



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 313 of 2021

Reserved on : 26.04.2023

Decided on : 01.05.2023

Reta Ram ...Petitioner.

Versus

Land Acquisition Collector. ...Respondent.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Rajnish Maniktala, Sr. Advocate with
Mr. Naresh Verma, Advocate.

For the respondent : Mr. H.S. Rawat, Additional Advocate
General.

Satyen Vaidya, Judge

Petitioner has prayed for following substantive
reliefs:-

- (a) *That the order dated 01.09.2021 (Annexure P-18) passed by the respondent whereby the application for reference under Section 64 had been rejected, may be quashed and set aside.*
- (b) *That the application under Section 64 of the Act of Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 may be allowed and the dispute may be*

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

referred to the Authority as specified under Section 64 of the Act.

(c) *That the petitioner may be suitably compensated on account of legal malafides of respondent.* ◊

2. Petitioner was recorded owner of land comprised in Khata No.3, Khatauni No.3, Khasra No. 1224/793, measuring 00-19-13 Hectares in Mohal Tatapani, Tehsil Karsog, District Mandi, H.P.

3. On 06.02.2013, Special Secretary Public Works, Government of H.P., issued notification under Section 4 of Land Acquisition Act, 1894, for acquisition of land in villages Tatapani and Kidia of Tehsil Karsog and District Mandi, H.P. for public purpose i.e. for construction of Tatapani-Shakrara road. Out of the above mentioned land of the petitioner, land measuring 0-9-2 hectares was also proposed to be acquired and was depicted by Khasra No. 1224/793/1. On completion of process of acquisition, the Land Acquisition Collector offered the market price of the land acquired for aforesaid purpose, vide award No. 128, dated 30.03.2015. Petitioner was also offered the market price of his acquired land. Subsequent to acquisition, land

acquired from petitioner was depicted by a Khasra No. 1432/1224/793.

4. According to the petitioner, he had partially constructed a building on the acquired land for which he has not been paid compensation. For redressal of his grievance, petitioner approached this Court by way of CWP No. 2886 of 2015, however, petitioner withdrew CWP No. 2886 of 2015 on 23.08.2019 with liberty to approach the appropriate Forum/Court. Accordingly, the writ petition was disposed of in following terms:-

“3 Petition is permitted to be withdrawn, with liberty to the petitioners to approach the appropriate Forum/Court of law for the redressal of their grievance. It is made clear that in the event of any such proceedings being initiated by the petitioners, then the time spent by them shall be exclude for the purpose of computation of limitation i.e. time as from the date when the petition was filed till today. Petition stands disposed of, so also the pending miscellaneous applications, if any.”

5. Thereafter, petitioner approached respondent-Land Acquisition Collector, Mandi, with an application under Section 64 of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short “2013 Act”). A prayer was made for referring the matter to appropriate authority for determination of the amount of compensation for house allegedly constructed on acquired land of petitioner.

6. The grievance of the petitioner is that the Land Acquisition Collector neither heard the petitioner on his application under Section 64 of 2013 Act nor petitioner was intimated about any proceedings, if any, undertaken on his application. Finally, petitioner submitted an application under R.T.I. Act and in response, his counsel was served with a communication, Annexure P-19, whereby it was informed that no case for proceedings under Section 64 was made out as there was no material to suggest that the house of the petitioner stood constructed on acquired land before issuance of notification under Section 4 of the Land Acquisition Act, 1894.

7. Petitioner has assailed the impugned communication, Annexure P-19, on the ground that the Land Acquisition Collector has exceeded the jurisdiction

vested in him by virtue of Section 64 of the 2013, Act.

He had no jurisdiction to decide the claim of the petitioner on merits. The only duty cast on him was to refer the matter to appropriate authority under 2013 Act.

8. Respondent by way of reply filed to the petition has contested the claim of the petitioner, on the ground that there was no house or structure on the acquired land of petitioner before its acquisition. Petitioner has raised the construction subsequently with ulterior motive and is not entitled to any compensation for building or structure. Petitioner has already been rightly paid the compensation in accordance with law.

9. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

10. Section 64 of 2013, Act, reads as under:-

“64 Reference to Authority

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is

payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collectors award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collectors award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

11. The aforesaid provision clearly mandates Land Acquisition Collector to refer the matter to the appropriate authority in case written application is received by him, requiring to refer the matter for determination of the authority with objection either to the measurement of the land, or the amount of the compensation, or the person to whom it is payable or the rate of rehabilitation and re-settlement under Chapters 5 and 6 of the Act, *ibid*, or to the apportionment of the compensation among the persons interested. The provision of Section 64 of 2013, Act does not leave any discretion with the Land Acquisition Collector to determine the issue himself. On receipt of an application with objection on any of the ground enumerated above, the Collector has to refer the matter to the authority.

12. Sub-section 2 of Section 51 of 2013, Act, mandates the appropriate government to specify in the notification referred to in sub-Section (1) the areas within which the authority may exercise jurisdiction for entertaining and deciding the references made to it

under Section 64 or applications made by the applicant under second proviso to sub-section (1) of Section 64.

13. Thus, there is no doubt that the jurisdiction to decide the application under Section 64 is with the authority established under Section 51 of the Act and the only role assigned to the Collector is to refer the matter to the authority.

14. The question of fact with respect to the truth of the claim of the petitioner has also to be determined by the authority. The Collector had no jurisdiction to go into such question. Even this Court in the instant proceedings will not venture into the question of fact, especially keeping in view the issue raised by the petitioner before this Court by way of instant petition.

15. Learned Additional Advocate General raised an argument that the petitioner having once accepted the award, was not entitled to file application under Section 64 of the 2013, Act. In support of his contention he has referred to sub-section (1) of Section 64, wherein it is provided that any person interested who has not accepted the award may approach the Collector for

referring the matter to the authority. Petitioner initially approached this Court by way of CWP No. 2886 of 15 for redressal of his grievance and after withdrawing the petition, he approached the Collector under Section 64 of 2013, Act. The instance of non-acceptance of the award by the petitioner, is manifest in his conduct. Thus, it cannot be said that the petitioner had accepted the award and hence was not entitled to file application under Section 64 of 2013, Act. In ***Ajit Singh and Others Vs. State of Punjab and Others reported in (1994) 4 SCC 67***, the Supreme Court in para-5 has held as under:-

“5.....Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants.”

16. Another ground raised by learned Additional Advocate General, is regarding limitation. In the backdrop of the prevailing fact situation of the case, the

objection so raised needs to be rejected for the reason that the Land Acquisition Collector had passed the award on 30.03.2015. Petitioner approached this Court by way of CWP No. 2886 of 2015 in the same year. Petition remained pending till 2019. While allowing the withdrawal of writ petition, this Court had directed the exclusion of time spent during the pendency of the writ petition before this Court for computation of limitation. The application under Section 64 of the Act, was filed by the petitioner before the Collector in July, 2020. The reason assigned is the impediments created by the then prevailing COVID-19 Pandemic conditions. Thus, no delay can be attributed to the petitioner. In any case, such question can also be gone into by the authority under the Act while adjudicating upon the claims put forth by way of application under Section 64 of the Act.

17. In result, the petition succeeds. Impugned order/communication, Annexure P-19, dated 01.09.2021, is quashed and set aside. Respondent/Collector is directed to make the reference, on the application already filed on behalf of the

petitioner, to the appropriate authority under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within four weeks from the date of passing of this order.

18. The petition is accordingly disposed of, so also the pending miscellaneous application(s), if any.

1st May, 2023
(*sushma*)

(Satyen Vaidya)
Judge

High Court