



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2300 of 2018
Reserved on: 21.06.2023
Decided on: 04.07.2023

Prem Lal Petitioner.

Versus

State of H.P. & others Respondents.

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. P.S. Goverdhan, Senior Advocate, with
Mr. Rakesh Thakur, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with
M/s Navlesh Verma, Pranay Pratap Singh,
Rakesh Dhaulta, Additional Advocate Generals
and M/s Arsh Rattan & Sidharth Jalta, Deputy
Advocate Generals, for respondents No.1 and 2-
State.

Mr. Neeraj Gupta, Senior Advocate, with
Mr. Ajeet Pal Singh, Advocate, for respondent
No.3.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has prayed for the following substantive reliefs:-

"i) To issue a writ of certiorari to quash and set aside the impugned order dated 23.11.2017 (Annexure P-1) passed by the Land Acquisition Collector-cum-Sub Divisional Officer (Civil), Arki, the respondent No.2.

ii) To allow application Annexure P-2 and to pass an appropriate order directing the respondent No.2 to send Land Reference Petition under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition,

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



Rehabilitation and Resettlement Act, 2013 to the Authority (District Judge Solan) for adjudication."

2. The case of the petitioner is that in the month of March, 2009, process was initiated by the respondents for acquiring the land of the petitioner and other land owners of village Ghamaro, Mangu, Gyana and Badog etc. for the use of respondent No.3 vide Notification dated 05.03.2009, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as 'the 1894 Act'). This was followed by issuance of a declaration under Section 6 of the Act, dated 02.03.2010. The acquisition process was opposed by the petitioner as well as other land owners of village Ghamaro, District Solan, H.P. by filing a writ petition before this Court. As the petition was dismissed, said judgment was assailed before the Hon'ble Supreme Court of India, where the matter was still pending as on the date of filing of the present petition. On 16.08.2017, the petitioner came to know from the land owners of Mangu that respondent No.2 had announced the Award in the acquisition proceedings. The Award was passed in the absence of the petitioner and other interested persons, who remained under the bonafide impression that as matter was pending before the Hon'ble Supreme Court, therefore, no Award would be announced by respondent No.2. After the petitioner gained this knowledge, he immediately approached the office of respondent No.2 where he was informed that Award No.1/2016 qua the acquisition of land stood announced on 15.09.2016.

3. Thereafter, the petitioner after collecting the requisite



documents filed a Reference Petition (Annexure P-3) under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') read with Section 18 of the 1894 Act against the Award dated 15.09.2016. Alongwith the Reference Petition, an application (Annexure P-2) was also filed, requesting respondent No.2 to forward the land reference to the learned District Judge, Solan, District Solan, H.P. for determination of the compensation payable to the petitioner as per law. In this application, reasons as to why the Reference Petition was not filed within the period of limitation were duly mentioned.

4. The grievance of the petitioner is that the application (Annexure P-2), praying for forwarding of the Reference to the learned District Judge, Solan for determination of compensation has been rejected by respondent No.2 in terms of order dated 23.11.2017 (Annexure P-1).

5. Learned Senior Counsel for the petitioner has argued that order dated 23.11.2017 (Annexure P-1) passed by respondent No.2 is not sustainable in the eyes of law, as by rejecting the application of the petitioner, the authority has infringed a very valuable right of the petitioner to seek adequate compensation qua the acquisition of his land which is his statutory right. Learned Senior Counsel argued that no opportunity was given to the petitioner to explain his position or lead evidence in support of the averments made in the application. He argued that the findings returned in the order were contrary to the record as the petitioner was never served any notice under Section 12(2) of the 1894 Act read with Section 37(2) of



the 2013 Act on 19.09.2016, as stood held by respondent No.2. Learned Senior Counsel submitted that the findings returned by respondent No.2 that the stand of the petitioner that he had no notice regarding passing of the Award was false and fabricated, were perverse findings and in fact no opportunity was granted to the petitioner by respondent No.2 to putforth his case, otherwise he would have had satisfied respondent No.2 in this regard. Learned Senior Counsel also argued that respondent No.2 erred in not appreciating that the petitioner was to gain nothing by not having filed the Reference Petition within the period of limitation and rather than interpreting the provisions of the statute liberally in the interest of the land looser, the application of the petitioner has been rejected by returning perverse findings. Accordingly, he submitted that as the findings returned in the impugned order dated 23.11.2017 (Annexure P-1) were not borne out from the record, therefore, the same be set aside and the Reference of the petitioner be forwarded to the learned District Judge, Solan, District Solan, H.P. for adjudication on merit.

6. Learned Advocate General while opposing the petition has taken the Court through the reply of respondents No.1 and 2 and submitted that a notice was duly served upon the petitioner by respondent No.2 regarding announcement of the Award on 19.09.2016, as was evident from Annexure R-2-/2 appended with the reply which was copy of the notice under Section 12 (2) of the 1894 Act read with Section 37 (2) of the 2013 Act. Thus, the contention of the petitioner that the Award was passed at this back or that he was not aware about the passing of the Award was incorrect



and untrue. He further argued that in terms of the record available, the petitioner was duly served the statutory notice and therefore as the petitioner did not file the Reference Petition in terms of Section 64 of the 2013 Act, there was no infirmity with the order passed by respondent No.2, dismissing the application of the petitioner.

7. The petition has been opposed by learned Senior Counsel appearing for respondent No.3, on the ground that the findings returned in the impugned order were duly substantiated from the record and as the petitioner was served notice under Section 12(2) of the 1894 Act read with Section 37 (2) of the 2013 Act through Parmanand, the Revenue Chowkidar of the area, therefore, there was no merit in the contention of the petitioner that he had no knowledge about the passing of the Award and that the said notice was not served upon him. Accordingly, he also prayed that the petition being devoid of any merit be dismissed.

8. We have heard learned counsel for the parties and have also gone through the impugned order as well as the pleadings carefully.

9. In terms of the provisions of the 2013 Act, any person interested who has not accepted the Award, may by written application to the Collector, require the matter to be referred by the Collector for determination of the Authority, *inter alia*, about the amount of compensation. Sub-section (2) of Section 64 of the 2013 Act reads as under:-

.....

“(2) *The application shall state the grounds on which*



objection to the award is taken:

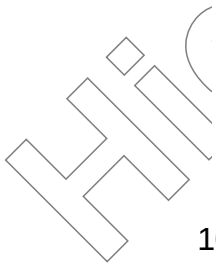
Provided that every such application shall be made--

(a) 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.

This clause seeks to provide that any person who has not accepted the award may refer the matter to Land Acquisition, Rehabilitation and Resettlement Authority through the District Collector.”



10. Thus, in terms of Sub-section (2) of the 2013 Act, the application under Section 64 has to be presented before the Collector within six weeks from the date of the Award, if the applicant was present or represented and in other cases, within six weeks of the receipt of the notice from the Collector under Section 21 of the 2013 Act or within six months from the Collector's Award, whichever period expires first. The second proviso to the Sub-section further provides that the Collector may entertain an application after the expiry of 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 first proviso.

11. The plain construction of the proviso to sub-section (2) of the 2013 Act is that the period prescribed for moving an application seeking a Reference is extendable by one year, provided the Collector is satisfied that there was sufficient cause for not filing the same within the specified period.

12. Respondent No.2 has rejected the application of the petitioner on the ground that the reasons spelled out by the petitioner in the application filed under Section 64 alongwith the Reference petition were "false and fabricated in the eyes of law". Respondent No.2 has returned the findings that notice under Section 12 (2) of the 1894 Act, read with Section 37 (2) of the 2013 Act was, issued to the petitioner which was duly served upon him on 19.09.2016 through Revenue Chowkidar, Parmanand, receipt (whereof was denied by the petitioner. Said Authority held that from this it was clear that the submission and reason for delay mentioned by the petitioner that he had no knowledge about the announcement of the Award, was incorrect.

13. In the present case, the Award was announced by the Collector on 15.09.2016. It is not the stand of the respondents that the petitioner was present or represented before the Collector at the time when he made his Award. Here is a case where a notice was issued to the petitioner by respondent No.2 under Section 12 (2) of the 1894 Act read with Section 37 (2) of the 2013 Act, which proves that the petitioner was not present or represented when the Award was made, because the procedure



under Section 12 (2) of the 1894 Act is followed only when the person interested is not present personally or represented when the Award is made. Therefore, in these circumstances, the issue that arises is as to whether the contention of the respondents that this notice was served upon the petitioner is borne out from the record or not.

14. The notice is appended with the reply filed by respondents No.1 and 2 as Annexure R-2/2. The same is dated 15.09.2016 and on the back of this notice there is an endorsement "Shriman Ji Lene Se Mana Kiya", i.e. Sir, refused to accept. This endorsement is dated 28.09.2016, signed by one Parmanand and below the signature word "Sathi" is written. It is not mentioned in the endorsement as to who refused to accept the notice, who this "Parmanand" was and who the "Sathi" was.

15. Therefore, the only prudent conclusion which can be drawn from the perusal of Annexure R-2/2 is that this notice was never served upon the petitioner as it was not mentioned in the endorsement that it was the petitioner upon whom the notice was served and it was he who refused to accept the same. Though it is mentioned in the impugned order that Parmanand was the Revenue Chowkidar, but there is no such endorsement below the signature of Parmanand on the notice.

16. Therefore, in the backdrop of the above discussion, we are of the considered view that the findings returned in the impugned order by respondent No.2 that the notice issued under Section 12 (2) of the 1894 Act read with Section 37(2) of the 2013 Act was served upon the petitioner are



perverse findings and the conclusion drawn by the said respondent that the contention of the petitioner that no notice was received by him was false and fabricated, is also a perverse conclusion. The petitioner was correct in his assertion that this notice was never served upon him, however, respondent No.2 in terms of the impugned order, without due application of mind rejected the application of the petitioner.

17. There is another important aspect of the matter and the same is that even if it was to be assumed for the sake of argument that the said notice was impliedly served upon the petitioner on 28.09.2016 on account of his purportedly refused to accept the same, then also as the prayer for Reference alongwith an application under Section 64 of the 2016 Act was filed by the petitioner within a period of one year and about ten days as from 28.09.2016, respondent No.2 ought to have entertained the application as he was empowered to do so in terms of the second proviso to Sub-section (2) of Section 64 of the 2013 Act. Respondent No.2 in fact erred in not appreciating that as the petitioner had been deprived of his property by way of compulsory acquisition of his land, the least that he was entitled to, was his Reference being forwarded to the Authority, seeking enhancement of compensation, more so when the same was within the extendable period of limitation prescribed in Section 64 of the 2013 Act.

18. Accordingly, in view of the findings returned hereinabove, this petition is allowed. Order dated 23.11.2017 (Annexure P-1), in terms whereof the application preferred by the petitioner under Section 64 of the 2013 Act read with Section 18 of the 1894 Act was dismissed, is set aside



and respondent No.2 is directed to forthwith forward the application of the petitioner alongwith the Reference to the Statutory Authority for adjudication of the Reference on merit. Pending application(s), if any, also stand disposed of. No order as to costs.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

July 04, 2023
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