



**REPORTABLE/NON-REPORTABLE**

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 22nd DAY OF AUGUST, 2022**

**BEFORE**

**HON'BLE MR. JUSTICE SATYEN VAIDYA**

**REGULAR FIRST APPEAL NO. 352 OF 2014**

**Between:-**

**SH. SUBHASH CHAND**

**...APPELLANT**

**(BY SH. G.D. VERMA, SENIOR ADVOCATE,  
WITH SH. B.C. VERMA, ADVOCATE)**

**AND**

**1. LAND ACQUISITION COLLECTOR,  
KOLDAM, DISTRICT BILASPUR,  
AT BILASPUR, H.P.**

**2. DISTRICT COLLECTOR,  
BILASPUR DISTRICT AT BILASPUR, H.P.**

**3. N.T.P.C. KOLDAM, BILASPUR  
THROUGH ITS AUTHORISED OFFICER.**

**.... RESPONDENTS**

**(SH. BHARAT BHUSHAN, ADDITIONAL  
ADVOCATE GENERAL, FOR R-1 & R-2.**

**SH. JAGDISH THAKUR, ADVOCATE, FOR  
R-3.)**

**RESERVED ON: 17.08.2022.**

**DECIDED ON: 22.08.2022.**

This appeal coming on for pronouncement of judgment this day, the Court delivered the following:

**J U D G M E N T**

By way of instant appeal, appellant assails award dated 27.06.2014 passed by learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. (Camp at Bilaspur) in Land Reference Petition No.47-4 of 2007 whereby the reference petition filed under Section 18 of the Land Acquisition Act (for short 'Act') was dismissed.

2. Brief facts necessary for adjudication of the appeal are that respondent No.1 acquired land, structures and trees for construction of Koldam Hydro Project of respondent No.3. Land bearing Khasra No.317/266/130 alongwith structure owned and possessed by the appellant, was also acquired. Respondent No.1 awarded a sum of Rs.5,99,094/- only in favour of the appellant as market value of the ground floor of the house of the appellant. The claim of the appellant for compensation to the first and second floor of the building constructed on Khasra No. 317/266/130 was rejected on the ground that said floors were constructed after issuance of notification under

Section 4 of the Act. The basis for such rejection was said to be the videography of the house of appellant recorded on 7/8.11.2000 when only the ground floor existed.

3. Aggrieved against inadequacy of amount awarded by respondent No.1, the appellant preferred application under Section 18 of the Act for making reference to the appropriate Court. The reference was accordingly made by respondent No.1 and the matter came to be decided by learned Additional District Judge, Ghumarwin, District Bilaspur vide impugned award.

4. The appellant has assailed the impugned award on the ground that the same was non-speaking and no reasons have been assigned for dismissing the reference petition. As per appellant, on one hand, the Reference Court had held that first and second floor of the building of the appellant were in existence prior to issuance of notification under Section 4 of the Act, on the other, the reference petition was dismissed without awarding any compensation for the said floors.

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

6. The perusal of impugned award reveals that the learned Reference Court had found the evidence led by the appellant, as to existence of first and second floor of the building prior to issuance of notification under Section 4 of the Act, as reliable and cogent. Whereas, the contrary stand taken by the respondents was disbelieved. Further, the record of videography of the building of the appellant conducted on 7/8.11.2000 produced before the learned Reference Court by way of compact disc Ext.RW3/A was held to be not proved in accordance with law. Thus, the learned Reference Court did not accept that the structure of the appellant was having only one storey at the time of issuance of notification under Section 4 of the Act. Still, the reference petition was dismissed merely on the ground that the appellant had failed to prove the market value of the acquired property. The statement of appellant's witness Sh. Rattan Lal Sharma (PW-1) and the site plan Ext.PW-1/A with estimate Ext.PW-1/B prepared by the said witness were disbelieved for want of placement of detail measurement on record in support of the abstract prepared by the said witness.

7. It is more than settled that the Reference Court holds an independent inquiry so as to arrive at just compensation payable to the person seeking enhancement before it. The Reference Court does not sit as a Court of appeal over the award passed by the Land Acquisition Collector. In ***Ashok Kumar and another vs. State of Haryana (2016) 4 SCC 544***, it has been held by the Hon'ble Supreme Court that it is the duty of the Court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the land owner and there is no cap on maximum rate of compensation that can be awarded by the Court and the Courts are not restricted to awarding only that amount as has been claimed by the land owners/applicants in their application before it.

8. A Division Bench of this Court in ***Associated Cement Companies Ltd. Vs. Jagan Nath and others 1998 (2) Shim. L.C. 92***, has held as under:

*“10. So far the observations of the Land Acquisition Collector as referred to in Para 30 of the impugned award of the District Judge in respect of comparison of the lands in villages Barmana, Nalag, Bhatar, Baloh, Dawan, Koti, Jamthal and Panjgain are concerned, these cannot be taken*

*into account for holding that the acquired land is comparable to the lands of awards Ex. P-12 and P-7 in view of the law laid down by the Supreme Court in Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and another (supra). In this judgment it has been categorically held that a reference under Section 18 of the Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Collector in his award unless the same material is produced and proved before the Court. Further, the award of the Land Acquisition Collector is not to be treated as judgment of the trial Court open to challenge before the Court hearing the reference. It is merely an offer made by the Land Acquisition Collector and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Collector, as if it were an appellate Court. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.”*

9. Keeping in view the aforesaid exposition of law, it can be said with certainty that learned Reference Court has failed to exercise the jurisdiction vested in it under law. Once the learned Reference Court had arrived at the conclusion that the structure owned by the appellant had three floors before the issuance of notification under

Section 4 of the Act, it was incumbent upon such court to determine the just and fair market value of first and second floors of said structure. Merely because the learned Reference Court had found the evidence of appellant deficient in proving the market value of the structure in question, the reference petition could not have been dismissed. Admittedly, some amount had been awarded in favour of the appellant for the ground floor by the Land Acquisition Collector and the quantification so arrived must have some basis for it. Learned Reference Court in any event could not have ignored such basis.

10. In view of above discussion, the appeal is allowed. Award dated 27.06.2014 passed by learned Additional District Judge, Ghumarwin, District Bilaspur in Land Reference Petition No. 47-4 of 2007 is set-aside and the case is remanded to the learned Additional District Judge, Ghumarwin, District Bilaspur to decide the reference petition afresh after affording opportunity of hearing to the parties. Since the reference petition pertains to the year 2007, learned Additional District Judge, Ghumarwin, District Bilaspur is directed to decide the reference petition

within a period of six months from the date of appearance of the parties before such Court. The parties are directed to appear before the Court of learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. on **01.09.2022**.

11. The appeal stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s) if any.

**22<sup>nd</sup> August, 2022**  
(GR)

**(Satyen Vaidya)**  
**Judge**

High Court of H.P.