

Collector Vs. Bakhshi Ram

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Court : Himachal Pradesh

Decided On : Dec-25-1960

Reported in : AIR1961HP20

Judge : C.B. Capoor, J.C.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 6, 11, 16, 17 and 48

Appeal No. : Civil Misc. First Appeal No. 77 of 1959

Appellant : Collector

Respondent : Bakhshi Ram

Advocate for Def. : Kanshi Ram, Adv.

Advocate for Pet/Ap. : Shankar Nath, Adv.

Disposition : Appeal allowed

Judgement :

C.B. Capoor, J.C.

1. This is an appeal by the Collector Bilaspur and is directed against an order of the learned Additional District Judge Bilaspur whereby on a reference under Section 18 of the Land Acquisition Act, hereinafter to be referred as the Act, a sum of Rs. 1150/- inclusive of the compulsory acquisition charges was awarded to the

respondent as compensation in respect of house No. 332 situate in village Bhakra Pargana Kot Kehloor. The aforesaid house was within the range of 1700 R. L. and was intended to be acquired in connection with the construction of the Bhakra Dam.

2. The Evaluation Division of the Bhakra Dam Administration assessed the value of the aforesaid house at Rs. 1000/-. No compensation was, however, awarded to the respondent in respect of it as by the time that the learned Collector made his award dated 9-11-1957 it had fallen down.

3. Land at a short distance from the disputed house was dug upto a depth of 20 feet by men employed by the Bhakra Dam Administration for the construction of Coffer Dam and the learned Additional District Judge reached the conclusion that the house fell down as a result of that digging. He was further of the opinion that the house existed at the time that the notification under Section 4 of the Act was issued. He, therefore, awarded to the respondent a sum of Rs. 1000/- as the value of the aforesaid house assessed by the Evaluation Department of the Bhakra Dam Administration plus 15 per cent thereof as the compulsory acquisition charges.

4. The main question that has been urged on behalf of the appellant is that as the aforesaid house did not exist at the time that the award was made by the learned Collector, the respondent was not entitled to be awarded any compensation in respect of it. According to the learned counsel for the appellant no compensation can be awarded in respect of a property which ceases to exist prior to the making of the award.

5. On behalf of the respondent on the otherhand it has been argued that if a property existed at the time of the issue of notification under Section 4 of the Act compensation would be payable in respect of it, even though it may have ceased to exist thereafter.

6. The first question that arises for decision is as to when did the aforesaid house fall down? It is clear from the evidence on record that it fell down in the rains of 1957. The notification under Sections 4 and 6 of the Act were respectively issued on 12-2-1956 and 4-5-1956. The award was made on 9-11-1957. It would thus

appear that the house in dispute fell down after the making of the notifications under Sections 4 and 6 of the Act but prior to the making of the award.

7. The next question that arises for decision is as to whether in order to entitle an interested person to compensation, the land intended to be acquired should be in existence at the time of the issue of notification under Section 4 or the notification under Section 6 or at the time of the making of the award.

8. A notification under Section 4 is primarily intended for preliminary investigation and a firm declaration as to the intention of the Government to acquire the land for a public purpose or for a company is made when a declaration is made under Section 6. Thus a date on which a notification under Section 4 is made is not at all relevant for the purpose under consideration. Even in the Sind case reported in *Province of Sind v. Harkrishindas Gulabrai*, AIR 1940 Sind 58, reliance on which has been placed on behalf of the respondent, the date of issue of notification under Section 4 was not considered to be relevant.

In a recent case reported in *Babu Barkya Thakur v. State of Bombay*, AIR 1960 SC 1203, it was held that the purpose of a notification under Section 4 is to carry on a preliminary investigation and that a defect in such notification is not fatal to the validity of the proceedings. Even on the making of a declaration under Section 6 the property intended to be acquired does not vest in the Collector. Section 16 of the Act provides that when the Collector has made an award under Section 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances.

In a case of urgency Section 17 of the Act empowers the Government to take possession of any waste or arable land needed for public purposes or for a Company even prior to the making of an award. That section further provides that such land shall thereupon vest absolutely in the Government free from all encumbrances. The conjoint effect of Sections 16 and 17 is that it is only on the taking of possession that the land vests in the Government. Section 48 of the Act also leads to the same conclusion.

Inter alia it provides that the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken and if the Government does not take possession it will only be liable to pay to the owner compensation for the damages that may have been suffered by him in consequence of the notice or of any proceedings thereunder together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land. It would not have been possible for the Government to withdraw from acquisition prior to the taking of possession if as a result of the declaration made under Section 6, the property intended to be acquired had vested in the Government.

9. So long as a property intended to be acquired does not vest in the Government it cannot be held liable for any damage caused to it, either as a result of any act of God, i.e., vis major or because of any act on the part of the owner. The learned Additional District Judge was of the opinion that because the house in question fell down as a result of the digging of the land close to it at the instance of Bhakra Dam Administration, for the construction of the Coffer Dam, the respondent was entitled to compensation under the Act.

I am, however, unable to endorse that conclusion of his. The respondent may in such circumstances have had a right to claim damages by filing a suit against the Government but the falling down of the house because of a wrongful act done at the instance of the Government cannot justify the award of compensation under the Act.

10. Different consideration might have arisen if the house had been damaged in furtherance of the purpose for which the property was intended to be acquired.

11. On behalf of the respondent reliance was placed upon the Sind case supra in support of the contention that if a property intended to be acquired is in existence at the time of the declaration under Section 6 of the Act the owner will be entitled to compensation even though it may have ceased to exist thereafter. In that case a portion of the property intended to be acquired had ceased to exist during the period between the notification issued under Sections 4 and 6 of the Act, and it was held that the owner of the property was not entitled to any compensation for

the portion which had ceased to exist.

The portion of the property in respect of which compensation was awarded to the owner existed both at the time of the making of declaration under Section 6 and at the time of making of the award. No question arose in that case as to whether an owner will be entitled to compensation if the property acquired ceased to exist during the period between the issue of notification under Section 6 and the making of the award or the taking of possession. The aforesaid ruling therefore, is not an authority for the proposition of law contended for on behalf of the respondent.

12. Succour for the aforesaid proposition of law was also drawn by the learned counsel for the respondent from the provisions of Clauses 1 and 6 of Section 23(1) and 7 of Section 24 of the Act. Those clauses run as below:

Section 23(1):Clause (1). The market value of the land at the date of the publication of the notification under Section 4, subsection (1).Clause (6). The damage, (if any) bona fide resulting from the diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

Section 24 : Clause (7). Any outlay or improvements on or disposal of the land acquired, commenced made or effected without the sanction of the Collector after the date of the publication of the notification under Section 4, Subsection (1).

13. Sections 23 and 24 detail the circumstances which a Court shall take or shall not take into consideration in determining the amount of compensation. Those sections are not concerned with the vesting in the Government of the land acquired. Thus while in determining the amount of compensation the value of the land at the date of the making of notification under Section 4 (1) of the Act may be taken into consideration, it cannot be said that the land intended to be acquired vests in the Government with effect from the date that the notification under Section 4 (1) is issued. For a similar reason 6th clause of Section 23 and 7th clause of Section 24 can be of no assistance to the learned counsel.

14. Thus differing from the learned Additional District Judge. I am of the opinion that the respondent was not entitled to be awarded any compensation in respect of the aforesaid house Lest there be any misunderstanding I want to make it clear that this decision will not have any effect on the supplementary award made by the learned Collector with respect to the disputed house.

15. In conclusion the appeal succeeds and is accepted. In view of the peculiar circumstances of the case no order is made as to costs.

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