

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.67 of 2002.

Decided on:September 29, 2006

State of H.P. & Anr.

.....Appellants.

VERSUS

Rikhi Ram.

.....Respondent.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?¹No

For the Appellants:

**Mr.M.S.Chandel, Advocate General
with Mr.Ashutosh Burathoki,
Addl.A.G.**

For the Respondent:

Mr.V.D.Khidta, Advocate.

Deepak Gupta, Judge(Oral)

This appeal is directed against the judgment of the learned District Judge, Hamirpur dated 2.1.2001.

2. Brief facts of the case are that possession of land belonging to the respondent was taken by the Government on 1.9.1979. However, the land was not acquired and the respondent filed a writ petition and thereafter notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was issued on 20.4.1996. Award was passed on 21.5.1997. The land owner filed a land reference and the Court below enhanced the compensation and assessed the value of the land at Rs.112/- per square metre and held

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

...2...

the claimant entitled to benefit on account of Section 23 (1-A) of the Act with effect from the date of possession i.e. 1.9.1979 to 21.5.1997.

3. The main ground taken in this appeal is that in view of the law settled by the Supreme Court, the Court below has erred in granting interest and additional solatium with effect from the date of possession. The law in this regard is settled. The Apex Court in ***R.L.Jain (D) by LRs vs. DDA and others {(2004) 4 SCC 79}***, has clearly held that where possession is taken earlier and the notification under Section 4 of the Act is issued subsequently the additional sum of compensation at the rate of 12% per annum would be payable only from the date of notification and not from the period anterior to the publication of the notification. The Court also held that the interest under Section 28 and 34 of the Act is payable only from the date of notification and not from the date of possession. In Para-18, the Court observed as follows:-

“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the

...3...

Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded.”

4. This view has been re-affirmed in ***Land Acquisition Officer & Asstt. Commissioner & Anr. Vs. Hemanagouda & Ors. {(2005) 12 SCC 443}***, wherein the Apex Court set aside the judgment of the High Court and held that no interest on the awarded amount was payable under Section 34 of the Act in respect of possession taken prior to notification under Section 4(1).

5. In view of the above discussion, the assessment made by the learned Court below assessing the value of the land at Rs.112/- per square metre is upheld. However, in view of the fact that possession was taken prior to the issuance of the notification under Section 4 of the Act, the clamant is not entitled to any amount under Section 23(1-A) of the Act. The claimant shall be entitled to interest under Sections 28 and 34 of the Act from the date of notification under Section 4 in accordance with law and not from the date of possession. The appeal is disposed of in the aforesaid terms.

September 29, 2006 (soni)

(Deepak Gupta)
Judge.

...4...