

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

**CWP No. 72 of 2007**

**Reserved on: October 27, 2008**

**Decided on: October 31, 2008**

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**Raj Kumar**

**Petitioner**

*Vs.*

**State of H.P. and others**

**Respondents**

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**Coram**

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

**The Hon'ble Mr. Justice V.K. Ahuja, Judge.**

***Whether approved for reporting?<sup>1</sup> Yes***

**For the Petitioner : Mr. K.C. Rana, Senior Advocate  
with Ms. Sweta Julka, Advocate.**

**For the Respondent : Mr. R.M. Bisht, Dy. A.G.**

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**V.K. Ahuja, Judge**

This civil writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the order passed by Land Acquisition Collector, Kangra, dated 4.9.2006.

2. Briefly, stated the facts of the case as alleged by the petitioner are that the respondents acquired the land of the petitioner measuring 0-00-50 hectares situated in Mohal Jassur, Tehsil Nurpur, District Kangra for construction of Mukerian-Talwara-Nurpur-Chakki Dhar Road. The land of about 25 land owners was acquired including that of petitioner for construction of the road. The Land Acquisition Collector, Kangra made its award on 3.6.1991. Some land owners aggrieved by the award

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

got referred the matter to the Court under Section 18 of the Land Acquisition Act. The Additional District Judge-II, Kangra at Dharamshala gave his judgment on 3.8.1994. The Regular First Appeal alongwith cross objections were filed by some of the land owners in this Court and it was held that they were entitled to Rs. One lakh per kanal as against Rs. 13,698/- per kanal granted by Land Acquisition Collector, Kangra. This Court also ordered to grant interest for the entire amount inclusive of the solatium.

3. It was further alleged that the petitioner had not accepted the amount nor filed any reference under Section 18 of the Land Acquisition Act. However, on the basis of the judgment of the Learned District Judge and this Court, they filed an application under Section 28-A of the Act for re-determination of the amount of compensation. The Collector re-determined the award vide its decision dated 14.6.2005. The petitioner No. 1 was present on the date of the award, who was only told about the award that he would get another additional amount of Rs. 9416/- for the acquired land. The petitioner alleged that this award was neither acceptable to him nor understandable, since it was not told to the petitioner as to how the Land Acquisition Collector/respondent No. 1 has determined the price of the land. The petitioner filed a reference before the respondent No. 2 who dismissed the same as barred by limitation under Section 18(2) of the Land Acquisition Act having not been filed within six weeks. It was held by respondent No. 2 that the reference was barred by five days since the award was passed on 14.6.2005

and the application was filed on 11.8.2005 being Monday. The petitioner filed the present writ petition being aggrieved by the said order passed by respondent No. 2 on the ground that respondent No. 2 had no jurisdiction to decide as to whether the application for reference was within time or not and excluding the time spent for receiving the copy, the reference petition was well within time and, therefore, the order passed by respondent no. 2 is liable to be set aside.

4. We have heard the learned counsel for the parties and have gone through the record of the case.

5. The contention put forth by learned counsel for the petitioner was that the order passed by the Collector was dated 14.6.2005. The petitioner applied for copy on 12.7.2005, which was supplied only on 20.7.2007 and the case was filed on 30.7.2005. Therefore, excluding the time spent in obtaining the copy, the petition was well within six weeks as provided under Section 18(2) of the Land Acquisition Act.

6. To substantiate his point, learned counsel for the petitioner had placed reliance upon the decision in ***Dharam Pal v. The Collector Land Acquisition, 1987 P.L.J. 263.*** The observation made in para-4 of the judgment are relevant and are being reproduced below:-

“It could no more be disputed that it was not for the Collector to decide, whether the application for reference was within time, or not. He should have referred the matter to the District Judge, leaving the question open so that the parties could lead evidence on this point, before the question could be decided. In this view of the matter, the revision succeeds and the impugned orders are set aside. The Collector is directed to make the reference to

the District Judge concerned in accordance with law within two months from today."

7. On the other hand, the learned Deputy Advocate General on behalf of the respondents submitted that Learned District Judge or L.A.O. had no power to condone the delay in question in filing the petition and as such, the impugned order passed by the respondent No. 2 was sustainable in the eyes of law. To substantiate his point, he relied upon the decision in ***MAHADEO BAJIRAO PATIL v. STATE OF MAHARASHTRA AND OTHERS , (2005) 7 Supreme Court Cases 440.*** The observations made in para-14 of the judgment are relevant and are being reproduced below:-

"Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under Section 18 of the Act has no power of condonation of delay in making an application under the aforesaid section."

8. The above decision clearly shows that there was no power to the Land Acquisition Collector or the Learned District Judge to condone the delay in making an application under Section 18 if it was not filed within six weeks of the receipt of notice under Section 12(2) of the Act.

9. Our attention has been drawn to the amendment made by State of H.P. in Section 18(2) proviso which was amended by The Land Acquisition by Act No. 17 of 1986 as assented to by the President on 11<sup>th</sup> July, 1986. The amended proviso to Section 18(2) reads as under:-

“Provided further that the Collector may entertain an application under this section, after the expiry of the period of six weeks but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

10. A perusal of Section 28-A of the Land Acquisition Act shows that it reads as under:-

**“28-A. Re-determination of the amount of compensation on the basis of the award of the Court-(1)**

Whether in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.”

11. From a perusal of the amended provision, it is clear that the power vests with the Collector to entertain an application even after the expiry of period of six weeks but within a period of six months. The only rider with the Collector is that he must be satisfied that the applicant was prevented by sufficient cause from making the application in time. The provision of Section 28-A are very clear that the time requisite for obtaining a copy of the award shall be excluded. The

petitioner had clearly alleged in the application the date of the award, the date of filing of reference and the time stage in obtaining the copy of the award. These dates were not specifically denied by the respondents in their reply and the petition was duly supported by an affidavit filed by the petitioner and as such, there is no necessity of leading evidence in regard to these dates alleged by the petitioner. It is, therefore, clear that if the time spent in obtaining the copy is excluded i.e. from 12.7.2005 to 20.7.2005, the reference petition was filed by the petitioner within six weeks of the date of the order and as such, the Collector was liable to exclude this period which was not done by him and therefore, the impugned order is liable to be set aside after holding that the petition filed by the petitioner was well within time.

12. In view of the above discussion, the impugned order passed by respondent No. 2 is set aside. The reference petition shall be re-registered by the Collector and he shall dispose of the same in accordance with law. The petitioner shall approach respondent No. 2 with a copy of the order who shall dispose of the case in accordance with law within one month of the receipt of the certified copy of the order who shall proceed in accordance with law with reference petition. The writ petition is allowed

accordingly with no order as to the costs.

**( Deepak Gupta ), J.**

**October 31, 2008**  
(vs)

**( V.K. Ahuja ), J.**