

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**RFA Nos.58 of 2014 a/w RFA No.6 of 2015****Reserved on : 27.03.2024**
Decided on : 30.04.2024**RFA No.58 of 2014**

Chiter Rekha

.....Appellant

Versus

Land Acquisition Collector & Anr.

.....Respondents

RFA No.6 of 2015

General Manager Northern Railway

.....Appellant

Versus

Chiter Rekha & Anr.

.....Respondents

*Coram****The Hon'ble Mr. Justice Virender Singh, Judge.******Whether approved for reporting? YES*****RFA No.58 of 2014****For the appellant :** **Mr. Sanjeev Kuthiala, Senior Advocate, assisted by Ms. Ankita, Advocate****For the respondents :** **Mr. H.S. Rawat, and Mr. Mohinder Zharaick, Additional**

Advocates General, for respondent No.1.

Mr. Nand Lal Thakur, Senior Panel Counsel, for respondent No.2.

RFA No.6 of 2015

For the appellant : **Mr. Nand Lal Thakur, Senior Panel Counsel.**

For the respondents : **Mr. Sanjeev Kuthiala, Senior Advocate, assisted by Ms. Ankita, Advocate, for respondent No.1.**

Mr. H.S. Rawat, and Mr. Mohinder Zharaick, Additional Advocates General, for respondent No.2.

Virender Singh, Judge

The above-titled appeals, filed under Section 54 of the Land Acquisition Act (hereinafter referred to as 'the Act'), are being disposed of by common judgment, as, both these appeals have been preferred by the parties, against the award dated 25.09.2013, passed by the Court of learned Additional District Judge-II, Una, H.P. (hereinafter referred to as the 'learned Reference Court), in *Reference Petition No.59 of 2009* titled as '*Chiter Rekha Vs. Land Acquisition Collector (Railways) Una, HP & Another*'.

2. Vide award dated 25.09.2013, the learned Reference Court has answered the reference petition, filed

under Section 18 of the Act, by passing the award. The following relief, to the petitioner in RFA No.58 of 2014, was given:-

“20. In view of my findings on the above issues, the petition is allowed and the petitioner is awarded compensation at the rate of Rs.900/- per square meter of the acquired land irrespective of classification of the land. The petitioner is awarded interest/additional compensation at the rate of 12% P.A. on the enhanced amount of compensation under Section 23(1-A) of the Act w.e.f. 23.6.2005 till 23.3.2007. Further, the petitioners are entitled to solatium at the rate of 30% on the enhanced amount of compensation. Apart from this, the petitioner is entitled to interest at the rate of 9 per cent for one year w.e.f. 23.3.2007 and thereafter at the rate of 15 per cent per annum till the amount of compensation is deposited in the court. Memo of costs be prepared and the files after due compliance be consigned to record room.”

3. For the sake of convenience, the parties to the present *lis* are, hereinafter referred to, in the same manner, as were, referred to, by the learned Reference Court.

4. Brief facts, leading to the filing of the present appeals, before this Court, may be summed up, as under:-

4.1. The land of petitioner-Chiter Rekha, situated at Village Andora Lower, Tehsil Amb, District Una, H.P., was acquired by the respondent, for the purpose of construction of Nangal-Talwara Railway Line. Notification, under Section 4 of

the Act, was issued on 23.06.2005, which was given wide publicity as per mandate of the Act. Thereafter, the provisions of Sections 6 and 7 of the Act were complied with and ultimately, the award, under Section 11 of the Act, was passed vide Award No.9/2006-2007 dated 23.03.2007, by the Land Acquisition Collector (Railway), Una, District Una, H.P.

4.2 Vide Award No.9 dated 23.03.2007, land was acquired and Land Acquisition Collector has assessed the market value of the land. Since, the petitioner was not satisfied with the market value of the acquired land, as assessed, by the Land Acquisition Collector, prevailing at the time of issuance of the notification, under Section 4 of the Act, as such, the reference, before the Land Acquisition Collector, was made, under Section 18 of the Act, against the award, with a prayer to refer the same to the Court of learned District Judge, Una, H.P.

4.3 According to the petitioner, her land was acquired by the respondent, vide Award No.9, as referred above. However, according to her, the amount of compensation was received by her, under protest.

4.4 According to her, the acquired land is very fertile and irrigated land, situated near Amb-Gagret Road. The commercial potentiality of the acquired land has also been

highlighted, by pleading that the market value of the acquired land is Rs.50,000/- per marla. The acquired land is also stated to be situated near Industrial Area, Amb.

5. On the basis of above, a prayer has been made to enhance the market value of the acquired land, prevailing at the time of issuance of the notification, under Section 4 of the Act.

6. This reference petition was entertained by the learned Reference Court.

7. When put to notice, the respondents have filed their reply, denying that the petitioner has not filed any objection, at the time of enquiry, under Section 9 of the Act. According to them, the petitioner has received an adequate compensation for the acquired land. However, the factum of acquisition of the land, as pleaded, by the petitioner, has not been disputed.

7.1 It is further case of the respondents that the Land Acquisition Collector has assessed the market value of the acquired land, after taking into consideration, all relevant factors, including commercial potentiality of the acquired land.

8. As such, a prayer has been made to dismiss the reference petition.

9. Petitioner has filed the rejoinder to the reply, denying the preliminary objections, as well as, contents of the reply, by virtue of which, the reference petition has been contested by re-asserting that of the reference petition.

10. From the pleadings of the parties, following issues were framed, by the learned Reference Court, vide order dated 10.08.2011:-

- “1. Whether the petitioner is entitled for enhancement of acquisition amount, as claimed? OPP*
- 2. Whether the petitioner is estopped by her act and conduct to file this reference? OPR*
- 3. Whether the petitioner has been awarded adequate compensation, as alleged? OPR*
- 4. Relief.”*

11. Thereafter, parties to the *lis* were directed to adduce evidence.

12. After closure of the evidence and after hearing learned counsel for the parties, the learned Reference Court has answered the reference petition, vide award, as referred to above.

13. Feeling aggrieved from the said award, petitioner-Chiter Rekha has filed RFA No.58 of 2014, before this Court, against the said award, mainly on the ground that, the

learned Reference Court has not assessed the market value of the acquired land, prevailing at the time of issuance of the notification, under Section 4 of the Act. Commercial potentiality of the acquired land is also stated to have not been taken into consideration.

13.1 The award has also been assailed, on the ground that the award is liable to be modified and the petitioner is entitled for enhancement of the amount of compensation.

13.2 Highlighting the commercial potentiality of the acquired land, the award has further been assailed, on the ground that the market value of the acquired land is ought to have been enhanced, as, the learned Reference Court has passed the impugned award, on 25.09.2013, under the Act, whereas, by that time, the President of India has given assent to the new law namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'New Act'). Hence, the amount of compensation, as well as, payment has been sought to be based upon the New Act.

14. In nutshell, petitioner has sought the relief on the basis of the New Act, instead of, the Act.

15. Along with the appeal, application (CMP No.9294 of 2018), under Order XLI Rule 27 read with Section 151 of CPC, for leading additional evidence, has been moved.

15.1 By virtue of the said application, documents, i.e. judgment, dated 09.05.2016, passed by this Court, in a bunch of Regular First Appeals, lead whereof, is RFA No.24 of 2010 titled as 'Vidya Sagar Vs. Land Acquisition Collector & Ors.', Award dated 18.04.2015, passed by the Court of learned Additional District Judge-II, Una, District Una, H.P., in a bunch of reference petitions, lead whereof, is Reference Petition No.RBT/123/13/2012, titled as 'Sewati Devi @Savitri Devi Vs. Land Acquisition Collector & Anr.', copy of C.D. Form and the certificate, issued by the Patwari, Patwar Circle, Andora, have been sought to be placed on record as additional evidence, on the ground that the above documents are necessary, for the purpose of doing complete justice, *inter se* the parties.

15.2 According to the petitioner, despite all endeavours, she could not produce these documents. As such, the documents are prayed to be placed on record, by way of the said application.

15.3 Although, this application was filed on 07.09.2018, but, till date, reply to the application has not been filed.

16. As such, a prayer has been made to allow the appeal, as well as, the said application.

17. The respondents have also filed RFA No.6 of 2015, assailing the award, passed by the learned Reference Court, mainly on the ground that the learned Reference Court has passed the award, without taking into consideration the oral, as well as, documentary evidence.

17.1 According to them, the evidence of RW-1 Lal Chand, Kanungo has not been considered properly, by the learned Reference Court.

17.2 It is their further case that the learned Reference Court has enhanced the amount of compensation, which amounts to an increase of more than 100% and the same has been done, without taking into consideration any evidence, on record. No evidence is stated to have been adduced, by the petitioner, to justify the enhancement of the amount of compensation.

18. On the basis of above facts, a prayer has been made to allow the appeal, by setting aside the award.

19. In order to decide the present appeals, it would be just and appropriate for this Court to discuss oral, as well as, documentary evidence, led by the parties, before the learned Reference Court.

20. After framing of the issues, petitioner has examined PW-1 Lal Chand, Patwari, who has proved the copy of settlement Ex.PW1/A. As per record, land bearing Khasra No.1650, 1651, 1661, 1648, 1649, 928 is abutting to the boundary of Lower Andora.

20.1 In the cross-examination, this witness has admitted that Upper Andora and Lower Andora are two different revenue estates.

21. Narinder Kumar, Patwari stepped into the witness box as PW-2 and deposed that the boundary line of Village Lower Andora, as per the record, has been recorded as 338 mts. and Khasra Nos.1295, 1296, 1298, 1297, 1323, 1321, 1324, 1335, 1336, 1339, 1338, 1340 and 1351 are abutting to the boundary. Across the boundary, the area of Partap Nagar, Amb is abutting. He has proved the document Ex.PW2/A.

21.1 In the cross-examination, this witness has deposed that he is not in a position to tell who are the

owners, of these khasra numbers, mentioned by him, in his examination-in-chief.

22. PW-3 Kali Dass has deposed that he is the GPA of petitioner-Chiter Rekha. In his examination-in-chief, he has deposed, as per the stand, taken by his wife-Smt. Chiter Rekha, in the reference petition.

22.1 In the cross-examination, he has deposed that his land measuring 13 kanal 14 marla was acquired, for the purpose of laying down broad gauge railway line. This witness has retired as Naib Tehsildar. He has admitted that the kind of the acquired land was not banjar kadim, but, according to him, the same was chahi (irrigated).

23. To rebut this evidence, respondents have examined RW-1 Lal Chand, Kanungo, who has proved the copy of notification, under Section 4 of the Act, as Ex.RW1/A, notification, under Section 6 of the Act, as Ex.RW1/B, Award No.9 dated 23.03.2007 Ex.RW1/C and chart, under Section 19 of the Act, as Ex.RW1/D. According to him, as per the record, total 5-35-15 hectares of land was acquired, for which, a sum of Rs.2,63,78,882/- was paid.

23.1 In the cross-examination, this witness has admitted that he has not seen the acquired land, nor he is aware about the fact as to whether the same is irrigated land

or not. He has feigned his ignorance with regard to the suggestions, which were put to him, regarding the commercial potentiality of the acquired land.

24. Apart from this, parties to the *lis* have also produced documentary evidence, which is copy of bandobast Ex.PW1/A, copy of tatima Ex.PW2/A, copy of GPA Ex.PW3/A, copy of Award No.5/2005-06 Ex.P1, pertaining to the land situated in Village Kataur Khurd, Tehsil Amb, District Una, copy of Award No.9/2006-2007 Ex.P2, pertaining to Village Andora Nichla, Tehsil Amb, District Una, copy of Award No.13/2006-2007 Ex.P3, pertaining to Village Partap Nagar, Tehsil Amb, District Una. Ex.P4 is the copy of Award dated 19.10.2011, passed by the Court of learned District Judge, Una, in a bunch of petitions, lead whereof, Land Reference Petition No.RBT/41-IV/11/10, titled as 'Jashwant Singh, son of Sher Singh Versus Land Acquisition Collector & Another'. This award pertains to the land situated in the revenue estate of Village Partap Nagar, Tehsil Amb, District Una. Ex.RW1/A is the copy of notification, issued under Section 4 of the Act, Ex.RW1/B is the copy of notification, issued under Section 7 of the Act, Ex.RW1/C is the copy of Award No.9/2006-2007 and Ex.RW1/D is the Form No.19, under Section 18 of the Act.

25. This is the entire documentary evidence, which has been led, by the parties, to the *lis*.

26. First question, which arises for determination, before this Court, is qua the applicability of the New Act. The award, under Section 11 of the Act, was passed on 23.03.2007 and the reference petition, under Section 18 of the Act, was decided on 25.09.2013, whereas, the New Act came into force on 01.01.2014, vide S.O. 3729 (E) dated 19.12.2013, published in the Gazette of India Extraordinary, Part-II, Section 3(ii) No.2839 dated 19.12.2013. Meaning thereby, even, at the time of decision of the Reference Petition, by the learned Reference Court, New Act had not come into force. Section 24 of the New Act is reproduced as under:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. –

- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -*
- (a) Where no award section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

27. It is not the case of appellant-Chiter Rekha that the possession of the land has not been taken, by the respondents or the compensation has not been paid.

28. The Legislature, in its wisdom, has used the term ‘award’, under Section 11 of the Act, in Section 24 of the New Act.

29. In view of the above discussions, the arguments, qua applicability of the New Act, regarding the land acquired, do not hold water. As such, the same are rejected.

30. The learned Reference Court, in this case, has awarded the compensation @Rs.900/- per square meter, irrespective of the classification of the land, along with statutory benefits.

31. As per the evidence, adduced by the parties, before the learned Reference Court, the acquired land is situated in Lower Andora and according to PW-1 Lal Chand, Patwari, acquired land is adjacent to Mohal Pratap Nagar, Tehsil Amb. As per document Ex.PW2/A, the boundary of Mohal Lower Andora is adjacent to Mohal Pratap Nagar, Tehsil Amb.

32. In addition to this, the petitioner has also relied upon documents i.e. Ex.P1, Award No.5/2005-06, pertaining to Village Kataur Khurd, Tehsil Amb District Una and Ex.P4, award passed by the learned District Judge, Una, H.P., in a bunch of reference petitions, lead whereof, is Land Reference Petition No.RBI 41-IV/11/10, titled as 'Jashwant Singh Vs. Land Acquisition Collector & Another'. The subject matter of the said Reference Petition is the land situated in Mohal Pratap Nagar, Tehsil Amb and the notification, under Section 4 of the Act, was issued on 23.06.2005.

32.1 The learned District Judge, in the said Reference Petition, has assessed the market value of the land by relying

upon document Ex.P4 and thus, awarded a sum of Rs.900/- per square meter, irrespective of the classification of the land.

33. Along with the appeal, petitioner-Chiter Rekha has also moved the application, under Order XLI Rule 27, read with Section 151 of CPC, for proving/placing on record the following documents:-

i. Judgment of the Coordinate Bench, passed on 09.05.2014, in Regular First Appeal No.77 of 2010, titled as 'General Manager, Northern Railway Vs. Kedar Nath and Others'.

By way of the said judgment, the Coordinate Bench of this Court has decided the bunch of Regular First Appeals, lead whereof, is RFA No.77 of 2010, titled as 'General Manager, Northern Railway Vs. Kedar Nath and Others'. The subject matter of the said case is the land acquired for construction of railway line from Nangal Dam to Talwara and the land is situated in Village Kataur Khurd, Tehsil Amb, District Una. The notification, under Section 4 of the Act, was issued on 25.02.2005.

ii. Copy of Land Reference RBT No.123/13/2012, decided on 18.04.2015, by the Court of learned Additional District Judge-II, Una, District Una, H.P.

- iii. Photocopy of CD Form.
- iv. Certificate, issued by Patwari, Patwar Circle, Andora.

34. All the aforesaid documents have been sought to be proved/produced, under Order XLI Rule 27 of CPC. As per the applicant-petitioner, the said documents are necessary and required for the purpose of proper adjudication/determination of the *lis*, and despite all endeavours, the same could not be produced earlier, by the applicant, despite due diligence.

35. Interestingly, the photocopies of all these documents have been annexed, with the application and the petitioner has not bothered to place on record the attested copies of the same. Even, document (Annexure A-2) is the uncertified copy of the award dated 18.04.2015, passed by the Court of learned Additional District Judge-II, Una, District Una, H.P.

35.1 Similarly, documents i.e. Annexure A-3 is the copy of CD Form and Annexure A-4 is the photocopy of the certificate, issued by the Patwari, Patwar Circle, Andora.

36. When, the petitioner has produced the photocopies of abovesaid documents and her application is totally silent as to how the documents Annexure A-2 to A-4

are relevant for the just adjudication of this case, in that eventuality, the assertions, in the application, are too short, to fulfill the ingredients, as per Order XLI Rule 27 of CPC.

However, judgment dated 09.05.2016, passed by this Court, in RFA No.77 of 2010, can be taken on record, as, High Court is the Court of record. Thus, application, bearing CMP No.9294 of 2018, is disposed of, accordingly

37. Considering the fact that notification, in the case, decided by the Coordinate Bench, in RFA No.77 of 2010, on 09.05.2016, was issued on 25.02.2005, whereas, in the present case, notification, under Section 4 of the Act, was issued on 09.07.2005 and the purpose for acquisition of the land, in both the cases, was for the construction of Broad Gauge Railway Line from Nangal to Talwara, as such, market value of the acquired land is required to be determined, as per this award. Hence, there is no substance in the appeal, preferred by the General Manager Northern Railway.

38. Accordingly, the market value of the acquired land is proved to be Rs.1,000/- per square meter, irrespective of the kind of the land. In addition to this, the petitioner is also entitled for all statutory benefits, as per law, which have been awarded to her, by the learned Reference Court.

39. In view of the above discussion, appeal bearing No.RFA No.58 of 2014, titled as 'Chiter Rekha Versus Land Acquisition Collector & Another' is allowed, in the aforesaid terms, whereas, appeal bearing No.RFA No.6 of 2015, titled as 'General Manager Northern Railway Versus Chiter Rekha & Another' is dismissed and the award, passed by the learned Reference Court, is modified, accordingly.

40. Pending application(s), if any, shall also stand disposed of.

41. Record be sent down.

(Virender Singh)
Judge

April 30, 2024

Gaurav Thakur