

**In the Court of R.K.Chaudhary, District Judge, Sirmaur District at
Nahan, Himachal Pradesh.**

CIS CNR No. : HPSI01-000514-2017.
 CIS Case Type : LAC Petition.
 CIS Case No. : 2/2017.
 CIS Case Year : 2017
 LAC Petition No. : 2-LAC/4 of 2017.
 Date of Institution : 21.8.2015.
 Date of Decision : 30.6.2022.

Shri Balak Singh son of Shri Dass Ram, resident of
 Ganguwala Jamniwala, Tehsil Paonta Sahib, District
 Sirmur, H.P.

.....**Petitioner**

Versus.

1. The Land Acquisition Collector, HPPWD., Solan and
 Sirmaur, District Solan, H.P.
3. The State of Himachal Pradesh through the
 Superintending Engineer, IPH Circle, Nahan, District
 Sirmaur, H.P.

.....**Respondents.**

**Reference petition under Section 18 of the
 Land Acquisition Act, 1894, for the
 determination of amount of compensation.**

Presenting counsels:

For the Petitioner : Sh. S.K. Kaushik, Advocate.

For the Respondents : Ms. Champa Sureel, Ld. DA.

AWARD

This award shall dispose of the reference petition
 filed under Section 18 of the Land Acquisition Act, 1894, against
 Award No.14/97 dated 06.2.1998, in respect of land comprising
 Khasra No. 188/1 measuring ten Biswas situated in village
 Ganguwala-Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H.P,

passed by the Land Acquisition Collector, HPPWD, Solan and Sirmaur District at Solan.

2. The facts necessary to dispose of this land reference petition, as stated, are that the Government of Himachal Pradesh issued a notification on 19.1.1995 for the acquisition of land measuring ten Biswas situated in village Ganguwala-Jamniwala, for the construction of the pump house. The petitioner is the owner of the said land and, after receipt of the notice, claimed compensation at the rate of Rs.2 lacs per bigha. However, after inquiry, the Land Acquisition Collector assessed the compensation at Rs.20,348/- per bigha. The award was passed on 6.2.1998, but its copy was supplied much after that, on 18.2.1998. Feeling aggrieved and dissatisfied with the assessment of compensation, the petitioner preferred the present petition because the land acquired was very valuable and of high-quality irrigated land. At the time of notification on 19.1.1995, the value of the same was over Rs.2 lacs per bigha. The determination of value by the Land Acquisition Collector is without any basis, and the same is based on surmises and conjectures. The land under reference was very fertile, and it has great potential in future, so the compensation granted has no nexus with the market value of the land. The reference is being made within 45 days. The petitioner has not accepted the award and, as such, is entitled to agitate the same. It has been prayed that compensation at the rate of Rs.2 lacs per bigha along with solatium at the rate of 30% and interest on the same may be determined and paid to the petitioner with costs of the petition.

3. The petition so filed has been contested by the respondents by filing a reply, wherein preliminary objections regarding maintainability, concealment of facts, cause of action, and locus standi were taken. It is also pleaded that the petitioner has not come to the Court with clean hands and that the petition is liable to be

dismissed with special heavy cost under Section 35-A of CPC. On merits, it is admitted that the petitioner was owners of the suit land measuring 00-10-00 bighas. It is submitted that the respondent had paid adequate compensation to the petitioner as per the kind and quality of the land, and the respondent had assessed the value of the petitioner's land as Rs.20,348/- per bigha. As per that rate, the compensation was paid to the petitioner. It is admitted that the award was passed on 6.2.1998, but it is specifically denied that the copy of the award was supplied later on. The compensation was given as per the quality and kind of the land. It has been specifically denied that the value of the petitioner's land was Rs.2 lacs per bigha at that time. It is denied that the land of the petitioner was fertile, and its value was not correctly assessed at that time. Other contents of the petition have been denied, and prayer for dismissal of the petition has been made.

4. In the rejoinder filed by the petitioner, the averments as contained in the petition were reiterated after refuting those of the reply contrary to the petition.

5. On the pleadings of the parties, the following issues were framed on 18.5.2017:-

1. Whether the petitioner is entitled to enhanced compensation? OPP.
2. Whether the petition is not maintainable? OPR.
3. Whether the petitioner has no cause of action to file this petition? . OPR
4. Whether the petitioner has already been adequately compensated? OPR.
5. Relief.

6. The parties have led oral and documentary evidence supporting their respective claims. I have heard the Id. Counsel for the parties and carefully review the evidence adduced on record. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue No.1: Redundant.

Issue No. 2: Yes

Issue No.3: Redundant

Issue No.4: Redundant.

Relief: The reference petition is dismissed as per the operative portion of the award.

REASONS FOR FINDINGS

ISSUE NO.2.

7. The petitioner presented the application on 21.8.2015 before this court for calling the reference petition under Section 18 of Land Acquisition Act, 1894, concerning award No. 14/97 dated 06.2.1998. A notice was issued to the State, and a reply was filed by Superintendent Engineer, IPH on 6.9.2016, whereby the respondent has taken objection regarding the maintainability and jurisdiction. On merits, the respondent has pleaded that applicants should have applied to Collector itself for forwarding his reference, but they have applied to the reference Court. It is specifically pleaded that the reference has already been sent to the court vide dispatch No. 2665 dated 18.3.1998. The court has called a report of Ahlmad, and as per the report dated 3.10.2016, no such reference/case has been received in this court. This court, on 25.10.2016, directed the petitioner to produce necessary material on record to show that the

petitioner has approached the appropriate authority to make necessary references to this court. A statement of Naib Tehsildar, Land Acquisition, Solan, was recorded on 16.3.2017. He has stated that no reference petition has been received in the LAO office Solan, and even the reference received by the Collector office vide receipt No. 153 dated 18.3.1998 is not traceable. On 2.1.2017, the applicants produced photocopies of the record, which they submitted to the Land Acquisition Collector, Solan, through Superintending Engineer, IPH circle, Nahan. The court directed LAC Solan to submit the record of reference on 20.1.2017. On 16.3.2017, after Naib Tehsildar's statement, this court concluded that no reference had been forwarded to this court for decision, so a photocopy of the reference petition tendered by the petitioner was considered as a reference petition, and the same was registered under Land Reference petition.

8. The reference court under the Land Acquisition Act 1894 has to acquire jurisdiction only when a reference is validly made to it by the Land Acquisition Officer. It has to exercise such powers as are given to it by the statute itself. It cannot widen its scope. In **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd vs. Allahabad Vikas Pradhikaran, [2003] 5 SCC 561**, the following observations were made:-

"7. It is well established that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that the civil court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it. This question was considered by various judicial authorities and one of the earliest decisions reported on this point is *Pramatha Nath Mullick Bahadur vs. Secy of State*, AIR 1930 PC 64. This was a case where the claimant sought a reference under Section 18 of the Act. In the application filed by the claimant, he

raised objection only regarding the valuation of the land. The claimant did not dispute the measurements of the land given in the award. Before the Reference Court, the claimant raised objection regarding the measurements of the land and sought for fresh measurements. This was refused and the claimant applied to the High Court for revision of this order but without success. Again, in the appeal, the claimant raised the same objection regarding measurements and the High Court rejected it. The Judicial Committee of the Privy Council held thus (AIR p. 65)

"Their Lordships have no doubt that the jurisdiction of the courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the 'matter' referred and the court has no power to determine or determine or consider anything beyond it."

9. In another case, namely, **Mohd Hasnuddin vs State of Maharashtra, (1979) 2 S C C 572**, the Hon'ble Supreme Court observed (SCC p. 584 para 25)

"25. Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact

arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee vs. Meer Mynooddeen Khan* (1855) 6 MIA 134 wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise."

9..... Rejecting this contention, this court held (AIR p. 306, para 3)

"The matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objection made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objections. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under Section 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in *Nusserwanjee Pestonjee vs. Meer Mynooddeen Khan* (1855) 6 MIA 134 "wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference insofar as the determination of compensation was concerned cannot amount to waiver or acquiescence.

Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence."

10. So, in view of the above discussion, no reference petition was received by this court from the office of Collector, and any application filed by the petitioner for enhancement of award before the Reference Court is not maintainable as this court is not a Court of original jurisdiction for awarding compensation in the Land Acquisition Cases. This court is also not an Appellate Court to find faults in calculating compensation awarded by the Land Acquisition Collector. Still, it is simply a reference Court where the court has to answer the reference on the dispute referred by the Collector for adjudication as per the provisions of Section 18 of the Act. The reference petition is not traceable in the office of Land Acquisition Collector Solan. The jurisdiction of the Reference Court is dependent upon the objection raised and forwarded by the Land Acquisition Collector, and the Reference Court itself cannot enlarge this scope. The Supreme Court explained this position in **P. K.Sreekantan vs P. Sreekumaran AIR 2007 SC 516**. The Collector also did not reference this court, so the present reference petition is not maintainable. Hence, issue No.2 is decided in the affirmative.

Issues No.1, 3 and 4:

11. It follows that the court has to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference it is called upon to hear is valid. It is only a valid reference which gives jurisdiction to the court, and, therefore, the court has to ask itself whether it has jurisdiction to entertain the reference. In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a

reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section [2] of Section 18 of the Act and if it finds that it was so made, decline to answer reference." In view of the decision on issue No.2, when no reference petition has been forwarded to this court and the present application is not maintainable, so the other issues have become redundant.

RELIEF

12. In view of the decision on issue No. 2 especially, this petition is dismissed. Since there is no reference petition, the court itself treated the application moved by the petitioner as a reference petition. Still, the jurisdiction of the Reference Court is dependent upon the objection raised and forwarded by the Land Acquisition Collector, and the Reference Court itself cannot enlarge this scope. So the reference petition is answered accordingly. A memo of costs is prepared. The file, after due completion, be consigned to the record room.

Announced and signed in the open Court today this 30th day of June, 2022.

sd/-
(R.K.Chaudhary)
 District Judge,
 Sirmaur District at Nahan, H.P.

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FORM-A

LIST OF WITNESSES

Sr. No.	Name of witness	Whether witness of petitioner/respondents.
1.	Sh. Ram Chander (PW1)	Petitioner
2.	Sh. Sh. Kuldeep Singh (PW2)	“
3.	Sh. Vijay Dhiman (RW1)	Respondents

FORM-B

LIST OF EXHIBITS

Mark/Ext. No.	Date of Ext.	Description
Ext. PA	29.6.2018	Copy of POA
Ext. PB	“	Copy of process fee
Ext. P1	13.7.2017	Copy of receipt.
Ext.pW1/A	6.10.2021	Affidavit of petitioner
Ext. PW1/B	“	Copy of jamabandi
Ext. PW1/C	“	Copy of sale deed
Ext. PW1/D	“	Copy of sale deed
Ext. PW1/E1 to E5	“	photographs
Ext. PY	“	Aksh Sajra tatima
Ext. PX	“	Jamabandi

Sd/-

(R.K.Chaudhary)

District Judge,
Sirmaur District at Nahan, H.P.