

SHIV SINGH & ORS.

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v.

STATE OF HIMACHAL PRADESH & ORS.

(Civil Appeal No. 4414 of 2018)

APRIL 25, 2018

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.15(2) – Non-compliance of, effect – Objections filed by the land owners challenging proposed acquisition – Non-submission of report by Collector to the appropriate government on the objections – Held: Under the scheme of the Act, once the objections are filed by the affected landowners, the same are required to be decided by the Collector under s.15(2) of the Act after affording an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question – It is mandatory on the part of the Collector to comply with the procedure prescribed under s.15(2) so as to make the acquisition proceedings legal and in conformity with the provisions of the Act – In this case, the Collector neither gave any opportunity to the appellants as contemplated under s.15(2) nor submitted any report as provided under s.15(2) to the Government so as to enable the Government to take appropriate decision – Therefore, the Collector directed to decide the objections filed by the appellants keeping in view the requirements of s.15(2) and pass appropriate orders.

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Allowing the appeal, the Court

HELD: It is not in dispute that the appellants had filed their objections to the proposed acquisition well within the time prescribed under Section 15 of the Act. There is non-compliance of Section 15(2) of the Act by the Collector. It is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the

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A Act. Respondent No.2 (Collector) is directed to decide the objections filed by the appellants keeping in view the requirements of Section 15(2) of the Act and pass appropriate orders. [Paras 6, 8 and 12][949-A, D-G]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4414 of 2018.

From the Judgment and Order dated 01.11.2016 of the High Court of Himachal Pradesh at Shimla in Writ Petition No. CWP No. 2159 of 2016.

C Sudhir Chandra, Sr. Adv., Bhagabati Prasad Padhy, Adv. for the Appellants.

Abhinav Mukerji, AAG, Ms. Bihu Sharma, Siddharth Garg, Ms. Purnima Krishna, Advs. for the Respondents.

The Judgment of the Court was delivered by

D ABHAY MANOHAR SAPRE, J. 1. Leave granted.

E 2. This appeal is filed against the final judgment and order dated 01.11.2016 passed by the High Court of Himachal Pradesh at Shimla in Writ Petition No. 2159 of 2016 whereby the Division Bench of the High Court dismissed the writ petition filed by the appellants herein wherein the challenge was made to the land acquisition proceedings initiated by the respondent-State for acquisition of the appellants' land.

3. In order to appreciate the issues involved in the appeal, few relevant facts need to be mentioned hereinbelow.

F 4. The dispute in this case relates to acquisition of the land belonging to the appellants which is sought to be acquired under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act").

G 5. By notification dated 08.12.2015 issued under Section 11 of the Act, the State of Himachal Pradesh sought to acquire the appellants' land measuring around 1-00-49 Hectares along with the lands of other landowners. The acquisition was for public purpose, namely, "construction of road from Bus Stand Ruhil to Upper Ruhil via Kuper".

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6. It is not in dispute that the appellants (writ petitioners) had filed their objections to the proposed acquisition on 05.01.2016 (Annexure P-8) well within the time prescribed under Section 15 of the Act. A

7. Under the scheme of the Act, once the objections are filed by the affected landowners, the same are required to be decided by the Collector under Section 15(2) of the Act after affording an opportunity of being heard to the landowners, who submitted their objections and after making further inquiry, as the Collector may think necessary, he is required to submit his report to the appropriate Government for appropriate action in the acquisition in question. B

8. In this case, we find that the Collector neither gave any opportunity to the appellants as contemplated under Section 15(2) of the Act and nor submitted any report as provided under Section 15(2) of the Act to the Government so as to enable the Government to take appropriate decision. In other words, we find that there is non-compliance of Section 15(2) of the Act by the Collector. In our view, it is mandatory on the part of the Collector to comply with the procedure prescribed under Section 15(2) of the Act so as to make the acquisition proceedings legal and in conformity with the provisions of the Act. C
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9. The aforementioned aspect of the case does not appear to have been taken note of by the High Court, resulting in dismissal of the appellants' writ petition requiring interference by this Court. E

10. Learned counsel for the respondent-State was also not able to show from the record that there was proper compliance of Section 15(2) of the Act by the Collector. The counter affidavit filed by the State also does not show any averment to prove this fact. F

11. It is for this reason and without going into any other issue arising in the case, we are inclined to allow the appeal, set aside the impugned judgment and allow the appellants' writ petition in part.

12. We hereby direct the respondent No.2 herein (Collector, Winter Field, Shimla-3 HP) to decide the objections filed by the appellants on 05.01.2016 keeping in view the requirements of Section 15(2) of the Act and pass appropriate orders. G

13. Let the objections be decided within three months from the date of this order as an outer limit uninfluenced by our observations made in the order. H

A 14. With these observations and directions, the appeal stands allowed.

Devika Gujral

Appeal allowed.