



THE HIGH COURT OF SIKKIM:GANGTOK

(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.A. No. 07 of 2023

Karma Tshering Bhutia,
S/o Shri Tempo Rapgay Bhutia,
R/o Marchak, Ranipool,
East Sikkim.

..... Appellant

versus

1. State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737 101.
2. The District Collector (East)
District Administrative Centre,
Government of Sikkim,
Sichey, Gangtok,
East Sikkim – 737 101.
3. The Secretary,
Land Revenue & Disaster Management Department,
Government of Sikkim,
Gangtok,
East Sikkim-737 101.
4. The Dean,
College of Agriculture Engineering &
Post Harvest Technology,
Central Agriculture University,
Ranipool,
East Sikkim.

..... Respondents

Appeal under Rule 148 of the Sikkim High Court (Practice & Procedure) Rules, 2011.

Appearance:

Mr. Yash Raj Singh Deora, Advocate and Mr. Girmey Bhutia, Advocate for the Appellant.



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondent Nos. 1, 2 & 3.

Ms. Pubalee Bujarbaruah, Senior Advocate with Mr. Ganesh Man Chettri and Mr. Benhail Alfieri Wanswett, Advocates for the Respondent No.4.

Date of judgment : 8th October, 2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

The impugned judgment passed by the learned Single Judge dated 10.07.2023, disposing two connected writ petitions, was primarily on the opinion that the statement of compensation computed on 31.05.2013 was not an award and the State respondents had failed to explain the law under which compensation was computed and prepared.

2. The impugned judgment holding that the statement of compensation computed on 31.05.2013 was in fact the award, is based on the premise that there was no provision in the *Land Acquisition Act, 1894* (for short, Act of 1894) under which such statements of compensation which had all the trappings of an award could be computed. This was incorrect. The relevant provision was not examined as it was not placed by the parties. We are, therefore, constrained



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

to interfere with the impugned judgment for reasons stated below.

3. Writ Petition (C) no. 32 of 2018 preferred by Karma Tshering Bhutia (the appellant herein) was dismissed and Writ Petition (C) 43 of 2022 preferred by College of Agriculture Engineering and Post Harvest Technology (for short, CAEPHT) (the respondent no.4 herein), was allowed.

4. The appellant had prayed for release of compensation amount as per *the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (for short, Act of 2013); payment of interest at 10% per annum on balance compensation amount unpaid until final payment; and for rehabilitation and resettlement of the appellant and his family members who were displaced.

5. CAEPHT in their writ petition had prayed for quashing of memo no. 1748/LR & DMD/GOS/ACQ/317-318 dated 12.08.2017; memo no.1748/LR & DMD/ACQ/GOS/418 dated 20.09.2017; and memo no. 1748/LR & DMD/2018/681 dated “Nil” 2018. These memos were issued by the respondent no.3 forwarding rectified details of compensation to CAEPHT.

6. Both the writ petitions arose from an acquisition proceeding under the Act of 1894.



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

7. Heard the learned counsel for the appellant, the learned senior counsel for the CAEPHT and the learned Additional Advocate General for the State respondents.

8. The admitted facts reflect:

Date	Events
22.08.2008 29.11.2008 10.06.2009	CAEPHT requested the State for additional land in Ranipool.
12.09.2012	CAEPHT sought administrative clarification regarding purchase of land and the correct procedure to be followed for purchase of land from willing local persons.
05.09.2012	Karma Tshering Bhutia offered his land for sale to CAEPHT.
18.05.2013	Preliminary notification under Section 4 was issued notifying the land of Karma Tshering Bhutia being needed for public purpose invoking urgency clause under Section 17 of the Act of 1894.
31.05.2013	Statement of compensation for land and other standing properties as assessed by respondent no.2 was forwarded to the respondent no.4 requesting for release of 80% advance payment for making payment to land owners.
03.08.2013	The declaration under Section 6 of the Act of 1894 was published.
01.11.2013	The respondent no.3 conveyed to respondent no.2 the government's approval under Section 7 of the Act of 1894 for the construction of the Central Agricultural University by respondent no.4 requesting respondent no.2 to proceed as per Act of 1894.
25.11.2013	Public notice under Section 9 of the Act of 1894 published calling upon interested persons to appear personally or by agent before the respondent no.2 on or before 12.12.2013 and state in writing the nature of their respective interest in the land and the amount in particular of their claims to the compensation for such interest and their objections, if any, on the measurement made under Section 8 of the Act of 1894.
01.01.2014	The Central Government enforced the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013).
01.05.2014	Respondent no.4 communicated to the respondent no.3 that it had released 80% of the compensation of land vide bank draft dated 07.04.2014 and sought for a direction to the revenue department to handover possession.
11.06.2015	Respondent no.3 informed respondent no.4 that all matters relating to acquisition had been kept on hold as



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

	the State Government was in the process of finalizing the Rules under the Act of 2013. It also stated that since award had not been made before 31.12.2013 under Section 24 of the Act of 2013 an increase in compensation amount is likely to be incurred which amount shall be confirmed after the Rules are finalized.
22.06.2015	Appellant signed a handing and taking over memo stating that he had received full payment of house compensation for the RCC building and 80% of land compensation and he would be handing over the land and building on 11.07.2015. On 11.07.2015, possession of the land and building was handed over to CAEPHT. Admittedly, CAEPHT has constructed buildings therein for the expansion of College through funds from the Central Government.

9. The Act of 1894 provides for detailed procedure for acquisition of land needed for public purpose and for determining the amount of compensation to be made on account of such acquisition.

10. The publication of preliminary notification under section 4 of the Act of 1894 must be followed by hearing of objections of persons interested as required under section 5(A) unless urgency clause under section 17 is invoked. The record reveals that the notification under section 4 of the Act of 1894 dated 18.05.2013 expressly invoked the urgency clause and in fact there was no hearing of objection of interested persons under section 5(A) thereof.

11. Consequently, the statement of compensation dated 31.05.2013 was computed as required under section 17. Under sub-section 3(A) thereof, before taking possession of any land, the Collector was required to tender payment of 80 per centum of the compensation for such land “as



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

estimated by him” to the persons interested entitled thereof. The mandate of the law therefore required the computation of the compensation payable as estimated by the Collector because he was required to tender payment of 80 per centum of the compensation for such land.

12. Sub-section 3(B) mandates that the amount paid or deposited under sub-section 3(A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector’s award, be recovered as an arrear of land revenue.

13. We notice that the learned counsel for the parties did not place sections 17(3) or 17(3A) of the Act of 1894 before the learned Single Judge and so it was not considered. If the provision had been considered, the impugned judgment would not have observed *“If the compensation computed on 31.05.2013 is not an award then the State-respondents have failed to explain the basis and law under which such compensation was prepared.”* Therefore, although the State-respondent had in their counter affidavit clearly stated that no award had been passed, the learned Single Judge was inclined to uphold the



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

contention of CAEPHT in their writ petition that the statement of compensation computed on 31.05.2013 was, in fact, the award.

14. Sub-section 4 of section 17 thereof provides that in the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5(A) shall not apply, and if it does so direct that a declaration may be made under section 6 in respect of the land at any time after the date of publication of the notification under section 4, sub-section (1). The record reveals that the declaration under section 6 was published only on 03.08.2013 much after the computation of statement of compensation on 31.05.2013.

15. While notification under section 4 is a preliminary notification notifying that whenever it appears to the Government that land in any locality is needed or likely to be needed for public purpose, the declaration under section 6 can be made when the Government is satisfied, after considering the report, if any, made under section 5(A), sub-section (2), that any particular land is needed for a public purpose.

16. Section 7 mandates that it is only when a declaration is made under section 6, can the Government



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

direct the Collector to take order for the acquisition of the land.

17. The language of section 9 makes it clear that the Collector shall only “then” cause public notice to be given to persons interested stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him.

18. The requirement of section 11 for an enquiry and passing of an award in writing under the Collector’s hand is not an empty formality. The Collector is required to fix a date for such enquiry and enquire into the objections, if any, which any person interested as stated pursuant to a notice given under section 9 to the measurements made under section 8, and the value of the land at the date of publication of the notification under section 4(1), and into the respective interest of the persons claiming the compensation. It is only after such enquiry that the Collector can make an award under his hand of – (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (3) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

claims, he has information, whether or not they have respectively appeared before him.

19. Section 11(A) clearly spells out that the Collector shall make an award under section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

20. The question whether an enquiry was held on a fixed date and a written award under the hand of the Collector was passed is always a question of fact. Merely because in the heading of the handing and taking over memo dated 22.06.2015 signed by the appellant, “section 16” was mentioned, there cannot be a presumption *dehors* the fact that an award must have been passed as argued by the learned senior counsel for the respondent no.4.

21. Section 16 and section 17 of the Act of 1894 operates under different circumstances. Section 16 contemplates the Collector taking possession of the land after the award under section 11 is made. Section 17 operates in cases of urgency. In such cases of urgency whenever the Government directs, the Collector, though no such award has been made, may on the expiration of 15 days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

public purpose. The record reveals that the Collector took possession of the land on 11.07.2015 after the publication of the notice under section 9 on 25.11.2013 but before the passing of the award. Admittedly, 80 per centum of the compensation of land as estimated by the Collector was tendered to the appellant as contemplated in section 17(3A) of the Act of 1894.

22. Thus, the reading of the provisions as discussed above makes it evident that when urgency clause is invoked by the Government under section 17, the Collector, before taking possession of the land, is required to estimate the compensation payable and tender payment of 80 per centum of the compensation so computed to the persons interested. It is also clear that the computation of the estimated compensation under section 17(3A) is not the same as an award under section 11 after an enquiry made. There is no deeming provision in the Act of 2013 which permits anyone to deem the computation of the estimated compensation under section 17(3A) to be an award under section 11 of the Act of 1894.

23. We are afraid, we cannot agree with the submission of the learned senior counsel for the respondent no.4, that as all the parties acted on the statement of compensation dated 31.05.2013 as the award, the Court



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

must deem the same to be an award under section 11. The intent and purpose of section 17(3A) is completely different than the award under section 11 of the Act of 1894. An award under section 11 of the Act of 1894 can be passed only after notice under section 9 is issued and an enquiry on a fixed date is made on the objections if any, of the persons interested. The award must necessarily be in writing under the hand of the Collector. When urgency clause is invoked under section 17, a vital right of the land owner to object under section 5(A) is taken away, and in such a situation it becomes crucial that the award be passed under section 11 only after hearing the objections of the persons interested.

24. In *Delhi Airtech Services Pvt. Ltd. & Another vs. State of U.P. and Another*¹, the Hon'ble Supreme Court has held:

“14. Hence, insofar as payment of compensation for the acquired land even if it is acquired under Section 17 of Act, 1894, it is evident that an award as contemplated under Section 11 of Act, 1894 is required to be passed so as to determine the compensation payable. Since sub-section (3A) to Section 17 mandates payment of 80% of the estimated compensation, such amount paid would get included in the amount to be determined and offered through the award. In that context it is clear that Section 17(4) contemplates, that the declaration is to be made under Section 6 even when an urgency provision is invoked and an award under Section 11 is to be passed to determine the compensation.

15. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-

¹ (2022) SCC Online SC 1408



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

applicability of 'lapsing' as contemplated under Section 11A of Act, 1894. This is so, since the terms "vesting absolutely" and "lapsing" cannot co-exist and cannot go hand in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, the payment of which only if tendered and paid, the vesting would become absolute and in such event the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any.

16. *But it is a different matter altogether, when Section 17(1) is invoked but the requirement thereunder which is a pre-requisite condition is not complied. As noted, sub-section (3A) has been inserted w.e.f. 24.09.1984, whereunder it is made mandatory to tender and pay 80% of the estimated compensation before taking possession. Therefore, even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the pre-requisite condition for payment of 80% before taking possession is not complied. In such circumstance, by legal fiction it loses its character as an acquisition under Section 17 and since the absolute vesting does not take place, it will lapse if the further process is not complied and the award is not passed within two years from the date of declaration. However, even when the pre-condition is not complied, if the land loser does not challenge the acquisition and/or taking of possession as illegal, but concedes to the position, the possession taken does not become per-se illegal and the vesting will be absolute and in such event it cannot be considered to have lapsed until the land loser exercises the right. We consider it so, since, both Section 11A and sub-section (3A) to Section 17 of Act, 1894 were inserted in Act, 1894 to enable the land losers to exercise their right conferred on them. As such, the said right is to be exercised by the land loser and none other, not even the acquiring authority or beneficiary nor would the said provision become automatically applicable unless it is triggered by the land loser.*



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

17. Therefore, we are of the considered view that Section 11A though applicable to the cases of acquisition initiated under Section 17(1) of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered on its own merits to determine whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will lose its character as being under Section 17 and if the award is not passed within two years from the date of the declaration, it will lapse and not otherwise. The benefit of said provision is available only to be invoked by the land loser and cannot be invoked by the acquiring authority to claim lapse by pointing to non-compliance since the 'vice' of non-compliance cannot be permitted to be converted into a 'virtue'.

25. In view of the clarification made by the Hon'ble Supreme Court, the alternative contention of respondent no.4 cannot be accepted. It was contended that if this Court were to conclude that there was, in fact, no award then it ought to be held that the acquisition proceeding had lapsed. In the present case, the records revealed that the land has absolutely vested on the compliance of sub-section 3(A) to section 17 of the Act of 1894 and 80% of the estimated compensation was tendered and paid.

26. Section 24 of the Act of 2013 provides that notwithstanding anything contained in the Act of 2013, in any case of land acquisition proceeding initiated under the Act of 1894, where no award under section 11 of the Act of



W.A. No. 07 of 2023
Karma Tshering Bhutia vs. State of Sikkim & Ors.

1894 has been made, then, all provisions of the Act of 2013 relating to determination of compensation shall apply. As we have held that in the present case there was no award under section 11 of the Act of 1894 the provisions of the Act of 2013 relating to the determination of compensation must necessarily apply. Section 24 of the Act of 2013 provides that in any case of land acquisition proceedings initiated under the Act of 1894, where no award under section 11 of the Act of 1894 has been made, then, all provisions of the Act of 2013 relating to the determination of the compensation shall apply.

27. We are, therefore, constrained to interfere with the impugned judgment and set it aside. Consequently, Writ Petition (C) No. 32 of 2018 is allowed with a direction that the respondent no.2 shall proceed as required under section 24 of the Act of 2013. Writ Petition (C) No 43 of 2022 preferred by the CAEPHT is, accordingly, rejected.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice