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**(1990) 02 MP CK 0011**  
**In the Madhya Pradesh High Court**  
**Case No : F.A. No. 24 of 1978**

Ashok and others

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision :** 02-02-1990

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 4(1)

**Citation :** (1990) JLJ 748

**Hon'ble Judges :** T.N. Singh, J;S.K. Dubey, J

**Bench :** Division Bench

**Advocate :** R.D. Jain and K.L. Mangal, for the Appellant; H.D. Gupta, Government Advocate for State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.K. Dubey, J.—This judgment shall also govern disposal of First Appeal No. 1/1978 [State of Madhya Pradesh v. Ramswaroop (dead) through L. Rs. Ashok and another] and First Appeal No. 2/1978 (State of Madhya Pradesh v. Bhagwati Prasad Singhal).

2. Brief facts leading to these appeals are : A Notification u/s 4(1) of the Land Acquisition Act, 1894, (for short, the "Act") was published on 15-7-1960 at part I of the M.P. Rajpatra for acquisition of land bearing Survey Nos. 5, 7, 25, 26, 27, 28, 29, 30, 31, 32, 35, 38, 43, 138 and 140, total area 57 Bigha 5 Biswa, situated in village Kotahar, within the limits of Municipal Corporation, Gwalior for establishing Krishi Upaj Mandi. The persons interested, i.e., the owners of the land, Ramswaroop Singhal and Bhagwati Prasad Singhal, who are brothers, filed their objections for award of compensation for the land. Besides these two brothers, Balkrishna Sharma and one Karnail Singh also filed their claim for compensation for the land situated at S. No. 30, area 6 Bigha 16 Biswa, as tenants in possession Dissatisfied with the award of the Land Acquisition Officer, all the persons/claimants applied for a reference u/s 18 of the Act for enhancement of the compensation. The Additional District Judge Gwalior,

disposed of all the cases, namely, L.A. Case Nos. 20/1968, 7/1967 and 8/1967, by a common award passed in L.A. Case No. 20/1968, whereby the claim of Balkrishna Sharma and Karnail Singh was dismissed holding them to be not entitled to any compensation, as the land belonged to Ramswaroop and Bhagwati Prasad. Bhagwati Prasad was awarded 1/3rd share of compensation and Ramswaroop was awarded 2/3rd, as the Court held that Gyasobai, the mother of Ramswaroop and Bhagwati Prasad, transferred her 1/3rd share in the land by a will in favour of Ramswaroop, which was probated by the competent Court on 27-4-1965. Market value was determined at the rate of Rs 1 000/- per Bigha instead of Rs. 500/- per Bigha, as awarded by the Land Acquisition Officer; 15% solatium and interest at the rate of 6% per annum was also awarded. Aggrieved of this award of enhancement, the State of Madhya Pradesh filed two separate appeals, being F.A. No. 1/1978 against Ramswaroop, who died during the pendency of the appeal and his legal representative were brought on record, and F.A. No 2/1978 against Bhagwati Prasad. Bhagwati Prasad, after receipt of notice filed cross-objections under O.41, R. 22, CPC, claiming one half share of compensation for his one half share in the land, instead of 1/3rd share, as awarded by the Additional District Judge. In the cross-objections, enhancement of market value and the solatium at the rate of 15% and also interest was also claimed. In this appeal Ramswaroop claimed compensation of his Share of land at the rate of Rs. 4/- per square yard. Bhagwati Prasad filed an application (I.A. No. 1) on 5-1-1979 and another application (I.A. No. II) on 4-11-1988, both under O. 1, R. 17 read with O.41, Rr. 22, 27 and S. 161 CPC, for impleading him as a party, claiming one-half share of compensation for the total land acquired. These applications were opposed by the appellant.

3. Shri H.D. Gupta, learned Government Advocate Shri R.D. Jain and Shri K.L. Mangal, learned counsel for the legal representatives of Ramswaroop, and Shri B.P. Singhal, who represented his case in person, were heard at length. Parties cited a number of decisions of the Apex Court, this Court as well as other High Court in support of their submissions.

4. Before we deal with the various contentions raised, it is worthwhile to mention here that Bhagwati Prasad abandoned his claim for claim in share of the land and compensation thereon in relation to the land situated at S. Nos. 26, 35, 38, 39, 43 and 138, area 23 Bigha 4 Biswa, but for the rest of the land he pressed his claim and interest in half of the compensation.

5. Shri B.P. Singhal submitted that the probate obtained by Ramswaroop was based on a forged will. He was a person interested and affected by the will, but the probate Court did not issue any notice to him, hence he was debarred from raising any objections in respect of the probate granted in favour of Ramswaroop; having come to know of the probate, he applied to the probate Court for setting aside the ex parte order granting the probate. The application was dismissed by the probate Court vide order dated 8th October 1965 holding that B.P. Singhal has no locus standi. In revision decided on 27-4 1967 (Ext.

P-32), a learned Single Judge of this Court, while dismissing the revision, observed that the probate can only be set aside if an appeal is taken u/s 299 of the Indian Succession Act, or the same is challenged in a regular title suit in a civil Court for establishing the title, wherein all circumstances relating to the will can be duly adjudicated upon. In this backdrop, as the grant of probate was without notice to B. P. Singhal which is not disputed, and, as the matter was subject to the decision of the civil Court, on reference u/s 18 of the Act, the District Judge, who exercises original jurisdiction and determines the rights of the parties has determined the share of the two brothers, Ramswaroop and B.P. Singhal, 2/3rd and 1/3rd, respectively, on the establishment of the title, the said finding can be challenged in this appeal and this Court exercising appellate jurisdiction has power to look into those findings, the order of the probate Court will not bind or affect the rights of the parties. Moreover, when this dispute was before the Land Acquisition Officer itself as to the apportionment, and the compensation was settled u/s 11 of the Act, the Collector has not referred the dispute to the civil Court for decision; therefore also, the District Judge had the jurisdiction to decide the rights of the parties in a proceeding u/s 18 of the Act. u/s 9 of the Act, claims were filed by the parties before the Collector, on 3-4-1963 appellant Bhagwati Prasad filed his claim and objections; thereafter, on 16-8-1963 Ramswaroop also filed his claim (Annexure A to the application under O. 1, R. 10 CPC) claiming that he and B.P. Singhal are both joint owners of the land and they are entitled for compensation in equal proportion; Gyasobai, the mother of the two, who died on 3-5-1964, executed the first will on 16-10-1963 and, thereafter, the second will was executed on 20-3-1964, and the probate was granted on 25-3-1965. True, after the death of the original holder of the land, i.e., Ramchandra, the father of the two brothers, the two brothers and the mother became joint owner according to section 82 of M.B. Land Revenue and Tenancy Act. Samvat 2007; through the land acquisition proceedings were started in the life time of Gyasobai, she never claimed any compensation as would be evident from Ext. P-24. Moreover, overwhelming evidence is adduced that after the death of Ramchandra the names of the two brothers were mutated in the revenue records as owners. Various orders, notices issued by Revenue Authorities and documents produced by parties do show that both brothers were joint owners of the land. The codicil is not registered, and to prove the will no attesting witness was examined either in the probate Court or in the civil Court. The will WAS not proved in accordance with the provisions of section 68 of the Evidence Act and section 63 of the Indian Succession Act. (See Girja Datt Singh Vs. Gangotri Datt Singh, & H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, . In face of the above and the circumstance and the evidence adduced by the parties before the Court below and also the fact that Bhagwati Prasad was not noticed by the probate Court and the probate so granted was subject to the decision of the civil Court, where the rights of the parties can be established, coupled with the admission of Ramswaroop of both brothers being joint owners in equal proportion, the probate, in our opinion, has no value. The parties having led evidence in the District Court in a proceeding u/s 18 of the Act which in

original civil proceeding, it was not necessary for B.P. Singhat to file separate suit. The contention of Shri Jain and Shri Mangal that the order of the probate Court is a judgment in rem and civil suit having not been filed by B.P. Singal for establishing his right or title in the property, cannot, in the circumstances, be accepted.

6. Re: Compensation-- Shri Gupta, learned counsel for the State, contended that the market value determined u/s 23 of the date of notification u/s 4(1) of the Act, is on the excessive side, because the land acquired is an agricultural undeveloped land having a large area. It is trite law that while determining the market value, the prices fetched for small developed plots cannot be made basis for determining the market value of land in big blocks. Shri Gupta further submitted that as both brothers have not examined themselves to prove their case, the burden was on them; therefore, the enhancement of the market value from Rs. 500/- to Rs. 1,000/- by the District Court was not correct. Lastly, learned counsel submitted that the document (Ext.p.8), which is an agreement for sale, cannot be taken into account, as the claimants had entered into this agreement for sale on 27-10-1959 knowing full well that the land is being acquired) the agreement in fact, is in anticipation of the acquisition to get a higher market value, as the steps for acquisition of land were started on 30-7-1959 and the notification u/s 4(1) on 15-7-1960.

7. We have gone through the record of the case and the oral and documentary evidence led by the parties, and are of the view that on the material adduced by parties, the appeals filed by the State deserve to be dismissed and this appeal filed for enhancing the compensation deserves to be partly allowed. It is true that Ramswaroop and B.P. Singhal have not entered the witness-box, but they have led evidence, both oral and documentary, to show the rising trend prices (sic) for urban use and speculative advantages. It is also not in dispute that the land is situated within the limits of Gwalior Municipal Corporation, on Agra-Bombay Road, near the Octroi post. Babulal Shrivastava (PW. 5) has proved the agreement for sale (Ex.p.8). By this agreement, the witness wanted to purchase the land, which was not a small plot, but 1 Bigha 3 Biswa for Rs. 5,000/-, and an earnest money of Rs. 300/- was paid to the brothers. In his cross examination, nothing has been brought to show that the agreement was not bona fide. On the other hand, the witness has stated that when the document of sale was to be entered into, he came to know that the land has been acquired; hence, he took his earnest money back. Besides this witness, another witness is Bholaram (P.W. 8), who purchased a plot of land (No. 13) in the locality, of the size 40"X50", vide registered sale-deed (Ex.p-10) for Rs. 1,200/- on 2-1-1959, if the market value of the land is calculated at this rate, it comes to Rs. 12,600/- per Bigha. Besides earlier sales, there is one more material document, viz, Ex.p-31, which is a resolution No. 280 dated 7-9-1959 of the Municipal Corporation, Gwalior, whereby the Corporation resolved to revise the schedule of rates of sale of their lands by making it double. Against this evidence, the State examined two witnesses, namely, L.K. Vijay Vargiya (DW 1), who was the Secretary cum-

Accountant of the Mandi Samiti at the relevant time, and Bhanu Pratap Singh (DW 2), who was produced and proved one sale-deed of the year 1958 (Ext. D 2), whereby land of 3 Bigha 4 Biswa was purchased by him for Rs. 800/- only. But in the cross examination, the witness has admitted that the land was purchased by his aunt from one Draupadi and he has no right or interest in the property transferred by this sale-deed nor he knows about the land's size, shape and situation.

8. It is settled that even if there is no sale of the land in the vicinity, the Court is not helpless to determine the market value. In land acquisition matters, the Court is bound to determine compensation by doing some mental exercise, considering the relevant factors, such as, speculative advantages, potentiality, size, shahs and frontage of the land. The land is situate within the Municipal Corporation's limits on Agra-Bombay Road and in the locality there are houses. It has got advantages not only of the use of agriculture but it had higher non-agricultural potentiality at the time of acquisition, with all its existing advantages. Recently, this Court in *M.P. Griha Nirman Mandal and another v. Umashankar & Anr* 1990 J LJ 240, held that in such cases a thorough, precise or scientific valuation is not possible, but some guess work has to be done to make the best of the situation. Even in the absence of sale in the near vicinity of big plots, the Judges must call in aid their experience in life and, on the available material, guess work is permissible. Fortunately, in this case the agreement for sale (Ext. p-8), which in our opinion, was not in anticipation of the acquisition to get a higher market value, and is a bonafide transaction, which was quite earlier to the time of the preliminary Notification, can be considered to be a legal evidence of the market value. This document though "does not create interest in property", bona fide reflects the market value of the land as on the date of the Notification u/s 4(1), and such bonafide transaction can be taken into consideration. (See *Collector, Baroda, v. Haridas Mangalal Parikh* AIR 1970 Gug. 91.

9. Even if this document is ignored, there is a resolution of the Municipal Corporation, whereby in the year 1959 the rates were double by the Corporation for sale of lands, which proves that there was a rising trend in the prices of the land. Reliance by land owners on case of *Administrator General of West Bengal Vs. Collector, Varanasi*, for determining the market value that even if the agreement to sell (Ext. P-8.) and the resolution are not considered, the transaction of a small plot) i.e., Ext.P 10, which establishes the price at the rate of Rs. 4.50 par yard can also be considered after giving necessary deductions for development of the land, roads and other development expenses to the extent of 40 per cent.

10. In our opinion, we cannot apply the case of *Administrator General West Bengal (supra)* to the present facts of the case, because the land is in huge area and has not been acquired for building site, but has been acquired for establishing a Krishi Upaj Mandi. In the year 1960 on the date of the preliminary notification, the value of the land, we fell on our guess work, ought to have been

a minimum of Rs. 2,000/- per Bigha, as in the case of Umashankar & another (supra) we applied the same principle for determining the market value, taking into consideration the rising trend in prices, in the absence of specific case of sale of similar plots. Therefore, the claimants are entitled to market value for the land acquired at the rate of Rs. 2,000/- per Bigha, therefore, market value for 57 Bigha 5 Biswa at the rate of Rs. 2,000/- per Bigha comes to Rs. 1,14,500/-. In addition to that, the claimants are entitled to 15% solatium and interest at the rate of 6% per annum on the said amount from the date of taking over the possession, i.e. 7-6-65.

11. The contention of the claimants/land-owners that they are entitled to solatium and interest in accordance with the amended provisions of section 23 and section 28 of the Act cannot be accepted. The law has been settled by the Apex Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., whereby the Apex Court has held that the benefit of the Land Acquisition Act, 1894, as amended in 1984, is available and confined to appeals against an award of the Collector or of the Court, rendered between 30th April 1982 (date of introduction of Bill) and 24th September 1984 (date of its passing). Therefore, the benefit of the amended provisions of the Act cannot be extended to the claimants/land-owners in the instant case.

12. The objection of Shri Gupta, learned Government Advocate, that the claimants are not entitled to any enhancement because proper ad valorem Court-fee has not been paid by them on their appeal, though has some bearing, but on that count, the claimants cannot be denied the benefit. The Apex Court in case of Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, has held that--

It would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms declares that he shall be paid such market value. 1 he State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen, we are, therefore, of the view that, in the present case, the Division Bench as well as the learned Single Judge should have allowed the appellants to pay up the deficit court-fee and awarded to them compensation at the higher rate or rates determined by them.

This Court on 10-4-1978 ordered the appeal to be registered, and the question of payment of court fee was left open. On 18-1-1990 at the time of hearing of the appeals, objection as to maintainability of the appeal for want of payment of court fee was raised. After hearing, placing reliance on the decision of Bagh Singh's case (supra), which has not been over-ruled in Raghubir Singh's case (supra) on this point, submission was made for deduction of court-fee from the compensation awarded. As the Court-fee is to be computed only on difference between the amount of compensation and the amount awarded, we direct that

both claimants, B.P. Singhal and the legal representatives of deceased appellant Ramswaroop shall be entitled to compensation as awarded by this Court only after the payment of ad valorem court-fee only on the difference of the amount of market value so determined. They need not deposit any court-fee on the amount of solatium or interest, which has also increased because of the enhancement of the market value of the land by us.

13. It is stated at the Bar by the parties that B.P. Singhal and the legal representatives of deceased Ramswaroop are litigating in respect of their rights in the properties left by Ramchandra, the father of Ramswaroop and B.P. Singhal. To remove the apprehension of the parties it is made clear that the decision in these appeals in respect of the rights and entitlement of compensation will not in any manner affect those litigations in respect of the rights of the parties.

14. Before parting with the appeals, one more direction is necessary. In Misc. Appeal No. 89/1978, filed by Balkrishna Sharma and Karnail Singh, which was disposed of by us on 18-1-1990, we passed the following order

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Respondents, deceased Ramswaroop (now represented by his legal representatives) and Bhagwati Prasad Singhal, have agree to pay the appellants a sum of Rs. 3,900/- with interest thereon at the rate of 6% per annum with effect from 1-7-1965 till the date of payment. They have agreed that in their appeals a direction may be made in that regard for payment to be made to the instant appellants out of the sum awarded to them when the award is executed. Indeed, the award shall be executed subject to first charge in regard to the interest of the instant appellants, as per the amount herein before agreed. The appellants have accordingly abandoned their claim for compensation which they had made before the Collector and before the Reference Court.

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Therefore, before disbursing the amount so awarded by us in these appeals to the claimants, the Collector and the Court disbursing the amount shall take care that the sum of Rs 3,900/- with interest at the rate of 6% per annum with effect from 1-7-1965 till the date of payment is paid to those appellants, being the first charge.

15. In the result, the appeal is allowed to the extent as indicated here inabove. The appeals filed by the State are dismissed. Parties to bear their own costs.