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**(1997) 12 SHI CK 0005**

**In the High Court Of Himachal Pradesh**

**Case No :** Regular First Appeal No's. 27, 28, 29, 30, 31, 32 and 47 of 1991

Associated Cement Companies Ltd.

APPELLANT

Vs

Jagan Nath and Others

RESPONDENT

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**Date of Decision :** 12-12-1997

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 23(1), 4

**Citation :** (1998) 2 ShimLC 92

**Hon'ble Judges :** Kamlesh Sharma, Acting C.J.; Surinder Sarup, J

**Bench :** Division Bench

**Advocate :** K.D. Sood, for the Appellant; G.D. Verma, Gopal Sharma and Inder Singh, General, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Kamlesh Sharma, Actg. C.J.

1. These appeals as well as cross-objections are being disposed of by a common judgment, as these arise out of the same award dated 22.12.1990 passed by Additional District Judge, Bilaspur, whereby the reference petitions of the Respondents-claimants were disposed of and the market value of the acquired land was determined as under:

(i) Gair Mumkin Abadi : Rs. 27,000 per bigha

(ii) Anderli Avail : Rs. 21,000 per bigha

(iii) Anderli Doem : Rs. 18,896 per bigha

(iv) Baharli Aval : Rs. 14,400 per bigha

(v) Beer, Kharetar and other Gair Mumkin.: Rs. 1,728 per bigha.

2. The acquired land was notified u/s 4 of the Land Acquisition Act (hereinafter called "the Act") on 21.10.1978. It is situated in village Panjgain and was acquired for the public purpose of mining, construction of factory and colony by

Associated Cement Companies Ltd. known as A.C.C. The Land Acquisition Collector gave his award on 20.9.1986 and determined the market value of the acquired land as under:

- (i) Anderli Aval : Rs. 7,500 per bigha. (ii) Anderli Doem : Rs. 6,900 per bigha.
- (iii) Baharli Aval : Rs. 6,200 per bigha. (iv) Baharli Doem : Rs. 3,700 per bigha.
- (v) Kharetar/Banjar, etc. (uncultivated) : Rs. 1,200 per bigha.

3. These appeals are preferred by the A.C.C. on the ground that the market value of the acquired land, as determined in the impugned award, is not only on the higher side but is also based upon the award Ex. P-12, the land of which is not comparable to the acquired land. Learned Counsel appearing for the A.C.C. has taken this Court through the evidence on record to point out that there is nothing on record to show that the land of award Ex. P-12, which is situated in village Nalag, is comparable to the acquired land situated in village Panjgain. The learned Counsel has specifically referred to the statement of Inder Singh PW-2 in cross-examination that the acquired land is slopy at some places to the extent of 90°, and has stressed that the land in village Nalag is plain and adjacent to the road, though he has not been able to point out any evidence on record to substantiate this submission. The learned Counsel has also relied upon the judgments in Pal Singh and others Vs. Union Territory of Chandigarh, ; Basant Kumar etc. v. Union of India, etc. 1996 (7) Scale 354 and Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., .

4. The learned Advocate-General appearing for the State has supported the submissions of learned Counsel for the A.C.C. and has pointed out that the District Judge has wrongly relied upon the observations of the Land Acquisition Collector in para 30 of his award that the lands comprised in villages, namely, Barmana, Nalag, Bhater, Panjgain, Baloh, Dawan, Koti and Jamthal are similar in nature and location and the area notified for acquisition in these villages is a compact block. Relying upon the judgments in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , the learned Advocate General has urged that the material relied upon by the Land Acquisition Collector in his award, unless the same material is produced and proved before the Court, cannot be taken into account by the District Judge in a reference u/s 18 of the Act. Learned Advocate-General has also referred to the judgment of the Supreme Court in M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, to stress that the market value of each plot of acquired land has to be determined independently keeping in view their salient factors affecting their market value.

5. On the other hand, learned Counsel appearing for the Respondents-claimants has pointed out that the market value of the acquired land was much more than what is determined by the District Judge keeping in view its location, potentiality, future prospects and other relevant factors. According to the learned Counsel, the acquired land is comparable to the lands situated in villages Nalag and Barmana, which were subject-matter of awards Exs. P-12 and P-7. In the

alternative, learned Counsel for the Respondents-claimants has argued that if this Court ultimately decides to accept the appeals and set aside the impugned award and remand the cases to the District Judge for decision afresh after affording opportunity to the parties to lead evidence, they will not press their cross-objections and the Court fee affixed thereon may be returned to the Respondents-claimants in accordance with law.

6. After giving our best consideration to the respective contentions of the learned Counsel for the parties, this Court finds that the impugned award does not stand the judicial scrutiny. The District Judge has solely relied upon the award Ex. P-12, which pertains to the land in village Nalag. The award Ex. P-12 has been relied upon in Anr. award Ex. P-7, which pertains to the land situated in villages Nalag and Bhater Uparli. No doubt, the date of notification u/s 4 of the Act in respect of the lands of these awards is the same as that of the acquired land, yet in the absence of any evidence on record that the lands of these awards is comparable to that of acquired land, these awards cannot be made basis for determining the market value of the acquired land. The learned Counsel for the A.C.C. is right in pointing out that there is no evidence on record worth the name to compare the lands of awards Ex. P-12 and P-7 with the acquired land. Jagan Nath PW-1 has stated that village Barmana is at a distance of 1 1/2 kilometres and village Nalag is adjacent to village Panjgain, whereas, village Dhawan Koti is across the Nala from village Panjgain and the lands of village Panjgain are superior in quality to villages Barmana, Nalag and Dhawan Koti. But, this evidence is not enough to hold that the lands of villages Barmana and Nalag acquired by awards Ex. P-12 and P-7 are comparable to the acquired land in village Panjgain. Therefore, this Court holds that award Ex. P-12, which has been relied upon in award Ex. P-7 could not form basis for determining the market value of the acquired land. We may point out that the appeals filed against the awards Exs. P-12 and P-7 have since been compromised by the parties therein on one of the conditions that the said awards will not be precedents in other cases.

7. In *Pal Singh and Ors. v. Union Territory of Chandigarh*, the learned Judges of the Supreme Court have held that, "for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgments by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land."

8. In *Basant Kumar, etc. v. Union of India, etc.* (supra) it is held by the learned Judges of the Supreme Court in para 5 of their judgment:

...It has been firmly settled law by deed role of decisions of this Court that the Judge determining the compensation u/s 23(1) should sit in the armchair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent

buyer for the same or similar land, I.e., land possessing all the advantageous features and of same extent. This test should always be kept in view and answer affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to away, he outsteps his domain of judicial decision and lands in misconduct amenable to disciplinary law.

Accordingly the principle that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis, is held wholly unsustainable in law and cannot be a valid ground for determination of compensation. The learned Judges have observed:

...it is common knowledge that even in the same village, no two lands command same market value. The lands abutting main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for same kind of land. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value; it is common knowledge that the lands in the village spread over the vast extent.

9. In *Special Deputy Collector and Anr. v. Kurra Sambasiva Rao and Ors.* (supra), the learned Judges have reiterated that the burden of proof is always on the claimant to prove by adducing cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the Land Acquisition Collector, which is only an offer. It is observed in para 6 of the judgment that:

...The object of the enquiry in a reference u/s 18 of the Act is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the sale transaction the nature of the land, its suitability, nature of the use to which the lands are put took on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is, therefore, the paramount duty of the courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the land. In that process, though some guesswork is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence

of oral evidence adduced by the Land Acquisition Officer or the beneficiaries the Judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

10. So far the observations of the Land Acquisition Collector as referred to in Para 30 of the impugned award of the District Judge in respect of comparison of the lands in villages Barmana, Nalag, Bhater, Baloh, Dawan, Koti, Jamthal and Panjgain are concerned, these cannot be taken into account for holding that the acquired land is comparable to the lands of awards Ex. P-12 and P-7 in view of the law laid down by the Supreme Court in *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr.* (supra). In this judgment it has been categorically held that a reference u/s 18 of the Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Collector in his award unless the same material is produced and proved before the Court. Further, the award of the Land Acquisition Collector is not to be treated as a judgment of the trial Court open to challenge before the Court hearing the reference. It is merely an offer made by the Land Acquisition Collector and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Collector, as if it were an appellate Court. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

11. In *M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (Deceased) by L.Rs., and Ors.* (supra) the learned Judges of the Supreme Court have also held that if "Comparable Sales Method of Valuation of Land" is adopted for determining the market value of acquired plot of land, it should be established by cogent and reliable evidence that location, shape, size, potentiality or tenure of one plot of acquired land is similar to other plots of acquired land, otherwise, the market value of each plot of acquired land is to be assessed independently of the other(s), even if all of them have been acquired pursuant to the same preliminary notification.

12. Therefore, in view of the ratio of the judgments referred to hereinabove, we hold that in the absence of any evidence on record that the lands of awards Ex. P-12 and P-7 are comparable to the acquired land, these awards were wrongly made basis for assessing the market value of the acquired land by the District Judge, with the result the appeals are accepted and the impugned award is set aside. However, in the facts and circumstances, it will be in the interest of justice and fair play to remand these cases to the District Judge, Bilaspur for decision afresh after giving opportunity to the parties to adduce evidence. Since the

reference petitions pertain to the year 1987, the District Judge, Bilaspur is directed to decide the reference petitions within a period of one year. The parties are directed to appear before him on 12th January, 1998.

13. In view of our order of remand, we allow the Respondents-claimants to withdraw their cross-objections. They will be entitled to the refund of Court fee in accordance with law. The cross-objections stand disposed.