
(2008) 02 SHI CK 0002
In the High Court Of Himachal Pradesh

Durgavati	Vs	APPELLANT
Nathpa Jhakhri Power Project Corporation and Another		RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Land Acquisition Act, 1984 — Section 23(2), 4

Citation : (2008) 1 ShimLC 472

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—The appellant has assailed the impugned award dated 2nd November, 2001 passed in Land Ref. Petition No. 18 of 1998, titled as Durgavati v. Land Acquisition Collector, whereby appellant's Land Reference Petition was dismissed upholding Award No. 36/97 dated 28.11.1997 passed by the Collector. The appellant's land measuring 0-13-22 Hectare, situate in Up-Mohal Punspa, Tehsil Nichar, District Kinnaur, H.P., was sought to be acquired in terms of Notification issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to Act), published on 20.5.1995. The Collector (Land Acquisition) passed the Award No. 36/97, awarding a sum of Rs. 1,64,860.46 as compensation. In terms of the said award the land of the appellant was assessed separately and compensation for fruit and non-fruit trees was also got separately assessed through District Horticulture Officer, Horticulture Department, H.P. in accordance with the norms laid down by the State Government at Rs. 20,566-00.

2. For the purposes of ready reference, amount so awarded by the Collector is reproduced as under:

1. Cost of land Rs. 81,831-80 2. Cost of Fruit trees Rs. 20,144-00 3. Cost of non-fruit trees Rs. 422-00 Total Rs. 1,02,397-80 4. Compulsory acquisition charges ? 30% under Section 23(2) of the Land Acquisition Act Rs. 30,719-34 5. Additional Charges @ 12% per annum w.e.f. 28.4.95 to 27.11.97 Rs. 31,743-32 Total

amount of compensation Rs. 1,64,860-46

3. Aggrieved by the same, appellant filed Land Reference Petition, which was registered as Petition No. 18 of 1998. In support of her claim appellant produced six witnesses and got exhibited two sale-deeds Ext. PW-3/A and Ext. PW-3/B as also certificate Ext. PW-6/A and average sale price of the land in the area concerned Ext. PW-6/B.

4. The respondents did not lead any evidence except for tendering copy of award dated 10.8.2000 passed in Land Reference Petition No. 201 of 1995/94 in case titled as Dorje Namgial v. Land Acquisition Collector and Anr. passed by District Judge, Kinnaur at Rampur Bushahr, H.P. (hereinafter referred to Award No. 201). The same pertains to the land adjacent to the appellant's land acquired vide Notification dated 25.8.1990.

5. Based on the material on record, the Court below came to the conclusion that the appellant's claim for enhanced compensation was not justified as Ext. PW-6/B, the average sale price, could not be looked into as the vendor and vendee of the sale-deeds referred to therein were not produced. The Court also found that there was no evidence of similarity of the acquired land with the land covered under sale-deeds Ext. PW-3/A and Ext. PW-3/B.

6. Aggrieved by the same, the appellant has filed the above appeal.

7. I have examined the record and heard the learned Counsel for the parties.

8. Ext. PW-6/B is the average sale price and cannot be made basis for determining the market value of the land. Ext. PW-3/A and Ext. PW-3/B undoubtedly pertains to the land which was acquired for commercial purposes alone and cannot be made basis for deciding the market value of the acquired land.

9. From the statements of Durgavati (PW-1), her husband Daulat Ram (PW-2), Udey Singh, Patwari (PW-3) and Budhi Singh, Revenue Clerk (PW-4) and also the Award No. 201, it is clear that Mohal Panspa was initially part of Up-Mohal Sungra. It is also clear that the land in question is just about 8 mts. away from National Highway and land adjacent to the appellant's land was acquired in the year 1990 in terms of Award No. 201 where the respondents have set up a Guest House for housing its officers. Thus the appellant's land had potentiality of being developed into commercial area cannot be ruled out. The acquired land is similar to the said land. Perusal of the Award No. 201 dated 10.8.2000 would show that the learned District Judge as on 25.8.1990 has determined the market value of the acquired land at Rs. 50,000 per Bigha. This has attained finality and in fact has been relied upon and referred to by the respondents. Thus, this can be made basis for determining the market value of the land in question.

10. The land in question admittedly is adjoining the National Highway and just at a distance of 2 Kms. from main town Sungra, where various Hydro-Power Projects are coming up and infrastructure for the settlement of employees

working in the said projects has been set up by the respondents.

11. PW-2 has clarified that there is a Rest House constructed in the vicinity of the acquired land and the market value is increasing manifold. The amount of compensation payable to the land owner for acquisition of its land has to be determined by taking into consideration the market value of the land on the date of publication of the Notification in the Official Gazette. The market value means the price that a willing purchaser would pay to the willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding disadvantages attached to the property.

12. Keeping in view the ratio of law laid down by the Apex Court in *Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another, Land Acquisition Officer and Revenue Divisional Officer v. Ramanjulu and Ors.* (2005) 9 SCC 594, and *IInd Additional Special Land Acquisition Officer and Anr. v. Rukhiben and Ors.* : (2004)8SCC577, judicial notice can be taken of the fact that the market value of the land is increasing day by day and there would be an average increase of 10% of the market price every year.

13. In *Ravinder Narain and Another Vs. Union of India (UOI)*, , it has been held as under:

Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be safe criteria. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality. However, the element of speculation is reduced to maximum if the underlying principles of fixation of market value with reference to comparable sales are made:

- (i) When sale is within a reasonable time of the date of notification u/s 4(1);
- (ii) It should be a bona fide transaction;
- (iii) It should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) It should possess similar advantages.

It is only when these factors are present, it can merit a consideration as a comparable case.

14. Thus keeping in view the ratio of law laid down by the Supreme Court, the

fair and reasonable market value of the land can be safely assessed to be Rs. 50,000/- per Bigha in the year 1990. By giving the benefit of 10% increase in the market price annually from the year 1990 till the year 1995, the market value of the acquired land comes out to be Rs. 69525.20 or say Rs. 69525/- per Bigha.

15. Learned Counsel for the respondents has argued that no compensation can be separately awarded towards trees and accordingly the amount awarded as such cannot be enhanced. The contention needs to be rejected for the simple reason that the Collector has assessed the compensation with regard to trees separately. Admittedly the compensation has been determined in accordance with Harbans Singh Formula, which has been framed on the basis of Price Index 1966. The appellant has not been given the benefit of Price Index after 1966.

16. The fact that the petition u/s 18 of the Act for enhancement of the amount awarded towards the land and the trees separately is maintainable, is no longer res integra. This Court in LAC and Anr. v. Diwan Chand RFA No. 317 of 2000 decided on 10th September, 2007 has held that based on Standing Order No. 28 issued by the Financial Commissioner, that the Collector is well within his right and the claimants were equally entitled for determination of compensation for the land and trees separately. While deciding the issue, this Court has held as under:

It is evident that Ratan Kumar Tandon (supra) has been clearly distinguished in the aforesaid report.

In Karam Singh (supra), wherein the Standing Orders issued by the Financial Commissioner, which have the force of law and are binding on the State, have not only been considered but approved and the Court while dealing with the assessment of compensation of fruit growing trees held as under:

....A mere reading of various provisions of Standing Order noticed above relevant to the controversy involved in these appeals, unmistakably show that the State Government and the Land Acquisition Collector have been following these provisions scrupulously and strictly in the land acquisition proceedings and the Land Acquisition Collectors have made awards consistently in accordance with the relevant provisions of the Standing Orders for assessing the market value of the land, trees and houses etc. separately.

....In these factual position and circumstances, the State of Himachal Pradesh and the Land Acquisition Collector cannot be permitted to urge that they are not obliged to pay the amount of compensation on the basis of the Standing Order No. 28 and Shri Harbans Singh Formula for acquired lands and fruit bearing trees separately. The Land Acquisition Collector is the agent of the State Government who makes offer to the claimants of the amount of compensation awarded in the awards and if the offer so made is not acceptable to the claimants, the claimants are entitled to receive the amount of compensation under protest and make reference petitions u/s 18 of the Act for enhancement of the amount of compensation. Therefore, the State Government and the Land Acquisition

Collector, who are appellants before us in these appeals cannot be permitted to raise the plea that the awards of the Collector and enhancement of the amount of compensation by the District Judges and Additional District Judges based upon the Government Standing Order, provisions contained in the Himachal Pradesh Land Records Manual and Shri Harbans Singh Formula which allow compensation in respect of the land and fruit bearing trees which allow compensation in respect of the land and fruit bearing trees separately. Nothing contrary has been brought to our notice and, therefore we do not think it proper to disturb the awards of the Courts below making enhancement of the amount of compensation for the land and the fruit bearing trees separately.

(Emphasis supplied)

In Ramesh Chand (*supra*), it has been held:

9. Another attempt was also made by the learned Advocate General, when he made submission that trees and land is not to be separately assessed. According to him, appellants are either entitled to the price of the land as an orchard land or of the trees. In my considered view, this plea is not more open in view of the Standing Order No. 28 issued by the Financial Commissioner, Himachal Pradesh, as well as a decision of Division Bench of this Court in Collector, LADC Mandi v. Karam Singh and Ors. and other connected cases latest HLJ 2000 (HP) 694. In this case after relying on Standing Order No. 28 issued by the Financial Commissioner, Himachal Pradesh and also taking note of Harbans Singh's formulae, it was held that land as well as trees standing thereon are to be assessed separately.

Standing Order No. 28 issued by the Financial Commissioner undisputedly having force of law deals with the procedure required to be adopted in the State of H.P. for the purposes of acquisition of land by the Government. Para 35 provides for Form of notice which is required to be issued u/s 9 of the Act and Paras 43, 43-A requires that main points which are required to be examined by the authorities approving the award, which inter alia, contain separate assessment of compensation on account of structures, wells, tubewells, trees etc. Para 45 prescribes the format in which the statement showing the compensation awarded is required to be filled in. From column 8 it is clear that separate information with regard to number of trees, houses etc. on the land are required to be furnished. In the State of Himachal Pradesh these instructions being fully applied the appellants cannot contend that the impugned award is faulty on the ratio of the decisions in the preceding paras are applicable. In these cases no such provision was there which itself required the assessment to be carried out separately. In the present case, there is no capitalization of prices at all.

In Abdul Kuddus Mandal and Others Vs. State of Assam and Another, , the Apex Court has held:

It appears to us that the High Court fell in a basic error in not awarding compensation for the houses on the ground that since land had been acquired, it

is only compensation for removal of houses standing thereon, which could have been granted because houses had not been acquired. That is not a correct approach. The compensation was required to be paid for the houses which were standing on that land. The land could not have been acquired without the houses standing thereon. The Reference Court had rightly awarded compensation for the houses. The order of the High Court on this account suffers from apparent error. Insofar as the reduction in the rate for land from Rs. 36,000 as awarded by the Reference Court to Rs. 20,000 per Bigha by the High Court is concerned. We are not persuaded to disagree because we have not found any error to have been committed by the High Court in that behalf. The High Court has not adverted to the compensation on account of zirut separately, though compensation on that account had been awarded by the Land Acquisition Collector and upheld by the Reference Court.

Now in the instant case, applying the aforesaid principles and perusal of the award passed by the Collector itself would show that assessment has been separately carried out with regard to land and super structure. In my view, if the State itself had offered separate amount of compensation for the structure separately, therefore, the award cannot be faulted for this reason. Accordingly, the Court below was right in enhancing the amount of compensation.

17. The Court considered the various decisions of the Apex Court in *State of Kerala v. P.P. Hassan Koya* reported in AIR 1968 SC 1201, *Ratan Kumar Tandon and Ors. v. State of U.P.* reported in (1997) 2 SCC 161, *Kiran Tandon Vs. Allahabad Development Authority and Another*, *State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others*, *Abdul Kuddus Mandal and Others Vs. State of Assam and Another*, *Tejumaal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P.*, *Collector, LAC, Mandi v. Karam Singh and Ors.* reported in Latest HLJ 2000 (HP) 694, *Ramesh Chand and Ors. v. Land Acquisition Collector* reported in Latest HLJ 2003 (HP) 977 and RFA No. 54 of 1998 *The State Government of Himachal Pradesh v. Atma Ram and Ors.* decided on 13.7.2007.

18. Learned Counsel for the respondents has referred to the decisions of the Apex Court in *Koyappathodi M. Ayisha Umma Vs. State of Kerala*, *State of Haryana v. Gurcharan Singh and Anr.* 1995 (2) S.C.C 637, *Airports Authority of India Vs. Satyagopal Roy and Others*, and *Cement Corporation of India Ltd. Vs. Purya and Others*, . The judgments referred to and relied upon by the learned Counsel for the respondents, in my view are clearly distinguishable. In the present case, the State has framed a policy, which is followed consistently and the awards are passed by the Collector separately based on the said policy. The judgments delivered by this Court in *Chamera HE Project, NHPC v. Kalyan Singh and Ors.* RFA No. 72 of 1998 and connected matters, decided on 30.5.2007 and *National Hydro Electric Power Corporation v. Sh. Vipin Kumar and Ors.* RFA No. 24 of 1998 and connected matters, decided on 7.8.2007 as relied upon by the learned Counsel for the respondents, are not applicable.

19. In a decision titled as *State of H.P. v. Atma Ram* (supra), this Court had

enhanced the compensation towards trees by four times. In Union of India and Ors. v. Khazana Ram and Ors. 1998 (1) SL.C. 479 , the compensation was enhanced by five times. Even though the appellant has claimed enhancement of compensation towards acquisition of trees by 300%, however, in my view the interests of justice would be met if the amount is enhanced by five times as awarded by the Collector below. For the foregoing reasons, the appellant shall be entitled for compensation as under:-- For Land: Rs. 69,525/- per Bigha. For Trees: Five times over and above the amount assessed by the Collector. Consequently, the claimant shall also be entitled to all the statutory benefits and more particularly in conformity with the ratio of law laid down by the Apex Court in Sunder Vs. Union of India, . The appeal is accordingly allowed.