
(2017) 03 SHI CK 0055
In the High Court Of Himachal Pradesh
Case No : 599 of 2011

GENERAL MANAGER

APPELLANT

Vs

SURINDER KUMAR & OTHERS

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 11, Section 18, Section 54 - Publication of preliminary notification and powers of officers thereupon. - Enquiry and award by Collector - Reference to Court - Appeals in proceedings before Court

Citation : (2017) 03 SHI CK 0055

Hon'ble Judges : Sanjay Karol

Bench : Single Bench

Advocate : Rahul Mahajan, Ajay Kumar, Dheeraj K Vashista, R S Verma, R M Bisht

Final Decision : Disposed

Judgement

1. In all these five appeals, so filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), beneficiary seeks review of award dated 28.02.2011, passed by Additional District Judge, Fast Track Court, Una, District Una H.P., in L.A.C. Petition No.14/2005 RBT 33/05/05, titled as Sat Parkash (deceased through L.Rs) Versus The Land Acquisition Collector, Railways & others, alongwith other connected matters, filed by the various claimants under Section 18 of the Act.

2. It is a matter of record that in terms of common impugned award, seven land reference petitions, came to be decided. It is also a matter of record that claimants, aggrieved of the impugned award, have also filed crossobjections.

3. Certain facts are not in dispute. For public purpose, namely, construction of Nangal-Talwara railway line, land situate in village Basal, Tehsil and District Una, came to be acquired. In the instant case, acquisition proceedings for 5-62-01

hectares of land came to be commenced with the publication of notification dated 15.02.2001, so issued under Section 4 of the Act. The Collector Land Acquisition determined the market value, in terms of its award dated 14.09.2001, so issued under Section 11 of the Act, in the following terms:-

Sr.No. Kind of land Cost per Kanal.

1. Chahi 49216-00
2. Do Fasli Abbai 45500.00
3. Ek Fasli Abbai & Do Fasli Doam 28219.00
4. Ek Fasli Doam 18156.00
5. Banjar Kadim Jadid 1313.00
6. Kharkana 5460.00
7. Gair Mumkin Abadi -
8. Other Gair Mumkin 1313.00

4. Land owners, dissatisfied with the determination of correct and true market value of the land filed reference petitions under Section 18 of the Act, which came to be decided in terms of the impugned award. The Reference Court, while rejecting the exemplar sale deeds, so produced on record by the land owners as also the beneficiary, redetermined the market value of the acquired land, by taking into account the exemplar award (Ex.PX), @ 75,000/- per Kanal irrespective of its classification and category. [1 Kanal = 0.049 hectares = 12010 square yards].

5. The challenge to the award, respectively, is two fold: (a) compensation determined is on the higher/lower side; and (b) Reference Court erred in ignoring the exemplar sale deeds. In any case, award (Ex.PX) could not have been made basis for determining the market value.

6. It is a matter of record that entire land stands fully utilized for the public purpose.

7. Award (Ex.PX) pertains to the land acquired for the very same acquisition purpose, commencing in the year 2001. 0-17-56 hectares of land situate in Up-Mohal Kaswa, Mohal Basal, District Una, came to be acquired with the issuance of notification dated 09.07.2001. Noticeably, market value of this land came to be determined by the Collector Land Acquisition classification wise ranging from Rs. 1558/- to Rs. 58,413/-. However, the Reference Court redetermined the market value @ Rs. 75,000/- per Kanal irrespective of its classification and category.

8. Now when one examines the testimonies of the claimants' witnesses, and more specifically that of Naresh Kumar (PW.5) and Sada Ram (PW.6), one finds them to have deposed that the market value of the acquired land was much

more and in any case, their land is somewhat similar to that of the exemplar land. Hence, Reference Court could have relied upon the said exemplar award.

9. It is a matter of record that beneficiary had also produced another exemplar award (Ex.RX) which rightly stands rejected by the Reference Court, for market value in terms thereof, came to be determined @ Rs. 25000/- per Kanal, which in any event is far less than what stands determined by the Collector Land Acquisition in the instant case.

10. This now takes us to the issue as to whether Reference Court was right in rejecting the exemplar sale deed so produced on record by the beneficiary. The only reason assigned for not considering the same, being that they pertain to "very small piece of land". The issue as to whether small transaction can be factored for determining the true and correct market value of the acquired land or not now stands well settled. It is no longer *res integra*.

11. The Apex court has reiterated that there is no bar for considering exemplars pertaining to small transactions of sale subject however the Court takes into account the various attending plus and minus factors. [Ravinder Narain and another versus Union of India (2003) 4 SCC 481 and Rishi Pal Singh and others versus Meerut Development Authority and another, (2006) 3 SCC 205]

12. Of course Court has to consider the evidence, so led by the parties with regard to its genuineness and similarity vis-a-vis its nature, use and potential.

13. Now exemplar sale deeds (Ex.PW.1/B, Ex.PW.1/C, Ex.PW.1/D & Ex.PW.1/E) pertain to the very same village whereby land came to be sold for a sum of Rs. 70,000/- to Rs. 1,00,000/-. It has come on record that through the testimonies of the vendor and the vendee (Lekh Raj, PW-7, Kehar Singh, PW-8, Ganesh Chand, PW-9 and Mool Raj, PW-10) as also the scribe (Nanak Chand, PW-2, Rajinder kumar, PW-3 and Kamal Nabh, PW-4) that the exemplar lands and more particularly that of sale transaction (Ex.PW.1/C), so executed on 10.8.1998 is similar to that of the acquired land.

14. At this stage learned counsel for the claimants contends that even if amount to the extent of 10%, than what stands awarded by the Reference Court, is enhanced, their clients shall not press for any higher claim(s).

15. No doubt, exemplar sale deed (Ex.PW.1/C) is a small parcel of land and such factor is to be considered while determining the market value, for necessary deduction is required to be made, by taking into account the entire attending circumstances, peculiar to the instant case, as is borne out from the evidence led by the parties, it would be only just, fair and reasonable that the amount in question is enhanced from Rs. 75,000/- per kanal to Rs. 82,500/- per kanal. Noticeably the extent of the acquired land is not much and the amount enhanced, including the component of interest, would not be substantial, effecting the outcome of other land reference cases, which may be pending before various Courts, for it stands clarified that enhancement in the instant

case, is based on the evidence available on record and the peculiar facts and circumstances of the case.

16. As such, impugned award dated 28.02.2011, passed by Additional District Judge, Fast Track Court, Una, District Una H.P., in L.A.C. Petition No.14/2005 RBT 33/05/05, titled as Sat Parkash (deceased through L.Rs) Versus The Land Acquisition Collector, Railways & others, alongwith other connected matters, is modified only to the extent that true and correct market value of the acquired land stands re-determined @ Rs. 82,500/- instead of Rs. 75,000/- per Kanal, as awarded by the Reference Court.

17. In view of the above, these appeals as also the cross-objections, stand disposed of accordingly, so also pending application(s), if any.