

(2003) 09 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 15 and 18 of 1996

H.P. Housing Board

APPELLANT

Vs

Ram Lal and Others
 Ram Lal and Others Vs Land
Acquisition Collector and Others

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 23(1), 24, 4

Citation : (2003) 3 ShimLC 64

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Deepak Gupta and Rajnish Maniktala, for the Appellant; Rajnish Maniktala, for Respondents No. 1 to 13, M.S. Chandel, General, P.M. Negi, Assistant A.G. for Respondent No. 14 in R.F.A. No. 15 of 1996, M.S. Chandel, General, P.M. Negi, Assistant A.G. for Respondent No. 1 and Deepak Gupta, in F.A. No. 18 of 1996, for the Respondent

Judgement

Arun Kumar Goel, J.—Since both these appeals are directed against the award dated 1.11.1995, passed by the learned District Judge, Hamirpur in Land Reference Case No. 2 of 1993, as such both these appeals are also being disposed of by this common judgment.

2. Land measuring 24847.2 sq. meters was intended to be acquired for a public purpose. Namely for the construction of Housing Board Colony. This land was situate in Mohal Naya Nagar, Hamirpur, Tehsil and District Hamirpur, H.P. Notification for acquiring this land was issued on 30.5.1991, u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). This was objected to by means of a writ petition in this Court. It was decided on 20.11.1991. Direction given in this writ petition was that Collector will be at liberty to initiate proceedings in accordance with law, treating the period for filing objections and Notification u/s 4 of the Act to have been issued on 20.11.1991. Collector was required to hear the claims and objections of the land owners u/s 5A of the Act, and then send his report to the Government for consideration. On receipt of the

report from the Collector, Notification under Sections 6 and 7 of the Act dated 12.11.1992 was published as required under law.

3. In the context of the acquisition in question, it is clear from the award of the Land Acquisition Collector, Sub-Divisional Officer (Civil)-cum-Land Acquisition Collector, Sub-Division, Hamirpur in Award No. 1 of 1993, dated 8.9.1993; that the land adjoins the existing Housing Board Colony.

4. As required under the provisions of the Act, land was got measured as also built-up area identified. Thereafter on the basis of classification, its compensation was assessed.

5. In addition to this, solatium at the rate of 30% of the total compensation besides interest was allowed.

6. Persons interested/Land owners, felt aggrieved by and dis-satisfied with the award of the Land Acquisition Collector. As such they claimed reference u/s 18 of the Act to Court for determination of compensation.

7. Respondents when put to notice by the learned Court below justified the award of the Land Acquisition Collector. As according to them compensation awarded was adequate, indicating the market value of the land on the date of publication of the Notification u/s 4 of the Act. Whereas, according to the persons interested, compensation at the rate of two to three thousand per square meter was payable to them for the entire land irrespective of its classification. According to them this is a single plot which was having on one side a "Nullah", which irrigated the land under acquisition and on the other there was a PWD road leading from Hamirpur to Nalti.

Trial Court framed the following issues:

1. Whether the Land Acquisition Collector has not assessed the correct market rate of the land acquired in the Award, if so, what was the market value of the land in question at the time of the notification u/s 4 of the Land Acquisition Act on 30.5.1991 and to what amount, the Petitioners are entitled for the compensation.

2. Whether there had been the fruit trees in the suit land as the Petitioners are entitled to the compensation, if so, to what amount.

3. Relief.

8. Parties led evidence, both oral and documentary. After consideration of the whole matter compensation was enhanced from Rs. 121 to 200 per square meters and from Rs. 60 to 100 per square meters besides solatium and interest etc.

9. In this background, both sides are aggrieved from the impugned award of the learned District Judge. It was pointed out on behalf of the Housing Board by Mr. Deepak Gupta, Advocate, that compensation assessed is extremely on higher

side. As according to him, on proved facts based on evidence produced by the parties, no exception can be taken to the compensation assessed by the Land Acquisition Collector. Whereas on the other hand, according to the learned Counsel for the persons interested/ land owners, compensation is totally inadequate. According to him though his clients are entitled to much more compensation. However, they are limiting their claim for enhancing it to Rs. 400 sq. meter irrespective of its classification plus solatium at the rate of 30% on this value. And further allowing interest on the entire compensation inclusive of solatium as per provisions of Sections 23(1-A), 28 and 34 of the Act. Both sides referred to the evidence produced by the parties.

10. Ex. RC to RG are the exemplars produced by the Housing Board to show by way of sale instances on or before the date of issuance of the Notification u/s 4 of the Act. All these sale instances pertain to Muhal Naya Nagar, where the land under acquisition is situate. Particulars of these sale instances are given hereinbelow:

Exhibit Date of Area Sale consideration registration RC 19.12.1990 664.85 Rs. 80,000 RD 3.1.1991 375.5 Rs. 44,000 RE 13.12.1991 557 Rs. 67,000 RF 6.2.1991 80/50 mtrs. Rs. 9,500 RG 30.5.1991 664.85 Rs. 80,000

Similarly, on behalf of the persons interested/land owners following sale instances were produced and proved with a view to support their claim for enhancement of compensation:

Exhibit Village Date Area Price PW-2/A Gaura 22.3.1994 30.60 mtrs. 16,500 PW-3/A -do- 20.11.1991 10.45 sq. mtrs. 18,000 PX -do- 18.6.1985 159.65 30,000 PW-6/A -do- 11.8.1992 32.80 50,000 P-7 Naya Nagar 12.2.1992 375.50 1,99,500

11. Ex. PW-4/A to PW-4/D, four plots for construction of booths each having area 20.13 sq. meters were auctioned by the Housing Board at Rs. 1,02,000, 97,000, 95,000 and Rs. 1,01,000.

12. Ex. P-8 is an award of the land measuring 5382.88 sq. meters in respect of the notification u/s 4 of the Act, dated 14.9.1994.

13. Brief reference to the evidence of the parties is being made hereinafter. Oral evidence is produced by the persons interested/land owners to show that the land in question is covered on three sides by PWD, (word ?road? appears to have been inadvertently omitted). PW-1 Ram Lal has stated that the land is levelled and gives good yield. There are 10-12 buildings standing on the land under acquisition. Housing Board had no choice, as the land under acquisition requires no development. Whereas other land available in town was either hilly or was in the shape of "Nullah". Further, according to him near the land under acquisition, there are buildings of Housing Board Colony. Housing Board has sold a number of undeveloped plots during the last 3-4 years which had steep gradient besides being hilly and "Khud". purchasers of such plots had to incur substantial expense

of Rs. 60 to 70 thousand in levelling those. According to him price of the land in question is Rs. two and half to three thousand per sq. meter. Fruit bearing trees of Galgal, Limes, Pears etc. standing on this land have not been assessed by the Horticulture people and no compensation for those has been paid. According to him, they were not allowed to enter the land in question after acquisition. As such, some of the trees were eaten up by the animals, whereas rest were cut. In cross examination he gave the details of the fruit bearing trees standing on the land in question and stated that though the claimants are 13 in number, but they belong to 5 families. Des Raj is PW-2. He had purchased land for Rs. 16, 500/ vide sale deed Ex. PW-2/A, measuring 30.60 sq. meters. This he had purchased because the land in question adjoined his Abadi and thus with a view to use it as a path for approaching his land because there was no path available to his other land measuring 12 kanals. In this view of the matter, this sale cannot be taken to be an exemplar for assessing the market value of the land in question which is subject matter of acquisition. Similarly, PW-3, Bakshi Ram who has proved sale deed Ex. PW-3/A. Vide this deed an area measuring 10.45 sq. meters, in Up Mohal Gaura, Mauza Bajuri was purchased by him for a consideration of Rs. 18,000. According to him, this land was purchased because it adjoined his other land. Therefore, with a view to put up a hand-pump, the land was purchased by the witness.

14. PW-4 is Kuldip Chand, an official of Housing Board. He has proved that Housing Board auctioned plots measuring 20.13 meters, each for the construction of booths as. detailed below:

	Exhibit	Price
	Ex. PW-4/A	Rs. 1,02,000
Ex. PW-4/B	Rs. 97,000	Ex. PW-4/C Rs. 95,000
	Ex. PW-4/D	Rs. 1,01,000

15. In his cross examination the witness has stated that these plots of booths were sold after development of land, which consisted of opening of roads, providing of sewerage etc. PW-5 Kishan Chand has proved sale deed Ex. PX. According to him on one side of the land under acquisition there is PWD road, and on the other existed buildings of Housing Board. Besides this, there were trees in some part of the acquired land and adjoining it there was a "Nullah".

16. PW-6 is Ram Rakha. Area measuring 33 sq. meters of land was sold by him vide Ex. PW-6/A in Up Mohal, Hamirpur. Per this witness acquired land was levelled having trees and also water source. Witness was unable to give khasra numbers of this land. Per him further, 55/100 fruit trees of peaches and pears were standing on the land under acquisition. He stated that in the centre of acquired land there is a "Nullah" of dirty water. According to him land which he purchased vide Ex. PW-6/A was situate in the heart of town.

17. Ex. P-7 is the copy of sale deed whereby land, as detailed hereinabove, was sold. Ex. P-8 is the copy of award, dated 20.5.1995 given by the Land Acquisition Collector, on the basis of Notification u/s 4 of the Act, dated 14.9.1994, published

in Rajpatra on 29.1.1995. Besides this, Ex. P-I to P-11 are the documents tendered on behalf of interest holders/landowners. Ex. P-2 to Ex. P-6 and Ex. P-9 are the copies of Jamabandis relating to acquired land. Ex. P-10 and Ex. P-II are the copies of Musabi, and Ex. P-I is the copy of award impugned in the land reference. On the other hand Respondents have produced Annexure R-A, Shajra Latha and Ex. RB, five years average of the land of village. Besides this copies of Jamabandis were also produced as Annexures RH, RI and RJ alongwith sale deeds, referred to hereinabove.

18. It is by now well settled that where specific sale instances are available, particularly relating to the sales in the vicinity of the land under acquisition, the Court need not look into other sale instances of areas at a distance. According to Mr. Gupta, sale instances near the date of Notification u/s 4 of the Act of Mohal Naya Nagar (where land in question is situate), are available. So there is no need for this Court to look to the exemplars of village Gaura and/or of Hamirpur town itself. According to him Ex. P-8 also cannot be looked into, for the simple reason that it is of more than three years and four months after the date of Notification u/s 4 of the Act in these appeals. Thus it also does not provide a good guide for assessment of compensation.

19. On the other hand, learned Counsel for the persons interested/ land owners, pointed out that so far his clients are concerned, they are atleast entitled to compensation at the rate of Rs. 400 per sq. meter without classification uniformly. According to him, even where sale instances of small parcels of land are there, (as in the present case), those need to be accepted and then after allowing reasonable deductions for development etc., compensation needs to be assessed. Thus, according to him, his appeal deserves to be allowed. As per provisions of the Act, compensation needs to be assessed on the basis of market value of the property on the date of publication of Notification u/s 4 of the Act. No doubt in the absence of specific sale instances on or about the date of Notification u/s 4 sale instances which are anterior as well as latter to the date of such Notification can be looked into. In addition to this where sale instances of small plots are relied upon by either party, then keeping in view similarity as well as proximity of location of the acquired land as well as of the lands which are subject matter of such sale instances, after making deductions on account of smallness and largeness of both the areas, compensation is to be worked out. Some guess work is always involved while assessing market value of the acquired property. In case of small plots requirement of purchaser, its being suitable to his urgent need etc. are some of the factors, which hike price thereof.

20. Besides this, the location as well as topography of the acquired land, its potential of future development, are some of other illustrative factors to be kept in view while assessing its market value. Court can also take judicial notice of the rising trend in the prices of the land, in and around especially in the upcoming townships, like Hamirpur in the present case.

21. Section 23(1) of the Act enumerates the factors which are to be taken note

of by the courts while assessing compensation of the land. Similarly, Section 24 of the Act indicates the matters to be neglected in determining such compensation.

22. Applying the above tests and looking to the facts and circumstances of these appeals, in my considered view sale instances, award and sale prices of the sites of booths, relied upon by both the sides do not in any manner improve the case of either of them. As in the circumstances of this case those do not provide good guide for ascertaining the market value of the land in question on the date of publication of Notification.

23. On the other hand, plea urged on behalf of the Housing Board for reduction of compensation also cannot be accepted in the like manner. Reason being that there is positive evidence to suggest that the land is levelled, having a "Nullah" which serves as source of irrigation to this land. There is further positive evidence that there were 10-12 houses standing on the land. Besides this, there is a motor road leading from Hamirpur to Nalti on one side and on one side of the land in question there is existing Housing Board Colony.

24. In addition to this potential of the land under acquisition for its development for housing/industrial area/commercial purposes can be very well appreciated. In this behalf statement of PWs have remained uncontroverted. In addition to this, judicial notice can be taken of the fact that Hamirpur, a newly created district in the year 1972. It is fast developing and upcoming town. Land under acquisition is a part of this town. Near it, Housing Board Colony is existing. Looking to the cumulative effect of all these factors, it is evident that the land in question had great potential of being developed as a housing colony/industrial area/commercial area.

25. As already noted, rates at which the Housing Board sold the land for construction of booths is wholly irrelevant in view of the provisions of Section 24 of the Act, as such no benefit can be derived by the persons interested/land owners from Ex. P-4/A to Ex. PW-4/D.

26. Learned Collector below while assessing the compensation has based its award on the basis of the classification of land as also on the basis of nearness of some portion of the acquired land to the motor road. While assessing the compensation, learned District Judge below has classified the land into two categories. Then compensation has been enhanced as one block from Rs. 121 to Rs. 200 sq. meter and in the other block from Rs. 60 to 100 per sq. meter.

27. When the land is being developed for a housing colony, as in the present case, classification completely loses significance. Reason being that it has to be developed as a single unit i.e. for housing colony. Similarly allowing higher price for land near the road and for the one which is at a distance from the road also does not provide any reasonable, muchless rational basis to allow less price for the area. Reason being that a person may be interested to reside near the road side in a developed colony for so many reasons. Whereas another, may like to

live in the vicinity which is away from the road to avoid husble and bustle of being near the roadside and for many other reasons. In these circumstances it cannot be said that location of the land and its distance from the road is a good criteria and/ or for that matter classification for the assessment of compensation. In my view entire land under acquisition should have been assessed at Rs. 200 per sq. meter irrespective of its classification and/or distance from the road.

28. Faced with this situation, Mr. Deepak Gupta, Advocate, on behalf of Housing Board submitted, that it is matter of common knowledge that plots situated on the roadside carry higher price, as compared to the plots which are away from the road. This argument cannot be accepted in view of the decision of the Supreme Court reported in the case of The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, What was held and is relevant was as under:

7. The argument advanced by Shri Nageswara Rao that the classification by the Land Acquisition Officer was in order and ought not to have been interfered with by the reference Court or the High Court does not appeal to us. When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and, therefore, classification of the same into different categories does not stand to reason.

28. Another submission urged by Mr. Maniktala was that the Land Acquisition Collector as well as the learned Court below, both have fallen into error by not allowing interest on solatium component of the award and thus the award of the Court below needs to be modified on this ground. This position though contested on behalf of the Housing Board, but Mr. Deepak Gupta, Advocate, but he was not able to stretch his submission further in view of the decision by the Constitution Bench of the Supreme Court, Sunder Vs. Union of India,

29. There is no legally acceptable evidence produced by the persons interested/ land owners to substantiate their plea of fruit bearing trees.

30. On the basis of the evidence on record, as being discussed hereinabove, plea urged on behalf of the Housing Board that compensation could not have been enhanced by the learned District Judge below, is not sustainable in view of what has been said in the preceding paras. As such it is rejected.

31. No other point is urged.

32. In view of the aforesaid discussion while dismissing RFA No. 15 of 1996; RFA No. 18 of 1996 is partly allowed and award of the District Judge, Hamirpur, in land reference case No. 2/93, decided on 1.11.1995, in case titled Ram Lal and 12 others v. The Collector Land Acquisition Collector and Anr. is hereby modified in the following terms:

(a) That the persons interested/land owners whose lands have been acquired will get compensation at a flat rate of Rs. 200 per sq. meter for the entire land irrespective of its classification or nearness to road;

(b) On the total amount of compensation they are held entitled to solatium at the rate of 30%.

(c) They are also held entitled to interest on the entire compensation i.e. price of land as well as solatium, under Sections 23(1-A), 28 and 34 of the Land Acquisition Act, 1894 from the date of publication of Notification u/s 4 of the Act;

(d) Respondents are directed to recalculate the amount in terms of this judgment forthwith and then deposit it in the Registry of this Court by or before 31.12.2003 subject to (e) below;

(e) Amount, if any paid/deposited in terms of the award of the Land Acquisition Collector/District Judge, Hamirpur, shall be deducted out of the amount that may be worked out on its recalculation in terms of this judgment, failing which, persons interested/land owners will be entitled to levy execution for recovery of such amount;

(f) Parties will bear their own costs.