

**(2021) 12 MP CK 0004**

**In the Madhya Pradesh High Court**

**Case No : First Appeal No.289, 290, 291 Of 2008**

Jethmal Sand (Since Dead) Through His Lrs Narendra Sand S/ O. Late Shri Jethmal Sand And Others

APPELLANT

Vs

State Of M.P. And Three Others

RESPONDENT

**Date of Decision : 02-12-2021**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 4(1), 18, 23, 54

Code Of Civil Procedure, 1908 — Section 96, Order 22 Rule 3, Order 22 Rule 5

**Citation : (2021) 12 MP CK 0004**

**Hon'ble Judges : Arun Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : Greeshm Jain, R. N. Singh, Arpan J. Pawar**

**Final Decision : Allowed**

## **Judgement**

Arun Kumar Sharma, J

1 .As the similar issue is involved in all the aforesaid appeals, therefore, they are being disposed of by this common order.

2. These appeals under Section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure have been filed against the judgment dated 26.02.2008 passed by Second Additional District Judge, Khandwa, District Khandwa (MP), in Reference Cases No.370/07; 369/07 & 270/07 filed by the appellants separately arising out of Reference Applications filed under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') by the appellants against the award dated 15.04.2004 passed by the Land Acquisition Officer, N.H.D.C., Harsood No.1, Khandwa, in Revenue Case No.4A/82/ Year 2000-2001.

3. The facts which are necessary to be stated here are that the appellants are permanent resident of Gram Mohiriyat, Nagar Panchayat, Harsood, Tahsil Harsood, District Khandwa (MP) which is a thickly populated town having good

market area and is within the boundaries of Nagar Panchayat. The appellants are exclusive owners of the land which have been acquired by the respondents for the development of Indira Sagar Project. Appellant Jetmal Sand (now dead) was having land bearing Khasra No.185/4 area of 19.06 acre, out of which, total Rakwa of 18.52 have been acquired, appellant Smt. Anita is having land bearing khasra no.185/3 area of 2.00 acre have been acquired and appellant Narendra is having land bearing Khasra No.185/1 area of 0.50 acre have been acquired. With regard to the acquisition of the aforesaid land, a notification was published in official gazette dated 24.08.2001 under section 4(1) of the Land Acquisition Act and after completing all due formalities and providing due opportunities of hearing to the rival parties, the aforesaid land were acquired by the respondents under the Land Acquisition Act, 1894 for development of Indira Sagar Project. The land acquisition officer passed an award on 15.04.2004, whereby total value of the land belonging to Jetmal was determined at Rs.30,12,637/-; the land belonging to Smt. Anita was determined at Rs.10,26,907/- and the land belonging to Narendra was determined at Rs.10,554/-. Being aggrieved by the aforesaid award, applications under Section 18 of the Land Acquisition Act were preferred by the appellants individually to the land acquisition officer which were referred to the District court, Khandwa whereby they claimed that the market value of the land fixed by the land acquisition officer is very meager and does not consider the potential value of the land as well as the house constructed thereon. They also claimed that the appellants were the sole owner of the land, much before of issuance of notification dated 24.08.2001, all the appellants had moved an application before the competent authority for diversion of the land, however, no action was taken. Therefore, they separately filed writ petitions bearing W.P.No.4561/02, W.P.No.4559/02 and W.P.No.4564/02 and this Hon'ble Court was of the opinion that as the land has already come in submerge, therefore, no relief can be granted and dismissed the writ petitions vide order dated 13.5.2002. However, in the LPA separately preferred by the appellants, A Division Bench of this Hon'ble Court vide its order dated 30.1.2004 was granted permission to the appellants to adduce appropriate evidence to establish the market value and importance of the land. In the Reference Court it has also been agitated by the appellants that the land owner should be awarded compensation on the basis of valuation per square foot and also prayed for enhancement of compensation. However, the Reference Court on the basis of the evidence adduced and the documentary evidence, partly allowed the reference preferred by the appellants namely Jetmal and Smt. Anita and enhanced the compensation to the tune of Rs.2,18,107/- payable to Jetmal and Rs.2,16,933/- to Smt. Anita, in addition to the amount already awarded by the Land Acquisition Officer. But, the Reference Court dismissed the reference filed by the appellant Narendra.

4. Learned counsel for the appellants questioning the correctness of the award has contended that the Reference court has fallen into grave error by awarding compensation on acreage basis though there are contemporaneous sale-deeds as per Ex.A-21 with A-40 and A-43 and Ex.A- 22 with A-41 etc. indicating square

foot price. The courts below have not taken into consideration the fact situation, as a result of which, the effect potentiality has been totally brushed aside. The land in question was most developed land as all civil amenities like electricity, school, college, bank, post office, market, petrol pump were within a radius of half kilometer which is evident from Ex.A-7 to A-15 & A-20. Further the acquired land is situated along the State Highway No.15 known as Khandwa-Hoshangabad Road, having frontage of near about 2 acres (Ex.A-20, A-28, A-35, A-36 & Ex.P-79 to A-108. It is also 100-150 meter away from the Railway Station and was opposite to Railway Colony which is clear from Ex.A-20. The land in question was almost in square shape, the Govt. P.G. College was situated on it and office of Assistant Soil Conservator was next to it which is clear from Ex.A-16, A-17 & A-18. One glaring aspect of the matter is that the land was never used for agriculture purpose since more than 100 years as the Cotton Zining Factory was situated in the appellants land since from British time in the year 1912-1913 which demonstrate the land was fully developed which is clear from Ex.A-38 & A-39. The land was situated within the Nagar Palika Harsood in ward no. 12 of it. The land Acquisition Officer as well as the Reference court have not taken into consideration the report submitted by the revenue inspector and the report of S.D.O. which would go a long way to show that the area adjacent to the acquired land was sold on the basis of per square foot. The Reference Court has gravely erred by not granting solatium and interest though the same is statutorily payable. The appellants are entitled to interest on the entire awarded amount including the solatium as the whole sum shall be regarded as an amount of compensation for the purpose of grant of interest under the Act. They prayed that the appeals be allowed and they be awarded compensation @ 110/- per square foot.

5. On behalf of respondent no. 4/N.H.D.C. Ltd., it has been stated that as per the market rate, value of the acquired land has been determined and the value of the acquired land and other material is also correct and for other heads, the claimants are not entitled to any compensation. The land acquisition officer has determined the compensation in accordance with law. In support of his contentions, reliance has been placed on the judgments of the Supreme Court in the cases of Haridwar Development Authority vs. Raghubir Singh and others (2010) 11 SCC 581; Deputy Collector (LA) vs. Madhubai Gobarbhai (2009) 15 SCC 125 and Viluben Jhalejar Contractor (Dead) by Lrs. vs. State of Gujarat (2005) 4 SCC 789 and prayed for dismissal of the appeal.

6. Having considered the contentions advanced by learned counsel for the parties and on perusal of the record in this case following questions arise for disposal of this appeal :-

(I) Whether the order passed by the reference court is correct in partially allowing the application of the appellants filed u/s 18 of the L.A. Act?

(ii) Whether the prayer made by the appellants for granting them compensation based on per square foot basis for large chunk of area is correct and as per land?

(iii) Whether appellants have established that their land was having potential value even though it was not diverted?

(iv) Whether appellants are entitled for the rates claimed by them in appeal for determination of compensation @ Rs.110/- per square foot?

(v) Whether appellants are entitled to get the value of their building and material based on the clause 2.4 of the Policy?

7. As all the questions are directly correlated to each other, therefore, they are being considered together. The land of the appellants were acquired under the Land Acquisition Act is undisputed. It is also undisputed that under protest appellants have accepted the compensation and land has come under submergence in construction of Indira Sagar Project. It is also undisputed that dissatisfied with the award applications u/s 18 of the Land Acquisition Act were filed by appellants for referring the matter before the Competent Court making prayer that they are entitled for the compensation @ Rs.110/- per square foot. It is also undisputed that the Reference court has partly modified the award passed by the competent authority under the Land Acquisition Act.

8. The appellants have filed the aforesaid appeals mainly on grounds that the Reference court has not taken into consideration the order passed by the writ court as well as Division Bench of the Hon'ble Court to the effect that the appellants are free to establish the potential value of the land by leading evidence, even though their land was undiverted. The Reference court has passed the award according to the guidelines fixed by the respondents themselves in determining the compensation. The Reference court has not correctly evaluated the compensation in spite of the fact that ample evidence was available on record in respect of potential value of the land. The Reference court ought to have kept in mind the object of section 23 of the L.A. Act as the court was only required to see the market value of the land. The Reference Court has committed illegality in ignoring the policy framed by the respondents, the appellants were entitled to get the value of building structure based on policy. defense the points that the Reference court has passed well reasoned order and has dealt every aspect in detail, therefore, no interference is called for. The price of large chunk of area cannot be determined for compensation based on the per square foot. The order of Reference court is based on policy framed by State Government and as the policy is not under challenged, therefore, appellants are prevented questioning the policy.

10. The appellants have mainly stressed on the ground that their land were having high potential value, therefore in spite of the fact that it was undiverted they are entitled for market value of the land as has been paid to others. In support of their contention large number of documents have been exhibited before the Reference court and it was contended on the basis of these documents that their land was fully developed and was on the State Highway No.15 with frontage of 2 Acres having Electricity, Water, Road, Facility, and for

that purpose Exhibit A-20, A-28, A-35 have been strongly relied upon, these exhibits are maps of Nagar Panchayat Harsood, in which, land of the appellants is shown. It has been pointed out that opposite to lands of the appellants Railway Station, various shops, offices, roads, government building etc. are situated, appellants have also relied on Exhibits A-79 to A-108 which are photographs to establish that after submerging and acquisition of the appellants' land the rehabilitation camps were set up by respondents on their lands by constructing Tents for staying of near about 8000 people, because the appellants' land were fully developed in entire Nagar Panchayat of Harsood no better lands than the appellants was available for rehabilitation purpose. The appellants have stated that their land were plain as well as parallel to State Highway Road and had all facilities of developed land and in fact, it was also fully developed and was in square shape. The Government PG College was situated on it as the land and building were given on rent to the State Government, two decade back. To support their contention Exhibits A-16 to A-18 which are rent agreements with the Education Department of Government of M.P. to run the Government P.G. College were placed on record.

11. The appellants have forcefully submitted that by Exhibit A-17 to A-20 it is established that in near vicinity of their land many government offices were situated that like of Electricity Board, Bank, School, Post Office, Petrol Pump, Police Station etc. and all these were within radius of 500 meters. It was also pointed out that 100 years back on their land Cotton Zining Factory was set up and since then land is a developed land reliance have been placed on Exhibit A-19 and A-38. The appellant have submitted that in spite of the fact that many land owners who were having inferior land and away from the main road i.e. State Highway No. 15 only because lands were diverted land or small piece of land they have been paid compensation @ Rs. 39.29/- per square foot and for that exhibits A-21 to A-32 have been relied. It has further been submitted that the evidence of appellants were untouched whereas in evidence of respondents the land acquisition officer DW-1 in his cross examination has admitted that the land of the appellants were developed and in proximity of Railway Station and because of having all development facilities like Electricity, Water, Road, Drainage, rehabilitation camps after acquisition were setup. The appellants have relied on large number of case laws in support of their contention, A Division Bench of Hon'ble High Court in the matter of Hira Devi Vs. State of M.P. ILR 2009 MP 104 has held that as payment of higher compensation is payable if the land is adjacent to the road almost identical pronouncement of law has been made in the matter of Union of India Vs. Ramprasad, (2006) 3 MPLJ 397 and Ahad Brothers Vs. State of M.P. AIR 1992 SC 229. The Hon'ble Apex Court in the matter of Rishipal Singh Vs. Meerut Development Authority (2006) 2 MPLJ 434 has observed that there is no bar if exemplars of small plot being considered when other relevant or material evidence is not available only requirement is deduction of appropriate land for development.

12. In matter of Land Acquisition officer Revenue Division Chhitor Vs. L.Kamla

(Smt.) dead by LR's (1992) 2 SCC 385, the Apex Court was of the view that in case if no comparable sale of land are available where large area has been sold, the small extent of land could be taken note for determination of compensation after making appropriate deduction against Road, Sewage, Drainage etc. In the matter of Sajan Vs. State of Maharashtra, AIR 2020 SC 2344, the Apex Court after deducting 20% of the land for development has directed for determination of compensation of large area of land based on the per square foot. In that case also the land was acquired for dam project and partially it was developed, the Apex Court has held that the land was developed in future residential colony could have been setup. In the matter of Kamalkant Shrivastava Vs. State of M.P. (2006) 4 MPLJ 317. The Division Bench of this Hon'ble Court was also of the view that there is no bar in payment of compensation for large area on basis of per square foot. Even though land was not diverted and used for agriculture purpose, but compensation has to be paid on the basis of potential value. That, based on the various case laws and the law settled by the Apex Court there is no restriction on this court to determine compensation of large area of land based on the per square foot. The Apex Court in the case of Hasan Ali Khan Vs. State of Gujarat 95 2MPWN 173 has cast duty on the court that while assessing the market value of land court has to utilize its judicial experience and not to sit like an empire, the court is required to determine the correct market value after taking into account all the circumstances on record by applying correct principle of law so that just and proper compensation be determined and to do that it is its Constitutional, Statutory and Social Duty. Section 23 of the Land Acquisition Act very specifically contents that to determine the compensation market value of the land is only required to be taken into consideration, if any policy is framed contrary to section 23 then it has no legal value. In light of the case laws as discussed above the present set of facts when are to be tested and seen it is notable that the land of the appellants was beside the state highway No.15, Khandwa - Hoshangabad Road, very close to Railway Station and had all necessary amenities of development like Water, Electricity, Drainage. The major Government Offices were in 500 meters radius like Post Office, Bank, School, Shops, Railway Quarter and Petrol Pump. The Land Acquisition Officer himself has admitted regarding potential value of the lands.

13. It might be case that the land of the appellants was not diverted and however that count only the relief claimed by the appellants could not be rejected specially when there is order of Division Bench passed in the LPA No. 341/03, 344/03 & 343/03 permitting the appellants to establish the potential and market value of the land by evidence. In almost in similar circumstances in case of Sajan (Supra) the Apex Court has ordered for deduction of 20% land for against development purpose and compensation at the rate per square foot was ordered. In that case also the land was submerged for construction of Hiwra Dam Project.

14. Appellant Jethmal had 18.52 acres of land and compensation for this land was determined based on the acreage basis whereas the lands which were in less

advantageous position have been compensated per square foot basis this itself is in violation of section 23 of the LA Act. The reference court has not kept in mind the object of section 23, therefore, the order requires to be modified. It is clearly established by the appellants that their land were fully developed and had potential value. The appellants, therefore, in light of the conspectus of above discussion entitle for compensation on the basis of per square foot. In the present case the respondents themselves have fixed the rate at Rs. 39.29/- per square foot, therefore, the claimants of all these three appeals viz F.A. No. 289/2008, F.A.No. 290/2008 and F.A. 291/2008 are entitled to the compensation @ 39.29/- per square foot after deducting of 30% of their land. Needless to say that appellants are also entitled for solatium @ 30% which is in-consonance with requirement of statute similarly interest as required u/s 28 of the Act is also to be paid, however amount already paid would be deducted from this.

15. The appellants have also submitted that as per policy clause 2.4 Exhibits A-74 the land looser were permitted to take away the structure building material with them. In the present case it has been alleged that the Govt. P.G. College which was situated on the submerged land, the structure of the building was not allowed to be taken by the respondents as they have setup rehabilitation camps on that, appellants have been prevented to get the benefit of Clause 2.2 and 2.4 of the policy. The witness of respondent DW-1 has also admitted the fact that camps were setup for rehabilitation of near about 8000 persons in the land of the appellants. Appellant Jethmal in F.A. No. 289/2008 has claimed an amount of Rs. 14,99,876/- against loss of building structure for which he was prevented due to settlement of camps as claimed by Exhibit A-65 and Exhibit A-74. The appellant Narendra Sand after the death of his father Jethmal, therefore, is entitled to amount of Rs. 14,99,876/- with interest at the rate 10% from the date it became due i.e. 25.08.2004.

16. An application under Order 22 Rule 3 read with Rule 5 as I.A. No. 429/2016 has been filed by Bharti Sand, Samekit Sand and Astha Sand on the strength that they are also legal representative of Late Jethmal Sand who died during pendency of Appeal and Narendra Sand on the strength of Will executed by Jethmal Sand has been substituted as Sole Legal representative of Jethmal Sand.

17. These three persons have also filed similar application though on different provision on CPC in the Appeal filed by husband and father of Children Jitendra Sand, the Division Bench by its order dated 10.09.2015 passed in F.A. No. 366/08 has rejected their application observing that if the applicants have any right to receive alumni, maintenance or any amount from the appellant on account of their marital status, they will claim in accordance with law not in the Appeal filed under LA Act.

18. It is also noted that these three applicant have also approached to Civil Court in different matters claiming legal representatives of Jethmal Sand, however they have compromised their matter and in fact suit filed by them questioning the Will dated 20.10.2019 executed by Jethmal Sand as null and void has been

withdrawn, therefore in the light of the above, I deem it proper to reject the application as it is merit-less and baseless as has no force of law. Hence I.A. No. 429/2016 is dismissed holding that they have no right to be impleaded as legal representative of Jethmal Sand and not entitled for any amount payable to Jethmal Sand in F.A. No. 289/2008.

The appeals are allowed to the extent as stated above. All other applications pending are disposed off accordingly.