

(2016) 01 SHI CK 0043

In the High Court Of Himachal Pradesh

Case No : RFA No. 32 of 2011 with C.O. No. 698 of 2011 and CMP No. 10118 of 2015

Land Acquisition Collector and others

APPELLANT

Vs

Kanwar Singh

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2016) 2 HimLR 1048 : (2016) ILRHP 425 : (2016) LatestHLJ(HP) 107

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Devyani Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J. - This regular first appeal is directed against the award of the learned District Judge, Solan, H.P. dated 7.8.2010, rendered in Reference Petition No. 7-S/4 of 2009.

2. "Key facts" necessary for the adjudication of this regular first appeal are that the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on 16.5.2005 for acquiring the land of the respondent-claimant (hereinafter referred to as the claimant), bearing Kh. Nos. 27/1, 32/1, 74/1, kita-3, measuring 1-0 bighas, situated in Village Nataila, Tehsil Kandaghat, Distt. Solan, H.P. for the construction of Sayri-Danwati road. It was published in the Rajpatra on 3.6.2005. The Land Acquisition Collector, HP PWD, South Zone, Winterfield, Shimla, announced the award on 17.5.2008, bearing No. 10/2008, whereby the market value of the acquired land was assessed at the rate of Rs. 5,14,384/- per bigha for Bangar Awal and at the rate of Rs. 74,669/- per bigha for Bangar Kadeem kind of land. Dissatisfied with the award of the Land Acquisition Collector, HP PWD, Shimla, the claimant sought a land reference petition No. 7-S/4 of 2009 before the Reference Court for determination of market value of the acquired land and for enhancement of the rate.

3. According to the claimant, the compensation awarded by the Land Acquisition Collector was on the conservative side. The market value of the acquired land was Rs. 50,00,000/- per bigha at the relevant time. The damage was also caused to his adjoining land. The petition was contested by the appellants. The case of the appellants before the Reference Court was that the price claimed by the claimant was exorbitant and the assessment of the compensation was made strictly as per law.

4. The learned Reference Court framed the issues on 28.5.2009 and award was passed on 7.8.2010 awarding compensation of Rs. 17,05,000/- per bigha for 7 biswas of Bangar-1 of land and Rs. 82,500/- per bigha for 13 biswas of Ghasni kind of land, along with statutory benefits. Hence, this regular first appeal. The claimant has also filed Cross Objections No. 698 of 2011 for enhancement of the amount.

5. Mr. Neeraj K. Sharma, Dy. Advocate General, appearing for the appellants has vehemently argued that the Reference Court has not taken into consideration the well known principles, while determining the market value of the acquired land. On the other hand, Ms. Devyani Sharma, Advocate, for the claimant has vehemently argued that the awarded amount by the learned Reference Court is on the conservative side. The claimant has also moved an application under Order 41, Rule 27 CPC, bearing No. 10118 of 2015 for leading additional evidence.

6. I have heard learned Advocates for the parties and gone through the award and records of the case carefully.

7. The claimant has appeared as PW-2. He has led his evidence by filing an affidavit. According to him, he used to grow cash crops on the acquired land and used to earn Rs. 2,00,000/- per bigha. The various public offices like Bank, Post Office, Agriculture Office/Horticulture Department, PHC, Patwar Circle and 10+2 Government school are situated in the vicinity of the acquired land. The Airport is also nearby the acquired land. Sayri bazaar is at a distance of 2-1/2 km. The State Highway also passes near the acquired land. The acquired land is situated on the boundary of village Kahla and the lands of these both the villages are similar in nature and kind. The possession was taken in 1983-84. The market value of the acquired land, according to him, at the relevant time was Rs. 15 to 20 lac per bigha.

8. PW-1 Patwari Halqua, Shyam Lal Verma has deposed that the nature and kind of land in village Kahla is similar to that of the land in village Nataila where the acquired land is situated. According to him, village Kot abuts village Nataila where the acquired land is situated.

9. PW-3 V.L.Verma has admitted that the road in question was constructed in the year 1986. He also admitted in his cross-examination that the possession was not taken in the year 1986 but was taken after the issuance of the notification.

10. RW-1 Hari Kishan has produced copies of the sale deeds Ext. R-1 and R-2. According to him, in Ext. R-1, 6 bigha-16 biswa of land was sold in village Kot in January 2006 for Rs. 7,00,000/- at the rate of about Rs. 1,11,100/- per bigha. Similarly, in February, 2006, 4 biswa of land was sold for Rs. 13,500/- i.e. at the rate of Rs. 67,500/- per bigha.

11. Neither vendor nor vendee has appeared to prove sale deeds Ext. R-1 and Ext. R-2. It is the admitted case that no transaction has taken place in village Nataila before one year of the publication of notification under Section 4 of the Act i.e. 16.5.2005. The claimant has placed on record copy of award dated 13.3.2010 qua the land of the same village where the acquired land is situated. In this case, the notification was issued on 25.9.2008 i.e. after three years.

12. The purpose for acquiring the land was construction of Sayari-Danwati road. As per the award dated 10.3.2010, the Land Acquisition Collector has awarded Rs. 1,55,000/- per biswa for Bangar-1 land and Rs. 31,00,000/- per bigha and also awarded Rs. 1,10,000/- per biswa for Bangar-II and Rs. 22,00,000/- per bigha. He has awarded Rs. 7500/- per biswa for Ghasni and Rs. 1,50,000/- per bigha. The land in the present appeal is also situated in the same village i.e. village Nataila. C.O. No.698 of 2011 and CMP No. 10118 of 2015.

13. Ms. Devyani Sharma, Advocate, has submitted that a sum of Rs. 17,05,000/- per bigha was required to be calculated uniformly for all kinds of land, irrespective of the category of land along with statutory benefits as the land was acquired for the purpose of construction of road. According to her, flat rate was required to be awarded.

14. The claimant has also filed CMP No. 10118 of 2015 under Order 41, Rule 27 CPC for leading additional evidence. Reliance has been placed on award rendered in LAC Petition No. 3-S/4 of 2011 dated 11.12.2014, rendered by the learned District Judge, Solan. In this case, the notification was issued under Section 4 of the Act on 25.9.2008 and it was published in the Rajpatra on 27.9.2008 and in two daily newspapers, namely, "Amar Ujala" and "Hindustan Times" on 16.10.2008. Wide publicity was also made in the locality on 5.11.2008. The notification under Sections 6 and 7 of the Act was issued on 20.2.2009 which was published in the Rajpatra on 25.2.2009 and in two daily newspapers, namely, "Indian Express" and "Apka Faisla" on 13.3.2009. However, the claimant, in the present appeal, as per the impugned award was only paid Rs. 5,14,384/- per bigha for Bangar Awal and Rs. 24,890/- per bigha for Ghasni kind of land. CMP No. 10118 of 2015 is accordingly allowed.

15. The learned Reference Court by relying on award No. 3 of 2010, dated 10.3.2010 and thereafter applying the decrease of 15% per annum in view of hike in prices from 2005, has assessed the value of the land for 7 biswas of Bangar-I kind of land of the claimant at the rate of Rs. 17, 05,000/- per bigha and for 13 biswas Ghasni kind of land at the rate of Rs. 82,500/- per bigha. In the impugned award i.e. award No. 10/2008 dated 17.5.2008, and award No.

3/2010 dated 10.3.2010 and in LAC petition No. 3-S/4 of 2011, decided on 11.12.2014, land has been acquired for the same purpose i.e. construction of Sayari-Danwati road. It is settled law that when land of different kinds and classification is acquired for one purpose, the market value of the entire acquired land, irrespective of its classification/category, is required to be assessed and awarded a flat and uniform rate for all categories of land since classification of land completely loses significance and entire land under acquisition shall be awarded uniform rate. The learned Reference Court has awarded Rs. 17,05,000/- per bigha for Bangar-I kind of land and Rs. 82,500/- per bigha for Ghasni kind of land, on the basis of classification of land. The learned Reference Court should have awarded flat and uniform rate of Rs. 17,05,000/- per bigha for Ghasni kind of land as well, since the land acquired was for a common purpose i.e. construction of Sayari-Danwati road.

16. In the case of H.P. Housing Board v. Ram Lal and others, reported in 2003 (3) Shim. L.C. 64, the learned Single Judge of this Court has held that when the land is being developed for housing colony, classification completely loses its significance. It has been held as follows:

"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 hustle and bustle of being near the road side 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."

17. Consequently, there is no merit in this regular first appeal and the same is dismissed. The Cross-Objections are allowed. The claimant is held entitled to uniform rate of compensation for the entire chunk of land, irrespective of classification, @ Rs. 17,05,000/- per bigha on the basis of Award in LAC Petition No. 3-S/4 of 2011 dated 11.12.2014. The enhanced amount be released to the claimant within a period of three months from today with statutory benefits after deducting the amount already paid. The award shall stand modified accordingly.