

(2018) 07 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : RFA No.463 of 2012

Land Acquisition Collector	Vs	APPELLANT
Surjit Singh And Others		RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6, 7, 18

Citation : (2018) AIRCC 2819

Hon'ble Judges : TARLOK SINGH CHAUHAN, J

Bench : Single Bench

Advocate : Neeraj Gupta, Ajeet??Pal Singh Jaswal, Tara Singh Chauhan, Vinod Thakur, Sudhir??Bhatnagar

Final Decision : Disposed of

Judgement

Sr.No.,Kind of Land,Price per Sq.meters

1.,Banjar Kadeem,Rs.68-06

2.,Gair Mumkin,Rs.34-30

a prudent purchaser would do,,

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus,,

factors and unloading it for minus factors.,,

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would,,

do. We may illustrate some such illustrative (not exhaustive) factors:-,,

Plus factors Minus factors,,

1. Smallness of size. 1. largeness of area.,,

2. Proximity to a road. 2. situation in the interior at a distance from the road. 3. frontage on a road. 3. narrow strip of land with very small frontage,,

compared to depth.,,

4. nearness to developed area. 4. lower level requiring the depressed portion to be filled up.,,

5. regular shape. 5. remoteness from developed locality.,,

6. level vis-a-vis land under acquisition. 6. some special disadvantageous factor which would deter a purchaser.,,

7. special value for an owner of an adjoining property to whom it may have some very special advantage.,,

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is,,

the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared",,

with a large tract or block of land of say 10000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have",,

to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the",,

invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance,,

at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small,,

plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether",,

waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.",,

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge,,

must place himself.,,

(17) These are general guidelines to be applied with understanding informed with common sense.â??,,

8. The respondents-claimants examined PW-2 Surjit Singh, who stated that in the year 1974 Housing Board Colony had taken over possession of his",,

land measuring 0-14-46 hectares i.e. about 3 Kanals 7 Marlas and thereafter award dated 05.06.2008 was passed and payment was made to him on,,

19.07.2008. He further deposed that at the commencement of development of colony, the value of his land was Rs.1,00,000/-per Marla. Mount",,,

Carmel School as also residential house complexes had come up in the vicinity of the land and lands worth lakhs of rupees were sold in the vicinity.,,

He, thus, prayed for compensation according to the market value. In cross-examination, he admitted that the Housing Board Colony had taken over",,,

the possession of the suit land in the year 1974 and raised houses thereupon.,,

9. The claimants also examined Ravi Kumar, Registration Clerk, as PW-1, who proved the copies of conveyance deeds Ex.PW1/A to Ex. PW1/D. In",,,

addition to the above, the claimants also placed on record copies of sale deeds Ex. PA to Ex.PD.",,,

10. On the other hand, the appellant herein tendered in evidence, copies of awards Ex. RX and Ex.RY.",,,

11. At this stage, it would be necessary to deal with each of the sale exemplars/ awards, as relied upon by the parties.",,,

12. As per Ex. PW1/A i.e. deed of conveyance of house sold by allotment by the appellant, area measuring 14 x 46 feet=644 square feet i.e. about 60",,,

square metres was sold for Rs.9500/- i.e. Rs.158.33 per square metre. This plot was allotted by the vendor through letter dated 11.04.1978.,,

13. As per Ex.PW1/B i.e. deed of conveyance, area of 253 square metres was sold for Rs.7,90,000/- which pertained to the allotment vide letter of",,,

the appellant dated 24.09.1998 and as per this conveyance deed, the area was sold at the rate of Rs.3122.52 per square metre.",,,

14. As per Ex.PW1/C, another conveyance deed, 84 square metres land was sold for Rs.60,000/- vide allotment dated 30.05.1988 and the sale price",,,

as per this conveyance deed works out to be Rs.714.28 per square metre.,,

15. Exhibit PW1/D is another conveyance deed where by 152 square metres land was sold for Rs.13,39,000/- and allotment was made vide letter",,,

dated 23.07.2008 and as per this allotment, the value of the land comes to Rs.8809.21 per square metre.",,,

16. As per Ex.PA dated 11.09.2006, 0-01-50 square metres land was sold for Rs.1,00,000/- i.e. 666.66 per square metre. As per Ex. PB dated",,,

16.04.2007, 0-01-93 square metres land was sold for Rs.2,90,000/- i.e. Rs.1502.59 per square metre. As per Ex. PC dated 23.01.2008, 0- 02 - 16",,,

square metres land was sold for Rs.4,40,000/- i.e. Rs.2037.03 per square metre.

As per Ex. PD dated 13.08.2009, 0-01-53 square metres land was",,,
sold for Rs.4,32,000/- i.e. Rs.2823.52 per square metre.",,,

17. Now, adverting to the copies of awards Ex.RX and Ex.RY. Exhibit RX is the award dated 05.04.1975 whereby the compensation for",,,

â??Baraniâ?? land of village Tabba was assessed at the rate of Rs.1,000/- per Kanal and that of â??Banjar Qadimâ?? land was assessed at the rate",,,

of Rs.500/- per bigha or Rs.225/- per Kanal. Exhibit RY is the Award No.5/2008 dated 05.06.2008 passed by the Land Acquisition Collector, whereby",,,

the land classified as â??Banjar Qadimâ?? had been assessed at Rs.68-06 per centiare and â??Gair Mumkinâ?? at Rs.34-30 per centiare.,,,

18. As per settled law, the market value of the land is required to be assessed on the date of notification issued under Section 4 of the Act which in",,,

the instant case is 29.04.2006. The most proximate sale deed made in point of time is Ex. PA dated 11.09.2006, according to which, the land has been",,,

sold at Rs.666.66 per square metre. As regards the other sale deeds, it would be noticed that Ex. PW1/A, Ex.PW1/B and Ex. PW1/D are deeds of",,,

conveyance of houses sold by allotment by the Housing Board/HIMUDA and, therefore, cannot be made the basis for determination of compensation",,,

of land.,,,

19. Even though, Ex. PW1/C is a deed of conveyance of plot sold by the appellant, but the same was executed more than two years after the issuance",,,

of notification under Section 4 of the Act, and was executed on 6th June, 2008. That apart, all the aforesaid conveyance deeds Ex.PW1/A to",,,

Ex.PW1/D were executed subsequent to the issuance of the notification under Section 4 of the Act and being post acquisitions, cannot be made the",,,

basis for determination of the market value.,,,

20. As regards the sale deeds, Ex. PC and Ex.PD, even these sale deeds are post acquisition sale deeds and, therefore, cannot be made the basis to",,,

determine the market value.,,,

21. As observed earlier, the most proximate sale deed in point of time is Ex.PA dated 11.09.2006 and as per this sale deed the market value at best",,,

works out at Rs.666.66 per square metre. Therefore, it is not at all understandable as to how the learned Court below assessed the market value at",,,

Rs.2,000/- per square metre that too by according the following reasons:-",,,

16. On over all analysis of the sale deeds, conveyance deeds and oral evidence in this regard particularly when no counter evidence has been,, adduced by respondents, this court is of the opinion that the value of suit land acquired on the date of notification under Section 4 i.e. 29.4.2006 could,, not have been less than Rs.2,000/- per sq. meters particularly when respondent-department has sold land at higher rates way back in 1998 as depicted",,, above through conveyance deeds Ext.PW1/A to PW1/D. Therefore, this court assesses the value of land acquired liable to be enhanced to the extent",,, of Rs.2,000/- per sq. meters irrespective of classification of land as the land is acquired for same purpose.â??",,,

22. The aforesaid findings, to say the least, are perverse and even the so called reasons in support of such findings are unsound and illogical.",,,

However, it needs to be borne in mind that even though the notification under Section 4 of the Act was issued on 29.04.2006, but yet this Court cannot",,,

lose sight of the fact and as admitted by the appellant that the possession of the land was taken by it in the year 1974. Obviously, the respondents have",,,

been deprived of the usages of this land for nearly 32 years. Therefore, in these circumstances, the Court is required to balance the competing",,,

interests of the parties. In case, the appellant had not deprived the respondents of the usages and occupation of the land for nearly 32 years, the",,,

market value of the land on the date of acquisition cannot account for and in fact does not account for the deprivation of usages of land for 32 years.,,,

23. How, therefore, in the given facts and circumstances, the competing interests of the parties are required to be balanced, in such circumstances is",,,

in fact no longer res integra in view of the judgment of the Honâ??ble Supreme Court in Balwan Singh and others versus Land Acquisition Collector,,

and another (2016) 13 SCC 412, wherein after taking into consideration the earlier precedent on the subject, the Honâ??ble Supreme Court directed",,,

the acquiring authority to award additional interest by way of damages @ 15% per annum from the date when the respondents-claimants were,,

dispossessed till the date of notification under Section 4 of the Act. It shall be apposite to refer to the relevant observations which read thus:-,,

1. The short issue arising for consideration in this appeal is whether the appellants are entitled to interest for the period from the date of,,

dispossession to the date of Notification under Section 4(1) of the Land Acquisition Act, 1894 (For short 'the Act'). That issue is no more res integra.",,,

In R.L. Jain Vs. DDA (2004) 4 SCC 79 at para 18, this Court has taken the view that the land owner is not entitled to interest under the Act.",,

However, it has been clarified that the land owner will be entitled to get rent or damages for use and occupation for the period the Government",,

retained possession of the property.,,

2. Noticing the above position, this Court in Madishetti Bala Ramul Vs. Land Acquisition Officer (2007) 9 SCC 650, took the view that it may not be",,

proper to remand the matter to the Collector to determine the amount of compensation to which the appellants therein would be entitled for the period,,

during which they remained out of possession and hence, in the interest of justice, this Court directed that additional interest at the rate of 15% per",,

annum on the amount awarded by the Land Acquisition Collector, shall be paid for the period between the date of dispossession and the date of",,

Notification under Section 4(1) of the Act.,,

3. The said view was followed by this Court in Tahera Khatoon Vs. Land Acquisition Officer (2014) 13 SCC 613.,,

4. Following the above view taken by this Court, these appeals are disposed of directing the respondents to award additional interest by way of",,

damages, at the rate of 15% per annum for the period between 1.7.1984, the date when the appellants were dispossessed till 2.9.1993, the date of",,

Notification under Section 4(1) of the Act. Needless to say that this compensation will be on the basis of land value fixed by the Reference Court. The,,

amount as above, shall be calculated and deposited before the Reference Court within a period of three months from today.â??",,

24. In view of the law expounded in the aforesaid judgment, even though the respondents-claimants can only be held entitled to compensation at the",,

rate of Rs.666/- per square metre as against Rs.2,000/- per square metre as awarded by the learned reference Court. Nonetheless, they are entitled to",,

additional interest by way of damages @ 15% per annum on this amount i.e. Rs.666/- per square metre from 1st January, 1974, the date when the",,

respondents-claimants were dispossessed till 29.04.2006, the date of notification under Section 4(1) of the Act.",,

25. Needless to say that this compensation will be on the basis of the land value fixed by this Court i.e. Rs.666/- per square metre. The amount as,,

above shall be calculated and deposited before the reference Court within a period of three months from today.,,

26. The appeal is disposed of in the aforesaid terms, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.",,