

(2023) 03 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 357 Of 2005

M/S Gujrat Ambuja Cement Factory, Darlaghat & Others

APPELLANT

Vs

Sukh Ram (Deceased) Through Lrs & Others

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 11, 25, 54

Citation : (2023) 03 SHI CK 0032

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Neeraj Gupta, Vedhant Ranta, Janesh Gupta, Adarsh K. Vashista, Rajender Sharma, Seema Sharma

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. Present appeal has been preferred under Section 54 of Land Acquisition Act, 1894 (in short 'the Act') against award dated 21.9.2007 passed by Additional District Judge, Solan in a Land Reference Petition No. 41 - S/4 of 2007/04, titled Sukh Ram and others vs. State of HP whereby Reference Court has enhanced the value of land at uniform rate at the rate of Rs.3,60,000/- per bigha, irrespective of its classification and category, whereas Land Acquisition Collector had determined the value of land ranging from Rs.15,000/- to Rs.1,00,000/- per bigha on the basis of classification and category of land.

2 Undisputedly, land of respondents was acquired for public purpose relating to expansion of factory of Gujarat Ambuja Cement Ltd. (appellant) by issuing notification under Section 4 of Act which was lastly published on 6.1.1998 and as a sequel thereto, Award No. 5 of 2000 was announced under Section 11 of the Act on 11.01.2001 by determining the value at the rate of Rs.15,000/- per bigha for uncultivated land and Rs.1,00,000/- per bigha for cultivated land.

3 Land owners, in Reference Petition, has examined 8 witnesses and have placed

on record average value of land Ext.PW2/A, copy of Award No. 5 of 2000 passed by Land Acquisition Collector in present case Ext.PW3/A, copy of detail of standing trees Ext.PW3/B, copy of Form CC Ext.PW3/C, copy of sale deed Ext.PW4/A, whereas project proponent had examined three witnesses RW1 to RW3 and has placed on record the copies of sale deeds Ext.R1 to Ext.R3 and copy of average value of land Ext.RW2/A.

4 Land owners have claimed compensation at the rate of Rs.10 lacs per bigha irrespective of its classification. Average value of land Ext.PW2/A, relied upon by land owners pertains to period 16.6.1997 to 15.6.1998 wherein average value of land in village has been shown as Rs.3,57,778/- per bigha. Whereas average value relied upon by Project proponent is for the period from 17.1.1997 to 16.1.1998 wherein average value of land has been shown as ranging from Rs.54324/- to Rs.77270/- on the basis of classification of land. Notification under Section 4 of the Act was published in January, 1998. There is a difference of consideration period in both average values and, therefore, on the basis of transaction during the said periods, average value of land is different in both documents prepared and produced by one and the same person appearing as a witness PW2 for land owners and RW2 for project proponent appellants. It is also settled that value of land for the purpose of determining the compensation under Acquisition Act cannot solely be based on one year average value of land but it depends on other several relevant factors, as also held in judgment dated 12.10.2018 passed by this Court in RFA No. 368 of 2014 titled Himachal Pradesh Power Corporation Limited vs. Narayan Singh and other connected matters.

5 Sale deed Ext.PW4/A is a sale deed dated 27.8.1997 whereby land measuring 1-3 bighas was sold for consideration of Rs.3,56,500/-. The said sale deed was executed within a period of five months before issuance of notification under Section 4 of the Act, therefore, the said sale deed has rightly been considered by Reference Court as a relevant transaction for determining the compensation. Whereas, sale deeds Ext.R-1 and Ext.R-2 pertain to different villages and it is not proved by appellants that land of those villages namely Dwaroo and Suli was of the same nature, potential and yield and, therefore, Reference Court has rightly discarded those sale deeds.

6 So far as sale deed Ext.R-3 is concerned that pertains to village Bated, i.e. village in reference, but same is of only 8 biswas of land and was executed on 12.6.1997, i.e. about 7 months before issuance of notification under Section 4 of Act, whereas Ext.PW4/A is nearer to notification issued under Section 4 of Act and, therefore, in comparison to sale deed Ext.R-3, sale deed Ext.PW4/A is appropriate for determining the value of compensation of land because Ext.R-3 pertains to a small chunk of 8 biswas land only whereas Ext.RW4/A is with respect to sale of 1-3 bighas of land and, therefore, Reference Court has rightly considered Ext.PW4/A as relevant transaction for determining the value of land for calculation of compensation payable to land owners.

7 Learned counsel for appellants has submitted, as also recorded by Reference

Court in para 13, that Award No.4 of 2000 was in respect of land acquired under the same notification issued under Section 4 of Act wherein value of land was determined at the rate of Rs.2 lac per bigha for cultivated land and Rs.50,000/- per bigha for uncultivated land and the said fact has been stated in examination-in-chief by witness PW3 Shyam Singh Pal, Sub Divisional Kanungo examined by land owners.

8 It has been submitted that despite the said fact on record, Reference Court has failed to take into consideration the value so determined in the said Award belonging to same village acquired under the same notification.

9 Learned counsel for land owners has contended that Award No. 4 of 2000 was a consent award and therefore, fair value of compensation was not determined during adjudication of the said Award but it was agreed value of land between two parties which cannot be taken into consideration for determining the value of land for calculating the compensation payable to land owners in present appeal.

10 In Award No. 4 of 2000, two different values were settled between the parties. Rs.2 lacs value was determined for cultivated land, whereas Rs.50,000/- was determined for uncultivated land. It is now settled that value of land in cases of acquisition like present one, is to be determined at uniform rate, irrespective of classification and category of land, and further that for that purpose, highest value of land, as determined by Land Acquisition Collector, can be made basis for determining value of land for all kinds of land irrespective of its classification and category. Therefore, for taking into consideration value of land determined in Award No. 4 of 2000, highest value i.e. Rs.2 lacs per bigha can be taken into consideration along with an other relevant exemplar deed i.e. sale deed Ext.PW4/A to determine the value of land for calculating the compensation.

11 It is well settled that at the time of determining market value of land for acquisition, the purpose for which the land is acquired, is relevant and not nature and classification of land and where nature and classification of the land has no relevance for purpose of acquisition, market value of the land is to be determined as a single unit irrespective of nature and classification of the land. In such a case, uniform rate to all kinds of land under acquisition as a single unit irrespective of their nature and classification is to be awarded. (See *Dadu Ram Vs. Land Acquisition Collector and others* (2016) 2 ILR 636 (HP); *H.P. Housing Board Vs. Ram Lal and others*, 2003 (3) Shim.L.C. 64; *Union of India Vs. Harinder Pal Singh and others* 2005 (12) SCC 564; *Executive Engineer and another Vs. Dila Ram*, Latest HLJ 2008 (HP) 1007; *LAC and another Vs. Bhoop Ram and others*, 1997 (2) SLC 229; *Smt. Gulabi and etc. Vs. State of H.P.* (AIR 1998 HP 9) and *G.M. Northern Railway Vs. Gulzar Singh and others* (Latest HLJ 2014 (HP) 775).

12 As provided under Section 25 of the Act, Court cannot award compensation lesser than that awarded by Land Acquisition Collector (See *Shub Ram & others Vs. State of Haryana and another* 2010 (1) SCC 444). Therefore, where uniform

rate of compensation is to be awarded, it cannot be less than highest rate determined by the Land Acquisition Collector.

13 It is true that in a consent award value of land is not determined on merits but definitely it is a transaction between two parties with respect to transfer of land for compensation payable as per agreed value of land. It is like a sale deed where two parties negotiate between them for sale and purchase of land for a consideration and, therefore, it is also a relevant document for determining the value of compensation payable to other land owners. But Reference Court has failed to take note of this transaction. I am of considered opinion that for determining the value of land both transactions, i.e. acquisition of land vide Award No.4 of 2000 as well as sale deed Ext.PW4/A, are relevant for determining the value of land and, therefore, for arriving at just and fair value of land, it would be appropriate to consider both these transactions and determine the value of land accordingly. Total of Rs. 2 lacs and Rs.3,56,500/-becomes Rs.5,56,500/- and mean thereof would be 2,78,250/-. As Award No. 4 of 2000 has not been proved on record by either party but the facts regarding said Award pertaining to classification of land and value consented by land owners for two different kinds of land has come on record in examination-in-chief of a witness examined by land owners. In the given facts and circumstances, it would be appropriate to calculate the value of land slightly higher than Rs.2,78,250/- and it would be appropriate to determine the value of land as Rs.2,85,000/- per bigha.

14 In view of aforesaid discussion, appeal is allowed and land owners are held to be entitled for compensation on the basis of value of land at the rate of Rs.2,85,000/- per bigha along with all other statutory benefits like solatium, additional compulsory acquisition charges etc. as available under law.

All pending miscellaneous application(s), if any, also stand disposed of accordingly.