

(2014) 12 SHI CK 0104

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal Nos. 130, 131, 132, 133, 134, 135, 136 and 137 of 2006

Prakash Kaur

APPELLANT

Vs

L.A.C.

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2015) 2 ShimLC 864

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : H.K. Bhardwaj and Dheeraj K. Vashisht, Advocate for the Appellant; Vivek Singh Attri, Deputy Advocate General and Rahul Mahajan, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—All these appeals are directed against the impugned award rendered by the learned District Judge, Una in Land Reference Petition Nos. 1, 2, 3, 4, 5, 6, 7 and 8 of 2002, wherein the award of the learned District Judge, Una is subjected to a frontal attack by the learned counsel for the appellants herein, on the score of his having assessed deficient, unjust and unreasonable compensation in favour of the appellants herein qua their lands subjected to acquisition for respondent No. 3-General Manager Northern Railways.

2. The learned counsel appearing for the appellants herein has concerted to espouse before this Court that the learned District Judge in rendering findings, on the issues, qua which the parties were at contest, has committed an impropriety inasmuch as he has omitted to take into consideration the factum of applicability of award rendered in a Reference Petition comprised in Ex. P-4 to the instant appeal even though, the lands of the land owners therein, as were subjected to acquisition, while being located in Village Ajnauli, as are the lands of the appellants herein located, as such, the determination of compensation by the learned District Judge in his award comprised in Ex. P-4 ought to have been the

determinant parameters for the learned District Judge, Una in his impugned award to on its strength assessing compensation qua the lands of the appellants herein. He hence, concerts that the learned District Judge, Una while assessing compensation qua the lands of the appellants herein has discarded the probative worth of Ex. P-4 and proceeded to assess a deficient, unreasonable and unjust compensation qua the lands of the appellants herein. The above contention as addressed before this Court by the learned counsel appearing for the appellants herein would garner immense weight and strength in the face of cogent evidence having come to be adduced before the learned District Judge, Una qua the fact of the advantages inherent in the lands of the land owners subjected to acquisition and qua which a determination was rendered by the learned District Judge, Una in Ex. P-4 and which advantages are extracted hereinafter being also inherent in the lands of the appellants herein while both being proximately located to each other.

"27. From the perusal of the evidence as has been re-produced hereinabove the following factors emerges as proved:-

- (i) That the aforesaid land of the petitioners which has been acquired happened to be situated on the boundary of Municipal Committee Una by the side of District Hospital, Una and a shopping complex named as Bhikha Market.
- (ii) The acquired land abutted the main road leading from Una to Hamirpur.
- (iii) The acquired land happened to be situated in the vicinity of village Ajnauli.
- (iv) The petitioners were growing crop in the acquire land and one of the petitioner Siri Ram had built a shop on the land bearing Khasra No. 1184.

3. The apt and apposite evidence of probative worth to constitute or to lay foundation for an inference that the advantages borne by the lands of the land owners qua whose lands an award is comprised in Ex. P-4 are also borne by the lands of the appellants herein was comprised in potent and cogent evidence portraying the factum of proximity of lands of the lands owners qua whom an award was rendered in Ex. P-4 with the lands of the appellants herein. Even though the oral testimonies of the petitioners in support thereof exist or occur on record, however, the self serving depositions of the petitioners are deficient as well as inapt for rendering a conclusion that hence cogent and potent evidence has come on record qua accomplishment and fulfillment of the relevant admissible parameter of the lands comprised in Ex. P-4 being situated in close proximity to the lands of the appellants so as to prod this Court to adjudge, on the strength of compensation determined in Ex. P-4, compensation qua the lands of the appellants herein at par thereon. Rather the deposition of PW-1 unfolds the factum of lands being away from the main highway. Besides the deposition of PW-2 while unfolding the factum of the vastness of expanse of village Ajnauli where the lands of the appellants is located, in as much as its extending up to 7 Kms., does also give leeway to an inference that given the expanseness or the width of the tract of the village wherein the lands of the land holders qua whom

an award was rendered as comprised in Ex. P-4 are located and wherein too the lands of the appellants herein are located, that, hence the lands of the land holders comprised in the verdict existing in Ex. P-4 and lands of the appellants herein are improximately located. Consequently, as such, the determination of compensation by the learned District Judge in his award comprised in Ex. P-4 qua the lands located in Village Ajnauli as the lands of the appellants are located cannot for lack of cogent evidence portraying proximity inter se lands of the petitioners in the award comprised in Ex. P-4 with the lands of the appellants herein form anvil for determining on score thereof compensation in favour of the lands of the appellants herein, too located in Village Ajnauli especially with theirs being improximately located to each other. Even otherwise the best evidence, for marshalling an inference that the determination of compensation by the learned District Judge in his award comprised in Ex. P-4 ought to be the anvil or anchor for determining on score thereof compensation for the lands of the appellants herein, was constituted by adduction of "Khaka Dasti" at the instance of the Revenue Officials of the Mohal Concerned portraying the factum of proximity in location of the lands inter se the petitioners in award comprised in Ex. P-4 and the lands of the appellants herein. Omission of its adduction into evidence fosters rather a concomitant deduction that the lands of the land holders comprised in award existing in Ex. P-4 cannot be reinforcingly concluded to be forming or constituting a viable, just and apposite parameter for on its score determining compensation qua the lands of the appellants herein though located also in village Ajnauli. Consequently, the reasoning and the concomitant conclusions arrived at by the learned District Judge that the award of the learned District Judge Una comprised in Ex. P-4 is unreliable or does not constitute a relevant parameter for on its score adjudging or determining compensation for the lands of the appellants herein is un-interfereable.

4. The learned counsel appearing for the appellants herein vociferously canvasses before this Court that the learned District Judge in his impugned award has untenably discarded the probative worth of Ex. PW-4/A, sale deed entered into a willing seller and willing buyer, hence bereft of an element of its constituting a rigged transaction, as such, when it was reliable and relevant piece of evidence, it rather ought to have been borne in mind by the learned District Judge for on its score determining compensation for the lands of the appellants herein as were subjected to acquisition dehors the fact that the sale deed adduced into evidence by the petitioners comprised in Ex. PW-4/A is qua a small tract of land and then may be the market value as unfolded in it may not in its entirety constitute the market value for the vast expanse or tract of lands of the appellants herein as subjected to acquisition unless obviously some legal permissible deductions from it were meted out. Nonetheless, the further fact that even when the apposite evidence for unraveling the factum of the land comprised in Ex. PW-4/A being located in close proximity to the lands of the appellants herein, is amiss, the apt conclusion which is to be formed is that the market value unfolded in the sale instance comprised in Ex. PW-4/A, cannot hence

constitute a reckonable parameter for on its strength determining compensation for the lands of the appellants herein. Moreso, when the said factum of proximity inter se the land comprised in Ex. PW-4/A and the lands of the appellants herein as subjected to acquisition remained un-pronounced even in the testimonies of the vendor and vendee therein. Concomitantly then it has been tenably concluded by the learned District Judge Una in his impugned award that the market value of the sale instance comprised in Ex. PW-4/A was both unreliable as well as un- reckonable for on its strength determining compensation for the lands of the appellants as were subjected to acquisition.

5. Be that as it may, when this Court while allowing an application preferred by the counsel for the appellants in RFA No. 131 of 2006 under Order 41 Rule 27 had then permitted him to adduce into evidence a judgment rendered by the learned Additional District Judge, Fast Track Court, Una who then come to tender the same into evidence and exhibited the same as Ex. AX. It hence becomes imperative for this Court to adjudicate and determine whether the compensation awarded by the learned Additional District Judge, Fast Track Court, Una in his judgment comprised in Ex. AX qua the lands of the lands owners therein constitutes, though rendered subsequently, to the rendition of the impugned award a relevant just and acceptable parameter for prodding this Court to on its strength determine compensation qua the lands of the appellants herein. A perusal of award comprised in Ex. AX unfolds the fact that the lands of the land owners therein as the lands of the appellants herein are located in Village Ajnauli. However, the mere factum of location of the lands of the land owners therein and of the appellants herein, in a common village Ajnauli, would not per se constitute Ex. AX, to be an apt parameter for on its strength determining compensation for the lands of the appellants herein, unless of course, evidence of potent worth and of immense probative value unveiling the factum of inter se proximity of lands comprised in Ex. AX and the lands of the appellants herein came to be unfolded as well as unearthed. The said evidence is manifestly brought to the fore by the factum of revelation in Annexure AX of the lands comprised in Khasra No. 1074/2, 583/2, 707/2, 741/3, 705/2, 706/2, 1075/2, 661/2, 698/2, respectively, having come to be therein subjected to acquisition. Now given also the imminent fact of the lands of the appellants herein bearing Khasra No. 583/1, 698/1 705/1, 706/1, 707/1, 741/1, 741/2, 1075/1 and 661/1, hence, only having a dissimilarity of min number vis-?-vis the lands detailed in Ex. AX, as such, obviously when the core khasra Numbers borne by each aforesaid are congruous or analogous to each other does then boost an inference that given the commonality of the core Khasra Nos. of the lands of the land holders in Ex. AX and of the lands of certain land holders/appellants herein that hence, the lands of the land holders in Ex. AX and the lands of the appellants herein are proximately located. Consequently, when there is an accomplishment and satiation of the relevant parameter of proximity inter-se the land of the land holders in Ex. AX with the lands of the appellants herein, as such, given the substantiation of proximate location of lands inter se the land holders in Ex. AX

with the lands of the appellants herein, the determination of compensation as rendered in favour of the land holders in Ex. AX also ought to prod this Court to qua the lands of the appellants herein award rates of compensation at par with the rates assessed qua the land of the land holders in Ex. AX. Even though, the lands of the land holders in Ex. AX were subjected to acquisition, subsequent to acquisition of the lands of the appellants herein and an award by the learned District Judge was also rendered subsequent to the rendition of the impugned award, yet especially in the face of rendition of an authoritative pronouncement of the Hon"ble Apex Court comprised in a judgment reported in Krapa Rangiah Vs. Special Deputy Collector, Land Acquisition, , the relevant portion whereof is extracted hereinafter, wherein it has been held that where higher rates of compensation are awarded by the Courts of law in subsequent claims, for adjoining lands then the higher rates of compensation as adjudged or assessed qua such lands adjoining the lands previously acquired be also adjudged as compensation for such previously acquired lands.

".....The area being comparable, the situation also being the same and all the plots having been acquired under the selfsame notification for Housing Scheme it seems to us proper that the same rate of compensation should be awarded to the claimant herein as was awarded by the High Court in Appeal No. 50 of 1970. We accordingly enhance the compensation granted to the claimants by Rs. 2 per Sq. Yd. with consequential increase in solatium and interest....." (p.p 375-376)

6. Consequently, it is held that even though the land holders herein/appellants were unable to establish before the learned District Judge Una, who was seized of the Reference Petition, the factum of their lands being carrying a potentiality equivalent or at par with the lands of the land holders qua whom a verdict as comprised in Annexure AX was rendered while theirs being located in proximity to the lands of the land holders therein, yet, when in Ex. AX the land owners therein have been able to adduce cogent evidence qua the fact of their lands carrying/bearing immense potentiality in as much as theirs being located on Una Hamirpur road as well as being 500 meters away from Municipal Limits of Una. As such, when for the reasons aforesaid, it has been held that the lands of the appellants herein are located in close proximity to the lands of the land holders in Ex. AX, it would be inexpedient, unjust and unfair to deprive to the appellants herein compensation at par with the one afforded to the land holders in Ex. AX merely for the reason that the appellants herein had failed or omitted to then before the learned District Judge adduce cogent evidence portraying the factum of the location of the lands in proximity to Una Hamirpur road as also being located 500 meters away from Municipal limits of Una town which evidence now as has surged forth by way of adduction into evidence Ex. AX ought to be revered to facilitate assessment of fair, just and reasonable compensation, even though Ex. AX is subsequently pronounced. Consequently, Rate of compensation awarded qua the lands of the land holders in Ex. AX is assessed to be the rate of compensation for the lands of the appellants herein alongwith all statutory

benefits.

7. For reiteration, the appeals are allowed and all the appellants herein are held entitled to the enhanced compensation at the rate of Rs. 1,58,400/- per kanal of land. The appellants are awarded interest @ 12% per annum on the enhanced amount of compensation under Section 23(1-A) from the date of publication of notification under Section 4 up to the date of pronouncement of award by LAC i.e. w.e.f 26.3.1998 to 18.9.2000. Further, the appellants are entitled to solatium at the rate of 30% on the enhanced amount of compensation on account of compulsory acquisition of lands on the enhanced amount of compensation. Apart from above, the appellants are entitled to interest at the rate of 9% per annum for one year from the date of pronouncement of award by LAC i.e. 18.9.2000 and thereafter at the rate of 15 % per annum till the amount of compensation is deposited in the Court.

The judgment disposes of all the appeals.