(2016) 03 SHI CK 0066

In the High Court Of Himachal Pradesh

Case No : RFA Nos. 73, 74 and 89 of 2009

State of Himachal Pradesh and Others — APPELLANT

Vs

Dave Ram and Others — RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:
Land Acquisition Act, 1894 — Section 18, Section 23, Section 23(1), Section 23(1A), Section 23(2), Section 34, Section 4, Section 4 (1), Section 4(1)

Citation : (2016) 3 HimLR 1441 : (2016) ILRHP 602 : (2016) 2 SimLC 828

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : Shrawan Dogra, Advocate General, R.S. Verma, Addl. Advocate General, Ram Murti Bisht and Puneet Rajta, Dy. A.Gs., for the Appellant; Naveen K. Bhardwaj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—1. Common Award dated 17.11.2008, passed by Addl. District Judge, Fast Track Court, Kullu, H.P., in Reference Petition No. 11 of 2007, titled as S/Sh. Dave Ram & others v. Land Acquisition Collector (CZ) HPPWD, Mandi, & another, along with other connected reference petitions, stands assailed in these appeals filed by the State.

2. The challenge is laid on two grounds: (a) There is quantum increase in the value of the market price so determined by the Collector Land Acquisition, HP. PWD, Kullu, Himachal Pradesh; and (b) regardless of the category and classification of the land, amount stands uniformally assessed in favour of the claimants.

3. For public purpose namely Ramshilla - Bhekhali Road, proceedings for acquisition were initiated with the publication of notification dated 17.6.1998 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). With the completion of the procedural formalities, the Collector Land Acquisition passed his Award dated 26.8.2000, determining the market value of

the acquired land in the following manner:

4. Aggrieved thereof, various Land Reference Petitions so filed under the provisions of Section 18 of the Act came to be decided in terms of common impugned award dated 17.11.2008 in the following terms:--

"In view of issue-wise discussion and decision, reference petitions are allowed. Petitioners are entitled for the claim of compensation @ Rs. 3,80,000/- per bigha (Rs. 19,000/- per biswa).

33. Furthermore, petitioners are also entitled:

1. Solatium @ 30% under Section 23(2) of the Act on the compensation assessed under Section 23(1) of the Act;

2. Additional compensation under Section 23(1A) of the Act @ 12% per annum on the market value determined above from the date of publication of the notification under Section 4 of the Act, till date of award of collector;

3. Collector is also directed to pay interest @ 9% per annum on enhanced/excess amount of compensation under Section 23(1), additional compensation under Section 23(1A) and solatium under Section 23(2) of the Act from the date of notification under Section 4 of the Act for one year and thereafter @ 15% per annum till the same is paid/deposited in the Court; and

4. petitioners shall also be entitled to interest under Section 34 of the Act from the date of notification under Section 4 of the Act, if not paid."

5. In support of their claims, as is evident from the record, claimants tendered various exemplar sale deeds. However, only exemplar sale deeds (Ext. P-1, Ext. P-3 and Ext. P-5) were proved in accordance with law, for the vendors/vendees stood examined in Court.

6. While determining the market value of the land, in terms of the impugned Award, the Court below has taken into consideration exemplar sale deeds (Ext. P-1 and Ext. P-5). Exemplar sale deed (Ext. P-1) pertains to sale of 5 biswas of land which took place on 15.12.1997, a date prior to the initiation of the proceedings under the Act. Jindu Ram (PW-1) while stepping into the witness box, has proven contents of the said sale deed and further deposed that the entire consideration of Rs. 40,000/- for 5 biawas of land stood paid and with the registration of the sale deed, property mutated in his name. Significantly this exemplar sale deed forms part of the same revenue estate (Phatti Sari). But what is further significant is the unrebutted testimony of this witness to the effect that the land in question was of same nature, potential, utility and comparable with the exemplar sale land. The Public Prosecutor did not dispute such fact as is evident on record.

7. Exemplar sale deed (Ext. P-5) reveals one biswa of land to have been sold for Rs. 30,000/-. The sale deed is dated 14.10.1988. Tej Ram (PW-3) has proved the same. He further states that the exemplar sale land situated in Phati Banogi

touches the boundary of Phati Sari and is similar in terms of location, quality and potentiality to that of the acquired land.

8. There is yet another exemplar sale deed (Ext. P-3) which pertains to the year 2003 whereby two biswa of land stood sold for a consideration of Rs. 3,50,000/- on 7.11.2003. But since it is a subsequent sale, rightly stands not considered by the Court below.

9. Through the testimony of Yashpal (PW-4) it stands proven on record that the land sought to be acquired in terms of the notification in question is more towards the Dhalpur/Kullu Bazar side, having high commercial value, apart from the land being put to agricultural use generating high income. The acquired land is similar to the land situated in Phati Banogi over which National Highway passes through.

10. Thus the claimants have been able to establish the real market value of the acquired land by leading clear, cogent and consistent piece of evidence. Court below has taken the mesne of the exemplar sale deeds (Ext. P1 and Ext. P5) which works out to Rs. 3,80,000/- per bigha or Rs. 19,000/- per biswa.

11. On the other hand, State has examined Ramesh Chand (RW-1) and Narvinder Singh (RW-2) who have simple proved on record the revenue record which also does not indicate the market value of the land. Ramesh Chand stated that the acquired land is at a distance of 9 km. from the National Highway but then the rates determined in terms of the impugned award are not on the basis of the exemplar sale deeds which are situated on the National Highway.

12. It is a matter of fact that the entire land was put to public purpose. Road stood constructed thereupon. It was used for only one purpose and as such there cannot be any error in uniform determination of the market value of the acquired land.

13. The apex Court in Haridwar Development Authority v. Raghubir Singh & others, , (2010) 11 SCC 581 has upheld the award of compensation on uniform rates. Also it has acknowledged the principle of providing increase in the market value up to 10% to 12% per year for the land situated near urban areas having potential for non-agricultural development.

14. In Union of India v. Harinder Pal Singh and others , 2005(12) SCC 564, while determining the compensation for acquisition of land pertaining to five different villages, the apex Court uniformly awarded a sum of Rs. 40,000/- per acre irrespective of the classification and the category of the land.

15. Further, in Nelson Fernades v. Special Land Acquisition Officer , 2007(9) SCC 447 while dealing with the case where the land was acquired for laying a Railway line, the Court held that no deduction by way of development charges was permissible as there was no question of any development thereof.

16. The market value of a property for the purposes of Section 23 of the Act is

the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best evidences of market value. {Mehta Ravindrarai Ajitrai (Deceased) through his Heirs and LRs. and Others v. State of Gujarat , (1989) 4 SCC 250, Nelson Fernandes & Ors. v. Special Land Acquisition Officer, South Goa & Ors. , (2007) 9 SCC 447}.

17. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner, excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration. (Atma Singh and others v. State of Haryana and another , (2008) 2 SCC 568).

18. The most reliable way to determine the value is to rely on the instances of sale portions of the same land as has been acquired or adjacent lands made shortly before or after the Section 4 Notification. {Panna Lal Ghosh & Ors. v. Land Acquisition Collector & Ors. , (2004) 1 SCC 467}

19. If there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated. Instances of sale in respect of the similar land situated in the same village and/or neighbouring villages could be taken to be a guiding factors for determination of market value. {Shakuntalabai (Smt.) & Ors. v. State of Maharashtra , (1996) 2 SCC 152, ONGC Limited v. Sendhabhai Vastram Patel & Ors. , (2005) 6 SCC 454}.

20. In Union of India v. Pramod Gupta (Dead) by LRs. & Ors. [, (2005) 12 SCC 1], the Apex Court held that the best method, as is well-known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidence admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/ or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of the expert and other relevant evidence would have only evidentiary value.

21. In Land Acquisition Officer, Kammarapally village, Nizamabad District, A. P. v. Nookala Rajamallu & Ors. [, (2003) 12 SCC 334 (para 9)], the Apex Court observed:

"9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

i) when sale is within a reasonable time of the date of notification under Section 4 (1);

ii) it should be a bona fide transaction;

iii) it should be of the land acquired or of the land adjacent to the land acquired; and

iv) it should possess similar advantages."

22. In Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat [, (2005) 4 SCC 789], the Apex Court reiterated that for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition by placing the two in juxtaposition. The positive factors are (i) smallness of size (ii) proximity to a road; (iii) frontage on a road; (iv) nearness to developed area; (v) regular shape, (vi) level vis-?-vis land under acquisition and (vii) special value for an owner of an adjoining property to whom it may have some very special advantage and the negative factors are: (i) largeness of area; (ii) situation in the interior at a distance from the road; (iii) narrow strip of land with very small frontage compared to depth; (iv) lower level requiring the depressed portion to be filled up; (v) remoteness from developed locality and (vi) some special disadvantageous factors which would deter a purchaser.

23. In Suresh Kumar v. Town Improvement Trust, Bhopal [, (1989) 2 SCC 329], the Apex Court has held that while determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner.

24. In Delhi Development Authority v. Bali Ram Sharma & Ors. [, (2004) 6 SCC 533], it is held that in cases where the purpose of acquisition was the same but the notification under Section 4(1) was issued on a subsequent date, obviously there would be escalation of prices in regard to those lands. Hence, it would be just and appropriate to give an annual increase of 10% in the market value in respect of the lands which were acquired by a subsequent notification and further in The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel & Anr. [, JT 2008 (9) SC 480], it has been held that increase in market value in urban/semi-urban areas was about 10% to 15% per annum, the corresponding increase in rural areas would at best be around half of it, that is about 5% to 7.5% per annum, in the absence of evidence of sudden spurts or

fall in prices.

25. This Court, in Gulabi and etc. v. State of H.P. , AIR 1998 HP 9, where the land was acquired for the purpose of construction of National Highway-21, held that the claimants would be entitled to compensation uniformly for all classes of land irrespective of its classification or quality. I am conscious that the facts are different in the instant case and the principle laid down therein cannot be applied stricto sensu. But however, this principle was followed and accepted by this Court in H.P. Housing Board v. Ram Lal & Ors. , 2003(3), Shim. L. C. 64, wherein the land was acquired for the purposes of setting up of a Housing Colony by the respondent authority itself. The Court held that

"27. When the land is being developed for a housing colony, as in the present case, classification completely looses 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 may 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 roadside 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."

28. Faced with this situation, Mr. Deepak Gupta, Advocate, on behalf of Housing Board submitted, that it is matter of common knowledge that plots situated on the roadside carry higher price, as compared to the plots which are away from the road. This argument cannot be accepted in view of the decision of the Supreme Court reported in the case of Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamlamma (Smt.) Dead by LRs and others K. Krishnamachari and others, , (1998) 2 SCC 385. What was held and is relevant was as under:--

"7. The argument advanced by Shri Nageswara Rao that the classification by the Land Acquisition Officer was in order and ought not to have been interfered with by the reference court or the High Court does not appeal to us. When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and, therefore, classification of the same into different categories does not stand to reason."

26. This judgment has attained finality as SLP (Civil) No. 15674-15675 of 2004 titled as Himachal Pradesh Housing Board v. Ram Lal (D) by LRs & Others, filed by the H.P. Housing Board was dismissed by the Apex Court on 16.8.2004.

27. This judgment was subsequently referred to and relied upon by another Hon''ble Judge of this Court in Executive Engineer & Anr. v. Dilla Ram {Latest HLJ 2008 HP 1007} and relying upon the decision of the Apex Court in Harinder Pal Singh (supra), wherein the market value of the land under acquisition situated in five different villages was assessed uniformly irrespective of its nature and quality, also awarded compensation on uniform rates.

28. It is a settled position of law that determination of the fair market value of the acquired land has to be on the basis of certain objective material. It cannot be left to the mere whims and fancies of the acquirer. Nothing was proved on record to establish the basis on which Collector determined the market value varying from Rs. 24000/- to Rs. 39,000/-. But then it is settled position of law that onus to prove the true market value rests with the claimants. However, the actions of the acquirer also have to be fair, just, reasonable and sustainable in law. The Act itself prescribes sufficient guidelines enabling the authorities as also the Court, for determining the fair market value and one such principle being the price which the willing vendor is expected to obtain in open market from a willing purchaser. Of course, this has to be after complete appraisal of the land, taking into account its peculiar advantages and disadvantages including commercial value. In the instant case the acquired land is close to the main Kullu town an international destination. The exemplar sale deeds are much prior to the initiation of the acquisition proceedings. It is not the case of the State that the sale deeds were executed in anticipation of such acquisition proceedings only to defraud the revenue authorities and have unadvantageous gainful position. Reference can be made to the decision rendered by the apex Court in Special Land Acquisition Officer v. Karigowda & others, , (2010) 5 SCC 708.

29. The apex Court in Andhra Pradesh Industrial Infrastructure Corporation Ltd. v. G. Mohan Reddy & others, (2010) 15 SCC 412 has recognized and acknowledged the principle of belting system for the determination of compensation under the Act.

30. The apex Court in Major General Kapil Mehra v. Union of India & another, , (2015) 2 SCC 262 has further held as under:--

"20. Where the lands acquired are of different type and different locations, averaging is not permissible. But where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible. For the purpose of fixation of fair and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully discarded. If the number of sale deeds of the same locality and the same period with short intervals are available, the average price of the available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for the land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages, etc."... ...

31. Hence, in the given facts and circumstances, no interference is warranted. It cannot be said that the findings returned by the Court below are perverse, illegal or erroneous.

The present appeals, devoid of any merit, are accordingly dismissed. Pending application(s), if any, also stand disposed of accordingly.

