

**(1980) 09 SHI CK 0007**

**In the High Court Of Himachal Pradesh**

**Case No :** Regular First Appeal No. 220 of 1980

State of Himachal Pradesh

APPELLANT

Vs

Jiwan Singh

RESPONDENT

**Date of Decision :** 22-09-1980

**Acts Referred:**

Evidence Act, 1872 — Section 114

Land Acquisition Act, 1894 — Section 18, 4, 6

**Citation :** (1980) 9 ILR HP 516

**Hon'ble Judges :** V.D. Misra, C.J.; H.S. Thakur, J

**Bench :** Division Bench

**Advocate :** Indar Singh, General, for the Appellant; O.P. Sharma, R.K. Sharma and D. Gupta, for the Respondent

## Judgement

V.D. Misra, C.J.—For constructing Beas Dam at Pong, extensive areas of land were acquired. Notifications under Sections 4 and 6 of the Land Acquisition Act (referred to as the Act) were issued on 1-4-1963 and 18-1-1969 respectively. These included villages as well as agricultural lands of the villagers. Claims to compensation were filed by interested persons. It was submitted that no regular sale of land had taken place which could be used as exemplars. Few transactions of sale were stated to be either due to exigency of circumstances such as marriages, litigations, and prolonged illnesses, or by some big landlords who to hoodwink the ceiling of land had transferred a part of their land to their kith and kin on the basis of fictitious low prices in order to avoid registration charges etc. It was, therefore, submitted by the claimants that the market value of their land may be determined on 20 times of their average annual produce from the land per kanal out of each class of land.

2. Faced with such objections crop cutting experiments were carried out in representative and selective lands of various kinds in various tikkas in the "Haloon area" as is apparent from award No. 183 dated 2-4-1969 given by Shri Jaswant Singh, Land Acquisition Collector, Beas Dam Project, District Talwara.

The result was that Rs. 100/- was calculated as the gross annual income of the crops from one kanal of Nahari Do-fasli land. The net income was calculated at Rs. 50/- per kanal of such land. The market value on the rental basis capitalised at 20 years purchase of Nahri Do-fasli was calculated at Rs. 1000/- per kanal. However, Shri Jaswant Singh, Land Acquisition Collector, decided to add the offer made by the acquiring department to the aforementioned market value and work out a mean which was offered as the market price. Accordingly Rs. 300/- per kanal for Nahri Do-fasli offered by the department was added to Rs. 1000/- and the mean of Rs. 650/- per kanal of Nahri Do-fasli land was offered to the claimants.

3. Shri Didar Singh, Land Acquisition Collector, vide his award dated 31-1-1972, adopted the offer made by Shri Jaswant Singh since the land in question was held comparable with the one for which Shri Jaswant Singh had made the offer. Shri Didar Singh held:

"Sweeping acquisition is being made for the reservoir area for Beas Project in Tehsil Dehra and Nurpur. The interested persons and Project authorities raised similar objections in several other tikkas where the acquisition has been completed. The learned Land Acquisition Collector Shri Jaswant Singh in his award of tikka Bihari, Mauza Dugha, dated 2-4-1969 has discussed in detail the contention of the interested persons and the Acquiring Department. The rates given in tikka Bihari for different classes of land are quite fair and I agree with the justification given by the learned Collector in his above said award. Moreover the land has also been acquired for Beas Dam in tikka Bari Khas of the same mauza which is adjoining to this tikka. The fertility, productivity and potentiality of land in this tikka can favourably be compared with tikka Bari Khas, for which the award had been given on the same rates per kanal for tikka Bihari.

4. Not satisfied with the offer, the claimants asked for reference u/s 18 of the Act. The learned Additional District Judge after recording the evidence produced by the parties came to the conclusion that the market price of Nahri Do-fasli was Rs. 1000/- per kanal, Nahri Ek-fasli Rs. 800/- per kanal, Barani Do-fasli Rs. 700/- per kanal, Barani Ek-fasli Rs. 600/- per kanal, Ban jar Ek-fasli Rs. 400/- per kanal, Banjar Quadim Rs. 200/- per kanal, and Gair Mumkin Abadi Rs. 100/- per kanal.

5. The State has filed appeals against these decisions. Since the questions of law and fact are common in these appeals, we decided to hear them together. These are thus being disposed of by this common judgment. We have decided to refer to the facts relating to R.F.A. No. 220 of 1980 for decision. The decision of this appeal will govern all the appeals since the land in question of other appeals is similar to the one which is subject matter of this appeal.

6. Admittedly there is no evidence of any transaction of sale having taken place during the relevant period before the land was acquired. The only method to determine the market value was by capitalising the net annual income at twenty

years purchase. The learned Additional District Judge has based his decision in this case on two grounds. The first ground is the crop cutting experiment, and the second is the oral evidence of the Respondent and his witnesses. It may be noticed that the oral evidence produced by the Respondent has gone un rebutted. The trial Judge accepted the results of the crop cutting experiments. He, however, held that the Collector should have awarded the price thus calculated instead of taking into consideration the offer made by the department concerned and then finding out the average.

7. Mr. Inder Singh, learned Advocate-General, does not controvert the method adopted by the Collector. However, he seriously objects to the Additional District Judge taking into consideration the crop cutting experiments. He submits that no evidence about these experiments was produced before the learned trial Judge and so the result of the experiments could not be taken into consideration. He further submits that some experiments might have been conducted but then since these were not proved before the trial Judge the latter could not refer to them. For the same reason this Court also, according to the learned Advocate-General, cannot consider the result of these experiments.

8. Before we look into the legal aspect of this argument we are constrained to remark that the stand taken by the State, to say the least, is shocking indeed. While it claims to be welfare State, it is out to deprive the poor illiterate villagers of their just dues on account of legal technicalities. That crop cutting experiments were conducted by the authorities at different places, is evident from the award of Shri Jaswant Singh which we have perused. We have no doubt about this fact. These experiments were conducted in order to find out the market value since other methods were not found satisfactory. The details of the experiments and the results thereof are in possession of the State which has refused to place them before the courts for reasons best known to it. We expected the State to produce these before us if it was anxious to do justice to its citizens to enable them to get fair market value of the lands which they were forced to part with. Here were the villagers who sacrificed whatever they had so that the Nation could prosper. And here is the State which is out to deprive the just dues of these poor villagers on legal technicalities.

9. It is now well settled that the Collector while holding an inquiry to find out the market value of the property acquired does not act as a judicial officer. He only acts administratively. His award only amounts to an offer. Except the Government no one is bound by it. In case the offer is not accepted, the person whose property is acquired can have a decision from a court of law u/s 18 of the Act. This was settled by the Judicial Committee of the Privy Council as far back as 1905 in *Ezra v. Secretary of State* ILR 30 Cal 36. It held:

"the meaning to be attached to the word "award" under S. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The consideration to which we

have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded.

10. These observations were quoted with approval by the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*,

11. It is also well settled that after reference has been made at the instance of the owner, he takes the place of a Plaintiff in those proceedings. The parties are at liberty to produce any evidence they desire in order to enable the court to determine the market value of the property.

12. Now, if the award given by the Collector is arbitrary, it is his duty to support it. It will be enough for the claimant to show that the award is inconsistent with the evidence. A Division Bench of the Bombay High Court in *Asstt. Development Officer, Trombay v. Tyaballi Allibhoy Bohori* AIR 1963 Bom 361, observed thus:

"...the Court is bound to treat the matter judicially as far as possible and it should only guess when science or common sense will not point to a definite conclusion. The Judge ought to be liberal in the sense that he should not be too meticulous or pedantic in dealing with the evidence. The value of property should not be unduly depreciated in order that Government may acquire as cheaply as possible, and seeing that an exact calculation to annas and pies is usually impossible, the Court is justified in taking a broad view as favourable to the owner as the evidence permits. But, as in the case of any other judicial proceedings, the findings must be based upon evidence and legitimate deductions from it, and if there is an appeal, both the evidence and legitimate deductions are subject to reconsideration by the appeal Court.

13. A Division Bench of Karnataka High Court in *Smt. Saraswathi Sundaram and Anr. v. The Asstt. Commissioner and Land Acquisition Officer, Bangalore Sub-Dn. Bangalore* AIR 1976 Kar 124, ruled that where the award of a Collector is arbitrary, it is for the Collector to support his award and it is only when the award cannot be termed arbitrary that it is the duty of the claimant to show that what has been awarded is inadequate.

14. In *Arunachala Aiyar v. Collector of Tanjore* AIR 1926 Mad 961, it was held:

"The award of the acquisition officer is evidence in proceeding under reference u/s 18. Statements in the award, such as statements as to contents of certain documents examined by the acquisition officer are evidence and need not be proved by the production of the documents themselves. The burden of proof is on the claimant to show that the award is wrong and the weight of that burden depends on the nature of the award.

15. Now the question before us is whether the trial Judge could have taken notice of the crop cutting experiments referred to in the award or was it

necessary that evidence was produced before him all over again ? Crop cutting experiments were conducted by the Government as is obvious from the award given by Shri Jaswant Singh and which was followed by the present Collector in giving his award. Though the inquiry conducted by the Collector is not a judicial proceeding, he is empowered to record the evidence following the procedure of the Code of Civil Procedure. He is entitled to receive evidence and the documents and the facts may be proved according to the Evidence Act.

16. Somewhat similar question arose before a Division Bench of Madhya Pradesh High Court in *Mehtar and Another Vs. The Collector, Durg and Others*, After noticing the aforementioned view of the Madras High Court, the Bench came to the conclusion that the following observations of the Supreme Court in *Chaturbhuj Pande and Others Vs. Collector, Raigarh*, seem to render the Madras authority a little doubtful:

"Mr. S.T. Desai, learned Counsel for the Appellants complained that the High Court was not right in looking into documents which were not a part of the records of the case particularly when his clients had not been given any opportunity to rebut the conclusions reached therein. It appears that these documents were looked into by the learned Judges after the conclusion of the arguments. If the High Court wanted to take into consideration any fresh evidence, it should have admitted the same in accordance with law. In that event the Appellants would have got opportunity to rebut that evidence. That having not been done we do not think it was open to the High Court to rely on those documents. We accordingly exclude from consideration those documents.

17. We have gone through the judgment of the Supreme Court. We find that the above observations were made when it was found that the High Court had taken into consideration some pamphlets which were not part of the record of the case and after arguments had been concluded. There is nothing in this judgment to show that those pamphlets were either forwarded by the Collector or had been referred to in his award.

18. Now it is the duty of the Collector to send a copy of his award along with the reference. The award may show that the parties had admitted certain facts or documents. In view of the admissions already made during the proceedings for the determination of the market value it is not necessary, in our opinion, for the parties to produce the evidence once more. It is elementary that only that material fact need be proved by a party which is not admitted or is denied by the opposite party. Where such a fact or document is admitted, a party cannot be required to prove that. In the case in hand, the crop cutting experiments were conducted by the Government and all the relevant details and documents were in their possession. In these circumstances we cannot agree with the contention put forward by the learned Advocate-General that it was the duty of the claimants to prove what has been admittedly done by the Government. Neither the experiments nor the results were in doubt. Indeed both the parties relied upon the same.

19. It was contended by the learned Advocate-General that it was the duty of the claimants to call upon the Government to produce all the relevant documents relating to the crop cutting experiments and only if the Government failed to produce the same an adverse presumption could have been drawn. It is further contended that the only presumption that could have been drawn was that crop cutting experiments were conducted and nothing more. We find no substance in these arguments. It is now well settled that where a party is in possession of material documents which are necessary to be produced for the determination of the controversy between the parties, it is the duty of that party to produce the same irrespective of the fact that the burden of proof may be on the opposite party. The Judicial Committee of the Privy Council in *Murrugesam pillai v. Gnana Sambandha Pandara Sannadhi* AIR 1917 PC 8, observed thus:

"A practice has grown up in Indian Procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough-they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.

20. This passage has been cited with approval in various decisions of the Supreme Court. In *Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others*, while repelling the contention that a notice should have been given to a party to produce such a document the Court observed:

"Mr. Gokhale, however, argued that it was no part of the Appellants duty to produce the accounts unless he was called upon to do so and the onus was upon the Respondents to prove the case and to show that the Dargah was the owner of plot No. 134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.

21. The State was well aware of the fact that the only method by which the fair market value of the acquired land could be determined was by crop cutting experiments at different places. And these experiments were in fact carried out. It is obvious that it was the duty of the State to place all the documents in their possession before the trial Judge in order to enable him to do justice and arrive at a fair market value. The State knew that these documents were extremely important for the determination of the market value. Indeed the Collector had proceeded to decide the value on this major consideration. Still the State decided to withhold the documents. We must draw an adverse presumption against the

State [Section 114 illustration (g) of the Evidence Act]. The presumption is not only that these experiments were conducted but it extends to the fact that Rs. 100/-per kanal were found to be the gross profit. After deducting Rs. 50/-for the expenses incurred etc., as has been done by the Collector, the capitalised value would come to Rs. 1000/- per kanal of Nahri Do-fasli land.

22. Even on evidence produced by the Respondent we would uphold the compensation awarded by the trial Judge. The Respondent examined Jai Singh P.W. 1 and Roshan Lal P.W. 2 in addition to making his own statement. Respondent Jiwan Singh P.W. 3 categorically stated that out of one kanal he was getting about 14/15 maunds of wheat, 12/13 maunds of maize and 10/12 maunds of paddy in addition to the vegetables and oil seeds. It is true that in cross-examination he has stated that he was getting 1200/1400 Man Kham from his whole land but then there is nothing to show that this produce was for the whole year. Evidently it relates to one crop. Admittedly his land is Nahri Do-fasli which means a canal irrigated land which produces two crops. There is no reason to disbelieve his statement. Indeed it broadly tallies with the crop cutting experiments. The Respondent's statement is assailed on the ground that he was not keeping any account and so he should not be relied upon. It is common knowledge that overwhelming majority of the farmers in this State are illiterate. Even those who know a bit of reading and writing do not keep accounts in the way one should keep in order to calculate profits. We, therefore, have no hesitation in accepting the Respondent's statement. He is also corroborated by the other two witnesses.

23. Statement of Roshan Lal P.W. 2 is assailed on the ground that he is an interested person. The interest is that he has also made a reference. Now the agricultural lands were acquired wholesale. Therefore, the witnesses could be only those persons whose lands stood acquired. In these circumstances no reasonable person can say that Roshan Lal should not be relied upon simply on the ground that he had also made a reference against the award given by the Collector.

24. Jai Singh P.W. 1 is also an agriculturist whose land was not far away from the land of the Respondent. He talks about the produce from his land and gives an estimate of the production of the Respondent's land. He has made no reference.

25. We are, therefore, satisfied on the evidence produced by the Respondent that the capitalised market value of the Nahri Do-fasli land is Rs. 1000/- per kanal. It may be noticed that this oral evidence has gone unrebutted. The trial Judge has also not disbelieved the witnesses produced by the Appellant.

26. Lastly it was contended that the land of the Respondent does not fall in Haldoon area in which the crop cutting experiments were conducted. This contention has no force in view of the fact that the Collector himself has come to the conclusion about the Appellant's land being similar to the one in which the crop cutting experiments were conducted.

27. We would, therefore, uphold the compensation awarded by the trial Judge and dismiss all the State appeals, namely, regular first appeals Nos. 220, 249, 251, 252, 261, 262, 265, 266, 267, 280, 281, 292, 297, 299, 300, 307, 308, 352, 355, 356, 366 and 370 of 1980, with costs. It need hardly be repeated that according to the awards given by the Collector, the lands in question have been found to be similar to each other. Since S/Shri O.P. Sharma, R.K. Sharma and D. Gupta Advocates have appeared on behalf of the Respondents in some of the appeals, the fee of each lawyer is settled at Rs. 200/-.