

(1997) 04 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 102 of 1990

State of Himachal Pradesh

APPELLANT

Vs

Mohi Ram and Others

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 24, 25, 3, 4

Citation : (1997) 3 ShimLC 1

Hon'ble Judges : R.L. Khurana, J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Inder Singh, General and Shyama Dogra, Deputy Advocate General, for the Appellant; D.N. Ronta, for the Respondent

Judgement

A.L. Vaidya, J.—This regular first appeal arises from the award dated 5-7-1990 of the learned Additional District Judge (I), Shimla, made in Land reference Case No. 27-S/4 of 988.

2. An extent of 50 bighas 16 biswas of land of village Kolvi, Tehsil Kotkhai, District Shimla, was notified and published for acquisition u/s 4 of the Land Acquisition Act, 1894, hereinafter referred to as the Act, on 3-1-1987 for a public purpose, namely, construction of Deem Link Road. This acquisition included land measuring 14 bis was comprising of khasra No. 246, belonging to Respondents 1 to 5, hereinafter referred to as the claimants.

3. The Collector, Land Acquisition awarded a total compensation of Rs. 25,982-76 paise in favour of the claimants, the detail of which is as under:

1. Compensation for land Rs. 4,028-36 2. Compensation for trees Rs. 17,110-00
3. 30% CAC u/s 23(2) Rs. 4,841-51 4. 12% interest u/s 23(1A) Rs. 5,002 89
----- Rs. 25,982-76 -----

The land of the claimants was assessed as 0-1" bighas Bakhal Awal and 0-2 bighas Hair Mumkin with market value for Bakhal Awal at the rate of Rs. 6,633/- per bigha and for Gair Mumkin at the rate of Rs. 500/- per bigha.

The claimants applied to the Collector u/s 18 of the Act for making a reference to the Court for the determination of the market value of the apple trees alone. They did not dispute to the assessment of the market value of the land as made by the Collector.

4. The present Appellant contested the petition before the Additional District Judge

Parties were put to trial on the following issues:

1. Whether the Petitioners are entitled to enhancement of compensation as alleged? If so, to what amount? OPP

2. Whether the Petitioners are entitled to interest as claimed under

Section 24 of the Land Acquisition Act, as alleged? OPP,

3. Relief.

The learned Additional District Judge to whom the reference came to be made by the Collector, assessed the market value of the apple tress at Rs. 42,947.25 paise, After deducting the amount of Rs. 12,110/- as assessed by the Collector, the claimants were held entitled to Rs. 30, 837.25 paise as compensation in addition, the claimants were allowed solatium at the rate of 30% and interest at the rate of 9% per annum from 3-(sic)-987, the date of publication of notification u/s 4, till 30-3 1988, the date of pronouncement of the award.

5 The State of Himachal Pradesh through the Land Acquisition Collector preferred the present appeal on various pleas.

Learned Counsel for the parties have been heard and the record has been scrutinised

6. The learned Advocate General has assailed the award passed by the court below on the sole ground that the compensation for the land and fruit bearing trees could not have been determined separately Learned Advocate General's line of argument has been that the compensation could be assessed being the market value of the land only and in this particular case as the land was having admittedly fruit bearing trees, its market value was to be assessed as an orchard. According to the learned Counsel for the Appellant, as the court below has not determined the market value in the manner as submitted by him above, the award on this sole ground has to be interfered with.

7. On the other hand, learned Counsel for the claimants has submitted that in the present case as the market value of the land was not assessed as an orchard, therefore the procedure adopted by the Land Acquisition Collector and the Court below was legal and sustainable one.

8. The two decisions of the Apex court have been brought to our notice which have dealt with the proposition in hand.

In *State of Haryana Vs. Gurcharan Singh and another etc.*, the Apex Court held as under:

It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is to be determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation need to be awarded.

Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over and one on the basis of the value of the land and again on the basis of yield got from the fruit bearing trees.

The definition of the land includes the benefits to arise from the land as defined in Section 3(a) of the Act. After compensation is determined on the basis of the value of the land from the income applying suitable multiplier, then the trees would be valued only as fire-wood and necessary compensation would be given, in this case, the High Court did not adopt this procedure.

The Collector while determining the compensation at the rate of Rs. 12,240 per acre on the basis of the yield, the multiplier applied is more than 8 years. Under no circumstances, the multiplier should be more than 8 year multiplier as it is settled law of this Court that when the market value is determined on the basis of the yield from the trees or plantation, 8 years multiplier shall be appropriate multiplier. For agricultural land 12 years multiplier shall be suitable multiplier.

In this case, the Collector applied more than 8 years multiplier and awarded compensation. The High Court also has not adverted to this aspect of the matter. The High Court committed an error of law in further enhancing the compensation. Considered from this perspective, since the award of the Collector, though the Collector had committed palpable error of law in separately awarding the compensation to the land as well as fruit bearing trees, it is an offer which cannot be disturbed because of Section 25 of the Act.

In the aforesaid case, on reference u/s 18 of the Act, the Additional District Judge affirmed the award of the Collector and on appeal, the High Court by confirming the market value of the land, enhanced the compensation by 60% of what was awarded by the Collector and accordingly granted enhanced compensation with statutory benefits.

In *Koyappathodi M. Ayisha Umma Vs. State of Kerala*, the proposition in hand was dealt with as under:

It is thus settled law that in evaluating the market value of the acquired property, namely, land and the building or the lands with fruit bearing trees standing thereon, value of both would not constitute one unit; but separate units; it would be open to the Land Acquisition Officer or the Court either to assess the lands with all its advantages as potential value and fix the market

value thereof or where there is reliable and acceptable evidence available on record of the annual income of the fruit bearing trees the annual net income multiplied by appropriate capitalisation of 15 years would be the proper and fair method to determine the market value but not both. In the former case the trees are to be separately valued as timber and to deduct salvage expenses to cut and remove the trees from the land. In this case the award of compensation was based on both the value of the land and trees. Accordingly, the determination of the compensation of the land as well as the trees is illegal. The High-Court laid the law correctly.

In the present case, as referred to above, the Land Acquisition Collector as well as the Additional District Judge have assessed the market value for the land and fruit bearing trees separately which procedure followed by both of them in view of the law laid down by the Apex Court, as referred to above was illegal.

9. It may be pointed out here that the aforesaid proposition which is a mixed question of law and the fact has been submitted on behalf of the State for the first time before this Court while addressing the arguments. Even this aspect has not been made a ground of appeal. It could not have been as the Land Acquisition Collector himself has assessed the market value of the land and trees separately which aspect was followed by the court below also.

10. Admittedly, the Land Acquisition Collector has not assessed the market value of the property acquired of the claimants in accordance with the law laid down by the Apex Court. In the aforesaid background the Appellant cannot take benefit for the illegalities committed by the Land Acquisition Collector in assessing the market value of the acquired property in accordance with law, as pointed out above. The evidence examined before the court below and the award made by the Land Acquisition Collector cannot be appreciated to assess the market value of the property under reference in the manner as has been required by the law laid down by the Apex Court. In so far as *State of Haryana v. Gurcharan Singh and Anr.* (supra) is concerned, the evidence was before the Apex Court to assess the market value of the acquired land, which was having plantation, on the basis of yield and income derived from that land. In the present case, that evidence is lacking.

11. Needless to say, the market value of the acquired property could be assessed on the basis of annual net income multiplied by appropriate capitalisation of the same year. The other method is to assess the market value on the basis of sale transactions of that very nature of the property in the vicinity of the same which had taken place at the relevant time.

12. The claimants' claim cannot be negated at this stage without affording them an opportunity to establish the claim on the basis of the aforesaid ratio laid down by the Apex Court.

13. Taking into consideration the overall factors present in this case, the present appeal is accepted and the award passed by the Additional District Judge, is set

aside and the matter is remanded back to the court below to assess the market value of the acquired property in terms of the law laid down by the Apex Court, as detailed above. The court below is directed to make the award by giving findings on the following issues after affording opportunity to both the parties to lead evidence:

1. What was the market value of the acquired property at the relevant time?
2. Whether the Petitioners are entitled to interest as claimed u/s 24 of the Land Acquisition Act, as alleged?

14. It may be pointed out here that no doubt the claimants in the reference made u/s 18 of the Act have asked for enhancement of the market value of the fruit bearing trees alone and not of the land acquired. But that aspect will not matter at all inasmuch as admittedly the land under reference was having fruit bearing trees and its quality was enhanced from Bakhal Awal to that of an orchard. The land and the fruit trees standing there upon in this context were inseparable for the purpose of assessing market value of the land under reference. It is with this background that to give substantial justice to the parties that case is being sent back, as ordered above.

15. The enhanced amount on the basis of the award given by Additional District Judge which is the subject matter of the present appeal, if paid to the claimants be dealt with by the court below while making the award on the basis of the aforesaid remand order.

In view of the aforesaid a terms present appeal stands disposed of. The parties are directed to appear before the court below on 12-5-97. Records be sent to the court below so as to reach there on or before the aforesaid fixed date.