**(2015) 11 SHI CK 0029**

**In the High Court Of Himachal Pradesh**

**Case No :** RFA Nos. 39 and 40 of 2009

State of H.P. and Others — APPELLANT

Vs

Rajinder Kumar and Others — RESPONDENT

**Date of Decision :** 06-11-2015

**Acts Referred:**
Land Acquisition Act, 1894 — Section 18, 4, 9

**Citation :** (2015) 11 SHI CK 0029

**Hon'ble Judges :** Dharam Chand Chaudhary, J.

**Bench :** Single Bench

**Advocate :** Virender Verma, Additional Advocate General and Pushpinder Jaswal, Deputy Advocate General, for the Appellant; Bhupinder Kanwar, Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

Dharam Chand Chaudhary, J.—This judgment shall dispose of both the appeals having been arisen from a common award dated 8.8.2008, passed by learned Additional District Judge, Shimla, in Land Reference No. 23-S/4 of 2006 and Land Reference No. 24-S/4 of 2006, whereby the market value of the land belonging to the respondents herein (petitioners in the trial Court) acquired for laying sewerage pipe line in village Chakrayal, Tehsil Shimla (Rural), District Shimla, has been re-determined at the rate of Rs. 4,95,000/- per bigha as against Rs. 80,000/- per bigha determined by the Land Acquisition Collector, appellant No. 3 herein.

2. The facts giving rise for filing of these appeals in a nutshell are that the petitioners in both the appeals are residents of village Badah, Tehsil and District Shimla. Their lands are situated in adjoining village Chakrayal, Tehsil and District Shimla. The appellants-respondents-State had proposed to lay sewerage pipe line for Shimla town. The line had also to cross village Chakrayal. Therefore, the lands belonging to the petitioners-respondents in that village were sought to be acquired by issuance of Notification under Section 4 of the Land Acquisition Act,

hereinafter referred to as ''the Act'' on 5.2.2002. Consequently, land bearing Khasra Nos. 11/1 and 13/1, measuring 0-01-58 hectares and 0-00-45 hectares, respectively, of petitioners Rajinder Kumar, Vijay Kumar and Ravi Shankar in Land Reference No. 23-S/4 of 2006, whereas land bearing Khasra No. 157/1, measuring 0-02-55 hectares of the petitioners Kanhiya Lal and Raj Kumar in Land Reference No. 24-S/4 of 2006 situate in village Chakrayal, Tehsil and District Shimla, was acquired by the appellants-respondents. The Land Acquisition Collector vide award Ext. PW-1/A has determined the market value of the acquired land at the rate of Rs. 80,000/- per bigha and assessed the compensation payable to the petitioners-respondents in lieu of the acquired land.

3. The petitioners being dissatisfied by the determination of the market value of the acquired land by the Land Acquisition Collector, have preferred the references hereinabove under Section 18 of the Act and claimed the market value of the acquired land at the rate of Rs. 12 lacs per bigha on the grounds that the same is situated at prime location adjoining to N.A.C. Dhalli, Commercial Complex, Sabzi Mandi and Bus-stand, Dhalli, having all modern facilities such as schools, college and hospital etc.

4. The respondents have contested both the references, however, on the common grounds that the same have been made beyond the period of limitation and also that since the acquired land is situated in village Chakrayal, i.e., far away from Dhalli having no Sabzi Mandi, Commercial Complex and bus-stand and rather is Ghasni in the shape of sloppy, uncultivable as well as surrounded by hillocks, cliffs, ravines, Nalaha and Khad, the Land Acquisition Collector has determined the market value thereof correctly and adequate compensation awarded to them.

5. Both references were clubbed for the purpose of common trial.

6. Following issues common in both references were framed:

1) Whether the petitioners are entitled to enhanced compensation as alleged? If so, to what extent? OPP.

2) Relief.

7. The evidence was recorded in Land Reference No. 24-S/4 of 2006. In order to prove their case, the petitioners have produced in evidence copy of award dated 25.4.2005 Ext. PW-1/A, Notification under Section 9 of the Act Ext. PW-1/B and the copy of award No. 2/99 dated 12.4.1999 Ext. PW-1/C by examining PW-1 Maan Singh, Patwari in the office of Land Acquisition Collector, Winter Field, Shimla. PW-2 Lekh Ram, Registration Clerk in the office of Sub Registrar, Rural, Shimla has proved certified copy of sale deed Ext. PW-2/A, whereas Shri Chander Shekhar, Patwari, Patwar Circle Sanjauli has proved the certificate Ext. PW-3/A.

8. Petitioner No. 2 Shri Raj Kumar in Land Reference No. 24-S/4 of 2006 had appeared as PW-4, whereas petitioner No. 2 Vijay Kumar in Land Reference No. 23-S/4 of 2006 as PW-5. They both in one voice have stated that in view of the

 

potentiality of the acquired land and the facilities of schools, college, hospital, telephone, water supply and electricity etc. etc. available in the area where the land is situated and as such they were entitled to the compensation at least at the rate of Rs. 12 lacs per bigha. As per their version, even in 1996 in village Chakrayal itself land was acquired for construction of road and the compensation was assessed by the Collector at the rate of Rs. 3.5 lacs per bigha. In cross-examination it is denied that the acquired land was sloppy, however, it is admitted that the sewerage line has been laid by digging the acquired land underneath to it. It is, however, denied that neither is there any severance of holding nor any difficulty is being faced by them to use the acquired land.

9. The appellants-respondents, on the other and, have examined Shri Parveen Kumar, Assistant Engineer as RW-1. As per his version, the acquired land was Ghasni and sloppy. The Department laid the sewerage pipe three feet inside the land. The place where the acquired land is situated is stated to be four kilometer away from Dhalli Bazar and is in rural area. When cross-examined he has admitted that the sewerage pipe land was laid in the acquired land under his supervision.

10. Learned trial Court on appreciation of the evidence available on record and taking into consideration the rival submissions, has arrived at a conclusion that to average the market value of the land as per the sale instances produced in evidence on both sides and the figure thereby to be arrived at would be the market value of the acquired land. Therefore, by adopting this formula the market value of the acquired land was determined as Rs. 5,36,000/- per bigha and making deduction to the extent of 7.64% on account of developmental charges from the same the net market value was assessed at Rs. 4,95,000/- per bigha and the compensation payable to the claimants enhanced accordingly.

11. The respondents-State, however, feeling aggrieved and dissatisfied by the impugned awards, have questioned the legality and validity thereof in these appeals, though separately, however, on common rounds. The challenge to the impugned awards is on the grounds, inter-alia, that the acquired land was of very inferior quality, having steeps slopes, totally locked, having no road connectivity to it and having dips and slopes to the bottom of hills and consisting of low lying area of hard rock strata, hillocks, cliffs, Nalahs and ravines, besides being fragile having different texture ranging from soft to hard soil. Therefore, heavy developmental cost was required to make it viable for laying of sewerage pipe line for Shimla town. It is also contended that there was neither any industrial/commercial activities nor any habitation nearby nor any amenities. The location, shape and size of the acquired land were entirely different from that of which sale deed has been produced in evidence. Therefore, the acquired land could have not been compared with the land sold by the sale deeds in question. On the other hand, sale instances Ext. R-1 and R-2 produced in evidence by the respondents-appellants depicting the exact market value of the land in the area have erroneously been ignored. It has been urged that from the perusal of these

documents it is crystal clear that the market value of the land in that area at the relevant time was much-much below to the market value determined by the trial Court. The deduction keeping in view the topography of the land should have not been 7.64% and at least 50% deduction should have been allowed from the cost of acquisition towards the developmental charges. Therefore, both the awards have been sought to be quashed and set aside.

12. On going through the entire record and also analyzing the rival submissions, following points arise for determination in the present appeals:

Point No. 1 Whether learned trial Court has erred in re-determining the market value of the acquired land and enhancing compensation and as such the impugned judgment is legally and factually unsustainable?

Point No. 2 Final Order.

Point No. 1.

13. There is no dispute so as to land belonging to the petitioners situate in village Chakrayal, Tehsil and District Shimla has been acquired for laying sewerage pipe line for Shimla town. There is again no dispute so as to observance of all codal formalities by the Land Acquisition Collector before announcement of award. However, the dispute is only qua the market value of the acquired land as assessed by Land Acquisition Collector and being claimed by the petitioners. The Land Acquisition Collector has assessed the value of the acquired land at the rate of Rs. 4,000/- per biswa and Rs. 80,000/- per bigha. The petitioners, however, claim the same to be Rs. 14 lacs per bigha and in any case not less than Rs. 12 lacs per bigha.

14. Now if coming to the evidence produced on both sides, while the petitioners have placed reliance on the sale deed Ext. PW-2/A and the previous award Ext. PW-1/C, learned Government Pleader has also tendered in his own statement the sale deeds Exts.R-1 and R-2. Besides, petitioners Raj Kumar and Vijay Kumar have stepped into the witness box as PW-4 and PW-5 at the same time the appellants-respondents-State have examined Shri Parveen Kumar, Assistant Engineer, Municipal Corporation, Shimla. Learned trial Court has categorically analyzed the evidence so produced on both sides and arrived at a conclusion that it is only by averaging the cost of the land sold vide sale deeds Ext. PW-2/A, Exts.R-1 and R-2 just and reasonable market value of the land can be assessed. The average market value of 12.5 biswas of land sold vide these sale instances comes to Rs. 3,35,000/-, i.e., Rs. 26,800/- per biswa or to say 26,800 x 20 = Rs. 5,36,000/- per bigha. After making deduction to an extent of 7.64% allegedly necessarily required towards developmental charges, learned trial Court has assessed the market value of the acquired land as Rs. 4,95,000/- per bigha at the time of issuance of the Notification under Section 4 of the Act.

15. Learned Additional Advocate General has vehemently argued that in view of the acquired land was of inferior quality, having steep slopes and no connectivity

 

of road as well as in the shape of hard rock strata and surrounded by Nalahs and ravines, its market value in any case could have not been as Rs. 26,800/- per biswa. Also, that huge funds were required to make the same worth for laying sewerage pipe. This Court, however, finds no substance in the submissions so made for the reason that the land was acquired for laying sewerage pipe line and the same in the shape of steep slopes or having hard strata etc. is hardly of any consequence nor the cost of laying pipe line borne by the user agency comes in the way of assessment of its market value and payment of just and reasonable compensation to the petitioners. Learned Additional District Judge has not committed any illegality or irregularity in averaging the price of the land sold vide sale instances produced in evidence by the parties on both sides that too after discussing in detail the authenticity and genuineness of these sale instances and also that since the appellants-respondents have failed to produce in evidence the distance of the acquired land from the land purchased through these sale instances, therefore, rightly made the average price of the land sold thereby as the market value of the land at the time of issuance of Notification under Section 4 of the Act for the reason that all the sale instances are in proximity to the date of issuance of the Notification under Section 4 of the Act.

16. The previous award Ext. PW-1/C also substantiates the claim of the petitioners as the market value of the land in village Chakrayal, as per this document was assessed at the rate of Rs. 3,34,307.68 paise per bigha qua Bakhal Awal, Rs. 2,31,538.45 paise per bigha qua Bakhal Doyam, Rs. 86,700/- per bigha qua Ghasni and Toda. As per this document, the market value of different type of land was assessed differently, however, in view of judgment of this Court in Executive Engineer and another v. Dilla Ram, Latest HLJ 2008 (HP) 1007, flat rate of acquired land can be assessed. When in that case the land was acquired for the purpose of construction of road, similar is the position in the present appeals as the land was acquired for laying sewerage pipe line and as such the nature of the acquired land has nothing to do therewith because the sewerage pipe line can be laid deep in the land. Therefore, on this score also the determination of the market value of the acquired land by learned Additional District Judge cannot be said to be legally unsustainable.

17. Another limb of arguments that at least 50% deduction should have been allowed to be made towards the developmental charges from the market value of the acquired land so assessed, is again without any substance for the reason that when the land has been acquired for laying sewerage line and not for developing a residential colony etc. no investment is required to be made on developmental activities like creation of parks, roads, drains etc. for which such deduction is required to be made. Therefore, even deduction to an extent of 7.64% should have also not been made. However, since this part of the award has not been challenged by the petitioners and as the same has attained the finality, the same calls for no interference in these appeals. However, so far as the claim that 50% deduction should have been ordered to be made as urged on behalf of the appellants-respondents being without any merit is hereby rejected.

 

18. Another grouse that in the absence of vendors/vendees who have sold and purchased the lands by way of sale instances Ext. PW-2/A, Exts.R-1 and R-2, the same should have not been relied upon. I am afraid that the same should have been raised in the present appeals for the reason that the copies of sale deeds Exts.R-1 and R-2 have been produced by the appellants-respondents themselves. They could have examined the vendors or vendees and it is thereafter could have disputed the authenticity and genuineness of sale instance Ext. PW-2/A produced in evidence by the petitioners. They even have not objected to the mode of production of the sale instance Ext. PW-2/A by the petitioners and as regards the sale instances Exts.R-1 and R-2 are concerned, it is Government Pleader who has tendered the same in evidence in his own statement.

19. The Apex Court in Himmat Singh and Others Vs. State of M.P. and Another, has held that all sale deeds produced in evidence and registered documents the authenticity thereof cannot be questioned. The Apex Court has again held in Dy. Collector, Land Acquisition, Gujarat and Another Vs. Madhubai Gobarbhai and Another, , that certified copies of the sale deeds are admissible as exemplars in land acquisition matters even if the vendors or vendees of these transactions have not been examined. Similar is the ratio of the judgment of the Apex Court in Cement Corporation of India Ltd. Vs. Purya and Others, .

20. In view of what has been said hereinabove, learned trial Court has not committed any illegality or irregularity in re-determining the market value of the acquired land at the rate of Rs. 4,95,000/- per bigha and enhancing the compensation accordingly. Point No. 1 is answered accordingly.

Point No. 2.

21. In view of the findings on point No. 1 hereinabove, both the appeals fail and the same are accordingly dismissed. No order as to costs. Certified copy of this judgment be placed on the record of RFA No. 40 of 2009.

 