

(1995) 05 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 1406 of 1982

State of H.P

APPELLANT

Vs

Kanwar Ishwari Singh and Others

RESPONDENT

Date of Decision : 20-05-1995

Acts Referred:

Evidence Act, 1872 — Section 13

Land Acquisition Act, 1894 — Section 18, 23, 23(1), 4, 51A

Registration Act, 1908 — Section 57

Citation : (1995) 2 ILR HP 1071

Hon'ble Judges : S.N. Phukan, C.J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Indar Singh, General, for the Appellant; Bhupender Gupta, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Vaidya, J.—All the above titled three appeals are being disposed of by this common judgment as not only common questions of law and facts are involved in these three appeals but also the learned District Judge, Shimla, vide his common Award dated 30th June, 1982, disposed of all the three petitions preferred separately by the Respondents u/s 18 of the Land Acquisition Act, (hereinafter to be called as "the Act").

2. The lands, which were the subject matter of the present three appeals, were acquired for pooled accommodation vide a common Award dated 27th July, 1977, given by the Land Acquisition Collector. Notification u/s 4 of the Act, in this behalf, was issued on 14th March, 1974, and the Collector in the impugned Award in respect of these lands assessed the market value at the rate of Rs. 7/- per square meter. The present Respondents did not accept this Award and as a result thereof preferred petitions u/s 18 of the Act, which were referred to the learned District Judge, who, after disposing of those petitions awarded compensation at the rate of Rs. 70/- per square meter.

3. The present Respondents, in their separate petitions preferred u/s 18 of the Act, pleaded that the price of the acquired land, as assessed by the Collector, was highly inadequate and they claims that the market value of the acquired land at the relevant time was Rs. 102.60, per square meter. It may be referred here that this rate was claimed in the case pertaining to R.F.A. No. 1407/83 while for the land under R.F.A. No. 1406/82 the interested persons claimed the price of the acquired land at the rate of Rs. 70/- per square meter which, according to them, was the market value of the same at the relevant time when notification u/s 4 of the Act was issued. However, for the land covered in RFA No. 1408/82, the market value claimed was Rs. 100/- per square meter.

4. It was pleaded in all these three cases, before the learned District Judge, that after Solan Tehsil was upgraded to a District, there had been great demand of land especially in regard to construction of houses at a very large scale as a result of which there was spurt in the prices of land and since the lands in questions were situated within the municipal limits of Solan town and near the Tehsil building, the same was an ideal site for construction of residential houses and, therefore, it had potential of becoming Abadi land and it should have been so considered by the Collector while assessing the market value but the Collector erred in assessing the value of these lands as Ghasni.

5. The present Appellant contested all these three petitions before the learned District Judge and denied the averments made by the Petitioners.

6. The following Issues were framed by the learned District Judge in the petition giving rise to RFA No. 1407 of 1982:

1. Whether the compensation awarded is inadequate, if so, what is the market value? OPP

2. Whether the petition suffers from misjoinder of the parties? OPR

3. Whether the Petitioners are estopped from claiming enhancement? OPR

4. Relief.

7. In the other two petitions only one Issue was framed, which was common and reads thus:

Whether the Collector has assessed the market value inadequately? If so, what is the market value of the property acquired?" OPP

8. As referred to earlier, after appreciating the evidence examined during the proceedings and after hearing the parties, the learned District Judge passed the following Award:

In view of the above, as I have already observed, no doubt the average sale price of the land sold in the locality proximate in time and place of the land under reference comes to Rs. 102/- per Sq. meter, I, however, feel that it would serve the ends of justice if the entire land in the three references is evaluated at the

rate of Rs. 70/- per square meter, since the land in question at present is in an undeveloped state and would entail some expenditure for its development into different plots, and the Issue is held accordingly in the three petitions.

9. The aforesaid Award made by the learned District Judge has been assailed in the present three appeals on various grounds, the main being that the learned District Judge acted illegally in appreciating the evidence examined by the interested persons in assessing the market value of the land under reference.

10. We have heard the learned Counsel for the parties and we have also been taken through the entire evidence examined before the learned District Judge.

11. The learned Advocate General, at the very out-set, has contended that there is absolutely no legally competent evidence examined by the present Respondents before the learned District Judge in support of their claim. The learned Advocate General's line of argument, in this particular behalf, has been that, no doubt, some sale transactions have been brought on record by the interested persons but those could not form legal evidence especially when both-vendor and vendee-in those transactions have not been examined on oath and in the absence of their examination the sale deeds or the version given by either of them will not carry any legal weight whatsoever and in this view of the matter, according to the learned Advocate General, the learned District Judge acted illegally in basing his findings on such an evidence which has got no value in the eye of law. It is not so simple a matter as has been contended by the learned Advocate General.

12. While going through the evidence examined during the proceedings before the learned District Judge not only the sale transactions have been proved by tendering the certified copies of the registered sale deeds but also vendor/vendee in some sale transactions have been examined on oath to support those transactions. In addition evidence pertaining to the potential value of the land under reference, the similarity of nature, kind, of the acquired land qua those transactions of sale has been brought on record.

13. As much stress has been laid by the learned Advocate General on the legal value of the sale transactions brought on record by the interested persons, it would be very much relevant, at this stage, to refer to Section 51-A of the Act, which was introduced by Act No. 68 of 1984, in order to avoid legal obstacle in appreciating such like documents. This Section reads thus:

51-A Acceptance of certified copy as evidence. In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

14. This Section facilitates the use in evidence of a copy of any document registered under the Registration Act. There is no dispute to the proposition that while assessing the market value u/s 23 of the Act the sale transactions of

similar lands in the neighbourhood on the date of publication of notification u/s 4 of the Act are relevant. These sale deeds despite being not inter parties can be admitted in evidence u/s 13 of the Evidence Act. This Section puts the matter beyond any controversy and simply states that such documents, as referred in the Section, may be used and accepted as evidence.

15. In case the registered sale deeds tendered in evidence proved the transactions to be relevant, to be taken note of while assessing the market value of the acquired land, such sale deeds have to be accepted in evidence. There is no doubt that while leading such type of evidence the court has to consider the value to be attached to this evidence in proving the fact of the sale consideration passed between the vendor and the vendee; the nature of the property sold; its potential value in relation to the acquired land. In case all these factors could be proved by tendering the registered copy of sale deed, the necessity of examining the vendor/vendee to prove the transaction would depend upon the facts of an individual case. In case the sale deed itself cannot exhibit the nature of the land sold; its situation vis-a-vis the acquired land; the potential value it carries in relation to the acquired land and other aspects essential to determine the market value, in that eventuality to prove those facts, referred to above, examination of the vendor/vendee is most essential. Otherwise tendering of a certified copy of a sale deed has to be accepted as a piece of evidence and it cannot be thrown out, out of consideration zone of the evidence on the sole ground that the vendor and the vendee have not come before the court to support this transactions by making a statement on oath. This aspect of the matter, as argued by the learned Advocate General, cannot be sustained under the law.

16. We need not cite various precedents in this behalf. The ratio in *Gulzara Singh and Ors. v. State of Punjab* and *Ors.* ((1993) 4 Supreme Court Cases 245), can be taken note of, which is a complete answer to the objection being raised by the learned Advocate General. The observations made by Justice K. Ramaswamy, in the aforesaid reported case, for the sake of convenience are reproduced hereunder:

To determine the market value of the land u/s 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of a hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification or near about the date of the notification is the acid test. If sale transactions relate to the lands under acquisition and if found to be genuine and bonafide transactions between willing vendor and vendee then it may be considered but reasonable margin must be given in fixing wholesale price. The sale and purchase of lands at a throw away price at arm's length or depressed sales or facade of sales brought into existence in quick succession to inflate the

market value would not offer any basis to determine just market value. In order to adjudge whether sales are bona fide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory. Every endeavour would be made to fix fair and reasonable market value.

17. The apex court, in the aforesaid case, has clearly dealt with the necessity of examining the vendor or vendee or the attesting witness of the sale deed. In the present appeals we are of the view that the aforesaid guidelines issued by the apex court have been fully complied with not only by the interested persons while leading evidence but also by the learned District Judge while appreciating the said evidence.

18. Before the learned District Judge all the three petitions were consolidated and the parties examined oral as well as documentary evidence to prove the market value of the acquired land at the relevant time.

19. One Shri Ram Rattan Aggarwal, who had been working as property dealer in Solan and in that capacity had sold certain parcels of land by open auction belonging to Smt. Padma Thakur wife of Muni Lal, has been examined as PW.1. These lands were sold by this witness in plots of different sizes. According to him, in 1973 when Solan became District the price of the land had gone up as there was housing problem there and the government had agreed to give loan for building purposes and in that very year, that is, in the year 1973 this witness sold those plots referred to above. According to him, the price at that time was Rs. 70,000/- to Rs. 80,000/- per bigha. He stated that those plots sold by him were situated in Lakkar Bazar Solan within the municipal limits of Solan town. He also added that these plots were purchased for residential and commercial purposes.

20. Pw2, is one Nek Ram, who was a building contractors at Solan, He deposed that after Solan was made a district headquarters the building work had started with very vigour and he had also been building various buildings at Solan. According to him, he had seen the lands of the Petitioners which was situated just opposite the Tehsil Office above the Rajgarh road and that there were number of residential buildings there. He also added that the lands of the Petitioners were good for constructing houses. He also added that there was a road adjoining the lands of the Petitioners which goes to Khalifa lodge.

21. Pw3 is Shri K.L. Gupta, Advocate, Solan, who stated that on 24th January, 1974 he had purchased a vacant plot measuring 127 square meters for a consideration of Rs. 7000/-. According to him, Rs. 3000/- was paid by him as

earnest money and the rest was paid before the Tehsildar, Solan. Ex. Pw 3/A was the copy of the registered sale deed. The witness had brought the original sale deed also when he was examined. He further added that before the purchase he had ascertained the market price of the land in Solan. According to him, the plot purchased by him was situated near the District Hospital, Solan. He also stated that tehsil office was about one and half furlong by road from his plot. According to him, facing tehsil office residential houses of the government officers have been built.

22. Pw4 is Shri Bhagwan Singh, Advocate, who on 21-2-1974 purchased 117 square meters of land from S/Shri Sant Ram Nand Ram for a consideration of Rs. 7000/- out of which Rs. 2000/- were paid as earnest money and the balance amount of Rs. 5000/- was paid before the Sub Registrar. He also stated that he had purchased the plot for house construction. This plot, according to the witness, was located near the District Hospital, Solan. He also added that during the last 3-4 years residences of the government officers were built and the plots around tehsil were good building sites. He has been very specific in deposing that he had verified the price of the land prevailing in the market before purchasing the plot. He has proved Ex. Pw 4/A, copy of the sale deed, on record.

23. Pw5 is one Kishan Lai Sahani. He stated that he had purchased a plot in Ser Solan in 1973 the area of which was 23 x 40 feet for a consideration of Rs. 8000/-. The witness had brought the original sale deed for the inspection of the Court and produced its certified copy Ex. Pw5/A on record. He also added that prior to the purchase he enquired about the prevailing rates. Rs. 1500/- were paid as earnest money by him and the balance amount was paid at the time of the registration. According to the witness, the acquired land also situated in village Ser Solan and was about 300 to 350 meters away from the land of the witness. He also stated that the acquired property was near khalifa lodge and about 150 meters above the tehsil building.

24. Pw6 is one Shri Jagat Ram who stated that he and his son purchased a plot in Lakkar Bazar Solan for Rs. 8000/-, which measured 90 square meters. He further added that he had paid the entire sale consideration and this plot was purchased by him by auction. He tendered certified copy of the registered sale deed, Ex. Pw6/A. According to him, Khalifa lodge was round about 300 to 350 meters above his plot and the tehsil building was about 80 meters away from his plot.

25. Pw7 is one Ved Prakash who stated that he purchased a plot in the name of his wife Smt. Raj Rani in Lakkar Bazaar Solan in the year 1973 for Rs. 4500/-. He also added that it was purchased in an auction. Ex. Pw7/A was the certified copy of the registered sale deed. Pw8 is Shri Jeet Ram who purchased a plot in the year 1973 in Lakkar Bazar Solan for Rs. 6900/- and, according to him, Rs. 1700/- were paid as earnest money and the remaining amount was paid at the time of registration. He further stated that Ram Rattan (Pw1) had sold the plot on behalf of the owner. The certified copy of the sale deed was Ex. Pw 8/A.

26. Pw9, is Shri Balanand Patwari who stated that there were residential houses near the land under reference. He has proved spot map Ex.PW 9/A which depicts the situation of various Khasra numbers. He stated that the acquired land was on Eastern side of Tehsil building and its areal distance from Tehsil office was 150 meters. According to him, residential houses near the acquired property were that of S.E., XEN and one Lala. He also stated that the plots sold by Padmawati were 20 to 30 meters away from Rajgarh road.

27. Pw10 is one Dhani Ram who stated that he, S/Shri Nand Lai and Kishan Chand had purchased land from Gita Ram near the Civil Hospital Solan. Its area was four biswas. It was purchased for Ra.13000/- which amount was paid. Ex. Pw10/A is the attested copy of the sale deed. Pw11 is Shri Hari Chand Patwari who has proved the copy of notification notifying the boundary of Municipal limits of Solan which is Ex. Pw11/A. He stated that the lands acquired were within the municipal limits of Solan and, according to him, settlement had already taken place in Solan within the municipal limits.

28. Pw12 is Kanwar Ishwari Singh, one of the Petitioners, who has supported the case of the Petitioners in all respect by deposing that the acquired land was situated in between Khalifa lodge and Seri Wala tank and its situation was in between the road and Nanak Villa road. He also added that the road leading to the office of the DFO was also connecting it. According to him, a number of houses had been built around the acquired property prior to the acquisition. He further added that the acquired land was plain and did not involve much expenditure for the purpose of building houses. he also deposed that the prices of the land have gone up after Solan was made a district.

29. Pw13 is one Puran Singh, one of the Petitioners. He was the husband of Bimla Devi and was holding general power of attorney for her. According to him, the market value of the acquired land ranged from Rs. 50,000/- to Rs. 1,00,000/- per bigha at the relevant time.

30. The Petitioners also tendered other documents, including registered sale deeds.

31. The certified copies of the registered deeds produced by the Petitioners were Ex. Pw3/A, Ex. Pw4/A, Ex. Pw5/A, Ex. Pw6/A, Ex. Pw7/A, Ex. Pw8/A, Ex. Pw10/A, Ex.P21, EX.P22, Ex.P27,(23 sic), Ex.P24, Ex.P25, Ex.P26, Ex.P27 and Ex.P28. In respect of these transactions some of the vendors and vendees have been examined on oath before the learned District Judge.

32. On the other hand the present Appellant in rebuttal examined three witnesses. Rw1 is Shri Hem Raj who has produced the record. Rw2 is Shri Jai Narain, Naib Tehsildar, who stated that he was posted as Girdawar Land Acquisition Solan from 1974 to 1977. According to him, he had inspected the spot and had worked out the five years average of the acquired land to be Rs. 6.15 per square meter for the Ghasni land. He further added that the acquired land of the interested persons, under reference, was Ghasni in nature and has

been assessed for its market value at the rate of Rs. 7/- per square meter. He added that for working out the five years average he had taken the mutations of village Ser(Solan) into consideration. However, he could not state as to where this land was situated of which the mutations were taken into account by him. He admitted that as soon as Solan was upgraded to a district a lot of houses had been built on the Rajgarh road and the construction was still going on.

33. Rw3 is Shri Balanand Patwari who has also proved on record the five years average, a copy whereof was Ex.RA. He also admitted that he had not seen the land mutations whereof were considered for working out the average. According to him, he also did not see the acquired land.

34. The evidence examined on behalf of the present Appellant has to be ignored straightaway, being not legally competent evidence in order to prove the market value of the land. Needless to say, the average sale price for five years has been discarded and not to be taken as a factor for assessing the market value of the acquired land at the relevant time. Actually, it is the market value which the acquired land had at the time of issuance of notification u/s 4 of the Act. In a way, what was the value at that particular time which the willing purchaser was offering and the willing seller was accepting. With that background, the transaction of sales at the relevant time of similar type of lands have to be taken note of and kept an important guiding factor to assess the market value of the acquired land at the relevant time.

35. Solan was made a district in the year 1973 and notification u/s 4 of the Act was issued in 14th March, 1974. The public purpose for which the land was acquired reflected the potential value which the acquired land carried. Admittedly, the land was acquired for pooled accommodation, meaning thereby that this land was acquired for construction of houses. It only reflected that this land, no doubt, was a Ghasni recorded in the records of rights, but had potential of an Abadi land and can be used for construction of residential houses. This aspect of the matter has always to be kept in mind while assessing the entire evidence dealing with the market value.

36. The evidence examined on behalf of the interested persons disclosed that Solan, after being upgraded as a district, had acquired much importance as a result of which there was tremendous increase in the price of land there. The evidence also related to the potential value of the land; its situation and other utility as compared to the transactions cited in evidence, referred to above.

37. It is an admitted fact that the land under reference was situated within the municipal limits of Solan. There is evidence to show that there was a road by the side of the acquired land which bifurcated from the main Solan-Rajgarh road and that road goes to the office of the DFO Solan and it was a motorable road.

38. At this stage the inspection note of the learned District Judge can safely be referred to who visited the spot in order to appreciate the evidence examined during those proceedings in its right perspective. This inspection note is dated

5th June, 1982 and, for the sake of convenience, it is reproduced hereunder:

I inspected the spot today, that is, 5-6-1982 in the presence of Shri Bhupender Gupta, Advocate, for the Petitioner and ADA for the Respondent. Kanungo Land Acquisition Office, Shri Shiv Singh, is also present and he has pointed out to me the land under reference.

This land is below water storage tank meant for the town of Solan and above the "Khalifa Lodge" building where JBT School is housed at present. Besides this building, there are also a number of residential houses of modern type" most of them belonging to the officers in the Himachal Pradesh Administration. The palaces of erstwhile ruler of Solan State and also the other palatial buildings are also quite near to the site in question. There is also, near the tank, office-cum-residential complex of the DFO Solan. There are also a number of residential houses constructed or under construction in the perimeter of this entire area. The site of the land is a commanding one from where the entire town of Solan is visible sprawling on all the three sides of this site and on the fourth side is hillock which has thick forest of Baan and Chil and is said to have been converted into a game sanctuary.

39. The aforesaid inspection note of the learned District Judge is self-explanatory. The evidence examined by the interested persons is fully supported by this inspection note.

40. The sale transactions brought on record on behalf of the interested persons as a whole give the average sale price at the rate of Rs. 103.16 per square meter.

41. It is apparent on the records itself that the Collector has assessed the value of the land on the basis of five years average of Ghasni land but it has, however, not been brought on record whether any parcel of this land was any way near to the acquired land. Actually there is no evidence on record to show as to where these parcels of land were situated the sales whereof were taken into consideration by the Collector while working out the average price. It may not be out of place to mention here that the situation and location of the land play a major role in determining the market value. It is really strange to note that the State has tried to raise objections against the evidence examined on behalf of the interested persons on the ground that the transactions relied upon have not been legally proved in the absence of examination of both vendors and vendees but how the State behaved itself is quite open. The aforesaid standard for appreciation of evidence regarding proving of sale transactions has not been complied with by the State itself. Any way, the fact remains that after the parties have examined evidence the onus of proving a particular Issue loses all significance and it is the entire evidence led by the parties which has to be taken note of while disposing of the Issue on merits.

42. As referred to earlier, the learned District Judge has rightly observed that the sale price of the land under reference comes to Rs. 102/- per square meter but the land under reference being in an undeveloped state, therefore, the market

value was restricted to Rs. 70/- per square meter in order to entail the expenditure for the development of the land under reference by making various plots for the purpose of construction.

43. The learned District Judge has properly and legally appreciated the entire evidence and by such appreciation has come to a correct conclusion in assessing the market value of the acquired land. We do not see any reason whatsoever to interfere with those valid findings. The present appeals, as such, are accordingly dismissed, being devoid of any merit. Parties are, however, left to bear their own costs.