

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.**

**RFA. NO.68 OF 1999.**

**Judgment Reserved on: 1.5.2007**

**Date of Decision: 31.5.2007**

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**LAC and another** ..... **Petitioners**

**Versus**

**Dharambir & another** ..... **Respondents**

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**Coram**

***The Hon'ble Mr. Justice Kuldip Singh, Judge***

**Whether approved for reporting? No.**

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***For the Petitioners: Mr. M.L. Chauhan, Addl. Advocate General.***

***For the respondents : Mr. Sunil Mohan, Advocate.***

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**Kuldip Singh, J**

This appeal has been filed against the award dated 31.7.1998 passed by learned District Judge, Kullu in Reference Petition No.11/96. The parties in this judgment are referred in the same manner as in the impugned award.

The brief facts as emerge from the record are that land measuring 1-16-1 bighas of the petitioners, situated at Seuobag, Phati and Kothi Kais, Tehsil and District Kullu was acquired for the construction of Kullu-Manali left bank Seoubag bye-pass road, for which notification under Section 4 of the Land Acquisition Act, 1894 ( for short the 'Act') was issued on 7.3.1991 and was published on 10.4.1991. The Land Acquisition Collector announced the award on 26.3.1992 and has awarded total compensation of Rs.1,54,208.85. The possession of the land was taken on 2.2.1990.

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*whether reporters of Local Papers may be allowed to see the Judgment? Yes*

The petitioners were aggrieved by the award, therefore, they filed the Reference petition under section 18 of the Act for enhancement of the compensation on the grounds that the compensation awarded by the Collector is inadequate keeping in view the nature of the land acquired. The acquired land is situated at a place known as Seobag in a big market centre which is flourishing with commercial activities and has high potential value for raising orchard, hotels and other commercial buildings. According to the petitioners the marked value of the land was not less than Rs.4,00,000/- per bigha. The possession was taken by the HP PWD in the year 1980 and not in the year 1992 as held by the Collector. It is also the case of the petitioners that they have constructed a danga on the acquired land for protection of land for which no compensation has been awarded and there were forty apple trees for which also no compensation has been given. The respondents filed reply and admitted the acquisition of land and the purpose for which land was acquired. They submitted that compensation awarded by the Collector to the petitioners is adequate. The petitioners are not entitled to any enhancement of compensation.

The following issues were framed by learned District Judge:-

1. *Whether there are grounds for enhancement of the award, passed by the respondent -1? If so, how much? OPP*
2. *Whether the possession has been taken over by the PWD Authority in the year 1980? OPP*

The learned District Judge while deciding issue No.1 has assessed market value of the acquired land at the rate of Rs.3,00,000/- per bigha at flat rate. The learned District Judge under issue No.2 has returned the findings that the petitioners have failed to prove that the possession of the acquired land was taken in the year 1980. The learned District Judge has held that the petitioners are entitled to interest

at the rate of 9% per annum for one year from the date of taking possession of the land and thereafter at the rate of 15% per annum till the amount of enhanced compensation awarded by the Court is paid or deposited in the Court under Section 28 of the Act. The petitioners were also entitled to the benefit of Section 23 of the Act on the enhanced compensation.

The respondents have come in appeal against the impugned award in this Court.

I have heard learned counsel for the parties and have also gone through the record.

The learned Additional Advocate General has submitted that the learned District Judge has erred in awarding compensation at the rate of Rs.3,00,000/- per bigha by relying, Ex.PR award dated 26.10.1994 which was given by Land Acquisition Collector in award No.9. He has submitted that the award given by the Collector amounting to Rs. 1,54,208.85 paisa for the land measuring 1-16-1 bigha is just compensation. The learned District Judge has erred in enhancing the compensation.

The learned counsel for the respondents has supported the impugned award of the Court by adopting the reasoning which has been given by the learned District Judge.

The parties have led documentary evidence as referred to by learned District Judge in Para-13 of the impugned award but the learned District Judge has held that sale deeds and jamabandies produced by petitioners are not relevant for determining the compensation. The sale deeds relied by the petitioners were of small area in comparison to acquired land. It has also not been proved that even small area covered by those sale deeds have similarity with the acquired area. In absence of such evidence the sale deeds relied by the petitioners can not be

taken into consideration for assessing the market value of the acquired land. The small area transactions cannot be relied for assessing the market value of large area. In **(1995) 2 Supreme Court Cases 424 TARLOCHAN SINGH AND ANOTHER vs. STATE OF PUNJAB AND OTHERS**, it has been held by the Hon'ble Supreme Court in para-2 as follows:-

*"It is seen that a land of magnitude of 881 acres when was acquired for planned development of the town, a willing purchaser would offer the same rates at which small plots admeasuring to 120 to 250 sq. ft. were offered and sold. It is impossible to accept that the lands would fetch that price when a large track of land was offered for sale in open market to willing buyer. Under those circumstances, sale transactions are absolutely and totally irrelevant and cannot form the basis to determine the compensation".*

In **1995 Supp ( 2) Supreme Court Cases 168 SPECIAL LAND ACQUISITION OFFICER AND ANOTHER vs. SIDAPPA OMANNA TUMARI AND OTHERS**, it has been held by the Hon'ble Supreme Court in para-13 as follows:-

*"Where the court has to determine the market value of large extents of acquired agricultural lands, it may not be desirable to be guided by the price fetched by sale of small extents of agricultural lands as the possibility of genuine agriculturists buying such small extents for their cultivation purposes is rather remote and it may also not be desirable to determine the market value of the acquired agricultural lands on the basis of the value fetched by sales of small extents of agricultural land even if they had been purchased for building purposes, for that would involve the consideration of too many imponderables."*

In **(1997) 9 Supreme Court Cases 628 LAND ACQUISITION OFFICER & SUB-COLLECTOR, GADWAL vs. SREELATHA**

**BHOOPAL (SMT) AND ANOTHER,** it has been held by the Hon'ble Supreme Court in para-4 as follows:-

*"It is now well-settled legal position that small pieces of land cannot offer the same market value as when a large tract of land is purchased in an open market by a willing and prudent purchaser. It is settled legal position that the court has to put itself in the armchair of a prudent purchaser and put the question to itself whether the land, in the given circumstances, would fetch the same market value as is likely to be determined by the court when small piece of land would be offered for sale."*

The sale deeds produced by the petitioners are of small area transactions and therefore for assessing the market value of acquired land those sale deeds have been rightly ignored by the learned District Judge for assessing the market value of the acquired land.

It has come on record that for acquiring land situated at Seubag, Phati and Kothi Kais for construction of Kulu-Manali Left Bank Seobagh bye-pass road another notification under Section 4 of the Act was issued on 24.7.1991 and an award No.9 dated 26.10.1994 was given by the Collector, a copy of such award has been placed on record as Ex.PR. The Collector in Ex.PR has awarded compensation at flat rate of Rs.3,00,000/- per bigha. The acquired land in the present case is situated in Phati Kuhal. The respondents have not proved on record that land acquired in Phati Kuhal is different from land acquired in Phati Kais. Therefore, in my opinion the learned District Judge has rightly relied award Ex.PR for assessing market value of the acquired land in the present case and has awarded compensation at the rate of Rs.3,00,000/- per bigha at flat rate. The respondents have failed to make out any case for interference as far as assessment of market value of the acquired land is concerned.

The learned District Judge has allowed interest at the rate of 9% per annum for one year from the date of taking possession of the land and thereafter at the rate of 15% per annum till the amount of enhanced compensation is paid or deposited in the Court. The learned District Judge while discussing issue No.2 has returned the finding that the petitioners have failed to prove that the possession of the acquired land has been taken in the year 1980. The Collector in the award has observed taking over of the possession of the acquired land on 2.2.1990. The learned District Judge has allowed interest 9% and 15% from the date of taking possession of the acquired land, but in the impugned award date of taking over of possession has not been specified.

The interest is payable from the date of notification under Section 4 of the Act.

In **(2004) 4 Supreme Court Cases 79, R.L. JAIN (D) BY LRS. Vs. DDA AND OTHERS**, it has been held by the Hon'ble Supreme Court in para-12 as follows:-

*“ The expression “the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited” should not be read in isolation divorced from its context. The words “such compensation” and “so taking possession” are important and have to be given meaning in the light of other provisions of the Act. “ Such compensation” would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub-section (2) of Section 23. The heading of Part II of the Act is “Acquisition” and there is a sub-heading “Taking Possession” which contains Sections 16 and 17 of the*

*Act. The words “so taking possession” would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words “from the date on which he took possession of the land” occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words “so taking possession” can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is dehors the provisions of the Act”.*

In **2003 (1) Shim. L.C. 474, State of H.P. and another vs. Kalawati** and others, a Division Bench on this Court has held that interest is payable for the land acquired only from the date of notification under Section 4 of the Act and not prior to it.

In the present case notification under Section 4 of the Act for acquiring land was published on 10.4.1991 therefore, petitioners are entitled to interest at the rate of 9% for one year from 10.4.1991 and at the rate of 15% from 10.4.1992 onwards till the compensation is paid or deposited in the Court. Therefore, the impugned award is modified and it is held that on the enhanced compensation interest is payable at the rate of 9% w.e.f. 10.4.1991 and at the rate of 15% w.e.f. 10.4.1992 till it is paid or deposited in the Court and not from the date of possession as awarded by learned District Judge.

No other point was urged.

In view of the above discussion, the appeal is partly allowed. The market value of the acquired land at the rate of Rs.3,00,000/- per bigha as assessed by learned District Judge is confirmed. On the enhanced compensation, interest at the rate of 9% per annum shall be payable from the date of publication of notification under Section 4 of the Act. i.e. 10.4.1991 to 10.4.1992 and at the rate of 15% per annum from 10.4.1992 till the amount is paid or deposited in the Court. The appeal is disposed of in the above terms. No order as to costs.

**( Kuldip Singh)**  
**Judge**

**May 31, 2007**  
**(sks)**