

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 160 of 1999.

Judgement reserved on: 13.11.2007.

Date of decision: 31.12.2007.

Bala Nand

..... Appellant.

Vs.

State of H.P. & ors.

.... Respondents.

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

Whether approved for reporting?

**For the Appellant : Mr. G.D.Verma, Sr. Advocate with
Mr. Romesh Verma, Advocate.**

**For the Respondents : Mr. M.S. Chandel, Advocate General
with Mr. M.L.Chauhan, Addl.
Advocate General, for the
respondents.**

Kuldip Singh, Judge.

This appeal has been directed against the award, dated 1.6.1999, passed by the learned District Judge, Shimla in Land Reference No. 22-S/4 of 1997, assessing the market value of the acquired land at Rs. 1,04,040/- and thus awarding an additional amount of Rs.58,176/- on account of excess compensation alongwith other payment under Section 23(1-A), compulsory acquisition charges and interest etc., more specifically mentioned in the impugned award.

2. The facts in brief are that Notification under Section 4 of the Land Acquisition Act (for short, the Act) was published in Rajpatra on 2.7.1994, for acquiring land measuring 2 Bighas 3 Biswas forming

Whether the reporters of the local papers may be allowed to see the Judgment?

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part of khasra No. 628/5/1, situated in village Quinnal for construction of Kalbog-Quinnal road. The Collector announced the award on 16.12.1996. The appellant was not satisfied with the compensation awarded to him, he preferred reference under Section 18 of the Act for enhancement of compensation which was contested by respondents.

3. The learned District Judge framed the following issues:-
1. Whether the compensation assessed by the Land Acquisition Collector is inadequate, if so, what is the just and adequate compensation? OPP.
 2. Whether the acquisition of the property of the reference petitioner has led to injurious severance, if so whether the petitioners are entitled to compensation on this count. If so what is the quantum of such damages? OPP.

3. Relief.

The learned District Judge enhanced the compensation vide award dated 1.6.1999, as noticed above. The appellant was not satisfied with the impugned award, therefore, he filed this appeal against the impugned award for enhancement of compensation.

4. The appellant has alleged that there were 40 apple, 48 almond, 5 pear and 1 peach fruit bearing trees on the acquired land, the market value of the acquired land was not less than Rs. 1,00,000/- per bigha. The valuation relied by the Collector for assessing the market value of the trees was faulty. The possession of the acquired land was taken in April, 1988. The increase in price

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up to the date of taking over the possession of the acquired land has not been taken into consideration. The acquisition has injuriously affected the other holding of the appellant and for severance of the same, Rs.1,00,000/- has been claimed. The Collector contested the claim of the appellant, but it has not been denied that the acquired land was not having an orchard. According to the Collector adequate compensation has been paid to the appellant. The learned District Judge enhanced the compensation in the reference petition of the appellant, as noticed above.

5. I have heard Mr. G.D.Verma, learned Senior Advocate for the appellant and Mr. M.S.Chandel, learned Advocate General and have gone through the record. It has been submitted on behalf of the appellant that just compensation of the acquired land has not been awarded by the learned District Judge. The material on record has not been properly appreciated. The market value of the land and fruit bearing trees standing thereon has not been properly assessed. The appellant is entitled to compensation at the rate of Rs.1,00,000/- per bigha for the land and the trees and Rs.1,00,000/- for severance. On behalf of the State, it has been stated that proper compensation was already awarded by the Collector to the appellant and learned District Judge has further enhanced the compensation. In these circumstances, the appellant is not entitled to any further increase in compensation.

6. PW 1 Bala Nand has stated that there was an orchard on the acquired land. There were 48 apple plants aged 6-7 years on the acquired land in the year 1989 when the land was acquired.

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There were 5 pear plants, 48 almond plants and 1 peach plant on the acquired land. Due to acquisition of land his holding has been severed at three places, he will have to raise protection walls for his left over land after spending Rs. 80000/- to Rs.90,000/-.

7. PW 2 Tilak Raj Chadha, an expert examined by the appellant has stated that he inspected the left out land of the appellant after acquisition. On this land, he found apple, almond, pear, apricot trees, the area is conducive for raising orchard. He prepared report Ex. P 1 on the basis of papers shown to him by the appellant. He worked out the value of the plants on the basis of Harbans Singh formula. In cross-examination, he has stated that normally 20 plants are raised on one bigha area. The acquired area was 2-3 bighas. As per his information, there were 40 apple trees and 48 almond trees on the acquired land. The almond trees were in the nature of fillers which were to be uprooted when the apple plants were to attain the bearing age.

8. PW 3 Garish, Field Officer from Labour Bureau, Shimla has placed on record consumer price index for the period from 1966 to 1992 Ex. P 2. The respondents did not lead any evidence despite several opportunities and ultimately the evidence of the respondents was closed by order of the court on 15.12.1998.

9. The possession of the acquired land was to be taken as per Collector's award, dated 16.12.1996 immediately after the payment of compensation. The Collector assessed the compensation vide award, dated 16.12.1996, therefore, it can be safely assumed

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that possession of the acquired land was taken after 16.12.1996 and not in the year 1988 or 1989, as alleged by the appellant.

10. The report Ex. P 1 was prepared on 12.5.1998 by PW 2 T.R.Chadha. In the report Ex. P 1, it has been stated that most of the trees were damaged since the possession was given to P.W.D. on 26.5.1989. The report Ex. P 1 is not based upon actual inspection of the fruit trees and the land when they were standing on the acquired land. PW 2 has stated that he prepared the report on the basis of information given by PW 1 who is an interested person. The learned District Judge has rightly not relied the report Ex. P 1 for assessing the market value of the acquired land alongwith fruit bearing trees. But since report has been prepared by an expert on the basis of information supplied by appellant therefore, to limited extent the learned District Judge has rightly taken help from this report for assessing the market value of acquired land alongwith trees.

11. In the statement of PW 1, it has come that there was an orchard on the acquired land, this part of his statement has not been challenged in cross examination conducted on behalf of the respondents. On the contrary, it is the case of the respondents that valuation of the fruit bearing trees has been done correctly. This means, there was an orchard on the acquired land.

12. The appellant has not led any evidence to show what was the market value of similar type of orchard when the notification under Act was issued. In these circumstances, the market value of the acquired land with trees is to be assessed on the basis of multiplier method on the basis of yield. In **State of Haryana vs.**

Gurcharan Singh and another 1995 Supp. (2) SCC 637, the Hon'ble Supreme Court has held that under no circumstances the multiplier should be eight years when the market value is determined on the basis of yield from the trees or a plantation.

13. In the statement showing compensation regarding the acquired land, the nature of land has been shown as Bakhal Dom with 40 apple, 1 pear, 5 apricot and 20 almond trees. This statement has been contradicted by PW 2 when he has stated in his statement that normally 20 plants are raised on one bigha and as per his information, there were 40 apple trees and 48 almond trees on the acquired land. This information to PW 2 was given by none-else but by the appellant. On 2 bigha 3 biswas of land, growth of 66 trees i.e. (40+1+5+20) is not possible. In view of statement of PW 2 it is held that there were 40 apple trees of second category on the acquired land. There is no other worth believing evidence on record to show that there were some other fruit bearing trees also on the acquired land other than the apple and almond trees. The almond trees were rightly excluded from consideration for assessing the market value of the acquired land as these trees were only planted as fillers. Therefore, to this extent no fault can be found with the impugned award.

14. The learned District Judge has noticed in the impugned award that Harbans Singh in his treatise known as Evaluation of Fruit Trees (Basic Principles and Method) has assumed the gross annual income of a first class apple tree at Rs. 100/- per annum. The annual income of a second class, per aforesaid treatise is 75 percent of the

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first class tree. This finding of the learned District Judge has not been disputed by either side. It means the annual income of the single apple tree of second category on the basis of Harbans Singh formula comes at Rs. 75/-. There were in all 40 apple trees of second category on the acquired land, therefore, annual income of 40 apple trees standing on the acquired land would come to $\text{Rs. } 40 \times 75 = \text{Rs. } 3000/-$ as per aforesaid formula. The Harbans Singh formula is of the year 1966, therefore, in the year 1966, the income from 40 apple trees comes to Rs. 3000/- per annum.

15. In view of **State of Haryana vs. Gurcharan Singh and another** (supra), in the present case multiplier of eight years is applicable to assess the market value of the acquired land with fruit bearing trees which comes to $\text{Rs. } 3000 \times 8 = \text{Rs. } 24,000/-$, however, this market value of the acquired land is on the basis of Harbans Singh formula, 1966. As per Ex. P 2, the increase in percentage of consumer price index for industrial workers from the year 1966 to 1992 is 664%. This increase in absence of other evidence can be safely applied for increase in apple crops also and its return. In fact this court in **Union of India and others vs. Khazana Ram and others** 1998 (1) Sim. L.C. 479 has allowed increase of compensation on the basis of increase in price index. The notification, under Section 4 of the act, was published in H.P. Rajpatra on 2.7.1994, but there is no evidence on record of consumer price index increase after the year 1992. Hence, the market value of the acquired land on the basis of yield from apple trees comes to $\text{Rs. } 24000 \times 664\% = \text{Rs. } 1,59,360/-$. The appellant has not proved

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entitlement of compensation for severance of his holding due to acquisition. The Collector has awarded compensation to the tune of Rs.45,864/-. Therefore, taking into account the amount awarded by the Collector, appellant is now entitled to enhanced compensation Rs.1,59,360 – Rs.45,864/- = Rs.1,13,496/- from the respondents, instead of Rs.58176/- as held by learned District Judge in the impugned award. The impugned award to this extent requires modification and is accordingly modified.

16. The result of the above discussion, the appeal is allowed and the impugned award is modified. The appellant is awarded Rs.1,13,496/- enhanced compensation over and above awarded by the Collector. The appellant is also entitled to 12% amount on the market value of the acquired land with trees under Section 23(1-A) of the Act from 2.7.1994 the date of publication of notification, under Section 4 of the Act, to 16.12.1996 the date of award of the Collector and 30% compulsory acquisition charges, under sub-section (2) of Section 23 of the Act. The appellant is also awarded 9% interest on the excess amount of compensation from the date of notification, under Section 4 of the Act i.e. 2.7.1994 to 2.7.1995 and thereafter at the rate of 15% per annum till payment.

December 31, 2007.
(Hem)

(Kuldip Singh)
Judge.