

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

RFA No. 163/2003 with Cross Objections 217/2003

Date of Decision: 30th May, 2008.

<i>Land Acquisition Collector and another</i>	<i>.....Appellants</i>
<i>Versus</i>	
<i>Sh. Kahan Chand and another</i>	<i>.....Respondents.</i>

Coram

The Hon’ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?¹

For the Appellants: Ms. Ruma Kaushik, Additional Advocate General.

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

Dev Darshan Sud, Judge.

This appeal has been preferred by the State against the judgment of the learned Additional District Judge, passed in reference petition with respect to the acquisition proceedings of land comprised in Khasra Nos. 357/1, 357/2, 358/1 and 364/1 measuring 1 bigha 18 biswas acquired by the appellant-respondents for construction of Parsa-Lower-Koti Road.

On the issue as to whether the petitioners were entitled to enhanced compensation, the learned reference court took into consideration Ext. PW-1/A, Ext. PW-2/A and Ext. PW-3/A being

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

reference petition Nos. 32-S/4 of 1992 titled Kahan Chand vs. State of H.P. and another decided on 16.1.1993, 8-S/4 of 1988 titled Kamla Nand vs. The State of H.P. and another decided on 8.9.1992 and 25-S/4 of 1988/87 titled Davinder Singh and others vs. State of H.P. decided on 1.5.1992 respectively and sale deed Ext. PW-4/A. This land, according to the petitioners being contiguous to the land in the present proceedings. Ext. D-1 and Ext. D-2 were produced by the appellant-State to show that the value of the land was not as claimed by the respondents-claimants. Learned reference court determined compensation @ 3000/- per biswas as the value of the acquired land basing its decision on Ext. PW-3/A holding that the land in both the present proceedings and the award was similar in nature. The learned court noted that the land mentioned in Ext. PW-3/A is contiguous to the land acquired by virtue of the present proceedings. While considering Ext. D-1 and Ext. D-2, the court rightly noticed that there was no evidence on record to show the location, proximity, nature, contiguity of the land therein to the acquired land and could not be used for determining just and fair compensation.

The State has appealed against the judgment of the learned reference court. One of the grounds urged is that the interest has not been awarded in accordance with the provisions of the Land Acquisition Act. This submission needs to be rejected outright as by an order dated 30th August, 2001, the court corrected the clerical mistake which had occurred in the order. There is nothing on the

record to show that the interest has not been awarded in accordance with the provisions of the Act. On the second submission that Ext. D-1 and Ext. D-2 established the market value of the land, all that need be said is that there is no evidence whatsoever to show on record as to whether nature of the land, its proximity to the land being acquired its nearness and at the state of development, access to public facilities etc. It must also be noticed that besides tendering the sale deed Ext. D-1 and D-2 in evidence, no attempt has been made by the appellant to establish the nature, quality, proximity and development of the land etc. By an order dated 16.9.1999 the State was directed to produce its evidence on 22.12.1999. On that day, no witness was present. Another opportunity was given for leading evidence for 7.4.2000. The three orders of the learned reference court are reproduced hereunder:-

“16.6.1999 Present: Sh. Pawan Kaprate Advocate for
the petitioner
Sh. Satish Kaushal Ld. DDA
for the respondent.

Statement of the PWs recorded. PW SDO PWD Rohroo has been given up by the petitioner being unnecessary. Statement to this effect recorded separately and has closed the evidence. List hit petition for RWs on 22.12.1999. Steps be taken within 10 days.

22.12.1999 Present: Sh. Y.P. Sood, Advocate for the
petitioner.

Sh. Satish Kaushal, Ld. DDA
for the respondent.

No RW is present nor steps taken. Be taken now and
RWs be summoned for 7.4.2000.

7.4.2000 Present: Sh. Y.P. Sood, Advocate for the
petitioner.

Sh. Satish Kaushal, Ld. DDA
for the respondent.

Ld. DDA has tendered in evidence certified copy of
sale deeds Ext. D-1 and D-2 and has closed the
evidence. List this petition for arguments on
1.5.2000.”

This is not a satisfactory way of leading evidence by
merely tendering sale deeds in evidence without establishing
anything more. In these circumstances, the submission made by the
learned counsel for the appellant cannot be accepted.

In the Cross-objections moved by the claimants-
respondents, primary ground urged is that on the basis of the
judgments passed by this court as also by the Supreme Court, the
reference court was in clear error in not granting the escalation in the
value of the land. The contention of the learned counsel for the
claimants is that Ext. PW-3/A which admittedly has not been
challenged in appeal in the High Court and considering the fact that
was notification issued in the year 1983 though could provide a good
guide for determination of the fair compensation to be awarded to
the claimants, yet in the present case, where notification under
Section 4 of the Act was issued on 17.6.1995 the market value was

required to be increased keeping in view the escalation in prices. Learned counsel placing reliance on the judgment of the Supreme Court in Special **Land Acquisition Officer vs. Mohd. Hanif Sahib Bawa Sahib (2002) 3 SCC 688** submits that 10% should be added every year as the escalation cost. He further fortifies his contention by the judgments of the Supreme Court in **Land Acquisition Officer and Revenue Divisional Officer vs. Ramanjulu and others (2005) 9 SCC 594**, holding that 10% for two years as the escalation costs was reasonable. The third judgment on which reliance has been placed by the learned counsel for the Cross-objector is **Amarjit Singh vs. Charanjit Singh and others (2004) 2 SCC 282** where the Supreme Court awarded 15 % increase. Learned counsel for the appellant relies upon the decision in **Ranvir Singh and another vs. Union of India AIR 2005 SC 3467** holding therein that:-

“39. Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. We, therefore, are unable to accept the contention of Mr. Nariman that as in one case we have fixed the valuation of Rs. 7000/- per bigha wherein the lands were acquired in the year 1961, applying the rule of escalation the market rate should be determined by calculating the increase in the prices at the rate of 12% per annum. We do not find any justifiable reason to base our decision only on the said criteria.”

Turning to the evidence on the record, it may be noticed that the witnesses of the cross –objectors have stated that the land of the claimant was of a high quality and that it was adjacent and contiguous to the land acquired by the State pursuant to Ext. PW-3/A. and that there was general escalation in land prices.

PWs 1 and 2 have stated that value of the land is increasing in the area. While determining just compensation, there has to be some element of guess work involved. Learned counsel for the cross-objectors submits that the acquired land is a small chunk of area of 1 bigha and 18 biswas and in this view of the matter would fetch a higher price. The claimant cross-objectors submits that the value of the land should be fixed at 1 lacs per bigha i.e. to say Rs. 5000/- per biswas. This estimation cannot be accepted. Applying the ratio of the Supreme Court decision 5% increase over the basic value of every year as escalation in the price would be reasonable. In this view of the matter cross-objections are accepted. The cross-objectors are held entitled to compensation @ 90,000/- per bigha. They shall also be entitled to solatium and statutory interest in accordance with law. The appeal and cross-objections are disposed of accordingly. There shall be no order as to costs.

30th May, 2008.
(cm)

(Dev Darshan Sud),
Judge.