

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

RFA No. 142 of 2006

Reserved on :10th August, 2009.
Date of Decision:30th September, 2009.

Suhru Ram and others	Appellants
Versus	
Land Acquisition Collector	Respondent

Coram

The Hon’ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting¹? Yes.

For the appellants: Mr.Bhupender Gupta, Sr. Advocate, with
Ms. Charu Gupta, Advocate.

For the respondent: Mr.Vivek Thakur, Addl. Advocate General,
And Mr.J.S.Ran, Asstt. Advocate General.

Sanjay Karol, J.

The claimants have filed the present appeal assailing the impugned award dated 5.2.2005 passed by the District Judge, Hamirpur, in Land Reference petition No.01 of 2003, titled as Suhru Ram and others vs. Land Acquisition Collector, Mandi, seeking further enhancement of the compensation awarded by the Court below.

For the public purpose, namely, construction of Sewerage Treatment Plant at Hamirpur, in Village Usiana, Mouza Bajuri, Tehsil and District Hamirpur, the claimants’ land comprising Khasra No. 413/1, 411/1, 412/1 and 415/1 measuring 2772.32 sq. meters in village Usiana, Tehsil Hamirpur, was acquired by the State. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was

¹Whether the reporters of Local Papers are allowed to see the Judgment?

published in the H.P. Rajpatra on 22.7.2000. The Land Acquisition Collector in terms of Award No.76/RC-1 of 2003 dated 28.5.2002, determined the market value for the acquired land to be Rs.1214/- per hundred sq. meters and accordingly determined the compensation due and payable to the claimants.

Total cost of the land was determined to be Rs.33652/- and other statutory benefits in terms of Section 23 of the Act were also awarded. Thus a total sum of Rs.59709/- was awarded to the claimants.

Aggrieved of the same, the claimants filed Land Reference petition under Section 18 of the Act claiming enhancement of the compensation as determined by the Land Acquisition collector.

The petition was opposed by the respondent-State.

The Court below framed the following issue:-

- 1) Whether the petitioners have not been paid adequate and sufficient compensation in accordance with the market value of the acquired land, if so, to what effect? OPP

Opportunity to adduce evidence was afforded to the parties.

Appreciating the material on record, the Court below enhanced the market value of the acquired land from Rs.1214/- per sq. hundred meters to Rs.2023/- per square hundred meters. The same was done by taking the mean of the sale instance Ext.P-1 dated 10.8.1999 placed on record by the claimants and sale deed Ext.RW-1/A dated 12.5.2000 placed on record by the State. The other sale transactions placed on record by the parties being Ext.PW-1/A, Ext.PW-2/A, Ext.PW-3/A, Ext.P-2 and Ext.P-3, were discarded for the reason that they were not proximate to the time of initiation of the acquisition proceedings.

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

Record reveals that claimants' application under Section 152, CPC for correction of arithmetic mistake which had crept in the award was also dismissed in terms of order dated 15.9.2005.

It is a matter of record that claimants in support of their case examined claimant No.1 Shri Suhru Ram (PW-1) and two witnesses, namely, Shri Jai Chand (PW-2) and Shri Rattan Chand (PW-3). It is also matter of record that said two witnesses have proved sale transactions Ext.PW-1/A and Ext.PW-3/A and all other sale transactions being Ext. P-1, Ext.P-2 and Ext.P-3 were simply tendered in evidence by the claimant on 25.6.2004.

It is also matter of record that respondent-State only examined Shri Jagar Nath Sharma (RW-1), Registration Clerk from the office of Tehsildar, who simply proved the sale transaction Ext.RW-1/A and Ext.RW-1/B.

In my considered view the Court below erred in relying upon the sale transactions Ext.P-1 and Ext.RW-1/A for the reason that there was nothing on record to prove the genuineness of the said sale transactions as also the comparability of the acquired land with that of the exemplar sale lands and more particularly with regard to its size, location, potentiality, nature, classification and use. In the absence of the same, it could not have been made basis for determining the market value. [*Cement Corpn. of India Ltd. v. Purya & Ors.* (2004) 8 SCC 270].

For the very same reason, all sale transactions other than Ext.PW-2/A and Ext.PW-3/A as placed on record by the claimants cannot

be considered. The reliance on the same by the learned senior counsel for the claimants is thus misconceived.

The principles of law for determining the market value of the land and payment of compensation are now settled.

The market value of a property for the purposes of Section 23 of the Act is the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best evidences of market value. {*Mehta Ravindraraai Ajitrai (Deceased) through his Heirs and LRs. and Others v. State of Gujarat* (1989) 4 SCC 250, *Nelson Fernandes & Ors. v. Special Land Acquisition Officer, South Goa & Ors.* (2007) 9 SCC 447}.

The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner, excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development

have to be taken into consideration. (*Atma Singh and others v. State of Haryana and another* (2008) 2 SCC 568).

The most reliable way to determine the value is to rely on the instances of sale portions of the same land as has been acquired or adjacent lands made shortly before or after the Section 4 Notification. {*Panna Lal Ghosh & Ors. v. Land Acquisition Collector & Ors.* (2004) 1 SCC 467}.

In *Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat* [(2005) 4 SCC 789], the Apex Court reiterated that for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive factors are (i) smallness of size (ii) proximity to a road; (iii) frontage on a road; (iv) nearness to developed area; (v) regular shape, (vi) level vis-a-vis land under acquisition and (vii) special value for an owner of an adjoining property to whom it may have some very special advantage and the negative factors are: (i) largeness of area; (ii) situation in the interior at a distance from the road; (iii) narrow strip of land with very small frontage compared to depth; (iv) lower level requiring the depressed portion to be filled up; (v) remoteness from developed locality and (vi) some special disadvantageous factors which would deter a purchaser.

From the Collector's award, it is evident that the acquired land is situated within the municipal limits of Hamirpur township. The same is also evident from the statement of PW-3. This fact was also not disputed during the course of hearing by either of the learned counsel.

From the statements of PW-1, PW-2 and PW-3 it is evident that the instant acquired land has the potential of being put to use for industrial/commercial and residential purposes. Adjoining to the acquired land a B.Ed. college, a School and residential Houses are in existence. The acquired land is just at a distance of 40 mts. away from the road and 60 mts. from the main Village Usiana. No doubt it is situated towards the Khud (rivulet), but however, it still had the potential of being put to use other than agriculture purposes.

The sale deed Ext.PW-3/A cannot be considered as it pertains to the year 1991 whereas the instant acquisition proceedings pertain to July, 2000. However, PW-3 the seller of the said transaction has deposed that Villages Gaura, Chaulia and Usiana are adjoining to each other and all the villages fall within the municipal limits. He had seen the acquired land and the land sold by him was for the purposes of setting up of a shop.

PW-1 has also stated that Villages Gaura, Lohara, Usiana and Chaulia are adjoining to each other falling within the municipal limits. It has come on record that village Usiana is just at a distance of 1 Km. from the Bus Stand of Hamirpur township.

PW-2 is the father of purchaser of land sold in terms of sale deed Ext.PW-2/A whereby 118 sq. mts. of land situated in Village Usiana was sold for a sum of Rs. 2,36,000/- on 12.9.2000, according to whom the land was purchased for setting up of a Hamirpur College of Education where B.Ed. college stands established. According to him, the acquired land is just at 100-150 mts. away from the exemplar sale land.

Even though the instant acquired land is at a distance of 100-150 sq. mts. from the exemplar sale land, however, considering its

proximity with the road and the fact that in and around the same, commercial establishments were either in existence or were intended to be set up, in my considered view the instant acquired land had great potential of being put to use for a purpose other than agriculture use. It has already been noticed that the acquired land was also in close proximity with the main Village Usiana and adjoining to the acquired land houses were already in existence. Hence there is enough evidence on record to prove the comparability of the acquired land with that of the exemplar sale deed (Ext.PW-2/A). Both the lands are situated in the same Mauza and are within the municipal limits.

The market value of the exemplar sale land Ext.PW-2/A comes to Rs.2000/- per sq. mt. The said sale transaction is of September, 2000 whereas the Notification under Section 4 of the Act was issued in July, 2000. However, keeping in view the locational disadvantage of the instant acquired land being closer to rivulet (Khud) some deduction, dependant upon various factors needs to be carried out. The acquired land is measuring 2772.32 sq. meters, whereas the exemplar sale land is just 118 sq. mts. Hence, keeping in view the principles of law laid down by the Apex Court in *Mehta Ravindraraj Ajitrai and others vs. State of Gujarat*, AIR 1989 SC 2051, *Kanwar Singh vs. Union of India*, (1998) 8 SCC 136, *Shaji Kuriakose vs. Indian Oil Corporation Ltd.*, (2001) 7 SCC 650, *The Land Acquisition Officer, Kammarapally Village vs. Nookala Rajamallu and others*, Judicial Reports (S.C.)2004 (2) 398 and *Ravinder Narain and another vs. Union of India*, Judicial Reports (S.C.) 2004(1) 525, deduction to the extent of 40% is warranted in the facts and circumstances of the present case.

The market value in terms of sale deed Ext.PW-2/A comes to Rs.2000/- per sq. mt., hence after deducting 40% from the same, the market value of the instant acquired land even safely be determined to be Rs.1200/- per sq. mt.

The Collector and the Court below have erred in not taking into account the fair market value of the acquired land. The awarded amount of compensation is on the lower side. The claimants have been able to prove that the market value is much higher than what stands awarded by the Collector. The claimants are entitled to the enhanced compensation for the acquired land on the said basis.

The claimants shall also be entitled to all the statutory compensation on the enhanced amount from the date of publication of the Notification in the official Gazette and more particularly keeping in view the principles of law laid down in *Sunder vs. Union of India* (2001) 7 SCC 211.

30th September, 2009
(C)

(Sanjay Karol)
Judge.