

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA Nos. 22,23 and 24 of 2001

Cross Objections Nos. 104, 105
and 106 of 2001

Judgment Reserved on: 18.8.2009

Date of Decision : 30.10.2009

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| 1. | <u>RFA No. 22 of 2001</u>
State of H.P. & others | |Appellants. |
| | Gumat Ram & others | Versus |Respondents. |
| 2. | <u>RFA No. 23 of 2001</u>
State of H.P. & others | |Appellants. |
| | Kaushalya Devi | Versus |Respondent. |
| 3. | <u>RFA No. 24 of 2001</u>
State of H.P. & others | |Appellants. |
| | Lochan Singh & others | Versus |Respondents. |
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The Hon'ble Mr. Justice Dev Darshan Sud, J.

Whether approved for reporting?¹ Yes.

RFA Nos. 22, 23 and 24 of 2001

For the Appellants:	Ms. Ruma Kaushik, Addl.A.G.
For the Respondents :	Shri G.D.Verma, Sr. Advocate with Shri Romesh Verma, Advocate.

¹ *Whether reports of Local Papers may be allowed to see the judgment? Yes.*

Dev Darshan Sud, J.

These three appeals alongwith the cross objections are being disposed by a common order as they arise out of a common award pronounced under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). It is undisputed before me that the land of the respondents, who were the claimants before the Reference Court, was acquired by the State for the purpose of construction of Wazir Bowali Jhakri bye pass road. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued by the State Government on 2.5.1989 and subsequently proceedings under Sections 6 and 7 of the Act were completed on 27.1.1990. The Land Acquisition Collector made an award on 26.10.1991 and granted compensation on the basis of classification of land.

The claimants-respondents, being dissatisfied, instituted petition(s) before the learned Reference Court under Section 18 of the Act. The Court after consideration of the entire evidence on record determined the value of land that is to say Bakhal Awal and Bakhal Doem at Rs. 75,000/- per bigha and for the other at Rs. 65,000/- per bigha. The State has challenged this award in the present appeal and the respondents have preferred cross objections. It is undisputed before me that all the petitions under Section 18 of the Act which were disposed of by common award and out of which the present appeals arise had been consolidated for the purpose of recording evidence and trial which fact is recorded by the learned District Judge vide his order dated 25.10.1994 in case No. 294 of 1999/93, titled Gummat Ram Vs. LAC.

The State is aggrieved by the determination of the compensation awarded to each of the claimants herein. Learned Additional Advocate General Ms. Ruma Kaushik submits that the compensation awarded has not been determined in accordance with the principles applicable, that is to say, the

provision of Section 23 (1) (A) of the Act. She submits that the learned Reference Court has awarded a flat rate irrespective of the quality of the land and that the acquired land did not possess any advantage of nearness to the town and facilities in the nature of hospital, school, government institutions etc. She submits that the learned Reference Court having held so, was in grave error in granting compensation at the rate at which it has been determined by it.

Learned counsel appearing for the appellants/cross objectors submits that the learned Reference Court was wrong in observing that the acquired land did not possess the advantage of being situated near the town and easy access to amenities/government institutions etc. This is the crux of the submissions made by the learned counsel appearing for the parties.

I have been taken through the evidence on record. The appellant-State has produced Ext.RW1/A which is the average price of the land for one year i.e. 28.5.1988 to 27.5.1989 and Ext.RW2/A, the detailed estimate of the constructed area which was taken over in the acquisition proceedings. Two witnesses namely RW1 Shri Harpal Singh Patwari and RW2 Shri N.L. Sharma, X-En HPPWD, Division Sarkaghat have been produced in evidence.

Adverting to the evidence of RW1, he states on oath that he was posted as Patwari from 1987 to 1994 in the office of the Land Acquisition Collector at Shimla. He proved Ext.RW1/A which is the yearly average price of land. In cross examination, he states that he cannot say as to what was the price of land at the time when it was acquired. He admits that the land is situated nearest to Rampur town and the village where the land is situated is connected to the town by a bridge. He admits that Rampur town is in Shimla district and that it has all amenities/facilities which were being availed of by the villagers.

RW2 Shri N.L.Sharma proves on record the estimate of the acquired houses. This is the entire evidence on behalf of the State.

Adverting to the evidence of the claimants, Smt. Kaushlya Devi has appeared as PW1 (in reference petition No. 28 of 1998) , Som Chand as PW4 (in reference petition No. 30 of 1998), Gummat Ram as PW8 (in reference petition No. 249 of 1999/93). They have stated that the village where their land is situated which was acquired for the construction of Wazir Bowali Jhakri bye pass road is situated only about ten minutes walking distance from Rampur Bushehr. It is connected with Rampur Bushehr town by a bridge and that this town has all facilities of government institutions, offices, schools, post office, hospital, educational institutions etc. In addition, the claimants have produced on record Ext.PW9/A and Ext.PW10/A two sale deeds to prove the value of their land. Adverting to Ext.PW9/A, i.e. sale deed executed on 17.10.1989 whereby six biswas of land was sold at Rs. 36,000/- and Ext.PW10/A executed on 16.4.1988 whereby four biswas of land was sold for Rs. 26,000/-. Learned counsel submits that when these sale deeds are taken together the value of land works out to Rs. 1,20,000/- according to sale deed Ext.PW9/A, and Rs. 1,30,000/- when sale deed Ext.PW10/A is considered. Learned Additional Advocate General submits that these sale deeds cannot be taken into consideration as they pertain to a small area whereas the area of the land acquired is large and they cannot be made the base/precedent for calculating the value of the acquired land. True that the value of land may have increased from the date when notification under Section 4 of the Act was issued as urged by the learned Additional Advocate General, but there is nothing on record to show that Ext.PW9/A was the result of price fixing. Rather, if Ext.PW10/A is considered, the value of land is more than that, as proved by Ext.PW9/A. So far as the question of area of land holdings is concerned, all that need be said is that in these cases the area varies viz. Gummat Ram 2.17 bighas, Kaushlya Devi 1.2 bighas and Som Chand 2.2 bighas. These can hardly be said to be large holdings which cannot be comparable with these sale deeds produced on

record. On the question of facilities and nearness to the town if it is assumed that the statements of the claimants and their witnesses are self serving all that need be said is that even RW1 admits that the village where the land is situated is near the town of Rampur and is connected by a foot bridge and all the facilities are available. Looking into the totality of the circumstances, the value of land can safely be fixed at Rs. 1,20,000/- per bigha. Learned Reference Court was wrong in holding that the village where the land is situated is not connected to Rampur Bushehr. These observations cannot be sustained on the basis of evidence on record as discussed. The submissions of the State that the holdings of the claimants are small cannot be accepted and by no stretch of imagination can be described as “large chunks”.

Learned counsel appearing for the respondents-Cross Objectors submits that post notification sale can be considered for the purpose of determining just compensation in case the sale instances are not such which fix the value of land at unrealistic price or has been manipulated by the parties only for the purpose of increasing the value of land. He submits that in ***Chamera Hydro Electric Project Vs. Ganga Ram & ors. RFA No. 310 of 1997 and RFA 319 of 1997 decided on October 29, 2007*** this Court by following the precedent of ***Chimani Hargovinddas Versus Special Land Acquisition Officer, Poona and another (1998) 3 SCC 751*** and ***State of Uttar Pradesh Versus Major Jitendra Kumar and others (1982) 2 SCC 382***, has laid down the principle of law applicable for accepting post notification sale instances. Learned counsel also relies upon ***Atma Singh (died) through L.Rs & others Vs. State of Haryana & Another, AIR 2008 Supreme Court 709*** holding that the exemplars of small pieces of land can be used when exemplars of large pieces of land are not available. There is no evidence on record of this case that there was any other sale instance on which reliance can be placed to determine a just value of the land.

Learned counsel also supports his submissions by the decision of this Court in *Durgavati Vs. Nathpa Jhakhri Power Project Corporation and another 2008 (1) Shimla Law Cases 472* holding that the advantages of the land being near to a town and other facilities in the nature of hospitals, schools, government institutions, banks, post offices etc. have to be taken into consideration before determination of this compensation as these factors would obviously increase the value of land. There is no dispute with respect to this proposition. From the evidence on record, I find that except sale instances as given by the claimants-cross objectors, there is no other instance which is brought on record of this case. The value of acquired land can be fixed with respect to Ext.PW10/A at Rs.1,20,000/- per bigha. The deduction of 20% would be reasonable as from the evidence I do not find that land requires any extensive development. In these circumstances, the value of acquired land is fixed at Rs. 96,000/- per bigha. In addition, the cross objectors shall be entitled to the statutory increase in solatium and interest etc. These appeals are accordingly dismissed. The cross objections are allowed as discussed hereinbefore. There shall be no order as to costs.

October 30,2009
(ms)

(Dev Darshan Sud)
Judge