

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.F.A. No. 189 of 2014 a/w RFA Nos. 4206, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4215, 4216, 4217, 4218, 4219, 4220, 4221 of 2013, RFA 188 of 2014 and RFA No. 345 of 2014

Date of decision: 31st October, 2014.

1. RFA No. 189 of 2014

Collector, Land Acquisition and others	...Appellants
Vs.	
Mohinder alias Dharmender and others	...Respondents.

2. RFA No. 4206 of 2013

Collector, Land Acquisition and others	...Appellants
Vs.	
Khekh Ram	...Respondent.

3. RFA No. 4207 of 2013

Collector, Land Acquisition and others	...Appellants
Vs.	
Karma Namgiyal	...Respondent.

4. RFA No. 4208 of 2013

Collector, Land Acquisition and others	...Appellants
Vs.	
Gauri alias Giri Devi and others	...Respondent.

5. RFA No. 4209 of 2013

Collector, Land Acquisition and others	...Appellants
Vs.	
Kala	...Respondent.

6. RFA No. 4210 of 2013

Collector, Land Acquisition and others	...Appellants
Vs.	
Jagdev Singh and others	...Respondents.

7. RFA No. 4211 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Leelawanti		...Respondent.

8. RFA No. 4212 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Fatta and others		...Respondents.

9. RFA No. 4213 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Almi		...Respondent.

10. RFA No. 4214 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Kundan Lal		...Respondent.

11. RFA No. 4215 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Chuni Lal and others		...Respondents.

12. RFA No. 4216 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Gauri alias Giri Devi		...Respondent.

13. RFA No. 4217 of 2013

Collector, Land Acquisition and others		...Appellants
	Vs.	
Kishan Chand and others		...Respondents.

14. RFA No. 4218 of 2013

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Tara Chand	...	Respondent.

15. RFA No. 4219 of 2013

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Sesi Devi	...	Respondent.

16. RFA No. 4220 of 2013

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Nathu	...	Respondent.

17. RFA No. 4221 of 2013

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Chobe Ram and another	...	Respondents.

18. RFA No. 188 of 2014

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Narvda alias Padma and others	...	Respondents.

19. RFA No.345 of 2014

Collector, Land Acquisition and others	...	Appellants
	Vs.	
Ghansham and others	...	Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
Whether approved for reporting?¹ No

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ?.yes*

For the appellants : Mr. Shrawan Dogra, Advocate General, with Mr. V.K.Verma and Ms. Meenakshi Sharma, Addl. A.Gs., and Ms. Parul Negi, Dy. A.G.

For the respondents : M/s B.S.Attri, Ashish Verma, Naveen K. Bhardwaj and A.S. Thakur, Advocates, for respective respondents.

Tarlok Singh Chauhan, Judge (oral)

Since all these appeals have been preferred against a common award, the same are taken up jointly for disposal.

2. Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was published in the Rajpatra on 7.9.2005 for acquiring land for construction of Manali-Kanyal Road. It was followed by other requisite notification under Sections 6 and 7 of the Act and award was finally made by the Land Acquisition Collector on 24.7.2009. The award was passed on the average of five years value according to which the compensation was awarded on the basis of classification of the land.

3. The respondents/land-owners feeling aggrieved and dissatisfied with the award, claimed enhancement of the same by filing Reference Petitions under Section 18 of the Act. These petitions were allowed by learned District Judge, Kullu and he awarded compensation at the rate of ₹ 2,00,000/- per biswa irrespective of the classification of the land. It is this award which has been challenged in all these appeals before this Court.

4. It is argued by learned Advocate General that the award passed by learned Court below is not only highly excessive but the learned Court below has been unnecessarily influenced by the

precedent situation little realising that at the time of acquisition, the lands had no commercial value. He further argued that the award was not maintainable in teeth of the judgment passed by this Court in RFA No. 45 of 2007 decided on 17.9.2009 titled Jeet Ram vs. State of H.P. where this Court had awarded a sum of ₹ 1,17,391.50 paise per biswa for the land acquired for the purpose of construction of sewerage treatment plant and this sewerage plant was situated adjoining to the police station and Judicial Court Complex Manali and was the more valuable than the acquired land.

5. It was contended that the award was required to be passed on the basis of the records maintained by the Government particularly the average market price worked out on the basis of average value of five years and was further required to be determined on the basis of classification of the land, rather than awarding a lumpsum compensation irrespective of such classification.

6. I have heard the learned counsel for the parties and have also gone through the records of the case carefully.

7. Insofar as the fixation of price of the land is concerned, the claimants in support of their claim had examined Tara Chand as PW-1, who tendered his affidavit Ex.PW-1/A. He had testified that the acquired land was situated adjacent to Manali Bazar and there were about 40-50 hotels and Resorts constructed in this area. He further testified that Gumti Dass and Smt. Krishna Kanta had sold eight biswas of land for ₹24,20,000/- in favour of Kartik Retreat Private Ltd. on 30.10.1999. He also testified that Jindu Ram had also sold his land measuring 1-3-13 bigha for ₹36,00,000/- in favour of M/s Akhnoor Hotel Pvt. Ltd. on 26.8.1995. He also relied upon the award passed

by this Court in RFA No. 45/2007 dated 17.9.2009 Ex.PW1/B. Ex.PW1/C is a sale deed dated 26.8.1995 whereby eight biswas of land had been sold for ₹24,00,000/- in the same phati. Vide Ex.PW1/D, which is a sale deed dated 29.10.1999, one biswa of land was sold for a sum of for ₹2,34,782/-. Similarly, vide Ex.PW1/E, which is a copy of sale deed dated 13.10.1999, an area of four biswas of land was sold for a sum of for ₹4,00,000/-.

8. While on the other hand, the appellants herein did not choose to lead any oral evidence and produced on record the sale deed Ex. R1 dated 25.11.2004 whereby seven biswas of land had been sold for a sum of for ₹1,02,500/- and another sale deed Ex.R3 dated 28.5.2005 whereby land measuring four biswas was sold for consideration of for ₹4,25,000/-. But then, no reliance can be placed upon these sale deeds, which have only been tendered by the appellants since no material has been placed on record to prove similar use, size, nature and potential of the acquired land with that of exemplar sale deeds supra.

9. This Court while dealing with in similar case relating to acquisition of land for construction and widening of the existing road in RFA No. 351 of 2008 decided on 17.10.2014 observed as follows:

“11. Once the land was acquired for construction and widening of the existing road, the relevant factors of each of the plot like its location, size, shape and potentiality were similar and, therefore, these had to be assessed uniformly irrespective of its classification. While determining the value of land, the main factor is potentiality, which undisputedly was same in respect of all the plots of acquired land, as all of them could be used for establishment of commercial units, guest houses, residential houses etc. as these lands already abutted the existing Highway. This approach is not pragmatic but is also logical. In this regard,

reliance can be placed on **Land Acquisition Collector Vs. Sukhdev Singh, 1995 (1) SLC 214**, paragraph 11 of which reads as under:

“11. While determining the market value of the acquired land on the basis of comparable sale transactions, the factors which are required to be kept in view have been laid down by Supreme Court in Chimanol Hargovinddas v. Special Land Acquisition Officer, Poona and another, AIR 1988 SC 1652 :-

(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer at the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reserve the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it,

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication or the notification under section 4 of the Land Acquisition Act (dates of Notifications under sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market land is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the

most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land).

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations :-

(i) proximity from time angle ;

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors :

- 1. Smallness of size.*
- 2. Proximity to a road.*
- 3. Frontage on a road.*
- 4. Nearness to developed area.*
- 5. Regular shape.*
- 6. Level vis-a-vis land under acquisition.*
- 7. Special value for an owner on an adjoining property to whom it may have some very special advantage.*

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do....."

The learned Judges of Supreme Court have further pointed out that valuation of these factors depends upon

the facts of each case and there cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide."

12. In so far as the contention of the learned Advocate General that the market value of different plots of acquired land was required to be assessed differently and not at a flat rate is concerned, it has to be borne in mind that the purpose of acquisition was for construction and widening of National Highway- 20. This aspect of the matter has already been dealt with by learned Division Bench of this Court in **Land Acquisition Collector** case (*supra*) wherein it has been held as under:

13. We do not find any substance in the submission of the learned Advocate General that the market value of different plots of acquired land was required to be assessed differently and not at flat rate, keeping in view the factors, such as, location, shape, size and potentiality etc. etc. of each plot of acquired land as he has failed to point out how these factors were different in respect of each plot of acquired land. Rather, we find that it is proved on record that all the plots of acquired land are situated adjacent to national highway and the relevant factors of each plot are similar keeping in view the purpose of construction of Barog by-pass road, for which the land was acquired. The main factor is potentiality, which was undisputedly same in respect of all the plots of acquired land, as all of them could be used for the establishment of commercial units, guest houses and residential houses.

14. Our attention is drawn to the latest judgment of the Supreme Court in *M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (deceased) by L. Rs. and others*, AIR 1994 SC 1160, which lays down that if there is evidence that the relevant factors, such as, location, shape, size, potentiality etc. etc. of one plot of acquired land widely differ from other plots of acquired land, then, the market value of each plot of acquired land has to be determined independently because 'differential factors' relating to different plots of acquired land greatly affect their value. But in the appeals in hand, such evidence is lacking that there were variations in "differential factors" of each plot of acquired land. Therefore, we have no hesitation to approve the determination of the market value of the acquired land at a flat rate of Rs. 15,000 per Bigha by the District Judge.

15. We find that in *M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (Deceased) by L. Rs. and others (supra)*, approving 'Comparable Sales Method of Valuation of Land' as most favored method, the learned Judges of Supreme Court have reiterated that :-

".....the comparable sale must, firstly be genuine, secondly it must have taken place at a time proximate to the date of publication of the

preliminary notification under section 4 (1) of the Act, thirdly the land sold under the sale must be similar to the acquired land, and fourthly the land sold under the sale must be in the vicinity of the acquired land. It has, therefore, to be noted that the location, size, shape, tenure, user or potentiality of land under comparable sale, if do not compare favourably with the acquired land, price fetched in comparable sale cannot furnish the 'price basis' for determining the market value of the acquired land. However, if any differing feature or factor in a land covered by comparable sale admits of adjustment in terms of money, depending on whether it is plus factor or minus factor, the market value of the acquired land is determined either by increasing its price or decreasing its price vis-a-vis the price fetched for land under comparable sale. What applies to comparable sale, equally applies to comparable award, if such award is relied upon as that furnishing a price basis for determination of the market value of the land, cannot be disputed."

10. Bearing in mind the aforesaid exposition of law and keeping in view the principles laid down therein, it would be seen that this Court in RFA No. 45 of 2007 had awarded compensation at the rate of ₹1,17,391.50 paise per biswa, which land had been acquired in the year 1996 i.e. a decade earlier to the notification of acquisition issued in this case. The appellants have relied upon this award. This Court cannot loose sight of the fact that the land therein was located in the centre of the town and was approachable by road. While in the present case though the land has been found more than suitable for hotel and commercial structure, but then the purpose of acquisition was for construction of road, meaning thereby that the land was not approachable by road. On such basis, I find no fault in the award passed by learned Court below whereby 20% deduction towards developmental charges has been made. The market value on the strength of the other sale deeds Ex.PW1/C and Ex.PW-1/D comes to more than ₹2,00,000/- per biswa. Even if it is assumed that the value of the land had only increased two fold within ten years, even then the

price of the land conservatively works out to be more than ₹2,00,000/- per biswa when compared with the compensation granted by this Court in RFA No. 45 of 2007. Once this is the position, no exception can be taken to the award passed by the learned Court below.

11. For all the reasons stated above, I find no merit in these appeals and the same are accordingly dismissed leaving the parties to bear their own costs. Pending applications, if any, shall stand disposed of accordingly.

October 31, 2014.
(GR)

(Tarlok Singh Chauhan)
Judge.