

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Dated:31.08.2017

CIMA Nos.174/2007, 175/2007, 176/2007, 177/2007, 179/2007, 180/2007 and 181/2007.

c/w

CIA Nos.15/2008, 16/2008, 17/2008, 18/2008, 22/2008, 23/2008, 24/2008.

Hans Raj & ors.	vs	Collector, Assistant Commissioner, Land Acquisition
Shivdev Singh	vs	Collector, Assistant Commissioner, Land Acquisition
Ravi Kumar & ors.	vs	Collector, Assistant Commissioner, Land Acquisition
Darshan Kumar & ors.	vs	Collector, Assistant Commissioner, Land Acquisition
Babu Ram & ors.	vs	Collector, Assistant Commissioner, Land Acquisition
Babu Ram & ors.	vs	Collector, Assistant Commissioner, Land Acquisition
Sohan Lal	vs	Collector, Assistant Commissioner, Land Acquisition
Collector Land Acquisition	vs	Darshan Kumar & ors.
Collector Land Acquisition	vs	Hans Raj & ors.
Collector Land Acquisition	vs	Dhanna & ors.
Collector Land Acquisition	vs	Om Parkash & anr.
Collector Land Acquisition	vs	Babu Ram & ors.
Collector Land Acquisition	vs	Sohan Lal
Collector Land Acquisition	vs	Shiv Dev Singh

Hon'ble Mr. Justice Tashi Rabstan, Judge.

Whether approved for reporting? :

Mr. Ajay Sharma, Advocate, for claimants-appellants.

Mr. R.S. Jamwal, Dy. AG, for Collector, Assistant Commissioner, Land Acquisition.

J U D G M E N T

1. All these appeals have arisen out of seven different judgments passed by the learned Additional District Judge, Jammu, dated 16.07.2007, whereby claimants-appellants in first seven cases herein have been held entitled to increased compensation of Rs.30,000/- per kanal along with proportionate jabrana and interest as admissible under law.

2. Since common question of law and facts are involved in all these appeals, same were considered and heard together and are being disposed of by this common judgment.

3. The facts leading to filing of present Appeals, as gathered from the appeal records, are that in the year 1981 Additional Secretary to Government, Revenue Department, issued notification dated 19.10.1981 under Section 6 of the Land Acquisition Act, 1990 declaring that the land measuring 180 kanals and 9 marlas in various survey numbers situated in Village Vijaypur, Tehsil Samba, is needed for public purpose, i.e., for construction of Main Ravi Canal. The said land also included the land of claimants-appellants herein. Thereafter, the Collector passed the final award on 16.03.1995 fixing the rate at Rs.10,000/- per kanal for Hail Mera-1 and Mera-1, Rs.2000/- per kanal for Qadeem Banjar and Ghair Mumkin, Rs.5066/- for costs of trees and Rs.3367/- for costs of the shop along with jabrana @ 15% per annum. After passing of the award, claimants-appellants accepted the compensation under protest. Since they were not satisfied with the amount of compensation, claimants-appellants moved an application before the Collector Land Acquisition for making a reference and enhancement of compensation to the tune of rupees one lac per kanal being the market value of said land at the relevant point of time. The reference court, i.e., Additional District Judge, Jammu after entering upon the reference on 16.11.1995 framed the following issues:

- i. Whether the application for reference is time barred? OP Respondents
- ii. What was the market rate of land acquired by the respondent at the relevant time during the acquisition proceedings? OP Petitioners
- iii. At last to what relief the petitioners are entitled regarding the quantum of compensation. OP Petitioners

4. Thereafter, the parties were directed to lead evidence in support of their respective claims. In support of their claim, claimants-appellants herein examined as many as four witnesses, whereas Collector-respondent examined two witnesses. Reference Court after hearing learned counsel appearing for the parties and examining the evidence led, decided the issues in favour of claimants-appellants herein and against the Collector-respondent. Consequently, the reference came to be allowed and the reference Court of learned Additional District Judge, Jammu enhanced the compensation to Rs.30,000/- per kanal along with jabrana @ 15% and interest as admissible under law. Feeling aggrieved, the present appeals as well as cross appeals have been filed by the claimants-appellants as well as Collector Land Acquisition, Kathua against the judgment/award passed by the reference Court.

5. I have heard learned counsel appearing for the parties and perused the files as well as record of learned reference Court.

6. Admittedly, one of the witnesses produced by the claimants-appellants, namely, PW Hasham Ali had deposed before the reference Court that his land too was acquired by the Collector in 1980, which had fallen within the Notified Area Committee, Vijaypur. He further deposed that value of his land at that time was assessed at Rs.30,000/- per kanal by the then Tehsildar and, accordingly, award came to be passed by the then Assistant Commissioner Agrarian vide No.2/2A/80-81/112-13 dated 30.06.1981. The record also reveals that his deposition was neither contradicted nor challenged by the Collector; meaning thereby the statement of said witness was accepted by the Collector to be conclusive in nature, as the said statement was having high evidentiary value. Thus, once the Collector had himself assessed the land at the rate of Rs.30,000/- per kanal, and, accordingly, passed the award on 30.06.1981, then how could he assess value of the land in the same Notified Area Committee of Vijaypur at the rate of Rs.10,000/- per kanal that too on 16.03.1995 when he passed the final

award, whereas certainly it ought to have been on higher side from Rs.30,000/- per kanal after a considerable lapse of time of more than fourteen years since the year 1981. Further, the record reveals that the Collector had failed to produce any evidence on record so as to show the average rate at the time of acquisition of land-in-question. Also, the evidence as well as record reveals that the area had been fast developing where the land-in-question had been acquired.

7. Further, one of the witnesses, namely, PW Dheru Ram had deposed that the market value of the land-in-question in the year 1980 was between Rs.30,000/- to Rs.35,000/- per kanal. His statement is also corroborated by the fact that in the year 1981, the then Assistant Commissioner Agrarian vide No.2/2A/80-81/112-13 dated 30.06.1981 had passed an award of Rs.30,000/- per kanal in the same area after the then Tehsildar had assessed the market value of the land. Therefore, I find great significance in the statement of said PW Dheru Ram. PW Dheru Ram also deposed that in the year 1986-87 the market value of the land-in-question was about Rs.80,000/- per kanal, whereas, another witness, namely, PW Kuldeep Raj had deposed that in the year 1985 the market value of the land-in-question was rupees one lac per kanal.

8. Even one of the witnesses, namely, DW Joginder Pal, Patwari, produced by the Collector, deposed that GT road is just 300 meters away from the acquired land, whereas road to Ram Garh also goes through the survey number where the land-in-question has been acquired. He further deposed that in two survey numbers of the acquired land, market of Vijaypur town has come up, and some portion of the acquired land is with the market, whereas some is with the road. He has also deposed that the nature of land is *warhal awal* and not banjar, so the value of *warhal awal* is more. Even he has deposed that the rate of land has increased for the last four/five years.

9. Another witness, namely, DW ID Padha, produced by the Collector deposed before the reference Court that market of Vijaypur town is on one side,

whereas the acquired land is on the other side. He further deposed that even some portion of the acquired land is near the road; meaning thereby even as per the deposition of witnesses produced by the Collector, the acquired land had vast/high potential value for commercial activities.

10. Thus, what transpires from the above discussion is that instead of opposing the claim of claimants-appellants, even both the witnesses produced by the Collector have supported their claim.

11. It is very strange and shocking that in the year 1981 an award of Rs.30,000/- per kanal is passed by the Assistant Commissioner Agrarian vide No.2/2A/80-81/112-13 dated 30.06.1981, whereas after a considerable lapse of more than fourteen years, Collector passes an award of Rs.10,000/- per kanal on 16.03.1995, that too in the same Notified Area Committee of Vijaypur with respect to the land having high commercial value; which is just 300 meters away from GT road; even road of Ram Garh goes through one of the survey numbers of the acquired land; in two survey numbers of the acquired land market of Vijaypur town has come up; some portion of the acquired land is with the market, whereas some is with the road. Not only this, even the nature of land is '*warhal awal*' and not '*banjar*', so certainly the value of '*warhal awal*' is more. So going by the market trend, population aspect and the nature of land-in-question having high potential of commercial activities, the value of land-in-question must had been increased to many folds between 1981 to 1995. However, despite these factual aspects, the Collector decreased the value of land from Rs.30,000/- per kanal in the year 1981 to Rs.10,000/- per kanal in the year 1995.

12. Further, the Chairperson, District Valuation Board/Deputy Commissioner, Samba has issued Notification No.DCS/SQ/2017-18/85-90 dated 04.04.2017 notifying rates of immovable property for the year 2017-18 in respect of District Samba.

13. It is admitted position that the land-in-question falls within the Notified Area Committee, Vijaypur, which is an urban area in terms of the said notification. The witnesses produced by the Collector also deposed before the Reference Court that market of Vijaypur town has come up in two survey numbers of the acquired land; some portion of the acquired land is with the market; some is near the road, whereas some is with the road and even road to Ram Garh also goes through one of the survey numbers of the land-in-question; meaning thereby the land-in-question is having residential as well as commercial value in terms of the said notification itself.

14. Now, what is to be seen here, that in terms of the said notification the Government has fixed the minimum value of land per kanal for residential purposes within the Notified Area Committee, Vijaypur is 17.10 lacs (Rs.17,10,000/-) per kanal and maximum value is 21.40 lacs (Rs.21,40,000/-) per kanal. Whereas, the minimum value of land per kanal for commercial purposes within the Notified Area Committee, Vijaypur is 23.40 lacs (Rs.23,40,000/-) and maximum value is 28.40 lacs (Rs.28,40,000/-) per kanal. The acquired land is 180 kanals and 9 marlas. Now if it is assumed that the Government intends to sale the said land for residential purposes on minimum value of Rs.17.10 lacs, it would get about Rs.30,78,00,000/- (thirty crores and seventy eight lacs). And, for commercial purposes on minimum value of Rs.23.40 lacs, the sale amount which the Government will get would be about Rs.42,12,00,000/- (forty two crores and twelve lacs).

15. Here, in the year 1981 the Government acquired 180 kanals and 09 marlas of land and the final award came to be passed in the year 1995 awarding Rs.10,000/- per kanal. In this way, for 180 kanals of acquired land, the Government is paying a paltry sum of rupees eighteen lacs only, whereas now as on today, i.e., 31.08.2017, the Government is getting about Rs.30,78,00,000/- on minimum value for residential purposes, and about Rs.42,12,00,000/- on

minimum value for commercial purposes, thus, within a period of twenty two years, it is getting a whopping profit of rupees thirty crores and sixty lacs for residential purposes, or rupees forty one crores and ninety four lacs for commercial purposes. Even this amount is on minimum value of the land fixed by the Government itself, and it may go too high if I take the value on higher side for residential as well as commercial purposes.

16. Now I come to a year earlier Notification issued by the Chairperson, District Valuation Board/Deputy Commissioner, Samba vide No.DCS/SQ/15-16/1433-38 dated 31.03.2016 notifying rates of immovable property for the year 2016-17 in respect of District Doda.

17. Here, the minimum value of land per kanal for residential purposes within the Notified Area Committee, Vijaypur was 11.40 lacs (Rs.11,40,000/-) and maximum value was 14.28 lacs (Rs.14,28,000/-) per kanal. Whereas, the minimum value of land per kanal for commercial purposes within the Notified Area Committee, Vijaypur was 15.60 lacs (Rs.15,60,000/-) and maximum value was 18.60 lacs (Rs.18,60,000/-) per kanal; meaning thereby the Government within a period of just one year enhanced the rates from minimum value of Rs.11,40,000/- to straightway Rs.17,10,000/- and maximum from Rs.14,28,000/- to Rs.21,40,000/- per kanal for residential purposes; and from minimum value of Rs.15,60,000/- to straightway Rs.23,40,000/- and maximum from Rs.18,60,000/- to Rs.28,40,000/- per kanal for commercial purposes. Thus, within a period of just one year, the Government has straightway enhanced the value/price of land including the land-in-question by 50% and more. However, in the present case the claimants were paid only a paltry amount of Rs.10,000/- per kanal. Thus, this is nothing but a sheer exploitation of poor public at the hands of none else but by the Government itself. The Government as a welfare state cannot be expected to adopt different parameters for fixing rates of the same land – one for itself and a different one for the claimants, whose lands

have been acquired by the Government. Therefore, in the given circumstances and in order to do comprehensive justice, least which could be done for the claimants is that the rate fixed by the Government for Rs.10,000/- per kanal in the year 1995 is enhanced to Rs.80,000/- per kanal only as against the prevailing rate for the same land which is now fixed by the Government itself at Rs.17,10,000/- per kanal on minimum side and Rs.21,40,000/- per kanal on maximum side for residential purposes, whereas, Rs.23,40,000/- per kanal on minimum side and Rs.28,40,000/- per kanal on maximum side for commercial purposes.

18. Therefore, in view of what has been discussed above, I deem it proper to allow the appeals filed by the claimants-appellants in first seven cases herein and modify the judgments passed by the reference Court of learned Additional District Judge, Jammu. Accordingly, the appeals being CIMA Nos.174/2007, 175/2007, 176/2007, 177/2007, 179/2007, 180/2007 and 181/2007 filed by the claimants are allowed and the judgments of reference Court of learned Additional District Judge, Jammu are modified to the extent that the claimants are entitled to receive compensation in respect of their land at the rate of Rs.80,000/- (Rupees eighty thousand) per kanal along with Jabrana at the rate of 15% and interest at the rate of 7% per annum. The claimants would be entitled to be paid increased rate of Rs.80,000/- per kanal after deducting the amount already paid to them along with proportionate Jabrana and interest @ 7% from the date of passing of the award, i.e., 16.03.1995 till its final realization. Consequently, the appeals filed by the Collector, i.e., CIA Nos.15/2008, 16/2008, 17/2008, 18/2008, 22/2008, 23/2008, 24/2008 are dismissed.

Registry to return the record to the learned Dy. A.G. against proper receipt.

Jammu
Dated:31.08.2017
(AnilSanhotra)

(Tashi Rabstan)
Judge

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Dated:06.07.2017

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Heard. Reserved.

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(AnilSanhotra)

(Tashi Rabstan)
Judge