

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No.406 of 2010 alongwith RFA Nos.  
172/2010, 173/2010, 175/2010, 176/2010,  
177/2010, 179/2010, 180/2010, 181/2010,  
183/2010, 192/2010, 405/2010 and  
479/2010

Judgment reserved on: 13.12.2016

Date of Decision: 28.2.2017.

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1. RFA No. 406/2010

General Manager Northern Railway ..Appellant

Versus

Om Prakash & others ..Respondents

2. RFA No. 172/2010

Satish Kumar & others ..Appellants

Versus

Land Acquisition Collector and another ..Respondents

3. RFA No. 173/2010

Joginder Kumar and another ..Appellants

Versus

Land Acquisition and another ..Respondents

4. RFA No. 175/2010

Satish Kumar & others ..Appellants

Versus

Land Acquisition Collector and another ..Respondents

5. RFA No. 176/2010

Bimla Devi and another ..Appellants

Versus

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Land Acquisition Collector and another ..Respondents

6. RFA No. 177/2010

Om Prakash and others ..Appellants

Versus

Land Acquisition Collector and another ..Respondents

7. RFA No. 179/2010

General Manager Northern Railway ..Appellant

Versus

Kashmiri Lal and others ..Respondents

8. RFA No. 180/2010

General Manager Northern Railway ..Appellant

Versus

Santosh Kumar and others ..Respondents

9. RFA No. 181/2010

General Manager Northern Railway ..Appellant

Versus

Santosh Kumar and others ..Respondents

10. RFA No. 183/2010

General Manager Northern Railway ..Appellant

Versus

Joginder Kumar and others ..Respondents

11. RFA No. 192/2010

General Manager Northern Railway ..Appellant

Versus

Satish Kumar and others ..Respondents

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12. RFA No. 405/2010

General Manager Northern Railway ..Appellant

Versus

Bimla Devi and others ..Respondents

13. RFA No. 479/2010

General Manager Northern Railway ..Appellant

Versus

Mast Ram and others ..Respondents

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Coram:

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

*Whether approved for reporting?<sup>1</sup> Yes*

For the Appellant: Mr. Rahul Mahajan, Advocate for General Manager Northern Railway-appellant in RFA Nos.179/2010, 180/2010, 181/2010, 183/2010, 192/2010, 405/2010, 406/2010 and 479/2010.

Mr. Ajay Sharma, Advocate, for the appellants in RFA Nos.172/2010, 173/2010, 175/2010, 176/2010 and 177/2010.

Mr. Neeraj Sharma, Deputy Advocate General for the state of H.P.

For the Respondents: Mr. Rahul Mahajan, Advocate for General Manager Northern Railway-respondent In RFA Nos.172/2010, 173/2010, 175/2010, 176/2010 and 177/2010.

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*Whether reporters of the local papers may be allowed to see the judgment?*  
*Yes*

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Mr. Ajay Sharma, Advocate for the respondents in RFA Nos. 179/201, 180/2010, 181/2010, 183/2010, 192/2010, 405/2010, 406/2010 and 749/2010.

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**Dharam Chand Chaudhary, Judge**

Common award dated 31.3.2010, passed by learned Additional District Judge, Fast Track Court, Una, District Una, in various Land References, is under challenge in these appeals. This appeal and the connected RFA Nos.179/2010, 180.2010, 183/2010, 192/2010, 405/2010 and 479/2010 have been preferred by General Manager, Northern Railway-respondent No.2 before learned Reference Court, whereas RFA Nos. 172/2010, 173/2010, 175/2010, 176/2010 and 177/2010 by Satish Kumar etc., claimants in Reference Petition No.3/05/03, Joginder Kumar and another, claimants in Reference Petition No.15/05/03, Santosh Kumar and others, claimants in Reference Petition No.2/05/03, Bimla Devi and another, claimants in Reference Petition No. 20/05/03 and Om Prakash and others, claimants in Reference Petition No.62/06/03, respectively.

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2. While respondent No.2. Northern Railway is aggrieved by the determination of the market value of the acquired land at the rate of Rs.55,000/- per Kanal by learned Reference Court below, the grouse of the claimants, as aforesaid, in a nutshell is that the market value so determined is highly inadequate, as according to them, the same should have been determined as Rs.50,000/- per Kanal and the compensation awarded to them accordingly. Therefore, while respondent No.2. has sought the relief of quashing the award, the above said claimants have sought the determination of the market value of the acquired land at the rate of Rs.50,000/- per Kanal and award of compensation to them, together with all statutory benefits accordingly.

3. It is a matter of record that the 1<sup>st</sup> respondent has acquired the land belonging to the claimants situate in villages Dangera, Kotla Khurd and Rainsary, Tehsil and District Una for the public purpose, namely, laying of Nangal-Talwara Broad Gauge railway line. Notification under Section 4 of the Land Acquisition Act issued on 21.3.1998 came to be published in the official gazette on 26.3.1998. The 1<sup>st</sup>

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respondent in the Court below, the Land Acquisition Collector (Railway) had assessed the market value of different categories of acquired land separately and awarded the compensation accordingly vide award dated 18.9.2000. In terms of the award under challenge, learned Reference Court, has, however, re-determined the market value of the all categories of acquired land at flat rate i.e. Rs.55,000/- per Kanal, irrespective of its category and classification. The compensation with respect to the structures/houses built up on the acquired land came to be re-determined separately. The compensation qua the acquired land and the structures/houses in existence thereon, so determined by the 1<sup>st</sup> respondent, was paid to the claimants accordingly. The correctness of the award, as pointed out at the outset, is the subject matter of dispute in these appeals preferred by the parties on both sides.

**4.** The commencement of the acquisition proceedings and acquisition of the land is not in dispute. The acquired land stands utilized for public purpose, namely, laying of Nangal-Talwara Broad

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Gauge railway line. The measurement of the acquired land has been given in para 1 of the impugned award.

5. The claimants in order to establish their claim for re-determination of the market value of the acquired land have produced in evidence copy of the sale deed Ext.PW1/A and that of the previous award of the Court Ext.P11. Besides, during the course of hearing arguments on their behalf, certified copy of another award passed by learned District Judge, Una in Land Reference Petition No.19 of 2005 and its connected Reference Petitions on 27.2.2010, was also pressed in service. On their behalf, reliance has also been placed on the testimony of PW2 Om Prakash-petitioner No.1 in Land Reference Petition No.62/06/03 and PW-3 Santokh Kumar-petitioner No.1 in Land Reference Petition No.2/05/03. PW-1 Ravi Kumar is Registration Clerk, who has been examined to prove the certified copy of the sale deed Ext.PW1/A, whereas PW-3 Kamal Dev is Numberdar of village Dangera and Gurmel Singh PW-5 is a person, who allegedly purchased land 3½ Kanals in village Dangera from Gian Chand etc. in a sum of Rs.1,46,000/-.

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6. On the other hand, the respondents have examined Joginder Singh, Kanungo office of Land Acquisition Collector (Railway)-respondent No.1 and RW2 Ashok Kumar Patwari, Patwar Circle Dangera.

7. The claimants with the help of the evidence they produced have tried to explain that the utility and potentiality of their land acquired by the respondent is better than the land situated in village Rainsari, acquired for the same public purpose and qua which vide award Ext.P1, the market value has been determined by learned Reference Court at the rate of Rs.25,000/- per Kanal. With the help of the award dated 27.2.2010 passed by learned District Judge, Una, in Land Reference pertaining to acquisition of the land for the same public purpose, situated in village Basal, an effort has been made to persuade the Court that they are also entitled to the award of compensation at the rate of Rs.75,000/- per Kanal, of course without producing any evidence that the potentiality and quality of their land is similar to that of acquired land in village Basal.



8. Learned trial Court below though has not taken into consideration the solitary sale instance Ext.PW1/A produced in evidence on behalf of the claimants, however, on the basis of previous award Ext. P-11 passed by learned Addl. District Judge in respect of the land acquired in village Rainsary and another award passed by learned District Judge, Una on 27.2.2010, in Land Reference petition No.19/05 and its connected Reference Petitions in respect of the land acquired in village Bassal, has proceeded to assess the market value of the acquired land belonging to the claimants herein at the rate of Rs.55,000/- per Kanal.

9. The respondent-Northern Railway has questioned the legality and validity of the impugned award on the grounds, inter-alia, that the re-determination of the market value of the acquired land irrespective of its nature and category is bad in law being beyond the pleadings as well as the evidence produced by the parties on both sides. The testimony as has come on record by way of statements of RW1 and RW2 has erroneously been brushed aside. The average certificate Ext.RW2/A qua the price of land in

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village Dangera is also ignored without assigning any reason. Learned Court below has failed to understand the just and proper compensation determined by the land Acquisition Collector, keeping in view the potentiality, nature and character of the acquired land as well as the use to which it was being put. Since the Land Acquisition Collector had assessed the market value of different categories of land separately, therefore, re-determination of the same at flat rates i.e. at the rate of Rs.55,000/- per Kanal, has resulted in prejudice to the respondent-beneficiary. The claimants have also been awarded 20% of the awarded amount erroneously on account of the so called severance of their holdings irrespective of there being no evidence produced in this regard. There being no evidence that the potentiality as well as the utility of the acquired land was similar to that of the land acquired in village Rainsary, the previous award Ext. P11 could have not been considered at all. The award dated 27.2.2010 passed by learned District Judge, Una in Reference Petition 19/05 and its connected matters was erroneously made basis for re-determination of the

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market value of the acquired land for want of evidence that the utility and potentiality of the acquired land in village Basal was similar to that of the land belonging to the claimants situated in village Dangera. Since the claimants have received the compensation without raising any protest qua determination of the market value of the acquired land by the Land Acquisition Collector, therefore, references should have been dismissed.

**10.** Now, if coming to the grouse of the appellants, as aforesaid, preferred by some of the claimants, it seems to be that the market value of the acquired land should have been determined as Rs.50,000/- per Kanal and the compensation awarded to them accordingly.

**11.** Mr. Rahul Mahajan, Advocate, learned counsel representing the respondent-Northern Railway has mainly emphasized that for want of cogent and reliable evidence to show that the potentiality and utility of the acquired land in village Basal is similar to that of the claimants situate in village Dangera, Kotla Khurd and Rainsary etc., the award dated 27.2.2010

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which pertains to the acquisition of land in village Basal could have not been made basis at all to determine the market value of the acquired land in these matters. Mr. Mahajan has also argued that even the previous award Ext.P11 could have not been relied upon to determine the market value of the acquired land, as according to him, no cogent and reliable evidence has come on record to show that the potentiality and utility of the acquired land was similar to the acquired land situated in village Rainsary, to which award Ext.P11 pertains. Also that the award dated 27.2.2010 qua the acquired land situated in village Bassal should have also not been considered for want of requisite evidence nor the same being part of record. It has also been urged that there being no evidence qua the claimants having suffered with any loss on account of severance of their holdings, 20% over and above the compensation assessed by learned Court below should have not been granted to them.

**12.** On the other hand, Mr. Ajay Sharma, Advocate, learned counsel has urged that the land in question acquired long back in the year 1998 and the

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claimants being poor people, the impugned award calls for no interference by this Court in the appeals preferred against the same by the beneficiary-respondent No.2.

**13.** The claimants in the appeals they preferred against the impugned award had sought the re-determination of the market value of the acquired land at the rate of Rs.50,000/- per Kanal. The challenge so laid to the impugned award is absolutely baseless and without any application of mind for the reason that learned Reference Court below has determined the market value of the acquired land above Rs.50,000/- i.e. Rs.55,000/- per Kanal. Therefore, neither Mr. Sharma could substantiate such claim during the course of arguments nor this Court finds any merit in RFA No.181/2010, 172/2010, 173/2010, 175/2010, 176/2010 and 177/2010, preferred by some of the claimants against the impugned award. Therefore, these appeals are accordingly dismissed.

**14.** Now, if coming to the first contention urged on behalf of respondent-2-beneficiary, Hon'ble the Apex Court in Kanwar Singh and others Vs. Union of

India, (1998) 8 SCC 136, has unequivocally and in clear terms held that in order to make the previous award of the Court or the sale instance basis to determine the market value of the acquired land, the potentiality and situation of the land in two different villages is required to be proved with the help of cogent and reliable evidence. The relevant portion of this judgment reads as follows:

“9. The contention of appellants' counsel that appellants deserved to be awarded the same rate of compensation as it was awarded to the claimants of village Masoodpur and Mahipalpur, in the present facts and circumstances of the case, is not tenable. If we go by the compensation awarded to claimants of adjoining village it would not lead to the correct assessment of market value of the land acquired in the village Rangpuri. For example village 'A' adjoins village 'B', village B adjoins village 'C', village 'G' adjoins village 'D', so on and so forth and in that process the entire Delhi would be covered. Generally mere would be different situation and potentiality of the land

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situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same.”

**15.** Similar is the ratio of judgment of Hon’ble apex Court in Jai Prakash and others Vs. Union of India, (1997) 9 SCC 510.

**16.** Now, if coming to the case in hand, undisputedly, the previous award of the Court i.e. award dated 27.2.2010 passed by learned District Judge, Una in land Reference Petition No.19/05 and its connected Reference Petitions, has been taken on record by learned Court below during the course of arguments. This award has been made basis while determining the market value of the acquired land as Rs.55,000/- per Kanal. Such an approach on the part of learned Court below is not legally sustainable for the reason that the previous award of the Court in respect of the land situated in some other village acquired for the same public purpose, no doubt can be made basis to determine the market value of the other acquired land for the same purpose, however, if it is pleaded and

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proved that the potentiality and utility as well as other conditions of the acquired land in 2 different villages are the same and similar. Not only this, but the previous award could have not been made basis without the same being part of the record of the case. As a matter of fact, the claimants should have produced the award in question in evidence, may be by way of leading additional evidence and also producing other cogent and reliable evidence to show that the potentiality and utility of the land, subject matter of dispute in that award, was the same and similar to that of the potentiality and nature of the land in the case in hand. No such procedure, however, has been resorted to and as such, in the light of the law laid down by the Hon'ble Apex Court in Kanwar Singh's case supra, learned Court below has erred in law while taking the award dated 27.2.2010 of village Bassal into consideration to re-determine the market value of the acquired land at the rate of Rs.55,000/- per Kanal. Had there been any evidence produced by the claimants that the potentiality of the acquired land in village Rainsary to which award Ext.P11 pertains is similar to



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that of the acquired land, the said award certainly would have been taken into consideration while re-determining the market value of the acquired land.

**17.** The present, as such, is a case where the award dated 27.2.2010 has erroneously been made basis by learned Reference Court below and as such the determination of the market value of the acquired land at the rate of Rs.55,000/- per Kanal is not legally sustainable. The claimants are whether entitled to the relief of re-determination of the market value of the acquired land and for enhancement of compensation in respect of the same, is a question which needs to be gone into afresh in the light of the above observations and also the evidence available on record.

**18.** Therefore, the present is a fit case where the impugned award being not legally sustainable deserves to be quashed, of course with a direction to learned Reference Court below to decide the Reference petitions afresh in the light of the evidence available on record and also the observations in this judgment hereinabove at the earliest, preferably by the quarter ending 30<sup>th</sup> June, 2017. It is clarified that if the

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claimants approach the Court below to lead additional evidence to prove the award dated 27.2.2010, the application filed for the purpose be considered on merits and decided in accordance with law and uninfluenced by any observation in this judgment.

**19.** With the above observations, this appeal and its connected appeals, i.e. RFA Nos.179/2010, 180/2010, 183/2010, 192/2010, 405/2010 and 479/2010 succeed and are accordingly allowed. Consequently, the impugned award is quashed and set aside. The Reference Petitions are, however, remanded to learned Reference Court below for disposal afresh in accordance with law and in the light of the observations hereinabove. The parties through learned counsel, representing them, are directed to appear in the Court below on 23.3.2017. Registry to remit the record to the Court concerned forthwith so as to reach there well before the date fixed.

**20.** As per the record, enhanced amount of compensation stands deposited in these cases. In few of the cases, 50% thereof even stands released also in favour of the claimants. It is deemed appropriate that

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the amount so lying deposited shall remain invested in fixed deposit till the reference petitions are considered and decided afresh in terms of this judgment. No steps for recovery of the compensation already released shall also be taken either by the beneficiary or the first respondent, Land Acquisition Collector in the reference petitions.

All the appeals stand disposed of accordingly.

**February 28, 2017**  
**(ss)**

**(Dharam Chand Chaudhary),**  
**Judge**