

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

RFA No. 164 of 2012 along with RFA
Nos. 516 to 531, 551 to 557 of 2011, 79
to 82, 105 to 110 of 2012 & CO No.
1010 of 2012 in RFA No. 106 of 2012.

Judgment Reserved on: 29.8.2018

Date of Decision: 28.9.2018

1. RFA No. 164 of 2012

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Smt. Soma Devi and others. ...Respondents.

2. RFA No. 516 of 2011

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Neelam. ...Respondent.

3. RFA No. 517 of 2011

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Vinod Kumar. ...Respondent.

4. RFA No. 518 of 2011

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Balwant Singh. ...Respondent.

5. RFA No. 519 of 2011

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Vinod Kumar. ...Respondent.

6. RFA No. 520 of 2011

**H.P. Housing and Urban Development Authority (HIMUDA) &
another. ...Appellants.**

Versus

Maado. ...Respondent.

7. RFA No. 521 of 2011***H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt.Parmila Beg and others. ...Respondents.*****8. RFA No. 522 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Neesha. ...Respondent.*****9. RFA No. 523 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh.Mangat Ram. ...Respondent.*****10. RFA No. 524 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Khem Lata. ...Respondent.*****11. RFA No. 525 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Jitender Kumar. ...Respondent.*****12. RFA No. 526 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh.Rashid and others. ...Respondents.*****13. RFA No. 527 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Vinod Kumar & others. ...Respondents.*****14. RFA No. 528 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Sidhart Kaushik & others. ...Respondents.***

15. RFA No. 529 of 2011***H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Gulam Sabar & others. ...Respondents.*****16. RFA No. 530 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Munna Khan & others. ...Respondents.*****17. RFA No. 531 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Munni Lal & others. ...Respondents.*****18. RFA No. 551 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Shanti Devi. ...Respondent.*****19. RFA No. 552 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Soma Devi. ...Respondent.*****20. RFA No. 553 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt. Lajja & others. ...Respondents.*****21. RFA No. 554 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Shri Desh Raj Sharma. ...Respondent.*****22. RFA No. 555 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Shakuntla. ...Respondent.***

23. RFA No. 556 of 2011***H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sukhvinder & others. ...Respondents.*****24. RFA No. 557 of 2011*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Deepak Kumar & others. ...Respondents.*****25. RFA No. 79 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Maya Ram. ...Respondent.*****26. RFA No. 80 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Hussan Pal. ...Respondent.*****27. RFA No. 81 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Tinku Ram. ...Respondent.*****28. RFA No. 82 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Pritam Singh. ...Respondent.*****29. RFA No. 105 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt.Ajmero Devi & others. ...Respondents.*****30. RFA No. 106 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt. Satya Devi & others. ...Respondents.***

31. RFA No. 107 of 2012***H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt. Asgari & others. ...Respondents.*****32. RFA No. 108 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Sabar. ...Respondent.*****33. RFA No. 109 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Ram Rattan ...Respondent.*****34. RFA No. 110 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Sh. Hukam Singh. ...Respondent.*****35. Cross-objection No. 1010 of 2012 in RFA No. 106 of 2012*****H.P. Housing and Urban Development Authority (HIMUDA) & another. ...Appellants.******Versus******Smt. Satya Devi & Others. ...Cross-objectors/Respondents.******Coram******The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Whether approved for reporting?¹ Yes.******For the Appellant(s): Mr. Bhupinder Gupta, Senior Advocate, with Ms. Poonam Gehlot, Advocate, except in RFA No. 79 to 82 of 2012.******For the Respondent(s): Mr. Deepak Kaushal, Advocate for private respondents/cross-objectors.******Mr. Shiv Pal Manhans and Ms. Rameeta Kumari, Additional Advocate Generals, with Mr. Raju Ram Rahi, Deputy***

**Advocate General for respondent-
State.**

Vivek Singh Thakur Judge

All these appeals arising out of awards dated 11.7.2011 and 15.11.2011 passed by learned District Judge, Sirmaur, District at Nahan (herein after referred to as the Reference Court) in land Reference Petition Nos. 6-LAC/4 of 2008, 23-LAC/4 of 2008, 20-LAC/4 of 2008, 29-LAC/4 of 2008, 22-LAC/4 of 2008, 26-LAC/4 of 2008, 40-LAC/4 of 2008, 24-LAC/4 of 2008, 28-LAC/4 of 2008, 25-LAC/4 of 2008, 21-LAC/4 of 2008, 1-LAC/4 of 2008, 17-LAC/4 of 2008, 3-LAC/4 of 2008, 15-LAC/4 of 2008, 2-LAC/4 of 2008, 4-LAC/4 of 2008, 31-LAC/4 of 2008, 32-LAC/4 of 2008, 33-LAC/4 of 2008, 34-LAC/4 of 2008, 30-LAC/4 of 2008, 35-LAC/4 of 2008, 10-LAC/4 of 2008, 12-LAC/4 of 2008, 16-LAC/4 of 2008, 9-LAC/4 of 2008, 11-LAC/4 of 2008, 7-LAC/4 of 2008, 13-LAC/4 of 2008, 14-LAC/4 of 2008, 8-LAC/4 of 2008, have been heard together and are being decided by this common judgment, as common question of fact and law, to be considered on the basis of common evidence, is involved.

2. State of Himachal Pradesh, for public purpose, i.e. for establishing Colony for industrial workers through Himachal Pradesh Housing and Urban Development Authority (hereinafter referred to as 'HIMUDA' for short), had initiated acquisition proceedings under Land Acquisition Act, 1994 (herein after referred to as the 'Act' for short) to acquire land in village

Moginand, Tehsil Nahan, District Sirmour, H.P. by issuing notification dated 1.12.2005 under Section 4 of the Act, which was published in Rajpatra on 8.12.2005 and in daily newspapers on 22.12.2005 and a public notice of the said notification was also circulated through Tehsildar, Nahan on 4.12.2005. After completing the proceedings under the Act, Land Acquisition Collector assessed uniform value of land under acquisition at the rate of ₹4,85,234/- per bigha irrespective of nature and classification of the land vide award No. 1 of 2007 announced on 1.2.2007.

3. Being aggrieved and dissatisfied with value of acquired land determined by Land Acquisition Collector, land owners had preferred Reference Petitions for enhancement under Section 18 of the Act, which have been decided by the Reference Court vide awards dated 11.7.2011 and 15.11.2011, by awarding uniform rate of ₹6,66,000/- per bighas, of the acquired land, irrespective of nature and classification of the land.

4. Beneficiary HIMUDA, being aggrieved by the enhancement awarded by the Reference Court, has preferred these appeals.

5. Vide award dated 11.7.2011, Reference Court has decided Reference Petition Nos. 1, 2, 3, 4, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41-LAC/4 of 2008 and 1-LAC/4 of 2009, enhancing the compensation to ₹6,66,000/- per bigha on the basis of evident

led in lead case LAC Petition No. 1-LAC/4 of 2008, titled Rashid Vs. HIMUDA and others. Appeals arising out of these Reference Petitions are RFA Nos. 516 to 531 and 551 to 557 of 2011.

6. Vide award dated 15.11.2011 Reference Court has decided land reference petition Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16-LAC/4 of 2008, awarding compensation on the same rate relying upon the award Ex. PX passed in LAC Petition No. 1-LAC-4 of 2008 Rashid Vs. HIMUDA and others. In these petitions, evidence was lead only in one lead case i.e. LAC Petition No. 5-LAC/4 of 2008 Ram Rattan Vs. State of H.P. Appeals arising out of these reference petitions are RFA Nos. 79 to 82 and RFA Nos. 105 to 110 of 2012.

6. Except one, none of the land owners have preferred cross-objections. Cross-objection No. 1010 of 2012 has been preferred in RFA No. 106 of 2012, which is an appeal in the set of cases decided on the basis of Rashid's case, wherein further enhancement of the compensation on the basis of evidence led in Ram Rattan's case (RFA No. 109 of 2012) has been claimed. In Ram Rattan's case except, Ex. PX passed in Rashid's case (RFA No. 164 of 2012) rest evidence is the same. Therefore, this cross-objection is also to be considered along with these appeals.

7. Acquisition proceedings in all appeals were initiated by one and the same notification issued under Section 4 of the Act with respect to the land pertaining to one and the same village i.e. village Moginand and amount of compensation was

also determined by Land Acquisition Collector vide common award No. 1 of 2007 announced on 1.2.2007. Evidence in Rashid's case, basis for awarding uniform rate in the cases under consideration in appeals, therefore, fate of Rashid's case will determine the amount of compensation payable in all cases. Thus it would be appropriate to evaluate the evidence in Rashid's case first of all.

8. In reference petitions, prayer for determining the amount of compensation at the rate of ₹20,00,000/ per bigha along with consequential statutory benefits was made on behalf of land owners/claimants. To substantiate their claim, land owners have examined four witnesses. PW-1 Pardeep Kumari Junior Engineer of HIMUDA at Nahan has proved on record that at the time of negotiation with land owners, an offer of ₹6,66,000/- was made to land owners-claimants, but the same was not accepted by them. PW-2 Vikram Gautam one of the land owners has reiterated claim on behalf of land owners, PW-3 Rajesh Malhotra is Patwari of the area concerned and PW-4 Kuldeep Singh is Economic Investigator, serving in the office of Principal Secretary of Single Window, Redressal of Grievances System, Kala Amb. Reliance has been put by land owners on sale deeds Ex. PW-2/B dated 29.9.2004, Ex. PW-2/C dated 31.5.2006, Ex. PW-2/D dated 29.4.2006, Ex. PW-2/E dated 24.5.2006 and Ex. PW-2/F dated 18.3.2006 pertaining to the same village i.e. village Moginand.

9. Beneficiary HIMUDA has examined five witnesses to rebut the claim of land owners. RW-1 Smt.Manna Devi Registration Clerk has produced sale deeds Ex. RW-1/A dated 19.7.2005, Ex. RW-1/B dated 30.11.2004, Ex. RW-1/C dated 29.10.2004, Ex. RW-1/D dated 30.11.2004 and RW-1/D dated 15.9.2004, pertaining to the land of the same village i.e. village Moginand. RW-2 Rasal Singh, Office Kanungo, has proved average value of land and jamabandi produced by HIMUDA with sale deeds Ex. RW-1/A to Ex. RW-1/E. RW-3 Chandershakher, Accounts Officer of HIMUDA has placed on record abstract of development cost Ex. RW-3/A, incurred by HIMUDA for developing the plots before putting them on sale. RW-4 Sunder Singh, Assistant Engineer HIMUDA has deposed with regard to work undertaken by HIMUDA for development of plots. RW-5 Diwan Chand Sharma, Architect HIMUDA has placed on record layout plan Ex. RW-5/A with respect to proposal of development of the acquired land for creation of colony.

10. It is contended by Mr.Bhupinder Gupta, Senior Advocate that the Reference Court, for awarding the compensation at the rate of ₹6,66,000/- per bigha, has wrongly relied upon the deposition of PW-1, Pardeep Kumari, wherein she deposed that during negotiation held with the villagers under Section 19 of the Act, Chief Executive Officer-cum-Secretary HIMUDA, in presence of Deputy Commissioner, Sirmaur and LAC HIMUDA had offered rate of ₹6,66,000/- per bigha to the villagers for all kinds of land, but the same was declined by land

owners. It is further contended that even if her statement with regard to offer of ₹6,66,000/- per bigha is considered to be correct, then also the Reference Court has committed an error considering the said amount as the base amount, as any such offer was in lump sum, inclusive of all statutory benefits and therefore, the said amount cannot be made basis for determination of compensation with further statutory benefits under the Act. On this issue, reliance has also been put on ***H.P. Housing Board Vs. Bharat S. Negi and others, (2004) 2 SCC 184***, wherein it has been held that such an offer made by beneficiary was consolidated inclusive of solatium and interest. It is further contended that there is only one sale deed Ex. PW-2/B produced by land owners, which pertains to the period proximate in time to the notification under Section 4 of the Act, whereas other sale deeds are post notification in time. Further that in sale deed Ex. PW-2/B, land measuring 6-06 bighas was sold for a consideration of ₹55,00,000/- and the land involved in the said sale deed was developed one, whereupon a structure of factory was already existing at the time of sale. In that sale deed value of land comes to be ₹8,73,015/- per bigha and as the land under acquisition is undeveloped land and therefore, in case Ex. PW-2/B is to be made basis for determining the value of land under acquisition, a deduction of at least 40% is necessary to arrive at correct value of the said land, which according to him comes to ₹5,23,809/- per bigha. For substantiating claim for deduction, he has relied upon ***Viluben Jhalejar Contractor***

(Dead) by LRs. Vs. State of Gujarat, (2005) 4 SCC 789; Trishala Jain Vs. State of Uttarakhand, (2011) 6 SCC 47; Wave Industries Private Limited Vs. Atar Singh and others, (2011) 14 SCC 745; Inderaj Singh Vs. State of Haryana, 2013 14 SCC 491; Union of India Vs. Raj Kumar Baghal Singh (Dead) through Legal Representatives and others, (2014) 10 SCC 422 and Bhupal Singh and others Vs. State of Haryana, (2015) 5 SCC 801.

11. It is true that the Apex Court in *Bharat Sing Negi's* case referred supra, has observed that offer of ₹80,000/- per bigha made by Housing Board was as consolidated amount, inclusive of solutum and interest, but the same was not taken into consideration as it had not been accepted by claimants. Therefore, in present case also the offer of ₹6,66,000/- made by beneficiary HIMUDA at the time of negotiations, which was not acceptable to the land owners, cannot be made basis for determining the amount of compensation.

12. Learned counsel for the land owners have contended that land under acquisition was situated in an area abutting to the National Highway as well as developed industrial area in the village Moginand and no deduction as is being pleaded by beneficiary HIMUDA is permissible in present case and also for the reason that keeping in view the location of the acquired land, the same had potential of being utilized by land owners themselves for raising construction for letting out or selling for residential purpose to the employees/workmen serving

in the adjacent industrial area. It is further contended that PW-1 Pardeep Kumari, who happens to be Junior Engineer with beneficiary HIMUDA, the plots created and developed on the acquired land were sold at the uniform rate of ₹3000/- per square meter, irrespective of category of land used to create those plots. As this rate, value of acquired land is at the rate of ₹24,00,000/- per bigha and even if 50% amount is deducted from the said value for incurring expenses to create and develop the plots, then also the value of undeveloped land becomes to ₹14,00,000/- per bigha and after deducting 75%, it comes to ₹7,00,000/- per bigha and therefore, instead of determining the value of land at the lower rate than the rate awarded by the Reference Court, it would be in the interest of justice to award the compensation at least at the rate of ₹7,00,000/- per bigha by exercising power of the Court under Order 41 Rule 33 C.P.C., for determining just and fair value of the land under acquisition, as it is the prime duty of the Court to award just and fair compensation. Reliance has been put on ***Narendra and others Vs. State of Uttar Pradesh and others, (2017) 9 SCC 426***, wherein in para 8, it has been held as under:-

“8. The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid

purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the State for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for "fair compensation". Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons through identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them."

13. There is no quarrel with respect to the ratio of law laid down by the Apex Court in *Narendra's* case *supra* and therefore, all these appeals arising out of one and the same notification, have been taken together for hearing and are being

decided with common judgment by awarding the same rate of compensation to all similarly situated land owners.

14. It is further contended that even if the amount of compensation is not to be determined at the rate of ₹6,66,000/- on the basis of offer made by beneficiary HIMUDA, the value of acquired land can be determined on the basis of sale deeds produced by land owners, particularly sale deed Ex. PW-2/B, wherein 6-06 bighas of land was sold for ₹55,00,000/-. According to the said sale deed, the value of land comes to ₹8,73,015/- per bigha and as no deduction is warranted towards development charges, the land owners may be awarded compensation at the rate of ₹8,73,015/- per bigha. Referring statement of PW-3 Rajesh Kumar Patwari, it is contended that land under acquisition was at a distance of 250-300 meters from National Highway and there were about 70 industries running around the said land. It is further contended that in Satya Devi's case (RFA No. 106 of 2012), the land owner has preferred Cross-objection for further enhancement of amount and determined enhanced value of land in her case is to be applied in all cases, as it is settled law that equal compensation should be paid to all whose land in the same village is acquired for one and the same purpose, particularly under the one and the same notification under Section 4 of the Act.

15. Plea of beneficiary HIMUDA that ₹6,66,000/- per Bigha was an offer of lump sum value of land including statutory benefits etc. is also rebutted by pointing out that beneficiary

HIMUDA has failed to brought on record any cogent and reliable evidence to prove that the said offer was inclusive of all statutory benefits and further that there is no cross-examination to witness PW-1, Pardeep Kumari on this count.

16. Sale deeds Ex. PW-2/C to Ex. PW-2/F have been executed and registered during 18.3.2006 to 31.5.2006, i.e. after issuance of notification dated 1.12.2005, under Section 4 of the Act and also after 22.12.2005, the date of last publication thereof and thus have rightly been ignored by the Reference Court. Transaction Ex. PW-2/B is dated 29.9.2004, which has taken place prior to issuance and publication of notification under Section 4 of the Act. According to this transaction land in village Moginand along with structure standing thereon was sold for ₹1,24,00,000/- only. The said document Ex. PW-2/B also contains a specific clause, wherein out of total sale consideration of ₹1,24,00,000/-, value of land and structure thereupon has been reflected separate, which reads as under:-

- (a) For land: Rs.55,00,000/-
(6.06 Bigha)
- (b) Building: Rs.69,50,000/-

Aforesaid transaction determines the value of land at the rate of ₹8,73,015/- per bigha.

17. It is true that fact stated in deposition of PW-1 Mrs.Pardeep Kumari that at the time of negotiation during proceeding under Section 19 of the Act a rate of ₹6,66,000/- per bigha was offered to villagers, has not been questioned in her cross-examination nor any evidence denying the said fact has

been produced by beneficiary HIMUDA. However, it is also a fact that nowhere in the statement of PW-1, Pardeep Kumari, it has come that said value was basic value for determining the compensation after adding statutory benefits thereon. Further no evidence has been placed on record on behalf of beneficiary HIMUDA to establish that the said offer was inclusive of statutory benefits. Be that it may be. In absence of evidence in favour of either side, an offer of ₹6,66,000/- per bigha cannot be made basis for determining the value of land, particularly when the said offer was declined by land owners and also when the exemplar transaction Ex. PW-2/B having close proximity with respect to time of notification under Section 4 of the Act as well as location is available on record. As per sale deeds Ex. RW-1/A, Ex. RW-1/B, Ex. RW-1/C and Ex. RW-1/D, relied upon by beneficiary HIMUDA, value of land comes to be ₹1,96,000/-, ₹1,57,895, ₹1,45,455/- and ₹20,000/- per bigha. On the basis of these sale deeds, average value of land comes to ₹5,19,350/- per bigha. Out of these sale deeds, one sale deed Ex. RW-1/A dated 19.5.2005 has been executed within a year from the date of issuance of notification under Section 4 of the Act and rest of three sale deeds dated 30.11.2004, 29.10.2004 and 15.9.2004 have been executed on a date beyond one year from the date of notification under Section 4 of the Act, therefore, sale deeds Ex. RW-1/B, Ex. RW-1/C and Ex. RW-1/D are not proximate in time of notification under Section 4 of the Act. Even if, all these sale deeds are taken into consideration with sale deed Ex. PW-2/B

relied upon by the land owners, the average value of land comes to ₹2,78,473/- per bigha, which is less than ₹4,86,234/- per bigha, the value determined by Land Acquisition Collector.

18. Exemplar transactions RW-1/A to Ex. RW-1/D relied upon by beneficiary HIMUDA, determines the value at a rate, which is lower than the rate awarded by the Land Acquisition Collector and therefore, the said exemplar deeds are not to be considered for determining the value of acquired land as the value determined on the basis of these exemplar transactions will be violative of provisions of Section 25 of the Act, which provides that the Court cannot determine the value of acquired land lesser than the value determined by Land Acquisition Collector.

19. Plea of beneficiary HIMUDA that for admission of PW-1 Pardeep Kumari in her cross-examination that compensation at the rate of ₹4,68,234/- per bigha was given rightly after considering the relevant factors, is also not tenable for the reasons that PW-1 is not the land owner, but an employee of beneficiary HIMUDA and thus her deposition justifying the value of land determined by Land Acquisition Collector cannot be basis for arising value of acquired land ignoring other relevant evidence on record, but has to be considered as a whole along with other evidence.

20. As per deposition of RW-4, Sunder Singh, after acquiring the land, HIMUDA has developed it by creating plots, constructing roads, providing water supply, coverage, septic

tank, pump house and electricity etc. which was not existing thereon at the time of acquisition and further that acquired land is not touching National High Way and beneficiary HIMUDA has constructed a link road to connect the acquired land with National High Way. He has further stated that industries are also decreasing in the area, as the tax free period provided by State to industry is over and therefore, market value of properties has also decreased in the area. He has further deposed that industrial area is at Kala Amb, which is about six kilometers away from village Moginand. Despite lengthy cross-examination, no where denial the development work carried out by the beneficiary HIMUDA as deposed by this witness in his examination-in-chief, has been suggested. The trend of cross-examination is to question the quantum of development work undertaken by the beneficiary HUMUDA on the spot.

21. RW-3 has deposed that beneficiary HUMUDA has incurred estimated cost for developing the plot at the rate of ₹2,956/- to ₹3,000/- per square meters. Suggestion that abstract of cost (tentative) for developing the plots Ex. RW-3/A, has been prepared on the basis of bogus figure, has been denied by this witness. In rest of cross-examination, the expenses mentioned under various heads under RW-3/A have been put to this witness, which have been admitted by him.

22. RW-5 Diwan Chand is Architect of beneficiary HIMUDA, who has proved the layout Ex. PW-5/A prepared by him with respect to acquired land with further deposition that

50% of acquired land was kept for development, amenities etc. and only 50% land was to be utilized for construction of houses and there is also Low Tension (L.T.) line in the land in question and land beneath the said line is also not useable for any purpose. He has also stated that to connect the acquired land with National Highway a link road was constructed by beneficiary HIMUDA.

23. RW-2, Rasal Singh was Kanungo at the time of acquisition of land. He has reiterated the average value and jamabandies enclosed with sale deeds Ex. RW-1/A to RW-1/E. In his cross-examination he has stated that at the time of acquisition, value of land was ₹20-25 lacks per bigha. His statement is contrary to the documents prepared and proved by him and there is also no other corroborative evidence substantiating the version of this witness.

24. PW-2 Vikram Gautam, land owner in his examination-in-chief has tendered his affidavit Ex. PW-2/A in evidence and has reiterated the claim of land owners as detailed supra. Nothing material favourable to beneficiary HIMUDA has come on record in his cross-examination.

25. PW-3 Rajesh Kumar Patwari has deposed that acquired land is at a distance of 250-300 meters from National Highway and there are about 70 industries near village Moginand. However, he has further clarified that this number includes industries of village Jatun and Ogli also. He has deposed that 10+2 school, Central Bank etc. are also there in

village Moginand and at a distance of 2-2.5 kilometers there are Law College, B.Ed. College and IIT and area of village Moginand to Kala Amb is a developed area. He has also deposed that land under acquisition is irrigated cultivable land. In cross-examination, he has admitted that acquired land is not abutting to the National Highway. Rest of the suggestions, disputing his statement made in examination-in-chief, have been denied by him. So far admission with regard to distance from National Highway is concerned, i.e. also not contrary to his examination-in-chief, wherein he has stated that acquired land is situated at distance of 250-300 meters from National Highway.

26. PW-4 Kuldeep Singh has placed on record the list of industries Ex. PW-4/A situated in village Moginand, Ogli, Main Thapal, Shoro and Kala Amb. In cross-examination, he has expressed his ignorance about the number of industries in working condition and number of closed industries.

27. From above discussion, it is clear that Ex. PW-2/B is only relevant exemplar transaction to be taken into consideration, wherein the land involved therein was also having structure of factory standing thereon, meaning thereby that the said land had been already been developed for establishing the factory and thus was capable of fetching higher price than the land yet to be developed. However, it is also to be taken in mind that buyer may also have to incur some expenditure for altering in existing structure for making it suitable for his purpose and thus factor is also relevant to be considered for determining

percentage of deduction on account of development charges. On this count, buyer definitely may have agreed to settle the sale consideration on lesser value. Further Ex. PW-2/B is in pursuant to auction and is not a transaction with free will of previous owner, but under duress. It has also been proved on record that beneficiary HIMUDA had undertaken number of developmental work like construction of road, arrangement for water and electricity supply, sewerage facility etc. and leveling plots to develop and utilize the land as a residential colony for workers and substantial amount has also been spent by beneficiary HIMUDA for the said purpose. Further the amount so spent is not to be reimbursed from the land owners, as the land has not been developed for use of land owners and further they are not having any share in the amount fetched by the beneficiary HIMUDA after selling the plots. Fixing the price for selling the plots is in the domain of beneficiary HIMUDA, in which the land owners have no role to play. However, right of land owners is only to have the fair compensation for their land. So far as deduction of development charges is concerned, the same is also permitted in certain cases to determine the fair value of land with reference to the purpose of acquisition of land and development expenditure incurred for utilization of land for the said purpose and where no such development work is necessary like construction of road and acquired land is to be used, as it is existing at the time of acquisition, no development charges are permitted to be deducted. But at the same time, it is to be kept

in mind that deduction on account of development charges is not a reimbursement of such expenses to beneficiary from land owners, but is a factor to be considered for arriving at just and fair value of acquired land with reference to potential of the said land and thus entire expenses are not to be taken in to consideration for deduction, as the entire development cost is not to be recovered from the land owners, rather the land owners are to be paid just and fair compensation.

28. In present case the land under acquisition is not totally undeveloped or far away from the National Highway. It was surrounded by industries and having potential for developing it privately also by land owners. Keeping in view facts and circumstances discussed supra, deduction of 1/3 amount from the value of land arrived at on the basis of exemplar sale deed Ex. PW-2/B would be excessive in present case. Therefore, keeping in view the entire evidence on record and the various pronouncement of the Courts, to determine the value of acquired land on the basis of exemplar sale deed Ex. PW-2/B after deducting 25% amount for development charges, which comes to be ₹6,54,761/- say ₹6,55,000/-. Therefore, award passed in RFA No. 526 of 2011, titled Rashid and another along with connected matter, deserves to be modified to the aforesaid extent.

29. In case of Ram Rattan (RFA No. 109 of 2012) and its connected matters, the Reference Court has determined the value of land relying upon the award Ex. PX i.e. award passed

by Reference Court in Rashid's case. It is undisputed that except the award Ex. PX, rest entire evidence in Ram Rattan's case is identical to the Rashid's case, which has already been discussed hereinabove and on the basis of which land owners in Rashid's case and its connected matters have been found to be entitled for compensation at the rate of ₹6,55,000/- per bigha. Therefore, land owners in these appeals are also entitled for the same compensation.

30. The cross-objections are also based on identical evidence discussed herein supra, therefore, the same is also disposed of in term of the appeals.

31. Accordingly, appeals filed by beneficiary HIMUDA are allowed in the aforesaid terms and cross-objection is dismissed. Therefore, land owners in all these appeals/cross-objector are held to be entitled for compensation at the rate of ₹6,55,000/- per bigha along with statutory benefits. No order to costs. Record be sent back.

28th September, 2018
(KRS)

(Vivek Singh Thakur),
Judge.