

HIGH COURT OF HIMACHAL PRADESH**Bench: Hon'ble Mr. Justice Virender Singh****Date of Decision: 1st May 2024**

RFA No. 76 of 2022

Collector Land Acquisition & Another ...Appellants**Versus****Ran Singh & others ...Respondents****Legislation:**

Sections 6, 7, 18, 23(1-A), 28, 34 of the Land Acquisition Act

Section 54 of the Land Acquisition Act

Subject: Regular First Appeal against the award dated 19.08.2011, passed by the Additional District Judge, Mandi, Himachal Pradesh, concerning the assessment of compensation for acquired land.

Headnotes:

Land Acquisition – Compensation – Assessment – Appeal Allowed – Matter Remanded for Fresh Decision – High Court of Himachal Pradesh at Shimla allowed the appeal against the award by the Additional District Judge, Mandi, H.P., in a land acquisition case. The appeal was filed on the grounds that the learned Reference Court ignored critical factors such as the nature of the land and assessed compensation based on guesswork. The High Court remanded the matter back to the Reference Court for fresh adjudication, directing it to consider the commercial potentiality of the land and assess market value appropriately, following the principles laid down by the Supreme Court regarding the use of future sale transactions in determining market value [Paras 1-16].

Market Value – Reliance on Future Sale Transactions – Judicial Caution Required – The High Court emphasized that the Reference Court should avoid relying on sale transactions that occurred after the date of notification under Section 4 of the Land Acquisition Act to determine market value, as per

Supreme Court precedent. The increase in market value post-acquisition due to development activities must be carefully considered to prevent inflated compensation [Paras 11-14].

Decision: The High Court allowed the appeal, setting aside the award of the Reference Court. The matter was remanded back to the Reference Court for reassessment of compensation, ensuring adherence to the principles of fair market valuation and procedural propriety. The Reference Court was instructed to expedite the proceedings and resolve the matter within three months.

Referred Cases:

- General Manager, OIL and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel (2008) 14 SCC 745

Principal Secretary, PWD & Others vs. Mehar Chand & Others (RFA No.174 of 2013)

Representing Advocates:

Mr. H.S. Rawat, Additional Advocate General for the appellants

Ms. Parul Negi, Advocate vice Mr. Amit K. Dhumal, Advocate for respondents No. 1(a) to 1(d)

Virender Singh, Judge (oral).

The appellants have filed the present Regular First Appeal, under Section 54 of the Land Acquisition Act, (hereinafter referred to 'as the Act'), against the award dated 19.8.2011, passed by the Court of learned Additional District Judge, Mandi, H.P. (hereinafter referred to as 'the Reference Court').

2. Vide award dated 19.8.2011, a bunch of Reference Petitions, was decided by the learned Reference Court, lead whereof was Reference Petition No. 50 of 2003, titled as, 'Kamla Devi versus Collector Land Acquisition, HPPWD & Another.'

3. Vide award dated 19.8.2011, impugned herein, by the appellant, the learned Reference Court has answered the above Reference Petitions, by granting the following relief:

“ In view of my aforesaid discussions, reference petitioners are allowed with costs and the reference petitioners are held entitled to enhance compensation at the rate of Rs. 31.30 per. Sq. meter in respect of acquired land. Further, the reference petitioners are also held entitled to the following reliefs:

“a) the petitioners shall also be entitled to solatium @ 30% on the amount as stated aforesaid,

b) the reference petitioners shall also be entitled for additional compensation @ 12% per annum under Section 23(1-A) of the Act w.e.f. 08.08.1992, the date of publication of notification till the date of award of the Collector, i.e. 7.12.1995 and

c) the reference petitioners shall also be entitled to interest under Section 28 of the Act on the amount assessed under sub section (1) of section 23 of the Act, the additional compensation worked out under sub-section (1-A) of section 23 of the Act, plus, solatium awarded under sub-section 23 of the Act, at the rate of 9% per annum on the value assessed from the date of award and thereafter, @15% per annum till the date of payment/deposit of the amount of compensation in accordance with Section 34 of the Act.”

4. Parties to the present lis are hereinafter referred to in the same manner, in which, they were referred to, by the learned Reference Court.

5. Brief facts leading to filing the present appeal, before this Court, may be summed up as under:-

5.1. The land of the petitioner Ran Singh was acquired by the State for construction of Sarori-Rissa road. The proceedings under Sections 6 and 7 of the Land Acquisition Act were conducted and ultimately, award No.18, dated 7.12.1995, was passed.

5.2. Since, the petitioner was not satisfied that the market value of the acquired land, assessed by the Land Acquisition Collector, as such, reference petition under Section 18 of the Land Acquisition Act was filed before the Land Acquisition Collector, with a request to forward the same to the learned District Judge, for adjudication.

5.3. As per reference petition, the market value of the acquired land has not been assessed, considering the commercial potentiality of the acquired land. Market value of the land in Mohal Alyana is stated to be very high. The

acquired land is stated to be adjoining to the boundaries of notified area of Sarkaghat.

6. On the basis of above facts, a prayer has been made to assess the market value of the acquired land, by considering the commercial potentiality of the same and as highlighted in the reference petition.

6. When, put to notice, respondents have contested the reference petition by filing preliminary objections that the Land Acquisition Collector has wrongly awarded the interest to the petitioner, from the date of taking possession; and the petition is time barred.

6.1 On merits, the reference petition has been contested by pleading that all the relevant factors have been considered by the Land Acquisition Collector and compensation, which was awarded to the petitioner, is higher than the market value, prevalent in Mohal Alyana, at the time of issuance of notification under Section 4 of the Act. However, factual position with regard to acquisition of land, has not been disputed.

7. From the pleadings of the parties, the learned Reference Court has framed the following issues, vide order dated 6.8.2005:

- i) *Whether the compensation assessed by the Land Acquisition Collector is inadequate, if so what is the just and adequate compensation? OPP*
- ii) *Relief.*

8. Aggrieved from the said award, the present appeal has been preferred, before this Court, mainly on the ground that the learned Reference Court, has ignored the plea of the respondents that there was no cultivable land acquired, and the amount of compensation, has been assessed, on the basis of guess work. The learned Reference Court is stated to have wrongly relied upon the revenue record, i.e. Jamabandi, in which, part of the petitioners' land, which was acquired, has been shown as 'Bagicha Kalahu faldar'.

9. Similarly, the award has been assailed on the ground that the petitioner has not produced any receipt/document, qua the damage to fruit bearing trees and non-fruit bearing trees, as well as, to the cultivated land and that the learned Reference Court has wrongly awarded the damages, without taking into account this fact.

10. On the basis of above facts, learned Additional Advocate General has prayed that the appeal may kindly be accepted and the impugned award may kindly be set aside.

11. Mr. H.S. Rawat, learned Additional Advocate General, appearing for the appellants-State has placed on record the judgment dated 25.4.2023, passed by a Coordinate Bench this Court, in a batch of petitions, lead whereof is **RFA No.174 of 2013**, titled as, '**Principal Secretary, PWD and others versus Mehar Chand & others**', whereby matters have been remanded back to the learned Reference Court, for deciding the same afresh.
12. Those appeals were filed by the Principal Secretary, HPPWD, to the Govt. of H.P., against the award dated 19.8.2011, passed by the learned Reference Court.
13. The above judgment of Coordinate Bench has been relied upon by the learned Additional Advocate General, by pointing out that the present appeal has also been filed against the award, dated 19.8.2011, passed by the learned Reference Court, which was being challenged, by way of **RFA No.174 of 2013**, along with its connected matters.
14. Vide judgment dated 25.4.2023, the Coordinate Bench of this Court, has held as under:

"11. In General manager, OIL and Natural Gas Corporation Ltd vs. Rameshbhai Jivanbhai Patel 2008 (14) SCC 745, it has been held that the assessment of market value should be avoided on the exemplar sale transactions, which have taken place after the issuance of -6- notification under Section 4 of the Act. Para-16 of the judgment reads as under:-

"16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/ acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that

area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/industrial layout will result in a higher rate of escalation in prices. As a result, if the -7- annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.” 12. In light of above exposition, the learned Reference Court was not right in assessing the market value of exemplar sale deed, which was executed after about eleven months from the date of issuance of notification under Section 4 of the Act. Noticeably, except exemplar sale deed Ext.

PW-1/A, the learned Reference Court has not placed reliance on any other evidence for assessment of market value of the land. Thus, the impugned award, passed in Reference Petitions No. 53, 58, 56 and 54 of 2003 cannot be sustained. -8- 13. Accordingly, the appeals are allowed. The impugned awards are set aside and the matters are remanded back to learned Reference Court to decide Reference Petitions No. 53, 58, 56 and 54 of 2003 afresh. Since initiation of reference petitions dates back to the year 2002, it is expected from the learned Reference Court that the above noted reference petitions will be decided by such Court with sufficient expedition and preferably within three months from the date of receipt of this judgment. Record be sent back forthwith. Pending applications, if any, also stand disposed of.”

15. Since, the present appeal has also been filed, against the said award, as such, the judgment dated 25.4.2023, passed by a Coordinate Bench of this Court, in ***RFA No.174 of 2013***, titled as, '***Principal Secretary, PWD & ors versus Mehar Chand & others***', is *mutatis mutandis* applicable to the present case.
16. As such, the present appeal is also allowed by setting aside the award impugned herein, and the matter is remanded back to the learned Reference Court to decide the same afresh, expeditiously, preferably within a period of three months, from the date of receipt of judgment, along with the records. Needless to say that the learned Reference Court shall issue notices to the parties, who are not represented before this Court, before deciding the case afresh.
17. The records be sent back.
18. The pending application(s), if any, are also disposed of.

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