

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***RFA Nos.: 306 of 2006 alongwith  
RFA No. 307/06, 207/07 to 212/07  
and RFA Nos. 215 to 224 of 2007.  
Cross Objection Nos.109/08,  
110/08 118/08***

Date of decision: 20.11.2009

RFA No. 306 of 2006 Union of India	....Appellant.
Versus	
Dhani Ram and others	....Respondents
RFA No. 307 of 2006 Union of India	....Appellant.
Versus	
Thakur Dass and others	....Respondents
RFA No. 207 of 2007 & Cross Objection No. 109 of 2008 Union of India	....Appellant.
Versus	
Amin Chand and others	....Respondents
RFA No. 208 of 2007 & Cross objection No.118 of 2008 Union of India	....Appellant.
Versus	
Santosh Kumar and others	....Respondents
RFA No. 209 of 2007 Union of India	....Appellant.
Versus	
Ram Lal and others	....Respondents
RFA No. 210 of 2007 Union of India	....Appellant.
Versus	
Ganga Dassi and others	....Respondents
RFA No. 211 of 2007 & Cross Objection No. 110 of 2008 Union of India	....Appellant.
Versus	
Farji Ram and others	....Respondents

RFA No. 212 of 2007 Union of India	....Appellant.
Versus	
Kaushalya Devi and another	....Respondents
RFA No. 215 of 2007 Union of India	....Appellant.
Versus	
Budh Ram	....Respondents
RFA No. 216 of 2007 Union of India	....Appellant.
Versus	
Bhola Dev	....Respondents
RFA No. 217 of 2007 Union of India	....Appellant.
Versus	
Shib Saran and others	....Respondents
RFA No. 218 of 2007 Union of India	....Appellant.
Versus	
Ms. Chambi and others	....Respondents
RFA No. 219 of 2007 Union of India	....Appellant.
Versus	
Chetan Ram and others	....Respondents
RFA No. 220 of 2007 Union of India	....Appellant.
Versus	
Hira Singh and others	....Respondents
RFA No. 221 of 2007 Union of India	....Appellant.
Versus	
Hari Singh	....Respondents
RFA No. 222 of 2007 Union of India	....Appellant.

Versus

Mohan Lal  
RFA No. 223 of 2007  
Union of India

....Respondents

....Appellant.

Versus

Dagu Mal (dead) through LRs and others

....Respondents

RFA No. 224 of 2007  
Union of India

....Appellant.

Versus

Lal Chand and others

....Respondents

***Coram******The Hon'ble Mr. Justice Deepak Gupta, Judge.****Whether approved for reporting?<sup>1</sup> No.*

For the Appellant (Union of India):  
(In all the appeals.)

Mr. Sandeep Sharma, Asstt. Solicitor  
General of India.

For the Respondents No.1 and 2  
(In RFA No.306/06 and 307 of 2006)

Mr. K.D.Sood, Advocate.

For the Respondent No.1  
(In RFA No. 207, 208, 211 of 2007)

Mr. B.N.Sharma, Advocate.

For the Respondent No.1  
(In RFA No. 209, 212 of 2007)

Mr. Dibender Ghosh, Advocate.

For the Respondents No.1 & 2  
(In RFA No. 217 of 2007)

Mr. P.C.Sharma, and  
Sh.B.N.Sharma, Advocates.

For the Respondents  
(In RFA Nos. 210,215,216, 218, 219,220,221,222 of 2007)

Mr. P.C.Sharma, Advocate.

For the LRs of Respondents No1 & 2.  
(in RFA No.223 of 2007)

Mr. P.C.Sharma, Advocate.

For the Respondents No. 1,2 & LR 3(a)  
(In RFA No. 224 of 2007)

Mr. P.C.Sharma, and  
Sh. B.N.Sharma, Advocate.

For the Respondent (State):  
(In all the appeals)

Mr. R.K.Bawa, Advocate General  
with Shri Vikas Rathour, Deputy  
Advocate General.

<sup>1</sup> *Whether the reporters of the local papers may be allowed to see the Judgment? Yes.*

**Deepak Gupta, J. (Oral)**

All the appeals arise out of one award being award No.1 of 1998 passed by the Land Acquisition Collector. The Land Acquisition Collector awarded compensation of land for different categories of lands by the said award:-

<b><u>Sr. No.</u></b>	<b><u>Classification of land</u></b>	<b><u>Area</u></b>	<b><u>Rate per biswa</u></b>	<b><u>Rate per bigha</u></b>
1.	Bathal Doem	37-7	5075-00	1,01,500
2.	Gair Mumkin (Awadi)	8-14	5075-00	1,01,500
3.	Bathal Soem	711-11	2625-00	52,500
4.	Bathal Chaharam	460-10	1575-00	31,500
5.	Banjar Kadim	25-5	1575-00	31,500
6.	Gair Mumkin	16-9	1575-00	31,500

The claimants who were not satisfied with the award of the Land Acquisition Collector filed Land Reference Petitions under Section 18 of the Land Acquisition Act, 1894 (here-in-after referred to as the Act). The District Judge awarded compensation for different categories of land from Rs.52,000/- to Rs.60,000/-. The District Judge has passed separate awards. However, since the award of the Land Acquisition Collector was one, these appeals can be disposed of by a common judgement.

It would be pertinent to mention that a number of appeals arising out of the same award of the Land Acquisition Collector and similar awards of the District Judge have been disposed of by a learned Single Judge of this Court vide his judgement dated 16<sup>th</sup>

December, 2008 delivered in RFA No. 246 of 2004, wherein it has been held as follows:-

The challenge to the impugned Award is on the ground that the Court below has determined the market value on the basis of solitary sale instance which was with respect to a small parcel of land. According to the learned Assistant Solicitor General of India, the Court below erred in basing its decision on the same particularly when otherwise there was contemporaneous material on record to justify the award passed by the Collector.

Per contra, Shri Brahma Nand Sharma, learned counsel for the claimants has defended the award for the reasons set out therein. According to him, there cannot be a straight jacket formula and Sale Deed pertaining to a solitary sale instance can also be considered for determining the market value of the acquired land.

The fact that the claimants land was acquired in terms of the Notification issued under the provisions of the Act is not in dispute. The extent, the location and the entitlement of the claimants is also not in dispute. It is equally true that even though large chunk of land was acquired for setting up of defence establishment but, however, individual share holding of each claimant is not very big and substantial.

The increase of the amount of the market value is also not very high and is just about 10% from what was awarded by the Collector, Land Acquisition.

In order to prove its case, the claimants examined Shri Gopal Dass (PW-1), Numberdar of Phati Nirmand; Shri Prabhdayal (PW-2), who sold his land in terms of Sale Deed Ext.PW-2/A, Shri Joginder Singh (PW-3) and Shri Ganga Ram (PW-4). These witnesses proved on record Sale Deed Ext.PW-2/A dated 14.9.1993 in terms of which 2 biswas of land in village Averi, was sold for a sum of Rs.6000/- (3 lakh per bigha).

In rebuttal, the respondents examined Shri Chain Ram (RW-1) and Shri Shyam Chand (RW-2), patwari of the Patwar Circle Nirmand.

Village Averi is at a distance of 6 kms. from Rampur stands proved by PW-1. That the acquired land was put to agricultural use and the claimants used to sow maize and wheat

stands proved by PW-1, PW-3 & PW-4. These witnesses have deposed that the crop sown on the acquired land was sold at Rampur, which in fact is closer from the acquired land and were having an annual income of Rs.one lac per bigha. According to the claimants, the market value of the acquired land was approximately 2½ lacs per bigha. With the acquisition of the land, as stands proved by them, there has been mass dislocation of population which has not only effected their personal life but also their businesses.

The acquired land was well connected by road and having all modern facilities, such as, telephone, road, electricity, water, school and market also stands proved by PW-1.

Judicial notice can be taken of the fact that Rampur, Tehsil Headquarters, is a fast going township. In and around Rampur, many Mega Power Projects have already been established and are in the process of being commissioned. The acquired land is just at a distance of 6 kms. from Rampur. PW-1 has also proved that the new power project by the name of Rampur Hydle Power Project is being constructed just at a distance of 4 kms. from Averi towards Duttnagar, which is near Rampur. Thus, the potentiality of the acquired land to be put to use other than agriculture cannot be ruled out and is in fact substantial.

The Collector Land Acquisition, as stands proved by RW-2, passed the Award on the basis of the annual average market price (Ext.RW-2/A) of village Nirmand, according to which the market price of the land at Nirmand for different categories of land was ;

Ropa Awal = Rs.31,464/- per bigha,

Ropa Doem = Rs.27,268/- per bigha,

Ropa Soem = Rs.17,200/- per bigha,

Bakhal Awal = Rs.18,458.88 per bigha.

The same was considered as according to RW-2, five yearly average market price as also the annual average market price of village Averi was very less and could not be construed to be determinative of the true market value of the acquired land.

The locational situation of village Averi from Rampur does not appear to be in dispute. RW-2 has admitted that Nirmand is just at a distance of 12 kms. from village Averi. If this was so then why the average price of village Rampur was not

taken into account by the Collector, is not evident from the record.

The District Judge has held that the acquired land was not irrigated and even PW-1 has admitted that the acquired land was sandy. These findings are not in dispute.

Be that as it may be the fact of the matter is that the claimants have proved through oral testimony that the market value of the land in Rampur is in the vicinity of Rs.4 lacs to 5 lacs per bigha. If this is so then the average market price of village Rampur ought to have been considered by the Collector while determining the market value of the acquired land. Rampur was in fact at a shorter distance from Averi than from Nirmand. It is not that the lands at Nirmand and Averi are of same quality or that the land at Rampur is of a different quality. The position of law is evidently clear and the market value of the basic valuation register maintained for the purposes of the collection of the stamps duty cannot be relied upon while determining the market value of the acquired land. *Krishi Utpadan Mandi Samiti, Sahaswan vs. Bipin Kumar* {2004(2) SCC 283}. The State did not lead any evidence except for proving on record Ext.RW-2/A which was the annual average market price of the land situated in village Nirmand.

On the contrary, the claimants have proved on record Sale Deed Ext.PW-2/A of land, which was sold by Shri Prabhdyal (PW-2). The genuineness of the sale transaction is not in dispute which is evident from the line of cross-examination carried out by the present appellants. Therefore, the same has been rightly considered by the Court below for determining the market value of the acquired land. From the statement of PW-2, it is evident that the land covered by the exemplar Sale Deed was not of good quality and did not have any locational advantage inasmuch as it was situated near a Nallah of village Averi. The sale transaction pertains to the very same village and is proximate to the time of the acquisition. In my view, no deduction is required to be carried out for the various reasons discussed hereinabove.

No doubt, the exemplar sale deed pertains to only 2 biswas of land but, however, the fact of the matter is that the individual share holding of each land holder is also not substantial.

With reference to question of acquisition being of a larger area, the error lies in the fact that for the acquisition of each landowner, it could not be said that the acquisition is of a larger area. Largeness is merely when each landholder's land is clubbed together then the area becomes large. Each landowner's holdings are of small area (*Thakarsibhai Devjibhai and others vs. Executive Engineer, Gujarat and another* (2001) 9 SCC 584).

There are two methods for assessing the market value of the acquired land, the first one is method of annual net income multiplied by appropriate capitalization of the same year and the second method is comparable sale transaction, but in the instant, the parties have contended and pleaded that the market value of the acquired land be assessed on the basis of the comparable market values.

It is settled principle of law that the market value of the acquired land can be assessed on the basis of bonafide sale transactions on comparable basis. However, if there has been no sufficient number of bonafide sale transactions in the locality then the sale which has taken place in the adjoining area can be taken into consideration for determining the market value of the acquired land.

It is now settled principle of law that the market value of the acquired land has to be determined on the crucial date of notification under Section 4 of the Act and only the genuineness of the sale transaction has to be taken into account and the market value has to be assessed on the basis of comparable sale transaction which has taken place in the area concerned and proximity from time angle and proximity from situation angle has to be identified and every case must be dealt with its own and valuation of these factors would depend upon the facts and circumstances of each case and there cannot be any hard and fast or rigid rules. Common sense is the best and the most reliable guide.

The Apex Court in *Chimanlal Hargovinddas vs. Special Land Acquisition Officer* {AIR 1988 SC 1652}, *R. L. Jain (Dead) by LRs vs. DDA and others* {2004(4) SCC 79} and *Ravinder Narain and another v. Union of India* {2003(4) SCC 481}, has held that the rate fixed for smaller plots in the same vicinity can be the basis for fixation of rate for large area acquired. In the present case, there is no dispute that the said sale transaction is of the same



village. It is situated in the same village having same advantage and within the reasonable time of the date of Notification issued under Section 4 of the Act. In my view, the same was rightly considered by the Court below.

It has come on record from the statement of PW-1 that village Nirmand is linked with Rampur via Averi. It has also come on record that as part of the package for acquisition of the land the State has earmarked area to rehabilitate the uprooted population. Undoubtedly this fact by itself would in no manner mean that the claimants should not be entitled to the fair market value of the acquired land, which has to be that of the willing seller and a purchaser at the time of acquisition of the land in question. In any event, there is nothing on record to prove that the claimants were also allotted any plots.

In view of the fact that exactly similar appeals filed by the Union of India have already been dismissed in the aforesaid terms, the present appeals filed by the Union of India are also dismissed in the same terms.

***Cross Objections:***

The main ground urged by Shri B.N.Sharma, Advocate, appearing on behalf of the cross-objectors is that once the land was being used for one purpose i.e. defence purpose all the lands should have been granted one compensation. His basic grievance is that all the lands should have been granted compensation at Rs.60,000/- per bigha and not as per the classification of the land. This contention cannot be accepted. Both the Land Acquisition Collector and the learned District Judge have assessed the value of the land on the basis of their classification. There is nothing wrong in doing so. In fact this is one of the matters which should be looked into while determining compensation in terms of Section 23 of the Act. It is true that in certain cases especially where lands

are acquired for housing colonies, etc. the Court has held that the classification of the land is immaterial but here the land has not been acquired for such a purpose but has been acquired for the purpose of the defence of the country and therefore, the value of the land has to be assessed according to the classification of the land. Cross objections, therefore, are rejected. The appeals and cross-objections are accordingly dismissed.

It is, however, made clear that the claimants in all the cases shall be entitled to solatium, additional compensation and interest as per the statutory provisions of the Land Acquisition Act, 1894.

**20<sup>th</sup> November, 2009.**  
TM

**( Deepak Gupta )**  
***Judge.***