

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**RFA No. 190 of 2012 with RFA
Nos. 191 to 209 and 211 to 221 of
2012.**

Decided on: 24.5.2017.

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| 1. <u>RFA No. 190 of 2012.</u>
HPSEB Ltd. Versus | Amar Singh. |
| 2. <u>RFA No. 191 of 2012.</u>
HPSEB Ltd. Versus | Roop Singh & anr. |
| 3. <u>RFA No. 192 of 2012.</u>
HPSEB Ltd. Versus | Karju Devi & ors. |
| 4. <u>RFA No. 193 of 2012.</u>
HPSEB Ltd. Versus | Naresh & ors. |
| 5. <u>RFA No. 194 of 2012.</u>
HPSEB Ltd. Versus | Prem Singh & anr. |
| 6. <u>RFA No. 195 of 2012.</u>
HPSEB Ltd. Versus | Gulab Singh & ors. |
| 7. <u>RFA No. 196 of 2012.</u>
HPSEB Ltd. Versus | Roshan Lal & ors. |
| 8. <u>RFA No. 197 of 2012.</u>
HPSEB Ltd. Versus | Neelam Kumar & anr. |
| 9. <u>RFA No. 198 of 2012.</u>
HPSEB Ltd. Versus | Bhekhu. |
| 10. <u>RFA No. 199 of 2012.</u>
HPSEB Ltd. Versus | Pammi Devi & anr. |
| 11. <u>RFA No. 200 of 2012.</u>
HPSEB Ltd. Versus | Jai Singh & ors. |
| 12. <u>RFA No. 201 of 2012.</u>
HPSEB Ltd. Versus | Joginder & anr. |
| 13. <u>RFA No. 202 of 2012.</u>
HPSEB Ltd. Versus | Damodar Dass. |
| 14. <u>RFA No. 203 of 2012.</u>
HPSEB Ltd. Versus | Pawan Kumar & ors. |
| 15. <u>RFA No. 204 of 2012.</u>
HPSEB Ltd. Versus | Ranvir Singh & ors. |
| 16. <u>RFA No. 205 of 2012.</u>
HPSEB Ltd. Versus | Ashok Kumar & ors. |
| 17. <u>RFA No. 206 of 2012.</u>
HPSEB Ltd. Versus | Jhanu Ram & ors. |
| 18. <u>RFA No. 207 of 2012.</u>
HPSEB Ltd. Versus | Sukh Dev singh & ors. |
| 19. <u>RFA No. 208 of 2012.</u>
HPSEB Ltd. Versus | Saran Dass & ors. |
| 20. <u>RFA No. 209 of 2012.</u>
HPSEB Ltd. Versus | Devi Singh. |

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| 21. <u>RFA No. 211 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Man Singh & ors. |
| 22. <u>RFA No. 212 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Daulat Ram & ors. |
| 23. <u>RFA No. 213 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Amar Singh & ors. |
| 24. <u>RFA No. 214 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Chaudhari Ram & ors. |
| 25. <u>RFA No. 215 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Jagjeet Singh & ors. |
| 26. <u>RFA No. 216 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Ghanshyam & anr. |
| 27. <u>RFA No. 217 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Naresh Kumar & ors. |
| 28. <u>RFA No. 218 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Kashmir Singh & ors. |
| 29. <u>RFA No. 219 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Geeta & ors. |
| 30. <u>RFA No. 220 of 2012.</u> | | |
| HPSEB Ltd. & anr. | Versus | Chharandu & anr. |
| 31. <u>RFA No. 221 of 2012.</u> | | |
| HPSEB Ltd. | Versus | Chamaru Ram & anr. |

For the appellant(s): Mr. Satyen Vaidya, Sr. Advocate with Mr. Vivek Sharma, Advocate.

For the respondents: Mr. H.S. Rangra, Advocate for private respondent(s).
Mr. Parmod Thakur, Addl. AG for the respondent-State.

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The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.
Whether approved for reporting?¹ Yes.

Dharam Chand Chaudhary, Judge (Oral).

This appeal and its connected matters have arisen from common award dated 22.10.2011 passed by learned Addl. District Judge, Mandi, in Reference Petition No. 19 of 2007 and its

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

connected references registered as reference petitions No. 2 to 16, 18, 22, 23, 20, 26 to 30, 33 to 37 of 2007, whereby while arriving at a conclusion that the compensation should have been determined and awarded at flat rates, irrespective of nature and category of the acquired land, has re-determined the market value thereof at flat rates i.e. Rs. 4,00,000/- per bigha and accordingly enhanced the compensation and awarded the same to the respondents herein (petitioners-claimants in the trial Court) together with all statutory benefits.

2. Since the legality and validity of the impugned award has been assailed on common grounds in all these appeals, therefore, the same were tagged for the purpose of hearing altogether and disposal by a common judgment in order to avoid repetition of facts and also the evidence available on record as well as conflicting findings.

3. The petitioners-claimants are residents of village (Mauja) Darat Bagla, PO Jalpehar, Tehsil Jogindernagar, Distt. Mandi. The appellant-Board (hereinafter referred to as the respondent) was in need of land in the said village for public purpose, namely, construction of 'Uhl Hydro Project, Stage-III'. The notification under Section 4 of the H.P. Land Acquisition Act (hereinafter referred to as the Act), issued by the Government of Himachal Pradesh on 4.7.2003 was published in Rajpatra and also

in Hindi daily “Amar Ujala” and “Divya Himachal” in its issue dated 16.7.2003. Besides, wide publicity was also made in the locality on 7.8.2003. The notification under Section 6 of the Act was issued and published in Rajpatra on 19.6.2004 and also in two leading newspapers i.e. “Dainik Bhaskar” and “Amar Ujala” on 14.6.2004. Wide publicity in this regard was also made in the locality on 16.6.2004.

4. Learned Land Acquisition Collector after compliance of statutory provisions and codal formalities determined the market value of different kind of acquired land measuring 60-06-05 bighas as follows:

(vii)	Dhani Awal	Rs. 4,00,000/- per bigha
(viii)	Dhani Doem	Rs. 3,60,000/- per bigha
(ix)	Kalahu Awal	Rs. 3,90,000/- per bigha
(x)	Kalahu Doem	Rs. 3,00,000/- per bigha
(xi)	Bagicha kalahu Phaldar & barani chaye	Rs. 4,10,000/- per bigha
(xii)	Bagicha barani Phaldar	Rs. 3,85,000/- per bigha
(vii)	Barani Awal	Rs. 3,50,000/- per bigha
(viii)	Barani Doem	Rs. 3,25,000/- per bigha
(ix)	Barani Some	Rs. 1,75,000/- per bigha
(x)	Banjar Kabel Kashat	Rs. 1,25,000/- per bigha
(xi)	Kharyatar	Rs. 1,00,000/- per bigha
(xii)	Gair mumkin bir & Nale	Rs. 1,00,000/- per bigha
(xiii)	Gair mumkin Awadi	Rs. 4,00,000/- per bigha”

5. The Land Acquisition Collector has awarded the compensation accordingly to the petitioners-claimants in respect of acquired land, together with all statutory benefits.

6. The petitioners-claimants, however, were not satisfied with determination of different market value of different kind of acquired land, hence preferred the references as aforesaid under Section 18 of the Act with a prayer to re-determine the same and pay compensation at enhanced rates together with all statutory benefits. The market value of the acquired land so determined was also claimed to be highly inadequate. Learned Reference Court below on appreciation of the entire record and also the evidence available on record has noticed that the market value of the acquired land determined by the Land Acquisition Collector was more than the price of land sold vide sale-deeds produced in evidence by the petitioners-claimants. Therefore, the evidence in the nature of the sale instances and oral evidence to substantiate the same was not considered nor discussed and rightly so because the Land Acquisition Collector has already determined the market value of the land over and above the sale consideration for which the land as per such sale instances was sold and also awarded the compensation more than that to the petitioners-claimants in respect of their holdings.

7. The Reference Court below, while taking note of the purpose for which the land was acquired and also the law laid down by this Court as well as the Apex Court has re-determined the market value of the acquired land irrespective of its nature and

category at flat rate i.e. Rs. 4,00,000/- per bigha of Dhani Awal/Gair Mumkin Abadi category of land determined by the Land Acquisition Collector and enhanced the compensation accordingly irrespective of the category and nature of the acquired land.

8. The legality and validity of the impugned award has been assailed in these appeals on the grounds, *inter alia*, that the market value of the acquired land was rightly assessed by the Land Acquisition Collector. The Reference Court below allegedly erred in law in assessing the value of the land i.e. Kharyatar, gair mumkin bir and nale etc. at the rate of Rs. 4,00,000/- per bigha. The market value thereof was rightly assessed by the Land Acquisition Collector @ Rs. 1,00,000/- per bigha. The land mostly is situated in rural area and being sloppy as well as spread over far off area i.e. at distant places from road side, the market value thereof could have not been determined as Rs. 4,00,000/- per bigha. The other statutory benefits were also erroneously awarded on the enhanced amount of compensation.

9. On hearing Mr. Satyen Vaidya, Sr. Advocate assisted by Mr. Vivek Sharma, Advocate for the appellant-Board and Sh. H.S.Rangra, Advocate, learned counsel for the petitioners-claimants as well as going through the record, it would not be improper to conclude that learned Reference Court below has not committed any illegality or irregularity in determining the market

value of the acquired land at flat rates irrespective of kind and nature of the acquired land and awarded the compensation to the petitioners-claimants accordingly, together with all statutory benefits. The land has been acquired for the public purpose, namely, 'Construction of Uhl Hydro Project, Stage-III'. Therefore, when Uhl Hydro Electric Project, Stage-III was to be constructed on the acquired land, its category, potentiality and utility loses significance. Law on the issue is no more *res-integra* as this Court in **RFA No. 24 of 2010**, titled as **Vidya Sagar vs. The Land Acquisition Collector and others** and its connected matters decided on **9.5.2016** has held as under:

“18. As already discussed, the Land Acquisition Collector has determined different rates qua different kind of land. The reference Court below while arriving at a conclusion that the acquisition is for the public purpose namely construction of railway line, no distinction could have been made viz-a-viz cultivable and non-cultivable land while determining its market value in view of its comparative utility to remain as it is irrespective of its category. Learned reference Court has also placed reliance to substantiate this part of the findings so recorded with the help of law laid down by a Division Bench of this Court in **L.A.C Solan and another V. Bhoop Ram along with its connected matters, 1997(2) Sim.L.C. 229** and also that of the **Hon'ble Apex Court in 1998(2) All India Land Acquisition Act LACC(1) SC**. The findings so

recorded by learned reference Court below are absolutely legal and valid as it is well established at this stage that when the land is acquired for a public purpose namely construction of road or for that matter construction of railway line as in these appeals, its market value should be determined at flat rates, irrespective of its nature and category. Support in this regard can be drawn from the judgment of this Court in ***Executive Engineer V. Dila Ram, Latest HLJ 2008 (HP) 1007***. The relevant portion of the judgment reads as follows:

“12. The Collector has awarded compensation of acquired land as per classification of the land. The learned District Judge has enhanced the compensation of the acquired land as per classification. One of the questions in the above appeals is whether awarding of compensation as per classification of the land is proper or not. The purpose of the acquisition in the present case is for construction of road and for that purpose classification completely loses significance. The acquired land is to be used/developed as a single unit for the construction of road. In ***H.P. Housing Board vs. Ram Lal and others, 2003(3) Shim L.C. 64***. The acquisition was made for construction of housing board colony and compensation was assessed as per classification by the Collector. In the High Court the persons interested limited their claim for enhancement of compensation to Rs. 400/- per square meter irrespective of classification. On those facts, a learned single Judge of this court has held that when the land is being developed for constructing housing colony, the classification completely loses significance and awarded compensation on flat rate of Rs. 200/- per square meter for the entire land irrespective of classification or nearness to the road. In ***Union of India vs. Harinder Pal Singh and others 2005(12) SCC 564***, the Hon’ble Supreme Court has approved the view of

the High Court assessing the market value of the lands under acquisition in the five villages at uniform rate of Rs. 40,000/- per acre, irrespective of their nature or quality and whether the same was situated nearer to the road or at some distance therefrom. In the present case also, the acquired land is to be used/developed for the construction of the road as a single unit and therefore, classification of the land loses significance. In these circumstances, the persons interested are entitled to compensation at the rate of Rs. 6,000/- per biswa of Rs. 1,20,000/- per bigha of the acquired land irrespective of classification, which is more than the market value assessed by learned District Judge.”

19. A Division Bench of this Court in ***Bhoop Ram’s*** case supra qua this aspect of the matter has also held as under:

“11.....The Land Acquisition Collector and the District Judge have determined the market value at a lesser rate for the acquired land, which was classified as Bangar Doem, Bangar Kadim, Ghasni, Charand and Gair Mumkin but in our view the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition for the construction of road and uniform rate of Rs. 40 per square meter or Rs. 30,000 per Bigha should be awarded irrespective of the classification of the acquired land.....”

10. Similar is the ratio of the judgment, again that of this Court, in ***RFA No. 246 of 2008***, titled as ***Dadu Ram vs. Land Acquisition Collector and others*** and its connected matters, decided on **29.3.2016**. The relevant text reads as follows:

“18. Now, if coming to the 2nd point, it is seen that learned reference Court has categorized the land in

two categories i.e. 'Majrua' and 'Gair Majrua', of course on the request of the petitioners, as is apparent from the perusal of award announced by the Land Acquisition Collector. In view of the evidence available on record, prior to inception of Kol Dam Project, no developmental activities had taken place there by that time. Meaning thereby that the entire area was in the process of being developed. The land was acquired for the construction of project. Therefore, taking into consideration, the purpose for which the land was acquired, the same should not have been classified 'Majrua' or 'Gair Majrua' for the reason that the land was acquired for the construction of project and as such, the classification of the acquired land completely loses significance. I am drawing support in this regard from the judgment of this Court in ***Executive Engineer and another v. Dila Ram, Latest HLJ 2008 (HP) 1007***, the relevant portion of the judgment reads as follows:

"12. The Collector has awarded compensation of the acquired land as per classification of the land. The learned District Judge has enhanced the compensation of the acquired land as per classification. One of the questions in the above appeals is whether awarding of compensation as per classification of the land is proper or not. The purpose of the acquisition in the present case is for construction of road and for that purpose classification completely loses significance. The acquired land is to be used/developed as a single unit for the construction of road. In ***H.P. Housing Board vs. Ram Lal and others, 2003 (3)Shim.L.C 64*** the acquisition was made for construction of housing board colony and compensation was assessed as per classification by the Collector. In the High Court the persons interested limited

their claim for enhancement of compensation to Rs. 400/- per square meter irrespective of classification. On those facts, a learned single Judge of this court has held that when the land is being developed for constructing housing colony, the classification completely loses significance and awarded compensation on the flat rate of Rs. 200/- per square meter for the entire land irrespective of classification or nearness to the road. In ***Union of India vs. Harinder Pal Singh and others 2005 (12) SCC 564***, the Hon'ble Supreme Court has approved the view of the High Court assessing the market value of the lands under acquisition in the five villages at uniform rate of Rs. 40,000/- per acre, irrespective of their nature or quality and whether the same was situated nearer to the road or at some distance therefrom. In the present case also, the acquired land is to be used/developed for the construction of the road as a single unit and, therefore, classification of the land loses significance. In these circumstances, the persons interested are entitled to compensation at the rate of Rs. 6,000/- per biswa of Rs. 1,20,000/- per bigha of the acquired land irrespective of classification, which is more than the market value assessed by learned District Judge."

19. The point in issue, therefore, is squarely covered by the judgment supra. Learned reference Court, therefore, should have determined the market value of the acquired land at flat rates, irrespective of its categorization. It is seen that the Court below has assessed the market value of the land categorized as 'Majrua' @ Rs. 4,68,497.00/- and 'Gair Majrua' @ Rs. 1,04,117.44/-. In view of the above, this Court determine the market value of the acquired land at flat rates, irrespective of its nature as Rs. 4,68,497.00/-"

11. Since in the case in hand, the acquired land has been used/developed for the construction of “Uhl Hydro Project, Stage-III”, as a single unit, therefore, the classification thereof as made by Land Acquisition Collector loses significance. The factors, such as nature of the acquired land, its quality and the same is situated near road or at some distance therefrom also loses significance. On behalf of the appellant-Board, nothing to the contrary has been brought on record to persuade this Court to take a view contrary to the one taken by learned Reference Court below. Therefore, all the appeals being devoid of any merit deserve dismissal.

12. In view of what has been said hereinabove, all these appeals fail and the same are accordingly dismissed. Pending application(s), if any, shall also stand disposed of.

Copy of this judgment duly authenticated be placed on the record of each of the connected appeals.

May 24, 2017
(karan)

(Dharam Chand Chaudhary)
Judge