IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 17 of 2019 with RFA 48 of 2019

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1. RFA No. 17 of 2019:
Hira Singh

…..Appellant.

Versus

State of Himachal Pradesh & another

……Respondents.

2. RFA No. 48 of 2019:
State of Himachal Pradesh & another

…..Appellants.

Versus

Hira Singh

……Respondent.

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The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?*

RFA No. 17 of 2019:

For the appellant:	Mr. Tek Chand Sharma, Advocate.
For the respondents/State:	Mr. Raj Kumar Negi, Additional Advocate General.

RFA No. 48 of 2019:

For the appellants/state:	Mr. Raj Kumar Negi, Additional Advocate General.
For the respondent:	Mr. Tek Chand Sharma, Advocate.

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Sushil Kukreja, Judge.

Since the instant appeals are offshoots of award, dated 05.05.2018, passed by learned Additional District Judge (CBI), Shimla, H.P. (hereinafter referred to as "the learned Reference Court"), they are taken up together for consideration and disposal.

2. RFA No. 17 of 2019 has been preferred by appellant-Hira Singh, who was petitioner before the learned Reference Court (hereinafter referred to as "the petitioner"), under Section 54 of the Land Acquisition Act, 1894 (for short "the Act"), against award dated 05.05.2018, passed by learned Reference Court, in land Reference RBT No. 31-S/4 of 2016/12, whereby the petition filed by the petitioner under Sections 18 and 30 of the Act, was allowed, with a prayer to modify the impugned award by granting interest on the amount of compensation from the date of taking of possession, i.e., from 1998 and compulsory additional compensation of 12% over and above the compensation already granted with all consequential statutory benefits.

3. RFA No. 48 of 2019 has been by appellant-State of H.P. & another, who were respondents before the learned Reference Court (hereinafter referred to as "the appellant-

State"), under Section 54 of the Act, 1894 (for short "the Act"), against the aforesaid award with a prayer to quash and set-aside the impugned award.

4. The facts giving to the instant appeals are that the Government of Himachal Pradesh issued notification under Section 4 of the Act on 07.05.2004 for acquisition of land situated in village Mahasu for public purpose, i.e., construction of Chandernagar-Halaila Road. The aforesaid notification was published in Gazette of H.P. on 20.05.2004 and in various news papers on 01.06.2004. Subsequently, notification under Sections 6 and 7 of the Act was issued on 26.05.2005. Ultimately Land Acquisition Collector passed award, dated19.05.2007, whereby the market value of the acquired land was determined at the uniform rate of Rs.3000/- per biswa, irrespective of its classification. Thereafter, through supplementary Award No. 5 of 2008, dated 22.01.2008, the Land Acquisition Collector determined the market value of 111 uprooted fruit plants.

5. The petitioner, feeling aggrieved, preferred a petition under Sections 18 and 30 of the Act, before the learned Reference Court. The learned Reference Court, after hearing the learned counsel for the parties and after

examining the entire record, allowed the reference petition of the petitioner/claimant and he was held entitled to compensation of the acquired land @ Rs.6,38,462/- per bigha, irrespective of its category/classification. The petitioner was also held entitled for Rs.3,80,300/- (Rs.19,015 x 20), being the value of 20 apple trees. In addition to the above compensation the petitioner was also held entitled for all the statutory benefits. However, the petitioner still feeling aggrieved preferred RFA No. 17 of 2019, with a prayer to enhance the compensation amount by allowing his appeal, whereas the State of H.P. & another preferred RFA No. 47 of 2019, with a prayer to quash and set-aside the impugned award passed by the learned Reference Court.

6. The learned Additional Advocate General for the State contended that the learned Reference Court had wrongly granted compensation for the excess number of trees for which petitioner/claimant was not entitled, as the number of trees have not been correctly determined by it. He further contended that the learned Reference Court has erred in not allowing the standard deduction between 33% to 53% while assessing the market value of the acquired land.

7. Conversely, the learned counsel for the

petitioner/claimant contended the respondents/Department has taken the possession of the acquired land in the year 1998, whereas notification under Section 4 of the Act was issued on 07.05.2004, as such the petitioner/claimant is entitled for damages/use and occupation charges from the year 1998 till 07.05.2004, as the petitioner had been deprived of his legitimate right of enjoying possession of his land.

8. I have heard the learned Counsel and Additional Advocate General for the respective parties and carefully examined the entire records.

9. In order to prove his case, the petitioner himself stepped into the witness-box as PW-2 and he tendered in evidence his affidavit, Ex. PW-2/A. He also tendered copies of jamabandi, Ex. PW-2/B, khaka dasti, Ex. PW-2/C, average Ex. PW-2/D, copy of list of uprooted trees, mark-X, copy of notification Ex. PW-2/E and Ex. PW-2/F. He deposed that he was owner-in-possession of the land having his orchard, which was acquired by the State on 19.05.2007, vide Award No. 15/2007, for construction of a road.

10. On the other hand, the respondents/Department, in order to rebut the evidence produced by the

petitioner/claimant, examined Shri Tika Ram, from the office of Land Acquisition Collector, Shimla, who appeared in the witness-box as RW-1. He had produced copy of award No. 15/2007, dated 19.05.2007, Ex. RW-1/A, copy of jambandi, Ex. RW-1/B, supplementary Award No. 05/2008, dated 22.01.2008, Ex.RW-1/C, award statement para 55, Ex.RW-1/D, notice under Section 12, Ex.RW-1/E, copy of one year average Et.RW-1/F and notification under Section 6, Ex.RW-2/F.

11. Shri P.C. Chauhan, the then Junior Engineer, appeared in the witness-box as RW-2 and he tendered in evidence his affidavit, Ex.RW-2/A. This witness reiterated the averments made by the respondents/Department in its reply. As per this witness, adequate compensation of the land and trees had been paid to the petitioner/claimant.

12. The learned Reference Court had assessed the market value of the land in the sum of Rs.6,38,462/- per bigha, irrespective of its classification.

13. The learned Additional Advocate General for the appellants/State contended that the learned Reference Court had erred in not deducting any amount while assessing the market value of the land in question. However, this

contention is devoid of any force as it is a settled law that no deduction will be permissible where the land is acquired for the purpose of construction of the road and for laying railway line etc.. In a case titled as ***Land Acquisition Collector vs. Bangalu @ Daulat Ram, 2025 (1) Shimla Law Cases 146***, this Court has held as under:

> ***11. The contention of the learned Deputy Advocate General that standard deduction was required to be made from the flat rate of Rs.8,50,000/- per bigha, is devoid of any merits. This Court in number of judgments has consistently taken a view that the deduction will not be permissible where the purpose of acquisition of land is for the construction of road, rail track or any other purpose relatable to the public at large, without any component of profit or loss.***
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> ***12. Reference can be made to 2014 (3) SLC 1356 titled as G.M. Northern Railway vs. Gulzar Singh & others as under:***
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> > ***"10. Even previously in judgments reported, in 1997 (2) SLC 229 and 1998(2) All India Land Acquisition Act LACC (1) SC, it has been mandated that when the purpose of acquisition is common, the award of compensation at a uniform rate for different classification/categories of land, is, tenable. Hence, it can be forthrightly concluded, that, the award of a uniform rate of compensation by the learned Additional District Judge Una for different lands bearing different classifications/categories, is, not legally infirm, especially when on acquisition they acquire a uniform potentiality.***
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> > ***11. The learned counsel appearing for the appellant has concerted, to also espouse before this Court, that even though, reliance upon Ex. PW1/C by the learned Court below, is not misplaced, in as much, as it fulfilled the relevant enshrined legal parameter for its invocation/applicability, in as much, as (i) it being proximate to the land subjected to acquisition, as also (ii) its execution being contemporaneous to the issuance of the notification under Section 4 of the Land Acquisition Act. Nonetheless, he has canvassed that (i) given the largeness or expanse and immensity/immenseness of size of the land subjected to acquisition vis-à-vis the area of the land sold/ comprised in Ex.PW 1/C, the market value of the land comprised in Ex.PW1/C could not have been, as a whole applied to the entire land subjected to the acquisition, unless, deductions for developmental costs as warranted and mandated by the decisions relied upon by him had been***

made/accorded. Since, the learned Additional District Judge, Una omitted to give/make deductions from the total compensation arrived at/worked out on the basis of the value of the land sold/comprised in Ex.PW1/C, whereas, he was enjoined to do so, he has committed a grave legal error necessitating interference by this Court.

12. While proceeding to gauge the sinew of the above contention canvassed before this Court, it is necessary to bear in mind that the judgments cited in support of the above view espoused by the learned counsel for the appellant, are distinguishable, vis-à-vis, the facts at hand, hence, in the humble view of this Court, not reliable as (a) all the judgments relied upon by the learned counsel for the appellant, concert to marshal the view, of, deductions from the lump sum compensation assessed qua a large tract of land on the score of market value of a small/minimal piece of land being made. In other words, the emphasis in the aforesaid citations, is that, for the market value of small a tract of land to be comprising an admissible parameter, for, on its strength working out the compensation for a large tract of land, it is, imperative that deductions towards development costs is made. However, distinguishably in the citations aforesaid, the acquisition was made for the development of sites for allotment for housing purpose or for construction of a housing colony or the purpose of acquisition had an inherent profiteering motive. Therefore, given the purpose for which the land was acquired, in, the cases relied upon by the learned counsel for the appellant, deductions were enjoined to be imperative or necessary, as, the entity for whom the land was brought under acquisition, would be entailed/obliged, to, make the land fit for the purpose for which it was acquired, in as much, as, such an entity concomitantly being driven to incur exorbitant expenses, towards its development for rendering it fit for use. As such, given the magnified increase in the scale of economies or given the ultimate manifold increase, in, the scale of economies or such incurring of exorbitant expenses on development, hence, acquiring the capacity to proportionately reduce their profit, as such, rendering the project for which the land was acquired financially viable, or, to obviate the losses accruing from the steep rates of compensation as may be awarded that deductions were permitted. In other words, deduction from compensation mandated to not render the venture and the purpose for which the land was acquired, in the aforesaid citations relied upon by the learned counsel for the appellant, to be financially un-whole some, as well as, unviable. More so, when the land is acquired for State holdings, building/housing agency(ies) or the agencies carrying out and engaged in profiteering work. However, in contra distinction, to the facts of the judgments, as relied upon by the learned counsel for the appellant, in the instant case, the

land has been subjected to acquisition, for the purpose of construction of a railway track. In the appellant engaging itself in the construction of a railway track, it has assumed the role of doing so, as, a welfare measure and not as a profiteering measure. The railway track would continue to be owned by the appellant, in distinction to the facts of the judgments relied upon by the learned counsel for the appellant, where the agency for whom the land was subjected to acquisition, would on developing the land, sell it further or gain profit. (b) The appellant has omitted to adduce cogent evidence on record displaying the fact that each of the land holder, whose land was subjected to acquisition was holding a vast expanse of land. Omission to adduce into evidence such proof demonstrative of each of the land holders, whose land was subjected to acquisition, owing a wide expanse or a large sized holding, vis-à-vis, the sale transaction comprised in Ex. PW1/C, a firm conclusion can be formed, that, the size of the holding or the size of the land of the each of the land holders, whose land was subjected to acquisition was more or less equal to or not disproportionately larger in size to the area of the land comprised in Ex.PW1/C. Hence, there was no jurisdictional error, on the part of the learned Additional District Judge, Una, in not affording deduction, given the smallness in size of the land comprised, in, Ex.PW1/C, vis-à-vis, the lands of each of the individual land owners, whose land was subjected to acquisition. Besides, it has also not been cogently proved by the appellant that any part of the land owned by each of the land owners and subjected to acquisition did not bear potentiality nor would have commanded a market value, lesser than the value earned by the expanse of land comprised in Ex.PW1/C. It appears, that, given the proximity of the acquired land, as deposed by PW-4 Gulzar Singh and PW3 Gurbachan Singh, to educational institution, temple and abadi of the villagers it enjoyed or commanded immense market value. Therefore, when each parcel of the land subjected to acquisition bore a market value, equivalent to the land subjected to acquisition, hence, there was, no, legal error committed by the learned Additional District Judge in relying upon for the market value depicted, in, Ex.PW1/C and applying it to the entire tracts of the land subjected to acquisition even, when it was smaller in size vis-à-vis the land subjected to the acquisition."

13. Similar, reiteration can be found in Jaswant Singh & others vs. State of H.P.& others, 2018 (3) Shimla Law Cases 1493. The relevant para of the aforesaid judgment is as under:

"4. Consequently, bearing in mind, the afore expostulation of law, occurring in paragraph No. 10 to 14 of the verdict of this Court, rendered in Gulzar Singh's case (supra), reiteratedly this Court further concludes (a) qua when the purpose, of, acquisition, is, for construction a road, and, when hence the

> ***meteing of deductions, vis-a-viz, compensation assessed by the learned Reference Court, on anvil, of, the apposite sale exemplar, is rather validly meteable, (b) only for covering the apt exorbitant costs, accruable for developing the acquired lands, for theirs ultimately rearing hence handsome profits, vis-à-vis, the authority, wherefrom whom, the acquisition is made, (c) thereupon the principle of meteing of deductions, when rather is squarely attracted and applicable, vis-à-vis, construction(s), of, road, (d) thereupon hence, the meteing of deduction by the learned reference court, vis-à-vis, compensation amount, as assessed in respect, of, the lands of the landowners/appellants herein, on anvil, of, the sale exemplar borne in Ex.PB, rather, is, rendered legally frail."***

> ***14. In Nelson Fernandes & others vs. Special Land Acquisition Officer, South Goa & others, (2007) 9 Supreme Court Cases 447, while dealing with the case where the land was acquired for laying a railway line, the Hon'ble Apex Court held that no deduction by way of development charges was permissible, as there was no question of any development thereof. The relevant portion of the judgment (supra) is as under:***

> > ***"30. … … … … that where lands are acquired for specific purposes, deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."***

14. In the instant case, also the land was acquired for the purpose of construction of Chandernagar-Halaila Road. Since every inch of the acquired land was put to the same use for which it was acquired, as such no deduction would be permissible. Hence, the market value assessed by the learned Reference Court, in the sum of Rs.6,38,462/- per bigha, does not require any interference.

15. The learned Additional Advocate General for the State next contended that the learned Reference Court had wrongly granted compensation for the excess number of

trees for which petitioner/claimant was not entitled, as the number of trees has not been correctly determined by it.

16. While appearing in the witness-box as PW-2, the petitioner deposed in his affidavit that his land was acquired for the construction of Chandernagar-Halaila road, in which about 34 apple plants of Spur variety had been uprooted, which were about 15-20 years of age and some deodar and kail trees were also uprooted for which no compensation had been assessed by the respondents. List of uprooted apple trees belonging to the petitioner/claimant is Ex. PW-3/A and it was prepared by Shri Paresh Chauhan (PW-3), the then Junior Engineer. The perusal of Ex. PW-3/A reveals that 20 apple trees, 5 pear trees and 7 almond trees of different sizes, belonging to the petitioner, were uprooted during the construction of the road. Shri S.P. Bhardwaj appeared in the witness-box as PW-1 and he deposed that on the request of the petitioner he visited Mahasu and Chakrot from where Chandernagar-Halaila road was constructed. He deposed that the road passed through the orchard of the petitioner. He also deposed that he had firstly visited Chakrot Chak and then Mahasu Chak and in both the chaks total 56 trees were uprooted, out of which 44 were apple trees, 5 pear trees and

7 almond trees. This witness deposed that when he had visited the spot, Patwari Halqua was with him, who had identified the land. He prepared his assessment report, Ex. PW-1/A.

17. Shri Paresh Chauhan, the then Assistant Engineer, PWD, who appeared in the witness-box as PW-3 and he had produced list of trees uprooted, mark-A (Ex.PW-3/A). As per this witness, the list, Ex. PW-3/A, was prepared on the spot and the same was correct.

18. The perusal of list, Ex. PW-3/A, reveals that 20 apple trees, 5 pear trees and 7 almond plants of different sizes, belonging to the petitioner, were uprooted during the construction of the road. Ex.PW-3/A was countersigned by the then Assistant Engineer, HP PWD, Sub Division, Kotkhai. Thus, there is no reason to disbelieve or discard list, Ex. PW-3/A. As per report, Ex. PW-3/A, average value of apple plant, in bearing stage, per plant comes to Rs.19,015/-, thus the total value of 20 apple plants came to Rs.3,80,300/-, i.e., Rs.19015x20=Rs.3,80,300/-. Average value of a pear bearing plant came to Rs.16,822/- and the total value of five pear trees came to Rs.84,109/-, i.e., Rs.16,822x5=Rs.84,109/- and the average value of a almond

bearing trees comes to Rs.3,182/- and the total value of seven almond trees comes to Rs.22,266/-

19. Thus, in view of the entire evidence on record, the learned Reference Court had rightly assessed the compensation in the sum of Rs3,80,300/-, being the value of 20 apple trees, Rs.84,109, being the value of 5 pear trees and Rs.22,266/- being the value of 7 almond trees.

20. The learned counsel for the petitioner/claimant contended that the respondents/Department has taken the possession of the acquired land in the year 1998, whereas notification under Section 4 of the Act was issued on 07.05.2004, as such the petitioner/claimant is entitled for damages/use and occupation charges from the year 1998 till 07.05.2004, as the petitioner had been deprived of his legitimate right of enjoying possession of his land. However, except for the bald statement of the petitioner/claimant, he had not produced any cogent and satisfactory evidence to prove that the possession of the acquired land was taken by the respondents/Department in the year 1998. There is no documentary evidence on record to show that the possession of the acquired land was taken in the year 1998. Therefore, in the absence of any cogent and satisfactory

evidence to this effect, the contention of the learned counsel for the petitioner/claimant is devoid of any merit and cannot be accepted.

21. In view of what has been discussed hereinabove, both the appeals, being without merits, deserve dismissal and are accordingly dismissed.

Pending application(s), if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

5th August, 2026
(virender)