

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 279 of 2019

Reserved on: 04.08.2026

Date of decision: 26.08.2026

Date of uploading on Website: 26.08.2026

Sr. Executive Engineer and another

....Appellants

Versus

Gopal Singh and others

...Respondents

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

¹ *Whether approved for reporting?*

For the appellants: Ms. Sunita Sharma, Senior Advocate,
with Ms. Harshita Dogra, Advocate.

For the respondents: Mr. Digvijay Singh Thakur & Mr. Sumit
Sharma, Advocates.

Sushil Kukreja, Judge

The present appeal has been preferred by the appellants-HPSEBL against award dated 08.09.2017, passed by the learned Additional District Judge, Kinnaur District at Rampur Bushahr, HP, in LAC Petition No.19-R/4 of 2016/2010, whereby the reference petition preferred by the respondents (hereinafter referred to as the petitioners) under Section 18 of the Land Acquisition Act (for short, the Act) was allowed, with a prayer to allow the instant appeal and consequently to dismiss

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

the reference petition.

2. Briefly stated the facts of the case are that a notification under Section 4 of the Act was issued on 25.08.2007, which was published in Rajpatra on 16.01.2008 as well as in two daily news papers, i.e. 'Hindustan Times' and 'Punjab Kesari' on 08.02.2008, for acquisition of land of the petitioners situated in Village Pashgaon for the construction of road and intake area leading to Ghanvi Hydro Electric Project Stage-II. After complying with the provisions of Sections 7 and 8 of the Act, notices were given to the petitioners under Section 9 of the Act and after detailed inquiry, the Land Acquisition Collector found that no sale proceedings took place during the relevant period and the land abutting and contiguous to the land under acquisition had already been acquired, vide Award No.583, dated 30.03.2007, for the same purpose and in that said award, the rates had been determined on the basis of one sale transaction, which took place in the aforesaid Village Pashgaon. Hence, the Land Acquisition Collector announced Award No.605, dated 31.03.2009, on the basis of previous award dated 30.03.2007. The Land Acquisition Collector had also awarded 10% per annum hike on the rates already

awarded and determined the rates as follows:-

Sr. No.	Classification of Land	Rate per centiar
1.	Bakhal Awal	Rs.225/-
2.	Uncultivated gair mumkin	Rs.120/-

3. The petitioners, feeling aggrieved and dissatisfied with the said award, preferred reference petition under Section 18 of the Act for enhancement of the amount of compensation on the ground that the award passed by the Land Acquisition Collector was *void-abinitio* as the market value of the acquired land at the time of notification under Section 4 of the Act was not less than Rs.8 lacs per bigha.

4. Vide impugned award dated 08.09.2017, the learned Reference Court allowed the reference petition with costs and the petitioners were held entitled to enhanced compensation at the rate of Rs.19,965/- per biswa, irrespective of classification of land, alongwith all other statutory benefits. Hence, the appellants/HPSEBL preferred the instant appeal with a prayer to set-aside the impugned award passed by the learned Reference Court.

5. The learned Senior Counsel for the appellants contended that the learned Reference Court had relied upon

Award No.583, dated 30.03.2017, however, it failed to deduct 30% developmental charges. She further contended that since the acquired land was situated in a remote village, therefore, the learned Reference Court has erred in awarding uniform compensation irrespective of the classification of the land.

6. Conversely, learned counsel for the respondents supported the impugned award by contending that the learned Reference Court had rightly assessed the market value of the acquired land.

7. I have heard learned Senior Counsel for the appellants as well the learned counsel for the respondents and have also carefully gone through the records.

8. As per the settled principle of law, compensation for the land acquired has to be determined at market value. Market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price

outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

9. In ***Mehta Ravindrarai Ajitrai (deceased) through his heirs and LRs & others vs. State of Gujarat (1989) 4 SCC 250***, the Hon'ble Supreme Court held that the market value of a property for the purpose of Section 23 of the Act is the price at which the property changes hands from a willing seller to a willing purchaser, but not too anxious a buyer, dealing at arms length. The relevant portion of the aforesaid judgment reads as under:

"4. The market value of a piece of property for purpose of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value."

10. In ***Atma Singh & others vs. State of Haryana & another (2008) 2 SCC 568***, the Hon'ble Supreme Court held that the market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its

existing conditions with all its existing advantages and its potential possibilities when led out in most advantages manner, excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The question whether a land has potential value or not, is primarily one of the facts depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. The relevant portion of the aforesaid judgment reads as under:

“4. The expression “market value” has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal

human conduct would be willing to buy as a prudent purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor façade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration."

11. For ascertaining market value of the acquired land, the Court can no doubt rely upon such sale transactions, which would offer a reasonable basis to fix the price, for which purpose, a sale transaction relating to a smaller parcel of land can be considered for the purpose of assessing the market value in respect of a large tract of land, after making appropriate deductions such as for development of land, for providing space for roads, sewers, drains, expenses involved in formation of a layout, lump- sum payments, as well as for the waiting period required for selling the sites that would be formed and other expenses involved therein, but before doing

so, the evidentiary value of such a sale deed is required to be carefully scrutinized. As held in the case of ***Land Acquisition Officer vs. Nookala Rajamallu reported as (2003) 12 SCC 334***, in order to adopt the price reflected in the sale deed, the following conditions are required to be met:-

"9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

10. It is only when these factors are present, it can merit a consideration as a comparable case."

13. The onus is upon the petitioner to prove the true and correct market value of the land at the time of the issuance of the notification under Section 4 of the Act. The petitioner is expected to lead cogent and satisfactory evidence in support of his claim. In ***Special Land Acquisition Officer vs. Karigowda & others, (2010) 5 SCC 708***, it has been held that the onus to prove entitlement to receive higher compensation is upon the claimants but it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the fact and clear position of documents,

that obligation to pay fair compensation is on the State in its absolute terms. The relevant portion of the aforesaid judgment reads as under:

“29. It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In Basant Kumar v. Union of India [(1996) 11 SCC 542] this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in Gafar v. Moradabad Development Authority [(2007) 7 SCC 614] and the Court held as under: (SCC p.620, para 12)

“12. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award.”

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the courts are expected to scrutinise the evidence led by the parties in such proceedings.”

14. In support of his case, the petitioners had produced

on record copy of sale-deed dated 15.10.2003, Ext. PW1/C and certified copy of award Ext.PW1/D dated 23.10.2010, passed by the learned Additional District Judge, Kinnaur at Rampur Bushahr.

15. On the other hand, the respondents examined two witnesses and tendered some documents in evidence. RW-1 Chander Prakash tendered in evidence his affidavit RW1/A, wherein he stated that as per record, the respondents had rightly awarded the compensation at the rate of Rs. 225/- per centare for *Bakhal Awal* and at the rate of Rs.120/- per centare for uncultivated *gair mumkin* land. Since there was no sale transaction during the period from 22.11.2006 to 22.11.2007, therefore, Award No.583, passed by the Land Acquisition Collector, HPSEB/HPPCL, with respect to the land acquired, abutting and adjoining to the land under acquisition for the same purpose, was relied upon and further 10% per annum hike was also awarded to the petitioners. During his cross-examination, he admitted that the HGPT stage-1 is near to Stage-II project and the land acquired for stage-1 project was of same kind and situated at same height as acquired for stage-II project. RW-2 Mahavir Sharma also tendered in evidence his

affidavit Ext.RW2/A, wherein, he deposed that the acquired land was situated in remote area at a distance of 40 km from Rampur town and the same was unirrigated land. During his cross-examination, he admitted that the land acquired for Stage-I project was situated within one kilometer from the land acquired for Stage-II project. The respondents had also placed on record the documents Ext.RW1/C to Ext.RW1/F.

16. Perusal of the copy of sale-deed dated 15.10.2003, Ext. PW1/C reveals that land measuring 00-00-80 hectares, situated in village Pashgaon was sold for Rs.15,000/- However, as the notification under Section 4 of the Act was issued on 25.8.2007 and the sale-deed Ext. PW1/C pertains to the period about four years prior to the issuance of the notification under Section 4 of the Act, hence, the learned reference court has rightly not taken into consideration this sale-deed to determine the market value of the land in dispute. The petitioners had also placed on record copy of Award Ext.PW1/D dated 23.10.2010, passed by the Additional District Judge, Kinnaur at Rampur, perusal of which shows that the petitioners therein were held entitled to enhanced compensation of acquired land at the rate of Rs.15,000/- per biswa, irrespective of the classification along

with other benefits. Its perusal further shows that the reference petition therein was made against the Award No.583, dated 30.03.2007, on which the LAC has relied upon at the time of passing the award. In the instant case, the respondents themselves had relied upon the Award No.583 dated 30.03.2007 and granted the compensation to the claimants/petitioners therein on the basis of said award.

17. In ***Union of India vs. Pramod Gupta (dead) by LRs & others, 2005 (12) SCC 1***, the Hon'ble Supreme Court held that the best method, as is well-known, would be the amount which a willing purchaser would pay to the owner of the land. In the absence of any direct evidence, the Court, however, may take recourse to various other known methods. Evidence admissible therefor inter alia would be the sale deeds, judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment/award in the absence of any other evidence like deed of sale, report of the expert and other relevant evidence would have only evidentiary value. The relevant portion of the aforesaid judgment reads as under:

“24 While determining the amount of compensation payable in respect of the lands acquired by the State,

the market value therefor indisputably has to be ascertained. There exist different modes therefor.

25. The best method, as is well known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidences admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment and award, in the absence of any other evidence like the deed of sale, report of the expert and other relevant evidence would have only evidentiary value."

18. Therefore, in view of the aforesaid decision of the Apex Court, in the absence of any other cogent and satisfactory evidence on record, the learned Reference Court has rightly held the petitioners entitled to enhanced amount of compensation at the rate of Rs.15,000/- per biswa, on the basis of the award Ext.PW1/D. Since the land in award Ext. PW1/D was acquired three years prior to the land acquired in the instant case, hence, after taking 10% annual increase, the petitioners have rightly been held entitled to enhanced compensation at the rate of Rs.19,965/- per biswa, irrespective of classification of land.

17. Hence, in view of the above, no interference is required in the impugned award dated 08.09.2017, passed by the learned Additional District Judge, Kinnaur District at Rampur Bushahr, HP. Consequently, the instant appeal,

being devoid of merits, deserves dismissal and is accordingly dismissed.

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

August 26, 2026
(V.Himalvi)

(Sushil Kukreja)
Judge