

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 128 of 2003**

K.K.Baghel, aged about years, son of K.C. Baghel, resident of
Azad Chowk, Raipur (M.P). **--- Appellant**

Versus

- (1) State of Madhya Pradesh (now Chhattisgarh) through the
Collector, Raipur (M.P)
- (2) The Executive Engineer, M.P. Grih Nirman Mandal Raipur (M.P)
--- Respondents

FA No. 102 of 2003

Harishankar Madharia, son of T.H. Madharia, aged about years,
resident of village Ma. L.L. Corporation, Azad Chowk, Raipur (M.P.,
now C.G) **--- Appellant**

Versus

- (1) State of Madhya Pradesh (now Chhattisgarh) through the
Collector, Raipur (M.P)
- (2) The Executive Engineer, M.P. Grih Nirman Mandal, Shankar
Nagar, Raipur (M.P). **--- Respondents**

FA No. 103 of 2003

Smt. Damyanti, wife of Tukendra Prasad, aged about years, R/o
village Limtara, Post Limtara, Distt. Durg (M.P., now C.G)
--- Appellant

Versus

- (1) State of Madhya Pradesh (now Chhattisgarh) through the
Collector, Raipur (M.P)
- (2) The Executive Engineer, M.P. Grih Nirman Mandal, Shankar
Nagar, Raipur (M.P now C.G). **--- Respondents**

For the appellants	:	Mr. Malay Kumar Bhaduri, Advocate
For Respondent No.1	:	Mr.Sanjay Patel Panel Lawyer
For the State/R-2	:	Mr. Samir Behar, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

27.10.2018

1. Since similar questions of law and facts are involved in all the 3 appeals, they are being disposed of by this common order.
2. Appeal filed by K.K. Baghel, bearing F.A. No.128 of 2003 arises out of the original Land Acquisition Case No.36/2000; appeal filed by Harishankar Madharia, son T.H. Madharia, bearing F.A. No.102/2003 arises out of original land acquisition case No.30/2000 and Appeal filed by Smt. Damayanti, wife of Tukendra Prasad bearing No. F.A.No.103/2003 arises out of a land acquisition case No.6/2000.
3. The undisputed facts of the case are that in a revenue case bearing No.66-A/1982 of the year 1988-1989 in respect of the lands situated in village Dangania an award was passed on 10.05.1990 u/s 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894). The land owners being aggrieved by such award had filed an application u/s 18 of the Act 1894. On such reference, the Court of 3rd Addl. District Judge, Raipur passed the order dated 24.12.2002 whereby the value of land @ Rs.1.87 per sqft., was enhanced to Rs.3/- per sqft. The Court has further awarded additional amount over the market value of land @ 12% of the market value u/s 23(1-A) of the Land Acquisition Act and also granted further additional amount @ 30% of the market value as per Section 23(2) of the Act of 1894. The said order is under challenge before this Court.
4. The admitted facts are that the erst-while housing board on

08.09.1988 proposed to acquire the land ad-measuring 17.938 hectares at village Dangania and acquisition proceedings commenced under the Land Acquisition Act 1894. As per the proposal initially the notification was issued u/s 4(1) which was published in M.P. Gazette (Part-I) at page 681 on 31.03.1989 and another notification was made on 31.03.1989 vide notification No.690 under section 6 of the Act. Both the notifications were subsequently published on 02.09.1989 in M.P. Gazette u/s 9(1) of the Act. Thereafter the land owners were heard as contemplated u/s 9(2) and 9(3) of the Act of 1894 on 16.09.1989. After hearing the land owners, the land acquisition officer passed an award on 10.05.1990 u/s 11 of the Act. Subsequently the part of award was paid to the land owners u/s 12(2) of the Act. Few of the appellants namely filed an application u/s 18 of the Act and reference was made to the Court that they were not satisfied with the award. Out of the 5 applicants, 3 of them have filed these appeals.

5. (i) In respect of Mr. K. K. Baghel, who has filed F.A.No.128/2003, his land bearing Kh.No.84/8 admeasuring 0.41 hectares was acquired and he was directed to be paid an amount of Rs.33,690/- u/s 11 of the Act. Further u/s 23(1) of the Act an amount of Rs.4380 was paid and u/s 23(2), Rs.10,108/- was paid whereby the total amount which comes to Rs.48,178 was paid.

(ii) In respect of Harishankar Madharia who has preferred appeal bearing No.102/2003 before this Court, his land bearing Kh.No.83/36 ad-measuring 0.23 hectares were acquired and he was directed to be paid Rs.18,899/- u/s 11

of the Act. Further u/s 23(1), Rs. 2457/- was paid and u/s 23(2), Rs.5670/-- was paid thereby the total sum amounting to Rs.27,026/- was paid to him.

(iii) In respect of appellant Damayanti who has preferred appeal No. 103/2003 the land bearing Kh.No.83/12 & 83/75 ad-measuring 0.24 hectares were acquired and u/s 11, an amount of Rs. 19,721/- was paid; u/s 23(1), Rs.2564/- was paid and u/s 23(2) Rs.5916/- was paid thereby a total amount of Rs.28,201/- was paid. The Court of Additional District Judge further enhanced the amount as aforesaid to the extent of Rs.3/- per sqft from Rs.1.87 per sqft., and relatively the compensation u/s 23(1) and 23(2) were also enhanced. Apart from that, the interest was also awarded u/s 28 of the Act. Being aggrieved by such order dated 24.12.2002, 3 separate appeals are preferred.

6. Mr. Malay Bhaduri, learned counsel for the appellant placed reliance in ***1995(II) M.P.Weekly Notes (Note No.54) – Ramesh Kumar vs. State of M.P.*** and would submit that the assessment of compensation of market price of the land has to be taken into account and not the use thereof since the court below has differentiated and not granted the actual compensation by holding the land to be an agricultural one. He further placed reliance in ***1995 (2) M.P. Weekly Notes (Note No.173) Hasanali Khanbhai @ Sons (M/s) v. State of Gujrat*** and would submit that to assess the market value of the land besides the other factors, the judicial experience should have been applied and the Court should have put itself on the chair of willing purchaser. He submits that the evidence on record would show that the

price of land prevailing in the area was Rs.15 to 20/- per sqft., which would be evident from the sale deed. He therefore, submits that the compensation so awarded should be relatively enhanced.

7. Per contra, learned counsel for the respondents would submit that the compensation so awarded is just and legal as the amount of compensation from Rs.1.87 per sqft., was enhanced to Rs.3/- per sqft on the basis of a sale deed executed by Manas Kumar and the sale deed of Manas Kumar was of the year 1987 whereas the acquisition was made after two years thereby the price of Rs.3/- per sqft., was just and legal which do not require any interference. He further submits that the other sale deeds so produced by the appellant would show that no nexus has been shown that these lands are adjacent to the acquired lands so as to evaluate the value of the property.
8. Learned State Counsel also submits that the order of the court below is well merited which do not call for any interference.
9. Heard learned counsel for the parties and also perused the documents of the respective records of appeals.
10. Since the acquisition pertains to the particular area wherein 3 appellants had their lands as such the evidence is also considered together as that was done by the court below. All the records of three reference cases are before the Court. The sale deed dated 25th Feb. 1987 was executed whereby a sale was made in favour of one Sudhir Dhruv Awal by Manas Kumar in respect of Kh.92/4 ad-measuring 4791 sqft., at village Dangania. The reference Court on the basis of said

sale deed has enhanced the amount to Rs.3/- per sqft. and the land bearing Khasra No.84/8 in respect of K.K. Baghel, land bearing Kh. No. 83/36 of Harishankar Madharia and the lands bearing Kh. Nos. 83/12 & 83/75 of of Damayanti were acquired. Whether those acquired lands of khasra numbers were adjacent to Khasra no.92/4 of which a price of Rs.3/- sqft was existing for the sale is not categorical. However, the reference Court has taken the price of the same to enhance the compensation on the ground that from the evidence it appears that the lands so acquired were near to the said land.

11. Appellant K.K. Baghel averred that the subject land is near Ayurvedic College, G.E.Road wherein the road was constructed in the year 1996. No document has been produced by him to show that at which road he purchased the land and whether any development was already carried out thereon or not. Likewise, Harishankar has also not placed any document to show that when the land was acquired whether it was a diverted plot or not. The reference Court while evaluating the land @ Rs.3 per sqft., has given a finding that the sale deed dt.25.07.1987 was executed before issuance of notification. At para 13 of the impugned judgment, the reference Court recorded that while producing the document one Vijay Kumar who is father of minor Ruchir Awal was examined as A.W.3 by the applicants to prove the sale of certain part of land of Kh.No.92/4 ad-measuring 11 decimal for which the sale deed was executed in favour of Ruchir Awal by Mukesh Kumar. Therefore, the said land of Kh.No.92/4 situates within the acquired land which belonged

to Ruchir Awal, son of Vijay Kumar. Taking into consideration such statement of Vijay Kumar, the guardian of Ruchir Awal the Court found that said Vijay Kumar who was examined as A.W.3 has not filed any application for reference u/s 18 of the Act. It is stated that the Court evaluated its statement by holding that the value of the land was Rs.3/- per sqft. There is no challenge to such finding by the Board, therefore, these findings arrived at by the reference Court are not required to be disturbed in absence of any challenge.

12. With respect to other sale deeds which have been produced as Ex.P-2 & Ex. P-3, it appears that Ex.P-2 is a sale deed executed in favour of Parvati Dubey dt. 15.2.1989. The property in such sale deed shows that it was in respect of a Nazul Plot situated at Dongaji Colony, College Ward and Plot number was 6/31. Along-with the sale deed, the map is also appended. Likewise, another sale deed executed in favour of Indrani Sharma is in respect of land bearing Kh.No.275/7 that situates in Dangania. The map of the said plot is also attached. In order to evaluate such value, it was necessary for the applicant to prove by placing cogent evidence i.e., Naxa prevailing of the area to show the actual existing position of the subject land which was acquired, for which separate sale deeds were exhibited to evaluate the land. Simply because the fact that the said lands situated in Dangania were sold at a higher value, it cannot be presumed that the lands acquired by the Housing Board would be at par with the sale deeds produced. The Court observed that at Dongania, 174 acres situated whereas the Housing Board has acquired only 17.938 hectares. Therefore the land would

have a separate value according to its situation. In order to get the benefit of other sale deed of Kh.No.92/4 and Nazul plot as also Kh.No.275/7, the applicants should have proved that the acquired lands were adjacent to those lands for which the sale deeds were produced. In absence thereof, no inference can be drawn that the document for which the sale deed was produced would carry the same price for the acquired land. It appears that the appellants have failed to produce the relevant evidence so as to evaluate the value of land in question which was acquired.

13. After scrutiny of the entire evidence, I am of the opinion that no interference is required by this Court to disturb the finding of the Court below. In the result, the appeals have no merit and are dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

**Sd/-
GOUTAM BHADURI
JUDGE**