IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFAs No.351 & 159 of 2014
Reserved on:18.03.2024
Pronounced on: 19.04.2024

RFA No.351 of 2014

State of Himachal Pradesh & Others ……Appellants

Versus

Ram Dayal & Others …Respondents

RFA No.159 of 2014

Ram Dayal & Others …Appellants

Versus

State of Himachal Pradesh & Others ..Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

RFA No.351 of 2014

For the appellants : Mr. Rakesh Dhaulta, Mr. Sushant Keprate & Mr. Gobind Korla, Additional Advocate Generals with Mr. Arsh Rattan & Ms. Priyaka Chauhan, Deputy Advocate Generals.

For the respondents : Ms. Devyani Sharma, Sr. Advocate with Mr. Anirudh Sharma, Advocate, for respondents No.1 & 2.

Respondent No.3 is stated to have expired.

RFA No.159 of 2014

For the appellants : Ms. Devyani Sharma, Sr. Advocate with Mr. Anirudh Sharma, Advocate.

For the respondents : Mr. Rakesh Dhaulta, Mr. Sushant Keprate & Mr. Gobind Korla, Additional Advocate Generals with Mr. Arsh Rattan & Ms. Priyaka Chauhan, Deputy Advocate Generals.

M.S. Ramachandra Rao, Chief Justice.

Both appeals are preferred under Section 54 of the Land Acquisition Act, 1894 (in short **"the Act"**) against the judgment dt. 08.01.2014 passed by the Additional District Judge, Sirmour District at Nahan, Himachal Pradesh, Camp at Paonta Sahib, in LAC Petition no.1-N/4 of 2009.

2) A Notification dt. 28.03.2007 has been issued under Section 4 (1) of the Act for acquisition of land of the appellants in RFA no.159 of 2014/**claimants** comprised in Khasra nos.529, 574, 573 & 575, Kita-4, measuring 4455.83 sq. mtrs. situated in Village Paonta Sahib, Tehsil Paonta Sahib, District Sirmour, H.P. for construction of a Sewerage Tank, Zone no.2.

3) Award no.18 of 2008 was passed on 05.09.2008 by the Collector, Land Acquisition, H.P.P.W.D., South Zone, Winter Field, Shimla.

The Award of the Land Acquisition Collector

4) Before the Land Acquisition Collector, the land acquiring Department, i.e. I & P.H. Division, Poanta Sahib, examined Sh. S.K. Gupta, Jr. Engineer, who produced a letter no.SRM-DRA-

1/DC/2008-270 dt. 21.04.2008, approving one year average market value, whereunder, he had stated:

"Classification of Land ***Rate per Sq. Mtrs.***

Auvar Anuval	*Rs.7,847.00*
Aubad Doyam	*Rs.5,185.00*
Banjar Kadim	*Rs.1,681.00*
Khadar	*Rs.5,185.00*
Nakabal	*Rs. 280.00"*

5) The Land Acquisition Collector, however, stated that this was on higher side.

6) The Land Acquisition Collector held that this one year average market value of land is based upon thirteen mutations of land of area ranging from 0-4 biswa to 0-6 biswa, purchased mainly for construction of domestic houses; land had been sold in plots which had been approved by the Town and Country Planning Department; these small plots fetch higher market value, whereas, the land under acquisition is a big chunk, measuring 4455.83 sq. mtrs.; and the plots sold indicate retail price, whereas, the price of acquired land depicts the whole sale price.

7) He also mentioned that the land under acquisition is in the shape of '*Banjar'* on spot as reported by the field staff and the acquired land does not possess any semblance or similarity with the land covered by the plots sold for construction of domestic house.

8) After referring to certain citations, he held that sufficient deduction has to be made to arrive at a just and fair market value of the land as approved by the District Collector.

9) He then treated the *entire* acquired land as '*Banjar'* class of land, deducted 53% from it, and arrived at a rate of Rs.790/- per sq. mtr. For the total area of acquired land measuring 4455.83 sq. mtrs., he thus arrived at a market value of Rs.35,20,106/- only.

10) He no doubt, granted in addition thereto, 12% additional market value and 30% solatium, but did no grant interest under Section 28 or Section 34 of the Act.

11) The Annexure to the said Award, i.e. Para-55, S.O. No.28, indicates that the extent of land acquired in Khasra no.529, is 1806.28 sq.m with a classification *Auvar Anuval;* in Khasra no.574, extent acquired is 1308.20 sq.m with classification *Nahari Auvar*; in Khasra no.573, extent acquired is 1199.60 sq.m also classified as *Auvar Anuval* and the extent acquired in Khasra no.575 is 141.75 sq.m classified as *Banjar Kadeem.*

The reference under Section 18 of the Act to the Civil Court

12) Not satisfied with the amount of compensation awarded by the Land Acquisition Collector, the claimants sought a reference under Section 18 of the Act to the Reference Court, stating that

they did not accept the Award and more compensation is required to be awarded.

13) The Land Acquisition Collector, H.P.W.D., Winter Field (South Zone), Shimla, vide proceedings no.863-66 dt. 19.11.2008, made the reference to the District Judge, Sirmour, under Section 18 of the Act.

14) The said reference was numbered as LAC Petition no.1-N/4 of 2009 before the Additional District Judge, Sirmour District at Nahan, H.P., Camp Court at Poanta Sahib.

The judgment of the Reference Court u/s 18 of the Act.

15) Before the Reference Court, the claimants contended that the market value of the land had not been properly assessed and it has to be assessed at the rate of Rs.33,820/- for 4,314.08 sq. mtrs. of *Auvar Abbal* land and Rs.7,247/- for 141.75 Sq. mtrs. of *Banjar Kadeem* land.

16) They contended that keeping in view the location of the land and other development activities being carried on at Paonta Sahib, a willing purchaser would offer the said rate.

17) It was also contended that while constructing the Water Sewerage Tank, adjoining land measuring 557.05 sq. mtrs., comprised in Khasra no.528, which is surrounding the said tank, was also adversely effected; that on that land no construction can be done

and it has become useless and so the claimants are entitled to compensation for this land also @ Rs.33,820/- per sq. mtr.

18) They contended that the acquired land adjoins to the road and having high potential value and can even be used for commercial purpose.

19) According to them, the Paonta Town is flourishing in business and many Pharmaceutical Companies had been established in this surrounding area, but this aspect had been totally ignored and only compensation was assessed on the basis of the *kind* of land ignoring the real utilization of the land.

20) They also contended that the Land Acquisition Collector, during inquiry did not consider the location, topography, potentiality of the acquired land and he had failed to award interest under Section 34 of the Act on the amount of compensation assessed by him.

Reply of the State.

21) Reply was filed by the I & P.H. Department of the State of Himachal Pradesh, disputing the above contentions.

22) According to them, Khasra no.528, measuring 557.05 sq. mtr., was recorded on the spot as *'Gairmumkin Nallah'*.

23) They alleged that the Department had acquired only 4455.83 sq. mtrs., comprised in Khasra nos.529, 573, 574 & 575 and there was no acquisition of any land in Khasra no.528.

24) It was contended that the Land Acquisition Collector had given opportunity of hearing to all the claimants and had arrived at the just and fair compensation for the acquired land.

25) According to the State, the acquired land was situated on the bank of *Yamuna River,* which is covered on one side by a *Nallah* through which the waste water of some part of Paonta Town flows, and on the other side, the land is surrounded by Mortuary House/House of the Dead as well as a Slaughtering House and so it had no useful value. According to them, no *Abadi* was situated near the acquired land and the acquired land was not fit for *Abadi* purpose and the rate claimed by the claimants was excessive.

The judgment of the Reference Court.

26) Before the Reference Court, the claimants examined PWs 1 to 5 and marked Ex.PW-1/A to Ex.PA (nine in number).

27) The State examined RW-1 and marked Ex.DA.

28) After discussing the oral and documentary evidence placed on record, the Reference Court took into account the letter no.SRM-DRA-1/DC/2008-270 dt. 21.04.2008 issued by the District Collector, Sirmour approving one year average market value of

lands with different classifications referred to above in para 4. Curiously it took an average of the market value thereunder (adding the market value of the five types of land and dividing it by five) and arrived at a market value of Rs.4,000/- per sq. mtr.

29) As we have noted above, the Land Acquisition Collector had only awarded Rs.790/- per sq. mtr.

30) The Reference Court held that irrespective of classification and category of the acquired land, compensation at uniform rate has to be assessed and all statutory benefits have to be granted, i.e. solatium, additional market value & interest under Sections 28 & 34 of the Act as well.

31) While doing so, it considered the oral evidence adduced by the claimants, who had categorically deposed through PW-2, Chairman of the Paonta Municipal Council; PW-4, who was a Member of the *'Paonta Sahib Vyapar Mandal"* (Business Association) and also the evidence of RW-1, who was as Assistant Engineer in the I. & P.H. Department, who spoke of the fact that the acquired land is within the Municipal Council limit of Paonta Sahib and was near to the Paonta market and there was a Telephone Exchange, Veterinary Hospital, Civil Hospital, Police Station and B.D.O. Office near to the acquired land, i.e at a little more than 100 meters.

32) Though certain Sale Deeds of the year 2006 were marked through PW-1, since 2006 & 2009 they were not relied on by the Reference Court.

33) It also placed reliance on Ex.PA, which is the *Jamabandi* for the Year 2007-2008. It noted that the classification of the land in the said *Jamabandi* of Khasra no.575 is *Banjar Kadeem,* Khasra no.529 is *Auvar Abbal,* Khasra no.574 is *Nahari Abbal* and Khasra no.573 is *Auvar Abbal.*

34) It held that no evidence had been led on behalf of the State as to on what basis the field staff had reported that the acquired land is *Banjar* and rejected the plea of the State that the acquired land is *Banjar* land.

The RFA No.159 of 2014 and RFA No.351 of 2014

35) Assailing the same, the State has preferred RFA no.351 of 2014, while the claimants have filed RFA no.159 of 2014.

36) Ms. Devyani Sharma, learned Sr. Counsel assisted by Mr. Anirudh Sharma, Counsel for the claimants, contended that the *Jamabandi* of 2007-2008, correctly discloses the classification of the land as best quality land and the Land Acquisition Collector erred in treating the whole of the acquired land as *Banjar* land and fixing a low compensation of Rs.790/- per sq. mtr. She contended

that this finding of the Land Acquisition Collector is perverse and not based on application of mind.

37) She also highlighted the evidence of PWs 2 & 4 as to the location of the land within the Municipal Limits of Paonta Sahib, close to the Telephone Exchange Office, Veterinary Hospital, B.D.O. Office, Shiva Colony, SDM Officials Colony, Police Station and Paonta Bazar.

38) She contended that there is no legal basis for the Reference Court taking average of the rate per square meter for the land of different classifications and arriving at the rate of Rs.4,000/- per sq. mtr.

39) According to her, since the land in Khasra nos.529, 573 & 574 is *Auvar Abbal(*best quality land) of extent of 4314.08 sq. mtrs., rate at Rs.7,847/- per sq. mtr. has to be granted as fixed in the District Collector, Sirmour's letter no.SRM-DRA-1/DC/2008-270 dt. 21.04.2008.

40) She also contended that for the land of 141.75 sq. mtrs. in Khasra no.575, in view of the location of the land, compensation of more than Rs.1,681/- per sq. mtr., mentioned in the District Collector's letter, has to be granted.

41) The learned Additional Advocate General appearing for the State, however, contended that the assessment of compensation by the

Reference Court is erroneous. He contended that the land acquired was for a Sewerage Plant and was closed to a *Nallah*, containing sewerage and the rate awarded by the Reference Court is excessive and the State appeal has to be allowed. He, however, did not dispute that claimants are entitled to award of interest under Sections 28 & 34 of the Act, which had been denied to them by the Land Acquisition Collector.

Consideration by the Court

42) We have noted the submissions of the parties.

43) We may point out that even before the Land Acquisition Collector, the letter no.SRM-DRA-1/DC/2008-270 dt. 21.04.2008 of the District Collector Sirmour at Nahan, approving one year average market value, had been placed on record.

44) In that letter admittedly, for *Auvar Abbal* land, the average market value / rate per square meter was fixed at Rs.7,847/- per sq.mtr. and for *Banjar Kadeem,* the rate was Rs.1,681/- per sq. mtr.

45) The *Jamabandi* for the Year 2007-2008 (Ex.PA) clearly mentions that land in Khasra no.529 measured 1806.28 sq. mtrs and is *Auvar Abbal;* land in Khasra no.574 measured 1308.20 sq. mtrs. and is *Nahari Abbal;* land in Khasra no.573 measured 1199.60 sq. mtrs. is also *Auvar Abbal;* but the land in Khasra no.575 measuring 141.75 sq. mtrs. is *Banjar Kadeem.*

46) The entries in this document are not disputed by the Additional Advocate General for the State.

47) The dictionary of revenue terms cited by the counsel for the claimants shows that '*Auvar Abbal'* is best quality land, while '*Nahari Abbal'* is a land irrigated from a Canal, but '*Banjar Kadeem'* is old fallow land.

48) Thus, there appears to be very little difference between land classified as '*Auvar Abbaal'* and '*Nahari Abbal',* which cover an extent of 4314.08 sq. mtrs. in Khasra nos.529, 574 & 573.

49) The balance acquired land is of extent 141.75 sq.m. which is *Banjar Khadeem*.

50) Though certain Sale Deeds had been produced by the claimants through PW-1, they were rightly not relied by the Reference Court, probably because the location of the land sold under those Sale Deeds *vis-à-vis* the acquired land was not stated by the claimants' witnesses.

51) However, PW-2, the Chairman of the Paonta Municipal Council, in his deposition stated that the acquired land is in the area of Municipal Council Paonta Sahib, and near this land, there is Office of Telephone Exchange, Veterinary Hospital, B.D.O. Office, a Colony called *'Shiva Colony' &* SDM Officials Colony and Bungalow of the Executive Engineer of I & P.H.

Department.He also stated that besides the colony, there is a Police Station and the Market of Paonta Sahib. He asserted that land under acquisition, which is within the limits of Municipal Council Paonta Sahib, would be prized at Rs.3 lacs to Rs.3.5 lacs per biswa.

52) He stated that the *Nallah*/dirty drain does not flow from the acquired land and that it flows from the side of the acquired land.

53) He denied that houses cannot be built in such a place and stated that on both sides of the drain there are houses. He denied the suggestion that the acquired land is adjacent to Yamuna River. According to him, the acquired land is at a distance of 200 to 300 meters from the Yamuna River. He also denied the suggestion that water from Yamuna River comes into the land in question during the rainy season or that the sewerage plant is located along the Yamuna River. He denied that the land in question was not safe for residential purpose. According to him, the Paonta Sahib Police Station is at a distance of 250 meters from the acquired land and the Cremation Ground is 150 meters away from the acquired land, though, the Slaughter House is besides the acquired land.

54) According to him, the *'Shiva Colony'* has been built at a distance of 150 meters from the acquired land, for which, N.O.C. was

taken from the Municipal Council Paonta for construction of houses; that the said Colony is at a distance of about 50 meters from Paonta Bazar and there is also State Bank by its side.

55) PW-4, who was the Member of the *'Paonta Sahib Vyapar Mandal',* supported the deposition of PW-2 and quoted that the price of the land would be more than 3.5 lacs per sq. mtr. According to him, land adjacent to the acquired land, is cultivated land and wheat and maize crops are grown in it and the area is quite developed and many people would be willing to buy land. According to him, the Yamuna River is 500 meters away from the acquired land. He stated that the dirty drain of the town flows alongside the land in question at a distance of 10 to 15 meters.

56) He denied that the land was not suitable for residential purposes, and according to him, there are big houses at a distance of 25 to 30 meters. He also stated that the Slaughter House and Mortuary House are being shifted from the place adjacent to the acquired land and construction work of the building of the Slaughter House was going on and it would be shifted.

57) RW-1, the witness examined by the State, also admitted that the land was within the Municipal Council limits and near the Paonta Market and Telephone Exchange, Veterinary Hospital, Civil Hospital, Police Station & B.D.O. Office were near the acquired

land at a distance of more than 100 mtrs. He declined to say what the Government price for the sale of land under acquisition would be. However, he admitted that the area of Paonta is developed. He also admitted that there is no dirty drain in the acquired land and that it was on one side and on the other side there is Yamuna River.

58) He stated that the land under acquisition is on elevation and there were quarters nearby.

59) A perusal of the above depositions of the witnesses clearly shows that the acquired land is within the Municipal Council limits of Paonta Sahib and the area is well developed. Though there is a dirty drain on one side of the acquired land and the Yamuna River on the other side, the acquired land being on a elevated level, is not effected and there are residential Colonies, such as Shiva Colony, SDM Officers Colony nearby and there are also Telephone Exchange, Veterinary Hospital & BDO Office nearby. It has also come on record that there is no dirty drain in the acquired land.

60) Therefore, undoubtedly, the acquired land has a potentiality and would have considerable value.

61) However, in the absence of sale transactions, relating to nearby lands, we have to fall back on the letter no.SRM-DRA-

1/DC/2008-270 dt. 21.04.2008 of the District Collector, Sirmour at Nahan (referred to in para 4 above) approving one year average market value of lands with different classifications, which was produced even before the Land Acquisition Collector by the officials of the State.

62) The Land Acquisition Collector, without noticing the classifications of the different portions of the acquired land, as mentioned in the *Jamabandi* Ex.PA, referred to above, in our opinion, wrongly treated the entire acquired land as *'Banjar'* and deducted 53% there-from without any valid basis and fixed a meager compensation of Rs.790/- per sq. mtr.

63) Though the Land Acquisition Collector has stated in his Award that the one year average market value was based upon thirteen mutations of small extents of land, there is no basis for the said conclusion since no such material has been placed before the Reference Court by the State's witnesses.

64) The Reference Court, while accepting the Collector's determination contained in his letter dt. 21.04.2008 referred to above, without any valid basis, took an average of the one year average market rate for lands of different classifications without any legal basis therefor, ignoring the rate fixed for the different types of classification of the lands as under: Rs.7,847 per sq. mtr.

for *Auvar Abbal* to Rs.1,681/- per sq. mtr. for *Banjar Kadeem* and other categories and arriving at the rate of Rs.4,000/- per sq. mtr.

65) Since according to the *Jamabandi* Ex.PA, referred to above, the land in Khasra nos.529, 573 & 574, comprising of 4314.08 sq. mtr., is of the best quality *Auvar Abbal/Nahari Abbal,* one can safely take the rate of Rs.7,847 per sq. mtr. mentioned in the aforesaid letter dt. 21.04.2008 of the Collector as market value for the said extent, and make a deduction of about 20% therefrom, arriving at the rate of Rs.6,270/- per sq. mtr. for the above extent.

66) For the extent of 141.75 in Khasra no.575, which is *Banjar Kadeem* and is a smaller extent, we apply the rate of Rs.1,681 per sq. mtr., and deduct 20% there-from and arrive at the market rate of Rs.1,345/- per sq. mtr.

66-a) The claimants shall be paid compensation of the above rates for the acquired land.

67) As regards Khasra no.528, since it is not the subject matter of acquisition and the same is not covered by the reference under Section 18 of the Act, we do not propose to award any compensation for it.

68) We are also of the opinion that the claimants are entitled to all statutory benefits as per the Land Acquisition Amendment Act 68 of 1984, such as solatium, additional market value under Sections

23 (1A) and 23(2) of the Act and also interest under Sections 28 & 34 of the Act on the above basis.

69) Accordingly, RFA no.159 of 2014 is allowed, and RFA no.351 of 2014, is dismissed. No costs.

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

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

April 19, 2024
(Yashwant)