 Neutral Citation No. (2026:HHC:49224)

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 152 of 2010
Reserved on: 07.10.2026
Date of decision: 06.11.2026
Date of uploading on website: 06.11.2026

Shamsher Singh (deceased) through his LRs & others
.....Appellants.

Versus

Ram Murti & others
.....Respondents.

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

For the appellants: Mr. Sanjeev Kuthiala, Senior Advocate, with Ms. Tamanna Sharma, Advocate.

For respondents No. 1, 2(i) to 2(v): Mr. R.P. Singh, Advocate.

None for respondent No. 3.

Respondents No. 4 & 6 to 9 ex parte.

Names of respondents No. 5 & 10 stands deleted.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellants, who were respondents No. 2 to 25 before the learned Reference Court (hereinafter referred to as "the appellants") under Section 54 of the Land Acquisition Act, 1894 (for short "the Act") against impugned award dated

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

21.04.2010, passed by learned District Judge, Una, Disrict Una, H.P. (hereinafter referred to as “the learned Reference Court”), in Land Reference Petition No. 34 of 2005, whereby the claim petition preferred by petitioners, i.e., Shri Ram Murti and Shri Gulzar Singh (respondents No. 1 and 2 herein), under Section 30 of the Act, was allowed.

2. The facts giving rise to the instant appeal are that the petitioners preferred a reference petition under Section 30 f the Act before the learned Reference Court challenging award passed by the Land Acquisition Collector. As per the petitioners, respondents No. 2 to 25 were owners of the land comprised in khata khatauni No. 22 min/136 min, khasra No. 2121, 2122, 2124, 2130, 2131, 2132, all *banjar kadeem,* 2123 *gair mumkin toba*, measuring 0-93-55, revenue estate Bharolian Khurd (Una). It was further averred that the Government of Himachal Pradesh, Department of Housing, vide its notification dated 21.06.2002, under Section 4 of the Act, which was published in H.P. Government Gazette extra ordinary on 15.07.2002, notified the acquisition of the above land of the respondents No. 2 to 25 for the construction of Housing Colony, Rakkar. Subsequently, notification under Sections 6 and 7 of the Act was issued on 01.07.2003. After

completion of all the procedural formalities the Land Acquisition Collector passed Award No. 1/2004, dated 01.12.2004. However, the petitioners preferred objection petition against the payment of compensation to the owners. In the objection petition, the petitioners averred that the land under acquisition was under the use of the petitioners and other inhabitants of the revenue estate Bharolian Khurd and in the books of the Collector the land was described as Giar Mumkin Toba. As per the petitioners, cattle of the village used to take water and rest there.

2(a). The owners of the land had filed Civil Suit No. 349 of 1961, titled as Maqsudam Singh & others vs. Salig Ram & others, whereby they claimed ownership and possession of 3130 kanal 18 marla land. Learned Sub Judge 1st Class, Una, vide judgment and decree dated 20.11.1962 treated land measuring 761.18 kanals under the user as passage, pasture and for common purposes of the residents. Thereafter, the owners of the land preferred an appeal before the High Court of Punjab and Haryana and vide judgment dated 29.05.1969, passed in LPA No. 277 of 1965, the High Court had upheld the judgment of the learned Trial Court.

2(b). The petitioners averred that out of land measuring 761.18 kanals, the Land Acquisition Collector had acquired a portion thereof, i.e., khasra No. 1136, for construction of Power Sub Station and colony of HPSEB. The owners had claimed compensation for acquisition of their land for sub-station and colony of HPSEB and the Reference Court, vide award dated 03.01.1986, had apportioned compensation between the owners and inhabitants in the ratio of 1:3. The said award was upheld by this Court in RFA No. 66 of 1986, titled Shamsher Singh & others vs. Ram Murti & others, dated 12.06.1997.

2(c). The petitioners also averred that the land acquired, vide award No. 1 of 2004, was similar to the land acquired in RFA No. 66 of 1986, thus, the petitioners were also entitled to 75% of the compensation. The petitioners and other residents of the revenue estate had been exercising customary rights over the land in question. As per the petitioners, in similar circumstances the land of respondents No. 2 to 25 was acquired for public purpose. The petitioners had claimed ¾ share, however, vide award dated 30.06.1989, passed in Petition No. 61 of 1987, the Reference Court had awarded 4/5 share of compensation to

the owners and the petitioners and other residents were awarded 1/5 share of the compensation.

2(d). Subsequently, the parties assailed the award passed by the learned Reference Court before this Court and this Court vide judgment dated 17.03.1989, rendered in RFA No. 67 of 1989 and three other connected appeals, had allowed ¾ share of compensation to the owners. The inhabitants were allowed remaining ¼ share of compensation. As the owners and inhabitants had conflicting claims, the Collector, Land Acquisition had referred the petition under Section 30 of the Act to the learned Reference Court.

3. Before the learned Reference Court, the owners had resisted the claim of the petitioners and stated that they had ownership of the land and the petitioners had customary right of drawing water for cattle from the land. As per the owners, the petitioners could not have claimed more than ¼ share of compensation, as per judgment, dated 17.03.1997, passed in RFA No. 67 of 1989, titled as Ram Murti & others vs. LAC. The owners further averred that the petitioners had no cause of action and the petition was resisted on the ground of non-joinder and estoppel.

4. Respondent No. 1, i.e., Land Acquisition Collector had admitted the acquisition of the land for housing colony and that the owners and inhabitants, to the exclusion of each other, had claimed compensation, therefore, respondent No. 1 had referred the matter to the learned Reference Court.

5. On the basis of the pleadings of the parties, the learned Reference Court framed the following issues for consideration and adjudication:

> "1. Whether the petitioners, to the exclusion of respondents No. 2 to 25, are entitled to compensation? OPP
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> 2. Whether the petition is bad for non-joinder of necessary parties? OPR
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> 3. Whether the petitioners are stopped from filing the reference petition by their act and conduct? OPR
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> 4. Whether the petitioners have no cause of action? OPR
>
> 5. Relief."

6. Learned Senior Counsel for the appellants contended that the appellants are the absolute owners of the acquired land and except for khasra No. 2123, recorded as *gair mumkin toba,* rest of the acquired land is recorded as *banjar kadeem* under the sole ownership of the appellants.

He further contended that the inhabitants are entitled for compensation only to the extent of 25% on khasra No. 2123, *gair mumkin toba,* and no compensation was to be paid on khasra numbers 2121, 2122, 2124, 2130 and 2131, which were classified as *banjar kadeem,* to which the owners are entitled to 100% compensation and the learned Reference Court had erred in giving contrary findings.

7. Conversely, the learned counsel for the contesting respondents No. 1, 2(i) to 2(v) supported the impugned award and contended that the impugned award is an outcome of proper appreciation of facts and law and the appeal, being devoid of merits, be dismissed.

8. I have heard the learned Senior Counsel for the appellants, learned counsel for respondents No. 1, 2(i) to 2(v) and carefully examined the entire records.

9. The perusal of the material on record reveals that in the revenue record, for the year 1912-13, the land under acquisition has been described as *'Bartan-aam* and *Gair Mumkin Toba'.* It is also not in dispute that the owners of the land had filed Civil Suit No. 349 of 1961, titled as Maqsudam Singh & others vs. Salig Ram & others, whereby they claimed ownership and possession of 3130 kanal 18 marla

land and vide judgment and decree dated 20.11.1962 of learned Sub Judge 1st Class, Una, land measuring 761 kanals and 18 marlas, was treated under common usage as passage, pasture and for common purposes of the residents. Thereafter, the owners of the land preferred an appeal before the High Court of Punjab and vide judgment dated 29.05.1969, passed in LPA No. 277 of 1965, the High Court had upheld the judgment and decree of the learned Trial Court confirming that while the land is for common usage, the ownership strictly vests with the appellants/landowners.

10. Admittedly, the appellants/respondents No. 2 to 25 are the owners of the land under acquisition. As observed earlier, the land in question has been described as *'Bartan-aam* and *Gair Mumkin Toba'.* In other words, the acquired land was not being used by the owners and it was meant for common usage and enjoyment of all the residents, including the owners and such entries are existing right from the year 1912-13. Thus, neither of the parties have been in exclusive possession and enjoyment of the land in question.

11. The general rule as to the apportionment is that the compensation amount should be apportioned between the persons interested according to the value of the interest,

which each person interested has in the acquired property.

12. In similar circumstances, in ***RFA No. 69 of 1989, titled as Ram Murti & others vs. State of H.P. & others***, decided on 17.03.1997 after relying upon the judgment reported in AIR 1942 Bombay 105, Government vs. The Century Spinning and Manufacturing Co. Ltd., a Division Bench of this Court had held as under:

> ***"After giving our best consideration to the respective contentions of the learned counsel for the parties, we are of the view that the appellants Ram Murti and others should get 1/4th share in the compensation for their easementary right of grazing over the acquired land, which was admittedly a pasture land. No doubt, appellants Shamsher Singh and others were its owners but their ownership right was eclipsed by the easementary rights of grazing of appellants Ram Murti and others and they could only take away trees, earth and grass from the acquired land or put it to any other use subject to the rights of grazing of Ram Murti and others… … ….".***
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> ***Taking light from this judgment and keeping in view all other relevant factors and evidence provided by the parties on record, we are of the view that appellants Ram Murti and others are entitled to 1/4th share in the amount of compensation and appellants Shamsher Singh and others should get 3/4th share. The findings of the District Judge in the impugned award are modified to that extent."***

13. Thus, the Division Bench of this Court had settled in RFA No. 69 of 1989, titled as Ram Murti & others vs. State of H.P. & others that land owners are entitled to 3/4th share of the compensation in identical acquisitions. However, the learned Reference Court has acted perversely by ignoring the aforesaid judgment of this Court, which mandated a 75% share for land owners in parallel matters. The learned

Reference Court had erred by treating all the acquired khasra numbers under a blanket category of public domain, failing to properly evaluate the distinct legal nature of the proprietary holdings. Therefore, in view of the binding precedent of the Division Bench in RFA No. 69 of 1989, titled as Ram Murti & others vs. State of H.P. & others, in the present case also, the findings of the learned District Judge in the impugned award deserves to be modified to the extent that appellants/owners are entitled to 3/4th share in the amount of compensation and respondents No. 1 and 2(i) to 2(v) and other inhabitants are entitled to 1/4th share.

14. In view of what has been discussed hereinabove, the instant appeal is allowed and the impugned award stands modified to the extent that appellants/owners are entitled to 3/4th share in the amount of compensation, whereas respondents No. 1 and 2(i) to 2(v) as well as the other inhabitants are entitled to 1/4th share.

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

(Sushil Kukreja)
Judge

6th November, 2026
(virender)