

A STATE OF HIMACHAL PRADESH & ORS.

v.

KANSHI RAM & ORS.

(Civil Appeal No. 6308 of 2019)

B AUGUST 14, 2019

[ABHAY MANOHAR SAPRE AND R. SUBHASH REDDY]

- Land Acquisition Act, 1894: ss.4, 6 – Gram panchayat made a request to State for construction of road from Namhol to Bahadurpur – For the purpose of construction of road, possession of land was taken in the year 1988 – Some of the owners of the land whose land was utilized for construction of road approached High Court complaining that their land was utilized without acquisition of land in accordance with law – Pursuant thereto, State-appellant initiated land acquisition proceedings to acquire 18-15 bighas of land situated in Tepra village – Land Acquisition Officer categorized the land into 5 categories and fixed Rs.61,666 per bigha – Reference Court fixed the compensation by awarding uniform rate at Rs.7 lakhs per bigha based on the sale deed dated 24.11.2004 – Aggrieved, State filed appeals before High Court – Respondents preferred cross objections claiming interest from the date of taking possession to the date of publication of s.4(1) Notification – By the impugned judgment, High Court dismissed the appeals filed by the State and allowed the cross objections by awarding interest @ 15% p.a. on the market value of the land fixed by the Reference Court, from 1.1.1989 till the date of Notification issued under s.4(1) of the Act – State and claimants filed appeals respectively – Held: Under the sale deed relied on, Ex.PW-1/A, only one biswa of land was sold by PW-2 to PW-3, for a consideration of Rs.50,000/- – PW-2 is also a claimant in these proceedings – When the total land admeasuring 18-15 bighas of land was acquired, the Reference Court and the High Court committed error in accepting document in Ex.PW-1/A, as a comparable sale for the purpose of fixing market value of the acquired land at the rate of Rs.7 lakhs per bigha – As no other documentary evidence is available on record and further in view of*

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the allegation of the appellants that the sale deed in Ex.'RA' dated 04.05.2001 under which 4-51 bighas of land in adjoining village was sold in the year 2001, is not considered without assigning valid reasons, State's appeals remitted to reference court for consideration afresh – The additional interest awarded @ 15% P.A. from the date of Notification is also set aside.

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Land Acquisition Act, 1894: Compensation, determination of – Comparable sale – Large extent of land – Sale deed of small chunk of land relied on – If no other comparable sales are available in the same village, it is always open to the Reference Court to consider sales in the adjoining villages during the relevant period – In the instant case, vendor in the sale deed relied on was the claimant in the instant land acquisition proceedings also – Such sale could not be considered as a comparable sale for the purpose of fixing the market value of large extent of land i.e. 18-15 bighas.

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Allowing the State's appeals and remitting the matter to Reference Court, the Court

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HELD : Under the sale deed relied on, Ex.PW-1/A, only one biswa of land was sold by PW-2 to PW-3, for a consideration of Rs.50,000/-. PW-2 is also a claimant in the land acquisition proceedings in the impugned judgment. When the total land admeasuring 18-15 bighas of land was acquired, the Reference Court and the High Court committed error in accepting document in Ex.PW-1/A, as a comparable sale for the purpose of fixing the market value of the acquired land at the rate of Rs.7.00 lakhs per bigha. As no other documentary evidence is available on record and further in view of the allegation of the appellants that the sale deed in Ex.'RA' dated 04.05.2001 under which 4-51 bighas of land in adjoining village was sold in the year 2001, is not considered without assigning valid reasons, these appeals filed by the State are to be allowed by remitting the matter for fresh consideration by the Reference/District Court. As much as PW-2 is the vendor under Ex.PW-1/A, who is no other than one of the claimants in the land acquisition proceedings, such sale could not have been considered as a comparable sale for the purpose of fixing the market value of large extent of land i.e. 18-15 bighas. If no other comparable sales are available in the same village, it

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- A is always open to the Reference Court to consider sales in the adjoining villages during the relevant period. Even otherwise, there are other methods for fixing the compensation. Such erroneous fixation of market value at the rate of Rs.7.00 lakhs per bigha as fixed by the Reference Court, ought not to have been approved by the High Court. As the appeals filed by the State are allowed by this Court, the additional interest awarded at the rate of 15% per annum from the date of Notification is also set aside. It is open to the Reference Court to consider the claim of the claimants for award of the additional interest from the date of taking possession to the date of issuance of Section
- B 4(1) Notification in accordance with law. [Paras 14, 15] [614-B-G; 615-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6308 of 2019.

- From the impugned Judgment and Order dated 31.07.2017 of the
- D High Court of Himachal Pradesh at Shimla in RFA No.202 of 2011.

With

Civil Appeal Nos. 6309, 6310, 6311, 6312, 6313, 6314, 6315, 6316, 6317, 6326, 6318, 6319, 6320, 6321, 6322, 6323, 6324, 6325, 6327-6328, 6331, 6332, 6330, 6329, 6333, 6334 of 2019.

- E Abhinav Mukerji, AAG Siddharth Garg, Mrs. Bihu Sharma, Ms. Purnima Krishna, B.S. Banthia, J.L. Bhardwaj, Rajesh Kandari, Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

- F 1. Delay condoned.
- 2. Leave granted.
- 3. All these Civil Appeals are filed, aggrieved by the judgment dated 31.07.2017 passed by the High Court of Himachal Pradesh at Shimla in R.F.A.No.202 of 2011 and batch, as such they are heard together and are disposed of by this common judgment.
- G 4. There are two sets of appeals in this batch of civil appeals. One set of civil appeals is filed by the State and the other set of civil appeals is filed by the respondents-claimants of the land, for grant of

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additional interest of 15% per annum on the compensation awarded to them. For the purpose of disposal we treat the Civil Appeal arising out of S.L.P.(Civil) No.29319 of 2018 as the lead matter.

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5. The Gram Panchayat, Namhol made a request to the appellants for construction of the road from Namhol to Bahadurpur. In view of the request made by the Gram Panchayat, the appellants have constructed the road from the village Tepra, Sub Tehsil Namhol, District Bilaspur. It is stated that for the above said purpose of construction of road, possession of the land was taken in the year 1988.

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6. When the possession of the land was taken for construction of the road, some of the owners of the land whose land was utilized for construction of road approached the High Court and filed writ petition in C.W.P.No.735 of 2004 complaining that their land was utilized for public purpose, without acquisition of land in accordance with law. Pursuant to directions issued by the High Court in the aforesaid writ petition, the appellants have initiated land acquisition proceedings, to acquire 18-15 bighas of land situated at Tepra village. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published in the Official Gazette on 30.7.2005. After completing the necessary formalities the Land Acquisition Officer has passed a common Award dated 08.05.2007 by assessing the market value of the acquired land on the basis of classification of land as under:-

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Classification of land	Rate per Bigha
1. Andrali Aval	Rs.61,666.00
2. Andrali Doem	Rs.51,666.00
3. Baharli Aval	Rs.41,666.00
4. Baharli Doem	Rs.20,000.00
5. Khariyater & Banjer	Rs.5,000.00

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7. Not satisfied with the market rate fixed by the Land Acquisition Officer, respondents-claimants have sought reference under Section 18 of the Act and their claims were referred to the District Court. The Reference Court on the basis of the material placed before it, enhanced the compensation by fixing uniform rate of Rs.7.00 lakhs per bigha, for

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- A all categories of land, irrespective of classification, along with other consequential benefits as per the provisions of the Act.

8. Aggrieved by the judgment of the Reference Court fixing compensation of Rs.7.00 lakhs per bigha, the appellants have preferred R.F.A.No.202 of 2011 and batch questioning the fixing of the market

- B value of the acquired land by uniform rate of Rs.7.00 lakhs per bigha. In the appeals preferred by the State, the respondents have preferred cross objections claiming interest from the date of taking possession to the date of publication of Section 4(1) Notification. By the impugned judgment the High Court of Himachal Pradesh at Shimla by a common judgment dismissed the appeals filed by the State and allowed the cross objections by awarding interest @ 15% per annum on the market value of the land fixed by the Reference Court, from 1.1.1989 till the date of Notification issued under Section 4(1) of the Act i.e. 30.7.2005. Aggrieved by the judgment of the High Court, appellants have filed these appeals. The respondents-claimants also preferred appeals claiming interest by
- C way of damages @ 15% per annum on the total compensation payable to the respondents, not merely on the market value as awarded by the High Court.

9. We have heard Sri Abhinav Mukerji learned counsel appearing for the appellants and Sri B.S. Banthia learned counsel appearing for the respondents.

10. In this batch of appeals, it is mainly contended by Sri Abhinav Mukerji learned counsel appearing for the State of Himachal Pradesh, that though a large extent of 18-15 bighas of land was acquired for the purpose of constructing the road, the Reference Court has fixed

- F compensation @ Rs.7.00 lakhs per bigha basing on the sale deed Ex.PW-1/A of small chunk i.e. 1 biswa of land and granted abnormal hike in the market value of the acquired land. It is also brought to our notice that the Ex.PW-1/A dated 24.11.2004 is the land sold by PW-2 Garja Ram to PW-3 Kuldip for a consideration of Rs.50,000/- for one biswa of land.
- G It is submitted that PW-2 Garja Ram is also one of the claimants in the acquisition proceedings. It is submitted by the learned counsel that having regard to total extent of 18-15 bighas of land which was under acquisition, the Reference Court should not have relied on Ex.PW-1/A for fixing the compensation @ Rs.7.00 lakhs per bigha. It is also submitted that though

the appellants have produced a comparable sale under sale deed Ex.'RA' dated 04.05.2001 under which 4-51 bighas of land situated in village Dabar Paragana Bahadurpur Tehsil Sadar District Bilaspur was sold but the same was not considered without assigning any valid reasons. It is also submitted by the learned counsel that the High Court committed an error in awarding damages @ 15% per annum on the market value of land, from the date of taking possession to the date of notification.

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11. On the other hand it is submitted by Sri B.S. Banthia, learned counsel for the respondents that the lands of the respondents-claimants who were all small farmers were taken possession in the year 1988 and they are not paid the market value of their lands by the appellants. It is submitted that in absence of any other comparable sale in the village, the Reference Court and the High Court rightly considered the document Ex.PW-1/A and fixed the compensation for the acquired land @ Rs.7.00 lakhs per bigha. It is further submitted that though the land under sale deed Ex.PW-1/A was sold at the rate of Rs.10.00 lakhs per bigha, but the Reference Court after deducting 30% has fixed the market value of the acquired land at Rs.7.00 lakhs per bigha. It is submitted that there is no merit in the appeals preferred by the State. Further it is also contended by the learned counsel for the respondents that the possession of the land in question was taken as early as in the year 1988 and only after directions were issued in the writ petition in C.W.P.No.735 of 2004, Notification under Section 4(1) of the Act was issued on 30.07.2005. It is submitted that the High Court while awarding additional interest @ 15% per annum has committed error in awarding such interest only on the market value of the land fixed by the Reference Court, instead of total compensation payable to the respondents-claimants.

12. At the outset it is to be noted that even according to the case of the respondents-claimants possession of the land in question was taken in the year 1988 for constructing the road and only after directions were issued in C.W.P.No.735 of 2004 Notification under Section 4(1) of the Act came to be issued on 30.07.2005. The Land Acquisition Officer after collecting necessary material, has passed a common Award on the basis of the classification of the land. The Land Acquisition Officer has categorized the land into 5 categories of the land and fixed Rs.61,666.00 for Andrali Aval, Rs.51,666.00 for Andrali Doem, Rs. 41,666.00 for Baharli Aval, Rs. 20,000.00 for Baharli Doem and Rs.5,000.00 for Khariyater & Banjer.

- A 13. Not satisfied by the Award passed by the Land Acquisition Officer, the respondents sought reference under Section 18 of the Act which was referred to the District Court. The Reference Court has fixed the compensation by awarding uniform rate at Rs.7.00 lakhs per bigha based on the Ex.PW-1/A dated 24.11.2004.
- B 14. At this stage it is to be seen that C.W.P.No.735 of 2004 must have been filed in the first quarter of the year 2004 and Ex.PW-1/A is dated 24.11.2004. Under the sale deed Ex.PW-1/A only one biswa of land was sold by PW-2 Garja Ram to PW-3 Kuldip, for a consideration of Rs.50,000/- . It is not in dispute that PW-2 Garja Ram is also a claimant in the land acquisition proceedings in the impugned judgment.
- C When the total land admeasuring 18-15 bighas of land was acquired, the Reference Court and the High Court committed error in accepting document in Ex.PW-1/A, as a comparable sale for the purpose of fixing the market value of the acquired land at the rate of Rs.7.00 lakhs per bigha. As no other documentary evidence is available on record and
- D further in view of the allegation of the appellants that the sale deed in Ex. 'RA' dated 04.05.2001 under which 4-51 bighas of land in adjoining village was sold in the year 2001, is not considered without assigning valid reasons, we are of the view that these appeals filed by the State are to be allowed by remitting the matter for fresh consideration by the Reference/District Court. As much as PW-2 is the vendor under Ex.PW-1/A, who is no other than one of the claimants in the land acquisition proceedings, such sale could not have been considered as a comparable sale for the purpose of fixing the market value of large extent of land i.e. 18-15 bighas. We are of the view that the Reference Court has committed error in relying on such document for fixing the compensation at the rate
- F of Rs.7.00 lakhs per bigha. If no other comparable sales are available in the same village it is always open to the Reference Court to consider sales in the adjoining villages during the relevant period. Even otherwise there are other methods for fixing the compensation. Such erroneous fixation of market value at the rate of Rs.7.00 lakhs per bigha as fixed by the Reference Court, ought not to have been approved by the High Court. As such we are of the view that the appeals filed by the State deserve to be allowed, by remitting the cases to the Reference Court for fresh adjudication.

15. Accordingly, for the aforesaid reasons all the appeals filed by the State are allowed by setting aside the common judgment dated 31.07.2017 in R.F.A. No. 202 of 2011 and batch. Consequently the Award of the Reference Court fixing the compensation for the acquired land at the rate of Rs.7.00 lakhs per bigha, also stands set aside and matters are remitted back for fresh consideration by the District Court for considering the references in accordance with law and to pass fresh Award. As much as the Notification under Section 4(1) of the Act was issued on 30.7.2005, we direct the Reference Court to dispose of references within a period of six months from date of this judgment. We permit both the sides to adduce further documentary and oral evidence, in support of their case. As the appeals filed by the State are allowed by this Court, the additional interest awarded at the rate of 15% per annum from the date of Notification is also set aside. It is open to the Reference Court to consider the claim of the claimants for award of the additional interest from the date of taking possession to the date of issuance of Section 4(1) Notification in accordance with law. We do not wish to express any opinion on such claim, such claim is to be considered independently in accordance with law.

16. As much as the appeals filed by the State are allowed, the batch of civil appeals filed by the respondents-claimants are dismissed with no order as to costs. It is made clear that the compensation which is already paid to the claimants, will be subject to further orders to be passed by the Reference Court.

Devika Gujral

Matter remitted to reference court.