

UNION OF INDIA

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v.

RAMCHANDRA & ORS.

(Civil Appeal Nos. 5006-5010 of 2022)

AUGUST 11, 2022

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[HEMANT GUPTA AND VIKRAM NATH, JJ.]

Land Acquisition Act, 1894– ss.23(1-A), 23(2) – Land owned by company was acquired for Railway line–Land Acquisition Collector awarded compensation @ Rs.5/- per square feet as the market value of the land acquired, alongwith additional compensation for expenditure incurred on construction of pillars apart from statutory benefits–Reference Court considering the rates of residential plots awarded compensation of Rs.40/- per square feet for the land acquired and also for the entire land of the company on the ground that the unacquired land cannot be utilized for the purpose intended to be used by the Company –High Court affirmed the said finding but, reduced the amount of compensation to Rs.19 per square feet – On appeal, held: Compensation for the entire land owned by the Company is wholly unwarranted, illegal and unduly advantageous to the Company–Process of determining compensation by the Reference Court is wholly fallacious – Thus, the appeal of the Company claiming enhancement of the compensation @ Rs. 40/- per square feet is untenable – Even the compensation determined by the High Court is questionable but no reason found to interfere in the present appeal –Land owners including the Company entitled to compensation of their land situated within 30 meters from the middle of the railway track on both sides @ Rs.19 per square feet–Company also entitled to compensation of Rs. 14,34,300/- on account of pillars raised –In respect of remaining land after the extent of 30 meters on the eastern side of the railway track, the Company is entitled to compensation @ Rs. 9.5 per square feet but without any benefits u/s.23(1-A) and s.23(2).

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Disposing of the appeals, the Court

HELD: 1.1 The brochure issued by the Development Authority of fully developed plots cannot form basis for award of compensation for acquisition of undeveloped lands. The entire

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- A process of determination of the market value by the Reference Court is contrary to the established principles of determination of the market value of the acquired land as the sale of developed land for the purpose of residential plots cannot be made basis for acquisition of undeveloped agricultural land. Still further, the acquired land can be said to be 41,771.32 square feet but the compensation has been awarded for the entire land of the Company as against the small area which was acquired for the railway line, though the balance land is owned and is in possession of the Company. The market value of Rs.25/- per square feet by the High Court has been arrived at on the basis of statements of some of the witnesses. No sale instance of the acquired land has been produced, not even the sale deed by which the Company has purchased the land almost 3 years prior to the acquisition. Such sale instance would have been the best yardstick to arrive at the market value of the acquired land. The High Court awarded Rs.19/- per square feet as the compensation of the entire land acquired. Though we are unable to agree with the reasoning, but in the absence of any other alternative to determine market value, we do not wish to interfere with the market value assessed by the High Court. One cannot understand that how such large chunk of land can be said to be unsuitable for any industry or any evidence suggesting that industry could not be set up in such large piece of land abutting road. The Company has not produced any drawings to say that their factory cannot be put up in the remaining compact land measuring more than 130000 square feet. Therefore, compensation for the entire land owned by the Company is wholly unwarranted, illegal and unduly advantageous to the Company.[Paras 16-19][272-D; 273-C-G]

Lal Chand v. Union of India & Anr (2009) 15 SCC 769
– relied on.

- 1.2 Even in respect of land on the eastern side of the railway line, it is not that such land cannot be utilized for any purpose. There is land of the other land owners on the other side, therefore, the same can be used for different purposes, may not be for industry. Therefore, the compensation of Rs.19/- per square feet awarded for such land is not sustainable on any principle of law. The compensation of land on the western side of the railway track

is to be awarded only as the agricultural land. Section 23 of the Act specifies the factors to determine the amount of compensation to be awarded for the land acquired. Clause thirdly is for determining damages sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from other land. Such provision has to be read along with Section 49 of the Act. There was an option with the appropriate Government to acquire the entire land without publication of any fresh notification if the appropriate Government was of the opinion that the claim of compensation on account of severing of the land is unreasonable or excessive. The Union has not exercised such option. Therefore, the compensation has to be determined keeping in view of the fact that the land is continued to be owned by the Company but its effective use stands diminished to large extent. the land situated on the western side is 139163 square feet (1.29 Hectare), which is not a small area from any angle, therefore, the appropriate Government was justified in not acquiring the said land and for the reason that the claim of compensation of such land is unreasonable or excessive. In fact, the Company had no claim in respect of the land situated on the western plank of the railway line. In respect of the land situated on the eastern side, the first impression is that the land is severed but if the plan produced by the Company is examined, there is land of other land owners as well. Therefore, it is not the entire land which has become unapproachable or land locked. Because of the railway line, may be the Company has to take a detour to approach such land but not that the substantial portion of the land cannot be used for any of the ancillary works of the Company. On account of the fact that the Company can approach the land on the eastern side by taking a detour, the Company will incur an additional cost, therefore, the Company is entitled to such additional cost. [Paras 20, 21, 23-25][274-A-C; 278-D-H]

Walchandnagar Industries Limited v. State of Maharashtra & Anr (2022) 5 SCC 71 – relied on.

1.3 Compensation on account of severance is not entitled to the benefit of Section 23(1-A) and Section 23(2) of the Act, as the market value is determined in terms of Section 23(1) firstly,

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- A whereas the compensation on account of severance of land is determined under Section 23(1) thirdly. The process of determining compensation by the Reference Court is wholly fallacious. Thus, the appeal of the Company claiming enhancement of the compensation @ Rs.40/- per square feet is untenable. Even
- B the compensation determined by the High Court is questionable but we do not find any reason to interfere in the present appeal under Article 136 of the Constitution. Furthermore, the Company shall be entitled to Rs.9.5 per square feet in respect of land situated on the eastern side after leaving 30 meters of the buffer zone but without any benefits under Section 23(1-A) and Section
- C 23(2) of the Act. [Paras 28, 29][279-G; 280-E-F]

State of Punjab v. Amarjit Singh & Anr. (2011) 4 SCC 734 – relied on.

- 1.4 The land owners including the Company shall be entitled to compensation of their land situated within 30 meters from the
- D middle of the railway track on both sides @ Rs.19 per square feet. The Company shall be entitled to compensation on account of pillars raised amounting to Rs. 14,34,300/- as well. The land owners including the Company shall be entitled to statutory benefits under Section 23(1-A) and Section 23(2) of the Act on such land. In respect of land after the extent of 30 meters on the western side of the railway track and abutting the road from Maksi to Ujjain, no compensation would be payable. In respect of remaining land after the extent of 30 meters on the eastern side of the railway track, the Company shall be entitled to compensation on account of severance of land @Rs.9.5 per square feet but such compensation shall be without any benefits under Section 23(1-A) and Section 23(2) of the Act.[Para 30][280-G-H; 281-A-C]

Tehal Singh & Ors. v. The State of Punjab through the Collector, Land Acquisition, Drainage Circle, Patiala & Ors. 1987 SCC OnLine P&H 269 – approved.

Case Law Reference

(2009) 15 SCC 769	relied on	Para 16
(2022) 5 SCC 71	relied on	Para 22
H (2011) 4 SCC 734	relied on	Para 28

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.5006- A
5010 of 2022.

With

Civil Appeal no. 5031 of 2022.

Ms. V. Mohana, Sr. Adv., Ms. Alka Agrawal, Sanjay Kumar Tyagi, Bharat Singh, Amrish Kumar, Puneet Jain, Ms. Christi Jain, Umang Mehta, Yogit Kamat, Mann Arora, Ms. Shruti Singh, Ms. Pratibha Jain, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

HEMANT GUPTA, J. C

1. These appeals arising out of judgment dated 29.6.2017 are being taken up for decision together. Civil Appeal Nos. 5006-5010 of 2022 are filed by the Union of India to reduce the amount of compensation from Rs.19 per square feet and also challenging the grant of compensation for the entire land owned by the Company - Sagar Maize Products Ltd.¹, who is owner of 2.038hectares in Village Maksi. Civil Appeal No. 5031 of 2022is preferredby the Company claiming enhancement of compensation of the acquired land to Rs.40/- per square feet. D

2. The Company purchased an area of 0.361 hectares of Survey Nos.1927/2, 1928/2 and an area of 1.317 hectares of Survey No. 1929 on Ujjain Road in Village Maksi in the year 1986-87. After purchase of the land, the Company got permission to convert the agricultural land to use for industrial purposes and has also started civil work for installation of the factory for which certain pillars were raised. E

3. A notification under Section 4 of the Land Acquisition Act, 1894² was published on 9.3.1990 forthe purpose of acquisition of 6.500 hectares of land situated in Village Maksi and 0.700 hectares of land situated in Village Jhokar, total 7.200 hectares of land for Dewas-Maksi Railway Line. The notification under Section 6 of the Act was published on 8.6.1990. F

4. The land measuring 0.244 hectares of land owned by the Company was actually acquired for the railway line comprising in Survey No. 1929.The Company has laid the claim before the Land Acquisition Collector as under:

¹ For short, the 'Company'

² For short, the 'Act'

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A	Value of Proposed Land measuring 203800 sq. ft.	Rs.1,01,90,000/-
	For Plantation	Rs.20,00,000/-
	Cost for setting up industry	Rs.2,82,634/-
	Industry Management	Rs.7,20,000/-
B	Total	Rs.1,37,50,634/-

- B 5. The Land Acquisition Collector passed an award on 2.6.1992 awarding a compensation of Rs.30,000/- per hectare i.e., @Rs.5/- per square feet as the market value of the land acquired. In addition thereto, the land owner was awarded a compensation of Rs.72,320/- on account of expenditure incurred on construction of 40 pillars, 19 situated within a periphery of 30 meters from the proposed railway line and another 21 lying outside the 30 meters periphery, apart from the statutory benefits.
- C 6. Aggrieved by the determination of the market value of the land acquired, the land owners including the Company sought reference under Section 18 of the Act. The Reference Court awarded a compensation of Rs.40/- per square feet for the land acquired and also for the entire land of the Company admeasuring 2.038 hectares on the ground that the unacquired land cannot be utilized for the purpose intended to be used by the Company.
- D 7. Such compensation was arrived at by the Reference Court on the basis of statement of PW 11 Pawan Damade, Manager working with Madhya Pradesh Housing Development Board. He deposed that an advertisement (Ex.P/23) for the sale of residential plots @Rs.45/- per square feet was issued by the Board in the year 1984. He also stated that the value of commercial plots was Rs. 50/- per square feet. The
- E F Reference Court held that the sale price of the residential plot was @Rs.45/- per square feet in the year 1984, but the sale price of the residential plot included some other charges, therefore, the Reference Court determined Rs.40/- per square feet as the market value.
- G 8. In respect of 26,325 square feet land for laying of the railway line, the Reference Court awarded compensation of Rs.10,53,000/. For the remaining land of 1,93,077 square feet, the Reference Court held that it is not possible to establish the industry as the railway line passes through Survey Nos. 1928 and 1929. It was held that the distance of 30 meters is required from the railway line for development work, hence as no construction work could be carried out, therefore, the entire land
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cannot be utilized for any purpose. Thus, compensation @Rs.40/- per square feet was awarded for the entire land purchased by the Company, apart from the statutory benefits awarded to the Company and to the other land owners.

9. The Company as well as the Union assailed the order of Reference Court by way of separate appeals before the High Court. The High Court affirmed the finding of the Reference Court that the entire land cannot be utilized by the Company, but reduced the amount of compensation to Rs.19/- per square feet. The High Court also referred to the statement of Pawan Damade (PW-11). Further, reliance was placed upon the statement of Rajesh Rathi (PW-1) representing the Company who deposed that he has spent Rs.14,29,800/- for setting up the industry over an area in question. The land owners also produced Awdhesh Sharma (PW-2), Naib Tehsildar who deposed that market value of the land acquired was Rs.25-30/- per square feet. R.C. Dhakad (PW-3), District Registrar, Shajapur deposed that Ex.15 is sale deed dated 7.11.1991 and the market value was Rs.250/- per square meter. Similarly, some of the land owners have appeared who have deposed that the market value of the land was Rs.15-20 per square feet. The High Court assessed the market value of the land in question as Rs.25/- per square feet, but in view of large track of agricultural land acquired, deduction of 25% was applied and the market value was assessed as Rs.19/- per square feet.

10. We have heard learned counsel for the parties and find the entire process of determination of the market value is based upon surmises and conjectures.

11. As per the map produced by the Company, on the left side of the railway line (East), the land measures $42940 + 10497 = 53437$ square feet, whereas the remaining land measures $58892 + 80271 = 139163$ square feet on the right side of the railway line (west). This is a compact piece of land abutting the road from Maksi to Ujjain. The first question which is required to be determined is as to what extent, land on both sides of the railway line would be part of acquisition. As per the Company, the land of 30 meters on both sides of railway line is the land required by the railways as a part of the acquisition after leaving 15 feet area on both sides of railway track. Such argument is based upon a communication dated 19.12.1991 from the Urban & Rural Investment Department, Madhya Pradesh that it is necessary to leave a minimum distance of 30

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- A meters as regard to any other development works from demarcation of railway line. Learned counsel for the Company relies upon Para 3718 of the Indian Railways Way and Works Manual wherein the fencing is to be provided on 30 meters of actual busy station yards on either side. As per the Company, the demarcation of railway line is after 15 meters of the railway line, meaning thereby 45 meters from the railway track.
- B 12. The stand of the Union is that 30 meters from the railway track is restricted area where construction will be permissible but with the consent of the railway and in the manner prescribed in the Circular dated 8.9.1988 and 25.6.2015. The reliance is placed upon Indian Railways Way and Works Manual, Para 827, which reads as under:
- C “827. Construction of Government and private buildings near Railway land
- a) 1. While it may be realised that Railways have a prior right of acquisition and utilisation of land adjacent to Railway boundaries, the Railway Administration can only insist on previous intimation being given by the revenue authorities or the local Govt. when such lands are assigned for specific purposes. For the prevention of encroachments on railway land such as by the erection of buildings and platforms and the gradual accrual of easements such as right of way and a right to discharge sullage or storm water over Railway land, it is desirable that sufficient open space be provided between the railway boundary and the nearest face of any structure erected on adjoining land.
- D 2. The interest of the Railways will be suitably safeguarded by providing for:
- E i) an open space of approximately 30m being left between the railway boundary and the nearest edge of a building constructed on adjacent land, the exact space to be left being governed by local conditions; and
- F ii) intimation regarding proposed construction on lands adjacent to the railway boundary being given to the railway authorities at least 90 days before the commencement of erection work.”
- G 13. The relevant extract from the Circular dated 8.9.1988 is reproduced as under:
- H “Railway Board under their letter No. 5456-W dated 24.4.96 addressed to all Provincial Government Local Administrations had

stipulated that an open space of 100 ft. (30m) approximately on both side of the Railway land should be left and the exact space should be governed by local conditions. This has been accepted by all the State Governments.

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2. In the cities and towns where the land is valuable and the cost is high it may not be possible for the owners to leave a large space (30m) between the Railway boundary and the nearest edge of the building. At the same time it is necessary that the Railway's interests are adequately safe-guarded.

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3. There has been a case in the past when a building which was close to the Railway boundary collapsed and caused obstruction to Railway traffic. Therefore in order to safe guard Railway's interest and also in view of the Tambe Committee's report (Committee appointed by Govt. of Maharashtra) following guidelines are issued for consideration of issue of 'No objection certificate' to the owners for construction of their buildings/structure in the vicinity of Railway land within 30m (100 ft.) from the existing boundary:-

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(iii) The height of the building should be restricted so that a clear space equal to half the height of the building is available between the nearest edge of the building and the Railway boundary."

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14. A perusal of the Indian Railways Way and Works Manual (para 827) and also the Circular dated 8.9.1988 shows that 30 meters of land on both sides of railway line can be said to be restricted area but it does not mean that the land cannot be utilized for any purpose. The communication dated 19.12.1991 on behalf of the Urban and Rural Department of the State is to the effect that distance of 30 meters of land is to be kept. Firstly, the distance norms are of the Railways and not of the State. Still further, the distance of 30 meters from the railway track can be left unoccupied but not 15 + 30 meters. However, since the land was purchased by the Company for the purpose of setting up of an industrial unit, therefore land to the extent of 30 meters on both sides cannot be put to effective use by the Company. Therefore, we deem it appropriate to grant compensation to the Company for the land on both sides of railway track to the extent of 30 meters from middle of the railway track.

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- A 15. As per the plan produced by the Company, land measuring 26400 square feet that is 49.3 square meters on both sides of railway track has actually been utilized for the purpose of railway track. Thus, additional 15 meters on both sides of the railway track would be subject to award of compensation @ Rs. 19 per square feet. Thus, land upto extent of 30 meters from the center of railway track is the land acquired for the railway track.
- B 16. In respect of amount of compensation, the statement of Pawan Damade (PW-11) is in respect of residential plots sold in the year 1984. The sale price of residential plots @ 45/- per square feet is after carrying the development activity such as laying of roads, electricity, and provision
- C of sewerage disposal, therefore, Rs.45/- could not be in any case the market value of the agricultural land. However, the Reference Court, without any basis, arrived at Rs.50/- per square feet,as the land for commercial purpose would be more expensive.The said process of reasoning led theReference Court to determine the market value at Rs. 40/- per square feet. The judgment of this Court reported as *Lal Chand v. Union of India & Anr.*³ held that the brochure issued by the Development Authority of fully developed plots cannot form basis for award of compensation for acquisition of undeveloped lands. This Court held as under:
- E “12. On careful consideration, we are of the view that such allotment rates of plots adopted by development authorities like DDA cannot form the basis for award of compensation for acquisition of undeveloped lands for several reasons. *Firstly*, market value has to be determined with reference to large tracts of undeveloped agricultural lands in a rural area, whereas the allotment rates of development authorities are with reference to small plots in a developed layout falling within urban area. *Secondly*, DDA and other statutory authorities adopt different rates for plots in the same area with reference to the economic capacity of the buyer, making it difficult to ascertain the real market value, whereas market value determination for acquisitions is uniform and does not depend upon the economic status of the land loser. *Thirdly*, we are concerned with market value of freehold land, whereas the allotment “rates” in the DDA brochure refer to the initial premium payable on allotment of plots on leasehold basis. We may elaborate on these three factors.
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- H ³(2009) 15 SCC 769

13. The percentage of “deduction for development” to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.” A

17. Thus, the entire process of determination of the market value by the Reference Court is contrary to the established principles of determination of the market value of the acquired land as the sale of developed land for the purpose of residential plots cannot be made basis for acquisition of undeveloped agricultural land. Still further, the acquired land can be said to be 41,771.32square feet but the compensation has been awarded for the entire land of the Company as against the small area which was acquired for the railway line, though the balance land is owned and is in possession of the Company. C

18. The market value of Rs.25/- per square feet by the High Court has been arrived at on the basis of statements of some of the witnesses. No sale instance of the acquired land has been produced, not even the sale deed by which the Company has purchased the land almost 3 years prior to the acquisition. Such sale instance would have been the best yardstick to arrive at the market value of the acquired land. The High Court awarded Rs.19/- per square feet as the compensation of the entire land acquired. Though we are unable to agree with the reasoning, but in the absence of any other alternativeto determine market value, we do not wish to interfere with the market value assessed by the High Court. D

19. One cannot understand that how such large chunk of land can be said to be unsuitable for any industry or anyevidence suggesting that industry could not be set up in such large piece of land abutting road. The Company has not produced any drawings to say that their factory cannot be put up in the remaining compact land measuring more than 130000 square feet. Therefore, compensation for the entire land owned by the Company is wholly unwarranted, illegal and unduly advantageous to the Company. E

20. Even in respect of land on the eastern side of the railway line, it is not that such land cannot be utilized for any purpose. There is land F

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- A of the other land owners on the other side, therefore, the same can be used for different purposes, may not be for industry. Therefore, the compensation of Rs.19/- per square feet awarded for such land is not sustainable on any principle of law. The compensation of land on the western side of the railway track is to be awarded only as the agricultural land.
- B 21. Now we shall deal with the amount of compensation for the land situated on the eastern side of the railway track on account of severance of the same from the rest of the land. Section 23 of the Act specifies the factors to determine the amount of compensation to be awarded for the land acquired. Clause thirdly is for determining damages sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from other land. Such provision has to be read along with Section 49 of the Act. The relevant provisions read thus:
- “23. Matters to be considered in determining compensation.”**(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—
- first, the market-value of the land at the date of the publication of the notification under Section 4, subsection (1);
- secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;
- thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
- fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
- fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to
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change his residence or place of business, the A
reasonable expenses (if any) incidental to such
change; and

sixthly, the damage (if any) *bona fide* resulting from B
diminution of the profits of the land between the time
of the publication of the declaration under Section 6
and the time of the Collector's taking possession of
the land.

In addition to the market-value of the land, as above provided, the C
Court shall in every case award an amount calculated at the rate
of twelve per centum per annum of such market-value for the
period commencing on and from the date of the publication of the
notification under Section 4, sub-section (1), in respect of such
land to the date of the award of the Collector or the date of taking
possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub- D
section, any period or periods during which the proceedings for
the acquisition of the land were held up on account of any stay or
injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land, as above provided, E
the Court shall in every case award a sum of thirty per centum on
such market-value, in consideration of the compulsory nature of
the acquisition.

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49. Acquisition of part of house or building.—(1) The F
provisions of this Act shall not be put in force for the purpose of
acquiring a part only of any house, manufactory or other building,
if the owner desires that the whole of such house, manufactory or
building shall be so acquired:

Provided that the owner may, at any time before the G
Collector has made his award under Section 11, by notice in writing,
withdraw or modify his expressed desire that the whole of such
house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to H
whether any land proposed to be taken under this Act does or
does not form part of a house, manufactory or building within the

- A meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.
- B In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.
- C (2) If, in the case of any claim under Section 23, sub-section (1), thirdly, by a person interested, on account of the serving of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.
- D (3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under Sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under Section 11.”
- E 22. Such provision has been examined recently by this Court in a judgment reported as *Walchandnagar Industries Limited v. State of Maharashtra & Anr.*⁴ wherein, this Court held as under:
- F “35. It may be noted that clause *thirdly* of Section 23(1) relates only to land, as it speaks only about the severance of the acquired land from the unacquired land and the damage sustained as a consequence. In contrast, clause *fourthly* of Section 23(1) deals with the damage sustained by the person interested, due to the injurious affection, (i) of his other movable property; (ii) of his other immovable property; and (iii) of his earnings. In other words what is injuriously affected at the time of Collector’s taking possession of the land, may either be the unacquired portion of the immovable property or other movable property or even the earnings of the person interested.

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H ⁴(2022) 5 SCC 71

37. Coming to Section 49, it deals with two contingencies. They A
are,

(i) cases where what is sought to be acquired is only a part of any house, manufactory or other building; and

(ii) cases where a claim for compensation under the head “severance” under clause *thirdly* of Section 23(1) arises. B

37.1. Insofar as the first contingency is concerned there is a bar under sub-section (1) of Section 49 for the acquisition of a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired. C

37.2. Insofar as the second contingency is concerned, there is a choice given to the appropriate Government to order the acquisition of the whole of the land, if the appropriate Government is of the opinion that the claim for severance compensation is unreasonable or excessive.

38. The distinction between the scope of sub-section (1) and the scope of sub-section (2) of Section 49 was brought out by this Court in *Harsook Das Bal Kishan Das v. LAO* [*Harsook Das Bal Kishan Das v. LAO*, (1975) 2 SCC 256] as follows : (SCC pp. 259-60, para 12)

“12. The object of Section 49(1) of the Act is to give to the owner the option whether he would like part to be acquired. The Government cannot take the other part under Section 49(1) of the Act unless the owner says so. Section 49(2) of the Act has nothing to do with Section 49(1) of the Act. Section 49(2) of the Act gives the option to the Government only where the claim under the third clause of Section 23(1) of the Act is excessive. Reference to the third clause of Section 23(1) of the Act makes it clear that the claim under the third clause of Section 23(1) is for severance. The Government in such a case of acquisition of the remaining portion of the land under Section 49(2) of the Act saves the public exchequer money which otherwise will be the subject-matter of a claim for severance.” E

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40. Section 49(2) also may not have any application for the reason that the appropriate Government did not think fit to seek acquisition of the whole of the land on which the remaining portion of the H

- A trolley line existed, on the ground that the claim for severance compensation was unreasonable or excessive. Therefore, it is enough for us to go back to clauses *thirdly* and *fourthly* of Section 23(1) without the constraints of sub-sections (1) or (2) of Section 49.
- B 41. As we have indicated earlier, clause *thirdly* relates to the damage sustained by the person interested, by reason of severance of the acquired land from the unacquired land, at the time of Collector's taking possession of the land. In contrast, clause *fourthly* of Section 23(1) deals with the damage sustained by reason of the acquisition injuriously affecting, (i) the other movable property; (ii) the other immovable property; and/or (iii) the earnings of the person interested."
- C 23. A reading of the abovesaid judgment shows that there was an option with the appropriate Government to acquire the entire land without publication of any fresh notification if the appropriate Government was
- D of the opinion that the claim of compensation on account of severing of the land is unreasonable or excessive. The Union has not exercised such option. Therefore, the compensation has to be determined keeping in view of the fact that the land is continued to be owned by the Company but its effective use stands diminished to large extent.
- E 24. As discussed above, we have found that the land situated on the western side is 139163 square feet (1.29 Hectare), which is not a small area from any angle, therefore, the appropriate Government was justified in not acquiring the said land and for the reason that the claim of compensation of such land is unreasonable or excessive. In fact, the
- F Company had no claim in respect of the land situated on the western plank of the railway line.
- G 25. In respect of the land situated on the eastern side, the first impression is that the land is severed but if the plan produced by the Company is examined, there is land of other land owners as well. Therefore, it is not the entire land which has become unapproachable or land locked. Because of the railway line, maybe the Company has to take a detour to approach such land but not that the substantial portion of the land cannot be used for any of the ancillary works of the Company. On account of the fact that the Company can approach the land on the eastern side by taking a detour, the Company will incur an additional
- H cost, therefore, the Company is entitled to such additional cost.

26. The Punjab and Haryana High Court in *Tehal Singh & Ors.* A v. *The State of Punjab through the Collector, Land Acquisition, Drainage Circle, Patiala & Ors.*⁵ granted additional compensation on account of severance of land in the case of water channels and that statutory benefits are not payable on such compensation on account of severance. It was held as under:

B
“11. Taking all the above factors into account. I consider the following compensation to be appropriate for severance of land to the concerned land-owners:—

C
(1) Where the S.Y.L. Canal intervenes between the land served and the village abadi and it is two acres or less in area, compensation for severance shall be 60% of the market value of the land so acquired.

D
(2) Where the severed land is no the abadi side of the village and S.Y.L. Canal is being constructed beyond it and it is two acres or less in area, compensation for severance shall be 40% of the market value of the land so acquired.

E
(3) Where the severed land is more than two acres in area but is less than 5 acres, and is located on either side of the S.Y.L. Canal, compensation at the rate of 10%- of the market value for its severance shall be payable.

F
12. The land-owners shall, however, be not entitled to soletium under Section 23(2) and the amount under Section 23(1-A) of the Act on the amount of compensation on account of severance, but they shall be entitled to interest as indicated in the following paragraph.”

G
27. We find that in respect to the land on the eastern side, after leaving land up to the extent of 30 meters from the center of railway track, the Company shall be entitled to Rs.9.5 per square feet,i.e., 50% of the compensation acquired for the railway track.

H
28. Still further, in terms of the judgment of this Court in *State of Punjab v. Amarjit Singh & Anr.*⁶, compensation on account of severance is not entitled to the benefit of Section 23(1-A) and Section 23(2) of the Act, as the market value is determined in terms of Section 23(1) firstly,

⁵ 1987 SCC OnLine P&H 269 : 1987 RRR 495

⁶ (2011) 4 SCC 734

- A whereas the compensation on account of severance of land is determined under Section 23(1) thirdly. This Court held as under:
- “11. Sub-section (1-A) of Section 23, inserted by Act 68 of 1984 provides that in addition to the market value of the land, as provided under Section 23(1), the court shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on or from the date of publication of the notification under Section 4(1) in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. The additional amount under Section 23(1-A) and solatium under Section 23(2) are both payable only on the market value determined under Section 23(1) of the Act and not on any other amount. Solatium under Section 23(2) is not payable on the additional amount nor is additional amount under Section 23(1-A) payable on solatium. Solatium and additional amount are also not payable on the damages/expenses that may be awarded under the second to sixth factors under Section 23(1) of the Act.”
29. The process of determining compensation by the Reference Court is wholly fallacious. Thus, the appeal of the Company claiming enhancement of the compensation @Rs.40/- per square feet is untenable.
- E Even the compensation determined by the High Court is questionable but we do not find any reason to interfere in the present appeal under Article 136 of the Constitution. Furthermore, the Company shall be entitled to Rs.9.5 per square feet in respect of land situated on the eastern side after leaving 30 meters of the buffer zone but without any benefits under Section 23(1-A) and Section 23(2) of the Act.
- F 30. The reference court determined compensation on account of construction in the shape of pillars raised now forming part of unacquired land situated on the western side of railway track as Rs. 14,34,300/- is not in dispute. Thus, the said amount is maintained. Consequently, Civil Appeal No. 5031 of 2022 filed by the Company is dismissed whereas G Civil Appeal Nos. 5006-5010 of 2022 filed by the Union are allowed in the following manner:
- (i) The land owners including the Company shall be entitled to compensation of their land situated within 30 meters from the middle of the railway track on both sides @Rs.19 per square feet. The Company shall be entitled to compensation

on account of pillars raised amounting to Rs. 14,34,300/- as well. The land owners including the Company shall be entitled to statutory benefits under Section 23(1-A) and Section 23(2) of the Act on such land. A

- (ii) In respect of land after the extent of 30 meters on the western side of the railway track and abutting the road from Makshi to Ujjain, no compensation would be payable. B
- (iii) In respect of remaining land after the extent of 30 meters on the eastern side of the railway track, the Company shall be entitled to compensation on account of severance of land @Rs.9.5 per square feet but such compensation shall be without any benefits under Section 23(1-A) and Section 23(2) of the Act. C

Divya Pandey and Anurag Bhaskar
(Assisted by : Bodhi Ramteke, LCRA)

Appeals disposed of.