

## **H.P. Housing Board vs Bharat S. Negi And Ors. on 27 January, 2004**

**Equivalent citations: AIR2004SC1800, 2004(2)AWC995(SC), 2004(2)SCALE99, (2004)2SCC184, AIR 2004 SUPREME COURT 1800, 2004 (2) SCC 184, 2004 AIR SCW 797, (2004) 2 ALLMR 329 (SC), 2004 (1) SLT 887, 2004 (2) ALL MR 329, 2004 (2) SCALE 99, (2004) 16 ALLINDCAS 318 (SC), 2004 (16) ALLINDCAS 318, 2004 (2) RECCIVR 186.2, 2004 (1) ALL CJ 487, 2004 ALL CJ 1 487, (2004) 2 SCALE 99, (2004) 54 ALL LR 500, (2004) 2 CURCC 5, (2004) 1 LANDLR 521, (2004) 1 SUPREME 770, (2004) 2 RECCIVR 186(2), (2004) 2 ALL WC 995, (2004) 2 CIVLJ 325, (2004) 1 LACC 366, 2004 WLC(RAJ)(UC) 71**

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**Bench: S.N. Variava, H.K. Sema**

### **JUDGMENT**

S.N. Variava, J.

1. These Appeals are against the judgment of the High Court dated 31st March, 1998.

2. Briefly stated the facts are as follows:

Approximately 53.12 bighas of land in Tehsii Rohru, District Shimla, Himachal Pradesh was acquired for the purpose of constructing a social housing colony. The said acquisition was pursuant to a Section 4 Notification dated 15th July, 1989. The Land Acquisition Officer passed an Award fixing the compensation at Rs. 40,000/- per bigha. Being dissatisfied the Claimants filed references.

3. The Reference Court, by its Judgment dated 14th August, 1995, fixed compensation at Rs. 1,11,660/- per bigha. The Reference Court so fixed the compensation by taking into consideration 5 sale instances proved by the Claimants/Respondents and 2 sale instances proved by the Appellants. The Reference Court averaged the price of all the sale instances and arrived at the above mentioned figure. It must be mentioned that it was shown to the Reference Court that all the sale instances proved by the Claimants pertained to land which was Kiar Awal (irrigated land), whereas the acquired land was Bakhal Awal (non-irrigated land). The Reference Court held that this made no difference as all the lands were acquired for housing purposes and they were all suitable for and acquired for construction activity. The Reference, Court also refused to give any deductions for

largeness of the land.

4. The Appellants filed an Appeal in the High Court, which has been disposed of by the High Court by the impugned Judgment. The High Court refused to take into consideration the 2 sale instances cited by the Appellants on the ground that the Appellants have themselves offered a price of Rs. 80,000/- per bigha. The High Court only took into consideration the 5 sale instances cited by the Claimants. Averaging the price of those 5 sale instances, the figure arrived at was Rs. 1,80,000/- per bigha. The High Court then deducted 40% for largeness of land and arrived at a figure of Rs. 1,08,000/- per bigha. The High Court fixed compensation at Rs. 1,08,000/- per bigha.

5. We have heard the parties. In our view, the High Court was absolutely wrong in excluding the 2 sale instances cited by the Appellants. The High Court omitted to notice that the offer of Rs. 80,000/- per bigha had not been accepted by the Claimants. In any event the offer was for Rs. 80,000/- per bigha as a consolidated amount. The Appellants would not then have to pay the solatium and interest amounts. We are told, and it is not disputed that the figure of Rs. 80,000/- per bigha would, if solatium and interest is deducted, have gone down to less than Rs. 40,000/- per bigha. In our view the approach of the Reference Court was correct. As all sale instances were proved, they were all to be taken into consideration. If all the sale instances are taken into consideration the average would work out to Rs. 1,11,660/- per bigha. But as all the sale instances are of small pieces of lands and the acquisition is of the large piece of land, a deduction of 33-1/3% must be made towards development cost. Thus the compensation would work out to Rs. 74,444/- per bigha.

6. We accordingly fix the compensation at Rs. 74,444/- per bigha. It is clarified that the Respondents/Claimants would also be entitled to solatium and interest as per the provisions of the Act.

7. The Appeals stand disposed off accordingly. There will be no order as to costs.