

Charan Dass (Dead) By Lrs vs H.P. Housing Urban Dev. Authority & Ors on 7 September, 2009

Equivalent citations: 2009 AIR SCW 6232, 2010 (1) AIR JHAR R 696, AIR 2009 SC (SUPP) 2506, (2009) 4 ALL WC 3625, (2009) 77 ALL LR 21, (2009) 12 SCALE 293, (2009) 4 RECCIVR 740, (2010) 1 LANDLR 540, (2010) 1 CIVLJ 43, 2010 (13) SCC 398, (2010) 1 ICC 39, (2009) 82 ALLINDCAS 198 (SC), (2009) 76 ALLINDCAS 281 (ALL), 2009 (3) ALL LJ 47, (2009) 2 ESC 1007, (2009) 2 ALL WC 1814, (2009) 4 CURCC 236

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Bench: Asok Kumar Ganguly, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2213 OF 2001

CHARAN DASS (DEAD) BY L.Rs. ... APPELLANT (S)

VERSUS

HIMACHAL PRADESH HOUSING
AND URBAN DEVELOPMENT
AUTHORITY & ORS. ... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 2214 OF 2001

KISHAN SINGH ... APPELLANT

VERSUS

HIMACHAL PRADESH HOUSING
BOARD & ORS. ... RESPONDENTS

CIVIL APPEAL NO. 2215 OF 2001

BASTI RAM ... APPELLANT

VERSUS

HIMACHAL PRADESH HOUSING

BOARD & ORS. RESPONDENTS

CIVIL APPEAL NOS. 2216-2220 OF 2001

DEVKI NAND APPELLANT

HIMACHAL PRADESH HOUSING
BOARD & ORS. RESPONDENTS

2

CIVIL APPEAL NOS. 2221-2227 OF 2001

JAI KISHAN & ORS. APPELLANTS

VERSUS

HIMACHAL PRADESH HOUSING
AND URBAN DEVELOPMENT
AUTHORITY & ORS. RESPONDENTS

CIVIL APPEAL NO. 2228 OF 2001

HARPAL & ORS. APPELLANTS

VERSUS

HIMACHAL PRADESH HOUSING
BOARD & ORS. RESPONDENTS

CIVIL APPEAL NOS. 2090-2101 OF 2004

SHONKIA (DEAD) BY L.Rs. APPELLANTS

VERSUS

STATE OF HIMACHAL PRADESH
& ORS. RESPONDENTS

JUDGMENT

D.K. JAIN, J.

This batch of appeals arises from the final judgment and order dated 7th June, 1999 rendered by the High Court of Himachal Pradesh at Shimla in twenty Regular First Appeals as also final judgment and order dated 14th August, 2003 delivered by the said High Court in twelve cognate Regular First Appeals wherein the former order has been relied upon. By the impugned order, while allowing the appeal preferred by the Himachal Pradesh Housing Board (hereinafter referred to as "the Housing

Board"), the High Court has reduced the amount of compensation awarded by the District Judge in Reference under Section 18 of the Land Acquisition Act, 1894 (for short "the Act").

2. Material facts common to all the appeals and relevant for the purpose of disposal of these appeals, are as follows:

The State of Himachal Pradesh, respondent No.2 in Civil Appeal No.2213 of 2001, intended to acquire land of the appellants at Shoghi, about 12 K.M. from the capital of the State at Shimla, for construction of a Housing Board Colony. Accordingly, a Notification under Section 4 of the Act was issued and published in the Himachal Pradesh Gazette on 6th November, 1990. The quality of the lands involved in the acquisition fell in different categories.

The Land Acquisition Collector, respondent No.3 herein, by his Award dated 3rd August, 1994 assessed the market value of the acquired land and announced his Award by which compensation at the rate of Rs.32,073/- per Bigha in respect of Bakhal Awal, Rs.24,288/- per Bigha for Bakhal Doem and Rs.7,785/- per Bigha for Ghasani Banjar Kadeem was awarded to the appellants-

landowners.

3. Not being satisfied, the appellants filed Reference Applications before the District Judge under Section 18 of the Act claiming compensation at Rs.22,00,000/- per Bigha, inter alia, on the ground that the market value of the acquired land was much more than what was awarded by respondent No.3. Vide his order dated 22nd June, 1996, the District Judge found the evidence adduced by the appellants (Exts. PW2/B and PW2/A) to be reliable. However, he found the exemplars filed by the Housing Board (RW3/A and RX), to be irrelevant for ascertaining the market value of the lands. Accordingly, he determined the market value of the acquired land at Rs.2 lakh per Bigha for all kinds of lands irrespective of their quality and classification. In addition thereto, the District Judge awarded Statutory interest and solatium to the appellants. Similarly, vide his order dated 22nd March, 1997, the District Judge again found the evidence adduced by the appellants in the form of two sale deeds to be reliable. Accordingly, relying on his earlier order dated 22nd June, 1996 (Ex.PZ), he awarded the same compensation to the appellants.

4. Being aggrieved with the amount of compensation determined by the District Judge, the Housing Board preferred Regular First Appeals to the High Court under Section 54 of the Act, praying for setting aside the judgments of the District Judge dated 22nd June, 1996 and 22nd March, 1997. The challenge to the said judgments was on diverse grounds, including that the two sale deeds relied upon by the District Judge pertained to two very small pieces of land having a double storied shop; one sale instance was in respect of one biswa of land sold four months after Notification under Section 4 in the present case; the evidence of Gursaran, one of the claimants, who had appeared to prove the sale deed in respect of the land with a double storied shop lacked truthfulness and in some references the compensation awarded was in excess of the land owned by the claimants.

5. Vide order dated 7th June, 1999, the High Court accepted the appeals filed by the Housing Board. Relying on the decisions of this Court in Special Tehsildar Land Acquisition, Vishakapatnam Vs. A. Mangala Gowri (Smt.)¹, Special Deputy Collector & Anr. Vs. Kurra Sambasiva Rao & Ors.² and Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi³, wherein broad parameters, to be kept in view while determining the market value of the land acquired for public purpose have been laid down, the High Court concluded that as compared to the sale instances relied upon by the appellants viz., Ext. PW2/B and Ext. PW2/A, the sale deeds filed by the Housing Board viz., RW3A (again marked as RW5A), RW4A and RX were relevant exemplars for ascertaining the market value of the land in question. The High Court observed as follows:

"...we find on record in these cases that there are only three relevant sale deeds which are marked Exhibits PW2/A, PW2/B, RX and RY. Sale deed Ex.PW2/B is dated 22.1.1990 in respect of which vendee PW-Gursaran (RW5) has been examined by both the parties who is also one of the claimants in the claim petitions. He purchased 2 biswas of land from Piara Singh on 22.1.1990 for a consideration of Rs.99,500/-. On this land there was a double storeyed shop. This witness also purchased another piece of 0-1 biswas of land through sale deed Ex.PW2/A, for a consideration of Rs.30,000/- from Satish Balooni and the value of this land comes to Rs.6 lacs per bigha. The second sale deed was executed after notification issued on

6.11.1990 and, therefore, the market value of that sale deed cannot be taken into consideration for (1991) 4 SCC 218 : AIR 1992 SC 666 (1997) 6 SCC 41 (1997) 9 SCC 673 determination of the acquired land. The three sale deeds relied upon by the appellant-Board are marked RX, RW3/A, again marked RW5/A and RY (RW4/A) pertaining to the year 1988-89 in respect of sale and purchase of the land in Shoghi Bazar by the vendors and vendees. To prove sale deed Ex.RW3/A (RW5/A) RW-Gursaran was examined (who appeared as his own witness in the claim petition), the vendee purchased 1-0 bigha of land in the year 1988-89 for a consideration of Rs.11,000/- from one Ranjit Lal. One Shiv Ram sold 0- 12 biswas of land to PW-Sanjiv Goel and his brother Ajay Kumar in the year 1988-89 for a consideration of Rs.48,000/- and the said land was purchased by vendee for the purpose of setting up of steel industries. PW- Prem Kumar purchased two biswas of land from Vishwa Nath for a consideration of Rs.48,000/-, copy of which was marked Ext. RX and again RW4/A. From the perusal of these sale deeds it is clear that they pertain to 1-1/2 or 2 years prior to the issue of notification under Section 4 of the Act. The duty of the court is to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the land and in that process, though some guesswork is involved, and mechanical assessment of the evidence should be avoided."

6. Inter-alia, observing that there is sufficient oral and documentary evidence on record to determine the fair, reasonable and adequate market value of the acquired land, the High Court finally determined the market value of the land as under:

"The value of the land purchased by the three vendees, namely, Prem Kumar, Gursaran and Sanjiv Goel who are also claimants in some of the claim petitions and the prices of the lands purchased by them about 1-1/2 or 2 years prior to the

acquisition of the land involved in the present cases after calculation and divided by three would come to Rs.1,03,667/- per bigha. Applying the guesswork of the escalation of the price between the year 1988-89 on 6.11.1990, we determine the market value of the acquired lands on the basis of these sale deeds at Rs.1,50,000 per bigha."

Thus, according to the High Court, the market value of the acquired lands as on the date of issue of Notification under Section 4 of the Act was Rs.1,50,000/- per Bigha. Having so determined the market value of the acquired land, the Court noted the evidence of Mr. A.K. Gupta, Assistant Architect (RW4) wherein he had deposed that only 41.4% of the total area was being used for construction and the remaining area was to be used for services like roads, pathways, green spaces etc. On the basis of the said evidence, the High Court made a deduction of 40% from the market value of the land determined by it at Rs.1,50,000/- per Bigha. Thus, the compensation payable to the land owners for the land acquired was determined at Rs.90,000/- per Bigha. The compensation awarded by the District Judge was accordingly modified to that extent, maintaining solatium and Statutory interest awarded by him. The High Court also noticed certain discrepancies in the judgment of the Reference Court in granting compensation for lands in excess of what were actually owned by the claimants. Aggrieved by the said judgments, the appellants- landowners are before us in these appeals.

7. Learned counsel appearing on behalf of the appellants, led by Mr. Atul Sharma, challenged the finding of the High Court that the exemplars/sale instances filed by the appellants and relied upon by the District Judge were not relevant for ascertaining the market value of the subject lands. It was argued that since Ext. RX, adduced by way of evidence by the Housing Board, was not proved, the High Court committed a patent illegality in relying on the same. Placing reliance on the decisions of this Court in Smt. Tribeni Devi & Ors. Vs. Collector of Ranchi & Vice Versa⁴ and Bhagwathula Samanna & Ors. Vs. Special Tahsildar & Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam⁵, learned counsel contended that the High Court failed to apply correct principles for reducing the market value of the land by 40% on account of non- availability of the land for construction of houses. It was asserted that the basis of deduction being the end use of the land and not the nature of the land or the comparable land, (1972) 1 SCC 480 (1991) 4 SCC 506 there should have been no deduction from the market value of the land determined by the High Court.

8. Per contra, learned counsel appearing on behalf of the Housing Board, supported the view taken by the High Court. Controverting the stand of the appellants that sale deed (RX) could not be relied upon as the same had not been proved by the Housing Board, learned counsel submitted that in the light of Section 51A of the Act, a certified copy of the sale deed (RX), registered under the Registration Act, 1908 could be accepted as evidence of the transaction recorded therein and, therefore, the High Court did not commit any illegality in placing reliance on it. Learned counsel also contended that the High Court was justified in making deduction at the rate of 40% by applying the principles of law laid down by this Court in Viluben Jhalejar Contractor (Dead) by LR's. Vs. State of Gujarat⁶, Atma Singh (Dead) through LR's. & Ors. Vs. State of Haryana & Anr.⁷ and Shimla Development Authority & Ors. Vs. Santosh Sharma (Smt) & Anr.⁸.

(2005) 4 SCC 789 (2008) 2 SCC 568 (1997) 2 SCC 637

9. Before we enter into the merits of the rival contentions, we may notice a few broad principles to be kept in view while ascertaining the market value of the land for the purpose of determining the amount of compensation payable on acquisition of land for a public purpose.

10. Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act. Section 23 provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall, inter alia, take into consideration the market value of the land at the date of the publication of the Notification under Section 4 of the Act. The Section contains the list of positive factors and Section 24 has a list of negatives, vis-a-vis the land under acquisition, to be taken into consideration while determining the amount of compensation. As already noted, the first step being the determination of the market value of the land on the date of publication of Notification under sub-Section (1) of Section 4 of the Act. One of the principles for determination of the market value of the acquired land would be the price that a willing purchaser would be willing to pay if it is sold in the open market at the time of issue of Notification under Section 4 of the Act. But finding direct evidence in this behalf is not an easy task and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for ascertaining the market value of the land in acquisition cases is the sale transactions on or about the date of issue of Notification under Section 4 of the Act. But here again finding a transaction of sale on or a few days before the said Notification is not an easy exercise. In the absence of such evidence contemporaneous transactions in respect of the lands, which have similar advantages and disadvantages is considered as a good piece of evidence for determining the market value of the acquired land. It needs little emphasis that the contemporaneous transactions or the comparable sales have to be in respect of lands which are contiguous to the acquired land and are similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard.

11. In Shaji Kuriakose & Anr. Vs. Indian Oil Corporation Ltd.

& Ors.9, this Court has observed as under:

"It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at

which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the (2001) 7 SCC 650 land covered by the sales must be similar to the acquired land and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land".

12. Yet again in Viluben Jhalejar Contractor (supra), making reference to a number of cases on the point, it was observed as follows:

"18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	Negative Factors
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- (i) smallness of size (i) largeness of area
- (ii) proximity to a road (ii) situation in the interior at a distance from the road
- (iii) frontage on a road (iii) narrow strip of land with very small frontage compared to depth
- (iv) nearness to developed (v) lower level requiring area the depressed portion to be filled up
- (v) regular shape (v) remoteness from developed locality
- (vi) level vis-a-vis land under (vi) some special acquisition disadvantageous factors which would deter a purchaser
- (vii) special value for an owner of an adjoining property to whom it may have some very special advantage".

13. Thus, comparable sales instances of similar lands in the neighbourhood at or about the date of Notification under Section 4(1) of the Act are considered to be the best evidence for determining the market value of the acquired land to arrive at a fair estimate of the amount of compensation payable to a land owner. Nevertheless, while ascertaining compensation, it is the duty of the Court to see that the compensation so determined is just and fair not only to the individual whose property has been acquired but also to the public which is to pay for it.

14. Before examining the correctness of the cases at hand, in the light of the legal principles enumerated above, it would also be appropriate to keep in view the scope of interference by this Court in an award granting compensation. It is trite that the scope of interference in such matters is very limited and it is only in cases where it is found that the authorities below, including the High Court, have either applied wrong principles or have omitted to take into consideration the relevant factors affecting valuation, that this Court would interfere.

15. The scope of interference by this Court was delineated by this Court in *Thakur Kamta Prasad Singh (Dead) by LRs. Vs. State of Bihar*¹⁰ wherein it was held that there is an element of guesswork inherent in most cases involving (1976) 3 SCC 772 determination of the market value of the acquired land. If the judgment of the High Court reveals that it has taken into consideration the relevant factors prescribed by the Act, in appeal under Article 133 of the Constitution of India, its assessment of the fair market value of the acquired land should not be disturbed.

16. The following observations of this Court in *Food Corporation of India through its District Manager, Faridkot, Punjab & Ors. Vs. Makhan Singh & Anr.*¹¹ are quite apposite:

"This Court as the last Court of appeal, will ordinarily not interfere in an award granting compensation unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Besides, generally speaking, the appellate court interferes not when the judgment under appeal is not right but only when it is shown to be wrong."

17. Bearing these principles in mind, we may now advert to the facts of the present case. As noted earlier, in the instant cases the Reference Court had relied on Exh. PW2/A and PW2/B to determine the market value of the land. Being the Court of First Appeal, the High Court re-evaluated the entire (1992) 3 SCC 67 evidence and found that Exh. RW4/A, RW3/A and sale deed marked RX in respect of pieces of the land purchased by Prem Kumar, Gursaran Singh, Sanjiv Goel who were also claimants in some of the cases, were the best pieces of evidence to ascertain the market value of the acquired lands. Accordingly, taking the same as the base and applying the formula of averages, the High Court enhanced the said average amount on account of escalation of the prices between the year 1980-89 as on 6th November, 1990, and determined the market value of the acquired land at Rs.1,50,000/- per Bigha. During the course of hearing we required counsel for the Housing Board to place before us the site plan showing the actual location of the subject lands and the location of the plots, in respect whereof, the sale- deeds were filed by the Housing Board as well as the land owners. Having bestowed our anxious consideration to the lay out plan vis-`-vis the land in question and bearing in mind the location of the land, subject-matter of the said sale- deeds, we find it difficult to hold that the exemplars relied upon by the High Court are irrelevant for determining the market value of the acquired lands. We are in agreement with the High Court that the location and the date of sale in the cases, relied upon by the High Court, were relevant for determining the market value of the acquired land. Having carefully examined the relevant evidence, we are convinced that there is no legal or factual infirmity in the approach of the High Court in ascertaining the market value of the lands as might induce us to interfere with finding of the High Court on that account. As noted above, unless some glaring infirmity is shown in the assessment of evidence by the High Court, this Court would ordinarily be slow in interfering with the approach of the High Court in that behalf.

18. The next question which now survives for consideration is whether the deduction of 40% from the market value determined by the High Court towards development charges for laying roads etc., is justified?

19. It is well settled that it is not in every case that deduction towards development charges has to be made when a big chunk of land is acquired for housing colonies etc. Where the acquired land falls in the midst of an already developed land with amenities of roads, electricity etc. deduction on this account may not be warranted. At the same time, where all civic and other amenities are to be provided to make it suitable for building purposes or under the local building regulations setting apart of some portion of the lands for providing common facilities is mandatory, an appropriate deduction may be justified.

20. In Special Tehsildar Land Acquisition, Vishakapatnam (supra), following Tribeni Devi's case (supra), this Court had observed as under:

"It is to be noted that in building regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve layout for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction of 1/4 may be justified."

21. In the light of the afore-noted parameters, we are of the view that in the instant case having regard to the relevant facts and circumstances of the case, including the location of the acquired land, a deduction of 30% towards development charges from the market value of land as arrived by the High Court, would meet the ends of justice. Accordingly, we hold that the market value of the land for the purpose of payment of compensation to the land owners in all these appeals is to be assessed at Rs.1,05,000/- per Bigha.

22. In the result, the appeals are partly allowed. The appellants shall be entitled to compensation at Rs.1,05,000/- per Bigha. Besides, they will also be entitled to Statutory amounts in terms of Section 23(1A) of the Act; solatium at 30% on the market value of the land in accordance with Section 23(2) of the Act and interest as stipulated in Section 28 of the Act.

23. There will, however, be no order as to costs.

.....J. (D.K. JAIN)J. (ASOK KUMAR GANGULY) NEW
DELHI SEPTEMBER 7, 2009.