

**IN THE COURT OF Dr. ABIRA BASU, ADDITIONAL DISTRICT
JUDGE, SIRMAUR DISTRICT AT NAHAN, H.P.**

CIS CNR No.	HPSI010005092017
CIS Case Type	LAC petition.
CIS Case No.	11/2017.
CIS Case Year	2017.
LAC Petition No.	11-N/4 of 2017.
Date of Institution	16.03.2017.
Date of Decision	23.08.2022.

1. Smt. Sumitra Devi Wd/O Late Sh. Tape Chand, aged about 76 years,
2. Sh. Shyam Lal S/O Sh. Pritam,
3. Sh. Joginder Singh S/O Sh. Dungi Ram,
4. Smt. Kiran D/O Sh. Joginder Singh (through his father),

All residents of village Patlion, Tehsil Paonta Sahib,
District Sirmaur, H.P.

.....Petitioners.

Versus

1. Union of India, through Secretary, Surface and National Highways, Ministries, New Delhi.
2. The Land Acquisition Collector, HPPWD/National Highways South Zone Winter Field Shimla, H.P.
3. The Executive Engineer, National Highways, Division Solan, District Solan, H.P.

....Respondents.

Petition under Section 64 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.

For the petitioners: Sh. Sharad Pandit, Ld. Counsel.

For the respondents: Sh. Jatinder Kumar, Id. Dy. DA.

A W A R D

This award will dispose of the above referred petition made under Section 64 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (hereinafter referred to as Act) arising out of the award No. 3/2016 dated 15.02.2016 passed by the respondent No. 2, Land Acquisition Collector, HPPWD /National Highway South Zone Winter Field Shimla, H.P.

2. The brief facts of the case are that the land of the petitioners situated in village Patlion, Tehsil Paonta Sahib, District Sirmaur, H.P. in which the petitioners are having shares as detailed in the award was acquired by respondent No.1 through respondent No.2 for public purpose namely for construction of National Highway Marg, Kala Amb-Paonta-Dehradun Road. The notification under Section 4 read with Section 4(1) of the Land Acquisition Act (hereinafter referred to as Act) was issued on 4.7.2013, which was published in "State Rajpatra" on 6.7.2013 and in two daily newspapers i.e. Dainik Jagran on 13.7.2013 and Ajeet Samachar on 14.7.2013. The notification under Sections 6 and 7 of the Act was issued on 3.1.2014. The Collector after conducting inquiry as envisaged under the Act, assessed the market value of the acquired land @ Rs. 20,00,000/- per bigha vide award No. 3/2016 dated 15.2.2016. the Land Acquisition Collector also awarded 12% additional amount and solatium under Section 30 of the Act.

3. Dissatisfied with the award in question, the petitioners seek reference for further re determination of the compensation

amount in respect of the land/building and for grant of other statutory benefits on the following grounds:-

i. That the respondents have issued common notification under Section 4 of the Act for acquiring the land for common purpose of reconstruction of Bata Bridge in villages Patlion and partly in *Up-Sampada Bata Mandi*. It has been further submitted that the Land Acquisition Collector committed an error in law by fixing the different market value of the acquired land for different village i.e. Rs. 20,00,000/- per bigha and @ Rs. 3560 per Sq mets i.e. Rs. 30,26,000/- per bigha respectively, whereas the market value should have been the same for both acquisition keeping in view the location potentiality and common purpose of the acquisition.

ii That the LAC has further committed an error in law by not considering the factors laid down under Sections 26 & 28 of the Act for fixing and assessing the market value of the acquired land. The commercial building of the petitioner No. 1 is also involved in the acquisition, the evaluation report in respect of the same is not submitted by the concerned department and as such there is no award in respect of the building as yet.

iii That the acquired land is prime and it can be treated as part of Paonta Town, though, it is located in Panchayat area, but the same is situated just at the point of bus terminal where from the roads bifurcate to Paonta Sahib, Nahan and Yamuna Nagar. This is a busy commercial centre and in the close vicinity of the acquired land, there are big hotels, marriage palace, shops, petrol pump. Apart from it, there are all the amenities and facilities like educational, hospitals and other offices which are supposed to be at a Tehsil Head Quarter.

iv The LAC has not assessed the total compensation as per the norms and law laid down under the Act and the compensation so assessed is inadequate and unreasonable. The petitioners are entitled at least to the four time increase of the compensation assessed by the LAC.

v The LAC has also committed an error in law by not granting the statutory benefit of interest under Section 80 of the Act on the amount of compensation assessed by him.

4. It has been further submitted that the present petition is within the period of limitation. Hence, prayed that the petition be forwarded to the appropriate authority appointed for District Sirmaur at Nahan to redetermine the compensation in respect of the land/building.

5. The petitions so filed have been contested by the respondents by filing reply taking preliminary objections qua maintainability and that an adequate award has been passed in accordance with law. On merits, it is denied that the compensation awarded to the petitioners by the Land Acquisition Collector is inadequate and the same is not in accordance with the prevailing market rate of the land in the vicinity. It has been submitted that the award has been passed in accordance with the law after considering all the aspects and on the basis of market value approved by the District Collector Sirmaur at Nahan and statutory benefits as admissible under the Right of Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013 have also been awarded. The land has been acquired by the respondents for the public purpose and in public interest. The notification under Section 4(1) of the Act was duly issued and published in two daily newspapers

and public notice was also issued and after hearing the objections notifications under Sections 6 & 7 of the Act was issued which was duly published in two news papers and in State Rajpatra. It has been further submitted that under Section 20 of the Act, acquired land was demarcated in the presence of the witnesses and thereafter notices under Section 21 of the Act were issued to the petitioners and other land owners. The petitioners have raised no objection qua the acquisition of the land, but they demanded compensation @ Rs. 15,000/- per Sq. metre. The award is said to have been passed in accordance with law and as per the highest rates approved by the District Collector and all the benefits as admissible under the Act have been awarded to the petitioners. It has been denied that the LAC should have applied the proper multiplier for rural/urban area as is applicable to the present case for fixing the market value of the acquired land and the building existing thereon. There is no building on the acquired land. It has also been denied that the petitioners are entitled for the compensation @ Rs. 15,000/- per square metres. The other averments have been denied and hence, prayed that petition be dismissed with costs in the interest of justice.

6. No rejoinder was filed. From the pleadings of the parties, the following issues were framed on 01.11.2017 :-

1. Whether inadequate compensation was paid to the petitioners and it is liable to be enhanced, if so to what extent? ..OPP
2. Whether the petitioners are entitled to compensation in respect of the constructed house?...OPP
3. Whether the rates assessed by the Collector are just, adequate and as per law?...OPR

4. Whether the compensation of the acquired land deserves to be determined as per the provisions of Section 28, 30 and Schedule 1 of the Act, if so, which factor should be applied for determination of compensation of the acquired land?....OPR
5. Whether petition is not maintainable? ...OPR
6. Whether petition is time barred?...OPR
7. Relief.

7. The parties have led oral as well as documentary evidence in support of their respective claims.

8. I have heard the learned counsel for the parties and have also gone through the record of the case.

9. For the detailed reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4: No

Issue No.5 : No.

Issue No.6 : No.

Relief : The petition is partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

10 In order to prove their claim, the petitioners have

examined three witnesses. PW-1 Sh. Deepak Kumar has deposed that he is posted as Patwari in Patwar Circle, Bhatanwali since 8.5.2018. Batamandi falls in Mauja Patwar Circle B Bhatanwali and village Patlion falls in Mauja Patwar Circle Puruwala and boundaries of both the circles adjoins to each other. He has prepared khakha dasti Ext. PW-1/A as per latha and spot, in which it has been shown that Up-Sampada of Bata Mandi falls at the end of khasra No. 111 and thereafter, boundary of Patlion starts. He has further deposed that there are 2-3 hotels near Bata Chowk and Bata pul and at a some distance there is a Petrol Pump. There are some shops near Bata Chowk. He has deposed that the land of the place where boundary of both the villages adjoin is same.

11. In his cross-examination, he has deposed that Musavi of summoned record is available and the boundary and Mauja are rightly verified from Musavi. He has denied that he is deposing falsely at the instance of the petitioners. He has admitted that at present he is not having any record of Patlion. He has denied that he is not competent to prepare khakha Ext. PW-1/A without the order of Tehsildar.

12. PW-2 is Sh. Dina Nath, son of the petitioner No. 1 and her power of attorney. He has tendered in evidence affidavit Ext. PW-2/A in his examination-in-chief, in which he has reiterated the averments made in the petition. He has also tendered on record power of attorney Ext. PW-2/B, copy of notification Ext. PW-2/C, copy of award No. 3/2016 Ext. PW-2/D, copy of notification issued under Section 4 of the Act and published in Rajpatra Ext. PW-2/E, another notification Ext. PW-2/F, copy of circle rate Ext. PW-2/G, copy of para No. 55 Ext. PW-2/H.

13. In his cross-examination, he has admitted that he is not the owner of the aforesaid land. He has admitted that the award of the aforesaid land was passed by DC Sirmaur under LAC Act, 2013. He has denied that he and his mother were granted compensation in the aforesaid case. Though, he has admitted that the amount of the aforesaid land i.e. about Rs. 22 lacs was revived by them. He has denied that they received the compensation equivalent to the land of other persons. He has admitted that he has not annexed the record qua increase of market value of the aforesaid land and sale deed and other record. He has denied that he has filed a false case.

14. PW-3 is Sh. Joginder Singh, who has tendered in evidence affidavit Ext. PW-3/A, in which he has reiterated the averments made in the petition. In his cross-examination, he has deposed that he has not produced any map and report of architecture, which could show that the market value of the land is more than the compensation they received. He has admitted that notification to acquire the land was issued in the year 2013 and the notifications were published in the news papers. He has admitted that he has received the compensation of Rs. 7,74,816/-. he has denied that he never raised any objection when the land was acquired by the Government. He has denied that they have awarded the compensation in the year 2013 more than the other people. He has denied that as per market value, the cost of his land is Rs. 2,53,000/-. He has denied that he is claiming more compensation on the basis of wrong facts.

15. RW-1 is Sh. Dalip Kapoor, Assistant Engineer, HPPWD(B&R) Sub Division No. 1, Paonta Sahib, who has tendered affidavit Ext. RW-1/A in his examination-in-chief, in

which he has reiterated the averments made in the reply. In his cross-examination, he has admitted that the boundaries of Bata Mandi and Patlion adjoin to each other. He has deposed that at the time of award, he was not having charge of that section. He has shown ignorance whether the notifications issued under Sections 4, 6 & 7 were common or not. He has admitted that the lands of Patlion and Bata Mani are of the same potentiality.

16. RW-2 is Sh. Surya Kant Samewal, Assistant Engineer, National Highway, Sub Division, HPPWD Dhaulakuan, who has also tendered in evidence affidavit Ext. RW-2/A by way of examination-in-chief, in which he has reiterated the averments made in the reply. In his cross-examination, He has admitted that the lands of Bata Mandi and Patlion come under village area. He has admitted that there are three big hotels near Bata Chowk and shops are also situated on both sides. He has further admitted that common notification of Bata Mandi and Patlion under Section 4 of the Act was issued. He has admitted that notification under Section 6 & 7 of the Act was also issued. He has shown ignorance whether the commercial value of Bata Mandi and Patlion is on higher side. He has admitted that no benefit can be given to any individual person or building.

17. RW-3 is Sh. Vikram Singh, Patwari, HPPWD Winter Field Shimla, who has brought the summoned record and proved notification under Section 4 of the Act Ext. RW-3/A, another notification under Sections 6&7 of the Act Ext. RW-3/B, copy of Para No. 55 Ext. RW-3/C, copy of award No. 3/2016 Ext. RW-3/D, notice Ext. RW-3/E, copy of payment Ext. RW-3/F, circle rate approved by DC Sirmaur vide letter Ext. RW-3/G and copy of circle rate Ext. RW-3/H. He has deposed that the circle rate of

village Patlion was Rs. 20,00,000/- per bigha at that time. Original record was seen and returned. This is the entire evidence on the file.

18. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has replaced the archaic Land Acquisition Act, 1894, to bring in a new procedure, aimed at granting fair compensation to those affected. Section 26 of the Act that deals with compensation for the land owners. It outlines the proposed minimum compensation, based on multiples of the market value. Usually, the market value is multiplied by a factor of one or two times, for land acquired in rural and urban areas. The market value of the land is determined by the average sale price for similar types of land situated in the nearest village or nearest vicinity area. This sale price is assessed, by considering one-half of the total number of sale deed or agreement to sell, in which the highest price has been mentioned. The compensation can also be a consented amount, in case the land is acquired for private companies or public-private partnership projects. In this case the land has been acquired for construction of *National Highway Marg, Kala Amb Paonta Sahib Dehradun Road*, so the consent of the owners are not required, only notice was sufficient which has been made by publication.

19. On perusal of the aforesaid award, it is apparent that the land acquisition proceedings have not been done under the old Land Acquisition Act so it would be covered under Sec 24(1) (a) of the Right to Fair Compensation Act. Coming to the aspect of use of factors laid down under sec 26 & 28 of the Right to Fair Compensation and transparency in Land Acquisition,

Rehabilitation and Resettlement Act 2013, it has been argued that proper multiplier I.e factor II of schedule I of the Act should have been applied.

20. In this case, the market value of the land has been assessed to be @ Rs 3560/- Per sq.mts vide award no 03/2016 dated 15.02.2016 under sec 26 of the Act. The relevant section is as under

26. Determination of market value of land by Collector.—(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated;or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in

clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be: Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land

*calculated under sub-section (1):
 Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:
 Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.*

21. In this case, it is not in dispute that the area is an Rural Area, As per sec 4 of the Act, the circle rates of the land per Bigha in respect of revenue village, Batamandi and Patlion , Tehsil Paonta Sahib applicable for the year 2013-2014 was Rs 20,00,000/- per bigha for National Highway . So the amount had to be taken as Rs 20,00,000/- and not Rs. 19,00,000/- as the boundaries of both revenue village are adjoining to each other. Further the award also mentions that the rate fixed was of Rs 20,00,000/- so the market value of Rs 20,00,000/- has to be taken. Further, there has been no explanation by the Ld. LAC for varying The Award under sec 23 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The land was acquired for construction of the National Highway (Ex PW2/D). and the area falls under Rural Area, the factor by which the market value is to be between one to two. However, the Ld.

Counsel for the petitioner has drawn the attention of the Court to the notification issued by the Government of India in the gazette notification dated 9 February 2016, which reads as under:-

S.O.425(E) – In exercise of the powers conferred by column No. 3 of serial No.2 of the First Schedule, read with sub-section (2) of section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (No. 30 of 2013), the Central Government, hereby, notifies that in case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two).

22. According to the Fair Compensation Act, the market value of the land has to be determined as per Section 26. In addition, the factor by which the market value is to be multiplied in rural areas is between 1 to 2. In this case, the latest notification of 2016, the market value has to be multiplied with factor 2. So, in addition to the market value in the present case, factor 2 has to be added to the total compensation, as per the provisions of Section 26 read with Schedule-1 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the above discussion and as per the provisions of Section 26 read with Schedule-1 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioners are entitled to enhancement of award, and it cannot be said that the petitioners have already been adequately compensated and the petition is not maintainable.

23. Thus, in view of what has been stated above, the issue in hand is decided in favour of the petitioners and is answered accordingly.

ISSUE NO. 2

24. The petitioner has claimed that they were running a shop of Halwai, and it has not been acquired, though as shown in R1, it can no longer be operative and effected their livelihood. Now, as per the spirit of the act, any person who lost his livelihood, notably under section 31 of the act, had to be compensated. In this case, the photograph In this case, the photograph, Mark R1, show that the house and the shop cannot be used for the purpose it was constructed. So she had to be also compensated for the house and the shop as already assessed. As her earning has been affected due to the construction of the highway. Hence, the issue in hand is decided in favour of the petitioner and is answered accordingly.

ISSUE No 3 & 4.

25. The Award has not mentioned any multiplier applied by the Ld Collector. It is mandatory to notify the multiplier of basis of the distance and also the Act lays down different multiplier of basis of whether the land is in urban or rural Area. The multiplier of two(2) has been assessed in this case as the land is in rural area, So the issue is decided accordingly.

ISSUE NO 5.

26. In view of my findings on issues No.1 and 2 above, the petitions as filed by the petitioners are held to be maintainable. Hence, the issue in hand is decided against the respondents and is answered accordingly.

ISSUE NO 6

27. The sec 73(c) of the act has provision that any person who is not satisfied with the award can give an application for reference to the Collector. It is the collector who has to see if the application is within time or not. As the collector has preferred this reference, therefore, the reference cannot be said to be time barred. Hence, this issue is decided in negative against the respondent.

RELIEF

28. In view of the decision on issue No. 1, a reference petition is allowed with costs and the reference petitioners are held entitled to enhanced compensation regarding acquired land. The petitioners are also entitled to all other statutory benefits, including interest on solatium and additional market value as per Section 30(3) of the Fair Compensation Act, i.e. the petitioners are entitled to enhanced compensation qua the land acquired. Besides, the petitioners are entitled to solatium equivalent to 100% of the market value of land multiplied by factor 2 and interest as per the provisions of Section 30(3) of the Fair Compensation Act i.e.

(I) Market value of land U/S-26 First Clause :
@20,00,000/- per bigha

(ii) Factor by which the market value is to be :X 2
multiplied in the case of rural areas.

(iii) 12% Additional amount (Section-30(3) of
Land Acquisition Act-2013) on Market
value of land.

(iv) 100% Solatium (U/S-30 of Land Acquisition

Act-2013).

(v) Value assessed of the house and the shop

29. It is, however, ordered that the amount of compensation, if already paid, shall be adjusted towards the enhanced amount of compensation. Reference petition is accordingly answered. A memo of costs be prepared. The file, after due completion, be consigned to the record room.

Announced in the open Court on this 23rd day of August, 2022. Sd/-

(**Dr. Abira Basu**)
Additional District Judge,
Sirmaur District at Nahan, H.P.

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FORM-A**LIST OF WITNESSES.**

Sr. No.	Name of witnesses	PW/RW
1	Sh. Deepak Kumar	PW-1
2	Sh. Dina Nath	PW-2
3	Sh. Joginder Singh	PW-3
4	Sh. Dalip Kumar	RW-1
5	Sh. Surya Kant Samewal	RW-2
6	Sh. Vikram Singh	RW-3

FORM-B**LIST OF EXHIBITS.**

SR. No	Exhibits	Dated	Description.
1.	Ext. PW1/A	23.5.2018	Khakha dasti
2.	Ext. PW-2/A	-do-	Affidavit of Sh. Dina Nath
3.	Ext. PW-2/B	-do-	Power of attorney
4.	Ext. PW-2/C	-do-	Copy of notification
5.	Ext. PW-2/D	-do-	Copy of award 3/2016
6.	Ext. PW-2/E	-do-	Copy of notification

7.	Ext. PW-1/F	-do-	Copy of notification
8.	Ext. PW-2/G	-do-	Copy of circle rate
9.	Ext. PW-2/H	-do-	Copy of para No. 55
10.	Ext. PW-3/A	14.12.2018	Affidavit of Sh. Joginder Singh
11.	Ext. RW-1/A	15.3.2022	Affidavit of Sh. Dalip Kumar
12.	Ext.RW-2/A	-do-	Affidavit of Sh. Surya Kant Samewal
13.	Ext. RW-3/A	2.4.2022	Notification U/S 4 of the Act
14.	Ext.RW-3/B	-do-	Notification U/S 6&7 of the Act
15.	Ext. RW-3/C	-do-	Copy of para No. 55
16.	Ext.RW-3/D	-do-	Copy of award No. 3/2016
17.	Ext.RW-3/E	-do-	Copy of notice
18.	Ext.RW-3/F	-do-	Copy of payment
19.	Ext. RW-3/G	-do-	Copy of letter
20.	Ext.RW-3/H	-do-	Copy of circle rate

(Dr. Abira Basu)
 Additional District Judge,
 Sirmaur District at Nahan, H.P.