



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

RFA No. 21 of 2016

Reserved on: 12.11.2025

Date of decision: 26.11.2025

State of H.P. & othersAppellants.

Versus

Krishan Chand (deceased) through His LRs

.....Respondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For appellants No. 1 & 2: Mr. Amandeep Sharma,
Additional Advocate General.

For appellant No. 3: Mr. Ram Kumar, Advocate, vice
Mr. Hamender Singh Chandel,
Advocate.

For respondents No.1(a),
1(c) to 1(g) and LRs of
deceased respondent No. 1(b):
Mr. K.S. Thakur, Advocate.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellants/State against award dated 02.05.2015, passed by learned Additional District Judge-II, Shimla, H.P. (hereinafter referred to as “the learned Reference Court”) in Land

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



Reference No. 9-S/2 of 14/05, whereby the petition filed by petitioner-Krishan Chand, under Section 18 of the Land Acquisition Act (for short “the Act”) against the award passed by the Land Acquisition Collector, Shimla, in Award No. 37 of 2005, decided on 28.02.2005, was allowed and the petitioner-Krishan Chand (now deceased) was held entitled for enhanced compensation at the rate of Rs.1,50,700/- per biswa alongwith solatium, additional compensation, interest etc..

2. The brief facts of the case are that Notification under Section 17(4) read with Section 4(1) of the Act, dated 13.05.2003, was published in daily news papers, i.e., Indian Express and Dainik Jagaran on 25.05.2004 and the same was also published in State Gazette on 25.05.2004 and public notice in the locality was issued on 17.05.2004. Notifications under Sections 6 and 7 of the Act were also issued and ultimately the Collector assessed the market value of the acquired land. The petitioner-Krishan Chand was awarded total compensation of Rs.53,000/-for his acquired land @ Rs.5000/- per biswa. However, the petitioner, being dissatisfied with the awarded amount of compensation, preferred a petition under Section 11 of the



Act, whereupon the Collector made reference to the learned Reference Court under Section 18 of the Act.

3. The learned Reference Court, allowed the petition of the petitioner-Krishan Chand (claimant) and held him entitled for enhanced compensation at the rate of Rs.1,50,700/- (rupees one lac fifty thousand and seven hundred) per biswa alongwith solatium, additional compensation, interest on the enhanced amount of compensation etc.. Hence, the appellants/State, i.e., The Secretary (I&PH) to the Government of H.P. and the Executive Engineer, I&PH, preferred the instant appeal under Section 54 of the Act with a prayer to quash and set-aside award dated 02.05.2015, passed by the learned Reference Court. During the pendency of the instant appeal, vide order dated 13.10.2020, passed by a co-ordinate Bench of this Court, Shimla Jal Prabandhan Nigam Limited (SJPNL), through its Managing Director, Shimla, was brought on record as appellant No. 3.

4. I have heard the learned Additional Advocate General for appellants No. 1 and 2/State, learned vice counsel for appellant No. 3, learned counsel for respondents No. 1(a), 1(c) to 1(g) and LR of deceased respondent No.



1(b) and also carefully examined the records.

5. The learned Additional Advocate General for appellants No. 1 and 2/State as well as learned counsel for appellant No. 3/SJPNL contended that the learned Reference Court had wrongly and erroneously assessed the value of the acquired land @ Rs.1,50,700/- per biswa or Rs.30,14,000/- per bigha, which is highly excessive. They further contended that there were neither any industrial or commercial activities nor any habitations nearby and the adjoining land was rural having all the rural features. Lastly, it was prayed that the instant appeal be allowed by setting-aside the impugned award.

6. Conversely, the learned counsel for respondents No. 1(a), 1(c) to 1(g) and LRs of deceased respondent No. 1(b) supported the impugned award by contending that the impugned award has been passed by the learned Reference Court after rightly appreciating both evidence and law and have prayed for dismissal of the instant appeal.

7. In order to prove its case, the petitioner himself stepped into the witness-box as PW-1 and stated that the land under acquisition had potentiality, as the government was planning to make Shimla a Satellite city. Shri Gian



Singh, Patwari, Patwar Circle Bhonth, was examined as PW-2, to prove one year average, PW-2/A. Shri Lekh Ram, Registration Clerk, was examined to prove sale deed, PW-2/A.

8. Conversely, the respondents examined Shri Gurnath Vashisht, Executive Engineer as RW-1, who deposed that acquired land was in *Nallah* in the jungle and it was one kilometer below the road. RW-2 Shri Krishan Dutt, Junior Engineer, deposed that the acquired land was below 800 meters from the village. RW-3, Shri Ramesh Chand, Additional Assistant Engineer, proved the site plan, RW-3/A.

9. As per the settled principle of law, compensation for the land acquired has to be determined at market value. Market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the



market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

10. In ***Mehta Ravindraraï Ajitrai (deceased) through his heirs and LRs and others v. State of Gujarat (1989) 4 SCC 250***, the Hon'ble Supreme Court held that the market value of a property for the purpose of Section 23 of the Act is the price at which the property changes hands from a willing seller to a willing purchaser, but not too anxious a buyer, dealing at arms length. The relevant portion of the aforesaid judgment reads as under:

"4.The market value of a piece of property for purpose of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidences of market value."

11. In ***Atma Singh & others vs. State of Haryana & another (2008) 2 SCC 568***, the Hon'ble Supreme Court held that the market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing conditions with all its existing advantages and its potential possibilities when led out in



most advantages manner, excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The question whether a land has potential value or not, is primarily one of the facts depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. The relevant portion of the aforesaid judgment reads as under:

- “4.The expression “market value” has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm’s length nor façade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value.***
- 5. For ascertaining the market value of the land, the***



potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration.”

12. In ***Union of India vs. Pramod Gupta (dead) by LRs & others, 2005 (12) SCC 1***, the Hon'ble Supreme Court held that the best method, as is well-known, would be the amount which a willing purchaser would pay to the owner of the land. In the absence of any direct evidence, the Court, however, may take recourse to various other known methods. Evidence admissible therefor inter alia would be the sale deeds, judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment/award in the absence of any other evidence like deed of sale, report of the expert and other relevant evidence would have only evidentiary value. The relevant portion of the aforesaid judgment reads as under:

“24 While determining the amount of compensation payable in respect of the lands acquired by the State, the market value therefor indisputably has to be ascertained. There exist different modes therefor.



25. *The best method, as is well known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidences admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighboring villages. Such a judgment and award, in the absence of any other evidence like the deed of sale, report of the expert and other relevant evidence would have only evidentiary value."*

13. For ascertaining market value of the acquired land, the Court can no doubt rely upon such sale transactions, which would offer a reasonable basis to fix the price, for which purpose, a sale transaction relating to a smaller parcel of land can be considered for the purpose of assessing the market value in respect of a large tract of land, after making appropriate deductions such as for development of land, for providing space for roads, sewers, drains, expenses involved in formation of a layout, lump-sum payments, as well as for the waiting period required for selling the sites that would be formed and other expenses involved therein, but before doing so, the evidentiary value of such a sale deed is required to be carefully scrutinized. As held in the case of ***Land Acquisition Officer vs. Nookala Rajamallu reported as (2003) 12 SCC 334***, in order to adopt the price reflected in the sale deed, the following conditions are required to be met:



- "9. *It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:*
- (i) *when sale is within a reasonable time of the date of notification under Section 4(1);*
 - (ii) *it should be a bona fide transaction;*
 - (iii) *it should be of the land acquired or of the land adjacent to the land acquired; and*
 - (iv) *it should possess similar advantages*
10. *It is only when these factors are present, it can merit a consideration as a comparable case (see Special Land Acquisition Officer v. T. Adinarayan Setty AIR 1959 SC 429)."*

14. In the instant case, after going through the entire evidence on record, it has become clear that in order to prove the market value of the acquired land, the petitioner has placed on record only one sale deed, executed on 03.09.2002, which is Ex. PW-2/A, whereas the respondents have placed on record Award, Ex. R-1 passed by the learned Land Acquisition Collector. As per the sale deed, Ex. PW-2/A, land measuring 0-01-68 hectares (0-4 biswas) was sold for a total consideration of Rs.1,15,500/- and its value comes out to Rs.28,766/- per biswa. However, the aforesaid sale deed, Ex. PW-2/A, cannot be taken into consideration as the same is in total contrast with the award Ex.R-1, wherein the maximum value of the land has been mentioned to be Rs.27,40,268/- per bigha, which comes out to Rs.1,37,013/- or say Rs.1,37,000/- per biswa. The aforesaid rates were



duly approved by the Collector vide letter dated 16.04.2004.

Therefore, for assessing the market value of the land acquired, the learned Reference Court had rightly taken the market value of the acquired land @ Rs.1,37,000/- per biswa on the basis of the rates approved by the Collector, vide award, Ex. R-1. However, at the same time, after applying cumulative increase @ 10% per annum on the market rates duly approved by the Collector, vide letter dated 16.04.2004, the learned Reference Court had taken an increase in the sum of Rs.13,700/- on the market price of the acquired land, and assessed its market value at Rs.1,50,700/- per biswa.

15. Now, the question which arises for consideration before this court is as to whether the learned Reference Court could have granted the cumulative rate of increase @ 10% per year on the market price of the acquired land in the facts and circumstances of the present case?

16. The learned Additional Advocate General/ learned vice counsel for the appellants contended that the cumulative rate of increase @ 10% per year could not have been granted by the learned Reference Court while assessing the market value of the land @ Rs.1,50,700/- per bigha as market rates were approved by the Collector, vide



letter dated 16.04.2004 whereas notification under Section 4 of the Act was published on 25.05.2004 and there is no gap between the date of issuance of the notification and the date of the letter of approval. In the facts and circumstances of the present case, in the opinion of this court, this contention is not without any substance as in **ONGC v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745**, the Hon'ble Supreme Court has held that for the purpose of calculation of the cumulative rate of increase, the year of the relied-upon transaction, which is the base year has to be excluded. The relevant portion of the aforesaid judgment reads as under:

“19. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs 10 per square metre, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs 12 per square metre, the flat rate increase will be Rs 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs 13 per square metre, then the flat rate increase will be Rs 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs 10 or Rs 12.10 or Rs 13.31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.

20. *The Reference Court has stated that the gap between 6-1-1987 (the date of transaction covered by Ext. 15)*



and 15-9-1992 (the date of acquisition under consideration) was six-and-half years. It therefore calculated the increase for six-and-half years. This is obviously erroneous. The actual gap is five years and eight months and not six-and-half years. However, for the purpose of calculation, we have to exclude the year of the relied-upon transaction, which is the base year. If the year of relied-upon transaction is 1987, the increase is applied not from 1987 itself, but only from the next year which is 1988. If the rate was Rs 10 per square metre in 1987, and the cumulative rate of increase is 7.5% per year, the price will be Rs 10.75 in 1988, Rs 11.56 in 1989, Rs 12.42 in 1990, Rs 13.35 in 1991 and Rs 14.35 in 1992. Thus, the calculation of increase is only for five years and not for six-and-half years.”

17. In the instant case, the Notification under Section 4 of the Act was published on 25.05.2004, whereas the learned Reference Court had rightly taken the market value of the acquired land @ Rs.1,37,000/- per biswa on basis of the market rates approved by the Collector, vide letter dated 16.04.2004, irrespective of the classification of the land. Since there is hardly any gap between the date of issuance of the notification and the date of the letter of approval dated 16.04.2004, in view of the aforesaid pronouncement of law by the Hon'ble Apex Court, the increase could not have been applied from the year 2004 as the letter on the basis of which, the market rates were approved by the Collector was itself of dated 16.04.2004. Hence, the Reference court had committed grave error in granting the cumulative rate of increase @ Rs.10% per annum for the year 2004 i.e., @ Rs.13,700/- per biswa in the



market value of the acquired land.

18. Therefore, the market value, as assessed by the learned Reference court, @ Rs.1,50,700/- deserves to be reduced to Rs.1,37,000/- per biswa, irrespective of the classification of the land. Accordingly, the impugned award deserves to be modified.

19. Hence in view of my aforesaid discussion, the impugned award is modified, as above. The market value, as assessed by the learned Reference court, @ Rs.1,50,700/- is reduced to Rs.1,37,000/- per biswa. It goes without saying that rest of the terms and conditions of the award shall remain the same. The solatium as well as all the other statutory benefits shall be calculated on the basis of the market value of the land assessed @ Rs.1,37,000/- per biswa.

20. In view of what has been discussed hereinabove, the instant appeal, is accordingly disposed of. Pending application(s), if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

26th November, 2025
(virender)