



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 20.07.2023
Pronounced on : 14.09.2023

CFA No. 8/2017(O&M)

Director Urban Local Bodies and anr.Appellant(s)/Petitioner(s)

Through: Mr. S. S. Nanda, Sr. AAG

Vs

Hans Raj and others Respondent(s)

Through: Mr. Vivek Sharma, Adv.
for Nos. 1 and 10 to 17
Mr. N. A. Choudhary, Adv.
for Nos. 2 to 9.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This appeal filed under section 52 of the Jammu and Kashmir Land Acquisition Act, 1990 (for short 'the Act') arises out of the judgment/award dated 31.03.2016 passed by the court of learned Principal District Judge, Bhadarwah (hereinafter to be referred as 'the reference court') in reference, titled, "Hans Raj and others vs Collector, Bhaderwah and Anr" bearing file No. 10/Reference, whereby the learned Reference Court has enhanced the compensation payable by the appellants to the respondents/owners for the land acquired by the appellants.
2. The award has been impugned by the appellants on the following grounds:
 - a) That without there being any cogent evidence on record, the learned reference court has enhanced the compensation for the land acquired by the appellants, only on the basis of the sole witness, namely, Mohd. Ibrahim, examined by the respondents.



- b) That the market rate of the small piece of land cannot be taken into consideration for determining the market rate for big chunk of land.
3. Mr. S. S. Nanda, learned Sr. AAG appearing for the appellants argued that the learned reference court has fallen in grave error of law while enhancing the compensation as the sale exemplar brought on record by the respondents was only in respect of small piece of land whereas the appellants had acquired the big chunk of land. He has placed reliance upon the judgment of this Court in case, titled, '**Dy. Chief Engineer Construction N. R. Reasi vs Makhna Singh and others**' passed in MA No.570 of 2014 decided on **14.07.2023**.
4. *Per contra*, Mr.Vivek Sharma and Mr. N. A. Choudhary, learned counsels appearing for the respondents argued that the learned reference court has rightly passed the award on the basis of the evidence led by the respondents, as such, there is no illegality in the award passed by the reference court. Mr. Vivek Sharma, relied upon the judgment passed by the Hon'ble Supreme Court in "**State of Madhya Pradesh v. Radheshyam & Ors.**"
5. Heard and perused the record.
6. Briefly stated the facts necessary for the adjudication of this appeal are that the land measuring 50 kanals and 16 marlas was acquired by the appellants for construction of a new bus stand in village, Nagar and Kotli, Tehsil Bhaderwah and the final award was passed on 13.03.2008 by the appellant No. 2. The notifications under section-4 of the Act were issued on 07.03.2005, 17.09.2005 and 16.10.2006 for the land measuring 34 kanals and 4½ marlas, 1 kanal and 9½ marlas and 13 kanals and 2 marlas respectively. Thereafter, notification under section-6 of the Act was issued by the



Government on 20.07.2007. As per the final award dated 13.03.2008, the following rates for payment of compensation to the owners were approved:

Abi type of land @	=Rs. 1,70,000/- per kanal
Udar type of land@	=Rs. 1,00,000/- per kanal
Banjir Qadeem type of land@	=Rs. 70,000/- per kanal
Gair Mumkin type of land @	= Rs. 40,000/- per kanal

7. The respondents feeling dissatisfied with the rate of compensation awarded in their favour, approached the appellant No. 2 for making reference for proper assessment of the compensation. The respondents filed their respective claims separately. The reference was made to the Reference Court and the appellants filed their response separately to the claims of the respondents and stated that the compensation has been assessed on the basis of rates of the land for last three years situated at villages Kotli and Nagar, Tehsil Bhaderwah and the respondents herein have not shown any justification for enhancement of the compensation. On the basis of the pleadings of the parties, the following issues were framed by the learned reference court:

- i. “Whether the compensation assessed by the Collector Land Acquisition Bhaderwah w.r.t. the land of the applicants acquired for construction of new Bus Stand Bhaderwah vide award dated 13.03.2008 is not as per the market rate, if so, what was the market rate at the relevant time? OPP
- ii. Whether the nature of acquired land belonging to the applicant Swami Raj Sharma as ‘Gair Mumkin Nallah’ is not correct. If so, what was the correct nature of land? OPP
- iii. Whether the nature of 3 marlas of land under Kh. No. 203 and 5 marlas under kh. No. 709/205 belonging to the applicant Faqir Chand as ‘Gair Mumkin’ is not correct, if so, what was the nature of this land? OPP



- iv. Whether the apportionment statement w.r.t. land belonging to the applicant Faqir Chand is not correct, if so to what compensation the applicant Faqir Chand is entitled? OPP.
 - v. Relief O. P. Parties.”
8. The respondents namely Hans Raj, Swami Raj, Manjeet Razdan and Surat Singh appeared as witnesses in support of their claim and one witness, namely, Mohd. Ibrahim, was also examined by them. The appellants did not choose to lead any evidence.
9. Respondent No. 1-Hans Raj stated that the acquired land was adjacent to the main road of Bhaderwah and was an agricultural land yielding two crops every year. He received Rs. 8500/- per marla as compensation, which was very less as compared to market rate of Rs. 50,000/- per marla. He further stated that number of hotels and shops have come up in the near vicinity of the acquired land and the said area was being used as commercial site in the Bhaderwah town. During cross-examination, he admitted that he had not placed on record any sale deed or any documentary evidence to support his claim that the market value of the acquired land was Rs. 50,000/- per marla. Respondent No. 8-Swami Raj Sharma stated that his agricultural land measuring 2 kanals and 4 marlas situated at village Kotli was adjacent to the main road Bhaderwah. He stated that the rate of the acquired land at the time of acquisition was about Rs. 50,000/- to 60,000/- per marla because the area was within the municipal limits of Bhaderwah town. He also stated that during the course of acquisition proceedings, he had submitted the copies of some sale deeds in respect of existing rates of the nearby land to the appellant No. 2 but the same were not considered. He also stated that he had sold the land at the rate of Rs. 15,000/- per marla situated at college road



Bhaderwah in the year, 2004, which is at some distance from the acquired land. He placed on record the certified copy of the sale deed. In cross examination, he stated that he received the compensation under protest. Respondent No. 5-Manjeet Razdan stated that his land situated at village Nagar was acquired by the appellants in the year, 2008 for construction of new bus stand. The acquired land was located near the Boys Higher Secondary School, Bhaderwah and was an agricultural land. The compensation amount of Rs. 8500/- per marla is very less as compared to the then prevailing market rate of the land which was Rs. 50,000/- per marla. During cross-examination he stated that in the objections filed by the appellant No 1, the rate of the acquired land was mentioned as Rs. 50,000/- per marla. Respondent No. 14- Surat Singh stated that his land was an agricultural land acquired by the appellants for the construction of new bus stand. The land was near Boys Higher Secondary School and was located at the central place of the town. He stated that at the time of acquisition of the land, the market rate of the land was Rs. 50,000/- to 60,000/- per marla. During cross- examination, he stated that he had not produced any sale deed in support of the market rate of the acquired land.

10. Respondents' witness- Mohd. Ibrahim produced a certified copy of the sale deed (ExtP-2), whereby he had sold 13 marals of land in the month of June, 2007 to one Suneer Kotwal for a consideration of Rs. 4,80,000/-. During cross-examination, he stated that village Kotli comes under the panchayat which falls outside the municipality. The acquired land used to yield paddy crop and, in the year 2005-06, the rate of the land at village Kotli was Rs. 50,000/- per marla.



11. The learned Reference Court after examining the pleadings and appreciating the evidence led by the respondents enhanced the rate of compensation payable to the respondents in the following manner:

Abi type of land @	=Rs. 7,20,000/- per kanal
Udar type of land @	=Rs. 4,24,000/- per kanal
Banjir Qadeem type of land @	=Rs. 2,96,800/- per kanal
Gair Mumkin type of land @	=Rs. 1,70,000/- per kanal

12. While enhancing the rate of compensation, the learned reference court has placed reliance upon the sale deed (ExtP-2) executed by Mohd. Ibrahim. A perusal of the sale deed reveals that the land measuring 13 marlas was sold for an amount of Rs. 4,80,000/- i.e. approximately Rs. 37,000/- per marla.
13. The contention raised by the appellants is that the small stretch of land cannot be considered for the purpose of determining the market value of large tract of land. It needs to be noted that it is not an absolute principle of law that for the purpose of determining the market value of large tract of the land, the market value of small pieces of land cannot be taken into consideration. If a comparable instance of sale is not available, then the market value of a small stretch of land can also be taken into consideration for determining the market value of large chunk of land.
14. The Apex Court in “**Trishla Jain v. State of Uttaranchal**”¹, has held that the value of small pieces of land can be taken into consideration for determining even the value of the large tract of land but with the condition that while doing so, some deduction is required to be made.
15. In “**Nirmal Singh v. State of Haryana**”², it was held by the Hon’ble Supreme Court as under:

¹(2011) 6 SCC 47
²(2015) 2 SCC 160



“19. Sale instances in relation to small pieces of land situated near the acquired land can be considered, subject to (i) reasonable deductions for developmental costs that will be incurred in the future as per the cases referred to supra, and (ii) the evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.”

16. In “**Viluben Jhalejar vs State of Gujarat**”³, the Supreme Court has held as under:

“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:

<i>Positive factors</i>	<i>Negative factors</i>
(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 area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-à-vis land under acquisition	(vi) some special 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”	

17. In the instant case, the latest notification under section 4 was issued on 16.10.2006. As per the sale deed executed between Swami Raj Sharma and

³(2005) 4 SCC 789



Abdul Qayoom Bhat, the land measuring 10 marlas was sold for an amount of Rs. 1.5 lacs in the year, 2004, meaning thereby that in the year, 2004, the rate of the acquired land was Rs. 15,000/- per marla. There is no identical exemplar of sale proximate in time as well as location as one sale deed is of the year, 2004 and another sale deed is dated 25.06.2007. As the latest notification under section 4 of the Act is of October, 2006 so the sale deed executed between Mohd. Ibrahim and Sameer Kotwal can be considered for the purpose of determining the market value of the acquired land though the same pertains to the small stretch of land measuring 13 marlas. From the award passed by the reference court, it is evident that no deduction has been made by the reference court, on account of the fact that where the small stretch of land is considered for determining the market value of large stretch of land, then certain deduction too is required to be made. Though the land was sold by Mohd. Ibrahim at the rate of Rs. 37,000/- per marla but this Court is of the considered view that some deduction is required to be made while considering the sale exemplar of small tract of land. The acquired land is to be developed into Bus Stand but equally true is that the acquired land, as mentioned in the award passed by the appellant No. 2, is along the road, in the limits of the municipal committee and the town is spreading and has commercial value.

18. In **Kasturi & Ors vs State of Haryana** ⁴, the Hon'ble Supreme Court has held *that it must be remembered that there is difference between a developed area and having potential value, which is yet to be developed. The fact that area is adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot,*



particularly when vast tracts are acquired, as in this case for development purpose.

19. In **Trishla Jain's case (supra)**, the Hon'ble Supreme Court has observed as under:

“45. This Court, depending on the facts and circumstances of each given case, has taken the view that deduction on account of expenses of development of the sites could vary from 10% to 86.33% depending on the nature of the land, its situation, the purpose and stage of development. Reference can be made to *K.S. Shivadevamma v. Asstt. Commr. and Land Acquisition Officer* [(1996) 2 SCC 62], *Ram Piari v. Collector (LA)* [(1996) 8 SCC 338], *Chimanlal Hargovind das v. Land Acquisition Officer* [(1988) 3 SCC 751] and *Hasanali Walim chand v. State of Maharashtra* [(1998) 2 SCC 388].”

20. Thus, the deduction on account of development of sites may vary from 10% to 86 %.

21. In the judgment relied upon by the learned counsel for the respondents in case titled '**State of Madhya Pradesh v. Radheshyam & Ors**'⁵, it has been held as under:

“33. The principles culled out from the above pronouncements clearly go to show that whether there should be any deduction or not and the ratio of deduction depends upon the evidence to be brought on record by the parties in respect of the land under acquisition.

34. It stands settled that if there is a large tract of land under acquisition but is capable of being used for the purpose for which smaller plots are used and is situated in a fully developed area with little or no requirement of any further development to be made, there would be no need for deduction of the value. Similarly, when all civic and other amenities are to be provided to make the land under acquisition suitable for the purpose for which it is being acquired setting aside some part of the land for development like roads, drainage, electricity, communication providing for common facilities and appropriate deduction, is liable to be made.”

⁴(2003) 1 SCC 354

⁵AIR ONLINE 2022 SC 908



22. By guesstimation, this Court is of the considered view that the market value of the acquired agricultural land can be fixed at Rs. 29,600/- per marla against Rs. 37,000/ (by making deduction @ 20%), taking into consideration that the acquired land was a big chunk of land and the sale deed was executed on 25.06.2007 i.e. after about eight months of the notification issued under section 4 of the Act.

23. In view of all what has been said and discussed above, the present appeal is partly allowed. The award passed by the reference court is modified to the extent as mentioned above and the appellants shall pay the compensation to the respondents as per following rates along with interest as directed by the learned reference court:

Abi type of land @	=Rs. 5,92,000/- per kanal
Udar type of land@	=Rs. 3,48,000/- per kanal
Banjar Qadeem type of land @	=Rs. 2,43,600/- per kanal
Gair Mumkin type of land @	= Rs. 1,39,200/- per kanal

24. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu

14.09.2023

Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No