State of H.P. and ors. Vs. Nihaloo Ram and ors.

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Court : Himachal Pradesh

Decided On : Jul-16-2007

Reported in : 2007(3)ShimLC306

Judge : Kuldip Singh, J.

Appellant : State of H.P. and ors.

Respondent : Nihaloo Ram and ors.

Judgement :

Kuldip Singh, J.

1. This Judgment shall dispose of seven appeals, i.e. RFA Nos. 266, 268, 276, 280, 308, 317 and 345 of 1997, which have been filed by State of H.P. against common award, dated 28.11.1996, passed by the learned District Judge, Shimla, in Land Reference Case Nos. 212-S/4 of 1993, 213-S/4 of 1993, 209-S/4 of 1993, 210-S/4 of 1993, 215-S/4 of 1993, 214-S/4 of 1993 and 211-S/4 of 1993, respectively. The parties are referred in the same manner, as in the impugned award.

2. The brief facts are that a Notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) was issued by the State, which was published on 8.6.1991, for acquisition of land for construction of Kalbog-Kuinal road. The land situated at villages Rajtari and Gadaog in Tehsil Kotkhai, District Shimla was

covered by the Notification, under Section 4 of the Act. The Land Acquisition Collector (for short, Collector) announced the award on 29.12.1991, and as per impugned award, the Collector awarded following compensation:

--Sr. No. & Name of case Area No. of trees Amount of compen-No. acquired sation awarded--1. 212-S/4 of 1993 Nihalu 0-15 Biswas 10 apple trees. Land = 10,203.75Ram etc. v. State of H.P. Trees = 6,734.00--2. 209-S/4 of 1993 Mathu 2-11 Bigs. 47 apple trees. Land = 53,330.75Ram v. State of H.P. Trees = 39,452.50--3. 210-S/4 of 1993, Durga 19 Biswas 9 apple trees. Land = 35,509.05Nand v. State of H.P. Trees = 5,960.25--4. 211-S/4 of 1993, Janki 10 Biswas 13 apple trees. Land = 16,779.50Dass etc. v. State of H.P. Trees = 10,476.00--5. 213-S/4 of 1993, Churu 1-1 Bighas 11 apple trees. Land = 42,855.75Ram v. State of H.P. Trees = 4,257.50--6. 214-S/4 of 1993, Palas 0-11 Biswas 11 apple trees. Land = 22,448.25Ram etc. v. State of H.P. Trees = 3,064.53--7. 215-S/4 of 1993, Gopi 2-13 Bighas 46 apple trees. Land = 16,000.60Nand v. State of H.P. Trees = 38,709.00--

3. The claimants-petitioners were not satisfied with the award, which was given by the Collector, therefore, they filed reference petitions, under Section 18 of the Act. Their grievance was that Collector has not assessed the market value of the acquired land and trees correctly. Apart from this, it is stated that there were 13 more apple trees on the land of the petitioners Nihalu Ram etc., which were damaged, but no compensation thereof was awarded. The compensation regarding retaining wall on the acquired land of Nihalu Ram etc. has not been

given. In the case of Palas Ram and others, it has been stated that there were 16 apple trees, but compensation has been awarded only in respect. of 11 apple trees. In the case of Mathu Ram, it has been alleged that no compensation regarding Gharat has been awarded. In the case of Mathu Ram, it has been stated that there were 50 apple trees, but compensation has been awarded only in respect of 47 trees. In the case of Gopi Nand, there were 55 apple trees, but compensation has been awarded in respect of 46 apple trees.

4. The respondents contested the claim of the petitioners-claimants and submitted that market value of the acquired land has been assessed correctly by the Collector and the petitioners are not entitled to enhancement of the compensation.

5. The learned District Judge held that petitioners-claimants have failed to prove that market value of the acquired land has not been assessed correctly, hence the petitioners-claimants are not entitled to enhancement of compensation on account of acquisition of land. The District Judge, has, however, enhanced the compensation with respect to market value of the fruit trees only.

6. The State has assailed the enhancement of the market value of the fruit trees on the ground that under the Act, market value of the land and fruit trees cannot be assessed separately. The market value of the land includes the market value of the fruit trees. Separate valuation of the land and fruit trees amounts to double assessment, which is not permissible under the Act. It has been submitted that various interests, increases have not been awarded as per the Act. The learned Counsel for the petitioner-claimants has supported the separate assessment of market value of the fruit trees. The learned Senior Advocate, representing the petitioners-claimants, has submitted that there are instructions of the Government that land and fruit trees are to be assessed separately and, therefore, the Collector is bound to assess the land and fruit trees separately. The State cannot take objection for separate assessment of the land and fruit trees, in view of its own instructions.

7. I have heard the learned Counsel for the parties and have also gone through the record.

8. In the present case, the learned District Judge, has recorded a finding that petitioners-claimants have not placed any material on record so as to enhance the compensation with respect to acquired land, but since the fruit trees on the acquired land were assessed on the basis of Harbans Singh formula of the year 1966, the acquisition, in question, is of the year 1991, therefore, the learned District Judge keeping in view the price rise from the years 1966 to 1991, has enhanced the market value of the fruit trees on the acquired land by four times.

9. The learned Additional Advocate General has submitted that the learned District Judge, has erred in assessing the market value of the fruit trees separately once he came to the conclusion that there is no evidence on record to increase the market value of the acquired land. The separate assessment of fruit trees was considered by this Court in Collector LAC, Mandi v. Karam Singh Latest HLJ 2000 (HP) 694. A Division Bench of this Court after noticing State of Haryana v. Gurcharan Singh and Anr. etc. 1995 (1) Scale 125, has held as follows:

The Director of the Horticulture of the State Government while assessing the market value of the fruit bearing trees has been adopting the formula of Shri Harbans Singh. The Land Acquisition Collectors of the State have applied and adopted the same formula in awarding compensation of the fruit bearing trees separately. In these factual position and circumstances, the State of Himachal Pradesh and the Land Acquisition Collector cannot be permitted to urge that they are not obliged to pay the amount of compensation on the basis of the Standing Order No. 28 and Shri Harbans Singh formula for acquired lands and fruit bearing trees separately. The Land Acquisition Collector is the agent of the State Government who makes offer to the claimants of the amount of compensation awarded in the awards and if the offer so made is not acceptable to the claimants, the claimants are entitled to receive the amount of compensation under protest and make reference petitioners under Section 18 of the Act for enhancement of the amount of compensation. Therefore, the State Government and the Land Acquisition Collector, who are appellants before us in these appeals cannot be permitted to raise the plea that the awards of the Collector and enhancement of the amount of compensation by the District Judges and Additional District Judges based upon the Government Standing Order, provisions contained in the Himachal

Pradesh Land Records Manual and Shri Harbans Singh formula which allow compensation in respect of the land and fruit bearing trees separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the awards of the Courts below making enhancement of the amount of compensation for the land and the fruit bearing trees separately. These cases are squarely covered by the ratio of the judgment of the apex Court in State of J&K; v. Mohammad Mateen Wani and Ors. (supra) and we do not find any merit in these appeals filed by the State and the Land Acquisition Collector challenging the awards on the grounds of assessment of compensation for lands and fruit trees separately.

10. In State of J & K v. Mohammad Mateen Wani and Ors. : AIR 1998 SC2470 , the Hon'ble Supreme Court has held as follows:

As regards the compensation in respect of fruit bearing trees and tube-wells the High Court had relied upon the Government circular which allows compensation in respect of fruit bearing trees and tube-well, separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the said finding.

11. In Ramesh Chand and Ors. v. Land Acquisition Collector Latest HLJ 2003 (HP) 977, again this Court has held, as follows:

Another attempt was also made by the learned Advocate General, when he made submission that trees and land is not to be separately assessed. According to him, applicants are either entitled to the price of the land as an orchard land or of the trees. In my considered view, this plea is no more open in view of the standing order No. 28 issued by the Finance Commissioner, Himachal Pradesh, as well as decision of Division Bench of this Court in Collector L.A.C. Mandi v. Karam Singh and Ors. and other connected cases Latest HLJ 2000 (HP) 694. In this case after relying on standing order No. 28 issued by the Financial Commissioner, Himachal Pradesh and also a taking note of Harbans Singh's formulae, it was held that land as well as trees standing thereon are to be assessed separately.

For taking this view reliance was placed on the decision of the Supreme Court in State of J&K;, appellant v. Mohammad Mateen Wani and Ors. respondents : AIR 1998 SC2470 . In this case it was held that for the land with fruit bearing trees separate compensation for fruit bearing trees and tube-well etc. was payable in view of the circulars issued by the Government of Jammu and Kashmir. In the case in hand, Standing Order No. 28 issued by the Financial Commissioner, Himachal Pradesh is there, whereunder while assessing compensation price of the land, trees, structures etc., is to be separately assessed which will from the basis for assessment of compensation. In this view of the matter, the appellant being not entitled to the payment of compensation separately for trees and land argued on behalf of the respondent is hereby rejected.

12. In view of Collector LAC, Mandi v. Karam Singh and Ramesh Chand and Ors. v. Land Acquisition Collector (supra), the contention of learned Additional Advocate General that fruit trees standing on the acquired land cannot be assessed separately, is rejected.

13. The next question is regarding the assessment of the fruit trees. A perusal of the statement of A.C. Sharma (PW1) and consumer price index Ex. PW 1/A would show that since 1966 till 1991, there was four times increase in the price rise. The Collector has awarded market value of the fruit trees assessed on the basis of Harbans Singh formula of 1966. The learned District Judge has allowed the following increase with respect to fruit trees:

--Sr. No. of case and title No. of Amount Amount Net amount ofNo. trees awarded by awarded by enhancedthe L.A.C. in the Court. Incompensation.rupees. rupees In rupees.--1. 2. 3. 4. 5. 6.--1. 212-S/4 of 1993 Nihalu 6,734/- 26,936/- 20,202/-Ram etc. v. State of H.P.--2. 209-S/4 of 1993 Mathu 47 39,452.50 1,57,810/- 1,18,357.50 sayRam v. State of H.P. 1,18,357/--3. 210-S/4 of 1993, Durga 9 5,960.25 23,841/- 17,880.75 or sayNand v. State of H.P.

17,881/---4. 211- S/4 of 1993,Janki 13 10,476/- 41,904/- 31,428/-Dass etc. v. State of H.P.---5. 213-S/4 of 1993, Churu 11 4,257.50 17,030/- 12,772.50 or sayRam v. State of H.P. 12,772/---6. 214-S/4 of 1993,Palas 11 3,064.53 12,258.12 9,193.59 sayRam etc. v. State of H.P. 9194/---7. 215-S/4ofl993, Gopi 46 38,709/- 1,54,836/- 1,16,127/-Nand v. State of H.P.---

A perusal of columns No. 4 and 5 of the above reproduced statement would show that the learned District Judge has increased the market value of the fruit trees by four times, keeping in view the price rise from 1966 to 1991.

14. In Union of India and Ors. v. Khazana Ram and Ors. 1998 (1) Sim. L.C. 479, this Court has given five times increase regarding assessment made in the year 1989, on the basis of Harbans Singh formula. In para-9 of the judgment, it has been held as under:

So far the present case is concerned, the year of assessment is 1989 and if we rely upon the Price Index filed along with the replies to the stay applications in the writ petitioners, the Price Index has arisen from 79.7 in the year 1966 to 428.8 in the year 1988 taking the Price Index as 100 for the base year 1970-71. The Price Index for the year 1989 has been shown 176.4 by taking 100 for the base year 1981-82. Therefore, the increase from 1966 to 1989 will be approximately five times. Accordingly, we hold that the ends of justice would be met if the claimants are given compensation five time of the compensation assessed by the Department as per Annexure PB to the writ petitions and Ext.RW-1/A on the file of the District Judge.

15. In the present case, the land with fruit bearing trees was acquired in the year 1991, therefore, No. fault can be found with the four times increase given by the learned District Judge to the market value of fruit trees which was assessed by the Collector on the basis of Harbans Singh formula of the year 1966.

16. There is, however, force in the submission of the learned Additional Advocate General that various increases and interests have been awarded by the learned District Judge, in violation of the Act. The learned District Judge has awarded 12% increase, under Section 23(1-A) from 20.2.1984 to 20.12.1991, and interest at the rate of 9% per annum, from 20.2.1984, and interest at the rate of 15% per annum, from 20.2.1985. The petitioners are entitled to 12% increase, under Section 23(1-A) from 8.6.1991 to 29.12.1991, 9% interest per annum on enhanced compensation for one year from the date of notification, under Section 4 of the Act, i.e. 8.6.1991, or the date of possession of the acquired land, whichever is later and thereafter (after one year) at the rate of 15% interest per annum till payment/deposit in the Court.

17. The result of the above discussion is, in RFA No. 266 of 1997 (Land Reference No. 212-S/4 of 1993), RFA No. 268 of 1997 (Land Reference No. 213-S/4 of 1993), RFA No. 276 of 1997 (Land Reference No. 209- S/4 of 1993), RFA No. 280 of 1997 (Land Reference No. 210-S/4 of 1993), RFA No. 308 of 1997 (Land Reference No. 215-S/4 of 1993), RFA No. 317 of 1997 (Land Reference No. 215-S/4 of 1993) and RFA No. 345 of 1997 (Land Reference No. 211-S/4 of 1993), the enhanced compensation awarded by the District Judge is upheld. In addition to above market value the petitioners-claimants in their respective appeals are entitled to 12% increase under Section 23 (1-A) from 8.6.1991 to 29.12.1991, 30% compulsory acquisition charges under Section 23(2) on the market value, 9% interest per annum on enhanced compensation for one year from the date of notification, under Section 4 of the Act i.e. 8.6.1991 or the date of possession of the acquired land whichever is later and thereafter (after one year) at the rate of 15% interest per annum till payment/deposit in the Court.

18. No other point was urged.

19. The appeals are disposed of in the above terms. No costs.