IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.182 of 2009 with RFA Nos. 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194 and 195 of 2009.
Reserved on: May 21, 2014

Decided on: May 27, 2014.

---

1. RFA No.182 of 2009:

G.M.Northern Railway **.....Appellant.**

VERSUS

Gulzar Singh & Ors. **.....Respondents.**

---

2. RFA No.183 of 2009:

G.M.Northern Railway **.....Appellant.**

VERSUS

Ashok Kumar & Ors. **.....Respondents.**

---

3. RFA No.184 of 2009:

G.M.Northern Railway **.....Appellant.**

VERSUS

Amrit Lal & Anr. **.....Respondents.**

---

4. RFA No.185 of 2009:

G.M.Northern Railway **.....Appellant.**

VERSUS

Madan Lal & Ors. **.....Respondents.**

---

5. RFA No.186 of 2009:

G.M.Northern Railway **.....Appellant.**

VERSUS

Bhagat Ram & Ors. **.....Respondents.**

---

6. RFA No.187 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Gurbachan Singh & Anr. **…..Respondents.**

7. RFA No.188 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Chhaju Ram & Ors **…..Respondents.**

8. RFA No.189 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Rajinder Kumar **…..Respondent.**

9. RFA No.190 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Sardari Lal & Ors. **…..Respondents.**

10. RFA No.191 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Rajinder Kumar & Ors. **…..Respondents.**

11. RFA No.192 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Chet Ram & Ors. **…..Respondents.**

12. RFA No.193 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Oma Rani & Ors. **…..Respondents.**

13. RFA No.194 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Tilak Raj & Ors. **…..Respondents.**

14. RFA No.195 of 2009:

G.M.Northern Railway **…..Appellant.**

VERSUS

Sarla Devi & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Sureshwar Thakur, Judge.

Whether approved for reporting?[1] Yes.

For the Appellant(s): **Mr.Rahul Mahajan, Advocate.**

For the Respondents: **Mr.Ajay Sharma, Advocate for private respondents in all the appeals except RFA No.193 of 2009.**
Mr.H.K.Bhardwaj, Advocate for private respondents in RFA No.193 of 2009.
Mr.Shrawan Dogra, Advocate General with Mr.R.S.Verma, Additional Advocate General & Mr.R.M.Bisht, Deputy Advocate General, for the State-respondent.

Sureshwar Thakur, Judge

The aforementioned appeals arise out of a common award passed by the learned Additional District Judge, Una in land reference petitions, hence they are being disposed of by a common judgment.

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

2. The brief facts of the case necessary for deciding these appeals, are that the lands of the respondents, which were subjected to acquisition proceedings, are situated at village Panoh, Tehsil and District Una, H.P. In total, they measure 7-26-75 hectares and were acquired for construction of a railway line between Nangal Dam to Talwara. All the lands comprised in the aforementioned appeals are located in the same village and are contiguous to each other.

3. The Land Acquisition Collector vide common award dated 10.8.2001 awarded different/variant rates of compensation for different classifications and categories of lands.

4. The award of the Land Acquisition Collector was subjected to impeachment by way of the land holders/land owners preferring reference petitions under Section 18 of the Land Acquisition Act before the learned District Judge, Una, who assigned them for adjudication, to the Court of the learned Additional District Judge, Una. The learned Additional District Judge, Una, on consideration of the material as laid before him had enhanced the compensation as awarded by the Land Acquisition Collector, in the impugned award. The enhancement of compensation was, on the score of the learned District Judge, Una, coming to award, uniform compensation, for all categories of lands or irrespective of their

classification, while relying upon sale deed comprised in, Ex.PW1/C.

5. In the appeals, before this Court, preferred at the instance of the authority for whom the land was acquired and on whom the liability to pay compensation as awarded, has been fastened, it, has been averred that the findings and the reasons afforded by the learned Additional District Judge, Una for reaching a conclusion, that the compensation amount awarded by the Land Acquisition Collector in impugned award, necessitates enhancement, are infirm, in as much, as: (a) the learned Additional District Judge, Una having disregarded, as well, as discarded, the factum of the land subjected to acquisition bearing different classifications/categories, hence, qua each of the classifications a corresponding rate of compensation was entailed to be assessed and no uniform rate of compensation as assessed by the learned Additional District Judge, Una, in the award impugned before this Court could be awarded; (b) the learned Additional District Judge, Una, has also untenably discarded the probative worth of Ex.R1 to Ex.R3 which comprised instances of sale, contemporaneous to the issuance of the notification under Section 4 of the Land Acquisition Act, as also, the sale instances of land located in immediate proximity to the land subjected to compensation. Hence, when the legally enjoined criteria for theirs being

reckoned and theirs enjoying probative value has been fulfilled, in as much, as they satisfied the criteria of proximity from time angle vis-à-vis the acquired land and also proximity from location angle vis-à-vis notification for their acquisition, their evidentiary value having come to be not appreciated, has occasioned incalculable miscarriage of justice. Even the wide expanse of land subjected to acquisition, in as much, as when land measuring 7-26-75 hectares was acquired, hence, the sale instance relied upon by the learned Additional District Judge, Una comprised in Ex.PW1/C qua the minimal land, sold therein comprising 2 kanals, 10 marlas, was not construable to be an admissible and relevant sale instance or comprising the relevant parameter for assessing on its strength, the compensation awarded for the entire land subjected to acquisition. Even if it assumingly, was a relevant and admissible legal parameter, for assessing on its strength compensation for the land subjected to acquisition, yet with the judgments of Hon'ble Apex Court reported in AIR 2011 SC 3178, AIR 2009 SC 1506, (2012)1 SCC 390 and (2011)6 SCC 46, espousing the salient legal cannon, of deductions being liable to be made from the total amount of compensation, in case, the sale instance, as relied upon, for assessing compensation for the land subjected to acquisition, is, qua land minimal or smaller in size vis-à-vis the land subjected to acquisition. In other words, it is

canvassed and contended before this Court that given the smallness and minimality of size of lands comprised in Ex.PW1/C, on which reliance was placed, by the learned Additional District Judge, Una, for on its strength uniformly assess compensation, for all categories of land subjected to acquisition, it could not, hence, be a tenable or a relevant parameter for assessing compensation, for the vast expanse of the land subjected, to acquisition, unless some deductions were made from the total amount of compensation assessed qua the entire land, on its score. However, when the learned Additional District Judge, Una, has omitted to even while relying upon Ex.PW1/c make deductions from the amount of compensation assessed qua the vastness of land subjected to acquisition while relying upon Ex. PW1/C, hence, he has misdirected himself in law.

6. Lastly, it has been contended that the learned Additional District Judge has erred in awarding severance charges, in as much, as he has solely relied upon the testimony of PW-4 Gulzar Singh, who has alone deposed that the construction of the railway track barred their accessing their fields on other side of the railway track, whereas, RW-1 Joginder Singh deposed qua severance having come to accrue to only two of the land owners, whose testimony ought not to have been discarded as untenably done. Consequently, no,

cumulative injury has ensued to the entire body of landowners from the construction of the railway track.

7. The learned counsel appearing for the respondents/landowners have contended before this Court that the impugned award is well reasoned and does not warrant interference from this Court in the exercise of, its, appellate jurisdiction.

8. Initially, this Court ought to deal with the legal vigor of the contention of the learned counsel for the appellant(s) that the learned Additional District Judge, Una has committed a legal lapse, in as much, as he has mis-appreciated the probative worth of sale instances comprised in Exts.R1 to R3. For the above contention of the learned counsel for the appellant to garner legal strength and sinew, it was imperative, that firm and formidable evidence ought to exist on record qua the fact of the aforesaid instances of sale comprised in the exhibits aforesaid, enjoying legal sanctity, so as to be rendered admissible as well as relevant in evidence, in as much, as cogent evidence ought to exist on record displaying (a) the fact of their being situated in close proximity to the land subjected to acquisition; (b) it, too having come to be proved that the sale instances comprised in Exts. R1 to R3 were contemporaneous to the notification under Section 4 of the Land Acquisition Act. A perusal of the evidence on record reveals that the aforesaid

exhibits were tendered in evidence by the learned counsel representing the appellants herein, before the learned Court below. There is lack of evidence on record, demonstrative of either of the sale exhibits, fulfilling the legally admissible and relevant criteria for theirs being, hence, reckoned to be comprising reckonable sale instances for, on their strength, compensation for the land subjected to acquisition being assessable, in as much, as there is no evidence qua (1) theirs being situated in close proximity to the land subjected to acquisition and (2) evidence qua their execution being contemporaneous to the issuance of the notification qua the land subjected to acquisition. Consequently, they do not constitute either relevant or admissible evidence nor also they are qualified to be comprising a relevant parameter, for on their strength, compensation for the land subjected to acquisition, being assessable. As a corollary, then, theirs being discarded by the learned Additional District Judge, Una, was legally sagacious and appreciable.

9. The learned counsel appearing for the appellant has canvassed with much force and vehemence that the impugned award rendered by the learned Additional District Judge, Una, is, besides liable for interference, in as much as, the learned Court below has unwarrantably and untenably proceeded to assess a uniform rate of compensation, for all

categories/classifications of land. Award of compensation, as such is legally infirm, in as much, as the variant rates borne by each category of land, was, hence, reckonable for awarding, as such, varying rates of compensation for each of such varying categories of land. However, the above contention stands aptly discountenanced by the learned Court below. It is significant that the purpose of acquisition for all categories of land is common to each of them. Therefore, when each of the categories/classifications of land, come to be subjected to acquisition for a common and single purpose, the classification borne by each of the categories of the land subjected to acquisition, pales into insignificance or is irrelevant, as well as fades into oblivion. On their being acquired or brought under acquisition, such classification looses its relevance as they, then, on acquisition and ultimately being subjected, to, use for the purpose for which they were acquired, acquire a uniform potentiality or a uniform classification. Hence, consequently, assessment of compensation at a uniform rate for different classifications/categories of land, as done by the learned Additional District Judge, Una, while upsetting the award rendered by the Land Acquisition Collector, impugned before it, who had awarded variant rates of compensation for different categories/classifications of land, does not constitute any

palpable or manifest legal error necessitating interference by this Court.

10. Even previously in judgments reported, in **1997 (2) SLC 229** and **1998(2) All India Land Acquisition Act LACC (1) SC**, it has been mandated that when the purpose of acquisition is common, the award of compensation at a uniform rate for different classification/categories of land, is, tenable. Hence, it can be forthrightly concluded, that, the award of a uniform rate of compensation by the learned Additional District Judge Una for different lands bearing different classifications/categories, is, not legally infirm, especially when on acquisition they acquire a uniform potentiality.

11. The learned counsel appearing for the appellant has concerted, to also espouse before this Court, that even though, reliance upon Ex. PW1/C by the learned Court below, is not misplaced, in as much, as it fulfilled the relevant enshrined legal parameter for its invocation/applicability, in as much, as (i) it being proximate to the land subjected to acquisition, as also (ii) its execution being contemporaneous to the issuance of the notification under Section 4 of the Land Acquisition Act. Nonetheless, he has canvassed that (i) given the largeness or expanse and immensity/immenseness of size of the land subjected to acquisition vis-à-vis the area of the land sold/ comprised in Ex.PW 1/C, the market value of the land comprised

in Ex.PW1/C could not have been, as a whole applied to the entire land subjected to the acquisition, unless, deductions for developmental costs as warranted and mandated by the decisions relied upon by him had been made/accorded. Since, the learned Additional District Judge, Una omitted to give/make deductions from the total compensation arrived at/worked out on the basis of the value of the land sold/comprised in Ex.PW1/C, whereas, he was enjoined to do so, he has committed a grave legal error necessitating interference by this Court.

12. While proceeding to gauge the sinew of the above contention canvassed before this Court, it is necessary to bear in mind that the judgments cited in support of the above view espoused by the learned counsel for the appellant, are distinguishable, vis-à-vis, the facts at hand, hence, in the humble view of this Court, not reliable as (a) all the judgments relied upon by the learned counsel for the appellant, concert to marshal the view, of, deductions from the lump sum compensation assessed qua a large tract of land on the score of market value of a small/minimal piece of land being made. In other words, the emphasis in the aforesaid citations, is that, for the market value of small a tract of land to be comprising an admissible parameter, for, on its strength working out the compensation for a large tract of land, it is, imperative that

deductions towards development costs is made. However, distinguishably in the citations aforesaid, the acquisition was made for the development of sites for allotment for housing purpose or for construction of a housing colony or the purpose of acquisition had an inherent profiteering motive. Therefore, given the purpose for which the land was acquired, in, the cases relied upon by the learned counsel for the appellant, deductions were enjoined to be imperative or necessary, as, the entity for whom the land was brought under acquisition, would be entailed/obliged, to, make the land fit for the purpose for which it was acquired, in as much, as, such an entity concomitantly being driven to incur exorbitant expenses, towards its development for rendering it fit for use. As such, given the magnified increase in the scale of economies or given the ultimate manifold increase, in, the scale of economies or such incurring of exorbitant expenses on development, hence, acquiring the capacity to proportionately reduce their profit, as such, rendering the project for which the land was acquired financially viable, or, to obviate the losses accruing from the steep rates of compensation as may be awarded that deductions were permitted. In other words, deduction from compensation mandated to not render the venture and the purpose for which the land was acquired, in the aforesaid citations relied upon by the learned counsel for the appellant, to

be financially un-whole some, as well as, unviable. More so, when the land is acquired for State holdings, building/housing agency(ies) or the agencies carrying out and engaged in profiteering work. However, in contra distinction, to the facts of the judgments, as relied upon by the learned counsel for the appellant, in the instant case, the land has been subjected to acquisition, for the purpose of construction of a railway track. In the appellant engaging itself in the construction of a railway track, it has assumed the role of doing so, as, a welfare measure and not as a profiteering measure. The railway track would continue to be owned by the appellant, in distinction to the facts of the judgments relied upon by the learned counsel for the appellant, where the agency for whom the land was subjected to acquisition, would on developing the land, sell it further or gain profit. (b) The appellant has omitted to adduce cogent evidence on record displaying the fact that each of the land holder, whose land was subjected to acquisition was holding a vast expanse of land. Omission to adduce into evidence such proof demonstrative of each of the land holders, whose land was subjected to acquisition, owing a wide expanse or a large sized holding, vis-à-vis, the sale transaction comprised in Ex. PW1/C, a firm conclusion can be formed, that, the size of the holding or the size of the land of the each of the land holders, whose land was subjected to acquisition was more or

less equal to or not disproportionately larger in size to the area of the land comprised in Ex.PW1/C. Hence, there was no jurisdictional error, on the part of the learned Additional District Judge, Una, in not affording deduction, given the smallness in size of the land comprised, in, Ex.PW1/C, vis-à-vis, the lands of each of the individual land owners, whose land was subjected to acquisition. Besides, it has also not been cogently proved by the appellant that any part of the land owned by each of the land owners and subjected to acquisition did not bear potentiality nor would have commanded a market value, lesser than the value earned by the expanse of land comprised in Ex.PW1/C. It appears, that, given the proximity of the acquired land, as deposed by PW-4 Gulzar Singh and PW-3 Gurbachan Singh, to educational institution, temple and abadi of the villagers it enjoyed or commanded immense market value. Therefore, when each parcel of the land subjected to acquisition bore a market value, equivalent to the land subjected to acquisition, hence, there was, no, legal error committed by the learned Additional District Judge in relying upon for the market value depicted, in, Ex.PW1/C and applying it to the entire tracts of the land subjected to acquisition even, when it was smaller in size vis-à-vis the land subjected to the acquisition.

13. It is also significant here to refer to the judgment reported in **Bhagwathula Samanna & Ors.** v. **Special Tahsildar and Land Acquisition Officer**, **AIR 1992 SC 2298** wherein the Hon'ble Apex Court has mandated:-

> "13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilize the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We, are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs.10/ per sq. yard to Rs. 6.50 paise per sq. yard to Rs.6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed."
>
> (pp. 2301-2302)

14. The citation aforesaid enshrines the principle that it is not a absolute proposition of law that on the score of market value of small tracts of land the compensation for large tracts of land, is, impermissible. For assessing compensation for large tracts of land, the market value of smaller tracts of land can be relied upon, in case a larger tracts of land in its entirety is advantageous or capable of being used for the purpose for which the smaller tracts are used and, is, also situated in a developed area, with little or no requirement of further development. Besides, the principle of deduction need not be applied, when this Court, has, held that there is no cogent and reliable evidence on record to prove that each part of the large tracts of the land or the wide expanse of land subjected to acquisition, does not have either potentiality or market value equivalent to the smaller tracts, comprised in Ex.PW-1/C relied upon by the learned Additional District Judge for assessing compensation, it can, hence, be concluded, that, consequently given the location of the large tracts of land, in, the vicinity of a developed area, it, was fetching the price equivalent to the small tracts of land, hence, deduction was not permissible. More so, when for reasons aforesaid deductions are not awardable.

15. On the strength of Ex.PW1/C, the learned Additional District, Una assessed the compensation at Rs.55000/- per kanal

for all categories of land, inclusive, of severance charges. Severance charges have not been separately calculated nor computed. Nor besides, deductions towards developmental costs have been tenably omitted to be made from the total amount of compensation. PW-4 Gulzar Singh has deposed that during the construction of the railway track, there, has been deprivation of accessibility to the villagers, to, conveniently access either side of the railway track where their agricultural land, is, located. The counsel for the appellant has relied upon the deposition of RW-1 Joginder Singh, who in his cross-examination has deposed that such severance is begotten only with respect to the land of two persons, namely Smt. Oma Rani and Smt. Sham Rani. Hence, he has contended that award of severance charges to all the landowners/respondents, are, untenable. However, reliance by the learned counsel for the appellant upon the testimony of RW1 Joginder Singh qua the fact aforesaid is misplaced, in as much as, he in his cross-examination deposed that he did not visit the site of acquisition. Consequently, when the site of acquisition remained unvisited by him, his testimony qua severance of the land being begotten qua two persons, hence, severance charges not awardable to others, is, to be discountenanced. Therefore, it has to be concluded that the construction of the railway track has caused damage/injury to the landowners arising from theirs lands on

either side of the railway track being rendered not easily accessible, as such, awarding of severance charges as done by the learned Additional District Judge, Una, by making them inclusive in the compensation sum of Rs.55000/- per kanal, does not warrant interference.

16. In view of above discussion, I find no merit in these appeals which are accordingly dismissed and the common award dated 13.3.2009 rendered by the learned Additional District Judge, Una, is affirmed. No order as to the costs.

27th May, 2014. **(Sureshwar Thakur)**
Judge

(soni/jai)