

# SUPREME COURT OF INDIA

Shri Shiv Ram

Vs.

State of Himachal Pradesh

C.A.No.1585 of 2001

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

18.12.2008

## JUDGMENT

### **Harjit Singh Bedi, J.**

1. This appeal arises out of the following facts:

2. About 11.9 bighas of land situated in two villages, Kasumpati-Junga and Patii-Rihana was notified for acquisition under Section 4 of the *Land Acquisition Act, 1894* (hereinafter called the "Act") in the official Gazette on 2nd April 1988, 23rd July 1988 and 28<sup>th</sup> September 1988. The Collector by his Award dated 28<sup>th</sup> July 1988 granted a sum of Rs.43,330/- per bigha for the acquired land. The claimant thereafter filed a reference before the District Judge, Shimla, who vide his order dated 11th June 1992 determined the market value at Rs.70,000/- per bigha rejecting the claimant's plea for the award of Rs.1,75,000/- per bigha. The matter was taken to the Division Bench of the High Court in First Appeal and the Bench vide its judgment dated 30<sup>th</sup> December 1999 confirmed the compensation awarded by the District Judge on reference but granted enhanced interest and solatium as per the entitlement of the claimant. The first appeal filed by the State Government seeking a reduction in the compensation granted by the District Judge was, however, dismissed. The present appeal at the instance of the claimant is before us against the judgment and order of the Division Bench aforementioned.

3. Mr. Agrawala, the learned counsel for the claimant- appellant has argued that as per Notification of the year 1980 the adjoining land in the same villages had been acquired for the same purpose and compensation at Rs.1.75 lakh per bigha minus 30% towards development charges had been awarded by the High Court by its judgment Ext.PY. He has, accordingly, pleaded that as the present matter pertained to an acquisition of the year 1988, that is almost 8 years after the earlier acquisition, a minimum of Rs.1.75 lakh was payable to the appellant. Mr. Sharma, the learned counsel for the respondents has, however, pointed out that this matter had been dealt with by the Division Bench and the plea had been rejected by observing that there was no evidence to show that the land acquired in the year 1980 and the land acquired by the impugned Notification was similar, of the same quality, classification or

potential for development and in the absence of any such evidence merely because some adjoining pieces of land had been granted a higher compensation, there was no justification in granting anything more in the present case.

4. We have heard the learned counsel for the parties and gone through the record. We are of the opinion that the observations of the Division Bench with regard to the quality and the situation of the land acquired in the year 1980 and the present acquisition are not quite accurate. In this connection, we may refer to the evidence of the land owner Lalit Kishore, who deposed that both these lands fell in the municipal area and adjoined Chhota Shimla Bazar and new colonies and flats made by the Shimla Development Authority were close by and that the land in question was level and was served with facilities like electricity, water, and sewerage etc. Even assuming for a moment that this statement could be said to be self-serving, we have chosen to consider the evidence produced by the respondent State itself. We refer in particular to the statements of Mangat Ram Patwari RW1 and Pratap Singh Kanoongo PW-2. Mangat Ram stated that the lands acquired by the two Notifications were situated side by side and that the land in all 4 villages which were under acquisition were of similar quality. Pratap Singh Kanoongo RW2 was even more forthcoming when he stated:

“I was posted in Shimla from 1986 to June 1990. I have seen all the villages of the acquired lands. It is correct that Khalini falls by the side of Moza Patiyog. Thereafter Patti Rehan Rural and then urban. By its side village Kasumpati Jhunga falls. The quality of all these land is the same and were acquired for the same purpose. It is correct that in the past 15 to 20 years in these villages private and Govt. colonies have come up in large scale. The boundary of Moza Kasumpati Jhunga goes up to Pari Mahal. Govt. colonies have been constructed right up to Pari Mahal. In these villages land was acquired even for SDA. In all these villages modern facilities are available. I have not brought that record on the basis of which Exhibit-RC, RE and RG have been prepared. The acquired land is by the side of BCS school in Patiyog. The land of Patti Rehana falls by the side of Brook Hurst. The land of Kusumpati Jhunga falls by the side of Kasumpati Bazar.”

5. These statements of the State's witnesses clearly fortify Mr. Agrawala's submission that the land subject to the two acquisition i.e. in 1980, and 1988 were of the same quality and situation and potential for use and were situated adjacent to each other and belonged to the same villages. We are, therefore, of the opinion that the observations of the Division Bench that no evidence had come on record to justify the payment of compensation at Rs.1.75 lakh per bigha minus 30 per cent are not justified.

6. We have also gone through the claim made by the land- owner/appellant before the High Court. We notice that the claimant had sought compensation at Rs.1.30 lakh per bigha and paid court fee on this figure. We are, therefore, of the opinion notwithstanding the fact that Mr. Agrawala is hesitatingly asking for Rs.5,00,000/- per bigha or atleast Rs.1.75 lakh per bigha nothing more than the amount claimed in the first appeal before the High Court is admissible. As already mentioned above, the land acquired by the Notification of 1980, compensation at Rs.1.75 lakh per bigha had been awarded with 30%

cut towards development charges etc. In view of the fact that the present acquisition was made some 8 years later and a claim of Rs.1.30 lakh per bigha has been made, we allow this appeal and direct that compensation at Rs.1.30 lakh per bigha shall be payable to the appellant. In addition to the enhanced compensation, the claimant-appellant shall also be entitled to solatium and interest on the enhanced amount. We, further, direct that the entire sum payable to the appellant under this judgment will be defrayed to him within a period of 4 months from the date of the supply of a certified copy of this judgment to the respondent. There will, however, be no order as to costs.