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ALI MOHAMMAD BEIGH AND ORS.

v.

STATE OF J & K

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(Civil Appeal Nos. 4295-4297 of 2017)

MARCH 21, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

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Jammu and Kashmir Land Acquisition Act, 1934 – Compensation – Lands in question granted less compensation as compared to identical and similar lands situated in adjacent villages acquired for the same purpose – Impropiety of – Appellants' land acquired for Rs.2,50,000/- per kanal while that of other land owners situated in adjacent villages acquired for same purpose granted Rs.4,00,000/- per kanal – Held: When the lands in question are situated nearby and are identical and similar and the acquisition is at the same time and for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons – Appellants are at par with other land owners whose lands are acquired – Hence, they are also entitled to enhanced compensation of Rs.4,00,000/- per Kanal with 15% solatium (Jabirana) and all other statutory benefits.

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Allowing the appeals, the Court

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HELD: 1.1 Appellants' lands in question are situated in village Chandapora which is adjacent to villages Bhagichandpora and Pazwalpora. In cases of acquisition of lands in Bhagichandpora and Pazwalpora which are adjacent to the lands of the appellants and were also acquired for the same purpose of resettlement of Dal dwellers, the Reference Court, after referring to the evidence adduced by the claimants thereon and the assessment of market rate by Tehsildar at Rs.4,00,000/- per Kanal, held that the land owners are entitled to compensation for the acquired land at the rate of Rs.4,00,000/- per Kanal with solatium at 15%. [Para 11] [879-E]

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1.2 Since village Chandapora is situated adjacent to villages Bhagichandpora and Pazwalpora, there was no reason why the

Reference Court differentiated the acquired land of the appellants-land owners situated in Chandapora by awarding lesser compensation of Rs.2,50,000/-. The appellants had also produced a sale deed by which a small strip of land was sold in the vicinity of the acquired land for an amount of Rs.1,00,000/-. But the Reference Court discarded the evidence of witness on the ground that under the sale deed only a small area of land was sold and the sale deed cannot be taken to be a representative character of the entire land. The Reference Court was not right in discarding the said sale deed which was supported by oral evidence of the witnesses, to substantiate their claim that the market rate assessed by the Tehsildar at Rs.2,50,000/- was not a fair compensation. [Para 12] [879-G-H; 880-A-C]

1.3 When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons. [Para 13] [880-C-D]

Union of India v. Bal Ram and Another (2010) 5 SCC 747; *Union of India v. Harinder Pal Singh and Others.* (2005) 12 SCC 564 : [2005] 4 Suppl. SCR 669 – relied on.

1.4 Therefore, when the lands situated in three different villages are identical/similar and are acquired at the same time and for the same purpose, it would be unfair to discriminate between other land owners and the appellants and pay less that is Rs.2,50,000/- per Kanal to the appellants and pay more to other land owners that is Rs.4,00,000/- per Kanal. The appellants are held to be at par with other land owners whose lands were acquired. Hence, they are also entitled to enhanced compensation of Rs.4,00,000/- per Kanal with 15% Solatium (Jabirana) and all other statutory benefits. [Para 15] [881-C-E]

Case Law Reference

(2010) 5 SCC 747	relied on	Para 13
[2005] 4 Suppl. SCR 669	relied on	Para 13

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A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4295-4297 of 2017.

From the Judgment and Order dated 24.09.2013 of the High Court of Jammu & Kashmir at Srinagar in CIA No. 211 of 2009 and Cross Appeal No. 64 of 2011.

B J. H. Reshi, Rahul Gupta, M. Mushtaq, Advs. for the Appellants.
G. M. Kawoosa, Shoeb Alam, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

C 2. These appeals arise out of the common judgment and order dated 24.09.2013 and 15.05.2015 passed by the High Court of Jammu and Kashmir at Srinagar dismissing CIA No.211 of 2009 along with Cross Appeal No.64 of 2011 and Review Petition Civil No. 07 of 2013 affirming the compensation of Rs.2,50,000/- per Kanal awarded to the appellants by the Reference Court.

D 3. Brief facts which led to filing of these appeals are as follows:
Notification dated 16.06.1997 was issued by the Collector, Lakes and Waterways Development Authority (LAWDA), Srinagar *vide* No.C-LDA/452-64, under Section 4(1) of the Jammu and Kashmir Land Acquisition Act for the acquisition of land measuring 505 Kanal 06 Marlas situated at Chandapora, Tehsil and District Srinagar, for the construction and development of housing colony for the resettlement of dislocated families of the Dal dwellers. On 01.06.1999, a Final Award was passed by the Collector, LAWDA, Srinagar under the Jammu and Kashmir Land Acquisition Act *vide* No. G-LDA 293-98 in respect of land measuring 505 Kanal 06 Marlas situated at Chandapora, Tehsil and District Srinagar. The Land Acquisition Officer assessed the compensation amount payable to the applicants/estate holders at the rate of Rs.1,50,000/- per Kanal Abi-Bagh, Rs.1,40,000/- per Kanal for Abi-Awal and Rs.1,30,000/- for Gair-Mumkin. On 01.06.1999, Collector passed the Final Award fixing compensation rates: (i) Abi-Bagh – irrigated Orchard land (Rs.1.50 lacs per Kanal); (ii) Abi-Awal – agricultural land (Rs.1.40 lacs per Kanal); and (iii) Gair-Mumkin – Barren land (Rs.1.30 lacs per Kanal).

4. Being aggrieved by the compensation awarded by the Collector, LAWDA, Srinagar, the appellants sought reference to the District

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Judge/Reference Court to establish their claims for enhanced compensation. The Reference Court *vide* judgment dated 31.10.2008 held that the appellants are entitled to get compensation of Rs.2,50,000/- per Kanal and also awarded compensation to the tune of Rs.10,000/- per Kanal on account of fencing. A

5. Feeling aggrieved by the compensation awarded by the Reference Court, State filed appeal CIA No.211 of 2009. Claimants have filed Cross Appeal bearing No.64 of 2011, seeking enhancement of compensation to Rs.4,00,000/- per Kanal. The High Court dismissed the State's appeal. The Cross Appeal filed by the appellants was also dismissed by the High Court holding that the appellants have not led any evidence which could have been the basis for enhancing compensation to Rs.4,00,000/- per Kanal as has been done in other cases. The review petition filed by the appellants also came to be dismissed. Being aggrieved by the dismissal of their Cross Appeal and the review, the appellants have filed these appeals. B C

6. Learned counsel for the appellants submitted that in the case of Reference No.5 of 2002 titled *Shamim Ahmed Dar and Ors. vs. Collector, LAWDA*, the Reference Court granted compensation at the rate of Rs.4,00,000/- per Kanal for the acquired land situated in the same village Chandapora where the acquired land of the appellants was also situated and while so the Reference Court erred in not granting the same rate of compensation, that is at the rate of Rs.4,00,000/- per Kanal to the appellants. Learned counsel further contended that Reference Court was not right in discriminating the appellants by granting compensation to them only at the rate of Rs.2,50,000/- per Kanal while in the case of adjacent land owners compensation has been fixed at the rate of Rs.4,00,000/- per Kanal. D E F

7. Per contra, learned counsel for the respondent-State submitted that the appellants have failed to adduce evidence to justify their claim *qua* compensation to the tune of Rs.4,00,000/- granted to the land owners. On the contrary, it was submitted that the land owners in Reference No.5 whose compensation has been enhanced to Rs.4,00,000/- have proved their case by adducing evidence in support of the said enhanced compensation. It was urged that the case of the appellants can in no way be compared with Reference No.5 and other cases inasmuch as in the said reference, land owners have clearly proved the G H

A rate at Rs.4,00,000/- per Kanal as per the market rate and the High Court rightly dismissed the Cross Appeal of the appellants and the impugned judgment warrants no interference.

8. We have carefully considered the rival contentions and also perused the impugned judgment and the materials on record.

B 9. Admittedly, the land measuring 65 Kanal ½ Marla of the appellants herein comprising of Khasra Nos. 115, 363/118, 179, 155, 197, 155, 90, 157, 100, 372/112, 102, 172, 173, 14 4 Min, 198, 148 and 194 covered by Reference No.15/2002 was acquired for the purpose of resettlement of Dal dwellers in the year 1997-1999. In or about the same time, the lands adjacent to the land of the appellants in Chandapora, Bhagichandpora and Pazwalpora were also acquired for the same purpose of resettlement of Dal dwellers by various references. Comparative table of the details of acquisition of lands of the appellants and the other land acquired in Chandapora, Bhagichandpora and Pazwalpora is as under:

Village	S.4(1) Notification	S.6 Declaration	Final Award	Reference Court Award
Chandapora	10.01.1997	02.06.1997	01.06.1999	Reference No. 15/2002 DOA 31.10.2008 Reference No. 5/2002 DOA 03.11.2008
Bhagi- Chandapora	24.06.1997	05.07.1997	01.06.1999	Reference 1/2003 6/2002 DOA 03.11.2009
Pazwalpora	16.06.1997	05.07.1997	14.07.1999	Reference No. 7/2002 DOA 03.11.2009

10. Learned counsel for the appellants has drawn our attention towards the fact that the villages of Chandapora, Bhagichandapora and Pazwalpora are situated adjacent to each other and share a common border/boundary with each other. The *inter se* distance between these villages is not much, however, centre to centre distance between these villages is less than half a kilometre. The learned counsel has also drawn our attention to the Site Plan showing *inter se* location of these villages and the land acquired there from by the Collector, LAWDA, Srinagar, Jammu and Kashmir in the year 1999, for the public purpose of re-settlement of Dal dwellers, which was obtained under the Right to Information Act, 2005 [RTI Act]. In response to the information sought by the appellants under the RTI Act, communication dated 08.12.2015 was sent stating that the villages of Chandapora, Bhagichandpora and Pazwalpora are situated adjacent to each other and shared a common border/boundary with each other. The Site Plan showing the location of the villages of Chandapora, Bhagichandpora and Pazwalporas also fortifies the information furnished that the above three villages are situated adjacent to each other and share a common border/boundary with each other.

11. In cases of acquisition of land in Bhagichandpora and Pazwalpora in Reference Nos.1/2003, 6/2002 and 7/2002, the Reference Court, after referring to the evidence adduced by the claimants thereon and also after referring to assessment of market rate by Tehsildar at Rs.4,00,000/- per Kanal, held that the land owners are entitled to compensation for the acquired land at the rate of Rs.4,00,000/- per Kanal with *solatium (Jabirana)* at the rate of 15% apart from interest @ 6% per annum on the enhanced compensation in excess to the sum awarded by the Collector, LAWDA.

12. As noted earlier, village Chandapora is situated adjacent to villages Bhagichandpora and Pazwalpora; while so, there was no reason why the Reference Court differentiated the land of the appellants-land owners of the acquired land in Chandapora land Reference No.15/2002 by awarding lesser compensation of Rs.2,50,000/-. On a perusal of the judgment of the Reference Court in Reference No.15 of 2002, it is seen that the witnesses were examined by the appellants to substantiate their case that the market rate of the land in village Chandapora in the year 1998 was about Rs.8,00,000/- per Kanal. Though the Tehsildar of the

- A area recommended Rs.2,50,000/- per Kanal, the witnesses have stated that the compensation fixed by Tehsildar was not reliable and not based on any material. The appellants have also produced a sale deed by one Mr. Bansilal under which he sold a small strip of land measuring 1360 sq. feet in the vicinity of the acquired land for an amount of Rs.1,00,000/-.
- B But the Reference Court discarded the evidence of witness Bansilal on the ground that under the sale deed only a small area of land was sold and the sale deed cannot be taken to be a representative character of the entire land. In our view, the Reference Court was not right in discarding the said sale deed which was supported by oral evidence of the witnesses, to substantiate their claim that the market rate assessed
- C by the Tehsildar at Rs.2,50,000/- was not a fair compensation.

13. When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons. In *Union of India vs. Bal Ram and Another* (2010) 5 SCC 747, this Court held that if the purpose of acquisition is same and when the lands are identical and similar though lying in different villages, there is no justification to make any discrimination between the land owners to pay more to some of the land owners and less compensation to others. The same was the view taken in *Union of India vs. Harinder Pal Singh and Others.* (2005) 12 SCC 564, where this Court held as under:-
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- “15. We have carefully considered the submissions made on behalf of the respective parties and we see no justification to interfere with the decision of the Division Bench of the Punjab and Haryana High Court which, in our view, took a pragmatic approach in fixing the market value of the lands forming the subject-matter of the acquisition proceedings at a uniform rate. From the sketch plan of the area in question, it appears to us that while the lands in question are situated in five different villages, they can be consolidated into one single unit with little to choose between one stretch of land and another. The entire area is in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in Kala Ghanu Pur where the market value of the acquired lands was fixed at a uniform rate of Rs 40,000 per acre. The Division Bench of the Punjab and Haryana High Court discarded the belting method of valuation having regard
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to the local circumstances and features and no cogent ground has been made out to interfere with the same. A

16. In our view, in the absence of any contemporaneous document, the market value of the acquired lands of Village Kala Ghanu Pur which were acquired at the same time as the lands in the other five villages was correctly taken to be a comparative unit for determination of the market value of the lands comprising the lands forming the subject-matter of the acquisition proceedings under consideration.....” B

14. When the lands are acquired at the same time and for the same purpose that is for resettlement of Dal dwellers, the lands situated in three different villages namely, Chandapora, Bhagichandpora and Pazwalpora, and since the land is similar land, it would be unfair to discriminate between the land owners and other references and the appellants who are the land owners in Reference No.15 and pay less that is Rs.2,50,000/- per Kanal to the appellants and pay more to other land owners that is Rs.4,00,000/- per Kanal. Impugned judgments of the High Court in CIA No. 211/2009 and Cross Appeal No. 64/2011 are to be set aside by enhancing the compensation to Rs.4,00,000 per Kanal. As a sequel to this, the order passed in review is also to be set aside. C D

15. In the result, the impugned judgments are set aside and these appeals are allowed. It is held that the appellants are at par with other land owners whose lands were acquired in Bhagichandpora and Pazwalpora in other references, and hence they are also entitled to enhanced compensation of Rs.4,00,000/- per Kanal with 15% *solatium* (*Jabirana*) and all other statutory benefits. No costs. E

Divya Pandey

Appeals allowed. F