

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

MA No. 71/2008  
IA No. 115/2013

**Pronounced on : 5 .06.2020**

Sagar Massieh & ors. .... Appellant(s)

Through:- Petitioner No. 1 present in person and  
on behalf of other petitioners also.

V/s

Collector (Assistant Commissioner) .....Respondent(s)  
Revenue and others

Through:- Mr. Jamrodh Singh, GA vice  
Mr. S. S. Nanda, Sr. AAG for R-1.

**Coram : HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

**01.** The land of the appellants measuring 02 Kanals 9½ Marlas falling under Khasra No. 775-min, Khata No. 516 situated at village Chakroi, Tehsil R. S. Pura was acquired by the State. Notification under Section 4 of the J&K Land Acquisition Act was issued by the Collector on 08.06.2000. The award was issued on 27.07.2001. The acquired land was required for construction of 33/11 KV Receiving Station at Chakroi by the Power Development Department. The award was passed on 27.07.2001 and market rate was fixed by the Collector at Rs.45,000/- per kanal.

**02.** The Collector made a reference to the District Judge as the appellants were not satisfied with the compensation awarded but the learned 2<sup>nd</sup> Additional District Judge Jammu, dismissed the reference vide his order dated 08.01.2008, holding that, no grounds are made out for enhancement of the compensation. Aggrieved by the order of 2<sup>nd</sup>

Additional District Judge, Jammu, the appellants have filed this appeal under Section 52 of the Land Acquisition Act.

**03.** The grounds of challenge are; (i) that the award of 2<sup>nd</sup> Additional District Judge, Jammu dated 08.01.2008 is against the law and facts; (ii) that the Tehsildar, R. S. Pura has assessed the value of the land at Rs.2 lakh per kanal, as such, the Collector was not justified in reducing the amount to Rs. 45,000/- per kanal without giving any reason; (iii) that the land was required on 24.09.1998 but the compensation was paid vide cheque dated 30.05.2002, therefore, the appellants are entitled to interest at the rate fixed under Section 35 of the J&K Land Acquisition Act.

**04.** The statement of Sagar Massieh, one of the appellants, was recorded on 02.11.2004 by the Reference Court and Satish Kumar, Assistant Revenue Attorney appeared on behalf of the respondent-Collector.

**05.** It is in the statement of appellant-Sagar Massieh that he demanded Rs.7,000/- per marla although the market rate of the land is Rs.10,000/- per marla. He stated that the amount awarded is very less and should be enhanced. As against this, the respondents' witness Satish Kumar is silent about the market value. Though he does not know when the possession of the land was taken and the amount was paid on 27.07.2001.

**06.** The only issue framed by the Reference Court was, "whether the compensation awarded is inadequate, if so, what is the market rate of the land, prevalent at the time of its acquisition and is petitioner entitled to receive the same". The Reference Court decided the

issue against the appellants holding that the cost of the land has been assessed on the basis of feedback received from the Field Agency, and that of the structure and trees, on the basis of the expert report.

**07.** It is admitted by the Collector in the award that the prevailing market value of the acquired land is more than Rs.7,000/- per kanal. It is also stated by the Collector that market rate of the land was Rs.10,000/- per marla. He has also stated at Page-4 of the award that the land was sold at Rs. 1.20 lakh per kanal as the land has great potential for commercial exploitation. In one of the paras, the Collector states that the Tehsildar has communicated the market rate of the land at Rs. 02 Lakh per kanal but accordingly, this communication has no logical basis.

He has also stated in one para which is extracted below:-

“I have visited the spot and has found that the land under acquisition is situated near the road. The Structure constructed by the owner, were also exiting over the said land. It has all the basic amenities of life in its surroundings. Therefore, it is justified to fix the rate of the land, keeping in view its commercial/residential potential.

The Tehsildar has communicated the market rate of the land @ Rs.2.00 lac per kanal but his communication has no logical basis.....”

**08.** The Collector having admitted that the land has great commercial value and that Tehsildar has recommended its value is Rs. 2 lakh per kanal, still he fixed the value of the land at Rs.45,000/- per kanal without giving any reason. After referring to the market potential of the land recommendation of the Tehsildar and admitting that one kanal of land in the same village was sold for Rs. One lakh twenty thousand though, he suddenly writes as under: -

“therefore, keeping in view the quantum of land and its commercial/residential potential, it is considered appropriate to assess the compensation at Rs. 45,000/- per kanal.”

**09.** This is arbitrary based on no rationale, while disagreeing with the Tehsildar, he has to give reasons why the rate should be less which has not been done by him. As per the law laid down by this Court in **Collector Land Acquisition vs Ali Mohd. Bhat & ors.**, reported in **AIR 1981 JK 38**. Relevant extract is reproduced below:-

“The words "after considering the report of the Collector and after making such further enquiry as may be necessary" occurring in Sub-section (3) of Section 11, are full of meaning. They unmistakably suggest that the Revenue Minister should make a speaking order after calling in further evidence, if necessary. Consideration implies application of mind. There can be no application of mind unless the mind is disclosed. There can be no disclosure of mind, unless the action is supported by reasons and logic. The Revenue Minister will be deemed to adopt the reasoning given by the Collector where he approves the tentative award. Where he does not propose to approve the tentative award, he must give his reasons which must be based' upon the objective assessment or the available evidence. Therefore we are not inclined to agree with the learned counsel for the State that the Revenue Minister will be competent to depart from the recommendations made by the Collector in the tentative award, without assigning any reasons.”

**10.** However, the amount cannot be awarded at the rate of Rs.10,000/- per marla or Rs.2 lakh per kanal as recommended by the Tehsildar. It is in the statement of Sagar Massieh that he has demanded Rs. 7000/- per marla but Tehsildar has proposed Rs. 10,000/- per marla however, the Collector gave only Rs. 2250/- per marla which is not

acceptable being very less. He also stated that he has accepted the award only under protest and this is not denied. The appellants have demanded Rs.7,000/- (Rupees seven thousand) per marla and the amount cannot be given in excess of the demand of the land owner in view of Section 25 of The State Land Acquisition Act, which reads as under:-

“25. Rules as to amount of compensation

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court, shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.”

**11.** Since it is admitted by the Collector and also by the appellant-Sagar Massieh that the clear demand by the owner for compensation was only to be paid at the rate of Rs.7,000/- per marla, this Court cannot exceed beyond the demand made by the appellants.

**12.** Hence the award of the Reference Court is set aside as it is not based on the appreciation of admitted facts because the Collector has himself admitted that the value of the land is not less than Rs.10,000/- per marla but since the appellants have demanded only Rs.7,000/- per marla as stated by Sagar Massieh and which is also the report of the Tehsildar R. S. Pura dated 16.03.1999, where he has stated that the market rate as Rs.1,40,000/- per kanal is reasonable. This is also the demand of the appellants also and there was no reason why the award was reduced particularly when this was the only piece of land owned by Mana Massieh, on which he had constructed his residential house also.

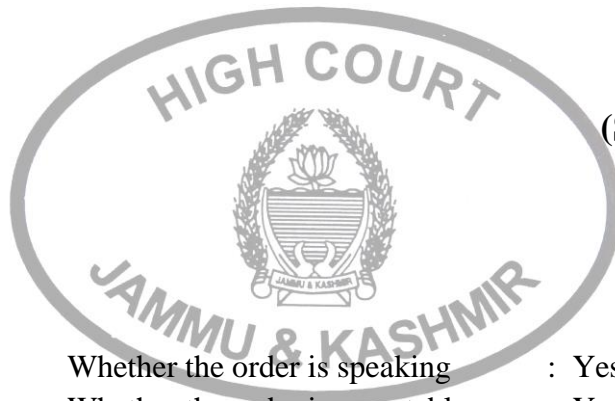
**13.** Since the cost of fruit bearing trees were assessed by the Horticulture Department and others, as such, there is no reason to interfere in the amount awarded in this regard on the basis of valuation

made by them. But the Collector had no reason to ignore the valuation made by the Tehsildar and since the amount claimed was less than that recommended by the Tehsildar, therefore, the same should be awarded.

**14.** Appellants are thus entitled to compensation at the rate of Rs.1,40,000/- per kanal with 6% interest from the date of acquisition of the land and therefore, the appellants are entitled to Rs.3,46,500/- less the amount received at Rs.1,11,375/- i.e., Rs.2,35,125/-. This amount will be payable with 15% Jabrana (solatium) and 10% interest under Section 35 of the Act from the date of acquisition till realization of the payment.

**15.** **Disposed of** in the aforesaid terms alongwith connected IA.

JAMMU  
5..06.2020  
*Ram Murti*



**(Sindhu Sharma)**  
**Judge**

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