

**FA-207-2002**

*(THE STATE OF M.P. TH. LAO. Vs GHAN SHYAM PATHAK & ANR)*

**20-09-2016**

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT  
AT JABALPUR**

**(SINGLE BENCH : HON'BLE SHRI JUSTICE  
J.P.GUPTA)**

**First Appeal No.207/2002**

State of Madhya Pradesh  
Vs  
Ghanshyam Pathak and another

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Shri Ajay Shukla, Learned GA for the appellant / State.  
None for the respondents.

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Whether approved for reporting : (Yes/No).

**J U D G M E N T**

**( 20.09.2016)**

This appeal under section 54 of the Land Acquisition Act read with section 96 of the Code of Civil Procedure has been filed against the judgment dated 21.11.2001 passed by the 9th Additional District Judge, Jabalpur (MP), in Land Acquisition Case No.10/95, arising out of Reference Application filed under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") against the award dated 21.9.1992 passed by the Land Acquisition Officer, Jabalpur in Revenue Case No.3/A-82/87-88.

2. In brief, the relevant facts of the case are that the respondent no. 1 is the owner of the land bearing survey no. 108/3 area 1.311 hectare and the respondent no. 2 is the owner of the land bearing survey no. 108/4 area 1.571 hectare situated at village Khairi, Tahsil and District Jabalpur and the aforesaid land was acquired by the appellant for constructing housing colony through M.P. Housing Board by a notification published in official gazette dated 21.9.1990 under sections 4(1) and 17 of the Land Acquisition Act and the Land Acquisition Officer passed an award on 21.9.1992, in which market value of the land was determined Rs.0.30/- per sq. meter and compensation was awarded accordingly along with other statutory benefits. The award was challenged by the respondents by submitting an application under section 18 of the Land Acquisition Act before the Collector, which was referred to the District Court, Jabalpur, in which the respondents claimed that the market value of the acquired land fixed by the Land Acquisition Officer is very less. The acquired land is situated on the residential area which is nearby outer limit of the Municipal area and the land has been acquired for the construction of the houses, therefore, it has the potentiality of being used for construction of houses. Its market value as per the prevailing rate at the time of acquisition should have been determined at the rate of Rs.150/- per sq. ft. Accordingly, with all statutory benefits, an award for compensation be passed.

3. On behalf of the appellant, it was stated that compensation determined by the Land Acquisition Officer is

proper and does not require any interference.

4. Learned court below after recording the evidence passed the impugned judgment holding the total market value of the land Rs.10,000/- per hectare in other words Rs.1 per sq. meter. Accordingly, learned court below directed to pay the amount of compensation along with other statutory benefits. Against the aforesaid judgment, appellant has filed this appeal.

5. Learned counsel for the appellant submitted that the impugned judgment is contrary to law. The learned court below has enhanced the amount of compensation in arbitrary manner without considering the facts of the case and evidence and the law. It is also submitted that after determination of the market value of the land, learned court below has also directed to pay interest on the amount of solatium from the date of taking possession i.e. 1.6.1989. This direction is also contrary to law. Hence, the impugned judgment be set-aside and the appeal be allowed.

6. On behalf of the respondents, none was present at the time of hearing. Hence, the appeal has been heard ex-parte.

7. Having considered the contention advanced by learned counsel for the appellant and on perusal of the record in this case following questions arise for determination :-

- i. Whether, the market value of the acquired land determined by the learned court below @ Rs. 1/- per sq. meter or Rs.10,000/- per hectare is arbitrary and

excessive or requires any interference ?

ii. Whether the direction given by the learned court below with regard to calculation of the statutory benefits is contrary to law and requires any interference?

iii. Relief and cost ?

**8. Question No.1** : The market value of the acquired land enhanced by the learned court below by determining @ Rs.1/- per sq. meter of Rs.10,000/- per hectare in place of Rs.0.30/- or Rs.3000/- per hectare. On perusal of the record particularly the statement of Ghanshyam Pathak (PW-1) and the sale deed Ex.P/1 it is apparent that the land situated nearby the acquired land was sold on 9.4.1990 nearby Rs.5/- per sq. ft. and the learned court below has accordingly determined the market value of the acquired land only Rs.1/- per sq. meter. (It works out near about Rs.54/- per sq. meter) considering the fact that the land sold vide Ex.P/1 is diverted and developed and was in the shape of plot. Therefore, before fixing price of the acquired land on the basis of the sale deed so many deductions would be required as the expenses would be required to be converted the acquired land as like the land sold vide Ex.P/1 thereafter Rs.1 per square meter market price was fixed. The aforesaid price is very less as it is 53 times less from the market price of the land sold by sale deed Ex.P/1. How many type of deductions be done. The price fixed by the learned court below would remain every time very less, therefore, the price fixed by the learned lower court cannot be considered to be excessive or arbitrary and cause any harm to the appellant. Hence, this objection is rejected

and it is held that the market value of the acquired fixed by the learned lower court is not excessive and does not require any interference. Therefore, the same is affirmed. The question no. 1 is answered accordingly.

**9. Question No.2:** The appellant has also objected that the direction regarding other statutory benefits like interest is not according to law. The provision regarding interest has not been properly considered by the learned lower court. Hence, the direction in this regard is also required to be re-consideration and also requires changes.

10. Learned lower court in operative para 35 of its impugned judgment has directed as follows :-

1) [kSjh iVokjh gYdk ua 20 cUnkscLr dzekad 570 tcyiqj esa fLFkr [kljk ua0 108@3 esa ks vf/kx`fgr dh xbZ Hkwfe 1311 gSDVS;j ds esa ls HkwfeLokeh /kuÃçÂ□Â□;ke izlkn rFkk [kljk ua0 108@4 esa ls vf/kx`ghr dh xbZ Hkwfe 1571 gSDVs;j Hkwfe ds fy;s Hkwfe Lokeh jktsUnz izlkn 10]000@& nl gtkj :0 izfr gSDVs;j dh nj ls {kfriqfrZ izkIr djus ds vf/kdkjh gS A

2) nksuks vkosndx.k mijksDr jkfÃçÂ□Â□k ij 30 izfrÃçÂ□Â□kr dh nj ls lksysfÃçÂ□Â□k;e jkfÃçÂ□Â□k Hkh izkIr djus ds vf/kdkjh gS A

3) nksuksa vkosndx.k mijksDr {kfriwfrZ ,oa lkysfÃçÂ□Â□k;e jkfÃçÂ□Â□k ij dCtk ysus ds fnukad 1@6@89 ls vnk;xh fnukad rd 6 izfrÃçÂ□Â□kr okfiZd dh nj ls lk/kkj.k O;kt Hkh izkIr djus ds vf/kdkjh gS A

4) iwoZ esa tks {kfriwfrZ vnk dh xbZ gS] og jkfÃçÂ□Â□k

dh x.kuk djrs le; ewy/ku esa ls de dh tkdj vnk;xh fnukad ds  
iÃçÂ□Â□pkr ÃçÂ□Â□ÃçÂ□Â□ksi jkfÃçÂ□Â□k ij  
C;kt dh x.kuk dh tk;sxh A

11. Sub clause 3 and 4 of operative para 35 of the impugned judgment is not proper as under the provisions of Section 23 (1A) of the Land Acquisition Act interest is payable only on the market value of the acquired land from the date of taking possession of the land or from the date of the publication of the notification under sub section (1), whichever is earlier. In this regard, date of taking possession is earlier. According to this provision, interest on solatium is not permissible but the learned lower court has also directed to pay interest on solatium also. Similarly, the learned lower court has directed to pay interest @6% per annum while as per the provision it should have been directed to pay @10% per annum. Hence, the direction given in sub clause 3 of para 35 in the impugned judgment is not according to law and requires changes as pointed out earlier.

12. Similarly direction given in sub clause 4 of para 35 of the impugned judgment is also not in accordance with law. The direction given by the learned lower court is not covered by the provisions of Section 28 of the Land Acquisition Act which is relevant for calculation of the interest and the direction relating to the interest, learned lower court has to direct that the compensation, calculated according to the direction given in sub clause 1 to 3 of para 35 of the impugned judgment is in excess of the sum which the Collector did the award as

compensation. Therefore, the collector shall pay interest on such excess amount at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess amount with further direction that where such excess or any part thereof is not paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of 15% per annum shall be paid from the date of expiry of said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. Thus, the direction in para 35 (4) is also contrary to law and requires changes. The question no. 2 is answered accordingly.

**13. Relief and Cost:** In view of the aforesaid discussion and findings of the aforesaid questions, the appeal filed by the appellant so far as it relates to enhancement of market value of the acquired land is concerned, has no substance, being devoid of merits, it is dismissed. So far as it relates to direction regarding interest as statutory benefits on the market value of the acquired land it deserves to be allowed. Accordingly, this appeal is partly dismissed and partly allowed with a direction that sub clause 3 and 4 of operative para 35 of the impugned judgment are set aside and substituted with following directions :-

- i) Both the respondents / claimants are entitled to get interest on the market value of the land @12% per annum from the date of taking its possession i.e. 1.6.1989 and
- ii) On the excess amount calculated in compliance

with the direction given earlier, the Collector shall pay interest @9% per annum from the date of taking possession of the land and thereafter, one year @15% per annum till realization of the excess amount be paid to the respondents / claimants.

14. The appeal is disposed of accordingly with no order as to cost.

**(J. P. GUPTA)**  
**JUDGE**

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