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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LAA No. 69/2007, LAA No. 409/2007 & CM No. 17649/2007
LAA No. 729/2008 & CM No. 11072/2008, LAA No. 730/2008
& CM No. 11075/2008, LAA No. 734/2008, LAA No. 740/2008
& CM No. 11365/2008, LAA No. 758/2008 & CM No. 11541/2008
LAA No. 759/2008 & CM No. 11544/2008, LAA No. 765/2008
& CM No. 11663/2008, LAA No. 766/2008 & CM No. 11666/2008
LAA No. 769/2008 & CM No. 11673/2008, LAA No. 801/2008,
LAA No. 815/2008, LAA No. 900/2008 & CM No. 13682/2008
LAA No. 551/2008, LAA No. 834/2008 & CM No. 13167/2007
LAA No. 835/2008 & CM No. 13170/2008, LAA No. 838/2008 &
CM No. 13178/2008, LAA No. 839/2008 & CM No. 13181/2008
LAA No. 862/2008 & CM No. 13310/2008, LAA No. 865/2008 &
CM No. 13325/2008, LAA No. 250/2007 & CM No. 5881/2008
LAA No. 512/2008 & CM No. 6505/2008, LAA No. 523/2008 &
CM No. 6637/2008, LAA No. 529/2008 & CM No. 6818/2008
LAA No. 547/2008 & CM No. 7088/2008, LAA No. 570/2008,
LAA No. 626/2008 & CM No. 8922/2008, LAA No. 665/2008 &
CM No. 9691/2008, LAA No. 666/2008 & CM No. 9694/2008
LAA No. 667/2008 & CM No. 9697/2008, LAA No. 669/2008 &
CM No. 9704/2008, LAA No. 702/2008 & CM No. 10214/2008
LAA No. 704/2008 & CM No. 10266/2008, LAA No. 810/2008 &
CM No. 12278/2008, LAA No. 646/2008 & CM No. 9194/2008
LAA No. 391/2007 & CM No. 17273/2007, LAA No. 393/2007 &
CM No. 17279/2007, LAA No. 394/2007 & CM No. 17282/2007
LAA No. 395/2007 & CM No. 17285/2007, LAA No. 1/2008 &
CM No. 7/2008, LAA No. 5/2008 & CM No. 19/2008, LAA No. 8/2008 & CM
No. 38/2008, LAA No. 12/2008 & CM No. 50/2008,
LAA No. 13/2008 & CM No. 53/2008, LAA No. 14/2008 &
CM Nos. 56/2008 & 12818/2008, LAA No. 15/2008 & CM No. 59/2008
LAA No. 260/208 & CM No. 12822 & 793/2008, LAA No. 261/2008
& CM No. 800/2008, LAA No. 262/2008 & CM No. 806/2008 & 13968/2008,
LAA No. 263/2008 & CM No. 809/2008
LAA No. 298/2008 & CM No. 1471/2008, LAA No. 349/2008 &
CM No. 2741/2008, LAA No. 375/2008 & CM No. 3533 & 13883/2008
LAA No. 376/2008 & CM No. 3537/2008, LAA No. 391/2008 &
CM No. 3561/2008, LAA No. 397/2008 & CM No. 3763/2008
LAA No. 398/2008 & CM No. 3766/2008, LAA No. 402/2008 &
CM No. 3774/2008, LAA No. 403/2008 & CM No. 3778/2008
LAA No. 405/2008 & CM No. 3795/2008, LAA No. 415/2008 &
CM No. 5877/2008, LAA No. 416/2008 & CM No. 5900/2008
LAA No. 417/2008 & CM No. 5878/2008, LAA No. 418/2008 &
CM No. 5893/2008, LAA No. 419/2008 & CM No. 5884/2008
LAA No. 420/2008 & CM No. 5885/2008, LAA No. 421/2008 &
CM No. 5902 & 10005/2008, LAA No. 422/2008 & CM No. 5897/2008
LAA No. 423/2008 & CM No. 5892/2008, LAA No. 424/2008 &
CM No. 5903/2008, LAA No. 439/2008 & CM No. 5890/2008
LAA No. 440/2008 & CM No. 5901/2008, LAA No. 441/2008 & CM No.
5876/2008, LAA No. 442/2008 & CM No. 5889/2008,
LAA No. 451/2008, LAA No. 459/2008, LAA No. 460/2008
LAA No. 461/2008, LAA No. 462/2008, LAA No. 463/2008
LAA No. 502/2008 & CM No. 10022-23/2008, LAA No. 503/2008,

Signature Not Verified
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

LAA No. 504/2008, LAA No. 505/2008, LAA No. 506/2008 & CM No. 8842-43/2008, LAA No. 507/2008, LAA No. 511/2008, LAA No. 543/2008 & CM No. 7077 & 10865/2008, LAA No. 586/2008, LAA No. 588/2008, LAA No. 591/2008, LAA No. 592/2008, LAA No. 595/2008, LAA No. 605/2008, LAA No. 607/2008, LAA No. 632/2008 & CM No. 9079/2008, LAA No. 633/2008 & CM No. 9084/2008, LAA No. 634/2008 & CM No. 9087/2008, LAA No. 639/208 & CM No. 9303/2008, LAA No. 642/2008 & CM No. 9176/2008, LAA No. 643/2008 & CM No. 9180/2008, LAA No. 644/2008 & CM No. 9183/2008, LAA No. 645/2008 & CM No. 9188/2008, LAA No. 672/2008, LAA No. 707/2008 & CM No. 10881/2008, LAA No. 717/2008 & CM No. 11022/2008, LAA No. 718/2008 & CM No. 11025/2008
LAA No. 719/2008 & CM No. 11045/2008, LAA No. 721/2008 & CM No. 11050/2008, LAA No. 725/2008 & CM No. 11060/2008
LAA No. 726/2008 & CM No. 11063/2008, LAA No. 727/2008 & CM No. 11066/2008, LAA No. 728/2008 & CM No. 11069/2008
LAA No. 389/2007 & CM No. 17268/2007, LAA No. 392/2007 & CM No. 12380 & 17276/2007, LAA No. 404/2007 & CM No. 17632/2007
LAA No. 405/2007 & CM No. 17637/2007, LAA No. 406/2007 & CM No. 17641/2007, LAA No. 407/2007 & CM No. 17643/2007
LAA No. 408/2007 & CM No. 17646/2007, LAA No. 410/2007 & CM No. 17653/2007, LAA No. 411/2007 & CM No. 17656/2007
LAA No. 2/2008 & CM No. 10/2008, LAA No. 3/2008 & CM No. 13/2008, LAA No. 4/2008 & CM No. 16/2008, LAA No. 6/2008 & CM No. 23/2008, LAA No. 7/2008 & CM No. 26/2008, LAA No. 10/2008 & CM No. 44/2008, LAA No. 16/2008 & CM No. 62/2008
LAA No. 17/2008 & CM No. 66/2008, LAA No. 18/2008 & CM No. 69/2008, LAA No. 283/2008 & CM No. 1388/2008, LAA No. 285/2008 & CM No. 1393/2008, LAA No. 288/2008, LAA No. 297/2008 & CM No. 1468/2008, LAA No. 306/208 & CM No. 1913/2008, LAA No. 307/2008 & CM No. 1916/2008, LAA No. 308/2008 & CM No. 1924/2008
LAA No. 312/2008 & CM No. 2006/2008, LAA No. 313/2008 & CM No. 2012/2008, LAA No. 314/2008 & CM No. 2020/2008, LAA No. 315/2008 & CM No. 2027/2008, LAA No. 316/2008 & CM No. 2031/2008
LAA No. 317/2008 & CM No. 2035/2008, LAA No. 321/2008 & CM No. 2082/2008, LAA No. 322/2008 & CM No. 2086/2008, LAA No. 323/2008 & CM No. 2089/2008, LAA No. 350/2008 & CM No. 2745/2008, LAA No. 395/2008 & CM No. 3756/2008, LAA No. 400/2008, LAA No. 409/2008, LAA No. 427/2008 & CM No. 4370/2008
LAA No. 428/2008 & CM No. 4374/2008, LAA No. 429/2008 & CM No. 4379/2008, LAA No. 430/2008 & CM No. 4383/2008, LAA No. 433/2008 & CM No. 4460/2008, LAA No. 450/2008 & CM No. 4841/2008, LAA No. 9/2008 & CM No. 41/2008, LAA No. 86/2007, LAA No. 95/2007, LAA No. 107/2007, LAA No. 108/2007, LAA No. 111/2007,
LAA No. 117/2007 & CM No. 4042/2008, LAA No. 176/2007, LAA No. 191/2007, LAA No. 194/2007 & CM No. 9640/2007, LAA No. 195/2007 & CM No. 9641/2007, LAA No. 238/2007 & CM No. 5894/2008
LAA No. 239/2007 & CM No. 5875/2008, LAA No. 240/2007 & CM No. 5886/2008, LAA No. 241/2007 & CM No. 5896/2008, LAA No. 242/2007 & CM No. 5879/2008, LAA No. 243/2007 & CM No. 5898/2008, LAA No. 244/2007 & CM No. 5880/2008, LAA No. 245/2007 & CM No. 11205/07 & 5887/2008, LAA No. 246/2007 & CM No. 5895/2008, LAA No. 247/2007 & CM No. 5888/2008
LAA No. 248/2007 & CM No. 5891/2008, LAA No. 249/2007 & CM No. 5899/2008, LAA No. 252/2007, LAA No. 253/2007 & CM No. 8092/2008,

LAA No. 254/2007, LAA No. 255/2007, LAA No. 256/2007 & CM No. 2233/2008, LAA No. 257/2007, LAA No. 259/2007, LAA No. 260/2007, LAA No. 261/2007, LAA No. 262/2007, LAA No. 263/2007
LAA No. 264/2007, LAA No. 269/2007, LAA No. 270/2007, LAA No. 271/2007, LAA No. 277/2007 & CM No. 12154/07 & 5882/2008
LAA No. 279/2007 & CM No. 5883/2008, LAA No. 295/2007, LAA No. 304/2007, LAA No. 367/2007, LAA No. 374/2007, LAA No. 384/2007
LAA No. 385/2007 & CM No. 17234/2007, LAA No. 398/2007, LAA No. 401/2007, LAA No. 20/2008 & CM No. 367/2008, LAA No. 253/2008, LAA No. 276/2008, LAA No. 327/2008 & CM No. 2164/2007
LAA No. 336/2007, LAA No. 347/2008 & CM No. 2680-81/08
LAA No. 371/2008, LAA No. 840/2008 & CM No. 13185/2008
LAA No. 841/2008 & CM No. 13188/2008, LAA No. 843/2008 & CM No. 13195/2008, LAA No. 864/2008 & CM No. 13316/2008
LAA No. 881/2008 & CM No. 13511/2008, LAA No. 886/2008 & CM No. 13527/2008, LAA No. 887/2008 & CM No. 13533/2008, LAA No. 889/2008 & CM No. 13538/2008, LAA No. 890/2007 & CM No. 13511/2008, LAA No. 867/2007 & CM No. 13421/2008, LAA No. 869/208 & CM No. 13426/2008, LAA No. 11/2008 & CM No. 47/2008
LAA No. 877/2008 & CM No. 13493/2008, LAA No. 949/2008 and LAA No. 950/2008

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Reserved on : October 16, 2008
Pronounced on : October 23, 2008

Ved Prakash & Ors. etc. etc. . . . Appellants

through :

Mr. S.K. Rout with Mr. Parminder Sehrawat and Mr. M.P. Siddiqui, Advocates for the appellants in LAA Nos. 551, 460, 461, 462, 502, 503, 504, 505, 506, 507, 511, 581 586. 588, 591, 592, 595, 605, 607, 400, 409/2008, 86, 176, 295, 304, 374/2007 & 371/2008

Mr. Deepak Khosla with Mr. Sumit Jain for the appellants in LAA Nos. 69/2007, 451, 459, 4/2008, 95, 117, 176, 191, 194, 195, 269, 270, 271, 304 & 367/2007

Mr. B.S. Kharb for the appellants in LAA Nos. 107, 108 and 111/07

VERSUS

Union of India & Ors. etc. . . . Respondents

through :

Mr. Mr. S.K. Rout with Mr. Parminder Sehrawat and Mr. M.P. Siddiqui, Advocates for the respondents in

LAA Nos. 729, 758, 759, 766, 769, 834, 835, 839, 547, 810, 394, 5, 8, 15, 261, 263, 349, 391, 397, 398, 416, 417, 418, 419, 424, 439, 441, 632, 634, 639, 707, 717, 728, 10, 17, 306, 314, 315, 316, 317, 321, 430/08, 239, 240, 241, 248/2007 & 327/2008.

Mr. Mukesh Gupta for the DDA in LAA 729, 758 & 707/08.

Ms. Shobhana Takiar with Mr. Gauran Sarin and Ms. Supriya Juneja for the DDA.

Mr. D.K. Pandey for counsel for the respondent No.1 in LAA 726/2008.

Mr. S.S. Dalal for the UOI in LAA Nos. 250/07, 523, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 439, 440, 441, 442/2008, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 277 & 279/2007.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see LA.A. No. 673/2008.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

October 23, 2008
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ LA.A. No. 673 of 2008
with
LAA No. 69/2007, LAA No. 409/2007 & CM No. 17649/2007
LAA No. 729/2008 & CM No. 11072/2008, LAA No. 730/2008
& CM No. 11075/2008, LAA No. 734/2008, LAA No. 740/2008
& CM No. 11365/2008, LAA No. 758/2008 & CM No. 11541/2008
LAA No. 759/2008 & CM No. 11544/2008, LAA No. 765/2008
& CM No. 11663/2008, LAA No. 766/2008 & CM No. 11666/2008
LAA No. 769/2008 & CM No. 11673/2008, LAA No. 801/2008,
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LAA No. 862/2008 & CM No. 13310/2008, LAA No. 865/2008 &
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LAA No. 512/2008 & CM No. 6505/2008, LAA No. 523/2008 &
CM No. 6637/2008, LAA No. 529/2008 & CM No. 6818/2008
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LAA No. 626/2008 & CM No. 8922/2008, LAA No. 665/2008 &
CM No. 9691/2008, LAA No. 666/2008 & CM No. 9694/2008
LAA No. 667/2008 & CM No. 9697/2008, LAA No. 669/2008 &
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Reserved on : October 16, 2008
Pronounced on : October 23, 2008

Ved Prakash & Ors. etc. etc. . . . Appellants

through : Mr. S.K. Rout with
Mr. Parminder Sehrawat and
Mr. M.P. Siddiqui, Advocates
for the appellants in LAA Nos.
551, 460, 461, 462, 502, 503,
504, 505, 506, 507, 511, 581
586. 588, 591, 592, 595, 605,
607, 400, 409/2008,
86, 176, 295, 304, 374/2007 &
371/2008

Mr. Deepak Khosla with

Mr. Sumit Jain for the appellants in LAA Nos. 69/2007, 451, 459, 4/2008, 95, 117, 176, 191, 194, 195, 269, 270, 271, 304 & 367/2007

Mr. B.S. Kharb for the appellants in LAA Nos. 107, 108 and 111/07

VERSUS

Union of India & Ors. etc. . . . Respondents

through : Mr. Mr. S.K. Rout with Mr. Parminder Sehrawat and Mr. M.P. Siddiqui, Advocates for the respondents in LAA Nos. 729, 758, 759, 766, 769, 834, 835, 839, 547, 810, 394, 5, 8, 15, 261, 263, 349, 391, 397, 398, 416, 417, 418, 419, 424, 439, 441, 632, 634, 639, 707, 717, 728, 10, 17, 306, 314, 315, 316, 317, 321, 430/08, 239, 240, 241, 248/2007 & 327/2008.

Mr. Mukesh Gupta for the DDA in LAA 729, 758 & 707/08.

Ms. Shobhana Takiar with Mr. Gauran Sarin and Ms. Supriya Juneja for the DDA.

Mr. D.K. Pandey for counsel for the respondent No.1 in LAA 726/2008.

Mr. S.S. Dalal for the UOI in LAA Nos. 250/07, 523, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 439, 440, 441, 442/2008, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 277 & 279/2007.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. All these appeals are filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'). In the appeals filed by the land owners (hereafter, for the sake of brevity, referred as such) they are seeking further enhancement in the compensation than what is awarded by the reference court under Section 18 of the Act. On the other hand, in all the appeals filed by the Union of India (for short, 'UOI'), the prayer made is to reduce the compensation on the plea that the compensation awarded by the learned ADJ is on a higher side.

2. Vide Notification dated 6.6.1991 issued under Section 4 of the Act, large tract of land situate in revenue village Kakrola was notified for acquisition for public purpose viz. "for the planned development of Delhi". It was followed by Declaration under Section 6 of the Act and thereafter Award No. 1/93-94 came to be passed by the Land Acquisition Collector (LAC). Total land of this village acquired was 8723 bighas and 16 biswas. In the award the LAC classified the lands into three categories. He awarded Rs.4.65 lacs per acre (Rs.96,875/- per bigha) for Block-A land. For determining this market value, he followed the recommendations of the Joint Secretary (Land & Building), Delhi Administration contained in letter dated 3.5.1990

wherein minimum price of the agricultural land had been fixed. In respect of Block-B land, market value was fixed at Rs.38,000/- per bigha, whereas for the land falling in Block-C category, market value was fixed at Rs.32,000/- per bigha by the LAC.

3. The land owners were not satisfied with the said fixation of market value of their land and, therefore, sought references under Section 18 of the Act. The learned ADJ answered those references vide his Award dated 6.5.2003. He did away with the categorization of the land into three blocks and fixed uniform market value for the entire land. As per the said award it was decided that fair price and market value of the land in dispute as on the date of Notification was Rs.1,25,000/- per bigha. Both the land owners as well as UOI challenged the said award by filing appeals in this Court. These appeals were decided by orders dated 24.5.2005 whereby Award dated 6.5.2003 of the learned ADJ was set aside and the matters were remanded back to the reference court with a direction to adjudicate the matters afresh after allowing the parties to lead further evidence.

4. After remand of the cases, the petitioner in LAC No. 462-A/2005 (new), 39/1997 (old) led further evidence by producing as many as six witnesses. No additional evidence was adduced by the UOI.

5. The learned ADJ has decided these references vide his Award dated 4.3.2008 fixing the market value of the land in question at Rs.1,09,500/-. These appeals are preferred against the said Award

fixing the aforesaid compensation, as pointed out in the beginning. Before we advert to the evidence on record and the submissions of counsel for the parties, it would be necessary to take note of some material facts.

6. When these references were decided earlier vide Award dated 6.5.2003, the learned ADJ had placed reliance upon two sale deeds, both dated 4.1.1989 as per which the land in the said village was sold at Rs.1,60,000/- per bigha. The Division Bench, while setting aside that Award vide its order dated 24.5.2005, had held that fair market value of the land could not be based on two sale deeds, inasmuch as one of the sale deeds related only to 1 bigha of land and another sale deed was executed in peculiar circumstances, i.e. for getting better quality of water for putting bore-well for taking water to his land for the purpose of cultivation.

7. The land owners have placed strong reliance on the following evidence :-

(a) Exhibit PW-8/A, which is a Circular No. FE.33(1) 86 dated 25.9.1989 issued by the Delhi Development Authority (DDA) fixing pre-determined rates in respect of alternative allotment of residential plots in different areas of Delhi/New Delhi. For residential plots falling in west zone, rate of Rs.730/- per sq.mtr. is fixed effective from 1.4.1989 to 31.3.1990.

(b) Exhibit PW-1/A, which is again a letter dated 18.11.1993 issued by the Joint Director (IL) of DDA addressed to the Additional

Commissioner (W), Delhi Water Supply and Sewerage Disposal Undertaking (DWSSDU). Vide this letter, certain lands are allotted to DWSSDU for construction of pumping station in Najafgarh township. The rate fixed for allotment of the said land is Rs.20 lacs per acre.

(c) Exhibit PW-2/1, which is letter dated 24.1.1992 of the Ministry of Urban Development (Land Division), Government of India, addressed to the L&DO, Nirman Bhawan, as well as Vice Chairman, DDA. Vide this communication, the price of Government land for allotment to various social, cultural and charitable and other organizations in Delhi and New Delhi were fixed. In respect of west zone, the rate fixed is Rs.39 lacs per acre.

(d) Exhibit PW-2/2 to 2/4 as per which Ministry of Urban Development has fixed the market rates of lands in different areas of Delhi/New Delhi under the control of L&DO which shows that each time higher rates were fixed for the land in West Delhi.

8. The perusal of the impugned Award rendered by the learned ADJ would show that the learned ADJ made the policy of the Government of India for fixation of minimum prices of agricultural land in respect of land of Union Territory of Delhi (Exhibit R-1) dated 3.5.1990 as the basis for fixation of the market price. As per this policy, the Government had fixed Rs.4.65 lacs per acre (Rs.96,875/-

per bigha), the minimum price for the agricultural land for the area in question as on 3.5.1990. The learned ADJ noted that Notification under Section 4 of the Act in the present case was issued on 6.6.1991, i.e. 13 months after the commencement of the aforesaid policy dated 3.5.1990. He accordingly granted further enhancement in the value fixed by the Government for the said period of 13 months at 12% p.a., which amount comes to Rs.12,593.75p. In these circumstances, the market value is fixed at Rs.1,09,468.75p. or Rs.1,09,500/- per bigha. The thought process of the learned ADJ, in this behalf, is reflected in para 22 of the Award, which reads as under :-

> "22. As discussed above, Hon'ble High Court of Delhi has already held that sale deeds which were filed by the petitioners cannot be considered for fixing the price and market value of the land in village Kakrola. At the same time, the Hon'ble High Court has also observed that appreciation for the period for 13 months has to be considered. In these circumstances and keeping in view that the Land Acquisition Act is welfare legislation, the arguments of ld. counsel for the Union of India seems to me not convincing as LAC himself awarded the compensation on the basis of the Government Policy. Therefore, there is no reason to deny the enhancement of appreciation for the period of 13 months. I am, therefore, of the view that petitioner is entitled for appreciation of 13 months over and above the value fixed by LAC. On calculation the amount of interest for 13 months @ 12% on Rs.96,875/- comes to Rs.12,593.75. If both the sums are added the total amount comes to Rs.1,09,468.75 or say 1,09,500/- for a bigha."

9. Mr. Deepak Khosla led the team of lawyers appearing for the land owners and made frontal attack to the impugned award. His submission was that total reliance on the aforesaid Government Policy dated 3.5.1990 ignoring other evidence produced by the land owners was clearly erroneous, inasmuch as by that policy the Government had fixed *'minimum price for agricultural land'*. His

submission is that once there was sufficient evidence in other forms indicating higher market value than the one prescribed in the said Government Policy, the courts should give due weightage to the said evidence as well, which was not done by the learned ADJ. He referred to the aforesaid four documents. First two documents, namely Ex.PW-8/A and Ex.PW-1/A were produced even at the earlier stage before the remand of the cases by the High Court. Other two documents were produced in the form of additional evidence after the remand.

10. He submitted that as per Ex.PW-8/A it was clear that the rates of land in West Delhi, even for allotment of alternative land in respect of those whose land had been acquired, was fixed at Rs.730/- per sq.mt. His argument was that though it was developed land and, therefore, development charges could be deducted therefrom, as per the Supreme Court judgment in the case of ***Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P.*** v. ***Nookala Rajamallu & Ors.***, 2003 (12) SCC 334, the maximum deduction which could be made was 53% and even if that is done, the market value of the subject land would come to Rs.340/- per sq.mt. As against this, the land owners were granted compensation of Rs.109/- per sq.yd. only.

11. He further submitted that Ex.PW-1/A was the document as per which land was allotted by the DDA to another Government body in the same area whereby the land was allotted at Rs.20 lacs per acre in the

year 1992 whereas the compensation granted to the land owners by the learned ADJ worked out to Rs.4.65 lacs per acre. Though the notification in the instant case was dated 6.6.1991 and even if some deductions were to be made therefrom, the market value would be much higher. He further submitted that sufficient evidence was produced to show that the aforesaid land allotted to DWSSDU was under developed land. In this behalf, he referred to the evidence of PW-1, namely, Tehsildar, who had deposed that at the time of handing over the land to DWSSDU, it was undeveloped land. He also referred to the testimony of PW-6 Shri Raj Pal Singh, Sector Officer of Horticulture Division of the DDA, who had brought the record relating to the expenditure incurred by the DDA for development of the aforesaid land given to the DWSSDU as per which total expenditure incurred was about Rs.19 lacs. Pointing out to the statement of PW-7 Shri Prem Chand, Patwari (Land Management) in DDA, Mr. Khosla submitted that even as per this witness no amount was spent on the development of the said land. On this basis, his submission was that Ex. PW-1/A could be considered as basis for fixing the market value of the land in question.

12. In respect of third document relied upon by the learned counsel for the land owners, namely, Ex.PW-2/1, it was argued that schedule of rates fixed by the L&DO in the year 1992 for West Zone was Rs.39 lacs, which was much higher than the market value fixed by the learned ADJ. He also argued that the subject land acquired by the Government had high future potential value keeping in view that the

surrounding area had already been developed by the DDA and it was also a relevant factor, as held by the Supreme Court in the case of *Smt. Tribeni Devi and Ors.* v. *The Collector,* AIR 1972 SC 1417.

13. He also submitted that upward trend in the land rates was clearly proved from Ex.PW-2/2 to 2/4, which could not be ignored by the learned ADJ. On the aforesaid basis, the argument of learned counsel appearing for the land owners was that the rate demanded by the land owners was valid and justified.

14. Mr. Sanjay Poddar countered the aforesaid submission of Mr. Khosla by putting his defence with all vehemence. He relied upon certain sale deeds produced by the respondents which are Ex. R-2/1 to R-2/7. All these sale deeds are dated 15.6.1990 and relate to the land in the same village. The area of land covered by each sale deed is 2 bigha and the total sale consideration was Rs.1,94,000/- for 2 bigha. Same is the position in respect of all other sale deeds. On this basis, he submitted that the market value of the agricultural land, as is manifest from the sale deeds which are of the same period when Section 4 notification was issued, would be Rs.97,000/- per bigha. His submission was that when the documentary evidence in the form of sale deed of the same village, same period and same land, i.e. agricultural land was available, it was not necessary and/or proper to look into any other evidence, much less the documents relating to neighbouring villages. He referred to the judgment of the Supreme Court in the case of *Shakuntalabai (Smt) & Ors.* v. *State of*

Maharashtra, (1996) 2 SCC 152 in this behalf. He further submitted that in any case the land owners could not rely upon the documents produced by them as they all relate to developed lands, whereas the land acquired was undeveloped. He submitted that no evidence was led as to how much amount was spent fixing the value by the DDA and L&DO etc.

15. In respect of Ex.PW/2/1 to 2/4, further submission was that L&DO has fixed the rates, that too of developed land, for the purpose of calculating unearned increase which could not be the basis for fixing the market value. He also argued that no evidence was produced to suggest that the acquired land had better potentiality. No evidence was led to show the comparison of the acquired land with the lands in respect of which Ex.PW-8/A, PW-1/A and PW-2/1 to 2/4 were issued by the DDA/L&DO. No evidence was also led on the advantages as well as disadvantages, location or potentiality. These documents, therefore, could not be considered, as held by this Court *Raj Devi & Ors.* v. *Union of India,* (145) 2007 DLT 438 {LA.A. No. 417-420/2006 & batch decided on 31.7.2007}. He further submitted that evidence of PWs. 5, 6 & 7 was not correctly read by learned counsel for the land owners. He, thus, contended that the market value should be fixed on the basis of sale deeds, namely Ex.R-2/1 to 2/7, as held by this Court in *Omwati* v. *Union of India & Anr.,* 2006 (90) DRJ 324 {LA.A No. 94/2006 & batch decided on 27.4.2006}, as per which the value would be less than what is awarded by the reference court.

16. His further submission was that the approach of the learned ADJ in giving 12% p.a. increase on the rates fixed by the Government vide letter dated 3.5.1990 was not correct as there was no principle of law that for the purpose of calculating the value as on the date of notification issued under Section 4 of the Act it was necessary in all the cases to give enhancement @ 12% p.a., as held by the Supreme Court in ***Mehtab Singh & Ors. etc. etc.*** v. ***State of Haryana,*** AIR 1995 SC 667. His further submission was that in any case in ***Omwati*** (supra) the increase was given @ 11.5% and not 12%. On this premise, he pleaded for reduction in the compensation awarded to the land owners.

17. In rejoinder, apart from other arguments advanced by Mr. Khosla, his main plea was that the sale deeds produced by the respondent also could not be considered as they relate to small parcel of land, namely, 2 bigha, which was precisely the reason for this Court to discard the sale deeds produced by the land owners in its order dated 24.5.2005.

18. We have considered the aforesaid submissions of learned counsel for the parties with reference to the record of these cases and the evidence produced. We may first discuss the documents on which reliance is placed by the learned counsel appearing for the land owners.

19. It is not in dispute that none of these documents relate to the land in village Kakrola. It is also not in dispute that all these documents

relate to fully developed area. In fact, except Ex.PW-1/A, which relates to allotment of land by the DDA to DWSSDU, with which we shall deal with separately, other documents concern the area which is constructed area and the development was undertaken long ago. Mr. Poddar is also right in his submission that none of the witnesses have been examined to compare the advantages, potentiality, situation of the land in question vis-à-vis these documents. In ***Jasrath*** v. ***Union of India*** and ***Union of India*** v. ***Ranbir Singh & Ors.,*** (130) 2006 DLT 700, this Court had refused to act upon such documents, which is manifest from the following observations contained therein:-

> "40. Having heard the learned Counsel appearing for the parties at some length on this aspect of the matter, we have no hesitation in coming to the conclusion that the brochure Ex.X cannot be treated as a determinative factor for determining the fair market value of the acquired land at the relevant time but it certainly is a relevant piece of evidence, which the court would have to examine particularly in relation to potential, location and other aspects. It would also be a relevant piece of evidence to show what kind of prices were prevailing in the adjacent areas which were fully developed and that the land in question had been acquired for completing the larger residential scheme of Rohini by providing essential amenities i.e. sewage system, drainage and water treatment plant. Thus, Ex.X cannot be excluded from the zone of consideration for ultimately deciding this issue. As far as the respondents are concerned they can hardly deny the said document and all that has been argued on behalf of the respondent is that it is a price of a developed area and thus is not comparable as it includes various elements of costing. Both these submissions are factually correct but as already noticed this document is a desirable indicator in relation to various factors essentially to be considered by the court in terms of the above judgment. therefore, Ex.X has to be looked into and treated as a relevant piece of evidence but certainly not a determinative evidence for fixing the market value of the land in question and particularly when other direct evidence by way of sale instances and judicial pronouncements in relation to the acquired land itself are available on record.
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> 44. The claimants also claim that the smaller plots in the same vicinity can be made the basis for fixation of rate for larger

area acquired and there is no prohibition in law. The Court is required to fix reasonable and fair market value in terms of Section 23 of the Act and for this purpose they have placed reliance on the judgment of the Supreme Court in the case of Ravinder Narain and Anr. v. Union of India (2003) 4 SCC 481.

45. The potential of the land as on the date of acquisition is a relevant factor and in some cases could form major basis for considering the claim of the claimants. The development charges would be deducted only for compensation being granted for a developed land and the Court has to take into consideration the future potential on account of its location. In this regard, reliance has been placed upon the judgment of the Supreme Court in the case of Hasanali Walimchand (dead) by Lrs. v. State of Maharashtra (1998) 2 SCC 388 where the Court held as under:-

> 6. The High Court has noticed in the impugned judgment and order that the "location" of the land indicates that it has building potential but fell into an error in ignoring that factor by observing :
>
> There is no record of any income being received by any of the landowners. These lands must, therefore, be valued as agricultural land with no potentiality whatsoever in the foreseeable future
>
> 7. We are unable to find any justification for such observation and finding. The above finding of the High Court is contradictory to the earlier finding based on the location of the land. It is no doubt correct that the reference court was influenced by sale transactions in respect of developed land and it failed to make any deduction for development of land while enhancing the compensation, but the High Court fell into error in ignoring the future potential of the land in question and instead resting its finding as realized potential only. The evidence on the record clearly establishes that the acquired land did have future potential on account of its location. It is not denied that the area around the city of Ahmednagar is fast developing and the land in question was located only at a short distance of about one and a half miles from Ahmednagar town.

48. We have discussed in great detail that Exh. X and Exh.X-1 even read in conjunction with Resolution dated 24th December, 1980 are relevant factors for determining the potential, location and as a guiding factor to the value of the surrounding land to the acquired land. This by itself cannot be treated to be a determinative factor for awarding compensation to the claimants. In fact for varied reasons, we would decline to fix compensation on the basis of this brochure. Firstly, the claimants have failed to lead any supporting evidence in that behalf. No witness has come and

stated that the acquired land is identically situated and has the same facilities like the land covered under Exh.X. Further there is no direct evidence of comparable lands and/or the land having identical potential to the land covered under the scheme. Onus of this kind was certainly upon the claimants and they have failed to discharge their onus in this regard. Secondly, the valuation fixed by this Court on the basis of Exh.X in its earlier judgment dated 4th September, 2001 has already been set aside by the Supreme Court with specific observation that the High Court had fallen in error in fixing the market value of the land on the basis of Exh.X. Thirdly, in various cases the Supreme Court has already stated the law that compensation of an undeveloped land cannot be decided on the sole basis of the rates relatable to the developed land, particularly when other evidence is available on record."

20. Moreover, insofar as schedule of rates fixed by the L&DO is concerned, not only that is in respect of fully developed residential, commercial and industrial plots, the purpose for fixing those rates is to arrive at unearned increase. In ***Karan Singh & Ors.*** v. ***Union of India,*** 55 (1994) DLT 511, this Court had not accepted identical evidence for fixing the market value holding that it was not a relevant piece of evidence for this purpose. Following observations in this behalf would be apposite :-

"17. We are not satisfied that production of copy of schedule of rates only fixed by the Ministry of Works and Housing (Land Division) will be relevant piece of evidence for determining the market value and ultimately assessing the amount of compensation under the Act when there are well known principles for determining the amount of compensation. The well known principles are *aksi bituced* in ***Koyappathodi*** v. ***State of Kerala*** (AIR 1911 SC 2027) as follows:

"It is settled law that the methods of valuation to be adopted in ascertaining the market value of the land as on the date of the notification are (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transaction of the purchase or sale of the lands acquired or the lands adjacent to the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the

> Court from taking any other special circumstances obtained in an appropriate case into consideration. As the object being always as near as possible in an estimate of the market value in arriving at a reasonable correct market value, it may be necessary to take even two or all those matters into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined."

21. The aforesaid judgment has been affirmed by the Supreme Court in ***Karan Singh & Ors. etc.*** v. ***Union of India,*** (1997) 8 SCC 186. We may also note that in the case of ***U.P. Jal Nigam, Lucknow through its Chairman & Anr.*** v. ***M/s. Kalra Properties (P) Ltd., Lucknow & Ors.,*** AIR 1996 SC 1170, the Supreme Court did not find favour with the argument that the market value of the land be fixed on the basis of circle rate fixed by the Collector for the purpose of levy of stamp duty. Similar view is taken by the Apex Court in ***Ranvir Singh & Anr.*** v. ***Union of India,*** (2005) 12 SCC 59.

22. This leaves us with one document, strongly relied upon by the land owners, namely, Ex.PW-1/A, as per which the land is allotted to DWSSDU in the year 1992 at Rs.20 lacs per acre. However, the distinguishing feature is that the land covered by the transaction was of another village, namely, Najafgarh. It is also not in dispute, and in fact accepted by the appellants' own witness, that this village was urbanized prior to 1974. On the contrary, the land of the land owners which is acquired and falls in village Kakrola was never urbanized under the provisions of Section 507 of the Delhi Municipal Corporation Act. The land owners have also not led any evidence

which would evince that both the lands are comparable. As already mentioned above, the price of developed land cannot be compared with the under developed land. No doubt, the land owners have produced three witnesses, namely PW Nos. 5 to 7, on the basis of which it was sought to be argued that there was hardly any expenditure incurred by the DDA on the development of this land. However, whereas PW-5, Deputy Director, New Lease Branch, DDA has mentioned that the land in question was a pond which was transferred to Horticulture Department of the DDA and Horticulture Department had put fencing of that land and also planted plants thereon. He has also stated that some amount was spent by the Horticulture Department for completion of those works but he was not aware of the actual expenditure. PW-6, Section Officer from Horticulture Division, on the other hand, produced PW-1/A collectively as well as Annexures PW-1/1 to 1/6 showing the expenditure incurred. These details would indicate that a sum of Rs.9,06,806/- was incurred on labour. The annexure would indicate that this expenditure comprises of the wages paid to beldar for work of Mali and watch & ward. Other annexure indicating expenditure of Rs.1,74,058/- reflects that that amount was spent on fencing, installation of hand pump, pump set and supply of plants. Another sheet, which demonstrates total expenditure of Rs.8,30,097/- towards supply of good earth, manure, sinking of tube well, fencing, sprinklers and the like. However, these expenses cannot be indicative of the total amount spent as for getting the aforesaid work

done permanent staff of the Horticulture Branch is also required. How much amount out of the salaries paid to them is to be charged to this project cannot be ascertained nor any evidence to that effect is led. There would be other infrastructural and overhead expenditure. Therefore, much credence cannot be given to the aforesaid amount spent.

23. Also for the reasons we have indicated about the other documents, it would not be safe to rely upon Ex. PW-1/A to arrive at the market value of the land at the relevant period.

24. Therefore, in view of the aforesaid discussion, we are of the opinion that the aforesaid documents cannot form the basis for fixing the market value of the land. At the same time, these would be relevant pieces of evidence from the point of view of potential, location and effect of prevalent price of developed land surrounding the acquired land. In this behalf, we may quote again from the Division Bench judgment of this Court in the case of ***Jasrath*** (supra) :-

> "49. Besides the fact that Exh. X cannot be taken to be a determinative evidence for fixing the market value of the land but it is certainly a relevant piece of evidence which the Court would have to look into while determining the controversy between the parties from the point of view of potential, location and effect of prevalent price of developed land surrounding the acquired land. With these observations, we would reject the plea of the claimants that compensation should be determined exclusively on the basis of Exh. X."

25. Normally, the sale instances of the acquired land are best piece of evidence and if such evidence is available, that can be relied upon for the purpose of fixation of the market value. As pointed out above,

Mr. Poddar, learned counsel for the respondents, relied upon certain sale deeds (Ex.R-2/1 to 2/7). At the same time, it is also not possible to rely upon sale deeds produced by the respondents in the form of Ex. R-2/1 to 2/7. These may be 7 sale deeds in respect of 2 bighas each, but they are of the same date, which means that these are the sale deeds of a very small area. When on an earlier occasion the market value of the land was fixed on the basis of two sale deeds produced by the land owners, this Court vide its order dated 24.5.2005 discarded the same on the ground that they were related to a small area, which is clear from the following observations therein :-

> "10. The aforesaid clearly shows that in so far as Exhibit PW-4/1 is concerned, the same has been executed for a peculiar requirement of the purchaser, who did not have sweet water for that purpose purchased a small piece of land for irrigation of the land located nearby. This can hardly be taken as basis for determination of the land value in view of the peculiar facts in which the Sale Deed was executed.
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> 11. In so far as Exhibit PW-1/1 is concerned, the peculiar facts have been set out. The land is measuring only one bigha and in the circumstances set out in respect of which that document has been executed, we are of the considered view that it is not possible to determine the market value of a large track of land measuring more than 8723 bighas on the basis only of that document."

Once we reject the sale deeds produced by the land owners, on the parity of reasoning it is difficult to accept the sale deeds produced by the respondents, which also relate to small piece(s) of land.

26. Where does the aforesaid discussion leads to? Obviously, neither the evidence relied upon by the land owners nor the sale deeds relied

upon by the UOI can be the foundation for measuring the market value. At least they cannot be taken to be determinative evidence for fixing the market value. However, their other relevancy in terms of ***Jasrath*** (supra) shall be taken into consideration appropriately.

27. This leads our discussion to the policy letter dated 3.5.1990 of the Government of India fixing minimum price of agricultural land. The learned ADJ for this purpose referred to the judgment of this Court in the case of ***Omwati*** (supra) wherein the Supreme Court had made the following observations *qua* such policy decisions fixing minimum value of the land :-

> "15. Such policy decisions of the government cannot be treated as a substantive piece of evidence. They are documents prepared by the Government after due verification and surveys, but the documents itself does not refer to any distinct piece of evidence which was considered by the government for determining the minimum price payable for acquisition of agricultural land. At the same time, this policy decision of the Government cannot be treated to be either entirely inadmissible or irrelevant for the purpose of determining the controversy in issue. This reflects the conscious decision of the appropriate government not to allow registration of the sale deeds, wherein the agricultural lands anywhere in Delhi are proposed to be sold below the specified rate i.e. Rs.4.65 lacs per acre (i.e. Rs.1,11,778.84 per bigha). This value was fixed in the year 1990. We do not intend to say that the government is bound by this price and the petitioners must get this price, but with such variations that are permissible in law, this would be some kind of a guideline for the court to arrive at just and fair market value of the land at the relevant time."

28. It is, thus, clear that such policy decisions of the Government cannot be treated as substantive piece of evidence. No doubt, in the absence of any other cogent evidence produced, which would indicate the market value of the land in question, the Court can rely upon such policy decision. We also should not be unmindful of the

fact that the rate fixed in the aforesaid policy decision is the *'minimum price'* of the agricultural land. Therefore, it would only provide some kind of a guideline for the court to arrive at just and fair market value of the land at the relevant time. When other evidence is produced, though cannot be made the basis of fixing market value, that at least would indicate that the market value of the land was higher than the aforesaid minimum price fixed by the Government. Therefore, some latitude towards that has to be given in arriving at fair market value.

29. Though we have already noted above that documents relied upon by the land owners cannot be considered as determinative evidence for fixing the market value of the land, but their relevancy is still to be kept in mind from the point of view of potential, location and effect of prevalent prices of the developed land surrounding the acquired land and this much peep into these documents is permissible. When we look into the documents from this angle, it becomes clear that the land price, even of agricultural land or in the said vicinity, was more than the minimum price fixed by the Government in its policy dated 3.5.1990.

30. We are, therefore, of the opinion that the land owners would be entitled to the compensation at rates marginally higher than the rates fixed by the Government vide policy dated 3.5.1990 and it would be safe to add 10% more value than the one fixed by the Government indicating the minimum price.

31. It would be of interest to note that if we apply another yardstick and look into the matter from another angle, we may arrive at the same result. As noted above, the respondents have heavily relied upon sale deeds which are of 2 bighas each. As per these sale deeds, the sale consideration for 2 bighas was Rs.1,94,000/-. However, Rs.15,520/- was spent on the stamp duty, etc. as well, which has to be added to the sale price. After adding that amount, the price of 2 bigha would be Rs.2,09,520/-. On this basis, value of one bigha would be Rs.1,04,760/-. If we take the sale deeds into consideration, which are of 2 bighas each, the sale deeds produced by the land owners will also have to be taken into consideration. As per the sale deed dated 4.1.1989, for one bigha the sale price was Rs.1,60,000/-. When we take average of the two sale deeds, one produced by the land owners and the other by the respondents, the amount would work out to little more than Rs.1,20,000/-. We may clarify that these sale deeds are not made the basis of awarding the compensation as they are discarded on the ground that they relate to small area of land. The only purpose was to point out that the market value fixed by us at Rs.1,20,500/- would be reasonable.

32. The only question that remains to be considered is as to whether the trial court was right in giving appreciation thereupon @ 12% p.a. for a period of 13 months, inasmuch as, the policy letter is dated 3.5.1990 whereas Section 4 notification is of 6.6.1991. Mr. Poddar argued that in the case of ***Mehtab Singh*** (supra), the Supreme Court had indicated that it was not necessary in all the cases to give

enhancement @ 12% p.a. However, Mr. Khosla, learned counsel for the land owners, rightly pointed out that the comments of the Supreme Court in that case were in respect of the land in Haryana. Position in Delhi is totally different. It has been established on record, judicial notice whereof is taken in various judgments, that there is a consistent upward trend in the market rates of lands in Delhi. It is for this reason that in number of judgments, this Court has accepted the formula of increase of rates @ 12% p.a. We may again refer to the earlier orders dated 24.5.2005 passed in these appeals while remanding the case back to the learned ADJ. The aforesaid Government policy was taken note of by the Division Bench and following pertinent observations were made in respect thereof :-

> "7. The aforesaid referred to Government policy has been considered by this Court in Tej Ram v. Union of India & Anr., 111 (2004) DLT 465 for fixation of the land value. It may, however, be noticed at this stage that in the present case, the acquisition is about a year later of fixation of the land price, which would require appropriate enhancement."

33. Thus, the court had opined even at that stage that appropriate enhancement will be required. This is precisely the course of action adopted by the learned ADJ. We are, therefore, of the opinion that the land owners would be entitled to appreciation of 13 months @ 12% p.a. and the learned ADJ rightly determined the market value on that basis.

34. On this reckoning, we are of the opinion that the market price of the land in question as on 3.5.1990 should be Rs.96,875 + Rs.9,685. In

this manner, as on 3.5.1990, the market value would be Rs.1,06,560/-. We are of the opinion that the learned ADJ rightly held that appreciation of 13 months @ 12% is to be given. By applying this formula, market value of the land as on the date of notification under Section 4 of the Act would be Rs.1,20,500/- per bigha.

35. In these circumstances, the appeals of the land owners are partly allowed by enhancing the compensation from Rs.1,09,500/- to Rs.1,20,500/-. These appeals are allowed in the aforesaid manner with proportionate costs. The appellants shall also be entitled to all other statutory benefits, as awarded by the learned ADJ. All the pending applications also stand disposed of. As a consequence, the appeals preferred by the UOI are also dismissed.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

October 23, 2008
nsk