

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LA.APP. 149/2007**

Reserved on : 26.11.2010

Pronounced on: 24.12.2010

IN THE MATTER OF :

MAJOR GENERAL KAPIL MEHRA AND ORS. Appellants
Through: Appellant No.1 in person.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Sanjay Poddar, Advocate with
Mr. Ramesh Ray, Advocate for respondent
No.1/Union of India.
Mr. Ashwani Kumar, Advocate with Mr. R.K.
Sharma, Advocate for respondent No.2/DDA.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J.

1. The appellants are aggrieved by the judgment dated 24.02.2007 passed by the learned Additional District Judge, on a reference petition under Section 18 of the Land Acquisition Act, 1894, holding *inter alia* that they were not entitled to any enhancement in compensation, as fixed by the LAC, of the acquired land bearing Khasra No.1300/1 min. (697) measuring 12 bighas situated in the revenue estate of village Mehrauli, New Delhi and further, that they were not entitled to compensation for wells and trees; or

to an additional amount under Section 23(1)(A) from 25.03.1983 till 18.09.1998 or to interest under Section 34 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act**'). However, as per the supplementary award, the appellants were held entitled to interest under Section 17(3)(A) of the Act for the period from 19.02.1997 till the date of payment and to compensation for trees, if any.

2. As the instant case has a chequered history, the relevant facts need to be narrated before dealing with the respective submissions made by the parties. The appellants were the owners of a parcel of land measuring 12 bighas (i.e. 12096 sq. yards) situated in Khasra No.1300/1 min.(old) 697(new) in Vasant Kunj, Mehrauli, New Delhi (hereinafter referred to as "the said land"). On 13.11.1959, the said land was notified for acquisition, along with the surrounding land under the Act. On 7.12.1966, a declaration was issued under Section 6 of the Act. On 25.03.1983, the aforesaid land was acquired under Award bearing No.83/82-83 and the LAC took possession thereof and handed over the same to the DDA. The appellants challenged the said acquisition proceedings and the award, by filing a writ petition before the High Court, registered as Civil Writ Petition No.1134/1992. The said writ petition was allowed by a Division Bench of this Court vide judgment dated 30.01.1996 and the acquisition proceedings in respect of the said land were quashed. The respondents were directed to restore possession of the land to the appellants within 90 days with further directions that if, for any reason, it was not possible to restore the possession, then the appellants would be entitled to alternate land of equal area.

3. The respondent/DDA challenged the aforesaid decision of the Division Bench dated 30.01.1996 by preferring a Special Leave Petition in the Supreme Court in November 1996. The said Special Leave Petition was dismissed by the Supreme Court vide order dated 18.11.1996 and as a result, the decision of the Division Bench attained finality. However, as the respondent/DDA did not return the land to the appellants, the latter initiated contempt proceedings by filing CCP No.461/1996 in this Court on 16.12.1996, wherein the Commissioner (Land Management), DDA and the Vice Chairman, DDA were impleaded as respondents. On 19.02.1997, a fresh notification was issued by the Land and Building Department, Govt. of NCT of Delhi under Sections 4 and 17 of the Act, proposing to acquire the land of the appellants for the development of Vasant Kunj under the planned development of Delhi.

4. Simultaneously, on 26.2.1997, the Director (Land Management), DDA filed an affidavit in the contempt proceedings stating *inter alia* that the land in question was utilized in respect of a Housing Scheme known as Vasant Kunj Residential Scheme, but in view of the interim order passed by the Division Bench in Civil Writ Petition No.1134/1992, the land was maintained as a green area. It was further stated that in the composite plan, in respect of Vasant Kunj Residential Scheme, the land in question was earmarked for a police station and a higher secondary school and that it was not feasible for the DDA to return possession of the land to the appellants as the same was part of a huge Residential Scheme and further, that no alternate plot in a similarly situated area was available for allotment to the appellants. It was lastly submitted that the appellants would be paid market value of the land as obtaining on 19.02.1997, together with such other

amount as provided for under the Act. This was the triggering point for the second round of litigation in respect of the subject land.

5. Award No.2/98-99 dated 18.09.1998 came to be announced by the Land Acquisition Collector (LAC) in respect of the said land, whereunder the market value of the land was assessed according to the date of notification under Section 4 of the Act, i.e., 19.02.1997. As against the claim of the appellants for compensation @ ₹25,000/- per sq. yard, apart from solatium and interest, treating the land as agricultural land, the LAC applied the indicative price for agricultural land acquired by the Government as ₹10 lacs per acre to the appellants' lands, discounted @ 11.5% per annum compounded rate of interest and awarded compensation @ ₹2,05,642.07 paise per bigha (i.e., ₹205/- per sq. yards). For taking such a decision, the LAC took guidance from a notification issued by the Land and Building Department dated 25.07.1997, which provided that w.e.f. 01.04.1997, the indicative price of agricultural land acquired by the Government would apply to the land notified under Section 4 of the Act before 01.04.1997. He also observed that the appellants had not given any documentary evidence in support of their claim. In addition to the above, the LAC held that the appellants were entitled to 30% solatium and other benefits under the Act. The claim for compensation for the well and the structure was, however, turned down by the LAC and compensation in respect of trees on the land was directed to be paid later, by way of a supplementary award. The appellants were held entitled to additional interest @ 12% per annum on the market value of the land, i.e., ₹26,400/- per bigha and to solatium @ 30% on the market value of the land as per Section 23(2b) of the Act. In conclusion, the appellants were held entitled

to a total sum of ₹37,12,180.05 paise under the Award.

6. Aggrieved by the aforesaid Award, the appellants filed a reference petition under Section 18 of the Act before the Additional District Judge on 07.10.1998, which came to be decided by the impugned judgment dated 24.02.2007. On the basis of the pleadings of the parties, the learned ADJ framed the following seven issues on 2.11.1999 :-

1. What was the market value of the land, trees, in dispute at the time of Section 4 Notification date?
2. To what enhancement in compensation, the petitioners are entitled?
3. Whether there existed any well on the land in dispute, if so what was its market value?
4. Whether Collector has not complied with the provisions of Section 17(3)(A) of the Land Acquisition Act, if so whether the petitioners are entitled to interest from 19.02.1997 to date of payment?
5. Whether the petitioners are entitled to 12% additional amount u/S 23 (1)(A) of I.A. Act from 25.3.83 to 18.9.98 ?
6. At what rate and on what amount the petitioners are entitled to interest u/S 34 of the I.A. Act?
7. Relief.

7. In support of their case, the appellants filed certified copies of the proceedings of WP(C)No.1134/1992 and the contempt petition, bearing CCP No.461/1996 and the orders passed thereon by the High Court, as mentioned above. They also filed certified copies of four perpetual lease deeds of residential plots in Vasant Kunj executed during the period, September 1995 to December 1996, between DDA and private parties, tabulated as below :

Exh.	Sale Date	Plot No.	Size (sq.mtr)	Sale (₹)	Price	Rate (₹/sq.yd)
A-7	22.09.95	59C	218.5	75,05,000		28,719
A-8	02.02.96	5C	220.0	96,55,000		36,695
A-9	02.02.96	8C	231.0	1,01,61,000		36,779
A-10	10.12.96	13C	242.0	1,37,60,000		47,542

8. On the other hand, the respondent/Union of India placed on record, true copies of Khasra Girdawaries of the subject land, for the years 1977-78 to 1980-81, 1986-87 to 1989-90, 1990-94 and 1994-98 (Ex.R-1 to R-4) and a copy of the letter dated 28.07.1997, issued by the Land and Building Department, Govt. of NCT of Delhi, fixing indicative price of agricultural land situated in river bed between the forward bunds (Ex.R-5). The sole witness examined by the respondent was Shri S.C. Chandana, Executive Engineer, SWD-IV, DDA(RW-1), who produced records pertaining to cost of development of residential plots in Sector C, Pocket 5, Vasant Kunj, New Delhi, including a layout plan indicating the plots of land mentioned in para 7 above, (Ex.DR-1/A).

9. After hearing both sides, the learned ADJ concluded that the rates of the specific pieces of land sold through public auction could not form the basis for determining the fair market value of the subject land and that while determining the prospective use of the land, its future potential and development could not be the only basis to determine the market value of the acquired land. Thus, while holding that auction of a developed plot by a public authority was not a proper guide for determining the fair market value of the acquired land, the lease deeds produced by the appellants were discarded. The learned ADJ then referred to a decision of the High Court in

a case entitled Nand Kishore vs. UOI reported as **73(1998) DLT 108**, where the issue of enhancement in compensation of the land situated in village Mehrauli was decided. In the aforesaid case, the land in question was acquired vide notification dated 21.11.1978 issued under Section 4 of the Act and the High Court fixed the market value of the expropriated land @ ₹30,000/- per bigha. In another case, LAC No.484/1993, entitled V.K. Goel vs. UOI & Anr., the learned ADJ assessed the market value of the land situated in village Mehrauli, acquired vide notification under Section 4 of the Act dated 11.4.1988, at ₹44,014/-. Taking into consideration the indicative price for agricultural land w.e.f. 01.04.1997, as taken note of by the LAC in the Award, the learned ADJ observed that if escalation in price of the land on the amount of ₹30,000/- per bigha is calculated @ 12% p.a. from 21.11.1978 (the date of notification under Section 4 of the Act in the case of Nand Kishore (supra)) to 19.2.1997 (the date of notification under Section 4 of the Act in the present case), it would have come to ₹1,02,000/- (approximate) and if 12% p.a. is calculated on the amount of ₹44,014/- from 11.4.1988 (the date of Section 4 notification in the case of LAC No.484/1993) to 19.12.1997, it would have been ₹46,771/-. He, therefore, opined that the market value of the acquired land, based on the calculations in the aforesaid two cases, on 19.2.1997 would have been ₹90,785/- per bigha, but having regard to the fact that the LAC had already awarded ₹2,05,642.07 paise per bigha for the acquired land as on 19.02.1997, which was much higher than the compensation calculated by him at ₹90,785/- per bigha, the claim of the appellants for enhancement in compensation was turned down. Aggrieved by the aforesaid decision, the appellants have preferred the present appeal.

10. In the present appeal, the appellants have claimed market value of the land @ ₹1,04,702/- per sq. yard; solatium @ 30% on the market value; additional amount @ 12% on the market value for the period with effect from the date of issuance of Section 4 Notification, i.e., from 19.02.1997 till the date of Award, i.e., till 18.09.1998; interest @ 9% under Section 34 of the Act with effect from 19.02.1997, the date of issuance of Section 4 Notification to 18.02.1998, i.e., one year from the date of issuance of Section 4 Notification, and @ 15% from 19.02.1998 onwards till the date of payment. Interest on the excess amount under Section 28 of the Act has been claimed @ 9% from 19.02.1997 to 18.02.1998 and @ 15% from 19.02.1998 onwards till the date of payment. Appellants have also claimed damages on the market value of the plot @ 7% p.a. from 25.3.1983 to 24.3.1984 and @ 13% p.a. from 25.3.1984 to 19.2.1997, along with interest on damages @ 6% p.a. from 19.2.1997 till the date of payment.

11. It may be mentioned at the outset that part of issue No.1, pertaining to the market value of the trees, and issue No.3, pertaining to existence of any well on the land, have not been pressed by the appellants, and hence, findings returned in that regard by the learned ADJ need not detain this Court. Similarly, arguments were not addressed by the appellants on the findings returned under issue No.4, pertaining to entitlement of interest from 19.02.1997, under Section 17(3)(A) of the Act and hence, the findings returned by the learned ADJ in that regard need no discussion. Apart from the findings returned in the impugned judgment with regard to the market value of the land at the time of issuance of Section 4 notification, the appellants have challenged the findings returned with respect to issues No.5 & 6. Issue No.5 was framed with regard to

entitlement of the appellants, if any, to 12% additional amount under Section 23(1)(A) of the Act from 25.03.1983 to 18.09.1998 and was decided against them by holding that they were not entitled to the amount from the date of dispossession till the date of issuance of the second notification under Section 4 of the Act, i.e., from 25.03.1983 to 19.02.1997. The appellants have stated that in view of the judgment of the Supreme Court in the case of R.L. Jain vs. DDA & Ors., **AIR 2004 SC 1904**, which held that where possession is taken before issuance of notification under Section 4 of the Act, interest cannot be awarded for period anterior to publication of notification under Section 4 of the Act, however the appellants would be entitled to seek an additional amount under Section 23(1)(A) of the Act w.e.f. 19.2.1997 to 18.9.1998, and damages for the period w.e.f. 25.3.1983 to 18.2.1997, damages for use of the land @ 7% for the first year and thereafter, @ 13 % on the market value of the plot along with interest on damages @ 6 % p.a. from the date of Section 4 notification till date of payment. Issue No.6 was framed with regard to the rate of interest and the amount, if any, to which the appellants were entitled under Section 34 of the Act, which was also decided against them.

12. Appellant No.1, who appeared in person, and addressed arguments on behalf of all the appellants, raised the following grounds to assail the impugned judgment :

- (i) The said land should have been returned to the appellants in compliance with the judgment of the High Court dated 30.01.1996.
- (ii) The said land was wrongly graded as agricultural land and hence, compensation was not assessed on the basis of its true

market value.

- (iii) The evidence tendered by the respondents in support of the prevailing market value of the land was irrelevant, as it referred to sale of agricultural lands, whereas the plot of land in question, situated in village Mehrauli, in which the residential colony Vasant Kunj has developed, was urban and residential in nature.
- (iv) The plot in question was fully developed and residential in nature and had all the civic amenities provided by MCD at the time of issuance of notification under Section 4 of the Act in February, 1997 and hence it was required to be assessed for compensation at urban rates and not at rural rates.
- (v) Certified copies of the four perpetual lease deeds (Ex.A-7 to Ex.A-10), placed on the record by the appellants to prove the prevailing market value of the land in Vasant Kunj at the time of issuance of the notification under Section 4 of the Act, were completely overlooked.
- (vi) No amount whatsoever has been granted to the appellants towards damages on the market value of the subject plot, w.e.f. 25.3.1983, the date when the first notification under Section 4 of the Act was issued, till 19.2.1997, the date of issuance of the second notification, in terms of the judgment of the Supreme Court in the case of R.L. Jain vs. DDA (**AIR 2004 SC 1904**).

13. The appellant No.1 stated that for determination of the market value of the acquired plot of land, they had filed copies of four perpetual lease deeds which were executed during the period, September 1995 to

December 1996, well near about the time when the Section 4 Notification dated 19.2.1997 was issued. To urge that the said lease deeds ought to have formed the basis for ascertaining the true market value of the land on the date of the notification, he referred to the decisions in the cases of Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. and Ors, (1994) 4 SCC 595 and U.P. Jal Nigam, Lucknow (Through its Chairman) & Anr. vs. Kalra Properties (P) Ltd., Lucknow, (1996) 3 SCC 124 (Para 5). He stated that a perusal of the aforesaid lease deeds reflects a consistent escalation in the price of land in Vasant Kunj, at a flat rate of 52% per annum, and considering the fact that they satisfied all the seven parameters laid down by the Supreme Court for assessing market value of acquired land, which include proximity of location, proximity of time, possession of similar advantages, *bona fide* transaction, etc., the learned ADJ was wrong to overlook these factors while arriving at the fair market value of the acquired land. To support his submissions, reference was made to the following judgments :

- i. Shri Rani M. Vijayalakshamma Rao Bahadur vs. Collector of Madras, (1961) 1 MLJ SC 45 (para 2)
- ii. The State of Punjab vs. Inder Singh, 1969 (LXXI) PLR 1034 (para 6)
- iii. Jogendra Nath Chatterjee & Ors. vs. State of West Bengal, AIR 1971 Calcutta 458 (V 58 C 103) (Head Note 'C') (para20)
- iv. Land Acquisition Collector, Punjab State Electricity Board, Patiala vs. Aditya Kumar & Ors., 1984 (LXXXVI) PLR 540 (para 1)

- v. Rameshwar Solanki vs. UOI, **AIR 1995 Delhi 358** (both on proximity of location/exact market value of the land)

14. The appellants stated that as compared to their land which was freehold in nature and would have fetched a far better price in the open market, the terms and conditions laid down in the perpetual lease deeds are far more stringent in nature and have a restricting effect on their market price. Reliance was placed on a decision of the Division Bench of this Court in the cases of Jas Rath vs. UOI, reported as **95 (2002) DLT 605 (DB)** (para 20) and a decision of the Supreme Court in the case of UOI, through Secretary, Ministry of Home Affairs, GOI, New Delhi & Ors. vs. A. Ajit Singh reported as **(1997) 6 SCC 50**, to submit that the price relationship between freehold property and leasehold property is 2:1 for residential plots.

15. The layout plan of Vasant Kunj drawn out in March 1987, produced by RW-1 as Ex.DR1/A, was also relied upon by the appellant No.1 to submit that the same clearly shows that the acquired land had been earmarked for a higher secondary school/police station. He contended that if in the year 1987 itself, the land was shown as earmarked for the aforesaid purpose, then the argument of the respondent that on the date of issuance of Section 4 notification, in February 1997, the plot was agricultural in nature was contrary to the records, more so when originally the said land was acquired on 25.3.1983 and continued to remain in the possession of the respondents thereafter.

16. In support of his submission that the LAC committed a patent error in treating the subject land as agricultural in nature and in taking recourse to the Government evaluation register/circle rates as reflected in

the notification dated 25.7.1997 issued by the Land & Building Department, which provided that w.e.f. 1.4.1997, the indicative price of agricultural land acquired by the Government would apply to land notified under Section 4 of the Act before 1.4.1997, the appellant No.1 relied upon the following judgments :

- i. Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, (1994) 4 SCC 595 (para 5)
- ii. Land Acquisition Officer, Eluru & Ors. vs. Jasti Rohini (Smt.) & Anr., (1995) 1 SCC 717 (Head note 'D')
- iii. U.P. Jal Nigam, Lucknow (Through its Chairman) & Anr. vs. Kalra Properties (P) Ltd., Lucknow, (1996) 3 SCC 124 (Para 5)
- iv. Ranvir Singh & Anr. vs. UOI, (2005) 12 SCC 59 (Head Note 'C') (Para 24)

17. It was urged on behalf of the appellants that the nature of the said land had changed from rural to urban and as the land in the area had been converted to developed area through a special Gazette notification, its character on the date of issuance of Section 4 notification was fully developed and residential in nature. [(Refer : Delhi Development Authority vs. Land Acquisition Collector & Anr. (130) 2006 DLT 1 (DB)].

18. On the other hand, Mr. Sanjay Poddar, Advocate, who appeared for respondent No.1/Union of India, supported the impugned judgment and submitted that the learned ADJ had rightly rejected the documentary evidence produced by the appellants seeking enhanced compensation namely, the certified copies of four perpetual lease deeds (Ex.A-7 to Ex.A-10) executed by the DDA in respect of residential plots measuring between

218.5 to 242 sq. meters, on the ground that the acquired land in question was surrounded by the area developed by DDA out of its own resources and it was much larger in dimension as compared to the parcels of land covered by the aforesaid perpetual lease deeds, and further, it was being maintained as a green area on the date of the notification. It was emphasized that small plots in a developed area could not be compared with a large undeveloped plot for calculation of market value. He further submitted that the principles for determination of compensation were well settled and the prices reflected in the perpetual lease deeds could not be taken as reflecting the representative price for the subject land, which was undeveloped.

19. Counsel for respondent No.1 pointed out that a *status quo* order had been operating in WP(C) No.1134/92 filed by the appellants challenging the earlier acquisition proceedings, which was ultimately allowed vide order dated 30.1.1996, and that right through the said proceedings, the land was maintained as a green area, which was a fact also borne out on a perusal of para 5 of the affidavit filed by the DDA in the contempt proceedings initiated by the appellants. The stand of the respondents was that as a result of the said *status quo* order, no development activity could be undertaken on the acquired land which retained its character of an agricultural piece of land, in the midst of Vasant Kunj which was developed by the DDA. The application of the notification issued by the Land & Building Department dated 25.7.1997 to the subject land, for assessing its market value, was sought to be justified on the ground that the land was maintained as a garden right from the beginning. He particularly referred to the revenue records (Khasra Girdawaries), Ex.R-1 to Ex.R-4, for the years 1977-78 to 1980-81, 1986-87 to 1989-90, 1990-94, 1994-95, to fortify his submission that the said land

was shown as "Ghair Mumkin Bagh", and to the averments made by the appellants in para 3 of the contempt petition where the acquired land was described as a "fruit garden".

20. Lastly, it was urged that there was no other evidence placed on record by the appellants to support their claim for higher compensation over and above what was awarded by the LAC and upheld in the impugned judgment, as the appellants had not stepped in the witness box and had failed to file any affidavit in support of their claim, due to which no opportunity was given to the respondents to cross-examine them with regard to the documentary evidence placed by them on record (Ex.A-7 to Ex.A-10). Mr. Poddar submitted that no oral evidence was produced by the appellants to suggest that the acquired land possessed similar advantages to the parcels of land, which were subject matter of the perpetual lease deeds (Ex.A-7 to Ex.A-10), and thus they failed to demonstrate that the acquired land and the lands covered by the sale transactions bear any similarity or have similar potentiality/advantages/features so as to entitle them to claim market value on parity. In support of his submissions, he relied on the following decisions:-

- i. **RFA No.677/1994** entitled "Laxmi Narain Bansal vs. UOI" decided on 30.9.2008 (paras 16 to 23)
- ii. **Bhim Singh & Ors vs. State of Haryana & Anr., (2003) 10 SCC 529** (paras 7 & 10)
- iii. **Delhi Housing Company vs. UOI & Anr., 111 (2004) DLT 246** (Para 3 to 6)
- iv. **UOI vs. Pramod Gupta (Dead) by LRs & Ors., (2005) 12 SCC 1** (Para 78)

- v. Ranvir Singh & Anr. vs. UOI, **(2005) 12 SCC 59** (Head Note 'C') (Paras 24-26 & 33)
- vi. Raj Devi & Ors. Vs. UOI & Anr., **145 (2007) DLT 438** (paras 3,7,8, & 10)
- vii. **LAA No.673/2008** entitled "Ved Prakash & Ors. vs. UOI & Anr." (paras 28 to 30)

21. In rebuttal, appellant No.1 reiterated the submissions made by him earlier. He disputed the contention of the respondents that a small plot in a developed area could not be compared with large undeveloped plots by submitting that their plot measuring 2½ acres was not incomparable with a parcel of land measuring 300 sq. yards and placed reliance on a decision of the Supreme Court in the case of Bhagwathula Samanna & Ors. vs. Special Tahsildar & Land Acquisition Officer, Visakhapatnam Municipality, reported as **AIR 1992 SC 2298**, wherein the yardstick applicable for comparison of small plots to big plots was elaborated. It was strenuously urged that the Khasra Girdawaries relied upon by the respondents (Ex. R-1 to R-4) did not reflect the correct position on the ground. Appellant No.1 stated that Ex.R-1 to R-4 are contrary to the respondents' own submission, as made in the reply filed in CCP No.461/96, that in the composite plan of Vasant Kunj Residential Scheme drawn in March 1987, the acquired land was earmarked for a Higher Secondary School & a Police Station, and could not be returned to the appellants as it was a part of a huge residential scheme.

22. With respect to the cost of development of land, the appellant No.1 contended that the respondents had produced RW-1, an Executive Engineer, DDA as a witness, who had taken only the plotable area into

consideration for arriving at the cost of development of residential land in Sector 'C', Pocket 5, Vasant Kunj, but he had erred in doubling the internal and external cost. He stated that while the methodology used for calculating the internal development cost and external development cost was correct, but the conclusions arrived at by RW1 were erroneous. He further stated that after the judgment of the Supreme Court in the case of R.L. Jain (D) by LRs. vs. DDA & Ors., reported as **AIR 2004 SC 1904**, the cost of development could not have been a relevant consideration towards calculation of compensation in the present case, as it had been incurred anterior to the issuance of the Section 4 notification. In the present case, despite the fact that the acquired land in question had already been taken possession of by the DDA in March 1987 itself, the appellants were still willing to suffer one third deduction towards development costs, which otherwise are deducted only for development of raw agricultural land.

23. This Court has heard extensive arguments addressed by the parties and carefully considered their submissions in light of the documents forming part of the trial court record and the judgments cited by both sides. The pivotal issue which engages this Court is as to whether the market value of the land in question was correctly assessed in the impugned judgment for the purpose of grant of compensation to the appellants under the Act.

24. The law mandates that when the State compulsorily deprives a person of his land for public purpose, by invoking the provisions of the Land Acquisition Act, he must be paid compensation in accordance with law, i.e., he must be paid the true market value of the acquired land. It has been held in a catena of decisions that the market value, as postulated in Section

23(1) of the Act, is deemed to be the just and fair compensation for the acquired land and that the words "market value" would be the price of the land prevailing on the date of publication of the preliminary notification under Section 4(1) of the Act. The acid test for determining the market value of the land is the price, which a willing vendor might reasonably expect to obtain from a willing purchaser. In determining the market value, the factors enumerated in Section 23 are to be taken into consideration, and those set out in Section 24 are to be excluded. There cannot be any mathematical accuracy in ascertaining the amount of compensation payable. As noted in the case of Viluben Jhalejar Contractor (deceased) through LRs v. State of Gujarat **AIR 2005 SC 2214**:

"Para 20: The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	Negative factors
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-à-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage”

25. For ascertaining market value of the acquired land, the Court can no doubt rely upon such sale transactions, which would offer a reasonable basis to fix the price, for which purpose, a sale transaction relating to a smaller parcel of land can be considered for the purpose of assessing the market value in respect of a large tract of land, after making appropriate deductions such as for development of land, for providing space for roads, sewers, drains, expenses involved in formation of a layout, lump-sum payments, as well as for the waiting period required for selling the sites that would be formed and other expenses involved therein, but before doing so, the evidentiary value of such a sale deed is required to be carefully scrutinized. As held in the case of Land Acquisition Officer vs. Nookala Rajamallu reported as **(2003) 12 SCC 334**, in order to adopt the price reflected in the sale deed, the following conditions are required to be met:

“9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages

10. It is only when these factors are present, it can merit a consideration as a comparable case (see Special Land Acquisition Officer v. T.Adinarayan Setty **AIR 1959 SC 429**).”

26. Appellant No.1 laid great emphasis on the fact that when it came to returning the subject land back to the appellants, in terms of the order dated 30.01.1996 passed by the Division Bench in W.P.(C) 1134/1992, the DDA stated that the possession of the said land could not be returned to the owners as the same was declared consumed in the Residential Scheme called Vasant Kunj, but when it came to grant of compensation for the said plot of land, it was graded as "agricultural" and the notification dated 25.07.1997 issued by the Land & Building Department was applied for arriving at the fair market value of the land. In this regard, the stand of the DDA, as taken by it in its affidavit dated 26.2.1997 filed in CCP No.461/1996, is of relevance. Paras No. 6, 7 & 8 of the aforesaid affidavit need to be highlighted and are reproduced hereinbelow for ready reference:

"Para 6. That the land in question is part of the plans which have been prepared in respect of Vasant Kunj Residential Scheme. The land is earmarked in the said plan for use of the purpose of police station and higher secondary school. It was not possible for the Delhi Development Authority to release the land in question. It was not possible for the Delhi Development Authority to give back the possession of the land as the same was part of the huge residential scheme, which has been completed by the Delhi Development Authority. The only alternative with the DDA was to allot an alternative plot to the petitioner. No land similarly situate was available for allotment to the petitioner. In these circumstances, it was felt that it would be necessary to acquire the land and accordingly notification under Sec. 4 of the LAA was issued on 19th February, 1997, and the Lt. Governor of Delhi has also been pleased to invoke the provisions of Section 17(1) & (4) of the Land Acquisition Act. The Lt. Governor has further directed that the provisions of Section 5(a) will not apply to this acquisition.

Para 7. That it is respectfully submitted that since the land could not be released because it was part of a huge residential scheme, which has almost been implemented, it became necessary for the DDA to initiate acquisition proceedings and the land is now being acquired and notification under Sections 4 & 17 have already been issued. The deponent respectfully submits that the petitioner would be paid the market price of the land as obtaining on 19.2.1997, and the deponent has been legally advised that his would be sufficient compliance of the orders of this Hon'ble Court.

Para 8. That the deponent respectfully submits that since the land could not be released, the proceedings for its acquisition have been initiated and the petitioner would be paid the market value as obtaining in February, 1997, together with such other amongst as provided under the LAA".

27. Having regard to the categorical stand taken by the DDA in its aforesaid affidavit, to the effect that the land in question was a part and parcel of the plans prepared in respect of Vasant Kunj Residential Scheme and was earmarked in the site plan for the purpose of building a police station and a higher secondary school and further, that it was not possible for the DDA to return the possession of the land to the appellants, as it was part of a huge residential scheme which had already been completed by the DDA, the inevitable conclusion is that the market value of the expropriated land could not have been determined by treating it as agricultural land.

28. A perusal of the impugned judgment passed by the Reference Court shows that though notice was taken of the notification dated 25.07.1997 issued by the Land and Building Department, Govt. of NCT of Delhi, whereunder the price of agricultural land, excluding the land situated in river bed between the forward bunds, was fixed for acquisition purpose

w.e.f. 01.04.1997, @ ₹10 lacs per acre, ultimately reliance was placed on the judgment of the Division Bench of this Court in the case of Nand Kishore (supra). In the said case, which dealt with appeals pertaining to village Mehrauli, notifications issued under Section 4 of the Act, starting with the notification dated 13.11.1959 and ending with the notification dated 21.11.1978, were subject matter of consideration for the purposes of examining the decision of the Reference Court assessing the market value of the acquired land. In the aforesaid decision, while considering the claims of the landowners for enhanced compensation, the Court took notice of the fact that there was no evidence by way of sale deeds, to show what was the prevailing market price of the land at the given time and hence, the Court had to assess the same on the basis of other parameters, including the earlier decisions of the Division Bench, fixing the market value of the land in the same area. Taking into consideration the stand of the appellants therein that while determining the market value of the acquired land, it ought to have been considered that the land had great potential value as building sites, as the entire Mehrauli area had been urbanized and there was a lot of building activity in the area right from the year 1960 onwards, the Division Bench had observed as below:-

“8. Coming to the aspect about the potential value of the land as a building site it is first to be noted that Mehrauli had a Notified Area Committee which is apparent from Notifications No.F.8(8)/54-LSG(ii) and F.8(8)/54-LSG containing the names of the members of the Notified Area Committee. **From these notifications, it is clear that in the year 1957 Mehrauli had a Notified Area Committee. The entire Village Mehrauli was urbanised by Notification No.RNZ/526 dated 23rd May, 1963. These notifications show that the entire Village Mehrauli had the potentiality of being used as building site.** Potentiality of land would mean such

uses to which it can be put in the near future. It was held by this Court in *Anar Singh v. Union of India*, AIR 1985 Delhi 298 that "Potentiality is a right and proper subject for consideration in ascertaining the compensation to be paid on expropriation. Prospects and possibilities of future development ought to be taken into account in determining the price to be paid for property compulsorily acquired". Thus for determining the market value of the land under acquisition the Court does not go by the actual use to which the land was being put at the time of the notification under Section 4. The Court has to see the better use to which it is reasonably capable of being put in the immediate or near future. If the acquired land has the building potentiality, it should necessarily be taken into account for determining its market value. **In determining building potentiality several factors come into consideration, such as the fact that there was a Notified Area Committee in the area much before the date of the notification under section 4 of the Act; the suitability of the acquired land for purposes of being used as building site; availability of water and electric supply in the area, accessibility to the land by way of roads and path ways etc. Most of these things were available in Mehrauli at the relevant time. Keeping this in view we are of the opinion that the land under acquisition had good building potentiality at the relevant time and it continued to enjoy this advantage during the entire period under consideration in the present batch of appeals."** (emphasis added).

29. After taking note of the rising trend in the market price of the land during the relevant period from the year 1955 onwards, which trend continued during the entire period under consideration, i.e., w.e.f. November 1959 to November 1978, the Division Bench held that it had no hesitation in holding that the lands, subject matter of the appeals, did enjoy good potential value as building sites; further, that urbanization had started in the area during the relevant period and a Notified Area Committee had come up during the mid-fifties. In the absence of any evidence by way of sale

transactions during the relevant period, guidance was taken from a decision of the Supreme Court in the case of Gokal vs. State of Haryana reported as **AIR 1992 SC 150** to fix the market value for various notifications under consideration at amounts ranging from ₹10,000/- per bigha for the notification issued under Section 4 of the Act on 13.11.1959 to ₹30,000/- per bigha for the notification issued under Section 4 of the Act on 21.11.1978.

30. In the case in hand, it was fallacious on the part of the Reference Court to fix the market value of the acquired land by calculating escalation in the price @ 12% per annum from 21.11.1978 (the date of issuance of Section 4 notification, subject matter of consideration in the case of Nand Kishore(supra)) upto 19.02.1997 (the date of issuance of Section 4 notification in the present case). Adopting the aforesaid method for determining the market value of the acquired land, by providing escalation in the rate spanning over a couple of decades has been frowned upon by the Courts. In the case of General Manager, ONGC Ltd. Vs. Rameshbhai Jivanbhai Patel and another reported as **(2008) 14 SCC 745**, the Supreme Court observed that taking recourse to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years, where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood, is a reasonably safe method only if applied for a period of four to five years. But for a longer period of time, even if reliance is placed on sale transactions/acquisitions related to neighbouring land, it would still be an unsafe method and an unreliable standard for determining market value, because over the course of years, the "rate" of annual

increase may itself have undergone a drastic change. Moreover, when in the present case, the appellants had placed on record, sale transactions entered into during the relevant period, there is no justification for adopting the aforesaid method of escalation for ascertaining the fair market value of the acquired land.

31. Further, application of the notification dated 25.07.1997, issued by the Land and Building Department, Govt. of NCT of Delhi, to the subject land was itself erroneous as the said notification dealt with the fixation of indicative price of "agricultural land/land situated in the river bed between the forward bunds". In view of the decision in the case of Nand Kishore (supra), it was no longer debatable in the present case that the subject land had great potential value as a building site. When such was the position way back in the year 1963, when admittedly the entire village Mehrauli was urbanised by virtue of a notification dated 23.05.1963, which itself demonstrated that the land had the potentiality of being used as building sites, it was untenable for the Reference Court to have fixed the market value of the land, by treating it as agricultural land, after the passing of almost three and a half decades.

32. Having arrived at the conclusion that the market value of the land in question was incorrectly assessed in the impugned judgment, this Court has now to examine the evidence produced on the basis of which the appellants seek enhancement in the market value. The appellant No.1 had contended that the true market value of the land could have been determined with reference to the comparable land transactions entered into during the relevant period, as the perpetual lease deeds placed on record were of dates proximate to the date on which the land was acquired in the

present case and the same having been executed by the DDA would be deemed to be *bona fide* in nature. The appellants had placed on record certified copies of four perpetual lease deeds (Ex.A-7 to Ex.A-10), which pertained to Pocket-C in the Vasant Kunj Residential Scheme for the period from 22.09.1995 to 10.12.1996. While no reasoning has been given in the impugned judgment for completely discarding the said documents, counsel for the respondents had urged that the aforesaid documentary evidence pertained to perpetual lease deeds executed by the DDA in respect of residential plots measuring between 218.5 sq.mtrs. to 242 sq. mtrs., which were small sized plots existing in an already developed area, and they could not have been taken into consideration for calculation of market value in the present case, as they did not reflect the representative price of the subject land, which was undeveloped.

33. The aforesaid argument of the learned counsel for the respondent cannot be accepted as an absolute proposition of law. Rather, the same has to be examined in the contextual background. In the first instance, one cannot overlook the fact that the value of freehold property is always more than that of leasehold property, as the tenure of the latter property is a fixed one and the terms and conditions imposed for holding such a property are far more stringent in nature. So, the acquired land, being freehold in nature, was unfettered by any conditions, and was in a more advantageous position than the parcels of land which are subject matter of perpetual lease deeds. As a result, this Court is inclined to agree with the appellants that the perpetual lease deeds, placed on the record by the appellants, could not have been completely discarded. However, some deductions from the sale consideration could certainly have been made for

the reason that a large tract of land will not fetch the same price as a small sized developed plot.

34. At the cost of the repetition, it may be reiterated that the increase in land price is dependent on the situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in that area. The Courts have taken judicial notice of the fact that while in rural areas, ordinarily, increase in price would be slow and gradual, in urban or semi-urban areas, where development is at a fast pace, the demand for land is high and where there is construction activity undertaken all around, escalation in the market price is at a much higher rate and has touched 30% to 50% or more per year, during the nineties. [Ref. General Manager, ONGC Ltd. (supra)].

35. In the instant case, the potential value of the land in question as a building site was clearly admitted by the DDA itself, when it stated in its affidavit dated 26.02.1997 that the acquired land of the appellants was part of a huge residential scheme, known as Vasant Kunj Residential Scheme, which had almost been fully implemented and thus, the land could not be released to the appellants. Merely because the land was being maintained as a green area by the respondent on the strength of an order of *status quo* passed in Civil Writ Petition No.1134/1992, does not mean that the land did not have the potential value as a building site. No doubt, one of the parameters for fixing the market value of the acquired land is the potentiality of the land, but the Courts do not go by the actual use to which the land was being put at the time of the notification under Section 4. What is relevant for the Court to see is the better use to which it is reasonably capable of being put in the immediate or near future. In the words of the

Supreme Court, in the case of Suresh Kumar vs. Town Improvement Trust reported as **(1989) 2 SCC 329**, a land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is wasteland or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land as the case may be. The possibility of it being used for building purposes would have to be taken into account. However, it must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration. In other words, the value of the land should be determined not necessarily according to its present disposition, but laid out in its lucrative and advantageous way in which the owner can dispose it of. It is well established that the special, though natural adaptability of the land for the purpose for which it is taken, is an important element to be taken into consideration in determining the market value of the land. In such a situation, the land might have already been valued at more than its value as agricultural land, if it had any other capabilities. However, capabilities which are to be taken into consideration are only reasonable and fair capabilities and not far-fetched and hypothetical ones. In sum, in estimating the market value of the land all of the capabilities of the land, and all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is applied by the owner at the time.

36. It is an undisputed position as borne out from the layout plan of the area filed by the respondents that the acquired land is situated in

Pocket-A of the Vasant Kunj Residential Scheme and the parcels of land, subject matter of the perpetual lease deeds are situated in the adjoining Pocket-C of the same scheme. Hence, in the absence of any evidence to the contrary, the potentiality and advantages of the subject land situated in Pocket-A and the parcels of land situated in Pocket-C can be safely concluded to be similar in nature. Construction activity in the surrounding area of the acquired land was almost complete at the time of issuance of the Section 4 notification. The DDA itself had stated so in the year 1997, when it filed an affidavit in the contempt proceedings. As for the availability of the land for development in the area, the DDA had also admitted in clear terms that no land was available in the similarly situated area for allotment to the appellants. Therefore, it can be assumed that the demand of land in the area was fairly high. As the land was admittedly situated within the Vasant Kunj Residential Scheme implemented by the DDA, it has also to be held that it possessed the potential value for use for building purposes.

37. Insofar as the question whether rates fixed for small plots of land can form the basis for fixation of the rate for larger plots of land is concerned, no absolute bar has been laid down in the judicial pronouncements that the said rates cannot form the basis for fixation of the rates of larger plots of land, as a determining factor for deciding the market value thereof. Rather, in the case of Land Acquisition Officer, Revenue Divisional Officer, Chittor Vs. Smt. L. Kamalamma (Dead) by LRs & Ors. K. Krishnamachari and Others reported as **(1998) 2 SCC 385**, the Supreme Court held that when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicative of the price that may be

fetches in respect of large tracts of land, by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment, as also for the waiting period required for selling the sites that would be formed. As noticed in the case of Viluben Jhalejar(supra):

“Para 21: Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.”

38. Further, Courts have recognized the fact that there can be two set of deductions, one for the largeness of the land and another for the development costs. The documents placed on record by the appellants indicate that between September 1995 to December 1996, the DDA executed perpetual lease deeds of residential plots in Pocket-C in Vasant Kunj area at rates ranging from ₹28,719/- to ₹47,542/- per sq. yard. For the purpose of ascertaining the fair market value of the acquired land, if an average of the prices of the four perpetual lease deeds is taken, the figure comes to ₹37,433.75 paise per sq.yard. To equalize the factor of the market value of a small plot of land as compared to a large plot of land, a deduction in the range of 30%-50% from the rate calculated at ₹37,433.75 paise per sq.yard can be considered. Having regard to the entire facts and circumstances of the present case, this Court is of the opinion that deduction @40% from the average price of ₹37,433.75 paise per sq.yard shall be a reasonable basis for arriving at the fair market value of the land. If so

deducted, the figure would work out to ₹22,460.25 paise per sq. yard.

39. In so far as the deduction towards development costs is concerned, considering the fact that the acquired land was a tract measuring 12 bighas (i.e. 12096 sq.yards), as against the perpetual lease deeds placed on the record by the appellants (Ex.A-7 to Ex.A-10), which measured anywhere between 218.5 to 242 sq. mtrs. (i.e., between 261 to 290 sq. yards), necessary deductions have also to be made for the extent of land required for the laying of roads and other civic amenities, including expenses on account of development of the site by laying-out roads, drains, sewers, water and electricity lines etc. Such deductions have varied from 20% to 50%, and in the case of Administrator General of West Bengal Vs. Collector, Varanasi reported as **1988 2 SCR 1025**, deduction to the extent of even 53% was allowed. However, normally the Courts have allowed one third deduction for such purpose. Being mindful of the aforesaid guidelines and also taking into consideration the willingness expressed by the appellants, to suffer one third deduction towards development costs, further one third deduction is allowed on ₹22,460.25 paise per.sq.yard and the fair market value of the acquired land, is determined @ ₹14,973.50 paise per sq.yard, which is rounded off to ₹14,974/- per sq.yrd.

40. Accordingly, the appeal is allowed to the extent that the fair market value of the subject land situated in the revenue estate of village Mehrauli measuring 12 *Bighas* in respect of which, notification was issued under Section 4 of the Act on 19.02.1997, is determined @ ₹ 14,974/- per sq. yard. Besides the above, the appellants shall also be entitled to 30% solatium on the above market value of the land under Section 23(2) of the Act, 12% on the additional amount under Section 23(1-A) of the Act from

the date of notification issued under Section 4(1) of the Act to the date of making of the award. On the enhanced market value, the appellant shall be paid interest under Section 28 of the Act @ 9% per annum from 19.02.1997, the date of issuance of Section 4 notification for the first year ending on 18.02.1998 and thereafter, @ 15% per annum till the date of tender of compensation. Interest shall also be paid on the solatium and the additional amount in view of the judgment of the Supreme Court in the case of Sunder Vs. UOI reported as **93(2001) DLT 569(SC)**.

41. This leaves the claim of the appellants for damages on the market value of the acquired land @7% per annum from 25.03.1983 to 24.03.1984 and @ 13% per annum from 25.03.1984 to 18.02.1997 alongwith interest on damages @ 6% per annum from 19.02.1997 till the date of payment. In the case of R.L. Jain (supra), a decision rendered during the pendency of the proceedings under Section 18 of the Act before the learned Additional District Judge, the Supreme Court held that the scheme of the Act does not contemplate taking over of possession prior to issuance of notification under Section 4 of the Act and if possession is taken prior to the said notification, it will be dehors the Act. It was further held as below:-

“18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. **He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that**

the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate maybe awarded.” (emphasis added)

42. In the present case, the earlier acquisition proceedings which were initiated with respect to the subject land on 13.11.1959, were declared to be null and void by a Division Bench of this Court vide judgment dated 30.01.1996. As a consequence of the decision in the case of R.L. Jain (supra), the appellants herein cannot claim entitlement to compensation or interest thereon for the period anterior to 19.02.1997, the date on which the second notification under Section 4 was issued, though the LAC took possession of the land on 25.03.1983. However, they could have claimed entitlement to rent or damages on account of use and occupation of the said land for the period the Government retained possession thereof, i.e., from 25.03.1983 to 18.02.1997. For determining the rent or damages for the use of the property, recourse could have been taken by the appellants to the provisions of Section 48 of the Act by approaching the LAC. The decision of the Supreme Court, in the case of R.L. Jain (supra), came to be rendered on 12.03.2004, much after the award was announced by the LAC on 18.09.1998 and after filing of the reference petition by the appellants on 07.10.1998, but before the date of the impugned judgment. However, the position on the record is that the appellants did not make any claim for rent/damages for the use of the said land for the period anterior to the date

of Section 4 notification before the Reference Court, nor was any evidence led on this point. As the scope of the present appeal is limited to examining the decision of the Reference Court, no such relief can be granted in the present proceedings. However, if the appellants have a remedy available to them to claim rent/damages from the respondent, for the use and occupation of the said land for the aforesaid period, in terms of the decision in the case of R.L. Jain (supra), they may exercise their rights in accordance with law, but without prejudice to the defences that may be available to the respondent in that regard.

43. The appeal is allowed on the above terms with costs quantified at ₹20,000/-.

DECEMBER 24, 2010
rkb/sk

(HIMA KOHLI)
JUDGE