% **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th November, 2011
Pronounced on: 23rd December, 2011

\+ LA APP.415/2011, LA.APP 608/2009, LA.APP129/2010, LA.APP 130/2010, LA.APP 176/2010 & CM No. 12873/2011, LA.APP 177/2010, LA.APP 179/2010, LA.APP 184/2010, LA.APP 214/2010, LA.APP219/2010, LA.APP 229/2010, LA.APP233/2010, LA.APP 234/2010, LA.APP 235/2010, LA.APP 236/2010, LA.APP 237/2010, LA.APP 240/2010, LA.APP 241/2010, LA.APP 255/2010, LA.APP 256/2010 & CM No. 12934/2011 (cross objections), LA.APP 257/2010, LA. APP. 258/2010, LA. APP 259 /2010, LA.APP 271/2010, LA.APP 413/2010, LA.APP 414/2010, LA.APP 415/2010, LA.APP 416/2010, LA.APP 417/2010 & CM No.3584/2011 (cross objections), LA.APP 419/2010, LA.APP 425/2010, LA.APP 453/2010, LA.APP 546/2010, LA.APP 547/2010, LA.APP 548/2010, LA.APP 549/2010, LA.APP 550/2010, LA.APP 551/2010, LA.APP 552/2010, LA.APP 553/2010, LA.APP 554/2010, LA.APP 555/2010, LA.APP 556/2010, LA.APP 557/2010, LA.APP 558/2010, LA.APP 559/2010, LA.APP 560/2010, LA.APP 561/2010, LA.APP 562/2010, LA.APP 563/2010, LA.APP 564/2010, LA.APP 565/2010, LA.APP 567/2010, LA.APP 568/2010, LA.APP 569/2010, LA.APP 570/2010, LA.APP 571/2010, LA.APP 572/2010, LA.APP 573/2010, LA.APP 574/2010, LA.APP 575/2010, LA.APP 576/2010, LA.APP 770/2011, LA.APP 771/2010, LA.APP 772/2010, LA.APP 773/2010, LA.APP 774/2010, LA.APP 775/2010, LA.APP 805/2010, LA.APP 822/2010, LA.APP 824/2010 & CM No.10333/2011 (cross-objection), LA.APP 864/2010, LA.APP 901/2010, LA.APP 902/2010, LA.APP 962/2010, LA.APP 1014/2010, LA.APP 1015/2010, LA.APP 1016/2010, LA.APP 1027/2010, LA.APP 1032/2010, LA.APP 1035/2010, LA.APP 1037/2010, LA.APP 1038/2010 & CM No.12952/2011 (cross-objections), LA.APP 1039/2010 (CM No.12875/2011 & CM No.12876/2011 (cross objections), LA.APP 154/2011, LA.APP 158/2011, LA.APP 274/2011, LA.APP 368/2011, LA.APP 379/2011, LA.APP 384/2011 & LA.APP 411/2011

(Relating to Notification No. F.No.11(36)/94-L&B/LA/5722 dated

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5th April, 1995 issued under Section 4 of the Land Acquisition Act, 1894 & Award No. 19/97-98, Village- Shahpur Garhi, Delhi)

Present: Mr. Deepak Khosla & Mr. V.P. Rana, Advocates for appellants.
Mr. Sanjay Podar, Senior Advocate with Mr.Sanjay Kumar Pathak, Ms. K.Kamoudi Kiran, Mr. Mohit Rao Jadhav & Ms. Navlin Swain, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
23.12.2011

For orders see LA.APP No. 608 of 2009.

(SUNIL GAUR)
JUDGE

December 23, 2011
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IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 8th November, 2011*
Pronounced on: 23rd December, 2011

\+ **LA.APP No.608/2009**

SHRI RAMESH KUMAR .....Appellant
Through: Mr. Deepak Khosla & Mr. V.P. Rana, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Sanjay Podar, Senior Advocate with Mr.Sanjay Kumar Pathak, Ms. K.Kamoudi Kiran, Mr. Mohitrao Jadhav & Ms. Navlin Swain, Advocates.

AND

\+ LA APP.415/2011, LA.APP 608/2009, LA.APP129/2010, LA.APP 130/2010, LA.APP 176/2010 & CM No. 12873/2011, LA.APP 177/2010, LA.APP 179/2010, LA.APP 184/2010, LA.APP 214/2010, LA.APP219/2010, LA.APP 229/2010, LA.APP233/2010, LA.APP 234/2010, LA.APP 235/2010, LA.APP 236/2010, LA.APP 237/2010, LA.APP 240/2010, LA.APP 241/2010, LA.APP 255/2010, LA.APP 256/2010 & CM No. 12934/2011 (cross objections), LA.APP 257/2010, LA.APP258/2010, LA. APP 259 /2010, LA.APP 271/2010, LA.APP 413/2010, LA.APP 414/2010, LA.APP 415/2010, LA.APP 416/2010, LA.APP 417/2010 & CM No.3584/2011 (cross objections), LA.APP 419/2010, LA.APP 425/2010, LA.APP 453/2010, LA.APP 546/2010, LA.APP 547/2010, LA.APP 548/2010, LA.APP 549/2010, LA.APP 550/2010, LA.APP 551/2010, LA.APP 552/2010, LA.APP 553/2010, LA.APP 554/2010, LA.APP 555/2010, LA.APP 556/2010, LA.APP 557/2010, LA.APP 558/2010, LA.APP 559/2010, LA.APP 560/2010, LA.APP 561/2010, LA.APP 562/2010, LA.APP 563/2010, LA.APP 564/2010, LA.APP 565/2010, LA.APP 567/2010, LA.APP 568/2010, LA.APP 569/2010, LA.APP 570/2010, LA.APP 571/2010, LA.APP 572/2010, LA.APP 573/2010, LA.APP 574/2010, LA.APP 575/2010, LA.APP 576/2010, LA.APP 770/2011, LA.APP 771/2010, LA.APP 772/2010, LA.APP 773/2010, LA.APP 774/2010, LA.APP 775/2010,

LA.APP 805/2010, LA.APP 822/2010, LA.APP 824/2010 & CM No.10333/2011 (cross-objection), LA.APP 864/2010, LA.APP 901/2010, LA.APP 902/2010, LA.APP 962/2010, LA.APP 1014/2010, LA.APP 1015/2010, LA.APP 1016/2010, LA.APP 1027/2010, LA.APP 1032/2010, LA.APP 1035/2010, LA.APP 1037/2010, LA.APP 1038/2010 & CM No.12952/2011 (cross-objections), LA.APP 1039/2010 (CM No.12875/2011 & CM No.12876/2011 (cross objections), LA.APP 154/2011, LA.APP 158/2011, LA.APP 274/2011, LA.APP 368/2011, LA.APP 379/2011, LA.APP 384/2011 & LA.APP 411/2011

(Relating to Notification No. F.No.11(36)/94-L&B/LA/5722 dated 5th April, 1995 issued under Section 4 of the Land Acquisition Act, 1894 & Award No. 19/97-98, Village- Shahpur Garhi, Delhi)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

23.12.2011

1. The above captioned appeals arise out of Award No.19/97-98 of the concerned Land Acquisition Collector pertaining to the agricultural land in the revenue estate of Village- *Shahpur Garhi,* Delhi, which was acquired by the respondent vide Notification of 5th April, 1995 under Section 4 of the Land Acquisition Act, 1894. The market price of the acquired land in question was determined by the Land Acquisition Collector @ ₹8,01,600/- per acre or @ ₹1,67,000/- per bigha.

2. In the Reference sought under Section 18 of the Land Acquisition Act, 1894 by the claimants/ land owners i.e. the appellants, the Reference Court has enhanced the compensation to ₹8,16,720/- per acre. Not satisfied with the aforesaid enhancement of ₹15,120/- per acre for the acquired land, appellants have come up in these appeals to seek much higher compensation i.e. enhanced compensation @ ₹100/- per square yard.

3. For development of Freight Complex in Narela Project, vide Notification of 5th April, 1995, under Section 4 of the Land Acquisition

Act , a large area of agricultural land measuring 733 bighas and 10 biswas of Village- Shahpur Garhi, Delhi was acquired by the respondents. The factual details disclosing as to how in pursuance to the aforesaid Notification, Award No. 19/97-98 came to be passed and the substance of the evidence led before the Reference Court stands noted in the impugned judgment and is not required to be recapitulated.

4. Before the Reference Court, assessment of the market value of the acquired land in question was sought on the basis of DDA predetermined rate of the year 1992-93 pertaining to Narela Residential Scheme and on the strength of DSIDC approved land rate for allotment of plots in Narela Industrial Complex, which stands negated in the impugned order while relying upon decision of the Apex Court in ***Union of India Vs. Ram Phool*** (2003) 10 SCC 167. On the aspect of potentiality of the acquired land in question being near the developed land, Reference Court has extensively relied upon Division Bench decision of this Court in ***Gajraj Singh Vs. Union of India*** 2006 VI AD (Delhi) 13 in maintaining enhancement @11.5% from the effective date of government policy of fixing minimum price of agricultural lands in Delhi, till Notification under Section 4 of the Land Acquisition Act was issued. Noting that the boundary of Village- *Shahpur Garhi* touches the boundary of Village- *Holambi Kalan*, Reference Court in the impugned judgment has assessed the compensation in the instant case on the basis of the compensation, assessed by this Court in ***Gajraj Singh*** *(Supra)* relating to Notification of 15th November, 1996, under Section 4 of Land Acquisition Act, 1894, pertaining to Village – *Holambi Kalan.*

5. In these appeals, at the final hearing, the counsels present on behalf of the appellants as well as senior counsel for the respondents were heard and with their assistance, the impugned judgment and the record was

perused. Since the submissions advanced by both the sides in these appeals were common, therefore, with the consent of learned counsel for the parties, these appeals and cross- objections are being decided by this common order.

6. The grounds of challenge to the Award of Land Acquisition Collector before the Reference Court are being noticed herein, for the reason that the same very grounds have been urged in these appeals on behalf of the appellants. These are:-

> 'i) That LAC has given very low rate of market value though the land of the petitioner has got potential value as the land of the petitioner is surrounded by the biggest colony of Asia namely Rohini and the land was acquired for the commercial activities;
> ii) that LAC has not taken into consideration that land has been acquired for commercial activities such as for setting of freight complex, therefore, market value of the land should be fixed at the rate of Rs.5,000/- per sq.meter.
> iii) that his land is situated quite close to the residential area of Narela and DSIDC Complex due to which his land has more potential value;
> iv) that land of the petitioner is between two roads including a national highway i.e. Government Karnal Road, and Delhi Narela Road, therefore, it has great potentiality for residential and commercial purposes; that palatial farm house has been constructed in the same revenue estate in which land of the petitioner has been situated;
> v) that land of the petitioner is fully developed and has all the modern facilities/ necessities i.e. telephone, electric, connection, water supply, public schools and SSN College and most frequent service of DTC buses and other private transport.'

7. In substance, aforesaid grounds are the submissions advanced on behalf of the appellants before this Court to challenge the impugned order of the Reference Court. Undisputedly, the land use of the acquired land in

question was agricultural at the time of issuance of Notification under Section 4 of Land Acquisition Act in question. The main ground to seek enhancement of compensation put forth on behalf of the appellants is the potential value of the land in question. Though the stand of the appellants herein before the Reference Court was that the land in question is strategically located from the commercial and industrial point of view, as it is just two kilometres away from Narela Green Mandi and three kilometres away from DSIDC Industrial Complex and that it has a great market value and potentiality, as it has been acquired for the development of Rohini Residential Scheme.

8. Appellants claim that acquired land is in close proximity of Industrial Area developed by DSIDC and residential colony developed by DDA, and they rely upon Letter of Allotment (EX. PW-1/A) of a plot in Narela Industrial Complex @ ₹650/- per square meter in the year 1990 by DSIDC. It is also claimed by the appellants that allotment of alternate plot under the Narela Residential Scheme by DDA in the year 1992-93, was available @ ₹650/- per square meter as per demand cum allotment letter (EX. PW2/1). Thus, seeking parity with aforesaid rates of developed lands, enhancement in compensation is sought by the appellants.

9. On the factual aspect, it stands noted in the impugned judgment that the land of the villages adjoining the village in question, including village- *Holambi Kalan*, has been acquired for the development of industrial area and Narela residential area in Narela. Conceding that the acquired land is in proximity of the industrial area developed by DSIDC, learned senior counsel for the respondent has clarified that the purpose of acquisition of the land in question is solely for the development of freight complex in Narela. However, it was disputed that the acquired land in

question is surrounded by any developed colony and thus, it was contended that the appellants cannot claim enhancement of the compensation by relying upon the rate of land in Narela Industrial Complex or under the Narela Residential Scheme floated by DDA. In this regard reliance was placed upon the decision of the Apex Court in ***Lal Chand Vs. Union of India & Anr.*** (2009) 15 SCC 769. Reliance was also placed upon a decision of a Coordinate Bench of this Court in LA.APP 266/2008 ***Jai Singh Vs. Union of India & Anr.*** , rendered on 23rd August, 2011, wherein in relation to this village, pertaining to an acquisition of land vide Notification of 16th May, 2002, amount of compensation was determined at ₹18,65,500/- per acre while relying upon a Division Bench decision of this Court in ***Gajraj Singh Vs. Union of India*** 2006 IV AD (Delhi) 13.

10. Even in the impugned judgment, in the absence of sale instances, Reference Court has relied upon ***Gajraj Singh*** *(Supra),* wherein pertaining to acquisition of the land of the adjoining village- *Holambi Kalan,* in relation to Notification of 15th November, 1996, the compensation determined was @ ₹9,76,121/- per acre for *A Category* land and @₹9,51,121/- per acre for *B Category land.*

11. Reference Court has rightly concluded that grounds of challenge laid to the Award, as noted in paragraph No.6 herein above, against the Award in question, remains unsubstantiated by the appellants.

12. While relying upon two decisions of the Apex Court in ***Bhim Singh Vs. State of Haryana*** (2003) 10 SCC 529 & ***Union of India Vs. Ram Phool*** (2003) 10 SCC 167, claim of the appellants to apply DDA and DSIDC rates to the land in question stands repelled by holding that no willing purchaser would buy agricultural land in question at the rate on which government is allotting developed land.

13. During the course of hearing, learned counsel for the appellants were not able to show that the aforesaid decisions are inapplicable nor any decision to the contrary was cited. Infact, Apex Court in its recent decision in ***Lal Chand Vs. Union of India*** (2009) 15 SCC 769 has reiterated in no uncertain terms that the rates for allotment of developed land by the DDA cannot be the basis for calculation of the market value of the acquired undeveloped lands. The pertinent observations made in paragraphs No.44 & 48 in ***Lal Chand*** *(Supra),* which deserves to be highlighted, are as under:-

> '***44.*** *One of the recognized methods for determination of market value is with reference to the opinion of experts. The estimation of market value by such statutorily constituted Expert Committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either streetwise, or roadwise, or areawise, or villagewise) and finalized after inviting objections and published in the gazette. Be that as it may.*
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> ***48.*** *Even if the relied upon transaction is only two to three years prior to the acquisition, the Court should, before adopting a standard escalation, satisfy itself that there were no adverse circumstances. For example, if the acquisition is of the year 2009, it may not be possible to determine the market value, based on the 2007 or 2008 prices, by providing an increase of 12% or 15% per year, as the newspaper reports disclose that the price of immovable properties in most areas of the country came down by more than 40% to 50% from the 2007 rates. Caution is therefore necessary before increasing the price with reference to the old transactions. Be that as it may. It is clear that the award made in regard to a 1961 acquisition will not be of any use for determining the market value for a 1981 acquisition.'*

14. The aforesaid decision of the Apex Court in ***Lal Singh*** *(Supra),* has been followed by a Coordinate Bench of this Court in ***Jai Singh*** *(Supra)*, which also applies on all fours in these matters as well.

15. On the potentiality aspect, neither the map / sizra (EX. PW3/A) nor any other evidence, establishes that apart from the DSIDC, there is any development in the vicinity of the acquired land. As already observed above, no sale instances of the nearby area are forthcoming to depict the potentiality of the area in question. It has to be kept in mind that the land in question has been acquired for development of the freight complex and not for the development of a residential area. Except the oral assertion of the appellants/ claimants that the acquired land is for the development of the Rohini Residential Area, there is no tangible evidence to establish this factual assertion.

16. Cross objections filed by the respondents to maintain the rate of compensation fixed by the Land Acquisition Collector and not to adopt the ratio of decision in ***Gajraj*** *(Supra),* are found to be without substance for the reason that undisputedly ***Gajraj*** *(Supra)* has attained finality and because it has not been shown by the respondents as to how this decision of the Division Bench of this Court has been wrongly applied by the Reference Court to the facts of the instant cases. Rather, I find that the Reference Court has correctly relied upon the decision in ***Gajraj*** *(Supra),* to arrive at the correct market value of the acquired land in question.

17. Since the decision of the Division Bench of this case in ***Gajraj*** *(Supra)*, has attained finality and it is the basis of the decision of a Coordinate Bench of this Court in ***Jai Singh*** *(Supra),* and is also the basis of the impugned order, therefore, I find no infirmity in the impugned order, adopting the rate of compensation as fixed by Division Bench of this Court in ***Gajraj*** *(Supra)*, in the matter of adjoining village- *Holambi*

Kalan. Even the reduction of the rate of compensation assessed @11.5% compound interest from the date of Notification of 15th November, 1996 in ***Gajraj*** *(Supra)* to date of Notification of 5th April, 1995 in the instant case is concerned, I find the same to be in conformity with the decision in ***Gajraj*** *(Supra)*, wherein annual compounding @11.5% has been approved.

18. As neither side could find fault in the impugned judgment determining the market value of the land in question @₹8,16,720/- per acre, therefore, the appeals of the claimant as well as cross-objections of the respondents are dismissed, with no order as to costs. Accordingly, all the above-mentioned appeals and cross-objections are disposed of with direction to the Registry to remit the compensation amount, if any, deposited by either side with the Registrar General of this Court, to the concerned Reference Court.

(SUNIL GAUR)
JUDGE

December 23, 2011
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