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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved On: 1st June, 2011*
Judgment Delivered On: 7th June, 2011

\+ LA.APP.310/2008

ASH MOHD. KHAN & ORS. .....Appellants
Through: Mr.L.C.Chechi, Advocate.

Versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr.Sanjay Poddar, Advocate
Mr.Ramesh Ray, Advocate and
Mr.Ashish Tanwar, Advocate for UOI.
Mr.Ajay Verma, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J.

For orders see LA.APP. No.59/2007

(PRADEEP NANDRAJOG)
JUDGE

JUNE 07, 2011
dk

Signature Not Verified
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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved On: 1st June, 2011*
Judgment Delivered On: 7th June, 2011

LA APP.NO.59/2007

BED RAM .....Appellant
Through: Mr.B.P.Gupta, Mr.Deepak Khosla and Mr.L.C.Chechi, Mr.R.B.Singh, Mr.Satish K.Verma and Mr.Rajesh Gupta, Advocates.

Versus

UOI & ORS. .....Respondents
Through: Mr.Sanjay Poddar, Standing Counsel (LA), GNCT Delhi with Mr.R.C.Ray, Advocate for R-1.
Mr.Ajay Kumar Verma, Standing Counsel DDA.

And

+LA.APP.41/2007 & CM /2011 (Cross Objections), LA.APP. 58/2007 & CM 3856/2011, LA.APP.60/2007, LA.APP.61/2007, LA.APP.62/2007, LA.APP.63/2007 & CM 11398/2011, LA.APP.64/2007 & CM No.942/2011, LA.APP. 65/2007, LA.APP.66/2007 & CM No.2547/2011, LA.APP.73/2007 & CM No.938/2011, LA.APP.87/2007, LA.APP.89/2007, LA.APP.91/2007, LA.APP.412/2007, LA.APP.310/2008, LA.APP.748/2008 & CM No.945/2011, LA.APP.802/2008, LA.APP.1028/2008, LA.APP.1033/2008, LA.APP.1034/2008, LA.APP.1037/2008, LA.APP.89/2009 & CM 11380/2011, LA.APP.116/2009, LA.APP.130/2009, LA.APP.553/2009, LA.APP.559/2009 & CM No.923/2011, LA.APP.595/2009 & CM 916/2011, LA.APP.2/2010, LA.APP.8/2010, LA.APP.101/2010 & CM No.914/2011, LA.APP.380/2010, LA.APP.957/2010, LA.APP.958/2010, LA.APP.3/2011, LA.APP.29/2011, LA.APP.54/2011 & CM 9964/2011, LA.APP.155/2011, LA.APP.156/2011 & CM 11360/2011,

LA.APP.159/2011, LA.APP.251/2011, LA.APP.40/2007, LA.APP.42/2007, LA.APP.43/2007, LA.APP.44/2007, LA.APP.293/2007, LA.APP.335/2008, LA.APP.1104/2008, LA.APP.1105/2008, LA.APP.1106/2008, LA.APP.1107/2008, LA.APP.647/2009, LA.APP.650/2009, LA.APP.311/2010, LA.APP.314/2010, LA.APP.315/2010, LA.APP.316/2010, LA.APP.388/2010, LA.APP.699/2010, LA.APP.930/2010, LA.APP.931/2010, LA.APP.933/2010, LA.APP.934/2010, LA.APP.1065/2010 & CM 11370/2011, LA.APP.372/2007, LA.APP.501/2008, LA.APP.508/2008 & CM No.14151/2008, LA.APP.509/2008, LA.APP.564/2008, LA.APP.565/2008 & CM No.14141/2008, LA.APP.609/2008, LA.APP.631/2008, LA.APP.737/2008, LA.APP.739/2008 & CM No.1548/2011, LA.APP.816/2008, LA.APP.817/2008, LA.APP.876/2008, LA.APP.966/2008 & CM 1568/2011, LA.APP.992/2008 & CM No.1288/2009, LA.APP.994/2008 & CM No.523/2009, LA.APP. 995/2008, LA.APP.996/2008 & CM No.1035/2009, LA.APP. 1016/2008, LA.APP. 1035/2008, LA.APP. 1036/2008, LA.APP. 1039/2008, LA.APP. 1041/2008, LA.APP. 1102/2008, LA.APP. 1136/2008, LA.APP.1204/2008 & CM No.919/2011, LA.APP. 1234/2008, LA.APP. 1236/2008, LA.APP. 1235/2008 & CM 11397/2011, LA.APP.550/2009 & CM NO.967/2011, LA.APP.551/2009 & CM No.11383/2011, LA.APP. No.576/2009 & CM 11386/2011, LA.APP. 580/2009, LA.APP. 607/2009 & CM 11389/2011, LA.APP. 25/2010, LA.APP. 253/2010, LA.APP. 263/2010, LA.APP. 264/2010, LA.APP. 454/2010, LA.APP.677/2010 & CM 11373/2011, LA.APP.678/2010 & CM 11395/2011, LA.APP. 679/2010, LA.APP.680/2010 & CM NO.958/2011, LA.APP.681/2010 & CM No.961/2011, LA.APP.682/2010 & CM 11393/2011, LA.APP. 683/2010, LA.APP.911/2010 & CM No.11364/2011, LA.APP.946/2010, LA.APP. 947/2010, LA.APP. 949/2010, LA.APP. 951/2010, LA.APP. 952/2010, LA.APP. 140/2011 & LA.APP.560/2009

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J.

1. Un-numbered cross objections and civil miscellaneous applications which are in the nature of cross objections, if any, lying unnumbered in the above captioned appeals may be numbered by the Registry.

2. The instant decision decides aforenoted appeals and cross objections in such appeals where cross objections are filed.

3. The river Yamuna is not only an important feature of the city of Delhi, but is also a major source of water supply to the city. It draws its water from the Yamunotri Glacier in the upper reaches of the Himalayas and on the way to the plains, is enriched by the river Tons and needless to state, numerous streams and rivulets enrich the river in its onward journey. It travels a distance of about 400 km in the plains before joining river Ganga at Allahabad.

4. It enters the city of Delhi from the North and flows Southward and covers a length of nearly 50 km while flowing through Delhi, of which about 22 km is within the urban stretch and the balance 28 km in the rural stretch.

5. Over the last century the quality of the water in the river has deteriorated due to increased waste water discharge, not only within the city of Delhi, but even upstream, when flowing through the city of Yamuna Nagar and the city of Panipat, both in the State of Haryana, where rapid industrialization has resulted in industrial effluent being discharged into the river water. The eco-system supporting migratory avifauna and the ground water has

continuously degraded, requiring immediate attention for conservation.

6. Various plans to harness the potential of the river have been discussed since early 1980 with reference to the navigational potential of the river; the aesthetics of the river and requirement of it being blended with the city of Delhi, as is the river 'Thames' in England and the river 'Seine' in France.

7. Bodies such as the 'Ministry of Environment and Forests', 'Central Water Power Research Station' and 'National Environmental Engineering Research Institute' have been suggesting remedial measures in various reports submitted from time to time, proposing plans for integration of river Yamuna in the planning, for the development of the National Capital Region, and of necessity which includes the National Capital Territory of Delhi.

8. Of the various proposals made, emphasizing the ecological role of the 'Flood Plains', abutting the river bed of the river Yamuna and its conservation imperatives, channelization of river Yamuna has been proposed, not only for the purposes of flood control but even drainage improvement and reduction in bank erosion. Of necessity, the proposals envisage modification of the river channel, keeping into account the conventional methods for channelization, involving enlargement of the channel by widening and/or deepening, to increase the channel capacity to carry water that would have otherwise spread on to the flood plain.

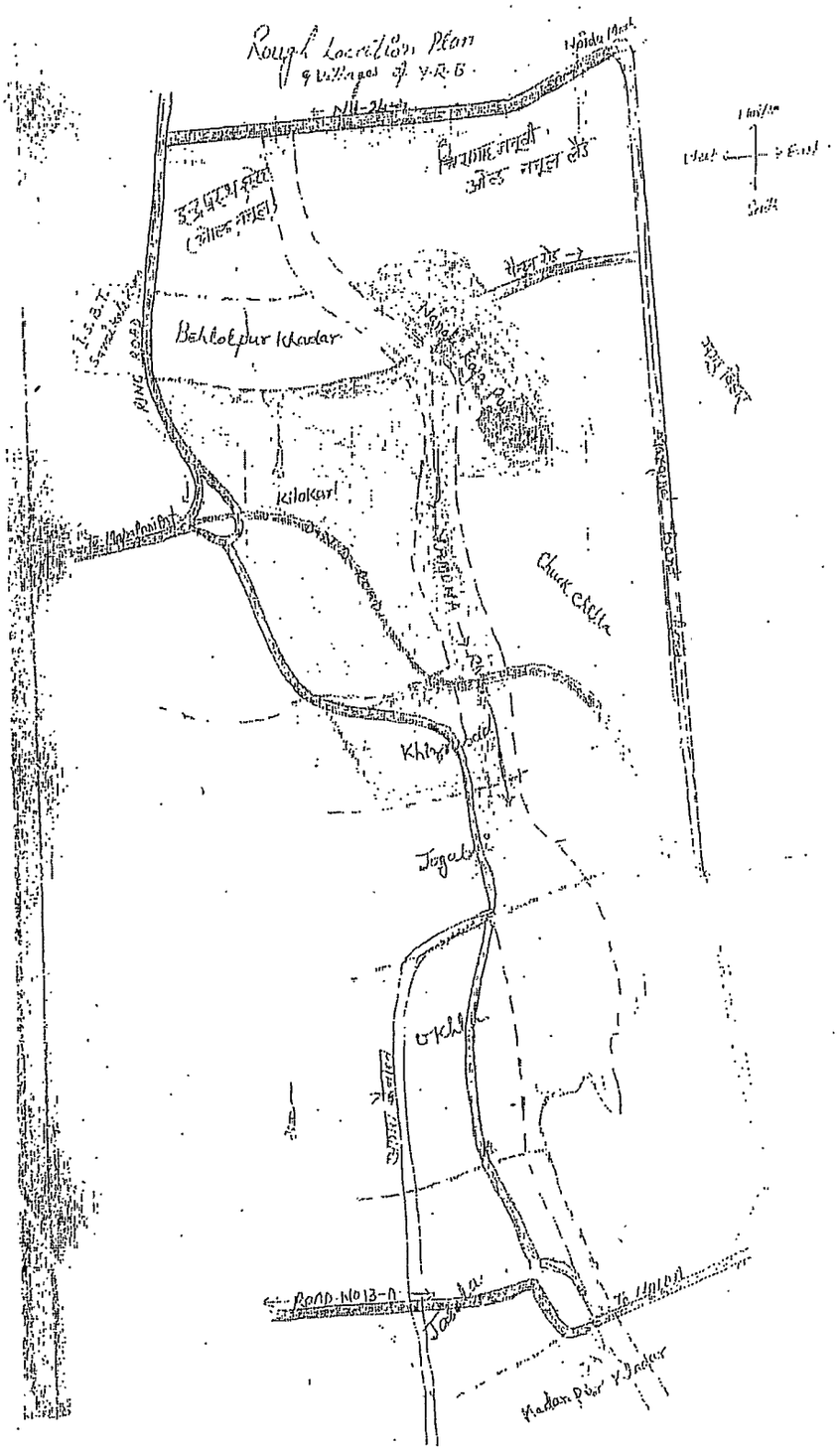
9. The Nodal Authority for the Planned Development of Delhi, the much maligned Delhi Development Authority, which is accused by many of having created urban chaos in Delhi, had evolved the 'Environmental Management Plan' for the stretch of

river Yamuna in the National Capital Territory of Delhi, with the overall objective of rejuvenating the river. The plan delineates the requirement of the city and makes recommendations after Initial Environmental Examination of the proposed activities in the 'River Front Development Plan'.

10. Briefly, the report delineates guidelines for development of river Yamuna as it flows in the city of Delhi by dividing the same into various stretches.

11. One such stretch is between the ITO Barrage till the ILFS-NOIDA Link Bridge in the South and further beyond, in the Southern direction, as the river flows past the city of Delhi and enters the State of Uttar Pradesh in the Southern boundary of the city of Delhi.

12. The stretch with which we are concerned in the instant Land Acquisition Appeals, is the stretch of the river as it crosses NH-24 (at the popular bridge called the Nizamuddin Bridge over the river Yamuna) and proceeds towards the South, crossing lands of village Behlolpur Khadar, Kilokari, Khizrabad, Jogabai, Okhla, Jasola and Madanpur Khadar, all of which lie on the Western bank of the river and Nangli Rajapur and Chuck Chilla, which lie on the Eastern bank of the river. Graphically reproduced the plan prepared by the learned Reference Court on inspection carried on 21.11.2006, and to be found in the record of LAC No.2/1998 *Bhopal Singh Vs. UOI & Anr.* (in respect of village Nangli Rajapur) would be as under:-


Rough Location Plan
9 Villages of Y.R.B.
Noida Mark
Bahlolpur Khadar
Kilokari
Chuck Chilla
Khizrabad
Jogabai
Road No 13-A
To Noida
Madan Pur Khadar

13. 'River Bed' is defined as the area, over which the river flows and denotes the area which, in the ordinary or regular course of nature, is covered by the waters of the river. 'Flood Plain' is the land adjacent to a river, which because of its level topography, floods when the river overflows.

14. The lands which are subject matter of acquisition in the instant appeals, lie in the Flood Plain area of river Yamuna, and mostly in the Western bank and except for a few patches, where agricultural activities can be undertaken, the land is mostly grassland, bushy and shrub vegetation. The aquatic vegetation is very poor in this stretch due to degraded water quality of river Yamuna.

15. The lands are comprised in the revenue estate of village Kilokari, Khizrabad and Nangli Rajapur.

16. Flood discharge and levels, at different gauging stations in river Yamuna, indicate flooding of the area whenever monsoon is normal or in excess.

17. As would be evident from the plan of the area prepared by the learned Reference Court, and as extracted hereinabove by me, the lands with which I am concerned is between the river bank and the Forward Bund. It has been graphically narrated by the learned Reference Court in its report dated 22.11.2006, relevant extract whereof would read as under:-

> "The spot inspection has been conducted in terms of order dated 13.11.06 in the presence of officials from DDA (Sh. M.M. Rao, Director L.M.), Sh. S.K. Singh (LAC South), Sh. Raj Shekhar (D.C. South), Sh. Atul Kumar (Ex. Engineer, Irrigation & Flood Control Department) who are accompanied with other team of officials from

respective departments. Counsel for the petitioners as well as respondents are also present.

The officials led to embankment of River Yamuna in village Nangli Rajapur via Marginal Bund Road through 'Pantoon Road'. A rough sketch (i.e. Site plan by approximation) prepared by officials of DDA to give a broad idea of the location of villages has been handed over. The same is Annexure 1 and clearly depicts the location of villages Behlolpur Khadar, Nangli Rajapur, Kilokari, Chuck Chilla, Khizrabad, Jogabai, Okhla, Jasola and Madanpur Khadar.

A copy of site plan indicating the khasra no's of village Nanglirazapur has been handed over by officials of LAC South. The officials explained at site that some of the Khasra no's which are sub-merged or likely to be sub-merged and are adjacent to water stream has been de-notified while the others had been acquired. The same are reflected in different shades in the site plan (Annexure II). The officials informed that the acquired land extended upto 500 metres and may be more from the stream of water which was flowing currently. The land on both sides at the 'site spot' appeared to be under cultivation. However, it is pertinent to note that officials from Irrigation and Flood Control Department informed that as and when the water level in river Yamuna crosses a mark of 204.83, the land gets covered with water, depending on amount of discharge of water in the river. It was also pointed out that owing to aforesaid reasons no development has been permitted from 'Marginal Bund Road' till embankment of River Yamuna (As depicted in Annexure – I). It was observed that there was no substantial development except that land appears to be utilized near the site for agricultural purpose.

Thereafter the officials led to show the approximate location of land of village Kilokari, Behlolpur and Khizrabad from Ring Road and D.N.D. Road. The officials showed that no activity/development on the land near to the embankment could be undertaken except for agricultural activity. The spot inspection

commenced at about 2.40 p.m. and has been completed at about 4.45 p.m.

Sd-
(ANOOP KUMAR MENDIRATTA)
ADDL. DISTRICT JUDGE: DELHI
22.11.2006"

18. It may be highlighted that the Forward Bund, as the very name suggests, is the raised embankment to contain the flooded river as and when it overflows, so that the city of Delhi is not inundated with water, during monsoon. It is obvious that due to this, there is hardly any construction activity in the area in question, for the reason most of it is low lying area and is flood prone. In the words of the learned Reference Court, the topology, nature and potential for utilization of the subject lands, may be reproduced by me. It reads as under:-

> "As per notification dated 23.6.89 placed on record about 3500 Hectares of land starting from a point 1 km. upstream, Wazirabad Barrage road till it outs the boundary of Union Territory was proposed to be acquired for channelization of river Yamuna. The purpose of the project itself suggests the land in the river bed adjacent to the existing stream of water was to be acquired. The acquired land being in river bed on forward bund as such can be safely inferred to be covered during some parts of the year with water and may be cultivable for other parts of the year. No evidence has been led by the petitioners to show that the land was not situated in the forward bund area. Considering the situation of the land in the river bed it may not be capable of being utilized as a normal agricultural land or building site despite the village being urbanized and cannot be compared with land other than situated in river bed in village Kilokari. The development may have taken place in and around village Kilokari but the same cannot change the handicaps of land situated in a forward bund area owing

to its typical location and likelihood of flooding during the monsoons. I may also observe that a mere construction of an isolated boundary wall or a solitary temple without indicating the nature of construction cannot lead to an inference that the land could be used as a building site or could be compared to land falling outside the forward bund area. The value of land as such needs to be assessed by this Court considering the aforesaid factors."

19. The quote hereinabove extracted by me is from the reference order dated 18.10.2006 in LAC No.1/2003 titled *Bed Ram Vs. UOI & Anr.*

20. By virtue of a notification dated 23.6.1989 issued under Section 4 of the Land Acquisition Act 1894, a vast track of land ad-measuring 3500 hectares was proposed to be acquired at public expense, for a public purpose, namely, 'Channelization of Yamuna River'. Lands of various villages were covered by the said notification and needless to state included lands comprised in the revenue estate of village Khizrabad, Kilokari and Nangli Rajapur. It may be clarified that not all agricultural lands in the revenue estate of said 3 villages were notified for the proposed acquisition. Only the lands which were between the Forward Bund and the river Yamuna and as stand graphically described by the learned Judge and as extracted hereinabove in para 17, were the ones which were proposed to be acquired.

21. The notification in question was followed by a declaration issued under Section 6 of the Land Acquisition Act 1894 on 22.06.1990 wherein the area and the Khasra number in each village in respect whereof the notification was issued were detailed.

22. Pertaining to the revenue estate of village Khizrabad, subject matter of the present appeals, the Land Acquisition Collector announced an Award bearing No.18/1992-93. Pertaining to village Kilokari the Award No.14/1992-93 was announced on 19.6.1992 and pertaining to village Nangli Rajapur the Award No.16/1992-93 was announced on 19.6.1992.

23. In all the awards, the Land Acquisition Collector assessed the fair market value of the subject lands for all 3 villages @ ₹27,334/- per bigha and needless to state held that the land owners would be entitled to the interest and such other statutory benefits as were to be paid on the compensation assessed as per the Land Acquisition Act 1894.

24. While assessing the fair market value of the lands as on 23.6.1989 i.e. the date of the notification issued under Section 4 of the Land Acquisition Act 1894, the Land Acquisition Collector took into consideration various registered sale deeds reflecting the stated price and therefrom computed that the average price of the land would come to ₹18,736/- per bigha. But, noting that vide Office Order dated 3.5.1990 the Government of Delhi had notified the minimum price of agricultural land in the Union Territory of Delhi having 2 rates; ₹4,50,000/- per acre for agricultural lands and ₹1,50,000/- per acre for land situated in the river bed, since the notification under Section 4 with which he was concerned was dated 23.6.1989, depressed, by discounting the price by 15% per annum and concluded by holding that the fair market price as of 23.6.1989 would be ₹27,344/- per bigha. This price determined for the land in village Kilokari was held to be price payable for the acquired land in the other 2 villages as well for the reason the Land

Acquisition Collector assessed the compensation on the minimum price notified by the Government itself as on 3.5.1990 for the lands situated in the river bed.

25. Dissatisfied with the assessment made by the Land Acquisition Collector, the appellants herein sought reference under Section 18 of the Land Acquisition Act 1894, which was referred to the Reference Court as per Section 18 of the Act.

26. The learned Reference Court, after framing the issues in the reference before it and after permitting the parties to lead evidence in support of their claim, disposed of the references made, by and under various orders fixing the fair market price at ₹89,600/- per bigha for the acquired lands.

27. I note that the reasoning of the learned Reference Court is pari-materia in each order.

28. The record of the learned Reference Court shows that before making the assessment, vide order dated 13.11.2006, it recorded that the Court would inspect the site and notice whereof was deemed to be given to the parties as per the order. Thereafter, in the presence of the learned counsel for such parties who chose to be present at the inspection and in the presence of the representative of the Land Acquisition Collector and DDA the learned Judge made a site visit on 22.11.2006 and prepared a spot inspection report and a site plan, both of which have been extracted by me hereinabove in para 12 and 17 above.

29. It may be noted that the learned Judge took various photographs which are placed in LAC No.2/1998 *Bhopal Singh Vs. UOI & Anr.* and the same show that the lands are low lying lands

and are, as described by the learned Judge in the report which I have extracted in para 17 hereinabove:

30. It is not in dispute that the land in question, falls in an area, which is between the river Yamuna and Ring Road. Since I am, with consent of learned counsel for the parties treating LA App.No.59/2007 as the lead matter, it would be relevant to note that the appellant thereof Bed Ram, appeared in the witness box as PW-7 before the Reference Court, and admitted in his cross-examination that except for a petrol pump and the two shops, there is no abadi around the land. It is also admitted that there is a *naala* (drain) in village Kilokari. He admitted that since construction was not allowed by the Government, no other construction could come up.

31. Various documents were proved before the learned Reference Court by various parties and find a mention in the various orders passed by the learned Reference Court, but I need not note the same because, before me, while arguing the appeals learned counsel for the parties pressed into aid only one sale deed dated 17.3.1988, Ex.PW-3/1 in the reference sought by Bed Ram. Besides, learned counsel relied upon the decision reported as *Tindey & Ors Vs. Union of India & Anr.* *2000* (54) DRJ 384 (DB), wherein a Division Bench of this Court assessed the market value for the land situate in village Khizrabad acquired pursuant to a notification dated 10.05.1976 and assessed the compensation @ ₹35,000/- per bigha as of 10.5.1976. I may highlight that land which was subject matter of consideration in *Tindey*'s case (supra) was saline land (*salabi*) and was acquired for purposes of constructing a pilot cut in the reach from Nizmudding Bridge to

Okhla Weir. Learned counsel also relied upon the decision reported as *Diwan Ram Swaroop & Ors Vs. Union of India* 1992 (48) DLT 600 perusal whereof shows that the land situate in village Khizrabad was acquired pursuant to a notification dated 03.06.1961 and was assessed at ₹12,500/- per bigha.

32. I may highlight that the decision in *Diwan Ram Swaroop*'s case (supra) was the basis on which decision was premised in *Tindey*'s case (supra). In *Tindey's* case, taking the land value at ₹12,500/- per bigha as of 3.6.1961 by giving an annual increment of 12% but denying a progressive increase, the sum worked out was ₹35,000/- per bigha. With reference to the decision reported as *Bedi Ram Vs. UOI & Anr.* 2001 (93) DLT 150 and a decision dated 4.2.2011 disposing of RFA No.582/1994 *Bal Krishan Kapahi Vs. UOI & Anr.* as also a decision of the Supreme Court reported as *Nand Ram Vs. State of Haryana* JT 1988 (4) SC 260, it was urged in the alternative, that if the price as per sale deed dated 17.3.1988 was not to be adopted and the sale price determined in *Diwan Ram Swaroop*'s case was taken to be base price, percentage increase adopted by the learned Trial Judge as 12% be adopted but the benefit of the progressive increase should be given and in respect of the plea I must note that learned counsel made a concession that as was done in *Bedi Ram*'s case, initial increase could be @ 6% per annum followed by 10% per annum and then 12% per annum, with the cut off years being 1959-1965 (6%), 1966-1973 (10%) and 1974 onwards (12%).

33. Pressing the first argument that the sale deed dated 17.3.1988 should be adopted by this Court to determine the fair market value as of 23.4.1989, learned counsel heavily relied upon

the decision of the Supreme Court reported as *G.Prema Vs. Special Tehsildar* (2010) 12 SCC 502 and the decision reported as *Om Prakash Vs. State of Haryana & Ors.* 2011 (IV) AD (SC) 383 and urged that as held therein the development around the place which had taken place over the years, where the subject lands were situate, had to be factored in while determining the fair market value of the acquired lands. Relying upon the testimony of Devi Ram PW-6 in the reference pertaining to Bed Ram, the Patwari of village Kilokari, learned counsel argued that he admitted that the land in question is situated in a developed area, having building potentiality, inasmuch as the land situated in village Kilokari and Khizrabad were acquired for the planned development of Delhi in the years 1959 and 1961 and on which acquired lands DDA had developed the residential colonies named 'Friends Colony', 'Kalindi Colony' and 'Maharani Bagh'. It was thus urged that the area in question had great potentiality; the same being a reflection of the 3 colonies having come up on the earlier acquired lands. Pertaining to the sale deed dated 17.3.1988, Ex.PW-3/1, referred to by me hereinabove, it was argued that the vendor and vendee of the sale deed were not the residents of the area in question and thus, the sale transacted between them had to be taken as the basis for determining the market value of the acquired land and could not be ignored by labeling the same as a tainted document and not to be ignored as per the reasoning of the learned Trial Judge, which reasoning is as under:-

> "It may further be observed that, there is no evidence to reflect that there could have been an increase in prices of land as per sale deed dated 17.3.88 @ Rs. 2,07,500 per bigha relied by petitioner when compared

with Ex.R1.(Rs.43,200/- per bigha) or min. price fixed w.e.f. 27.4.90 as per policy within a short span of time. It is a known fact that the scheme of acquisition is known to the villages and residents much before the actual notification u/s 4 is issued as numerous surveys are made prior to any acquisition proceedings. As such the execution of sale deed at enhanced rates to claim increased compensation cannot be ruled out. For the aforesaid reasons sale deed dated 17.3.88 relied by petitioner does not appear to be reliable to assess the value of land."

34. I have extracted the quote herein above from the decision dated 25.9.2006 in LAC No.1/2003 '*Bed Ram vs. UOI & Anr.*'.

35. Pertaining to village Kilokari, an additional argument was advanced which was predicated on the decision dated 10.10.1984 in RFA No.117/1974 *Smt.Angoori Devi vs. UOI & Ors.* wherein pertaining to a notification dated 13.11.1959 fair market value assessed by this Court for lands in village Kilokari was ₹26,000/- per bigha as against ₹12,500/- per bigha for the land in village Khizrabad wherein in *Diwan Ram Swarup's* case (supra) compensation assessed as of the date 3.6.1961 was ₹12,500/-. It was thus urged that it was apparent that land in village Kilokari was more valuable than the rest and for which it was urged that Kilokari needs to be dealt with on a better footing.

36. Per contra, Shri Sanjay Poddar, Standing Counsel for the Land Acquisition Collector urged that the Trial Court had visited the spot and had acquired spot knowledge about the land and its topography, and has recorded a categorical finding of fact, to the effect that the acquired lands are in the river bed on Forward Bund and as such, can safely be inferred to be covered during some part

of the year with water and may be cultivable for other parts of the year. Since the lands fall in the river bed, they may not be capable of being utilized as a normal agricultural land and in any case are unsuitable to be built upon. The development may have taken in and around village Kilokari and village Khizrabad, but the same was on the lands on the western side of Ring Road, instant lands are on the eastern side of Ring Road; the earlier acquired lands were not low lying lands. They were just like any other ordinary agricultural lands. Counsel stated that the situational disadvantage of the instant lands was writ apparent and that mere isolated construction of a petrol pump and 2 unauthorized shops to which Sh.Bed Ram had referred to in his testimony were of no significance. Learned counsel highlighted that the witnesses had admitted that no construction was permissible on the land and thus urged that merely because 3 colonies: Maharani Bagh, Kalindi Colony and New Friends Colony had come up on the acquired lands mainly of village Kilokari and partly of village Khizrabad could not impact the potentiality of the instant lands which were qualitatively disadvantageously situated, being on the eastern side of Ring Road and across the Forward Bund spanning the area between the Forward Bund and the river Yamuna.

37. Learned counsel clarified that even if it be held that the learned Trial Judge has inadvertently referred to as the subject lands as forming the River Bed rather than the Flood Plain land, but hasten to add that this does not impact the reasoning of the learned Trial Judge inasmuch as the land being the Flood Plain land was prone to water-logging and indeed this was the reason why hardly any crop was grown on the lands and the fact that the

natural vegetation on the land being grass land, bushy and shrub vegetation.

38. In reply to the arguments pertaining to the progressive increase to be effected while determining the fair market value of the land, Shri Sanjay Poddar relied upon the latest judgment of the Supreme Court reported as *General Manager, Oil & Natural Gas Corporation Ltd Vs. Rameshbhai Jivanbhai Patel & Anr.* 2008 (14) SCC 745 and highlighted paragraphs 13 and 14 thereof.

39. Learned counsel highlighted that the solitary sale deed relied upon i.e. the sale deed dated 17.03.1988 executed by Shri Ranjit Singh S/o Shri Badlu Ram in favour of Shri Vinod Kumar S/o Shri Kedar Nath, whereby a parcel of land ad-measuring 1 bigha 1 biswa was sold for a sum of ₹2,07,500/-; the recitals of the same would show that ₹40,000/- was paid in advance and balance i.e. ₹1,67,500/- was to be paid at the time of registration of the sale deed. The sale deed did not make it clear as to what was the mode of payment of balance sale consideration. Counsel highlighted that the sale deed was executed a few months prior to the date of the notification in question and justified the reasoning of the learned Trial Judge which was questioned by the learned counsel, which reasoning I have extracted in para 33 above. Learned counsel further urged that except for this solitary sale deed, no other evidence in the shape of voluntary sale transaction has been placed on record by the appellants/land-owners. Counsel highlighted that in rebuttal, the Union of India submitted 4 sale deeds, Ex.R-1 to Ex.R-4 which were also considered at the time of announcing the awards which showed that the average sale price was ₹18,736/- per bigha. Counsel highlighted that 2 sale deeds out

of these 4 were executed by the land-owners/claimants, namely, Smt.Angoori Devi. Counsel urged that the paucity of sale deeds showed paucity of sale transactions and thus there was no demand for the land in question and thus concluded that the land did not have any potentiality to command higher value as claimed by the appellants. Learned counsel contended that the learned Reference Court has rightly rejected the solitary sale-deed relied upon by the appellants. Learned counsel highlighted that such types of documents are created not only for the purposes of inflating the price, but also to secure alternative plots inasmuch as the Large Scale Acquisition Policy for Agricultural Lands in Delhi requires that the individual, whose land is acquired, must have more than 1 bigha land to be entitled to a residential plot in a developed colony. Learned counsel highlighted the decision of the Supreme Court reported as *Mohammad Raofuddin Vs. Land Acquisition Officer* 2009 (14) SCC 367, wherein it was observed as under:-

> "12. In *Shaji Kuriakose* v. *Indian Oil Corpn. Ltd.* this Court had observed as under: (SCC pp. 652-53, para 3)
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> > "*3.* ... While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the

market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (*1*) the sale must be a genuine transaction, (*2*) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (*3*) that the land covered by the sale must be in the vicinity of the acquired land, (*4*) that the land covered by the sales must be similar to the acquired land, and (*5*) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

40. It was argued by Mr.Sanjay Poddar and for which learned counsel relied upon the decision of the Supreme Court reported as *Kanwar Singh & Ors. vs. Union of India* 1998 (8) SCC 136, that the lands situated in various villages acquired through the same notification cannot be given the same market value unless and until it is proved that the situation and potentiality of the land in 2 different villages are the same. To this effect, he pointed out that even in *Nand Ram's* case (supra), relied upon by the appellants, it was held that the similarly situated land in a village is to be given the same price and not all. Thus, it was argued that unless and until the potentiality and situation of the

land sought to be acquired are similar to the land sought to be compared, a uniform rate cannot be awarded. This argument of learned counsel I am noting was in response to the submission made that the solitary sale deed pertaining to village Kilokari be treated as reflective of the market value of lands in village Khizrabad and village Nangli Razapur. Mr.Sanjay Poddar further argued that while assessing the market value of the acquired lands, the principle, as laid down in *Mohammad Raofuddin's* case supra is to be followed; namely, (i) the court is duty bound to ensure that the compensation determined is just and fair not only to the individual whose property is acquired, but also to the public which has to pay for it; and (ii) the land situated on the frontage having special advantages cannot be treated at par with the land situated in the interior undeveloped area. Further, the court is required to act as a willing and informed buyer and seller, meaning thereby, such a buyer and seller must be unaffected by the special needs of a particular purchase and must have the information required by a prudent person relating to the land sought to be acquired. Counsel highlighted that the learned Trial Court, which had visited the site, has acted as an informed buyer and seller while recording the finding about the nature of the land, which finding cannot be disturbed without any cogent evidence.

41. Mr.Ajay Verma, learned counsel for DDA while adopting the arguments advanced by Mr.Sanjay Poddar, added that the land acquired for residential colonies was not the purpose under the present notification and that as held in the decision reported as *Executive Director vs. Sharat Chandra Bisoi* 2000 (6) SCC 326,

lands can be classified as situated near a river or at a distance there-from i.e. within a village *belting* can be resorted to.

42. In rejoinder, learned counsel for the appellants, submitting rejoinder submissions through Mr.B.P.Gupta, Advocate relied upon the decision of this court reported as *Baldev Singh Dhillon & Ors. Vs. Union of India & Ors* 2005 (121) DLT 606, and with reference to paragraphs 23 and 70 thereof contended that in the said decision, pertaining to the instant lands, where the challenge to the acquisition was that there was no ground to invoke the urgency clause i.e. Section 17(1) and 17(4) of the Land Acquisition Act 1894 thereby denying the right of hearing to the land-owners affected under Section 5(A) of the Act, the respondents had cited the looming threat of unauthorized colonization as the reason to deny such right and therefrom counsel sought to infer that the lands had a potentiality for development and colonization. Mr.L.C.Chechi, learned counsel supplemented, with reference to a notification dated 25.1.1995 issued under Section 48(2) of the Land Acquisition Act 1894 read with an order dated 5.11.2004, both of which were not filed before the learned Reference Court, but were taken on record as additional evidence pursuant to an application filed under Order 41 Rule 27 of the Code of Civil Procedure, and urged that the notification and the order prove that the lands which were under the River Bed were de-notified from acquisition as they were held not required for the purpose for which the acquisition was made, and therefrom counsel urged that it was apparent that the remaining lands were not 'River Bed'.

43. Having considered the submissions urged by learned counsel for the parties I propose to deal with the same after noting the decision of the Supreme Court reported as (2008) 14 SCC 745 *General Manager Oil & Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel & Anr.*

44. The matter reached the Supreme Court, on the facts that an area ad-measuring 13 hectares and 17 ares, in village Ijapura within District Mehsana, Gujarat was acquired for an ONGC installation, for which the notification under Section 4 of the Land Acquisition Act 1894 was issued on 15.9.1992. The Land Acquisition Collector determined the fair market value of the land as of 15.9.1992 at ₹2.10 per square meter. On a reference sought, the Reference Court enhanced the compensation by determining the fair market value at ₹17.10 per square meter. The reasoning of the Reference Court was that in the absence of any sale deeds in the village in question, the only material was Ex.15, being an award pertaining to a notification dated 6.1.1987 whereunder land in a neighbouring village named Santhal was assessed to a fair compensation at the rate of ₹10 per square meter, as also Ex.16, which related to another land near the village Ijapura i.e. land in village Chalsana, of which fair compensation was also assessed at ₹10 per square meter pertaining to a notification dated 31.7.1986. Thus, taking ₹10 per square meter to be fair market value for the years 1986 and 1987, since notification being considered was dated 15.9.1992, the Reference Court increased the value, cumulatively at the rate of 10% per annum and thereafter reduced ₹2 per square meter on account of distance factor between village

Ijapura and other 2 villages, thereby arriving at the figure of ₹17.10 per square meter. The High Court dismissed the appeal against the decision of the Reference Court. This is how the matter reached the Supreme Court.

45. The Supreme Court opined, on the facts of the said case, that in the absence of any evidence relating to sale transactions in village Ijapura and having regard to the proximity of village Santhal with the acquired lands of village Ijapura, it would be reasonable to determine the market value of lands in village Ijapura with reference to the value of land in village Santhal and village Chalsana. Thus, the Supreme Court held that it would be reasonable to hold that in the year 1987, value of land in village Ijapura was the same as in village Santhal and this would mean that as of the year 1987, value of land in village Ijapura was ₹10 per square meter. The Supreme Court thereafter considered the second question, as to what should be the percentage increase to be given per annum and the further question whether the same should be cumulative i.e. progressive or simple. With reference to the decisions reported as (1992) 4 SCC 659 *Ranjit Singh Vs. UT of Chandigarh*, (2004) 2 SCC 283 *Krishi Utpadan Mandi Samiti Vs. Bipin Kumar* and (2005) 9 SCC 594 *Land Acquisition Officer and Revenue Divisional Officer Vs. Ramanjulu*, where Courts had accepted escalation in market value of land at the relevant time from percentages ranging between 10% to 15% per annum, the Supreme Court held that one has to be careful with respect to: Whether the land was comprised in an urban, semi-urban or a rural

area. In para 13 and 14 of its opinion, the Supreme Court observed as under:-

> "13. Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during nineties.
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> 14. On the other extreme, in remote rural area where there was no chance of any development and hardly and buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or2% per annumn. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% or 15% per annumn, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the ninetites, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."

46. Thereafter, the Supreme Court noted that the acquisition in *Ranjit Singh*'s case (supra), pertained to lands on which Sector 41 in the city of Chandigarh was developed i.e. the land was abutting the urban city of Chandigarh. The land in *Bipin*

Kumar's case (supra) was adjoining the Badaun - Delhi Highway and was in a semi-urban area and the land which was subject matter of consideration in *Ramanjulu*'s case (supra) pertained to the 3rd phase development of the existing and established industrial estate in the urban area. It was in this context that the Supreme Court expressed an opinion in para 13 and 14 of its decision, as extracted hereinabove.

47. The observations in para 14 of the decision pertaining to remote rural areas are equally applicable where the land is such that there is hardly any chance of any development and hardly any buyer to purchase the land; and hence prices stagnating.

48. Needless to state, the situation of the land and its surrounding areas, including availability of land in the area and demand thereof are the factors which lower prices in rural areas and these would equally be the factors which would depress price rise even if the land is in an urban area, but is so placed in the city, that its potential for development is meager.

49. Marshy lands along river banks, lands in Flood Plain, prone to flooding, would be in this category, even if it is in an urban or a semi-urban area.

50. Reverting back to the decision of the Supreme Court in *Ramesh Bhai's* case (supra), highlighting that, for lands where potentiality was established, a safe thumb rule held applicable by the Court, could be to increase the market value by 10% to 15% per annum, but this thumb rule was expressly made subject to a variation; where peculiar features were available in the form of evidence to increase the growth up to even 30% per annum or depress the same to half i.e. 5% to 7.5% per annum.

51. Applying the aforesaid principles, it was observed that since the subject lands were in a rural area and there was no development activity in the area for a long period of time, appropriate escalation per annum should be 7.5% and no more.

52. Stating that the escalations should be at a cumulative rate i.e. progressively and not at a flat rate, the Supreme Court, in para 20 and 21 of its opinion, held that commencing with the rate of ₹10/- per square meter in the year 1987 and according benefit of cumulative rate of increase to be 7.5% per year, the price would rise to ₹14.35 per square meter in the year 1992 and as against deducting ₹2/- on account of distance factor as done by the Court of Reference and as upheld by the High Court, since the Supreme Court was applying a lower percentage cumulative rate of escalation, the deduction effected was ₹1.35 per square meter and accordingly the fair market value determined was ₹13/- per square meter.

53. With respect to the sale deed dated 17.3.1988 it has to be highlighted that apart from the reasoning given by the learned Trial Judge there are good further reasoning to ignore the same and I have highlighted the same while noting the argument of Sh.Sanjay Poddar Advocate in para 39 above and since I am accepting the entire reasoning of the argument I need not re-state the same as my reasons, but lest I am accused of being a copy cat and not evidencing that I have independently applied my mind to the argument I record that a solitary sale transaction would be an unsafe measure since a solitary swallow does not mean the onset of Spring and that a solitary tree is no indication that one has reached the woods. I need not pen down the catena of judgments

penned in this Court by learned Judges wherein a little in excess of 1 bigha of agricultural land was acquired a few days prior or a few months prior to a proposed acquisition to avail the benefit of an alternative residential plot in a developed area at a concessional price as per the Large Scale Acquisition Policy for Agricultural Lands in Delhi. It assumes importance that under the sale deed 1 bigha and 1 biswa of land was transacted on 17.3.1988. As I have highlighted herein above, issue of re-development of the river Yamuna was being considered for a long period of time and there is every possibility of Sh.Vinod Kumar being a smart man who knew somebody in the corridors of power and got wind of the proposed acquisition. I wonder what meaningful agricultural activity can be carried on by a person on 1 bigha and 1 biswa land? That apart, as observed by the Supreme Court in the decision reported as *Union of India vs. Ram Phal* 2003 (10) SCC 166, while assessing the value of a large tract of land situated in various villages a solitary sale transaction of a small parcel of land should be ignored as it would be unsafe to assess the market value of a large tract of land based thereon. The law relating to sampling tells us that for a sample to be representative of the whole it must be a fair percentage of the whole and not a trifle. I reiterate my reasoning in paras 47 and 48 above.

54. The question would be whether the percentage increased worked out by the learned Trial Judge i.e. 12% per annum on a flat rate with reference to the land price ₹35,000/- per bigha as determined in *Tindey's* case (supra), which I note pertained to a notification dated 10.5.1976 for lands in village Khizrabad (land being salabi and thus a guidance to me of being in

the flood plain of the river) is correct and whether the same has to be applied progressively and not at the flat rate.

55. I have already held herein above that the instant lands are on the Flood Plain, not on the river bed as held by the learned Reference Court, but the same would make no difference inasmuch as being on the flood plain of the river, the land is low lying, shallow, mostly grassland, bushy and with shrub vegetation. The aquatic vegetation is very poor and the area gets flooded whenever the monsoon is normal or in excess. The learned Reference Court has highlighted the topology of the land with reference to a personal visit and I accept the same. The instant lands are situationally disadvantaged and are qualitatively different, being inferior, to other lands in the revenue estate of village Kilokari and Khizrabad which were acquired earlier on, on which the colonies of Maharani Bagh, Kalindi Colony and New Friends Colony were colonized. It is for this reason the decision in RFA No.117/1974 *Smt. Angoori Devi vs. UOI* wherein pertaining to a notification dated 13.11.1959, for land in village Kilokari fair market value assessed was ₹26,000/- per bigha cannot be the basis for fixing the fair market value of the subject lands. I highlight that pertaining to village Khizrabad, for similar land, pertaining to a notification dated 10.5.1976, in *Tindey's* case (supra) fair market value assessed as of said date was ₹35,000/- per bigha. The argument of Sh.L.C.Chechi Advocate, noted in paragraph 42 above (last portion), needs to be dealt with here. The notification releasing lands are the 'River Bed' and the 'Flood Plain'. It is apparent that the authorities as also the Reference Court have used the expression 'River Bed' and 'Flood Plain' as

interchangeable, not realizing that the two are different; and as explained in para 13 above. The subject lands are 'Flood Plain' and not 'River Bed' and as held by me in paras 47 and 48 above, the consequence of the lands being 'Flood Plain' have to follow.

56. On the principle of percentage increase as per *Bedi Ram's* case (supra), relied upon by learned counsel for the land-owners, wherein progressive increase for various stretches of years was applied at 6%, 10% and 12% per annum, suffice would it be to state that the same was on the basis of evidence of such an increase. I am guided on the issue by the decision of the Supreme Court in *Ramesh Bhai's* case (supra) wherein the Supreme Court cautioned the Courts that while applying the thumb rule of percentage increase in the price of lands, one must not be oblivious of positive evidence to show a greater price rise or lack of any evidence of sales, meaning thereby prices being stagnant or increasing marginally by 1% or 2% per annum and in such cases pertaining to rural areas the thumb rule being to take the price increase between 5% to 7.5% per annum. I have already held herein above that the peculiar features, which are negative in character, for the instant lands would require the thumb rule required to be adopted for rural areas as applicable to the instant lands on the principles I have extracted in *Rameshbhai's* case (supra). I may highlight that the decision of a learned Single Judge of this Court in *Baldev Singh Dhillon's* case (supra), which was relied upon by learned counsel for the appellants, in para 73 thereof, brings out that there is no development potential in the land save and except to develop it as a green area after channelizing the river Yamuna and use the same for people to

stroll around and enjoy the cool breeze after toiling hard in the hot summer; not more than 15% of the area is capable of a meaningful use.

57. But, I hasten to add that, the futuristic use of a land after acquisition would not be a basis to infer a fair market value, which is the mandate of Section 24 of the Land Acquisition Act 1894.

58. Whatever be the percentage increase per annum in the value of the land, as per the decision in *Rameshbhai's* case (supra) the same has to be applied in progression.

59. Taking into account all the factors herein above noted, of fact and of law, in my opinion the fair market value of the instant subject lands require the same to be fixed with reference to the decision in *Tindey's* case (supra) by taking the land value at ₹35,000/- per bigha as of 10.5.1976 and applying the percentage increase not at 12% per annum but at 7.5% per annum and applying the same progressively for a period of 13 years, since the notification with which I am concerned is dated 23.6.1989, I reach the figure in sum of ₹89,614.37 per bigha.

60. The learned Reference Court has determined the compensation at ₹89,600/- per bigha by adopting the annual price rise to be 12% but applying the same at a flat rate to the base rate of ₹35,000/- per bigha.

61. But, I have worked out the figure to reach the sum of ₹89,614.37 by commencing from the base date 10.5.1976 and applying the same for a period of 13 years which will take me to the date 10.5.1989, I am conscious of the fact that the notification requires me to proceed ahead by another 43 days and therefore

logically requiring to further enhance the sum, but noting that mathematical precision is not to be achieved while assessing fair compensation and that if difference between dates is negligible, the same has to be ignored and thus I bring the curtains down by according my imprimatur to the price determined by the learned Reference Court.

62. Pertaining to the cross objections filed by the Union of India, I note that the challenge was to the learned Trial Judge holding that land value appreciated by 12% per annum. The challenge was on the ground that the poor quality, locational and otherwise, of the land did not warrant said presumption to be raised.

63. In view of my reasoning hereinabove dealing with the rival contentions pertaining to the appeals filed by the land owners, and the conclusions arrived at, the inevitable consequence has to be, the dismissal of all the cross appeals and cross objections filed by the Union of India.

64. Thus, all appeals as also the cross objections are dismissed, leaving the parties to bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

JUNE 07, 2011
mm / dk