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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: January 12, 2012
Pronounced on: February 01, 2012

+ LA.APP. 133/2011

VED PRAKASH & ORS

..... Appellant

Through:

Mr.B.S.Maan, Mr.Amit Maan, Mr.R.S.Verma, Mr.Jai Prakash, Ms.Smita Maan and Mr.Jitin Tewathia, Advocates (R-14-16, 22, 30, 34, 38-45, 51-53) Mr.Mohinder Singh Charak, Advocate for appellant in R-112 and respondent in R-63 Mr.B.D.Sharma, Mr.S.K.Rout, Mr.B.K.Routray, Mr.Vinay Kumar, Advocates in (R-84 to 86, 88-102, 104) Mr.S.K.Rout and Mr.B.K.Routray, Advocates (in R-74 and for respondent on R-79)

versus

UNION OF INDIA & ANR

..... Respondent

Through:

Mr.Sanjay Poddar, Senior Advocate with Mr.Sanjay Pathak, Ms.Navlin Swain, Ms.K.K.Kiran and Mr.S.N.Pandey, Advocates for UOI Mr. Yeeshu Jain, Advocate for UOI (R-1 to 5, 18-37, 47, 49, 50-52, 55-73, 75-81, 113-123 Mr.Arun Birbal, Mr.Bankey Bihari Sharma, Ms.Amita Singh, Mr.S.K.Sethi and Mr.Kunal Sharma, Advocates for DDA in (R-74-77 & 80) Mr.Mohinder Singh Charak, Advocate (R-63 and 112)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
01.02.2012

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For orders see LA.App. No.115/2011, titled as *Jai Prakash vs. Union of India & Anr.*


(SUNIL GAUR)
JUDGE

FEBRUARY 01, 2012

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: January 12, 2011
Pronounced on: February 01, 2012

+ LA.APP. 115/2011 (VILLAGE BAMNOLI)

JAI PRAKASH

..... Appellant

Through: Mr.B.S.Maan, Mr.Amit Maan, Mr.R.S.Verma,
Mr.Jai Prakash, Ms.Smita Maan and Mr.Jitin
Tewathia, Advocates (R-14-16, 22, 30, 34, 38-
45, 51-53)
Mr.Mohinder Singh Charak, Advocate for
appellant in R-112 and respondent in R-63
Mr.B.D.Sharma, Mr.S.K.Rout,
Mr.B.K.Routray, Mr.Vinay Kumar, Advocates
in (R-84 to 86, 88-102, 104)
Mr.S.K.Rout and Mr.B.K.Routray, Advocates
(in R-74 and for respondent on R-79)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Sanjay Poddar, Senior Advocate with
Mr.Sanjay Pathak, Ms.Navlin Swain,
Ms.K.K.Kiran and Mr.S.N.Pandey, Advocates
for UOI
Mr. Yeeshu Jain, Advocate for UOI (R-1 to 5,
18-37, 47, 49, 50-52, 55-73, 75-81, 113-123
Mr.Arun Birbal, Mr.Bankey Bihari Sharma,
Ms.Amita Singh, Mr.S.K.Sethi and Mr.Kunal
Sharma, Advocates for DDA in (R-74-77 &
80)
Mr.Mohinder Singh Charak, Advocate (R-63
and 112)

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LA.App. 287/2011	LA.App. 288/2011	LA.APP. 184/2011 & C.M.No. 10953/2011 (Cross-objection)

(Relating to Notification No.9(50)/2004/L&B/LA/13211 of 04.11.2004 issued under Section 4 of the Land Acquisition Act, 1894 & Award No. 1/2007-2008 of 06.08.2008, Village Bamnoli, New Delhi)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
01.02.2012

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1. Above captioned appeals and cross-objections relate to acquisition of about 2100 bighas of land in Village Bamnoli, Delhi notified for Planned Development of Delhi vide Notification of 4th November, 2004 under the *Land Acquisition Act, 1894* and since the impugned order of the Reference Court in these appeals uniformly grants compensation at the rate of ₹17,45,000 *per acre* with statutory benefits, therefore, with the consent of learned counsel for the parties, who were present at the final hearing, these matters were heard together and are being adjudicated upon by this common order.
2. Land Acquisition Collector while relying upon the indicative price fixed by Government of NCT of Delhi for agricultural land in Delhi for the period in question, had determined the market value of the acquired land in question at the aforesaid rate of ₹15,70,000/- *per acre* of leveled land in Block A, whereas for the acquired land excavated beyond one meter, i.e., Block B land, compensation was determined at the rate of ₹14,13,000/- *per acre*.
3. Not satisfied with the aforesaid Award of Land Acquisition Collector, before the Reference Court, appellants/claimants had relied upon Notification of 24th October, 1994 issued by the Municipal Corporation of Delhi declaring the land in 20 villages including the instant village to be urbanized. Reliance was also placed upon Notification of 16th October, 2000 declaring change of land use of the acquired land in question and thereupon, Delhi Development Authority had prepared Zonal Development Plan for Dwarka Sub City in Dwarka,

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New Delhi.

4. While relying upon seven sale instances (Ex.PW-1/7 to Ex.PW-1/13) of the year 1999, relating to agricultural land in Village Pochanpur purchased by a religious society – *Radha Swami Satsang, Beas*, and certified copy of Sale Deed of 27th September, 2004 (Ex.PW-1/14) of Village Bharthal, enhancement in compensation was sought. Reference Court upon evaluation of the evidence on record concluded that there was no evidence to the effect that location, potential and utility of the land in the Villages of Bharthal, Pochanpur and Bamnoli is similar and had chosen not to rely upon the aforesaid sale instances as the Sale instance of this very village was available.

5. In the absence of the evidence of the Vendor/Vendee of the aforesaid sale instances, Reference Court had discarded the aforesaid sale instances relied upon by the appellants/claimants, while advertng to paragraph no: 29 of the Apex Court decision in *Lal Chand vs. Union of India and Anr.*, (2009) 15 SCC 769. Before dealing with the sale instances (Ex.R-I and Ex.R-II) of Village Bamnoli, Reference Court had refused to apply Delhi Development Authority auction rate for the commercial plots or the schedule of market rates for Vasant Vihar by placing implicit reliance upon the Apex Court decision in *Lal Chand* (supra) to hold that market price for the developed land cannot be applied while determining the market price of the undeveloped agricultural land in Delhi.

6. To fortify the aforesaid finding, Reference Court has extensively quoted the passages from the Apex Court decision in *Lal Chand* (supra) and thereafter, had proceeded to discard heavily relied upon instance of allotment of 14.5 acres of the acquired land by Delhi Development Authority to the Power Department of Government of NCT of Delhi for

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construction of 715 Mega Watt Gas Based Power Plant/Project, while holding as under:-

"77. The allotment of 1.5 hectare of land for a premium of ₹297.42 lakh per acre is an inter departmental allotment. Buyer and seller both are agencies of state. Since no development/ construction can take place on the land in question without permission of DDA in view of Section 12 of the Delhi Development Act, 1957 determination of premium for allotment of land in development area is not an ordinary sale between a prudent buyer and seller. Premium of land in such an allotment cannot be called the market price of land which a prospective buyer of similar land sitting in his armchair would be willing to pay.

78. Moreover, there is a time gap of three years between date of Notification under Section 4 of LA Act which is 04.11.2004 and date of allotment which is 25.11.2007. Market price of land allotted after 3 years of Notification under Section 4 of LA Act cannot be taken into consideration for determining market value on the date of Notification under Section 4. As per Section 24 of LA Act, the Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when required."

7. On the aspect of the acquired land being declared urbanized and of being in the development zone, the pertinent findings returned by the Reference Court are as under:-

"94. Land of petitioner is agricultural land although it is in urbanized area and in development zone. The land continued to be agricultural land even till issuance of Notification under Section 4 of LA Act in the year 2004 would show that in spite of being in capital of country having explosive population, no residential colony, approved or unapproved came up on the land in question and it would negate possibility of land in question having potential for building site even in near future.

95. The petitioner has brought no evidence, leave aside documentary evidence that the acquired land was suitable

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for putting up buildings, be they residential or commercial or industrial as the case may be. There is no building activity started on the land in question even after passing of a decade since area was urbanized."

8. On the question of potentiality of the acquired land, Reference Court has taken note of the fact that this acquired land is surrounded on all four sides by Villages – Bharthal, Bijwasan, Pochanpur and Dhul Siras. Noticing that acquired land is in the vicinity of Dwarka, where DDA is developing colonies and therefore, adoption of the minimum rates for agricultural land fixed by the Government of Delhi by the Land Acquisition Collector was not justified. Upon considering the two sale instances of 25th October, 2004 (Ex.R-1) and of 20th April, 2004 (Ex.R-2) of this very village, Reference Court had discarded the sale instance (Ex.R-2) as sale consideration of ₹9,02,496 *per acre* was found to be depressed and had chosen to rely upon the sale instance (Ex.R-1) depicting sale consideration of ₹17,45,108 which was found to be comparable.

9. In the instant appeals, it was vehemently urged on behalf of the appellants that the effect of Notification of 24th October, 1994 declaring the acquired lands being fit for urbanization and Notification of 16th October, 2000 regarding the change of land use under the Master Plan of Delhi has not been considered by the Reference Court to appreciate the true potential of the acquired land. Reliance was placed upon decision of the Apex Court in *Special Land Acquisition Officer & Anr vs. M.K. Rafiq Saheb*, (2011) 7 SCC 714, by learned counsel for the appellants to contend that in view of the aforesaid Notifications, the acquired land cannot be treated as an agricultural land for determination of its market value.

10. Aforesaid contention is noticed for being outrightly rejected as the

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acquired lands may not to be termed as agricultural land but they were certainly undeveloped. Government's minimum rates for the agricultural land applicable to Delhi have been rightly discarded by the Reference Court. So, reliance placed upon *M.K. Rafiq Saheb (supra)*, is clearly misplaced, as the Reference Court has determined the market value of the acquired land while relying upon a sale exemplar of this very village.

11. There is no question of discarding the aforesaid Notifications. In fact, inspite of the aforesaid Notifications no development activity was there on the acquired lands as no permission was sought by the owners of the acquired lands under Delhi Development Act and therefore, it can be safely concluded that the acquired lands were undeveloped and the same could not be compared with developed lands for determining the market value of the acquired land. Thus, reliance placed by appellant's counsel upon *Udho Dass vs. State of Haryana & Ors.*, 2010 (9) SCALE 41 is of no avail.

12. Rejection of auction rates of Delhi Development Authority, in Sector 20 and 22 of Dwarka, by the Reference Court, is assailed by learned counsel for the appellants by contending that the acquired land is fully comparable with the aforesaid land and is in proximity and therefore, the market value of the acquired land ought to have been fixed with reference to the auction rates of the Delhi Development Authority. Reference Court has not only relied upon the decision of Apex Court in *Lal Chand vs. Union of India and Anr.*, (2009) 15 SCC 769 but has extensively quoted relevant passages therefrom to hold that the sale consideration of the developed lands cannot be applied to the acquired lands which are undisputedly undeveloped. At the hearing in these appeals, learned counsel for the appellant could not distinguish the decision of the Apex Court in *Lal Chand (supra)*, whose ratio squarely

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applies to the instant cases. Therefore, I find that the Reference Court has rightly refused to apply Delhi Development Authority auction rates for determining the market value of the acquired land.

13. While reiterating the well settled principle of law that comparable sale instances, are the best piece of evidence to be considered by the Court for the purpose of determining the compensation, Apex Court in its recent decision in *'Radha Mudaliyar Vs. Special Tahsildar (Land Acquisition Tamil Nadu Housing Board)* (2010) 13 SCC 384 has observed as under:-

"13. Comparable sales instances are the safest method for determining the market value of the acquired land and as laid down in Shaji Kuriakose v. Indian Oil Corpn. Ltd., it should satisfy the factors, inter alia (1) the sale must be genuine transaction; (2) the sale deed must have been executed at the time proximate to the date of issuance of notification under Section 4 of the Act; (3) the land covered by the sale must be in the vicinity of the acquired land; (4) the land covered by the sale must be similar to the acquired land and (5) size of the plot of the land covered by the sale be comparable to the acquired land. The sales instances should preferably be closest to the date of notification as then alone it would satisfy the touchstone of the principles contemplated under Section 23 of the Act, as held in Kanwar Singh vs. Union of India."

14. Fixation of the market value of the acquired land on the basis of the sale instances (Ex.PW-1/7 to Ex.PW-1/14) of the adjoining villages, as sought by the appellants stands rightly rejected by the Reference Court as the sale instances of this very village are available. When it is so, then there is no need to look for the sale instances of the adjoining villages.

15. On the aforesaid reasoning, adoption of the L&DO rates to fix the market value of the acquired lands sought by the appellants is outrightly rejected. Appellants' counsel had relied upon decision of the Apex

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Court in *Kiran Tandon vs. Allahabad Development Authority*, (2004) 10 SCC 745 and in *Valliyammal and Anr vs. Special Tehsildar (Land Acquisition) and Anr.*, AIR 2011 SC 2937 to assert that deduction of 40% towards development charges was improper and where large area, not fully developed, is acquired, normally, deduction of about 33% is permissible. The need to look for sale instances in the vicinity is obviated in view of the fact that the sale instances of the instant village are available and so the requirement of considering the applicability of the sale instances (Ex.PW-1/7 to Ex.PW-1/14) would arise only when sale instance (Ex.R-1) is found to be not comparable. Therefore, reference to the aforesaid decisions by learned counsel for the appellants is of no consequence.

16. During the course of hearing, learned counsel for the appellants had strongly relied upon the instance of allotment of 14.5 hectares (37 acres approximately) by Delhi Development Authority to the Power Department of Delhi Government on leasehold basis at a consideration of ₹297.42 lacs per acre with 2.5% annual ground rent to claim enhancement of compensation at the rate of ₹40 lacs per acre over and above the market value fixed by the Reference Court as the allotment of the aforesaid land was out of the acquired land. With much vehemence, it was asserted by learned counsel for the appellants that the aforesaid allotment is clearly comparable and therefore, on its basis the compensation ought to be enhanced while treating the acquired land to be at par with the aforesaid land allotted to Power Department of Government of Delhi.

17. To meet the aforesaid stand of the appellants, it was pointed out by learned senior counsel for the Respondents that aforesaid allotment by Delhi Development Authority to Power Department of Government

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of Delhi was made in November, 2007 and the possession of the aforesaid land was handed over to the Power Department of Government of Delhi in February, 2008 and the acquisition of the land in question is of November, 2004 and during the intervening period land rates had steadily increased and therefore, aforesaid allotment cannot be made the basis to determine the market value of the acquired land as the intervening gap is of three years.

18. The factors to be considered to determine the market value of the acquired lands as reiterated by the Apex Court in *General Manager, Oil and Natural Gas Corporation Ltd vs. Rameshbhai Jivanbhai Patel and Anr*, (2008) 14 SCC 745, are 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 the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. 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% to 15% per annum, 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 nineties, 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.

15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

19. Being mindful of the ratio of the decision of the Apex Court in *ONGC (supra)*, I find that the instance of institutional allotment (Ex.PW13/1) of the year 2007 heavily relied upon by the appellants would not be a useful guide to determine the market value of the land in question, as the said allotment was made after a period of three years from the date of acquisition of the land in question. It is so said because the sale exemplar of the relevant period of this very village in question is

available. Therefore, the aforesaid instance of allotment of land to the Power Department of Government of Delhi has been rightly rejected by the Reference Court.

20. Now what is required to be considered is whether the sale instance (Ex.R-1) relied upon by the Reference Court is a comparable instance or not. Undisputedly, sale instance (Ex.R-1) is of this very village and is of October, 2004 whereas the land in question was acquired vide Notification of November, 2004. Evidently, aforesaid sale instance (Ex.R-1) is not only relevant but is comparable as it has not been shown by the appellants as to what are the distinguishing features which would make it inapplicable to determine the market value of the acquired lands. Finding of the Reference Court that when the sale instance (Ex.R-1) was exhibited no objection was raised by the claimants and as per section 51-A of *Land Acquisition Act, 1894*, a certified copy of a registered document is acceptable in evidence and since this document has been tendered in evidence by the Respondents, the same can be read against them, remains unimpeachable.

21. However, to meet the aforesaid finding of the Reference Court, it was submitted by learned counsel for the appellants that opportunity to lead rebuttal evidence to show that sale instance (Ex.R-1) is not reliable or bona fide, an application to lead rebuttal evidence was filed before the Reference Court which was illegally rejected vide order of 25th August, 2010 and therefore, this matter needs to be remanded back to the Reference Court to enable the appellants to lead rebuttal evidence to demolish aforesaid sale instance (Ex.R-1).

22. First of all, appellants ought to have objected to the exhibition of aforesaid sale instance (Ex.R-1). Having not done so, appellants have to face the legal consequences. Secondly, even if application of the

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appellants for leading rebuttal evidence was rejected by the Reference Court, nothing had stopped them from moving an application for leading additional evidence in the appeal to lead evidence in order to demolish the sale instance (Ex.R-1). Not only this, even during the course of hearing, nothing was urged to show as to how the sale instance (Ex.R-1) is not genuine/reliable or comparable.

23. In the light of the evidence on record, I am of the considered opinion that the Reference Court has rightly relied upon the sale instance (Ex.R-1) to determine the market value of the acquired lands. Finding no merit in the instant appeals of claimants and cross-objection by one of them, the same are dismissed while leaving the parties to bear their own costs.

24. So far as appeals of the Respondents are concerned, I find no substance in them, because the determination of the market value of the acquired land by the Reference Court has been done while relying upon the sale instance (Ex.R-1) produced by the Respondents themselves. Regarding doing away of the classification of the acquired land into 'A' block and 'B' Block by the Reference Court is concerned, I find that this classification has a reasonable basis. That is to say, land with top soil and the land without top soil cannot be put at par as the market value of the land without top soil is bound to be lesser than the market value of the land with top soil.

25. Endorsing the price differentiation between 'A' category land and 'B' category land, my esteemed brother Pradeep Nandrajog, J., in a recent decision in LA.App. No.266/2008, titled as *Jai Singh & Ors. vs. Union of India & Ors.*, rendered on 23rd August 2011, while relying on the decision of the Division Bench of this court in *Gajraj Singh vs. Union of India*, 2006 (VI) AD Delhi 13, has held as under:-

"56. In Gajraj Singh's case (supra), the price differential worked out was ₹25,000/- per acre. I have noted hereinabove that the acquisition in Gajraj Singh's case pertained to the date 15.11.1996. In Gajraj Singh's case the price for Category 'A' land determined was ₹9,76,121/- per acre and for Category 'B' land the price determined was ₹9,51,121/- per acre and the price differential comes to about 2.5% with reference to the price of Category 'A' land.

57. I thus hold that Gajraj Singh's case should be my guiding star for price differential in the instant cases as well and thus I hold that wherever Category 'A', Category 'B' and Category 'C' have to be differentiated on price, the differential should be 2.5%."

26. Consequentially, the finding of the Reference Court regarding the 'A' category and 'B' category land being similarly situated having same potentiality and because they are acquired for the same public purpose, cannot be sustained in the light of the aforesaid observations. However, the claim of the Union of India, to seek adoption of the minimum indicative price of agricultural land in Delhi while forgetting that the Appellant – UOI itself has relied upon the sale instance (Ex.R-1), merits rejection.

27. In view of the afore-going narration, I find that no substance in the appeals filed by claimants as well as in cross objection of one of the claimants and the same are dismissed. So far as the appeals filed by Union of India are concerned, the same are partly allowed to the extent that the compensation awarded by the Reference Court for the 'B' category of lands (as noticed in the Award of the Land Acquisition Collector) is reduced from ₹17,45,000 per acre to ₹17,01,375/- per acre.

28. Before parting this order, I would like to bring on record that the brevity of this order is occasioned by the fact that the impugned judgment is well considered on facts and the law. Therefore, I have

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purposefully not adverted to the entire evidence on record and the relevant evidence, i.e. of the sale exemplars has been taken into consideration by me in this order.

29. The above captioned appeals and cross-objection 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

February 01, 2012

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