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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LA.APP. 154/2012**

UNION OF INDIA Appellant
Through: Ms. Deepika, Advocate
versus

M/S MALIK MARBLES TRADERS Respondent
Through: Mr. Arun Birbal, Advocate for R-
3/DDA.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
07.05.2012

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CM No. 8345/2012 (under Section 5 of Limitation Act)

Delay is of 107 days' in filing the accompanying appeal.

As the delay stands sufficiently explained in Paragraph No. 2 of the application, therefore, this application is allowed and is disposed of as such.

LA.APP. 154/2012 & CM No.8343/2012 (u/S 41 R 5 of the Land Acquisition Act, 1894 & Sec. 151 CPC) & CM No.8344/2012 (u/S 151 CPC)

Counsel for the appellant fairly concedes that the impugned judgment relies upon the decision of a Coordinate Bench of this Court in LA. APP No.228/2009, '*Deepak Sachdeva Vs. Union of India & Ors.*', rendered on 22nd March, 2011 and in view thereof, this appeal has to be indeed dismissed.

In the light of above, this appeal and pending applications are dismissed, with no orders as to costs.


(SUNIL GAUR)
JUDGE

Signature Not Verified

MAY 07, 2012/rs

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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22nd March, 2011

1. L.A.App. 228/2009

DEEPAK SACHDEVA

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

..... Appellant

VERSUS

UNION OF INDIA

Through: Mr. Ramesh Ray, Mr. Ashish Tanwar,
Adv. for Mr. Sanjay Poddar, Advocate.

..... Respondent

2. L.A.App. 242/2009

ROYAL MARBLES & ORS

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

..... Appellants

VERSUS

UNION OF INDIA & ANR.

Through: Mr. Ramesh Ray, Mr. Ashish Tanwar,
Adv. for Mr. Sanjay Poddar, Advocate.

..... Respondents

3. L.A.App. 438/2009

UNION OF INDIA

Through: None.

..... Appellant

VERSUS

MR. KULDEEP KOHLI & ANR.

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

..... Respondents

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4. **L.A.App. 439/2009**

UNION OF INDIA

..... Appellant

Through: None.

VERSUS

SUPER MARBLE & ORS

..... Respondents

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

5. **L.A.App. 440/2009**

UNION OF INDIA

..... Appellant

Through: None.

VERSUS

R.B.CHARKHA & ANR.

..... Respondents

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

6. **L.A.App. 451/2009**

VIRENDER BHUTANI & ANR.

..... Appellants

Through: None.

VERSUS

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ramesh Ray, Mr. Ashish Tanwar, Adv.
for Mr. Sanjay Poddar, Advocate for UOI.

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7. L.A.App. 561/2009

UNION OF INDIA Appellant

Through: None.

VERSUS

RAKESH KUMAR BABBAR Respondent

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates.

8. L.A.App. 575/2009

UNION OF INDIA Appellant

Through: None.

VERSUS

M/S LIBERTY TILES & MARBLES Respondent

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

9. L.A.App. 20/2010

UNION OF INDIA Appellant

Through: None.

VERSUS

UTTAM BUILDERS & ANR. Respondents

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

10. L.A.App. 62/2010

UNION OF INDIA Appellant

Through: None.

VERSUS

KISHAN LAL & ORS. Respondents

Through: Ms. Sukhda Dhamija, Mr. S.K.Rout and
Mr. S.K.Sharma, Advocates

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11. L.A.App. 381/2010

N.S.MITTAL

..... Appellant

Through: None.

VERSUS

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ramesh Ray, Mr. Ashish Tanwar for
Mr. Sanjay Poddar, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

L.A.Appeal Nos.228/2009, 242/2009, 451/2009, 381/2010 (By Land Owners)

L.A.Appeal Nos.438/2009, 439/2009, 440/2009, 561/2009, 575/2009, 20/2010, 62/2010 (By Union of India)

VALMIKI J. MEHTA, J (ORAL)

1. These two sets of first appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') have been preferred against the impugned judgment and decree dated 16.10.2008 of the Reference Court of the ADJ under Section 18 of the Act. Whereas the land owners in their appeals have prayed for higher compensation and also statutory benefit under Section 34 of the Act, which was denied to them by the Reference Court, the Union of India in its appeals has prayed for reduction in

the market value of the land determined by the impugned judgment. Counsel for the parties agree that since the facts and the evidence led in the cases is more or less identical, the appeals can be disposed of by a common judgment.

2. A notification under Section 4 of the Act was issued on 5.4.1999 for acquiring land for construction of the Raja Garden Fly Over. The owners of these lands are the persons who applied for a reference under Section 18 of the Act seeking enhancement of compensation and thereafter have filed these appeals for further enhancement of compensation and other statutory benefits. The Award in this case was passed by the Land Acquisition Collector on 24.4.2001 being Award No.1/DCW/2001-2002. The Land Acquisition Collector granted compensation considering the lands as only being capable of being used for residential purposes only. By the impugned judgment, the Reference Court of the ADJ has held that the lands are commercial in nature and accordingly granted commercial rates for the acquired lands on the basis of the schedule of rates for commercial premises issued by the Ministry of Urban Affairs and Development, Department of Urban Ministry (Land Division) dated 16.4.1999 with respect to lands situated in Ramesh Nagar, a colony adjacent to and falling behind Rajouri Garden, in which the acquired lands are situated.

3. In the Reference Court, the land owners examined the witness PW-1 from the office of the Land & Development Office, Government of India,

Nirman Bhawan, and which witness proved the schedule of rates of land in Delhi dated 16.4.1999. The land owners also led the evidence of the Town Planner of the Municipal Corporation of Delhi (MCD) to show that shops were sanctioned on the ground floor of buildings constructed on the lands which were acquired by the subject notification and the upper floors in the buildings were residential. The Union of India relied upon various sale deeds being Ex.R-2 to R-6 with respect to lands falling in village Basai Darapur, a colony which is situated even behind Ramesh Nagar. By the impugned judgment, the Reference Court of ADJ has held the land use as commercial in view of the deposition of PW-2, Town Planner of MCD. The trial court has also accepted the schedule of rates dated 16.4.1999 for the commercial rates of Ramesh Nagar, a colony situated just behind Rajouri Garden where the subject lands are situated.

4. Learned counsel for the appellant sought to argue that the Reference Court of ADJ ought to have granted commercial rates of West Patel Nagar and not of Ramesh Nagar. I cannot agree, because admittedly, the area of West Patel Nagar is situated many kilometers away from the acquired lands whereas Ramesh Nagar is situated adjacent to and behind Rajouri Garden where the acquired lands are situated. The other argument of the learned counsel for the appellant in reply to the grounds of appeal of Union of India in its appeals for reduction of compensation was that the commercial rates stated in the schedule of rates dated 16.4.1999, are to be taken only as a

basis/starting point, inasmuch as, the said schedule would contain basically general average rates and which general average rates are liable to be modified/increased as per the superior location of a commercial plot/shop, and, it was contended that since the acquired lands in this case were situated right on the main Ring Road, the Reference Court of the ADJ has correctly accepted the commercial rates as specified in the schedule dated 16.4.1999. It was argued that a shop or showroom on the main Ring Road has a very vantage location and was far more valuable and having more market value than the general rates of commercial areas in Ramesh Nagar. It was argued that rates of the subject lands would be at least 50% to 100% higher than rates of commercial premises in Ramesh Nagar.

5. Unfortunately, the Union of India remained unrepresented by its counsel in its appeals which were filed by the Union of India. The counsel who appeared for Union of India only appeared for Union of India as the respondent in the appeals filed by the land owners. I have waited for the counsel for the Union of India to argue its appeals right from 2.15 PM, however, although it is 3.30 PM, the counsel for Union of India, Ms. Deepika, Advocate has not appeared. I have therefore, perused the record with respect to the appeals filed by the Union of India. A perusal of the same shows that the only relevant ground raised in these appeals filed by Union of India is that the Reference Court of the ADJ has committed an error in granting the commercial rates with respect to the acquired lands because as

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per the evidence of the Town Planner of MCD, led by the land owners themselves, only the ground floor was commercial and not the upper floors which were residential.

6. In my opinion, the appeals, both of the land owners and also of the Union of India, are liable to be dismissed for the reasons set out herein below except the fact that the appellants-land owners would be entitled to the statutory benefit under Section 34 of the Act of payment of interest at 15% after one year from the date of taking possession of the acquired lands and which has not been granted by the impugned judgment.

7. The trial court has rightly relied upon the deposition of PW-2, Town Planner of MCD, to hold that the ground floor of the buildings constructed on the subject lands could be used for commercial purposes. The Union of India did not file any counter evidence to show that the ground floor could not be used for commercial purposes. I, therefore, hold that the ground floor of buildings on the acquired lands could be used for commercial purposes inasmuch as the plans which were sanctioned for the properties were of commercial use with respect to the ground floor. That is, however, not the end of the matter because the ADJ prima facie seems to have erred in granting commercial rates with respect to the entire lands i.e., for all the floors inasmuch as the schedule dated 16.4.1999 would only be applicable if the complete use of all floors is commercial. The question therefore is what should be the rate which should be awarded for the acquired lands keeping

in view the fact that the ground floor could be used for commercial purposes and the upper floors were to be used for residential purposes. In my opinion, the argument of the counsel for the appellants carries weight that the rate fixed in the schedule of rates dated 16.4.1999 is only indicative of general commercial rates and in appropriate cases, the said rates are liable to be enhanced in view of the advantageous location which can be found in the facts of a particular case. In the facts of the present cases, the commercial properties situated on the main Ring Road will obviously have more commercial value than the commercial property which is situated not on the main Ring Road but somewhere inside in Ramesh Nagar. The rates of commercial properties in Ramesh Nagar have thus to be enhanced when applied to the subject lands on main Ring Road as Ramesh Nagar is situated not on main Ring Road but behind Rajouri Garden and the rates of Ramesh Nagar can thus apply for the subject acquired lands only by suitably enhancing the same. Balancing therefore the fact that the appellants have claimed higher compensation and the Union of India has claimed reduction of compensation, on the ground that only ground floor could be used for commercial purpose, I find that in the peculiar facts and circumstances of the present cases the average commercial rates as found in the circular dated 16.4.1999 of the Ministry of Urban Affairs and Development should be granted with respect to the acquired lands as a whole.

I must note that every exercise for determining of the market value of the land is necessarily fraught with certain amount of guess work and it is indeed very difficult to get perfect exaction for the rates to be determined. In the facts of the present cases, I am forced to resort to partial intelligent guess work because no evidence has been led on behalf of either of the parties, i.e., the Union of India or the land owners as to what should be the rates of properties where ground floor can be used for commercial purposes and first floor and above for residential purposes and I have before me only the circular for commercial rates of Ramesh Nagar which has to be conditioned by the fact of the prime showroom locations of the subject properties on the main Ring Road. In my opinion, the ends of justice will be served in the facts of the present cases by not interfering with the determination of compensation as arrived at by the Reference Court of ADJ in the impugned judgment.

8. It is not disputed by the counsel for Union of India/respondent in the appeals as filed by the land owners, that the Reference Court of ADJ has erroneously not granted the statutory benefit of 15% interest after one year of taking possession of the acquired lands in terms of Section 34 of the Act. The proviso to Section 34 of the Act clearly provides that if compensation is not paid or deposited within a period of one year from the date on which possession is taken of the acquired lands, interest at 15% shall be payable from the date of expiry of the period of one year on the amount of

compensation which has not been paid or deposited before the date of expiry of such period. I therefore hold that the appellants will be entitled to statutory benefit of 15% rate of interest in terms of the proviso to Section 34 of the Act.

9. In view of the above, I determine the market value of the lands at 14,490/- per square meter, the rate determined by the reference court. The appellants will also be entitled to other statutory benefits as granted by the Reference Court of the ADJ in the impugned judgment. In addition to the above, and as already stated by me, the appellants /land owners will be entitled to statutory benefit of the proviso to Section 34 of the Act. Decree sheet be prepared. Trial court record be sent back.

MARCH 22 , 2011
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VALMIKI J. MEHTA, J.