

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

Reserved on: December 13, 2012

Pronounced on: January 04, 2013

+ (i) **R.F.A. No. 838/2002**

UNION OF INDIA Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

ADIL SINGH & ORS. Respondents
Through: Mr.Ravinder Sethi, Senior
Advocate with Mr.Ajoy B.Kalia,
Advocate for Respondent No. 1.
Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC
Mr.Rajesh Yadav and Ms.Ruchira,
Advocates for Respondent No. 4.

+ (ii) **LA. APP. No. 305/2007**

DEFENCE ESTATES OFFICER Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

LAC & ORS. Respondents
Through: Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC
Mr.Rajesh Yadav and Ms.Ruchira,
Advocates for Respondent No. 2(a)
to 2(d).

+ (iii) R.F.A. No. 324/2003

DEFENCE ESTATES OFFICER Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

LAC & ORS. Respondents
Through: Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC

+ (iv) R.F.A. No. 83/2007 & C.M.No. 3616/2007

DEFENCE ESTATES OFFICER Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

LAC & ORS. Respondents
Through: Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC
Mr.Rajesh Yadav and Ms.Ruchira,
Advocates for Respondent No. 2.

+ (v) R.F.A. No. 328/2003

DEFENCE ESTATES OFFICER Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

LAC & ORS. Respondents
Through: Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC

+ (vi) **R.F.A. No. 329/2003**

DEFENCE ESTATES OFFICER Appellant
Through: Ms.Sonia Mathur and Mr.Sushil
Dubey, Advocates

versus

LAC & ORS. Respondents
Through: Mr.Sanjay Kumar Pathak and
Ms.K.K. Kiran, Advocates for
UOI/LAC
Mr.N.S.Vashisht and Mr.Arpan
Sharma, Advocates for respondent
No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% JUDGMENT

1. The subject matter of the above captioned six appeals is the apportionment of compensation in respect of acquisition of land at *Jantar Mantar, Delhi* in the first above captioned appeal and in remaining appeals, at *Mall Road, Delhi* vide Notification of 31st March, 2000 under Section 4 of *Land Acquisition Act, 1894*. Since the subject matter of above captioned appeals is identical, therefore these appeals were heard together and are being disposed of by this common judgment.

2. Reference Court's order in proceedings under Section 30 & 31 of *Land Acquisition Act, 1894* grants compensation to respondents herein while granting to appellant capitalized value of

rent of subject land which was leased out in perpetuity by appellant to respondents.

3. Appellant in these appeals claims apportionment of compensation awarded in the ratio of 25%: 75%. That is, out of the compensation awarded 25% is claimed by appellant by virtue of being the Lessor/owner of the subject land and the remaining 75% of the compensation to the respondents.

4. Learned counsel for appellant contends that the principle of law in respect of apportionment of compensation as enunciated in *Sharda Devi vs. State of Bihar and another* (2003) 3 SCC 128, is inapplicable to the case in hand, as the Lessor is Ministry of Defence, Government of India, whereas the acquiring agency is Government of NCT of Delhi. It is pointed out by appellant's counsel that though the Notification under Section 4 of the *Land Acquisition Act, 1894* was for acquisition of leasehold rights but the subject land was assessed by Land Acquisition Collector at the market rate and so, the ratio of Apex Court decisions in *Brij Behari Sahai (dead) through LRs. & Ors. vs. State of U.P.*, (2004) 1 SCC 641 and *Union of India & others vs. A. Ajit Singh*, AIR 1997 SC 2669 apportioning the compensation between the Lessor and the Lessee in the ratio of 40% : 60% or 75% : 25% of market value of the land applies. It is pointed out by learned counsel for appellant that the compensation assessed in respect of superstructure on the subject land has been awarded to the Lessee and the Land Acquisition Collector had rightly awarded compensation in the

ratio of 60%: 40%. That is, 60% to Lessee and 40% to the Lessor while determining the market value of the acquired land.

5. According to appellant's counsel, a bare perusal of the identical Lease Deeds in question reveals that appellant had retained absolute ownership of the subject land and there was a resumption clause also in the Lease Deeds in question which gives right to appellant to resume the subject land after giving one month's notice. While placing implicit reliance upon Apex Court decision in *Inder Parshad vs. Union of India and others*, (1994) 5 SCC 239, apportionment of compensation in respect of acquired land in question is claimed in these appeals in the ratio of 25% : 75%, i.e., 25% to appellant and 75% to the respondents.

6. Learned counsel for contesting respondents maintain that the impugned judgment is sustainable on facts and in law as well. During the course of hearing, attention of this Court was drawn to Notification in question under Section 4 of *Land Acquisition Act, 1894* to point out that it specifically mentions that leasehold rights in the subject land are sought to be acquired and so logically speaking, the compensation awarded is in respect of leasehold rights only, which has been rightly granted to contesting respondents by the Reference Court.

7. By placing reliance upon decisions in *Sharda Devi vs. State of Bihar and another*, (2003) 3 SCC 128; *Collector of Bombay vs. Nusserwanji Rattanji Mistri and others*, AIR 1955 SC 298; *G.H. Grant (Dr) vs. State of Vihar*, AIR 1966 SC 237; decisions in

R.F.A. No. 70/1989, *Raj Kumar & Ors. vs. Union of India*, rendered on 21st December, 2001; *Vithal Yeshwant Jathar vs. Shikandarkhan Makhtumkhan Sardesai*, AIR 1963 SC 385; *Kachrulal Hiralal Dhoot vs. The Gurudwara Board Nanded and others*, AIR 1979 Bombay 31 and *Sivayogeswara Cotton Press, Devangere and others vs. M.Panchaksharappa and another*, AIR 1962 SC 413, it was vehemently contended that the State does not acquire its own land and if Government itself has interest in the land then, it acquires other interests thereupon and the compensation awarded has been determined in respect of leasehold rights only and not of ownership rights of the Lessor/appellant. According to learned counsel for contesting respondents, reliance placed upon decision in *Inder Parshad* (supra) by appellant is of no avail and that the State is not a 'person interested' as defined in Section 3(b) of the *Land Acquisition Act, 1894*. It is contended on behalf of contesting respondents that there is no question of grant of any compensation awarded to the appellant.

8. Infact, attention of this Court was drawn by respondents' counsel to paragraphs no.: 4 to 6 and 8 of the decision in *Inder Parshad* (supra) to highlight that unless sum total of interest held by Lessor and Lessee in the land is acquired, the compensation payable is towards the leasehold interest and the Lessor in case of leasehold properties is entitled to claim land revenue etc. only, which has been already granted to appellant in the impugned order by arriving at the capitalized value of the rent while computing it

for a period of *twenty* years. Dismissal of these appeals is sought by learned counsel for contesting respondents by implicitly relying upon the nature of the lease in question being permanent and because the acquisition was in respect of leasehold rights only.

9. The contentions advanced by the respective parties and the decisions cited have been pondered over and the impugned judgment as well as the material on record has been perused. Thereupon, it transpires that though the Notification acquiring the subject land was in respect of leasehold rights only but, infact perusal of the Award of Land Acquisition Collector reveals that the determination of compensation is on the basis of market value of the subject land. This makes all the difference. That is to say, the ratio of decisions relied upon by learned counsel for contesting respondents could have really applied, had the assessment of compensation been actually in respect of leasehold rights only in the subject land.

10. Since the determination of compensation in respect of subject land is at the market value of land in question, therefore the ratio of decisions of Apex Court in *Inder Parshad* (supra) and *Brij Behari Sahai* (supra) squarely applies. The pertinent observations made by Apex Court in ***Inder Parshad*** (supra) are as under:-

“But on the facts in this case, it is seen that since the Land Acquisition Collector had determined the compensation of the sum total of the interests held by the lessor and the lessee in the land under acquisition

but being not able to decide on the apportionment of such compensation between Government and the appellant reference was made to the civil court to determine the apportionment. The civil court decided by its award that apportionment of compensation fixed in the award of the Land Acquisition Collector between the lessee-claimant and the Government-landlord shall be in order of 67 per cent and 33 per cent. The High Court by its judgment and decree under the present appeal has modified the apportionment of compensation payable for land as 75 per cent for the lessee and 25 per cent for the lessor.”

11. It would be worthwhile to quote relevant paragraph no. 20 and 21 of Apex Court decision in **Brij Behari Sahai** (supra) which reads as under:-

“20. The claim on behalf of the appellants that the entire compensation determined was only in respect of the totality of the rights held by the appellants as lessees and not of the whole inclusive of the rights and interests of the Government also, though appears to be attractive, does not appeal to us for acceptance. Though as a matter of principle of law, the Government while invoking the provisions of the Land Acquisition Act for acquiring a land in which the Government also had some or other of the interest, need not go for acquiring their interest as well as what is permissible as well as obligated for acquisition is only such of the private interest of third parties other than that of the Government, the Land

Acquisition Officer in this case has chosen to, while determining the market value, indisputably proceed to determine for the whole of it and only as a consequence thereof has chosen to apportion compensation between the Government and the claimants at the rate of 10 annas : 6 annas respectively. Though the Reference Court, during the course of its judgment, adverts to the principles relating to the need or desirability of acquiring land of only private parties other than that of the Government under the Land Acquisition Act, has ultimately chosen to adopt only the standard rate of market value determined by the Land Acquisition Officer. Consequently, niceties of language apart and the purported endeavour attempted to have been made by the Reference Court, we are constrained to hold that the actual market value determined was that of the acquired properties as a whole and consequently, the need for apportionment would inevitably arise.

21. Applying the ratio of the decision of this Court reported in Inder Parshad case the fixation of apportionment in the ratio of 75% in favour of the claimants and 25% in favour of the State would be just and reasonable. The ratio fixed therein seems to us to be more appropriate on the facts of these cases, than the one approved in A.Ajit Singh case. Having regard to the fact that the Government's interest has been fixed at the proportion of 25%, there is no further need or justification to direct the capitalization of the ground rent for further being deducted or directed to be paid by the claimants either from the compensation amount or otherwise, separately."

12. Reference Court in the impugned judgment though had taken a note of the Apex Court decision in *Inder Parshad* (supra) but has failed to apply its ratio by distinguishing it and has misapplied the ratio of Apex Court decisions in *Sharda Devi* (supra); *Vithal Yeshwant Jathar* (supra) and *Cotton Press* (supra) while missing out the vital distinction of actual basis of the compensation assessed which undisputedly is at the market rate of the subject land and is certainly not on the basis of leasehold rights only in the acquired land. Therefore, the contentions advanced by learned counsel for contesting respondents and the reasoning in the impugned order does not hold good.

13. In the aforesaid view, the impugned judgment is clearly unsustainable and is thus set aside and the above captioned appeals are allowed. Resultantly, appellant shall get 25% of the compensation awarded and rest of the 75% compensation awarded shall go to the respondents.

14. The above captioned appeals are accordingly disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
Judge

January 04, 2013
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