

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

Date of Decision: November 20, 2014

(i) + **LA.APP. 34/2006**

JAGE RAM Appellant

Through: Mr. Rajesh Yadav, Advocate

versus

UOI & ANR. Respondent

Through: Mr. Sanjay Kumar Pathak,
Advocate for respondent No.1-UOI
Ms. Shobhna Takiar, Advocate for
respondent No.2-DDA

(ii) + **LA.APP.35-54/2006**

CHANDGI DECD. THR. LRS Appellant

Through: Mr. Rajesh Yadav, Advocate

versus

UOI & ANR. Respondents

Through: Mr. Sanjay Kumar Pathak,
Advocate for respondent No.1-UOI
Ms. Shobhna Takiar, Advocate for
respondent No.2-DDA

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Learned counsel for appellants submits the above captioned two

appeals are preferred by the two brothers and the findings returned in the impugned judgments are identical and therefore, these appeals can be heard together. Accordingly, both these appeals were heard together and are being disposed of by this common judgment.

The land in question is situated in Village Roshan Pura, which was acquired vide Notification of 8th August, 1973 under Section 4 of the Land Acquisition Act. The Land Acquisition Collector had assessed the market value of the land in question at ₹22,000/- per *bigha* with proportionate solatium etc. Enhancement @₹50/- per sq.yards was sought before the Reference Court, which stands dismissed vide impugned judgment of 4th October, 2005. The detailed facts of these cases are already noticed in impugned judgment and needs no reproduction.

Appellants-claimants had relied upon Sale Deed of 24th January, 1974, whereas the land in question was acquired on 8th August, 1973 and the finding returned by the learned Reference Court in respect of the aforesaid Sale Deed is as under:-

‘The Sale deed filed on record will not provide any benefit to both the parties for the reasons firstly that these have not been proved on record as per law. Secondly, sale deed filed by petitioner is dated 24.1.1974 whereas the land was acquired in the present case on 8.8.73. Thus sale deed is for the subsequent period and does not depict the actual value as on the date of notification of thee present case. The third reason for discarding these sale deeds are that situation of particular land plays an important role in fetching the value of it. For

example, if the land is situated just near the metal led road on a developed place it may fetch more value than the land which is situated far away from the metal led road and near the less developed are. In the present case no evidence has been adduced to prove the existence of favourable factors to fetch more value of the land in dispute.

In view of the reasons mentioned herein above, it is held that petitioner could not establish on record that market value as on the date of notification for acquisition of land was more than what the Land Acquisition Collector assessed in his award. Therefore, it is held that the petitioner is not entitled for enhancement of compensation and accordingly, this issue is decided in favour of the respondents and against the petitioner.”

It would be pertinent to note that no oral evidence was led by the parties except that appellants-claimants had placed on record certified copy of Sale Deed of 24th January, 1974, which pertains to 4 bighas & 16 biswas of land in the same revenue estate. To seek the location of the land of the Sale Deed and the acquired land, the site plan/ aks sirza is required to be looked into.

At the hearing of these two appeals, it was submitted by learned counsel for appellants that the learned Reference Court has held that the registered Sale Deed is per se admissible in evidence. Learned counsel for respondent points out that the vicinity of the Sale Deed in question vis-à-vis the acquired land is to be seen.

Attention of this Court is drawn to the certified copy of the

aforesaid Sale Deed to point out that the location of land in the Sale Deed is Chhawla, Gurgaon Road, near Najafgarh, Delhi. It was also pointed out that it is evident from the Award of the Land Acquisition Collector (*EX. R-1*) that the acquired land is situated on one side of Najafgarh, Chhawla Road, Delhi.

At this stage, learned counsel for first respondent submits that the exact location of the acquired land vis-à-vis land which is subject matter of the Sale Deed in question is not at all clear. It is pertinent to note here that the acquired land measures 13 bigas and 18 biswas and that the land in question was for a public purpose i.e. for construction of S.D.O. Office.

Mr. Sanjay Kumar Pathak, learned counsel for first respondent submits that in the Award of Land Acquisition Collector (*Ex.-R-1*), six comparable sale instances have been considered and thereafter only market value of the acquired land has been assessed, which is quite reasonable. Learned counsel for first respondent points out that Land Acquisition Collector, in the Award in question has relied upon the Sale Deed of 22nd July, 1971, which was of 11 bigas & 10 biswas and its market value was assessed at ₹23,000/- . It was submitted by appellant's counsel that the appellants' acquired land was on the main road and so was better located than the land of those sale instances relied upon by the Land Acquisition Collector. Mr. Sanjay Kumar Pathak, learned Counsel for first respondent, relies upon Apex Court decision in *Special Land Acquisition Officer Vs. Maharani Biswal & ors.* (2011) 12 SCC 324, which reads as under:-

“16... Since the High Court has not considered the oral

evidence and also not properly analysed the documentary evidence available on record, the judgment an order passed by the High Court cannot be sustained and has to be interfered with. This is also because of the fact that High Court proceeded on a wrong notion that the sale deed of tiny pieces of land could be the determining factor as the land acquired in the present case is Ac.4.98 decimals as against the sale deeds by which not even 1 decimal of land was sold. There is total misleading of the evidence on record and also misinterpretation of the legal proposition settled by this Court.”

The settled legal position governing the assessment of compensation in respect of acquired lands, which holds good even today, is as follows:-

- (i) Apex Court in the case of *Adusumilli Gopala Krishna Vs. Spl. Deputy Collector (Land Acquisition)* AIR 1980 SC 1870 has held that an assessment of compensation payable for land acquired must take into account several factors, including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired and so on.
- (ii) Apex Court in the case of *Suresh Kumar, Appellant Vs. Town Improvement Trust, Bhopal*, AIR 1989 SC 1222, has observed that in estimating the market value of the land, the

proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land namely, its proximity to developed urbanized areas.

After having heard learned counsel for the parties and on perusal of the record of this case and by applying the afore-noted parameters governing the assessment of compensation, I find that merely because there is one line in the Award that the acquired land is on Najafgarh Chhawla Road, it would not *per se* mean that it is abutting the *Chhawla* Gurgaon Road. The location of the relied upon Sale Deed vis-à-vis the acquired land is also not clear nor it is disclosed by either side that at what distance is the acquired land from the land relied upon in the sale exemplars. In the absence of *aks sirza*, it would be hazardous to make any guess, particularly when the relied upon sale instances pertain to a comparatively larger chunk of land when compared with the acquired land and so, in the considered opinion of this Court, there is no illegality or infirmity in the impugned judgment.

Thus, while upholding the impugned judgments, these appeals are dismissed with no order as to costs.

(SUNIL GAUR)
JUDGE

NOVEMBER 20, 2014

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