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

% Reserved on : 18.07.2025
Pronounced on : 28.07.2024

\+ **LA.APP. 331/2007**

UOI .....Appellant

Through: Mr. Sanjay Kumar Pathak, Standing Counsel for UOI with Mrs. K.K. Kiran Pathak, Mr. Sunil Kumar Jha, Mr. Mohd. Sueb Akhtar, Mr. Divakar Kapil, Advocates.

versus

PHIRE RAM AND ANR .....Respondents

Through:

Mr. Rajesh Yadav, Senior Advocate
Mr. Rahul Chaudhary, Adv. for R-1.
Ms. Avni Singh, Panel Counsel for GNCTD.

\+ **LA.APP. 333/2007**

UOI .....Appellant

Through: Mr. Sanjay Kumar Pathak, Standing Counsel for UOI with Mrs. K.K. Kiran Pathak, Mr. Sunil Kumar Jha, Mr. Mohd. Sueb Akhtar, Mr. Divakar Kapil, Advocates.

versus

JAI CHAND AND ORS .....Respondents

Through:

Mr. Rajesh Yadav, Senior Advocate
Mr. Rahul Chaudhary, Adv. for R-1.
Ms. Avni Singh, Panel Counsel for GNCTD.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

LA.APP. 331/2007, CM APPL. 13369/2011

LA.APP. 333/2007, CM APPL. 13370/2011

1. The present appeals have been preferred under section 54 of the Land Acquisition Act, 1984 (hereinafter referred to as 'LA Act'), which pertain to proceedings undertaken in the village of Tughlakabad, New Delhi, commenced vide notification No.F7(34)/90-L&B/LA dated 02.04.1996 under Section 4 of the LA Act (hereby referred to as 'acquisition notification') for the creation of wildlife sanctuary under 'Planned Development of Delhi', followed by a declaration dated 06.05.1996 under Section 6 of the LA Act.

2. On 05.12.1997, the Land Acquisition Collector, vide award No. 01/1997-98, awarded compensation for the acquired land @ Rs.1,23,000/- per *bigha* to *Phire Ram* and *Sh. Jai Chand* (deceased), respondents No.1 in LA.APP. 331/2007 and LA.APP. 333/2007 respectively. Aggrieved by the said compensation amount, the aforesaid respondents filed Reference petitions under section 18 of the LA Act. Vide impugned judgements dated 10.07.2006 in LAC No. 29/1/06 in the case of *Phire Ram* and LAC No. 27/1/06 in the case of *Jai Chand*, the Reference Court enhanced the compensation payable to the said respondents to Rs.4,180/- per sq. yard, along with other statutory benefits and, while doing so, the reference Court relied upon the decision of the Division Bench of this Court dated 30.03.2001 passed in **RFA No. 461/1995** titled as *Hari Chand v. Union of India*.

3 The primary ground on which the present appeals were filed was that the decision in Hari Chand (supra) was based on an earlier decision of another Division Bench of this Court in based on the decision dated 21.08.1998, in *Bhola Nath Sharma Vs. Union of India,* passed by the Division Bench of this Court in RFA No. 65/81. Concededly, the present appeals came to be filed singularly on the ground that since the challenge to Bhola Nath (Supra) was pending before the Supreme Court, the Reference Court ought not to have relied on Hari Chand (supra).

4. However, much water has flown under the bridge since then. The Supreme Court, in the challenge to decision of Division Bench in Bhola Nath (Supra), had remitted the matter back to the Reference Court as in the enhancement proceedings before the Reference Court, the beneficiary i.e., DDA was not impleaded. On remand back, while the Reference Court enhanced the compensation, the Co-ordinate bench of this Court vide decision dated 23.03.2016 in LA APP. 109/2013 arrived at a market value of the acquired land at Rs. 2,000/- per square yard, which is the same as that decided by the Division Bench in Bhola Nath Sharma (Supra). The decision dated 23.03.2016 was also challenged before the Supreme Court in SLP No. (C) No.19123/2016 which was dismissed vide order dated 06.04.2017 and thereafter the review petition bearing Review Petition (C) No. 1588/2017 was also dismissed on 09.08.2017. Resultantly, the compensation ascertained by this Court in Bhola Nath (Supra) has attained finality.

5. Notably, vide order dated 21.03.2024, with the consent of the parties, the issue in the captioned appeals stands confined to the aspect of enhancement to be granted annually to the respondents herein. The Reference Court has granted enhancement @ 10% p.a. cross objections have

been filed by respondent No.1 in LA.APP. 331/2007 and the Legal representatives of respondent No.1 in LA.APP. 333/2007.

6. Mr. Yadav, learned Senior Counsel for the answering respondents, submits that the respondents in the cross objections are claiming enhancement in compensation @ Rs.550/- per square yard, over and above the compensation that has been granted by the learned Reference Court. It is submitted that respondents are entitled to an annual increase/escalation @ 15% per annum, at the compounding rate, from 01.06.1992 to 02.04.1996, i.e. for 03 years and 10 months, in view of the decisions in *Madhusudan Kabra & Ors. Vs. State of Maharashtra and Ors*. [1] Anjani Molu Dessai v. State of Goa and Anr, [2], order of review dated 30.07.2021 passed in R.P No.109/2021 in **LA Appeal No.749/2008** *'Tripat Kaur Vs. Union of India.* and DMRC Ltd v. Union of India & Ors[3], which affirmed the decision of Co-ordinate Bench of this Court dated 04.05.2021, passed in **LA Appeal No.612/2008** titled *Adil Singh Vs. Union of India & Ors.* and it is submitted that the respondents are willing to pay any additional court fees in case the compensation amount is enhanced.

It is next contended that as per the law settled in *Ashok Kumar & Ors. Vs. State of Haryana & Ors.*[4], and *General Manager, Oil and Natural Gas Corporation Limited. v. Rameshbhai Jivanbhai Patel*[5], the enhancement in the market value has to be calculated cumulatively and not by applying a flat rate.

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[1] (2018) 1 SCC 140
[2] (2010) 13 SCC 710
[3] SLP (C) Nos. 13193-13203/2021 decided on 26.11.2023
[4] (2015) 15 SCC 200
[5] (2008) 14 SCC 745

Lastly, it is contended that the subject land is acquired for 'Wild Life Sanctuary', where no further development is required to be undertaken, and thus, no development charges are liable to be deducted. Reliance is placed on the judgment in *'Bhikulal Kedarmal Goenka (Dead) Through LRs Vs. State of Maharashtra & Anr.*'[6]

7. *Per contra*, Mr. Pathak, learned counsel for the appellant, submits that the Reference Court erred in awarding escalation @10% as the land pertained to a rural area and the increase in its market value would be slower as compared to an urban or semi-urban area. He prays that the rate of escalation which was awarded be reduced. Reliance in this regard is placed on the decisions in *Central Warehousing Corp. Vs. Thakur Dwara Kalan ul-Maruf Baraglan Wala (Dead) & Ors.,* [7]& *State of Haryana and Another vs. Subhash Chander and Others.* [8]

He further submits that the date of acquisition notification in *Hari Chand (supra)* based on which the Reference Court enhanced the compensation was 01.06.1992 and it also pertained to village Tughlakabad. He contends that since the same is considered to be an exemplar in the present case, the calculation of the escalation of compensation amount should commence from 1993, i.e., after excluding the base year of the relied-upon transaction, being 1992. Reliance in this regard is placed upon decision in Rameshbhai Jivanbhai Patel (supra)**.**

Lastly, it is submitted that cumulative increase in market value is not an absolute rule and cannot be granted in a mechanical manner. Reliance is

[6] (2016) 14 SCC 279
[7] (2023) SCC OnLine SC 1361
[8] (2013) 5 SCC 527.

placed on the decision of the Supreme Court in Manik Panjabrao Kalmegh v. Executive Engineer Bembla Project Division Yavatmal.[9]

8. In Rejoinder, learned Senior Counsel for the answering respondents submits that the village Tughlakabad was urbanised on 03.06.1996, and in this regard refers to the Gazette Notification No. F. 2(49)/65- LSG.

9. I have heard the counsels for the parties and have perused the documents which have been placed on record.

10. The question of escalation becomes circumspect in cases where market value of land situated in a particular area needs to be calculated and there are no contemporaneous sale transactions available in respect of similarly situated land for the period when the acquisition begins. In such a scenario, previously proven market value can be taken as a base to which appropriate escalation has to be applied. The rate of increase is also not uniform, as the same depends on the location, demand, existing development and availability of land for future development in an area. Usually, the increase in rural areas is slower compared to urban and semi-urban areas.

9. The Supreme Court in Rameshbhai Jivanbhai Patel (supra) has held that this method of applying escalation to older sale transactions is only safe for shorter time spans, like 4-5 years as there are chances of the rate of escalation itself changing drastically. The relevant extract is reproduced hereunder for convenience:-

> *"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*

[9] 2024 SCC OnLine SC 3185

transactions/acquisitions precede the subject acquisition by only a few years, that is, up to 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 of 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."

10. As to the question whether flat rate of escalation should be given or a cumulative rate, the Supreme Court in Rameshbhai Jivanbhai Patel (supra) holds that since the year on year increase to be calculated is always in reference to the market value of the previous year, the appropriate method is to calculate the increase cumulatively and that a flat rate can lead to anomalies. It held as follows:-

Whether the increase should be at a cumulative rate or a flat rate?

18. The increase in market value is calculated with reference to the market value during the immediate preceding year. ***When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate****. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs 10 per square metre):*

…

19. We may also point out that application of a flat rate will lead to anomalous results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs 10 per square metre, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs 12 per square metre, the flat rate increase will be Rs 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the

> *price was Rs 13 per square metre, then the flat rate increase will be Rs 1.30 per annum for the years 1991 and 1992.* ***It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. On the other hand, the cumulative rate method will lead to consistency and more realistic results. Whether the base price is Rs 10 or Rs 12.10 or Rs 13.31, the increase will lead to the same result. The logical, practical and appropriate method is therefore to apply the increase cumulatively and not at a flat rate.***

11. In the above noted case, the land was located in Ijapura village, Gujarat. The gap between the date of transaction and acquisition notification was of five years and eight months, and the cumulative rate of escalation which was determined was 7.5% p.a. for five years after excluding the base year. Though both sides have relied on a plethora of decisions, this Court does not deem it necessary to go through each one of them. An endeavour would be made to go through some of the recent decisions cited by both sides.

12. The decision in Rameshbhai Jivanbhai Patel (supra) was cited with approval by a 3 Judge Bench of the Supreme Court in Ashok Kumar & Ors. Vs. State of Haryana & Ors.(supra), wherein it was held that :-

> *"22. In light of the aforesaid view of this Court, the Reference Court has correctly ascertained the premium to be paid at the rate of 12% per annum with cumulative effect from the date of earlier acquisition, dated 02.07.1985 to the acquisition herein, dated 29.01.1990 and therefore, determined the fair market value of acquired lands as Rs. 394/- per square yards.*
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> *23. In our view, the High Court has incorrectly relied upon the sale transactions which date much prior in time than the date of notification and thus, do not reflect the true market value. In the event of an award more proximate to the date of acquisition was available, it would have been proper for the High Court to consider the same as best evidence than the post-dated sale transactions. Thus, in our considered opinion, the judgment and order passed by the High Court does not fairly and*

adequately assess the compensation payable to the claimants and requires to be set aside and consequently, the judgment and order passed by the Reference Court requires to be restored."

The case pertained to Villages Fatehpur, Maheshpur, Kundli and Railley, Haryana. Herein, the gap between the date of transaction and acquisition notification was of approximately four and a half years, and the cumulative rate of escalation which was determined was 12% p.a.

13. In the case of State of Haryana and Another vs. Subhash Chander (supra) and Others, relating to acquisition of land situated at village Kherki, Majra, the Supreme Court awarded annual increase cumulatively at the rate of 10% for a period of two years. The relevant extract is reproduced hereunder:-

10. However, at the same time considering the fact that in the present case with respect to the very village, the acquisition proceedings came to be initiated in the month of January 2008, it will not be safe and/or prudent to grant the cumulative increase of 12%. In the facts and circumstances of the case and even considering the sale instances produced on record, we are of the opinion that if instead of 12% enhancement on Rs 2,38,00,000, 10% increase is accepted it can be said to be a just compensation and it may meet the ends of justice.

14. The Supreme Court Central Warehousing Corp.(supra), dealing with a time period gap of 11 years between the acquisition notification for Naraingarh, district Ambala and the sale deeds, awarded only 8% annual escalation. It held that:

"the fair and reasonable compensation in the present case would be best determined if we apply 8% annual increase with cumulative effect. This is for the reason that the gap is huge i.e. 11 years. For shorter period of 3-5 years, it could have been 10% or 12%. But in no case 15% would be justified for a period of 11 years as awarded by the High Court in the

impugned order. In the present case, given the 11 years gap, 8% would be considered just and proper."

15. In Adil Singh (Supra), a Co-ordinate bench of this Court had awarded an escalation @15% p.a. for 3 years for the acquisition of the property bearing No.8 at Jantar Mantar Road, New Delhi for traffic integration and the intake shaft for the underground Metro Rail at Patel Chowk. This decision was upheld by the Supreme Court in DMRC (Supra), holding that:-

> *"9.The issue of annual escalation was next examined together with the deduction of 25% of the market price towards development charges ordered by the Reference Court. The learned Judge then went on to observe that the rate of escalation at 15% per annum should be awarded to the affected land owners. In reaching such conclusion, the Court took into account that the property owners had not led any evidence on price escalation of immovable property in the proximate area where the acquired property was located. On this aspect, the learned counsel for the land owners had contended i.e. that transaction of the property in the area of Jantar Mantar is very rare and one cannot possibly have sale exemplars of property sold in the said area.*
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> xxx
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> *12. As can be noticed the Reference Court while rejecting comparability of properties, weighed in not only the price & size difference, but also the customer base for properties located at Amrita Shergil Marg & Golf Links. The Court noted that the per sq.mtr. price of a house situated at Golf Links could not be an indice for determination of the per sq.mtr. price of a bungalow on Jantar Mantar Road. Thus, the High Court rightly concurred with the findings of Reference Court while rejecting the semblance between the properties located at Amrita Shergil Marg (& Golf Links) & the subject properties for being incomparable to those at Jantar Mantar. Bringing on record the correct exemplar, the High Court considered the sale of property No.11, Barakhamba Road, New Delhi, its price & residential nature amongst other things. The Court drew a rather fair comparison between the property no.11, Barakhamba Road & held it to be identically positioned to the subject property at Jantar Mantar.*
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> xxx
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> *15. While putting to rest the issue of compensation, the High Court rightly set aside the 25% deduction from the market value, towards development cost, ordered by the Reference Court. It was noted that deduction towards development cost is required to be made when development of the property would lead to certain portions of the property being sacrificed in such*

development, towards providing common areas / amenities & which portions are not capable of fetching any value. Since the subject property was located in an area with sufficient civic amenities that do not require any further development, it correctly held that the question of any part of acquired land being wasted and/or any monies being required to be paid for development, would not arise.

16. Following a thorough analysis of the precedents on the question of escalation, the High Court correctly noted that no specific property's price escalation was required to prove that there had been a general increase in value or rental over the years. Therefore, the High Court rightly allowed for escalation at the rate of 15% per annum in prices, for a period of three years without deducting any development charges."

Thus, it is seen that the land in the abovementioned case was located at Jantar Mantar Road, right in the heart of the capital with sufficient civic amenities and does not require any further development. On the other hand, the land in the present case is located in a relatively undeveloped area, as the very reason for acquisition is stated to be for the purpose of creating a wildlife sanctuary. Thus, the escalation being awarded @15% for 3 years in DMRC (Supra) can be distinguished from the present case on a factual basis.

16. Coming to the present case, the date of acquisition notification in *Hari Chand (supra)* based on which the Reference Court enhanced the compensation was 01.06.1992 whereas the acquisition notification for the land in question was issued on 02.04.1996. Thus, there is a gap of around 3 years and 10 months. Keeping in view the decision of Supreme Court in Ashok Kumar (Supra), which has a comparable time gap, the Court deems it fit to increase the enhancement rate from 10% which has been awarded by the Reference Court, to 12%, which is to be calculated cumulatively, along with all consequential benefits. The cross objections are allowed to the aforesaid extent.

17. The appeals are dismissed and cross objections are allowed to aforesaid extent.

18. The respondents shall deposit additional Court fees.

19. A copy of this judgement be sent to the Reference Court for information.

MANOJ KUMAR OHRI
(JUDGE)

JULY 28, 2025
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