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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 15.09.2017

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Judgment delivered on: 15.11.2017

+ **LA.APP. 913/2008**

VIRENDER SOOD

..... Appellant

Through: Ms. Anita Sahani & Mr. Jaipal,
Advocates.

versus

UOI & ORS

..... Respondents

Through: Mr. Sanjay Pathak, Ms. K. Kaomudi
Kiran Pathak, Mr. Sunil Kumar Jha &
Mr. Kushal Raj Tater, Advocates for
GNCTD.

Mr. Ajay Verma, Senior Standing
Counsel and Ms. Diviani Khanna,
Advocate for DDA.

+ **LA.APP. 35/2009 and C.M. Nos.13411/2014, 9090/2015 &
11135/2015**

UOI

..... Appellant

Through: Mr. Sanjay Pathak, Ms. K. Kaomudi
Kiran Pathak, Mr. Sunil Kumar Jha &
Mr. Kushal Raj Tater, Advocates for
GNCTD.

versus

SHRI VIRENDER SOOD & ANR.

..... Respondents

Through: Ms. Anita Sahani & Mr. Jaipal,
Advocates.

Mr. Ajay Verma, Senior Standing
Counsel and Ms. Diviani Khanna,
Advocate for DDA.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. By this common judgment, I proceed to dispose of the aforesaid two appeals u/s 54 of the Land Acquisition Act ('Act') – one preferred by the claimant/ land owner (herein after referred to as the Appellant), i.e. LA Appeal No.913/2008, and the other – being LA Appeal No.35/2009, preferred by Union of India (herein after referred to as the Respondent) to assail the same judgment rendered by the learned ADJ in LAC No.1171/2005 u/s 18 of the Act.

2. By the impugned judgment, the learned ADJ has held the appellant land owner entitled to enhancement of compensation @ Rs.24,009/- per sq mtr, solatium @ 30%, and additional amount of 12% p.a. of market value as per section 23 (1A) of the Act from the date of notification u/s 4 of the Act till the date of dispossession, or award, whichever is earlier. The appellant has also been held entitled to interest on enhanced compensation @ 9% p.a. from the date of award, or dispossession, whichever is earlier till expiry of one year and, thereafter, @ 15% p.a. till payment as per section 28 of the Act. Interest on solatium and additional amount has also been awarded as per the directions of the Supreme Court in *Sunder v. Union of India*, 93 (2001) DLT 569.

3. The appellants land in question, measuring 557.61 sq mtr situated in Khasra No.2359 min in the revenue estate of Basai Darapur known as

Mansarovar Garden, New Delhi was notified u/s 4 of the Act vide notification dated 01.04.2004. The notification u/s 6 of the Act was issued on 10.11.2004. The Land Acquisition Collector (LAC) passed the award on 07.04.2005. The said award pertained only to the aforesaid land of the appellant. The LAC assessed the compensation @ 13,491/- per sq mtr for land and Rs.2,000/- per large tree; Rs.1,000/- per small tree, and; Rs.5,000/- for borewell. In addition, solatium @ 30% and additional amount @ 12% p.a. u/s 23 (1A) of the Act was also assessed and awarded.

4. The appellant, being dissatisfied with the said Award, sought reference u/s 18 of the Act for enhanced compensation. The appellant contended that the LAC had failed to take into consideration the market value of the land situated in the surrounding localities, and the fact that the land in question is situated in the heart of West Delhi i.e. Kirti Nagar. The LAC also failed to take into account the nature of permitted use of the land in question, which was residential-cum-commercial. The appellant contended that the LAC had also failed to assess the potentiality of the land for commercial as well as residential use. The LAC had assessed the market value of the land in question by treating the same as agricultural land and determined the value accordingly. The appellant contended that the land in question is one of the best plots which could be used commercially, as it was situated in Kirti Nagar, which is one of the biggest timber markets in India. The land of the appellant was surrounded by developed colonies like Saraswati Garden, and residential colonies like Rajouri Garden, and Patel Nagar – which are

hardly 1 KM away from the acquired land. The acquired land was hardly 1 KM from Mayapuri Industrial Area, as well as Loha Mandi Naraina. It was less than 1 KM from metro railway station at Kirti Nagar and Ramesh Nagar, Moti Nagar.

5. The appellant also contended that the LAC had also failed to appreciate that in terms of the Zonal Development Plan, the area in question could be used as guest house, nursing home, post office, dispensary, ESS and conveniences. The appellant also contended that the LAC had failed to assess the compensation for the super structure over the land in question, and damage caused to the appellant by uprooting him from his residence, as well as from his business. All modern amenities and facilities of life – like metalled road, electricity, drinking water were easily available on the land in question, much prior to the issuance of notification u/s 4 of the Act.

6. The appellant claimed that the market value of the land – as on the date of issuance of notification u/s 4 of the Act, was not less than Rs.60,000/- per sq mtr, keeping in view the demand and supply position. The appellant also claimed compensation for structure to the tune of Rs.3 lacs, apart from damages of Rs.5 lacs.

7. The respondent contested the said claim of the appellant. It was claimed that the Delhi Land Reforms Act was applicable to the land in question. The respondent also claimed that the DDA was a necessary party for complete adjudication of the reference. The land was not surrounded by developed or undeveloped colony and could be used only

for agricultural purpose. There was no structure, tree, well or tube well on the land in question at the time of issuance of the notification u/s 4 of the Act. The respondent defended the compensation assessed by the LAC. The DDA was also represented before the learned ADJ in the reference proceedings, and adopted their defence on the same lines as the respondent-UOI.

8. The learned ADJ framed the following issues on the basis of pleading on 11.09.2006:

“1. What was the market value of the acquired land at the time of issuance of notification u/s 4 of the Land Acquisition Act?

2. To what enhancement in compensation, if any, petitioner is entitled?

3. Whether the petitioner is entitled to any compensation for structure, if any, standing on the acquired land? OPP

4. Relief”.

9. The appellant led his evidence by filing his affidavit Ex P-1. To establish the use and occupation of the land in question, the appellant relied upon a report prepared by a Local Commissioner on 30.06.2000 along with the site plan and proceedings in Suit No.389/2000 filed by the appellant against the MCD in the Court of Smt. Raj Rani Mitra, Civil Judge. The said report of the Local Commissioner noticed that denting and painting work was going on in the property for the last 8-10 years as per statement of persons on the suit property. The land in question is three side open land. The Local Commissioner did not find any

unauthorized use or profession being undertaken on the said land. The appellant also relied on the application made for sanction of building plan for construction of commercial complex over the land in question vide Ex PW-1/2. Since the MCD did not act on the said application, the appellant preferred W.P.(C.) No.1339/2003. The appellant relied upon the orders passed in those proceedings on 21.05.2003 and 06.08.2004 i.e. Ex. PW-1/3 and PW-1/4. Ex PW-1/4 shows that the DDA had acknowledged that the land in question could be used as a community centre, and that the same could also be used as guest house, nursing home, post office, dispensary, ESS and for convenience.

10. The appellant also claimed – by placing reliance on the proceedings in the writ petition, that the DDA and the MCD had admitted that the land in question fell in the vacant portion of the shopping centre shown in the lay out plan of Mansarovar Garden. Copy of the affidavits of the MCD and DDA filed in the aforesaid writ petition were exhibited as Ex PW1/5 and PW-1/6. As per the affidavit of DDA, on the adjoining property, construction 2/3 storeys existed, ground floor whereof was being used for commercial activity as a manufacturing unit, while the upper floors were being used partly for residence, and partly for offices.

11. The appellant also relied upon the award No.6/DC (W)/ 2004-05 for metro railway project, whereunder the LAC had fixed the market value of property No.6667 measuring 3257 sq mtr in Kirti Nagar, Najafgarh Road at Rs.19,660/- per sq mtr by relying upon sale transactions and schedule rates circulated by Ministry of Urban Affairs and Development on 16.04.1999. Copy of the award was proved as Ex

PW-1/8. Another award No.14/DC (W) 2004-05 for Vivek Cinema, Patel Nagar was proved as Ex. PW-1/9. The same pertained to 2325.24 sq mtr land acquired for MRTS project vide notification dated 04.03.2003 issued u/s 4 of the Act. While making the said award, the LAC followed the schedule rates circulated by the Ministry of Urban Affairs and Development vide letter dated 16.04.1999, and applied the formula for appreciation. By considering the location and commercial potentiality of the lands, the market value of the property was fixed at Rs.31,395/- per sq yds. The appellant also relied upon a valuation report made by a registered valuer regarding the value of structure and boundary wall existing on his land, which was exhibited as Ex. PW-1/16, and the same was valued at Rs.7 lacs.

12. The appellant also relied upon the sale deed dated 01.05.2000 in respect of House No.50, Kirti Nagar Ex PW-1/10. The same pertained to 1/4th undivided share, which translates to 50 sq yds and the sale consideration in the sale deed was disclosed as Rs.22.50 lacs. The same translates to market value of Rs.45,000/- per sq mtr. Another sale deed dated 15.11.1996 in respect of property No.7, West Patel Nagar measuring 800 sq yds exhibited as Ex PW-1/11 was relied upon by the appellant. In the sale deed, the sale price was disclosed at Rs.3.95 crores, which translates to a market value of Rs.49,375/- per sq mtr.

13. The appellant also relied upon another sale deed dated 11.04.2005 pertaining to property No.169A, Block KA1, Janakpuri in respect of property admeasuring 444 sq mtr, exhibited as Ex PW-1/15. The same shows sale consideration of Rs.2.50 crore which translated at Rs.56,306/-

per sq mtr. The appellant also relied upon the auction held for commercial plots No.4, 5 and 6 admeasuring 10,728 sq mtr @ Rs.66,294/ per sq mtr. The same was exhibited as Ex PW-1/12. Similarly, plot No.10 admeasuring 5832 sq mtr was auctioned @ Rs.64,660/- per sq yd vide Ex PW-11/3 and plot No.23 admeasuring 11,429 sq mtr was auctioned at Rs.73,680/- per sq mtr vide Ex PW-1/14. The said auctions were conducted on 10.08.2004 in respect of plots situated at Shivaji Place, Delhi.

14. The appellant was cross examined. Insofar as it is relevant and material, he stated in his cross examination that as per the zonal plan of the DDA, the user of the land in question is shown as commercial and not residential. He denied that the land in village Basai Darapur was unleveled in the year 1967 when his father purchased the same. He stated that his plot was surrounded by commercial property such as Oriental Bank of Commerce, State Bank of India, Bhagat Shopping Complex, Public Schools. He admitted that Mansarovar Garden and Kirti Nagar had come up on the land of Basai Darapur. Kirti Nagar was situated at a distance of 250 mtr from his land. He had no personal knowledge about the execution and preparation of the sale deeds relied upon by him. He denied that Kirti Nagar was situated at a distance of 1 KM from his land. At the same time, he admitted that there was no commercial mall adjacent to the property in question.

15. PW-3 Anil Kumar, UDC from the office of Sub Registrar-II, Janakpuri, Delhi proved the copies of the sale deed Ex PW-1/3. Similarly, PW-4 Naresh Kumar Jain, LDC, Slum & JJ Department

proved the auction letters Ex PW-1/12 to PW-1/14. PW-5 Pramod Gogia, Architectural Draftsman, MCD Building Supervisor and Architect proved his report of valuation of superstructure as Ex PW-1/16, and lay out plan Ex PW-1/16A. The appellant also placed on record the copy of statement one Ram Naresh Aggarwal, Inspector from the office of Chief Commissioner of Income Tax Department, New Delhi as recorded in LAC 5/2005. As per the said statement, Dr. B.M.L. Kapoor entered into an agreement dated 16.08.1999 to sell property No.20/73, Punjabi Bagh, Delhi admeasuring 1322 sq yd for Rs.1.90 crore. However, the NOC was not granted by the income tax department as proceedings u/s 269 of the Income Tax were initiated. Auction of the said property was held on 31.08.2000 by the government auctioneers for a consideration of Rs.2.38 crores. A copy of the auction letter dated 31.08.2000 was exhibited as Ex. PW-1/1. As per this auction, the value of the said land comes to Rs.18,300/- per sq mtr approximately. The appellant also produced copy of schedule of rates issued by the Ministry of Urban Development for conversion of commercial leases in various localities, which was given mark B. As per the said document, the rate of Kirti Nagar was Rs.35,696/- per sq mtr for the period between 1999 till 2000.

16. On the other hand, the respondent relied upon a sale deed dated 23.03.2004 relating property No.111/18A, Tilak Nagar admeasuring 100 sq yd for Rs.4.85 lacs vide Ex. R-1. As per this sale deed, the rate was Rs.4,850 per sq yd. Vide Ex R-2, the respondent tendered certified copy of sale deed dated 06.02.2001 relating to property admeasuring 400 sq yd in village Basai Darapur for sale consideration of Rs.33.73 lacs.

According to this sale deed, the rate comes to Rs.8,000/- per sq yd. The respondent also produced the sale deed dated 19.04.2004 in respect of plot No.21 admeasuring 200 sq yd in village Basai Darapur vide Ex R-3. The sale consideration was Rs.1 lac meaning thereby that the market value comes to Rs.5,000/- per sq yd.

17. The learned ADJ found merit in the appellants submission that the award Ex. PW-1/8 and PW-1/9 made by the LAC on the basis of schedule rates notified by the Ministry of Urban Development could not be ignored. The submission of the appellant, that if the schedule of rates could form the basis of the determination of the market value of the land in respect of the said awards, there was no reason why the same could not be used in the present case, was also accepted. As per the award Ex PW-1/9, the market value had been fixed at Rs.31,395/- sq mtr. In ***Bedi Ram v. Union of India***, 93 (2001) DLT 150, the appreciation @ 12% p.a. had to be applied from 1973 onwards. This was so held in ***Simla Catholic Achieves v. Union of India***, 2002 (6) Apex Decision Delhi 315, as well. Since there was a gap of one year in the date of the notification in the present case and the date of the notification in respect of the award Ex PW-1/9, by applying appreciation @ 12% p.a., the market value of the land would be approximately Rs.35,000/- per sq mtr.

18. The learned ADJ also rejected the respondents contention that the land in question was only residential. In this regard, reliance was placed on the stand taken by the DDA in the writ petition preferred by the appellant that the land in question was commercial. The learned ADJ also agreed with the appellant by placing reliance on ***State of***

Maharashtra v. Abdul Sattar, AIR 1995 Bom 85 (DB), that if the distance between the acquired land and the land in respect whereof sale deeds were produced as evidence is about 1.5 KM, the distance is of little significance. The learned ADJ also held that certified copy of registered sale deeds were acceptable as reliable evidence and in this regard, he placed reliance on *State of Haryana v. Ram Singh*, (2001) 6 SCC 254. The learned ADJ, for the purpose of assessing the market value of the land in question on the date of issuance of the notification u/s 4 of the Act, relied upon the following evidences:

- i) Ex. PW-1/10, PW-1/11 and PW-1/15, which were in respect of lands sold at around Rs.55,000/- per sq mtr. The land covered by these sale deeds in respect of areas at a distance of 2-3 KM from the land in question. By applying and appreciation of 12% p.a. in respect of the land value evident from the sale deed Ex PW-1/10 of the year 2000, the market value of the land translated to Rs.67,000/- per sq mtr.
- ii) Ex PW-1/15 is a sale deed executed one year after the issuance of notification u/s 4 of the Act. If the depreciation of 12% p.a. is applied, the market value of the land comes to Rs.50,000/- per sq mtr approximately.
- iii) Ex. PW-1/12 to PW-1/14 were the auction sales held 16 months subsequent to the date of notification u/s 4 of the Act. After discounting the price at 15%, the rate translated to Rs.55,000/- per sq mtr.

19. Thus, the learned ADJ has assessed the market value of the land at Rs.50,000/- on the date of issuance of notification u/s 4 of the Act by primarily relying on sale deed Ex PW-1/10, PW-1/11 and PW-1/15 and the auctions held vide Ex PW-1/12 to PW-1/14.

20. However, the learned ADJ applied a discount of 25% for development and thereby reduced the rate to Rs.37,500/- per sq mtr. While doing so, the learned ADJ relied upon ***Chiman Lal Hargovind Dass v. State, Land Acquisition Officer***, (1988) 3 SCC 751, wherein 25% deduction was allowed for carving out roads, leaving open spaces and plotting out smaller plots suitable for construction of buildings. Pertinently, the learned ADJ rejected the respondents submission that the land in question was wholly under developed by observing “*in the case in hand, there is no evidence on behalf of the respondents that the land in question was wholly under developed*”.

21. The submission of Ms. Anita Sahni, learned counsel for the appellant is that the user of the land in question was commercial. She submits that this fact was well established before the learned ADJ and even accepted by him. In this regard, reference has been made to the affidavit of the MCD as well as that of the DDA filed in WP (C) No. 1339/2003 i.e. Ex.PW1/5 and Ex.PW1/6A respectively. Ms. Sahni has also referred to the site plan of the land in question from the trial Court record, and to the photographs of the plot in question as well. The plan shows that the land in question abuts 80' wide road on the two sides, and 20' wide on the third side. The photographs show that the land in question falls in a fully developed area, inasmuch, as, the adjoining

properties are also built up. The submission of Ms. Sahni is that the deduction of 25% applied by the learned ADJ for purpose of development, carving out roads and smaller plots, by relying on ***Chiman Lal Hargovind Dass*** (supra) is erroneous, considering that there was no question of carving out any roads, leaving open spaces and plotting out smaller plots suitable for construction of buildings. She submits that the land in question is not a large chunk of land situated in an agricultural area which would require the carving out of roads, leaving open spaces and plotting of smaller plots. The plot area is only 557.61 sq mtr, and the same does not require any further division for its beneficial use and enjoyment. Thus, first and foremost submission of learned counsel for the appellant is that the deduction of 25% was completely unjustified in the facts and circumstances of the case.

22. The further submission of Ms. Sahni is that the land rate assessed by the learned ADJ is also on the lower side. She submits on the basis of the sale transaction relied upon by the appellant, that market rate of the land in question in the year 2000 was in the range of Rs. 60,000/- per square meter. Thus, according to her, in the year 2004 i.e. on the date of acquisition, the same would have been at least Rs. 90,000/- per square meter. Ms. Sahni has, once again, sought to draw the attention of this Court to the evidences brought on record and above referred to, viz. Ex PW-1/10, PW-1/11, PW-1/15, PW-1/12, PW-1/14, PW-1/13, to submit that the market rate of the plot in question would be Rs.90,000/- per sq. mtr. as on 01.04.2004.

23. Ms. Sahni has also placed reliance on the report of the Local Commissioner dated 30.06.2000 (Ex.PW1/1) to show that commercial activity was being undertaken on the land in question i.e. of undertaking denting and painting activity and also to show that the plot in question was developed with a good location. For the same purpose, reliance is placed on the counter affidavit of the Municipal Corporation of Delhi and the Delhi Development Authority in WP(C) No. 1339 of 2003, Ex.PW1/5 and Ex.PW1/6 respectively. Ms. Sahni has relied upon ***Ravinder Narain and another Vs. Union of India*** AIR 2003 SC 1987, wherein the Supreme Court laid down the factors essential for a sale deed to be considered as a comparable case, in the matter of assessment of the market value of the acquired land. The Supreme Court observed that:

“the value of the potentiality is to be determined on such materials as are available and without indulging in any fits of imagination. There is bound to be some amount of guess work while determining the potentiality. However, the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made;

- (i) when sale is within a reasonable time of the date of notification under Section 4(1);*
- (ii) it should be a bona fide transaction;*
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and*
- (iv) it should possess similar advantages.*

*It is only when these factors are present, it can merit a consideration as a comparable case (See **The Special***

***Land Acquisition Officer, Bangalore Vs. T.Adinarayan
Setty AIR 1959 SC 429.”***

24. Ms. Sahni submits that the sale transactions relied upon are sales within a reasonable time of the date of notification in Section 4; are bona fide transaction; pertain to lands in the near vicinity of the acquired land, and; fall within similar localities in the neighbourhood. Thus, they possess similar advantages. She submits that the land in question being a three-side open plot - with 80' wide roads on two sides, has a tremendous locational advantage. She submits that the decision in ***Chiman Lal Hargovind Dass*** (supra) relied upon by the learned ADJ relates to a large block of land and not to a relatively small individual plot in a developed locality. In ***Chiman Lal Hargovind Dass*** (supra), the Supreme Court, inter alia, observed;

“It is common knowledge that when a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the court having regard to the shape, size and situation of the concerned block of land etc. These cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a question of fact depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law.”

25. She relies on ***Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*** AIR 1992 SC 2298, wherein the Supreme Court disapproved of the

deduction in the land rate for development of the plot. In this case, the High Court applied a deduction of 1/3rd of the value to reduce market rate to Rs. 6.50 per square yard by placing reliance on ***Tribeni Devi Vs. Collector, Ranchi*** (1972) 3 SCR 208. It was contended by the appellant before the Supreme Court that the said deduction was erroneous, inasmuch, as, the land in question was fully developed and eminently suitable for being used as house sites. The Supreme Court accepted the submission of the appellant and observed as follows:

“11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc., then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

12.The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed land with amenities of

roads, electricity etc., the deduction in the value of the comparable land is not warranted.”

26. Ms. Sahni has also placed reliance on a Division Bench judgment of this Court in ***Bedi Ram Vs. Union of India & Anr.*** 93(2001) Delhi Law Times 150 (DB) to submit that an annual increment of 12% per annum would be a safe increment to apply. The said decision is made in respect of land acquisition of land undertaken in village Kondli, Delhi.

27. On the other hand, the submission of Mr. Pathak is that the sale deeds relied upon by the appellant were in respect of constructed properties. Thus, deduction of 25% in the rates was liable to be made towards cost of construction. He submits that the best evidence available for consideration was in respect of a sale deed pertaining to the same village in the case of ***Deepak Sachdeva Vs. Union of India*** La. App. No. 228/2009 decided on 22.03.2011. In this case, the Court was dealing with acquisition proceedings undertaken vide notification under Section of the Act dated 05.04.1999 in respect of land falling in village Basai Darapur. This Court determined the land rate on the date of issuance of notification under Section 4 at Rs. 14,490/- per square meter. Mr. Pathak submits by adopting the said rate as the base rate, the increment of 12% per annum could be applied to arrive at the prevalent rate as on 01.04.2004 when the notification under Section 4 of the Act was issued for the land in question. Mr. Pathak has also submitted that the sale deeds relied upon by the appellant in respect of the plots in Raja Garden, Kirti Nagar, Janakpuri and Patel Nagar are not relevant and in this regard, he places reliance on ***Bhule Ram Vs. Union of India and another*** (2014) 11 SCC 307. He also places reliance on ***Lal Chand Vs. Union of***

India and another (2009) 15 SCC 769 wherein the Supreme Court held that the allotment rates of plots adopted by the DDA could not form the basis for award of compensation for acquisition of undeveloped lands. The said observation was made in respect of acquisition of large tracts of undeveloped agricultural lands in rural areas, which could not be compared with small plots in developed layout falling within urban area. The Supreme Court also took into consideration that the development agencies like the DDA adopted different rates for plots in the same area with reference to the economic capacity of the buyers, making it difficult to ascertain the real market value, whereas market value determination for acquisitions is uniform and does not depend upon the economic status of the land loser. The Supreme Court was concerned with market value of freehold land, whereas the allotment 'rates' in the DDA brochure refer to the initial premium payable on allotment of plots on leasehold basis.

28. In her rejoinder, learned counsel for the appellant points out that in the case of **Deepak Sachdeva** (supra), no evidence whatsoever was led by the claimant of comparable sale transactions, and it is for this reason that the court arrived at the land rate only Rs. 14,490/- per square meter as on 05.04.1999. The learned Single Judge in **Deepak Sachdeva**(supra), inter alia observed as follows:

"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 show room locations of the subject properties on the main Ring Road.”

29. From the aforesaid circumstances and discussions, it is evident that the land in question is the single plot. The size of the plot is 557.61 square meters. It cannot be described as a ‘large tract’ of land. It is usable as a single plot and there is no reason to assume that the same requires further sub-division, or carving out of roads or other conveniences. Therefore, neither any land area, nor any cost of development is required to be undertaken in respect of the land in question. Pertinently, it is abutting 80’ wide roads on 2 sides and 20’ wide road on third side. It is a three side open plot. The photographs show that the area is fully developed, inasmuch, as in the immediate neighbourhood, there are few built up structures being gainfully occupied and utilized for residential-cum-commercial purposes. Though, the plot in question is not in the immediate neighbourhood, it is at close quarters from other well-developed localities in West Delhi, such as, Kirti Nagar, Saraswati Garden, Rajouri Garden and Patel Nagar. The plot in question is not situated on the far flung outskirts of Delhi. The deduction of 25% applied by the learned ADJ by following the decision in ***Chiman Lal Hargovind Dass*** (supra) is, therefore, clearly not justified.

30. I now turn to deal with the submissions of learned counsels premised on the sale transactions for purpose of assessment of the market

rate of the land on the date of issuance of the notification under Section 4 of the Act i.e. 01.04.2004.

31. Ex.PW1/10 is the sale deed dated 01.05.2000 in the area of Kirti Nagar for a plot admeasuring 50 square yards (41.80 square meter) for Rs. 22.50 lakhs, which translates to Rs. 53,827/- per square meter. By applying escalation of 12% per annum, the market rate of the plot in question translates to Rs.70,623/- per square meter. However, in my view, the sales reflected in Ex PW-1/10 may not be the most appropriate instance to be relied upon, considering the fact that the plot area under sale was only 50 square yards, and it is well known that smaller plots are able to fetch higher rate in the market. The area of the plot in question is 557.61 square meter as opposed to 41.8 square meter, in respect whereof, Ex.PW1/10 was executed.

32. Similarly, Ex.PW1/11 is a sale deed of 15.11.1996 in the area of Patel Nagar. This is in respect of an area admeasuring 669 square meters for Rs. 3.95 crores, which translates to Rs. 59043/- per square meter. By applying 12% annual increment, the land rate of the said plot in the year 2004 comes to Rs. 1,33,525/- per square meter. This is a comparable plot to the plot in question. However, Patel Nagar is an older well developed colony than Mansarovar Garden, New Delhi, falling in the revenue estate of Basai Darapur. Thus, it may not be safe to completely rely upon Ex.PW1/11 to assess the value of the plot in question on the date of the issuance of notification under Section 4 of the Act, though the same appears to be at a close distance from the plot in question.

33. Reliance is also placed on Ex.PW1/15 - a sale deed in respect of a plot falling in Janakpuri. The date of the sale is 11.04.2005. The area of the said plot is 444 square meter for Rs.2.5crores which translates to Rs.56,306/- per square meter. The area of the plot in question is comparable to the area of the plot in respect whereof Ex.PW1/15 was executed. The time is also approximate i.e. one year after the date of issuance of notification under Section 4 of the Act in the present case. However, the area of Janakpuri is about 5 k.m. away from the plot in question. Janakpuri is an older development compared to Mansarovar Garden. By application of deduction of 12% per annum, the rate of the said plot in Janakpuri would translate to Rs. 49550/-. At the same time, Mansarovar Garden is closer to the centre of Delhi as compared to Janakpuri. Thus, if Ex.PW1/15 were to be adopted as the basis, the rate of the land in question would be somewhat higher.

34. Ex.PW1/12 and Ex.PW1/14 are two instances of open auction held on 30.07.2004. In my view, these are two extremely relevant instances. This is for the reason that the consideration disclosed in an auction sale is completely over board, and there is no component which is hidden or undisclosed. It is well-known - and judicial notice can be taken of the fact, that sale consideration is often suppressed with a view to avoid stamp duty and other taxes. Invariably, there is a component of cash/undisclosed consideration involved. In recognition of this fact of life, Chapter XXC was introduced in the Income Tax Act. This is what explains wide diversions of the rate per square meter in respect of sale deeds executed in the same area/locality around the same time.

35. Both these auctions sale pertain to the area of Raja Garden. The first sale pertains to plot admeasuring 10728 square meters for Rs.71.12 crores. The rate of this plot translates to Rs. 66,293/- per square meter. The sale deed Ex.PW1/14 pertains to another plot admeasuring 11427 square meters for Rs.84.08 crores. The rate of this plot translates to Rs.73,580/- per square meter. These sale transactions, however, are in relation to completely commercial plots. The user of the land in question, however, was not a completely commercial on the date of issuance of the notification under Section 4 of the Act. At the same time, these transactions are in respect of very large plots.

36. As noticed hereinabove, the permitted user of the land in question was residential-cum-commercial according to the statement given by the DDA and MCD in the aforesaid writ proceedings. The same could be used as a guest house, nursing home, post office, dispensary, ESS and for conveniences. Thus, it may not be appropriate to lift the land rate emerging from these two open auction sale transactions – which pertained to commercial plots, and apply the same for the plot in question. However, they are a pointer to the land rate that would have been prevailing on the date of acquisition of the plot in question. It also needs to be borne in mind that these two auctions pertained to area of Raja Garden, which is also an older development. Ex.PW1/13 is another auction sale held on 30.07.2004 for a plot admeasuring 5832 square meters for Rs.37.71 crores which translates to Rs. 54,372/- per square meter in the area of Raja Garden. For the reasons aforesaid, the rate disclosed by this transaction also cannot be lifted and applied to the

acquisition in question, though, it certainly is a pointer to the rate that would have been prevailing in respect of the land in question on the date of acquisition i.e. 01.04.2004.

37. Having discussed the pros and cons of the several transactions relied upon by the parties, the prevalent market rate on the date of issuance of notification under Section 4 of the Act i.e. on 01.04.2004, on an over-all assessment, which entails some amount of guess work, in my view, could fairly be assumed to be Rs.52,000/- per square meter. While arriving at the said figure, I have taken into consideration the fact that the rate on the relevant date in respect of a similar plot falling in Patel Nagar came to Rs. 59043/-; the rate in respect of a plot admeasuring 444 square meters in Janakpuri on 11.04.2005 came to Rs. 56306/- per square meter; and the rates of auction sales of large commercial plots in Raja Garden ranged between Rs.73580/- and Rs. 54372/- per square meter as on 30.07.2004. Considering the fact that the plot in question has a significant locational advantage – being three side open with opening on 80' wide roads on two sides and 20' wide road on the third side, coupled with the fact that the plot could be used for residential-cum-commercial purposes, I am of the view that the rate of Rs. 52,000/- per square meter on the date of issuance of Section 4 notification is fair and just.

38. So far as reliance placed by Mr. Pathak on *Deepak Sachdeva* (supra) is concerned, I am not inclined to adopt the rate assessed by this Court in the said case as the base, for the reason that the acquisition in that case took place nearly five years earlier, which is a substantial time difference in acquisition and also for the reason that the Court did not

have the benefit of comparable sale transactions available to it while making the assessment which have been relied upon by the appellant in the present case. Reliance placed on *Bhule Ram* (supra) and *Lal Chand* (supra) is misplaced in the facts of the present case. These decisions are not attracted in the present factual context.

39. Accordingly, while dismissing the appeal preferred by the respondent, the appeal preferred by the appellant is partially allowed. The market rate of the land in question is determined at Rs.52,000/- per sq. mtr. as on 01.04.2004. The appellant will also be entitled to all the statutory benefits granted by the learned ADJ. Decree sheet be prepared accordingly. The Trial Court Record be sent back.

(VIPIN SANGHI)
JUDGE

NOVEMBER 15, 2017