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

\+ LA.APP. 273/2016

UNION OF INDIA ..... Appellant

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

versus

RAM KISHAN SEHGAL & ANR ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R
% 21.12.2017

C.M. Appl. 47002/2017

1. Issue notice. Learned counsel for respondent accepts notice.

2. The application for early hearing is allowed and the appeal is taken up for hearing today itself.

LA.APP. 273/2016

3. The appellant has challenged the judgment dated 26th August, 2015 whereby the Reference Court has enhanced the compensation by applying the circle rates.

4. Learned counsel for the appellant submits that the Reference Court has applied the circle rates as the market value of the land in question. It is submitted that the Supreme Court in the recent judgment of ***Union of India v. Savitri Devi,*** 2017 SCC OnLine 1400 decided on 21st September, 2017 set aside the awards based on circle rates holding that the circle rates could not have been made basis for determination of compensation. The Supreme

Court remanded back the matter with liberty to the parties to adduce additional evidence with respect to the market value of the land. Relevant portion of the judgment of Supreme Court is reproduced hereunder: -

> *"2. After hearing learned counsel for the parties, we deem it appropriate to set aside the impugned judgment and order <u>as the circle rates, that has been relied upon, could not have been made the basis for determination of the compensation. In the guidelines, the circle rates have been provided for the purpose of payment of stamp duty, but that cannot be made the basis to determine the actual price of the market value of the property. It may vary considering the nature and situation of the land. Thus, the judgment of the High Court cannot be sustained</u>. In addition, there is nothing to indicate that any statutory committee has determined the said rate on a scientific basis and methodical assessment of market value.*
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> *3. This court in Lal Chand vs. Union of India & Anr. [(2009) 15 SCC 769], has laid down thus:*
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>> *"41.It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Valuation Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees.*
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>> *44. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence, can, therefore, form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We, however, hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either streetwise, or road-wise, or*

area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may.

46. In the instant case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in Jawajee Naganatham will apply and they will not be of any assistance for determining the market value. Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant."

4. In Government (NCT of Delhi) & Ors. v. Ajay Kumar & Ors. [(2014)13 SCC 734] it was held that circle rates could not form the basis. Compensation has to be determined on the basis of objective criteria, this court observed:

"7.We have heard Shri L.N. Rao, learned Additional Solicitor General appearing for the appellants and Shri P.S. Narasimha, learned senior advocate appearing for the respondents. Though, we appreciate the anguish expressed by the High Court over the abysmally low market value determined by the Land Acquisition Collectors in almost all cases, a phenomenon which is prevalent all over the country, it is not possible to approve the exercise undertaken by the High Court for forcing the administration to prescribe circle rates as the criteria for fixing market value or for determination of the compensation. The 1894 Act contains a comprehensive mechanism for fixing market value and determination of the compensation payable. Any person, who feels aggrieved by the award of the Land Acquisition Collector or the determination made by the Reference Court can avail remedy either by filing an application under Section 18 of the 1894 Act or by filing an appeal under Section 54 thereof. Therefore, there was no justification for the High Court to have compelled the Government to adopt the circle rates as an important factor for fixing market value of the acquired land. The power vested in the Collector to determine market value of the acquired land cannot be controlled by a judicial fiat and each case has to be decided by the concerned

> *authority by application of objective criteria.*
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> *8. In the result, the appeals are disposed of by making it clear that the circle rates referred to in notification dated 23.2.2001 issued by appellant No.1 shall not constitute the sole criteria for fixing market value of the acquired land and the Land Acquisition Collector shall be free to make determination by taking into consideration the relevant factors and the evidence which may in an appropriate case include circle rates."*
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> *5. It was submitted by learned counsel appearing for the parties that it would be appropriate to permit the parties to adduce additional evidence. The High Court may permit the parties to adduce the evidence before the Reference Court and call for the finding of the Reference Court.*
>
> *6. <u>The circle rates for purpose of stamp duty could not have been made the basis for determining the market value</u>. Resultantly, we set aside the judgment passed by the High Court. The appeals are allowed and the matters are remitted to the High Court for deciding afresh."*

(Emphasis Supplied)

5. Learned counsels for the parties submit that the impugned judgment of the Reference Court be set aside and the matter be remanded back to the Reference Court for recording of additional evidence of the parties with respect to the market value of the land and for passing a fresh order.

6. The appeal is allowed, the impugned judgment of the Reference Court is set aside and the matter is remanded back to the Reference Court for recording additional evidence in terms of the aforesaid judgment of the Supreme Court and the Reference Court shall pass a fresh order in accordance with law.

7. Learned counsel for the appellant seeks refund of the Court fees under Section 13 of the Court Fees Act, 1870 read with Order XLI Rule 23 of the Code of Civil Procedure, 1908 which provides for refund of the Court fees. Considering that the Reference Court had disposed of the reference on a

preliminary point by taking the circle rates and the remand is being made of this preliminary point of law, the prayer for refund of the Court fees is allowed and the registry shall grant a certificate authorising the appellant to receive back the full Court fees paid on the memorandum of appeal from the Collector of Stamps.

8. Learned counsel for the appellant seeks direction with respect to the decretal amount. In case the decretal amount has not been deposited, the appellant would not be required to deposit/pay the same. However, in case, the decretal amount has already been deposited with the Reference Court but not yet released, the Reference Court shall retain the amount in fixed deposit till fresh adjudication. In case the decretal amount has been released to the private respondent(s), the private respondent(s) is/are permitted to retain the decretal amount till fresh order is passed by the Reference Court subject to the private respondent(s) furnishing sufficient security to the satisfaction of the Reference Court with an undertaking to deposit the amount along with such interest as the Reference Court may direct in the event of the appellant succeeding before the Reference Court. In such cases, an undertaking along with the sufficient security to the satisfaction of the Reference Court be filed by the private respondent(s) before the Reference Court within a period of eight weeks from today. The learned Reference Court shall not permit the private respondent(s) to lead additional evidence till the undertaking and the security in terms of this order is furnished by the private respondent(s) before the Reference Court. In the event of the failure of the private respondent(s) to file an undertaking and the security within eight weeks, the appellant would be at liberty to initiate execution proceedings for recovery of the decretal amount from the private respondent(s) in accordance with law.

9. The parties shall appear before the Reference Court on 31st January,

2018. Learned counsels for the parties submit that they have noted down the next date of hearing and no fresh notice for their appearance would be required for appearance before the Reference Court.

10. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

DECEMBER 21, 2017
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