

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 4th May, 2021

+ LA.APP.No.612/2008

ADIL SINGH

..... Appellant

Through: Mr. Amit Sibal, Sr. Adv. with Mr. Ajoy Bhushan Kalia & Mr. Puneet Sharma, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. for UOI/LAC.
Mr. Tarun Johri, Mr. Ankit Saini, Advs. for DMRC.

AND

+ LA.APP.No.749/2008

TRIPAT KAUR

..... Appellant

Through: Mr. Rajesh Yadav, Ms. Ruchira V. Arora and Mr. Dhananjay Mehlawat, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. for UOI/LAC.
Mr. Tarun Johri, Mr. Ankit Saini, Advs. for DMRC.

AND

+ LA.APP.No.812/2008

DELHI METRO RAIL CORPORATION LTD. Appellant

Through: Mr. Tarun Johri, Mr. Ankit Saini, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. for UOI/LAC.
Mr. Amit Sibal, Sr. Adv. with Mr. Ajoy Bhushan Kalia & Mr. Puneet Sharma, Advs. for R-2.

AND

+ **LA.APP.No.821/2008**

HARIPAL SINGH GILL

..... Appellant

Through: Mr. Amit Sibal, Sr. Adv. with Mr. Ajoy Bhushan Kalia & Mr. Puneet Sharma, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. for UOI/LAC.
Mr. Tarun Johri, Mr. Ankit Saini, Advs. for DMRC.

AND

+ **LA.APP.No.822/2008**

DILSHER SINGH & ORS.

..... Appellants

Through: Mr. Amit Sibal, Sr. Adv. with Mr. Ajoy Bhushan Kalia & Mr. Puneet Sharma, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. Kaomudi Kiran Pathak, Mr. Sunil Kumar Jha and Mr. M.S. Akhtar, Advs. for UOI/LAC.
Mr. Tarun Johri, Mr. Ankit Saini, Advs. for DMRC.

AND

+

LA.APP.No.912/2008

DELHI METRO RAIL CORPORATION LTD. Appellant

Through: Mr. Tarun Johri, Mr. Ankit Saini,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar,
Adv. for UOI/LAC.

Mr. Amit Sibal, Sr. Adv. with Mr.
Ajoy Bhushan Kalia & Mr. Puneet
Sharma, Adv. for R-2.

AND

+

LA.APP.No.919/2008

DELHI METRO RAIL CORPORATION LTD. Appellant

Through: Mr. Tarun Johri, Mr. Ankit Saini,
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar,
Adv. for UOI/LAC.

Mr. Amit Sibal, Sr. Adv. with Mr.
Ajoy Bhushan Kalia & Mr. Puneet
Sharma, Adv. for R-2.

AND

+

LA.APP.No.920/2008

ALOK SINGH & ANR.

.... Appellants

Through: Mr. Ajoy Bhushan Kalia, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil

Kumar Jha and Mr. M.S. Akhtar,
Advs. for UOI/LAC.

Mr. Tarun Johri, Mr. Ankit Saini,
Advs. for DMRC.

AND

+

LA.APP.No.921/2008

DELHI METRO RAIL CORPORATION LTD. Appellant

Through: Mr. Tarun Johri, Mr. Ankit Saini,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar,
Advs. for UOI/LAC.

Mr. Amit Sibal, Sr. Adv. with Mr.
Ajoy Bhushan Kalia & Mr. Puneet
Sharma, Advs. for R-2.

Mr. Rajesh Yadav & Ms. Ruchira V.
Arora & Mr. Dhananjay Mehlawat,
Advs. for R-2.

AND

+

LA.APP.No.1082/2008

DELHI METRO RAIL CORPORATION LTD. Appellant

Through: Mr. Tarun Johri, Mr. Ankit Saini,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar,
Advs. for UOI/LAC.

Mr. Amit Sibal & Mr. Ravinder
Sethi, Sr. Advs. with Mr. Ajoy
Bhushan Kalia & Mr. Puneet
Sharma, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. All these appeals, under Section 54 of the Land Acquisition Act, 1894, impugn the order/s/judgment/s of the Additional District Judge (LAC), Delhi (hereinafter called the Reference Court) in References under Sections 18 and 19 of the Act, with respect to LAC Award No.13/2001-02 with respect to acquisition of property No.8, Jantar Mantar Road, New Delhi.
2. The appeals were admitted for hearing.
3. On 7th August, 2018, CM No.47184/2017 of the respondent no.2 in LA.APP.No.812/2008, for substituting the security furnished for withdrawing the compensation deposited in the Court by the appellant therein viz. Delhi Metro Rail Corporation Limited (DMRC), came up before the undersigned, when finding that the appeal itself was of the year 2008, it was deemed appropriate, that instead of the application, the appeal itself be taken up for hearing. On being informed that other appeals aforesaid, also preferred against the same/similar judgment/order/s and / or pertaining to the acquisition of the land of the share of others in the same property were also pending consideration, all the appeals were ordered to be listed together for hearing.
4. The hearing commenced on 24th September, 2018 and continued till 29th January, 2019, when orders were reserved.

5. Mr. Amit Sibal, Senior Advocate for the appellant in LA.APP. No.612/2008, opened the arguments on behalf of the owners of the property acquired and which arguments were adopted by counsels for the other owners, in their appeals. Mr. Tarun Johri, Advocate on behalf of DMRC and Mr. Sanjay Kumar Pathak, Advocate on behalf of Land Acquisition Collector (LAC) were also heard in opposition to the arguments of Mr. Amit Sibal, Senior Advocate and in support of the appeals of DMRC.

6. Vide Notifications, dated 31st March, 2000 under Section 4(1) and Section 17(1) and dated 23rd May, 2000 under Section 6, of the Act, land ad-measuring 10,800 sq. mtrs. or 2.67 acres comprising property bearing Plot No.2, Block No.125, known as 8 Jantar Mantar, New Delhi-110001, was acquired for making traffic integration and intake shaft for underground Metro at Patel Chowk, Mass Rapid Transit System (MRTS) Station and vide Award No.13/2001-02, the LAC awarded compensation at Rs.18,480/- per sq. mtr., besides other statutory benefits and compensation with respect to structures etc. Feeling dissatisfied with the quantum of compensation awarded by the LAC, the property owners filed petitions under Section 18 of the Act, for reference to be made for determination by the Court, of their objections to the compensation awarded. Reference under Section 19 of the Act was accordingly made to the Reference Court.

7. It was the claim of the property owners before the Reference Court, that (i) the LAC had assessed the market value of the acquired land, only on the basis of rates of land in residential areas in the vicinity of which the subject property was/is situated, as given in Schedule of Market Rates of land in Delhi; (ii) the Schedule of Market Rates of the land issued by the

Ministry of Urban Development was merely an inter-office memo, only meant for charging stamp duty and the amount of unearned increase while granting permission for sale of perpetual leasehold rights in the land; the said Schedule of Market Rates did not represent the market value of the acquired land, which was situated in a posh locality, having prime location and unique advantages and benefits, besides potential of being developed into a Group Housing Complex, for which plans had been submitted for approval and sanctions granted; (iii) the property owners, as far back as in the year 1994-95, had deposited Rs.5,37,66,993/- towards development charges for development of Group Housing Complex on the property; (iv) the final approval for constructing a Group Housing Complex at property bearing No.5, Jantar Mantar Road, New Delhi situated on the same road as the subject property, had already been granted; (v) had there been no acquisition proceedings with respect to the subject property, the property owners would have been entitled to construct a Group Housing Complex on the subject property and the true market value of the said potential of the property had not been considered; (vi) the acquired property also had a great potential of being developed and DMRC itself had advertised a multi-storied commercial complex having a sale value of minimum Rs.20,000/- per sq.ft., over the acquired land; on the said basis, the acquired property had market value of Rs.2,08,90,89,500/-; and, (vii) the award of the LAC, also ignored the sale deeds of properties situated in comparable areas and which properties were not even having the potential of being developed into a Group Housing Complex; the property owners had placed before the LAC, documents pertaining to sale of, (a) property No.22 ad-measuring 3,679 sq.mtr. situated at Amrita Shergill Marg New Delhi in October, 1999,

for a price of Rs.71,380 per sq.mtr.; (b) Flat No.35 ad-measuring 134 sq. mtr. situated at Dakshineswar Building, 10, Hailey Road, New Delhi, in the year 1996, for a price of Rs.1,00,00,000/- i.e. Rs.74,626/- per sq.mtr.; (c) property No.68, Golf Links New Delhi ad-measuring 404 sq. mtr., on 3rd June, 1998 for a price of Rs.1,39,266/- per sq.mtr.; and, (d) property No.11 Barakhamba Road New Delhi ad-measuring 4,791 sq.mtr., on 6th October, 1997, for a price of Rs.58,443/- per sq.mtr. The property owners thus, as against the market value determined by LAC of Rs.18,480/- per sq. mtr., claimed Rs.1,93,434/- per sq. mtr., claiming the same to be the minimum market value of the property.

8. It was the stand of LAC before the Reference Court, that (i) the property owners were not even the owners of the land underneath the property and were thus not entitled to any compensation, as the Land & Development Office (L&DO) was the recorded owner of the land; and, (ii) there was no structure, tree, well or tubewell on the acquired land.

9. It was the stand of DMRC before the Reference Court, that (i) LAC had taken into consideration all the material placed before it, while determining the market value of the property and had correctly assessed the market value of the property; (ii) the property owners had failed to produce any documents to substantiate their claim that the applicable Municipal Authorities had approved a Group Housing Complex on the acquired property; (iii) compensation could not be determined in a hypothetical scenario; (iv) evidence submitted by the property owners was of properties which were neither situated in the same area nor were similar to the property in question; (v) price fetched by a property in an auction sale, as in

the case of property No.22, Amrita Shergill Marg, New Delhi, could not be the criteria for determining market price, as the dynamics of a sale in an auction are entirely different; (vi) similarly, the price of a constructed flat, sold on a per sq.ft. basis, particularly of a small size, cannot be a criteria for determining the market value of the subject property; (vii) there was no thumb rule, of loading the price of the property by 15% annually, as was pleaded and claimed by the property owners; (viii) property No.11, Barakhamba Road, New Delhi, was situated in a commercial area and the price thereof is incomparable to the price of the subject property which is residential in nature and commercial use whereof is not permitted; and, (ix) property No.68, Golf Links, New Delhi is a small property and the price thereof also could not be comparable to the market value of the subject property.

10. On the basis of the pleadings of the parties, the Reference Court, on 25th November, 2002, framed the following issues:

“No.1. What was the right, title and interest of the petitioner in the acquired property?”

No.2. To what enhancement in compensation, if any, the petitioner is entitled to?

No.3. Relief.”

11. The Reference Court, vide the impugned judgment/order/s, qua issue No.1. held, (a) that the onus to prove the said issue was on the property owners; (b) the property owners themselves, in the Reference Petitions had averred that there was a dispute as to the apportionment and which was referred and was decided vide order dated 29th May, 2001 of the Additional

District Judge (ADJ) and pursuant where to the property owners were awarded a further sum of Rs.5,18,91,840/- as compensation and which money had been disbursed; (c) as per the said judgment dated 29th May, 2001, L&DO was held entitled to compensation at Rs.960/- only and the remaining compensation had been awarded to the property owners; (d) the UOI/L&DO had neither led any evidence nor proved any document in rebuttal; and, (e) accordingly, the property owners have got the right, title and interest, as per their respective shares in the property in question.

12. The Reference Court, vide the impugned order/judgment/s, determined the fair market value of the acquired property as on 31st March, 2000, at Rs.56,908/- per sq.mtr. and also held the property owners to be entitled to interest, solatium and additional amount, under Sections 28 and 23(2) of the Act. The Reference Court, under issue No.2 aforesaid, has reasoned that, (a) property No.22 Amrita Shergill Marg, New Delhi and property No.67, Golf Links, New Delhi were situated at a far distance from the subject property and the sale price thereof could not be used for determining the sale price of the subject property; (b) property at 11, Barakhamba Road, New Delhi was at a distance of 1.3 Kms. from the subject property and the price thereof was thus the best piece of evidence for determination of the market value of the subject property; (c) the subject property and the property No.11 Barakhamba Road, New Delhi are situated in well developed areas, surrounded with well built properties, roads, etc.; (d) property No.11, Barakhamba Road, New Delhi, having an area of 4791 sq.mtr., was sold on 6th October, 1997 at Rs.58,443/- sq.mtr.; at the annual escalation of price of 12%, the price of the said property as on 31st March,

2000, was Rs.75,878/- per sq.mtr.; (e) DMRC itself, vide public notice dated 2nd April, 2007, had invited requests for proposal for building and operating a five star hotel over the land acquired; (f) the statute does not allow for payment of any amount on account of potential value, over and above the market value; and, (g) though the subject property was already well developed and no amount was required to be deducted towards development costs but even if the maximum deduction at 25% on the above rate of Rs.75,878/- were to be allowed, the price would come to Rs.56,908/- per sq.mtr. as on 31st March, 2000. Accordingly, the market value of the property, as on 31st March, 2000, was determined at Rs.56,908/- per sq.mtr.

13. Both, the property owners as well as DMRC, are dissatisfied with the order / judgment/s of the Reference Court; DMRC, from enhancement of compensation from that determined in the award of the LAC, of Rs.18,480/- per sq.mtr. to Rs.56,908/- per sq.mtr.; and, property owners, from non-determination of compensation at Rs.1,93,434/- per sq. mtr., as sought by them.

14. The senior counsel for the property owners opened his arguments, contending that the property is situated in the heart of New Delhi, close to various government offices, Parliament House, Reserve Bank of India and the commercial centre of Connaught Place, New Delhi.

15. It was at that stage enquired from the senior counsel for the property owners as well as from the counsels for DMRC and LAC, and as recorded in the order dated 24th September, 2018, (i) whether property No.8, Jantar Mantar, New Delhi, subject matter of these appeals, is situated within

Lutyens' Bungalow Zone; (ii) whether the property aforesaid is situated within the no construction distance under the Ancient Monuments Preservation Act, 1904; and, (iii) where was/is the location of the subject property vis-à-vis. the location near Jantar Mantar, where earlier public protests were permitted to be held. It was felt that since construction in Lutyens' Bungalow Zone and within prescribed distance under the Ancient Monuments Act, which would apply to the observatory of Jantar Mantar, is restricted / prohibited, the said factors would have relevance in determination of market value of the subject property and which had not been taken into consideration by the Reference Court or by the LAC. Similarly it was felt that if the subject property was in the vicinity of the site earmarked for public protests, the same would also have relevance to the determination of market value.

16. The senior counsel for the property owners, on the next date of hearing informed that there were/are no building restrictions, as in the Lutyens' Bungalow Zone, in the locality where the subject property is situated and that the property was / is outside the no construction zone under the Ancient Monuments Preservation Act. It was stated, and not disputed by the counsels for DMRC and LAC, that the property is not situated within the Lutyens' Bungalow Zone. The senior counsel for the property owners, continuing his arguments, contended that (i) the property owners, on 27th September, 1990 had entered into a Collaboration Agreement with Unitech Ltd., for development of the property into a Group Housing Complex; on 23rd December, 1993, L&DO conveyed its sanction for developing Group Housing Complex on the land underneath the

property and demanded development charges of Rs.5,37,66,993/-, which were deposited; on 8th July, 1994, requisite plans and detailed drawings for sanction of proposed Group Housing Complex on the land underneath the property were submitted to New Delhi Municipal Council (NDMC); (ii) the property owners, before the LAC, claimed Rs.1,93,434/- per sq.mtr. on the basis of true and potential value of the property, computed at the net sale price of Rs.10,500/- per sq.ft. for the covered area and Rs.5,00,00,000/- for the open parking spaces; (iii) documents showing sale price of residential flats in the adjoining areas were submitted to the LAC; (iv) LAC however in the award, besides the Schedule of Market Rates of Ministry of Urban Development, also determined the market value of the subject property on the basis of sale price of basement parking in Harsha Bhawan in Connaught Place and of ground floor of properties in Hanuman Lane, New Delhi; (v) LAC, finding wide variance in the rates, in the sale deeds of comparable properties relied upon by the property owners on the one hand and in the rates of basements in commercial buildings in Connaught Place, New Delhi and of ground floor of residences in Hanuman Lane, on the other hand, ultimately fell back on the rates of land prescribed in the inter-office memo aforesaid of L&DO; (vi) the property owners, before the Reference Court, led evidence in support of their claim; per contra, LAC, though placed documents with respect to sale of basements meant for parking, in commercial buildings in Connaught Place, New Delhi and of ground floor in Hanuman Lane, did not prove the said documents in accordance with law and also did not examine any witnesses; (vii) the action of DMRC, of inviting tenders for development of a five star hotel on the acquired property, shows that the property owners have been deprived of their very

valuable property, having high potential value, under the guise of public purpose and in colourful exercise of power; (viii) though the Reference Court enhanced the compensation amount from that Rs.18,480/- per sq.mtr. in the award of LAC, to Rs.56,908/- per sq.mtr. but erroneously rejected the evidence submitted by the property owners; (ix) the Reference Court, though accepted the evidence submitted by the property owners, with respect to sale of property No.11, Barakhamba Road, New Delhi, but wrongly deducted 25% therefrom, towards development charges and computed escalation at just 12% per annum instead of 15% per annum; (x) the Reference Court wrongly rejected the parameter of future development potential of the acquired property, for determination of market value thereof; (xi) the reason given by the Reference Court for rejecting the evidence submitted by property owners, of sale price of properties at Amrita Shergill Marg, New Delhi and at Golf Links, New Delhi, i.e. of the same being at a distance from the subject property, is specious and has no basis in law; (xii) under law, no deduction towards development charges is warranted when the property is already developed and has roads, drainage, electricity and all other amenities and facilities in the vicinity; (xiii) reliance was placed on paragraphs 11 and 13 of ***Bhagwathula Samanna Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam*** (1991) 4 SCC 506 and on paragraph 6 of ***Piyara Singh Vs. State of Haryana*** (2017) 12 SCC 714, holding that no deduction for development charges is to be made when the property is already developed; (xiv) there is no law requiring rejection of rates of properties at a distance in excess of 2½ Kms., while determining market value; reliance was placed on paragraph 12 of ***Thakarsibhai Devjibhai Vs. Executive Engineer, Gujarat*** LA.APP.No.612/2008 & other connected appeals

(2001) 9 SCC 584, to contend that therein sale deeds of properties 5 Kms. apart were considered for computing market value; (xv) reliance by the Reference Court, on Section 23(1A) of the Act, for fixing the rate of annual escalation of property price at 12%, is erroneous; Section 23(1A) applies to the period commencing on and from the date of publication of the notification under Section 4(1) of the Act and till the date of award or the date of taking over possession and has no application to yearly escalation in determination of market value with reference to prior sale deeds of comparable properties; Section 23(1A) was inserted in the Act to ensure release of award amount and / or taking over of possession within a reasonable time and to take away the discretion earlier exercised by LAC during the said period; the same can have no application to escalation in prices for any other period; (xvi) the yearly escalation in market value of land is not on fixed percentage basis but depends upon the location of the land, as held in paragraphs 13 and 14 of ***General Manager, Oil and Natural Gas Corporation Limited Vs. Rameshbhai Jivanbhai Patel*** (2008) 14 SCC 745; (xvii) reference is made to paragraph 2 of ***Madhusudan Kabra Vs. State of Maharashtra*** (2018) 1 SCC 140, paragraphs 13 and 14 of ***General Manager, Oil and Natural Gas Corporation Limited*** supra and paragraphs 7 and 8 of ***Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun Vs. Bipin Kumar*** (2004) 2 SCC 283, to contend that in the said cases, either escalation of 15% was granted or it was held, that in urban areas, annual escalation can be from 30 to 50%; (xviii) the Reference Court has erred in reading ***State of Haryana Vs. Ram Singh*** (2001) 6 SCC 254; the same nowhere lays down, what has been deduced therefrom; rather, the same holds that potentiality forms a part of the market value of the land and

may be considered for determining its market value; and, (xix) reference was made to paragraphs 8 and 9 of ***P. Ram Reddy Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad*** (1995) 2 SCC 305 and to paragraph 11 of ***Land Acquisition Officer, Eluru Vs. Jasti Rohini (SMT)*** (1995) 1 SCC 717, to contend that potentiality of a land ought to be considered while determining its market value.

17. The counsel for the DMRC, opposing the arguments of the senior counsel for the property owners and in support of the DMRC's own appeals, argued that (a) the price of property No.11, Barakhamba Road, New Delhi, which is commercial in nature, cannot form the basis of determination of market value of the subject property which is residential in nature; (b) the circle rates prescribed by the L&DO cannot be discarded in toto; (c) the sale deeds of the nearest residential locality to the subject property i.e. of Hanuman Road, New Delhi have not been considered by the Reference Court; (d) enhancement in market value, with passage of time, cannot be assumed mechanically, as has been done in the impugned judgment, by treating the annual enhancement at 12%; reliance in this regard was placed on ***Land Acquisition Officer Vs. B. Vijender Reddy*** (2001) 10 SCC 669; (e) rather, the sale deeds of the properties at Golf Links, New Delhi produced by the property owners themselves, show that between 1998 and 1999 there was a fall in prices; (f) for the property owners to be entitled to any enhancement whatsoever, the property owners were required to establish a trend of increase in prices and which has not been done; (g) there was no credible evidence whatsoever on record of any comparable prices and no error could be found in the award of the LAC

determining the market value on the basis of market rates prescribed by L&DO; (h) the L&DO rate, from 1st April, 1998 to 31st March, 2000, of the subject property was Rs.18,480/- per sq.mtr.; (i) in fact the sale deed of property No.11, Barakhamba Road, New Delhi is for the same price as prescribed by L&DO for Barakhamba Road and which also shows that the L&DO rates, followed in the award of LAC, are the market rates; (j) the rates of properties at Amrita Shergill Marg, New Delhi and Golf Links, New Delhi, which are premier residential only localities, even otherwise are not comparable with the rates of the properties at Jantar Mantar Road, New Delhi, which is surrounded by commercial area and thus not most suitable as a residence; (k) the market value of the property at Jantar Mantar Road, New Delhi has to be less than the market value of the properties at Amrita Shergill Marg, New Delhi and/or at Golf Links, New Delhi; (l) auction generally fetches higher prices and the price fetched in an auction is not a good indice of market value; reliance in this regard was placed on ***Raj Kumar Vs. Haryana State*** (2007) 7 SCC 609 and ***Major General Kapil Mehra Vs. Union of India*** (2015) 2 SCC 262; (m) though the property owners claim potential value of the property owing to the proposal of development of a Group Housing Complex thereon but the sanction for the said proposal was in the name of Unitech Ltd. and the property owners had failed to produce their agreement with Unitech Ltd. and which would have shown the share of the property owners in the said potential even if any; (n) the sale deeds of properties at Golf Links, New Delhi or of flats at Hailey Road, New Delhi are for smaller areas and which have more buyers and consequently fetch more price and cannot be comparative rate for a large property as the subject property; reference in this regard was made to

Special Land Acquisition Officer Vs. M.K. Rafiq Saheb (2011) 7 SCC 714 and to *Thakarsibhai Devjibhai* supra; and, (o) the judgments referred to by the senior counsel for the property owners, with respect to distance not affecting the price, pertain to rural areas; on the contrary, in urban areas there can be a huge variance in price of properties even at a half kilometer distance from each other.

18. The counsel for LAC argued, that (i) Supreme Court in *Executive Engineer, Karnataka Housing Board Vs. Land Acquisition Officer, Gadag* (2011) 2 SCC 246 and in *Raj Kumar* supra (2007) 7 SCC 609 has held that price fetched in an auction is 20% more than the market price and is to be relied upon only if there is no instance of real sale; (ii) *Bhule Ram Vs. Union of India* (2014) 11 SCC 307 is qua agricultural land and would have no application qua urban areas; and, (iii) *Viluben Jhalejar Contractor Vs. State of Gujarat* (2005) 4 SCC 789 prescribes the factors to be considered for valuation.

19. The senior counsel for the property owners, in rejoinder, argued that (i) *Thakur Kuldeep Singh Vs. Union of India* (2010) 3 SCC 794 also referred to by the respondents to contend that L&DO rates are to be relied upon, does not hold so and rather holds to the contrary and lays down that the same cannot be the sole basis but can be used only as corroborative evidence; (ii) in paragraph 5 of *U.P. Jal Nigam, Lucknow Vs. Kalra Properties (P) Ltd., Lucknow* (1996) 3 SCC 124, paragraphs 6 to 8 of *Land Acquisition Officer, Eluru* supra and in paragraph 5 of *Union of India Vs. Savitri Devi* (2018) 12 SCC 545, it has been held that rates fixed by Government cannot be taken as criteria for determining the market value of

the land and are only for the purpose of collecting the stamp duty; (iii) it has been held in judgment dated 21st December, 2001 in RFA No.70/1989 titled ***Raj Kumar Vs. Union of India*** by this Court that when land has been compulsorily taken away from a person, he is entitled to receive the highest value of similar land in the locality; to the same effect is ***Anjani Molu Dessai Vs. State of Goa*** (2010) 13 SCC 710; (iv) though it has been argued before this Court that property at 11, Barakhamba Road, New Delhi is a commercial property but no evidence whatsoever was led in this regard and no suggestion even to this effect given to the property owners or their witnesses; (v) Master Plan of Delhi, being MPD-2021 cannot be relied upon to contend that property at 11, Barakhamba Road, New Delhi is a commercial property as the same came into effect only on 7th February, 2007, while the subject property stood acquired in the year 2000; (vi) reference was made to documents handed over, to contend that the owners of property No.11, Barakhamba Road, New Delhi had applied to NDMC for construction of a residential building thereon; (vii) the entire Barakhamba Road, New Delhi, even as per MPD-2021, is not commercial and is commercial only till Tolstoy Marg, New Delhi; (viii) the argument of the counsel for DMRC, that the sale deeds of the properties at Golf Links, New Delhi relied upon by the property owners show a falling trend in the price, is again without laying any foundation or evidence therefor; (ix) Golf Links, New Delhi area falls in the Lutyens' Bungalow Zone wherein fresh construction beyond the existing plinth and height is not possible; (x) on the contrary, Jantar Mantar Road, New Delhi does not fall in Lutyens' Bungalow Zone; (xi) the price reflected in the sale deeds, is generally below the market value, as observed in paragraph 46 of ***Adil Singh Vs.***

Union of India (UOI) 171 (2010) DLT 748; (xii) the counsel for DMRC himself having relied on the sale deeds of properties at Golf Links, New Delhi to contend that the trend was of fall in prices, cannot contend that the said sale deeds are to be ignored; moreover, for contending so, the sale deeds of properties at Amrita Shergill Marg, New Delhi and at 11, Barakhamba Road, New Delhi are being ignored by counsel for DMRC; (xiii) a portion of nearby property plot No.6, Tolstoy Marg, New Delhi was acquired on 5th September, 1991, for the purpose of road widening, and compensation, vide judgment reported in *K. Narendra Vs. Riviera Apartments (P) Ltd.* (1999) 5 SCC 77, was awarded at Rs.33,400/- per sq.mtr.; (xiv) the said compensation, compared with the sale price of Rs.5,65,102/- per sq.mtr. of property No.2, Hailey Road, New Delhi sold in the year 2012, shows escalation in sale prices at the rate of 75.81% per annum; (xv) in comparison thereto, the property owners are seeking annual escalation at 15% per annum only; (xvi) judicial notice should be taken of general price rise and the property owners are entitled to escalation of more than 15% per annum in terms thereof also; (xvii) comparable properties at 11, Barakhamba Road, New Delhi, 22, Amrita Shergill Marg, New Delhi, 68 Golf Links, New Delhi and 61 Golf Links, New Delhi, prices whereof are being relied upon by the property owners to arrive at the market value of the acquired property, are at a distance of 1.3 Kms., 3.6 Kms., 3.8 Kms. and 3.8 Kms. respectively from the subject property and Supreme Court in *Thakarsibhai Devjibhai* supra has considered properties at a distance of 5 Kms. also as comparable properties; (xviii) merely because the sale documents of basement of Harsha Bhawan and of ground floor on Hanuman Road are of the year 2000 itself, is no reason for the market value

of the subject property to be determined on the basis thereof, as the same are not comparable properties; and, (xix) the judgments relied upon by the counsel for the DMRC to contend that an auction fetches a price higher than the market price, do not hold so and are inapplicable to the present situation.

20. I have considered the record and the contentions urged, and what emerges is as under:

- A. The Secretary of State for India in Council, vide deed dated 7th June, 1920, granted perpetual leasehold rights in a plot of land ad-measuring 2.67 acres, in favour of Rai Bahadur Sardar Narain Singh. The said plot of land subsequently came to be known as plot No.2, Block No.125, known as 8 Jantar Mantar, New Delhi.
- B. Vide Notifications dated 31st March, 2000 under Sections 4(1) and 17(1) and dated 23rd May, 2000 under Section 6 of the Act, 10,800 sq.mtr. or 2.67 acres of the aforesaid land/property was acquired as aforesaid and claims invited with respect to compensation thereof.
- C. Both, L&DO, being the successor-in-interest of Secretary of State for India in Council, and the property owners, claiming to be successors in interest of the lessee aforesaid of the land underneath the property, made claim for compensation. L&DO claimed 25% of the total compensation, at the rate of Rs.18,480/- per sq.mtr., being the Schedule Rate of land declared by the Ministry of Urban Development as aforesaid. The property owners claimed compensation at the rate of (i) Rs.1,93,372/- per sq.mtr., on the basis

of potential of development of a Group Housing Complex with a total covered area of 1,94,199 sq.ft. on the said land fetching net sale price, after deducting the cost of construction, of Rs.10,500/- per sq.ft. besides the price of Rs.5,00,00,000/- for sale of car parking spaces, i.e. total Rs.2,08,90,89,500/-; or (ii) Rs.1,29,378/- per sq.mtr. on the basis of price fetched by contemporaneous sales of, (a) Flat No.35, 9th Floor, Dakshineshwar Building, 10, Hailey Road, New Delhi, (b) property No.11 Barakhamba Road, New Delhi, (c) property No.22, Amrita Shergill Marg, New Delhi, (d) property No.68, Golf Links, New Delhi and (e) property No.61 Golf Links, New Delhi.

- D. LAC, vide Award No.13/2001-02, determined the market value of the acquired land as on 31st March, 2000 at Rs.18,480/- per sq.mtr., reasoning that (i) the land is located in the Connaught Place area, which has been a well developed urban locale for a long period and is dotted with beautifully constructed government accommodation, private accommodation, buildings etc. and the land under acquisition is residential in nature – all this has to be kept in mind while arriving at the market value; (ii) the sale price fetched by properties at Barakhamba Road, New Delhi, Amrita Shergill Marg, New Delhi and Golf Links, New Delhi, relied upon by the property owners, could not be relied on as the said properties were not comparable to the land/property under acquisition; (iii) for arriving at the market value, price fetched by sales in the year 2000, of (a) parking space in basement of Harsha Bhawan, Connaught Place, New Delhi; (b) Flat

No.4 in basement of Harsha Bhawan, New Delhi; (c) the residential space No.6 in the ground floor of 42B, Hanuman Lane, New Delhi; and, (d) residential space No. 5 on ground floor at 42B, Hanuman Lane, New Delhi, were considered; (iv) the Schedule of Market Rates for land in Delhi, issued by Ministry of Urban Development vide letter dated 16th April, 1999, was also considered; (v) there was a wide variation between the rates of sales in the year 2000, of the parking space / flat in basement in Harsha Bhawan, New Delhi on the one hand and of the residential spaces in Hanuman Lane, New Delhi, on the other hand – thus the said sale prices could not be relied on while deciding the standard market rate for land under acquisition; (vi) apart from already standing structure on the land, nothing had come to notice that would lead to the inference that the perpetual lessees of the land had any intention of developing any building thereon; (vii) compensation at the rate of more than Rs.1,00,000/- per sq.mtr. claimed by the property owners was unrealistic and unreasonable and was speculative in nature; (viii) L&DO have realistic approach in claiming Rs.18,480/- per sq.mtr.; (ix) 15% per annum escalation claimed by the property owners was also not reliable; and, (x) keeping in view the level of the development, locality, situation of the area, appropriate market value of the land under acquisition was Rs.18,480/- per sq.mtr.

E. As far as the claim of L&DO, for 25% of the market value determined of the land/compensation, was/is concerned, on the property owners controverting the same, a reference under Sections

30 and 31 of the Act, for apportionment of compensation, was made and which reference was decided vide judgment dated 29th May, 2001 and it was held, that (i) the perpetual lease deed admittedly executed by the predecessor-in-interest of L&DO, of the land underneath the property, was for an unlimited period and permitted the lessee to raise construction of a permanent nature thereon; (ii) where the land is let out for building purposes, without a fixed period, the presumption is that it was intended to create a permanent tenancy; (iii) thus the perpetual lease deed executed by predecessor-in-interest of L&DO in favour of the predecessor-in-interest of the property owners, created a permanent tenancy with respect to the land in favour of the property owners; (iv) not only so, the said perpetual lease deed also did not require the lessee to obtain any prior permission of the L&DO as lessor, for transfer or assignment of the leasehold rights; (v) the share of compensation of L&DO, as lessor and of property owners, as lessee, had/has to be evaluated considering the said facts; (vi) since the lease was perpetual, for an unlimited period and the rent was fixed in perpetuity and the lessee was entitled to assign or transfer the leasehold rights in the land and the ownership rights in the construction thereon, without prior approval of the lessor, L&DO as lessor was entitled only to the grant of capitalized value of rent out of the acquisition compensation; (vii) admittedly the rent, as per lease deed was Rs.48/- per annum and capitalized value thereof for 20 years came to Rs.960/-; and, (viii) L&DO was thus entitled to compensation to that extent only.

- F. Nothing has been brought on record to show that the aforesaid order/judgment in Section 30/31 proceedings has not attained finality. Thus as far as issue No.1 aforesaid framed by the Reference Court is concerned, it is no longer *res integra* that the property owners are entitled to the entire compensation determined, save the capitalized value of the rent under the perpetual lease, determined at Rs.960/-, being the share of L&DO as lessor in the compensation.
- G. Accordingly, though pursuant to the award of LAC aforesaid, the property owners were initially permitted to withdraw compensation determined at the rate of Rs.18,480/- per sq.mtr. supra, to the extent of 75% only but on pronouncement of the judgment/order aforesaid, were also permitted to withdraw the remaining 25% of compensation except the share of Rs.960/-, determined to be of L&DO.
- H. The property owners, being dissatisfied with the award of LAC, sought reference under Section 18 and which was made under Section 19 and which has resulted in the impugned order/judgment/s, enhancing the market value of the land from Rs.18,480/- per sq.mtr. to Rs.56,908/- per sq.mtr.
- I. While,
- (A) the property owners contend that the Reference Court erred in
- (i) deciding with reference to the sale price of property No.11, Barakhamba Road, New Delhi only and in rejecting the sale price of properties at Amrita Shergill Marg, New Delhi and Golf Links, New Delhi;

- (ii) computing the market value of the land acquired as on 31st March, 2000, on the parameter of price fetched by property no.11, Barakhamba Road, New Delhi on 6th October, 1997, by providing for annual escalation in prices at 12% only instead of 15% per annum;
- (iii) deducting 25% from the market value so arrived at, towards development charges, when the property was / is already in a developed area and nothing was required to be spent towards development thereof; and,
- (iv) not computing the compensation on the basis of potential of construction of a Group Housing Complex on the subject property;

and that if the Reference Court had not so erred, the market value / compensation determined would have been higher;

(B) DMRC contends that the Reference Court erred in

- (i) treating the property no.11, Barakhamba Road, New Delhi as a comparable property, when the same is commercial, as distinct from subject property, which was / is residential in nature;
- (ii) granting escalation at the rate of 12% per annum, when there was no evidence of any trend of escalation in prices between the year 1997 when the property no.11,

Barakhamba Road, New Delhi was sold and the year 2000 when the subject property was acquired; and,

- (iii) in not considering the prices fetched from sale in the same year i.e. 2000 of parking spaces / flat in the basement of Harsha Bhawan, New Delhi and residential spaces in Hanuman Road, New Delhi which were closest in distance to the subject property and which prices were much lesser than those of the Barakhamba Road, New Delhi property; and,

that had the Reference Court not so erred, would not have enhanced the compensation from that determined by LAC in the award.

- J. The decision in these appeals thus has to be qua the aforesaid contentions of the respective parties.
- K. As far as the contention of the property owners, of the Reference Court having erred in not considering the price of sale of properties in Amrita Shergill Marg, New Delhi and Golf Links, New Delhi, for determination of market value of subject property, merely on the ground of the same being situated at a distance from the subject property is concerned, in my opinion, not only are the said properties situated at a distance but cannot otherwise also be said to be comparable to the subject property, for the market value of the subject property to be determined on the indice of market value thereof.

L. Determination of market value of the property acquired, for the purpose of determination of compensation payable for compulsory acquisition thereof, is comparable to determination of *mesne* profits for unauthorized occupation of the property. Computation of both, particularly of residential properties, entails some element of genuine intelligent and honest guess work. The Courts, during the said determination, are also entitled to take judicial notice, in the case of determination of *mesne* profits, of the trend of general increase in rents in the city of Delhi and not of the prevalent rates of rent, in the absence of proof thereof, as held in ***National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association*** 122 (2005) DLT 629 (DB). As far as Delhi is concerned, subordinate legislation in the form of Order XV-A of the Code of Civil Procedure, 1908, as applicable to Delhi, empowers the Court, in any suit by an owner/lessor for eviction of an unauthorized occupant/lessee or for recovery of rent and future *mesne* profits from him, to direct the defendant who, on preponderance of probabilities, may not be found to have a right to continue in possession of property, to deposit during the pendency of the suit such amount as may appear reasonable to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken by defendant in unauthorized occupation. There thus also exists a legislative mandate in this regard, as far as the city of Delhi is concerned. Judicial notice which the Court making such determination is competent and authorized to take, also extends to the knowledge of different locations and the

difference which the same makes vis-à-vis the market value, whether for sale or for letting.

- M. Taking such judicial notice, I say that while Amrita Shergill Marg and Golf Links are well defined exclusive residential colonies/areas, each of the properties wherein is meant for and being used as a residence, the same cannot be said of Jantar Mantar Road, New Delhi where the subject property is situated. Jantar Mantar Road, having barely a few residential bungalows, is not a well defined residential colony / area and is rather a small island in an otherwise surrounding sea of central business district of Connaught Place and institutional buildings and all of which fetch a large number of footfalls, including on the approach roads to the said few residential bungalows. Needless to state, the footfalls are accompanied with noise and pollution. A seeker, in or about the year 1997-2000, of a bungalow for residence in Delhi, would have preferred a bungalow in the peaceful and serene Amrita Shergill Marg rather than in the din of Jantar Mantar Road. Axiomatically, a bungalow on Amrita Shergill Marg would fetch a higher price than a bungalow on Jantar Mantar Road. As far as the colony of Golf Links is concerned, though undoubtedly a prime residential area but the houses therein, though undoubtedly large, do not constitute a bungalow and are comparatively much smaller in size to the subject property or to the bungalows on Amrita Shergill Marg; the customer base for the two is different and a seeker of a bungalow would ordinarily not settle for a house in Golf Links; the number of buyers for a smaller property

being more, the price fetched is also more. Thus the per sq.mtr. price of a house in Golf Links cannot be an indice for determination of the per sq.mtr. price of a bungalow on Jantar Mantar Road. Mention may also be made of the green lung of Lodhi Garden spread over an area of 90 acres abutting the bungalows on Amrita Shergill Marg and of Delhi Golf Club spread over an area of 220 acres abutting the houses in Golf Links, as compared to the vehicular pollution in the central business district of Connaught Place and the crowds on Parliament Street, which also distinguish the Amrita Shergill Marg and Golf Links properties from the subject property and market value thereof cannot be an index for determining the market value of the subject property.

- N. Similarly, a parking space or a flat (which can only be used for storage) in a basement in Harsha Bhawan, a multi-storied commercial building in the middle circle of Connaught Place, cannot be said to be a comparable property to a bungalow, as the subject property was, for the price fetched thereof to be an index for determining the market value of the subject property. The same is the position with respect to the residential spaces in Hanuman Lane. Hanuman Lane, New Delhi is again a small island of residences, in the midst of the central business district of Connaught Place; the sizes of houses therein vary from 300 to about 1000/1200 sq.yds. The sales thereof referred to by DMRC, are not even of full houses in Hanuman Lane, New Delhi but of part/s only of a ground floor. The said part of the floor of a house in Hanuman Lane is again

incomparable to a residential bungalow ad-measuring 2.67 acres and the customers of the two are also entirely different. A prospective buyer looking for a bungalow with a garden, ad-measuring 2.67 acres or there about, cannot be asked to fulfil his need with a residential space ad-measuring less than 1000 sq.ft. on one of the floors of a house nearby and vice-a-versa.

- O. Though the counsel for DMRC, during the hearing sought to contend that the built up area in the subject property also was very small and most of the property comprised of open grounds, but was cut short in the said argument. Having had the benefit, as a Judge of this Court, of living in a house, the constructed area whereof is a minuscule percentage of its total size, I can confidently say that the pleasures of living in such a house are immeasurable in terms of money and market value of such house cannot be compared with the market value of a residential flat, merely because the constructed area of both is the same. Thus no fault can be found in the Reference Court rejecting the said properties also as being incomparable to the subject property.
- P. What the Reference Court was thus left with, was the evidence with respect to the price of Rs.58,443/- per sq.mtr. fetched on sale of property No.11, Barakhamba Road, New Delhi on 6th October, 1997.
- Q. Barakhamba Road is identically situated to the Jantar Mantar Road. Barakhamba Road, originating from the outer circle of Connaught Place, though originally had residences on its entire stretch but by the

year 2000 with which we are concerned, had multi-storied commercial buildings on the portion thereof stretching from outer circle of Connaught Place till the intersection thereof with Tolstoy Marg / Maharaja Ranjeet Singh Marg and beyond which intersection, Barakhamba Road has Modern School and Sapru House on one side thereof and a few residential bungalows on the other side thereof and of which one, just like on the Jantar Mantar Road, has a Group Housing Complex in the name of Nilgiri Apartments constructed thereon.

- R. A perusal of the Sale Deed dated 6th October, 1997 of property No.11, Barakhamba Road, New Delhi, shows that (i) some of the vendors/original owners thereof, till the date of sale, were resident thereof; (ii) the vendors / original owners of the property, as far back as on 12th February, 1987, had entered into a Collaboration Agreement with Unitech Ltd., for raising and constructing a Group Housing, on land admeasuring 4,791 sq.mtrs. or 1.184 acres underneath the said property and perpetual lease whereof also had been granted by Secretary of State for India in Council; under the said Collaboration Agreement, 57% of the built up area was to belong to the vendors / original owners and the remaining 43% was to belong to Unitech Ltd. towards incurring the development and construction cost; and, (iii) however subsequently, on 17th October, 1996, the vendors / original owners of the property as well as the said Unitech Ltd. agreed to sell the said property to Uni-chand Builders Pvt. Ltd., for a total sale consideration of Rs.28,00,00,000/-, of which

Rs.18,20,00,000/- was to be shared by the vendors / original owners and Rs.9,80,00,000/- by Unitech Ltd., and in pursuance whereof the sale deed dated 6th October, 1997 executed.

- S. The aforesaid shows that, (i) the sale of property No.11, Barakhamba Road, New Delhi and the price agreed thereof, was as a residential property and not as a commercial property; (ii) the said property also had a potential of construction of a Group Housing thereon; and, (iii) the price of Rs.28,00,00,000/- therefor was agreed on 17th October, 1996 i.e. more than three years prior to the acquisition of the subject property. Judicial notice can also be taken of the fact that the price of Rs.28,00,00,000/- for an area of 4,791 sq.mtrs. or 1.184 acres i.e. less than half of the area of the subject property, was a suppressed price and not the market price as on 17th October, 1996, because the vendors / original owners, as far back as on 12th February, 1987 had created an encumbrance on the property in the form of Collaboration Agreement with Unitech Ltd. Judicial notice can be taken of the fact that the value of an unencumbered property is always much higher than of an encumbered property.
- T. It would thus be seen that property no.11, Barakhamba Road, New Delhi was not only a comparable property but in my view an identical property to the subject property, price fetched by which was rightly taken into consideration by the Reference Court for determining the market value of the subject property and the compensation payable for acquisition thereof.

- U. The only objection of the counsel for DMRC to the price fetched by property no.11, Barakhamba Road, New Delhi being taken into consideration for determining the market value of the subject property, on the ground that while the subject property is residential, the Barakhamba Road property is commercial, has no merit inasmuch as irrespective of whether the land use of property no.11, Barakhamba Road, New Delhi stands changed to commercial, the fact remains that the Collaboration Agreement entered in February, 1987 with respect thereto was for construction of a Group Housing and the sale thereof in the year 1996-1997 was also as a residential property. Once it is found that the sale price was determined on the premise of the property being residential, the contention that the property is commercial, is of no avail.
- V. Once it is found that property no.11, Barakhamba Road, New Delhi, also having a potential of construction of a Group Housing thereon, fetched a market price of Rs.28,00,00,000/-, the contention of the property owners, that the Reference Court has not taken into consideration the potential of construction of a Group Housing on the subject property, while determining market value thereof, also stands answered. Even otherwise, reference with benefit may be made to **Ram Singh** supra also relied upon by the Reference Court, where, dealing with the contention that the High Court should have granted further amount on account of potential value, over and above the market value, by way of compensation, it was held that, (i) under Section 23(1) of the Act, in determining the amount of compensation

to be awarded, the Court shall take into consideration the market value of the land; (ii) the statute does not allow for payment of any further amount on account of “potential value” over and above the market value; and, (iii) “market value” means the price which the asset would or could be expected to fetch in the open market; where a property has the potentiality of more profitable use, it will command a better price than the property without such potential; in other words, potentiality forms part of the market value and will be a factor to be taken into account for the purpose of determining the market value; but once the market value is determined, there is no question of awarding any further amount in addition thereto by reason of any future potential.

- W. That leaves the issues of, (a) annual escalation, if any to be granted with reference to the price of Barakhamba Road property, since the sale thereof is of more than three years prior to the acquisition of the subject property; and, (b) deduction, if any required to be made towards the development charges.
- X. The Reference Court, though held that since the subject property was situated in a developed area, no deduction from the market price determined was called for but then proceeded to, without giving any reasons, deduct 25% of the market price towards development cost. The Reference Court, on realising the enormity of the market value on the basis whereof compensation would become payable to the property owners, perhaps allowed its imagination to boggle, and thus chose to deduct 25% therefrom in the name of development cost.

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 and which portions are not capable of fetching any value. For instance, in acquisition of large tracts of agricultural land, nearly 25% to 30% of the land acquired, during development, is devoted towards roads etc. or monies expended in other developmental activities viz. electrification, provision for water lines etc. In ***Sabha Mohammed Yusuf Abdul Hamid Mulla Vs. Special Land Acquisition Officer*** (2012) 7 SCC 595, it was held that a large block of land will have to be developed, preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur and which development charges may range between 20% and 50% of the total price. It was further held that the deduction for development consists of two components; the first is with reference to the area acquired to be utilized for development works and the second is the cost of the development works. It was yet further held that the deduction of development cost is the concept used to derive the wholesale price of large undeveloped land with reference to the retail price of a small developed plot. Needless to state, all this does not apply to the subject property. The subject property is already surrounded by municipal roads and has all the requisite civic amenities. The question of any part of acquired land being wasted and / or any monies being required to be paid for development, does not arise. Reliance by the senior counsel for the property owners on

Bhagwathula Samanna and ***Piyara Singh*** supra is apposite. Thus, the deduction made by the Reference Court, of 25% from the market value, towards development cost, cannot be sustained and is set aside.

- Y. That brings me to the question of escalation if any to be granted on the anvil adopted by the Reference Court and found to have been correctly adopted, of sale price of property no.11, Barakhamba Road, New Delhi, for the reason of such sale being of three years prior to the acquisition of the subject property. While the senior counsel for the property owners claims 15% annual escalation, as against 12% escalation awarded by the Reference Court, the counsel for DMRC contends that no escalation is payable because the property owners failed to prove any trend of escalation of prices in the area/locality where the subject property is situated; with reference to instances of sales of property in Golf Links, furnished by the property owners, it was argued that the trend indicated is otherwise.
- Z. I am unable to agree with the contention aforesaid of the counsel for DMRC. Even in ***National Radio and Electronic Co. Ltd.*** supra, though the Division Bench of this Court held that no judicial notice of prevalent rates of letting value could be taken but held that judicial notice of the trend of general increase in rent could indeed be taken. As far back as in ***D.C. Oswal Vs. V.K. Subbiah*** (1992) 1 SCC 370 also it was held that judicial notice can be taken of the fact that rental has escalated everywhere. Again, in ***Saradamani Kandappan Vs. S. Rajalakshmi*** (2011) 12 SCC 18, it was held that judicial notice of the

comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now, can be taken. There are innumerable judgments of this Court, where, in determination of mesne profits, judicial notice has been taken of galloping rentals of immovable property in the city of Delhi. Mention may only be made of ***S. Kumar Vs. G.R. Kathpalia*** (1999) 77 DLT 266 (DB) and of ***Ajit Gogna Vs. Jitender Gogna*** 2019 SCC OnLine Del 7517. Thus, notwithstanding the property owners having not led any evidence of increase in prices of immovable property in the locality where the subject property and property no.11, Barakhamba Road are located, judicial notice can be taken of the trend of general increase in prices, between the years 1996 and 2000 in the said locality.

- AA. As far as the rate of escalation is concerned, merit is found in the contention that the rate of 12% per annum in Section 23(1A) of the Act cannot be the basis for such increase. Taking judicial notice and on the basis of judgments cited by the senior counsel for the property owners in this regard, the rate of escalation at 15% per annum is found to be apposite.
- BB. Though in view of above, need to comment on the award of LAC is not necessary but I must observe, (i) that the LAC in the present case failed to discharge his statutory duty to enquire into and determine the compensation for the land compulsorily acquired; (ii) the role of LAC during such determination, is inquisitorial and not adversarial; (iii) LAC, in the present case has failed to conduct any enquiry to

determine the market value of the property compulsorily acquired; (iv) I have in *Siri Chand Vs. Union of India* MANU/DE/0987/2019 held that it is the duty of the LAC and / or the Union of India to pay to the citizen whose land has been compulsorily acquired, just and due compensation therefor and the LAC / Union of India cannot hide behind the veil of technicalities, to deny such just and due compensation; (v) though the property owners, before the LAC also presented documents aforesaid of sale of Barakhamba Road, Amrita Shergill Marg and Golf Links properties but the LAC brushed them aside, merely stating that the said properties were not comparable and without giving any reasons therefor; (vi) though the LAC on its own referred to documents of sale of car parking and storage spaces in the basement of Harsha Bhawan and portions of ground floor of a house on Hanuman Road but the prices fetched by the said properties also were not made the criteria for determination of compensation, on the specious reason of there being huge variance in prices; neither of the said properties could be said to be comparable with the subject property which was a bungalow; (vii) no efforts were stated in the award to have been made, to find out the particulars of sale of other similar properties; (viii) as far as reliance by LAC on Schedule of Market Rates prepared by the Ministry of Urban Development for the purposes of levy of stamp duty and unearned increase to be charged at the time of grant of sale permission, is concerned, it was not considered that the said Schedule is prepared unilaterally, without involving the property owners and no criteria followed in preparation thereof disclosed; the same, even if intended to form the basis of

determination of market value, has the status of *ex parte* evidence and before use thereof opportunity has to be given to the property owners to cross-examine the authors of the said Schedule and which opportunity was not given; and, (ix) the Division Bench of this Court, in ***Manu Narang Vs. The Lt. Governor, Government National Capital Territory of Delhi*** 226 (2016) DLT 1, ***Amit Gupta Vs. Govt. of NCT of Delhi*** 229 (2016) DLT 385 and in ***Govt. of NCT of Delhi Vs. CTA Apparels Pvt. Ltd.*** MANU/DE/4615/2019 has held that circle rates notified under Rule 4 of the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007, are to act as a guide / indicator for the purpose of assessing the duty chargeable on the value of the consideration of any property and any instrument setting forth the market value below such valuation is to be referred by the Registering Officer to the Collector of Stamps and that the prescription of the circle rates does not take away the right to show that the property in question is correctly valued at a price less than the circle rate and an opportunity to prove the same has to be provided – thus the circle rates prescribed are not binding on the payer of stamp duty even and the question of LAC determining the market value, solely on the basis thereof did not arise.

21. From the aforesaid discussion it follows, (i) that the appeals of DMRC have no merit and are to be dismissed; and, (ii) the appeals of property owners are to be partly allowed. The market value as on 31st March, 2000 of the acquired property / land ad-measuring 10,800 sq. mtrs., has to be computed by providing for escalation at the rate of 15% per

annum in prices, for a period of three years, taking the price of property no.11, Barakhamba Road, New Delhi as on 17th October, 1996 at Rs.58,443/- per sq.mtr. i.e. at Rs.84,742.35 paise or Rs.84,742/- per sq.mtr. and without deducting any development charges therefrom.

22. Accordingly LA.APP.Nos.812/2008, 912/2008, 919/2008, 921/2008 and 1082/2008 are dismissed and LA.APP. Nos.612/2008, 749/2008, 821/2008, 822/2008 and 920/2008 are partly allowed, by determining the market value as on 31st March, 2000 of land ad-measuring 10,800 sq.mtrs. at property no.8, Jantar Mantar Road, New Delhi at Rs.84,742/- per sq.mtr. and compensation together with other statutory amounts and interest being paid on basis thereof.

23. The additional compensation so due be deposited in the Reference Court within three months of today and be released to the property owners as per their respective shares.

24. The appeals are disposed of.

RAJIV SAHAI ENDLAW, J.

MAY 04, 2021

‘gsr’..