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

% **Reserved on: 04 October, 2024**
Decided on: 06 November, 2024

\+ **LA.APP. 78/2022 & CM APPL. 17739/2022**

CHET RAM & OTHERS .....Appellants

Through: Mr. Rajesh Yadav, Senior Advocate with Ms. Ruchira V Arora and Mr. Dhananjay, Advocates

V

UNION OF INDIA& ANOTHER .....Respondents

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mr. Sunil Kumar Jha, Mr. M. S. Akhtar, Mr. Mayank Aroraand Mr. Sami Sameer Sidhique, Advocates for Respondent no 1/UOI
Ms. Kritika Gupta, Advocate for Respondent no 2/DDA

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present appeal is filed under section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "**the Act**") to challenge the judgment and decree dated 26.02.2022 passed in LAC bearing no. 3/17 titled as **Chet Ram & others V Union of India & another** (hereinafter referred to as "**the impugned judgment**") passed by the court of Ms. Shelly Arora, ADJ-01, South East District, Saket Courts, New Delhi (hereinafter referred to as "**the reference court**") whereby the reference court enhanced the compensation amount awarded by the LAC i.e. at the rate of Rs. 2,244.166/- per sq. meter (Rs. 2,684/- per sq. yards) to Rs. 7,392/- per sq. meter (Rs. 8,840.76/- per sq. yards) of the appellant's land bearing Khasra no. 621/2/3/2/2/1 measuring 02 Bighas 16 Biswas (2816 sq. yards) situated in the Revenue Estate of Village Bahapur forming part of Nehru Place District Centre, Delhi was assessed at a rate of Rs. 30,124.21 per sq. meter along with other benefits.

2. The factual background of the case is that LAC pronounced Award bearing no 24/DC(S)2005-06 under section 11 of the Act in pursuance of notifications bearing no F.9(32)/01/L&B/LA/14637 dated 28.11.2002 issued under sections 4 & 17 of the Act and bearing no F.9(32)/01/L&B/LA/4941 dated 13.06.2003 issued under section 6 of the Act for acquisition of land falling in Khasra no 621/2/3/2/2/1 measuring 2 bighas and 16 biswas and Khasra no 621/2/3/2/2/2 measuring 6 bighas and 10 biswas total measuring 08 bighas and 6 biswas situated in Village Bahapur for Planned Development of Delhi. LAC has determined market value of land at rate of Rs. 2,684/- per square yard along with statutory benefits. LAC as per Award observed that market value of the land has to be determined with reference to the price prevailing on date of preliminary notification and the market value means the price that would be paid by willing purchaser to a willing seller where both are actuated by business principles prevalent at the time in the locality. LAC also observed that interested persons/claimants have not filed any documentary evidence in support of their claim and such their claims were not justified. LAC determined/assessed market value of the acquired land at rate of Rs. 2684/- per square yard on basis of judgment dated 03.03.2005 passed by this court in WP (c) no 6967/2003 wherein it was observed that the claimants are entitled *prima facie* to receive compensation at rate of Rs. 2684/- per square yard. LAC further observed that acquired land was vacant and as such did not grant any compensation for tree, walls and structures.

LAC also awarded other statutory benefits which are admissible as per Act.

3. The appellants are co-bhumidars/owners of the land falling in Khasra no 621/2/3/2/2/1 measuring 2 bighas and 16 bighas situated in revenue Estate Village Bahapur, Delhi. The appellants have claimed compensation at rate of Rs. 3,50,000/- per square yard along statutory benefits. The appellants being aggrieved preferred reference petition under section 18 of the Act wherein the appellants stated that the market value of the acquired land was not correctly assessed and claimed and assessed market value of acquired land at Rs. 3,25,000/- per square yard due to crucial location of the acquired land. The appellants also claimed that they incurred cost of Rs. 25,00,000/- on construction of 15 rooms on the acquired land and further claimed Rs. 10,00,000/- as litigation expenses. The appellants also referred judgment dated 20.08.2014 passed in LAC no 159/11 (South District) wherein petition/reference under sections 30 and 31 of the Act was decided/answered in favour of the appellants which was upheld by this court vide order dated 14.07.2016. In said reference petition, an application under Order XXII Rule 3 and 4 read with section 151

CPC was allowed vide order dated 26.03.2014 on basis of the registered Will of the appellant no 1 and as such compensation falling in share of the appellant no 1 Chet Ram Sharma wholly devolved upon his son who is the appellant no 2. The appellants also relied on Power of Attorneys issued by the appellants no 2 and 3 in favour of the appellant no 2.

4. The respondent no 1/Union of India in written statement alleged that the reference petition was barred by limitation. LAC has awarded suitable and adequate compensation on well-reasoned assessment.

5. The appellants in rejoinder to the written statement of the respondent no 1/Union of India stated that the appellant no 1 purchased 28 bighas of land comprised in Khasra no 621/2/3/2/2/1 vide sale deed dated 03.11.1955 which was registered on 24.11.1956 and thereafter said land was mutated in his name vide mutation no 2357 dated 18.12.1962. However, land measuring 25 bighas 4 biswas was acquired for Planned Development of Delhi vide Award no 2059 dated 24.01.1968. The appellants filed Writ Petition bearing no 6091/2000 wherein vide order dated 11.07.2001 Coordinate Bench of this Court issued direction that if the land is required by DDA the steps should be initiated within a period of 8 weeks from the date of the order and if it is decided that the land is not to be acquired then the land use should be communicated to MCD to enable processing of application of the appellants for sanction of plan. The Writ Petition was disposed of vide order dated 26.09.2002 with direction to DDA to communicate to MCD about use of land as existing on date within a period of 2 weeks from the date of the order and MCD thereafter to consider plans of the appellants within a period of 6 weeks. DDA in compliance of said order wrote a letter dated 31.01.2003 informing land use of land of the appellants as commercial and is forming part of the Nehru Place District Centre. The appellants further stated that the acquired land is part of revenue estate of village Bahapur which is surrounded by well-developed residential and commercial colonies like Nehru Place District Center, Kalkaji, East of Kailash, G.K. I and II, Kailash Colony, Okhla Industrial Area, New Friends Colony, Sarita Vihar, Jasola Vihar, Mathura Road and also important establishments like Eros Five Star Hotel, Lady Shriram College, World Trade Center, Ansal Plaza, Sirifort Auditorium, Sirifort Sports Complex, Asiad Village and many other important places exist in the vicinity of the acquired land which reflected great potentiality of the acquired land. The appellants also stated that the land in the vicinity of the acquired land was well-developed and the acquired land itself was ideally located to be used for commercial purposes having been surrounded by Nehru Plaza District Centre which is stated to commercial and IT Hub. The appellants also stated that they would have constructed multi storey building with a shopping mall or office complex or an IT electronic centre after sanctioning of building plans which would have earned huge profit. The appellants also emphasized that all civic amenities such as water, electricity, sewage, transport, roads, flyovers, schools, college, office complexes, restaurants, cinema halls, hospitals, MTNL office, commercial complex, porch markets were available adjacent to the acquired land much prior to the date of notification with District Centre Nehru Place and office of MTNL being adjacent to the land of the appellants. The appellants also stated that the acquired land was easily accessible from Ring Road, Outer Ring Road and National Highway-2 connecting to Faridabad, Mathura, Agra, Lucknow and beyond. The appellants reiterated that acquired land was situated in a fully developed commercial centre and was fully capable of being used for any commercial purpose and as such the appellants are entitled to auction price similar to Nehru Place District Centre, Saket City Centre and Vasant Kunj. The acquired land/property was far more valuable than the auctioned plots on account of its superior location, advantages, situation and potentiality in comparison with the plots auctioned by DDA. The appellants placed reliance on various documents and stated that the claim of the appellants for award of compensation at rate of Rs. 3,25,000/- per square yard as on date of notification under section 4 of the Act is based on cogent, convincing, sound and admissible documentary evidence.

6. The respondent no 2/DDA in written statement stated that the possession of acquired land was delivered by Land and Building Department. Land Acquisition Collector/LAC to DDA on 28.10.2003. LAC duly assessed compensation in respect of acquired land after consideration of all material documents and Award passed by LAC does not warrant any interference. The reference petition is liable to be dismissed. The appellants filed replication/rejoinder wherein again reiterated that their claim is just and reasonable and is based on cogent, convincing and admissible documents.

7. The reference court after completion of pleadings framed following issues vide order dated 03.05.2017: -

> **i) What was the market value of the land acquired at the time of notification u/S 4 & 6 of the Old Act of Land Acquisition, 1894 in the present reference? OPP.**
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> **ii) Whether the petitioners are entitled for compensation in tune of market value @ 3,25,000/- per square yards alongwith all other statutory benefits? OPP.**
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> **iii) Whether the petitioner is entitled for interest on solatium and additional amount in view of judgment of Hon'ble Supreme Court of India in case Sunder Vs. Union of India dated 19.09.2001? OPP.**
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> **iv) Whether the petitioner is entitled for Rs. 25 lacs as expenses on account of super structure, raising 15 room, boundary walls of the land in question prior to the date of notification? OPP.**
>
> **v) Whether the petitioners are entitled for Rs. 10,00,000/- as litigation charges? OPP.**
>
> **vi) Whether the present reference is barred by limitation? OPR.**
>
> **vii) Relief.**

8. The appellants examined the appellant no 2 B. D. Sharma as PW1 who proved documents Ex. PW1/1 to Ex.PW1/19; D. V. Sharma, ASO, DDA Master Plan, Vikas Sadan as PW2 who proved letter dated 31.03.2003 issued by DDA to Chief Planner as Ex. PW1/5; S. K. Kapoor, Assistant Director (Planning), Zone-F, DDA who proved the Zonal Development Plan of Zone-F as PW3/1; Meenu Mehrol, Assistant Director, HUPW, South Zone, Vikas Minar as PW4 who proved layout plan of Nehru Place District Centre as Ex. PW4/1;Mohd. Israr, ASO, Commercial Lands, INA, Vikas Sadan who proved ten perpetual lease deeds and conveyance deeds executed by DDA as Ex.PW5/1 (Colly) and L. Baxla, Ahlmed who brought judicial record pertaining to LAC no 159/2011 titled as Union of India V Chet Ram Sharma & others.

8.1 The respondent no 1/Union of India in evidence relied on Award bearing no 24/DC/(S)/2005-2006 pertaining to Village Bahapur as Ex. R1. The respondent no 2/DDA adopted the evidence led by the respondent no 1/Union of India.

9. The reference court enhanced compensation from Rs. 2684/- per square yard as awarded by LAC to Rs. 8840/-per square yard besides grant of statutory benefits as per the Act. The reference court further ordered that the respondents no 1 and 2 shall be liable to pay compensation jointly and severally and further compensation shall be disbursed to the appellants as per share as detailed in statement under section 19 of the Act and have been held entitled for apportionment of awarded compensation equally in terms of judgment dated 20.08.2014 passed in reference petition under section 30-31 of the Act in LAC no 159/2011 which was confirmed in LA Appeal no 349/2014 by this court vide judgment dated 14.07.2016.

10. The reference court in impugned judgment on issue no (vi) related to plea of limitation held that the reference petition was filed within prescribed period of limitation as per section 18 of the Act and reference petition cannot be said to be barred by limitation. The reference court observed that onus was on the appellants to prove market value of the acquired land at the time of notification under section 4 of the Act and their entitlement to claim compensation at rate of Rs. 3,25,000/- per square yard.

10.1 The reference court in considered contention of the appellants that land use of the acquired land was commercial in nature as it formed part of Nehru Place District Centre as on date of notification under section 4 of the Act and the acquired land was few yards away from iconic commercial and IT Hub of Nehru Place Towers and few hundred meters away from Kalkaji Temple surrounded by posh and developed colonies on all its side with various social, cultural, educational, recreational, medical institutions of great importance in its vicinity and easy accessibility. The reference court also noted that village Bahapur was urbanised vide notification bearing no. F.9(2)66-Law-Corp. dated 28.05.1966 issued under section 507(a) of Delhi Municipal Corporation Act. The reference court also considered communication dated 31.01.2003 Ex. PW1/5 issued by DDA to the Chief Town Planner and argument advanced on behalf of the appellants on basis of said letter dated 31.01.2003 Ex. PW1/5 that the land use of the acquired land was commercial since it forms part of Nehru Place District Centre and that any permission for construction cannot be given to the party. The reference court also considered argument advanced on behalf of the respondent no 1/Union of India that the land use as stated to be commercial can be interpreted as only on the date of communication of letter Ex. PW1/5 dated 31.01.2003 while in present case notification under section 4 of the Act was issued on 28.11.2002 and said letter does not offer any clarification that the land use of the acquired land was commercial even prior to issuance of notification and as existing on 26.09.2002 i.e. the date of order Ex. PW1/4 or even prior to it. The reference court observed that respective written statement filed on behalf of the respondents 1 and 2 was silent about the land use and the appellants also did not plead in reference petition that land use was commercial on date of issuance of notification under section 4 of the Act as their Khasra no was part of Nehru Place District Centre. The reference court further observed that the appellants in reference petition claimed that the acquired land was adjacent to Nehru Place District Centre and as such acquired land had great potentiality for commercial and industrial purposes. The reference court also observed that the appellants filed letter dated 31.01.2003 Ex.PW1/5 and other supporting documents only in replication/rejoinder despite being fact that the appellants were conscious of the outcome of proceedings arising out of Writ Petition bearing no 6091/2000 and as such letter dated 31.01.2003 Ex. PW1/5 and other documents as referred in replication/rejoinder could not be respondent by the respondents and it amount to amendment of basic reference petition which could not be allowed. The reference court also considered argument advanced on behalf of the appellants that the appellant no 2 as PW1 was not cross examined as to land use as per letter dated 31.03.2003 Ex. PW1/5 which was issued in terms of Master Plan and Zonal Development Plan confirming land use of the acquired land was commercial and falls specifically in Zonal Development Plan of Zone F, Zonal Development Plan proved as Ex. PW3/1 and lay out plan proved as Ex. PW4/1. The reference court further observed that the appellants did not claim that the acquired land was put to commercial use at time of notification under section 4 of the Act and after referring Award Ex. R1 and cross examination of PW1 further observed that there was no dispute that existing use of acquired land was not commercial. The reference court also observed that DDA in terms of order dated 26.09.2002 was not asked to communicate to MCD, the land use of the acquired land as on 11.01.1994 when the appellants submitted application for sanctioning of plan before the competent authority and further communication Ex. PW1/5 was addressed and issued after four months of notification under section 4 of the Act and it is not clear from letter dated 31.03.2003 Ex. PW1/5 that land use of the acquired land was commercial prior to the notification under section 4 of the Act and it only gives inference that acquired land was being acquired for the purpose of Planned Development of Delhi. The reference court was in agreement that the acquired land was part of expansion plan of Nehru Place District Centre which was to be implemented in terms of Layout Plan approved only in February, 2003.The reference court ultimately held that the acquired land was only meant to be put to possible future potential use in terms of Zonal Development Plan and Layout Plan and it cannot be interpreted that the existing land use on date of notification under section 4 of the Act was commercial. The reference court also observed that it can be deduced that the acquired land held capability of construction of buildings and also enjoyed locational advantage with basic civic amenities already in place on account of developed neighbourhood areas and easy accessibility as well as connectivity.

10.2 The reference court in impugned judgment also considered reliance placed on several exemplars by the appellant as detailed in para no 19.30 of impugned judgment. The appellants before the reference court had placed reliance on two judgments dated 30.11.2010 passed in LAC no 1/08 pertaining to Award bearing no 25/2005-2006 Ex. PW1/12 and related to Village Yusuf Sarai and dated 02.08.2011 passed in LAC no 116/11 pertaining to Award bearing no 25/2005-2006 and related to Village Yusuf Sarai Ex. PW1/13. The appellants relied on these judgments not due to reason of proximity of Village Yusuf Sarai with the acquired land of Village Bahapur but to demonstrate that the acquired land of Village Yusuf Sarai which falls in category E was awarded compensation at rate of Rs. 1,25,000/- per square meter for an Award pronounced in the year 2005-2006 for a notification issued in year 2003 while acquired land pertaining to village Bahapur falls in Category A and thus acquired land subject matter of present appeal is entitled to receive compensation at least 10 times considering the difference in circle rate. However the reference court observed that categorisation of localities from A to F was undertaken only in year 2007 i.e. much prior to issuance of notification under section 4 of the Act in year 2002 and even categorisation does not determine market value of the acquired land. The market value of land situated in village Yusuf

Sarai which was about 6-7 km away, was determined on its own merit and accordingly the reference court did not accept these two exemplars.

10.3 The reference court also rejected two sale exemplars which are referred in judgment Ex. PW1/12 and were pertaining to commercial property in Gulmohar Park and lease deed of commercial plot of Yusuf Sarai District Centre. The reference court observed that village Yusuf Sarai does not share its boundary with village Bahapur and exemplar pertaining to Gulmohar Park cannot be compare with acquired land situated in village Bahapur as it was residential in nature and situated at a distance of 6 km. The reference court did not accept categorisation of localities as a criterion for determination of market value for assessment of compensation.

10.4 The appellants before the reference court also referred on Sale Deed Ex. PW1/11 registered on 09.10.2002 pertaining to Shop situated in M-Block measuring 195 sq. yards but the reference court did not accept Sale Deed Ex. PW1/11 as good exemplar due to reason it was situated at a distance of about 4 km and was situated in a well-developed residential colony. The reference court in impugned judgment also did not accept various auction advertisements Ex. PW5/1 issued by DDA in leading newspapers to show high time reserve price fixed by DDA in various residential complexes in South Delhi due to reasons as mentioned in paras no 19.38 and 19.39 of the impugned judgment. The appellants before the reference court also referred circle rates as notified in year 2014. It is stated that Nehru Place falls in category A wherein minimum rate for valuation of land for residential use in respect of category A locality as per said notification is Rs. 7,74,000/- per square meter and after applying multiplier of 3 to arrive at the cost of commercial property, the minimum rate would be Rs. 23,22,000/- per square meter which can be used as an exemplar although notification is dated 22.09.2014 to assess market value of the acquired land and the appellant calculated value of the acquired land on 28.11.2002 at Rs. 3,30,285.38 per square meter after taking depreciation at rate of 15% per year. The reference court observed that Circle Rates were first notified in year 2007 as minimum rates for valuation of lands and immoveable properties in Delhi for purpose of registration under the Registration Act, 1908 and were not in place in year 2002. The acquired land was acquired to be developed for further extension of Nehru Place for Planned Development of Delhi and the rates applicable to Nehru Place even in the year 2007 could not be basis for determination of market value on the date of notification under section 4 of the Act.

10.5 The appellants before reference court also laid emphasis on perpetual lease deed dated 23.01.1996 Ex. PW1/10 (the certified copy) in respect of auctioned commercial plot no 70 measuring 1784.38 square meters for a consideration of Rs. 34,20,00,000/- as an exemplar on ground that it is nearest property to the acquired land and both are situated in Nehru Place District Centre with similar advantages and further it was *bona fide* transaction of the respondent no 2. It reflects value at Rs. 3,73,648.37/- per square yard after cumulative increase at rate of 15% per annum. The reference court observed that the Division Bench of this court in writ petition bearing no 76-79/2004 filed by the appellants has already rejected said perpetual lease deed. It was also observed that there is a difference of 5 years between execution of lease deed and issuance of notification under section 4 of the Act and further the acquired land is situated on the outer periphery of Nehru Place District Centre and is proposed to be expanded in terms of lay out plan. The reference court observed that the acquired land though having potentiality cannot be stated to be a commercial developed plot within main central zone of the Nehru Place District Centre. It was further observed that it purpose appears to provide ancillary support to facilitate usage and augment potentiality of earmarked established commercial zone of the complex. It was further observed that it is located far nearer to the residential colony of Kalkaji then the commercial plazas of Nehru Place Complex. The reference court opined that the acquired land cannot be equated with a commercial plot in a commercial zone equipped with all facilities to reap its complete potential to yield maximum profit even though both eventually formed part of same proposed /to be extended Nehru Place District Centre. It was also observed that lease premium charged by DDA cannot be equated to the market value of the property. The reference court ultimately held that perpetual lease deed of commercial plot of Nehru Place District Centre cannot be comparable sale instance for assessment of market value of the acquired land as on date of notification in year 2002.

10.6 The reference court observed in para no 19.60 that all sale exemplars relied upon by the appellants as comparable sale instances to determine market value of the acquired land held to be not relevant. The appellants did not produce even a single sale exemplar of same nature of land of same village with contemporary sale transaction and even no sale exemplar of the neighbouring village/revenue estate has been produced for consideration. It was also observed that the acquired land is levelled land surrounded by developed colonies and commercial Nehru Place District Centre. The acquired land had access to basic civil amenities. The reference court after considering all facts deducted 20% as cost of development in arriving at the market value of the acquired land. The reference court also observed that LAC did not make any independent assessment for determination of market value but fixed rate as per judgment dated 03.03.2005 passed by this court in Writ Petition bearing no 6867/2003 at rate of Rs. 2684/- per square yard. It was also observed that nature of the soil is rocky but levelled and the acquired land possessed building potentiality and was capable for raising any residential/commercial or industrial building in near future. It cannot be said that the acquired land fell in a rural belt and was undeveloped or untouched with no basic civic amenities available therein. The reference court after taking judicial notice under section 56 of the Indian Evidence Act, 1872 of applicable L&DO rates as well as rates of land applicable for conversion of leasehold into freehold determined value of land at Rs. 9254/- per square meter. Accordingly, the reference court awarded compensation at rate of Rs. 8840.76 per square yard (Rs. 7392/- per square meter) after applying deduction of 20% towards development cost alongwith statutory benefits as mentioned in para no 23 of the impugned judgment.

11. The appellants being aggrieved filed the present appeal and challenged the impugned judgment on grounds that the reference court has grossly erred in assessing the market value of the acquired land and had assessed market value which is too low, inadequate and was not the actual market value on the date of notification under section 4 of the Act dated 28.11.2002. The reference court has also failed to appreciate the sale instances produced and proved by the appellants which were the best piece of the evidence to arrive at a fair market value of the land on 28.11.2002 i.e. date of notification under section 4 of the Act. The reference court has committed a grave error in discarding the letter of the DDA dated 31.01.2023 Ex. PW 1/5and treating the acquired land of the appellants to be "not commercial" while the acquired land was "commercial" in nature. The reference court has also not appreciated the exemplar dated 23.01.1996 Ex. PW1/10 in respect of the plot no. 70, Nehru Place District Centre which was a land comparable with acquired land in all respect. The acquired property and the plot no. 70, Nehru Place District Centre, had commercial usage with similar situational advantages and the distance between both the properties is less than 200 meters. The appellants were also entitled to the cumulative increase at the rate 15% from the sale of the same exemplar property dated 23.01.1996 till the notification under section 4 of the Act, dated 28.11.2002. The plot no. 70 was sold on 23.01.1996 at the rate of Rs. 1,91,663.21 per square meter and accordingly, the appellants were also entitled to annual increase @ 15% at compounding rate and must have been granted compensation @ Rs. 3,73,648.37 per square yards as on the date of Section 4 notification. The reference court has also failed to appreciate that the land situated in Yusuf Sarai which was acquired vide notification dated 29.04.2003 had fetched compensation at the rate of Rs.1,25,000/- per square meter. The land in Yusuf Sarai falls in category 'E' locality and the acquired land falls under category 'A' and would have easily fetched a higher compensation than the Yusuf Sarai land. The reference court has committed an error in rejecting the sale deed pertaining the Gulmohar Park property and lease deed of the Yusuf Sarai District Centre. The reference court has erred in rejecting the sale deed dated 09.10.2002 Ex. PW-1/11 related to a property measuring 195 square yards situated in M Block, G.K-II. The sale instances/exemplar of the commercial complexes/district centers situated at Saket, Vasant Kunj and Nehru Place and the said exemplars demonstrated that the commercial properties in Saket and Vasant Kunj which are situated in category 'C' localities can fetch that kind of price then acquired property of the appellants would fetch much more price. The reference court rejected said exemplars on an erroneous and unsustainable ground that these are developed and ready for possession commercial plots in fully planned layouts whereas the acquired land was not a commercial plot in a planned commercial premier complex.

11.1 The reference court has erred in observing that the Circle Rates in Delhi have not been determined by any statutorily appointed Expert Committee upon adoption of a scientific basis. The Circle Rates were issued by the Lieutenant Governor of NCT of Delhi in exercise of powers conferred by Section 27 and Section 47 A of the Indian Stamps Act, 1899 and are statutory in character and cannot be disregarded. The appellants had not relied upon the Circle Rates of the year 2007 and the reference court has considered the said Circle Rates only in respect of the residential land rates whereas the land of the appellants was commercial which requires a multiplier of three and the exercise carried out by the Reference court with respect to the 2007 Circle Rates for residential lands was unwarranted. The highest of the exemplar which is a *bona fide* transaction is to be followed which in the present case was the perpetual lease deed dated 23.01.1996 i.e., Ex. PW- 1/10 and the conveyance deeds Ex. PW1/5(Colly).

11.2 That the reference court has committed a grave error in observing that the appellants made no effort to adduce independent expert evidence about the state of buildings, college, hospitals, colonies as existing on the date of notification. The reference court has ignored the cross examination of the PW1 and PW1 in affidavit made all the detailed statements with regard to the existence of all the facilities, amenities, location and situation of the acquired land. The reference court has failed to apply its own independent mind to the facts and evidence on record. The reference court has erred in observing that the appellants did not produce even a single sale exemplar of same nature of land of same/neighbouring village along with contemporary sale transaction, however, the appellants had produced *bona fide* sale transactions not only of village Bahapur where Nehru Place District Centre and Greater Kailash are situated but also of adjoining localities/colonies such as Gulmohar Park, Yusuf Sarai and Saket etc. which had been discarded by the reference court on an untenable ground that the said exemplars are of fully developed commercial centers and not compared to the land of the appellants.

11.3 The Reference court admitted that the acquired land had potentiality for residential, commercial or industrial use but erred in holding that the acquired land yet to be developed.The reference court has awarded inadequate compensation. The appellants also challenged impugned judgment on various other ground.

12. Sh. Rajesh Yadav, the learned Senior Advocate for the appellants advanced oral arguments and written arguments were also submitted by the appellants. It is argued that this court vide order dated 26.09.2002 Ex.PW1/4 passed in W.P (C) 6091/2000 directed DDA to communicate to MCD the land use of the appellants' land as existing on date and thereafter DDA vide letter dated 31.01.2003 informed the position of the appellants land as "Commercial" as it forms part of "Nehru Place District Centre" but the reference court has ignored letter dated 31.01.2003 which ultimately led to the rejection of the claim of the appellants for compensation @ Rs.3,25,000/- per square yard. He further argued that said letter Ex.PW1/5 was deemed to be admitted by the respondents as neither PW-1 nor PW-2 were cross-examined on letter Ex. PW1/5. Sh. Yadav further argued that the reference court created various grounds which were not raised by the respondents and led to deprivation of fair compensation to the appellants.

12.1 Sh. Yadav also argued that the Land Acquisition Act, 1894 is a beneficial legislation and strict rules of pleadings are not applicable. The reference court as such erred in holding that the appellants did not plead land use in the reference petition and only referred the letter dated 31.01.2003 Ex.PW1/5 in the rejoinder/replication. He further stated that Fair Compensation in case of a land acquisition cannot be denied on technical grounds and it is the duty of the court to award just and fair compensation irrespective of the claim made by the landowner. Sh. Yadav referred testimony of PW3 who proved the Zonal Development Plan of Zone-F Ex. PW3/1 which reflected the land use of the acquired land as "Commercial" and was forming part of Village Bahapur which was urbanized vide notification dated 03.06.1996 under section 507(a) of the Delhi Municipal Corporation Act, 1957.

12.2 Sh. Yadav during argument referred exemplar Ex. PW1/10 i.e. the perpetual lease deed dated 23.01.1996 and argued that it was most comparable exemplar being in respect to plot 70, Nehru Place District Centre but was disregarded by the reference court. He argued that the said exemplar pertaining to plot 70 and the acquired land were similar to the extent of their commercial usage with similar situational advantages and area and both the properties were situated at a distance of less than 200 meters. The reference court also discarded other sale instances/exemplars which were proved by the appellants. Sh. Yadav cited **Mehrawal Khewaji Trust (Registered), Faridkot and others V State of Punjab and others,** (2010) 12 SCC51 to argue that the reference court should have accepted exemplar Ex. PW1/10 dated 23.01.1996 being highest exemplar pertaining to the property bearing no 70, Nehru Place District Centre. The appellants are also entitled to the cumulative increase i.e. compounding at the rate of 15% from the sale of said exemplar property dated 23.01.1996 till notification under section 4 of the Act dated 28.11.2002. The plot no. 70 was sold on 23.01.1996 at the rate of Rs. 1,91,663.21 per square meter and accordingly, the appellants are entitled to Rs. 3,73,648.37/- per square yards as the compensation for the acquired land. Sh. Yadav stated that the acquired land was fully developed being part of the Nehru Place District Centre and as such no deduction can be done towards development cost.

12.3 Sh. Yadav attacked impugned judgment by arguing that the reference court was erred in holding that the existing land use of the acquired land was not commercial as the appellants were not using the land for commercial purpose. He argued that the market value of the land has to be determined on potentiality for urban development and not by actual use and as such the reference court has erred in holding the land use was not commercial because it was not used for commercial purposes. Sh. Yadav also argued that the reference court did not appreciate that the land situated in Yusuf Sarai which falls under category 'E' could fetch a compensation of Rs. 1,25,000/- per square meter then acquired land which falls in category 'A' deserves higher compensation due to superior location.

12.4 Sh. Yadav stated that the reference court considered L&DO rates of Rs. 9240/- per square meter and after deducing 20% towards development cost arrived to figure of Rs. 7392 per square meter i.e. Rs. 8840.75/- per square yard on date of notification under section 4 of the Act and argued that while calculating compensation, the reference court exceed its jurisdiction and after referring **Krishan Kumar V Union of India & others,** (2015) 15 SCC 220 argued that the government orders which are made basis for fixing the market value of the land could not have been relied upon for such purpose as they are not the true indicia of the market price.

12.5 Sh. Yadav also argued that the reference court has failed to appreciate the exemplar properties situated in Saket which was less than 5 km and after referring **Thakarsibhai Devji bhai and others V Executive Engineer, Gujarat and another,** (2001) 9SCC584 argued that it is settled law that the exemplars of distance of even five kilometers can be considered for determination of market value. Sh. Yadav also argued that sale instances of few years after issuance of notification under section 4 of the Act can be considered while assessing market value.

12.6 Sh. Rajesh Yadav during arguments cited **Bachhaj Nahar V Nilima Mandal and Anr.,**(2008) 17 SCC 491**; Ashok Kumar V State of Haryana & Ors.,**(2016) 4 SCC 544**; Narendra & Others V State of Uttar Pradesh & Ors.,**(2017) 9 SCC 426**; Brahampal Alias Sammy & Another V National Insurance Company,** (2021) 6 SCC 512**; Mehrawal Khewaji Trust (Registered), Faridkot and Ors. V State of Punjab and Ors.,**(2012) 5 SCC 432**; Udho Dass V**

State of Haryana & Ors., (2010) 12 SCC 51**; Viluben Jhalejar Contractor (Dead) By Lrs. V State of Gujrat,**(2005) 4 SCC 789 **; Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by LRs & Ors. V Special Land Acquisition Officer & Ors.,** (2012) 7 SCC 595**;** and various other judgments.

13. Sh. Rajesh Yadav, the learned Senior Advocate for the appellants also submitted additional written submissions wherein stated that the land use of the acquired land was commercial on the date of notification under section 4 of the Act as per letter/communication dated 31.01.2003 Ex. PW1/5 as it forms part of the Nehru Place District Centre. The appellants mainly placed reliance on the exemplar i.e. the perpetual lease dated 23.01.1996Ex.PW 1/10 in respect of Plot no. 70, District Centre, Nehru Place, New Delhi which was converted to freehold vide conveyance deed dated 14.10.2005 Ex. PW5/1 and is situated in the same colony where the acquired land is situated in close proximity. It was also stated that when there are multiple exemplars with respect to similar lands, it is a general rule that the highest of the exemplars has to be considered as per law laid down in **Anjana Molu Dessai V State of Goa & Another**, (2010) 13 SCC 710 and **Mehrawal Khewaji Trust (Regd.) Faridkot & Others V State of Punjab & Others**, (2012) 5 SCC 432.The appellants also relied on two judgments passed by the reference court in respect of land situated in Yusuf Sarai whereby compensation was granted at the rate of Rs. 1,25,000/- per sq. meter. It was also stated that the court can indulge in some guesswork to balance equity for fixing just and fair market value and reference was made to **Krishan Kumar V Union of India & another**, (2015) 15 SCC 220. The decision in **Malook Nagar &Ors. V Union of India,** 2005(4) (Delhi) 629 as cited by the counsel for the respondent no 1/Union of India is not applicable in the present case being was not conclusive and binding in nature. The appellants in additional written submissions also countered arguments advanced on behalf of the respondent no 1/Union of India and the respondent no 2/DDA.

14. Sh. Sanjay Pathak advanced oral arguments wherein defended Award passed by LAC and impugned judgment passed by the reference court. Sh. Pathak during argument primarily referred **Malook Nagar & others V Union of India,** 2005 (4) AD (DELHI)

629 wherein the perpetual lease deed 23.01.1996 Ex. PW1/10 was accepted by another coordinate bench of this court.

15. Ms. Kritika Gupta, the counsel for the respondent no.2/DDA advanced oral arguments and also filed written submissions. It is argued that the appellants set up a new case in the rejoinder before the reference court as relevant facts should be raised in the pleading made at the first instance. The appellants did not mention in reference petition that acquired was commercial in nature. It was also argued that the appellants admitted that the land was never put to commercial use and they did not earn any gain from acquired land but these facts were only mentioned in the replication/rejoinder. It was also argued that the appellants *malafide* chose to withhold the letter dated 31.01.2003 at the time of filing of the reference petition and referred only in the replication/rejoinder. Ms. Gupta supported finding of the reference court in impugned judgment that adding new factual premise in Rejoinder/Replication would rather amount to amendment of basic reference petition which obviously cannot be allowed. It was also argued that the appellants have failed to prove that the land use was commercial on the date of issuance of notification under section 4 of the Act. The appellants had preferred a writ petition bearing no. 6091/2000 seeking directions from MCD and DDA/ he respondent no.2 to communicate the land use of the appellants and vide order dated 26.09.2002 directions were given to DDA/ the respondent no.2 to communicate the land use of the acquired land to the MCD and thereafter DDA/the respondent no.2 issued the letter dated 31.01.2003 to MCD. It is argued that the appellants on basis of this letter are falsely alleging that the land use of the land in question is commercial as on the date of issuance of notification under section 4, of the Act i.e. 26.09.2002 and further argued that letter dated 31.01.2003 specify that the land use of the acquired land was "commercial" son the date of the issuance of letteri.e.31.01.2003 and not any date prior thereto. The letter dated 31.01.2003 was issued later than the date of issuance of notification under Section 4, of the Act i.e. 28.11.2002. It reflects that land use at the time of or even prior to the issuance of notification under section 4 of the Act on 28.11.2002 was unclear and was not commercial as falsely claimed by the appellants. The appellants could not prove that the land use was commercial in nature as on the date of issuance of notification under section 4 of the Act or any date prior thereto or being utilized as such. It was also argued that that the testimony of PW1 suffers from various material contradictions. The appellant reliance on Ex. PW-1/10 in respect of the Plot no. 70, Nehru Place District Centre was misplaced. It was argued that the present appeal be dismissed.

16. Section 23 of the Act provides statutory provisions regarding determination of compensation for acquisition for land acquired for public purpose and section 24 of the Act also laid down the factors which are not to be considered for the purpose of determining the compensation. Sections 23 and 24 of the Act read as under:-

> **23. Matters to be considered on determining compensation.-(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration**
>
> **first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];**
>
> **secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;**
>
> **thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of**

the land, by reason of serving such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

[(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation. - But the Court shall not take into consideration –

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under section 4, sub-section (1); [or]

[eighthly, any increase to the value of the land on account of its being put to any use, which is forbidden by law or opposed to public policy.]

16.1 The Supreme Court in **Narendra & others V State of Uttar Pradesh & others,** (2017) 9 SCC426 after following **Ashok Kumar V State of Haryana,** (2016) 4 SCC 544 observed that it is duty of the court to award just and fair compensation taking into consideration true market value and other relevant factors, irrespective of claim made by the landowner and there is no cap on the maximum rate of compensation that can be awarded by the court and the courts are not restricted to awarding only that amount that has been claimed by the landowners/applicants in their application before it.

16.2 The Supreme Court also in **Kapil Mehra& others V Union of India & another**, (2015) 2 SCC 262 observed as under:-

> **10. Market Value: First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:-**
>
> **(i) existing geographical situation of the land;**
> **(ii) existing use of the land;**
> **(iii) already available advantages, like proximity to National or State Highway or road and/or developed area and**
> **(iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.**

> **11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.**

17. It is reflecting from record that LAC pronounced Award bearing no 24/DC(S)2005-06 dated 06.06.2005 in pursuance of notifications dated 28.11.2002 issued under sections 4 & 17 of the Act and dated 13.06.2003 issued under section 6 of the Act for acquisition of land total measuring 08 bighas and 6 biswas situated in village Bahapur for Planned Development of Delhi which also included land falling in Khasra no 621/2/3/2/2/1 measuring 2 bighas owned by the appellants. LAC has determined market value of land at rate of Rs. 2,684/- per square yard along with statutory benefits. LAC on basis of judgment dated 03.03.2005 passed by this court in WP (C) no 6967/2003 titled as **Malook Nagar & others V Union of India**. The appellants have claimed compensation at rate of Rs. 3,50,000/- per square yard along statutory benefits. The appellants not satisfied with compensation awarded by LAC preferred reference petition under section 18 of the Act. The reference court after taking judicial notice of applicable L&DO rates as well as rates of land applicable for conversion of leasehold into freehold determined value of land at Rs. 9254/- per square meter and after applying deduction of 20% towards development cost awarded compensation at rate of Rs. 8840.76 per square yard (Rs. 7392/- per square meter) along with statutory benefits.

18. The appellants filed Writ Petition bearing no 6091/2000 and vide orders dated 11.07.2001 and 26.09.2002 directions were issued that if the land is required by DDA then steps should be initiated within a period of 8 weeks from the date of the order and if it is decided that the land is not to be acquired then the land use should be communicated to MCD to enable processing of application of the appellants for sanction of plan. DDA issued a letter dated 31.01.2003 Ex.PW1/5 informing land use of land of the appellants as commercial and is forming part of the Nehru Place District Centre.

19. The appellants to justify claim of compensation at rate of Rs. 3,25,000/- per square yard heavily relied on letter dated 31.01.2003

Ex. PW1/5 which was considered by the reference court. The appellants on basis of letter dated 31.01.2003 Ex. PW1/5 emphasized that the land use of the acquired land was commercial since it forms part of Nehru Place District Centre. To the contrary, it was argued on behalf of the respondents that the land use as stated to be commercial in letter/communication dated 31.01.2003 Ex. PW1/5 can be interpreted as only on the date of communication of letter Ex. PW1/5 dated 31.01.2003 and there was no clarification that the land use of the acquired land was commercial prior to issuance of notification under section 4 of the Act. It is correct that the appellants did not plead in reference petition that land use was commercial on date of issuance of notification under section 4 of the Act and was part of Nehru Place District Centre. The appellants in reference petition only claimed that the acquired land was situated adjacent to Nehru Place District Centre and was having great potentiality for commercial and industrial purposes. The appellants have filed letter/communication dated 31.01.2003 Ex.PW1/5 along with replication/rejoinder. The reference court observed that the appellants despite being conscious of letter dated 31.01.2003 Ex. PW1/5 did not file it along with reference petition which amount to amendment of basic reference petition. The respective counsels for the respondents also argued that the appellants filed letter dated 31.01.2003 along with replication/rejoinder which amount to amendment of reference petition and is against basic rules of pleadings. The replication/rejoinder is also considered as part of pleadings and if the appellants filed letter/communication dated 31.01.2003 Ex. PW1/5 only along with replication/rejoinder, it does not reduce value of letter Ex.PW1/5 in context of present petition. The reference court was not justified in observing that filing of letter dated 31.01.2003 Ex. PW1/5 was amounting to amendment of reference petition. The argument advanced on behalf of the respondents as referred hereinabove is also without any legal force.

20. The learned Senior Counsel for the appellants argued that letter dated 31.01.2003 Ex. PW1/5 confirmed land use as commercial and forming part of Nehru Place District Centre and said argument was opposed by the counsels for the respondents. The reference court in impugned judgment observed that the appellants did not claim that the acquired land was put to commercial use at time of notification under section 4 of the Act and there was no dispute that existing use of acquired land was not commercial. The reference court also observed that DDA in terms of order dated 26.09.2002 was not asked to communicate to MCD about land use of the acquired land as on 11.01.1994 when the appellants submitted application for sanctioning of plan before the concerned authority and communication Ex. PW1/5 was issued after four months of notification under section 4 of the Act. The reference court also observed in letter dated 31.03.2003 Ex. PW1/5 does not reflect with clarity that land use of the acquired land was commercial prior to the notification under section 4 of the Act and was of opinion that the acquired land was part of expansion plan of Nehru Place District Centre which was to be implemented in terms of Layout Plan approved only in February, 2003. The reference court held that the acquired land was only meant to be put to possible future potential use in terms of Zonal Development Plan and Layout Plan and it cannot be interpreted that the existing land use on date of notification under section 4 of the Act was commercial. The reference court as such misconstrued and misread the letter dated 31.03.2003 Ex. PW1/5 as it was issued by a public authority i.e.

DDA in exercise of its administrative function and its correctness cannot be disputed. The letter dated 31.01.2003 Ex. PW1/5 does not reflect that land use of the acquired land was not commercial prior to issuance of said letter or even prior to issuance of notification under section 4 of the Act and was not part of Nehru Place District Centre. It is matter of common knowledge that DDA issued letter Ex. PW1/5 to MCD to inform land use of acquired land on basis of existing use of acquired land as commercial and further correctness of letter Ex.PW1/5 is not disputed by either of the respondents. The reference court also note that that it can be deduced that the acquired land held capability of construction of buildings and also enjoyed locational advantage with basic civic amenities already in place on account of developed neighbourhood areas and easy accessibility as well as connectivity. It is appearing that the land use of acquired land was commercial and was part of Nehru Place District Centre and there is no reason to disbelieve letter Ex. PW1/5. There is force in argument advanced by the learned counsel for the appellants that in terms of letter dated 31.01.2003 Ex. PW1/5, the land use of acquired land was commercial and contrary argument advanced by respective counsels for the respondents are over-stretched and misplaced. There is no reason to discard letter dated 31.01.3003 Ex. PW1/5 which was outcome of various judicial orders passed in writ petition bearing no 6091/2000.

21. The appellants placed reliance on several exemplars as detailed in para no 19.30 of impugned judgment. The appellants relied on two judgments dated 30.11.2010 Ex. PW1/12 passed in LAC no 1/08 pertaining to Award bearing no 25/2005-2006 and related to Village Yusuf Sarai and dated 02.08.2011 Ex. PW1/13 passed in LAC no 116/11 pertaining to Award bearing no 25/2005-2006 and related to Village Yusuf Sarai. The appellants admitted that village Yusuf Sarai is not situated in proximity of Village Yusuf Sarai with the acquired land situated in village Bahapur but these judgments are referred to demonstrate that the acquired land of Village Yusuf Sarai which falls in category E was awarded compensation at rate of Rs. 1,25,000/- per square meter while acquired land pertaining to village Bahapur falls in Category A and as such acquired land subject matter of present appeal is entitled to receive much higher compensation considering the difference in circle rate. The reference court did not accept these two judgments to determine market value of acquired land subject matter of present appeal by observing that categorisation of localities does not determine market value of the land and market value of land situated in village Yusuf Sarai was determined on its own merit. It is correct that land situated in village Yusuf Sarai was at a distance of about 6/7 km away from the acquired land and categorisation of locality may not be a relevant criterion to determine market value of but the reference court should realized that these exemplars can indicate that the land falling in category A may fetch higher value in comparison to land situated in category E.

22. The reference court also did not accept other exemplars which are Sale Deed Ex. PW1/11 registered on 09.10.2002 pertaining to shop situated in M-Block measuring 195 sq. yards and various auction advertisements Ex. PW5/1 issued by DDA in leading newspapers to show high time reserve price fixed by DDA in various residential complexes in South Delhi due to reasons as mentioned in relevant part of the impugned judgment. The reference court was justified in not accepting these exemplars to determine market value of the acquired land. The reference court also did not rightly accept Circle Rates as notified in year 2014 referred on behalf of the appellants.

23. The appellants during argument before reference court laid much emphasis on another exemplar perpetual lease deed dated 23.01.1996 Ex. PW1/10 (the certified copy) in respect of auctioned commercial plot no 70 measuring 1784.38 square meters for a consideration of Rs. 34,20,00,000/-. It was argued that plot no 70 is nearest property to the acquired land and both are situated in Nehru Place District Centre with similar advantages. However, the reference court after referring decision in **Malook Nagar & others V Union of India** observed that the Division Bench of this court in writ petitions bearing no 6967/2003 and 76-79/2004 filed by the appellants has already rejected said perpetual lease deed and also observed that there is a difference of 5 years between execution of said lease deed and issuance of notification under section 4 of the Act. The reference court also observed that the acquired land is situated on the outer periphery of Nehru Place District Centre and is proposed to be expanded in terms of lay out plan. The reference court after giving various reasons held that perpetual lease deed of commercial plot of

Nehru Place District Centre cannot be comparable sale instance for assessment of market value of the acquired land as on date of notification in year 2002. Sh. Sanjay Pathak, counsel for the respondent no 1/Union of India also heavily relied on judgment delivered in **Malook Nagar V Union of India** to substantiate argument that the perpetual lease deed dated 23.01.1996 Ex. PW1/10 cannot be accepted as a good exemplar to assess market value of the acquired land. Sh. Rajesh Yadav, the learned Senior Counsel for the appellants during arguments attempted although unsuccessfully to differentiate between observations made in **Malook Nagar V Union of India** with facts and circumstances of present case. The reference court was justified in not accepting perpetual lease deed dated 23.01.1996 Ex. PW1/10 particularly in view of observations made by the Division Bench of this court as referred herein above. There is force in argument advanced by Sh. Yadav that the perpetual lease deed is a good exemplar in determining market value of the acquired land.

24. The reference court in para no 19.60 of the impugned judgment observed that sale exemplars referred by the appellants as comparable sale instances held to be not relevant and the appellants did not produce any contemporary sale exemplar from same village and even sale exemplar of the neighbouring village/revenue estate has not been produced. Simultaneously the reference court also observed that the acquired land is levelled land surrounded by developed colonies and commercial Nehru Place District Centre and had access to basic civil amenities. Issue which needs judicial consideration is that what should be appropriate market value of the acquired land on date of issuance of notification under section 4 of the Act. LAC has determined market value of land at rate of Rs. 2,684/- per square yard along with statutory benefits on basis of judgment dated 03.03.2005 passed by this court in WP (C) no 6967/2003 titled as **Malook Nagar & others V Union of India**. The perusal of said judgment dated 03.03.2003 reflects that the Division Bench only observed that the petitioners/claimants therein *prima facie* are entitled to receive compensation at the rate of Rs.2684/- per square yard and further observed that if the petitioners therein filed an application under section 18 of the Act before LAC, the same shall be referred to the court of competent jurisdiction. It is apparent that the Division Bench of this court did not fixed compensation at the rate of Rs. 2684/- also so determined by LAC on basis of evidence of the parties in reference petition under section 18 of the Act rather the Division Bench took only *prima facie* view regarding this. The reference court also observed that LAC did not make any independent assessment for determination of market value but fixed rate as per judgment dated 03.03.2005 passed by Division Bench of this court in Writ Petition bearing no 6867/2003 at rate of Rs. 2684/- per square yard.

25. The reference court in impugned judgment observed that PW1 testified that Village Bahapur has a government school and a government college within its periphery. The acquired land possessed building potentiality and was reasonably capable for raising any residential/ commercial or industrial building in the near future. This court also observed that the land use of the acquired land was commercial and forms part of Nehru Place District Complex. The reference court further observed that the acquired land does not fell in a rural belt and was undeveloped or untouched with no basic civic amenities available. The acquired land can support support or provide structural stability to the buildings and also enjoyed easy accessibility with various arterial roads in near vicinity. The village Bahapur is adjacent to village Jasola which has Sarita Vihar, Apollo Hospital, Mohan Estates in its periphery and Sukhdev Vihar, Greater Kailash, Okhla Industrial Area within range of 3-4 km from the acquired land. It was also observed that the acquired land enjoyed locational, geographical and usage potentiality for future development. The reference court after taking judicial notice of applicable L&DO rates as well as rates of land applicable for conversion of leasehold into freehold determined value of land at Rs. 9254/- per square meter awarded compensation at rate of Rs. 8840.76 per square yard (Rs. 7392/- per square meter) after applying deduction of 20% towards development cost along with statutory benefits.

26. The Supreme Court recently in **Horrmal (deceased) through his LRs and others V State of Haryana & others,** Civil Appeal No.---/2024 arising out of SLP (C) No. 7963/2023 decided on 21.10.2024 observed that the process of assessing or affixing is not tethered to precision but is rather aimed at a nuanced estimation of pertinent factors. The Supreme Court also referred **Special Land Acquisition Officer V T, Adinarayan Setty,** AIR 1959 SC 429 wherein it was observed that the market value connotes the price that a willing buyer would pay to a willing seller, taking into account the land's current conditions and its advantages and potentialities. The Land Acquisition Act, 1984 is social welfare legislation and it is duty of the court to award just and fair compensation to the land owners and to consider relevant factors in assessing value of the land on date of notification issued under section 4 of the Act. The Supreme Court in **Narendra & others V State of Uttar Pradesh & others** also observed that it is duty of the court to award just and fair compensation taking into consideration true market value and other relevant factors.

27. LAC as well as the reference court has awarded very less compensation to the appellants in respect of acquired land subject matter of present appeal. The reference court did not appreciate two exemplar cited and referred on behalf of the appellants which aretwo judgments dated 30.11.2010 Ex. PW1/12 passed in LAC no 1/08 pertaining to Award bearing no 25/2005-2006 and related to Village Yusuf Sarai and dated 02.08.2011 Ex. PW1/13 passed in LAC no 116/11 pertaining to Award bearing no 25/2005-2006 and related to

Village Yusuf Sarai wherein compensation was awarded at rate of Rs. 1,25,000/- per square meter. It is correct that village Yusuf Sarai is not situated in proximity of Village Yusuf Sarai with the acquired land situated in village Bahapur. The acquired land situated in Village Yusuf Sarai falls in category E and was awarded compensation at rate of Rs. 1,25,000/- per square meter. The acquired land pertaining to village Bahapur falls in Category A is as entitled to receive higher compensation considering the difference in circle rate. Although the reference court did not accept these two judgments as good exemplar to determine market value of acquired land subject matter of present appeal by observing that categorisation of localities does not determine market value of the land and market value of land situated in village Yusuf Sarai was determined on its own merit. It is clear that the land which falls in Category A can fetch more compensation in comparison to the land falls in Category E. The reference court should realise that these exemplars can indicate that the land falling in category A as in case of acquired land subject matter of present appeal may fetch higher value in comparison to land situated in category E. The appellants are entitled to receive compensation at least at rate of Rs. 1,25,000/- per square yard on date of notification under section 4 of the Act which is appearing to be just and fair.

28. The reference court in impugned judgment deducted 20% as development cost.The Supreme Court in **Major General Kapil Mehra and others V Union of India and another,** (2015) 2 SCC 262 also considered guidelines for deduction towards development out of compensation. It was observed that deduction for development consists of two components which are appropriate deduction to be made towards the area required to be utilized for roads, drains and common facilities like parks etc. and deduction to be made towards cost of development that is cost of levelling the land, cost of laying roads and drains, erection of electrical poles and water lines etc. It was further observed that the Supreme Court has taken consistent view that one-third deduction is to be made towards the area to be made for roads, drains and other facilities subject to certain variations depending upon its nature, location, extent and development around the area and further appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area. In present case after considering location of the acquired land and its surrounding, it would be appropriate to deduct 10% towards cost of construction.

29. Accordingly after deducting cost of development, the appellants are awarded compensation of Rs.1,12,500/- per square yard along with other statutory benefits awarded by the reference court in terms of judgment titled as **Sunder V Union of India,** (2001) 7 SCC 211 and proportionate cost. The appellants are not entitled to claim compensation at rate of Rs. 3,25,000/- per square yard as claimed by them and also argued by Sh. Rajesh Yadav, the learned Senior Counsel for the appellants. The arguments advanced by the respective counsels for the appellants and the respondents and case law referred and relied upon by them are also considered in the right perspective. The appeal is partially allowed. The decree sheet be prepared accordingly.

DR. SUDHIR KUMAR JAIN
(JUDGE)

NOVEMBER 06, 2024
AK/ABK