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

\+ LA.APP. 42/2019

SUSHIL KUMAR & ORS ..... Appellants

Through: Ms. Smita Maan, Mr. Kartik Dabas and Mr. Jayant Tewatia, Advocates

versus

LAND ACQUISITION COLLECTOR & ANR ..... Respondents

Through: Mr. Sanjay Kumar Pathak, Standing Counsel with Mr. Sunil Kumar Jha and Mr. Mayank Madhu, Advocates for R-1/UOI
Mr. Neeraj Kumar and Mr. Harsh Saini, Advocates for R-2/DDA

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

% **13.05.2024**

1. The present appeal is filed under section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as **"the Act"**) to impugn the judgment and decree dated 20.11.2018 passed by the court of Sh. Ajay Gulati, ADJ-02, South District, Saket Courts, Delhi in LAC bearing no. 29/2016 in pursuance of award bearing no. 1/2006-07 pertaining to the Village Mehrauli, New Delhi.

2. It is appearing from the record that a reference under section 18 of the Act was received from the office of the Land Acquisition Collector on the applications filed by the appellants for enhancement of the monetary compensation as awarded by the Land Acquisition Collector.

3. The notification under section 4 of the Act was issued on 20.10.2004 and notification under section 6 of the Act was issued on 09.01.2006. The

land falling in the revenue estate of village Mehrauli was acquired for 'Planned Development of Delhi' and ultimately, acquired by the award bearing no. 1/2006-07 under section 11 of the Act by the Land Acquisition Collector. The total area under acquisition was around 6 *bigha 6 biswa*. The trial court vide judgment dated 20.11.2018 had awarded the following compensation which is reproduced as under:-

> **36. In view of the above discussion, the petitioners are held entitled to enhanced compensation @Rs. 14,974/- per sq. yard with respect to the land acquired as mentioned in the statement under Section 19 of the Act, 1894 alongwith 30% solatium under Section 23(2) of Act, in lieu of compulsory acquisition of land; interest @ 12% per annum under section 23(1A) from the date of notification upto the date of award by LAC or date of taking of possession whichever is earlier; 9% interest on excess amount awarded by court from the date of possession of land for period upto one year; and 15% per annum interest on such excess amount for subsequent period till amount is deposited in court under Section 28 of the Act.**
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> **37. Further, petitioners are also held entitled for other benefits allowed in the Award by Land Acquisition Collector, Delhi. The compensation will be disbursed to petitioners as per the statement under Section 19 of the Act, 1894.**
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> **38. The reference petition stands answered as above. Both the sides will bear their own costs. Memo of costs be drawn accordingly. A copy of this Award be sent to Land Acquisition Collector, South District, Delhi, for necessary information, action and immediate compliance on his part for remitting of amount payable to the petitioners. Thereafter, file be consigned to record room after necessary compliance.**

4. The counsel for the appellants stated that the trial court, while passing the impugned judgment and decree dated 20.11.2018, has not considered

the principle of escalation while awarding the compensation and in support of his case, cited the judgment titled as **Salaha Begaum and Others V Special Land Acquisition Officer** (2013) 11 SCC 426. The relevant portion of the judgment reads as under:-

> **8. Another error committed by the High Court is that it has not given the benefit of principle of escalation of price to the appellants. This Court has repeatedly held that the exercise undertaken for fixing market value and determination of compensation payable to the landowner should necessarily involve consideration of escalation in land prices — Ranjit Singh v. UT of Chandigarh [(1992) 4 SCC 659] , Krishi Utpadan Mandi Samiti v. Bipin Kumar [(2004) 2 SCC 283] , Land Acquisition Officer v. Ramanjulu [(2005) 9 SCC 594] , Sardar Jogendra Singh v. State of U.P. [(2008) 17 SCC 133 : (2009) 5 SCC (Civ) 822] and Revenue Divl. Officer-cum-LAO v. Sk. Azam Saheb [(2009) 4 SCC 395 : (2009) 2 SCC (Civ) 182] .**
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> **9. In ONGC Ltd. v. Rameshbhai Jivanbhai Patel [(2008) 14 SCC 745] the Court held as under: (SCC pp. 750-51, paras 13-15)**
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> > **"13. Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.**
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> > **14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate**

> of 1% or 2% per annum. There is thus a significant difference in increase in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.
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> 15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

10. In view of the above discussion, we hold that the appellants are entitled to compensation at the rate of Rs 2,20,000 per acre with benefit of 10% increase for the time gap of two years between the notification issued for the acquisition of Shri Ugregowda' s land and the notification issued for the acquisition of their land.

5. The counsel for the appellants also referred the decision rendered in **Major General Kapil Mehra & Others V Union of India & Anr.** 2010 SCC OnLine Del 4612 whereby the Coordinate Bench of this Court has granted the escalation for a land acquired almost 07 years prior to the acquisition of land subject matter of the present appeal.

6. Mr. Sanjay Kumar Pathak, Standing Counsel for the respondent no. 1/Union of India to counter the arguments as advanced by the counsel for the appellants, cited **Central Warehouing Corporation V Thakur Dwara Kalan ul-Maruf Baraglan Wala (Dead) and Others** 2023 SCC OnLine SC 1361 and referred in particular the paras no. 17 and 18 of the judgment. It is further argued that the Supreme Court in the above judgment has observed that the award of compensation on the basis of annual increase can be taken only for 4 - 5 years and it would be unsafe to uniformly apply the same rate for increase for subsequent years that too with cumulative effect. It is further argued that the Supreme Court has awarded cumulative annual increase only @ 7.5% for a period of 05 years. The relevant portion of the judgment reads as under:-

> **17. The case which was referred to by the High Court was *Rameshbhai Jivanbhai Patel* (supra). It no doubt referred to determining compensation on the basis of annual increase with cumulative effect, but at the same time it had put a caution that such annual increase can be taken only for 4-5 years as beyond that it would be unsafe to uniformly apply the same rate for increase and that too with cumulative effect. Paragraph 15 of the said judgment may be reproduced here which mentions the reasons where the gap is of several years, such standards may not be reliable rather the same maybe unsafe. …**

18. In the said case, after laying down the caution, this Court awarded cumulative annual increase at the rate of 7.5% for a period of five years.

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24. Taking an overall view in the matter and the consistent view of this Court, the fair and reasonable compensation in the present case would be best determined if we apply 8% annual increase with cumulative effect. This is for the reason that the gap is huge i.e. 11 years. For shorter period of 3-5 years, it could have been 10% or 12%. But in no case 15% would be justified for a period of 11 years as awarded by the High Court in the impugned order. In the present case, given the 11 years gap, 8% would be considered just and proper.

7. The perusal of the operative part, particularly the para no. 36 of the impugned judgment and decree reflects that the trial court has not considered the entitlement of the appellants, if any, regarding the escalation of the compensation with respect to the land in question. The trial court should have considered the issue of escalation of the compensation in terms of the law laid down by the Supreme Court in various judgments.

8. Accordingly, the present appeal is remanded back to the trial court with the direction to decide the entitlement of the appellants, if any, for claiming the escalation in accordance with law preferably within a period of 02 months from the date of receipt of this order.

9. The present appeal stands disposed of.

10. The appellants shall be at liberty to initiate appropriate legal proceedings in case they feel aggrieved by the fresh decision to be delivered by the trial court on the point of proper escalation of compensation.

DR. SUDHIR KUMAR JAIN, J

MAY 13, 2024/*Sk/am*