* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **LA.APP. 109/2013**

Reserved on: 25.02.2016
Date of decision: 23.03.2016

BHOLA NATH SHARMA THROUGH LRS..... Appellant
Through: Mr. Dhruv Mehta, Sr. Adv. with Mr.Aman Vachher, Mr. Ashutosh Dubey, Mr. Abhishek Chauhan, Mr.Sagar Mehra, Ms.Anupama & Mr.Sagar Mehra, Advs.

versus

UNION OF INDIA THROUGH LAC & ANR..... Respondents
Through: Mr. Sanjay Kumar Pathak, Ms.K.Kaomudi Pathak, Mr. Sunil Kumar Jha, Mr.Kushal Raj Tater, Ms.Shreya Kasera, Advs. for R-1/UOI.
Mr. Kunal Sharma, Adv. for DDA.

\+ **LA.APP. 76/2013**

Reserved on: 26.02.2016
Date of decision: 23.03.2016

ANAND PRAKASH & ORS. ..... Appellants
Through: Mr. Vipin K.Singh, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Sanjay Kumar Pathak, Ms.K.Kaomudi Pathak, Mr. Sunil Kumar Jha, Mr.Kushal Raj Tater, Ms.Shreya Kasera, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

1. In LA.Appeal No.109/2013, the appellants Bhola Nath Sharma (deceased) through his legal representative Ms.Radha Sharma and Mr.Shambhu Nath Sharma have challenged the judgment dated 08.05.2012 passed in LAC No. 283/2011 arising out of Award No. 10/79-80 for the land acquired in village Bahapur whereby the market value of the land in question, on the date of notification under Section 4 of the Land Acquisition Act (30.06.1978) has been assessed at Rs. 250 per sq. yds. along with interest at the rate of 6% p.a. from the date of compensation awarded by Land Acquisition Collector and 15% p.a. solatium on the enhanced amount of compensation, but without any interest on the same.

2. The appellants in LA.Appeal No.76/2013 have challenged the judgment dated 08.05.2012 passed in LAC No.285/2011 arising out of award No.224-86-87 for the land acquired in Village Bahapur whereby the same market value, compensation and interest as was done in LAC No. 283/2011 was assessed by the Reference Court. In case of the appellants in LA Appeal No.76/2013, the date of notification under Section 4 was 06.06.1978 and the date of notification under Section 6 of the Act was 28.08.1979.

3. It would be relevant here in this context to mention that against the award passed in the aforesaid case (LAC No. 285/2011), the appellants had earlier preferred LA Appeal No.48/2007. On the basis of submission made by the counsel for the parties, the Delhi High

Court vide order dated 25.01.2011 remanded the case of the appellants in LA Appeal No.76/2013 to the Reference Court as it was connected with the case of the appellants in LA Appeal No.109/2013 (Bhola Nath Sharma through LRs vs. Union of India through LAC and Anr.).

4. The written statement given by the DDA in the case of Bhola Nath Sharma through LRs vs. Union of India & Anr. and other evidence were adopted in the aforesaid case (Anand Prakash and Ors vs. Union of India; LA Appeal No.76/2013).

5. Hence, both the appeals are being taken up together.

6. The appellants have challenged the aforesaid judgment on grounds of (i) complete non-application of mind; (ii) non determination of the market value of the land acquired in accordance with the evolved principles for the same; (iii) exemplars relied upon by the appellant/claimants not having been taken into account; (iv) adoption of a wrong/inaccurate approach of calculating the rent of number of years after the purchase of land, despite their being evidence of comparable sales and other evidences for computation of market value; (v) not relying upon the judgment in land acquisition case of Village Jasola, a neighbouring village where notification was issued on 15.06.1979 and in the lead case of Ram Chander & Ors vs. Union of India (RFA No.416/1986) in which the claimants were held to be entitled to compensation at the rate of Rs.2240/- per sq.yards along with solatium at the rate of 30% and interest at the rate of 9% per annum for a period of one year from the date of the collector taking possession and thereafter at the rate of 15% per annum till the date of payment along with interest on solatium in view of the

judgment of the Hon'ble Supreme Court in Sunder vs. Union of India, 2001(7) SCC 211 and not even adverting to the judgment passed by the Delhi High Court in RFA No.65/1981 (the case of the appellant in the first round of litigation) wherein the claimants were awarded Rs.2000/- per sq.yard with interest and solatium.

7. It would be necessary to briefly state the facts and developments which have taken place in this case (Bhola Nath Sharma through LRs vs. Union of India and Anr.).

8. By notification dated 30.06.78 issued under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'), the Lt. Governor of Delhi proposed the acquisition of 70 Bighas and 13 Biswas of land situated at village Bahapur for a public purpose, namely planned development of Delhi.

9. After considering the objections filed by the land owners, the Lt. Governor, Delhi issued declaration under Section 6 of the Act, which was published in the official gazette dated 19.02.79 for acquisition of 62 Bighas and 1 Biswas of land. In the award of the Land Acquisition Collector dated 25.06.79, the acquired land was divided into three separate blocks, numbered as A, B and C and different market value for each was fixed at Rs.84/- per sq.yard; Rs.63/- per sq.yard and Rs.42/- per sq. yard respectively.

10. Applications under Section 18 of the Act were filed by interested persons for referring the matter to the Court for determination of the amount of compensation. Based upon the aforesaid applications, the Land Acquisition Collector referred the

matter to the Reference Court, where the case was registered as LAC No. 2/1980 (Bhola Nath and Anr. vs. UOI).

11. The reference Court, vide judgment dated 27.09.1980, disposed of the aforementioned case, holding that the claimants were entitled to compensation at the rate of Rs.175/- per sq. yard with 15% solatium and 6% interest with effect from 30.06.1978. This was with reference to Block A of the acquired land. For Blocks B and C, the Reference Court, in LAC No. 105/1984 (Smt. Narmada Devi and Ors. vs. UOI: disposed of on 14.05.1984) fixed the market value of the acquired land at the rate of Rs.129/- per sq.yard and Rs.108/- per sq.yard respectively.

12. The appellants and others challenged the aforesaid judgment of the Reference Court vide RFA No.65/1981 and 266/1984.

13. The Division Bench of the Delhi High Court in the aforesaid first Appeals, returned the verdict that the appellants were entitled to the compensation at the rate of Rs. 2000/- per sq. yard with 15% solatium and 6% interest from the date of dispossession. It may be pointed out here that by virtue of notification dated 03.06.1966 issued under the Delhi Municipal Corporation Act, the appellants were dispossessed in the month of January, 1972 only.

14. The challenge to the aforesaid judgment by the UOI and the Land Acquisition Collector vide SLP (C) No. 1608/1999 failed. The SLP was dismissed on 12.04.1999 and the review petition No. 1359/1999 was also dismissed on 13.10.1999.

15. The appellants and Smt. Narmada Devi and Ors. had also filed SLPs which, after notice, were converted into Civil Appeal Nos.

6564/2001 and 6565/2001. Later, the aforesaid civil appeals were permitted to be withdrawn. However, the cross objections filed by the Union of India and the Land Acquisition Collector were allowed to remain pending.

16. Since Delhi Development Authority (respondent No.2) was not a party to the proceedings either before the Land Acquisition Collector, or before the Reference Court or before the High Court in RFA No.65/1981, it preferred a SLP along with condonation petition, raising the plea that it was at the instance of the DDA that the land in Village Bahapur was acquired and was transferred to it under Section 22(1) of the Act for planned development of Delhi and the DDA was asked to release Rs.14,15,82,253/- for payment of compensation, thereby making DDA an interested person within the meaning of section 3(b) of the act, entitling it to have an opportunity to participate in the proceedings before the Land Acquisition Collector and the Reference Court, as is mandated under Section 50(2) of the Act. It was averred on behalf of the DDA that it learnt about the judgment of the Reference Court only in June, 1999 when it was intimated by the Land Acquisition Collector for release of the claimed amount.

17. The Hon'ble Supreme Court of India allowed the petition by the DDA; set aside the judgment of the Reference Court as well as that of the High Court and directed for a fresh determination of the amount of compensation payable to the appellants herein and remitted the matter to the Reference Court for deciding the aforesaid references afresh, after giving opportunities of hearing to the parties, including an

opportunity to the DDA to adduce evidence for the purposes of determining the amount of compensation.

18. The Referee Court was further directed not to be influenced by the observations contained in the judgment of the High Court as well as the Supreme Court. Considering the case to be an old one, the Reference Court was directed to decide the matter within a period of 9 months from the date of receipt of the judgment of the Supreme Court. By way of abundant precaution, the Supreme Court also directed that in case the amount of enhanced compensation determined by the Reference Court had been paid to the appellant or their predecessors, they would not be required to refund the same.

19. The cross objections in CA No.6564 & 6565/2001, referred to above were also disposed of as having become infructuous.

20. After the remand, the appellants asked for and were permitted to adopt the evidence which had been adduced in the first round of litigation. The DDA, after inspection of records, asked for Shambhu Nath (AW-4) and Munni Lal Bajaj (AW-7) to be summoned for being cross examined. The afore-cited witnesses were cross examined by the DDA and the Union of India adopted such cross-examination of the aforesaid witnesses.

21. The DDA led two witnesses in defence namely Sri Raj Singh and Sri Arun Kumar Vashishth as R2/W1 and R2/W2 respectively.

22. Before analyzing the evidence adduced on behalf of the parties and the judgment of the Reference Court, it would be necessary here in this context to refer to the relevant part of the award of the Land Acquisition Collector and the reasoning assigned by him for

determining the market value of the land acquired and the compensation to which the claimants were found to be entitled to. The relevant portion of the award is quoted below:

> *" In fixing the market value of the land in a particular village sale deeds of the preceeding 5 years and preceeding awards in the same village or vicinity are taken into consideration for purpose of guidance. The record reveals that there is no mutation sanctioned in the village Bahapur from 1972 to 1979. Besides, no award has been announced except the latest Award No.2059 which pertained to notification under Section 4 dated 13.11.1959. The date of notification in the present award is 30.6.1978. The difference between these two notifications is about 19 years and so above quoted award is not relevant for our purpose. Therefore, that the scope of award and sale deeds as a serving guideline for determining the market value for this award is seemingly ruled out because the market value of the land under acquisition to be ascertained is the value of the land in its actual condition on the date of notification with all its advantages and potentialities.*
>
> *Documents referred at Sr.No.1 to 3 in the title "Documentary Evidence" cannot be referred to as these lands are close to Mathura Road and Friends Colony and therefore away from the land in question. The land in question is nearer to the Kalka Ext.Colony and Kalka Temple as compared to the area mentioned at Sr.No.1 to 3 of the documentary evidence also to the industrial area. Considering all those facts there remains only the booklet issued by*

Government of India entitled "Information for the guidance of lease Holders" which can be depended with as a guideline for determining the market value. In the said booklet, Kalkaji i.e. Village Bahapur is on page No.16 at Sr.No.64. The rate as given at the booklet is R.160/- per sq.yd for residence and Rs.150/- per sq.yd for commercial purpose valued sometime in 1965. My spot visit dated 14.5.1979 has ruled out the possibility of the area being the commercial one because of the reasons given above and also its comparative nearness of the Kalkaji Ext. colony than the industrial area. The record also reveals that the said land is in Government possession since 1972 prior to the enactment of Urban Ceiling Act.

For the purpose of this award the whole area is divided into three groups. Group A, B & C. Group A comprises of 29 Bighas 1 Biswas pertaining to Kh.No.1773/1200/559/1/1 & Group B comprises of Kh.No.1610/1195/558 min & 1611/1195/558/2 total area measuring 18 bighas 5 biswas & Group C consists of Kh.No.1612/1195 & 542 min (13-15) & less than biswas respectively. There is built up area in Kh.No.1773/1200/559/1/1 & 1611/1195/558/2. The land of these khasra numbers is acquired under the present award and since the built up structure is prior to the date of notification u/s 4 the award for the structure will be drawn separately after valuation report for those structure is received from Asstt.Engineer (Valuation). Block A consists of level Pahar land. The rate of Rs.60/- per sq.yd prescribed by the Government of India,

Ministry of Works, Housing and Supply in that booklet is in respect of developed land for the year 1965 and as such some margin will have to be given before arriving at the market value of the land under acquisition. After deducting 20% on account of development charges and allowing interest @ 6% w.e.f. 1.1.66 to 30.6.78 I assess the compensation at Rs.84/- per sq.yd for the land placed in Block A. Land in Block B is not level and is full of stones and some gaddles and will have to be filled up in order to make it a level land. Lot of expenditure will have to be incurred in making it a level land. In respect of this land I consider that 40% on account of development charges be deducted from the rate of Rs.60/- per sq.yd fixed for the development land. After allowing the increase @ 6% I assess the compensation at Rs.63/- per sq.yd in respect of the land placed in Block-B. Land placed in Block C is sloppy & Khal land. In respect of this land also heavy investment will have to be made to level and develop the land and to bring it upto the level of Block-A & B. I, therefore, consider that 60% development charges will have to be incurred and after allowing interest of 6% w.e.f. 1.1.86 to 30.6.78 I assess the compensation at Rs.42/- per sq.yd for the land placed in Block-C. The rate of Rs.60/- is for the year 1965. Therefore, allowance will have to be made for the increase in prices of the land as the land under acquisition was notified u/s 4 of the L.A Act on 30.6.1978.

TREES

There are some very small trees of natural growth here and there in the land pertaining to Block-C of this award but neither the revenue record show their existence nor anybody had made any claim for these trees. Therefore, no compensation has been assessed for them.

STRUCTURE

There are some structures existing on Kh.No.1773/1200/559/1/1 and 1611/1195/558/2 which according to revenue record exist at the time of notification u/s 4 of the L.A Act. A letter for valuation of the structure is being written to the Asstt.Engineer (Valuation) and when the valuation report for the said structure is received a supplementary award will be given in respect of the structure only.

15% SOLATION

15% solatium will be payable over and above the market value of the land so assessed.

APPORTIONMENT

Compensation will be paid to the interested persons on the basis of the latest entries in the revenue record. In case of dispute, which may not be settled as per the provisions of L.A Act the matter will be referred to the Court of A.D.J. for adjudication u/s 30-31 of the L.A.Act.

LAND REVENUE DEDUCTION

The land under acquisition is assessed at Rs.6.93 N.P. as land revenue which will be deducted from the Khalsa Rent Roll of the Village from the date of taking over possession of the land.

SUMMARY OF THE AWARD

The award is summarized as under:-

S.No.	Block	Area Big-Bis	Rate per sq.yds (one bigh=1008 1/3 sq.yds)	Amount of compensation
1.	A	29-1	Rs.84/-	Rs.24,60,535-00/-
2.	B	19-5	Rs.63/-	Rs.12,22,856-25/-
3.	C	13-15	Rs.42/-	Rs.5,82,312-50/-
			TOTAL	RS.42,65,703-75/-
			Add 15% Solatium	Rs. 6,39,855-56/-
			GRAND TOTAL	Rs.49,05,559-31/-

(Rupees Forty Nine Lac Five Thousand Five Hundred Fifty Nine and Paisa Thirty one only)"

23. Now, a brief look at the evidence adduced on behalf of the parties and its analysis by the Reference Court would be necessary to test whether the market value arrived at as well as the computation of the entitlement of compensation to the appellants by the Reference Court is justifiable or requires alterations.

24. Mr.T.C.Narang, Assistant in the DDA (AW-1) deposed that plot Nos.71 to 84, 43 & 98 were auctioned by the DDA on 28.01.1977. Plot No.43 was auctioned for 2,09,52,000/- to M/s.Ansal Properties and Industries Pvt. Ltd (area 1011-7141 sq.mts). Plot No.98, approximately of the same area was auctioned/sold for

Rs.1,93,01,000/- to M/s.Skippers Towers Pvt. Ltd. However, it was stated by AW-1 that he did not have any personal knowledge of the auction nor was aware of the potentialities of the plots which had been auctioned. However, it was further deposed that the plots were in the developed area for multi storied buildings which were duly approved by the DDA.

25. The Reference Court did not consider the aforesaid sale prices for the reason that those plots of land which were auctioned/sold in 1977 were not comparable to the land acquired as the aforesaid auction sales were in Nehru Place which had a high commercial value.

26. Mala Singh, Patwari Revenue, Delhi (AW-2) proved ak-shijra, (village map) (Exh.AW-2/1) and stated that it had been prepared by her from the original. The portion inside the red line was Nehru Place and though the distance was not written in the original but it was mentioned in the red ink on the copy of the same. The measurements were made at the spot and only thereafter the distance according to the measurement was mentioned. In cross examination, PW-2 confessed of her not being entitled to make any entry in red ink, strictly as per rules. The aforesaid measurement was made at the instance of the claimant. No application was received for taking any measurement at the spot.

27. Yad Ram, Naib Tehsildar (AW-3) has proved the chief data (AW-3/1) and stated that the acquired land is about 1000 to 1500 yards away from Nehru Place. On inspection of the spot, he found an existing water tank.

28. Shambhu Nath, appellant No.2, AW-4; claimant and one of the witnesses who was cross examined by DDA categorically stated that the acquired land was situated 300 yards away from Nehru Place Complex and was in close vicinity of old and new Chirag Delhi road. Adjacent Chirag Delhi road was an industrially developed area and a water tank existed there. Even in the cross examination, AW-4 has admitted that Nehru Place is a commercial area and Kalkaji Colony which is a developed area is about 1000 sq.yards from Bahapur, the village where the land was acquired. In the cross examination of AW-4 by the DDA, AW-4 stated that the land in question was a rocky land. A water treatment plant had existed over 17 bighas and 1 biswas of land since 1972. No permission had been taken from him nor by the MCD or Delhi Jal Board for the construction of the water treatment plant and nothing was paid to him also in lieu of his being displaced from the aforesaid area. In the same khasra, in 2 bighas of land two godowns of NCERT existed before 1972. AW-4 however, was not aware whether the land in question had been reserved as a green area. Out of the remaining area where water treatment plant was constructed, there were staff quarters for the employees of Delhi Jal Board. It was admitted that the area of Nehru Place was earmarked as commercial as per the master plan. It was submitted by him that Greater Kailash-II is approximately 1 km from the land in question but forms part of the same revenue estate. The suggestion that the rates of land in Greater Kailash-II are not comparable to the acquired land was denied.

29. SC Sharma, Clerk Land & Development Office (AW-5) and Harbhajan Lal, LDC, DDA (AW-6) submitted that the schedule of rates (AW-5/1) had been issued by the DDA but under what circumstances the schedule or rates were prepared were not known to both of them.

30. Munni Lal Bajaj (AW-7), another witness who was cross examined by DDA has deposed that he owned two bighas of land in the area which was acquired and over which he constructed four godowns in the years 1966, 1968, 1972 and 1973. The aforesaid godowns were rented out to NCERT and he received Rs. 3258/- per month as monthly rental for all the godowns. AW-7 admitted the existence of a factory at a distance of 50 yards from his land and existence of other factories at about 1-1.5 furlong from his land. He also admitted of a water overhead tank through with water was supplied to Lajpat Nagar, Kalkaji etc. He was also not aware whether the area was a green area in the master plan and stated that the godowns were assessed to house tax.

31. The Reference Court with respect to the aforesaid evidence has inferred that if the godowns over 200 sq.yards of land were fetching a monthly rental from a Government body to the tune of Rs.3258.80/-, its multiplication by 16 years of rental value would be a safe method of assessing the market value of the property. If that method of computation is used, then the market value of the property would come to Rs.625689.60 for one bigha of land and after deducting 50% of developmental charges, it would come to Rs.3,12,844.80/-. The Reference Court thereafter went on to state that if Rs.1,00,000/- and

odd is considered to be the value of the construction of the godown, then the value of land comes to Rs.2,00,000/- per bigha, thus giving the value of the land at Rs.200/- per sq.yards. If 12½% is deducted out of this amount as price of land to be left for passages etc, then the value comes to Rs.175 per sq.yard.

32. Raghunath, LDC, DDA (AW-8) had brought the original lease deeds which were executed on behalf of the DDA (copies of which are exhibits AW-8/1 to AW-8/5). However, he has stated that he has no personal knowledge about those lease deeds and he has not even seen Nehru Place.

33. A.D.Chhabra, LDC in the office of Sub Registrar (AW-9) also claimed to have brought the lease deeds referred to above.

34. Anand Prakash, LDC, Municipal Corporation of Delhi (AW-10) stated that there is a water tank in Kalkaji, maintained by the Corporation but he would not know the khasra number where the water tank is situated. The water tank was stated to be very near Kalkaji temple. The Municipal Corporation of Delhi, for supplying water to Kalkaji and Gobindpuri took usual charges.

35. On behalf of the Union of India, Radhey Mohan Lal, Assistant Director of Development and Control Wing, New Delhi (RW-1) and Narinder Nath Seth, Tehsildar Land and Building Department (RW-2) offered their evidence. RW-1 deposed that the acquired land was meant for district parks, playgrounds and open space and the land fell under the green area. In the cross examination, he has stated that the land was surveyed by the surveyor only two days ago before giving his evidence. He also admitted of existence of a publication division

of NCERT and a water tank over the acquired land. The rest of the land was hilly area. RW-1 did not have any personal knowledge whether there was another factory in the vicinity or that the godowns of AW-7 were rented out to a Government organization.

36. RW-2 who had surveyed the plot on instructions deposed that towards the north of the land there is an industrial area and old Chirag Delhi road is on the left side of the road which is about 100 yards away. The existence of water tank and residential quarters have not been denied. He has proved the copy of his report Exh.RW-2/1.

37. The DDA, as stated earlier, examined two of the witnesses on its behalf. Sh.Raj Singh, Land Management branch, (R2W1) stated that the area in question was 29 bighas and 5 biswas. In an area of about 2 bighas and 2 biswas, godowns were constructed and a water treatment plant of Delhi Jal Board existed over approximately 17 bighas and 1 biswas of land. The remaining area of 10 bighas was stated to have been converted into a district park, however, the boundaries of the khasra were not demarcated and he was not aware as to whether the land use had been changed in Delhi. Mr.Arun Kumar Vashisht, R2W2 testified before the Reference Court that identification of khasra is not done by the planning department but by the land department as per the master plan. The master plan of Delhi, it was stated, does not specify any khasra number.

38. The following exemplars with regard to lease of land at Nehru Place were produced in evidence on behalf of the appellant:-

Exhibit	Area (sqm.)	Date of lease deed	Rate of premium

			per sqm.
AW.8/1	334	01.08.1973	1429/-
AW.8/2	741	28.09.1973	2160/-
AW.8/3	334	17.10.1973	3024/-
AW.8/4	334	24.10.1973	2550/-
AW.8/5	445.93	29.11.1973	1175/-

39. The learned Reference Court, with respect to the aforestated evidence was of the opinion that such evidences would not be relevant as the land acquired cannot be equated with Nehru Place complex. The relevant portion of the judgment of the Reference Court on the aforesaid issue is as hereunder:-

> *".....Which by no stretch of imagination can be equated with the land in dispute. The land comprised in Nehru Place complex has been ear-marked for one of the biggest markets in Asia and with a provision of multi-storey buildings and with arrangements for providing all facilities in that area needed for multi storey buildings. The trend of the market value of the leasehold rights sold in Nehru Place Complex has been ear-marked for one of the biggest markets in Asia and with a provision of multi-storey buildings and with arrangements for providing all facilities in that area needed for multi storey buildings. The trend of the market value of the leasehold rights sold in Nehru Complex makes it abundantly clear that as the area comprised within Nehru Place complex is gaining more importance the market value of lease hold rights is leaping many folds. In*

1973, the plots in Nehru Place complex were sold from about Rs. 1125/- about to Rs. 3,000/- per sq. meter. In 1977, those were sold for near about Rs. 20,000/- per sq. meter and as per newspapers reports in 1980, the same have been sold at about Rs. 50,000/- per sq. meter. It does not mean that the market value of the land, may be for residential or commercial purposes has increased by such proportions in the locality as in the Nehru Place Complex. The sale deed of Greater Kailash -II produced by the claimant itself shows that the land in dispute cannot be equated with the land of Nehru Place. The land sold in Greater Kailash-II of which sale deed has been produced on record, was sold in December, 1978 at Rs. 1200/- per sq. yard. That land was of shops in a commercial area and is hardly about a mile even less from Nehru Place. The market value cannot fluctuate to such an extent as is evident from the documents. It merely shows that Nehru Place had its own special importance as far back as 1973, the prices of lease-hold right were varying between Rs. 1175/- to Rs. 3,000/- per sq. meter and in 1977 it was about Rs. 20,000/- per sq. meter and in 1980 it is about Rs. 50,000/- per sq. meters. Thus it is clear that this land cannot by no stretch of imagination be equated with the land of Nehru Place Complex."

40. Exhibit AW-5/1 is the schedule of market rate issued by the Ministry of Works and Housing, Land Development Office in 1976 effective from 01.04.1979 to 31.03.1981. It has been clarified that the rates fixed by the Government are meant for specific purposes namely

calculation of various charges on account of unearned increase, temporary or permanent change of purpose and regularization of misuse/unauthorized construction in a leasehold property under the control of the office. As an introductory, it was made clear that the rates may not be the market rates of the land. The Reference Court has taken the view that the value of land for residential purposes at item no.11 of group 5 namely Kalkaji has been fixed at Rs.400/- per sq.yard for residential purposes and Rs.800/- per sq.yard for commercial purposes.

41. The Reference Court has computed the market value on the basis of the aforesaid booklet after necessary deductions at Rs.250/- per sq.yard:-

> "*48. The third piece of evidence is booklet issued by the Ministry. Though the booklet which has been issued in 1976 as is apparent from the fact that number of notification is mentioned L & DO/5/2/76/CDM yet value applicable was from 01.04.1979 to 31.03.1981. The value of land for residential purposes at item no. 11 of Group 5 is mentioned at Rs. 400/- per sq. yard about residential land and Rs. 800/- per sq. yard about commercial land. That value is of leasehold rights. If value of ownership right is considered to be 25 percent more, then the value come to Rs. 500/- per sq. yard. If 50 percent is deducted out of it considering the fact that the value is of smaller plots and it includes development charges as also the fact that the land in the present case was of green belt, the value comes to Rs. 250/- per sq. yard."*

42. Exhibit AW-3/1 is the chief data of the acquired land. The relevant portion of which is as hereunder:-

> *"These are the proceedings for determination of compensation U/s of the land Acquisition Act. The land under acquisition is situated in village Bahapur and was put under notification U/s 4 of the land acquisition Act Notification No.F.9(13)/76-L&B dated 30-6-78 for a public purpose namely for the planned development of Delhi. After considering objections U/s.5-A the Delhi Administration issued a declaration U/s.6 of the Land Acquisition Act for the acquisition of an area measuring 62 bighas 1 biswas vide notification No.F.9(13)/76-L&B/Vol/ii dated 19-2-1979. In pursuance of the aforesaid notification notice U/s 9 & 10 of the LA Act were issued to all the interested persons in the land under acquisition and the claims filed by them are discussed under a separate heading "compensation claims". True and correct Area.*
>
> *The land was measured on the spot by the Land Acquisition Field Staff alongwith representative of the requiring department and the available area found at the spot is as under:-*
>
> | ***Field No.*** | ***Area*** | ***Kind of soil*** |
> |---|---|---|
> | *542 min* | *Less than biswas* | *Banjar Qadium* |
> | *1611/1195/ 558/2* | *1-1* | *G.M.Dharamshala* |
> | *1612/1195/* | *13-5* | *G.M.Pahar* |

1610/1195/ 5581/4 min	*1804*	*G.M.Pahar (According to Jamabandi)*
1773/1200/ 559/1/1	*29-1*	*G.M.Pahar*
	62-1	
Classification of the area		*The land is situated approximate 100 yds. of*
G.M.Dharamshala	*1-1*	*Kalka Temple and*
G.M.Pahar	*61-0*	*Kalka Temple is Situated of V-Bahapur*
Banjar Qadium Less than biswas		
	62-1	

1. As per revenue record the kind of land of Kh.no.1610/1195/558 is G.M.Dharamshala. But there is not Dharamshala on Kh.No.1610/1195/558.

2. As per Kh.Girdwari for the year 1972 to 1978 Kh.No.1612/1195/558 & 1773/1200/559/1/1 entry is ownership in the name of Sarkar Dolatmadar and in possession of land and building ownership entry is wrong. The record is prepared according to Jamabandi."

43. Exhibit PX2 is the sale deed dated 23.12.1978 by one S.K.Sood of a commercial plot in Greater Kailash-II, an area of village Bahapur. The sale is at Rs.1200/- per sq.yard. The Reference Court is of the opinion that if a residential property can fetch half the value of the sale

price, then the value would come to Rs.600 per sq.yards. If 1/3rd of the value is deducted considering that the land was a small piece of land then the value of land comes to Rs.400/- per sq.yard. If 50% of the aforesaid amount is considered to be taken out for developmental charges then the value would come to Rs.200/- per sq.yards.

44. The Trial Court at para 47 has held as under:-

> "*47. Next piece of evidence is sale deed of commercial plot in Greater Kailash Part-II. That sale is of Rs. 1,200/- per sq. yard. If it is considered that residential property can fetch half of the value, then the value comes to Rs. 600/- per sq. yards. If 1/3rd of the value is deducted considering that the land was smaller piece of land, then the value comes to Rs. 400/- per sq. yard. Out of 50 percent is considered to be development charges, then the value comes to Rs. 200/- per sq. yards."*

45. Exhibit PX3 is the Gazette notification dated 03.06.1966 declaring that the revenue estate of Bahapur is not included in the rural area and ceases to be so.

46. AW-6/1 is the statement of commercial plots auctioned by DDA in Nehru Place.

"Statement of Commercial plots, auctioned by DDA in Nehru Place

S.No.	**Plot No.**	**Date of Auction**	**Bid Amount**	**Name**
1.	27	18-10-72	4,77,000/-	Saraswati Builders

2.	56	28-11-72	16,01,000/-	S.K.Construction
3.	34	6-2-73	10,10,000/-	Indian Farmers
4.	46	28-11-72	8,51,000/-	H.Dohil
5.	30-31	18-10-72	5,24,000/-	Raja Towers

47. The materials which have been relied upon by the DDA are:-

i) Exhibit RW-2/1

ii) Some judgments have also been relied upon by the DDA wherein the market value with respect to plot which was notified on 13.11.1959 in the revenue estate of Bahapur has been assessed at Rs.2000/- per bigha (market value of Gair Mumkin Dharamshala) and Rs.800/- per bigha for Gair Mumkin Pahar. The Reference Court held the market value to be Rs.4000/- per bigha instead of Rs.2000/- per bigha.

iii) Another judgment with respect to the same date of notification for the revenue estate of Bahapur where the market value of Block C was fixed at Rs.6800/- per bigha.

iv) Exhibit R-3, the judgment passed in LAC No.334/2010 wherein the market value of Block C has been computed at Rs.2000/- per bigha.

48. Exhibit RW-2/1 is the copy of the report of Narinder Nath Seth of the Land and Building department who has given the location of the plot and has stated about the entire land being a rocky place, the report inter-alia states that there is no greenery in and around the place and if the potential value of an under-developed land is taken into consideration the same would not fetch more than Rs.10/- per sq.metre.

49. The sum and substance of the argument on behalf of the appellants before the Reference Court was that the location of the land is adjacent to Nehru Place at a distance of 300 yards and is located opposite to Okhla Industrial Estate; the nearest factory is at a distance of 50 yards from the acquired land; the adjoining areas are Kalkaji Extn. Residential colony and Kalkaji Temple; there are two public roads on two sides of the land; the nature and character of the land has been characterized as leveled pahari land; availability of a water treatment plant with residential quarters over 17 bighas of land; two godowns of NCERT, a Government organization over 2 bighas of land fetching reasonably good amount per month as rental; the area being commercial is just opposite to Nehru Place and Okhla Industrial area; the area could also be taken as residential as it is near to Kalkaji Extn. Colony.

50. Additionally, it was submitted on behalf of the appellants before the Reference Court that not only the character of the land but its future potential would also be a relevant indicator and a piece of evidence in determining the market value. That multi storied buildings could come up in the acquired land is also not to be lost sight of and

assessment, per force is required to be made on the basis of hypothetical building schemes for the purposes of judging the price/market value of the land in question. It was suggested to the Reference Court that if at all the acquired land did not have the level of development as that of Nehru Place, 10 to 25% could reasonably be deducted towards the cost of development. The highest of the exemplars submitted by the appellants, it was urged had to be taken into account and was required to be given a primacy. The appellants completely rejected the evidence offered especially Exhibit RW-2/1 as inadmissible. The witness who appeared on behalf of DDA was not an expert that his opinion could have had no fault. The contention of the DDA that the land acquired fell in the green area has not been supported by any document or cogent and positive evidence regarding the same. What the Land Acquisition Collector lost sight of was that the Nehru Place was extended by 20 acres which also originally was not green belt and that the user of the land had been changed by the Government before acquisition or else water treatment plant would not have been constructed over major portion of the acquired land.

51. The Union of India (respondent No.1) made a fervent plea that the sale deeds could not have been taken as correct exemplars as neither the vendor nor the vendee were examined to prove those documents; AW-8, the LDC of the DDA did not have any personal knowledge of the contents of the sale deeds and ignorance was expressed by other witnesses including AW-1 about the potentiality or quality of land. It was submitted that the sale deed of the land of

Greater Kailash-II was not helpful as it related to a completely developed plot whereas the land acquired was admittedly a hilly tract.

52. Similarly, the DDA (respondent No.2) came up before the Reference Court with the plan that there is no dispute regarding the nature and character of land as being Gair Mumkin Pahar and had no similarity to the leased/sold properties of Nehru Place. The deposition of the witnesses offered on behalf of the appellants were assailed on the ground that the same do not make out any special case for the appellants to have a market value of the land acquired enhanced any further. A great stress was laid on the fact that the area of the land acquired was under green cover and, therefore, the potential of the land and the same becoming commercial in future was out of question.

53. The reference court framed the two issues namely

1. *What was the market value of the acquired as on the date of issuance of notification u/s 4 of the LA Act, and*
2. *To what enhancement in compensation, if any, are the petitioners entitled.*

54. With respect to issue No.1, the Reference Court held that the market value of the land in question is Rs.250/- per sq.yard.

> *"50. Petitioners have only led emphasis on adducing the evidence pertaining to the market value of the acquired land in question. No evidence has been led with regard to clause secondly, thirdly, fourthly, fifthly and sixthly the petitioners are failed to show before this court that the land in question was having standing crops/ trees if any or the petitioners suffer very losses on account of severance from such land or due*

to acquisition of the land in question. Property of the petitioners movable or immovable was injuriously affected or because of the acquired land in question the petitioners were compelled to change his residence or place of business incidental to such change. However, on the other hand, Ld. counsel for DDA has highlighted the submission of the petitioners that the acquired land was an abundant land and was a rocky land. It was not an agricultural land and even no activities was carried on by the petitioners before the acquisition of the land by the government even till date the land in question is developed as a government park in few part of the land and approximately 17 bigha of land is used by DJB which is not a commercial activity rather it is a public utility.

55. *As per provisions under section 23 of Land Acquisition Act, 1894 in determining the amount of compensation to be awarded for land acquired under this act there are number of criteria. The first criteria under section 23 is the market value of land at the date of publication of the notification under section 4 sub section 1 of LA Act to which the petitioners have led extensive evidence but as regards the other provisions are concerned which are the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession, the damage sustained by the person by reason of severing such land from his other land, the damage sustained by the person interested by reason of the acquisition injuriously affecting his other property, the interested persons are compelled to change their*

residence or place of business incidental to the acquisition, the damage resulting from diminution of the profits of the land between the time of the publication under section 6 and the time of the Collector's taking possession of the land. No evidence has been led by the petitioners on account of these factors. Hence, I hold the market value of the land in question on the date of notification under section 4 of LA Act i.e. 30.06.1978 as Rs. 250/- per sq. yards. Issue no. 1 is decided accordingly. "

(Emphasis provided)

56. With reference to issue no.2, the Reference Court held:-

ISSUE NO. 2

To what enhancement in compensation, if any, are the petitioners entitled?

52.The petitioners are entitled to balance amount of compensation @ Rs. 250/- per sq. yards in respect of the acquired land in question as per admitted statement under section 19 of LA Act in this case.

RELIEF

53. Petitioners are entitled to interest @ 6 % p.a. from the date of notification under section 4 and till the date of compensation awarded by LAC. Petitioners are also entitled to 15% p.a. solatium on the enhanced amount of compensation, the case being prior to the amendment of the LA Act in the year 1984. No interest on solatium [in the light of the judgment in RFA No. 387/1991 titled as Ramphool & Ors. vs. UOI].

54. Reference is answered vide the above award. Statement under Section 19 of the L.A. Act be annexed to the award. Copy be sent to the Land Acquisition Collector concerned for information and necessary compliance within a week from the date of this order. As the acquired land has been placed at the disposal of respondent no. 2 as the ultimate beneficiary, the liability of the respondents would be joint and several. No orders as to costs."

57. Mr.Dhruv Mehta, learned senior advocate assailed the aforesaid judgment of the Reference Court on the ground that it did not appreciate the location and potential of the land and the five lease deeds namely Exh.AW-8/1 to 8/5 actually gave a good guide for coming to the market value of the acquired land. The lease deeds were executed by the respondent No.2, the DDA, in favour of the lessees and the plots were of an area ranging from 334 sq.mtr. to 740 sq.mtr. The dates of the lease deeds, their respective area and the rate at which premium was paid for acquisition should have been relied upon by the Trial Court. All the exemplars pertained to the year 1973 whereas the crucial date for the purposes of fixation of market value is 30.06.1978 i.e. the date of issuance of notification under Section 4 of the Act. It was submitted that in the year 1973, the average of the five exemplars referred to above came to Rs.2067/- per sq.mtr. and, therefore, on the date of notification, interest of the claimants/appellants would have been sub-served if an escalation at reasonable rates per annum could have been super added to the aforesaid average of the exemplars.

58. It was further submitted that the acquired land has been urbanized in 1966 for which there was sufficient evidence in the form of existence of water treatment plant, godowns of NCERT, residential quarters and factories etc on the acquired land and near the vicinity. There was no reason for the Reference Court not to have assessed the market value of the acquired land at commercial rate.

59. What was very seriously argued was that the lands in village Jasola were acquired vide notification issued on 15.06.1979 in which the lead case of Ram Chander & Ors vs. Union of India (RFA No.416/1986) was decided on 19.10.2001. Another notification with respect to land in Jasola was issued on 12.05.1986 in which the case of Sri Naim Singh vs. UOI (RFA No. 667/98) was decided on 18.11.2004 by the Delhi High Court. In the aforesaid two cases, the Delhi High Court relied upon the judgment passed in Bhola Nath Sharma (the case of the appellant in the first round of litigation, RFA No.65/1981) in which the market value of Rs.2000/- which was fixed by the Delhi High Court with respect to land acquired in the revenue estate of Bahapur was relied upon, thus, lending finality to the correct determination of the market value of the land in question. It is submitted that the reference of the Delhi High Court judgment with respect to acquisition of land of village Jasola should have been taken into consideration by the Reference Court as it was most relevant for the purposes of determination of the market value of the acquired land.

60. The further challenge to the aforesaid judgment was on the ground that the Reference Court did not award statutory benefits under

Section 23(2) & Section 28 of the Act in accordance with the law laid down in the case of Sunder vs. Union of India, 2001(7) SCC 211 and Union of India vs. Raghubir Singh wherein it was specified that the land owner is entitled to an interest under Section 28 at the rate of 9% per annum for the first year from the taking over of the possession or the date of award whichever is earlier and 15% thereafter till the making of the payment of enhanced compensation in the matters which are decided after 30.04.1982. Mr.Dhruv Mehta, learned senior advocate thus submitted that it would have been only fair on the part of the Reference Court to have seen the line of reasoning given by the Delhi High Court for assessing the market value of the land in question on the date of notification and that the argument of the respondents that there was a direction by the Supreme Court of not being influenced by any judgment of the High Court or Supreme Court justifying the Reference Court in not at all adverting to the aforesaid judgment of the Delhi High Court was absolutely untenable and unjustified. There was no reason to get influenced by any of the observations in the aforesaid judgment but it could have given a good guiding light to the Reference Court to have decided the issue in accordance with law.

61. Mr.S.K.Pathak, learned advocate for the Union of India and Mr.Kunal Sharma, learned advocate for the DDA (respondent No.3) have supported the reasoning given by the Reference Court for coming to the market value of the land in question.

62. Now in order to appreciate the contentions of the parties for fixing the market rate of the acquired land, it is necessary to refer to

the provisions of Sections 23 & 24 of the Land Acquisition Act, 1984 as also the case laws with regard to the principles on which the market value of the acquired land is to be assessed for the purposes of determination of the compensation to be granted to the claimants/land owners.

63. Section 23 of the Land Acquisition Act, 1894 deals with matters to be considered in determining compensation:-

> *"**23. Matters to be considered in 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 or 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 severing 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, if, 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 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 lend 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."

64. Section 24 of Land Acquisition Act, 1894 with regard to the matters to be neglected in determining the compensation:-

> *"**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 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, subsection(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."*

65. The law with respect to calculation of the market value of the acquired land and the compensation to be given to the landlords is well established. Section 23 of the Act clearly lays downs the principles.

66. Market value of the land means what a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going on in the vicinity and the potentiality of the land.

67. While fixing the market value of the acquired land, what are required to be kept in mind are the geographical situation of the land; the existing use of the land and the location as well as other advantages appurtenant to the land. The market value of the other land situated in the same locality or adjacent locality would also be an important factor for determination of the reasonable market value of the acquired land.

68. In ***Viluben Jhalejar Contractor vs. State of Gujarat***, (2005) 4 SCC 789, the Supreme Court laid down the following principles for determination of market value of the acquired land:-

> *17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the*

publication of the notification under sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	***Negative factors***
(i) smallness of size	*(i) largeness of area*
(ii) proximity to a road	*(ii) situation in the interior at a distance from the road*
(iii) frontage on a road	*(iii) narrow strip of land with very small frontage compared to depth*
(iv) nearness to developed area	*(iv) lower level requiring the depressed portion to be filled up*
(v) regular shape	*(v) remoteness from developed locality*
(vi) level vis-a-vis land under acquisition	*(vi) some special disadvantageous factors which would deter a purchaser*
(*vii*) special value for an owner of an adjoining property to whom it may have some very special advantage	

69. It has been the practice to adopt the comparable sales method for determining the market value of the land as aforesaid method is more preferable than computing the valuation of the land on the basis of capitalization of net income method or by taking expert opinion. The reason for the same is that a willing purchaser would always pay the same price which was fetched of other land with same geographical location and advantage.

70. In ***Karnataka Urban Water Supply and Drainage Board vs. K.S.Gangadharappa & Ors***, (2009) 11 SCC 164, the Supreme Court held that when sale is within a reasonable time of the date of

notification under Section 4(1); it is a bona fide transaction and the sale is of the land adjacent to the land acquired having similar advantages, it remarkably reduces the element of speculation in fixation of market value of the land with reference to comparable sales.

71. Similar view was taken by the Supreme Court in ***Land Acquisition Officer vs. T.Adinarayan Setty***, AIR 1959 SC 429 and ***Ravinder Narain vs. Union of India***, (2003) 4 SCC 481.

72. In ***Mahabir Prasad Santuka and Ors. vs. Collector, Cuttack and Ors.*** (1987) 1 SCC 587, the Supreme Court took into account the evidence on record and found that the land in dispute was adjacent to the industrial area which included number of factories and came to the conclusion that it had the potential of future course as factory or building site. It was held by the Supreme Court in Mahabir Prasad Santuka and Ors. (Supra) at para 6 as follows:-

> *"6. The High Court further held that since the appellants had purchased the land at the rate of Rs. 100 per acre in the year 1956, they were not entitled, in any event, to compensation more than Rs. 7,500 per acre, this view is untenable. There is evidence on record to show that the land which was purchased in the year 1956 had no potentiality at that stage, as Industrial acre had not developed near the land. After the setting up industrial area of Charbatiya the price of the land situate in its vicinity had increased tremendously. It is a matter of common knowledge that price of land near the vicinity of industrial area is bound to rise. Admittedly the appellants' land is*

situate near the industrial area, therefore its value had increased and the High Court committed error in ignoring this aspect by determining the compensation. Plot No. 177 is a big plot having various sub-plots which are owned by different persons. The appellants are owners of Plots Nos. 177/16, 177/16-A, 177/17 and 177/17-A. The land contained in other sub-plot Nos. 177/19, 177/10 and 177/7 was also acquired and the compensation in respect thereof was determined by High Court uniformly at the rate of Rs. 15,000 per acre. There are five judgments of the High Court on record in respect of various sub-plots of Plot No. 177. On a perusal of those judgments, it is evident the High Court has awarded compensation at the rate of Rs. 15,000 per acre for the land which is quite adjacent to the appellants land. The High Court has observed in its Judgment in First Appeal No. 173 of 1971 connected with First Appeal No. 174 of 1971, Collector, Cuttack v. Karunakar Mohanty, decided on October 21, 1975, that the Advocate General appearing on behalf of the State conceded that in view of the decision of the High Court in respect of the similar land in the vicinity it was not possible on his part to question the valuation of the acquired land as fixed by the Subordinate Judge at the rate of Rs. 15,000 per acre. In that case plot No. 177/13 was the subject matter of the acquisition. We have also perused a copy of the map which is on record. We find that the appellant's land is quite adjacent to those plots which were the subject matter of the decision in the appeals decided by the High

Court where compensation has been awarded at the rate of Rs. 15,000 per acre. In the circumstances there is no valid reason to award compensation to the appellant at a reduced rate specially so when the respondents have failed to point out any material difference in the situation, topography, lay out of the appellants' land with that of the adjacent land in respect of which compensation has been awarded at the rate of Rs. 15,000 per acre. If the impugned order of the High Court under appeal is upheld an anomalous position would arise inasmuch as the appellants will be denied that amount of compensation which has been awarded to other claimants in respect of similar adjacent land. We are therefore of the opinion that the High Court committed error in interfering with the order of the Subordinate Judge and in determining the compensation at the rate of Rs. 7,500 per acre. We hold that the appellants are entitled to compensation at the rate of Rs. 15,000 per acre as determined by the learned Subordinate Judge."

73. The Supreme Court in the aforesaid case took note of the fact that there was no reason for the land owners to be paid at a low rate as it would have created an unfair circumstance against the landlords in the event of their being denied fair compensation which has been awarded to the other claimants in respect of adjacent land.

74. The market value of the land is to be determined with reference to the above market sale of comparable land in the neighbourhood by a willing seller to a willing buyer on or before the date of notification

for acquisition. This is because such sale exemplars give a fair indication of the market value of the land.

75. A "willing seller" is a person who is not acting under any pressure to sell his property (in distress sale), he knows the advantages and disadvantages of his property and sells the same after ascertaining the prevailing market prices at fair and reasonable value. Correspondingly a willing purchaser is a person who has a choice in the matter of purchase of different properties and out of the choice, he, voluntarily decides to buy a particular property by assessing its advantages and disadvantages and the prevailing market value thereof.

76. Another issue which has gained general acceptance is that the sale transactions under the registered sale deeds are to be assumed as normal sales by a willing seller to a willing purchaser. However, in the absence of such registered sale deeds, even auction sales, which stand on a different footing, can be accepted if they are the only comparable sale transactions available in terms of proximity in situation and proximity in time to the acquired land.

77. The Supreme Court in ***Raj Kumar v. Haryana State***, (2007) 7 SCC 609 has observed that the element of computation in an auction sale makes them unsafe guides for determining the market value. However, in ***Executive Engineer, Karnataka Housing Board vs. Land Acquisition Officer, Gadag & Ors***, (2011) 2 SCC 246, the Supreme Court held as hereunder:-

> *"7. But where an open auction sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the*

> *court may have to, with caution, rely upon the price disclosed by such auction sales, by providing an appropriate deduction or cut to off-set the competitive-hike in value. In this case, the Reference Court and High Court, after referring to the evidence relating to other sale transactions, found them to be inapplicable as they related to far away properties. Therefore we are left with only the auction sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% in the auction price disclosed by the relied upon auction transaction towards the factor of `competitive - price hike' would enable us to arrive at the fair market price."*

78. Thus what the Supreme Court cautioned was that in the absence of any comparable sale exemplars, there was no difficulty in accepting auction sales as well but with appropriate deductions which would offset the competitive hike in valuation.

79. In Executive Engineer, Karnataka Housing Board (Supra), the Supreme Court, taking into consideration the existence of gap of three years between the relevant date for determination of compensation and sale exemplars and taking into account that the acquired lands were within the municipal limits with considerable development potential, gave 10% increase per annum for three years for assessing the market value on the concerned date.

80. With respect to the issue regarding compensation for acquisition of a large piece of land on the basis of sale instances relating to smaller pieces of land, the law is very clear that it would always not be

an absolute rule that sale instances relating to small pieces of land are unsafe guides and cannot be considered. Under certain circumstances sale deeds of small pieces of land could be used for determining the value of acquired land which is comparatively large in area.

81. In ***Land Acquisition Officer vs. Nookala Rajamallu***, (2003) 12 SCC 334, it has been held:-

> *"6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to few decisions of this Court in Collector of Lakhimour v. Bhuban Chandra Dutta MANU/SC/0597/1971: AIR 1971 SC 2015, Prithvi Raj Taneja v. State of M.P. MANU/SC/0281/1977:AIR 1977 SC 1560 and Kausalya Devi Bogra v. Land Acquisition Officer MANU/SC/0241/1984: AIR 1984 SC 892.*
>
> *7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."*

82. In ***Bhagwathula Samanna vs. Tehsildar and Land Acquisition Officer***, (1991) 4 SCC 506, it was held:-

> *13. The proposition that large area of land cannot possibly fetch a price at the same*

> *rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted....*

83. In ***Land Acquisition Officer vs. L.Kamalamma***, (1998) 2 SCC 385, the Supreme Court held as under:-

> *"...when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting period required for selling the sites that would be formed."*

84. In ***Smt.Basavva and Ors vs. Special Land Acquisition Officer and Ors***, (1996) 9 SCC 640, the Supreme Court gave a direction that the Courts have to consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect of comparable lands. In case said requirements are met, sufficient deductions should be made to arrive at the just and fair market value

of large tracts of land. The time lag for real development and the waiting period for development are also relevant consideration for determination of just and adequate compensation. Each case depends upon its own facts. In Basavva (Supra), the Supreme Court, on such principle made a total deduction of 65% in determining the compensation.

85. It is true that in normal course it would be an extremely difficult proposition to look for sale instances of large tracts of land as they are very few in number. More often than not similar plots are sold and purchased and it would be rather harsh for the Courts to ask from the claimants, sale instances of lands which are comparable in size to the acquired land. The aforesaid principles of using, as an exemplar, sale instances of small tracts of land with necessary deductions was approved by the Supreme Court in the case of ***Special Land Acquisition Officer and Anr. vs. M.K. Rafiq Saheb*** in (2011) 7 SCC 714.

86. A question arose as to what course is required to be adopted in case several relevant exemplars are available before the Courts. The Supreme Court in ***M.Vijayalakshmamma Rao Bahadur vs. Collector***, (1969) 1 MLJ 45 and ***State of Punjab vs. Hansraj***, (1994) 5 SCC 734 held that averaging the prices fetched by sales by different lands of different kinds at different times may not lead to the correct result regarding the market value of the land in question. Such method ought not to be adopted regularly.

87. In ***Anjani Molu Dessai vs. State of Goa***, (2010) 13 SCC 710 the Supreme Court held as under:-

> ***"20.*** *The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf."*

88. The two decisions referred to in the aforesaid judgment are M.Vijayalakshmamma Rao Bahadur (Supra) and State of Punjab vs. Hansraj (Supra).

89. If there are several exemplars with reference to smaller lands, the safest proposition is to adopt the highest of the exemplars if it appears to be a bonafide transaction. This principle is in accord with the element of fairness in grant of compensation as a land owner is entitled to the highest valuation of the land which a smaller located land in the vicinity has fetched.

90. True it is that many a times it is not desirable to take the average of the various sales deeds, but when the prices differ diametrically, the average of the sale prices also could be taken for determining the market value.

91. What is of utmost importance is that justice to the land losers in cases of compulsory acquisition be handed over. All attempts are required to be taken to award fair compensation to the extent possible on the basis of various factors and the assessment/methods of assessment would vary with the facts of each and every acquisition.

92. It is really relevant, in case of acceptance of a sale instance of a bonafide nature, to determine the percentage of hike, the percentage of deductions, interests, solatium and interest on solatium.

93. In Haryana State Agricultural Market Board vs. Krishan Kumar, (2011) 15 SCC 297, the Supreme Court reiterated the proposition that if the value of small developed plots should be the basis, appropriate deductions will have to be made towards the area to be used for roads, drains and common facilities like park, open space etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines.

94. Consistent view taken by this Court is that one-third deduction is made towards the above heads is justifiable. Reiterating the rule of 1/3rd deductions towards development, the Supreme Court in ***Sabhia Mohammed Yusuf Abdul Hamid Mulla vs. Land Acquisition Officer***, (2012) 7 SCC 595 held that in fixing the market value of the acquired land which is undeveloped or under developed, the general approved deduction is to the extent of 1/3rd of the market value.

95. In ***Kasturi vs. State of Haryana***, (2003) 1 SCC 354, the Supreme Court has held:-

7. *It is not debated that the sale transaction covered by Ext. P-7 relates to a small plot and the land in question acquired is about 84 acres. This land comprising of a large area is not developed although it has potential value for residential and commercial purposes. In order to develop this land, roads were to be laid, provision for drainage was to be made and certain area was to be earmarked for other civic amenities. Thus, after leaving the area in the land required for the purposes mentioned above, plots were to be made for residential and commercial purposes by incurring expenditure for other developmental works, such as providing electricity, water etc. The acquired land is not a small plot located in such a way that no other development was required at all and it could be utilized as it is as a developed building site. It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-*

lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso

> *facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."*

96. Thus the determination of the market value is prediction of an economic event namely a price outcome of hypothetical sale expressed in terms of probabilities.

97. In order to sum up the principles, the positive factors with respect to the acquired land would be:- (i) smallness of size; (ii) proximity to a road; (iii) frontage on a road; (iv) nearness to developed area; (v) regular shape; (vi) leveled land etc. The aspects which would reduce the market value of an acquired land would be (a) largeness of the area; (b) distance from the road; (c) small or narrow frontage; (d) unleveled land; (e) remoteness from the developed locality and (f) all other issues over which a purchaser would be reluctant to acquire the land.

98. The normal proposition is with regard to acceptance of the market value on the basis of the highest exemplar, but where there are several sales of smaller lands and prices range in a narrow bandwidth, the average thereof can be taken as representing the market price. If the values disclosed with respect to two lands vary substantially, it would lead to the inference that either the lands are of dissimilar nature or that the lesser value transaction is because of certain other unfathomable factors. As a general rule if the sale instances are of the same location, averaging is permissible.

99. With respect to the deductions towards development charges, the law seems to have been crystallized to deducting 1/3rd in case of undeveloped or under-developed areas but lesser deductions whether not or less developed is required to be made for implementation of the public purpose for which the land is acquired. If the acquired land is having certain other advantages, for instance its nearness to developed area, it could well be taken into consideration for reducing the percentage of cut to be applied. The developmental charges in such cases would be lesser on that account. What is not to be lost sight of is that there is a difference between a developed area and an area having a potential value which is yet to be developed. An area which is developed or adjacent to a developed area would not necessarily make it qualify for lesser deductions. The percentage of deductions for development is to be calculated to arrive at the market value of the land in question.

100. Another area where there has been, by now a unanimity of opinion is the interest which is to be paid to the land owner. The relevant statutory provisions of Sections 28 & 34 of the Land Acquisition Act, 1894 are:-

> *"28* ***Collector may be directed to pay interest on excess compensation****. - If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [nine per centum] per annum*

from the date on which he took possession of the land to the date of payment of such excess into Court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

34. ***Payment of interest****. -When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited.*

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

101. Thus the Land Acquisition Act, 1894 provides for payment of interest to the claimants either under Section 34 or under Section 28 of the Act. Section 34 of the Act enjoins upon the Collector to pay

interest on the amount of compensation at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. The proviso to Section 34 makes it very clear that if the compensation amount is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% from the date of expiry of the period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

102. The interest which is paid under Section 28 of the Act is on the awarded sum which is in excess of what the Collector has awarded as compensation. This also has to be paid at the rate of 9% per annum for the first year of taking possession and 15% per annum thereafter if the amount of compensation was not paid or deposited within a period of one year or deposited thereafter.

103. Though unlike under Section 34 where payment of interest is mandatory, the award of interest under Section 28 is discretionary but such discretion has to be exercised with proper care and circumspection and in a judicious manner. While Section 34 of the Act is couched in mandatory terms which are evident from the use of the word "shall", in Section 28 there is a use of the word "may" but this does not give an uncontrolled power in the hand of the Court.

104. For quite some time there was a dispute with regard to the liability of the State to pay interest on the amount envisaged under Section 23(2) of the Land Acquisition Act which is ordinarily referred to as solatium.

105. The Constitution Bench in ***Sunder vs. Union of India***, (2001) 7 SCC 211, relying upon the various decisions of the High Courts especially the decision rendered in Punjab & Haryana High Court in ***State of Haryana vs. Smt.Kailashwati and Ors***, AIR 1980 P&H 117 held that the interest awardable under Section 28 would include within its ambit both the market value and the statutory solatium. Thus a person who is entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium. The aforesaid position of the Constitution Bench in Sunder (Supra) was further clarified by a subsequent Constitution Bench judgment in ***Gurpreet Singh vs. Union of India***, (2006) 8 SCC 457.

106. In Gurpreet Singh (Supra), the Supreme Court held as hereunder:-

> ***"****32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under*

Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under Section 18 of the Act. When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

34. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the Reference Court if it had not already been deposited.

35. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply."

107. After having seen the development of law with respect to determination of market value of land for the purposes of grant of compensation to the landowner and various statutory interests, we proceed ahead to analyze the facts of this case for determining the market value and whether the appellants are entitled to enhanced compensation and if so to what extent as well as the rate of interest which the claimant is required to be paid.

108. The evidence adduced on behalf of the parties clearly make out that the land acquired is adjacent to one of the most prestigious commercial centers of Delhi i.e. Nehru Place. The Reference Court has also more or less accepted the proposition advanced on behalf of the appellants that the acquired land is very near to the Nehru Place commercial complex and is also situated very near to the well known Kalkaji temple.

109. The report of the tehsildar of the area (Exh.RW-2/1) describes the boundaries of the land. In the north of the acquired land is the parking place of Kalkaji Temple and Okhla Industrial Area whereas the south portion of the land is vacant. Nehru Place is at a distance of 300 mts. To the east of the land is Kalkaji Temple and there is vacant land till the ring road in the west of the acquired land.

110. The evidences further reflect that a water tank was constructed over the land prior to 1972. The presence of NCERT godowns, residential quarters of Delhi Jal Board appurtenant to the water treatment plant has not been disputed. The categorical assertion of the witnesses on behalf of the appellants which has not been seriously

disputed by the evidence offered on behalf of the respondents is location of a factory at a distance of 50 yards.

111. The Reference Court has clearly held on the basis of the evidence that the land in question could not have been reserved for being used as green belt or else such structures would not have been there. The Reference Court also clearly spells out that on the date of notification, the potentiality of the land is to be seen and not the possible user of such land in future. If this was the line of reasoning of the Reference Court, this Court is at a loss to understand as to why the Reference Court was not prepared to accept the sale instances of the neighbouring area which were prior in time to the notification.

112. It further appears that all modern facilities including road, electricity and water is available in the area. This could be inferred from the presence of the water treatment plant, residential quarters as well as the factory. The presence of Okhla Industrial Area across the road makes the acquired land commercial and developed. There is an admission of the witnesses regarding two roads on either side of the area acquired.

113. The nature of land is stated to be leveled and rocky. Such lands are always most suited for multi storied buildings. The rocky but leveled land in the vicinity of Nehru Place complex leaves no scope for excluding the sale instances which have been offered by the appellants as relevant exemplars for determining the market value.

114. The principle of determining the market value by keeping in mind and entering into the shoes of a willing buyer or a willing

purchaser has been applied uniformly without any departure for a very long time. The potentiality has to be seen on the day of the notification and which would include the positive or the negative factors regarding the assessment of the market value. The acquired land has an additional unique advantage of largeness. Such lands are most suitable for any further development and use.

115. The sale instances given by the appellants are all of Nehru Place and the area ranges from 334 sq.mts to 741 sq.mts. Thus the sale instances are roughly of the same period which is prior to the notification under Section 4 of the Act in the present case and there is no substantial or diametrical divergence in the rates. The position of law with respect to the sale exemplars have been noted. It is always not necessary to insist for sale instances of the same size of land which is acquired. Had it not been true, there was no necessity of reducing the price to per sq.yard or per sq.mtr. The sale instances have the endorsement and approval of the DDA (respondent No.2).

116. The logic of the Reference Court that the sale exemplars of the Nehru Place cannot be taken into account as Nehru Place has a distinct position in the commercial world is highly distorted and without any substance. The grounds on which the sale exemplars have been discarded by the Reference Court appears to be specious and meretricious.

117. Admittedly, the distance between the acquired land and Nehru Place is 300 sq.mtrs. There is no reason why the sale instances available before the Trial Court could not have provided a good guide

for determination of the market value. If at all, Nehru Place has a distinct advantage of being highly developed commercial complex, the same could have been accounted for by providing for deductions after taking out the average of the sale exemplars. The contention of the appellants that the non examination of either the vendor or the vendee of the aforesaid sale instances renders those sale instances to be inadmissible in evidence is being noted only to be rejected.

118. The evidence with regard to Exh.AW-1/1 is regarding lease deed for larger tract of land. The same cannot be accepted as comparable sale. Similarly, the instance regarding sale of shop in Greater Kailash-II is also not acceptable because of the distance from the acquired land. The sale instances namely Exh.AW-8/1 to AW-8/5 are of the year 1973, roughly about five years before the notification.

119. The determination of the market value by this Court in RFA No.65/1981 vide judgment dated 21.08.1988 appears to me to be the safest guide to arrive at a fair conclusion. In RFA No.65/1981, referred to above, the average of the sale exemplars Exh.AW-8/1 to AW-8/5 were taken to calculate the average rate per sq.yard, which came to Rs.1880/- per sq.yard. Adding 12% annual increment thereupon for a period of five years i.e. from 1973 to 1978, the date of notification, the average rate came to approximately Rs.2900/- per sq.yard.

120. The Division Bench of the Delhi High Court, referred to above deducted 30% as development cost as well as the cost of land to be spared for the purposes of roads, parks and other facilities. After the

aforesaid deduction the price arrived at by the Court was approximately Rs.2000/- per sq.yards on the date of the notification.

121. This Court is of the opinion that the deduction of 30% is reasonable and fair, for the reason that the sale instances which have been relied upon are of an extremely developed area of Nehru Place. Further deductions are not required to be done as a factory exists nearby which pre-supposes the area to be fairly developed. The small sale instances for small tracts of land do not create any impediment for this Court to arrive at a reasonable conclusion.

122. It has been submitted that the compensation to the landlord requires interest to be paid from the date of actual dispossession from the land in dispute. The appellants were dispossessed from 1972 though the notification under Section 4 of the Act came only on 30.06.1978. It appears that the appellants were dispossessed for the purposes of construction of water treatment plant and residential quarters of Delhi Jal Board. This fact has not been disputed and thus it can be taken into account that the dispossession is from the year 1972.

123. Now the question arises whether the appellants are entitled to payment of interest since the date of their dispossession which is prior to the notification under Section 4(1) of the Act.

124. The Land Acquisition Act is a complete code in itself dealing with acquisition of land, taking possession of the same and paying compensation to the land owner. After the notification under Section 4(1) of the Act, a proper survey is made. Thereafter the interested persons have the right to object to the acquisition. Thereafter a

declaration under Section 6 of the Act is made and published in the Official Gazette. It is at this stage that the Collector issues notice to the interested persons under Section 9(1) of the Act intimating them that the Government intends to take possession of the land. An award is made by the Collector under Section 11 of the Act regarding compensation which would be allowed for the land. Section 16 of the Act provides that when a Collector has made an award under Section 11, he may take possession of the land which will thereafter vest in the Government. The stages provided in the Act reflect that possession of the land can be taken only after the award is made under Section 11 of the Act. In urgent situations, an exception has been carved out under Section 17. Whenever, an appropriate Government so directs, the Collector without having made any award, may, on the expiry of 15 days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose and such land shall thereupon vest in the Government without any encumbrance. The urgency which is taken care of by Section 17(1) of the Act requires a notification under Section 9(1) of the Act. Such notification also cannot be issued prior to the publication of notification under Section 4(1) and 6 of the Act. Thus any possession prior to the issuance of notification under Section 4(1) is without any sanction of law. It is precisely for this reason that the Act requires the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purposes of grant of compensation.

125. The relevant provisions with regard to payment of interest namely Section 34 of the Act makes it very clear that the interest shall be paid at the rate of 9% per annum from the time of taking possession until paid or deposited.

126. The Supreme Court in ***R.L.Jain vs. DDA***, (2004) 4 SCC 79 at para 12 held as under:-

> ***"12.*** *The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub-section (2) of Section 23. The heading of Part II of the Act is "Acquisition" and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the*

> *stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is dehors the provisions of the Act."*

127. In the aforesaid case namely R.L.Jain (Supra), land had been acquired only after the preliminary notification was issued on 09.09.1992 as earlier acquisition proceedings were declared null and void in the suit instituted by the land owner and consequently, he was not entitled to compensation or interest thereupon for the anterior period.

128. In R.L.Jain (Supra), the Bench, however, noted that where possession is taken prior to the issuance of notification, it would be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled

while determining the compensation amount payable to the land owner for the acquisition of the property.

129. It may be noted here that no effort was made by the land owner to claim any damages for use and occupation of the land or to get the rent for the same.

130. Strictly speaking, interest is payable since the date of dispossession after the notification under Section 4(1) of the Act. However, taking into consideration that appellants are surely to be compensated for the number of years for which they were dispossessed prior to the notification, I deem it expedient to award interest at the rate of 6% per annum from the date of dispossession in the year 1972 till the date of notification under Section 4(1) of the Act. This would take care of the damages to which the appellant, in the opinion of this Court, would be entitled to.

131. The appellants would further be entitled to interest at the rate of 9% per annum for one year from the date of notification and 15% per annum after the expiry of one year till the payment.

132. The appellants shall also be entitled to all other statutory benefits, including solatium at the rate of 30% per annum and interest over solatium in terms of the judgment delivered in ***Sunder vs. Union of India,*** 2001(7) SCC 211 and ***Gurpreet Singh vs. Union of India,*** (2006) 8 SCC 457.

133. Thus, the market value of the acquired land is fixed at Rs.2,000/- per sq. yard as on 30.06.1978 and 06.06.1978 (dates of notification under Section 4 of the Act for Bhola Nath Sharma through

LRs and Anand Prakash and Ors. respectively) and the appellants in both the cases are entitled to be compensated on that basis.

134. As noted above, the appellants in LA Appeal No.109/2013 shall be paid interest at the rate of 6% per annum from the date of dispossession in 1972 till the date of notification.

135. The appellants in both the appeals will be entitled to interest at the rate of 9% per annum for one year from the respective dates of notification and thereafter at the rate of 15% per annum till payment along with statutory solatium at the rate of 30% per annum with interest.

136. The appeals are disposed of in terms of the above.

ASHUTOSH KUMAR, J

MARCH 23, 2016
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