(2010) 06 DEL CK 0061

In the Delhi High Court

Case No : LA.A. No''s. 164, 165, 166, 167, 168, 169, 170, 172, 173, 175, 177, 178, 179, 180, 181, 182, 183, 184, 186, 187, 189, 190, 192, 193, 200, 203, 204, 205, 206, 207, 209, 210, 211, 213, 224, 233, 272, 278, 281, 294 and 375 of 2007, 1125 of 2008 and 47 and 68

Bhule Ram and Others APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 03-06-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 18, 23, 23(1), 23(1A)

Citation : (2010) 06 DEL CK 0061

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Deepak Khosla, in LAA 164, 165, 166, 167, 168, 169, 170, 172, 173, 175, 177, 178, 179, 180, 181, 182, 183, 184, 190, 192, 193, 200, 210, 211, 213, 224, 233, 272, 278, 281, 294 and 375/2007, 1125/2008 and 47 and 68/2010 and Om Prakash, in LAA 186, 187, 189, 203, 204, 205, 206, 207 and 209/2007, for the Appellant; Sanjay Poddar and Ramesh Ray, S.K. Taneja Puneet Taneja and Mohd. Asgar Ali for NTPC, for the Respondent

Judgement

Hima Kohli, J.—This common judgment shall dispose of the appeals filed by the appellants u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act?), challenging the fixation of market value of the land acquired by the Land Acquisition Collector (LAC) situated in village Aali, pursuant to an Award No. 4/1998-99 pronounced on 23.2.1999, after issuance of Notification u/s 4 and 17(1) of the Act on 31.10.1996, which ripened in a Declaration u/s 6 of the Act, issued on 26.2.1997. The total land acquired by the above Award measures 996 bighas and 8 biswas.

2. With the consent of the parties, L.A.A. No. 173 of 2007 is being treated as the lead case. While learned Counsel for the appellants, Mr. Deepak Khosla, addressed arguments on behalf of all the appellants, respondent/UOI was represented by Mr. Sanjay Poddar, Advocate, and Mr. S.K. Taneja, Sr. Advocate

addressed arguments on behalf of respondent/NTPC.

3. The purpose of acquiring the land was for Planned Development of Delhi, namely, for construction of Ash Pond by respondent/NTPC. Under the Award No. 4/1998-99, the market value of the land was fixed by Land Acquisition Collector at Rs. 1,94,088/- per bigha, based on the minimum rate fixed by the Delhi Government for agricultural land, apart from solatium and other statutory benefits. While assessing the market value of the land in question on 30.10.1996, the LAC observed that there was no previous award in the preceding year, which could be referred to or taken into consideration. He declined to take into consideration two sale deeds of land measuring 1 bigha each, valued at Rs. 4,20,000/-, executed in February, 1996 and relied upon by the claimants, on the ground that while the sale deeds were only for 1 bigha each, the acquired land was 1000 times more than that and there was a certain fall in the price when the land is taken in bulk, instead of smaller plots. Instead, the LAC relied on the policy of the Delhi Government dated 25.7.1997 which had fixed the corresponding appreciation of land @ 11.5% p.a. as market value so fixed on 30.5.1990, which was Rs. 4,65,000/- per acre. Taking into consideration, the said minimum rate fixed under the aforesaid policy as the best factor to determine the market value, the LAC fixed the market value of the land @ Rs. 1,94,088/- per bigha, as payable to the expropriated land owners.

4. Aggrieved by the said determination of market value of the land, the appellants filed a reference petition before the learned Additional District Judge u/s 18 of the Act. Vide judgment and order dated 23.08.2007, the learned Additional District Judge fixed the market value of the acquired land at Rs. 1,96,940/- per bigha, apart from granting solatium and other statutory benefits, in terms of the judgment of the Supreme Court in the case of Sunder v. UOI reported as DLT 2001 (SC) 569. The said rate of the land was again determined by the learned Additional District Judge on the basis of the minimum rate fixed by the Government for agricultural land. But the enhancement in the market value of the land from Rs. 1,94,088/- per bigha to Rs. 1,96,940/- per bigha took place on account of an error of calculation detected in the assessment made by the LAC, resulting in a difference of Rs. 2,852/- per bigha. Dis-satisfied by the judgment and order of the Reference Court, the appellants have filed the present appeals praying inter alia for enhancement of the compensation payable for the acquired land, by fixing the same as Rs. 5,00,000/- per bigha (i.e., @ Rs. 500/- per sq.yd. or @ Rs. 24,00,000/- per acre), besides statutory benefits, including solatium and interest etc.

5.Counsel for the appellants assailed the impugned judgment and submitted that the Reference Court erred in discarding the two sale deeds pertaining to land situated in the same village, which were duly proved on record and were exhibited as Ex.P-1 & P-2. Ex.P-1 is a sale deed dated 28.2.1996 in respect of khasra No. 785 measuring 1 bigha, sold for a consideration of Rs. 4,90,000/-. Ex.P-2 is a sale deed dated 23.2.1996 in respect of khasra No. 815/2 measuring

1 bigha, sold for a consideration of Rs. 4,20,000/-. He stated that the vendors and the vendees of the sale deeds were duly examined in the Reference Court and there was no justification for discarding the said documents only for the reason that the sale consideration was paid in cash and when received by the vendors, was not deposited in the bank. He asserted that the sale transactions, subject matter of both the sale deeds were bona fide and were between a willing purchaser and a willing seller and that requisite mutation was also sanctioned pursuant to the sale deeds. It was further submitted that the land subject matter of the two sale deeds was also acquired under the instant notification and the instant award and the purchasers of the land under the two sale deeds were claimants before the Reference Court and appellants before this Court, in separate appeals, registered as L.A.A. No. 210/2007 and L.A.A. No. 211/2007.

6. Mr. Khosla submitted that in case of compulsory acquisition, the sale of similar land in the very same locality is the best evidence and a land owner is entitled to base his claim on the highest value fetched by a sale transaction of similar land in the same locality. It was also stated that the two sale deeds were executed prior to the issuance of the preliminary notification and were the best evidence available. Thus, according to him, there was no reason for the LAC and the Reference Court to have ignored the two sale deeds in question, particularly when the UOI did not produce any other sale transaction of a larger plot in village Aali during the relevant period and nor did the Revenue Authorities have in their power and possession, any other documentary evidence. In support of the said submission, he relied on the following judgments:

(i) Sri Rani M. Vijayalakshmamma Rao Bahadur, Ranee of Vuyyur v. The Collector of Madras 1969 MLJ 45 (para 2)

(ii) Union of India Vs. Nand Kishore and Others,

(iii) V.P. Singh Rathour Vs. Smt. Ram Kali Devi and Others,

(iv) Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri,

(v) The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others,

7. It was further canvassed by the counsel for the appellants that the mere distance of 3 Kms. between village Jasola and village Aali itself is not relevant as both the lands are in the same vicinity, and therefore the determination of the market value of the land in village Aali could be based on the prices of the land situated in village Jasola. On this aspect, he referred to the decision of the Supreme Court in the case of Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, . He also relied on the topography of the land as reflected from the Eicher Map placed on the record and on the deposition of PW-1, Sh. Ashok Kumar, the Halqa Patwari of village Aali, who had stated that the nature of land in village Jasola and village Aali were similar. It was submitted that the land in village Aali was fairly developed, as the outlet of M/s. Haldiram

and the NTPC colony existed in the area and the said colony had the facilities of electricity, water, roads etc. Further, the land of village Aali is surrounded by Mohan Co-operative Society, Indraprastha Apollo Hospital, and that Jasola Sports Complex and Jasola Vihar are in close vicinity of the land in question. It was also urged that in a batch of appeals pertaining to village Jasola, lead matter being, RFA No. 114/98 S.S. Aggarwal and Ors. v. UOI decided on 21.2.2003, the Division Bench had fixed the market value of the land in the year 1995 @ Rs. 7,390/- per sq. yd. (i.e., Rs. 74,00,000/- per bigha) and considering the fact that village Aali and village Jasola are both situated on Mathura Road which is an arterial road leading from Ashram Chowk to Badarpur border and that village Aali is situated only a little further away from village Jasola, the value of the acquired land could not be as low, as determined by the courts below.

8. Per contra, counsel for the respondent/UOI supported the impugned judgment and submitted that the Reference Court had rightly discarded the two sale deeds (Ex. P-1 & Ex. P-2), as they did not reflect the representative price for fixing the price of a large chunk of land. He further submitted that the sale transactions were not bonafide for the reason that the entire transaction was in cash and the sale deeds were executed more than three years after issuance of the preliminary notification. Support was sought to be drawn from the judgment of the Supreme Court in the case of The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, to urge that the conditions required to be met in order to adopt the price reflected in the Sale Deeds, as laid down in the aforesaid judgment, were not fulfilled. In response to the argument of the counsel for the appellants that reliance could have been placed on the price of land fixed for village Jasola, counsel for the respondent/UOI submitted that no comparison could have been drawn with village Jasola for the reason that the criteria for determining the value of the land is not "contiguity of the land", but "potentiality of the land" and that value of the land in village Aali could not be compared with village Jasola merely because it was situated some three kilometers away. He argued that the testimony of PW-1 had to be discarded as he failed to produce any document to establish that the nature, use, potentiality and advantages of the land in village Aali could be held comparable to the land situated in village Jasola.

9. Mr.Poddar denied that the land in village Aali was developed, or situated on an arterial road, i.e., Mathura Road. Rather, reference was made to the same Eicher map, to submit that the acquired land was situated near the Agra canal, and was at least 3 kilometers away from the main road, that it did not have any infrastructure by way of road, water, electricity or sewage and as was apparent from the two sale deeds produced by the appellants, the acquired land was agricultural in nature. He also referred to a decision in the case of Union of India v. Zila Singh reported as : (2003) 10 SCC 167 and in the case of The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, and urged that a small piece of land cannot be compared with a large tract of acquired land. To substantiate his submission

that there could be no comparison between the land situated in village Aali and village Jasola and that the appellants had failed to prove that the situation and potentiality of land in both the villages is the same, he relied on the following judgments:

(i) Baldev Singh and others Vs. State of Pujnab through Collector,

(ii) Satpal and others, etc. Vs. Union of India,

(iii) Kanwar Singh and Others Vs. Union of India,

(iv) The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others,

(v) Raj Devi and Others Vs. Union of India (UOI) and Another,

(vi) General Manager, ONGC Ltd. v. Rameshbhai Jivanbhai Patel and Anr. (2008) 14 SCC 745 (para 10)

10. Finally, counsel for the respondent/UOI pointed out that there exists another material evidence, by way of a decision of the Division Bench of this Court dated 30.11.2007 in a batch of matters, lead matter being L.A.A. No. 92/2007, entitled "Nirmal v. UOI", which relates to land acquired in the same village, for the same public purpose, and covered under notification dated 16.10.1992, and can be taken into consideration for determining the market value of the land in village Aali. He also submitted that after discussing the very same evidence, the Division Bench had discarded the two sale deeds (Ex.P-1 and P-2) and held that the appellants/landowners therein were entitled to compensation @ Rs. 6,51,000/- per acre, with proportionate statutory benefits.

11. Counsel for the respondent No. 2/NTPC adopted the arguments addressed by the counsel for the respondent No. 1/UOI, and went on to add that in the impugned judgment, mention was made of order dated 21.3.2007 in LAC No. 4/06, entitled "Shafiq-ur-Rehman v. UOI", pertaining to the same award, in which case it was observed that 1 bigha of acquired land was purchased by the petitioner therein/Shafiq-ur-Rehman for a consideration of Rs. 1 lac by virtue of a sale deed dated 18.12.2005 executed 10 months? prior to the date of notification issued u/s 4, which showed that the market value of the land was much less than the value assessed by the LAC at Rs. 1,94,088/- per bigha. After extracting the aforesaid observations made in LAC No. 4/06, the Reference Court observed in the impugned order that the sale deed in question in respect of 1 bigha of land in village Aali reflected that the prevalent market value of the acquired land was much less than what was mentioned in the sale deeds relied upon by the appellants. It was contended by the counsel for the respondent No. 2/NTPC that the findings of the Reference Court as above have not been assailed by the appellants in the present appeals and hence they are deemed to be accepted as correct.

12. In rebuttal, counsel for the appellants contended that in the case of Nirmal

(supra) the Division Bench of this Court did not deal with the two sale deeds in question and made no comments in respect thereof and hence the assumption of the counsel for the respondent/UOI that the two sale deeds were discarded, is misplaced. He strenuously urged that the appellants having adduced evidence by producing sale deeds, had discharged the initial onus placed on them to prove the issues framed by the Reference Court and thereafter, the onus shifted to the respondents, which they had failed to discharge, as they did not place on record any evidence to establish the correct price of the acquired land. With respect to the allegation of the respondent/UOI that the two sale deeds were not bonafide, it was stated by the counsel for the appellants that no material was brought on record by the respondent/UOI to cast any doubt on the sale deeds.

13. It was further stated on behalf of the appellants that it was not as if there were frequent acquisitions of land in village Aali and hence the question of creating or fabricating evidence did not arise. In support of the argument that merely because the two sale deeds in question were too close to the date of issuance of notification was itself not sufficient to reject the said evidence, reference was made to a judgment of the Supreme Court in the case of Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, . It was further submitted that fixation of compensation based on mis-declared values in respect of transactions to which the claimants are not a party, cannot bind them. Reliance was placed on an order dated 17.2.2009 passed by a Division Bench in WP(C) No. 2109/08 entitled "Ajay Kumar v. Govt. of NCT of Delhi" to rebut the argument of the respondents that the appellants could not claim the price as fixed for the land situated in village Jasola. Counsel for the appellants stated that as the development was taking place in a phased manner in the area, expansion was being slowly undertaken towards the main Mathura road and that the future potential of the land had to be a matter of consideration while determining the market value of the land in question. He referred to a decision of the Supreme Court in the case of P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, and of this Court in the case of V.P. Singh Rathour Vs. Smt. Ram Kali Devi and Others, to support the above plea.

14. With respect to the submission made by the counsel for the respondent No. 2/NTPC that order dated 21.3.2007 passed by the Reference Court in LAC No. 4/06, entitled "Shafiq-ur-Rehman v. UOI" was of relevance, counsel for the appellants stated that the rate shown in the sale deed in question was far less than the price fixed for agricultural land in the policy of the Delhi Government dated 25.7.1997 which indicated the minimum price fixed for agricultural land in Delhi. He stated that taking into consideration the policy of the Delhi Government, the LAC had determined the market value of the land in question at Rs. 1,94,088/- per bigha at a later date and hence the sale deed dated 18.12.1995 referred to in the case of Shafiq-ur-Rehman, ought to be treated as a case of under valuation. In support of the aforesaid submission, he relied on a judgment of the Division Bench of this Court dated 21.02.2003 in RFA No.

114/1998 entitled "S.S. Aggarwal v. UOI". Reliance was also sought to be placed on a recent decision of the Supreme Court in the case of Subh Ram and Ors. v. Haryana State and Anr. reported as 2010 I AD (SC) 619, to state that the aforesaid sale deed dated 18.12.1995 could not have been considered as the LAC had himself assessed the market value of the land at Rs. 194 per.sq.yard, which after necessary correction was carried out by the Reference Court, came to a figure of Rs. 196 per sq.yard.

15. In his sur-rejoinder, counsel for the respondent No. 1/UOI stated that it is apparent from a perusal of the impugned judgment, that the Reference Court had only discussed the sale deed dated 18.12.1995, but had not made it the basis for assessing the market value of the acquired land. On the issue of under valuation, he sought to rely on a decision of the Supreme Court in the case of Lal Chand Vs. Union of India (UOI) and Another, wherein the evidentiary value of undervalued sale deeds in determining the market value was discussed.

16. I have heard the counsels for the parties and have carefully considered their respective submissions, besides the judgments relied upon by both the sides, in the light of the findings returned by the Reference Court.

17. As much emphasis has been laid by the counsel for the appellants on the two sale deeds (Ex.P1 and P2) pertaining to the land situated in village Aali itself, as being important pieces of evidence for assessing the market value of the acquired land, the evidentiary value of such documents requires examination. The law mandates that when the State compulsorily deprives a person of his land for public purpose, by invoking the provisions of the Land Acquisition Act, he must be paid compensation in accordance with law, i.e., he must be paid the true market value of the acquired land. It has been held in a catena of decisions, that the market value as postulated in Section 23(1) of the Act, is deemed to be the just and fair compensation for the acquired land and that the words "market value" would be the price of the land prevailing on the date of publication of the preliminary Notification u/s 4(1) of the Act. The acid test for determining the market value of the land is the price, which a willing vendor might reasonably expect to obtain from a willing purchaser. In determining the market value, the factors enumerated in Section 23 are to be taken into consideration, and those set out in Section 24 are to be excluded. For ascertaining such a market value, the Court can no doubt rely upon such sale transactions, which would offer a reasonable basis to fix the price, for which purpose, sale transaction relating to smaller parcel of land for the purpose of assessing the market value in respect of a large tract of land can also be taken into consideration after making appropriate deductions such as for development of land for providing space for roads, sewers, drains, expenses involved in formation of a layout, lump-sum payments as well as the waiting period required for selling the sites that would be formed and other expenses involved therein, but before doing so, the evidentiary value of such a sale deed is required to be carefully scrutinized. As held in the case of Nookala Rajamallu (supra), in order to adopt the price

reflected in the sale deed, the following conditions are required to be met:

9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification u/s 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages

10. It is only when these factors are present, it can merit a consideration as a comparable case (see The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty,

18. In the present case, the two sale deeds in question are dated 28.02.1996 (Ex.P-1) and 23.02.1996 (Ex.P-2) respectively. Both are in respect of one bigha of land situated in the village Aali. While the sale consideration as mentioned in Ex.P-1 was Rs. 4,90,000/-, the sale consideration in respect of Ex.P-2 was mentioned as Rs. 4,20,000/-. As the Notification u/s 4 of the Act was issued on 31.10.1996, the time lag between the date of execution of the sale deeds in question and the issuance of Notification was less than one year. Hence at first blush, the submission of the counsel for the appellants that the sale prices reflected in the aforesaid two sale deeds ought to have been accepted, as the prices indicated therein were fetched for similar lands with similar advantages and potentialities, executed on or about the time of preliminary Notification, appears quite attractive. However, the bona fides of the sale transactions also need to be put to test. In this context, it is relevant to examine the evidence led by the appellants.

19. One of the witnesses produced by the appellants, Shri Bishamber Dayal deposed that he had executed the sale deed dated 23.02.1996, in respect of one bigha of land for a sale consideration of Rs. 4,20,000/- which amount was received by him from one Sh. Surinder, entirely in cash. In his cross-examination, the said witness was unable to state as to how many witnesses were present at the time of execution of the sale deed. He further admitted that though he had a bank account, but the cash received on account of the sale was not deposited in the bank. He conceded that he did not make any declaration with the Income Tax authorities in respect of the sale and nor had he taken any permission for sale of the land in question. While it is narrated in the Sale Deed that the money had already been received by the vendor, the vendee deposed that the whole consideration was paid to him on the same day in the office of the Registrar.

20. Similarly, the other witness produced by the appellants, Shri Mahender Singh

stated in his testimony that he had executed the sale deed dated 28.02.1996, in respect of one bigha of land in village Aali sold by him to Sh. Arjun, for a consideration of Rs. 4,90,000/- which sale consideration was received by him in cash, though he admitted having a bank account. The purchaser of one bigha of land, subject matter of Ex.P-2, Shri Surender Singh deposed that he had purchased a piece of land measuring one bigha for a sale consideration of Rs. 4,20,000/-, which was paid by him in cash. He stated that he had purchased the land for agricultural purposes. In his cross-examination, he admitted that the land was purchased after issuance of the Notification u/s 4 of the Act and there were no authorized or unauthorized colonies near about the land in dispute.

21. From the aforesaid testimony of the witnesses, the genuineness of the two sale deeds appears to be doubtful. The vendors under the two sale deeds admitted that the entire sale consideration was received by them in cash and though they were income tax assessees, they did not deposit the sale amount into their bank accounts. This is despite the fact that both the vendor and the vendee of Ex.P-2 admitted maintaining bank accounts in their names. The parties also admitted that they did not disclose the sale transaction to the Income Tax authorities. Pertinently, the land was being utilized by the vendor for agricultural purpose and was also purchased for the very same purpose. There is force in the contention of the counsel for the respondent/UOI that no prudent cultivator would purchase one bigha of land for the purposes of cultivation, as cultivation in such circumstances would prove to be quite uneconomical. The said sale deeds came into existence a few months prior to the issuance of the Notification in question and after the survey conducted by the Government for the purpose of acquisition. Interestingly, both the seller and the purchaser were claimants before the Reference Court and are appellants in the present Court. Apart from the sale deeds, the appellants were unable to place on record any contemporaneous evidence to support the sale transactions. In such circumstances, mere examination of the vendor and vendee of the sale deeds is not sufficient, in the absence of any proof of passing of the sale consideration under the sale deeds or the circumstances in which, the said documents came to be executed. As observed in the case of Baldev Singh (supra), it is not uncommon that prior to issuance of preliminary Notification, the survey of the land is conducted by the Government and as it takes some time for the publication of the Notification, such like documents are brought into existence so as to increase the market value of the land.

22.The submission of the counsel for the appellant that having adduced sufficient evidence by producing the sale deeds and the executants in the witness box, they had discharged the onus placed on them, which shifted to the respondents who failed to discharge the same, must be examined in the light of the observations made by the Supreme Court in the case of P. Ram Reddy (supra). It was observed in the said case that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for the court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses, who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not creditworthy. But, in land acquisition references before civil courts, where witnesses give oral evidence in support of the claims of the claimants for higher compensation, the ineffective cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner, in which the claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State. Hence, it cannot be said that whenever the statements made by claimants? witnesses in courts are not got over on behalf of the Collector by subjecting the witnesses to effective cross-examination or by not adducing evidence in rebuttal, the courts are obligated to accept such statements of witnesses as true, if tested on the basis of probabilities, becomes unreliable. Such is not even the case here. The respondents have effectively cross-examined the witnesses produced by the appellants in support of the two sale deeds, and elicited sufficient information from them to cast a shadow on the said documents. Mere acceptance of a document of sale transaction as evidence, does not mean that the court is bound to treat them as reliable evidence. All the pros and cons have to be weighed by the court. Having tested the oral evidence of the appellants on the touchstone of probabilities, it has to be held that the two sale deeds (Ex.P-1 & Ex.P-2) appear to be untrustworthy and cannot be relied upon for determining the market value of the acquired land in village Aali at the time of issuance of preliminary Notification. This Court is therefore inclined to agree with the Reference Court that the aforesaid sale deeds could not be relied upon to assess the market value of the land, as the appellants were unable to dispel the cloud of suspicion hanging on the aforesaid documents, by producing supporting contemporaneous evidence to establish their genuineness.

23. In view of the conclusion that the bona fides of the two sale transactions with regard to the same land under acquisition appear to be untrustworthy and were rightly not relied upon by the Reference Court to reflect the prevalent market value of the acquired land, this Court need not dwell on the question as to whether the value fetched by a smaller parcel of land could form the basis for determination of the value of a large tract of land. For the said reason, the judgments referred to by both sides as to in what circumstances, can the sale price in respect of a small piece of land be the determinative factor for deciding the market value of the land, need not detain the Court.

24. The second plank of the arguments addressed on behalf of the appellants is that for determining the market value of the acquired land, the Reference Court ought not to have ignored the evidence produced by the appellants, pertaining to the market value of the land situated in village Jasola, particularly when both the lands were situated in the same vicinity and the Halqa Patwari, PW1 had deposed that the nature of the land in village Jasola and village Aali were similar.

25. It is a settled law that in the absence of any reliable instance of sale of land in the same village which can form the basis to assess the market value of the

acquired land, the Courts can take into consideration the prices of land situated in the adjoining villages. However, the potentiality of the land is an important factor. Following the decision of the Supreme Court in the case o Smt. Tribeni Devi and Others Vs. Collector of Ranchi, it was held by the High Court in the case of Mani Ram Sharma (supra), that the potentiality of land is a true element of value and it will include probabilities, possibilities and prospects. A Division Bench of this Court observed in the case of Raj Devi (supra), that the mere fact that two villages are contiguous to each other could not be sufficient for granting the same compensation to owners of lands in the two villages. Generally speaking, there would be different situations and potentialities and the land situated in two different villages cannot be identical, unless it has been established that the situations and the potentialities of the land in two different villages are the same. (Refer: Kanwar Singh (supra). This can only be determined with reference to the material to be placed on the record, or made available in that regard by the parties concerned and not purely on surmises and conjectures.

26. In the case of P. Ram Reddy (supra), on the question as to whether the building potentiality of the land acquired under the Act, is required to be taken into consideration for the purpose of determining its market value and if so, in what manner, the Supreme Court held as below:

8. Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land u/s 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged u/s 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonable capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged u/s 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged u/s 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e. on its potentiality. When the acquired land has the potentiality of being use for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonable expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable

to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the LA Act.

(emphasis added)

27. In the present case, the evidence placed on the record by the appellants to claim parity with the land situated in village Jasola is a judgment of the Division Bench of this Court in RFA 114/1998 entitled S.S. Aggarwal and Ors. v. Union of India and Ors. whereunder the land notified u/s 4 of the Act on 06.01.1995 in village Jasola, was assessed at Rs. 7,390/- per sq. yard (Ex.P4), the testimony of Shri Ashok Kumar(PW-1), Halqa Patwari of village Aali and the topography of the area as per the site plan.

28. In his testimony, Shri Ashok Kumar (PW-1) deposed that village Madanpur Khadar was located between village Jasola and village Aali and that the distance between the two villages was about 3 kms. Mathura Road was stated to be at a distance of 6 kms. from the land in question. Similarly, Mohan Co-operative Society was also stated to be at a distance of 6 kms from the land in question, whereas Sarita Vihar and Apollo Hospital were at a distance of 7 kms. The land in question was stated to be agricultural in nature and it was admitted that no development had taken place in the area where the land had been acquired for NTPC. Pertinently, in his cross-examination, the said witness stated that earlier also, the land had been acquired in village Aali for the purpose of Ash Pond collection for NTPC and no development had taken place in the area where the land had been acquired; that the land, which had been developed in village Jasola for residential and commercial purposes was at a considerable distance from the acquired land, which was located far away from the main road. The witness admitted that he had no document to show that the land in village Jasola was similar to the land in village Aali. The records reflect that none of the witnesses produced by the appellants were able to establish that the situations and potentialities of the land in village Jasola and village Aali are similar, so as to seek parity with village Jasola. The witness produced by the appellants has not been able to furnish any cogent reasons as to why the land price in village Aali must be identical to that in village Jasola. The burden of proving the said point rested at the door of the appellants, which they have failed to discharge sufficiently.

29. The submission of the counsel for the appellants that the site plan reflects that acquired land in village Aali was surrounded by Mohan Co-operative Society, Indraprastha Apollo Hospital, Jasola Sports Complex and Jasola Vihar, is contrary to the records. The aforesaid locations mentioned by the counsel for the appellants are about 6-7 kms. away from the acquired land. The distance between Mathura Road and the acquired land at village Aali is also admittedly about 6 kms.

30. The aforesaid position is also borne out from a perusal of the Eicher map, which reflects the topography of the area, and over which there is no dispute.

Village Aali is bounded by village Madanpur Khadar towards the north and Badarpur to its south. On its east is the Agra Canal and on its west runs Mathura Road. On the other side of Mathura Road is Mohan Cooperative Industrial Area and the outlet of M/s. Haldiram, which fall in village Tehkhand. The site plan relied upon by the counsel for the appellants itself reflects that the acquired land is situated quite far away from Mohan Cooperative Society. Indraprastha Apollo Hospital, Jasola Sports Complex and Jasola Vihar form a part of village Jasola and adjoining to village Jasola is village Madanpur Khadar, whereafter towards it? s south, comes village Aali. Except for the colony of NTPC itself, which cannot be treated as a private residential colony but one constructed by the undertaking for the residence of its employees, working in the unit, there is no other habitation in the near about area. There is no access by road to the acquired land. No evidence has been placed on record to demonstrate that any development work by way of extension of facilities of electricity, water, sewer, roads etc. had been undertaken in the acquired land. The two Sale Deeds (Ex.P-1 & Ex.P-2) also reflect that the land was being used for agricultural purposes. Hence, the geographical location of the land does not come to the aid of the appellants to claim parity with the land in village Jasola.

31. The parity sought by the appellants with land situated in village Jasola on the strength of the judgment of the Division Bench of this Court in the case of S.S. Aggarwal (supra), also seems to be misconceived. In the aforesaid case, the Division Bench observed that the revenue estate of village Jasola was declared as urban on 28.09.1966 and was declared as a developed area in the year 1974. Four successive acquisitions took place in the said village and on the date of Notification u/s 4 of the Act, i.e., on 06.01.1995, it was a fully developed area in which, there stood Sukhdev Vihar, Ishwar Nagar, Jasola DDA flats, Jasola Colony, Apollo Hospital, Harkesh Ngar, Sarita Vihar, part of Mohan Cooperative Industrial Area and Okhla Industrial Area Part-II and there is colony of New Friends Colony. Considering the development activities, which were coming up in the colonies, the existence of a medical institution and an industrial area, the Division Bench held that prior to the notification u/s 4 of the Act itself, the land in question had great potential not only as a site for residential building, but also for commercial and industrial development. For determining the market value of the acquired land in village Jasola, the Court took into consideration the market value of the land situated in village Bahpur and the schedule of market rates of land as fixed by the Government of India in different areas of Delhi/New Delhi, and thereafter, for the difference of the rate upto the date of notification u/s 4 of the Act, considered the option of allowing progressive appreciation @ 12% per annum or a flat increase of 15% per annum, to arrive at the prevailing market value of the acquired land in village Jasola. After taking into consideration the fact that the market value of the land had been on the increase from the year 1979 onwards on account of tremendous development activities and keeping in view the fact that the major tract of land in village Jasola and village Bahpur had already been acquired for planned development, the Court finally granted a flat increase @

15% per annum and worked out the average market rate of the land situated in village Jasola as on 06.01.1995, @ Rs. 7,390/- per sq. yard.

32. None of the features mentioned in village Jasola have been found to be identical or even similar in the fact situation of the case in hand. It cannot be said that the acquired land is in close proximity to the developed land in village Jasola nor can the said land boast any development activities, residential, commercial or industrial, for enhancing its potentialities. Mere distance of about 3 kms. between village Jasola and village Aali, cannot strengthen the hands of the appellants to claim parity in the absence of placing any material on the record to show that the quality and potentiality of the land in village Aali is similar to the land in village Jasola. Hence, contiguity of the two villages cannot be treated as sufficient ground to grant the same compensation to the landowners in both the villages. [Refer: (i) Union of India Vs. Nand Kishore and Others, , (ii) Kanwar Singh and Others Vs. Union of India, and (iii) Raj Devi and Others Vs. Union of India (UOI) and Another,

33. The finding of the Reference Court that no evidence had been led to show any development in village Aali, so as to assess the market value of the acquired land on the basis of the rates assessed in village Jasola, is based on a correct appreciation of the evidence on the record and does not call for interference. For the aforesaid reasons, this Court is not inclined to interfere with the said findings insofar as the Reference Court declined to grant compensation to the appellants on the basis of the market value of the land acquired in village Jasola, as per the judgment in the case of S.S. Aggarwal (supra). In any case, a judgment determining the compensation is not conclusive, but only a piece of evidence which has to be scrutinized along with other pieces of evidence for assessing the correct market value of the land.

34. Insofar as the submission of the counsel for the respondent No. 2/NTPC with regard to the mention made by the Reference Court to a decision in LAC No. 4/2006 entitled Shafiq-ur-Rehman v. UOI, decided on 21.03.2007 and pertaining to the same Award is concerned, a perusal of the impugned judgment shows that although a mention of the aforesaid case was made by the Reference Court, the same did not form the basis of assessing the market value of the acquired land. In the case of Shafiq-ur-Rehman (supra), the Reference Court had observed that the petitioner therein had himself purchased the acquired land measuring one bigha in village Aali by virtue of a sale deed dated 18.12.1995 for a consideration of Rs. 1 lac. After taking note of the said transaction, the Reference Court observed in the said case that the same reflected that the market value of the land was much less than the amount assessed by the LAC, which was @ Rs. 1,94,088/- per bigha and even if appreciation is assessed @ 12% per annum from 18.12.1995 till the date of Notification u/s 4 of the Act, i.e., till 31.10.1996, the rate of land would be far less than what was awarded by the LAC. In the impugned Award, subject matter of the present appeals, the Reference Court accepted the findings of the LAC insofar as the determination of the market value

of the acquired land was concerned. While doing so, he only corrected the arithmetical error of calculation in the assessment of the market value of the land made by the LAC to fix it @ Rs. 1,96,940/- per bigha. Even otherwise, there is merit in the submission of the counsel for the appellants that the land price shown in the sale deeds, mentioned in the case of Shafiq-ur-Rehman (supra), was far less than the price fixed for agricultural land as per the policy of the Delhi Government dated 25.07.1997, which determined the corresponding appreciation @ 11.5% per annum as the market value fixed on 30.05.1990, which came to a figure of Rs. 4,65,000/- per acre, as the basis for assessing the market value of the acquired land. Therefore, the submission of the counsel for the respondent No. 2/NTPC that the sale transaction, as discussed in the case of Shafiq-ur-Rehman (supra), could have a binding force on the land of the appellants herein, they having accepted the same as correct, is without any force, and is turned down.

35. Now, that the two sale transactions have been found to be shaky pieces of evidence for adopting the comparable sales method, the judgment of the Division Bench of this Court in the case of S.S. Aggarwal (supra) has been held to have no application to the present case and it has been concluded that reliance cannot be placed on instance of price of land in village Jasola, the potentiality of the two classes of land being entirely different, the question that requires to be addressed is if there is any other material, which could be taken into consideration to assess the correct market value of the acquired land?

36. A relevant decision, which has been brought to the notice of this Court by the learned Counsel for the respondent/UOI and cannot be ignored, is the judgment of a Division Bench of this Court dated 30.11.2007, in a batch of matters, lead matter registered as LAA 92/2007 entitled Nirmal v. UOI. In the aforesaid judgment, the Division Bench considered the judgment and order dated 15.1.2007 passed by the learned Additional District Judge in respect of the land situated in the same village, i.e., village Aali covered under Award No. 9/94-95, announced on 6.6.1994, pursuant to a notification u/s 4 of the Act issued on 16.10.1992, which was followed by a declaration u/s 6 of the Act, issued on 23.3.1993. In the aforesaid case also, a large tract of land was notified for acquisition for the same purpose as in the present case, i.e., for development of Ash Pond collection for NTPC. The compensation as determined by the LAC and payable to the land owners was fixed @ Rs. 4,65,000/- per acre. Dis-satisfied by the said enhancement, the expropriated land owners preferred an appeal before the Reference Court, which vide judgment dated 22.1.2007, enhanced the compensation to Rs. 5,99,850/- per acre. Aggrieved by the said enhancement, the land owners preferred an appeal before the High Court. In the said appeal, the High Court held the appellants/landowners therein to be entitled to payment of compensation @ Rs. 6,51,000/- per acre, with proportionate statutory benefits on the said amount alongwith the proportionate costs. Unfortunately, the said judgment and order dated 15.1.2007 was not brought to the notice of the Reference Court at the time when arguments were addressed by the parties in

the present case. As the judgment of the Division Bench came to be passed three months later, on 30.11.2007, the Reference Court could not have the benefit of the said judgment while passing the impugned order dated 23.8.2007.

37. While the date of issuance of the preliminary Notification in the case of Nirmal (supra) was 16.10.1992, in the present case, the date of notification u/s 4 of the Act, is 31.10.1996, i.e., approximately four years down the line. In the aforesaid case also, the Division Bench took notice of the two sale deeds (Ex.P-1 & Ex.P-2), subject matter of consideration in the impugned judgment herein, but went on to determine the market value of the acquired land not on the basis of the said sale transactions, but on the basis of compensation given for the land situated in village Jaitpur, wherein the date of Section 4 notification was found to be identical to that in the aforesaid case, i.e., 16.10.1992. Incidentally, the land in village Jaitpur was also acquired for the purposes of Ash Ponds for BTPS. The Division Bench observed that the Reference Court in that case had wrongly ignored the fact that the compensation for the land in village Jaitpur had been enhanced by the Reference Court itself in LAC No. 133/1994 to Rs. 6,51,000/- per acre. Having regard to the fact that the preliminary Notifications in both the acquisitions were issued on the same date and taking into consideration the fact that the Reference Court had accepted the acquisition of land in village Jaitpur as comparable to that of Village Aali, it was opined by the Division Bench that there was no reason as to why the enhanced compensation as determined by the Reference Court for village Jaitpur should not be made applicable for acquisition in the case of village Aali. As a result, the appeals were allowed in the case of Nirmal (supra) by holding that the appellants/landowners were entitled to receive compensation @ Rs. 6,51,000/- per acre for the acquired land.

38. If the compensation was fixed @ Rs. 4,65,000/- per acre in the aforesaid case by the LAC, as on the date of issuance of the preliminary notification, i.e., on 16.10.1992, for the agricultural land of the same nature acquired in the very same village, for almost an identical purpose, then the LAC in the present case ought to have looked into the said piece of evidence for determining the fair market value of the land on 31.10.1996. Determination of the market value of the land, four years down the line, as on 31.10.1996, at Rs. 1,94,088/- (revised to Rs. 1,96,940/- by the Reference Court, by rectifying the arithmetical error), which is less than half of the rate determined in the year 1992, appears to be quite unreasonable. Furthermore, as noticed above, on references received from the landowners in the case of Nirmal (supra), the Reference Court had enhanced the market value of the acquired land from Rs. 4,65,000/- per acre as fixed by the LAC, to Rs. 5,99,850/- per acre, after giving appreciation @ 12% p.a. for a period of 29 months (i.e., from 27.4.1990, the date of the policy of Government of Delhi, till 16.10.1992, the date of issuance of Section 4 Notification). This mount was further enhanced by the Division Bench in appeal, by adding Rs. 51,150/- per acre to the sum of Rs. 5,99,850/-, to arrive at the compensation of Rs. 6,51,000/- per acre.

39. Considering the fact that the gap between the date of issuance of Section 4 notification in the case of Nirmal (supra) and that in the present case is only a period of four years and 15 days and in view of the fact that both the notifications pertain to large tracts of agricultural land of the same nature, advantages and potentiality, situated in the same village, i.e., village Aali which were acquired for the same purpose of Ash Pond Collection for NTPC, it would be fairly safe to make the case of Nirmal (supra) as the basis for determining the market value of the acquired land in the present case.

40. The next question that is posed is what was the rate of escalation in the market value at the relevant time. While dealing with the question as to what should be the increase per annum, and how should it be calculated, the Supreme Court made the following observations in the case of General Manager, ONGC (supra):

13. Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be

unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

(emphasis added)

41. In the present case, as noticed above, the acquisition was in a rural area. There is no evidence brought on the record of any extraordinary development or increase in the land prices of the area. Nor is there any evidence produced by respondent/UOI to show complete stagnation of land price only because it was agricultural in nature. The time line between the acquisition of land in village Aali in the case of Nirmal (supra) and the case in hand, is of four years.

42. Keeping in mind the aforesaid guidelines laid down by the Supreme Court, in the absence of clear and specific evidence indicating the real increase in prices, the escalation in price of land in village Aali, can be reasonably ascertained by making October 1992, the base year and adopting the method of calculating the year to year increase on a cumulative increase basis, by applying a cumulative rate of escalation. This Court is of the view that providing escalation of 10% p.a. over the 1992 land price determined in the case of Nirmal (supra), would be reasonable and adequate to arrive at the fair market value of the acquired lands. As the rate of the land was determined at Rs. 6,51,000/- per acre in the base year 1992, and the cumulative rate of increase in land price in such a rural area would be 10 % p.a., while excluding the base year of the relied upon acquisition proceedings, the market value of the acquired land in the year 1996, would be Rs. 9,53,129.10 paise per acre. The said figure is rounded off to Rs. 9,53,130/- per acre.

43. Accordingly, the appeals are partially allowed. The fair market value of the land situated in village Aali in respect of the notification issued u/s 4 of the Act dated 31.10.1996, is determined as Rs. 9,53,130/- per acre. Besides the above, the appellants shall also be entitled to 30% solatium on the above market value of the land u/s 23(2) of the Act, 12% additional amount u/s 23(1A) of the Act from the date of notification issued u/s 4(1) of the Act to the date of the Collector taking possession of the land or making of the award, whichever is earlier. On the enhanced market value, interest will also be paid u/s 28 of the Act @ 9% p.a. from the date of dispossession for the first year and thereafter, @ 15% p.a. till the date of tender of compensation. Interest will also be paid on the solatium and additional amount in view of the decision of the Supreme Court in the case of Sunder Vs. Union of India, The appellants shall be entitled to proportionate costs in the appeals.

44. The appeals stand disposed of, on the above terms.

