(2012) 01 DEL CK 0176

In the Delhi High Court

Case No : LA. APP. 1195 of 2008 (Village- Bharthal) , LA. APP. 412 of 2008 and CM. No. 4096 of 2008 (Cross-Objections) ; LA. APP. 452 of 2008; LA. APP. 453 of 2008; LA. APP. 688 of 2008 and CM. No. 5990 of 2010 (Cross-Objections) ; LA. APP. 697 of 2008 and CM. No.

Ranbir Sharma APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Citation : (2012) 187 DLT 781 : (2012) 128 DRJ 184

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : B.S. Maan, Mr. Amit Maan, Mr. Jai Prakash, Ms. Smita Maan, Mr. R.S. Verma, Mr. Jitin Tewathia, Mr. Anand Yadav and Ms. Anita Tomar Mr. Rohtas, Advocate. Mr. Raghuvinder Godara, Mr. N.S. Negi and Mr. H.S. Rautela, Mr. S.K. Rout and Mr. B.K. Routray, Mr. M. Azam Ansari Mr. Pankaj Vivek, Mr. Rajesh Yadav, Mr. Deepak Khosla, Mr. Samit Khosla and Mr. Dhananjay Mehlawat, Mr. H.S. Rautela, Mr. I.S. Dahiya, Mr. Sandeep Thakhur, Mr. Atul Tripathi, Advocate. Mr. N.S. Negi and Mr. H.S.Rautela, Advocates for respondent in Appeals filed by UOI in LA. app. 1195/2008 Village- Bharthal Mr. R.S. Tomar, Mr. Virendra Singh Advocates Mr. S.K. Solanki and Mr. S.K. Rout and Mr. B.K. Routray, in R-2-14, 38, 41-46, 49, 50-69, 73, 75, 76 in LA. app. 294/2010 Village- Bijwasan and Mr. B.D. Sharma, Mr. S.K.Solanki and Mr. S.K. Rout, in R-16, 20, 23 to 26, 29, 30, 33, 36 to 40, 44 to 49, 59, 63 to 71 Mr. S.B. Kumar, in LA. app. No. 61, 64, 65/2011 Mr. Rajesh Yadav, in R-22 in LA. app. 111/2010 Village Pochanpur, for the appearing parties; Sanjay Poddar with Mr. Sanjay Pathak, Mohitrao Jadhav and Ms. Navlin Swain, Ms. K. Kaumudi Kiran, Advocates for LAC/UOI Mr. Ajay Verma, Ms. Beenashaw Soni, Mukesh Kumar, S.K. Sethi, Pawan Mathur, Kunal Sharma, Advocate for DDA in LA. APP. 1195/2008 (Village- Bharthal), Mr. Sanjay Poddar with Mr. Sanjay Kumar Pathak, Mohitrao Jadhav and Ms. Navlin Swain, Advocates for UOI/LAC Mr. S.K. Solanki and Mr. S.K. Rout and Mr. B.K. Routray, Advocates in appeals filed by UOI. Mr. Virendra Singh, Advocate in R-68, 71 and 72 in appeal filed by UOI Mr. Bankey Bihar Sharma, Kunal Sharma and Mr. Somer K.Seth, Advocates for DDA in LA. APP. 294/2010 (Village- Bijwasan) and Mr. Sanjay Poddar with Mr. Sanjay Kumar Pathak, Mohitrao Jadhav and Ms. Navlin Swain, Advocates for UOI/LAC Mr. Bankey Bihari Sharma, Kunal Sharma and Mr. Somer K.Seth, Advocates for DDA in LA. APP. 111/2010 (Village Pochanpur), for the Respondent

Judgement

Sunil Gaur

1. Since the grounds on which enhancement of the compensation is sought by the appellants in these bunch of appeals are identical, therefore with the consent of learned counsel for the parties present at the hearing of these appeals, these bunch of appeals pertaining to Notification No. F.10(30)96-L& B/LA/13417 dated 13.12.2000, relating to geographically contiguous Villages Bharthal, Bijwasan and Pochanpur are being disposed of by this common order.

2. Acquisition process for planned development of "Dwarka Phase-II" in Delhi, commenced with the issuance of Notification of 13th December, 2000 u/s 4 of the Land Acquisition Act, 1894, pertaining to vast tract of agricultural land in one compact block comprising of thirteen Revenue Estates including villages in question, i.e., Bharthal, Bijwasan and Pochanpur.

3. Agricultural land of the appellants herein in the aforesaid three villages stood acquired by the Respondents vide three separate Awards, i.e., Award No. 26/2002-2003; Award No. 28/2002-2003; and Award No. 30/2002-2003 granting compensation @ Rs. 13.82 lacs per acre for Block ''A'' (level field - with top soil) and @ Rs. 12.32 lacs per acre for Block ''B'' (without top soil).

4. Dissatisfied with the assessment of market value of their acquired agricultural lands, appellants had sought reference u/s 18 of the Land Acquisition Act, 1894 and the Reference Court vide impugned judgment had enhanced compensation @ Rs. 15.00 lacs per acre for the appellants'' acquired land in Block ''A'' and @ Rs. 13.36 lacs per acre for their Block ''B'' land in Villages Bharthal and Bijwasan; whereas, references relating to Village Pochanpur have been dismissed.

5. In these appeals, further enhancement of compensation sought by the appellants of Villages Bharthal and Bijwasan is at the rate of Rupees Fifty lacs per acre, whereas appellants of Village Pochanpur have sought compensation at the rate of Rupees Thirty lacs per acre by relying upon the precedents in the shape of decisions in Executive Engineer, Karnataka Housing Board Vs. Land Acquisition Officer, Gadag and Others, ; Anjani Molu Dessai Vs. State of Goa and Another, ; Subh Ram and Others Vs. Haryana State and Another, ; Sagunthala (Dead) through LRs. Vs. Special Tehsildar (L.A.) and Others, ; Ranvir Singh and Another Vs. Union of India (UOI), ; Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon, ; Jai Lal (dead) through L.Rs. Vs. Union of India, ; Rama Nand (since deceased) through LRs vs. Union of India & Anr., 2002 (65) DRJ 1 (DB); Udho Dass vs. State of Haryana & Ors., 2010 (9) SCALE 41; Chakas Vs. State of Punjab and Others, ; Avinash Dhavaji Naik Vs. State of Maharashtra, ; Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, ; W.P.(C) No. 4143/2003 titled as Smt. Indu Khorana vs. Gram Sabha & Ors, decided on 26.03.2010; Special Land Acquisition Officer and Another Vs. M.K. Rafiq Saheb, ; Thakarsibhai Devjibhai and Others Vs. Executive

Engineer, Gujarat and Another, ; Haryana State Industrial Development Corporation, (2010) 11 SCC 175; Risal Singh & Ors. Vs. Union of India & Anr., 2006 (89) DRJ 527 (DB); Lal Chand Vs. Union of India (UOI) and Another, ; General Manager, Oil and Natural Gas Corporation Ltd vs. Rameshbhai Jivanbhai Patel and Anr, (2008) 14 SCC 745; Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., ; Kiran Tandon Vs. Allahabad Development Authority and Another, ; Mahesh Dattatray Thirthkar Vs. State of Maharashtra, ; Major General Kapil Mehra and Others Vs. Union of India (UOI) and Another, ; W.P.(C) No. 4284/2007 titled as Surat Singh vs. Delhi Development Authority & Anr., decided on 24.04.2008; Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another, ; Satpal and others, etc. Vs. Union of India, ; LA. APP. No. 656/2008 titled as Sushil Kumar vs. Union of India, decided on 26.09.2011; LA. APP. No. 59/2007 titled as Bed Ram vs. Union of India, decided on 07.06.2011; and Bhule Ram vs. Union of India, 2010 (170) DLT 371.

6. On the strength of the aforesaid decisions, at the very outset, it was urged by Mr.B.S.Maan, learned arguing counsel for the appellants that the location and situation of the acquired agricultural land has to be first understood in order to appreciate its potential which must be adjudged keeping in view the development in the area over a period of time and the same cannot be limited to the near future alone.

7. It was pointed out by Mr.R.S.Tomar, counsel for appellants that Delhi-Rewari-Jodhpur broad gage railway line of Village Biijwasan passes through the land of Village Bharthal, dividing it into two parts, i.e., on the eastern side of the railway line is the IGI Airport, New Delhi and Oil Depots of Indian Oil and Bharat Petroleum and a road 100 meters wide starting from NH-8 from Shiv Murti towards Dwarka Sub-City Part-I and Part-II again divides the agricultural land into two portions; (i) North Eastern side, where IGI Airport is located; and (ii) South Eastern side, where developed Farm Houses are located on the land of Villages Bharthal, Bijwasan and Samalkha. It was also pointed out by Mr.S.K.Solanki learned counsel for the appellants that northern part of the land of Village Bharthal was first acquired for the extension of IGI Airport in the year 1971 and again in the year 1980 for establishing Indian Oil Depots and thereafter in the year 1982 for Bharat Petroleum and the lands of Village Bharthal and Village Pochanpur were also acquired in the year 1984 for development of Dwarka Phase-I and the lands on the western side of Villages Bamnoli and Dhool Siras were also acquired for the development of Phase-II, Dwarka Sub-City. Attention was drawn to the aks sizras/map to highlight that the boundary of Village Bharthal, Village Pochanpur and Village Dhool Siras are contiguous.

8. It was strenuously urged by Mr.B.S.Maan, learned counsel for the appellants that the Reference Court has failed to appreciate the potentiality of the acquired land in the light of its location and has illegally treated the acquired land to be

agricultural in spite of Notification of 16th October, 2000 vide which land use of the three villages in question was changed from agricultural to residential/ commercial/industrial, etc. and infact the entire land of Village Bharthal had ceased to be rural in view of the Notification of 24th October, 1994.

9. It was argued with much vehemence by Mr.S.K.Rout, learned counsel for the appellants that the aforesaid two Notifications have been wrongly discarded by the Reference Court by relying upon P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , which has been considered by the Apex Court in its later decision in Udho Dass vs. State of Haryana & Ors., 2010(9) SCALE 41 holding that the potential of the acquired land must be adjudged keeping in view the development in the area over a period of time and the same cannot be limited to a near future alone and if after the acquisition, if the authorities do not put the land to any use, it would not mean that there is no building potentiality.

10. Reliance was placed by Mr.B.D.Sharma, learned counsel for the appellants upon the seven Sale Deeds of Village Pochanpur to highlight that the sale price reflected therein varied from Rs. 52 lacs to Rs. 62 lacs and merely because of the said variation, these sale exemplars cannot be thrown out as has been illegally done by the Reference Court, because there is no basis to conclude that these sale exemplars are overvalued because of any special advantages and as per settled legal proposition laid down by the Apex Court in Anjani Molu Dessai Vs. State of Goa and Another, , the average of sale exemplars ought to be taken as representing the market price of the land which comes to Rs. 57 lacs per acre and since the sale exemplars relied upon by the appellants are the comparable sale instances, therefore, reliance placed by the Reference Court upon the minimum rates/circle rates for determining the market value of the acquired land is patently erroneous.

11. Assessment of market value of the acquired land was sought by Mr.R.Godara, learned counsel for the appellants on the basis of the L& DO rates fixed by the Government and also on the basis of pre-determined rates fixed by the Government for allotment of alternate plots in the year 2000-2001. Keeping in view the location, situation and potentiality of the acquired land, determination of its market value is sought on the strength of sale exemplars of Village Pochanpur and Village Samalkha or alternatively on the basis of the L& DO rates of the developed lands in Dwarka Phase-I or on the basis of the Pre-Determined Rates (PDRs) as referred to above.

12. In the written synopsis, appellant - Impulse India Private Limited of LA. App. No. 295/2009 has assailed the impugned judgment on the following grounds:-

a) "Ignores the acknowledgement on the part of the respondent about the Award No. 26/2002-2003 dated 23.10.2002 being flawed in the course of the proceedings Civil Writ petition No. 19012 of 2006. (Referred to in cross-examination of appellant dated 7.7.2007)

b) Does not account for the fact that the Public Notice dated 18.9.1987 adversely affected the rates of land in the area for more than 15 years before the Notification u/s 5 of the Land Acquisition Act, 1894 was issued.

c) Valuing the land on the basis of the letter dated 11.9.2001 issued by the Government of National Capital Territory of Delhi is not in accordance with the law laid down by various decisions including in one of the more recent decisions of the Hon''ble Supreme Court in Sagunthala (Dead) through LRs. Vs. Special Tehsildar (L.A.) and Others, .

d) Ignores the evidence and other factors which as per established law has to be considered before ascertaining the value of the land under acquisition.

e) Does not deal with disparity in value of the Sale Deeds produced before the trial Court whereas as per the law established by the Hon''ble Supreme Court in the recent case of Chinda Fakira Patil versus Special Land Acquisition Officer, Civil Apeal No. 5475 of 2007. The Hon''ble Supreme Court has specifically held that Sale Deed showing higher rate should not be disregarded in case the average sale price is lower. Further in Anjani Molu Dessai Vs. State of Goa and Another, , the Supreme Court has also held that the highest of the exemplars and not by averaging of different types of sales transactions should be considered while adjudicating upon compensation upon a certan land.

f) Relied upon judgment dated 3.3.2008 in LAC No. 97A/2006 to decide the market value of the subject land while ignoring the material which indicate that the market value of the land is much higher than 15 lac per acre in Block A and Rs. 13,36,000 in Block B in violation of the law laid down by the Hon''ble Supreme Court including in Subh Ram and Others Vs. Haryana State and Another, . As a consequence, the impugned judgment refused to return an actual finding on the issue No. 1 framed on 27.2.2007.

g) Evaluated the land as agricultural land although vide Notification of the Municipal Corporation of Delhi, the land use of Village Dhool Siras and Bharthal was changed and these areas ceased to be agricultural and came now under the urban boundaries of Delhi State. The masterplan and Notifications of Government for land use change show that in future land can be subjected to residential, commercial and other permissible uses. It is also pertinent to mention that the appellant lead evidence in respect of the 74th amendment of the Constitution of India, w.e.f. 1.6.1993 IX A, by virtue of which the Municipal Corporation Act was amended and the area where the land is situated, was deemed a municipal area and the municipal Counsellor was elected from there. No Panchayat elections were held in the area.

h) Refused to apply the law laid down in AIR Supreme Court 3467, Ranvir Singh and Anr vs. Union of India and refused to consider the fact that the development in the area has a direct effect on the price that a willing purchaser would pay for the subject land.

i) Ignored the fact that Respondent No. 2 had also auctioned similarly situated land as commercial blocks at the rate of about Rs. 2.6 lakh and concluded that the said land is wholly underdeveloped land.

j) The valuation of the subject land is even lower than the pre-determined auction rates set by Respondent No. 2 for similarly situated land.

k) Does not take into account the possibility of change of the use of the land although the land was acquired for development purposes of Dwarka Phase II. It is reiterated that the land use of Village Dhool Siras and Bharthal was changed and these areas ceased to be agricultural and came now under the urban boundaries of Delhi State.

l) Ignored Notifications dated 16.10.2000 and 24.10.1994 although they clearly establish the commercial potentiality of the said land. In Sagunthala (Dead) through LRs. Vs. Special Tehsildar (L.A.) and Others, it was held that the purpose for which land is acquired is a relevant factor. While determining value of the property acquired the fact whether the land has got building potentiality to be used for building purposes in immediate or in near future needs to be considered.

m) The presence of a number of buildings on the lands acquired and the said land being occupied by the buildings are to be treated as house sites. The lands were acquired for purpose of putting up residential quarters. As a portion of the land is being considered as house site, the adjoining lands have the potential of being put in better use as house sites in the near future.

13. In the brief synopsis by Ved Pal and others of LA. App. No. 347/2009, the factual details have been provided with a prayer that the appellants of this appeal be treated at par with the co-appellants of the other appeals in these bunch of appeals.

14. Supplementing the aforesaid arguments advanced on behalf of the appellants, it was urged by Mr.Anand Yadav, Advocate that the effect of urbanization of the lands in the Villages in question, i.e., the change in land use has been considered in Mahesh Dattatray Thirthkar Vs. State of Maharashtra, ; Major General Kapil Mehra and Others Vs. Union of India (UOI) and Another, and that Pre-Determined Rates, Reserved Auction Rates of the area are relevant to determine the market value of the acquired lands and infact the sale instances relied upon by the appellants are comparable and ought to have been relied upon by the Reference Court to assess the correct market value of the acquired lands. Thus, enhancement of compensation reflecting just, fair and adequate market value for the acquired lands is sought in these appeals.

15. Arguing the cross-objections filed by the Respondents, Mr. Sanjay Poddar, learned Senior Counsel urged that though as per Section 51-A of Land Acquisition Act, 1894, a certified copy of the Sale Deed is an admissible evidence but the same cannot be taken as relevant evidence for determination of the market value unless and until the same is properly connected with the land in

question and element of special fancy of the purchaser and other factors namely, nature, situation of the property, proximity to the village etc. are also required to be considered and the sale instances relied upon by the Respondents disclosing correct market value of the acquired lands have been illegally rejected by the Reference Court and while placing reliance upon the decisions in Jai Lal (dead) through L.Rs. Vs. Union of India, , Satpal and others, etc. Vs. Union of India, ; Lal Chand Vs. Union of India (UOI) and Another, ; LA. APP. No. 656/2008 titled as Sushil Kumar vs. Union of India, decided on 26.09.2011, it was urged that sharp increase in price in a short period cannot be taken to be realistic until reasons for such sharp increase are explained by producing in evidence the seller and the purchaser as no prudent person having knowledge of the usual prevalent trend in the market would pay such a higher pay as reflected in the sale instance of Radha Swami Satsang, Beas, relied upon by the appellants, but for special consideration. Thus, it was contended on behalf of the cross-objector that adoption of L& DO rates/Pre-Determined Rates cannot be countenanced in view of the decision of Apex Court in Lal Chand (supra) which has been followed by a coordinate Bench of this Court in Sushil Kumar (supra) and Raj Singh (supra).

16. So far as potentiality of the land is concerned, it was urged by Mr.Sanjay Poddar, learned senior counsel for the Respondents/cross-objectors that the same has already been factored into, while fixing the minimum indicative price of the agricultural land by the Government as on 1st April, 2000 and by granting appreciation thereon @ 12% per annum, market value of the acquired lands has been erroneously determined by the Reference Court, as in Sushil Kumar (supra) appreciation @ 10% per annum has been granted. Thus, it is submitted that there is no scope for further enhancement from the price of acquired lands as fixed by the Land Acquisition Collector and so, the impugned judgment deserves to be modified deleting the enhancement by the Reference Court while taking into consideration the appreciation @ 12% per annum and the same deserves to be brought in line while granting appreciation @ 10% per annum and thereby allowing the cross-objections to the aforesaid extent.

17. After considering the rival submissions advanced by both the sides and upon close perusal of the impugned judgment, the evidence on record and the decisions cited, what emerges is that the true market value of the comparable land is the price paid by willing purchaser to a willing seller and the best evidence is the comparable sale instances. While dealing with the question of potential value of the acquired land, what has to be considered in assessing the market value thereof, stands reiterated by the Apex Court in Udho Dass vs. State of Haryana & Ors., 2010 (9) SCALE 41 in these words:-

(i) the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purpose;

(v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.

18. The potentiality of land for the purpose of development as also for building purposes depends upon a large number of factors. For the said purpose, the Court may not only have to bear in mind the purpose for which the lands were sought to be acquired but also the subsequent events to some extent. It has been so observed by the Apex Court in Avinash (supra). While reiterating the relevant factors for determination of compensation for acquired lands, it has been held by the Apex Court in Atma Singh (supra) that the exemplars of small pieces of land relied upon by the appellants could not be a ground to discard them especially when exemplars of large pieces of land were not available.

19. Aforesaid dictum stands reiterated by the Apex Court in Special Land Acquisition Officer and Another Vs. M.K. Rafiq Saheb, . The legal proposition which emerges from the decisions relied upon on behalf of the appellants is that where there is no basic difference either in location, situation or potentiality of the villages, which are similarly situated having similar advantage available to them even as regards future prospects, there is no justification for reducing the compensation on the ground of distance between similarly situated lands and the acquired land.

20. It is a well established proposition of law that the burden of proving the true market value of the acquired land is on the State who has acquired the agricultural land for a particular purpose. But, it is equally true that the burden of proving inadequacy of compensation awarded is on the claimant. For this proposition, the decision of the Apex Court in Kiran Tandon (Supra) can be referred to with advantage.

21. Apex Court in Valliyammal (Supra), while taking note of the fact that the acquired land was situated in close vicinity of residential colonies, educational institutions, hospitals, etc., had held that deduction of 40% towards development charges was improper. The pertinent observations made by the Apex Court in Anjani Molu Dessai (Supra) deserve attention, which are as under:-

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 under-valuation or other price depressing reasons. Consequently averaging cannot be resorted to.

22. It would be worthwhile to take note of the clinching observations pertaining to determination of fair market rate of acquired lands made by the Apex Court in Chindha Fakira Patil (Supra), which are as follows:-

It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighborhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value.

23. Principles to determine the market value of the acquired lands as reiterated by the Apex Court in Oil and Natural Gas Corporation Ltd. (ONGC) (Supra), are as under:-

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. 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.

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 precedes the subject acquisition by only a few years, that is upto 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 Rs. 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.

24. This Court is mindful of the dictum of the Apex Court in Haryana State Industrial Development Corporation (HSIDC) (Supra), regarding computation of compensation for the acquired lands by adopting comparative sales methods. What was said by the Apex Court in HSIDC (Supra) is as under:-

When different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have sometimes felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification.

25. Undisputedly, in these appeals sale exemplars in and around acquired land of Village Bharthal, Village Bijwasan of the period in question are not available and the solitary sale exemplar strongly relied upon by the appellants is of Village Pochanpur, i.e., the seven Sale Deeds vide which religious institution, i.e., Radha Swami Satsang, Beas had purchased the agricultural land in Village Pochanpur at a price which varied from Rs. 52 lacs to Rs. 62 lacs per acre.

26. Whether aforesaid Sale Deeds (Ex.PW-1/4 to Ex.PW-1/10) which are basically between one set of co-owners and Radha Swami Satsang, Beas in respect of the compact block of land measuring 18 Bighas and 6 Biswas situated in Village Pochanpur reflect the correct market value of the land in the villages in question is the moot question which is required to be answered. Evidently, aforesaid sale exemplars, i.e., Sale Deeds (Ex.PW-1/4 to Ex.PW-1/10) indicate that its price varies from Rs. 52 lacs to Rs. 62 lacs per acre. Meaning thereby,

the entire land of the sale exemplars - Sale Deeds (Ex.PW-1/4 to Ex.PW-1/10) did not command the same market price. It was dependent upon the nature and situation of the aforesaid lands. Evidence to establish the advantages attached to each parcel of land of these sale exemplars with acquired land in question, is lacking. Therefore, these sale exemplars cannot be treated as disclosing representative price for the acquired lands in question. The special need of the purchaser of these agricultural lands in Village Pochanpur vide Sale Deeds (Ex.PW-1/4 to Ex.PW-1/10) has not been brought out as the purchaser/vendee of these agricultural land has not been got examined by the appellants. Had the purchaser/vendee of the aforesaid sale exemplars been got examined, then it could have been elicited from him as to why he had agreed to pay such a high price for these lands. The special fancy of the purchaser, i.e., Radha Swami Satsang, Beas who had purchased more than 33 Bighas of land at an exorbitant price in Village Mamurpur vide Sale Deed executed on 25th March, 2000 was also subject matter in LA. App. No. 266/2008 titled as Jai Singh vs. Union of India, decided on 23.8.2011 and in LA. App. No. 999/2010 titled as Raj Singh vs. Union of India, decided on 19.9.2011 and in the aforesaid decisions, the sale exemplar of Village Mamurpur was discarded while holding that the same cannot be treated as representative price for the acquired lands.

27. In the instant matters, though the land use of the acquired lands was changed much prior to their acquisition, but it has come in evidence that the acquired lands were being used for agricultural purpose till their acquisition. Thus, it becomes evident that the acquired lands were not developed lands. No prudent person having knowledge of prevailing market price of the land in question would pay such a high price unless and until such purchase is meant for special consideration and so, in the considered opinion of this Court the sale exemplars, i.e., Sale Deeds (Ex.PW-1/4 to Ex.PW-1/10) have been rightly discarded by the Reference Court.

28. So far as the sale exemplar of Village Samalkha (Ex.PW-1/11) relied upon by the appellants is concerned, disclosing exorbitant price of Rs. 1,76,55,172.41 per acre relating to Sale Deed of 27th January, 2000, it needs to be noted that because this sale exemplar (Ex.PW-1/11) was situated on the National Highway - 8 and because vide Sale Deed (Ex.PW-1/11) vendor had sold not only the land but the structure thereon including tube well, boring, fitting, fixture, lane, by-lane, etc., therefore, it had fetched such a high price. In view thereof, this sale exemplar cannot be treated as a representative price for the acquired lands in question.

29. Left with no sale exemplars disclosing realistic price of similarly situated lands in the vicinity, now it is required to be considered as to whether adoption of L& DO circular rates for the developed lands and Pre-Determined Rates for the alternate plots by the DDA ought to be adopted to determine the true market value of the acquired lands in question.

30. Parameters governing fixation of market value of acquired lands highlighted

by Apex Court in its decision reported as P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, are as under:-

12. However, in either of the said cases whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of plots in a well developed layout in the neighborhood or whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of building plots in an undeveloped layout of building plots in the neighborhood, it becomes inevitable for the Court to find out what will be the price fetched or to be fetched by the sales of plots in the layouts, relied upon by any of the parties, with reference to the price which the plots could have fetched if sold on the date of the publication of the preliminary notification u/s 4(1) of the Act. Further, where no evidence of price fetched by the sales of the plots in layouts of building plots in the neighborhood of the acquired lands becomes available, then what could be done is to find out the market value of the acquired land with reference to the relevant date of publication u/s 4(1) of the LA Act, according to the actual use to which it was put and increase its value by a small percentage having regard to the degree of its building potentiality ascertained on the basis of evidence to be made available in that regard. A small percentage increase to be given shall not exceed 1/5th of the market value of the land found out according to its actual user since resort to the method of giving increased value for such building potentiality arises only when there is no evidence of sales of building plots in the neighborhood of the acquired land indicating that there was no immediate demand, as such, for building plots even if formed in the acquired land.

31. In view of the difficulties in adoption of rate of land charged by the DDA after acquiring the agricultural lands, developing the same, and transferring perpetual leasehold rights, the Apex Court in Lal Chand (Supra), held that it is not safe or advisable to rely upon the allotment rates/Pre-Determined Rates in determining the market value of the adjoining undeveloped freehold lands. Following the dictum of Lal Chand (Supra), a coordinate Bench of this Court in Jai Singh (Supra) and Sushil Kumar (Supra) has excluded the DDA rates qua the developed lands as being not relevant for assessing the market value of the undeveloped acquired lands. Thus, I find that the Reference Court has rightly not adopted the DDA rates for allotment of developed land or the DDA''s Pre-Determined Rates for alternate allotments for fixing the market value of the acquired agricultural lands in question.

32. Now what is required to be seen is whether progressive increase method would be relevant criteria for assessing the market value of the land in question while taking into consideration the earlier acquisition of the year 1984 in Village Bharthal and other villages for development of Dwarka Phase-I. It was sought to be argued by Mr.Sanjay Poddar, learned senior counsel for the respondent/cross-objector that even if the escalation at the compounded rate of 10% per annum is

taken from the year 1984 till the year 2000, i.e., for the period intervening the Notification for development of Dwarka Phase-I and the instant Notification for development of Dwarka Phase-II, still the price fixed by the Land Acquisition Collector is more than the aforesaid escalated price and therefore, the enhancement granted by the Reference Court is unjustified.

33. Aforesaid argument does not hold good in view of the dictum of the Apex Court in Lal Chand (Supra), cautioning the Courts to adopt progressive increase method in assessment of the market value of the acquired land only when the gap is of 4-5 years and beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard, if the gap is of only of a few years, may become unsafe and unreliable standard where the gap is larger. In the instant case, the gap between the two Notifications, i.e., of Dwarka Phase-I and Dwarka Phase-II is of sixteen years and therefore, it would be unsafe to adopt the mode of determining the market value by providing appropriate escalation over the market value of the nearby land of the previous years.

34. Mr.Sanjay Poddar, learned senior counsel for the respondent/cross-objector had urged that the Reference Court has granted escalation @ 12% per annum, which is unwarranted as a coordinate bench of this Court in Sushil Kumar (Supra), has granted escalation @ 10% per annum. After having perused the decision in Sushil Kumar (Supra), I find that 10% increase on account of higher potentiality of the acquired land over and above the market value determined by the Reference Court has been granted and so, by relying upon Sushil Kumar (Supra) escalation granted by the Reference Court @ 12% per annum cannot be reduced to 10% per annum. In this view of the matter, the cross-objections of the respondent are dismissed.

35. Now what is to be seen is whether adoption of Government''s minimum price of the agricultural land in Delhi, by the Reference Court is reasonable criteria for determining the market value of the acquired land and as to whether the escalation of 12% per annum granted by the Reference Court from the date of fixation of the minimum price for the agricultural land by the Government w.e.f. 1st April, 2000 till the date of Notification in the instant appeals deserves to be further increased or not.

36. Adoption of Government''s minimum rates of agricultural land pertaining to the Notification in question has been assailed by the learned counsel for appellants because the acquired land had ceased to be an agricultural land by virtue of Notification of 24th October, 1994 declaring agricultural lands in these three villages in question to be urban. It is true that vide aforesaid Notification of the year 1994 the land use of the acquired land had changed but that by itself is not sufficient to presume that the acquired lands had gained potentiality for being considered as developed lands. The evidence led is lacking on the vital aspect of there being any development in and around the acquired lands in question. Not only this, even the sale exemplars of Radha Swami Satsang, Beas heavily relied upon by the appellants disclose that the sale of the said lands was

for agricultural purpose.

37. Rather, it emerges from the evidence on record that till the issuance of Notification u/s 4 of the Land Acquisition Act, 1894, the acquired lands were put to agricultural use. Had there been increase in price due to higher demand, on account of potentiality of the acquired lands upon change of their use post the year 1994, then appellants could have laid their hands on other sale instances in the area in question. But, indeed appellants cannot rely upon the sale of the land in Village Pochanpur to a religious institution and another sale instance of Village Samalkha (Ex.PW-1/11) without leading any evidence to establish that the quality and potentiality of the sale exemplars of Radha Swami Satsang, Beas in Village Pochanpur and the sale exemplar of Village Samalkha (Ex.PW-1/11) are comparable with the acquired lands and so the contiguity of the acquired land with the sale instance of Village Samalkha (Ex. PW-1/11) cannot be treated to be sufficient ground to grant higher compensation while relying upon the aforesaid sale instances. Therefore, in view of the afore-referred dictum of the Apex Court in Haryana State Industrial Development Corporation (HSIDC) (Supra), uniform rate of compensation deserves to be awarded for the lands acquired under the same Notification in the light of the minimum price fixed by the Government for the agricultural land in Delhi, which generally factors in the rise of price due to higher potentiality. Taking note of the fact that there is a gap between what would be expected to be the market growth and what the market had actually grown, Government''s minimum agricultural price has been held to be reasonable basis for assessing the market value of the acquired lands in Jai Singh (Supra) as well as in Sushil Kumar (Supra) and I find no reason to take a different view than the one which had been taken by coordinate Bench of this Court in the aforesaid cases of Jai Singh (Supra) and Sushil Kumar (Supra).

38. This Court is of the considered view that the Reference Court in the matters pertaining to Village Bharthal and Village Bijwasan has rightly relied upon the Government''s minimum price for agricultural lands in Delhi to fix the market value of the acquired lands in question. Finding of the Reference Court in matter of Village Bharthal and Village Bijwasan, of there being no evidence that the potential and the situation of the acquired lands is similar to sale exemplars is borne out from the evidence on record. But I find that the aspect of higher potentiality of the acquired lands being in close vicinity of the IGI Airport, Indian Oil and Bharat Petroleum Depots and of Railway line passing through Village Bharthal and there being a 100 meters vide road starting from NH-8 from Shiv Murti side to Dwarka Sub-City, Part I and Part II, dividing the acquired lands in two portions, and there being Farm Houses in the vicinity of the acquired lands has somehow missed the attention of the Reference Court. In the considered opinion of this Court, on account of aforesaid locational advantages, the acquired lands in question, certainly assume higher building potentiality being in vicinity of Dwarka Phase-I. What persuades this Court to grant 10% increase over and above market value of the acquired lands as assessed by the Reference Court on account of the higher building potentiality in the acquired lands is the settled

legal position aptly highlighted by the Apext Court in Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad, , in these words:-

When once a conclusion is reached that there was the possibility of the acquired land being used for putting up buildings in the immediate or near future, such conclusion would be sufficient to hold that the acquired land had a building potentiality and proceed to determine its market value taking into account the increase in price attributable to such building potentiality.

39. Considering the fact that it would be very difficult to provide a definite value qua potential, and in view of the fact that exactness can never be achieved in the matters of assessing fair compensation, it is broad probabilities of the instant cases, which persuades me to treat them with equivalence by uniformly applying the Government''s minimum prices for the agricultural lands for computing the fair market value of the acquired lands as there are no special features to treat the acquired lands differently and so, appellants of Village Pochanpur are treated at par with their counter-parts, i.e., appellants of Village Bharthal and Village Bijwasan. However, while relying upon the decision in Sushil Kumar (Supra), I am inclined to grant 10% increase over and above the market value of the acquired lands determined by the Reference Court in these matters on account of the aforesaid locational advantages providing a higher building potentiality in the acquired lands in question.

40. Accordingly, these appeals are partly allowed to the extent of awarding 10% increase over and above the market value assessed by the Reference Court in matters pertaining to Village Bharthal and Village Bijwasan. While treating the appellants of Village Pochanpur at par with the appellants of Village Bharthal and Village Bijwasan, the appeals of the appellants of Village Pochanpur are also allowed to the extent indicated above. Thus, the market value of the acquired lands of these three villages in question is determined @ Rs. 16,50,000/- per bigha for the Category ''A'' land and @ Rs. 14,69,600/- per bigha for the Category ''B'' lands in question.

41. On the aforesaid enhancement in the compensation awarded, statutory benefits as per the Land Acquisition Act, 1894 as explained in the judgment reported in Sunder vs. UOI 2001 (93) DLT 569 are granted, except for the period where there is a delay in filing the appeal, for which period of delay no interest on the enhanced compensation shall be paid. These appellants would be entitled to proportionate costs.

42. The above captioned appeals and cross-objections are disposed of in the aforesaid terms with direction to the Registry to remit the compensation amount, if any, deposited by either side with the Registrar General of this Court, to the concerned Reference Court. Decree sheets be accordingly prepared.

