

(2001) 03 DEL CK 0181

In the Delhi High Court

Case No : Regular First Appeal No. 461 of 1995 along with Regular First Appeal No's. 794, 414, 450, 462, 463, 930, 942 and 944 of 1995; Regular First Appeal No's. 1. 2. 5. 241. 243 and 246 to 249 of 1996

Shri Hari Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Citation : (2001) 5 AD 160 : (2001) 91 DLT 602 : (2001) 60 DRJ 821

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Om Prakash, for the Appellant; Ms. Geeta Luthra, for the Respondent

Judgement

Devinder Gupta. J.

1. This judgment is meant to dispose of these group of appeals filed u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") since they arise out of same award of the Collector Land Acquisition.

2. A big chunk of land situate within Revenue Estate of village Tughlakabad was notified for being acquired, at public expense for public purpose, namely, Planned Development of Delhi, through notification issued under Sections 4 and 17(1) of the Act on 1.6.1992. It was followed by declaration u/s 6 of the Act made on 29.7.1992. As Section 17(1) of the Act was invoked, compliance of Section 5A of the Act was waived off. Actual physical possession of the land admittedly had already been taken over on 4.7.1998.

3. Pursuant to notices issued under Sections 9 and 10(1) of the Act claims were invited. The Collector Land Acquisition on 17.5.1994 made his award No.4/94-95 offering amount of compensation to the claimants at the rate of Rs.118/- per sq.yard as against the claim of Rs.5,000/- per sq.yard. Feeling dissatisfied references were sought by the claimants. The Reference Court through the

impugned awards determined the amount of compensation holding the claimants to be entitled to compensation at the rate of Rs.223/- per sq.yard. Still feeling dissatisfied further enhancement had been sought by the claimants in these appeals. Though the claims initially were up to Rs.5,000/- per sq.yard but in the appeals the claims have been restricted their claim up to Rs.3,000/- per sq. yard because of paucity of finance to pay for the requisite amount of court fee.

4. The question before us in these appeals is about the amount of compensation payable to the claimants for acquisition of their property taking into consideration the potentiality of the land as on the date of notification u/s 4 of the Act.

5. The mandate of law is that a person, who is deprived compulsorily of his land for public purpose by the State, under the provisions of the Land Acquisition Act, must be paid compensation in accordance with law i.e. the true market value. This Constitutional mandate of paying the true market value of land was highlighted by the Supreme Court in its decision in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, saying:-

"Where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law in so many terms, declares that he shall be paid such market value."

6. In determining the amount of Compensation, factors enumerated in Section 23 of the Act are to be taken into consideration and the factors enumerated in Section 24 of the Act are to be excluded. It need hardly be said that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but only by reference to the uses, which it is reasonably capable of being put in future. This potential use to which the land is reasonably capable of being put in future in the hands of the owner has to be taken into consideration and the owner is entitled to have the price assessed with reference to the advantages which will give the land the greatest value. The value of an owner's interest is not properly compensated by assessing the amount of pecuniary benefits obtained by past user in disregard of the possible benefits in future. The possibility of a mere profitable use is one such advantage, which may be taken into consideration, which is known as the potential value.

7. The Supreme Court in The Collector, Raigarh Vs. Harisingh Thakur and Another, held that the question as to whether a particular land had potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the user to which it is put or is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their further extension, whether the nearby town is a

developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighborhood thereof.

8. It is in the light of these principles that we have to approach to the question before us.

9. As regards the location of the acquired area of village Tughlakabad and the advantages attached to it, the Collector Land Acquisition had also in his award made some reference. It is stated that long before issuance of notification u/s 4 of the Act, the entire Revenue Estate of Tughlakabad stood urbanised. The area was located near to various posh colonies, Therefore, the acquired land was not agricultural land, Therefore, rates fixed by the Delhi Administration, being market value for non-agricultural lands, cannot be applied in arriving at the market value of the acquired land. Jawahar Singh, Halka Patwari, with the help of Aks Sijara of village Tughlakabad made a statement before the reference court that village Angagpur of District Faridabad, Haryana is located towards South of Tughlakabad and Kant Enclave Colony existed on the border of Tughlakabad towards the South. Towards Northern Side boundary of village Bahapur touches village Tughlakabad, which is known as Greater Kailash-II. Mehrauli-Badarpur Road passes through village Tughlakabad. Much prior to issuance of notification u/s 4 of the Act, three major institutions existed in village Tughlakabad, namely, Batra Hospital, Majidia Hospital and Hamdard University. Sangam Vihar colony also existed towards the Southern side. In addition to the three major institutions, colonies like Tara Apartment, Alaknanda and D.D.A. Flats Kalkaji existed on the revenue estate of village Tughlakabad. Mandakini Enclave was also built and developed on the lands of village Tughlakabad. Group Housing Scheme came into being in this colony in 1981-84 and Plotted Scheme in the year 1990-92. Kalkaji and Kalkaji Extension market were also constructed on the land of village Tughlakabad and village Bahapur.

10. From the unrebutted evidence on record, it thus becomes clear that the acquired land of revenue estate of village Tughlakabad, as on the date of notification u/s 4 of the Act, was surrounded by well developed colonies of D.D.A. and institutions like D.D.A. flats Kalkaji, Tara Apartments, Alakhnanda, Greater Kailash-II, Yamuna Apartments, Chittranjan Park, Mandakini Enclave, Batra Hospital, Hamdard College of Pharmacy, Nehru Place, Okhla Industrial Area etc. For the establishment and development of the aforementioned colonies and institutions, parcels of land from out of Revenue Estate of Tughlakabad were acquired during the period from 1949 to 1965. Considering the development, which had taken place by 1965 within the Revenue Estate, it was duly urbanised. Notification (Exhibit-1) published on 3.6.1966 in Delhi Gazette Extraordinary Part IV, was issued by the Delhi Administration in exercise of its powers conferred by clause (a) of Section 507 of the Delhi Municipal Corporation Act, 1957 with the previous approval of the Central Government declaring amongst others that the Revenue Estate of Tughlakabad shall cease to be rural area.

11. Issuance of such a notification itself is sufficient to raise an inference about potentiality of the entire land of village Tughlakabad as a building site more particularly in view of the two decisions of this Court in P.N.Singh v. Union of India 1997 I AD (Delhi) 83 and Tindey and Others Vs. Union of India (UOI) and Another, . It was held in these decisions that the effect of urbanisation would be that the potentiality of the lands as on the date of notification has to be taken as a building site.

12. The Collector, Land Acquisition in his award also noticed a fact that in a major policy decision, Delhi Administration had fixed minimum price of the agricultural land for the purpose of paying compensation at the rate of Rs.4.65 lakhs per acre. Since village Tughlakabad was urbanised and being non-agricultural land, rates fixed by the Delhi Administration cannot be applied for determining the market value. Therefore, he relied upon the judgment of this Court in RFA No.299/84 (Virender Singh etc. v. Union of India) decided on 23.4.1991. In that case the land had been acquired for public purpose through notification dated 5.7.1973. Compensation was assessed at the rate of Rs.68,000/- per bigha. Treating the said amount to be the fair market value as on 5.7.1973, he allowed due appreciation thereupon and offered compensation at the rate of Rs.1,18,000/- per bigha as on 1.6.1992.

13. The Reference Court in the impugned award, after noticing the topography of the acquired land that it was surrounded by villages Badarpur, Pul Fehlad, Tigri and Bahapur and discarding other evidence, placed reliance upon the document Ex.A.5. In his opinion it was a direct and best piece of evidence to be acted upon for all practical purposes. Document Ex.A.5 is the copy of the judgment of this Court in RFA No.299 of 1984 (Virender Singh v. Union of India) decided on 23.4.1991. For the time gap of about 19 years between the dates of notification u/s 4 in Ex.A.5 and the notification issued u/s 4 of the Act in the instant case appreciation @ 12% p.a. in the opinion of the Reference Court could be allowed in order to determine fair market value as on 1.6.1992. For this the Reference Court relied upon the judgment of this Court in Prakash Chand Kashyap v. Union of India AIR 1988 Delhi 316 and Rameshwar Solanki Vs. Union of India, . Thus allowing the said appreciation, the Reference Court assessed the market value of the acquired land at the rate of Rs.223/- per sq.yard.

14. Learned counsel for the appellant had laid much stress on the other evidence adduced in the case urging that as the entire Revenue Estate was urbanised by notification dated 3.6.1996 about 26 years prior to the issuance of the notification u/s 4 of the Act and as the acquired land was located in close proximity to the posh and developed colonies and institutions, potential value of the land for being utilised for residential, commercial as well as industrial purposes ought to have been considered. In case the Collector Land Acquisition and the Reference Court thought it fit to place reliance upon document Ex.A.5 for determining the amount of compensation, they ought to have applied the same rationale as was applied by the Division Bench in the said judgment Ex.A.5. He

urged that in judgment Ex.A5 schedule of rates of Kalkaji fixed by the Government, which was prevalent in the year 1966, were applied. For that reason alone the market value as on 5.7.1973 was arrived at by adding thereto appreciation at the rate of 12% p.a. As in these appeals the determination of the market rate has to be worded out as on 1.6.1992. there is no reason why the rates fixed by the Government through document Ex.A-B issued on 1.2.1992 be not made the basis. According to his submission, the Collector as well as the Reference Court fell in error by allowing appreciation on the market value as determined in Ex.A-5. In Ex.A-5 appreciation was allowed on the market rates as were fixed by the Government for 1966, whereas the Government had revised schedule of rates. Revised rates ought to have been made basis for determining compensation.

15. Ex.A.5 is copy of the judgment of a Division Bench of this Court, which determined the amount of compensation for acquisition of land situated in village Tughlakabad through notification issued u/s 4(1) of the Act on 5.7.1973. Schedule of rates, as notified by Government of India, Ministry of Works, Housing and Urban Development, through its letter (Ex.A-7) dated 28.3.1996 for the neighbouring locality of Kalkaji was made basis in determining the amount of compensation. Since the colony of Kalkaji had been established on the land of village Tughlakabad, which had been acquired some where in 1949-50, the Court proceeded on the basis that fair market value of the land in Tughlakabad as on 28.6.1996 was Rs.65/- per sq.yard. Since market value had to be determined with reference to the date of notification u/s 4 i.e. 6.7.1973, on allowing of appreciation at the rate of 12%, Court held Rs.68/- per sq.yard to be the fair market value of the acquired land in Kalkaji.

16. In supersession of earlier notifications on the subject of Schedule of Market Rates of Land in different areas of Delhi/New Delhi, Ministry of Works, Housing on 7.5.1974 issued another notification in which rates for residential and commercial lands in Kalkaji are shown as Rs.100/- and Rs.200/- per sq.yard respectively instead and in place of earlier rates of Rs.60/- and Rs.150/- respectively. Another office order No.2 of 1992 (Ex.P-9) was issued on 11.2.1992. By the said order Government of India, Ministry of Urban Development, Land and Development Office, New Delhi notified fresh schedule of market rates of land in Delhi/New Delhi. Instead and in place of Rs.100/- and Rs.200/- per sq.yard the market rates for residential and commercial plots for Kalkaji are shown as Rs.8,400/- per sq.meter and Rs.16,900/- per sq.meter, (approximately it will be Rs.7245/- and Rs.14,490/- sq.yard for residential and commercial plots respectively).

17. Contention of learned counsel for the appellant was that the Reference Court was not justified in allowing 12% appreciation for the period from 1973 to 1992 on the market rate as had been determined in judgment Ex.A.5. Schedule of rates for 1966 was relied upon in Ex.A.5. By the time impugned award was passed, new Schedule of rates were in operation. Considering the percentage of

appreciation in the notified market rates from 1966 (Ex.P-7) to the year 1992 (Ex.P-9) proportionate increase ought to have been allowed by 72 times. Rates for Kalkaji colony had increased 72 times from 1973 to 1992. In case Rs.68/- was taken to be the market value as in 1973, minimum rate, which ought to have been assessed in 1992 would be Rs.4,896/- per sq.yard. As against this as per the circulars of Government of India, the notifying rates for residential plots in 1992 were Rs.7,245/-Per sq.yard in Kalkaji.

18. Market value of the land for a particular area or a revenue estate as fixed by the Central Government in the circular issued on 28.3.1996 were held to form a reasonable and fair basis to determine the market value for the land acquired in that area or revenue estate in RFA No.299/84 (Virender Singh v. Union of India) decided on 23.4.1991.

19. Decision in Virender Singh's case (supra) was followed in Chandan and Others Vs. Union of India, . While determining compensation of land situate in village Tughlakabad acquired through notification issued on 23.1.1965, it was held that colony of Kalkaji had been carved out of the land of village Tughlakabad. Circulars of Central Government fixing market value of residential plots in a particular area were held to form a reasonable basis for determining the market value of land acquired in the same area. Judgment in Virender Singh's case (supra) was followed but with one rider. It was observed that the attention of the Judges, who decided Virender Singh's case (supra) was not drawn of the necessity to make 1/3 deduction from the market rates fixed by the Central Government as per the decision of Supreme Court in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, and Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, . In the later decision, the Apex Court had held:-

"In Smt. Tribeni Devi and Others Vs. Collector of Ranchi, , this Court held that "in order to develop that area at least the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities." On this basis the value of the land at Rs.2,08,135.70 per acre would, after the deduction of 1/3 come to Rs.1,38,757 per acre. In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, . This Court held that deduction of 1/3 was held to be reasonable. In Vijay Kumar Moti Lal Vs. State of Maharashtra, was deducted towards developmental charges in undeveloped area. In Vijaysingh Liladhar Vs. Special Land Acquisition Officer, the deduction of 1/4th by the High Court which was not challenged in this Court was upheld. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , deduction of 25 per cent was held to be reasonable. It is to be noted that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc, are condition precedent to approve play out for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction

of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction of 1/4 may be justified. On that basis, this Court in R.Dharma Rao's case upheld deduction of 1/5 because the owner while obtaining the lay out had already set apart lands for road and drainage. Therefore, deduction of 1/3 would be reasonable. In fact in The Tehsildar, Land Acquisition, Vishakapatnam v. P.Narasing Rao (1985) 1 A PLJ (HC) 99, a Division Bench of the High Court surveyed judgments of the High Court relating to housing schemes of Visakhapatnam upholding deduction of 1/3 to be reasonable. Accordingly we hold that 1/3 of the market value should be deducted for development of the lands."

20. Thus in Chandan's case (supra) market value of the acquired land was determined after making deduction of 1/3 from the rates as notified in the circular issued by the Central Government. The Bench observed:-

"It is not disputed before us that colony of Kalkaji was carved out of the land of village Tughlakabad. The colony is developed with roads, parks, schools and having other civil amenities. The circular of the Central Government containing information for guidance of leaseholders fixes the market value of the residential plots in Kalkaji at the rate of Rs.60/- per square yard. It is mentioned in the circular that the land value indicated in it was determined some time in 1965 and though issued in 1966 would not purport to indicate current market value of any particular plot for the purpose of Direct Taxes Act which would depend not only on the exact location of the plot within the specified area but also on the date as on which the valuation had to be made under the respective Acts. The circular also states that the instructions contained therein were for the limited purpose of providing assistance to the lessees in the matter of assessment of charges by the Lesser and were, in no way, to be construed as statutory rules and regulations on the subject. Nevertheless, as held in RFA 299/84 the circular does give reasonable basis of the market value of the land in the colony of Kalkaji in the year 1965. It is, Therefore, not necessary to refer to any judgment fixing the market value of the adjacent land to the lands subject matter of these appeals when sufficient guidelines could be obtained from the Central Government circular of 1966 itself. The market value of the land in all these appeals has, Therefore, to be fixed at Rs.60/- per square yard less 1/3rd of the same deducted for the purpose of development of lands. The latest decision of the Supreme Court on the question of deduction of 1/3rd of the market value is reported in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, . Reference in this case was made to many earlier decisions of the Supreme Court and one of such decisions is in the case of Smt. Tribeni Devi and Others Vs. Collector of Ranchi, . where the Court held that "in order to develop that area at least the value of 1/3rd of the land will have to be deducted, for roads, "drainage and other amenities"". In D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI), , the Court found that the acquired land was across the road of a developed colony Rajouri Garden. The evidence showed that the sale price of developed plots in the Rajouri Garden came to Rs.23/- per square yard. After taking into account the land set apart for roads, open spaces and

other facilities and the development charges including the brokerage and administrative expenses, the Court found the price of the developed land would work but to Rs.11.56 per square yard. That would be about half of the price for a developed plot. That would be about half of the price for a developed plot. In the present case, however, we find that there is no such evidence and we have to adopt the rough and ready method laid by the Supreme Court. Accordingly, we will hold that 1/3rd of the market value be deducted for the development of lands acquired and, thus, the market value would come to Rs.40/- per square yard or Rs.40,000/- per bigha."

21. In RFA No.131/88 (Ram Lal Bansiwali v. Union of India decided on 28.11.1995 another Division Bench of this Court, of which one of us (Devinder Gupta, J.) was a member, held the schedule of rates issued by Land and Development Office to be a relevant piece of evidence in determining the amount of compensation. The Bench observed:-

"This market value, if allowed, would be in consonance with the average rates, as recognised in schedule of rates issued by the L & D.D. in Ex.A-5 for the commercial plots located in the same vicinity on the main New Rohtak Road, namely, Rs.2,400/- per sq.yard as on 1.4.1982."

22. Another Division Bench of this Court in Anil Kumar Sharma Vs. Union of India, approved the earlier view on the relevance of the circulars issued about the market rates of commercial and residential plots in determining the amount of compensation in land acquisition cases.

23. Before we dwell further on this point, it will be necessary for us to refer to a few other decisions relied upon. Ex.A.10 is the copy of an award of Reference Court (Shri B.B.Gupta, Additional District Judge, Delhi) in LAC No.2 of 1980 (Bhola Nath and Shambhu Nath v. Union of India) decided on 27.2.1980. For the land situate within the Revenue Estate of village Bahapur, acquired through notification issued u/s 4 of the Act on 30.6.1978, the Collector Land Acquisition had assessed the market value at varying rates from Rs.42/- to Rs.84/- for Block-C, Block-B and Block-A lands respectively. The Reference Court in the said award assessed the fair market value at Rs.175/- per sq.yard instead and in place of Rs.84/- per sq.yard. Appeal was preferred against this award to this Court. Division Bench of this Court in RFA No.65/81 (Bhola Nath and others v. Union of India) decided on 21.8.1988 enhanced the amount of compensation holding the fair market value of land situate in village Bahpur as on 30.6.1978 at Rs.2,000/- per sq.yard. In arriving at such fair market value, this Court took the average of the market rates as depicted in various lease deeds of developed plots of DDA in the adjacent locality of an earlier period and allowed 12% annual increase therein and deducting 1/3 towards development costs. The court held:-

"In the absence of any other evidence on record, we are of the view that the best manner to determine an appropriate market value for the acquired land would be to take the average of the market value from the above lease deeds and to allow

12% annual increments thereon for a period of five years so as to reach 30th June, 1978 which is the date of notification u/s 4 of the Act in the present case. On this basis the average rate comes approximately Rs.2,900/- per sq.yard. In the absence of evidence by way of sale transactions near about the date of the notification u/s 4 of the Act, the Supreme Court resorted to the method of taking averages and proceeding on the basis of yearly increase in the market value of land in *Gokal Vs. State of Haryana*, . This system of working out the market value in such circumstances was also followed by this Court in *Rameshwar Solanki Vs. Union of India*, and *Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, *Bhagwathula Samanna v. Special Tahsildar and Land Acquisition Officer, Revenue Divisional Officer v. L.Kamalamma*.

From the above price some deduction will have to be made on account of the fact that the plots from which the said price has been worked out were fully developed plots whereas the land subject matter of the present appeal is a large tract of land with no development. On this account in order to make the price comparable, some deduction has to be made. In the facts of the present case, a deduction of 30% appears to be an appropriate deduction which will take care of the development cost as well as the cost of land to be left out for purposes of roads, parks, and other common facilities. From this we reach the price of approximately Rs.2,000/- per sq.yard as on 30th June, 1978."

24. SLP (Civil) No.1608 of 1999 (*Union of India v. Bhola Nath Sharma (dead) by LRs. and others*) filed against the judgment of this Court in *Bhola Nath's* case (*supra*) was dismissed by Supreme Court on 12.4.1999. Review petition No.1359 of 1999 was also dismissed by Supreme Court on 13.10.1999.

25. Ex.A.11 is the copy of award No.7/91-92 dated 7.1.1992 of the Collector Land Acquisition offering compensation to the land owners for their land situate in village Bahpur, Delhi acquired through notification issued u/s 4 of the Act on 5.10.1989. Collector offered amount of compensation at the rate of Rs.790.00 per sq.yard or Rs.8,30,000.00 per bigha. It has come in evidence that village Bahpur adjoins village Tughlakabad.

26. Supreme Court in *Sri Rani M.Vijayalakshamma Rao Bahadur, Rance of Vuyyur v. The Collector of Madras* 1969 M.L.J.45 (S.C) held that when the land is being compulsorily taken away from a person, he is entitled to the highest value, which similar land in the locality is shown to have fetched. In *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, it was held that Court can take judicial notice of general trend of rise in prices of land. It was also held that when no sales of comparable land were available, where large chunks of land had been acquired, even land transactions in respect of smaller extent of land could be taken note of, as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land for providing enough space for roads, sewers, drains, expenses involved

in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed. It was also held that when land is acquired, which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonable higher price for that site. Therefore, there will be nothing wrong in case the entire land acquired in one block is classified into some category for assessing the amount of compensation.

27. The evidence, as noticed above, in this case suggests that the acquired land had the potentiality as a building site. Within village Tughlakabad posh colonies and institutions already existed. On the land, which earlier had been acquired from out of the revenue estate of Tughlakabad, not only important institutions were constructed and developed but all amenities like water, electricity etc. were available. There is no denial that as on the date of notification u/s 4(1) of the Act there was tremendous possibility of future extension since adjoining colonies were fast developing. There was tremendous pressure of building activities towards the acquired land. Considering these potentialities it is a matter of common knowledge that in such circumstances prices of land in the vicinity might have increased manifold after each successive acquisition. Land of village Tughlakabad was being acquired bit by bit with effect from 1949. It continued to be so acquired till the acquisition in question took place on 1.6.1992. Therefore, the Reference Court was not justified in having continued to bank upon an earlier award Ex.A-5 in which the scheduled rates of 1966 were made the basis. Because of steep rise in the prices of land not only in and around the acquired area but through out the National Capital Territory of Delhi and because of the successive acquisitions: schedule of rates undergoing modifications and fresh rates were notified the latest rates were announced in 1992, there is no reason why 1992 rates would not have been made the basis by the Reference Court in determining fair market value as on 1.6.1992.

28. There is evidence on record that the entire land acquired through the notification u/s 4(1) of the Act as on that day was surrounded by the well developed colonies of DDA/Govt. like Kalkaji, Tara Apartments, Alaknanda, greater Kailash Part II, Yamuna Apartments, Chittranjan Park, Mandakani Enclave, Batra Hospital, Hamdard College of Pharmacy and Nehru Place, Okhla Industrial area etc. and all the civic facilities like water, electricity, sewage, and roads etc. were available to the land in question. Most of the land of this village was acquired by the Government for the development of the above said colonies in the year 1949 to 1965 and the entire revenue estate of this village was declared urbanised by the Government on 3.6.1966. The land in question could be used for residential, commercial as well as industrial purposes as the above said colonies were admittedly developed on the land of this village. The Land

Acquisition Collector himself observed in the award itself regarding the potential value of the land in question which is as under:-

"The land under acquisition is situated in village Tughlakabad. The entire estate of Tughlakabad was urbanised vide notification No.F-2(49)/65/LSG dated 03.06.1966 i.e. long before the issue of notification u/s 4 of the Act. The policy decision of Delhi Administration fixing market value of land at the rate of Rs.4.65 lacs per acre is for agricultural land only. Since the land of Tughlakabad is urbanised and non agricultural land, the rates fixed by Delhi Administration cannot be applied for determination of market value of non-agricultural land."

29. Colony known Mandakani Enclave had been developed by D.D.A. on the land of Tughlakabad and plots were auctioned or allotted during 1993-94 for residential purposes. At page 151 is the detail of Auction/Allotment of plots by the D.D.A. in Colony, namely, "Mandakani Enclave" (South Zone), New Delhi. The market rates fetched during auction range from Rs.15,000/- to Rs.20,000/- per sq.yard, which would definitely suggest the tremendous rise in prices because of tremendous pressure of building activity in and around the vicinity.

30. In Ram Lal's case (supra) Division Bench had determined the amount of compensation for the land situate at village Chokri Mubarkabad acquired through notification issued u/s 4 of the Act on 27.7.1984 at the rate of Rs.2,320/- per sq.yard. The assessment was made on the basis of schedule of rates as were notified on 1.4.1982 at Rs.2,400/- per sq. yard. Supreme Court further enhanced the amount of compensation by its decision rendered on 17.2.1997 in Civil Appeal No.1328.97 holding that the land in question was situated in a developed industrial area. Market value was thus enhanced and was fixed at Rs.3,000/- per sq. yard.

In case as on 11.2.1992 the market rate of residential plots in Kalkaji was Rs.7,245/-, fair market value could be determined of the land situate in Tughlakabad acquired through notification dated 1.6.1992 by making a reasonable deduction towards development charges in view of the principles laid down by Supreme Court in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, and Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, .

Learned counsel for the appellant submitted that as all facilities were available and the land was surrounded by developed colonies and could be used for building purposes, without further development, no deductions be allowed. He placed reliance on the decision of Supreme Court in Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer AIR 1992 S.C. 2998.

There is no doubt that if large tract of land because of advantageous is capable of being used for the purpose for which smaller plots are used and is also situated in a developed area with little or no requirement of further development, principle of deduction of the value for purpose of comparison is not warranted.

There is no material on record to suggest that the acquired land had all facilities like a developed colony, Therefore, there is no reason why there should not be made a reasonable deduction for the purpose of development charges likely to be incurred for road, drainage, electricity, compunctions etc.

By notification of 1992 (Ex.A-9) rates as reflected for the locality in question were Rs.7,245/- per sq. yard. It would be more than 73 times the rates, which are assessed by this Court in Ex.A.5 for the acquisition which took place in 1973. Assuming that 1973 rates are to be made the basis for determining the market value of land, the same in any case would not be less than Rs.4,896/-. Even considering that this lower figure to be the market rates of developed plots in the locality as on 1.6.1992 instead and in place of Rs.7245/- per sq. yard and allowing deduction of Rs.1896/- per sq. yard there from, it would not be unreasonable to hold that the fair market value of the acquired land as on 1.6.1992 would be Rs.3,000/- per sq. yard. We may observe that this deduction of Rs.1869/- per sq.yard is still on higher side being 38.72%. Thus the claimants are held entitled to compensation at the rate of Rs.3,000/- per sq. yard.

Consequently, the appeals are allowed with proportionate costs holding the claimants/ appellants to be entitled to compensation at the rate of Rs.3,000/- per sq. yard. Over and above the amount of compensation, the claimants will be paid solarium at the rate of 30% on the market value. The claimants are also held entitled to additional amount at the rate of 12% p.a. on the market value with effect from the date of notification u/s 4(1) of the Act to the date of award, since possession in this case had already been taken prior to issuance of notification u/s 4(1) of the Act. The claimants will be paid interest on the enhanced amount of compensation at the rate of 9% p.a. for a period of one year from 4.7.1988 and thereafter at the rate of 15% p.a. till the date of payment. Question of payment of interest on solarium is left open. The same in case is held payable by the Supreme Court in its decision on the question, which has been referred to a larger bench in Kapur Chand Jain (Dead) and Others Vs. State Govt. of H.P. and Others, , the same will become payable to the claimants.