(2022) 11 DEL CK 0163

In the Delhi High Court

Case No : LA.APP. No. 691, 696, 700, 701, 702, 711, 712, 713, 717 Of 2011, 29 Of 2012, 48, 59, 90, 208, 209, 212, 213, 214, 216 Of 2014, Civil Miscellaneous Application No. 2148, 2973, 3276, 3277, 3716, 3718, 3735, 6130, 6137, 6138, 6273, 6277, 6300, 6648 Of 2014,

Ved Prakash Decd Thr Lrs APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27
Land Acquisition Act, 1894 — Section 4, 6, 18, 19, 23

Citation : (2022) 11 DEL CK 0163

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Sanjay Kumar Pathak, Pradeep Dewan, Swati Bhardwaj, Tarun Johri, Ankur Gupta

Final Decision : Dismissed

Judgement

Anu Malhotra, J

Applications for Condonation of Delay

1. The applications for condonation of delay filed by the land owners, Union of India and the DMRC have been considered and delay condoned vide orders dated 24.11.2011, 25.11.2011, 17.11.2011, 09.12.2015, 06.08.2014, 13.02.2012 and 14.01.2022. Applications under Order 41 Rule 27 of the CPC filed by the Union of India which vide order dated 19.03.2015 and 06.07.2022 have been disposed of to the effect that their documents sought to be placed on record were being taken on record with their evidentiary value to be considered at the time of consideration of the appeals.

Appeals

2. LA.APP. 691/2011 is the lead case.

3. The LA Appeals bearing numbers LA.APP. 691/2011, LA.APP. 701/2011, LA.APP. 29/2012, LA.APP. 696/2011, LA.APP. 711/2011 and LA.APP. 712/2011 are appeals filed by persons whose land, pursuant to notification No. F.7(26)/2000/L&B/LA/13537 dated 15.12.2000 under Section 4 of the LA Act, 1894 and declaration vide notification No.F.7(26)/2000/L&B/LA/MRTS/16126 dated 14.02.2001 under Section 6 of the said enactment, was acquired by the Government for construction of Mass Rapid Transit System, and the Land Acquisition Collector assessed the market value of the land and awarded the compensation @ Rs.9,900/- per sq. meter, pursuant to which the reference under Section 18 of the Land Acquisition Act, 1894 was made by the persons whose land was acquired situated at Chhatra Marg, Mall Road, Civil Station and Kingsway Camp, Delhi.

The LA Appeals bearing numbers LA.APP. 700/2011 and LA.APP. 717/2011 are appeals filed by persons whose land, pursuant to notification No. F.7(35)/95/L&B/LA/11/5316 dated 12.06.1997 under Section 4 of the LA Act, 1894 and declaration vide notification No. F.7(35)/95/L&B/LA/11/8918 dated 28.07.1997 under Section 6 of the said enactment, was also acquired by the Government for construction of Mass Rapid Transit System, and the Land Acquisition Collector assessed the market value of the land and awarded the compensation @ Rs.6,300/- per sq. meter, pursuant to which the reference under Section 18 of the Land Acquisition Act, 1894 was made by the persons whose land was so acquired situated at Sham Nath Marg, Delhi.

The LA Appeals bearing numbers LA.APP. 713/2011 are appeals filed by persons whose land, pursuant to notification No. F.7(35)/95/L&B/LA/Vol. VIII/12212 dated 12.11.1999 under Section 4 of the LA Act, 1894 and declaration vide notification No. F.7(35)/95/L&B/LA/Vol. VIII/14861 dated 18.01.2000 under Section 6 of the said enactment, was also acquired by the Government for construction of Mass Rapid Transit System, and the Land Acquisition Collector assessed the market value of the land and awarded the compensation @ Rs.6,930/- per sq. meter, pursuant to which the reference under Section 18 of the Land Acquisition Act, 1894 was made by the persons whose land was so acquired situated at Sham Nath Marg, Civil Station, Delhi.

4. Vide the award dated 14.07.2011, the learned ADJ-02,

vide award No. 7/DCN/2001-2002 in relation to the Village Mall Road, Civil Station qua LAC 15/1/06 forming subject matter of LA APP.691/2011;

vide award No. 7/DCN/2001-2002 in relation to Chhatra Marg, Civil Station qua LAC 298/1/06, which is the subject matter of LA APP. 701/2011;

vide award No. 7/DCN/2001-2002 in relation to the Chhatra Marg, Civil Station qua LAC 297/1/06 forming subject matter of LA APP. 702/2011;

vide award No. 7/DCN/2001-2002 in relation to the Village Mall Road, Civil Station qua LAC 20/1/06 forming subject matter of LA APP. 711/2011;

vide award No. 7/DCN/2001-2002 in relation to the Village Mall Road, Civil Station qua LAC 18/1/06 forming subject matter of LA APP. 712/2011;

vide award No. 7/DCN/2001-2002 in relation to the Village Mall Road, Civil Station qua LAC 14/1/06 forming subject matter of LA APP. 29/2012,

vide award No. 7/DCN/2001-2002 in relation to Kingsway Camp, Mall Raod qua LAC 387/1/06, forming subject matter of LA APP. 696/2011;

vide award No. 02/DCN/2001-2002 in relation to Sham Nath, Civil Station qua LAC 21/1/06, forming subject matter of LA APP. 713/2011;

vide award No. 02/1999-2000 in relation to Sham Nath Marg, Delhi qua LAC 310/1/06, forming subject matter of LA APP. 717/2011;

vide award No. 02/1999-2000 in relation to Sham Nath Marg, Civil Station qua LAC 19/1/06, forming subject matter of LA APP. 700/2011;

fixed the market value of the land of the petitioners arrayed as appellants of appeals bearing numbers LA.APP. 691/2011, LA.APP. 701/2011, LA.APP. 702/2011, LA.APP. 711/2011, LA.APP. 712/2011, LA APP. 29/2012, LA.APP. 712/2011, LA.APP. 717/2011, LA.APP. 700/2011 and LA.APP. 696/2011 at Rs.28.351/- per sq. meter and held that the appellants thereof were entitled to claim compensation as per their respective share holdings as mentioned in the statement under Section 19 of the Land Acquisition Act, 1894 on which 30% solatium shall be admissible to the petitioners in terms of Section 23 of L.A. Act, 1894.

The petitioners were held entitled to compensation in lieu of big and small trees in the following manner:-

* In LA.APP. 713/2011, 29 big trees @ Rs.4,500/- per big tree and 16 small trees @ Rs.1500/- per small tree;

* In LA.APP. 712/2011, 12 big trees @ Rs.1,000/- per big tree and 1 small tree @ Rs.500/- per small tree;

* In LA.APP. 702/2011, 41 big trees @ Rs.1,000/- per big tree and 9 small trees @ Rs.500/- per small tree;

* In LA.APP. 701/2011, 39 big trees @ Rs.1,000/- per big tree and 6 small trees @ Rs.500/- per small tree;

* In LA.APP. 696/2011, 18 big trees @ Rs.1,000/- per big tree and 10 small trees @ Rs.500/- per small tree;

* In LA.APP. 691/2011, 18 big trees @ Rs.1,000/- per big tree and 10 small trees @ Rs.500/- per small tree;

As the acquisition was more or less compulsory in nature, therefore, the petitioners were held entitled to the interest at the rate of 9% for the first year from the date of dispossession and at the rate of 15% on the difference between the enhanced compensation awarded by learned Reference Court and the compensation awarded by the LAC for the subsequent period till the payment is made to the petitioners. The petitioners were further held entitled to the interest on the Solatium/ additional amount in terms of the judgment of Hon'ble Supreme Court of India in Sunder Versus UOI DLT (2001) SC 569.

5. Vide notification dated 12.06.1997, in LAC 307/1/06 in relation to LA APP. 48/2014 filed by the Union of India, in LAC 310/1/06 in relation to LA APP. 717/2011 filed by the land owners (i.e. PC Khanna and Sons HUF through Karta Shri Parveen Khanna) and in LA APP. 700/2011 filed by the land owner (i.e. PC Khanna, decd. through LRs Naveen Khanna and Parveen Khanna) and the cross-appeal by the Union of India in LA APP.59/2014 qua the same award, the learned Reference Court held the market value of the land to be Rs.28,351/- per sq. meter.

Likewise vide notification dated 12.11.1999, in LAC 21/1/06 in relation to LA APP. 713/2011 filed by the land owners (i.e. PC Khanna, decd. through LRs Naveen Khanna and Parveen Khanna) and the cross-appeal filed by the Union of India in LA APP.90/2014 qua the same award, the learned Reference Court held the market value of the land to be Rs.28,351/- per sq. meter.

Likewise, vide notification dated 15.12.2000, in LAC 297/1/06 in relation to LA APP. 702/2011 filed by the land owners (i.e. Romesh C. Khanna decd. Through LRs) and the cross appeal filed by the Union of India in LA APP.208/2014 qua the same award;

in LAC 298/1/06 in relation to LA APP. 701/2011 filed by the land owner (i.e. Sanjay Khanna) and the cross appeal filed by the Union of India in LA APP.214/2014 qua the same award;

in LAC 20/1/06 in relation to LA APP. 711/2011 filed by the land owner (i.e. Pramod Mehra) and the cross appeal filed by the Union of India in LA APP.216/2014 qua the same award;

in LAC 15/1/06 in relation to LA APP. 691/2011 filed by the land owner (i.e. Ved Prakash decd. Through LRs) and the cross appeal filed by the Union of India in LA APP.212/2014 qua the same award;

in LAC 387/1/06 in relation to LA APP. 696/2011 filed by the land owner (i.e. Devinder Mehra) and the cross appeal filed by the Union of India in LA APP.209/2014 qua the same award;

in LAC 18/1/06 in relation to LA APP. 712/2011 filed by the land owner (i.e. Sanjay Khanna HUF through its Karta) and the cross appeal filed by the Union of India in LA APP.213/2014 qua the same award;

and in LAC 14/1/06 in relation to LA APP. 29/2012 filed by the land owners (i.e. Sushil Kumar Malik & Ors.), the learned Reference Court held the market value of the land to be Rs.28,351/- per sq. meter, all for the purpose of the Mass Rapid Transit System, with all these subject land properties being situated on the same Grand Trunk Road in virtually the same vicinity, it is considered appropriate to take up the appeals and the cross-appeals together for adjudication, in as much as, the learned Reference Court has assessed the market value of the land in each of them at being Rs.28,351/- per sq. meter.

6. The LA Appeals bearing numbers LA APP. 208/2014, LA APP. 209/2014, LA APP. 212/2014, LA APP. 213/2014, LA APP. 214/2014, LA APP. 216/2014, LA APP. 48/2014, LA APP. 59/2014 and LA APP. 90/2014 were filed by the Union of India assailing the said enhancement and assailing the judgment order and decree dated 14.07.2011 of the learned ADJ and sought that the said order be set aside with it having been submitted by the Union of India through the LAC that the learned ADJ had gravely erred in ignoring settled principles for fixation of fair market value under the Land Acquisition Act, 1894, and that vide the said order, judgment and decree there had been an erroneous determination of the market value of the land at Rs.28,351/- per sq. meter, and that the market value of the land could under no circumstances be more than the amount awarded by the Land Acquisition Collector.

7. It was further submitted on behalf of the Union of India that the onus to prove enhancement of the market price was upon the respondent to the said appeals filed by the Union of India i.e., the persons whose land was acquired and appellants of appeal bearing numbers LA.APP. 691/2011, LA.APP. 696/2011, LA.APP. 701/2011, LA.APP. 702/2011, LA.APP. 711/2011 and LA.APP. 712/2011, LA.APP. 700/2011 and LA APP. 713/2011.

8. Vide the impugned award dated 14.07.2011, the learned ADJ-02 took into account the factum that the lands and houses of the appellants were situated on the National Highway now known as the Grand Trunk Road, that the extended ranges of the Aravali Mountains are in the vicinity known as the Northern Ridge, that the University of Delhi is adjacent to the properties, that facilities like good markets, the ISBT, Asia's largest Court the Tis Hazari Court, the Vidhansabha, the Lt. Governor's House are all in the periphery of the properties acquired, and that the appellants of appeals bearing numbers LA.APP. 691/2011, LA.APP. 696/2011, LA.APP. 700/2011, LA.APP. 701/2011, LA.APP. 702/2011, LA.APP. 711/2011 and LA.APP. 712/2011, LA.APP. 713/2011, LA.APP. 717/2011 and LA APP. 29/2012 had produced documentary evidence to show vide Ex.PW3/B, an entry in the auction register in relation to residential flats auctioned at Mukherjee Nagar to have a reserved price of Rs.22,000/- per sq. meter, a sale deed, Ex.PW4/B, dated 15.12.1995 of property No. 49/3, Rajpur Road, ad-measuring 899.70 sq. meters, to show that the price fixed was Rs.12,124/- per sq. meter, and sale deeds Ex.PW5/A and Ex.PW5/B to show that the value of the land there had been worked out to be Rs.41,025/- per sq. meter as the base price on 19.09.1996 in relation to property situated at Shri Ram Road, Delhi measuring

585.285 sq. meters, submitting that, in the instant case, the notifications were dated 12.06.1997, 12.11.1999 and 15.12.2000, and thus an escalation of 12% p.a. needed to be added, which would take the price of the land to be Rs.68,619/- per sq. meter after having 12% increase p.a. for about five years.

9. The appellants of appeals bearing Nos. LA.APP. 691/2011, LA.APP. 701/2011, LA.APP. 702/2011, LA.APP. 711/2011, LA.APP. 700/2011, LA.APP. 713/2011 and LA APP. 29/2012 have sought an increase in the market value to the tune of Rs.1 Lakh per sq. meter, apart from seeking enhanced compensations for the super structures placed on the properties, with the appellant of LA.APP. 712/2011 and LA.APP. 717/2011 seeking enhancement of the market value of land to be fixed at Rs. 75,000/- per sq. meter, apart from seeking enhanced compensation for the super structure raised on the property, and with the appellant of LA.APP. 696/2011 seeking enhancement in the market value of land to be fixed at Rs. 71,470/- per sq. meter, apart from the statutory solatium and interest and other benefits available to the appellants in terms of the verdict in SUNDER SINGH VS. UNION OF INDIA DLT (2001) SC 569.

10. Whereas the thrust of the arguments of the appellants whose lands were seized with superstructures thereon is to the effect that the learned Reference Court of the learned ADJ ought to have taken into account the market value of the land at which the property at Shri Ram Road had been sold in terms of Ex.PW5/A and Ex.PW5/B, the thrust of the arguments of the Union of India vide its appeal, to which the Delhi Metro Rail Corporation called DMRC is arrayed as respondent No.2, through cross-objections raised by the Union of India, is to the effect that the LAC had correctly taken into account the certified copies of the sale deeds of bona fide transactions of similar land during five years prior to the notification under Section 4 by taking the average sale price of Rs.11,967/- per sq. meter and by loading/discounting reducing it by 17.5% i.e. average of 20% and 15% on account of cost of structures and the same being old to find the average transaction price of the land component and arrived at the market value at Rs.9,900/- per square meter, whereas the Reference Court considered the schedule of the market rate for land transfer in Delhi by the Department of Urban Development, Ministry of Urban Affairs & Employment, Govt. of India dated 16.04.1999.

11. The thrust of arguments of the Union of India is to the effect that 27 sale instances of some of the acquired land have been concealed by the claimants and even if the contention of the claimants is that the sale deed is under valued and depressed, the assessments of the market value made by the LAC in the three respective awards are much more than three times to five times the price for which the claimants purchased the same and no fault can be found in the assessment made by the LAC and no enhancement was required to be made over and above of the assessment made by the LAC.

12. The Union of India further submits that the learned Reference Court has erred and relied upon the sale deed executed on 25.02.1999 EX.PW4/C in

respect of property No.1, Flagstaff Road, Civil Lines Delhi, whereby half share of the said property was sold at the rate of Rs.28,351/- per sq. meter, and that the sale deed was not reflective of the fair market value as on the date of the issuance of the notification under Section 4 of the Act and no reliance could be placed on the said sale deed, and even if it could be so assessed as the fair market value, deductions ought to have been made by discounting/loading structure component to arrive at the market value of the land component.

13. The DMRC arrayed as the respondent No.2 to all the appeals filed by the Union of India, submits that the sale example of property No.28, Shri Ram Road, Delhi dated 19.07.1996 ad-measuring 585.285 sq. meters vide exhibits PW-5/A and PW-5/B at the rate approximately of Rs.41,025/- per sq. meter cannot be relied upon for determination of the market value of the subject property under acquisition, as the sizes of the properties are not comparable.

14. Furthermore, it is submitted by the DMRC that the sale in relation to the property No. 28, Sri Ram Road, Delhi, arose out of the family settlement between the parties to such sale deed and is not a principle to principle contract/ sale, and thus cannot be relied upon for determination of the market value of the acquired property.

15. It is further submitted by the DMRC that the per sq. meter price of a smaller property ad-measuring 528.285 sq. meters cannot be an indice for determination of per sq. meter price of large properties, and that the appellants have failed to put forth any evidence as to how the property located at Shri Ram Road was identically situated to the acquired properties.

16. The DMRC submits that there is a vast difference in market value of the properties situated even on a smaller distance of 3 kms., and thus the property located at Sri Ram Road, Delhi cannot be said to be identically located to the acquired property.

17. Inter alia, the DMRC submits that there can be no escalation at the rate of 15% for every subsequent year, as there is nothing on record placed by the appellants to show the trend of escalation from the date when the subject properties were acquired.

18. Inter alia, the DMRC has submitted to the effect that the land measuring 6.80 hectares was transferred by DMRC to M/s Parsvnath Landmark Developers Pvt. Ltd. for a period of 99 years starting from the date of the allotment to DMRC i.e. 15.11.1999, on permanent lease basis at a total value of Rs.194 crores in the year 2004, and the Letter of Acceptance dated 08.03.2004 had been issued by DMRC in favour of M/s Parsvnath for residential development, and thus, on 08.03.2004 the value of the aforesaid land at Khyber Pass was approx. Rs.28,529.41/- per sq. meter, and if, 15% per annum of cumulative deduction is applied on compounding basis, then the value of the land at Khyber Pass as on 08.03.2001 would come to the tune of approx. Rs. 17,520/- per sq. meter, which was much lower than the market value of approx. Rs.28,351/- per sq. meter

awarded by the Reference Court. The DMRC sought to place on record the Transfer Deed dated 01.09.2006 and the Agreement dated 30.03.2004 executed between the respondent No.2, i.e. the DMRC, and M/s Parsvnath Landmark Developers Pvt. Ltd.

19. Inter alia, the DMRC submits that in June, 2008, it had issued an RFP for development construction of a Group Housing Residential Project on land ad-measuring 20,000 sq. meters, which is a part of the acquired property forming subject matter of LA APP. 702/2011, and that the Letter of Acceptance dated 13.08.2008 had been issued by DMRC in favour of M/s. Young Builders Pvt. Ltd. for a total consideration of approx. Rs.218.20 crores, which aspects were noted in judgment dated 27.05.2015 in Writ Petition (C) No.2743 of 2012 titled Registrar, University of Delhi Vs. Union of India and Ors, and thus, on 13.08.2008, the value of the acquired land of 20,000 sq. meters came to the tune of approx. Rs.1,09,100/- per sq. meter, and if, 15% per annum of cumulative deduction was applied on compounding basis, then, the value of the acquired land as on 13.08.2000 would come to the tune of approx. Rs.29,728/- per sq. meter, with it having been submitted by the DMRC that the said bid had been received by DMRC only after the construction and implementation of the Metro Project including Metro Station on the acquired land, meaning thereby, that the value of the acquired property was much lower than the rates arrived at by the Hon'ble Reference Court.

20. For the purpose of the present appeals, in view of the documents sought to be placed upon on behalf of either side being documents in the form of registered sale deeds, the Court accepts them to be correct.

21. As regards the contention however raised on behalf of the appellants, i.e. the land owners whose land was acquired vide the notifications forming subject matter of the judgment of the learned Reference Court dated 14.07.2011 in relation to notification No. F.7(35)/95/L&B/LA/Vol. VIII/12212 dated 12.11.1999, notification No. F.7(35)/95/L&B/LA/11/5316 dated 12.06.1997 and notification No. F.7(26)/2000/L&B/LA/13537 dated 15.12.2000 to the effect that the market value has been wrongly assessed, in as much as, the value of the property 28, Shri Ram Road has not been taken into account, the Court is of the considered view that there is no infirmity in the observations of the learned Reference Court in not taking the value of property at Shri Ram Road to be the market value of the properties acquired on the dates of the notification in question. This is so, in as much as, rightly contended on behalf of the Union of India and the DMRC, the sale transaction in relation to the property at Shri Ram Road was on the basis of a family settlement, and furthermore, in relation to property much smaller in dimensions than the properties in question, and also was in relation to a comparatively peaceful area than the Mall Raod and Cavalry Lane and Chhatra Marg, where the properties forming subject matter of the appeals are situated.

22. The prayer thus made by the appellants, the land owners, seeking an enhancement of the market value of the land to Rs.1 Lakh or Rs.75,000/- or Rs.

71,470/- per sq. meter or to the extent Rs.41,025/- per sq. meter at Shri Ram Road is thus declined.

23. However, the contentions raised by the Union of India and the DMRC also that the market value had been incorrectly assessed by the Reference Court and ought to be reduced, can also not be accepted in view of the factum that the Reference Court has taken into account the comparable rate of land market value of land situated at 1, Flagstaff Road, Civil Lines, Delhi on the date 25.02.1999 as being Rs.28,351.22 per sq. meter and also taken into account the average of all sale instances put forth by the appellants which had come forth to be Rs. 25,437/- approx. and thus, taken an approximation of the sale instances to conclude that EX.PW4/C showed the most appropriate sale price of Rs.28,521/- per sq. meter. Thus, the contentions both of the Union of India and the DMRC seeking a reduction in the rate of assessment of the market value of the lands in question in also declined.

24. The learned Reference Court vide granting the relief of enhancement of the market value of the land from Rs.9900/- per sq. meter, Rs.6,930/- per sq. meter and Rs.6,300 per sq. meter and assessing it and fixing at being Rs.28,351 per sq. meter has granted the requisite 30% solatium in terms of Section 23 of the Land Acquisition Act, 1894 and has also granted the compensation in relation to the constructed portions of the property as well as qua the trees thereon with interest at the rate of 9% for the first year from the date of dispossession and at the rate of 15% on the difference between the enhanced compensation awarded by the Court and the compensation awarded by the LAC for subsequent period till the payment is made to the petitioners in terms of the verdict of the Hon'ble Supreme Court in "Sunder Versus UOI" DLT (2001) SC 569.

25. There is thus no reason to differ from the findings of the learned Reference Court in the judgments dated 14.07.2011 in LAC bearing Nos. LAC 21/1/06, LAC 310/1/06, LAC 19/1/06, LAC 297/1/06, LAC 298/1/06, LAC 20/1/06, LAC 14/1/06, LAC 15/1/06, LAC 387/1/06 and LAC 18/1/06 forming subject matters of LA Appeals bearing numbers LA APP. 713/2011, LA APP. 717/2011, LA APP. 700/2011, LA APP. 702/2011, LA APP. 701/2011, LA APP. 711/2011, LA APP. 29/2012, LA APP. 691/2011, LA APP. 696/2011 and LA APP. 712/2011 respectively.

26. The LA appeals bearing Nos. LA APP. 713/2011, LA APP 717/2011, LA APP. 700/2011, LA.APP. 702/2011, LA.APP. 701/2011, LA.APP. 711/2011, LA APP. 29/2012, LA.APP. 691/2011, LA.APP. 696/2011, LA.APP. 48/2014 and LA.APP. 712/2011 and the cross-appeals bearing Nos., LA APP 59/2014, LA APP 90/2014, LA APP. 208/2014, LA APP. 209/2014, LA APP. 212/2014, LA APP. 213/2014, LA APP. 214/2014 and LA APP. 216/2014 are all declined.

27. The accompanying applications are also disposed of.

