IN THE HIGH COURT OF DELHI

\+ **LA APP. No. 252-55/2005**

Judgment reserved on : April 21, 2006

% **Judgment delivered on : April 27,2006**

\# **Jagdeshwar & Ors** **....Appellant**

! **through: Mr. Deepak Khosla with Mr. I.S. Dahiya, Advocates.**

Versus

$ **Union of India & Another** **....Respondents**

through: Mr. Sanjay Poddar for LAC.

Ms. Pinki Anand & Mr. Sandeep Aggarwal for DSIDC.

CORAM :
HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S. L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

For orders see, LA APP. No. 91/2005

SWATANTER KUMAR
(JUDGE)

April 27, 2006
vk

S.L. BHAYANA
(JUDGE)

IN THE HIGH COURT OF DELHI

+ LA APP. No. 91/2005

Judgment reserved on : April 21, 2006
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Gajraj Singh ....Appellant
! through: Mr. Deepak Khosla with Mr. I.S. Dahiya, Advocates.

Versus

$ Union of India & Another ....Respondents
through: Mr. Sanjay Poddar for LAC.
Ms. Pinki Anand & Mr. Sandeep Aggarwal for DSIDC.

AND

LAAPP. Nos. 69/2005, 70/2005, 71/2005, 72/2005, 73/2005, 74/2005, 75/2005, 76/2005, 80/2005, 81/2005, 82/2005, 83/2005, 84/2005, 85/2005, 88/2005, 89/2005, 90/2005, 159/2005, 252-55/2005, 256-57/05, 539/2005, 591/2005, 622/2005, 674/2005, 675/2005, 677/2005, 415/2003 & RFAs. 408/2002 & 580/2003.

CORAM :
HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE S. L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not? yes

3. Whether the judgment should be referred in the Digest? yes

SWATANTER KUMAR, J.

The above noticed 30 appeals have been preferred by the

claimants/owners of the acquired land against the common judgment and order of the learned Additional District Judge, Delhi dated 30th November, 2004 wherein the Court held that the claimants were not entitled to any enhancement in compensation awarded by the Land Acquisition Collector vide its award No.22/97-98 and answered the references preferred to that Court under Section 18 of the Land Acquisiition Act (hereinafter referred to as the Act) accordingly.

Though we propose to dispose of all the appeals by this common judgment but we would be referring to the facts of the case in Gajraj Singh (LA (Appl.) 91/2005). The appellants claim to be owners of land measuring about 170 bighas and 2 biswas situated in khasra Nos. 43/13 (4-16), 42/14(1-14), 16 (4-8), 17 (5-6), 23 (2-14, 24 (4-16), 25 (4-16), 66/2 (94-16), 9 (4-16), 12 (4-16), 19 (4-16), 22 (4-16), 70/2 (5-4) as Bhumidar in possession of land in which the appellant had the share as reflected in the revenue record. Notification under Section 4 was issued on 15th November, 1996 acquiring 940 bigha and 6 biswa of land in the revenue estate of Village Holambi Kalan. Declaration in furtherance thereto was issued under Section 6 of the Act on 21st November, 1996. The Collector issued notices to the parties and after following the due process, divided the land into 2 different categories and vide its award dated 30th March, 1998 awarded the compensation to the claimants @Rs.1,86,500/- per bigha for land falling in category A and @Rs.1,61,500/- for the land falling in category B. Dissatisfied with this award of the Collector, the appellants and other land owners had filed references, which were disposed of by the learned

Reference Court vide order dated 22nd December, 2001. The reference Court had enhanced the compensation payable to the claimants @Rs.2,41,452 for category A land and @Rs.2,01,452/- for category B land. The Union of India as well as claimants had filed appeals against the said award. In the case of **Chajju Ram Vs. Union of India & Ors** (RFA No. 522/2002 decided on30th November, 2003), the Division Bench of this Court had remanded the matter and the Court directed as under :-

> ".....No doubt the claimants were assisted by the lawyers but it does not mean that the farmers should not be given an opportunity to lead the evidence on material aspect. Union of India objected for grant of such an opportunity. It is stated that it would amount to filling the gaps. Looking to the peculiar facts and circumstances of the case and in order to the complete justice this Court is of the opinion that opportunity should be given to claimants as well as the acquiring authority to lead evidence in this behalf.
>
> It is in view of the opinion that we have expressed hereinabove, the appeals preferred by the claimants as well as the acquiring authority are required to be disposed of with the direction to the Reference Court to complete the exercise of regarding evidence land deliver fresh award within a period of six months. At the same time if the adjournments are sought for and granted by the Reference Court, then the time shall stand automatically extended to the extent adjournment is granted.
>
> On behalf of the Union of India it was submitted that they have deposited the amount in the Court in most of the cases and in some of the cases amount has been withdrawn. We are told that the claimants who have withdrawn the amount, it is on furnishing a bank guarantee. It is in view of this, we direct that bank guarantees shall stand extended till period of six months expires from the date of decision that may be made by the Reference Court. It goes without saving that if amount is reduced by the Reference Court. The claimants who have taken the money shall have to restitute without any demur and at the

same time if there is change in the amount in favour of the claimants, the amount will have to be paid by the Union of India. In view of what is stated hereinabove, the award made by the Reference Court is set aside with the direction to permit the parties to lead the evidence taking into consideration the fresh evidence recorded as well as evidence already there and to decide the reference in accordance with law."

Upon remand of the case by the High Court, the Reference Court permitted the parties to lead oral and documentary evidence. From the record, it is apparent that the parties produced some evidence especially in regard to determination of market value of the acquired land relatable to the agricultural yield of the land in question. However, vide its award dated 30th November, 2004, the Reference Court, as already noticed, declined to enhance any compensation and maintained the compensation awarded by the Land Acquisition Collector, giving rise to the present appeals.

Learned counsel appearing for the appellants contended that the impugned judgment of the Reference Court is liable to be set aside as the Court has erred in appreciating the evidence produced by the parties on record and has erroneously ignored the statement of PW-3, PW-4 and PW-5 in regard to agricultural yield, location, potential and direct evidence, which would justify the prayer of the claimants for enhancement of the compensation. It is also seriously contended that while referring to the policy of the Government and the award of the Collector, the Reference Court ignored the material facts that for the financial year referred to in the award would end on 31st March, 1996

while the Notification in the present case was issued on 15th November, 1996 and as such for the period of more than 6 months, the enhancement in value even in terms of policy of the Government should have been granted to the claimants. Besides the fact that Court had not correctly applied the settled principles of law relating to acquisition of land, the Court has even fallen in error of fact, which calls for setting aside of the said judgment and the claimants pray for grant of compensation at the rate of Rs.286 per sq. yard i.e. Rs.100/- over and above the compensation awarded by the Collector. In the prayer clause of appeal, the appellants pray for grant of uniform rate of compensation @Rs.3 lakh per bigha instead of Rs.1,86,500/- as granted by the Collector and affirmed by the Reference Court.

The Reference Court in terms of order of remand was to consider the evidence led by the parties both prior to and after passing of order of remand. No evidence was admittedly led by the appellants by way of sale deeds in relation to acquired land or even the adjacent land. The emphasis of the appellant is mainly on Exh. PW1/8, the letter issued by DSIDC to the allottees of the industrial shed in Village Bhorgarh as according to the appellants, the land of this village is adjacent to the acquired land and has a direct impact on the development and potential of the acquired land. In this regard they also relied upon the statements of PW1 A.K. Mohani, AG-II, DSIDC, PW-3 RAVINDER PAL, LDC, lsbr, DDA,and PW-4 Hari Om, Patwari of the Village Holambi Kalan. Further they relied upon Exh. PW-2/A,

which is a circular issued by the Ministry of Urban Development to recover premium and ground rent from varous institutions at the rates indicated therein.

One of the claimants Gajraj Singh had been examined as PW-5, who besides producing the khasra girdawari for the year 1991-92 Ex.PW.5/A, stated that he used to cultivate the land till acquisition and was sowing rice and wheat therein. According to him, the land was at a distance of about 1-1/2 km. from the DSIDC shed constructed at Bhorgarh and Shahpur Garhi. The respondent did not lead any oral evidence either at the initial or the subsequent stage. They had earlier tendered in evidence Exh. RX-1 to RX-5. In order words, this is the complete evidence of the respondent before the Reference Court.

The Court in view of the above evidence is to examine whether the judgment under appeal declining to enhance the compensation payable to the claimants and affirming the award of the Collector is an order which is fair, equitable and inconformity with the provisions of Section 23 of the Act or not?

In terms of the order of the remand of the High Court, a specific direction was given to the Reference Court to permit the parties to lead evidence with particular emphasis on agricultural yield and then determine the fair market value of the acquired land as on the date of acquisition. Thus, it will be appropriate to examine this aspect of the case at the first instance.

VALUATION ON THE BASIS OF AGRICULTURAL YIELD

Once the order of remand was made by the High Court and the parties have accepted that order, it would primarily lead to one result that the land in question was an agricultural land at the time of acquisition. PW-5 Gajraj Singh, one of the claimants, in his statement has stated that he used to cultivate the land till acquisition and he was sowing rice and wheat and so was the entry recorded in the khasra girdawari for the year 1991-92 being Ex.PW5/A. In view of this evidence and the order of the High Court dated 30th November, 2003 in RFA 522/2002, it has to be taken for all practical intent and purposes that the land in question was an agricultural land or was at least an agricultural land at the time of acquisition of the land in question. In order to establish their claim on the basis of agricultural yield, the claimants examined PW-6 Nirdesh Kumar, who is a resident of Village Holambi Kalan, Delhi for the last more than 35 years. He stated that he owns 1 acre of agricultural land inVillage Holambi Kalan. The land was stated to be of good quality for agricultural purposes and was irrigated by canal water. He specifically stated in his examination in chief that he and Gajraj used to cultivate vegetables in the land i.e. Gobhi, Palak, Maithi and Mooli. In one Kila, they get the gobhi crop of about 300 to 400 molds. According to him, they used to get nearly 4 crops in a year and would earn approximately Rs.1 lakh from all the crops in one year after deducting the expenses. He produced the payment sheets issued by Mother Dairy, Delhi to him. One of the payment sheets was marked as Mark-A-1. In his further examination in chief he stated as under :-

"In one year, we have four crops. Two of Palak, one cauliflower and one radish."

In his cross-examination, he was specifically asked and he did not deny the suggestion that he was cultivating vegetables on the land and such price is determined by the demand in the market. He also stated in his cross-examination that he sells his crops to Mother Dairy and produced mark-A, a computerised statement issued by the Mother Dairy officials and he had sold 9585 kg. of cauliflower to mother Dairy officials with effect from 1st December, 2003 to 7th December, 2003 at different rates. Besides mark-A, he did not produced anything to show that what was the sale price of vegetables. In his cross-examination, he specifically made a statement that for the year 2003, the total production of cauliflower from 6 bighas of land was 9585 kgs. and he had received a payment of Rs.56,671/-, which was given to him by cheque by the Mother Dairy.

The respondents had led no evidence in this regard.

The Reference Court rejected the entire evidence produced by the claimants for two reasons. Firstly that there was no cogent evidence or documents on record to support the statement of PW-6 and secondly mark-A is related to to the year 2003 and thus, was inconsequential or irrelavent as the notification in question was issued on 15th November, 1996. It was also noticed by the Reference Court that khasra girdawari for the year 1994-95, 1995-96 were not filed. The contention of the claimants that the multiplier of 15-16

years should be applied was also rejected by the Reference Court by holding that as the claimants had failed to prove the income from the agricultural produce, the market value of the land could not be determined and declined to interfere in the valuation given by the Collector. It is true that onus to prove main and ancillary issues for determining the fair market value of the acquired land at the time of acquisition would lie upon the claimants but equally true is that before the Reference Court there was some onus upon the respondents once the claimants discharged the primary onus placed upon them. The evidence led in a case has to be construed with pervasive view keeping in mind the class of persons, who are parties to the lis. There is no dispute to the fact that the land in question is being used for agricultural purposes and the claimants, who are small agriculturists were not expected to maintain audited books of accounts, particularly in the year of 1990. The Court would have to look into the statement of PW-5 and PW-6 while keeping in mind the fact that they are small agriculturists having 1 to 6 acres of land in the entire acquired land. The claimants could have produced witnesses from Mother Dairy to prove Mark-A in accordance with law but the Court cannot lose sight of the fact that Mark-A is a computerised statement issued by the Mother Dairy and as per statement of PW-6, the payments were made by the Mother Dairy by cheques. He did give the exact amount of Rs.56,671/- in relation to the payment made to him during the year 2003. PW-6 had stated that he did not maintain the accounts. To apply the test of discharge of onus beyond any reasonable doubt strictly to

acquisition matters may not meet the ends of justice. In cases of compulsive acquisition, some amount of guess work is to be done by the Court and somewhat liberal approach would have to be applied. The statements of PW-5 and PW-6 was recorded on oath and nothing so divesting came out in cross-examination so as to completely defeat their claim for higher compensation. On the contrary, the case of the respondents in evidence or otherwise is that the land was being used for agricultural purposes. Once this fact is admitted, it may not be entirely just and fair to the claimants that statements of PW-5 and PW-6 are disbelieved by the court particularly when the respondents chose not to lead any documentary or oral evidence on this issue.

While relying on the statements of PW-5 and PW-6, learned counsel appearing for the appellant argued that while applying the multiplier of 15 to the income of the claimants, they would be entitled to compensation @Rs.15 lakhs per acre. For this purpose, his submission is as under :-

(a) the return of two palak crops in the year	- Rs.40,000/-
Less expenses	Rs. 5,000/-
Net Income	- Rs.35,000/-
(b) the return of one cauliflower crop	- Rs.50,000/-
Less expenses	- Rs. 10,000/-
Net Income	-Rs.40,000/-
(c) the return of one radish crop	- Rs.30,000/-

less expenses	- Rs. 5,000/-
Net Income	-Rs.25,000

Total of (a), (b) and(c) is Rs.1,00,000/- and by applying the multiplier of 15 the same becomes Rs.15,00,000/-.

The learned Reference Court in fact did not refer to the above computation as it held that there was no cogent evidence to support the claim of the claimants. While referring to the judgment of Supreme Court in the case of **Executive Director Vs. Sarat Chandra Bisoi &Another** (2000) 6 SCC 326 the learned Reference Court mentioned that multiplier of 15 or 16 would be appropriate multiplier but as there was no evidence to determine the annual return from the agricultural produce by the claimants as held by the Supreme Court in the case of **State of UP & Another Vs. Rajindra Singh** AIR 1996 SC 1564, the question of determining the compensation on that basis was not possible.

In the case of **Executive Director** (supra), the Supreme Court had clearly stated that one of the method to find out the annual income of the land, which the owner has been deriving or is expected to derive from the use of the land and capitalise the same by adopting a multiplier. The onus to prove such income is on the claimant. The statement of PW-5 and PW-6 in the present case is not worthy of rejection just because the complete accounts were not produced and particularly when they stated that they were not having such

books of accounts. Not to maintain books of accounts for such agricultural holdings is neither unusual nor an unexpected conduct of a normal human being. In our view, the learned reference Court was not entirely right in completely rejecting the entire evidence led by these two witnesses in regard to agricultural produce and the return therefrom.

In the case of **The State of Gujarat & Ors. Vs. Rama Rana & Ors** JT 1997 (1) SC 444, the Supreme Court stated the principles that Court should examine oral evidence of the claimant carefully applying test of normal prudent man. The Court can even accept the oral statement of Sarpanch and apply the multiplier of 10 years. The Supreme Court held as under :-

> "5. It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deeds, is the realised value of the crop. Normally, they should have produced the statistics from the Agricultural Department as to the nature of the crops and the prices prevailing at that time. But unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. It is a fact that the Government have failed to adduce any evidence in that behalf. However, we cannot reject the oral evidence of the witnesses on that ground alone. The court has statutory duty to the society to subject the oral evidence to great scrutiny, applying the test of normal man, i.e, whether he would be willing to purchase the land at the rates proposed by the Court. On the touch stone of this, the Court should evaluate the evidence objectively and dispassionately and reach a finding on compensation. The reference Court has accepted the evidence of the Sarpanch to be the reliable person. Therefore, , we proceed on that premise. The appropriate multiplier should be of 10 years as settled by several judgments of this Court. Necessarily, 50% of the net value towards cultivation expenses requires to be deducted. The award

of the reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the reference Court at Rs.2,050/- as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50% towards cultivation expenses should be made. After giving deduction, the balance will be the net value of the land. On that basis, the claimants are entitled to Rs.20,500/- per acre with solatium @30% on enhanced compensation and interest on enhanced compensation @0.9% per annum for one year from the date of taking possession and 15% per annum till date of deposit into the court under the Act as amended by Act 68 of 1984, namely 30% solatium on the enhanced compensation, interest on the enhanced compensation, interest on the enhanced compensation from the date of taking possession for one year at 9% and thereafter at 15% till date of deposit."

From the above judgment, it is clear that some reasonable amount has to be deducted on account of expenses in relation to maintenance of the land, transportation of agricultural produce and other incidental expenses, which a grower is bound to incur. In different cases, multiplier of different years have been applied by the Court right from 8 years to 18 years. Reasonableness in computation and nature of the land with its potential are the basis for determination of just fair market value of the land. PW-5 and PW-6 have stated that they were not maintaining regular accounts. Thus, for this reason, their statement on oath cannot be entirely discarded by the Court nor can they take undue advantage of non-production of books. Agricultural produce has to be computed on the basis of the statement made by PW-5 & PW-6. According to them they are having a return from agricultural produce of nearly Rs. 1,20,000 per year and they only incur the expenses of Rs.17,500/- on

all the four crops. This figure being little on the lower side and keeping in view the fact the farmer would incur expenditure on seeds, maintenance of fields and crops, looking after the crop, transportation etc. for the four crops, another sum of Rs.5,000/- can safely be added. Thus giving gross return of nearly 95,000/- annually, applying a multiplier of 10 years in terms of the above judgment. The value of the land on the basis of agricultural yield would come to Rs.9,50,000/- per acre.

SALE DEEDS

It is not possible for the Court to apply the most appropriate method for computing the fair market value of the land on the date of acquisition/issuance of notification under Section 4 by way of sale deeds because the present case is a case of no evidence under this head. As far as petitioners are concerned, despite grant of two opportunities i.e. before passing of the first judgment by the Reference Court and then after the order of remand by the High Court, they produced no sale deeds. The respondents had only placed on record Exh. RX-1 to Exh,.RX-5 i.e. copies of the sale deeds in relation to sale of the land in Village Holambi Kalan, which are inconsequential inasmuch as the Collector had already awarded compensation higher than the rates indicated in those sale deeds. The Union of India is not aggrieved and in any case as per provisions of Section 25 , the Reference Court or this Court would have no jurisdiction to reduce the amount awarded by the Collector to the claimants in land acquisition proceedings. Thus, no detailed discussion on

this issue is called for.

LOCATION, POTENTIONAL & COMPARIBILITY OF THE ACQUIRED LAND WITH SURROUNDING LAND

There cannot be any dispute to the legal proposition that in the absence of direct evidence by way of sale deeds relating to the acquired land itself, the Court may refer to the evidence by way of sale deeds or other documents otherwise admissible in evidence in regard to the surrounding lands to the acquired land. Criteria for determining fair market value of the land, thus, has to be decided on the basis of comparable instances of sale or other evidence, which would provide a correct percept for the Court in arriving at just and fair market value of the acquired land at the time of acquisition. The evidence produced before the Court, therefore, must consist of comparable and relevant documentary evidence and oral evidence, which otherwise would relate itself to the various factors enumerated in the provisions of Section 23(1). In the award of the Collector it was noticed that the claimants had claimed exorbitant prices of land but had led no evidence in support of their claims. While relying upon the policy announced by the Govt. of NCT of Delhi, price of agricultural land was fixed @Rs.10 lakhs per acre for acquisition of agricultural land w.e.f. 1st April, 1997. This price was earlier stated to be Rs.4.65 lakhs per acre with effect from 27th April,1990. As further noticed in the award, the two classes of land under BlockA and Block B were based upon the reasoning that Block-A was agricultural land and was being used for

agriculture while Block-B land was where the quality of land was not so good and there were Gadhas and Bhatta Ground and in that area earth has been taken out for making bricks. Even in the award also it was specifically recorded that at the time of taking over possession of the land on 26th June, 1997, Kharif crop was standing on the vacant land and possession was taken with crops. Compensation for crop was not given as according to the field staff the crop was harvested by the interested persons and there was no need to give the compensation for the crops in the award. In other words, this best evidence was available with the respondent and for the reasons best known to the respondent, no evidence was produced before the Court. PW-1 A.K. Mohani had produced original record before the Court and had stated that industrial plots were allotted to various persons and a plot measuring about 350 sq.mtr. was offered to one Balluram @Rs.650/- per sq.mtr. Photocopy of the offered land was exhibited on record as Ex.PW1/A. He conceded that he was not aware whether development charges were included in the said rate. The land was situated in Village Bhorgarh. However, he did not know how the price was calculated and to what extent the the development charges had been added in this offer. PW-4 Hari Om, Patwari stated and described the boundaries of the acquired land as under :-

> " I have brought the summoned record e.g. Aks Sajra & Khatooni. On the northern side of village Hulambi Kalan, the boundaries of village rajapur, Bhorgarh and Sahahpur Garhi touch and towards the western side the boundaries of village Bawana and sanooth touches; towards

the southern side the boundaries of village, hulambi khurd and towards eastern side the boundary of village Alipur touches.

The land of village Hoolambi Kalan has been acquired for DSIDC. I have seen the entire area of village Hoolambi Kalan and the adjoining villages. The industrial sheds of DSIDC are already in existence in the acquired land of villages Bhorgarh and Shahpur Garhi. A road known as Alipur Narela road passes through village Hoolambi Kalan and touches village Bhorgarh and Shahpur Garhi."

While in the cross-examination of said witness only one question was asked to him to which he stated that the acquired land of village Holambi Kalan is at a distance of about 1-1/2 kms. from Alipur and there is a road towards the eastern side of the acquired land. No other question was asked to this witness in his cross-examination. PW-5 Gajraj Singh stated that his land was at a distance of 1-1/2 kms from DSIDC Shed constructed at Bhorgarh-Shahpur Garhi. He specifically stated that the acquired land is approachable by the metalled roadsare. No suggestion was made to this witness in his cross-examination that he was deposing incorrectly or that the location given by him of the acquired land was not correct. PW-6 Nirdesh Kumar stated that his land was of good quality for agricultural purpose. They were selling their agricultural produce to Mother Dairy as well as taking it to Azadpur Mandi. The above evidence produced by the claimants in order to show the location and potentiality of the land while the respondents again adduced no evidence even on this aspect. The acquired land is situated in the revenue estate of

Village Holambi Kalan and the adjacent villages thereto with which it has common boundaries are Villages Bhorgarh, Shahpur Garhi and Holambi Khurd. The statement of PW-4 remained unquestioned and there could be no reason for the court to disbelieve the statement of Govt. Official, who had produced the record including Aks Sajra and Khatauni. Though the acquired land is an agricultural land but it certainly is surrounded by developed area whether industrial or otherwise in the Villages Bhorgarh, Shahpur and Narela. In order to show that the land has a great potentiality and its location is one which could fetch a commercial or residential price for the acquired land, the claimants had produced Exh.PW1/A and Exh.PW3/A to show that the area of the surrounding villages to the acquired land had been developed under industrial and residential schemes. The entire evidence on record, thus, leads at least to one reasonable conclusion that on the cumulative reading of all the oral and documentary evidence produced by the parties on record, which can be safely concluded that acquired land is an agricultural land giving good agricultural produce and is surrounded by developed industrial or residential developed area and has a reasonably good potential.

FAIR MARKET VALUE OF THE LANDON BASIS OTHER THAN THE SALE DEED OR AGRICULTURAL YIELD.

Assessment of market value would be dependent on various factors and the decision of the Court in this regard has to be multi-based. Except in the cases where there is direct evidence e.g. sale deeds of the relevant periods

of comparable instances even of the surrounding lands in addition thereto the Court would consider the location and potential including surrounding developed area of the acquired land into consideration. In most of the cases, with the exception of complete relevant evidence on record, the Court in cases would have to make some guess work for determining the fair market value of the land . The process of determining of market value, thus, in many cases must depend particularly on valuation of many imponderables and it must necessarily be some matter of conjuncture or guess work. In fact in most of the cases, it may not be practically possible to compute the fair market value of the land correctly by decimal and by rough arithmetic process. In this regard, reference can be made to various judgments of this Court as well as the Supreme Court in the cases of **Jai Lal (dead) through L.Rs. Vs. Union of India** 94 DLT (2001) 429, **Bedi Ram Vs. Union of India & Another** 93 (2001) DLT 150 (DB), **Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Praddesh and Another** (1977) 1 SCC 684.

The claimants have heavily relied upon Ex.PW1/A (Ex.P2) which is a letter of allotment issued by the DSIDC for allotting the industrial sheds to Mr. Ballu Ram @ Rs. 650/- per sq.m. and then on Ex.P4 which is a circular issued by the Government of India, Min. of Urban Development fixing prices of Government land for allotment to various social, cultural, charitable and other organizations in Delhi/N.Delhi and lastly on Ex.PW3/A which is a letter

of demand dated 18.1.93 in respect of plot No. 19, Pocket 8, Sector B4 measuring about 209 sq.m. in Narela industrial scheme @ Rs.1650.65/- per sq. m. in the name of Mr. Attar Singh Khatri. As far as Ex.P4 and Ex.PW3/A are concerned, they cannot be termed as comparable or even referable instances. The reason for the same is that Ex.P4 does not relate to the rates of agricultural lands or even the lands which are agricultural but have been partially developed. In fact the said list gives the Government rates for allotment of the land to various institutions falling in the category of social, cultural, charitable and other organizations as per the policy of the Government and has no relevance or bearing on the issue for determination before the court. In Ex.P4 at page 10 under Zone (VI), Narela and other outlying colonies have been referred which itself means that the reference to the colonies and even the village in question has not been made. This documents is of no help to the claimants and deserves to be rejected from the zone of consideration. Ex.PW3/A is a letter written by the DDA requiring the allottee to make the payment. It spells out various terms and conditions and the alternative plots were being given under the Scheme of large scale acquisition, Development and Disposal of land scheme. These are the fully developed plots where even rehabilitation has started and the entire area has been developed under a huge acquisition and development scheme by the DDA.

As far as Ex.PW1/A is concerned, this document may not fall as a determinative evidence for the purposes of computing the fair market value of

the acquired land at the relevant time but certainly is a material piece of evidence which gives an idea not only with regard to the value of the land but as well as to the location and potential of the land. PW-4 has stated in no uncertain terms that the boundaries of village Hulambi Kalan, on the northeran side, touch the boundaries of village Bhorgarh and Sahahpur Garhi. The industrial sheds which have been offered to the allottee @ Rs. 650/- per sq. m. are located in the village Bhorgarh and are at a distance of 1-1/2/2 kms from the acquired land as per the statements of PW 4 and PW5. It may, therefore, be relevant to notice that the land in question is surrounded by developed areas of residential and industrial blocks which is indicative of the fact that the acquired land had great potential. The location, potential and distance of a kilometer would hardly be very material. It has also come in evidence that there are roads in and towards the acquired land. As per statement of PW5, a metalled road comes through the entire village. In absence of evidence of sale instances or any other direct evidence in relation to the acquired land, Ex.PW1/A can be treated as a relevant piece of evidence though not a determinative piece of evidence. It is a settled proposition of law that value of the acquired land must be determined keeping in view the factors spelled out in Section 23(1) of the Act and with reference to the material on record with some element of conjectures and guess work. (refer *P.Ram Reddy and others v. Land Acquisition Collector, Hyderabad, Urban Development Authority, Hyderabad and others (1995) 2 SCC 305)*. In this case, the Supreme Court even permitted

the compensation to be computed on the basis of a hypothetical lay out of building plots similar to those sold. The court cannot ignore the fact that the acquisition of land under the provisions of the Act, is a concept of compulsive acquisition. It is an unilateral act of acquiring property belonging to the others as opposed to mutual agreement for transfer or vesting of property by a seller in favour of a purchaser. The Government has been vested with the power of acquisition and this process of acquisition has been held to be constitutional. But still the fact remains that the deprivation of property of a citizen is result of eminent domain of the State permitting compulsory acquisition of property. It is not only where the Government takes the property of a citizen but also deprives him of his livelihood. To great extent, the Legislature has protected the interest of a land owner whose land is being acquired by introducing various amendments to the provisions of Sections 23 to 25 but still the court has to keep in mind that value of the agricultural land has been rising even in Delhi rapidly and the legislative protection provided under the Statute do not completely provide a safeguard to the citizens in a democratic set up which would satisfy the constitutional mandate of due process and its implied facets. A Division Bench of this court in the case of *Pt. Jain Ram Singh v. UOI and others AIR 1989 Delhi 310* held that the transactions of adjoining villages can also be good guide when instances are not available in village itself. This view has met the approval of the Supreme Court as well as followed by different Benches of this court. We may also notice here that there is a contrary view

taken in some of the judgments of the High Court as well as by the Supreme Court in the case of *Kanwar Singh & others v. UOI JT 1998 (7) SC 397* holding that instances of adjoining villages cannot be taken to be of great evidentary value in determining the market value of the land in question. But in those cases the sale transactions of the acquired land were available and therefore recourse to the transactions in adjoining villages was sought to be not proper.

Be that as it may, in the present case, there is admittedly no evidence led by either of the parties in regard to the transactions in relation to the acquired land. Thus, the court has to rely upon transactions of the adjacent villages which can be treated, as already said, as relevant piece of evidence but no determinative factors. Ex.PW1/A certainly relates to a developed area of industrial sheds, thus would not be completely comparable instance. This only gives an idea to the court what was the value of the adjacent lands nearly 16 years prior to the date of acquisition. There is no dispute to the fact that the industrial sheds in question are developed areas though they are adjacent to the acquired land. As already noticed, the Collector has already granted compensation to the claimants while the sheds were offered @ Rs. 650 per sq.m. How much amount has been spent on development and what are the components of this figure is not on record. Thus, the court has to apply only a guess work to find out whether the amount awarded by the Collector was a just and fair market value of the land at the time of its acquisition.

Learned counsel appearing for the respondents while relying upon

the judgment of the Supreme Court in the case of *Bhim Singh and others v. State of Haryana and another AIR 2003 SC 4382* contended that the developed land and sheds cannot be taken into consideration for determining the fair market value of the acquired land which was agricultural land. He also contended that the land users of the land falling under the Narela residential scheme and Bhorgarh industrial scheme are even otherwise distinguishable as the value of the land would be different particularly because of the fact that prior to allocation of sheds the user of the land was changed under the development plan in accordance with Section 12 of the DDA Act. On the contrary, the learned counsel appearing for the claimants while relying upon the judgment of the Supreme Court in the case of *OM Prakash (D) by Lrs. and others v. Union of India and another 2004 VIII AD (SC) 37* stated that there is hardly much of difference between the land of two villages as there was hardly any change of user despite such notification. In support of his contention he relies upon para 8 of the judgment in OM Prakash' case (supra) which reads as under:-

> "8. While the claimants-appellants urged that after the notification issued on 8.12.1982 the lands in question had acquired great commercial potentiality and that this fact had been lost sight of by the High Court in assessing the fair market value as on the date of the notification under Section 4 of the Act, the learned counsel for the Union of India contends that, despite the change in the master plan, there was hardly any change in the land user between 8.12.1982 and 2.6.1983 when the notification under Section 4 of the Act was issued. The land had been continued to be used for agricultural and allied purposes and there was no commercial exploitation of

the land at all despite it being allowed as a result of change in the master plan."

This controversy is really of not much relevance and significance for determining the controversy in the present case as even according to the claimants themselves the land in question was being used for agricultural purposes even on the date of acquisition. But still the fact remains that the surrounding areas of this land had already developed into industrial or residential schemes as back as in the year 1980 and 1993 respectively. The cumulative effect of the above discussion is that it can safely be stated that the land in question had potential or had been developed into residential or industrial place. It had metalled roads and as such they would be entitled to some higher compensation than the one awarded by the Collector.

There are three judicial pronouncements which from time to time have determined the fair market value of the land in village Bhorgarh. In the case of *Union of India v. Amar Singh RFA 464/88 and other connected appeals, decided on 7.2.2003*, which related to the acquisition of the land by issuance of a notification under Section 4 of the Act for acquiring the land in village Bhorgarh for development of Narela Industrial Area, the High Court had granted compensation @ Rs. 38,300/- per bigha. As this judgment of the High Court was pronounced on later point of time it had also considered the judgment in the case of *Jai Lal (dead) through Lrs v. UOI 94(2001) DLT 429* where for notifications issued on 1st and 2nd June, 1983 for acquisition of land

in the revenue estate of the same village, the High Court had granted compensation @ Rs. 82,255/- per bigha. Still another notification was issued for acquisition of land in village Bhorgarh for acquiring a land measuring about 52 acres for construction of godowns for Food Corporation of India etc. in the village Bhorgarh and the other two villages and the Supreme Court approved the grant of compensation to the claimants @ Rs. 82,255/- per bigha. as in 1979 as well as in 1982-83 the Government intended to acquire lands from the Revenue estate of village Bhorgarh and they were agricultural lands. It was noticed that in the case of *Jai Lal (supra)*, long gap of 19 years was supplied by giving annual increase by compounding it on per annum and the enhancement of compensation given by the High Court was approved by the Supreme Court in para 11 of the judgment in *Om Prakash's case (supra)* which reads as under:-

> "11. In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30.10.1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on this basis, the fair

market value would be Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs. 1,08,397/- per bigha. Allowing appreciation @ 12% for every year, not cumulatively,but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs. 56,112/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs. 16,750/- per bigha fixed in the case of Dharmbir & Ors. vs. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked the market value of the lands on various bases and keeping in view the fact that between 8.12.1982 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs. 82,255/- per bigha."

The learned counsel appearing for the respondents while re-agitating the fact that instances given of industrial sheds of the village Bhorgarh cannot be taken into consideration, also argued that the judgments in the case of *Om Praksh (supra)* and in other Bhorgarh cases, were after the land use had been permitted to be changed under the provisions of the DDA Act. It may be noticed that this argument raised apparently appears to be attracted of some substance but on proper examination of the submission, it hardly has any merit. Firstly in view of the judgment of the Supreme Court in *Om Prakash's case (supra)* and secondly the fact that in the case of *Amar Singh (supra)* the land was acquired on 20.10.79 while the notification was issued by the DDA under Section 11A of the Act, as stated, on 8.12.82. It is clear from the various

judgments which are judicial precedents in relation to the land situated in the revenue estate of Bhorgarh adjacent to the acquired land that the same had received compensation of Rs. 82,255/- per bigha for acquisition of the land in the year 1982, then by any standards, the present claimants are certainly entitled to enhancement at least of some compensation for compulsive acquisition of their lands which was also their livelihood. Learned counsel appearing for the claimants also pointed out an apparent error in the award of the Collector as well as in the judgment of the reference which is apparent on the face of the record. It was argued that the Collector in his award had held as under:-

> "In view of the absence of any documentary evidence on record to the contrary, I find Rs. 10.00 lakhs per acre to be the most reasonable price for best kind i.e. The land falling in 'A' block as on 1.4.97. Since originally, it was proposed to increase the price of land @ 10% per annum on and above the price of Rs. 4.65 lakhs per acre (fixed by previous decision of govt. of National Capital Territory of Delhi which came into effect from 27.4.90) but finally decision was taken to round it off to Rs. 10.00 lakhs per acre which effectively gives an increase of about 11.5% per annum compounded. Since the notification under Section 4 was issued on 15.11.96 and the price of the land is to be determined on the date of notification under section 4 itself therefore, I have given a compounded increase of abut 11.5% per annum upto the financial year 1996-97 and I, accordingly, determine the market value of the 'A' Block land @ Rs. 8,95,200/- per acre or Rs. 1,86,500/- per bigha.
>
> As far as assessment of land falling in 'B' Block is concerned, attention is required to be paid to the quality of the land. As stated earlier, this land has 'Gadhas' and 'Bhatta Crund'. From this land earth has been taken out for making bricks. It is the general practice to lease out the land to the Bhatta owners who removes earth from the land for making bricks, for a consideration. Thus the landowners have already got some compensation for their land, which has now become

of inferior quality. For the assessment of this inferior land,it would be appropriate here that landowners should not be given the amount which they have already received in consideration of removal of earth from their land. For arriving at this amount, inquiries were made and it came to my notice that for removing earth up 3-4 feet Rs. 1.20 lakh to 1.30 lakh per acre is paid as lease consideration. In a recent award No. 1/97-98 of village Bawana announced by the undersinged on 4.7.97, I have given a deduction of rs. 1.20 lakh per acre in the market value of 'B' Block land from that of 'A' block land.

As such, I assess the market value of 'A' block land @ Rs. 7,75,200/- per acre or Rs. 1,61,500/- per bigha.

In addition to the market value fixed above, land owner will be entitled to all other benefits as per the provision of the Act."

This also had the approval of the reference court. The apparent defect in the award is that while giving benefit by adding the value of the land @ 11.5% per annum, no benefit has been given to the claimants for the period from 1.4.96 to 15.11.96, the date of acquisition of their land. Seven to eight months is a material period for considering the benefit to be given on an immovable property in the case of compulsive acquisition. The reference court as well as the Collector have accepted that the claimants would be entitled to the advantage in increase of price of their lands @ 11.5 % compounded annually as the original price under the old policy was fixed @ Rs. 4.65 lacs per acre w.e.f. 1.4.90. While, it was raised to Rs. 10 lacs per acre w.e.f. 1.4.96. This error is manifest in the impugned judgment and in the award of the Collector. The claimants have been given compensation @ Rs. 8,95,200/- per acre while they should have given compensation at the rate computed as per the

Collector's award even if maintained @ Rs. 9,49,173/- per acre. In terms of the judgments of the High Court and as approved by the Supreme Court in Om Prakash's case (supra) and by the High Court in Jai Lal's case, the claimants would certainly be entitled to higher compensation than the one awarded by the reference court. On the basis of *Om Prakash and Jai Lal's case* (supra), the acquisition of land in Bhorgarh village as in 1996, if acquired, would be @ Rs. 4,01,989/- per bigha i.e. nearly more than Rs. 16 lacs per acre. Even if the land of village Hulambi Kalan is treated inferior to that of Bhorgarh, the claimants would be entitled to higher compensation making a deduction for better location and potential in comparison to the acquired land. In furtherance to the judicial pronouncements giving a deduction of 40% on the judicial pronouncements relating to Bhorgarh and with the above recorded benefit @ 12% annually compounded, the claimants would be entitled to receive a sum of Rs. 10,03364/- per acre. On the basis of Ex.PW1/A if it is taken to be of some evidential value and the reasonable deduction is made on account of industrial development of the sheds in village Bhorgarh @ 25 % from the rate of 260 per sq.m. and giving some adjustments on account of sq.yds. or sq. meters, the claimants would get nearly Rs. 9,75,000/- per acre.

As we have already discussed that even on the basis of agricultural produce relating to the acquired land, the claimants would be entitled to higher compensation @ nearly Rs. 9,50,000/- per acre.

Thus, viewed from different angles i.e. computation relatable to

agricultural yield, computation based on judicial pronouncements of adjacent village and after correcting an error which has crept in the judgment of the Collector and the reference court with reference to the policy given by the Government in relation to agricultural land in case of acquisition i.e. Policy dated 1.4.97, the claimants are entitled to more or less the same compensation. Deducing the mean of the above three figures, the fair market value of the acquired land can reasonably be concluded at Rs. 9,76,121/- per acre. Thus, we would award the said amount of compensation to the land owners/claimants.

It is not disputed before us that there is another error in the judgment of the reference court and the Collector that the claimants have not been awarded interest as in terms of the provision of the L.A. Act on the solatium as well as the benefit available to the claimants in terms of Section 23 (1)(a) of the Act. Learned counsel appearing for the respondents fairly stated that the claimants would be entitled to the said benefit. However in the facts and circumstances of the case, we do not propose to interfere with the concurrent finding recorded by the reference court and the Collector in regard to grouping of lands. In the award, it was recorded that there is 'B' group land where there are gaddas and bhattas being run by the owners. No evidence was brought on record by any of the claimants to show that the said finding is incorrect. The claimants in whose land there are gaddas and bhattas are being run, have already earned enough from those lands and thus are bound to suffer certain disadvantage and cannot argue that their land should be treated identically to the agriculture lands which were bearing crops at the relevant time and had a higher level of water as well as earth. Thus we do not propose to interfere with the grouping of land into two different sections i.e. Group A and Group B. Because of lack of evidence by the claimants, we approve the

order of the reference court maintaining marginal difference in awarding compensation to these two categories of lands in the same ratio.

In view of our above detailed discussion, we partially allow these appeals of the claimants and hold that:-

1. The claimants would be entitled to get compensation @ Rs. 9,76,121/- per acre for the lands falling in category 'A' and Rs. 9,51,121/- per acre for the lands falling in category 'B'.

2. The claimants would be entitled to receive interest on solatium as well as the benefit which has accrued to them as per provisions of Section 23 (1)(a) of the Act.

3. The claimants would be entitled to all the statutory benefits and interest in accordance with the provisions of the Land Acquisition Act.

The appeals are finally disposed of while leaving the parties to bear their own costs.

(SWATANTER KUMAR)
JUDGE

(S.L. BHAYANA)
JUDGE

APRIL 27, 2006
vk/ng