

**Hem Chander Malik Vs. Uoi and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/920996](http://sooperkanoon.com/920996)

**Court :** Delhi

**Decided On :** Sep-26-2011

**Judge :** Pradeep Nandrajog, J.

**Acts :** [Land Acquisition Act 1894](#) - Section 4

**Appeal No. :** LA.APP. 358/2007

**Appellant :** Hem Chander Malik

**Respondent :** Uoi and Others

**Advocate for Def. :** Mr.Sanjay Poddar; Mr.Sanjay Kumar Pathak; Mr.Sachin Nawani; Mr.Siddharth Panda; Ms.K Kaomudi Kiran, Advs.

**Advocate for Pet/Ap. :** Mr. J.V. Rana; Mr.Deepak Khosla; Mr.S.K.Yadav; Mr.S.K.Verma, Advs.

**Judgement :**

1. Vide three awards as afore-noted pronounced pursuant to three notifications issued under Section 4 of the [Land Acquisition Act 1894](#) on 23.12.1994, 28.4.1995 and 27.10.1999, agricultural lands in village Shahbad Daulatpur were acquired for development of Rohini Phase-IV. It may be highlighted that lands for the colony Rohini were first acquired in the year 1961 and from time to time acquisitions were made as and when Rohini Phase-I, Rohini Phase-II and Rohini Phase- III were developed and colonized. The effect of what I have highlighted is that by the time

subject acquisitions were effected, the surrounding lands had not only been acquired but had been fully developed and largely colonized and thus the subject lands had acquired a building potentiality.

2. When judgment was reserved in the instant appeals on 19.8.2011, arguments were advanced and decision was reserved in Appeals pertaining to acquisition of land in the adjoining village Rithala. Agricultural lands of said village Rithala were also acquired for the expansion of the Rohini Residential Scheme pursuant to a notification dated 21.7.1993 issued under Section 4 of the [Land Acquisition Act 1894](#).

3. Arguments advanced in the instant appeals were the same as were advanced in the appeals pertaining to village Rithala and thus, since I have dealt with the arguments while pronouncing decision today in the appeals pertaining to village Rithala, I need not re-pen the arguments and my reasons dealing with the same.

4. Suffice would it be to state that amongst other arguments, one argument advanced was with respect to subject lands having acquired a building potentiality. This was, one of the many arguments advanced in the appeals pertaining to village Rithala.

5. I had rejected all arguments save and except the one qua building potentiality, and for which reasons could be gathered from the decision pronounced today pertaining to village Rithala and the lead matter is LA.APP.No.656/2008 Sushil Kumar vs. UOI & Ors. The same may be treated as incorporated by reference in the present decision.

6. With reference to the decision of the Supreme Court reported as 1995 (2) SCC 305 P.Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority & Ors., on the principle of subject lands having acquired a building potentiality, but there being no reliable evidence to translate the potentiality into a money value, as held in the decision in P.Ram Reddys case (supra), on the basis of market value determined as per actual user I have, to give effect to building potentiality acquired, enhanced the price by 10% and on said basis, pertaining to the notification dated 21.7.1993 have determined fair market

value of land in village Rithala as of said date to be `1,53,000/- per bigha and would highlight that the said sum was arrived at on the basis that as per actual user fair market value on said date would be `1,39,026.40 per bigha.

7. Giving same benefit to the subject lands and with reference to the fact that as of 21.7.1993, factoring in the benefit of building potentiality, for adjoining village Rithala I have determined fair market value at `1,53,000/-; taking the said price and the said date as the base indices, pertaining to the notifications dated 23.12.1994 and 28.4.1995, increasing the land price by 10% per annum, I determine the fair market value to be `1,69,515.61 per bigha i.e. `8,13,674.92 per acre, rounded off to `8,13,675/- per acre as of 23.12.1994 and `1,83,390.41 per bigha or `8,80,273.96 per acre rounded off to `8,80,275/- per acre.

8. Appeals by the land owners pertaining to the said two notifications are partially allowed by increasing the compensation payable as above.

9. Pertaining to the notification dated 2.10.1999, it needs to be highlighted that the learned Additional District Judge has determined fair market value at `12,96,455.89 per acre on the strength of the minimum price notified by the Government for agricultural lands as of 1.4.1999.

10. If I were to adopt the land price at `1,53,000/- per bigha as of 21.7.1993 and increase the same by 10% per annum, as I have done for the previous two notifications, the land price would come to `11,89,728/- per acre, which would be less than the minimum price notified by the Government with effect from 1.4.1999.

11. I do not do so for the reason, in my judgment delivered on 23.8.2011 deciding a batch of appeals, lead matter being LA.APP. No.266/2008 Jai Singh vs. UOI & Anr., discussing the notifications issued by the Government of Delhi from time to time enhancing market value of agricultural lands and decisions by Courts on the issue of market value of agricultural lands on various dates and in particular the decision of a Division Bench of this Court reported as 2006 (IV) AD (Delhi) 13 Gajraj Singh vs. UOI & Anr., in paragraphs 49 to 52 I had observed as under:-

"49. I have, in para 37 above, noted a decision of a Division Bench of this Court in LA.APP.No.866/2005 decided on 11.5.2006, Mahender Singh vs. UOI & Ors. wherein pertaining to village Bawana, fair market value determined as of 15.11.1996 is `1,99,904.68 per bigha which equals to `9,59,542.46 per acre. The said decision would be relevant on the issue of potentiality, an issue which I have promised to discuss. The decision notes that the subject lands i.e. the lands with which the Division Bench was concerned, had acquired a potentiality inasmuch as, as discussed in paras 25 to 28 of the decision, rural areas in the Union Territory of Delhi was attracting migrants. Based on population growth, 5 villages in rural Delhi were identified for providing major health facilities, schools, markets and rural industry, one of which was village Bawana. It was noted that G.T.Karnal Road and Rohtak Road were providing good access to village Bawana and that the Master Plan for Delhi notified in the year 1990 had indicated the land use in the area to be changed in the future to industrial and commercial, but had also observed that notwithstanding this, for the reason no zonal plan was notified as contemplated by Section 11A of the Delhi Development Act 1957, the lands continued to be used for agricultural purposes and there was no evidence that till the year 1996, any land use had been actually changed and put to the use contemplated by the Master Plan. As in the instant case, where all subject lands were continuously put to agricultural use, same was the case noted in the said decision. To put it pithily, the potential use of the lands giving birth to a potential land value with reference to the area being known to all as being required in the future for building purposes, was found not resulting in the potential being valued with reference to the potentiality i.e. the lands being, in the near future capable of being built upon. To put it differently, the decision, though not so expressly stating, would be a proposition that there is a difference between the undeveloped land having building potentiality in presenti vis-à-vis a land having a building potentiality, in futuro. As already noted by me in para 36 above, as of the date 15.11.1996, fair market value determined was `9,59,542.46 per acre and which I highlight once again is the same as would be determined with reference to the notification being closest in point of time i.e. the notification dated 25.7.1997 where- under for agricultural lands in Delhi minimum price fixed by the Government as of 1.4.1997 was `10 lakhs per acre. Interestingly, the same Division Bench had pronounced

another judgment reported as 2006 IV AD (Delhi) 13 Gajraj Singh vs. UOI & Anr. where pertaining to agricultural lands in village Holambi Kalan where 940 bigha and 6 biswa land was acquired pursuant to the same notification dated 15.11.1996, fair market value determined for Category „A lands was `9,76,121/- per acre and for Category „B lands was `9,51,121/- per acre i.e. near approximate to the fair market value of lands in village Bawana. It needs to be highlighted that while determining the fair market value as of 15.11.1996 in village Holambi Kalan, evidenced from the observations of the Court in para 19 and 20 of the decision, location and potentiality with reference to development work carried out in the surrounding lands was considered. I would highlight that another Division Bench of this Court, in another adjoining village in the same „V i.e. between G.T.Karnal Road and Rohtak Road, i.e. village Singhola determined fair market value as of 19.3.1993 @ `1,30,523/- per bigha i.e. `6,26,510.40 per acre. The decision is reported as 2004 (4) AD (Delhi) 20 Ram Chander vs. UOI and the same Division Bench, as per the decision reported as 111 (2004) DLT 95 Hukum Singh vs. UOI, pertaining to a notification dated 14.1.1994 for village Singhola determined fair market value @ `1,40,230/- per bigha i.e. `6,73,104/- per acre.

50. The aforesaid judgments noted in the preceding paragraphs as also the various notifications issued from time to time by the Government of NCT Delhi notifying minimum price for agricultural lands in Delhi as tabulated by me in para 7 above bring out two very important facts relevant to determine the growth/rise in the prices of agricultural land in Delhi over the years commencing from the year 1990. As of 27.4.1990 minimum price was `4.65 lakhs per acre which rose to `10 lakhs per acre as of 1.4.1997 i.e. the increase is `5.35 lakhs spread over 7 years which gives us a 115.054% increase in 7 years and the average price increase would be 16.436%. The price rise over the next 1 year is by 11.2% and thereafter by 11% for the next 2 years and 11.5% for the next year i.e. as of 1.4.2001. It shows that due to urbanization, between the year 1990 and 1997 prices grows fairly sharply and good corroborative evidence for this would be the decision of the Division Bench of this Court in Gajrajs case (supra), which I have discussed in para 49 above.

51. I need to elaborate a little more with respect to the decision in Gajrajs case. Discussing the evidence pertaining to fair market value of agricultural land in village Holambi Kalan as of 15.11.1996, in paras 9 to 17 the Court discussed the valuation on the basis of agricultural yield and found that the gross return per acre per annum was `95,000/- for multiple cropped land and having good

irrigation facilities and thus capitalized the land price at `9.5 lakhs per acre. Discussing the second method of land prices of comparable lands in the surrounding areas including potentiality, in para 19 onwards the Court discussed the matter with reference to land prices in adjoining village Bhorgarh where FCI Godowns had come up and based on sale instances found that based on the said sale instances and giving benefit of industrialization the land price would come to `10,03,364/- per acre (Refer para 31). The Court then considered the prices notified by the Government as per policy dated 1.4.1997 and thus worked out the mean average figure of `9,76,121/- per acre for Category „A lands and `9,51,121/- per acre for Category „B lands. The decision highlights that the potentiality had been well-factored in when the Government issued the minimum price notification w.e.f. 1.4.1997, evidenced by the fact that even with respect to sale transactions the Court found that as against the minimum price notified as of 1.4.1997 at `10 lakhs per acre, sale instances were highlighting that the price was `10,03,364/- per acre.

52. The decision in Mahender Singhs case, pertaining to village Bawana, referred to by me in para 49 above, highlights with reference to para 28 to 31 of the decision that the Master Plan for Delhi 1990 had been taken into account by the Court which was projecting residential, commercial and industrial future exploitation of agricultural land in Delhi and on the issue of potentiality had noted that notwithstanding the Master Plan so projecting and the lands theoretically acquiring a potentiality, the same had not translated into a reality evidenced by the fact that till the year 1996 i.e. the date of the notification with which the Division Bench was concerned, virtually no development had taken place in village Bawana and Holambi Kalan and nobody had exploited the potential. As I have already highlighted in para 49 above there is a gap between what would be expected to be the market growth and what the market actually grows. The decisions in Gajrajs

case and Mahender Singhs case highlight that potentiality translated itself into a reality between 1990 and 1997 when prices rose by about 16.5% per annum and thereafter the extended potentiality did not translate with the requisite momentum and the acceleration fell to between 10% per annum to 11% per annum. One reason could be that pursuant to Master Plan for Delhi 1990 a fairly large area came to be developed, both residential, commercial and industrial and probably there was enough availability of developed land and the hunger of the market got saturated."

12. The decision highlights that by the year 1997 i.e. when w.e.f. 1.4.1997 minimum price determined by the Government was `10,00,000/- per acre, building potentiality impacting the value of agricultural lands in Delhi had already been factored in and thus I hold that pertaining to the notification dated 27.10.1999, the land value determined by the learned Reference Court is correct and thus all appeals pertaining to said notification are dismissed leaving the parties to bear their own costs.

13. To summarize:-

(a) All appeals pertaining to the notification dated 23.12.1994 stand disposed of determining fair market value to be paid to the land owners in sum of `8,136,750/- per acre together with statutory benefits as explained by the Supreme Court in the decision reported as 2001 (93) DLT 569 Sunder vs. UOI plus proportionate costs.

(b) All appeals pertaining to the notification dated 28.4.1995 stand disposed of determining fair market value to be paid to the land owners in sum of `8,80,275/- per acre together with statutory benefits as explained by the Supreme Court in the decision reported as 2001 (93) DLT 569 Sunder vs. UOI plus proportionate costs.

(c) All appeals pertaining to the notification dated 27.10.1999 are dismissed leaving the parties to bear their own costs.

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