

Sushil Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Sep-26-2011

Judge : Pradeep Nandrajog, J.

Acts : [Land Acquisition Act 1894](#) - Sections 4, 6, 18

Appeal No. : LA.APP. 656/2008

Appellant : Sushil Kumar

Respondent : Uoi and ors.

Advocate for Def. : Mr Sanjay Poddar And Ors.

Advocate for Pet/Ap. : Mr. I. S. Dahiya And Ors.

Judgement :

1. Land measuring 43-07 bigha was acquired pursuant to a notification issued under Section 4 of the [Land Acquisition Act 1894](#) on 21.07.1993. The acquisition was for a public purpose, namely, Rohini Residential Scheme under the Planned Development of Delhi. The notification was followed by a declaration under Section 6 of the L.A.Act which was issued on 15.07.1994. After following the due process, the Land Acquisition Collector announced an award bearing No.4/1996-97, whereby he assessed the fair market value of the acquired land @ `96,875/- per bigha. Statutory benefits payable as per the L.A.Act 1894, as amended from time to time, were directed to be paid to the claimants.

2. Dissatisfied with the determination of the fair market value by the Land Acquisition Collector, the land owners sought reference under Section 18 of the L.A.Act before the learned Reference Court. After affording an opportunity to lead evidence to the parties, the learned Reference Court, vide judgment and decree dated 08.02.2008 passed in LAC No.230/2000 titled Naresh Bhushan (Since deceased) Thr. LRS. v. Union of India, disposed of the reference by enhancing the compensation to `1,39,026.40 per bigha. On the enhanced compensation statutory benefits as per the L.A.Act 1894 as amended from time to time were directed to be paid and on which issue there is no dispute. Other decisions have followed.

3. The land owners are still dissatisfied with the compensation assessed and seek the same to be enhanced under the above-captioned appeals.

4. I proceed with my discussion on the subject by highlighting that the Land Acquisition Collector as well as the learned Reference Court, while determining compensation, have relied upon the notification dated 03.05.1990 issued by the Government of Delhi whereunder the Government of Delhi fixed the minimum agricultural price in Delhi with effect from 27.04.1990 @ `96,875/- per bigha. The only difference between the two assessments is that the learned Land Acquisition Collector did not take into account the fact that he was concerned with determining the fair market value of land as on the date 21.7.1993 and the minimum price fixed by the Government was as on 27.04.1990. The learned Reference Court had granted appreciation @ 11.5% for a period of 39 months and 22 days i.e. the interregnum period.

5. Arguing the appeals, learned counsel for the appellants urged that 3 pieces of evidence have been ignored by the learned Reference Court and thus urged that the appeals be allowed by enhancing the compensation firstly:

(a) The land acquired in village Rithala which was the subject matter of consideration was for the further expansion of the Rohini Residential Scheme and that earlier lands acquired in village Rithala and adjoining villages had already been developed for residential housing purposes and transferred either on free-hold tenure or lease-hold tenure at rates ranging between `100/- per square meter to `2,050/- per square meter, depending upon the size and category of persons to

whom allotment was made i.e. economically weaker sections, low income group, middle income group and high income group. It was urged that effecting suitable deduction from the mean average of said rates, fair market value should be determined. Brochure published by DDA was relied upon as evidence.

(b) In the alternative it was urged that vide circular dated 03.03.1993 (Exhibit PW-3/1) issued by the Ministry of Urban Development effective from 1.4.1992 the Government of India had notified rates at which it would charge unearned increase if perpetual lessees transferred their lease-hold interest in land demised in perpetuity to them by the Government. Counsel urged that the Government having itself notified the rate which it would treat as the market rate of land for charging unearned increase was bound to pay the same price when it acquired land in Delhi.

(c) With reference to Ex.PW-2/1, a plan showing the location of the subject land ad-measuring 43.07 bigha learned counsel urged that the rate for charging unearned increase as per Ex.PW-3/1 had to be granted in view of the decision of a Division Bench of this Court reported as 2006 (136) DLT 1 DDA v. LAC & Ors.

(d) Lastly it was urged that worse-cum-worst appreciation @ 12% per annum cumulatively and not 11.5% simple for a period of 39 months and 22 days ought to have been granted.

6. The first submission urged by learned counsel with reference to price at which DDA had allotted developed plots, is premised on evidence which is inchoate and incomplete and the argument advanced by learned counsel for the appellants on similar quality of evidence was considered by the Supreme Court in the decision reported as 2009 (15) SCC 769 Lal Chand v. UOI. The discussion in paras 11 to 27 of the said decision are relevant and I extract the same as under:- "Whether the DDA brochure is relevant evidence?

11. The DDA brochure (Ext. X-1) dated 9-2-1981 is an invitation seeking applications from members of the public for allotment of plots on lease basis under the Rohini Residential Housing Scheme. The brochure stated that the plots were in a layout formed/to be formed in Rithala and the surrounding villages. The

brochure gives the following provisional rates for allotment of plots on leasehold basis:

Sl. No. Plot size Category Rate (per square metre)

1. 26 sq m Economically weaker sections ` 100 (EWS)
2. 32 sq m Low income group (LIG) `125
3. 48 sq m Low income group (LIG) ` 150
4. 60 sq m Middle income group (MIG) ` 200
5. 90 sq m Middle income group (MIG) ` 200

The appellants contend that Rs 150 per square metre which is the average of the said provisional rates, should be taken as indicative of the ruling market price.

12. On careful consideration, we are of the view that such allotment rates of plots adopted by development authorities like DDA cannot form the basis for award of compensation for acquisition of undeveloped lands for several reasons. Firstly, market value has to be determined with reference to large tracts of undeveloped agricultural lands in a rural area, whereas the allotment rates of development authorities are with reference to small plots in a developed layout falling within urban area. Secondly, DDA and other statutory authorities adopt different rates for plots in the same area with reference to the economic capacity of the buyer, making it difficult to ascertain the real market value, whereas market value determination for acquisitions is uniform and does not depend upon the economic status of the land loser. Thirdly, we are concerned with market value of freehold land, whereas the allotment "rates" in the DDA brochure refer to the initial premium payable on allotment of plots on leasehold basis. We may elaborate on these three factors.

First factor

13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for

development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civil amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

16. On the other hand, if the residential plot is in an unauthorised private residential layout, the percentage of "deduction for development" may be far less. This is because in an unauthorised layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorised layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.

17. The "deduction for development" with reference to prices of plots in authorised private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary.)

20. Therefore the deduction for the "development factor" to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorised private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

21. Even among the layouts formed by DDA, the percentage of land utilised for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout--whether it is residential, residential- cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid

examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%.

Second factor

23. DDA and other statutory development authorities adopt different rates for allotment of plots in the same layout, depending upon the economic status of the allottees, classifying them as high income group, middle income group, low income group, and economically weaker sections. As a consequence, in the same layout, plots may be earmarked for persons belonging to economically weaker sections at a price/premium of Rs 100 sq m, whereas the price/premium charged may be Rs 150 per square metre for members of low income group, Rs 200 per square metre for persons belonging to middle income group and Rs 250 per square metre for persons belonging to high income groups.

24. The ratio of sites in a layout reserved for HIG, MIG, LIG and EWS may also vary. All these varying factors reflect in the rates for allotment. It will be illogical to take the average of the allotment rates, as the "market value" of those plots does not depend upon the cost incurred by DDA statutory authority, but upon the paying capacity of the applicants for allotment.

Third factor

25. Some development authorities allot plots on freehold basis, that is, by way of absolute sale. Some development authorities like DDA allot plots on leasehold basis. Some have premium which is almost equal to sale price, with a nominal annual rent, whereas others have lesser premium, and more substantial annual rent.

26. There are standard methods for determining the annual rental value with reference to the value of a freehold property. There are also standard methods for determining the value of freehold (ownership) rights with reference to the annual rental income in regular leases. But it is very difficult to arrive at the market value of a freehold property with reference to the premium for a leasehold plot allotted by DDA. As the period of lease is long, the rent is very nominal, sometimes there is a

tendency among the public to equate the lease premium rate (allotment price) charged by DDA, as being equal to the market value of the property.

27. However, in view of the difficulties referred to above, it is not safe or advisable to rely upon the allotment rates/auction rates in regard to the plots formed by DDA in a developed layout, in determining the market value of the adjoining undeveloped freehold lands. The DDA brochure price has therefore to be excluded as being not relevant."

7. I had referred to the same material relied upon in the instant case pertaining to Rohini Residential Housing Scheme in my decision dated 23.8.2011 in LA.App.No.266/2008 Jai Singh v. UOI & Anr. and with reference to the decision of the Supreme Court in Lal Chand's case (supra) had held that it would be neither safe nor advisable to determine fair market value of subject lands on the basis of this inchoate evidence. I reiterate my reasoning therein which may be read as reasoning in the instant decision as well and thus negate the first plea urged.

8. Argument (b) and (c) are intertwined for the reason justification to be paid the land price in terms of Ex.PW-3/1 is by drawing attention to the plan Ex.PW-2/1 and the decision of a Division Bench of this Court reported as 2006 (136) DLT 1 DDA v. LAC & Ors.

9. The site plan Ex.PW-2/1 would reveal that the subject land ad-measures 43.07 bigha i.e. 43,700 square yards. Ex.PW-8/1 i.e. the lay out plan of Rohini Residential Scheme would reveal that on all 4 sides of the subject land development has been carried out.

10. Land which formed the subject matter of consideration before the Division Bench in the decision reported as 2006 (136) DLT 1 DDA v. LAC & Ors ad-measured only 2,000 square yards and had been left out from the earlier acquisition and by the time said land was acquired, complete development had taken place around the said 2,000 square yards of land. Now, virtually no development is required to exploit the 2,000 square yards of land if it is bounded by developed land all around. Thus, there can be no equivalence with respect to the principle to be adopted for a small parcel of land ad-measuring 2,000 square

yards which is bounded on all 4 sides by developed lands and a parcel of land ad-measuring 43,700 square yards bounded on all 4 sides by developed lands for the reason if the purpose of acquisition is a housing scheme, lot of development would have to be carried out on the 43,700 square yards of land. Roads, parks, space for utilities etc. would have to be left out. Expenditure would have to be incurred on main roads, storm water drains, street lights and sewage lines and the same inchoateness will permeate the quality of evidence as was found in the decision in Lal Chand's case (supra). Thus, argument (b) and (c) as noted hereinabove cannot be accepted.

11. I may only highlight that the Halqa Patwari of Rithala was examined as a witness in the references and his testimony brings out that there exists a nallah in the acquired land, which depreciates its price. There was no structure on the land and mere existence of a road within the acquired land would not render the land a fully developed area, requiring no further development activity.

12. I may note that lands in village Rithala have been acquired since 1961 on many occasions for Rohini Residential Scheme. Besides the lands situated in village Rithala, the lands in the adjoining villages, namely, Shahbad Daulatpur and Pooth Kalan were also acquired earlier for the same Rohini Residential Scheme, which is one of the largest residential schemes in Delhi. Certain lands situated in village Shahbad Daulatpur was earlier acquired vide notification dated 23.06.1989 for the said purpose of Rohini Residential Scheme. A Division Bench of this Court, in RFA No.677/1994 titled Shri Laxmi Narain Bansal etc. v. Union of India, after examining similar evidence, in its decision dated 30.09.2008, determined the fair market value to be at `89,620/- per bigha as of 23.6.1989 and rejected similar argument with regard to comparison with developed land.

13. I may also note that while assessing the fair market value of land acquired pursuant to the notifications issued in the year 1980-81, a Division Bench of this court, while adopting the DDA's brochure and the sale price of developed plots, assessed the fair market value at `73/- per sq.yds. While making such an assessment, the Division Bench also deducted 60% towards development charges. The main judgment was rendered in the decision reported as 95 (2002)

DLT 605 Jas Rath v. Union of India, which I may refer to as Jas Rath-I. Said decision was challenged before the Supreme Court and was reversed in the decision reported as 2005 (12) SCC 59 Ranveer Singh and Another v. Union of India. The reasoning of the Division Bench was found faulty and the matter was remanded for fresh consideration.

14. On remand, a Division Bench of this Court assessed the fair market value of the land at `27 per sq.yds as against Rs 73 per sq.yds fixed earlier. The decision in remand is reported as 130 (2006) DLT 700 Jas Rath v. Union of India. I refer to the said decision as Jas Rath-II. Against this decision, Leave to Appeal was granted by the Supreme Court and the final decision rendered was in Lal Chand's case (supra), in which fair market value was enhanced to `30.50 per square yards, but argument based upon fixing the land price with reference to the rate at which developed plots were transferred by DDA with suitable adjustments towards development was specifically rejected.

15. In the decision reported as 1995 (2) SCC 305 P. Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors. it was observed as under:-

"11. Prices fetched by sales of building plots which may become available could be of building plots in either a fully developed layout of building plots or in an undeveloped layout of building plots, situated in the vicinity of the acquired land with building potentiality. If the market value of the acquired land with building potentiality has to be fixed on the basis of the evidence of the said prices, the first thing required to be done is to prepare a hypothetical layout of building plots of the acquired land itself. Then, how much of land out of the acquired land becomes available to be made into plots similar to those in the developed layout of building plots or in the undeveloped layout of building plots has to be found out. If the building plots which so become available were to be sold at the prices at which the building plots in the developed by out of building plots or undeveloped layout of building plots could have been sold on the date envisaged in Section 4(1) of the Act, what would be the total amount of such prices which could have been obtained has to be seen. Then what could have been the losses suffered or

expenses incurred for getting such total amount has to be found out. The market value of the acquired land with building potentiality, can then be regarded as the total amount of the prices of sales of all the building plots envisaged in the hypothetical layout of building plots in the acquired land minus the losses which could have been suffered or expenses which could have been incurred in making the hypothetical layout of building plots in the acquired land on par with the developed layout of building plots or the undeveloped layout of building plots as the case may be. If losses to be suffered or expenses to be incurred for making a layout of building plots in the acquired land with building potentiality for purposes of selling such building plots at the prices to be fetched by similar building plots in the developed layout of building plots or in the undeveloped layout of building plots are to be found out, the losses which might have been suffered or expenses which might have been incurred by the owners of the lands of either of a developed layout of building plots or of an undeveloped layout of building plots, in making such lay outs, could. prove to be the best evidence. The evidence of losses suffered or expenses incurred in having made a layout of building plots may relate to lands lost for laying roads, drain, sewerages, parks etc, costs incurred in the making of roads, drains, sewerages, providing water supply, electric supply, losses on investments and paying of conversion charges, development charges etc. in a developed layout or an undeveloped layout in which building plots had been laid and sold and which sales form the basis for determining the market value of the acquired land. If evidence to be adduced in the said regard is of public authorities or local boards or private developers who will have formed such layouts of building plots in the land in the neighbourhood of the acquired land and sold them, it could be of great value. No difficulty arises when all the materials needed to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be formed in respect of it is made available to the Court, so as to enable it to find out the possible market value of the acquired land with reference to the price to be fetched by sale of building plots to be made in such land. But, owners, of the acquired land with building potentiality, rarely produce all the material or evidence needed for the Court to determine the market value of the acquired land with building potentiality on the basis of a hypothetical layout of building plots to be thought of by the Court in respect of such land,

although they rely on the price fetched by sale of plots in the developed layout or an undeveloped layout for determining the market value of their lands with building potentiality in the vicinity of such layout. It is where the Court may have to inevitably fix the market value of the acquired land with building potentiality on the basis of the prices got in the sale transactions relating to the building plots in a developed or an undeveloped layout, relied upon by the owners of the land, if such transactions are found to be genuine. A simple method, therefore, is evolved by courts in determining the market value of the acquired land with building potentiality with reference to the retail price to be fetched by sale of plots in a fully developed layout as on the date of publication of Notification under Section 4(1) of the Act. In *Bombay Improvement Trust v. Marwanji Manekji Mistry* reported in AIR 1926 Bom. 420, the said method is referred to by Macleod, C.J. as that where the wholesale price of the acquired land with building potentiality could be fixed at one-third to one half of the retail price fetched by sale of building plots in a developed layout of building plots, depending upon the nature of development taken place in such layout. Thus, when it becomes inevitable for the Court to fix the market value of the acquired land with building potentiality on the basis of the price fetched by sale of a building plot in a developed layout of building plots in the vicinity, it must, in our view, fix the wholesale market value of the acquired land with building potentiality at one-third to one half of the retail price got by genuine sales of plots in a developed layout in the vicinity, by deducting two-thirds, to one-half out of the retail prices of plots, as losses or expenses involved in having made the land where the plots are formed as developed, according to the degree of development. For instance, if the retail price of plot is `12 per square yard, the wholesale price of the acquired land with building potentiality could be fixed at rupees varying between `4 and `6 depending upon the nature of development found in the layout of the plot sold in retail. Coming to fixation of the wholesale price of the acquired land with building potentiality on the basis of retail price of a building plot sold out of an undeveloped layout of building plots, such wholesale price ought to be fixed by deducting at least one-third of the retail price of the building plot in such layout, because such would be the least loss to be suffered in forming a layout of building plots in the acquired land with building potentiality, after leaving out land for roads, drains etc. by obtaining the needed permissions

from public authorities for making such layout. Therefore, the wholesale price of the acquired land could be fixed at `8 per square yard if the price fetched or to be fetched by sale of building plot in an undeveloped layout is `12. However, in either of the said cases whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of plots in a well developed layout in the neighbourhood or whether it be the determination of the market value of the acquired land with building potentiality with reference to the price fetched by sale of building plots in an undeveloped layout of building plots in the neighbourhood, it becomes inevitable for the Court to find out what will be the price fetched or to be fetched by the sales of plots in the layouts, relied upon by any of the parties, with reference to the price which the plots could have fetched if sold on the date of the publication of the preliminary notification under Section 4(1) of the Act. Further, where no evidence of price fetched by the sales of the plots in layouts of building plots in the neighbourhood of the acquired lands becomes available, then what could be done is to find out the market value of the acquired land with reference to the relevant date of publication under Section 4(1) of the LA Act, according to the actual use to which it was put and increase its value by a small percentage having regard to the degree of its building potentiality ascertained on the basis of evidence to be made available in that regard. A small percentage increase to be given shall not exceed 1/5th of the market value of the land found out according to its actual user since resort to the method of giving increased value for such building potentiality arises only when there is no evidence of sales of building plots in the neighbourhood of the acquired land indicating that there was no immediate demand, as such, for building plots even if formed in the acquired land."

16. Considering the fact that the subject lands ad-measure 43,700 square yards i.e. a mid-segment area; neither too small (akin to 2,000 square yards) or too large for a housing residential scheme where normally acquired lands range between 300 bigha to 7000 bigha i.e. 3,02,400 square yards to 70,56,000 square yards, considering further that it is bounded on all 4 sides by developed land on which colonization has been affected, in view of the observations in P.Ram.Reddy's case (supra), the subject lands, qua which evidence of potentiality translating into money value as required has not been led, and indeed I find is not being led in any

case where such an argument is advanced; for it would be very difficult to translate the development cost of the developed land into a definite value qua potential. But, considering the mid-size segment of land, I am of the opinion that as held in said decision a percentage increase not exceeding 1/5th of the market value otherwise determined as per actual user of the acquired land (towards building potentiality) needs to be granted. As per P.Ram.Reddy's case the maximum increase could be 1/5th i.e. 20%. Considering that the instant lands are in mid-area segment and since exactness can never be achieved while determining fair market value of large and even mid-size segment of lands, I hold that 10% increase over and above the market value determined according to its actual user would be a just and a fair method to determine the compensation payable.

17. Concurring with the reasoning of the learned Reference Court that on actual user basis fair market value as on 21.7.1993 comes to `1,39,026.40 per bigha, increasing the same by 10% I determine the fair market value payable in sum of `1,52,929.04 per bigha, rounded off to `1,53,000/- per bigha.

18. As a result of this discussion, the appeals preferred by the land owners are allowed as above. Decree be prepared. It is made clear that the land owners would also be entitled to all statutory benefits, including the benefits granted by the Supreme Court in its decision in 93 (2001) DLT 567 Sunder v. Union of India. The appellant would also be entitled to proportionate costs.