SUPREME COURT OF INDIA

Lal Chand

Vs.

Union of India

C.A.No.4945 of 2006

(R V Raveendran and B. Sudershan Reddy JJ.)

12.08.2009

JUDGMENT

R. V. RAVEENDRAN, J.

This batch of appeals arise out a common judgment dated 27.4.2006 of the High Court of Delhi in RFA No.751/1994 (Jas Rath vs. Union of India) and other connected cases. They relate to determination of market value in regard to lands situated at village Rithala on the outskirts of Delhi, acquired for (i) construction of a supplementary drain; (ii) construction of sewage treatment plant; (iii) re-modelling of Nangloi drain; and (iv) planned development of Delhi. The said four acquisitions were initiated under notifications dated 13.2.1981, 20.2.1981 13.3.1981 and 31.12.1981 issued under section 4(1) of the Land Acquisition Act, 1894 (LA Act' for short). The extent of lands acquired and compensation awarded are as under:

Rate awarded per Bigha (Unit of 1008 sq. yds.)

Date of Extent notification notified under Bighas-Biswas Sec.4(1) By LAO By Reference By High Court Court (impugned judgment) (In Rupees) (In Rupees) (In Rupees) 13.2.1981 829 - 00 2600 (Block B) 20,000 25,000 3800 (Block A) 20.2.1981 883 - 08 2600 (Block B) 20,000 25,000 3800 (Block A) 13.3.1981 78 - 16 6500 10,800 25000 31.12.1981 5947 - 00 7000 (Block C) 21,000 27,000 9000 (Block B) 10840 (Block A)

2. The awards of the reference court were challenged by the landowners. The appeals were decided by the Delhi High Court by judgment dated 4.9.2001 awarding Rs.67000 per bigha in regard to lands covered by notifications dated 13.2.1981, 20.2.1981 and 13.3.1981 and Rs.73,584 per bigha in regard to lands covered by notification dated 31.12.1981. For arriving at the said market value, the

High Court relied upon the allotment rates of Delhi Development Authority for plots shown in its Brochure issued on 9.2.1981 in respect of Rohini Residential Scheme (Phase-I), formed by acquiring part of Rithala village and surrounding villages. The provisional rates of allotment given in the said brochure were Rs.100, Rs.125, Rs.150, and Rs.200 per sq. m. respectively for plots of the size of 26,32,48,60 and 90 sq. m. The High Court took the average of those allotment rates as Rs.150 per sq. m. Having regard to the fact that the said rate was the premium for allotment on leasehold basis, the High Court inferred that the freehold market value of the said plots would be at least double, that is Rs.300 per sq. m. Taking note of the fact that considerable expenditure would have been involved for developing the plots, the High Court took the wholesale price of freehold plots as Rs.200 per sq. m. and after deducting 60% towards the cost of development and area required for roads etc., determined the market price at Rs.80 per sq. m. (or Rs.67/- per sq. yd.). The said rate was awarded as compensation for the first three acquisitions. In regard to land acquired under the last notification (dated 31.12.1981) it provided an increase of 12% per annum and arrived at the market value as Rs.73 per sq. yd. This worked out to Rs.67,536 per bigha in regard to the first three acquisitions and Rs.73,584 per bigha in regard to the last acquisition.

3. Feeling aggrieved the claimants as well as the Union of India filed appeals before this Court. This court by a common judgment dated 7.9.2005 (reported in Ranvir Singh v. Union of India - 2005 (12) SCC 59) allowed the appeals, set aside the judgment of the High Court and remanded the matter to the High Court for determination of the market value afresh. This Court held :

(a) The lease premium in respect of fully developed plots (which was given in the DDA brochure) could not be the basis for determining the freehold market value of undeveloped land, though the undeveloped land may be situated adjacent to the developed plots. Therefore the DDA brochure rates were not of assistance.

(b) The sale deeds pertaining to the acquired lands or nearby lands would be the most relevant pieces of evidence and the High Court ought not to have ignored the sale deeds exhibited by the parties on the ground that neither the vendors nor the purchasers relating to the said deeds were examined as witnesses, having regard to the decision of the Constitution Bench of this Court in Cement Corporation of India Ltd. V. Purya [2004 (8) SCC 270].

(c) The claim of the land owners that the market value of the acquired lands should be determined on the basis of acquisition of the year 1961 in the same village, by increasing the award price of Rs.7,000 per bigha at the rate of 12% per annum for 20 years, was unacceptable.

4. After remand, parties let in further evidence. The High Court examined various pieces of evidence placed before it. It rejected the entire documentary evidence placed by both parties, except two documents for determining the compensation. The first is a sale deed (Ex. PW-1/1) dated 4/11.4.1980 under which land was sold in Rithala village for Rs.19,000/- per bigha. The second is another sale deed (Ex. A1) dated 9.4.1981 under which one bigha of land was sold for Rs.35,000/-. The average of the said two sale deeds, namely Rs.27,000/- per bigha was determined as the market value in regard to the lands acquired under notifications dated 31.12.1981. In regard to the lands that were acquired under notifications dated 13.2.1981, 20.2.1981 and 13.3.1981, having regard to the fact that the said acquisitions were about 11 to 10 months prior to the acquisition of 31.12.1981, it determined the market value as Rs.25,000/- per bigha.

5. Not being satisfied with the amount awarded the appellants have filed these appeals. According to

them, the compensation awarded is low and it ought to have been higher. They contend that the High court was not justified in rejecting the following documents from consideration : (i) Ex. X-1 (DDA brochure relating to Rohini Residential Scheme) issued in 1981 showing an average premium of Rs.150/- per sq. m. in respect of DDA plots for allotment.

(ii) The circle rates dated 21.1.1989 issued by the Land Division of Government of India showing a market value of Rs.400/- per square yard for residential plots (and Rs.800/- per sq. yd. for commercial plots). (iii) Award relating to the acquisition of land at Rithala under notification dated 24.10.1961 at Rs.7,000 per Bigha which when increased at a compound rate of 12% per annum for twenty years, would give a market value of Rs.67,525/- per bigha in 1981. (iv) Sale deeds marked as A-2, A-3, A-10 to A-13 all of the year 1981, showing a market value ranging from Rs.35000/- per bigha to Rs.68570/- per bigha.

The appellants contend that by taking those documents into account, the High Court ought to have determined the market value as at least Rs.49000/- per Bigha. The DDA has filed cross-objections in several appeals for reducing the compensation to what was awarded by the reference court.

Whether DDA brochure is relevant evidence?

6. The DDA brochure (Ex.X1) dated 9.2.1981 is an invitation seeking applications from members of public for allotment of plots on lease basis under 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 :

S.No. Plot size Category Rate (Per Sq.m.)

1. 26 sqm Economically weaker sections(EWS) Rs. 100/-

2. 32 sqm Low Income Group(LIG) Rs. 125/-

3. 48 sqm Low Income Group (LIG) Rs. 150/-

4. 60 sqm Middle Income Group (MIG) Rs. 200/-

5. 90 sqm Middle Income Group (MIG) Rs. 200/- The appellants contend that Rs.150/- per sq. m. which is the average of the said provisional rates, should be taken as indicative of the ruling market price.

7. 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 lay out falling within Urbana. 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.

8. First factor: 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 lay out in which the exemplar plots are situated. 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, play grounds and civic amenities (community facilities) etc. 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 waterlines, 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. 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 un-authorized lay outs, usually no land will be set apart for parks, play grounds 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. The `deduction for development' with references to prices of plots in authorised private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout. 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 measuring100 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 a industrial plot may range only between 45% to 55% as contrasted from 65 to 75% for residential plots. 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).

9. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed lay out, to arrive at the cost of undeveloped land, will be for more than the deduction with reference to the price of a small plot in an unauthorized private lay out 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. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and play grounds 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 play grounds provided. Some of the layouts formed by statutory Development

Authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical sub-stations 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%.

10. Second factor: DDA and other statutory development authorities adopt different rates for allotment, 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 section at a price/premium of Rs. 100/- sq.m, whereas the price/premium charged may be Rs.150/- per sq.m for members of low income group, Rs.200/- per sq.m for persons belonging to middle income group and Rs. 250/- per sq. m. for persons belonging to High income groups. 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.

11. Third factor: 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. 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, some times there is a tendency among public to equate the lease premium rate (allotment price) charged by DDA, as being equal to the market value of the property. 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.

Whether the circle rates/guideline value rates can be relied upon to determine the market value?

12. The appellant relied upon the notification dated 21.1.1981 issued by the Land Division of Government of India, Ministry of Works and Housing, notifying the Schedule of Market Rates of land in different parts of Delhi and various outlying areas - showing the minimum rates Rs.400/- per sq. yard for residential and Rs.800/- sq. yard for non- residential plots. The question is whether the same could be relied upon for determination of market value in regard to land acquisition. When the matter came up before this Court in the earlier round, the counsel for the appellant had conceded that such rates could not form the basis for determining the market value of the acquired lands. In spite of it, the learned counsel for appellant submitted before us that though the said circle rates cannot be the basis for determining the market value, it may be taken note of as one of the relevant pieces of evidence indicative of the market value. There is some confusion as to whether such basic rates/guideline value/minimum registration value rates could form the basis for determining the market value.

13. This Court in Jawajee Nagnatham v. Revenue Divisional Officer [1994 (4) SCC 595] and several cases following it, including Land Acquisition Officer, Eluru vs Jasti Rohini [1995 (1) SCC 717], U.P. Jal Nigam, Lucknow through its Chairman vs M/s. Kalra Properties (P) Ltd. Lucknow [1996 (3) SCC 124] and Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar [2004 (2) SCC 283] held that maket value under section 23 of LA Act cannot be fixed on the basis of the rates mentioned in the Basic Valuation Registers' maintained for the purpose of detection of undervaluation and collection of proper stamp duty. 13.1) In Jawajee Nagnatham, the land owners had appealed to the Andhra Pradesh High Court against the order of Reference Court, claiming increase, relying up on the market value entered in the Basic Valuation Register maintained by the Revenue Authorities under the Stamp Act. The High Court rejected the claim based on the Basic Valuation Register, as such Register had no evidentiary value or statutory basis. In appeals by the land owners, this Court held that the Basic Valuation Register was maintained for the purpose of collecting stamp duty under Section 47A of the Indian Stamp Act, 1899 (as amended in Andhra Pradesh); that Section 47A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block, district or region and to maintain Basic Valuation Register for levy of stamp duty in regard to instruments presented for registration; that there was no other statutory provision or rule having statutory force providing for maintaining such Valuation Register; and therefore, such Register prepared and maintained for the purpose of collecting stamp duty had no statutory base or force and cannot form the basis to determine the market value of any acquired land under Section 23 of the LA Act. Jasti Rohini also arose from Andhra Pradesh and followed Jawajee Naganatham and held that the Basic Valuation Register had no statutory basis.

13.2) The case of U.P. Jal Nigam arose from Uttara Pradesh. In that case, the land owner filed a writ petition seeking a direction to U.P. Jal Nigam to pay compensation in regard to lands acquired on the basis of market value assessed by the Collector, Lucknow. The High Court allowed the petition and directed the U.P. Jal Nigam to pay compensation at the rate determined by the Collector, on the basis of the basic valuation circulars issued for purposes of stamp duty. This Court reversed the decision of the High Court following its earlier decision in Jawajee Naganatham and held that the Collector committed an error in determining the market value on the basis of Basic Value Circulars. Jawajee Naganatham was again followed in Bipin Kumar, which is another case from Uttar Pradesh.

13.3) All the four decisions rejected the value entered in the Basic Valuation Registers, on the ground that they had no statutory basis having regard to the provisions of stamp law applicable in the respective States (Andhra Pradesh and Uttar Pradesh) and cannot be the basis for determination of market value under Section 23 of LA Act.

14. There are also another set of decisions considering such circle rates could be considered as prima facie basis, for purposes of ascertaining the market value and determining whether there was any undervaluation of the instrument for purposes of stamp duty, which is a revenue collection exercise. We may refer to one of those cases, that is Ramesh Chand Bansal v. District Magistrate/Collector, Ghaziabad [1999 (5) SCC 62], wherein this Court held :

Reading S. 47-A with the aforesaid R. 340-A it is clear that the circle rate fixed by the Collector is not final but is only a prima facie determination of rate of an area concerned only to give guidance to the Registering Authority to test prima facie whether the instrument has properly described the value of the property. The circle rate under this Rule is neither final for the authority nor to one subjeted to pay the stamp duty. So far sub-sections (1) and (2) it is very limited in its application as

it only directs the Registering Authority to refer to the Collector for determination in case property is under-valued in such instrument. The circle rate does not take away the right of such person to show that the property in question is correctly valued as he gets an opportunity in case of under-valuation to prove it before the Collector after reference is made.

15. In R. Sai Bharathi v. J. Jayalalitha [2004 (2) SCC 9], while examining the issue in the context of a case relating to disproportionate assets, this Court held :

The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. x x x x This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value. Undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosant as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies.

16. It should however be noted that as contrasted from the assessment of market value contained in non-statutory Basic Value Registers, the position may be different, where the guideline market values are determined by Expert Committees constituted under the State Stamp Law, by following the detailed procedure laid down under the relevant rules, and are published in the State Gazette. Such state stamp Acts and the Rules thereunder, provide for scientific and methodical assessment of market value in different areas by Expert Committees. These statutes provide that such committees will be constituted with officers from the Department of Revenue, Public Works, Survey Settlement, Local Authority and an expert in the field of valuation of properties, with the sub-registrar of the sub-registration district as the member secretary. They also provide for different methods of valuation for lands, plots, houses and other buildings. They require determination of the market value of agricultural lands by classifying them with reference to soil, rate of revenue assessment, value of lands in the vicinity and locality, nature of crop yield for specified number of years, and situation (with reference to roads, markets etc.). The rates assessed by the committee are required to be published inviting objections/suggestions from the members of public. After considering such objections/suggestions, the final rates are published in the Gazette. Such published rates are revised and updated periodically. When the guideline market values, that is, minimum rates for registration of properties, are so evaluated and determined by expert committees as per statutory procedure, there is no reason why such rates should not be a relevant piece of evidence for determination of market value. One of the recognised methods for determination of market value is with reference to opinion of experts. The estimation of market value by such statutorily constituted expert committees, as expert evidence can therefore form the basis for determining the market value in land acquisition cases, as a relevant piece of evidence. It will be however open to either party to place evidence to dislodge the presumption that may flow from such guideline market value. We however hasten to add that the guideline market value can be a relevant piece of evidence only if they are assessed by statutorily appointed Expert Committees, in accordance with the prescribed assessment procedure (either street-wise, or road-wise, or area-wise, or village-wise) and finalised after inviting objections and published in the Gazette. Be that as it may. We have referred to this aspect only to show that there are different categories of Basic Valuation Registers in different states

and what is stated with reference to the stamp law in Andhra Pradesh or Uttar Pradesh, may not apply with reference to other states where state stamp laws have prescribed the procedure for determination of market value, referred to above.

17. In this case, there is nothing to show the circle rates have been determined by any statutorily appointed committee by adopting scientific basis. Hence, the principle in Jawajee Naganatham will apply and they will not be of any assistance for determining the market value. Further, they do not purport to be the market value for lands in rural areas on the outskirts of Delhi, nor the market values relating to Rithala village. The circle rates relate to urban/city areas in Delhi and are wholly irrelevant. Whether the award relating to acquisition on 24.10.1961 is relevant.

18. The appellants contend that some lands in Rithala were acquired under section 4(1) notification dated 24.10.1961 for the planned development of Delhi and compensation was awarded at the rate of Rs.7000 per bigha. Their contention is that as the present acquisition is in the year 1981, the market value of the acquired land should be determined with reference to the market value determined for the 1961 acquisition by providing an appropriate increase at the cumulative/ compounded rate of 12% per annum.

19. This Court had occasion to examine this issue recently. In The General Manager, Oil Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel [2008 (11) SCALE 637], this court held : Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

(emphasis supplied)

Even if the relied upon transaction is only two to three years prior to the acquisition, court should, before adopting a standard escalation, satisfy that there were no adverse circumstances. For example, if the acquisition is of this year 2009, it may not be possible to determine the market value, based on the 2007 or 2008 prices, by providing an increase of 12% or 15% per year, as the newspaper reports disclose that the price of immovable properties in most areas of the country came down by more than 40% to 50% from the 2007 rates. Caution is therefore necessary before increasing the price with reference to the old transactions. Be that as it may. It is clear that the award made in regard to a 1961 acquisition will not be of any use for determining the market value for a 1981 acquisition.

Whether the High Court was justified in rejecting the sale deeds (Ex.A- 2 to A-3 and A-10 to A-13 and Ex.R3 to R7) from consideration?

20. The appellants have relied upon A-2, A-3 and A-10 to A-13 relating to sale of land in Rithala village, the details of which are as under:

S.No. Ex. No. Date of Sale Extent sold Rate per bigha execution consideration

1. A-1 09.4.1981 35000 1 bigha 35000

2. A-2 15.9.1981 35000 1 bigha 35000

3. A-13 15.9.1981 35000 1 bigha 35000

4. A-3 27.7.1981 49000 1 bigha 49000

5. A-10 03.11.1981 24000 7 biswas 68571

6. A-11 03.11.1981 24000 7 biswas 68571

7. A-12 01.12.1981 49000 1 bigha 49000

21. On the other hand, the respondents relied upon Ex.R3 to R7 relating to sale of land in Rithala Village,the details of which are as under:

S Ex. Extent of land Date of Sale Rate per No. No. Bigha-Biswas Execution consideration Bigha

1. R5 1-3 09.2.1981 Rs.10,800/- Rs.9,391/-

2. R7 1-3 09.2.1981 Rs.10,800/- Rs.9391/-

3. R4 3 - 12 05.6.1981 Rs.32,500/- Rs.9028/-

4. R6 3-3 17.7.1981 Rs.34,000/- Rs.10,793/-

5. R3 4 - 12 28.11.1981 Rs.46,000/- Rs.10000/-

22. The High Court, as noticed above, determined the market value as Rs.27000/- per bigha by taking the average of the prices disclosed by Ex.A1 dated 9.4.1981 (Rs.35000/-) and Ex. PW1/1 dated 4/11.4.1980 (Rs.19000/-). It rejected Ex. A2, A3 and A10 to A13 on the ground that they were post-notification sales with reference to acquisitions dated 13.2.1981, 20.2.1981 and 13.3.1981. Then it examined whether the said sale deeds were of any relevance to determine the market value in regard to the acquisition under notification dated 13.12.1981. It was of the view that Ex. A10 to A12 related to small bits of land and therefore were not of any assistance. It referred to the fact that the sales on 3.11.1981 (Ex. A10 and A11) were at a price of Rs.68571 per bigha and sales on 27.7.1981 and 1.12.1981 (Ex.A3 and A12) were at a price of Rs.49,000/-, whereas the market price on 9.4.1981 (Ex. A1) was only Rs.35000 per bigha, thereby showing a steep increase in seven months. The High Court was of the view that the increase of nearly 95% in a period of 7 months or even a 40% increase in four/eight months demonstrated that they were not bonafide transactions and therefore, they should be ignored. The High Court did not consider the possibility that the steep increase may be a genuine increase on account of the rapid urbanisation of the area, or

on account of the acquisitions in February and March, 1981 and/or on account of the locational advantage (such as nearness to road or nearness to developed area).

23. The High Court also rejected Ex.R3 to R7 relied upon by the respondents, solely on the ground that the prices therein were lower than the market value offered by Land Acquisition Collector and therefore, they had to be excluded under section 25 of the LA Act. Section 25 provides that the amount of compensation awarded by a reference court shall not be less than the amount awarded by the Collector under section 11. We fail to see how the said section has any relevance in regard to determination of market value as contrasted from award of compensation. If the sale deeds relied on by the respondents showed a particular market value, they cannot be ignored merely because the Collector had awarded compensation at a higher rate in regard to the acquired land. All that section 25 requires is that courts should not award an amount which is less than what is awarded by the Land Acquisition Collector, even if the evidence may show a lesser market value. So, the bar under section 25 of the LA Act is not in regard to determination of a market value, which is less than what was awarded by the LAO. The bar is only upon the reference court (or any higher court) reducing the compensation awarded by the Land Acquisition Collector. The fact that the Land Acquisition Collector has awarded compensation at a particular rate does not mean that the sale deeds which are otherwise reliable, cannot be relied upon to find out what was the real market value. Further the very assumption that all awards made by the Collector were at a rate higher than what was disclosed by the sale deeds (Ex.R3 to R7) is also not correct. The Land Acquisition Collector awarded a sum of Rs.2600 to Rs.3800 per bigha in regard to acquisitions under notifications dated 13.2.1981 and 20.2.1981, Rs.6500 in regard to acquisition under notification dated 13.3.1981. These amounts were certainly lower than the market value shown by Ex.R3 to R7. Even in regard to the acquisition under notification dated 13.12.1981, the award by the Collector at Rs.7,000/- and Rs.9000/- were lower than the value disclosed by Ex.R3 to R7. As noticed above, these sale deeds show that the market value was around Rs. 9000 per bigha in February to June 1981 and 10,000 to 11,000 per bigha between July, 1981 and November, 1981. The Land Acquisition Officer awarded Rs. 10,840 (which is more than the price shown by Ex.R3 to R7) in regard to only some lands acquired under the December, 1981 acquisition. Be that as it may. As the sale deeds (Ex.R3 to R7) relate to sales of lands in Rithala Village, they cannot be excluded from consideration merely on the ground that what has been awarded by the Land Acquisition Collector was higher in regard to some of the acquired lands. We accordingly find that the ground on which the High Court excluded the sale deeds Ex.R3 to R7 is not sound. The question whether these deeds (Ex.R3 to R7) should be excluded on any other relevant ground will be considered later.

24. We are therefore of the considered view that the reasons assigned by the High Court for rejecting Ex. A2,3, A10 to A13 and Ex R3 to R7 are not sound. All the sale deeds related to Rithala village and were of the year of acquisition, namely 1981. They were prior to the acquisition under notification dated 31.12.1981, which is the largest of the four acquisitions. The difficulty arises because of the marked difference in value, disclosed by the sale deeds exhibited by the respondents (Ex.R3 to R7) and the sale deeds exhibited by the appellants (Ex.A1 to A3 and A10 to A13). The sale deeds produced by the respondents (Ex. R3 to R7) which are of the period between 9.2.1981 to 28.11.1981 disclose a value of Rs.9028 to Rs.10791 per bigha, that is an average of Rs.10000 per bigha. On the other hand the sale deeds, produced by the appellant (Ex. A1 to A3 and A10 to A13) which are the period 9.4.1981 to 1.12.1981 show market values of Rs.35000/-, Rs.49000/- and Rs.68371/- per bigha, the average being Rs.50790/- per bigha. The variation between the sale deeds relied upon by the respondents and appellants is as much as 400%. The question then is which set of sale deeds should be accepted, for determination of the market value of the acquired lands.

25. The appellants contend that the sale transactions as per Ex.R3 to R7 relied upon by the respondents, showing an average value of Rs.10000 per bigha, should be excluded from consideration as they do not reflect the true market value and as they were obviously undervalued transactions where only a part of sale price was shown in the document, the balance having been suppressed either to evade capital gains tax and stamp duty, or to invest black money. Alternatively, it is submitted that they may be distress sales. On the other hand the respondents submitted that the sale deeds exhibited by them represent the true market value as they showed a consistent price range whereas the sale deeds exhibited by the appellants (Ex. A1 to A3 and A10 to A13) showed prices with a large variation demonstrating that they were got up to show artificially increased value and that it should be inferred that they were created only for the purpose of providing proof in support of the claim for higher compensation. It is submitted that they do not represent bona fide transactions. It is pointed out that the residents of the locality knew in the year 1980 itself, or at least by February, 1981 that there will be further acquisition of lands in Rithala village for development of existing Rohini Scheme and related purposes and therefore, these documents were brought into existence to create evidence of a higher than real market price. It is submitted that there is no explanation regarding the large variance in the price disclosed by Ex.A1 to A3 and A10 to A13. This necessitates consideration of effect of section 51A of the LA Act and the relevance of undervalued documents.

What is the effect of section 51A of LA Act?

26. Before the amendment to the LA Act, introducing section 51A, it was necessary to examine either the vendor or a vendee to exhibit a sale deed and prove its contents. If the vendor or vendee was so examined, it was possible to cross-examine them so as to ascertain whether the transaction reflected by the exhibited instrument was a genuine transaction or a transaction showing a depressed value or a boosted value. But with the insertion of section 51A, certified copies of registered sale deeds could be tendered as evidence without examining the vendor or vendee thereof and the court is enabled to accept them as evidence of the transaction recorded therein. The scope of section 51A was explained by a Constitution Bench of this Court in Cement Corporation of India v. Purya [2004 (8) SCC 270] thus :

But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. ..... Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature has advisedly used the word `may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e. upon taking into consideration the relevant factors.

The submission of Mr. G. Chandrasekhar to the effect that the contents of a sale deed should be a conclusive proof as regard the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51 of the Act cannot be accepted as the Court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court

is entitled to appreciate the evidence brought on records for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other. [emphasis supplied]

The following view expressed earlier in Land Acquisition Officer and Mandal Revenue Officer vs. Narasaiah [2001 (3) SCC 530], was approved in Cement Corporation of India (supra) and is extracted below : The words may be accepted as evidence in the Section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned. Therefore, courts may accept and act upon certified copies of sale deeds exhibited without examining the vendor or vendee. They may not be relied upon if there is other acceptable evidence which throw a doubt about the correctness of the sale price shown therein.

27. The evidence to reject an exemplar sale deed as not relevant, may be either extrinsic or intrinsic. The statement of a witness describing the advantageous or disadvantageous features of the land which is the subject matter of such document will be extrinsic evidence. An absurdly low or high freakish value when compared to the prevailing price disclosed by other contemporaneous transactions may also be an extrinsic evidence. Where the sale deed recites the financial difficulties of the vendor and the urgent need to find money as reasons for the sale, that will be an intrinsic evidence of a distress sale. Therefore, though a certified copy of a sale deed may be received in evidence and exhibited even without examining the vendor and vendee, and accepted as proof of the transaction to which it relates, the courts have the discretion to rely upon it or reject it as unreliable or unacceptable for reasons to be recorded.

28. But a word of caution. What Narsaiah and Cement Corporation of India clarified was that a certified copy of a sale deed could be marked as an exhibit and its contents may be relied upon as evidence of the sale transaction, even without examining either the vendor or the vendee, in view of the enabling provision in Section 51 of the LA Act. If the acquisition is in regard to a large area of agricultural lands in a village, and the exemplar sale deed is also in respect of an agricultural land in the same village, it may be possible to rely upon the sale deed as prima facie evidence of the prevailing market value, even if such land is at the other end of the village at a distance of one or two kilometres. But the same may not be the position where the acquisition relates to plots in a town or city where every locality or road has a different value. For example in a place like Delhi there are some areas where the plot value is many times more than the value of plots in a neighbouring middle class locality which in turn may be many time more than the value of plot in a neighbouring slum area. Or the price of a property on a main road may be many times more than the price of a property on a parallel smaller road, though the two properties may be situated back to back. It cannot be said that merely because two properties adjoin each other or touch each other the value applicable to the property facing a main road, should be applied to the property to its rear facing a service road. Therefore, while a distance of about a kilometre may not make a difference for purposes of market value in a rural village, even a distance of 50 metre may make a huge difference in market value in urban properties.

29. There would be lesser likelihood of rejection of a sale deed exhibited to prove the market value, if some witness speaks about the property which is the subject matter of the exemplar sale deed and explains its situation, potential, as also about the similarities or dissimilarities with the acquired

land. The distance between the two properties, the nature and situation of the property, proximity to the village or a road and several other factors may all be relevant in determining the market value. Mere production of some exemplar deeds without `connecting' the subject matter of the instrument, to the acquired lands will be of little assistance in determining the market value. Section 51A of the LA Act only exempts the production of the original sale deed and examination of the vendor or vendee. What is the utility or relevance of under-valued sale deeds in determing market price?

30. This takes us to the value of undervalued sale deeds. When the respondents rely upon certain sale deeds to justify the value determined by the Land Acquisition Collector or to show that the market value was less than what is claimed by the claimants, and if the claimants produce satisfactory evidence (which may be either with reference to contemporaneous sale deeds or awards made in respect of acquisition of comparable land or by other acceptable evidence) to show that the market value was much higher, the sale deed relied upon by the respondents showing a lesser value may be inferred to be undervalued, or not showing the true value. Such deeds have to be excluded from consideration as being unreliable evidence. A document which is found to be undervalued cannot be used as evidence.

31. But we have noticed a disturbing trend in some recent cases, where a court accepts the sale deed exhibited by the claimants as the basis for ascertaining the market value. But then, it also accepts a contention of the claimants that the general tendency of members of public is not to show the real value, but show a lesser value to avoid tax/stamp duty and therefore the sale deeds produced and relied on by them, should be assumed to be under valued. On such assumption, some courts have been adding some fancied percentage to the value shown by the sale deeds to arrive at what they consider to be `realistic market value'. The addition so made may vary from 10% to 100% depending upon the whims, fancies, and the perception of the learned Judge as to what is the general extent of suppression of the price in sale deeds. Such increase, in the market value disclosed by the sale deeds, on the assumption that all sale deeds show a `depressed' market value instead of the real value, is impermissible. The Court can either accept the document as showing the prevailing market value, in which event it has to be acted upon. Or the Court may find a document to be undervalued in which it should be rejected straightaway as not reliable. There is no third way of accepting a document, by adding to the market value disclosed by the document, some percentage to off-set the under-valuation. There is no legal basis to proceed on a general assumption that parties, without exception, fail to reflect the true consideration in the sale deeds, that there is always undervaluation or suppression of the true price and that consequently, all sale deeds reflect a depressed value and not the real market value and therefore, some percentage should be added to arrive at the real value. Such a course also amounts to branding all vendors and purchasers as dishonest persons without any evidence and without hearing them. It ignores the fact that government has fixed minimum guideline values and whenever a registering authority is of the view that a sale deed is undervalued, proceedings are initiated for determination of the true market value. It also ignores the fact that a large number of sale deeds are accepted by the registering authorities as disclosing the current market value. Be that as it may.

Whether valuation by the High Court is proper?

32. The existence of several other sale deeds showing a much higher value and the fact that the Land Acquisition Collector chose to award a higher rate in regard to some of the acquired lands, leads to an inevitable inference that Ex.R3 to R7 were either undervalued or were distress sales. Whatever be the reason, they are liable to be excluded from consideration.

33. The sale transactions under Ex. A1 to A3 and A10 to A13 relate to plots used for residential or other non-agricultural purposes. Though these sale deeds describe the lands sold as agricultural lands, having regard to the prevailing land reforms laws, the size of the plots show that they were not used for agricultural purposes. For example, two of the sale deeds - Exs. A10 and A11, relate to 7 biswas of land each (about 350 sq. yds. each) and the purchaser is a business firm (M/s. Sant Co.). Obviously, the land was not sold for agricultural purpose, as it is not possible to imagine plots measuring only 350 sq. yards being sold for agricultural purposes. Significantly, the other sale deeds, each of which relate to an area of one bigha and show a price of Rs.35000/- per bigha (three deeds) and Rs.49000/- per bigha (two deeds). It is evident the plots which were the subject matter of these sale deeds were sold as semi-urban land for residential or other non-residential purposes. There is no evidence or material to show that they were nominal or sham documents intended to create evidence of a higher market value. The variation in price between Rs.35000 to Rs.68571 may possibly be on account of several factors. It is possible that some plots were nearer while others were far away from roads or developed areas. In the absence of the evidence of vendors/vendees of these documents, we propose to take average of these transactions, which is approximately Rs.50,790/- per bigha, as the market value of small plots sold for residential or non- agricultural purposes.

34. But when the market value of such small plots intended for non- agricultural purposes is made the basis for determining the market value of large tracts of agricultural lands, it is necessary to make an appropriate deduction towards `development' factor. The evidence shows that the acquired lands were at the relevant time (1981) in a rural area on the outskirts of Delhi, with access to roads and services nearby. In fact the Municipal Corporation of Delhi, within a few months after the acquisition, issued a notification dated 23/4/1982, under section 507(a) of Delhi Municipal Corporation Act, 1957 declaring that Rithala in the northern zone of Delhi shall cease to be a rural area. The appellants have also let in evidence to show that the acquired lands were situated in an area having a potential for development for residential use. The policy resolution dated 27.12.1980 of Delhi Development Authority in regard to development of Zones H7 and H8 (Rohini Scheme) in North-West Delh shows that the area was earmarked for fast urban development. Some facilities like roads, water, electricity had reached the area in a limited manner. Therefore, the appropriate deduction towards development, needs to be only 40% instead of the higher standard percentage of 60% to 70%.

35. On deduction of 40% from Rs.50790/- per bigha which the market value of small plots, the market value for the large tracts of lands acquired in December, 1981 would be Rs.30,474/- (rounded off to Rs.30500/-) per bigha. As the earlier three acquisitions were of the same year, but were in February and March (that is on 13.2.1981, 20.2.1981 and 13.3.1981) which are about 10 to 11 months earlier, the compensation in regard to the three earlier acquisitions is determined as Rs.28000/- per bigha. To this extent, the award of the High Court requires to be modified.

36. The learned counsel for DDA contended that market value determined by the High Court required to be reduced with reference to the market value of the acquired lands in the neighbouring village. He relied upon the decision of this Court in Union of India vs. Ram Phool - 2003 (10) SCC 167, which related to acquisition of 5484 bighas of land in revenue village Poothkalan on the outskirts of Delhi, in regard to which the preliminary notification was issued on 11.12.1981. The reference court had, after referring to several sale transactions, determined the market value as Rs.15,700/- per bigha in one case and Rs.18,500/- per bigha in another case. On appeal by the

claimants, the High Court excluded several sale transactions relied upon by the reference court as not inspiring confidence, and on the basis of a solitary transaction dated 10.9.1981 in regard to a small area of one bigha, increased the market value to Rs.30,000/- per bigha. This Court held that the High Court erred in relying upon a single sale deed relating to a small extent of one bigha to determine the market value of a large extent of 5484 bighas. It further held that if that sale deed was excluded, there was no other evidence to support the increase in compensation made by the High Court. Consequently, this Court set aside the increase awarded by the High Court and restored the market value determined by the reference court. The learned counsel for DDA submitted that a rate in that range (Rs.15700 to Rs.18500 per bigha) should therefore be adopted for the Rithala lands also. But that decision relating to Poothkalan is not of any assistance with reference to the Rithala acquisitions for the following reasons:

(i) It is now well settled that sale transactions or awards relating to neighbouring village will not be relied on when acceptable evidence by way of contemporaneous sale transactions or awards are available in regard to the very village where the acquisition took place. (Where there are no contemporaneous sale deeds or awards relating to the same village, then the sale transactions or awards of the same period relating to the neighbouring village can be considered provided there is evidence to show that the acquired lands and the lands covered by the exemplar deeds of the neighbouring village are similarly situated). (ii) The decision in Ram Phool itself lays down as follows: `Contemporaneous award no doubt is a useful guide for every court to determine the market value but that award must be taken into evidence in accordance with law by giving an opportunity to the other side for rebutting the same and that has not been done in the case on hand.' In this case while the learned counsel for respondents contended that the lands at Rithala and Poothkalan were similar, the learned counsel for the appellants submitted that the acquired lands in Rithala were far more valuable than the lands in Poothkalan and that Rithala was nearer to the city when compared to Poothkalan. Neither stand is supported by any evidence or material on record. In the absence of any evidence, we cannot assume that acquired lands in Rithala and lands acquired in Poothkalan were similarly situated.

(iii) In Ram Phool, this Court set aside the decision of the High Court and restored the award of reference court, not because it came to the conclusion that the market value was only Rs.15,700/-/Rs.18,500/- as decided by the reference court, but because the only piece of evidence that was relied on by the High Court to fix the market value of Rs.30,000/- was found to be not reliable and no other evidence was available. Therefore, decision of this Court in Ram Phool was not a positive determination of market value of Poothkalan lands, but the rejection of a determination of a higher value by High Court for want of acceptable evidence.

Conclusion :

37. We accordingly increase the compensation, in regard to acquisition dated 31.12.1981 from Rs.27000/- to Rs.30,500/- per bigha. We also increase the compensation in regard to the acquisition dated 13.2.1981, 20.2.1981 and 13.3.1981 from Rs.25,000/- to Rs.28,000/- per bigha. The statutory benefits and interest awarded are not disturbed.

38. The appeals by the claimants are partly allowed increasing the compensation as per para 37 above. As a consequence, the cross objections by DDA seeking reduction of the compensation are rejected without going into the question whether such cross objections are maintainable. Parties to bear their respective costs.

(R V Raveendran) August 12, 2009. (B. Sudershan Reddy)

SUPREME COURT OF INDIA

C.A.No.1853 of 2007

Karam Singh (dead) Through Lrs.

Vs.

Union of India

JUDGMENT

R. V. RAVEENDRAN, J.

1. Leave granted in the special leave petitions.

2. These appeals are by claimants for increase in compensation in regard to acquisitions of lands situated at Rithala village initiated under preliminary notifications dated 13.2.1981, 20.2.1981, 13.3.1981, and 31.12.1981.

3. These matters are covered by the judgment in Lal Chand vs. Union of India [Civil Appeal No.4945 of 2006] and connected cases, decided today. Following the decision and in terms of it, these appeals are allowed in part.