

New Okhla Industrial Development ... vs Harnand Singh (Deceased) Thr. Lrs on 10 July, 2024

Author: Surya Kant

Bench: Surya Kant

2024 INSC 509

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3674-3675 OF 2023

New Okhla Industrial Development Authority

...Appellant(s)

Versus

Harnand Singh (Deceased) through LRs & Ors.

...Respondent(s)

WITH

CIVIL APPEAL NO.3676-3688 OF 2023

CIVIL APPEAL NO.3869 OF 2023

M.A. NO.2424 OF 2019 IN SLP (C) NO.9732 OF 2014

M.A. NO.2663 OF 2023 IN SLP (C) NO.36027 OF 2009

M.A. NO.2404 OF 2023 IN SLP (C) NO.28146 OF 2009

M.A. NO.2305 OF 2023 IN SLP (C) NO.23068-23070 OF 2010

M.A. NO.2402 OF 2023 IN SLP (C) NO.23900 OF 2009

M.A. NO.2600 OF 2023 IN SLP (C) NO.29597-29639 OF 2010

M.A. NO.2602 OF 2023 IN SLP (C) NO.29597-29639 OF 2010

M.A. NO.2598 OF 2023 IN SLP (C) NO.29597-29639 OF 2010

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M.A. NO.2601 OF 2023 IN SLP (C) NO.29597-29639 OF 2010

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[ARISING OUT OF DIARY NO (s). 9072 OF 2024]

JUDGEMENT

SURYA KANT, J.

Delay condoned. Leave granted.

2. These appeals and applications have been preferred by the New Okhla Industrial Development Authority (hereinafter, 'NOIDA') and landowners owning land in Village Chhalera Bangar, Tehsil Dadri, District Ghaziabad, contesting various identical impugned orders, including the judgment dated 08.02.2021 and in the review order dated 22.07.2021 passed in the lead case by the High Court of Judicature at Allahabad (hereinafter, 'High Court'), enhancing the compensation granted to the landowners for an acquisition initiated under the Land Acquisition Act, 1894 (hereinafter, '1894 Act'). In the appeals preferred by NOIDA, the High Court has enhanced the rate of compensation from the range of INR 222 and 233 per sq. yd. as granted by the Additional District Judge, Ghaziabad (hereinafter, 'Reference Court'), to INR 449 per sq. yd. Whereas, in the appeals and applications filed by the landowners, it was enhanced to INR 340 per sq. yd.

A. FACTS

3. The present controversy has a chequered history. The acquisition process was initiated by State of U.P./NOIDA on 05.01.1991 through a notification issued under Section 4(1) of the 1894 Act, for the acquisition of approximately 492 acres of land in Village Chhalera Bangar, intended for planned Industrial Development. Afterwards, on 07.01.1992, the government issued a declaration under Section 6 read in conjunction with the 'urgency clause' contained in Section 17 of the 1894 Act. Possession of the land was taken on 30.03.1992, 07.08.1995 and 18.11.1995.

4. Subsequently, on 17.08.1996, the Land Acquisition Officer (hereinafter, 'LAO') issued an award under Section 11 of the 1894 Act, affixing compensation at INR 110 per sq. yd. The LAO relied on a sale deed dated 16.12.1988, whereby one Jyoti Prasad had sold the land to G.R. Pant at a rate of INR 125 per sq. yd. Applying a further 12% deduction, owing to the large area under acquisition, the rate of compensation was finally determined at INR 110 per sq. yd.

5. Following the award, several landowners made a reference before the Reference Court seeking enhancement of compensation under Section 18 of the 1894 Act. The record indicates two kinds of compensation rates granted by the Reference Court: first, INR 233 and second, INR 222 per square yard. In both these awards, the evidence suggested the market value of the land at the relevant time, at INR 390 per sq. yd., upon which a 40% deduction for development was applied. However, the

final figure achieved after this calculation has been noted differently in both orders, where INR 222 per square yard seems to be the result of a calculation error.

6. Some landowners further preferred appeals before the High Court. One such initiative was filed by Jagdish Singh etc., who challenged the Reference Court's award in First Appeal No. 774/2001, titled Jagdish Chandra and others v. New Okhla Industrial Development Authority. The High Court through its judgement dated 14.12.2007, reversed the deductions made by the Reference Court from the assessed market value and directed the State / NOIDA authorities to recalculate the compensation at INR 297.50 per sq. yd. without deducting development charges. However, in another similar group of appeals, the High Court, vide the later judgement dated 09.05.2008, refused to enhance the compensation.

7. The landowners' review application(s) against the order dated 09.05.2008 were dismissed by the High Court observing that they could independently file appeals, if so aggrieved. However, in response to a later application seeking clarification, the High Court on 19.05.2010 clarified the operative part of its earlier judgment and enhanced the compensation to INR 340 per sq. yd. The other alike appeals filed by similarly situated landowners were also allowed in part and the compensation was enhanced to INR 340 per sq. yd.

8. Seeking further enhancement, a few landowners approached this Court, but their Special Leave Petitions (SLPs) were dismissed on 05.02.2014. However, in Civil Appeal Nos. 18620-18623 / 2017 titled Bir Singh v. State of Uttar Pradesh, this Court vide judgement dated 09.11.2017, further enhanced the compensation to INR 449 per sq. yd., relying on a sale exemplar dated 16.12.1988 for a land situated in Village Chhalera Bangar, and noting that the sale price of the said land was INR 400 per sq. yd. The Review and Curative Petitions preferred by the State / NOIDA authorities against this order were dismissed on 06.03.2018 and 13.03.2019, respectively. Consequently, all the First Appeals pending before the High Court, pertaining to the same acquisition came to be allowed in line with Bir Singh (supra), and compensation was accordingly enhanced to INR 449 per sq. yd.

9. It is in this backdrop that a majority of the cases before us mount a challenge to those High Court orders which were pronounced before Bir Singh (supra) and wherein the High Court had granted compensation at INR 340 per sq. yd. only. The landowners thus seek parity with Bir Singh (supra) and the resultant enhancement of their compensation to INR 449 per sq. yd. On the other hand, NOIDA has also filed multiple appeals challenging the High Court judgements that were decided on the anvil of Bir Singh (supra). The landowners too have filed several Miscellaneous Applications against the earlier dismissal of their SLPs, seeking recall of the previous orders and to restore parity with Bir Singh (supra). Additionally, two of the SLPs included in the batch of cases before us assail an order of the High Court dismissing the landowners' Review Petitions and rejecting their enhancement claim on account of delay in filing the review before the High Court.

10. The matters pending before us, therefore, can be categorized into two groups:

- i. SLPs, Miscellaneous Applications and Civil Appeals preferred by landowners who had already been granted compensation at INR 340 per sq. yd. and who are now

seeking parity with Bir Singh (supra) where compensation was enhanced to INR 449 per sq. yd.;

and ii. Civil Appeals preferred by NOIDA as against the enhanced compensation of INR 449 per sq. yd. granted to some of the landowners.

B. CONTENTIONS ON BEHALF OF THE STATE

11. We have heard learned Senior Counsels for the parties at considerable length and have perused the record at length.

12. Mr. Ravinder Kumar, learned Senior Counsel representing NOIDA, argued that Bir Singh (supra) had based its finding on an erroneous reading of a sale exemplar, wherein this Court read a description of the extent of land being 400 sq. yds. as the value of the land instead, i.e., INR 400 per sq. yd. He submitted that the Reference Court had read the figure correctly and granted compensation at INR 110 per sq. yd. Thus, he urged that there being an ex-facie factual error while deciding Bir Singh (supra), parity could not be sought with that decision which was only binding inter partes and ought not to be treated as a precedent.

13. Learned Senior Counsel contended that the landowners could not invoke Section 28A of the 1894 Act for re-determination of the market value of their lands as the said provision was restricted to the compensation determined by the Reference Court. Reliance has been placed on the decision of this Court in Ramsingbhai Jerambhai v. State of Gujarat.¹ He also argued that the sale deeds produced before this Court by the landowners were of abadi land whereas, in the present case, agricultural or non-abadi land has been acquired. Mr. Kumar then highlighted that the acquired land is a huge chunk of land and cannot be utilised for non- agricultural purposes unless major developmental works are carried out, in the form of roads, water supply, sewage, open spaces, schools, hospitals, parks etc., as a result of which not more than 50% of it will be left for carving out industrial or institutional plots for actual sale.

14. Mr. Kumar, Learned Senior Counsel, proffered that a uniform rate of compensation ought to be fixed for the entire acquisition rather than individual rates applicable for different parcels of land. The relevant factors while affixing compensation ought to include the fact that the authorities do not derive any income from the land. He highlighted the aims and objects of NOIDA to impress upon the fact that the Statutory Authority is an extended hand of the State, with the responsibility of implementing development projects and several concessional allotments have been made towards marginalised sections of society, on a no profit basis. Additionally, he canvassed that the compensation cannot be fixed at the current market value considering the fact that the rates would have increased over time on account of planned development carried out in neighbouring areas post- acquisition. A pointed reference was also made to the overall development of the Township in the National Capital Region. Further, he maintained that 1 (2018) 16 SCC 445.

the circle rate might not accurately reflect the correct market value of the acquired land at the relevant cut off dates, as the acquisition was made of an undeveloped large tract of agricultural land.

15. In the context of the Miscellaneous Applications seeking to rely on Bir Singh (supra), for recalling the orders dismissing the SLPs, Mr. Kumar argued that they ought not to be entertained, being not maintainable, as none of these applicants invoked the review jurisdiction of this Court within a reasonable period of time. He pointed out significant delays of over nine years in some of the cases, and vehemently urged this Court to not enhance compensation considering that the land had already been allocated to third parties and it is now impossible to recover the enhanced compensation amount from such allottees in the absence of any binding contract to this effect. Mr. Kumar underscored that in many of these SLPs in which Miscellaneous Applications have now been filed, Review and Curative Petitions had been filed and dismissed earlier by this Court.

C. CONTENTIONS ON BEHALF OF THE LANDOWNERS

16. Per contra, Mr. Yatinder Singh and Mr. Vimlesh Kumar Shukla, Learned Senior Counsels representing the landowners, at the outset very fairly acknowledged that the decision in Bir Singh (supra) was founded on a bona fide factual error of misreading the sale exemplar relied upon therein. They however bounced back to claim compensation not less than the rate awarded in Bir Singh (supra). In this regard, they drew our attention to evidence establishing parity for awarding compensation at the rate determined by this Court in Bir Singh (supra). They banked upon the sale exemplar dated 22.02.1989, which, according to them, is similar to the sale instance relied upon in Bir Singh (supra), wherein a plot of 470 sq. yds. was sold at INR 446 per sq. yd. The sale deed dated 22.02.1989, being for a small piece of land, it was urged, ought not to undermine its relevance. They made a pointed reference to the Reference Court's order, which the NOIDA authorities relied upon, was also based on a sale deed of only 400 sq. yds. Learned Senior Counsels also disputed NOIDA's claim that the said sale deed was within abadi land, and drew our attention to the map indicating it was an agricultural land only.

17. It was then argued that the factors necessary for evaluating the potentiality of land are the same as those used towards fixing the circle rate. The circle rate, therefore, is a crucial and relevant piece of evidence and ought to be employed in determining the market value of the land for which the said circle rate was affixed. The acquired land was claimed to be situated amidst developed areas and near the Amity Public School, a large Golf Course, a Film City, and with developed Residential Colonies and Shopping Areas on all three sides. The acquired land being in the heart of NOIDA, which has become one of the largest industrial and commercial cities in India, is in proximity to the DSC Shade, Okhla Barrage Highway and the MAT Public School of Business Management. Even parts of the national capital – Delhi, were shown as being no more than a few kilometres away, with important national landmarks such as Connaught Place, Nehru Place, the Supreme Court and the ITO all being within a 15-kilometre radius. They further highlighted that the lands in nearby Sector 18, were acquired in 1976 for between INR 7,200 to INR 10,200 per bigha. Further, a plot of 575 sq. yds. was leased by the NOIDA authorities on 28.08.1988 for INR 11,576 per sq. yd. and another similar plot was leased for INR 22,125 per sq. yd. on 09.12.1988.

18. Other Learned Counsel for some of the landowners also articulated that Bir Singh (supra) could not be revisited as the Review and Curative Petitions against it had already been dismissed. Parity was once again sought with Bir Singh (supra), invoking Section 28A of the 1894 Act.

D. ISSUES

19. In our considered opinion, the following questions arise for deliberation by this Court:

i. Should compensation be enhanced, and if so, to what extent? How should the quantum be calculated?

ii. Are the Miscellaneous Applications maintainable? iii. Can the landowners rely upon Section 28A of the 1894 Act to seek parity with Bir Singh (supra)?

E. ANALYSIS

E.1. Quantum of Compensation

20. The primary issue in this case centres around the quantum of compensation granted to the landowners, and the inconsistency and disparity in the amounts awarded at different stages of the judicial process.

21. To begin with, we may clarify that although this Court in Bir Singh (supra) had enhanced compensation to INR 449 per sq. yd., both sides very fairly agreed during the course of hearing that the same was founded on a bona fide factual error. Bir Singh (supra) relied on a sale deed dated 16.12.1988, noting the value of the land therein as being INR 400 per sq. yd. However, it is apparent that the figure of 400 actually denoted the area and size of the plot and not its sale value. Nevertheless, the decision was not revisited by this Court while exercising Review and Curative jurisdictions – likely on account of the practical difficulties in recovering the excess compensation amount already paid to the expropriated land owners and given the larger interest of justice. While Bir Singh (supra) thus remains a binding precedent inter-se the parties, it would not bind us because of its sui generis factual position. Given this, it becomes necessary for us to determine the market value of the land independently. E.1.1 Evidence used in determining the quantum of compensation

22. Firstly, it may be refreshed that for the purpose of evaluating compensation for the acquired land, Section 23(1) of the 1894 Act, acts as a lighthouse. It stipulates that:-

“23. Matters to be considered in determining compensation. — (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration— first, the market-value of the land at the date of the

publication of the notification under Section 4, sub- section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.”

23. While the 1894 Act does not provide a strict definition of the term ‘market-value’, it essentially refers to the price that the asset would likely fetch in an open market transaction. Incontrovertibly, the Legislature has consciously chosen not to define this term, as is discernible from the reports of the Select Committee, wherein they posited that “no attempt would be made to define strictly the term in the Act and that the price which a willing vendor might be expected to obtain in the market from a willing purchaser, should be left for the decision primarily of the Collector and ultimately of the Court.”² Hence, during the framing of the 1894 Act, it was understood that the ‘market value’ would simply be the price which a willing buyer would give to a willing seller.

24. Given the statutory intention behind term ‘market value’, the natural corollary is that the sale exemplars reflecting the prices paid by a willing buyer to a willing seller would be the most relevant piece of evidence for determination of such value.³

25. However, for utilizing these sale deeds as the foundation for determining compensation, it is imperative that these sale instances satisfy certain criteria of comparability. In this regard, it is necessary that the sale deeds adhere to the following factors:

- i. the sale must be a genuine transaction;
- ii. the sale deed must have been executed at the time proximate to

the date of the notification issued under Section 4 of the 1894 Act; iii. the land covered by the sale must be in the vicinity of the acquired land; and iv. the nature of such land, including its size, must be similar to the acquired land.⁴

26. Adverting to the facts of the case in hand, it is germane to our analysis to note that the landowners have placed their reliance on only one sale deed dated 22.02.1989, which values the land at INR 446 per sq. yd. 2 Commentary on the Land Acquisition Act, Om Prakash Aggarwal, 8th Edn. (New Delhi:

Universal Law Publishing Co. Pvt. Ltd., 2008), pg. 761.

3 Administrator General of W.B. v. Collector, (1988) 2 SCC 150, para 8; Ram Kanwar v. State of Haryana, (2020) 17 SCC 232, para 11 4 Shaji Kuriakose v. Indian Oil Corpn. Ltd., (2001) 7 SCC 650, para. 3 Although this sale deed pertains to the land situated within the same village, its plot size is significantly smaller—being only 470 sq. yds.—as compared to the vast area under acquisition, which spans approximately 492 acres or 23.81 lakh sq. yds. There is no gainsaying that the prices of small plots of land cannot ordinarily serve as the basis of evaluating the market value of larger tracts of land.⁵ However, there is no legal impediment against considering sale exemplars of smaller parcels of land, provided they are subjected to cuts or deductions. 6 The reasoning behind this exercise is that smaller plots of land are typically valued at a higher price owing to their developed nature, contrasting with larger tracts that require substantial areas to be set aside towards setting up infrastructure such as roads, parks or other civic amenities.⁷ Therefore, adjusting these values through appropriate cuts would provide a more accurate approximation of the land's value.

27. However, in this particular instance, the acquired land exceeds the land in the cited sale exemplar by more than 5000 times. The issue in this context is not restricted to the smaller size of the land in the sale exemplar but rather the fact that there is only a solitary instance of sale brought on record. Had there been multiple such sale instances, there could have been some basis for estimation that this Court could have deduced from. However, the sale deed dated 22.02.1989, which is the sole example relied upon, not only inadequately represents the values of the land being acquired but also introduces significant risk and imprecision, if relied upon as the 5 ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745. 6 Ravinder Kumar Goel v. State of Haryana and Others, 2023 SCC OnLine SC 147 7 Atma Singh v. State of Haryana and others, (2008) 2 SCC 568. sole foundation of our assessment. We are, therefore, extremely reluctant to rely on this sale deed as a direct piece of evidence for determining the fair and just market value of the acquired land.

28. Furthermore, a closer look at the lease deeds submitted by the landowners also reveals that they pertain to properties not comparable to the land under acquisition. For instance, the lease deeds dated 01.09.1988 and 09.12.1988 pertain to well-developed commercial spaces in a Shopping Complex. No such development or construction had taken place on the acquired lands. Commercialisation of the acquired land can only occur after it is fully developed, to attract similar lease offers that could exhibit comparable values. The lands as they stood as on the date of the Section 4 notification were not exactly analogous to the leased-out plots or commercial buildings relied upon by the landowners. These lease deeds hence cannot be mechanically relied upon either.

29. Finally, the landowners seek refuge in the circle rate of the area in which the subject lands are situated – contending that it was as much as INR 1500 per sq. yd. in the year 1991. We must note, however, at the outset that this claim is unsubstantiated by any reliable material on record. A

document enumerating the circle rates of 37 villages, based upon notification issued by the State / NOIDA authorities, dated 30.11.1989, was, of course, produced by the landowners to demonstrate that the NOIDA authority itself determined the rate for lands in village Chhalera Bangar at INR 650 per sq. yd. (for lands adjoining the road) and INR 350 per sq. yd. (for the lands away from the road); but this too cannot be the sheet anchor as the said circular was apparently issued with the primary object of levying stamp-duty on an estimated price value of the land in the year 1989.

30. Consequently, given our analysis above, it is apparent that there exists no direct piece of evidence to determine fair and just compensation in the instant cases. We must, therefore, resort to the settled principle of guesstimation.⁸ E.1.2. Applicability and use of the principle of guesstimation

31. Guesstimation is a heuristic device that enables the court, in the absence of direct evidence and relevant sale exemplars, to make a reasonable and informed guess or estimation of the market value of the land under acquisition, and concomitantly the compensation payable by the appropriate Government. In that sense, guesstimation hinges on the Court's ability to exercise informed judgement and expertise in assessing the market value of land, especially when the evidence does not tender a straightforward answer.

32. This principle accentuates the fundamental understanding that determining compensation for land is not a matter of exact science but involves a significant element of estimation. Indeed, this holds true for valuation of land in general, which is affected by a multitude of factors such as its location, surrounding market conditions, feasible uses etc. Accordingly, while evidence and calculations can aid in estimating the land value, they ultimately serve as tools for approximation rather than precision. Instead, land valuation—and consequently the affixation of compensation— 8 *Trishala Jain v. State of Uttaranchal*, (2011) 6 SCC 47, para 63. remains an exercise of informed estimation, requiring the integration of diverse data points and professional judgment concerning subjective, intangible and dynamic elements. Pursing a single precise valuation or compensation figure is bound to be unjust, representing a rigid approach and a procrustean endeavour at best.

33. Having said that, it is important to clarify that the process of determining compensation is not entirely subjective. While it may not be possible to arrive at a definitive figure, the exercise is still epistemologically objective in so far as it is grounded in evidence and the consideration of relevant factors. In case the compensation is fixed agnostically to the factors affecting the valuation of the land, the resultant figure might be arbitrary and may fail to adequately compensate the landowner for the expropriated land. Hence, while some subjectivity may exist in fixing the final figure based on these factors, the sliding scale of judicial discretion cannot be extended to mere speculation.

34. Accordingly, while the Court can use the principle of guesstimation in reasonably estimating the value of land in the absence of direct evidence, the exercise ought not to be purely hypothetical. Instead, the Court must embrace a holistic view and consider all relevant factors and existing evidence, even if not directly comparable, to arrive at a fair determination of compensation. *Trishala Jain v. State of Uttaranchal*,⁹ summarizes these yardsticks as follows:

“65. It will be appropriate for us to state certain principles controlling the application of “guesstimate”:

9 (2011) 6 SCC 47, para 65.

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.”

35. Broadly, such relevant factors can be divided into three categories:

i. Characteristics of the land: The valuation of land is undeniably influenced by its inherent characteristics. A parcel of land endowed with advantageous features that enhance its accessibility and usability tends to command higher market price and thus, a greater valuation in comparison to lands lacking such attributes. Key factors contributing to such features include connectivity via roads and other means of transportation, the size and shape of the land, availability of essential utilities such as electricity and water, the evenness or levelling of the land’s surface, width of frontage, and nature and status of the surrounding area etc.; ii. Future potentiality of the land: In addition to its characteristics, the valuation of land is also influenced by its potentiality. Lands with the potential to be used for commercial or residential purposes; that are located in or near a developed area; or which are proximate to tourist destinations, are perceived to hold greater value in the future. Consequently, landowners may anticipate higher future prices and accordingly demand higher sale prices compared to lands lacking these attributes. Accordingly, these features also lead to an increase in valuation; and iii. Factors denoting market sentiment: Market sentiments are powerful drivers of land valuation. Even if a particular piece of land possesses all desirable features, its valuation can still suffer if the market conditions at the time of publication of the notification under Section 4 of the 1894 Act were unfavourable. Factors such as economic recessions, political instability, speculative investments or real estate crisis can impact the perceived value of the land. Thus, these extraneous economic and political factors must also be considered when assessing land valuation.

36. In the instant case, the evidence led by parties provides several relevant factors, as enumerated above. For instance, while the sale deed produced by the landowners cannot directly be relied upon for determining the price of the land, given its relative proximity, it nonetheless establishes its potentiality in the form of possible use towards residential purposes.

37. Likewise, the lease deeds further underscore the commercial potentiality of land in the adjoining vicinity—as Sector 18 is situated only 3- 4 kilometres away from the subject land. Moreover, as in the case of Sector 18, the acquired land is well connected to major roads and has adequate supply of water and electricity. Further, as highlighted by the landowners, the land under acquisition lies near prominent amenities and landmarks such as the Amity Public School, a large Golf Course, and a prominent tourist attraction - the Film City. Apart from that, it is also in proximity to the DSC Shade, Okhla Barrage Highway and the MAT Public School of Business Management.

38. Additionally, the acquired land is enveloped by developed colonies and markets on all three sides. Towards the western periphery, it is bordered by N.T. Road which offers excellent connectivity to the Kalindikunj area near Delhi via the Yamuna Barrage. Beyond the southern side, the land is flanked by a six-lane road leading towards Delhi through Noida, alongside residential enclaves designated for Army Officers, along with the aforementioned golf course. Eastward, there are developed sectors 43 and 45, as well as the lands belonging to village Sadarpur. Lastly, the acquired land benefits from convenient access to key landmarks in Delhi including the Supreme Court, Connaught Place and the ITO, highlighting its strategic location vis-à-vis its potentiality and future multiplicity of its market value at the time of issuance of the Section 4 notification.

39. More importantly, the land is not uneven, prone to flooding or subject to construction restrictions. Taken together, all these facts and evidence lead to the reasonable inference that the subject land had significant potential for future commercial development at the time of issuance of the notification under Section 4, akin to the developments witnessed in the lease deeds for Sector 18, NOIDA.

40. At this juncture, we may clarify that the mere absence of multiple sale exemplars also does not by itself support a conclusion that the market condition was unfavourable or that the lands had stagnant demand and low value, as sellers often hold on to lands whose prices are in the process of increasing or likely to increase in the near future, owing to urbanisation or other upcoming development projects and changes.

41. Thus, even devoid of numerous sale exemplars showing frequent transactions and considering the factors enumerated in the preceding paragraph, we are inclined to estimate that the value of the subject land was appreciating at around 15% annually. This rough estimate of ours is supported by the decision of this Court in *ONGC Ltd. v. Rameshbhai Jivanbhai Patel*,¹⁰ which recognised that a 15% annual growth in prices can be assumed for lands situated in urban areas.

42. Regarding the quantum of compensation and/or valuation of the acquired land, an escalation is merited even if we were to rely on the lower end of the rates fixed by NOIDA itself in 1989 in Chhalera Banger, for lands lying away from the road, being INR 350 per sq. yd. Given that these rates were released by NOIDA towards the latter half of 1989, and considering how the acquisition process began on 05.01.1991, it would be appropriate to apply a 15% escalation for one year to this price – bringing our total guesstimate to Rs. 403 per sq. yd.

43. In order to further substantiate this estimation, we place our reliance on the decision rendered in *Krishan Kumar v. Union of India*,¹¹ where this Court acknowledged that while sale exemplars may not directly establish the 10 (2008) 14 SCC 745, para 14.

¹¹ (2015) 15 SCC 220, para 22-25.

amount of compensation to be granted, compensation could be determined applying the principle of guesstimation, based on the circle rate after granting a marginal increase over the same.

44. In light of the above analysis, the evidence produced by both, the State and the landowners, and on employing the principle of guesstimation, it stands conclusively surmised that the landowners herein are entitled to an enhancement in the compensation awarded. Accordingly, we partly allow these present appeals and revise the rate of compensation to INR 403 per sq. yd. for the entire acquired land except such part of it which was subject matter of the decision in *Bir Singh* (supra).

E.2. Maintainability of the Miscellaneous Applications

45. The miscellaneous applications in the present batch of cases before us seek parity with the rate of compensation awarded in *Bir Singh* (supra). Learned Senior Counsel for NOIDA is not wrong in contending that this would effectively amount to recall of the previous orders and part acceptance of the appeals by way of Review based on a subsequent change of law.

46. Although, as laid down in *State (NCT of Delhi) v. K.L. Rathi Steels Ltd.*,¹² Miscellaneous Applications based on change of law are typically not maintainable, except in certain exceptional circumstances, and in the interests of justice. These circumstances pertain to a position where the law is in a continuous state of flux and/or where not allowing the applications would have a significant detrimental effect and result in the miscarriage of 12 2024 SCC OnLine SC 1090, para 113.

justice. It seems to us that the current situation exemplifies such a scenario.

47. In our considered opinion, it would indeed be unfair to single out a few individual landowners and deny them the benefit of just compensation, owing to factors and processes outside their control. Comparing the impact of not allowing these miscellaneous applications solely on grounds of maintainability vis-à-vis allowing them marginally higher compensation in the larger interest of justice—we are persuaded to accede to the landowners' prayers. Disallowing these applications would in a way be against the spirit of Article 14 of our Constitution and will defy the right to treat those placed equally in an equal manner.

48. Consequently, invoking our powers under Article 142 of the Constitution with a view to do complete justice between the parties, we deem it fit to enhance compensation notwithstanding the dismissal of earlier Review and Curative Petitions. Moreover, it is clarified that since our analysis above is agnostic to the decision in *Bir Singh* (supra), we are, therefore, not applying a subsequent change of law, but instead only correcting a judicial error and restoring uniformity in a case

involving peculiar circumstances.

49. Consequently, the landowners in these miscellaneous applications are also held entitled to the new revised rate of INR 403 per sq. yd. for their acquired land.

E.3. Applicability of Section 28A of the 1894 Act

50. Section 28A of the 1894 Act serves as a legislative safeguard against discrimination in the grant of compensation. It stipulates that if an individual whose land is acquired receives enhanced compensation, all other affected persons covered by the same notification under Section 4 of the 1894 Act are entitled to seek parity with such enhancement.

51. This provision was not originally a part of the 1894 Act and was introduced through the Land Acquisition (Amendment) Act, 1984. The Statement of Objects and Reasons accompanying the aforementioned Amendment Act, clarified that Section 28A aimed to rectify disparities between landowners. It addressed situations where more affluent landowners could avail themselves of a reference to the civil court under Section 18, while inarticulate and poor people often could not resort to a similar recourse, resulting in inequality in compensation for similar quality of land. The provision sought to remedy this by allowing all affected parties covered by the same notification to seek redetermination of compensation once the court grants higher compensation under Section 18 to any one of them.¹³

52. In the instant case, however, we are not delving deep into the landowners' prayer for parity based on Section 28A of the 1894 Act in consonance with the Bir Singh (supra) judgement. We do so for three reasons: (a) that as mentioned in para 22 of this judgement, Bir Singh (supra) would not bind us given its precarious and sui generis facts; (b) the landowners have not demonstrated compliance with the procedural 13 Mewa Ram v. State of Haryana, (1986) 4 SCC 151, Para 4; Babua Ram v. State of U.P., (1995) 2 SCC 689, para 36.

technicalities of this provision, such as writing to the Collector within the prescribed limitation period; and (c) the issue is rendered academic in light of our analysis above where we have independently revised the rate of compensation to INR 403 per sq. yd for one and all.

53. Similarly, the plea hovering around Article 14 of the Constitution to seek uniformity in the matter of award of compensation, has also become academic, as such a relief already stands granted to all the landowners, though on different grounds.

F. CONCLUSION

54. The present factual situation had three set of cases – appeals filed by the landowners, appeals filed by NOIDA, and the Miscellaneous Applications filed by the landowners. Without disturbing the ratio of Bir Singh (supra) and the compensation granted to landowners therein, and with a view to put a quietus on this long-standing dispute, the landowners' appeals are allowed in part; the appeals by NOIDA authorities against the grant of compensation are also allowed in part, such that the rate

of compensation is enhanced from INR 340 per sq. yd. to INR 403 per sq. yd. and where the High Court has, following Bir Singh (supra) granted compensation at INR 449 per sq. yd., the same is reduced to INR 403 per sq. yd.

55. The enhanced compensation amount shall be deposited with the Reference Court within a period of eight weeks. It shall then be disbursed to the claimants at the earliest.

56. All the matters stand disposed of in the aforementioned terms and directions.

..... J.

(SURYA KANT) J.

(K.V. VISWANATHAN) NEW DELHI DATED:10.07.2024