Kapil Mehra & Ors vs Union Of India & Anr on 17 October, 2014

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Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2545-2546/2012

MAJ. GEN. KAPIL MEHRA & ORS. ..Appellants

Versus

UNION OF INDIA & ANR. ..Respondents

J U D G M E N T

R. BANUMATHI, J.

These appeals are directed against the impugned Orders dated 24.12.2010 and 13.10.2011 passed by Delhi High Court in L.A. Appeal No.149/2007 and C.M. No.735/2011 in L.A. Appeal No.149/2007 respectively by which High Court awarded compensation at the rate of Rs.14,974/- per sq. yard for appellants' land acquired by the Delhi Development Authority (DDA) for development of Vasant Kunj Residential Scheme, Delhi along with interest and proportionate costs.

2. Shorn of details of the previous notification in 1983 and the earlier rounds of litigation, background facts in a nutshell are as follows: On 19.2.1997, a fresh notification was issued by the Land and Building Department, Govt. of NCT of Delhi under Sections 4 and 17 of the Land Acquisition Act, 1894 (the Act) proposing to acquire the land of the appellants measuring 12 Bigha (12096 sq. yards) for development of Vasant Kunj under the planned development scheme of Delhi. Land Acquisition Collector (LAC) by award No. 2/98-99 dated 18.9.1998 assessed the market value of the land @ Rs.2,05,642.07 paise per bigha (Rs.205/-per sq.yard), adding additional interest @ 12% per annum on the market value of land and the solatium @ 30% on the market value of land and the compensation was fixed @ Rs.37,21,180.05 paise per bigha.

3. Aggrieved by the award, the appellants filed Reference Petition under Section 18 of the Act before the Additional District Judge (LAC), Delhi. In the reference court, the appellants produced four documents Exs A7 to A10-perpetual lease deeds of residential plots in Vasant Kunj, executed between September 1995 to December 1996 at the rates ranging from Rs.28,719/- to Rs.47,542/- per sq. yard. The reference court held that the lease deeds of auction of a developed plot by a public

authority are not a proper guide for determining the fair market value of the acquired lands and reference court discarded the exemplars- Exs A7 to A10 lease deeds and rejected the claim of the appellants for enhancement of compensation.

4. Aggrieved by the decision of the reference court, appellants filed Land Acquisition Appeal No.149/2007 before High Court of Delhi. The High Court had taken average of the exemplars- Exs A7 to A10 and deducted 40% from the average price towards smallness of the area and further deducted one third towards development of land and fixed the market value of the land at Rs.14,974/- per sq. yard. High Court held that the appellants shall be entitled to 30% solatium on the above market value of the land under Section 23(2) of the Act and 12% of the additional amount under Section 23(1-A) of the Act. The High Court further ordered that in terms of Section 28 of the Act on the enhanced market value, the appellants shall be paid interest @ 9% per annum from 19.2.1997 i.e. date of notification under Section 4 of the Act till 18.2.1998 and thereafter @ 15% per annum till the date of deposit of compensation. It was also held that interest shall also be paid on solatium and additional amount. The appellants filed application C.M. No.735/2011 in L.A. Appeal No.149/2007 before the High Court under Sections 152 and 153 read with Section 151 C.P.C. to award Rs.48 lakhs which was paid as court fees and also prayed for award of interest under Section 34 for the enhanced compensation. The application was allowed in part by order dated 13.10.2011, granting proportionate costs to the appellants over and above Rs.20,000/- as awarded in High Court's judgment dated 24.12.2010. Being aggrieved by the quantum of compensation and award of proportionate cost, the appellants are before us.

5. First appellant- Maj. Gen. Kapil Mehra, party in person, contended that correct reckoning of market value is the highest price in any sale deed of comparable instance and the High Court was not justified in averaging the sale prices of the four perpetual lease deeds, Exs A7 to A10 and the approach of the High Court in averaging the sale prices of exemplars is erroneous. He further contended that the exemplars Exs A7 to A10 relied upon by the appellants are perpetual lease deeds of residential plots in Vasant Kunj and what was acquired was freehold lands of the appellants and the price difference between the 'leasehold' and 'freehold' was not kept in view by the High Court for ascertaining the correct market value. It was submitted that deductions made for development at one third i.e. 331/3% and 40% for the smallness of area of exemplars as compared to the largeness of the acquired lands are very much on the higher side.

6. The judgment of the High Court was challenged by DDA in Special Leave Petition (Civil) No.15272/2011 and the same was dismissed by the Order dated 12.5.2011. Mr. Amarendra Sharan, learned Senior Counsel appearing for the respondents submitted that in the Special Leave Petition (Civil) No.15272/2011, Maj. Gen. Kapil Mehra appeared in person and the said special leave petition was dismissed by a speaking order and the said order merges with the High Court order and the same is binding upon the appellant and in separate appeals, the appellants cannot challenge the adequacy of the compensation and the present appeals are not maintainable. Reliance was placed upon the judgment of this Court in Kunhayammed and Ors. vs. State of Kerala and Anr. (2000) 6 SCC 359 and S. Gangadhara Palo vs. Revenue Divisional Officer and Anr., (2011) 4 SCC 602.

7. Without prejudice to the above contention, Mr. Amarendra Sharan, learned Senior Counsel appearing for the respondents submitted that the land acquired is 12 bigha which is almost 12096 sq. yards which is thousand times more than the area of the plots in Exs A7 to A10, that too, in fully developed commercial area and the sale price of such a small area cannot be taken as the value for arriving at the market value of large extent of area. It was submitted that it is not safe to rely upon the allotment rates/auction rates in regard to the commercial plots formed by DDA in a developed layout in determining the market value of the adjoining large extent of undeveloped land. It was further submitted that in case of Delhi Development Authority or any statutory authority, 40% of the land area is to be deducted for formation of roads, drains, parks and common amenities and further 35% deduction ought to have been made towards the cost of leveling the land, construction of sewerages, laying electricity lines etc. Learned Senior Counsel submitted that deduction for development ought to have been made at 70-75% and the High Court was not justified in making nominal deduction of 331/3% of the area.

8. We have given our thoughtful consideration to the submissions and perused the materials on record.

9. Before we proceed to consider the merits of the matter, let us first examine the preliminary objections raised by the respondents as to the maintainability of these appeals. Of course, Special Leave Petition (Civil) No.15272/2011 filed by DDA was dismissed on 12.5.2011 by a speaking order. It is well settled that when a special leave petition is dismissed with reasons, there is a merger of the judgment of the High Court in the order of the Supreme Court. Dismissal of special leave petition filed by DDA only means that this Court felt that the quantum of Rs.14,974/- per sq. yard fixed by the High Court need not be further reduced. In the special leave petition, though first appellant appeared and resisted the same, the first appellant could not have advanced his arguments seeking enhancement of compensation. Dismissal of special leave petition has become final as against DDA. When SLP filed by DDA was heard and disposed of by this Court (vide Order dated 12.05.2011), the appellants were pursuing their review petition before the High Court which came to be dismissed on 13.10.2011. So far as the appellants are concerned, the order was then res subjudice. Order of this Court dismissing the special leave petition preferred by DDA, in our view, is not an impediment to the appellants to pursue their appeals and we proceed to consider merits of the rival contentions.

10. Market Value: First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:- (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a

willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

12. In Viluben Jhalejar Contractor v. State of Gujarat (2005) 4 SCC 789, this Court laid down the following principles for determination of market value of the acquired land: (SCC pp.796-97, paras 17-20) "17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition……"

13. The courts adopt comparable sales method for valuation of land while fixing the market value of the acquired land. Comparable sales method of valuation is preferred rather than methods of valuation of land such as capitalization of net income method or expert opinion method, because it furnishes the evidence for determination of the market value of the acquired land at which the willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification under Section 4 of the Act.

14. While taking comparable sales method of valuation of land for fixing the market value of the acquired land, there are certain factors which are required to be satisfied and only on fulfillment of those factors, the compensation can be awarded according to the value of the land stated in the sale deeds. In Karnataka Urban Water Supply and Drainage Board and Ors. v. K.S. Gangadharappa & Anr., (2009) 11 SCC 164, factors which merit consideration as comparable sales are, interalia, laid down as under:-

> "It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) It should be a bona fide transaction;

It should be of the land acquired or of the land adjacent to the land acquired; and It should possess similar advantages.

It is only when these factors are present, it can merit a consideration as a comparable case (See Special Land Acquisition Officer v. T. Adinarayan Setty (AIR 1959 SC 429) These aspects have been highlighted in Ravinder Narain v. Union of India (2003) 4 SCC 481."

15. Appellants have produced Exs A7 to A10-four perpetual lease deeds of residential plots in Pocket C of Vasant Kunj Area between September 1995 to December 1996, the details of which are as under:

Exh.	Sale Date	Plot No.	Size (Sq.Mtr.)	Sale Price (Rs.)	Rate (Rs. per sq.yd.)
A-7	22.09.95	59C	218	5,75,05,000/-	28,719/-
A-8	02.02.96	5C	220	96,55,000/-	36,695/-
A-9	02.02.96	8C	231	1,01,61,000/-	36,779/-
A-10	10.12.96	13C	242	1,37,60,000/-	47,542/-

16. Exs A7 to A10 are lease deeds of small plots executed by DDA. Plots in the above lease deeds are in the same vicinity of the acquired land and High Court had taken the same as comparable sales. The size of the plots covered in the exemplars are smaller. If there is a dissimilarity in regard to the area, it is open to the court to make proper deduction towards smallness of area. We find no error in the approach of the High Court taking Exs A7 to A10 as comparable sales for fixation of market value.

17. The High Court has taken average of sale price of Exs A7 to A10 and deducted 40% towards smallness of the plot taken for comparison, further deducted one third towards development. Though we may finally affirm the rate fixed by the High Court, for the reasons stated infra we fix the market value in accordance with the well settled principles laid down by this Court.

18. Determination of Market Value on the basis of average price paid under sale transactions: For ascertaining the fair market value of the acquired land, High Court adopted the 'average method' by averaging the sale price of Exs A-7 to A-10 and calculated the rate at Rs.37,433.75 paise per sq. yard. The appellants contend that when land is being compulsorily taken away, the landholder is entitled to claim the highest value which similar land in the locality is shown to have fetched in a bonafide transaction and High Court was not justified in averaging the sale prices of four perpetual lease deeds. Appellants placed reliance upon the judgments of this Court in M. Vijayalakshmamma Rao Bahadur vs. Collector (1969) 1 MLJ SC 45 and State of Punjab and Anr. vs. Hans Raj (D) by Lrs. And Ors., (1994) 5 SCC 734. In Hans Raj case (supra) it was held as under:

> "4. Having given our anxious consideration to the respective contentions, we are of the considered view that the learned Single Judge of the High Court committed a grave error in working out average price paid under the sale transactions to determine the market value of the acquired land on that basis. As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should not have, ordinarily recourse to such method. It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value."

19. Referring to Hans Raj's case in Anjani Molu Dessai vs. State of Goa And Anr., (2010) 13 SCC 710, this Court held as under:-

> "20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bonafide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sales is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf."

20. Where the lands acquired are of different type and different locations, averaging is not permissible. But where there are several sales of similar lands, more or less, at the same time, whose prices have marginal variation, averaging thereof is permissible. For the purpose of fixation of fair and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully discarded. If the number of sale deeds of the same locality and the same period with short intervals are available, the average price of the available number of sale deeds shall be considered as a fair and reasonable market price. Ultimately, it is in the interest of justice for the land losers to be awarded fair compensation. All attempts should be taken to award fair compensation to the extent possible on the basis of their accessibility to different kinds of roads, locational advantages etc. Four perpetual lease deeds A-7 to A-10 relied upon by the appellants are of the same locality – Vasant Kunj Residential Scheme and relate to the period ranging from September 1995 to December 1996, but they are just prior to Section 4(1) notification. In our view, the High Court was justified in taking the average of the said four exemplars and approach adopted by the High Court in averaging the sale prices of Exs A7 to A10 cannot be said to be perverse.

21. Freehold vis-a-vis Leasehold Price - Market Value: Contention of the appellants is that Exs A7 to A10 relate to long term perpetual leasehold deeds and what was acquired was appellants' freehold property and freehold property has higher value than the leasehold plot and suitable addition should have been made. The appellant contends that the terms stipulated in perpetual leasehold are extremely stringent and in such cases, no sale is permitted without the permission of DDA and there are many other uncomfortable clauses in the terms of the perpetual lease deeds and all these 'stringent conditions' increase the gap between 'freehold' price and 'leasehold' price. It is submitted that market value of 'freehold property' is much higher than the value of 'leasehold property' and this was not taken into consideration by the High Court.

22. In M.B. Gopala Krishna & Ors. vs. Special Deputy Collector, Land Acquisition, (1996) 3 SCC 594, as relied upon by the appellants, it was held as under:-

> "It is further contended by Shri Mudgal that value of the land does not get pegged down on account of the land being in occupation of a tenant and the circumstances in this behalf taken into account by the High Court, is irrelevant. We find no force in the contention. A freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A freehold land normally commands higher compensation while the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land. Under those circumstances, the High Court would be right in its conclusion that the land burdened with encumbrances takes lesser price than the freehold land. The encumbrances would operate as a disabling factor to peg down the price when we compare the same with freehold land." The above observations were made in the aforesaid decision while upholding the compensation that was payable to the landlord without reference to the tenant's rights. The above principle will apply only where a property subject to encumbrances is to be sold to a private purchaser or is acquired subject to the tenancy.

23. 'Freehold land' and 'leasehold land' are conceptually different. If a property subject to a lease and in the possession of a lessee is offered for sale by the owner to a prospective private purchaser, the purchaser being aware that on purchase he will get only title and not possession and that the sale in his favour will be subject to encumbrance namely, the lease, he will offer a price taking note of the encumbrances. Naturally, such a price would be less than the price of a property without any encumbrance. But when a land is acquired free from encumbrances, the market value of the same will certainly be higher.

24. Exs A7 to A10 are the perpetual lease deeds relating to the period from September 1995 to December 1996 and to get the perpetual lease deeds converted as freehold, the holder of perpetual leasehold has to pay further amount to DDA. Having regard to the period of Exs A7 to A10 and the date of issuance of Section 4 notification dated 19.2.1997, in our view, addition of 20% is to be added for arriving at the value of 'freehold' property. Adding 20% to Rs.37,433.75 per sq. yard which comes to Rs.7,486.75, the value is calculated at Rs.44,920.50 rounded off to Rs. 44,921/- per sq. yard.

25. Deduction Towards Competitive Bidding: Exs A7 to A10 exemplars are perpetual lease deeds of commercial plots auctioned in Vasant Kunj area. Learned senior counsel for the respondents contended that this auctioned commercial site can never be equated to the value of large extent of agricultural land like the land acquired in the present case and those plots auctioned are developed plots on which the Government had spent a considerable amount. It is contended that the auction prices of commercial plots in exemplars are not true index of a fair market value of the land at the relevant time because elements of speculation and unfair competition in such auctions and suitable deduction ought to have been made for competitive bidding.

26. While considering the competition involved in auction sales of commercial/residential plots and observing that the element of competition in auction sales make them unsafe guides for determining the market value of the acquired lands, in Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag And Ors., (2011) 2 SCC 246 paras 6 & 7, this Court held as under:-

> "6. But auction-sales stand on a different footing. When purchasers start bidding for a property in an auction, an element of competition enters into the auction. Human ego, and desire to do better and excel over other competitors, leads to competitive bidding, each trying to outbid the others. Thus in a well advertised open auction-sale, where a large number of bidders participate, there is always a tendency for the price of the auctioned property to go up considerably. On the other hand, where the auction-sale is by banks or financial institutions, courts etc. to recover dues, there is an element of distress, a cloud regarding title, and a chance of litigation, which have the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. As a result, courts are wary of relying upon auction-sale transactions when other regular traditional sale transactions are available while determining the market value of the acquired land. This Court in Raj Kumar v. Haryana State (2007) 7 SCC 609 observed that the element of competition in auction-sales makes them unsafe guides for determining the market value.
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> 7. But where an open auction-sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the price disclosed by such auction-sales, by providing an appropriate deduction or cut to offset the competitive hike in value. In this case, the Reference Court and the High Court, after referring to the evidence relating to other sale transactions, found them to be inapplicable as they related to far away properties. Therefore we are left with only the auction-sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% in the auction price disclosed by the relied upon auction transaction towards the factor of "competitive price hike" would enable us to arrive at the fair market price." (Underlining added)

27. The above principle was reiterated in Raj Kumar And Ors. v. Haryana State And Ors., (2007) 7 SCC 609 where in para 16, this Court has held as under:-

> "16. All the relevant aspects have been taken into consideration and we do not find any error in principle committed by the High Court justifying our interference in appeal. An argument was raised that the prices of lands fetched in auction had been ignored on the basis that prices fetched in auction-sales cannot form the basis. It was submitted that there was no general rule that such prices cannot be adopted. On considering the relevant facts disclosed, it cannot be said that the High Court has committed any error in discarding those auction-sales while determining the compensation payable. The element of competition in auction-sales does not make them safe guides. Similarly, the argument that when a compact piece of land is acquired there cannot be adoption of separate rates, cannot be accepted in the light of the decision of this Court in Union of India vs. Mangatu Ram (1997) 6 SCC 59. That case related to acquisition of lands in the vicinity of the present properties. The ratio of that decision also supports the distinction made by the Awarding Officer and the High Court in the matter of fixing the land value for the lands in Satrod Khurd and Satrod Khas."

28. The general rule that the sale prices of the comparable sales should be relied upon for calculating the market value will not apply when the sale transactions relied upon are auction sales. As per the decision in Karnataka Housing Board's case (2011) 2 SCC 246, in our view, 20% deduction is to be made for competitive bidding. Deducting 20% i.e. Rs.8,984/- from Rs.44,921/-, balance arrived at Rs.35,937/- per sq. yard is fixed as the value for the acquired land.

29. Deduction Towards the Development: The High Court has deducted 40% from the average price to equalize the factor of the market value of a small plot of land as compared to large area of land acquired and the figure works out to Rs.22,460.25. High Court has also deducted one third towards development cost and determined the market value of the acquired land at Rs.14,974/- per sq. yard.

30. Appellants contend that the rate of deduction as applied by the High Court was highly excessive as the acquired lands are situated in the area already developed and have all potential for development. It is submitted that the Court repeatedly held that in assessing the compensation payable in respect of lands which had the potential for housing or commercial purposes, normally 20% of the assessed value of the land is deducted, depending on the nature of the land, its location, extent of expenditure involved for development and the land required for roads and other civic amenities etc. and while so, thumb rule of 331/3% or one third cut on development cost cannot be used in a situation when the exact development cost has been established through evidence. The appellants rely upon the documents issued by Executive Engineer (Annexure P-5) to contend that the cost of development of Vasant Kunj is only Rs.330/- per Sq. Yard.

31. Mr. Amarendra Sharan, learned Senior Counsel appearing for the respondents contended that in forming a lay out by Delhi Development Authority or any statutory authority, 40% of the land area is to be deducted for formation of roads, drains, parks and other civic amenities and further 35% is to

be deducted towards development cost for forming the lay out, levelling the road, construction of drainage and erection of electricity lines etc. It was submitted that deduction for development on both the components worked out to 70-75% and the High Court was not justified in making standard deduction of one third. It was further submitted that if a suitable deduction is made, the compensation awarded by the High Court seems to be excessive and prayer for suitable reduction of the award is made.

32. While making one third deduction towards development cost, the learned single Judge did not keep in view the two essential components of deduction for development. Deduction for development consists of two components:- firstly, appropriate deduction to be made towards the area required to be utilized for roads, drains and common facilities like parks etc.; secondly, further deduction to be made towards the cost of development, that is cost of levelling the land, cost of laying roads and drains, erection of electrical poles and water lines etc. For deduction of development towards land and development charges, the nature of development, conditions and nature of the land, the land required to be set apart under the Building Rules for roads, sewerage, electricity, parks, water supply etc. and other relevant circumstances involved are required to be considered.

33. In Haryana State Agricultural Market Board And Anr. vs. Krishan Kumar And Ors., (2011) 15 SCC 297, it was held as under:

> "10. It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains, and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."

34. Consistent view taken by this Court is that one third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area.

35. Reiterating the rule of one third deduction towards development, in Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and Ors. vs. Special Land Acquisition Officer and Ors., (2012) 7 SCC 595, this Court in paragraph 19 held as under:-

> "19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land in acquired. In Kasturi vs. State of Haryana (2003) 1 SCC 354) the Court held: (SCC pp. 359-60, para 7) "7... It is well settled that in respect of agricultural land or undeveloped land which has

potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character or a developed area. In 84 acres of land acquired even if one portion on one sides abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose." (emphasis supplied) The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P. ((2003)10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority. (2004)10 SCC 745"

36. While determining the market value of the acquired land, normally one third deduction i.e. 331/3% towards development charges is allowed. One third deduction towards development was allowed in Special Tehsildar, L.A. Vishakapatnam vs. Smt.A. Mangala Gowri, (1991) 4 SCC 218; Gulzara Singh & Ors. vs. State of Punjab & Ors., (1993) 4 SCC 245; Santosh Kumari & Ors. vs. State of Haryana, (1996) 10 SCC 631; Revenue Divisional Officer-cum-LAO vs. Shaik Azam Saheb etc., (2009) 4 SCC 395; A.P. Housing Board vs. K. Manohar Reddy, (2010)12 SCC 707; Ashrafi & Ors. vs. State of Haryana & Ors., (2013) 5 SCC 527 and Kashmir Singh vs. State of Haryana & Ors., (2014) 2 SCC 165.

37. Depending on nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board and Anr. vs. Krishan Kumar and Ors. (2011) 15 SCC 297; Deputy Director Land Acquisition vs. Malla Atchinaidua And Ors. AIR 2007 SC 740; Mummidi Apparao (Dead by LR) vs. Nagarjuna Fertilizers & Chemical Ltd., AIR 2009 SC 1506; and Lal Chand vs. Union of India and Anr. (2009) 15 SCC 769.

38. In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in Basavva (Smt.) And Ors. v. Spl. Land Acquisition Officer And Ors., (1996) 9 SCC 640, this Court upheld the deduction of 65%. In Kanta Devi & Ors. vs. State of Haryana And Anr., (2008) 15 SCC 201, deduction of 60% towards development charges was held to be legal. This Court in Subh Ram & Ors. vs. State of Haryana & Anr., (2010) 1 SCC 444, held that deduction of 67% amount was not improper. Similarly, in Chandrasekhar (dead) by L.Rs. and Ors. vs. LAO & Anr., (2012) 1 SCC 390, deduction of 70% was upheld.

39. We have referred to various decisions of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewerage. 40.

Rule of one third deduction towards development appears to be the general rule. But so far as Delhi Development Authority is concerned, or similar statutory authorities, where well planned layouts are put in place, larger land area may be utilized for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this Court in Lal Chand vs. Union of India & Anr. (2009) 15 SCC 769 and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under:-

> “13. The percentage of “deduction for development” to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.
>
> 14. The “deduction for development” consists of two components. The first is with reference to the area required to be utilized 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 utilize around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

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

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

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

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

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

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

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

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%." Lal Chand's case deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilized for laying down of roads, drains etc. Further deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, underground drainage, laying down water lines, electricity lines was made.

41. In the instant case, having regard to the extent of the land acquired and the development in and around Vasant Kunj area, in our view, it is appropriate to make 35% deduction towards utilization of the land area in the layout for roads, drains, parks, playgrounds and civic amenities. So far as the expenditure for development of the large extent of land into a developed area by construction of proper roads, underground drainage, sewerage and erection of electricity lines, it is appropriate to make further deduction of 25%, though 35% of the value was deducted in Lal Chand case (supra) towards development charges. Two components taken together, the total deduction to be made would be 60%. 60% of Rs.35,937/- works out to Rs.21,562/- and deducting the same, the value of the land would be Rs.14,375/- per sq. yard. What was awarded by the High Court was Rs.14,974/- per sq. yard. Since the SLP (Civil) No.15272/2011 filed by DDA was dismissed by this Court on 12.5.2011 and the sale has become final as against the appellants, we are not inclined to further reduce the value of the acquired land from Rs.14,974/- per sq. yard as determined by the High Court and the compensation awarded by the High Court at Rs.14974/- per sq. yard is maintained.

42. INTEREST: Contention of the appellants is that on the enhanced compensation, the mandatory interest under Section 34 of the Act has not been awarded to them. Placing reliance upon Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF), (2009) 8 SCC 412, it is contended that the impugned judgment is silent on granting statutory interest under Section 34 of the Land Acquisition Act and the appellants pray for award of interest on the enhanced compensation. The appellants filed C.M. No.735/2011 before the High Court seeking review for payment of interest which according to the appellants was omitted to be included and the said application was dismissed by the High Court.

43. Land Acquisition Act, 1894, provides for payment of interest to the claimants either under Section 34 or under Section 28 of the Act. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation to be worked out in accordance with provisions of Section 23(1) and the sub-section thereof, at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. As per proviso to Section 34, if the compensation amount or any part thereof is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

44. Section 28 empowers the courts, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. Both in terms of Section 34 and Section 28, interest at 9% per annum is payable for the first year of taking possession and 15% per annum thereafter, if the amount of compensation was not paid or deposited within a period of one year or deposited thereafter.

45. Award of interest under Section 34 is mandatory in as much the word used in the Section is 'shall'. The scheme of the Act and the express provisions thereof establish that the interest payable under Section 34 is statutory. The claim for interest under Section 28 of the Act proceeds on the basis that due compensation not having been paid, the claimant should be allowed interest on the enhanced compensation amount. The award of interest under Section 28 is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. The use of the word "may" in Section 28 does not confer any arbitrary discretion on the Court to disallow interest for no valid or proper reasons. Normally, Court awards interest if it enhances the compensation in excess of the amount awarded by the Collector, unless there are exceptional circumstances.

46. A Constitution Bench of this Court in Gurpreet Singh vs. Union of India, (2006) 8 SCC 457, considering the scope of Section 34 and Section 28 of the Act, has held as under:-

> "44. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation determined under Section 23(1) with interest from the date of taking possession till date of payment or deposit into the court to which reference under Section 18 would be made. On determination of the excess amount of compensation, Section 28 empowers the court, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. The award of the court may also direct the Collector to pay interest on such excess or part thereof from the date on which he took possession of the land to the date of payment of such excess into court at the rates specified thereunder. The Court stated: [Prem Nath Kapur vs. National Fertilizers Corporation of India Ltd., (1996) 2 SCC 71, SCC p. 77, para 10] "In other words, Sections 34 and 28 fasten the liability on the State to pay interest on the amount of compensation or on excess compensation under Section 28 from the date of the award and decree but the liability to pay interest on the excess amount of compensation determined by the Court relates back to the date of taking possession of the land to the date of the payment of such excess 'into the court'."
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> 45. The Court concluded: (Prem Nath Kapur case, SCC p. 78, para 12) "12. It is clear from the scheme of the Act and the express language used in Sections 23(1) and (2), 34 and 28 and now Section 23(1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of

> interest on such excess compensation into the court. ... The liability to pay interest is only on the excess amount of [pic]compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the court or determined under Section 26 or Section 54 and deposited into the court or on solatium under Section 23(2) and additional amount under Section 23(1-A)."

47. In the scheme of the Act, considering the different stages at which interest is payable on the compensation amount/enhanced compensation, the Constitution Bench of this Court in Gurpreet Singh's case further held as under:-

> "32. In the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by Section 23(1), Section 23(1-A), Section 23(2) and the interest contemplated by Section 34 of the Act. The whole of that amount is paid or deposited by the Collector in terms of Section 31 of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him. If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under Section 31 of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.
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> 33. The second stage occurs on a reference under Section 18 of the Act.

When the Reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under Section 23(1), Section 23(1-A), Section 23(2) and interest on the enhanced amount as provided in Section 28 of the Act and costs in terms of Section 27. The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

34. The third stage occurs, when in appeal, the High Court enhances the compensation as indicated already. That enhanced compensation would also bear interest on the enhanced portion of the compensation, when Section 28 is applied. The enhanced amount thus calculated will have to be deposited in addition to the amount awarded by the Reference Court if it had not already been deposited.

35. The fourth stage may be when the Supreme Court enhances the compensation and at that stage too, the same rule would apply."

48. By going through the judgment of reference court as well as the High Court, we find that the appellants were awarded interest in terms of Section 34 and Section 28 of the Act. Section 4(1) notification was issued on 19.02.1997. The reference court has not enhanced the compensation amount; but has only confirmed the award passed by the Collector. However, while dismissing the reference, reference court held that the appellant shall be entitled to get interest in terms of the provisions of the Act for the period from 19.02.1997 till the date of payment, meaning thereby that the statutory interest in terms of Section 34 of the Act is payable.

49. When the High Court enhanced the compensation, the High Court held that the appellants shall be paid interest in terms of Section 28 of the Act. On the enhanced compensation, High Court ordered payment of interest at the rate of 9% from 19.02.1997 to 18.2.1998 and thereafter at the rate of 15% per annum till the date of payment. The relevant portion of the judgment of the High Court reads as under:-

> "On the enhanced market value, the appellant shall be paid interest under Section 28 of the Act @ 9% per annum from 19.02.1997, the date of issuance of Section 4 notification for the first year ending on 18.02.1998 and thereafter, @ 15% per annum till the date of tender of compensation. Interest shall also be paid on the solatium and the additional amount in view of the judgment of the Supreme Court in the case of Sunder Vs. UOI reported as 93(2001) DLT 569 (SC)." Since the statutory interest under Section 34 and also the interest in terms of Section 28 of Act had been awarded to the appellants, we find no merit in the grievance of the appellants as to the payment of interest.

50. COSTS: By its judgment dated 24.12.2010, the High Court enhanced the compensation at the rate of Rs.14,974/- per sq. yard, but the High Court had then awarded only costs of Rs.20,000/-.

Thereafter, the appellants filed C.M. No. 735/2011, interalia, contending that they ought to have been awarded entire costs at the rate of Rs. 50,000/- per sq. yard, enhanced compensation as claimed by the claimants. Appellants also claimed that the entire court fees of Rs.48 lakhs affixed on the memo of appeal be included in the costs. High Court rejected the plea of the appellants for inclusion of the entire court fees and costs at the rate of enhanced compensation for the acquired land at Rs.50,000/- per sq. yard as claimed by the appellants. But the High Court modified its order by awarding proportionate costs in favour of the appellants over and above the sum of Rs.20,000/-.

51. The appellant, party-in-person, contended that they have paid court fees of Rs.48 lakhs and High Court ignored the mandatory provisions of law in awarding costs and that court fees is an integral part of costs. It was submitted that the impugned order dated 13.10.2011 awarding "grant of proportionate costs" is not in accordance with well settled principle of law. Appellants further contended that being partly successful before the High Court, they cannot be deprived of their claim of entire court fees and the costs.

52. The learned Senior Counsel for respondents submitted that as per the well settled principle, the High Court has awarded proportionate costs and there is no improper exercise of discretion

warranting interference by this Court.

53. Section 27 of the Act deals with costs. Section 27 reads as under:

> "27. Costs:- (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.
>
> (2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs."

54. The language of Section 27(1) is clear and very wide and it gives power to the courts to order costs to be paid by what persons and in what proportions they are to be paid. In making order for costs under Section 27(1), the court may have regard to the provisions of Section 35 C.P.C. Analysing sub-section (2) of Section 27, it appears to consist of three parts, viz., (i) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the collector as directed by the Court;

(ii) the court is not bound to do so in every case. If the court forms opinion that the claim of the claimant is extravagant or that he was so negligent in putting his case before the Collector, then the court may make a different order as regards costs and (iii) the court may in such cases direct, that some deduction be made from the costs of the claimant or that he should pay a part of the Collector's costs.

55. Ordinarily, when a litigant succeeds in part and fails in part, the equitable order made is that he should receive proportionate costs. When considering the appellants' claim in C.M. No. 735 of 2011, in exercise of its discretion, the High Court rightly awarded proportionate costs and accordingly directed payment of such proportionate costs of over and above Rs.20,000/- as originally ordered. Merely because the appellants claimed compensation at the rate of Rs.50,000/- per sq.yard, the respondents cannot be saddled with the liability of paying the entire costs and the court fees paid by the appellants. There is no improper exercise of discretion by the High Court in awarding proportionate costs and we find no merit in the claim of the appellants claiming full costs.

56. We may incidentally refer to the statement of learned Senior Counsel for the respondents that compensation amount of about Rs.40 crores has already been paid to the appellants.

57. We, therefore, do not find any merit in these appeals and the appeals are dismissed accordingly. Parties are to bear their respective costs.

.....J (T.S. Thakur) .....J (R. Banumathi) New Delhi;

October 17, 2014