

**IN THE COURT OF SH. UMED SINGH GREWAL,
ADDITIONAL DISTRICT JUDGE-02, WEST, DELHI.**

LAC No. 93/16

Area: Property No. 69/6A, DLF Industrial Area, Patel Road, 70,
Najafgarh Road, New Delhi-15

Award No.: 02/DC (W)/2006-07 dated 30.08.2006

**M/s Divya Automates
through Usha Mehta
W/o Ashok Mehta
R/o 12-B, Bazar Marg,
Old Rajendra Nagar,
New Delhi-110060**

.... Claimant/Petitioner

versus

1. **UNION OF INDIA**
Through Land Acquisition Collector/
ADM (West),
Old Middle School,
Rampura, Delhi.
2. **Municipal Corporation of Delhi**
Through its Commissioner,
Town Hall, Delhi-110006

.....Respondents

Date of institution of the case : 15.01.2013
Date of reserving of judgment : 19.08.2020
Date of pronouncement of judgment: 05.10.2020

(Reference under Section 18 of Land Acquisition Act)

J U D G M E N T

1. The Government of NCT of Delhi acquired total land measuring 11785.82 sq. meter under Section 4 of the Land Acquisition Act, 1984 (hereinafter referred to as 'the Act') vide notification no. F.7(7)/03/L&B/LA/9174 dated

03.09.2003 also under Section 6 vide notification no. F.7(7)/03/L&B/LA/9375 dated 02.09.2004. The land was notified under Section 17 vide notification no. F.7(7)/03/L&B/LA/9376 dated 02.09.2004. The land was acquired for the purpose of construction of the Grade/Flyover at Najafgarh Road & Patel Road Intersection near Moti Nagar.

2. The Land Acquisition Collector (hereinafter referred to as 'the Collector') passed award no. 02/DC (W)/2006-2007 dated 30.08.2006 under Section 11 of the Act. The Collector determined the market value of the land under acquisition @ Rs.20,900/- per square meter. The structure also valued as per valuation report submitted by MCD.

3. According to statement of Section 19 of the Act filed by the Collector petitioner was shown as recorded owner of the acquired land. No objections filed by petitioner.

Name of recorded owner & share	Property No.	Total Area in Sqm.	Kind of soil	Detail of Buildings
M/s Divya Automates (60% share)	69/6A	18.55	Nil	As per award
Date of Possession is 25.10.2005.				

4. The petitioner filed the application under Section 18 of the Act against the findings and determination of the market value of the land/property made by the Land Acquisition Collector, West (hereinafter referred to as 'LAC (West)').

5. In brief, the facts stated by the petitioner are that she was the absolute owner and in actual physical possession of the fully built up commercial property bearing no. 69/6A measuring 18.55 sq. mtrs., Najafgarh Road, Moti Nagar, New Delhi. The petitioner being the owner of the said property has filed the claim petition pursuant to the notices received under Section 9 and 10 of the Act by the Collector. The petitioner has raised the claim for the compensation in respect of the said property as well as the buildings and other super structures which were in existence over the said property in the nature of 8 feet high boundary wall. The said property is located at prime location in the midst of well developed commercial area and the same was situated upon the main Najafgarh road, which is nearly 300 feet wide. All the facilities and amenities were available at the said property.

6. It is stated that the Collector has assessed the market value of the land @ Rs.20,900/- per sq. mtrs. Whereas the petitioner has raised specific demand of compensation for land @ Rs.50,000/- per sq. mtrs. The assessment of market value by the Collector is highly arbitrary and unreasonable. The petitioner challenges the assessment of the market value/compensation made by the Collector on the following grounds:

7. It is stated the assessment of the market value and compensation in respect of the said property and construction/structure is arbitrary and unreasonable and is contrary to the provisions of Section 23 and 24 of the Act and also contrary to the principles laid down by the Hon'ble High

courts and Supreme Court for the assessment of the fair market value. The Collector has failed to appreciate the true and correct nature of the acquired property of the petitioner, its location, situation and the potentialities of the same.

8. It is stated that the Collector has failed to appreciate the facts due to which the market value of the said property was not less than Rs.50,000/- per sq. meter. The Collector has failed to appreciate the fact that the said property was situated within the vicinity of Kirti Nagar Railway Station and very near to the Metro Station of Moti Nagar and Kirti Nagar which enhances the market value of the property. The petitioner apart from the true, correct and fair market value of the said property is also entitled to all the statutory benefits including the interest, solatium etc. in accordance with law. The petitioner is also entitled for proper rehabilitation for the reason of acquisition of the property.

9. The petitioner seeks minimum market value at the rate of Rs.50,000/- per sq. mtrs. As on the date of notification under Section 4 of the Act also to assess the market value in respect of the structures/constructions as per claim earlier filed under Section 9 & 10 of the Act filed before the LAC. The petitioner further seeks to grant all the statutory benefits of solatium, additional amount, interest etc. in accordance with the provisions of the Land Acquisition Act.

10. Respondent no.1/ Union of India filed written statement, denying the averments made in the petition and grounds and stated that the Collector, while passing the award, has taken into consideration all legal requirements

and material on record and has rightly assessed the true market value of the land on the date of notification under Section 4 of the Act. The compensation has been rightly assessed by the Collector keeping in view the legal norms. The assessed and awarded compensation is just, legal, proper, sufficient and reasonable. The claim of the petitioner is highly excessive, unjustified and denied.

11. It is pertinent to mention that initially, the petitioner had impleaded Public Works Department as respondent no.2 but later on, the North Delhi Municipal Corporation was impleaded as respondent no.2 being beneficiary.

12. Respondent no. 2/North DMC also filed a detailed reply and taken preliminary objections that present petition is not maintainable. It is stated that after the pronouncement of award, certain facts are found which needs consideration. It is stated that the Delhi Improvement Trust, now Delhi Development Authority, made and sanctioned a plan for development of Industrial Area on the Najafgarh Road, Delhi. Out of which plot no. 69 measuring 12.41 acres of land was sold to Rai Bahadur Gujjar Mal Modi vide agreement dated 17.08.1948. Thereafter, he sold the land to Shri Jiwan Lal Virmani vide sale deed dated 22.03.1950. A proposal for subject petition of the plot no. 69 submitted for approval in the year 1973. It was put up before Standing Committee and same was approved vide Resolution No. 1294 dated 31.05.1973. It is stated that Virmani family took full benefit of the said resolution and got the land sub-divided and used/sold the sub-divided plots to India Export House but did

not fulfill the other conditions of the resolution which were in favour of the MCD or the general public. Thus the resolution lapsed. It is stated that between MCD and M/s. India Export Pvt. Ltd., there was huge correspondence, according to which the land required for road widening free of cost, was to be given to the answering respondents. In the reply, several standing resolutions are mentioned.

13. It is stated that writ petition bearing no. 1289/95 was also filed in the Hon'ble High Court by India Export Pvt. Ltd. It is stated that the entire land measuring 12.41 acres would be treated as one transaction and sub division in favour of individuals would be referred as per Section 312, 313 of Delhi Municipal Corporation Act. It is stated that the reference is barred by limitation. On merits, it is stated that the petitioner is not entitled to further enhancement of compensation; Rather, the compensation amount paid by MCD or LAC requires to be revoked in the light of resolution of MCD of the year 1973 and 1996.

14. After filing of written statements by respondents, as per record, no replication filed by petitioner.

15. My Ld. Predecessor vide order dated 15.10.2015 framed the following issues:

1. What was the market value of the land in question on the date of notification u/s 4 of the Land Acquisition Act? OPP

2. Whether the petitioner is entitled for

**enhancement of the compensation in
respect of land and if so, at what rate? OPP**

3. Relief.

16. Petitioner, in support of his case, examined Mr. Achin Saxena, GPA of the petitioner, who tendered his evidence by way of affidavit Ex. PW-1/1 and proved the following documents: -

- i) Copy of GPA dated 09.01.2010 executed by the petitioner in his favour as Ex.PW-1/1 (OSR).
- ii) Copy of license issued by Licensing Department, MCD in favour of petitioner as Ex. PW-1/2 (OSR),
- iii) Copy of registration certificate issued by the Delhi Shops and Establishment Department in his favour as Ex. PW-1/3 (OSR).
- iv) Copy of consent order issued by the Delhi Pollution Control Committee in faovur of petitioner as Ex. PW-1/4 (OSR)
- v) Copy of Award bearing No. 17/DC(W_/2004-05 pertaining to Vivek Cinema, Patel Nagar marked as Ex. PW-1/5
- vi) Mark X is the photocopy of judgment delivered in case titled M/s India Export House Pvt. Ltd. Vs UOI & Ors dated 08.04.2009 which pertains to the judgment delivered in case titled as Sh. Virender Sood Vs UOI & Anr bearing LAC No. 117/05 dated 16.04.2008
- vii) Mark A is the copy of letter written by the SDM to the office of Divisional Commissioner dated 25.08.2006 sent by the Addl. Deputy Commissioner (MCD) to the Deputy Commissioner (West) LAC.

17. Respondent no.1/ UOI examined Sh. A.C.Tiwari, Ld. Counsel, who tendered the copy of Award No. 02/DC(W)/2006-07 as Ex. R-1.

18. Respondent no. 2 examined Sh. Vijender Kumar, Section Officer, as R2W1 who tendered his evidence by way of affidavit as Ex. R2W-1/A. He relied upon the documents mentioned as Ex. RW-1/1 to Ex. RW-1/12 in his affidavit Ex. R2W-1/A. However, the same were de-exhibited as the original were neither filed on record nor produced for perusal of the court. Accordingly, the same were directed to be read as Mark-1 to Mark-12, respectively. Further, there are no documents mentioned as Ex. RW-1/6 & Ex. RW-1/8 on record. Also, there is no document Mark 6 & Mark 8 also. Vijender Kumar deposed that contents of para-6 of his affidavit in evidence be not read and the same be considered as deleted.

19. It is stated that a reference petition under Section 30-31 of the LA Act bearing LAC No. 10A/10/07 titled 'Union of India vs. Harish Virmani & Others' has already been decided by the Ld. Predecessor of this court on 14.12.2017.

20. Thus, in LAC No. 10A/10/07, titled as Union of India Vs Harish Virmani & Ors., the share percentage of petitioner i.e. **IP No. 23** *inter alia*, was adjudicated. That decision was given on 14.12.2017 and against such order, one Sh. Ashok Virmani had filed a Writ Petition in the Hon'ble High Court which came to be registered as WP (C) 1453/2018. However, it is admitted by both the sides that such Writ Petition has now been dismissed as withdrawn and copy of the same has been placed on record. Thus, as of now, even

as per both the sides, there is no embargo or impediment in considering and deciding the present reference petition in terms of decision of reference court given on 14.12.2017 in relation to petition under Section 30-31 of Land Acquisition Act

21. I have heard Ms. Dimple Dhamija, Ld. Counsel for the petitioner, Sh. A.C. Tiwari, Ld. Counsel for the respondent no.1/UOI and also perused the written final arguments filed by them. I have perused the record. My issue wise findings are as under:

ISSUE NOS. 1 & 2

22. Ld. Counsel for the petitioner, in the written arguments, submitted that petitioner was also held entitled to be the owner of the above stated property admeasuring 7.60 sq. meters (4.269+3.328) by way of the judgment dated 14.12.2017 titled as UOI Vs Harish Virmani & Ors. The petitioner relied on judgment of M/s. India Export Pvt. Ltd. Vs. UOI, bearing LAC No. 49/08, wherein the court has determined the fair market value of the land involved and acquired vide Award No. 02/DC(W)/2006-07, part of the same award as of the present petition. The petitioner has also relied on judgment passed by this court in the same award i.e. Award No. 02/DC (W)/2006-07 dated 30.08.2006 in case bearing LAC No. 106/11 titled 'Smt. Rajinder Kaur vs. Union of India & Anr.' dated 05.01.2016.

23. On the other hand, UOI relied on the award Ex. R-1 passed by the Collector. MCD examined one witness. The affidavits mention about the fact that the MCD had

challenged the award of Collector. However, there is no issue on this aspect as deposed by MCD witnesses. The evidence led by MCD is silent on the aspect of enhancement of market value as claimed by the petitioner. This Court has no jurisdiction to adjudicate the legality of the award as now claimed by respondent no.2, when the matter is already subjudice before the Hon'ble High Court.

24. In these circumstances, the law is well settled that the market value already determined vide judgment in case bearing LAC No. 106/11 titled 'Smt. Rajinder Kaur vs. Union of India & Anr.' dated 05.01.2016, is applicable in the present case as well. Reliance is also placed on '**Nand Ram & Ors. vs. The State of Haryana**', **JT 1988 (4) SC 260**.

25. Hence, in view of the above observation and discussion, the petitioner is entitled to fair market value of the compensation to be paid to the petitioner at the rate of Rs.28,438.53 per square meter. Petitioner is thus entitled to enhancement of compensation to the tune of Rs.7,538.53 along with 30% solatium. Petitioner is also entitled to additional amount at the rate of 12% p.a. from the date of notification till the date of possession i.e. 03.09.2003 to 27.12.2004 as per provisions of Section 23 (1-A) of the Land Acquisition Act. Petitioner shall be entitled to the interest at the rate of 9% for first year from the date of taking of possession of land in question and 15% for subsequent years till the entire payment of compensation is made as per Section 28 of the Act.

26. Accordingly, issue nos. 1 & 2 are decided in favour of petitioner and against the respondents.

ISSUE NO. 3 (RELIEF)

27. In view of the above observations and discussion, the reference is disposed of by holding that the compensation awarded to the petitioner at the rate of Rs.20,900/- per sq. meter by LAC was inadequate and unreasonable. Petitioner was required to be paid compensation at the rate of Rs.28,438.53 (Rupees twenty eight thousand four hundred thirty eight and paise fifty three only) per square meter. Petitioner is thus entitled to enhancement of compensation to the tune of Rs.7,538.53 (Rupees seven thousand five hundred thirty eight and paise fifty three only) along with 30% solatium.

Petitioner is also entitled to additional amount at the rate of 12% p.a. from the date of notification till the date of possession or date of award whichever is earlier as per provisions of Section 23 (1-A) of the Land Acquisition Act.

Petitioner shall be entitled to the interest at the rate of 9% for first year from the date of taking of possession of land in question and 15% for subsequent years till the entire payment of compensation is made as per Section 28 of the Act.

28. Needless to emphasize that the compensation payable to the petitioner would be as per share percentage adjudicated in Reference Petition pertaining to sec 30-31 of said Act. In this context, it would be pertinent to mention the judgment in case bearing no. LAC No 10A/10/07 titled Union

of India Vs Harish Virmani & Ors. passed by Id Predecessor Judge. As per para no. 198 of the judgment, IP No. 23 M/s Divya Automates (petitioner herein) was held entitled to area of 4.2696 sq. meters (i.e. 60% of 20% of 35.58 sq. meters.) and 3.328 sq. meters (i.e. 40% of 20% of 41.66 sq. meters). Total area under the said comes out to $4.2696 + 3.328 = 7.597$ Sq. meters.

29. Apart from the above, the petitioner is also entitled to enhancement qua its un-disputedly owned land of 11.13 sq. meters (i.e. 60% of 18.55 sq. meters) as mentioned in the statement under Section 19 of the L.A Act. In this way, the total area comes out to $7.597 + 11.13 = 18.727$ sq. meters.

30. A copy of the judgment be sent to Land Acquisition Collector (West) for information and necessary action.

31. Decree sheet be prepared accordingly.

32. File be consigned to Record Room.

Announced in the open court
today the 5th day of Oct. 2020

(Umed Singh Grewal)
ADJ-02, West/Delhi