

Award No. 05/LAC/N/08-09

Name of Village - Delhi Patti
Area - Roshanara Road/Pul Bangash
Nature of Award - Permanent
Purpose of Acquisition - Additional Land for Pul Bangash MRTS Station

A notification for acquisition of land at Roshanara Road/Pul Bangash of Delhi Patti area was made u/s 4 of Land Acquisition Act 1894 hereinafter referred as LA Act vide notification No. F7(19)/2000/L&B/LA/MRTS (PB)/13807 dated 17.2.2006. Wide publicity of the notification was made through major daily newspapers in Hindi and English languages i.e. in Nav Bharat Times in Hindi and Times of India in English on 25.2.2006. Similarly the notice was also got pasted and displayed in the locality. The declaration u/s 6 of the LA Act was issued vide notification No. F7(19)/2000/L&B/LA/MRTS (PB)/15284 dt. 10.1.07.


The specifications of land notified for acquisition are as under :-

<u>Village</u>	<u>Khasra No.</u>	<u>Property No.</u>	<u>Total Area</u>
Delhi Patti	388 Min.	8713 Roshanara Road	92.36 Sq. Mtrs.

Wide publicity of the declaration was also made through Nav Bharat Times in Hindi & Times of India in English on 13.1.2007. This notification was also got pasted and displayed in the locality.

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Measurement and True Area –


According to the notification u/s 4 & declaration U/s 6 of LA Act 1894 the total area of the land under acquisition was 92.36 sq. Mtrs. There was no dispute between the land notified as 92.36 sq. mtrs. and the area as measured and available on site at the time of taking possession by DMRC i.e. on 28.6.2006 from the owner of land, Mr. Rakesh Kumar Gupta as per Mpl. Records, (as per information given by Asst. Assessor & Collector, S.P. Zone vide his letter No. TAX/A&C/SPZ/2005-2006/778 dated 2.2.2006).

Notice U/s 5A was issued to Sh. Rakesh Kumar Gupta and Sh. Rakesh Kumar filed N.O.C. about acquisition of said land. The report was made to the Govt. and thereafter notice u/s 6 was issued by L&B Deptt. G.N.C.T, Delhi.

Notices u/s 9 & 10 of LA Act for inviting claims and to produce evidence in support of the claims, were also issued to the interested persons on 22.4.2008 and served on the interested persons as per record on 22.4.2008. The notices were also got pasted and displayed in the locality.

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Possession:

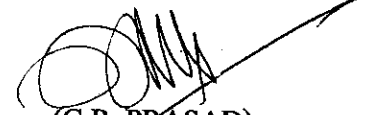
Possession of 92.36 Sq. Mts. of land had already been taken over on 28.6.06 from Shri Rakesh Kumar Gupta by DMRC under an Agreement dated 28.6.2006 duly signed by Sh. Sirajul Hoque, DGM/G DMRC and owner of the land Sh. Rakesh Kumar Gupta. The possession then by a Note was handed over by Shri Raghvendra Bhat, Asst. Manager (G) of DMRC to Shri Ravindra Bhat, Asstt. Manager (RC) DMRC on 28.6.2006. The possession was taken under L.A. Act as also agreed under the said agreement.

Notices u/s 50(2) of LA Act were issued on 29.4.2008 to DMRC vide letter No. LAC/N/2006/Acq./704 dated 29.4.2008 and served upon DMRC on 30.4.2008 whereby DMRC was afforded with an opportunity to appear on 7.5.2008 and adduce evidence for the purposes of determining the amount of compensation and to appraise the value of built up double storeyed structure taken over by them directly. The DMRC did not turn up to appear on 7.5.2008 nor filed any evidence despite of service of notice on them. No response has been received from the office of DMRC till the time of making of this award.

The claims from interested persons were received and considered while making award u/s 11 of LA Act. The details of the claims as received are discussed under the heading claims and evidences.

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This acquisition involves a built up commercial building which was in possession of M/s. Moon Light Enterprises and M/s. Maruti Electricals. The valuation of the structure as submitted by the owner was got checked and vetted from Executive Engineer, CPWD, Division VI, Y-shape building, I.T.O. Delhi and allowed as the value of the structure.

CLAIMS & EVIDENCES:


<u>S.No.</u>	<u>Mpl. No.</u>	<u>Name of claimant</u>	<u>Details of claims & evidence</u>
1.	8713 Part, Roshanara Road, Delhi	1. Rakesh Kr. Gupta Prop. Maruti Electricals & M/s. Moon Light Enterprises	1. Mkt. Value of Land a) Rs.2,50,000 per sq.mt. b) Rs.18,13,028/- for structure as per Valuation Report 2. Alternative site 3. Business Loss 5045000/- For Maruti Electricals & Rs.1500000/- for Moon Light Enterprises. 4. Other statutory benefits.

EVIDENCES

1. Copy of Circle Rates.
2. Sales Tax Regn.
3. Copy of Income Tax Return
4. Copy of Delhi Development Act Section 14.
5. Copy of Master Plan 1961
6. Copy of Master Plan 2021. Item No.5.1
7. Valuation Report of structure from a Govt. approved valuer.

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8. Copy of Jt. Survey Report dated 18.5.2007.
9. Copy of Naksa Nazri dated 28.5.2007.
10. Copy of Judgement High Court DLT 18 1980.
11. Copy of Judgement DDA V/s Ganga Singh.
12. Copy of Judgement of Supreme Court Ramesh Dutta V/s State of Punjab & others. 2004 SCC 388.
13. Certified Copy of Records of Delhi Municipality for 1953.
14. Report of a Chartered Accountant regarding loss of earnings & shifting charges.

On persual of the claims filed by interested persons it is noted that they have claimed the market value of land at the Rate of 2,50,000/- per sq. mtr. on the basis of 20 years of capitalization of Lease Rent taken by DMRC at Pul Bangash Station for a permitted FAR of 350. They have also stated in their claims that the shops of Pul Bangash Station were functional much prior to the date of notification u/s 4 in this case. Although the shops at Pul Bangash Station were functional at the time of notification but the rate based on the Lease Rate charged by the DMRC could not be allowed because no evidence has been produced to prove the claim @ Rs.2,50,000/- per sq. mtr.

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Compensation:

The market value of land under acquisition is to be determined with reference to the date of notification u/s 4 of LA Act 1894 which is 17.2.06 in this case. For determination of market value of land, its current land use, proximity of the land to the nearby developed areas, potentiality of future land use and existing facilities have been taken into consideration as required u/s 23(1) of LA Act.

Existing facilities:

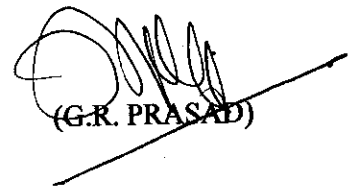
At the time of acquisition the property acquired was abutted to the shops PB-1 to PB-13 of Pul Bangash MRTS Station. The property was surrounded by Commercial properties from all sides and was in use of commercial purposes since before 1953 as is mentioned in the Certified copy of Records of Delhi Municipality. The property under acquisition was served with well connected roads (Roshanara Road and Rani Jhansi Road).

Proximity to nearby Developed Areas and facilities:

Land acquired under present acquisition was in the hub of commercial area of Roshanara Road and Pul Bangash, Rani Jhansi Road. Branch of State Bank of India, Oriental Bank of Commerce, Primary School of Delhi Municipal Corporation, Centurian Bank and Palace Cinema are in the vicinity of property. All area was fully well developed before the date of notification u/s 4 of L.A. Act. The area has been developed and urbanized long back.

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Current Land Use:

The land under acquisition was in use of M/s. Maruti Electricals & M/s. Moon Light Enterprises at the time of acquisition and was in use for commercial purposes since before 1953 as is clear from the Certified copy of Records of Delhi Municipality submitted by the Recorded Owner. The Recorded owner has submitted a copy of Master Plan 1962, which was applicable till 1st of August, 1990, the area was earmarked commercial area for flatted factories and light and service industries. The recorded owner has also submitted a copy of list of Local Commercial Areas in which the Roshanara Road and Rani Jhansi Road has been shown as Commercial Areas. As per records of acquisition a joint survey was conducted on 23.8.2005 consisting of officials of MRTS i.e. Shri Raghvendra Bhat of DMRC & reported the property as built up and commercial. The structure of other part of the property was got evaluated by DMRC itself for the purposes of the acquisition and got vetted by PWD and was submitted in this office which shows the area as commercial area. The recorded owner has also produced a copy of Master Plan 2021 wherein para 5.1 is quoted as under :-

“Residential areas and streets/stretches earlier declared as commercial area/streets or where commercial use was allowed in MPD-1962 shall continue such use at least to the extent as permissible in MPD-1962. Commercial activity from prior to 1962 in Residential areas are also permitted subject to documentary proof thereof.”

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A copy Sec. 14 of Delhi Development Act filed and claimed by the owner reads as under :-

“User of land & building in contravention of plans – After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Provided that it shall be lawful to continue to use upon such terms & conditions as may be prescribed by regulation made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force”. The recorded owner also filed a copy of judgement of Delhi High Court CRA No.275 of 1976. Section 14 of Delhi Development Act has been interpreted in the decision of Delhi High Court in 18 (1980) DLT 354 DDA V/s Ganga Singh. This decision was based on earlier two decisions Sarojini Market Shopkeeper Association (Regd.) another U/s UOI and others 1969 PCR 1144 and Lal Singh & others V/s The Lt. Governor Delhi & others ILR (1971) II, Delhi 392. Hon’ble High Court in the said case held that:-

“the planned development of Delhi as envisaged in the provisions of the Act was likely to take time and during the intervening period human activity was not desired to be brought to a standstill. The legislature knew that human problem was involved and a large segment of society engaged in trade could not be uprooted over-night. To tide over such difficulty, proviso to section 14 made it lawful to continue to use any land or building for the purpose and to the extent for and to which it was being used upon the

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date on which any of the plans came into force. It is true that proviso carves out an exception to the general rule embodied in section 14 and the exception envisaged in the proviso would be subject to such terms and conditions as may be prescribed in regulations made in that behalf. But if the Authority fails to make regulations no disability is created for using any land or a building for a purpose for which it was previously being used. Proviso to Section 14 is intended to relieve the hardship in carrying out the planned development of a zone. The words "use upon such terms and conditions as may be prescribed". In the proviso enable the Authority to restrict by regulations the use of any land or building for a purpose for which it was being previously used. In other words so long as regulations are not framed an occupier of a land or a building cannot be deprived of taking advantage of the proviso to section 14. Pending framing of the regulations prosecution in respect of a non-conforming user prior to the coming into force of any of the plans, is misconceived."

The land use of property No. 8713 Roshanara Road was also got confirmed from Asstt. Assessor & Collector, S.P.Zone vide his letter No. TAX/A&C/SPZ/2005-06 dated 2.2.2006, addressed to LAC North stated that Shri Rakesh Kumar Gupta is the recorded owner of the said property and confirmed land use of property No.8713, Roshanara Road, Delhi-7 measuring 428 sq. mtrs. being/is commercial."

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Considering MPD 1962, MPD 2021, Delhi Development Act, 1957 Section 14, Report of Assessor & Collector, Joint Survey Report by Officials of DMRC Land & Building Deptt. and Land Acquisition Collector & other evidences produced by the owner, it is established that the land use of the property is commercial.

Market Value:

For arriving at a true market value on specified date three methods of evaluation are followed. In the first method attempts are made to look for evidences of sales transaction of similar lands in the vicinity as a measure of market value. But neither the claimants have submitted any evidences of similar sales transactions, nor such comparable sales transactions could be noted and if any transaction is available is of very small parcels of land so could not be considered.

In the second method the market value arrived at by an expert body i.e. Schedule of Market Value of land notified by deptt. of Urban Development, Ministry of Urban Affairs and Employment vide Nos. J22011/4/95-LD dated 16.4.99 for different localities have been taken into consideration. The indicative market prices as provided in the schedule are Rs.14490/- per sq. mtr. for Commercial use. But the indicative market prices were effective from 1.4.98 and till 31.3.2000 only. On the other side the claimants have submitted copy of circle rates. The market value as per Circle rates is Rs.18,400/- per sq.

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mtr. for residential use with a multiplicative use factor of 3 for commercial use (The definition of the land use is to be taken as in Unit Area Property Tax System). The definition for commercial land use category as given in Unit area property tax system is "Business building shall mean any building or part thereof use for transaction of building or for transaction of business or for keeping of accounts and records or for similar other purposes and such building shall include (1) office, banks, professional establishments, court houses, libraries for the principal function of transaction of public business and keeping of books and records, (2) Office building (premises) solely or principally used as office or for office purposes and (3) one and two star hotels, restaurants, lodges and guest houses. This rate if discounted to the date of notification i.e. 17.2.2006 comes to Rs.48,977/- per sq. mtr. for commercial land use. But these Rates are effective from 11.7.2007 only. In this case we have to assess the market value as on 17.2.06 i.e. the date of notification u/s 4 of LA Act. So to arrive at the true and fair market value an escalation of 11.5% per annum compounded annually is allowed on 14490 per sq. mtr. from 1.4.1998 to 17.2.06 i.e. for a period of 7 years and 323 days as allowed by Supreme Court of India & High Courts in numerous cases of Land Acquisition. So the rate arrived at is Rs.34204/- per sq. mtr. which is allowed as the true and fair market value of land under present acquisition.

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Other benefits:

Solatum – Besides, the compensation on market value of land the rightful claimants are also entitled to solatium @ 30% over the market value of land as required u/s 23(2) of the Act.

Additional Benefits:

The entitled persons are also given additional benefit @ 12% per annum U/s 23(1)(A) on market value of land from the date of notification u/s 4 of the Act i.e. 17.2.06 till the date of possession i.e. 28.6.06 (for a period of 131 days) for land measuring 92.36 sq. mtrs.

Interest U/s 34 of LA Act:

As the possession of land had been taken over on 28.6.06 by DMRC. The interest is payable on unpaid amount @ 9% for first year and @ 15% for the rest of the term, from the date of possession till the date of Award, as per provision of section 34 of LA Act 1894. So the interest on total amount of consideration is allowed for one year @ 9% per annum. Further interest @ 15% p.a. is allowed from 28.6.2007 to 18.7.2008 i.e. the date of Award for a period of 1 year and 20 days.

Apportionment:

Shri Rakesh Kumar Gupta is the recorded owner of the land acquired and there is no other claimant. Hence the entire amount of compensation is allowed to Shri Rakesh Kumar Gupta.

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(G.R. PRASAD)
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SUMMARY OF THE AWARD

ITEMS

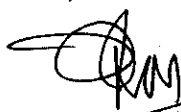
AMOUNT in Rs.

1. Compensation towards market value of land measuring 92.36 sq.mtrs. amounting Rs. 34204 per sq. mtr. U/s 23(1) of LA Act	3159081.44
2. Additional Benefit @ 12% p.a. for a period of 131 days over the market Value of land u/s 23 (1A) of the Act.	136056.88
3. Solatium @ 30% over the compensation for land u/s 23(2) of the Act.	947724.43
4. Compensation towards structures as per vetted report of CPWD	1353819.00
Total Amount of consideration	5596681.75
5. Intt. on Rs. 5596681.75 u/s 34 of LA Act @ 9% p.a. for first year i.e. from 28.6.2006 to 27.6.2007 @ 15% form 28.6.2007 to 18.7.2008 for 1 year & 20 Days	503701.36 885502.38
Grand Total :	6985885.49
or Say	6985885.00

(Rupees Sixty Nine Lakhs eighty five thousand eight hundreded & eigty five only)

This Award is made u/s 11 of the Land Acquisition Act, 1894.

Award announced in open Court
and filed u/s 12 of LA Act. 1894.


18.07.08


(G.R. PRASAD)
LAND ACQUISITION COLLECTOR / ADM
(NORTH)

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