

SUPREME COURT DECISIONS ON ENHANCEMENT OF COMPENSATION IN LAND ACQUISITION CASES

A DISCUSSION OF *HSI IDC V. MAWASI*

By Vivek Kohli and Shivambika Sinha

CASE NOTES

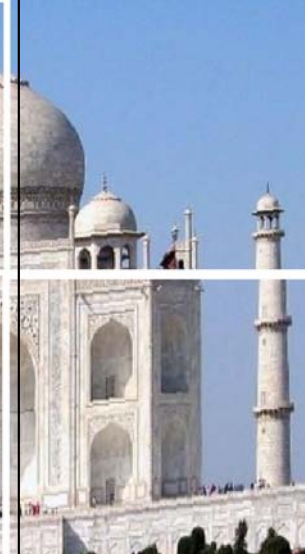
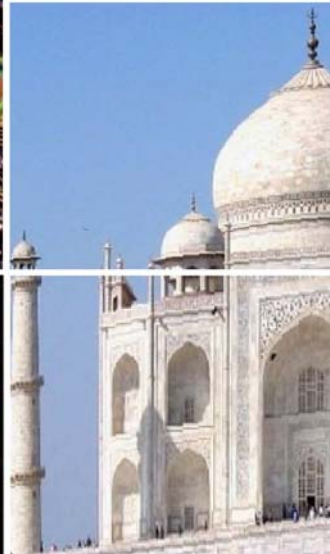
In 1994, the Government of Haryana acquired over 1,765 acres of land for the purpose of developing an Industrial Model Township ("IMT") in Manesar, Haryana, through compulsory acquisition under the Indian Land Acquisition Act, 1894. Possession of the acquired land was handed over to the Haryana State Industrial and Infrastructure Development Corporation Limited (HSI IDC) which was entrusted with the task of demarcating the land into plots and allotting the same to prospective investors, industrialists and entrepreneurs.

Even as HSI IDC commenced the allotment process and the development of the IMT progressed, litigation was initiated by the original landowners of the acquired land challenging the fairness of the compensation awarded by the state government in consideration of the compulsory acquisition. The present article analyzes the outcome of the litigation initiated by the landowners seeking an increase in the quantum of compensation payable by the state government for the acquired land. The litigation,

spanning over 15 years and traversing all layers of judicial hierarchy, culminated in a 400% increase in the compensation amount payable by HSI IDC to the landowners. While considering the claims of the landowners, the Supreme Court of India recapitulated the law regarding the criteria for assessing the compensation payable to private landowners and the duty on the state to ensure that such compensation is fair and reasonable. Since the burden of the enhancement of the compensation was passed on by HSI IDC to the allottees of the land in IMT Manesar, the present article also analyzes the extent of the contractual liability of the allottees to bear that burden.

SCHEME OF THE ACT

The purpose of the Act is to enable the state to compulsorily acquire lands required for undertaking projects of public importance. The power of compulsory acquisition has an inbuilt element of duty



upon the state to pay compensation which is just and fair, and to do so without delay. *The Special Tahsildar v. M. Sowdammal*, (2010) 5 SCC 708.

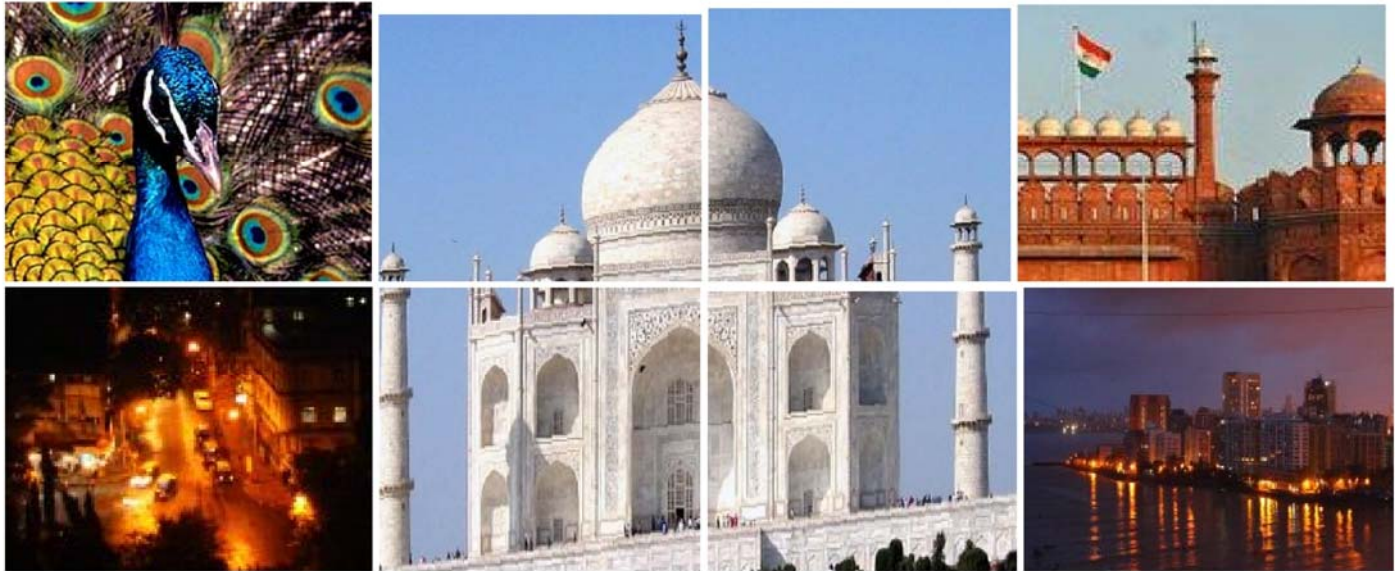
The first step in the initiation of land acquisition proceedings by the state is publication of a notification under Section 4 of the Act which acts as a public announcement of the Government's intention to acquire the land for a public purpose. Land that is subject to a notification under Section 4 may or may not become subject to acquisition. Within a year of publishing a notification under Section 4 and upon being satisfied as to the need and suitability of the lands under consideration, a declaration is required to be made by the appropriate Government under Section 6 of the Act, stating whether the lands are required for a public purpose or for a Company.

Thereafter, the concerned Land Acquisition Collector ("LAC") is required to take measurements of the land and invite the persons interested in the land to state the nature of their interests and the particulars of their claim for compensation. After hearing all parties, and within two years of a declaration under Section 6, the LAC must pass an award declaring the compensation payable for the acquired land. Thereafter, the LAC is entitled to take possession of the

land which vests free of all encumbrances with the appropriate Government.

Courts in India have consistently held that the assessment of compensation under the Act, and review of the same by the Courts, must be based upon its 'fair market value', it being the price which a willing seller might be expected to obtain in the open market from a willing buyer. The Act also provides guidance as to the aspects that should be taken into account by the LAC and the reviewing Courts while determining the compensation payable to the landowners. The Act provides that the compensation payable should be determined on the basis of the market value of the land on the date of publication of the notification under

Section 4 of the Act ("Relevant Date"). While determining the market value, it shall not be relevant to take into consideration any increase in the value of the acquired land that is likely to accrue from the use to which it is put once it is acquired.



Considering that such acts of compulsory acquisitions, usually of agricultural lands, deprive the original landowners of their source of livelihood and means of production, the Act confers a statutory right on the persons aggrieved by the award of the LAC to challenge the same before Courts of law. The burden of demonstrating that the compensation awarded falls below the true market value of the property, and also to establish the correct market value, lies with the landowner. The landowner has to set up a claim for compensation on the basis of cogent evidence and once the initial burden is discharged, the burden shifts to the State to show that the claim made by the landowner is overvalued and ought not to be granted.

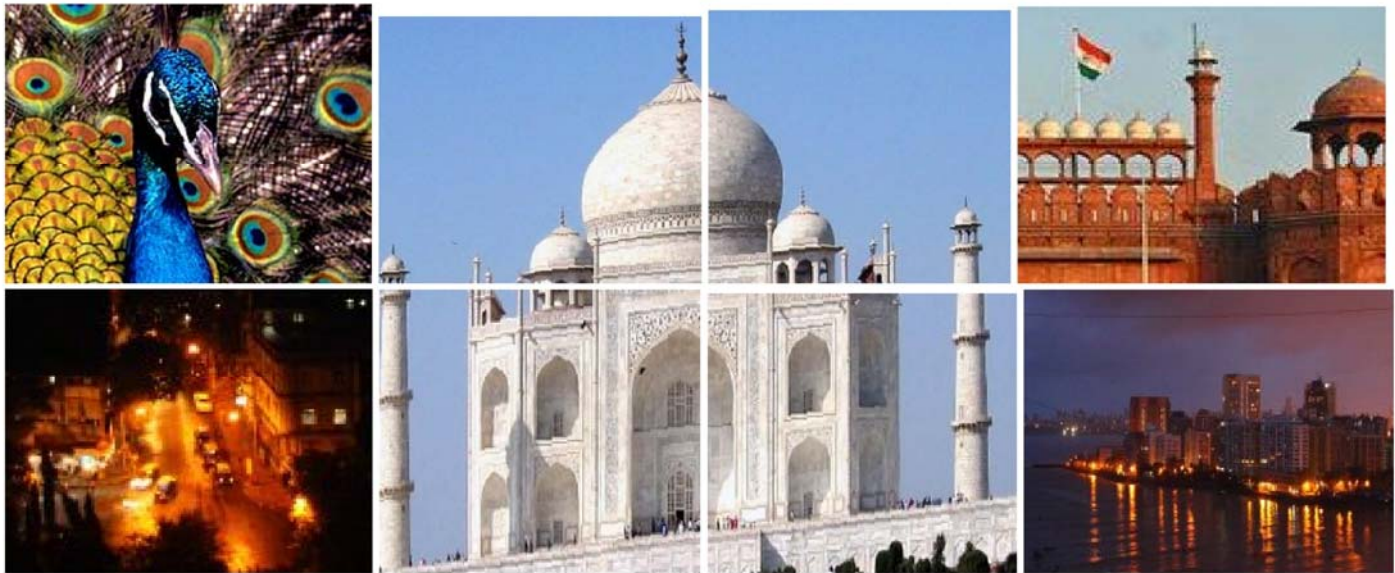
FACTS OF THE CASE

The acquisition of land for IMT Manesar was undertaken in two phases. In the first phase, about 256 acres of land were acquired in village Manesar. The Notification under Section 4 of the Act with respect to the acquisition was issued on 30 April 1994 ("First Notification") and the declaration of purpose was made under Section 6 of the Act on 30 March 1995. The acquisition was completed and an award was passed by the LAC on 28 March 1997 ("First Award") fixing

the market value of the land at INR 367,400 per acre.

Meanwhile, an additional 1,490 acres of land were notified for acquisition by way of another Notification under Section 4 of the Act, dated 15 November 1994 ("Second Notification"), followed by a declaration under Section 6, dated 10 November 1995. The second phase of the acquisition notified lands in village Manesar, as well as, in some adjoining villages. The second phase of the acquisition was completed and an award, dated 3 April 1997 ("Second Award"), was passed by the LAC fixing the market value at INR 413,600 per acre. Significantly, the Second Award assessed the fair market value of similarly situated lands higher than the First Award basis the increase in land value in the area following issuance of the First Notification.

Landowners affected by both phases of the acquisition challenged the awards before the Additional District Judge, Gurgaon ("Reference Court") and produced various sale instances by way of evidence to support their claim for enhanced compensation. The Reference Court failed to appreciate the evidence and adopted a location-based criterion for determining the market value of the lands. Pursuant to appeals filed by the landowners, the High Court of



Punjab & Haryana set aside the order of the Reference Court and enhanced the market value of the lands covered by the First Award to INR 1,200,000 per acre and of those covered by the Second Award to INR 1,500,000 per acre.

On appeal, the Supreme Court, by order dated 17 August, 2010 [(2010) 11 SCC 175], rejected HSIIDC's plea against the enhancement of compensation and further increased the compensation payable to the landowners to INR 2,000,000. Review Petitions filed by HSIIDC against the said order were also dismissed by the Supreme Court and the grant of enhanced compensation attained finality on 2 July, 2012 [(2012) 7 SCC 721; (2012) 7 SCC 200].

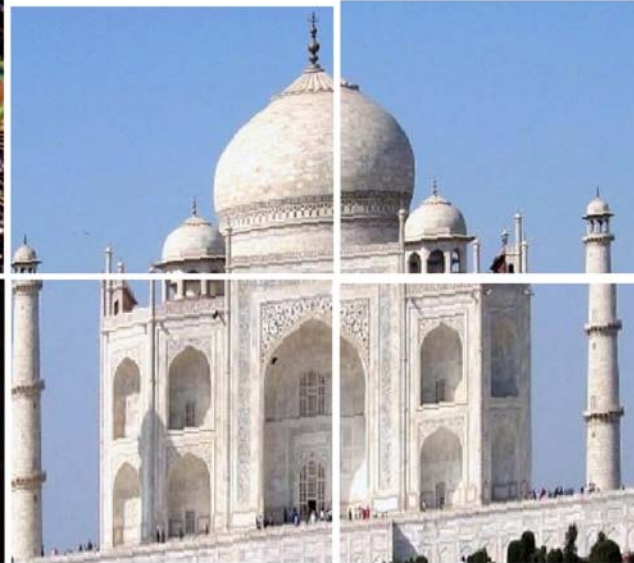
DECISION OF THE LOWER COURTS

In the instant case, the landowners produced various sale instances by way of evidence before the Courts in order to support their claims for enhanced compensation. Instead of determining which sale instance was the most appropriate indicator of the true market value of the acquired land, the Reference Court adopted a location-based criterion for assessing compensation payable to the landowners and divided the entire acquired portion into two blocks.

Block A was classified as properties situated within 500 yards of a National Highway connecting New Delhi to Mumbai, and the remaining lands were included in Block B. While market value of Block B was not altered significantly, considering proximity to the National Highway, market value of Block A properties was enhanced by the Reference Court to INR 651,994 per acre for lands covered under the First Award and to INR 689,333 for lands under the Second Award.

On appeal, the location-based methodology adopted by the Reference Court was rejected by the High Court which, in fixing the quantum of compensation, placed reliance on a sale deed, dated 16 September 1994, produced by the landowners, on the ground that it reflected, as nearly as possible, the market value of the acquired land.

The Sale Deed had been executed between two companies and the sale consideration, at the rate of INR 2,003,103 per acre, had been paid by way of bank drafts. Taking judicial notice of the fact that sale transactions between private individuals are often undervalued with a view to save stamp duty and registration charges, the High Court relied on the Sale Deed, to the exclusion of all others, on the ground that, since it had been entered into between two companies,



it was more likely to reflect the true market value of land as compared to sales between private individuals. The High Court, however, imposed a 20-25% cut in the market value assessed by it on account of development cost of the acquired land, which was far greater in size than the one covered by the Sale Deed.

It is noteworthy that, while fixing the compensation payable to the landowners, the High Court retained the distinction drawn by the Reference Court between the properties notified under the First Notification and those notified under the Second Notification. This distinction was presumed to be a given in light of the requirement that compensation should be based on the market value of the acquired land as on the Relevant Date.

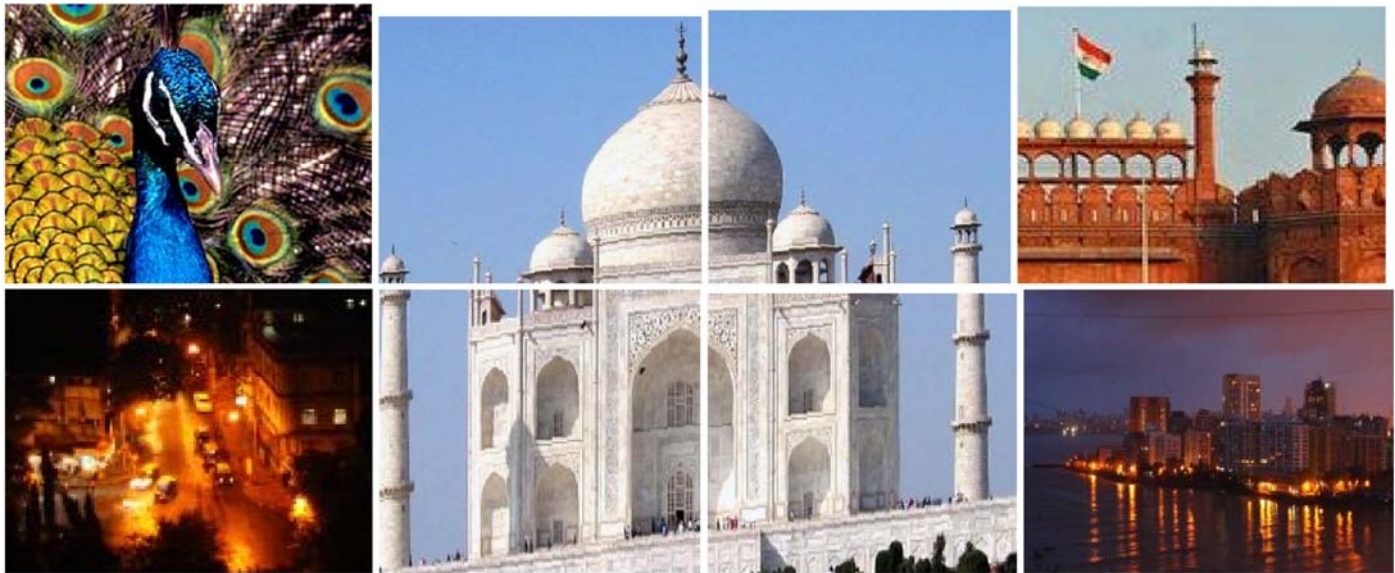
DECISION OF THE SUPREME COURT

The High Court's rejection of the location-based assessment was upheld by the Supreme Court in light of precedents laying down the principle that where different categories of land were acquired for the same purpose, differential valuation ought to be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification. *Subh Ram v. State of Haryana*, (2010) 1 SCC 444. Further, the

Supreme Court upheld the settled principle of law that whenever direct evidence in the form of sale instances is available for consideration, the comparable sales method ought to be applied to the exclusion of all other methods while determining the market value of acquired lands.

The Supreme Court upheld the High Court's order to the extent it relied on the comparable sales method and it was a question of evidence as to whether the Sale Deed had been validly accepted as the appropriate indicator of the fair market value. On appreciating the evidence led by the landowners, the Supreme Court found that the High Court was right in relying on the Sale Deed for ascertaining the market value of the acquired land and accepted the position of the High Court that judicial notice can be taken of the fact that prices in sale transactions between private individuals are usually undervalued.

However, the Supreme Court modified the High Court's decision in two ways. First, the Supreme Court rejected the distinction made by the lower Courts between lands acquired under the First and Second Notifications and awarded a single rate of compensation to all landowners basis the principle evolved by the Courts that, for the purpose of



appreciating evidence, the date of the sale instance under consideration must be in reasonable proximity to the Relevant Date [(2010) 5 SCC 708]. In the instant case, the First Notification was issued in April 1994 while the Second Notification was issued in November 1994. The Sale Deed produced by the landowners was registered in September 1994 and was preceded by an agreement to sell, dated 31 May 1994. Thus, the Sale Deed reflected the market value of the underlying property during the period May-September 1994, which was reasonably proximate to the Relevant Dates of both the First and Second Notifications.

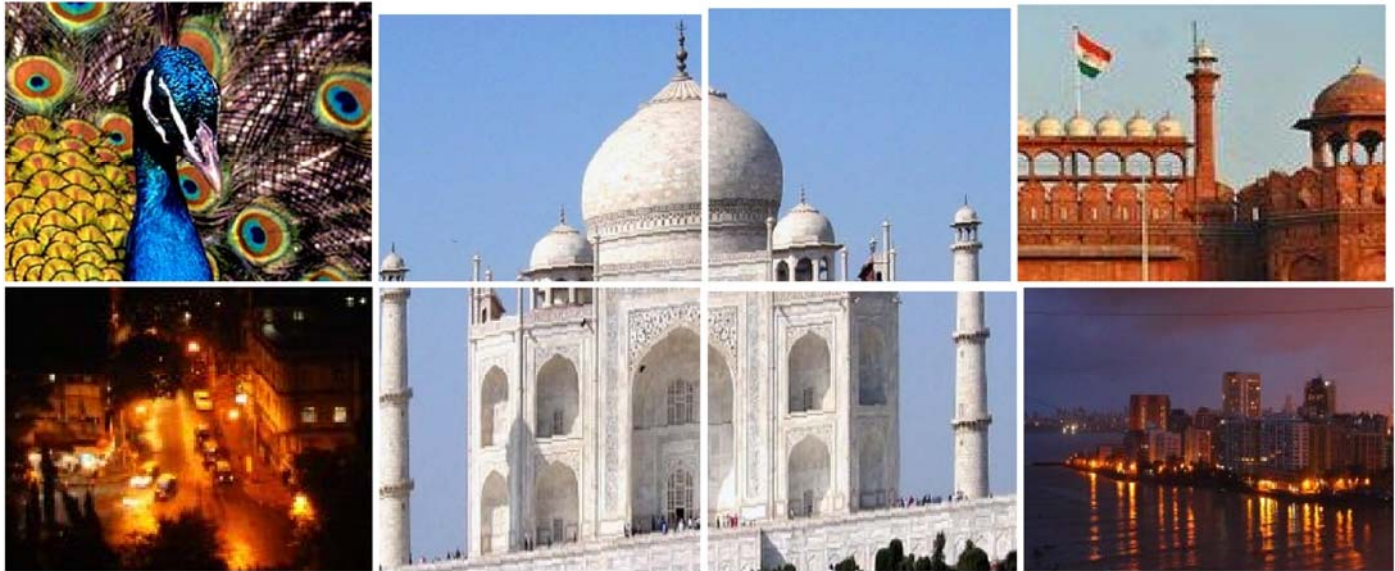
Second, the Supreme Court held that the 20-25% deduction allowed by the High Court in the sale price reflected in the Sale Deed was incorrect. The Supreme Court noted that it cannot be ignored that the land under consideration was acquired for setting up an IMT at Manesar and after developing the land HSIIDC was bound to sell the plots at much higher price to the prospective industrial entrepreneurs and would recover the development cost of the land proportionately from the allottees.

In this context, it is appropriate to note that while a post-acquisition increase in land value cannot be considered while assessing market value of acquired

land, by deducting 20-25% in the instant case, the post-acquisition expense of development costs was sought to be transferred onto the landowners. In such a scenario, the Supreme Court held that the High Court committed an error by applying a 20-25% cut on market value determined on the basis of the Sale Deed, and assessed the compensation at a uniform enhanced rate of INR 2,000,000.

HSIIDC then filed review petitions assailing the enhanced compensation on the ground that the Sale Deed was not a reliable indicator of the true market value as it had been executed between two companies belonging to the same management with a view to artificially inflate the price of the land. On appreciating the evidence placed on record, the Supreme Court found that HSIIDC had presented no evidence to challenge the veracity of the Sale Deed and that HSIIDC was attempting to file a second appeal in the garb of review petitions. In this view of the matter, the Supreme Court dismissed the review petitions and imposed a further cost of INR 25,000 against HSIIDC to be paid in each case filed before the Supreme Court.

In view of the dismissal of the review petitions by the Supreme Court, the question of payment of compensation has now attained finality.



FINANCIAL BURDEN

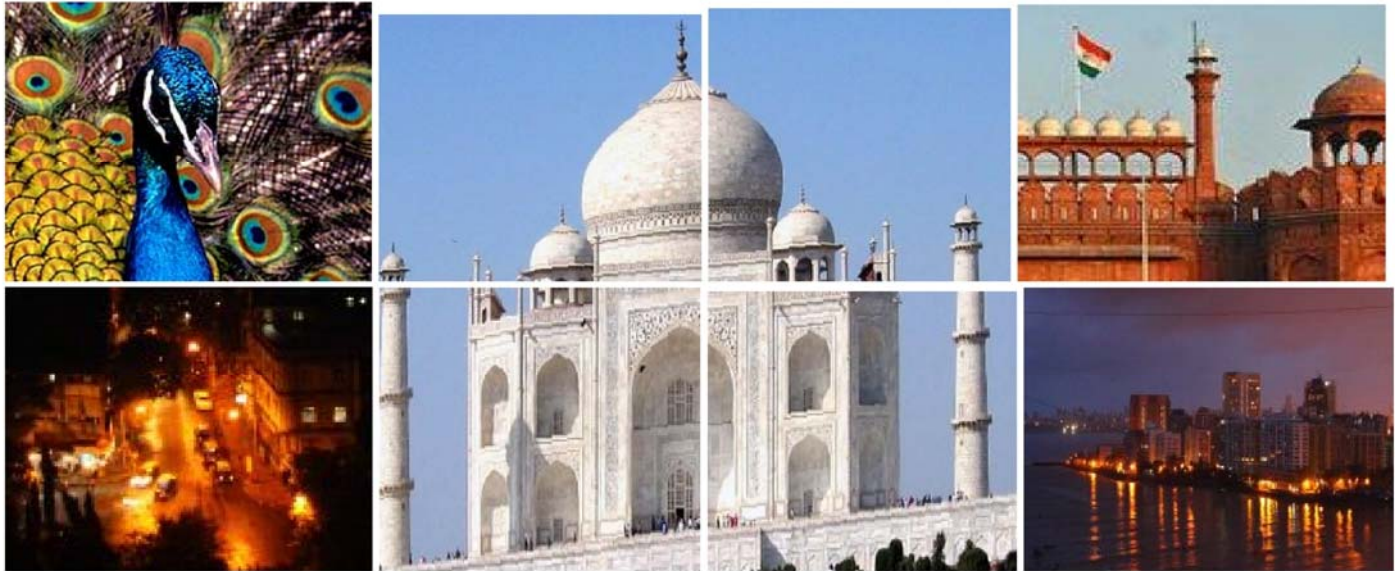
Under the Act, as well as the order of the Supreme Court, the liability to compensate the landowners dispossessed by compulsory acquisition lies with the concerned State. However, under the terms of the allotment, this burden has been shifted by HSIIDC onto the industrial allottees who have been allotted plots in IMT, Manesar. The financial impact of the Supreme Court's judgment is, therefore, being borne by industrial allottees.

An attempt made by the IMT Industrial Association to be impleaded in the review petitions filed by HSIIDC was rejected by the Supreme Court on the ground that they did not have *locus standi* to be heard in this matter. The extent to which the cost of additional compensation can be reasonably transferred by HSIIDC on the allottees of industrial plots was not an issue before the Supreme Court and, therefore, there was no occasion to make a group of industrial allottees a party to a dispute between the State and the landowners. However, the fact that the industrial allottees have already paid an allotment price significantly higher than the cost of the enhanced compensation was duly noted by the Supreme Court.

It may well be possible for HSIIDC to absorb the impact of the enhanced compensation. HSIIDC, however, may seek to recover the enhanced compensation from industry allottees. In that event, the allottees' contractual liability to bear the impact of the enhancement would be limited to the difference between the initial compensation awarded by the LAC and the compensation now payable as per the orders of the Supreme Court. While the rights of the landowners against HSIIDC are protected by the Act, the rights of allottees against unjust claims made by HSIIDC are to be found within the terms of the allotment.

CONCLUSION

The Supreme Court's decision follows a trend of decisions where the Courts have been liberal in awarding compensation for acquisition of land with a view to ensure just and fair compensation for persons affected by compulsory acquisition, without exceeding the scope of law. What was unique in the *HSIIDC v. Mawasi* case was that the Sale Deed was accepted by the Supreme Court as a true indicator of the market value for the entire acquired land even though it was entered into after the date of the First Notification and an increase in price may have resulted from the said



acquisition.

The Supreme Court was influenced by the difference in price paid by the allottees to HSIIDC and the price LAC paid to the original owners. Allottees paid HSIIDC at the rate of INR 2,200 per square yard, whereas LAC acquired the land at the rate of INR 82.64 per square yard. Though it is settled law that the purpose of acquisition is not a relevant factor for determining the true market value of acquired property, the potential profit accruable to HSIIDC from further allotment of the acquired land was found to be a relevant consideration for reviewing the reasonableness of the compensation awarded to the original landowners. Even then, the effective increase in compensation to the landowners (from INR 82.64 to INR 413.2 per square yard) is still meager as compared to the profits received and receivable by HSIIDC from the allotment of the acquired land.

From the above analysis of the case, it is apparent that the LAC defaulted in ascertaining the appropriate compensation payable to the landowners as per the Act and the law laid down by the Courts in India. The enhancement of compensation by the Supreme Court was merely to rectify the errors committed by the Courts below in applying the law and appreciating

evidence produced by the landowners in support of their claims. *Vivek Kohli is co-founder and Senior Partner at!*

ZEUS Law Associates. A practicing lawyer for over 20 years, he oversees the indirect tax, regulatory, litigation and dispute resolution practices of the firm in New Delhi. ZEUS is a corporate commercial law firm. One of its areas of specialization is real estate and infrastructure-related advising and litigation.!

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