

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL****LA. Appeal No.5 of 2023**

1. The Commissioner(works) Government of Manipur, Old Secretariat, Babupara, PO & Ps Imphal, District Imphal West, Manipur, Pin No.795001.
2. The Chief Engineer (PWD), Manipur, Khoyathang, PO & PS Imphal, Imphal West District, Pin-795001.

...Appellants***– Versus –***

1. Khangembam(o) Monorama Devi, aged about 55 years W/o Dr. Radheshyam of Chajing Awang Leikai, Imphal West District, Manipur.

....Respondent

2. The Union of India, represented by Secretary, Department of Road Transport and Highway (Sadak Parivahan Aur Raj Marg Vibhag), Thansport Bhavan-I, Parliament Street (Sansad Marg), New Delhi-110001, Govt. of India.
3. The Deputy Commissioner/Collector (LA) Porompat, Imphal East District, Manipur, Pin No.795005.

.... Proforma Respondents.

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Petitioner : Mr. RK Umakanta, GA.
For the Respondents : Mr. BR Sharma, Adv. R2 & Mrs. L. Monomala, GA R3.
Date of Order : 10.08.2023.

JUDGMENT & ORDER

[1] Heard Mr. RK Umakanta, learned Government Advocate for the appellants; Mr. BR Sharma, learned Sr. PCCG for respondent No.2 and Mrs. L. Monomala, learned Government Advocate for the respondents 3.

[2] Despite service of notice and the name being printed in the cause list, none appeared for the first respondent/claimant.

[3] Aggrieved by the judgment dated 25.02.2022 passed by the learned District Judge, Imphal East in OS (LA) Case No.25 of 2009, the appellants have filed the present appeal.

[4] The learned Government Advocate for the appellants submitted that the Reference Court ought not to have taken into consideration the order of the Government dated 15.3.2010 and erred in enhancing the compensation @ Rs.40/- per sq. ft. as the market value of the land has to be calculated as on the date of publication of Section 4 notification. The Reference Court failed to appreciate that the market value of the lands acquired may not be similar

to the land in terms of potential and the nature of the land involved. The first respondent/claimant has failed to produce documents to show the compensation offered by the Reference Court is inadequate and the lands are capable of fetching higher market value.

[5] The learned Government Advocate further submitted that the Reference Court could not have taken up Issue Nos.1 to 4, 6 and 7 and the additional issue together while exercising power under Section 18 of the Land Acquisition Act, as the reference under Section 18 can be take up only on the limited issue as provided in the provision itself. In fact, Issue Nos.2 to 4, 6 and 7 and the additional issue framed on 14.3.2018 are barred by the principles of res judicata as the said issues were taken up by the Gauhati High Court in W.P.(C) No.21 of 2008 and other connected cases and decided on 16.7.2008.

[6] The learned Government Advocate submitted that the first respondent/claimant and others have challenged the acquisition of land and its subsequent notifications on the ground that the proposed action on the part of the authorities is illegal and unjust.

[7] The learned Government Advocate then submitted that the Reference Court erred in coming to the conclusion that Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the new Act") would be applicable to the present matter, inasmuch as there is no corresponding provision from the Land Acquisition Act and since the award was passed on

16.8.2008 and possession has already been taken by the authority before the new Act came into effect.

[8] It is the submission of the learned Government Advocate for the appellants that the findings of the Reference Court are arbitrary and had caused miscarriage of justice against the appellants. The first respondent/claimant having received the compensation without any reference, cannot seek reference under Section 18 of the Act.

[9] The learned Government Advocate for the appellants urged that if the judgment of the Reference Court is allowed to stand in the present form, it will lead to severe financial liability in the future acquisition of land in the said area and also will result in huge expenditure from the State exchequer in future developmental projects, as the same will be taken as precedent for further land acquisition in future developmental work.

[10] The respondents 2 and 3 are proforma respondents and the first respondent being contested party has not turned up to oppose the appeal.

[11] Upon consideration of the pleadings and the arguments made by the learned Government Advocate for the appellants, the only point that arises for consideration is whether the Reference Court was right in fixing the market value of the acquired land at Rs.40/- per sq. ft.

[12] The Government of Manipur, Public Works Department proposed to acquire 44.0977 acres of land situated at Village No.68-Kiyamgei, Porompat Sub Division, Imphal East District for a public purpose of widening

of NH-39 from Canchipur Bridge to Lilong Bridge and construction of Leishang Hiden to eastern side of NH-39 Km 326,720 (MU Gate) to Km 330.150 (Lilong Bridge). Section 4(1) notification for acquisition of the lands was issued on 29.10.2007 and Section 6 declaration was issued on 27.12.2007. Thereafter, demarcation of the affected lands was conducted by the Sub Divisional Officer, Porompat in the presence of the affected pattadars and after comparing the sales data, determined market value of the affected lands at Rs.9.92 per square feet for homestead land and Rs.6.32 per square feet for agricultural land.

[13] The first respondent/claimant is the owner of the homestead lands under Patta No.732/1387 of Dag Nos.9/1059 measuring 0.1034 acre and the said land was acquired for the purpose aforesaid.

[14] According to the appellants, at the time of measurement of the acquired land, the first respondent/claimant was present and the fixation of compensation was made by the Revenue Department as per the then market value and while fixing the market value, the affected pattadar has not made any objection for enhancement and, in fact, the first respondent/claimant has received the compensation without any protest. While being so, the first respondent/claimant is estopped from claiming higher value for the acquired land. It is the submission of the learned Government Advocate that while fixing the market value of the acquired land, the authorities have taken sales data of three years prior to 29.10.2007.

[15] On a reading of the judgment of the Reference Court, this Court finds that the Reference Court has recorded its finding as under:

“20. ... However, neither in the Award nor in the statement of D.W.3, who is giving his statements on behalf of the respondent no.1, the collector, L.A. Imphal East, whisper about the examinations of sale data of the surrounding areas. More so, no sale deed/data is evern produced by the respondents in order to establish the basis of their settlement of the market value of those acquired land.”

[16] In the impugned order, the Reference Court observed that the claimant has produced an order dated 21.06.2011 passed by the erstwhile District Judge, Manipur East in Original (LA) Suit No.4 of 2009 regarding a homestead land acquired by the same Award and by the said order, my predecessor fixed the market value of the said land at Rs.100/- per sq. ft.

[17] The Reference Court has also referred to the orders passed in O.S. (LA) Nos.6, 7, 8, 9, 10, 11, 12 of 2009 relating to the lands acquired and fixation of the market value of the acquired lands at the rate of Rs.60/- for both the homestead lands and agricultural lands. Stating that the lands acquired by the Government under Award dated 16.8.2008 are the lands lying on the just adjacent eastern side of NH-39 starting from Manipur University Gate up to Lilong Bridge and the eastern side of NH-39 from Manipur University Gate to Lilong Bridge is within the jurisdiction of Imphal East, whereas the western side is within the jurisdiction of Imphal West and from the southern side of Lilong Bridge, Thoubal District starts, the Reference Court arrived at a finding

that the land in question is similar to that of the earlier acquisition of land referred supra. In other words, it is the finding of the Reference Court that the northern side of Lilong Bridge is towards Imphal side, which is capital of Manipur and the southern side is towards Thoubal side.

[18] Referring to the order dated 15.3.2010 and finding that the lands acquired under the reference in question are towards Imphal side and there are many prospects of developing and followed with the fixation of market value as done in the earlier cases, the Reference Court agreed with enhanced rate fixed by his predecessor i.e. Rs.60/- per sq. ft. While agreeing so, the Reference Court has taken a different view regarding fixing of the same enhanced rate for both homestead and agricultural lands and it should be different rates for homestead lands and agricultural lands. Otherwise there will be no differentiation in between these two lands and, accordingly, fixed the market value of the agricultural lands at Rs.40/- per sq. ft.

[19] Referring to the order dated 15.3.2010 and finding that the lands acquired under the reference in question are towards Imphal side and there are many prospects of developing and followed with the fixation of market value as done in the earlier cases, the Reference Court fixed the market value of the acquired land at Rs.40/- per sq. ft.

[20] It appears that though several Issues were framed by the Reference Court, while answering the Issues, it has taken Issue No.1 framed on 8.5.2013 and the re-framed Issue No.11 which was framed on 14.3.2018 and arrived at a conclusion that the market value of the agricultural land would

fetch to the value at Rs.40/- per sq. ft. at the relevant point of time. Admittedly, the Reference Court has not done any independent comparison of sales data to fix the market value of the acquired land at Rs.40/- per sq. ft.

[21] Drawing the attention of this Court to paragraphs 23 to 25 of the impugned judgment, the learned Government Advocate submitted that the Reference Court enhanced the market value of the acquired land from Rs.6.32 to Rs.40/- per sq. ft. on the wrong presumption when the reality is somewhat different. Paragraphs 23 to 25 of the judgment of the Reference Court is reproduced hereunder for ready reference:

“23. It is an admitted fact that the lands acquired by Government under the Award dated 16-08-2008 are the lands lying on the just adjacent eastern side of National Highway 39 starting from Manipur University Gate up to Lilong Bridge. The eastern side of N.H. 39 from M.U. Gate to Lilong Bridge is within the jurisdiction of Imphal East whereas, the western side is within the jurisdiction of Imphal West. From the southern side of Lilong Bridge, Thoubal District starts. In other words, the northern side of Lilong Bridge is towards Imphal side, which is the capital of Manipur and the southern side is towards Thoubal side.

24. It will not be a disputed fact that just after crossing the Lilong Bridge, Lilong Bazar is situated and thus, in the said order dated 15-03-2010, the rate of homestead lands is fixed at Rs.221 and Rs.80/- for agricultural lands. Then, in the 17-Chaobok area which is about 7/8 kms. From Lilong Bazar, the rate of homestead lands is fixed at Rs.77 and Rs.51/- for agricultural lands. Surprisingly, for the homestead lands acquired by the Award dated 16-08-2008 the rate is fixed at Rs.9.92/- and that of agricultural lands is at Rs.6.32/-.

25. Accordingly, I have given more emphasis on the said order of the Government dated 15-03-2010 since this is the rates fixed by the Government. I have already stated that in the order dated 15-03-2010 for 17-Chaobok area which is about 7/8 kms. From Lilong Bazar, the rate of homestead lands is fixed at Rs.77/- and Rs.51/- for agricultural lands. However, the lands acquired under this reference are towards Imphal side, even though the said area are the last boundary of Imphal, there are many prospects of developing because those lands are nearby the Manipur University. Therefore, I agree with the enhance rate fixed by my last predecessor i.e. Rs.60/- per sq. ft. is more proper and reasonable. But, I have different opinion regarding the fixing of the same enhance rate for both homestead lands and agricultural lands. It should be different rates for homestead lands and agricultural lands, according to my opinion, otherwise, there will no differentiation in between the homestead lands and the agricultural lands. Therefore, I fixed the market value of the agricultural lands at Rs.40/- per sq. ft.

ORDER

I hereby ordered that the rate of compensation of the agricultural land of the claimant acquired under the Award dated 16-08-2008 is enhanced at the rate of Rs.40/- per sq. ft.

In addition, the claimant is entitled 30% solatium and 12% additional charges for the enhanced compensation amount. However, there will be no additional charge or interest for the pendign period in this reference Court. Nevertheless, the enhance rate of compensation minus already received compensation shall be paid within 90 days from the date of this order and that, in case of failure to make payment of the same within the stipulated period, claimants are entitled 6% interest per annum till the payment of enhance rate of compensation.”

[22] 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.

[23] 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 of 1894, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from the 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.

[24] In the case on hand, the entire judgment of the Reference Court proceeds only on the location of the acquired land and earlier judgment passed by this Court. As stated supra, no independent analysis has been made to fix the market value of the acquired land by the Reference Court by comparing the sale deeds at the crucial date while interfering with the award. The Reference Court has not adopted 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 purchase 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(1). Merely because earlier the Court fixed the market value at higher rate, the same should be followed at later point of time in another for fixing the market value.

[25] It is the duty of the Reference Court to deal with the issue on case to case basis and then fix the market value. When the Reference Court has taken a different view that there will be differentiation between the homestead lands and agricultural lands, simultaneously, it ought to have independently discuss about the comparison of the sale deeds to fix the market value at the crucial time. However, the Reference Court has failed to do so. On the other hand, taking note of the fertility of the land and comparing the sale deeds at the crucial date, the authority concerned has fixed the market value of the land in question at Rs.6.32 per sq. ft., which cannot be simply enhanced.

[26] Similar arguments canvased in the present appeal have been canvased in LA (Appeal) No.2 of 2023 and, this Court vide order dated 20.03.2023, allowed the appeal and set aside the judgment dated 25.2.2021 passed in OS (LA) Case No.8 of 2020. When the judgment of the Reference Court has been set aside by this Court in LA (Appeal) No.2 of 2023, the judicial propriety is to follow the said judgment in the future case unless set aside by

the higher Court. Therefore, this Court is of the view that the judgment in LA (Appeal) No.2 of 2023 is squarely apply to the instant appeal.

[27] It is the case of the appellants that having received the compensation without any protest/reference, the first respondent/claimant cannot seek reference under Section 18 of the Act and in support of their case, the appellants have placed reliance upon the judgment of the Apex Court in the case of *Wardington Lyngdoh and others v. Collector, Mawkyrwat, (1995) 4 SCC 428*.

[28] In *Wardington Lyngdoh*, supra, the Apex Court held:

“5. It will thus be clear that the persons interested in the land are entitled to receive compensation awarded by the Collector under Section 11 under protest and entitled to object to the compensation determined by the Collector. No person who had received the amount otherwise than under protest should be entitled to make the application under Section 18. In other words, the receipt of the amount under protest is a condition precedent to make an application under Section 18 within the limitation prescribed under the proviso to sub-section (2) of Section 18 together with the grounds on which the objections have been taken. Thereon, the Collector is enjoined to make a reference to the civil court with the statement in the manner stated in Section 19.”

[29] This Court is in agreement with the submission made by the learned Government Advocate that the Reference Court enhanced the market value without any valid documents. Therefore, this Court is of the view that

the Reference Court has committed an error in relying on the earlier judgments of the another Reference Court and the letter of the Under Secretary (Revenue) dated 15.3.2010 while enhancing the market value of the acquired land from Rs.6.32 per square feet to Rs.40/- per square feet.

[30] On a thorough reading of the judgment of the Reference Court, this Court finds that there is no consideration of the potentiality of the acquired land apart from other considerations. The Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of the parameters specified under Section 23 of the Act of 1894.

[31] While passing the impugned judgment, the Reference Court did not take into consideration all these factors and the well settled principles of law laid down by the Apex Court and, as stated supra, enhanced the market value of the acquired land at Rs.40/- at its whims and fancies, which cannot be endorsed by this Court. As stated supra, without any protest, the first respondent received the compensation from the Land Acquisition Officer, which would clearly establish that he has no grievance over the market rate fixed by the Land Acquisition Officer. In view of the above, this Court is of the view that the impugned judgment dated 25.2.2021 passed by the Reference Court is unsustainable in the eyes of law.

[32] It is reiterated that as the entire compensation amount awarded by the Land Acquisition Officer had already been received by the first respondent and since this Court is of the view that there was no illegality or

unreasonableness on the part of the Land Acquisition Officer while determining the market value of the acquired land at the rate of Rs.6.32 per sq. ft., this Court is not inclined to interfere or change the said compensation amount at this distant point of time.

[33] In the result, the appeal is allowed by setting aside the impugned judgment dated 25.2.2021 passed by the learned District Judge, Imphal East in O.S. (LA) Case No.25 of 2009. No costs.

ACTING CHIEF JUSTICE

FR/NFR

John Kom