

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
L.A. App. No.25 of 2022

1. The Deputy Chief Engineer (Construction), N.F. Railway, Badharghat Railway Complex, P.O. Siddhi Ashram, P.S. Amtali, Agartala, District: Tripura West.

.....Appellant

-VERSUS-

1. Smti. Hena Das, wife of late Nibaran Chandra Das,
2. Sri Sudip Das, son of late Nibaran Chandra Das,

Both are residents of Charipara, P.S. Amtali, District: West Tripura.

3. Smti. Jhuma Das, daughter of late Nibaran Chandra Das, wife of Sri Mithu Das, resident of Siddhi Ashram, P.S. Amtali, District: West Tripura.
4. Smti. Ruma Das, wife of Sri Sanjoy Das, daughter of late Nibaran Chandra Das, resident of Narayanpur, P.S. Airport, District: West Tripura.
5. The Land Acquisition Collector, West Tripura, Agartala.

.....Respondents.

CO(FA) No.14 of 2022

1. Smti. Hena Das, wife of late Nibaran Chandra Das aged-60,
2. Sri Sudip Das aged-31, son of late Nibaran Chandra Das,

Both are residents of Charipara, P.S. Amtali, District: West Tripura.

3. Smti. Jhuma Das aged-39, daughter of late Nibaran Chandra Das, wife of Sri Mithu Das, resident of Siddhi Ashram, P.S. Amtali, District: West Tripura.
4. Smti. Ruma Das aged-35, wife of Sri Sanjoy Das, daughter of late Nibaran Chandra Das, resident of Narayanpur, P.S. Airport, District: West Tripura.

.....Claimant-respondent-Cross Objectors

-VERSUS-

1. The Deputy Chief Engineer (Construction), N.F. Railway, Badharghat Railway Complex, P.O. Siddhi Ashram, P.S. Amtali, District: West Tripura.
2. The L. A. Collector, West Tripura, Agartala.

.....Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. Asutosh De, Advocate.
For Respondent(s)	:	Mr. P. Gautam, Advocate. Mr. D. Deb, Advocate. Mr. D. Debnath, Advocate.
Date of hearing and delivery of judgment and order	:	20.07.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

Heard Mr. A. De, learned counsel appearing for the appellant,
Also heard Mr. P. Gautam, Mr. D. Deb, and Mr. D. Debnath, learned
counsel appearing for the respondents.

[2] The present appeal has been filed under Section-74 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, hereinafter referred to as the RFCTLARR Act, 2013 against the judgment and award dated 22.02.2022 in connection with Land Acquisition Case No.50 of 2017 passed by the learned Land Acquisition, Rehabilitation & Resettlement Authority, Tripura, Presiding Officer, wherein, the learned Presiding Officer awarded Rs.16,00,000/- only per kani along with solatium and other statutory benefits which is not proper and against the spirit of law. Further, the cross-objection on behalf of the claimant respondent-cross objectors under Order-XLI, Rule-22 of CPC has also been filed against the cross appeal under Section-74 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act of 2013 preferred by the opposite party No.1 appellant respondent, N.F. Railway against the judgment and award dated 22.02.2022 in connection with Land Acquisition Case No.50 of 2017 passed by the learned Land Acquisition, Rehabilitation & Re-settlement Authority, Tripura, Presiding Officer, wherein, the learned Presiding Officer awarded Rs.16,00,000/- only per kani along with solatium and other statutory benefits.

[3] The brief facts behind the appeal are that the government of Tripura acquired the land in question belonging to the respondents. By a notification dated 28.01.2017 under Section-11 of the RECTLARR Act, 2013. The land was acquired for the purpose of construction for new rail line from Agartala to Akhaura Rail Construction. The acquired land fallen under Khatian No.2481, Plot No.6910 of Mouja Charipara, Sheet No.1 and 2/P, Tahashil Badharghat, land measuring 0.060 acres, classified as Bastu (Tilla). The learned L.A. Collector, West Tripura, Agartala awarded Rs.4,50,000/- only per kani and awarded total compensation amounting to Rs.2,09,956/- only for the acquired land which is

mentioned in page-2, table No.1 in the judgment passed in connection with Land Acquisition Case No.50 of 2017.

[4] Being aggrieved by and dissatisfied with the award, the claimant filed an objection and prayed for referring the case to the Land Acquisition, Rehabilitation and Re-settlement Authority Tripura, hereinafter called the authority for proper determination of compensation and adjudication of the case. The L.A. Collector subsequently referred the case to the authority. The authority served notice upon both the parties and respective parties and counter claim statement. After hearing both the parties on the basis of documents and statement of facts, the authority awarded an amount of Rs.16,00,000/- only per kani along with other statutory benefits.

[5] After hearing the learned counsel appearing for the parties and having gone through the material evidence on record, the learned Land Acquisition, Rehabilitation & Re-settlement Authority, Tripura has observed as under:

“44.(i) The Referring Claimants is entitled enhanced market value of his acquired land measuring 0.060 acre under plot No.6910 of Khatian No.2481 @ Rs.16,00,000/- per kani (0.40 acre) instead of Rs.4,50,000/- per kani (0.40 acre) determined by the L.A. Collector at apportionment Sl. No.118. (ii) The market value of the acquired land as determined at the above rate be multiplied with factor “1.5” as per Section-26(c) and as contemplated in first schedule appended to Act, 2013 to get the value of the land (iii) The referring claimant in addition to value of land is entitled to get compensation u/s.29 of Act 2013 as determined by the L.A. Collector for the things attached to the acquired property viz. crops. (iv) The referring claimant as per section 69(3) of the Act 2013, in addition to the market value of the land is entitled 100% solatium over the total (value of the land + cost for damage for the things attached to the acquired property viz crops) compensation amount. (v) The referring claimants as per section 69(2) of Act 2013, is entitled 12% pa on the market value from the date of publication of notification under Section 11 to the date of award of the L.A. Collector or taking of the possession of acquired property, whichever is earlier. (vi) The referring claimants u/s.72 of Act 2013 is entitled for interest at the rate of 9% p.a. from the date on which the L.A. Collector took possession of acquired property to the date of payment of the excess amount into the authority from 21.08.2017, for the first year and interest at the rate of 15% p.a. for subsequent years, till deposit of entire amount. (vii) The amount already paid by the LA Collector shall be deducted in the excess compensation now awarded to the acquired property.”

[6] Being aggrieved by and dissatisfied with the judgment and award, the appellant and the cross-objectors have preferred this appeal and the cross objection.

[7] Mr. A. De, learned counsel appearing for the appellant has submitted that the authority manifest error in law in determining the market value of the acquired lands as the authority failed to apply the correct principle of law in the matter of determination of the market value of the acquired land and as such

the judgment and award passed by the authority is liable to be set aside and quashed. The judgment of the authority is cryptic and the authority has not assigned any reason for determining the correct principle of law for deciding the quantum of compensation for the acquired land but passed whimsical judgment and award which is without any basis and against the spirit of law and as such liable to be dismissed and set aside.

[8] The acquired land in question is situated far away from the road and abandoned class of land but the authority without considering anything passed whimsical judgment without any basis and as such the judgment passed by authority is liable to be set aside. The claimant petitioners on the time of adducing evidence some exemplar deeds has been submitted for showing the present market value of the land. But the deed submitted by the claimant petitioners is far away from the acquired land.

[9] Moreover, the deeds submitted by the claimant petitioners is on the road side and no way connected with the acquired land, so consideration of the said deed is no basis and stand in the eye of law for determination of quantum of compensation. But the authority passed whimsical judgment by consideration of the said deeds which is against the spirit of law. The authority did not mention any reason in his judgment for which the authority enhanced the award from Rs.4,50,000/- to Rs.16,00,000/- per kani and as such the judgment and award passed by the authority is liable to be set aside.

[10] He has further contended that after construction of the railway line, the area surrounding thereon became highly developed automatically but, the authority never deducted the development charge from the compensation amount passed. There are not at all modern facilities like water supply, transportation, electricity, market, school and hospital etc. But, the authority did not consider the same and passed whimsical judgment which is liable to be set aside. The whole claim of the referring claimant respondent herein, are imaginary and without any grounds.

[11] Claimant No.1 Smt. Hena Das, the respondent No.1 herien, appeared and submitted claim statement and represented the other respondent Nos.2 to 4 by dint of Registered General Power of Attorney bearing No.IV-382 dated 18.09.2017. In the claim statement it was stated that the acquired land is Bastu (Tila), situated at 'Mouza': Charipara nearby the Agartala Municipal Corporation area and also nearby Palanpara to West Charipara pitch road. It is pleaded that all modern facilities like water supply line, electric connection, road communication, school, local offices of various deptt. of Govt of Tripura

including TMC & Dr. B.R.M. Teaching hospital and Badharghat Railway Station are within one & half km. from the acquired land. At the time of acquisition the market value of the acquired land was more than Rs.2,00,00,000/- per kani. It is also stated that the acquired land which are classified as Bastu (Tila), can be easily converted to viti/vastu class of land for construction of building.

[12] On the other hand, the Opposite parties No.1 & 2, the appellant and the respondent No.5, herein, contested the claim of the referring claimants. But did not deny and dispute the fact that the aforesaid land was acquired for the purpose of the project of railway as stated herein before. However, it was denied and disputed that the compensation to the referring claimant was insufficient or inadequate. The value of the acquired land was assessed as per market value of the land of the area and the referring claimants are not entitled to get any further compensation for the acquired land. O.P.No.1 in the counter statement has specifically pleaded that the award was passed by the LA Collector taking into the consideration of factors: (i) plot wise value of land,(ii) recent sale deeds of same mouja, (iii) variation of value of land near to the road side and back side, (iv) variation of value of land near to the market, school and other Govt. establishment and vice-versa, (v) accessibility to the roads, surface of acquired land, size of area etc. O.P. 2 (L.A. Collector) in the counter statement specifically denied the claim of the claimant that there are any modern amenities available within the walking distance of the acquired land.

[13] Learned counsel appearing for the appellant has submitted that the sale instances produced by the referring claimant and marked as exhibits cannot be the basis for determining the market value as the sale instances are not similar type of land and the referring claimant has no personal knowledge about the transaction of the land under sale instances. The L.A. Collector considered the physical verification report of the expert committee, constituted by the D.M. & Collector of the District, headed by the SDM. Thereafter, he determined the market value of the acquired property taking consideration of sale instances of similar class of land situated within 200 mtrs. of the said acquired property and thus the market value determined by the LA. Collector is rational and acceptable.

[14] The argument of the learned counsel shows that the dispute in the reference is about the rate of market value determined by the LA Collector. The case law referred by the respective learned counsels are on the principle of determination of market value for the acquisition of land is all under the old Land Acquisition Act i.e. the Act of 1894. In the present case, the reference by the LA Collector is under Section-64 of the RFCTLARR Act, 2013 and the market value

of the acquired land is to be determined under Section-26 of the said Act, 2013 which prescribed a specific procedure and guidelines for determining the market value of the acquired land.

[15] The Hon'ble Supreme Court in the case of *Land Acquisition Officer v. Karigowda* reported in (2010) 5 SCC 708 at paragraphs 32, 33 & 34 it was observed:

32. Where a statutory provision confers rights and also states mandatory or implied conditions which would have to be satisfied before the claim, can culminate into a relief, such considerations or conditions are relevant for the purposes of interpretation as well. A power conferred by the statute, often contains an express condition for its exercise and, in absence of, or in addition to the express condition, there are also implied conditions for exercise of power. Exercise of statutory power in breach of express or implied conditions will be illegal, if the conditions breached are mandatory. This principle, to a large extent, is applicable to exercise of rights arising from beneficial legislations, when an owner claims benefits under statutory provisions, it is for him to show that what is contemplated under the conditions attached thereto has been satisfied, particularly when such legislative intent is clear from the bare reading of the provisions. Like the cases in hand, it is for the claimants to show that, to award the compensation payable under the statutory provisions, they have brought on record, evidence to satisfy the criterion and conditions required to be fulfilled for such a claim.

33. The provisions with which we are concerned primarily are the provisions of the statute which are coupled with obligations and limitations specified in them. The power is vested in the Collector to grant compensation; in courts to enhance the same in favour of the claimants whose lands are acquired, in case they are aggrieved. But, this power has to be exercised while keeping in mind the settled guidelines and parameters stated in [Sections 23](#) and [24](#) of the Act. It will, thus, not be permissible for the authorities to go beyond the scope and purview of the provisions or the pre-requisites stated in these provisions for determination of the fair market value of the land.

34. The statutory law as well as the judgments pronounced by the courts has consistently taken the view that compensation has to be determined strictly in accordance with the provisions of [Sections 23](#) and [24](#) of the Act. The matters which are to be governed by the terms of [Section 24](#) of the Act cannot be taken into consideration by extending discretion referable to the matters which should be considered by the courts in terms of [Section 23](#) of the Act. To put it in another way, the court should apply the principle of literal or plain construction to these provisions, as the Legislature in its wisdom has not given to the court absolute discretion in matter relating to awarding of compensation but has intended to control the same by enacting these statutory provisions.

[16] Therefore, it is well settled that the statute law and the case law would go side by side to interpret the statutes. Perhaps keeping in mind of the various guidelines setup by the Hon'ble Supreme Court, the legislator prescribed the specific and detail methods for determination of market value of land in acquisition under RFCTLARR Act, 2013 which are more clear and specific in comparison to the methods prescribed in the old Land Acquisition Act i.e. the Act of 1898. As such, I shall be refrained myself to discuss the case law unless it is

required in interpretation of the provisions under RFCTLARR Act, 2013. The methods for determination of market value are prescribed under Section- 26 of the said Act, 2013 read as follows:

"Section 26 Determination of Market Value of land by collector: (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:-

(a) the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell as the case may be in the area, where the land is situated; or

(b) The average sale price for similar type of land situated in the nearest village or nearest vicinity area or

(c) Consented amount of compensation as agreed upon under Sub-section (2) of Section-2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher.

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section-11.

Explanation I-The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2- For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreement to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation-3 while determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4-While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that-

(a) The land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) The registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) The market value has not been specified under the Indian Stamp Act, 1699 by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the

price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1): Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice"

[17] A careful reading of Section-26 of the RFCTLARR Act, 2013 it would be seen that provision is governed the methods of determination of the market value of acquired land. Section 26 (1) of the said Act in clause (a), clause (b) and clause (c) prescribed three different methods for determination of market value applicable in three different situations. Section-26 (1)(a) states that the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell as the case may be in the area, where the land is situated Specific criteria have been fixed to determine the market value of acquired land. In the case at hand LA Collector in his 'Assessment Note' opined that the value chart prepared in the year 2011 for the purpose of registration of sale deed is far below the prevail market rate in the locality. Therefore, the methods for determination of market value laid down in Section 26(1) (a) of the RFCTLARR Act, 2013 is not applicable in this case. Again, Section-26(1) (c) of the RFCTLARR Act, 2013 is also not applicable here as the land was not acquired for public private partnership project.

[18] In the instant case sale instance under Exhibit-2 and 3 are classified as bastu /Viti class land and the land under sale instance Exhibit-A is classified comprising of three classes land viz. Bagan (Tila), Chara (Tila) & Bastu (Tila). Therefore, the sale instances under Exhibit-2 (Bastu/viti), Exhibit-3 (Bast/viti) and Exhibit-A ((Bagan (Tila), Chara (Tila) & Bastu (Tila)) are also not exactly similar to the acquired land (Bastu-tila). However, land classified as Bastu (Tila) is also used for the purpose of construction of residential house. But the potential value of Bastu (Tila) land lower than the Bastu (Viti) class land due to surface and other facilities attached to the earth. However, the acquired land could have been converted to 'Bastu/viti land after necessary development. Therefore, sale

instances classified as Bastu (Viti) class land may be taken into account with a suitable discount of the value of the instances subject to satisfaction of other condition laid down in the statute. The Hon'ble Supreme Court in *Special land Acquisition Officer and another vs. Sidappa Omannu Tumari and others* reported in *1995 Supp.(2) SCC 168* said, “14. Therefore, where a sale deed or an agreement to sell relating to a small extent of land is produced by the claimant, in the enquiry held for determination of compensation payable for his large extent of land, the court is not always bound to determine the market price of such large extent of acquired land on the basis of the price fetched or to be fetched by small extent of land covered by such sale deed or agreement to sell.”

[19] So, before taking into account of sale instances under Exhibit-2, Exhibit-3 and Exhibit-A as comparable sale instances the quantum or area of the lands are to be looked into. The area of acquired land plot No. 5513/p is 0.300 acre. On the other hand the area or quantum of lands of three sale instances under Exhibit-2, Exhibit-3 and Exhibit-A respectively are 0.03 acre, 0.01 acre and 0.140 acre. The above observation shows that the area/quantum of land of sale instances under Exhibit-2 and 3 is very small in comparison with the acquired land. Every prudent man knows that for construction of a house building minimum 0.02 acre area of land is required. However, it is common at Agartala and its adjoining area to sell and purchase less than 0.02 acre land on the roadside at a very high rate for using in commercial purpose. In this case no evidence led by the claimant to clear the doubt. So, I have no hesitation to hold that the land of Exhibit-2 and 3 might have been purchased at a high rate for commercial purpose.

[20] There are two crucial differences in the acquired land under plot No. 6915 and exemplar Exhibit no.2 and 3. First, the land under Exhibit no 2 and 3 are bastu/viti class land whereas land pertaining to plot No. 6910 is bastu (Tilla) and finally, the area/quantum of land. In Exhibit No.2 quantum of land is 0.03 acre and the area of Exhibit No. 3 is 0.10 acre. Both are of small area in comparison with the acquired land (0.060 acre). The area of land under Exhibit-3 (0.010 acre) is so small that no residential house could be build except a very small building for running commercial unit like a store or a shop. Therefore, this Court has no hesitation to consider that land under Exhibit-3 was purchased for running of commercial unit fetching high price. Interestingly, both the sale instances under Exhibits No.2 and 3 were registered on 22.03.2013 i.e. on the same day. Land of sale instance under Exhibit No.2 (Sale deed No. 1-1728 dated 22.03.2013) was sold @ Rs 40,00,000/- per Kani (0.40 acre) whereas land in Exhibit-3 (sale deed No. 1- 1729 dated 22.03.2013) was sold @ Rs. 2,00,00,000/- per Kani(0.40 acre) though both the land classified as Basu/viti land. It is question why the two plot of

land registered on the same of the same locality has such a huge difference of price.

[21] The probable cause may be that land fetching high price is situated at market area or near to the market of developed area and suitable for running business unit. The buyer may have purchased the same at a rocket high price to establish business unit. No map is produced to show the exact location of the plots to show that the land is situated very near to the acquired land. No evidence is adduced by claimant by examining the vendor or vendee as witness to clarify the reason of such difference of price at same mouja. So the sale instance under Exhibit-3 is not at all comparable sale instance to determine the market value and thus kept outside of consideration for the reasons stated above.

[22] The main contention of the counsel for the appellant is that the appeal is filed on the ground that the land acquired is far away from the main city and the developing areas. It is just attaching the Bangladesh border and since it is the remote place the amount of compensation which has been awarded by the concerned authority is unjust and the table No.2 which is placed on record needs to be reconsidered and table No.3 of the LA Collector is just and proper. Nothing has been placed on record by way of any evidence or pleadings to show that the subject land is on the Indo-Bangla border.

[23] In view of overall reasons given by the learned authority and going through the evidence on record and the arguments put forwarded by the learned counsel appearing for the parties, this Court is of the considered opinion that the authority has decided the matter and calculated the amount of compensation/award as per the principle laid down by the Apex Court as aforementioned and on the basis of the relevant documents. Since, it is already considered and the award has been passed, it is not a case for passing any further order. Accordingly, the findings as arrived at by the learned authority are just and proper and do not require any interference and thus, affirmed.

[24] Accordingly, the appeal and the cross-objection preferred by both the parties, stand dismissed. Consequently, the judgment and award passed by the learned authority stands affirmed. Draw the decree accordingly and thereafter, send down the LCRs forthwith. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A.Ghash

ANJAN
GHOSH

Digitally signed by
ANJAN GHOSH
Date: 2023.07.28
18:24:04 +05'30'