

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

L.A. App. No.66 of 2023

1. Oil and Natural Gas Corporation Ltd. Tripura Asset, Badharghat Complex, P.O. & P.S. A. D. Nagar, Agartala, District West Tripura Pin-799014 [represented by its authorized signatory Shri Ashim Mog].

.....Appellant

-VERSUS-

1. Ali Ajgar, son of Chand Miah of Putia, P.O. Putia, P.S. Kalamchawra, District: Sepahijala.
2. The Land Acquisition Collector, Sepahijala District, O/o the District Magistrate & Collector, P.O. Bishramganj, Pin-799103.

.....Respondent.

.....proforma-respondent.

For Appellant(s)	:	Mr. T. K. Deb, Advocate.
For Respondent(s)	:	Mr. A. Sengupta, Advocate.

L.A. App. No.86 of 2023

1. Ali Ajgar, son of Chand Miah resident of Putia, P.O. Putia, P.S. Kalamchawra, District: Sepahijala, Tripura.

.....Claimant-appellant

-VERSUS-

1. Oil and Natural Gas Corporation Ltd. Tripura Asset, Badharghat Complex, P.O. Amtali-799014, P.S. Amtali, Agartala, District West [represented by its Executive Director].
2. The Land Acquisition Collector, Sepahijala District, Bishramganj, Pin-799103.

.....O.P.-Respondents.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. A. Sengupta, Advocate.
For Respondent(s)	:	Mr. T. K. Deb, Advocate.
Date of hearing and delivery of judgment and order	:	28.08.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

Heard Mr. T. K. Deb, learned counsel appearing for the appellant and Mr. A. Sengupta, learned counsel appearing for the respondents [L.A. App. No.66 of 2023]. In L.A. App. No.86 of 2023 Mr. A. Sengupta, learned appears for the appellant and Mr. T. K. Deb, learned counsel appears for the respondents.

[2] These appeals have been filed under Section-74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 against the judgment and award dated 1st December, 2022 passed by the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura, Agartala in L.A. (Ref.) No.59 of 2018.

[3] The Government temporally acquired 4.01 acres land covering the land of the Referring Claimant for construction of Drill site and waste pit for the location of RODK at mouja- Putia, sheet No. 1/p, T.K. Veluarchar under Sonamura Subdivision, District Sepahijala vide Notification No. F.09 (01)-REV/ACQ/VIII/16, dated 05/02/2016. He was allowed compensation amounting to Rs. 12,40,350/- as damage cost of trees in his acquired land as per assessment of the Land Acquisition Collector, Sepahijala district (herein after referred as L.A. Collector). The referring claimant was not satisfied with the awarded compensation and filed application under Section-64 of the Act, 2013. L.A. Collector referred the case before the authority on 26.03.2018. On receiving the notice, the referring claimant and L.A. Collector appeared and submitted their respective statement.

[4] The authority after hearing the parties and having gone through the material evidence on record, has observed as under:

“11.(i) The referring claimant in addition to value of land is entitled to get compensation u/s. 29 of Act 2013 for 400 rubber trees amounting to Rs. 19,00,000/- In addition to the market value of the land is entitled 100% solatium over the compensation amount. (ii) 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, for the first year and interest at the rate of 15%p.a., for subsequent years, till deposit of entire amount. (iii) The amount already paid by the LA Collector shall be deducted in the excess compensation now awarded to the acquired property.”

[5] Mr. T. K. Deb, learned counsel appearing for the appellant, ONGC in support of his case has submitted that the authority by way of non-reading and

misreading and wrong appreciation of the documentary evidence on record arrived at erroneous and perverse findings causing grave injustice to the appellant.

[6] The Learned Land Acquisition, Rehabilitation and Resettlement Authority, ought to have held that the land of the claimant was acquired for temporary purpose for the period of 3 years from the date of commencement of such acquisition and the said land after use for 3 years would be returned to the claimant. In this view of the matter, cost of damage of the trees has been assessed at higher side without going to the actual girth of the trees which was admitted by the claimant in his claim statement in para-4. It is further submitted that the award of 100% solatium on the compensation so determined and imposing interest under Section 72 i.e. 9% interest per annum from the date of taking over possession of the land to the date of payment of the excess amount into the authority for the first year and interest @ 15% per annum for subsequent years, till deposit of entire amount is bad in law being in contravention of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

[7] Learned LARR Authority below did not at all consider the fact that after joint verification in the land of the claimant, various trees were found on the Plot Nos. 722, 723/P and 723/ 1586 (P)., planted by the referring claimant and amidst of them 400 number of rubber trees were also there having the girth of each in average 20 inches. The Referring Claimant also admitted in para-4 of his statement of claim that the said Rubber Trees attaining 50 cm girth and 125 cm height and became matured for tapping. 50 cm girth is equal to 20 inches girth. According to the statement of existing rates and proposed rates for surface damages of the trees in view of acquisition of land for different purpose as per rates of Revenue Department, 20 inches girth of Rubber trees of 1 to 2 years maximum rate is Rs.700/- per tree.

[8] The acquisition of land being done following the Land Acquisition Act and Rules made there under and guidelines issued by the Revenue Department, Govt. of Tripura time to time but not governed by any other rules and regulations. Learned LARR Authority committed grave error in determining the rate of compensation assessed for per tree at the rate of Rs.4750/- and further the Learned Court below by enhancing the rate of damage of tree to the extent of Rs.4,750/- per tree has caused serious miscarriage of justice to the Appellant.

[9] The Learned LARR Authority ought to have considered that the claimant did not mention the exact date of planting rubber trees and in absence of which it is difficult to determine the age of the tree and for which the Learned LARR Authority ought to have considered the measurement of the girth of the Rubber trees. But the Learned LARR Authority without considering the same arrived at an erroneous finding holding that the claimant will be entitled to Rs.4750/- per tree as compensation on the basis of the age of the tree as allegedly 8 years. So the assessment and compensation as awarded by the Learned LARR Authority is wrong, improper, erroneous and without any basis and therefore, the impugned Judgment and award of compensation is liable to be modified.

[10] The Learned Court below ought to have considered that the guideline of the Rubber Board in respect of the rate for causing damage to the rubber plantation will not be applicable in the present case since the acquisition of the land of the claimant is for three years i.e. for temporary acquisition and after expiry of the said stipulated period the land would be returned to the claimant. In view of what has been stated above the claimant cannot claim the rate for damage of rubber tree as fixed by the Rubber Board but the said rate for damage of rubber tree would be assessed as per the guideline of the Revenue Department to the Govt. of Tripura. The Learned Court below did not consider the said aspect and therefore, the impugned judgment and award of compensation is liable to be modified.

[11] The Learned Court below ought to have considered that during preparation of land statement and other allied works by way of joint survey, the claimant was found in possession of land of plot no. 722, 723/p and 723/1586(p) by way of raising Rubber Plantation and other forest and fruit bearing trees, such as Segun, Karoi, Jackfruits etc. although he was not lawful owner of the said land. In order to assess the damage compensation of those trees, the existing Guideline of the Government of Tripura was followed. But the Learned LARR Authority did not consider the same.

[12] The Learned Court below ought to have considered that the enhanced value of rubber tree for Rs 4700 per tree following the Judgment passed by the This Court in L.A. App.No.108 of 2014 will not be applicable in this case because the said case was a case of permanent acquisition. But the present case is for temporary acquisition of the land and the land would be handed over to its

owner/possessor after three years of acquisition. The claimant would get back his land after three years and can make plantation. The rate of rubber plant has been assessed at a proper rate by the LA Collector following the Notification of the Revenue Department, but the LARR Authority has assessed the rate of rubber plant per tree for Rs.4700/- which is not only wrong, perverse and ignoring the existing guideline of the Notification issued by the revenue Department but also a glaring example of non-application of mind judiciously and, therefore, the claimant is not entitled to any compensation assessment of which was based on the norms of Rubber Board.

[13] The Learned Court has erred in not appreciating that the proceedings are related to temporary acquisition of land under Section 81 of the Act, 2013 and therefore, 100% solatium cannot be imposed on the amount so determined by the learned Authority. Learned Authority failed to appreciate that present case being of temporary acquisition interest under Section 72 of the Act, 2013 cannot be imposed which is applicable exclusively in cases of permanent acquisition of the land. Learned Authority thus erred in not appreciating that interest under section 72 of the Act is awarded in the course of and as a part of permanent acquisition.

[14] Mr. A. Sengupta, learned counsel appearing for the claimant-appellant in L.A. App. No.86 of 2023 in support of his case has submitted that the determination of damage cost per rubber tree @Rs. 4,750/-i.e. 50% of the rate fixed by the Rubber Board in Exhibit-1 is not acceptable to the referring claimant-appellant. The findings of the learned tribunal below that since the land was temporarily acquired for 3 years and after 3 years the land would return back to the owner and the owner would be able to reuse the land, hence, damage cost per rubber tree was assessed at Rs. 4,750-i.e. 50% of the rate fixed by the Rubber Board in Exhibit-1 is erroneous, improper and unjust in the eye of law.

[15] The learned tribunal should have considered that the referring claimant appellant only raised claim for sufficiency of compensation for loss of his 400 numbers of rubber trees due to acquisition of land and he never differ as to the sufficiency of compensation for the land. The learned tribunal below should have considered that due to such acquisition of land, the referring claimant appellant lost his 400 numbers of rubber trees of 8 years old not temporarily, but permanently forever. Hence, he is entitled to get full potential value of each rubber tree as assessed by the rubber tree in Exhibit-1.

[16] In view of above discussions and after gone through the evidence on record for a definite conclusion, let us revisit the evidences once again. Exhibit-C (OP-1) is the Apportionment of compensation for various trees of referring claimant prepared in Land Acquisition Special Form. But in this case the claim of referring claimant is limited to the rate of 400 hundred rubber trees. Exhibit-C (OP-1) shows that L.A. Collector, Sepahijala District awarded compensation as damage cost of 400 rubbers tree (Rs.700/- X 400) - Rs.2,80,000. Learned counsel Mr. A. Sengupta submits that the damage cost of the rubber trees assessed is most arbitrary. The assessment should be made as per cost benefit analysis (Exhibit-2) by the Rubber Board. The argument of the learned counsel of OPs is that the rate is determined by the L.A. Collector on the basis of a notification No. F.30(02)-REV/ACQ/2002 dated 22.07.2013 issued in the Revenue Department, Government of Tripura marked as Exhibit-D (OP-1) for the purpose of acquisition of land. A perusal of the said notification at Sl. No. 41 of the said notification dated 22.07.2013 shows the rate of rubber plant for the age groups in between 1 to 3 years are mentioned but nothing has mentioned about the rate for the other age's rubber trees.

[17] Exhibit-B (OP-1) is the statement of cost of damage of trees in acquisition in Form No.11 prepared by the LA Collector also does not show the age of the rubber trees except the measurement of girth of the tree. So it cannot be said that the rate fixed by the LA Collector is according to the notification of the Revenue Department. Even it is accepted that the rate fixed by the LA Collector is in accordance with the guidelines of the Revenue Department, the determination is not correct for the reasons that in Exhibit-B (OP-1), the statement of assessment does not show the age of rubber trees on the acquired land. The claimant stated in his evidence that the age of tree was 7 years. According to his claim statement the trees were planted in the year 2007 where as the acquisition was made in the year 2016 (LA Case No.03/SNM/2016). From Exhibit-B (OP-1), the statement of assessment I find that the girth of the rubber tree is 20 inch. From the size of the trees one can presume that the rubber trees on the acquired land were enough matured for tapping of latex. Therefore, the evidence of referring claimant that the age of trees is 7 years is convincing.

[18] Section 29(2) of the Act, 2013 says that for determination of the compensation of trees the collector shall take the service of experienced person in

the relevant field. In this case the experienced person is the Rubber Board Authority who deals with the production of rubber in the country. The claimant relied on the communication dated 28.03.2012 in respect of the cost benefit analysis of rubber issued by the Rubber Board (Exhibit-1).

[19] It is seen from record that there is no expert opinion or any documentary proof on behalf of the ONGC in support of their case that the claimants are not entitled to Rs.9,500/- per tree nor the life of the tree is less than 8 years (1-3 years only as contended) nor the girth of the tree is smaller than required since no evidence is led and no documentary proof is filed, this Court is not inclined to appreciate the case of ONGC.

[20] The communication shows that the loss per rubber tree is Rs. 9500/- for the rubber tree of 8 years old but, in this case the acquisition is temporarily for three years and after three years the land would go back to the owner but, it should be kept in mind that the loss per rubber tree amounting to Rs.9,500/- for the rubber tree of 8 years old, so assessed by the learned tribunal below was absolutely correct but, the deduction of 50% amount due to the reason that it is a temporary acquisition for 3 years and after 3 years the land would go back to the claimant-appellant and would be able to reuse the land, is totally improper and unjust in the eye of law. The learned tribunal ought to have considered the fact that the referring claimant-appellant only raised claim for sufficiency of compensation for loss of 400 numbers of rubber trees. Due to such acquisition of land, the referring claimant-appellant lost 400 numbers of rubber trees of 8 years old not temporarily, but permanently forever. As such, the deduction should not be there. Hence, the rate of the rubber trees would be Rs.9,500/- instead of Rs.4,750/- as per cost benefit analysis by the Rubber Board.

[21] Accordingly, the appeal preferred by the claimant-appellant stands allowed. Consequently, the appeal preferred by the appellant-ONGC stands dismissed. Draw the decree accordingly and thereafter, send down the LCRs forthwith. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

A.Ghosh

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