

**HIGH COURT OF TRIPURA
AGARTALA**

LA App. No. 28 of 2023

The Deputy Chief Engineer (Construction-1),
N.F. Railway, Badharghat, Agartala.

..... Appellant

V E R S U S

1) Smt. Sandhya Rani Deb,
Wife of late haripada Deb, resident of Charipara,
P.S. Amtali, District- West Tripura

2) Sri. Rajesh Deb,
Son of late Haripada Deb, resident of Charipara,
P.S. Amtali, District- West Tripura.

....Respondents (Referring claimants)

3) The Land Acquisition Collector,
West Tripura, Agartala.

..... Respondent

For Appellant(s) : **Mr. B Majumder, Dy. SGI.**

For Respondent(s) : **Mr. D. R. Choudhury, Sr. Adv.**
Mr. D. Deb, Adv.

Along with

CO (FA) No. 10 of 2023

1. Smt. Sandhya Rani Deb (aged 62 years)
W/O Lt. Haripada Deb

2. Sri Rajesh Deb (aged 40 years)
S/O Lt. Haripada Deb

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

.....Referring-Claimants-Respondent-Cross Objectors

V E R S U S

1.The Deputy Chief Engineer, Con-1

N.F. Railway, Badharghat, Agartala

P.S.- Amtali, District- West Tripura

.....O.P. No.1 – Appellant

2. The L.A. Collector

West Tripura, Agartala

Pin.- 799001

.....O.P. No.2-Respondent

For Appellant(s)	:	Mr. D. R. Choudhury, Sr. Adv. Mr. D. Deb, Adv.
For Respondent(s)	:	Mr. B Majumder, Dy. SGI.
Date of hearing	:	08.12.2023
Date of Delivery of judgment	:	25.01.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. D. PURKAYASTHA
ORDER & JUDGMENT

Both the appeal and cross objection have arisen from the award passed by Land Acquisition, Rehabilitation and Resettlement Authority of Tripura (for short, "the authority") on 23.08.2022 in LA Case. No.85 of 2017.

2. An area of 0.43 acre of the land of the claimant-cross objectors (hereinafter referred as the Claimants) was acquired by the government vide notification No.F.09(05)-REV/SEQ/VI/16 dated 28.01.2017 issued under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the

Act”) for the purpose of construction of Agartala–Akhaura new railway line appertaining to the following RS plots with respective areas:

Acquired Land			
Khatian No.1031 of mouja- Charipara	Plot No.	Quantum of Land acquired	Class of Land
	6876	0.06 acr.	Chara (Tilla)
	6898	0.27 acr.	Chara (Tilla)
	6907	0.10 acr.	Bastu (Tilla)
Total- 0.43 acr.			

3. The LA Collector awarded compensation @ Rs.4.50,000/- per kani for both the classes of land and thereafter, applied the multiplier of 1.5 to reach out the quantum of compensation apart from other statutory interests. On reference, the authority enhanced the compensation and made it @ Rs.30,40,000/- per kani with other statutory reliefs, including a similar application of the multiplier of 1.5.

4. The original owner, Smt. Sandhya Rani Deb, transferred the said acquired land to her son Rajesh Deb and therefore, Rajesh Deb was also made a party before the authority.

5. Claim of the claimants for the land valuation before the authority was @ Rs.1,50,00,000/- per kani. According to them, the acquired land was located at Mouja Charipara under Tahshil Badharghat nearby the Agartala Municipal Corporation area conjoined with present-time facilities like water and electricity supply, road communication, existence of different Govt. offices in that locality etc. According to them,

TMC & Dr. B.R.M Teaching Hospital and Badharghat Railway Station were also situated within the range of 1.5 km therefrom.

6. LA Collector contested the proceedings before the authority supporting their award, stating that after considering several sale exemplars available for the adjacent lands and also considering the market price prevailing at the relevant point of time, the compensation was duly determined by them.

7. From the side of the claimant, Sri. Rajesh Deb examined himself before the authority and also proved four numbers of sale deeds and one map to support their claim, whereas from the side of LA Collector, one Narendra Chandra Deb was examined and six numbers of sale deeds were proved into evidence. The appellant NF Railway, did not contest the claim by submitting any counter objection.

8. During hearing, Mr. B Majumder, learned Deputy SGI, argued that the award passed by the authority was exorbitant and that even the authority enhanced the compensation six times more than the award passed by the LA Collector.

9. According to Mr. Majumder, learned counsel, the authority relied on the Exbt.-1 and Exbt.-4 to determine the compensation and Exbt.-1 relates to Bastu class of land and not similar to the acquired plot of Bastu (tilla) class of land and therefore, the authority misapplied the provision of Section 26 of the Act which envisages that the sale deeds in respect of similar class of land should be taken into consideration and moreover, Exbt.-4 was executed just few days prior to the date of notification. Learned counsel further tried to bolster his submission, stating

that the land of Exbt.-4 was not traceable in the map (Exbt.-5) indicating thereby, that it was far away from the acquired land.

10. Mr. Majumder, learned counsel further challenged the award on the ground that nowhere the distance of the sale exemplars from the acquired land were mentioned but the authority lost sight of the same.

11. Mr. D. Deb, learned counsel for the claimants, refuted the submission, pointing out that the lands under Exbt.-1 and Exbt.-4 were similar in class as of the acquired land, and there the transaction took place at a much higher rate and illegally the authority while determining the compensation reduced 20% from the sale price of Exbt.-1 and 40% from the sale price of Exbt.-4 on the ground of development costs and also on consideration that the area of the plots under Exbt.-1 and Exbt.-4 were smaller than the acquired land. Therefore, according to Mr. Deb, learned counsel, higher price ought to have been awarded by the authority to the claimants.

12. Before re-appreciating the evidence on record and the observations made by the authority, the basic principles underlying in the Act for determination of market value of land, are required to be referred to. Sub-Section (1) of Section 26 of the Act, therefore, is reproduced bellow:-

"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 (2 of 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 1- 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 agreements 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."

13. To determine the compensation basing on the sale exemplars, the provision, therefore enumerates that the average sale price for a similar type (*emphasis laid*) of land situated in the near village or near vicinity area should be taken into consideration. Therefore, the land under sale exemplar, even if not situated in the same village of the acquired land, is also permitted to be taken into consideration. Explanation 2 of Section 26

further stipulates that one-half of the total number of the sale deeds shall be taken into account in which the highest sale price (*emphasis laid*) has been demonstrated.

14. The provision of Section 26 further cast a duty on the Collector to consider the sale price of similar type of land. The words 'similar type' cannot be equated with the words 'same type'. As per Oxford Advanced Learner's Dictionary, 8th Edition, the word 'same' denotes '*exactly the one or ones referred to or mentioned*' whereas, the word 'similar' means '*like but not exactly the same*'.

15. Explanation No.1 provides that the sale transactions or agreement to sale of similar types of area of preceding three years should be taken into consideration, and the same may be made the basis for determining such compensation after taking average sale price of one-half of the total number of sale deeds or sale agreements which were on highest side. The words 'similar type of area' as mentioned in Explanation 1 do not confine only to take into consideration of the sale exemplars involving similar quantity of land, like the quantity of the acquired land. Otherwise, on many occasions, it may not be possible for the acquiring authority to collect such types of sale exemplars having similarity with both class and quantity of the acquired land.

16. The authority in the impugned award has also given a tabular demonstration of the sale exemplars relied upon by both the parties in table 1 and table 2 which for useful references are reproduced hereunder:-

Table-1 (Exhibited Sale deeds and map)

Sl.	Exhibit No.	Sale Deed/Map	Type/Class of Land	Quantum of Land	Value (Rs.)	Rate per kani
1	1	Sale Deed No.1- 1728, dated 22.03.2013	Bastu	0.030 acre	3,00,000/-	40,00,000/-
2	2	Sale Deed No.1- 1729, dated 22.03.2013	Bastu	0.010 acre	5,00,000/-	2,00,00,000/-
3	3	Sale Deed No.1- 1609, dated 22.03.2014	Nal	0.060 acre	4,50,000/-	30,00,000/-
4	4	Sale Deed No.1- 57, dated 04.01.2017	Chara (Tila)	0.050 acre	6,00,000/-	48,00,000/-
5	5	Settlement Map of mouja Charipara (sheet No.2) showing Plot No. 6876,6898 and 6907.				
6	6	Khatian No. 1031 in the name of Rajesh Deb.				

Table-2 (Exhibited Sale deeds of OP No.2)

Sl.	Sale Deed	Type/Class of Land	Quantum of Land	Rate per Kani	Value (Rs.)	Exhibit No.
1	Sale Deed No.1- 3185, dated 08.04.2016	Bagan (Tila), Chara (Tila) & Bastu (Tila)	0.140 acre	Rs. 1.5 Lakh	RS. 40, 000/-	A
2	Sale Deed No.1- 4537, dated 13.05.2016	NAL	0.200 acre	Rs. 1.60 Lakh	Rs. 80, 000/-	B
3	Sale Deed No.1- 7952, dated 10.09.2015	TILA	0.040 acre	Rs. 3 Lakh	Rs. 30,000/-	C
4	Sale Deed No.1- 0405, dated 21.01.2014	NAL	0.310 acre	Rs. 1.3 Lakhs	Rs. 1,00,000/-	D
5	Sale Deed No.1- 647, dated 31.01.2014	Tilla/Chara (Nal)	0.030 acre	Rs. 4 Lakh	Rs. 30,000/-	E
6	Sale Deed No.1- 1756, dated 13.03.2014	NAL	0.630 acre	Rs. 1.77 Lakh say Rs. 1.8 Lakhs	Rs.2,80,000/-	F

17. The authority while appreciating those sale exemplars observed that the acquired plot Nos.6867 and 6898 are connected with one road and the land was not far away from the Agartala city area.

18. The reasons, as assigned by the authority, for determination of the land valuation after appreciation of the sale exemplars, are referred by extracting para 35 of the impugned award:

"35. Now coming to the acquired land measuring $(0.060+0.270+0.100)=0.430$ acres classified as Bastu (Tilla), and Chara (Tilla) is to be compared with the similar class of sale instances under Exhibit-1, Exhibit-2, Exhibit-4, Exhibit-A and Exhibit-C. According to the provision in section 26 of the RFCTLARR Act, 2013 and the guideline of the Hon'ble Supreme court in Special Land Acquisition Officer and another vs. Sidappa Omanna Tumari and another (supra) it is necessary to consider the area or size of the acquired land. The quantum of land under Exhibit-2 (Sale deed no.-1-729) dated 22-03-2013 is 0.010 acre only. The size of this plot is so small that it is not at all suitable for construction of any house or building except for a shop in the market area. The said land perhaps purchased for construction of shop in the market area or to extend of any adjacent area for construction of building. It is not the case of the claimant that the acquired land is located at market area. So the sale instance under Exhibit-2 is discarded as it is not similar type of land in view of the reasons as stated above. On scrutiny of the sale instances, it is transpired that the transaction value of land measuring 0.030 acre classified as 'Bastu' under Exhibit-1 is Rs.3,00,000/- i.e. Rs.40,00,000/- per kani (0.04 acre). Again land measuring 0.05 acres under Exhibit-4, classified as Chara (Tila) was sold for Rs.6,00,000/- i.e. Rs. 48,00,000/- per kani. The quantum of land in Exhibit-1 and Exhibit -4 are very small as compared to the acquired land. Therefore, sale price of instance under Exhibit-1 should be reduced by 20% and the sale price of land under Exhibit-4 be reduced by 40% (towards small size and Development cost). So the discounted price of land under Exhibit-1 per kani (0.400 acre) is reduced to Rs.32,00,000/- and the price of Exhibit-4 per kani reduced to Rs.28,80,000/-. The price of sale instance under Exhibit-A is Rs.1,14,000/- and Exhibit-C is Rs.3,00,000/-. In view of the Explanation - 2 to section 26 (1) of the RFCTLARR Act, 2013 one half of the total number of sale deeds or agreement to sell of the highest sale price shall be taken into account. So, to determine the market price Exhibit-1 and Exhibit-4 are taken into consideration. On calculation, the

average market price per kani of land under Exhibit-1 and Exhibit-4, is $(32,00,000+28,80,000)/2 = \text{Rs. } 30,40,000/-$. Accordingly, the market value of land measuring $(0.060+0.270+0.100) = 0.430$ acres classified as Chara (Tilla) and Bastu (Tilla), under plot Nos. 6876, 6898 and 6970 is determined at the rate of Rs.30,40,000/- per kani which is to be multiplied by factor 1.5 to determined the value of the acquired land."

19. The authority therefore, apart from Exbt.-1, Exbt.-4, Exbt.-A i.e. of Bastu, Chara(tilla), Bagan (tilla) with chara (tilla) and Bastu (tilla) class of land respectively, also took into consideration Ext.C i.e tilla class of land, and the land under Exbt.-2 was discarded by the Authority on the ground that the area of the land (0.1 acre) was too small assuming that it was perhaps purchased for construction of any shop with commercial intent.

20. Ext.1 and Ext.2 were executed beyond the preceding 3 years of the year of acquisition. Only Ext. 4 and Ext.A are of Chara (Tilla) class of land like the acquired land. Land under Ext.C is of Tilla class i.e. more or less similar to some of the acquired plots. Therefore, if these 3 deeds are taken into consideration, one-half of the exemplars on the higher side are Ext.4 and Ext.C. If, average of the rate involved in Ext.4 and Ext.C are taken into consideration, it comes to Rs.25,50,000/-.

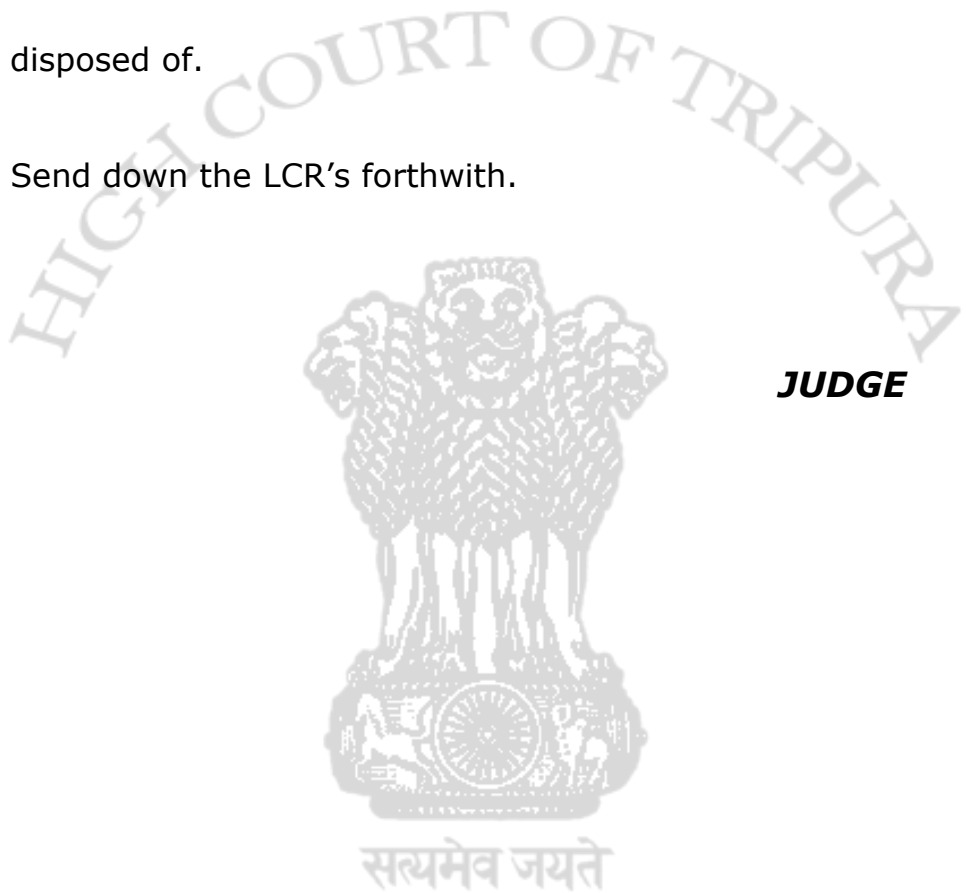
21. Situated thus, the value of the acquired land is determined @ Rs.25,50,000/- per kani. The claimant-cross objectors are, therefore, entitled to get compensation for the land @ Rs.25,50,000/- per kani and along with the same, they will be entitled to get further compensation by multiplying such land value with the factor 1.5, 100% solatium and additional compensation/interest under Sections 69 and 72 of the Act as

awarded by the authority. In addition, a cost of Rs.1000/-, as awarded by the authority, will also be paid by the LA Collector to the claimants.

Accordingly, the appeal is partly allowed and the cross objection is dismissed.

No order as to any other cost(s). Pending application(s), if any, also stands disposed of.

Send down the LCR's forthwith.



SATABDI DUTTA

Digitally signed by SATABDI
DUTTA

Date: 2024.01.29 13:45:26 +05'30'

Satabdi