

**HIGH COURT OF TRIPURA
AGARTALA
L.A.APP.No.31 of 2024**

The Union of India,
represented by the 2nd in Commandant
for Commandant H.Q.,6 Bn, BSF, Fatikcherra,
Mohanpur, District-West Tripura

----Appellant-Opposite Party(s)

Versus

1. Sri Pradip Das,
son of Late Mani Bhusan Das

2. Sri Krishna Kanta Das,
Son of Late Mani Bhusan Das

3. Sri Keshab Kumar Das,
son of Late Mani Bhusan Das

4. Smt. Uma Das,
daughter of Late Mani Bhusan Das
wife of Sri Badal Roy Sarkar

5. Smt. Purnima Das,
daughter of Late Mani Bhusan Das
wife of Sri Sushanta Roy

all are represented by Sri Pradip Kumar Das,
son of Late Mani Bhusan Das of Jagatpur,
P.O. Abhoynagar, P.S. East Agartala, District-West Tripura

(The Referring Claimants No.1 is their constituted Attorney)

----Respondent-Claimant(s)

6. L.A. Collector,
West Tripura, Agartala

----Respondent (s)

For Appellant(s)	:	Mr. B. Majumder, DSGI.
For Respondent(s)	:	Mr. S.S. Debnath, Adv. Mr. D.S. Kunwar, Adv.
Date of Hearing	:	05.07.2024
Date of delivery of Judgment & Order	:	09.07.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

This is an appeal under Section 54 of the Land Acquisition Act challenging the judgment and award dated 25.07.2023 passed in connection with Case No.Misc.(L.A.)196 of 2014 delivered by Learned Land Acquisition Judge, Court No.1, West Tripura, Agartala.

2. Heard Mr. B. Majumder, Learned DSGI appearing for the appellant and Mr. S.S. Debnath, Learned counsel appearing for the claimant-respondent Nos.1 to 5 and also Mr. D.S. Kunwar, Learned counsel appearing for the respondent No.6, L.A. Collector.

3. In course of hearing of argument, Learned counsel for the appellant submitted that the Learned L.A. Judge without application of proper mind has determined/assessed the market value of the acquired land @ Rs.25,00,000/- per kani for which the judgment/award needs to be set aside. Learned counsel for the appellant in course of hearing referred para Nos.19, 22, 23, 24 & 26 of the judgment and submitted that the referring-claimants in support of their claim could not adduce any satisfactory documents i.e. the sale deeds for proper determination of the compensation and the Learned L.A. Judge without any basis and without any reasoning and finding has determined the market value @ Rs.25,00,000/- per kani. Referring para-22 of the judgment he submitted that the sale instance (Exbt.4) appears to be executed in the year 2001, but the notification for acquisition of land was published in the year 2011 i.e. 9 years after the date of execution of the sale deed in question. So, there was no scope to place any reliance upon that document.

4. Referring para Nos.23 & 24, Learned counsel for the appellant submitted that on perusal of paper book and also on perusal of the said document i.e. Exbt.2 the same was nothing but a general power of attorney wherein Learned Court below in the judgment/award mentioned that it was a sale deed. Thus, it is clear that without application of proper mind he has delivered the judgment.

5. Finally, in para No.26 according to the Learned counsel for the appellant the Learned L.A. Judge without any reasoning and finding has assessed the market value of the acquired land @ Rs.25,00,000/- per kani. So, Learned counsel for the appellant urged for setting aside the award delivered by the Learned L.A. Judge.

6. Learned counsel for the appellant further submitted that the land of Exbt.4 is 'vastu' class of land and the acquired land was 'nal' class of land which are totally different and no site plan or map is proved by the respondent-claimants before the Learned Court below to substantiate that the same was nearby the original land for which this cannot be compared as a sale instance in determination of the market price of the acquired land.

7. On the other hand, Learned counsel for the referring-claimants drawn the attention of the Court that initially on the claim of the referring-claimants i.e. the respondent herein Learned L.A. Judge passed an award determining the market value of the acquired land @ Rs.35,00,000/- per kani and challenging that award, the present appellant preferred an appeal before the High Court which was numbered as L.A.53 of 2020 and this High Court after hearing a batch of matters in L.A. appeals by a common judgment remanded back the matter to the Learned L.A. Judge by the judgment and award dated

22.02.2023 with a direction to rehear the matter and to pass a reasoned judgment in accordance with law within a period of 6(six) months after appreciating the evidence on record and accordingly, the Learned L.A. Judge passed a fresh judgment on 25.07.2023 against which the present appeal is preferred by the appellant.

8. I have heard arguments of both the sides and gone through the records of the Learned Court below. It appears that on a reference under Section 18 of L.A. Act Misc.(L.A.)Case No.196 of 2014 was registered before the L.A. Judge, West Tripura, Agartala, Court No.1 whereas both the parties have submitted their claim statement and their counter statement and after taking evidence on record Learned L.A. Judge passed an award/judgment. Initially, award was passed determining the market price @ Rs.35,00,000/-per kani which was challenged in appeal and this High Court as already stated was pleased to set aside the judgment and remanded back the matter to the Learned L.A. Judge with a direction to pass a fresh judgment after appreciating the evidence on record and accordingly, the judgment was passed.

9. In the case at hand, land measuring 0.94 acres classified as 'nal' under mouja-Ramnagar, Sheet No.2/p, recorded in khatian No.3121 comprising in C/S plot Nos.4384, 4301, 4218, 4213/p and 4304 belonging to the referring-claimants were acquired by the government for the purpose of establishment of BOP ACP of 6 Bn. BSF under Sadar Sub-Division, West Tripura District vide notification No.F.09(02)-REV/ACQ/VI/11 dated 21.02.2011. The referring-claimants were represented by their constituted attorney No.1 by submitting a General Power of Attorney. The L.A. Collector in determining the compensation assessed the market value of the acquired land @ Rs.37,50,000/- per

acre and also assessed additional compensation @ 30% solatium and interest @ 12% per annum w.e.f. 24.02.2011 to 22.07.2011 for a period of 149 days and assessed the total amount of compensation amounting to Rs.47,55,177/-. As the claimants were dissatisfied with the award of the L.A. Collector so they submitted an application before the Learned L.A. Collector for referring the matter before the L.A. Judge for determination of compensation as per prevailing market price of the acquired land. The matter was accordingly come up before the Learned L.A. Judge and the case was registered and both the parties submitted their claim statement and counter-statement. Before the Learned L.A. Judge one of the referring-claimants namely Sri Pradip Kumar Das was examined as P.W.1 and he relied upon some documents General Power of Attorney dated 06.03.2019 (8 sheets) which was marked as Exbt.2 to Exbt.2(vii), the copy of sale deed bearing No.1-1597 dated 25.02.2015 (9 sheets) marked as Exbt.3 to Exbt.3(viii), the copy of sale deed no.1-9625 dated 12.11.2001 (4 sheets) marked as Exbt.4 to Exbt.4(iii). From the side of the L.A. Collector one Debananda Debbarma, Senior Government Surveyor was examined and from the requiring Department one witness namely Sri K. Nath, Head Constable (Ministerial), Office of the Commandant 120 Bn. BSF, Fatikcherra, Tripura was examined as OPW-2. No documentary evidence was adduced by the opposite parties to substantiate their pleadings. Finally, on the basis of evidence on record, Learned L.A. Judge determined the market value of the acquire land @ Rs.25,00,000/- per kani by the judgment/award dated 25.07.2023.

10. I have gone through the para Nos.19, 20, 23 & 24 of the judgment it appears that the Learned Tribunal below did not rely upon

Exbt.3 i.e. the sale deed of the year 2015 as it was four years later from the date of notification of acquisition. So, Learned Tribunal below did not consider the same. Rather, Learned Tribunal below relied upon Exbt.4 i.e. sale deed of the year 2001 which was executed almost nine years prior to the date of notification of acquisition. In para Nos.23 & 24 Learned Tribunal below relied upon Exbt.2 but factually on perusal of records it appears that the same was a General Power of Attorney, not a sale deed. It is not clear how the Learned Tribunal below referred Exbt.2 in paras-23 & 24 of the judgment, there was no explanation in this regard. Exbt.2 was a General Power of Attorney which was executed by Sri Krishna Kanta Das, Sri Keshab Kumar Das, Smti. Uma Das and Smti. Purnima Das in favour of one Sri Pradip Kumar Das. Thus, it appears that the Learned Tribunal below either misconstrued the said exhibited document or did not apply the mind at the time of delivery of the judgment properly in referring the document as Exbt.2.

11. In course of hearing of argument, Learned Counsel for the appellant relied upon two citations. In **Shaji Kuriakose and Another versus Indian Oil Corporation Ltd. and Others** reported in **(2001) 7 SCC 650** the Hon'ble Apex Court in para No.3 observed as under :

"3. It is no doubt true that courts adopt comparable sales Method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as Capitalisation of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value the land reflected in the sales. The factors laid down" inter alia are : (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the

date of issue of notification under Section 4 of the Act, that (3) the land covered by the sales must be in the vicinity of the acquired land, that (4) the land covered by the sale must be similar to the acquired land and that (5) the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ex. A-4 is genuine, inasmuch as sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ex. A-4. The land covered by Ex. A-4 is situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlong from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimantssss, whose land has also been acquired. Further, the land covered by Ex. A-4 is a dry land and whereas the acquired land is a wet land. After acquisition, the acquired land has to be re-claimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ex. A-4 relates to a small piece of land which do not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation that what was the market value of the land covered by Ex. A-4. We therefore, do not find any infirmity in the judgment of the High Court. "

In **Karnataka Urban Water Supply and Drainage Board and Others versus K.S. Gangadharappa and Another** reported in **(2009) 11 SCC 164** the Hon'ble Apex Court in paras-9 & 10 observed as under :

"9. It is right as contended by learned counsel for the respondents that deductions can be made for development. But the deductions have to be made from some definite figure. In the instant case the High Court has not indicated any basis but has come to an abrupt conclusion that the claim of the owners for enhancement has to be accepted but not for Rs.9,00,000/- per acre as claimed but at Rs.4,00,000/- per acre. Market value has a definite concept and it cannot be evaluated without any foundation or basis.

10. In the circumstances we set aside the impugned judgment of the High Court to decide the matter afresh and indicate a basis for fixation of market value at a definite figure. The appeals are allowed to the aforesaid extent."

Referring the same, Learned counsel for the appellant drawn the attention of the Court that the Hon'ble Apex Court has given certain parameters in determining the amount of compensation in respect of the

acquired land which the Learned Tribunal below consider in this case at the time of delivery of judgment for which the interference of the Court is required by setting aside the judgment of the Learned Tribunal below.

12. I have perused the record of the Learned Tribunal below very carefully. It appears that at the time of determination of compensation in respect of the present case Learned Tribunal below relied upon Exbt.4 i.e. the sale deed of the year 2001 which was almost about nine years earlier prior to the date of notification in the year 2011. Furthermore, in the said deed the quantum of land has been shown as the 'vastu' viti class of land whereas in the present case, the acquired land of the referring-claimants was nal/paddy land which is apparent from the judgment of the Learned Tribunal below. So, in view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned cases it appears that the Learned Tribunal below without application of proper mind and without considering all the above factors determined the amount of compensation in respect of the acquired land without assigning any justified grounds/reasons @ Rs.25,00,000/- per kani for which in my considered view the judgment/award of the Learned Tribunal below suffers from perversity. So, it appears that the matter again needs to be remanded back to the Learned Tribunal below again either to take fresh evidence of both the sides or to re-appreciate the evidence on record properly and to deliver the judgment afresh. At the time of determination of the judgment, Learned Court below should consider the following factors :

(1) the sale must be a genuine transaction.

(2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act.

(3) the land covered by the sales must be in the vicinity of the acquired land.

(4) the land covered by the sale must be similar to the acquired land.

(5) the size of plot of the land covered by the sales be comparable to the land acquired.

13. Here in the case at hand, it appears that the Learned L.A. Judge could not consider the above factors in determining the amount of compensation and furthermore, if it is found that the Learned L.A. Judge relied upon Exbt.4 which was in respect of 'vastu' 'viti' class of land but in the present case the acquired land was 'nal' class of land. So, there was no scope on the part of Learned L.A. Judge to rely upon said Exbt.4 at the time of determination of compensation. So, it appears that in absence of consideration of the above factors the judgment delivered by Learned L.A. Judge needs to be set aside.

14. In the result, the appeal filed by the appellant is hereby allowed. The judgment and award dated 25.07.2023 delivered by Learned L.A. Judge, Court No.1, West Tripura, Agartala in connection with Misc.(L.A.)196 of 2014 is hereby set aside. The case is remanded back to the Learned L.A. Judge with a direction either to take fresh evidence of both the parties after hearing Learned counsels for the parties or to re-appreciate the evidence already on record and to deliver a fresh judgment after considering the above factors within a period of 3(three) months from the date of receipt of a copy of the judgment/order.

Learned counsel of both the parties be asked to appear before the Learned L.A. Judge on **19.07.2024**.

Draw the decree accordingly.

Send down the LCRs along with a copy of the judgment immediately.

It is necessary to mention here that initially the appellant submitted a Demand Draft of Rs.71,63,949/- vide No.489377 dated 08.03.2021 in pursuance of order dated 17.11.2020 passed in I.A.No.01 of 2020 (stay petition) arising out of L.A. App.No.53 of 2020 and thereafter, as per order of the Court, 50% of the aforesaid amount was released in favour of the referring-claimants by this Court and the remaining amount is lying with the Registry. So, the balance amount would remain with the Registry till disposal of the case by the Learned L.A. Judge as per judgment of this Court or any further order thereof.

The case is thus disposed of.

Pending application/s, if any, also stands disposed of.

JUDGE