

**HIGH COURT OF TRIPURA
AGARTALA**

L. A. App. No.40 of 2023 & L. A. App. No.41 of 2023

1. L. A. App. No.40 of 2023.

1. The Executive Officer,
Tripura Housing & Construction Board,
Gurkhabasti, Agartala, PO- New Kunjaban,
PS-New Capital Complex, District- West Tripura,
PIN-799006

.....Appellant(s).

Versus

1. Sri Biswajit Modak,
S/O- Paresh Modak,
Of Renters Colony, Anandanagar,
P.O.- Anandanagar,
P.S.- East Agartala, PIN-799004.
District:- West Tripura.

.....claimant-respondent.

2. L.A. Collector, West Tripura,
Office of the DM & Collector,
West Tripura, Agartala, PIN-799001.

.....OP-respondent.

2. L. A. App. No.41 of 2023.

1. The Executive Officer,
Tripura Housing & Construction Board,
Gurkhabasti, Agartala, PO- New Kunjaban,
PS-New Capital Complex, District- West Tripura,
PIN-799006

..... Appellant(s).

Versus

1. Sri Satyajit Modak,
S/O- Paresh Modak,
Of Renters Colony, Anandanagar,
P.O.- Anandanagar,
P.S.- East Agartala, PIN-799004.
District:- West Tripura.

.....claimant-respondent.

2. L.A. Collector, West Tripura,
Office of the DM & Collector,
West Tripura, Agartala, PIN-799001.

.....OP-respondent.

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For Appellant	: Mr. Suman Bhattacharjee, Advocate. : Ms. D. Sengupta, Advocate.
For Respondent(s)	: Mr. Sankar Bhattacharjee, Advocate. : Mr. P. Debnath, Advocate. : Mr. S. Noatia, Advocate. : Mr. P. S. Roy, Advocate.
Date of hearing	: 11/01/2024
Date of judgment	: 01/02/2024
Whether fit for reporting:	No.

_J_U_D_G_M_E_N_T_

S. Datta Purkayastha, J.

Both the appeals are being disposed of by a common judgment, inasmuch as the lands in both the appeals were acquired from a common plot for common purposes by a common notification. Respondent No.1 in both the appeals are two brothers and vide notification bearing No.F.9(9)-REV/ACQ/XIV/07 dated 12/09/2007, an area of 0.40 acres of land respectively from each brother was acquired from plot No.301/p for the purpose of construction of housing flats at Sreenagar, Anandanagar (Near By pass road at Malaynagar) under Bishalgarh Sub-Division in West Tripura District.

[2] The respondent No.2, L.A. Collector in both the appeals determined compensation for the acquired land @ Rs.12,60,000/- (Rupees twelve lakh sixty thousand) only per kani. On reference, learned L.A. Judge enhanced the same and determined the land valuation @ Rs.30,00,000/-(Rupees thirty lakh) only per kani. In both the proceedings, 5(five) nos. of sale exemplars from claimant

and one sale exemplar from the side of L.A. Collector were proved into evidence.

[3] While determining the compensation for the land, learned L.A. Judge did not rely upon any of the sale exemplars proved by either party, rather based it's decision relying on the award passed in Misc. (L.A.) 34 of 2015 by L.A. Judge. A common observation was made in para No.11 of both the impugned awards passed by the L.A. Judge which are reproduced hereinbelow:

"11. In Misc. L.A. 34 of 2015 for a less potential land situated in much more backward position than the acquired land of this case, the market price was fixed @ Rs.20,00,000/- per kani. So, market price for the acquired land of this case can be fixed and assessed @ Rs.30,00,000/- per kani.

Hence, both the issues are decided in favour of the referring claimant."

[4] The L.A. Judge has thereby decided the compensation @ Rs.30,000,00/-(Rupees thirty lakh) only per kani in both the cases along with the benefits of 30% solatium and other statutory relief/interests. Being dissatisfied thereby the appellant has preferred both the appeals.

[5] At the very outset, Mr. Suman Bhattacharjee, learned counsel appearing for the appellant submitted that the award passed in said Misc. (L.A.) No.34 of 2015 as was relied upon by the trial court in passing the impugned awards, was set-aside by the High Court in L.A. App. No.14 of 2020 while deciding analogously with L.A. App. No.7 of 2021 and L.A. App. No.15 of

2020 and the matter was remanded to the trial court again for fresh decision in the following terms:

" 8. After hearing both the parties and perusing the evidence on record, this Court is of the opinion that this instant appeal is liable to be remanded back since the enhancement from Rs.8,00,000/-(Rupees eight lakhs) per kani to Rs.14,00,000/-(Rupees fourteen lakhs) per kani and via media fixing it to Rs.12,00,000/-(Rupees twelve lakhs) per kani is unreasoned. It is relevant to note that Exbt-4, i.e. a sale deed wherein the valuation of the land is given at Rs.14,00,000/- per kani, is made after the said notification is issued. Exbt-F, i.e. another sale deed wherein the value of the land is given at Rs.8,00,000/- per kani is of the year 2006. So the order passed by the Court below is not supported by any reason, only guesswork has been made, since the guesswork is under challenge, this Court feels that proper reasoning could have been given. Hence the matter is remanded back.

9. So in view of the above, all these 3(three) appeals are remanded back to the Court of the learned L.A. Judge for fresh adjudication of the matters individually/separately within a period of 2(two) months from the date of receipt of the copy of this order. The parties concerned are also directed to cooperate with the Court below for the disposal of the matter within the aforesaid period. Learned counsel for the parties is also at liberty to file a certified copy of this order before the Court below.

10. Accordingly, all these 3(three) appeals are disposed of. Consequently, pending application(s), if any also stands closed."

[6] Mr. Bhattacharjee, learned counsel for the appellant, therefore, insisted for remanding the present two appeals to the L.A. Judge in consonance with the orders passed in said three

appeals by the High Court and also further submitted that out of total 9 cases under the same project 7 cases were already remanded back to the court below for fresh decision. On merit of the cases, Mr. Bhattacharjee, learned counsel argued that though the court below relied on the award passed in Misc.(L.A.) 34 of 2015 but already at that time the appeal challenging the said award was filed before the High Court and therefore, the L.A. Judge ought not to have relied upon said award, however, he also submits that it might not be within the knowledge of the court below that appeal was pending before High Court.

[7] According to Mr. Bhattacharjee, learned counsel, all the sale exemplars except Exbt.1 and Exbt.8, as relied upon by the claimant, were executed after the notification for the acquisition was published and, therefore, those sale exemplars cannot be taken into consideration. In continuation of his submission, Mr. Bhattacharjee, learned counsel referred Exbt.1 to indicate that the same was also not reliable document, for, it was executed only one month prior to the date of notification. Regarding Exbt.8, he contended that the land involved in the said sale exemplar was superior in quality than the acquired land i.e. of Bastu class which, as per the assessment note of L.A. Collector, was only 250 feet away from the acquired plot and the transaction took place in said deed was @ Rs.20,000,00/- (Rupees twenty lakh) only per kani, but that despite the same, the L.A. Judge has awarded compensation for the lands involved in the present appeals @ Rs.30,000,00/-(Rupees thirty lakh) only per kani.

According to Mr. S. Bhattacharjee, learned counsel the acquired lands were required to be further developed for the construction of housing flats therein but learned L.A. Judge failed to take notice of all these facts and granted an exorbitant amount of compensation.

[8] Mr. Suman Bhattacharjee, learned counsel also referred a decision between **CENTRAL WAREHOUSING CORPORATION Versus THAKUR DWARA KALAN UI-MARUF BARAGLAN WALA (DEED) & ORS.** in 2023 Legal Eagle (SC) 1039 of the **Supreme Court of India** submitting that in case, the method of determining the compensation is based on annual increase, at best 8% annual increase can be taken into consideration.

[9] Mr. P. S. Roy, learned counsel representing the L.A. Collector also made similar submission.

[10] Mr. P. Debnath, learned counsel for claimant-respondents, strongly contended that the lands involved in both the appeals were adjacent to a big motorable road having high potential value and location of the lands involved in these present appeals was more advantageous in location than the lands involved in Misc.(L.A.) 34 of 2015 and Misc.(L.A.) 36 of 2015. Referring to the cross-examination of the claimants in both the cases, Mr. Debnath, learned counsel, argued that not a single question was put from the side of the appellants to make Exbt.8 unreliable, and therefore, the appellant could not argue now that Exbt.8 was not reliable and even the appellant did not adduce any evidence in both the abovesaid proceedings before the trial court.

Therefore, according to Mr. Debnath, learned counsel, the L.A. Judge was completely justified in awarding the compensation @ Rs.30,000,00/-(Rupees thirty lakh) only per kani considering the better location and higher potentiality of the land involved in these appeals. Mr. Debnath, strongly opposed the submission of the Ld. Counsel of the appellant regarding remand of the cases.

[11] Mr. Sankar Bhattacharjee, learned counsel who was also representing the respondent-claimants relied on a decision of this Court in the case of **THE IN-CHARGE, HR-IR ONGC LTD. Vs. ABDUL LATIF AND OTHERS** (L.A. App. No.30 of 2020 decided on 07.01.2022) wherein it was observed that in absence of any evidence being led to the contrary by the appellant the assertion made on behalf of the appellant that the sale deed under Exbt.1 could not be relied upon by the L.A. Collector or the L.A. Judge, cannot be entertained. Although, it was claimed by the appellant in that case that the land was not identical, yet the onus was on the appellant to bring on record to establish the said fact. Learned counsel also referred another decision of the Apex Court in **TRISHALA JAIN AND ANOTHER Versus STATE OF UTTARANCHAL AND ANOTHER** reported in **(2011) 6 SCC 47/2011 STPL 18698 SC** and the relevant portions of the judgment as referred are extracted below:

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56. *More often than not, it is not possible to fix the compensation with exactitude or arithmetic accuracy. Depending on the facts and circumstances of the case, the Court may have to take recourse to some guesswork while determining the fair market value of the land and the consequential amount of compensation that is*

required to be paid to the persons interested in the acquired land.

57. "Guess" as understood in its common parlance is an estimate without any specific information while "calculations" are always made with reference to specific data. "Guesstimate" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time "guess" cannot be treated synonymous to "conjecture". "Guess" by itself may be a statement or result based on unknown factors while "conjecture" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. "Guesstimate" is with higher certainty than mere "guess" or a "conjecture" per se.

58. The concept of "guesswork" is not unknown to various fields of law. It has been applied in cases relating to insurance, taxation, compensation under the Motor Vehicles Act as well as under the Labour Laws. All that is required from a Court is that such guesswork has to be used with greater element of caution and within the determinants of law declared by the legislature or by the Courts from time to time.

....."

[12] So far as the remand of the cases to the L.A. Judge as insisted by the learned counsel of the appellant is concerned, this court is of the view that the L.A. appeal No.14 of 2020 arising out of Misc. (L.A.) 34 of 2015 along with other 2(two) cases were remanded to the L.A. Judge for fresh decision for different reason. In the case in hand the L.A. Judge except relying on the award passed in L.A. 34 of 2015 did not make any discussion on the sale exemplars as were proved from both the sides and referring to the award passed in said Misc. (L.A.) 34 of 2015, based it's decision and disposed of both the instant cases by fixing the compensation of Rs.30,00,000/-(Rupees thirty lakh) only per kani i.e. by enhancing Rs.10,00,000/-(Rupees ten lakh) only per kani more above the award as was passed in said Misc. (L.A.) 34 of 2015.

When the said award passed in Misc. (L.A.) 34 of 2015 has been set aside by the High Court, automatically the impugned awards are also liable to be set aside. However, the sale exemplars and map etc. as proved by the parties are already on record, this court proceeds to decide both the appeals on merit without remanding the same.

[13] The date of notification under Section 4 of L.A. Act in both the cases was issued on 12/09/2007. For useful reference, the summary of sale exemplars as proved from both the claimant and the L.A. Collector are demonstrated in the pictorial chart below :

Sale Deeds relied upon by claimant in both the cases

Sl. No.	Mouja	Exbts.	Deed No. with date	Involved Plot No.	Class of land	Area sold	Value	Value per Kani	Distance from acquired land as per assessment note.
1	2	3	4	5	6	7	8	9	10
1.	Ananda nagar No.1/P	Exbt.1	No.1-2617 Dt.17.08.2007	423/9145	Nal	2(two) gandas 11 (eleven) dhurs	Rs.1,54,000/-	Rs.15,05,500/-	820 feet (Near to the 2 nd unit) and as per boundary description, it is situated adjacent to Ananda Nagar Takarjala road.
2.	-do-	Exbt.2	No.1-977 Dt.02.02.2002	5585	Viti, Tilla	2(two) gandas	Rs.50,000/-	Rs.5,00,000/-	No information furnished by L.A.Collector, however, as per boundary description, the land is situated adjacent to Agartala Gabordi Road
3.	-do-	Exbt.3	No.967 Dt.10/06/2010 AD.	215, 203/9777, 219/9776, 219/9232, 219/9234, 220/9236	Bastu (Tilla) , Chara and Tilla	04 (four) decimal	Rs.3,50,000/-	Rs.35,00,000/-	No information furnished by L.A.Collector.
4.	-do-	Exbt.4	No.1-3317 Dt. 17/10/2007 AD.	296,297	Tilla	04(four) decimal	Rs.1,40,000/-	Rs.14,00,000/-	On the proposed acquired land. (on the 2 nd unit)

5.	-do-	Exbt.8	No.1-6555 Dt.08/06/2006 AD.	214/9111, 216/9113, 217/9112	Bastu	02(two) karas	Rs.50,000/-	Rs.20,00,000/-	250 feet (near 1 st unit). As per boundary description, there are two roads on two sides of the land
<u><i>Sale Deeds relied upon by L A Collector</i></u>									
6.	Anan da nagar No.1/ P	Exbt.A	No.1-7062 Dt.19/06/2006 AD.	222/971 9	Nal	01(one) ganda 01(one) kara	Rs.75,000/-	Rs.12,00,000/-	On the proposed acquired land (on the 1 st unit) and adjacent to bypass road.

[14] As per the assessment note, the L.A. Collector divided the total acquired plots into two groups i.e. unit-1 & unit-2 considering the development of that area and the 1st unit lands cover the more valuable land than the 2nd unit lands which are situated just behind the lands of 1st unit on the Southern side. It is also observed by L.A. Collector that the 1st unit lands cover the lands having access to the main road, whereas, the 2nd unit lands do not possess such facility. The lands involved in the present cases fall within 1st unit and thus the acquired plots are more valuable having situated adjacent to Kayerpur-Amtali Bypass road or within the area of 150 feet from that road as indicated by L.A. Collector.

[15] Out of above said 6(six) sale exemplars, as proved by the parties, Exbt.3 & Exbt.4 were issued after the notification of the acquisition was issued. The land under Exbt.1 is of Nal class of land like the acquired land and same, was sold @ Rs.15,05,500/- (Rupees fifteen lakh five thousand and five hundred) only per kani. That land is situated near Anandanagar - Takarjala road. There is no indication of the involved plot under Exbt.1 in the trace map

(Exbt.5) which at the first blush creates an impression that the land of Exbt.1 was not closer to the acquired land but the L.A. Collector has shown the distance of said plot to be only 820 feet from acquired land. The land under Exbt.2 is of Viti/Tilla class, situated near Agartala - Takarjala road and it demonstrates a transaction of the year 2002, whereas, the acquisition was of 2007 AD. However, the L.A. Collector in the assessment note has not mentioned the distance of said plot from acquired land. As it appears from above said assessment note, for the said project total 13.71 acre of land under Mouja Anandanagar was acquired and the acquired land was situated near Malaynagar, adjacent to Khayerpur – Amtali bypass road, and Agartala - Anandanagar road also passes through at a distance of 0.3 km away from the acquired land.

[16] Exbt.5 also demonstrates sale of a very small quantity of Bastu class of land i.e. 2 karas of land for Rs.20,00,000/- and the same is situated within 250 feet near the 1st unit land and said land is having road connectivity on two sides. Land under Exbt.A shows the sale of Nal class of land of 01(one) ganda 01(one) kara for Rs.75,000/-(Rupees seventy five thousand) only i.e. Rs.12,00,000/-(Rupees twelve lakh) only per kani and the same is situated inside the 1st unit acquired land but the transaction took place on 19/06/2006 i.e. more than 1 year prior to the acquisition.

[17] On consideration of all the sale exemplars, only land under Exbt.1 and Exbt.A appears to be the Nal class of land i.e.,

similar to the acquired plots, and there is time gap between the execution or sale deed under Exbt.A and the acquisition, so at the time of such acquisition, certainly there was some escalation of price in that locality and such escalation can be evident from Exbt.1 which was executed only about 25(twenty five) days prior to the notification, having the transaction @ Rs.15,05,500/- (Rupees fifteen lakh five thousand and five hundred) only per kani. The land in Exbt.1 is comparatively of small quantity than the acquired land. However, the high potentiality of acquired land has been reflected in the assessment note of the L.A. Collector wherein the Collector has kept the plot within the category of 1st unit of acquired land. Exbt.A also contains a smaller quantity than land under Exbt.1, and, in fact, the said land is also situated within the category of 1st unit of the acquired lands. There is nothing to indicate that some artificial transactions were made to fetch higher compensation for the acquisition. Increase of value of the land from Rs.12,00,000/-(Rupees twelve lakh) only per kani to Rs.15,00,000/-(Rupees fifteen lakh) only per kani within that locality appears to be not unlikely considering the location of the acquired lands. Therefore, mainly relying as Exbt.1, value of the acquired land is determined @ Rs.15,00,000/- per kani.

[18] In the result, both the appeals are allowed. The claimants in both the cases will get compensation for the lands @ Rs.15,00,000/-(Rupees fifteen lakh) only per kani. Apart there from they will also get 30% solatium along with additional

compensation/interest as granted by the L.A. Judge under Sections 23(2), 23(1-A) and 28 of the L.A. Act.

Both the appeals are accordingly disposed of.

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



RUDRADEEP BANERJEE

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