

HIGH COURT OF TRIPURA
AGARTALA

CO(FA) No.06 of 2019
In LA App. No.54 of 2019

Smt. Shipra Biswas Majumder,
wife of Sri Uttam Majumdar, C/O Sri Milan Behari Majumdar, of
No-1 College Road, Sarasima, P.O. Sarasima, P.S. Belonia, District
South Tripura, Pin 799155, at present residing at Ker Chowmuhani,
T.G. Road, Ramnagar Road No.-2, P.O. Ramnagar, P.S. West
Agartala, District West Tripura, Pin 799002.

.....Cross Objector/Claimant Respondent/Appellant(s)

- V e r s u s -

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

.....Appellants-Respondent(s)

- 2. The Land Acquisition Collector,**
South Tripura, Belonia, P.O. Belonia, P.S. Belonia, District South
Tripura, Pin 799155.

..... Respondent(s)

LA App. No.54 of 2019

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

..... Appellant(s)

- V e r s u s -

- 1. Smt. Shipra Biswas (Majumder),**
Wife of Sri Uttam Majumder, Resident of No.1 College Road,
Sarashima, P.S. Belonia, District South Tripura.
- 2. The Land Acquisition Collector,**
South Tripura, Belonia.

..... Respondent(s)

CO(FA) No.06 of 2019

For the Cross Objector(s)	:	Mr. J. Rajesh, Advocate. Mr. N. Majumder, Advocate.
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI. Mr. Kohinoor N. Bhattacharya, G.A.

LA App. No.54 of 2019

For the Appellant(s)	:	Mr. B. Majumder, Dy. SGI.
For the Respondent(s)	:	Mr. J. Rajesh, Advocate. Mr. N. Majumder, Advocate. Mr. Kohinoor N. Bhattacharya, G.A.

Date of hearing	:	5th February, 2024.
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Date of delivery of Judgment & order : **13th March, 2024.**

YES	NO
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

A land area of 0.32 acre (class tilla) under plot Nos.5636/6495/p in Mouja Sarasima, South Tripura was acquired by the Government for construction of a new railway line from Agartala to Sabroom vide notification No.9(05)-REV/ACQ/XII/2012 dated 15.03.2012.

[2] While determining the compensation, the LA Collector collected some sale exemplars but did not rely on the same on the ground that the lands of those sale deeds were not nearer to the acquired land. The LA Collector, thereafter, collected plot-wise valuation chart from the office of SDM, Belonia and finally awarded compensation @ Rs.4,00,000/- per kani for the land and Rs.24,800/- for 62 rubber trees found therein. The present claimant-cross-objector [hereinafter referred as "claimant"] being aggrieved thereby sought reference under Section 18 of the LA Act in the Court of LA Judge, Belonia and learned LA Judge thereafter awarded compensation @ Rs.10,00,000/- per kani for the land and @ Rs.6,000/- for each rubber tree in respect of said total 62 rubber trees.

[3] Being aggrieved by the award of learned LA Judge, the requiring department, NF Railway preferred LA App. No.54 of 2019

and simultaneously, the claimant preferred CO(FA) No.06 of 2019. This Court, thereafter, dismissed both the LA Appeal and Cross Objection vide judgment dated 07.07.2021 affirming the award passed by the learned LA Judge.

[4] The original appellant i.e. N.F. Railway did not move further but the cross-objector preferred Civil Appeal No.6281 of 2023 with SLP(C) No.21355 of 2022 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 27.09.2023 remanded the matter for fresh determination of market value of the acquired land keeping in view of the exemplars relied upon by the claimant before the Land Acquisition Collector/Reference Court. The relevant observation of the Hon'ble Supreme Court is extracted herein below:

"12. It appears to us that the High Court ought not to have determined the compensation only on the basis of one sale instance or the amount claimed by the appellants in their reference under Section 18 of the Act. All that the High Court was required to do was to consider the sale instances and then determine as to whether all the sale instances or any one of them is comparable with the acquired land for the purpose of assessing the fair and just market value of the acquired land.

13. For the reasons aforesaid, the appeals are allowed in part, the impugned judgments dated 16.07.2021 and 07.07.2021 are set aside and the matters are remanded to the High Court for a fresh determination of the market value of the acquired land of the appellants keeping in view the exemplars relied upon by them before the Land Acquisition Collector/Reference Court.

14. It goes without saying that the High Court will not reduce the compensation already awarded to the appellants at the rate of Rs.10,00,000/- per kani.

15. We request the High Court to re-determine the rate of compensation within a period of four months from the date of appearance of the parties before the High Court.

16. It is clarified that we have not expressed any opinion on the merits of the appellant's claim.

17. As a result, the pending interlocutory applications also stand disposed of."

[5] On remand, after reopening the hearing of the case, the claimant adduced one additional evidence i.e. one report dated 27.11.2023 issued by the Executive Engineer, Belonia Division, PWD(R&B), Belonia, South Tripura along with the hard copy of one google map showing aerial distance of the acquired plot with some other plots (marked as Exbt.15/1 and Exbt.15/2 respectively).

[6] Appearing for the claimant-cross objector, Mr. J. Rajesh, learned counsel argued that the claimant took possession of the acquired land on lease from one Sankar Baisnab and his wife, Dipali Baisnab, for 99 years vide Lease Deed No.1-2056 dated 18.11.2002 (Exbt.11) and developed the land and finally, planted and nourished rubber trees therein and when the expected time for tapping the rubber came, the land was acquired to the utter deprivation of the claimant from getting benefits of her huge investment in the land. While referring to different sale exemplars as proved in the record, Mr. Rajesh, learned counsel strongly relied on the said exemplars under Exbt.1, Exbt.3 and Exbt.5. According to him, the LA Collector did not prove any sale exemplar to contradict abovesaid sale exemplars and therefore, the sale exemplars are most reliable. He also tried to show the distance of some plots involved in those sale exemplars from the acquired land

referring to exhibit Exbt.15/2. Finally, he relied on the following decisions of the Apex Court:

(i) ***Mahesh Dattatray Thirthkar vs. State of Maharashtra, (2009) 11 SCC 141-*** At Para-47 it was observed that minor inconsistency in the testimony of witness do not warrant non-reliance of the same.

(ii) ***Chandrashekar (Dead) by LRS. & Ors. vs. Land Acquisition Officer & Anr., (2012) 1 SCC 390-*** Hon'ble Supreme Court at Para 22 reiterated the principles as enunciated in *Lal Chand vs. Union of India, (2009) 15 SCC 769* and *A.P. Housing Board vs. K. Manohar Reddy, (2010) 12 SCC 707*, that while applying the sale consideration of a small piece of developed land to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% can be made. But in 2009 in *Subh Ram* case, Apex Court restricted deduction on account of the "first component" or development, as also, on account of the "second component" of development to $33\frac{1}{3}$ % each.

(iii) ***Ashok Kumar & Anr. vs. State of Haryana, (2016) 4 SCC 544-*** In this case Hon'ble Supreme Court at Para 7 held that a higher compensation than what is claimed by the applicant in his pleading can be awarded by the Court and it is the duty of the court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of claim made by the owner.

Finally, learned counsel prayed for a higher rate of compensation @ Rs.40,00,000/- per kani for the land.

[7] Mr. B. Majumder, learned Dy. S.G.I. for NF Railway, on the other hand, argued that the map as produced under Exbt.15/2 by the claimant did not demonstrate the physical distance between the land of sale exemplars and the acquired land, and nothing was proved by the claimant to show such actual physical distance. According to him, aerial distance cannot be taken into consideration for determining the market value. Learned Dy. S.G.I. also argued that maximum sale exemplars as relied upon by the claimant were transacted for residential purposes i.e. for bastu (tilla) class of land which cannot form basis for determination of compensation. Another issue for the first time was raised by him that the claimant was not the owner of the land, rather she was a leasee but the original owner was not made a party in the proceeding and therefore, the appeal itself was not maintainable. Learned Dy. S.G.I. also referred to Para-9 of the examination-in-chief of the claimant to show that her claim in the evidence was around Rs.11,00,000/- per kani as she had stated therein that the LA Collector for the adjacent land awarded compensation @ Rs.11,00,000/- per kani for tilla and chara class of land.

[8] Learned Dy. S.G.I. finally referred to the following decisions of Hon'ble Supreme Court:

(a) ***Kiran Tandon vs. Allahabad Development Authority & Anr., (2004) 10 SCC 745-*** At para-10 it was observed by the Apex Court that Collector's award under Section 11 is nothing more than an offer of compensation made by the Government to the claimants and burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant and he is in the position of a plaintiff.

(b) ***Shaji Kuriakose & Anr. vs. Indian Oil Corpn. Ltd. & Ors., (2001) 7 SCC 650-*** At Para-3 it was observed that while determining the valuation of land under comparable sales method, the following factors are required to be fulfilled:

- (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 sale must be in the vicinity of the acquired land,
- (4) the land covered by the sales must be similar to the acquired land, and
- (5) that the size of plot of the land covered by the sales be comparable to the land acquired.

The Hon'ble Apex Court further observed that 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 dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land to what is reflected in the sales depending upon the disadvantages attached with the acquired land.

(c) ***Ravinder Narain & Anr. vs. Union of India, (2003) 4 SCC 481***- At para-9, it was observed that if the following principles of fixation of market value with reference to comparable sale are made, the element of speculation can be reduced to a minimum:

- (i) when sale is within a reasonable time of the date of notification under Section 4(1);
- (ii) it should be a bona fide transaction;
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

Same principle was also reiterated in ***Karnataka Urban Water Supply & Drainage Board & Ors. vs. K.S. Gangadharappa & Anr., (2009) 11 SCC 164***, as referred by learned Dy. S.G.I.

(d) ***Major General Kapil Mehra & Ors. vs. Union of India & Anr., (2015) 2 SCC 262***- At para-10 it was observed by the Apex Court that while fixing the market value of the acquired land, the land acquisition officer is required to keep in mind the following factors: (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area; and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

(e) ***Lal Chand vs. Union of India & Anr., (2009) 15***

SCC 769- At para-13 it was observed that the percentage of “deduction for development” to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

(f) ***M/s. Printers House Pvt. Ltd. vs. Mst. Saiyadan (Deceased) by L. Rs. & Ors., AIR 1994 SC 1160-*** The relevant observation at Para-30 as referred was that for determination of compensation on the basis of comparable sales method, the proximity of land of sale exemplar to the acquired land assumes great significance.

Taking recourse to all these decisions of the Apex Court, learned Dy. S.G.I. submits that the claimant was not entitled to further enhancement of compensation.

[9] Mr. Kohinoor N. Bhattacharya, learned G.A. also made similar submissions. However, he supported the report of the Executive Engineer, PWD as marked under Exbt.15/1 and 15/2.

[10] The claimant proved 7 (seven) numbers of sale exemplars under Exbt.1 to Exbt.7 before the learned LA Judge to support her claim. But two sheets of revenue maps, as proved under Exbt.8, do not indicate the location of plots of sale exemplars and the acquired plot to show the approximate distances. However,

the Exbt.15/2, under additional evidence, indicates the approximate distance (aerial distance) of Exbt.1, Exbt.3 and Exbt.5 only. For convenience, the summary of the sale exemplars under Exbt.1 to Exbt.7 is canvassed in a chart below:

Exbt. No.	Deed No.	Plot No.	Class	Area Sold	Value (in Rs.)	Rate (in Rs.)	Approximate Distance between acquired Plot and plots under Exhibits	Remark , if any
1	No.1-1533 dated 15.12.2010	3088	Bastu (Tilla)	0.09 Acre	6,75,000/-	30 lakhs per kani	Approx 1.8 Km	----
2	No.1-1483 dated 19.11.2010	3292	Bagan (Tilla)	0.06 Acre	1,50,000/-	10 lakhs per kani	Not available	North-PWD Road
3	No.1-249 dated 22.02.2010	1026/6883	Bastu (Tilla)	0.01 Acre	1,00,000/-	40 lakhs per kani	1.45 Km	South-PWD Road, East-Path
4	No.1-987 dated 05.05.2006	2906	Viti (Tilla)	0.35 Acre	8,00,000/-	9,14,000/- per kani	Not available	West-Govt. Road
5	No.1-1667 dated 16.12.2009	942	Bagan (Tilla)	0.04 Acre	6,00,000/-	60 lakhs per kani	1.8 Km	South-ITI Road
6	No.1-1008 dated 04.07.2008	3605/5950 and 3605	Viti (Tilla)	0.02 Acre	50,000/-	10 lakhs per kani	Not available	----
7	No.1-1366 dated 25.10.2010	1601	Rubber garden (Chankhala Lunga)	0.08 Acre	1,50,000/-	7,50,000/- per kani	Not available	----

[11] The acquired land is of class tilla whereas no exemplar under tilla class of land was proved by the claimant. According to the claimant, she made rubber plantation inside the acquired plot. Therefore, the nature of the land as converted by the claimant after necessary development became more or less in the nature of bagan (tilla) class of land. Out of said 7 (seven) sale exemplars, Exbt.1

and Exbt.3 relate to transfer of bastu (tilla) class of land and Exbt.4 and Exbt.6 relate to viti (tilla) class of land. Both bastu (tilla) and viti (tilla) classes of land are totally dissimilar with the nature of present acquired land. Exbt.2 demonstrates the transfer of 0.06 acre of land in the year 2010 @Rs.10,00,000/- per kani in respect of bagan (tilla) class of land, but distance of the same from the acquired land is not available in the record and it is a road side land. Similarly, another small plot of 0.04 acre of land under Exbt.5 of bagan (tilla) was sold @ Rs.60,00,000/- per kani in the year 2009 and the said land is situated near ITI road as per the boundary description given in the deed. But nothing is there that transaction under Exbt.5 was not bona fide. Even the L.A. Collector in his assessment note mentioned of other two sale deeds bearing No.1-1520 dated 08.12.2010 and No.1-1535 dated 15.12.2010 wherein also transactions took place @ Rs.60 lakhs per kani for Bagan (tilla) class of land but those deeds with other sale exemplars were discarded by him on the ground that same were not nearer to the acquired land but he did not even show the distance of those sale exemplars from acquired land. Therefore, it appears that transaction @Rs.60 lakhs per kani for such bagan(tilla) class of land were not unusual in that area during the time of acquisition. Under Exbt.7, Chankhala (lunga) [Chankhala indicates haycock] class of land was sold in the year 2010 @Rs.7,50,000/- per kani. There is also mention of rubber garden in the said land in the contents of the deed, but this land is of much

inferior quality than the acquired land. In ***Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. vs. Nookala Rajamallu & Ors., (2003) 12 SCC 334-*** At para-6 of the judgment, it was observed by the Apex Court that where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. However, it cannot be laid down as an absolute proposition that rates fixed for small plots cannot be the basis for fixing the rate. For example, where there is no other material, it may, in appropriate cases, be open to the adjudicating court to make a comparison of prices paid for small plots of land. However, in such cases, necessary deductions/adjustments have to be made while determining the prices.

[12] In ***Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. vs. State of Punjab & Ors., 2012 AIR SCW 2822,*** in para-15, it was also observed by the Apex Court that when there are several exemplars with reference to similar lands (emphasis added), it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It was also observed that it would seem to be only fair that where the sale-deeds pertaining to different

transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course and it is not desirable to take an average of various sale-deeds placed before the authority/court for fixing fair compensation.

[13] On appreciation of the deed under Exbt.5 vis-a-vis the map under Exbt.15/2, it appears that the land under Exbt.5 is situated at a distance of 1.8 Km from the acquired land at Satmura Chowmuhani which is much closer to the office of DM & Collector, South Tripura District. Satmura Dakshinewari Kali temple, Mahamaya kalibari, Buddha temple, Municipal council office etc. are comparatively closer to the land of Exbt.5 which otherwise indicates its location within urban area i.e. Belonia township. Moreso, it is a roadside land situated adjacent to ITI road. This may also be the reason why sale was transacted in much higher rate. On the other hand, as already indicated above, there is no material to ascertain the distance of Exbt.2 from the acquired plot and same also does not display the transaction of highest rate. Therefore, in light of the principle as laid in ***Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. (Supra)***, Exbt.5 is taken into consideration for determination of market value of the acquired land subject to necessary deduction. In Exbt.5, sale of land was transacted @ Rs.60,00,000/- per kani. As discussed, the location of Exbt.5 is in an urban area, presumably having all the civic amenities of an urban area and its

distance from acquired plot is 1.8 km. A small plot of land of area 0.04 acre was transferred by Exbt.5 and it is road side land. Considering such smaller area of plot, distance and less potentiality, 20% + 20%+ 30% i.e. total 70% deduction appears to be just and proper for determination of value of acquired land. Market value of acquired land is, therefore, determined at (Rs.60,00,000 - 70% of Rs.60,00,000)= Rs.18,00,000/- per kani. Though land under Exbt.5 was executed in December, 2009 and acquisition was made in March, 2012, but no benefit of escalation of rate is favoured to the claimant considering the fact that from the above pictorial chart, no remarkable escalation is found visible in that area rather, a similar or even lower rate appeared to have been maintained in that locality in 2009 and 2010 AD for such bagan (tilla) class of land.

[14] Learned Dy. S.G.I. though argued that the aerial distance of acquired plot from sale exemplar cannot be taken into consideration but revenue map also demonstrates the distance determined on the basis of scale and not the physical distance based on road connectivity.

[15] Learned Dy. S.G.I. also questioned the maintainability of the appeal on the ground that the original owners of the land were not made parties in the appeal but such submission cannot be considered at this stage, for, no such plea was earlier taken by them before any Court and the matter was remanded only for a limited purpose. Said original owners namely, Sankar Baisnab and

Dipali Baisnab also never prayed for any reference under section 18 of the Act. A copy of the judgment dated 18.03.2021 passed by this Court in LA App. No.04 of 2020 with reference to Section 30 of the L.A. Act is also placed before me which shows that the matter of apportionment regarding the present award was already set at rest by holding that the present claimant-cross objector will get 55% and the original owners, Sankar Baisnab and Smti Dipali Baisnab, jointly get 45% of the award compensation.

In the result, the cross objection is allowed. Compensation for the land is determined @Rs.18,00,000/- per kani. The rate of trees as was determined by the LA Judge is not interfered with and is hereby affirmed. Further, it would carry 30% solatium, other statutory interests, additional compensation and cost in terms of the award passed by the learned LA Judge, South Tripura, Belonia. Compensation for the land will be apportioned in terms of judgment dated 18.03.2021 passed in LA App. No.04 of 2020. Needless to say, L.A. Appeal No.54 of 2019 will accordingly be treated to be dismissed.

Pending application(s), if any, also stands disposed of.

Registry is to re-consign the LCRs with a copy of this judgment.

JUDGE