

HIGH COURT OF TRIPURA
AGARTALA
LA.App. No. 100 of 2023
With CO(FA) No. 01 of 2024.

- 1. The Deputy Chief Engineer (Construction -2)**
N.F. Railway, Badharghat, Agartala

-----Appellant.

Versus

- 1. Smt. Minati Das,**
Wife of Late Dharendra Ch. Das.
- 2. Sri Bablu Das,**
Son of Late Dharendra Ch. Das
- 3. Sri Litan Das,**
Son of Late Dharendra Ch. Das
- 4. Smt. Parthana Das**
D/o of Late Dharendra Ch. Das.
- 5. Smt. Biba Das,**
D/o, of Late Dharendra Ch. Das,
All are resident of Sarashima, P.S Belonia,
District, South Tripura.

----- Respondents (Referring Claimants)

- 6. The Land Acquisition Collector,**
South Tripura, Belonia.

सत्यमेव जयते

.....Respondent.

CO(FA) No. 01 of 2024

- 1. Sri Bablu Das,**
S/o- Late Dharendra Ch. Das
- 2. Sri Litan Das,**
Son of Late Dharendra Ch. Das
- 3. Smt. Parthana Das**

D/o of Late Dharendra Ch. Das.

W/o. Priyalal Nama.

4. Smt. Biba Das,

D/o- Late Dharendra Ch. Das

All are resident of Sarashima, P.S Belonia,

District, South Tripura.

.....Cross- Objector (Appellants)

Versus

1. The Deputy Chief Engineer (Construction -2)

N.F. Railway, Badharghat, Agartala, having his office at
Badharghat, Agartala, Pin- 799003.

2. The Land Acquisition Collector,

South Tripura, Belonia having his office at Belonia.

.....Respondents.

For the Appellant(s)	:	Mr. B. Majumder, Dy.SGI.
For the Respondent(s)	:	Mr. S. Kr. Deb, Sr. Advocate. Mr. S. Datta, Advocate.
For Cross- Objector (s)	:	Mr. S. Kr. Deb, Sr. Advocate. Mr. S. Datta, Advocate
For the Respondent(s)	:	Mr. B. Majumder, Dy. SGI.
Date of hearing	:	27.01.2025.
Date of delivery of Judgment & Order	:	30 / 01/2025.
Whether fit for reporting	:	NO

BEFORE
HON'BLE MR. JUSTICE T. AMARNATH GOUD

J U D G M E N T & O R D E R

Heard Mr. B. Majumder, learned Dy. SGI appearing for the
appellant in LA. App No. 100 of 2023 as well as for the respondent in CO(FA)
01 of 2024 . Also heard Mr. S. Kr. Deb, learned senior counsel assisted by Mr.

S.Datta, learned counsel appearing for the referring claimants (respondents herein) in LA. App No. 100 of 2023 and for the Cross-Objectors in CO(FA) 01 of 2024.

[2] This present appeal has 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 30.01.2023 passed in L.A Case 71 of 2019 by the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura along with this appeal a Cross-Objection has also been filed by the Cross –Objector (Respondents herein) under Order XLI Rule 22 of the Code of Civil Procedure read with Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act, against the Judgment and Award dated 30.01.2023 passed in the LA Case No. 71 of 2019 by the aforesaid authority. Hence, both the appeals are taken together for a common disposal.

[3] The brief facts of the case is that, the referring claimants (respondents herein) Smt. Minati Das and her husband Late Dharendra Ch. Das were the owner and possessor of land under Khatian No. 2025, plot No. 6025/6433/p in Mauja Sarashima under Belonia Sub-division, Dharendra Ch. Das died on 05.04.2013 and on his death his son and daughters became the owner of the land along with their mother. The Government acquired the land measuring 0.70 acres owned by the referring claimants (respondents herein) under aforesaid Khatian No. 2025, plot No. 6025/6433/p for construction of new Railway line vide notification No. F.09 (01)/REV/ACQ/XII/15 dated 3.08.2015. The LA Collector, South Tripura determined the market value of acquired land @ Rs. 5,00,000/- per kani and to arrive the land value of acquired land applied multiplication factor 1.5, cost of damage of trees on the land and also awarded 100% solatium over the total compensation and 12%

interest w.e.f. 03.08.2015 to 02.03.2016 (for 7 months). That, being aggrieved by the amount of compensation awarded by the LA Collector the respondents herein (claimants) sought for reference. Accordingly, the matter has been referred to the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura for determination of appropriate compensation. Thereafter, the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura by its judgment and award dated 30.01.2023 enhanced the award passed by the LA Collector and assessed the value @ Rs. 10,00,000/- per kani. The relevant portion of the Judgment and Award dated 30.01.2023 passed in LA Case No. 71 of 2019 is quoted herein below:-

"ORDER / AWARD

16. (1) The Referring Claimant is entitled enhanced market value of her acquired land measuring 0.70 acres under plot Nos. 6025/6433/p@ Rs. 10,00,000/- per kani (ii) The market value of the acquired land as determined at the above rate be multiplied with factor '1.5' as per section 26 (c) and as contemplated in First schedule appended to Act 2013 to get the value of the land (iii) The referring claimant in addition to value of land is entitled to get compensation u/s. 29 of Act 2013 for 100 rubber trees amounting to Rs. 4,50,000/- (Rs.4500x100) (iv) The referring claimant as per section 69(3) of the Act 2013, in addition to the market value of the land is entitled 100% solatium over the total (value of the land cost for damage for 100 rubber trees) compensation The referring claimants as per section 60(2) of Act 2013, is entitled 12 p.a. on the market value from the date of publication of notification under section 11 to the date of award of the LA Collector or taking of the possession of acquired property, which-ever is earlier. (vi) 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. (vii) The amount already paid by the LA Collector shall be deducted in the excess compensation now awarded to the acquired property. Advocate fee is fixed at Rs.1000/-. The parties are directed to bear their own cost in this case. Draw award accordingly".

[4] Being aggrieved and dissatisfied with the order dated 30.01.2023 passed in LA Case No. 71 of 2019 by the Learned Land Acquisition, Rehabilitation and Resettlement Authority, Tripura, Agartala, the appellant herein approached this court seeking the following reliefs:-

"(i) Admit the appeal filed by the appellant;

(ii) Call for the records of L.A. case no. 71 of 2019 from the court of the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura;

(iii) Issue notice upon the respondents;

AND

(iv) After hearing both the parties kindly set aside the impugned judgment and award dated 30.01.2023 passed in L.A. case no. 71 of 2019 by the Land Acquisition, Rehabilitation and Resettlement Authority, Tripura; "

[5] On the other hand, Cross- Objection has been filed by the Cross-Objectors (Respondents herein) in CO(FA) 01 of 2024 seeking the following reliefs:

"i. Admit this appeal.

ii. Call for records.

iii. Issue Notice upon the respondents and

iv. After hearing the parties be pleased to allow this Cross-Objection."

[6] Mr. B. Majumder, learned Dy.SGI appearing for the appellant submits before this Court as per requisition of the appellant, land measuring 0.70 acres appertaining to plot no. 6025/6433/p Khatian No. 2025 situated at Mouja –Sarashima under Belonia Sub-Division were acquired for the purpose of construction of new railway line. The LA Collector assessed the value of the acquired land @ Rs. 5,00,000/- per kani and applied the multiplying factor 1.5 to determine the value of the acquired land as provided under Section 26 of the RFCTLARR Act, 2013 and awarded total compensation of Rs.28,46,250/. Thereafter, the respondents (referring claimants) sought for reference and the matter has been referred to Land Acquisition, Rehabilitation and Resettlement Authority, Tripura and by a judgment the said authority determined the value of the land @ of Rs. 10,00,000/- per kani along with other benefits. Learned counsel prays before this Court that the learned Court below failed to assessed the value of the land and the judgment and award is liable to be set aside.

[7] Mr. S. Kr. Deb, learned senior counsel submits before this Court that the respondent No.1 was the owner and possessor of the half share and

all the other respondents (referring claimants) were the owners and possessors of the half share of the acquired land measuring 0.70 acres. The husband of the respondent no.1 and father of the other respondents namely late Dharendra Chandra Das son of Late Prakash Chandra das during his life time got some land measuring 2.70 acres by way of allotment along with one co-sharer Smt. Minati Das, his wife, appertaining to Mauja- Sarasima of Sarasima Tehashil Kachari under Belonia Sub-Division comprising khatian No-2025 and said Dharendra Chandra Das died on 05-04-2013 in his own resident leaving behind the respondents as his surviving legal heirs. Until death the predecessor-in-title of the respondents (referring claimant) namely, Dharendra Chandra Das and the other respondents were in peaceful possession on the acquired land and after reclaiming the same transplanted rubber plantations covering all those 2.50 acres of land appertaining to Mauja Sarasima and after death of late Dharendra Chandra Das the instant respondents (referring claimants) were in peaceful possession and enjoyment of the said land and income of rubber plantation situated thereon.

[8] Mr. Deb, learned senior counsel further submits that for the public purpose of construction of new Railway line from Agartala to sabroom in mouja sarasima under Belonia sub-Division in South Tripura District, several plots of lands, path and ponds were notified for acquisition by the Government through its agents, namely the Land Acquisition Collector, South Tripura District, Belonia for materializing the purpose as aforesaid. The proposed acquisition was notified after publishing notices and notifications in the official Gazette under section 11 of the RFCTLARR Act-2013 being the No. F.09(01)-REV/ACQ/XII/2015 and dated 03-08-2015 proposing thereat to acquire 0.70 acres of land which comprising in khatian No-2025 and stated in RS(new) plot No-6025/6433 appertains to Mauja Sarasima of Sarasima Tehashil Kachari

under Belonia Sub Division. That the referring claimants were informed by a letter through Sub-Divisional Magistrate, Belonia that L.A. Collector acquired some landed property for construction work of new Railway Line from Agartala to Sabroom and awarded an amount of Rs. 28,46,250/- for the said proposed acquired land measuring 0.70 acres including all standing rubber trees in number 100 thereon and directed to receive the awarded amount from the S.D.M. office, as on 17-05-2016. That the referring claimants perused the notice and find that there is no mention in the notice the quantity and description of the proposed acquired land. Later on the referring claimants came to know that the L.A. Collector proposed to 0.70 acres Tilla (presently after reclaiming and transplanting said tilla became a Bagan Tilla) class land appertaining to Mouja & T.K. Sarasima, comprising khatian No-2025 RS (new) plot No-6025/6433 under Belonia Revenue circle and Belonia Sub-Division for the above noted construction work. It is mentionable here that all the respondents are the owners of the 50% share of the acquired land by way of the survivor/successor of deceased Dharendra Chandra Das and the respondent no-1 is the owner of the remaining 50% land as per the description of the khatian.

[9] Mr. Deb, learned senior counsel also submits that the land acquisition Collector awarded Compensation for acquired land on the basis of the rate chart of land published by the Sub-Divisional Magistrate, Belonia in the year 2009 without any physical verification of the present market value of land and also not follow the guide line of "The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013". That the L.A. Collector awarded compensation for the land of respondents (referring claimants) @ Rs. 5,00,000/- per käni (per 40 decimals) of land, Which is too below the market value as is prevailing in the locality. To

substantiate their claims, the referring claimants have submitted three sale deeds bearing No-1-1372 dated 20-10-2009 and bearing No. 1-1667 dated 16-12-2009. on perusal of the two sale deeds, it will be seen that in the year 2009 land was sold at a price of Rs. 40,00,000/- to Rs. 60,00,000/- per kani and in this way on a comparative tally with the adjacent Revenue village that is Belonia Mauja the referring claimants submitted a sale deed bearing No. 1-1683 dated 20-07-2006, where land was sold at a price of Rs. 84,21,052/-per kani of land, but the collector could not adopted the mandatory provision of section 26 of the RFCTLARR Act, 2013 during assessing and determining the market value of the land. On the other hand the land Acquisition Judge, South Tripura, District, Belonia, pronounced judgment in connection with the market value of the land in the same Mauja Sarasima which acquired in the year 2011 and earlier for the same project. In those judgment the Hon'ble judge awarded enhancement rate of compensation of those acquired land @ Rs. 10,00,000/- to Rs. 50,00,000/- per kani. That on being encouraged by the sector officer of Rubber Board, the referring claimants in the year 2006 started rubber plantations, after doing reclamation being expending in huge amount of money covering all those 2.50 acres of tilla land. As per instructions of sector officer of the Rubber Board, now Belonia, the respondents transplanted $140 \times 2.50 = 350$ nos. of Rubber graft in their land (140 per acres) and due to acquisition of land measuring 0.70 acres the 100 numbers of matured rubber trees had been destroyed during construction work. That the L.A. Collector arbitrarily and whimsically awarded for a matured rubber tree @ Rs. 800/- only without following the directions made in section 29 of the RFCTLARR Act, 2013. As per analysis and in description of the Rubber production Commissioner in the year 2011 that 1. no rubber tree during its life time produced total net income at Rs. 10,000/-. As per Rubber Board chart, if a

mature rubber tree destroyed in the 11 years old, loss sustained by grower as Rs. 8,000/- and in different acquisition cases L.A. Judge also directed to pay an amount of Rs. 8000/- as compensation for a mature rubber tree to the claimant by the L.A. Collector. It was done in utter incredible manner. The L.A. Collector with a view to cause loss to the claimants had done these acts of misfeasance and malfeasance. It was unfelt and insensitive. That the respondents crave the indulgence of the Honorable court to give the details of the claim animated by to justify their claims. That the acquired land is situated adjacent boundary of Belonia Municipality area and it is heart of the Belonia Rail station as well as excellent for the commercial purpose. Land per kani Rs. 40,00,000/- (Rupees Fourty Lakhs) so far the acquiring of 0.70 acres that is one kani fifteen gandas of land of the referring claimants, the claimants demands Rs. 70,00,000/- (Rupees seventy lakhs) only for land measuring 0.70 acres on the basis of recent transaction and market-value of land along with the solatium and interest.

[10] Mr. Deb, learned senior counsel appearing for the respondents as well as for the Cross-Objector in CO(FA) 01 of 2024, lastly submits that as per the assessment of the Managing Director, TFDC A corporate body formed by the State of Tripura the assessment of every mature rubber tree provide its total income at Rs. 10,000/-. As such uprooted and demolished 100 nos. mature rubber trees x Rs.10,000/- = Rs. 10,00,000/- (Rupees ten Lakhs). The respondents demand Rs. 10,00,000/- for the demolished 100 nos. matured rubber trees which are situated their acquired land, along with solatium and interest. That no compensation has been awarded for the rehabilitation after acquisition of land and no compensation has been awarded for the damage sustained by the claimants for the reason of acquired land being severed from their home-stead other land.

[11] To support his arguments, Mr. Deb, learned senior counsel appearing for the respondents placed reliance on the following judgments of the Hon'ble Apex Court which are as under :

1. ***Bhag Singh and Others Versus Union Territory of Chandigarh*** reported in **(1992) 4 SCC 692.**
2. ***Land Acquisition Officer Revenue Divisional Officer Chittor Versus L. Kamalamma (Smt) Dead by LRS and Others K. Krishnamachari And Others*** reported in **(1998) 2 SCC 385.**
3. ***ONGC LTD. Versus Sendhabhai Vastram Patel and Others,*** reported in **(2005) 6 SCC 454.**

The relevant portions of the aforesaid judgments of Hon'ble Apex Court are extracted as under :-

1. ***Bhag Singh and Others Versus Union Territory of Chandigarh,*** reported in **(1992) 4 SCC 692.**

"8.No doubt, a judgment of a Court in a land acquisition case determining the market value of a land in the vicinity of the acquired land, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred. There will be no difficulty in accepting such judgment as one furnishing the basis for determining the market value of the acquired land under consideration, if the opposite parties do not genuinely dispute the position that the judgment relied upon, could be acted as basis for determination of the market value of the acquired land. In fact, in Krapa Rangiah's case (supra) this Court was considering a case where the High Court had reduced the compensation which had been awarded in appeal by the reference Court. It was not disputed before this Court that the High Court had granted an extra rate of Rs. 2 per square yard for a similar land which adjoined the acquired land and had been acquired under the same Notification. It is in the said set of admitted facts, this Court enhanced the compensation payable for the acquired land under consideration before it by Rs. 2 per square yard. This decision, therefore, cannot lend any assistance to the petitioners claim for grant of compensation which could be higher than that granted by the High Court. The petitioners in the present petitions, it has to be noted, though have been granted compensation by the High Court exceeding that granted by the Reference Court was seeking grant of further enhanced compensation from this Court. But such claim for enhanced compensation is contested by learned Counsel appearing for the Land Acquisition Collector, by urging that the judgment of the High Court on which reliance is placed on behalf of petitioners cannot form the basis for determining the market value of the acquired lands of the petitioners, in as much as, there is absolutely no evidence adduced by them to show that in the attendant facts and circumstances of the cases, it would be just and reasonable to grant the compensation for the acquired lands of the petitioners at a higher rate in which compensation has been granted to the claimant concerned in a stray case where subsequent judgment has been rendered by the High Court.

Judgments of the High Court given in a large number of cases determining the market value of lands in a huge tract at uniform rates cannot be revised, in our view, solely on the basis of claim made on behalf of petitioners that a learned Judge of the same High Court in a subsequent stray case has awarded a higher compensation for a piece of land said to be in the same tract of the acquired lands. If recourse is taken to such procedure, the market value already determined in a large number of cases at uniform rates may go on requiring either enhancement or reduction, whenever subsequent judgment of the Court in a stray case brings about a variation in the market value of land concerned. To say the least, such procedure if is resorted to by Courts in determination of market value of lands lying in large tracts based on previous awards or judgments can never reach finality. Besides, recourse to such procedure could give ample scope for making of arbitrary and fanciful awards in land acquisition cases. Hence, we consider it unsafe to act on a subsequent stray judgment of a High Court in a land acquisition case to disturb its earlier large number of judgments, where uniform rate of market value of the acquired lands in same vicinity are fixed. Consequently, no interference with the judgment of the High Court against which present SLPs are filed, is warranted. The SLPs are, therefore, liable to be dismissed."

2. Land Acquisition Officer Revenue Divisional Officer Chittor Versus L. Kamamma (Smt) Dead by LRS and Others K. Krishnamachari And Others reported in **(1998) 2 SCC 385,**

"6.The general trend in the prices of land is on the rise and the judicial notice of the same had been taken by the High Court correctly and therefore, cannot be challenged. Puttur is an urban area and the Lands in question are abutting the main road leading from Tirupathi to Ankonam via Puttur and the acquired land was in the heart of Puttur town. To the north of the land was in the heart of puttur town. To the north of the land in question there is a famous Venkateswaraswamy Temple and to the immediate south, the famous Tiruthani, one of the abodes of Lord Subrahmanyaswamy. Therefore taking into consideration, the topography of the land we may safely proceed on the basis that the High Court had correctly noted the Situation of the land in question which has the potentiality of being developed as urban land. Exb. B-30 is a sale deed dated 9th August, 1976, the transaction having taken place prior to eight months from the issue of preliminary Notification for acquisition of land in the present case. Having found that that piece of land referred in Ex. B- 30 is situated very close to the lands that are acquired under the Notification in question the Reference Court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land and by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lumpsum payment as also the waiting period required for selling the sites that would be formed."

3. ONGC LTD. Versus Sendhabhai Vastram Patel and Others, reported in **(2005) 6 SCC 454.**

"11.While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefore has to be ascertained. Although, there exist different modes for arriving at market value for the land acquired; the best method, however, as is well- known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by deeds of sale. In absence of any direct evidence on the said point, the court may take recourse to other methods; viz. judgments and awards passed in respect of acquisitions of lands made in the same village and / or neighbouring villages. Such a judgment and

award in absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value."

Mr. Deb, learned senior counsel, therefore, urges before this court to dismiss the appeal.

[12] On the other hand, Mr. B. Majumder, learned Dy.SGI, appearing for the appellant further submits that the learned Trial Court solely relied upon the earlier judgments and no other issue has been taken for appreciation. And that judgments were passed in view of the earlier act and for earlier act whole appreciation has been taken and based on this earlier act award cannot be passed. And so far the issue is concerned only 2 issues were framed which are quoted as under :-

i. Whether the value of the acquired land assessed by the LA Collector is inadequate ?

ii. Whether the referring claimant is entitled enhanced compensation of the acquired land ? if so, what would be the compensation ?

Except that no other issue has been framed and so far the value of the rubber tree is concerned no issue has been framed. And there is no material on record on what basis the award has been given, assessing value of the rubber tree. He also said that this is the basic principle without any evidence on record only on the assumption and presumption nothing can be awarded.

[13] Mr. Majumder, learned Dy.SGI, thereafter submits that in the case in hand except the exhibit 7 i.e. the earlier judgment nothing has been taken for consideration, so in that view of the matter this judgment cannot be stand. One can get higher amount what he has placed on record and that should be appropriate evidence and only after appreciating the evidence on record Trial Court is entitled to enhance or reduce the compensation. So, straightway without any evidence one cannot get single penny. Even the

assessment which has been given by the rubber board that also not been exhibited. At last he prays before this court to allow his appeal.

[14] On a careful observation of the submissions of learned counsel for the appellant, this court is of the view that there is no embargo on the part of the appellant to make his submission before this Court when the matter involved public money which is to be disbursed to the claimants. Accordingly, the matter remanded back to the lower court to frame an issue on the point of ownership without referring to the earlier award which has attained finality. It is seen from the order passed by the learned Court below that no proper reasoning is given for enhancement of compensation and no issue has been framed on the point of title deed and mark exhibits on the point of rubber trees/woods. Since, the issues are not framed and there is no justification given for considering the same for compensation issue needs to be framed and the claimants make out the case beyond reasonable doubt on the point of claiming compensation for the rubber trees/woods. It is needless to observe that, if the claimants are not the owner of the land and has no authorization to possess the land, it is meant that they are not the owner of the land and an unauthorized occupant being a trespasser cannot claim any benefits or compensation on land and the structure or any plants saying that he is raising any plants. In the absence of the same, this Court feels that the Court below needs to look into this aspect. Accordingly, the order passed by the Court below is set aside, and the matter is remanded to the learned Court below for framing issue on the point of title deed and providing an opportunity, if required, to amend the pleadings and mark the title deeds if any, and decide the matter as per procedure as expeditiously as possible by giving an opportunity to both sides.

[15] In the event, if the court is convinced that the claimants are having valid documents and are the owners of the land then appropriate compensation under the act and rules for land as well as in terms of rubber wood notifications issued from time to time be marked as exhibits and on the strength of said documents such as notification of the rubber plants appropriate compensation be granted. If the claimants are not able to convince the Court, on the point of ownership, it is needless to say that they would not be entitled for a single rupee from the public money by way of compensation. The Judgments cited by the counsel for claimants are not applicable to the facts of the case.

[16] With the above observation the matter stands remanded back to the court below for fresh adjudication and, accordingly, the appeal is allowed and the same is disposed of. Resultantly, the Cross Objection filed by the Cross-Objector in the connected CO(FA) 01 of 2024 also stands dismissed. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

JUDGE

Paritosh

**SABYASACHI
GHOSH**

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