

IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. APP. NO.09 OF 2011
L.A. APP. NO.10 OF 2011
L.A. APP. NO.11 OF 2011
L.A. APP. NO.12 OF 2011

IN
L.A. APP. NO.09 OF 2011

1. The State of Tripura,
represented by the Secretary to the Govt. of Tripura,
Transport Department, Agartala, West Tripura

2. The Land Acquisition Collector,
Govt. of Tripura, North Tripura District, Kailashahar

..... Appellants

– Vs –

Sri Nikhil Chandra Saha,
son of late Gopal Chandra Saha,
resident of Central Road, Dharmanagar,
P.O. & P.S. Dharmanagar, District : North Tripura.

.....Respondent

For the appellants : Mr. Nepal Majumder, Advocate

For the respondent : Mr. P. Majumder, Advocate

IN
L.A. APP. NO.10 OF 2011

1. The State of Tripura,
represented by the Secretary to the Govt. of Tripura,
Transport Department, Agartala, West Tripura

2. The Land Acquisition Collector,
Govt. of Tripura, North Tripura District, Kailashahar

..... Appellants

– Vs –

Smt. Rajashree Roy (Saha),
wife of Sri Nikhil Chandra Saha ,
resident of Central Road, Dharmanagar,
P.O. & P.S. Dharmanagar, District : North Tripura.

.....Respondent

For the appellants : Mr. Nepal Majumder, Advocate

For the respondent : Mr. P. Majumder, Advocate

IN
L.A. APP. NO.11 OF 2011

1. The State of Tripura,
represented by the Secretary to the Govt. of Tripura,
Transport Department, Agartala, West Tripura

2. The Land Acquisition Collector,
Govt. of Tripura, North Tripura District, Kailashahar

..... Appellants

– Vs –

Smt. Nabanita Bhattacharjee (Dey),
wife of Tamal Sarkar Dey ,
resident of Central Road, Dharmanagar,
P.O. & P.S. Dharmanagar, District : North Tripura.

.....Respondent

For the appellants : Mr. Nepal Majumder, Advocate

For the respondent : Mr. Pradip Chakraborty, Advocate

IN
L.A. APP. NO.12 OF 2011

1. The State of Tripura,
represented by the Secretary to the Govt. of Tripura,
Transport Department, Agartala, West Tripura
- 3.The Land Acquisition Collector,
Govt. of Tripura, North Tripura District, Kailashahar

..... Appellants

– Vs –

Smt. Reba Roy,
wife of Sri Rajib Roy,
resident of Rajbari, Central Road, Dharmanagar,
P.O. & P.S. Dharmanagar, District : North Tripura.

.....Respondent

For the appellants : Mr. Nepal Majumder, Advocate

For the respondent : Mr. P. Majumder, Advocate

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : 08.06.2015

Date of judgment & order : 20.07.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

All these appeals, being L.A. App. No.09/2011, L.A. App. No.10/2011, L.A. App. No.11/2011 and L.A. App. No.12/2011 are taken up together for disposal by a common

judgment for the reason that the land relevant for each of the appeal was acquired by the Govt. of Tripura for construction of the new motorstand at Dharmanagar. Even though the impugned judgments were delivered on various dates, but the reasoning and analysis based on the evidence are identical.

2. There is no dispute that as the value for the land, attracted by the acquisition proceeding, as determined by the Land Acquisition Judge did not satisfy the land-losers, the reference under Section 18 of the Land Acquisition Act, 1894 was made. The land as acquired is a compact area. The judgment and award dated 31.03.2009 delivered in Civil Misc.(LA) No.03/2008, the judgment and award dated 21.05.2009 delivered in Civil Misc.(LA) No.05/2008, the judgment and award dated 06.06.2009 delivered in Civil Misc.(LA) No.07/2008 and the judgment and award dated 16.04.2009 delivered in Civil Misc.(LA) No.08/2008 disposing the reference on enhancement of the land value are challenged respectively in L.A. App. No.09/2011, L.A. App. No.10/2011, L.A. App. No.11/2011 and L.A. App. No.12/2011 by the requiring department and the Land Acquisition Collector.

3. For construction of motorstand at Dharmanagar, by the notification under No.F.9(14)-REV/ACQ/I/2006, dated 03.11.2006, the land from the respondent land-losers was

sought to be acquired by invoking urgency provision as provided under Section 17(1) of the Land Acquisition Act, 1894. The following table as prepared by means of the record, would demonstrate the area of land and the compensation awarded by the Land Acquisition Judge with other necessary particulars :

Sl. No.	Name of the respondent land-losers	L.A. Appeal numbers	Misc.(LA) numbers	Khatian numbers	C.S. Plot numbers	Area in acres	Compensation *
1.	Sri Nikhil Chandra Saha	L.A.App. No.09/2011	Civil Misc.(LA) No.03/2008	6728	15365 (bastu)	.123	₹13,27,403
2.	Smt. Rajashree Roy (Saha)	L.A.App. No.10/2011	Civil Misc.(LA) No.05/2008	6726	10908 (bastu)	.369	₹39,82,208
3.	Smt. Nabanita Bhattacharjee (Dey)	L.A.App. No.11/2011	Civil Misc.(LA) No.07/2008	6730	15367 (bastu)	0.06	₹6,47,513
4.	Smt. Reba Roy	L.A.App. No.12/2011	Civil Misc.(LA) No.08/2008	6727	10905, 10907 (bastu) & 10906 (viti)	.380	₹41,00,918

* The compensation as shown against the column does not show the total amount of the compensation as that rate is for the land value as ascertained by the Land Acquisition Collector. With that, the solatium @ 30% and additional compensation @ 12% per annum shall include and the interest in terms of Section 34 of the Land Acquisition Act as well.

4. As stated, the respondent-land losers, being dissatisfied with the said award made by the Land Acquisition Collector, North Tripura, Kailashahar, asked for reference under Section 18 of the L.A. Act and thus the matter fell in the season of the Land Acquisition Judge, North Tripura, Kailashahar for determination of the just and fair land value for the said acquisition. The Land Acquisition Judge, North Tripura,

Kailashahar, by the impugned judgment determined the value of the land @ ₹40,00,000 per kani for assessing the compensation in favour of the respondent-land losers, hereinafter referred to as the 'referring claimants'.

5. Being aggrieved by the said determination, by means of the impugned judgments and awards, the requiring department as well as the Land Acquisition Collector jointly filed these appeals under Section 54 of the Land Acquisition Act on uniform grounds of objections. According to them, at the time of acquisition, the market value of the acquired land was ₹22,00,000 per kani for bastu/viti and nal class of land and ₹10,00,000 per kani for duba/pukur and pukur par class of land and the said rate was determined by proper field verification. But, the Land Acquisition Judge has provided ₹40,00,000 per kani for bastu/viti class of land and in some other cases ₹20,00,000 per kani for duba/pukur and pukurpar class of land without any basis but on wild guess. But, in the instant batch of appeals, except the bastu/viti class of land no other class of land is relevant. Even the L.A. Collector had considered one valuation report of a chartered valuer which has been admitted in the evidence, but the said evidence was also not given due regard. According to the said valuation report, the market rate of the acquired land was determined at ₹30,00,000 per kani.

6. Mr. Nepal Majumder, learned counsel appearing for the appellants has submitted that even the rate as awarded by the L.A. Collector at ₹32,00,000 per kani for bastu class of land is on the higher side and as such the grievance as expressed by way of reference was not maintainable.

7. For the referring claimants, Mr. P. Majumder, learned counsel in L.A.App. No.09/2011, L.A.App. No.10/2011 and L.A.App. No.12/2011 and Mr. P. Chakraborty, learned counsel in L.A.App. No.11/2011, have submitted in unison that the claim was for ₹70,00,000 per kani in view of the location of the land which has high potential for commercial complex and some of the referring claimants had already made a project report for constructing a business complex for optimising the advantages and utility of the land. Before that project could see the day of light, the land was acquired for construction of the motorstand at Dharmanagar.

8. Mr. P. Chakraborty, learned counsel appearing for the referring claimant in L.A.App. No.11/2011, having placed reliance on **Ravinder Kumar Sharma Vs. State of Assam & Ors.**, reported in **AIR 1999 SC 3571**, has made an attempt to impress upon the court that the market value as asserted by the Land Acquisition Judge may further be enhanced as the claim of the referring claimant was ₹70,00,000 per kani, even though no

appeal or cross-objection has been filed by the referring claimants in terms of Order 41 Rule 22(1) of the CPC, inasmuch as the apex court has observed in that report that without filing cross-objection in an appeal, an adverse finding upon which a decree in part has been passed against the respondent, may be questioned and the appellate court may determine the issue appropriately even going beyond what has been given in the decree. This contention of Mr. Chakraborty, learned counsel cannot be acceded by this court, inasmuch as such inherent power as provided under Order 41 Rule 22 of the CPC is supposed to be exercised when the finding which is not under challenge by the respondents appears atrocious or has caused failure of justice. Order 41 Rule 22(1) of the CPC is not to be used ordinarily.

9. There is no dispute that in the vicinity of the acquired land there situate railway station, TRTC bus stand, two petrol pumps and some important offices. According to the counsel for the referring claimants, the Land Acquisition Judge has correctly taken all the factors for purpose of determining the just market value of the acquired land. Hence, there is no infirmity at all.

10. For appreciating the rival contentions, it may be noted at the outset that the sale exemplars introduced by the

referring claimants, being Exbt.1 series, was considered by the Land Acquisition Judge as those transfer of land had taken place before issuance of the notification under Section 4 of the Land Acquisition Act, 1894 i.e. on 28.05.2007. But, the Land Acquisition Judge did not substantially rely on the rate available on those deeds for the reason that the location of those land was not proximate to the acquired land. But those were taken for comprehending the rate prevailing in that area. The Land Acquisition Judge, having observed that the acquired land is situated just adjacent to the Dharmanagar-Agartala main road and classified as bastu/viti, having prominent location nearby, has determined the market value of the land.

11. It is true that the analysis and reasoning provided in the impugned judgments and awards are sketchy. However, on scrutiny, this court has come across a correspondence under No.1072/F.2(11-A)/SDM/DMN/REV/07, dated 08.08.2007 addressed to the District Magistrate & Collector, North Tripura, Kailashahar, by the Sub-Divisional Magistrate, Dharmanagar. In that correspondence dated 08.08.2007, the Sub-Divisional Magistrate has observed as under :

"The Kanango has stated in his proposal that the said land is under Public Works Department,

Govt. of Tripura. The rate of the said land per kani is Rs.60,00,000/- (Rupees Sixty Lakhs) only as per Govt. value of this adjacent plot."

This assessment was made for determining premium for allotment of the khas land. According to the referring claimants, that land is in close vicinity of the acquired land.

12. That apart, from scrutiny of the sale instances, this court finds that by the sale deed No.1-2273 dated 20.09.2006, a piece of land measuring seven gandas was transferred on consideration of ₹4,00,000, meaning about ₹12,00,000 per kani, whereas the sale deed No.1-20 dated 03.01.2007 (both the sale deeds are part of Exbt.1 series) carries the market value at ₹7,00,000 per kani as a piece of land measuring 0.06 decimals was transferred on consideration of ₹1,00,000. No doubt, these sale deeds were of no assistance to the referring claimants. However, from the valuation report (Exbt.B), it appears that the valuer had determined the rate of the land under acquisition at ₹30,00,000 per kani on 02.01.2006, whereas the notification under Section 4 was issued on 28.05.2007 i.e. almost after two years of that valuation. The said valuation was made not for the Land Acquisition Judge but for the bank for according financial assistance to some of the referring claimants. But, the said valuation reports have been admitted in the evidence at the

instance of the appellants. However, from another communication dated 11.09.2006 (part of Exbt.B), it appears that the Sub-Divisional Magistrate, Dharmanagar, for purpose of acquisition of land for construction of motorstand, tentatively assessed the market value at ₹22,00,000 per kani for bastu/viti and nal class of land, whereas for duba/pukur and pukurpar was assessed at ₹10,00,000 per kani.

13. It is really disturbing to note that when the premium was assessed for making allotment of some khas land, the land value was shown by the Sub-Divisional Magistrate in the correspondence dated 08.08.2007 at ₹60,00,000 per kani, but when it is a question of acquisition, the said officer assessed the land value for the same class of land at ₹22,00,000 per kani, whereas a chartered valuer has assessed the market value of that land at ₹30,00,000 per kani on 02.01.2006. If the escalation rate is taken at 10% per annum, the market value as assessed by the chartered valuer would come to ₹36,00,000 per kani at the time of acquisition.

14. Having regard to the potential, when the Land Acquisition Judge has assessed the land value at ₹40,00,000 per kani, according to this Court, this cannot be treated as

unreasonable or bereft of any basis and hence this Court is not inclined to interfere the impugned judgments.

15. Having observed thus, these appeals stand dismissed. Draw the decree accordingly.

Send down the LCRs thereafter.

JUDGE

ROY