# THE HIGH COURT OF TRIPURA
# AGARTALA

## L.A. APP. 32 OF 2011

**1a. Smt. Pratima Biswas**,
W/O late Nandalal Biswas,

**1b. Smt. Ratna Prava Biswas**,
D/O late Nandalal Biswas,

**1c. Smt. Khuku Rani Biswas**,
D/O late Nandalal Biswas,

**1d. Smt. Kakali Biswas**,
D/O late Nandalal Biswas,

**1e. Sri Subrata Biswas**,
D/O late Nandalal Biswas,

**1f. Sri Sujit Biswas**,
D/O late Nandalal Biswas,

All are resident of village- Purba Gakulnagar
P.S. Bishalgarh, District- Sipahijala.

**2. Sri Sanjoy Biswas**,
Son of late Chitta Ranjan Biswas,
Resident of Purba Gakulnagar, P.O Gakulnagar,
P.S. Bishalgarh, District- West Tripura.

**3. Sri Uma Sankar Biswas**,
Son of late Usha Ranjan Biswas,
Resident of Purba Gakulnagar, P.O Gakulnagar,
P.S. Bishalgarh, District- West Tripura.

… ***Appellants***

- **Versus** –

**1. The Land Acquisition Collector**,
West Tripura, P.O. Agartala- 799001,
P.S. West Agartala, District- West Tripura.

**2. The State of Tripura**,
Represented by the Secretary,
To the Government of Tripura, Law Department,
New Secretariat Complex, P.O. Kunjaban,
P.S. East Agartala, Agartala- 799006, Dist.- West Tripura.

***Respondents***

## L.A. APP. 33 OF 2011

**Sri Jahar Debnath** ,
Son of late Lal Mohan Debnath, resident of Gakulnagar,
Gate No.1, P.O Gakulnagar, P.S. Bishalgarh,
District- West Tripura.

… ***Appellant***

- **Versus** –

1. **The Land Acquisition Collector**,
   West Tripura, P.O. Agartala- 799001,
   P.S. West Agartala, District- West Tripura.

2. **The State of Tripura**,
   Represented by the Secretary,
   To the Government of Tripura, Law Department,
   New Secretariat Complex, P.O. Kunjaban,
   P.S. East Agartala, Agartala- 799006, Dist.- West Tripura.

***Respondents***

## L.A. APP. 34 OF 2011

**Smt. Mani Nandi (Datta)** ,
wife of Sri Khokan Datta, resident of East Gakulnagar,
P.O Gakulnagar, P.S. Bishalgarh, District- West Tripura.

… ***Appellant***

- **Versus** –

1. **The Land Acquisition Collector**,
   West Tripura, P.O. Agartala- 799001,
   P.S. West Agartala, District- West Tripura.

2. **The State of Tripura**,
   Represented by the Secretary,
   To the Government of Tripura, Law Department,
   New Secretariat Complex, P.O. Kunjaban,
   P.S. East Agartala, Agartala- 799006, Dist.- West Tripura.

***Respondents***

## BEFORE
## THE HON'BLE MR. JUSTICE U.B.SAHA

| | | |
|---|---|---|
| For the appellants | : | Mr. SM Chakraborty, Sr. Advocate<br>Mr. B. Saha, Advocate |
| For the respondents | : | Mr. B. Datta, State Counsel |
| Date of hearing delivery of Judgment and Order | : | **04.07.2015.** |
| Date of delivery of the Judgment and Order | : | **27.08.2015** |
| Whether fit for reporting | : | No. |

## JUDGEMENT AND ORDER

In these 3 appeals, the controversies lie within a very narrow compass regarding the value of the land acquired under the LA Act. As the points and issues are common, they are dealt with together.

**2.** These appeals under Section 54 of the Land Acquisition Act, 1894(in short hereinafter referred to as LA Act) are filed against the judgment dated 08.04.2011 passed by the learned LA Judge(Court No.2), West Tripura, Agartala in Misc.(LA) 103 of 2005, 104 of 2005 and 105 of 2005 respectively wherein the learned LA Judge affirmed the market value of the acquired land determined by the Land Acquisition Collector and rejected the claim of the claimant appellants for enhancement of the compensation of the land.

**3.** Heard Mr. SM Chakraborty, learned senior counsel and Mr. B. Saha, learned counsel appearing for the appellants as well as Mr. B. Datta, learned counsel appearing for the State.

**4.** Lands measuring 0.75 acres, 0.10 acres and 0.15 acres in total 1 acre of tilla class land was acquired by the State vide notification no. F.9(3)-Rev/Acq/XIV/2002, dated 13.02.2002 under Section 4 of the LA Act for the purpose of construction of court building and residential quarter of Judicial Officers under Bishalgarh sheet No.1. The said notification was published in the local newspaper 'Tripura Darpan' on 19.02.2002. Thereafter, a declaration under Section 6 of the Act was issued by the respondent No.1, Land Acquisition Collector on 16.03.2002.

**5.** The Land Acquisition Collector assessed the market rate of the land acquired from the claimant appellant for the project, as stated above by way of preparing assessment note even after field enquiry and considering the relevant sale instances and finally determined the value of the land @Rs. 2 lakh per kani equivalent to 0.40 acres taking into consideration for sale deeds exhibited on 05.051999, 07.01.2000, 01.01.2001, 08.09.1998 and 08.02.2002 and assessed the value of the land measuring 0.75 acres belonging to the appellants in LA 32 of 2011

@ Rs. 3,75,000/- plus admissible statutory additional compensation @30% and 12% interest which in all comes to Rs.5,04,262/- and also assessed the value of the land measuring 0.10 acres belonging to the appellants in LA 33 of 2011 @Rs. 50,000/- plus admissible statutory additional compensation and 12% interest which in all comes to Rs. 67,275/- and also assessed the value of the land measuring 0.15 actes belonging to the appellants in LA 34 of 2011 @ Rs.75,000/- plus admissible statutory additional compensation and 12% interest which in all comes to Rs. 1,00,853/-.

**6.** The claimant appellants being not satisfied with the award passed by the LA Collector filed application under Section 18 of the LA Act for referring their case before the learned LA Judge claiming Rs.40 lakh per kani. Accordingly, the LA Collector referred the matter to the learned LA Judge, West Tripura, Agartala and the learned LA Judge taking note of the plots nos, khatian nos and the nature of the land acquired by the LA Collector from the claimant appellants and the evidence adduced by the respective parties passed the impugned judgment and award.

**7.** The learned LA Collector submitted counter statement in support of the assessment note. The appellants examined one witness in their respective cases and the respondents also examined one OPw.

**8.** Mr. B.Saha, learned counsel appearing for the appellants submitted that the learned LA Judge, erred in not taking note of the comparable sale instances and placed reliance on the instances of sale which cannot be termed to be contemporaneous. With reference to the location of the acquired land, it was submitted that the market value, as fixed is certainly in the lower side in view of the market value mentioned in the sale deed no.1-1621 (exhibit 1 series). He further submits that the sale instances are comparable under the same Mouja and has to be accepted as the basis for determining the market price of the acquired land on the date of acquisition. He has again submitted that the learned LA Judge did not apply his mind to the material evidence on record. He passed the judgment only on the basis of the assessment note of the LA Collector. It is also contended by the learned counsel of the appellants that undisputedly the acquired land is situated in the heart of Bishalgarh town which is also nearby the English Medium school, BSF Headquarter, Office tilla market complex etc. He has also placed reliance on the judgment of this Court in ***Deputy Chief Engineer, NF Railway vs. Nani Bala Ghosh*** reported in ***2014 1 TLR 646*** wherein this Court held that sale instances of comparable land under same Mouja, may be accepted as the basis for determining the market price of the acquired land on the date of acquisition. He has also placed reliance on a decision of the Apex Court in ***Rabinder Narain and another vs. Union of India***, reported in ***AIR 2003 SC 1987*** wherein the Apex Court stated inter alia that where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. According to him, the sale instances relied upon by the appellants, though relating to a small plot of land but the same is adjacent to the acquired land and the learned LA Judge ought to have accepted the market value of the said plot for determination of the market value in the instant case.

**9.** On the other hand Mr. B. Datta, learned counsel appearing for the State submits that the appellants though produced one sale deed being No. 1-1621 relating to the land measuring 2 kranta 1 dhur sold at the rate of Rs.20,000/- i.e. Rs.23,52,941/- per kani, but the appellants did not adduce any evidence by either examining the vendor or the vendee or the attesting witnesses of the sale deed to prove its case. He further submits that the appellants also did not submit any surveyed map and khatian to show that the land in sale deed no. 1-1621 is adjacent to the acquired land. He again submits that the class of land in the sale deed being no. 1-1621 is a bastu class of land whereas the acquired land is tilla class of land and more so the land in sale deed no. 1-1621 is a small plot of land which can only be used for commercial purpose. He finally contended that as the appellants have failed to adduce any evidence showing that the land involved in the sale instance relied by them are adjacent to the Bishalgarh town nearby English Medium school, BSF Headquarter, Office tilla market complex etc., the learned LA Collector has rightly disbelieved those sale instances. He has also taken this court to paragraph 10 of the impugned judgment, which is as follows :

> **"Since the notification for acquisition of the land under Section 4 of the Act was issued on 13.02.2002, the sale deeds of 22.09.2005 and 15.03.2005 cannot be based for determination of market value of land under acquisition as the sales were taken place after more than two years from the publication of notification under Section 4 of the Act. The sale under deed no. 1621, dated 17.02.1999 pertains to land measuring 2 krantas and 1 dhur equivalent to 147 sq.feet or 0.0034 acre surveyed in plot no. 805(part) of Mouja Bishalgarh situated by the side of Agartala-Bishalgarh main road which was sold at the rate of Rs.20,000/-. The rate of the land per kani comes to Rs.23,52,941/- approximately. The PW 1 has not produced any surveyed map of plot no. 805(part) of Mouja Bishalgarh to enable this Court to see the distance between the said plot and acquired land. Besides, the area of land under the sale referred to above, is too meager which tends to believe that it was used for commercial purpose. So, the said sale cannot be relied on for the purpose of determination of market value of the acquired land in issue. The claimants could not produce any better evidence to discard the assessment of market value made by the L.A.Collector relying on the sale deeds already mentioned in para above. So, I find no reason to interfere with the determination of the market value of the land under acquisition made by the L.A.Collector and, therefore, the claim of the claimant for enhancement of the compensation of the land under acquisition stands unreasonable. The claimants are not entitled to any other ancillary benefit as claimed for".**

**10.** Normally at the time of determining the market value relating to an acquired land, the proximity of time relating to sale deed produced by the parties and the proximity of land involved in the sale deed as well as the land acquired in the project are of material consideration for indentifying the comparable sale instances out of genuine instances and a court is to give preference to the sale instances of adjacent land in comparison to sale instances of land situated far away from the acquired land. While computing the market value, the mathematical precision relating to value of a land may not be possible in every case, but even in the same location or area, two different sites/plots might have different value. It may happen some times that the people knowing the fact that the land would be acquired in the area, they purchase the land showing higher rate to get the benefit of the acquisition of land in near future.

**11**. It appears from the record that the appellants had produced three sale deeds before the L. A. Collector. Sale deed No. 1-10780 of dated 22.9.2005, Sale deed No. 1-2968 of dated 15.3.2005 and Sale deed No. 1-1621 of dated 17.2.1999. The notification for acquisition of land under Section 4 of the L.A. Act was issued on 13.2.2002. So the sale deeds of 2005 cannot be the basis for determination of the market value. Further all the sale deeds are relating to small pieces of lands which might have used for commercial purposes. Besides, the claimants have not produced surveyed map to see the distance between the plots of lands in those sale deeds and the acquired lands. Keeping in view the same, the L.A. collector did not rely on those sale deeds for the purpose of determination of the market value of the acquired lands.

**12**. Before assessment of the rate of the market value of the acquired land, the L.A. Collector considered a sale instance of Bishalgarh mouja relating to a small piece of land which was executed just five days before the date of notification under Section -4 of the L.A.

Act, i.e., the sale deed No. 1-175 under plot No. 542(part), in the year 2002 and the land was sold @ Rs.6,48,000/- per kani, although it was a very small piece of land but in the acquired land. The L.A. collector did not consider it as the land was purchased by the original jotedar himself.

**13**. In reference, the L.A. Judge also held that the said sale deed cannot be relied on for the purpose of determination of market value of the acquired land and the claimants also could not produce any better evidence to discard the assessment of market value made by the L.A. Collector. As such, the L.A. Judge did not interfere with the determination of the market value of the acquired land made by the L.A. Collector. Ultimately, the claim of the claimants for enhancement of the compensation of the acquired land was rejected by the L.A. Judge.

**14**. It is also apparent from the Assessment note of the L.A. collector that the L.A. collector assessed the market value on an average basis considering the two sale deeds, that is sale deed No. 1-162 dated 7.1.2000 wherein the rate of the land mentioned @ Rs.2,00,000/- per kani and the other is sale deed No. 1-2284 dated 8.9.1998 wherein the rate of the land was shown @ Rs.1,00,000/-. Thus, the average rate of the land was considered @ Rs.1,50,000/-. Thereafter, considering the physical position and importance of the land, the L.A. Collector determined the market value of the acquired land @ Rs.2,00,000/- for all classes of land under acquisition. The L.A Judge on reference considered the same aspects and that is why he did not enhance the value of the acquired land. According to this Court, both the L.A. Collector and the L.A. Judge erred in determining the market value of the acquired land. It is an admitted position that the price of the land is increasing day by day. The rate of the previous years can be considered only to take the help for assessment of the rate of the land in the subsequent years when sale deeds of the subsequent years nearer to the acquired land are not available. But the rate of the land cannot be assessed on an average basis on the rates of the previous years which the L.A. Collector did. In the instant case, the lands of the claimants were acquired in the year 2002. But the L.A. Collector considered the sale deeds of 1998 and 2000 and basing on the value of the said two sale deeds, he had fixed the rate of the acquired lands on an average basis and ignored the sale deed of the year 2002 which was available before him though for a very small piece of land.

**15**. In **H.P. Housing Board** vs**. Bharat S. Negi and ors, AIR 2004 SC 1800**, the Apex court held ...."But as all the sale instances are of small pieces of lands and the acquisition is of the large piece of land, a deduction of 33-1/3% must be made towards development cost." ...

**16**. Perused the impugned judgment as well as the assessment note of the L.A. Collector. The claimants in their written statement demanded compensation of the acquired land @ Rs.40,00,000/- per kani with statutory solatium, interest and other ancillary benefits.

**17**. Considering the above, this court is of the considered opinion that it would be the just compensation if the value of the acquired land is determined @ Rs.4,00,000/- per kani keeping in view the rate of the land @ Rs.6,00,000 lesser than Rs.6,48,000/ shown in Sale deed No. 1-175 dated 8.2.2002 with deduction about 33.3% towards development costs from Rs.6,00,000/- considering the land in the said sale deed a small piece of land and that it is a well known that when a large piece of land is sold out, one cannot get the same rate that of a very small plot of land.

**18**. For the foregoing reasons and discussion, the value of the land thus is assessed @ Rs.4,00,000/- per kani. The claimants shall be entitled to the additional compensation, solatium and interest in accordance with the provisions of the Land Acquisition Act.

**19**. The appeals are disposed of in the aforesaid terms. No order as to costs.

Send down the L.C.Rs.

**JUDGE**

*Saikat*