

THE HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) NO.277 of 2009

Fortuna Agro Plantations Ltd.,

A company registered under Companies Act, 1956,
having its registered office at P.O : Gobindopur, Kailashahar,
Distt. : North Tripura, Being represented by
Shri Amit Bhawsinka, S/o : Raj Kumar Bhawsinka,
[Manager (ADM) of the petitioner company].

..... *Petitioner.*

- Vs -

- 1. The Union of India,**
Represented by the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi - 110001.
- 2. The land Acquisition Collector,**
North Tripura, Kailashahar.
- 3. The State of Tripura,**
Represented by the Secretary to the
Government of Tripura,
Revenue Department, Agartala.

..... *Respondents.*

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. D K Biswas, Advocate.

For

Respondent No.1 : Mr. B Majumder, C.G.C.,

Respondent Nos.2 & 3 : Mr. D Chakraborty, Sr. Advocate,
Mr. B Dutta, Advocate,
Mr. H Laskar, Advocate.

Date of hearing : 5th August, 2015.

Date of judgment : 7th September, 2015.

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

By means of this petition, the petitioner company has prayed for grant of the following relief :

“In the above circumstances it is most humbly prayed that Your Lordships would be kind enough to pass appropriate Writ/Direction to the Respondent No.2 to prepare and pass a fresh/modified award taking into consideration the claim petition and supporting documents tendered by the petitioner with the approval of the Appropriate Government, in response to the notice under Section 9 by a speaking order following the stipulations of Sec.11, Sec.23, Sec.23(1A), 23(2) and Sec.34.”

2. The undisputed facts are that 3 acres of land of the petitioner company has been acquired by the State of Tripura for establishment of Border Out Post(BOP) at Jeeban Tilla for guarding the Indo-Bangladesh international border.

3. According to the petitioner, the possession of land was taken on 1st April, 2005 but compensation was not paid to the petitioner in terms of Section 17 of the Land Acquisition Act, 1894. The petitioner submitted certain claims before the Land Acquisition Collector, North Tripura, Kailashahar and finally the Collector has passed an award on 11th June, 2009 which is attached to the writ petition. The petitioner company has been awarded total compensation of Rs.8,56,251/- out of which Rs.3,00,000/- is on account of cost of 3 acres of land @ Rs.1,00,000/- per acre and Rs.4,26,700/- has been granted for damage to plants including gamai

and teak trees and also damage to some bamboo plants. The claimant has been awarded interest of Rs.39,551/- and Rs.90,000/- as solatium i.e. a total amount of Rs.8,56,251/-. The petitioner company has also received this amount of compensation though under protest.

4. The case of the petitioner is that this compensation has not been properly assessed by the Land Acquisition Collector. Written arguments were filed on behalf of the claimant petitioner and in these written arguments certain issues have been raised. It is urged that the award is not a complete award but is only a part award. The next grievance of the petitioner is that no award in terms of Section 17 of the Land Acquisition Act, 1894 was made when the petitioner's land was forcibly taken over by the State. The third grievance is that the petitioner had been granted compensation for 1818 number of trees whereas the number of trees taken over was 1831. The petitioner company has been granted compensation for two types of bamboo i.e. 'Rupai Bamboo' and 'Muli Bamboo' @ Rs.2/- per bamboo and it has been awarded compensation for 23,000 bamboos. The fourth ground raised by the petitioner is that the Land Acquisition Collector has awarded nil amount towards statutory entitlement under Section 23(1A) and reliance is placed on the judgment of the Apex Court in ***Sunder Vs. Union of India, (2001) 7 SCC 211*** and it is urged that the award is violative of the law laid down in ***Sundar's*** case because interest has not been awarded on the solatium. It is also alleged that there are many other irregularities and illegalities in the award.

5. The petitioner through their counsel gave a notice to the State, the Border Security Force(BSF) and the Land Acquisition Collector wherein it was urged that the assessment made by the Land Acquisition Collector is on the lower side and that the assessment made is not in accordance with law. It is also urged that the assessment is not in accordance with the guidelines and instructions issued by the State of Tripura from time to time. Further, it was alleged that Land Acquisition Collector has not passed a speaking order. It would be pertinent to mention that this notice was issued after the petitioner company had received the amount of compensation assessed by the Land Acquisition Collector though under protest on 28th June, 2008. In the notice it was prayed that all the claims of the client may be examined, settled and paid within 30 days. It appears that this notice itself was treated as a reference petition under Section 18 and the matter referred to the learned District Judge in terms of the Land Acquisition Act, 1894.

6. The petitioner filed this writ petition in the year 2009 claiming that the award is a part of order and, therefore, the Land Acquisition Collector be directed to again pass a detailed award with reasons. It has been urged on behalf of the petitioner that the compensation has not been assessed by taking into consideration the provisions of Section 23 of the Land Acquisition Act, 1894 and it is urged that award is contrary to the provisions of Section 23 of the Land Acquisition Act, 1894. The petitioner also claimed that potential

value of the trees and the value of the trees have not been properly valued. Reliance has been placed on a number of judgments which are as follows :

“Manipur Tea Cooperative Private Ltd. Vs. Collector of Hailakandi, AIR 1997 SC 1779; Municipal Council, Ahmednagar and another Vs. Shah Hyder Beig and others, AIR 2007 SC 671; ABL International Ltd. and another Vs. Export Credit Guarantee Corporation and of India and Ors., (2004) S SCC 553; Bhimidipati Annapoorna Bhavani Vs. The Land Acquisition Officer, Peddapuram and Ors., AIR 2005 Andhra Pradesh 365; Govt. of A.P. and Ors Vs. Kollutla Obi Reddy and Ors., AIR 2006 SC 642; Special Land Acquisition Officer Vs. Chandramma (deceased by L.Rs.), AIR 2009 SC 2209; Kranti Associates Private Ltd. and Another Vs. Masood Ahmed Khan and Ors., (2010)9 SCC 496; The Secretary & Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Ors., AIR 2010 SC 1285; Special Land Acquisition Officer Vs. Karigowda & Ors., AIR 2010 SC 2322.”

In my view, none of these judgments is applicable in the facts of the present case.

7. Section 18 of the Land Acquisition Act, 1894 reads as follows :

“18. Reference to Court. —

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the

matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

The award of the Land Acquisition Collector is only an offer made on behalf of the State. In case the land owner is not satisfied by the offer he can initiate proceedings under Section 18 of the Land Acquisition Act, 1894 and thereafter the matter has to be referred to the Land Acquisition Judge who decides what is the amount payable in accordance with the provisions of the Land Acquisition Act, 1894. There is an efficacious alternative remedy available to the petitioner of approaching the Land Acquisition Judge. In fact, in this case, reference has already been made under Section 18 and at the request of the petitioner those proceedings under Section 18 of the Act were stayed.

8. The petitioner had earlier filed a Writ Petition (Civil) No.315 of 2007. Though that writ petition was in respect of a different

piece of land similar objections were raised. The writ petition was dismissed and thereafter the petitioner filed a writ appeal being W.A No.31 of 2008 which was also dismissed by a Division Bench of this Court on 5th August, 2009 with costs of Rs.10,000/-. In the said writ appeal the Division Bench held as follows :

“High Court will not exercise the jurisdiction under Article 226 of the Constitution of India in the matter of the claim for enhancement of the amount of compensation, as such dispute cannot be decided in a writ jurisdiction which requires detailed examination of evidence and can be done only under the provisions of the Act, meaning thereby, there has to be an application under Section 18 of the Act seeking reference and in the event of filing such application within the time allowed under the Act, on the basis of the decision that may be given by the competent court.”

9. This Court is not expressing any opinion on the merits of the present case. It is for the Land Acquisition Judge to decide what is the just compensation payable to the claimant. This will have to be decided after dealing with all points raised by the claimant as well as by the State and the BSF. Here it would be pertinent to mention that one of the points raised by the State in the writ petition is that permission to the petitioner company to retain the land was given only because the land in question is a tea garden and therefore, there is no question of their being any teak/gamai plantation or bamboo plantation on the same. This Court is not going into this aspect of the matter also.

10. It is, however, absolutely clear that the issues raised by the petitioner are all issues which have to be decided on the basis of evidence. What is the exact number of trees which were taken over? What is the value of the trees? What is the amount of compensation to which the claimant petitioner is entitled to in terms of Land Acquisition Act, 1894? These are all issues which have to be decided only after evidence is recorded. In this case, the petitioner claims that the possession was taken over in the year 2005. There is no explanation by the petitioner why it remained silent and did not approach the Court till the year 2009. With regard to the other grievances of the petitioner I am clearly of the view that these will have to be decided in proceedings under Section 18 of the Land Acquisition Act, 1894 and not in the writ proceedings. I am clearly of the view that the writ petition is a total abuse of the process of the Court and, therefore, the same is dismissed with costs assessed at Rs.10,000/-.

The petition is disposed of accordingly.

CHIEF JUSTICE

Sukhendu