

THE HIGH COURT OF TRIPURA AGARTALA

LA App. 12 of 2009

The Deputy Chief Engineer (Cons),
N.F. Railway,
Agartala, West Tripura.

..... Appellant

Versus

- 1. Sri Gopal Chandra Debnath,**
S/O Mahananda Debnath,
Resident of Jogendranagar,
P.S. East Agartala,
West Tripura.

claimant-respondent

- 2. The Land Acquisition Collector**
West Tripura, Agartala.

..... Respondent

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

For the appellants : Mr. A Lodh, Advocate.

For the respondents : None.

Date of hearing and
delivery of judgment : **06.02.2015.**

Whether fit for reporting : **Yes/No**

JUDGMENT AND ORDER (ORAL)

This appeal under Section 54 of the Land Acquisition Act is filed for setting aside the judgment and award dated 16.05.2008 passed by the learned LA Judge, Court No. IV, West Tripura, Agartala in LA Case No. Misc. (LA) 61/2000.

2. Heard Mr. Lodh, learned counsel for the appellant-NF Railway.
None appears for respondents.

3. The factual matrix required to be discussed for disposal of this appeal is as follows:

Land measuring 0.28 acres of land (under plot No. 5209 Viti-0.24 acres and under Plot No. 5210 Bastu-0.04 acres) under Jogendranagar Mouja of Bishalgarh sub-Division was acquired by the LA Collector, West Tripura, Agartala (respondent No. 2 herein) for the purpose of construction of new Railway Line from Kumarghat to Agartala. The LA Collector awarded Rs. 84,242/- only as compensation of the acquired land including additional compensation.

4. The claimant-respondent being aggrieved by the award of the LA Collector made an application under Section 18 of the LA Act for reference and the same was referred to the learned LA Judge, West Tripura, Agartala. The case of the claimant-respondent before the LA Judge was that the LA Collector had made the assessment arbitrarily without any reference to the prevailing market value and other surrounding factors and as such the said amount was not justified at all. According to the claimant the amount is liable to be enhanced and he is entitled to have adequate compensation.

5. The respondent LA Collector, by way of filing written statement, vehemently opposed the claim and asserted that the land in question of the claimant was not adjacent to the Jogendranagar Hospital, Jogendranagar Girls HS(+2) School, Veterinary Hospital and Agartala Town, etc. It was the further case of the LA collector that the consideration amount for the acquired land was considered basing upon Rs. 35,000/- per kani as consideration of the acquired land as Viti and Bastu class of land.

6. The Deputy chief Engineer (Cons.), NF Railway was one of the party in the LA Proceeding and appearing in the said proceeding he vehemently denied the claim of the claimant-petitioner, claimant-

respondent herein, by way of filing his written objection supporting the plea of the LA Collector.

7. Mr. Lodh while urging for setting aside the impugned judgment and award submits that the LA Collector considered all the relevant factors and the value of the neighbouring area and determined the market value of the acquired land but the learned LA Judge without any basis enhanced the awarded amount from Rs. 35,000/- per kani to Rs.60,000/- per kani. He also pointed out that the learned LA Judge in his judgment and award specifically stated that the LA Collector did not commit any serious error at the time of award of compensation. Not only that, the claimant-respondent failed to produce any concrete proof that the prevailing market value of the acquired land on the date and time was more than that of the rate of compensation awarded. He again submits that the learned LA Judge enhanced the award passed by the LA Collector without any basis, rather fully on speculation which is not permissible under law.

8. Before deciding the instant appeal, it would be proper for this Court to discuss the findings of the learned LA Judge on the basis of which he has enhanced the rate of compensation of the acquired land from Rs.35,000/- to Rs.60,000/- per kani. It appears from the judgment and award as impugned that the learned LA Judge noted, inter alia,

“On hearing the parties to the case and after perusing the documents of both sides it appears to me that the acquired land of the petitioner was far away from the Jogendra Nagar Bazar, Jogendranagar Girls Class XIII (sic) School and Agartala town. He also failed to produce any sale-deed of any other land adjacent to his land in question.

So inference can easily be drawn that the LA Collector had not given less amount than the prevailing rate of that locality”.

It is further stated that "On the other hand on perusal of the documents of the opposite-parties I am of the opinion that they have not committed any serious error at the time of awarding the payment of compensation. They awarded @ Rs. 35,000/- per kani for the acquired land. The petitioner failed to produce any concreat (sic) proof that the prevailing market value of the acquired land on the relevant date and time was more than that of awarded amount of compensation." It is not clear then on the basis of what the learned LA Judge enhanced the awarded amount from Rs.35,000/- to Rs.60,000/- per kani. Even if this Court considers that the purpose of acquisition has to be looked into by the LA Judge while deciding a reference under Section 18 of the LA Act then also question arises that at the time of fixing the market value the deduction of development charges has to be excluded.

9. By this time it is settled that in case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjoining land with similar advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalize it by a number of years' purchase. The capitalized value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer. But in the instant case, no sale instances relating to comparable land has been produced by the respondent-claimants and even there is no evidence regarding any annual income from the acquired land. Compensation cannot be made merely on speculations and hypothetical schemes of the future development of the land.

10. Upon going through the findings of the learned LA Judge and considering the other materials as available before this Court, this Court is of the considered opinion that the learned LA Judge committed error in enhancing the market value of the acquired land, particularly when he himself came to the conclusion that the LA Collector did not commit any error while fixing the market value of the acquired land. More so, the judgment and award passed by the learned LA Judge is wholly arbitrary and perverse as the same is without any evidence.

11. Accordingly, the judgment and award passed by the learned LA Judge, as impugned herein, is hereby set aside and the order passed by the learned LA Collector is maintained. With the above, the instant appeal is allowed.

Send down the LCR.

JUDGE

lodh