

THE HIGH COURT OF TRIPURA AGARTALA

LA App. 16 of 2009

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

..... Appellant

Versus

- 1. Khurshid Miah,**
S/O Late Abdul Majid Miah,
Resident of Dukli, P.O. Madhuban,
P.S. Amtali, West Tripura Dist.

Referring claimant-respondent

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

..... Respondent

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

For the appellant : Mr. A Lodh, Advocate.

For the respondents : Ms P Deb (Paul), Advocate

Date of hearing and
delivery of judgment : **30.03.2015.**

Whether fit for reporting : **No**

JUDGMENT AND ORDER (ORAL)

1. The instant appeal is directed against the judgment and award dated 10.09.2008 passed by the Land Acquisition Judge (Addl. District Judge, Court No.4), West Tripura, Agartala in Misc. (L.A.) 18 of 2003.

2. Heard Mr. A Lodh, learned counsel for the appellant-NF Railway as well as Mrs. P Deb (Paul), learned counsel for the respondents.

3. Briefly stated the facts of the case is that the L. A Collector acquired 0.14 acres of bastu class of land belonging to the claimant-respondent under plot No. 15, 14 of Khatian No. 14 under Dukli mouja, Madhuban of Bishalgarh Sub-Division towards construction of N.F. Railway station yard and railway line vide Notification No. F.9 (1) Rev/Acq/XIV/98 dated 27.02.1998 and awarded Rs. 63,653/- only in total as compensation for the acquired land including additional compensation and additional amount.

4. The respondent-claimant being aggrieved by the award of the LA Collector made an application under Section 18 of the LA Act and the same was referred to the concerned LA Judge. It is the case of the claimant-respondent that the LA Collector has made the award of compensation arbitrarily without any reference to the prevailing market value and other surrounding factors. The claimant-respondent demanded Rs. 10 lakhs per kani for the acquired lands in question.

5. In the proceedings under Section 18 of the L.A. Act, the LA Collector appeared and vehemently opposed the claim of the referring respondent-claimant. The case of the LA Collector before the LA Judge was that the land in question cannot be compared with other commercial lands and associated items as the said land are situated far away from the Agartala-Bishalgarh main road as well as the Agartala-Dukli Main Road and over and above, the land in question was not adjacent to the ONGC Head Quarters, Jute Mill, Dr. BR Ambedkar Hospital and Siddhi Ashram Market etc. Thus, the LA

Collector considering the above aspects awarded Rs. 74,000/- per kani for the acquired lands.

6. The appellant-NF Railway also vehemently denied the claim of the claimant-respondents and asserted that the LA Collector rightly determined the market value of the land in question.

7. The learned LA Judge, after hearing the parties enhanced the market value of the acquired land in question from Rs.74, 000/- to Rs. 1,70,000/- per kani.

8. Being aggrieved by the judgment and award of the learned LA Judge, NF Railway preferred the instant appeal through the Deputy Chief Engineer (Cons) of the NF Railway.

9. Mr. Lodh while urging for setting aside the impugned judgment and awards submitted that the LA Collector considering all the relevant factors and the value of the neighbouring area, determined the market value of the acquired land but the learned LA Judge without any basis enhanced the awarded amount from Rs. 74,000/- to Rs. 1,70,000/- 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 respondent-claimants 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.

10. On the other hand, Ms Deb (Paul) submits that the learned LA Judge rightly enhanced the market value of the land in question as the said land was acquired for the purpose of construction of railway station yard and railway line. She also submits that at the time of determination of market value of the acquired land, the Court has to see the purpose for which the land is being acquired.

11. Before deciding the appeals, 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.74, 000/- to Rs. 1, 70,000/- per kani. It appears from the judgment and award as impugned that the learned LA Judge noted, inter alia, 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." It is also stated by the LA Judge that "the petitioner failed to produce any concrete 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 that on what basis the learned LA Judge enhanced the awarded amount from Rs.74,000/- to Rs.1,70,000/- 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.

12. By this time it is settled that in case of a land, the market value is generally ascertained on a consideration of the prices obtained by sale of adjoining land with similar advantages. Where

there is no sale 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.

13. Upon going through the findings of the learned LA Judge and considering the other materials as available before this Court, this Court is of 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.

14. In a batch of cases (L.A. Appl 03 of 2006 etc.) delivered judgment on 10.04.2014 wherein the lands acquired were under mouja Dukli and the L. A. Collector awarded compensation @ Rs. 74,000/- per kani and the L.A. Judge enhanced the awarded amount to the tune of Rs.2,00,000/- per kani, this Court considering all aspects of the matter reduced the enhanced award from Rs. 2,00,000/- to Rs., 1,52,000/- per kani.

15. Keeping in view the above and as the acquired land belonging to the same mouja Dukli, this court is of the considered opinion that the similar amount of compensation of Rs. 1,52, 000/- per kani may be taken as just compensation for the land acquired in the instant appeal also. Accordingly, the claimant-respondent is entitled to compensation at the rate of Rs.1,52,000/- per kani for the acquired land. The claimant shall also be entitled to additional compensation, solatium and interest as per provision of the L.A. Act. The impugned judgment and award dated 10.9.2008 passed by the learned L. A. Judge, West Tripura is modified to the extent indicated above.

16. In the result, the appeal is partly allowed. No order as to costs.

Send down the LCR.

JUDGE

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