

HIGH COURT OF TRIPURA AGARTALA

L.A. Appl 13 of 2009

The Deputy Chief Engineer (construction)
N.F. Railway Gurkha Basti,
Agartala, West Tripura District

Appellant

-versus-

Heirs of late Sakhi Lal Deb Barma
Referring claimant who died on 4.10.2002

1. Smt. Bidhi Bala Deb Barma
W/o late Sakhi Lal Deb Barma

2. Sri Sushanta Deb Barma
S/o late Sakhi Lal Deb Barma

3. Shri Prasanta Debbarma
S/o late Sakhi Lal Deb Barma

4. Shri Jayanta Deb Barma
S/o late Sakhi Lal Deb Barma

All of village- K.K. Nagar
P.S. Bishalgarh
Dist. West Tripura

5. Smt. Anjana Deb Barma (choudhury)
W/o Shri Dilip Kumar Choudhury
D/o late Sakhi Lal Deb Barma

Resident of vill. Dashamighat
P.S. West Agartala,
Agartala, West Tripura

6. Smt. Tinku Deb Barma (Majumder)
W/o Shri Vivekananda Majumder
D/o late Sakhi Lal Deb Barma
Resident of Vill. Dhaleswar
(near Parchya Bharati School)

P.S. East Agartala
Agartala, West Tripura Dist.

7. Smt. Rinku Deb Barma
W/o Shri Swapan Deb Barma
D/o late Sakhi Lal Deb Barma
Resident of Banamalipur
P.S. East Agartala
West Tripura District ... Referring claimant-respondents

8. The Land Acquisition Collector
West Tripura Respondent

BEFORE

THE HON'BLE MR JUSTICE U.B. SAHA

Advocate for the Appellant: Mr. A. Lodh, CGC

Advocate for the respondent
No. 1 to 7: Ms. P. Deb Pal, Advocate

Advocate for the respondent
No. 8 : none

Date of hearing : 26.3.015
& delivery
of the judgment

Whether fit for reporting: No

JUDGEMENT AND ORDER(oral)

1. The instant appeal is preferred against the judgment and award dated 18.6.2008 passed by the learned Land Acquisition Judge, West Tripura, Agartala (Court No.3) in Misc. (L. A) 60 of 1999 whereunder the learned L.A. Judge, enhanced the value of the acquired land from Rs.1,06,000.00 to Rs. 1,50,000/- per kani. He has also allowed usual solatium and interest as per provision of the L.A. Act. If any amount has

already been paid, that should be deducted from the enhanced award of compensation.

2. Heard Mr. A. Lodh, learned CGC appearing for the appellant as well as Ms. P. Deb Pal, learned counsel appearing for the respondent No. 1 to 7. None appears for the respondent No. 8.

3. Land measuring 0.10 acre appertaining to plot No. 8524/17209 under Khatian No. 10326 belonging to predecessor-in-interest of the claimant petitioners was acquired by the L.A Collector for the purpose of construction of N.F. Railway line under mouja Badharghat. The said acquisition was as per Notification dated 19.11.1997 under Section 4 of the L.A. Act. The value of the land was assessed by the L.A Collector at the rate of Rs.1,06,000/- per kani. The respondent claimants received the awarded amount under protest and submitted an application under Section 18 of the L.A. Act requesting the L.A. Collector to refer the matter and the matter was accordingly referred.

4. During the pendency of the 18 reference case, the referring claimant died and her legal heirs have been substituted in her place as claimant-petitioners.

5. The grievance of the claimant-petitioners before the L.A. Judge was that the learned L.A Collector has not considered the potentiality of the acquired land and awarded inadequate compensation of the land. It is also stated by the claimant-

respondents that the market value of the acquired land at the relevant time of the acquisition varied from Rs.8 lacs to Rs. 10 lacs per kani, but the L.A. Collector assessed compensation in a very unreasonable manner which is far below the market value of the acquired land prevailing at the time of acquisition in that locality.

6. The opposition party-LA Collector, West Tripura as well as the Deputy Chief Engineer (construction), N.F. Railway, the requiring department, resisted the claim petition by filing separate written statement denying all the allegations made in the claim statement and asserted that the L.A. Collector after considering all aspects awarded a reasonable compensation for the acquired land and that the compensation awarded by the L.A. Collector is adequate, just and appropriate and hence no interference is called for.

7. During the trial, all parties examined one witness each and also produced and exhibited some documents which were marked as Ext. 1 series and A to E series respectively.

8. The learned L.A Judge in his findings noted that *"the most reliable way to determine the marker value is to rely on the instance of sale of portion of the same land as has been acquired or adjacent land made shortly/before or after section 4 notification. In the instance case claimant submitted certified copy of common judgment dated 13.11.06 passed in Misc. (LA) 32/02 and seven other cases (Ext.-1 series) in support of their claim. I have gone through the judgment and found that land covered under Ext.-1*

series relates to notification dated 23.2.98 whereas land in the instant case relates to notification dated 19.11.97. Claimant also did not adduce any evidence to show that the land under Ext-1 series and the instant case are of similar nature having similar potentiality and therefore, Ext-1 series cannot be taken into consideration for a basis for determination of the market value of the land in the instant case. On the other hand, O.P L.A Collector submitted assessment note (Ext.-'E' series) in support of their pleadings. It is revealed from the assessment note that L.A. Collector assessed the market value of the acquired land on the basis of average of sale consideration reflected in some sale deeds in respect of land lying in the immediate vicinity of the acquired land and was executed prior to the date on which notification u/s 4 was issued. Determination of the market value on average basis is incorrect in that it overlooked the comparable method."

9. As there was no cogent evidence before the learned L.A. Judge for determining the market value, he has taken judicial notice of the facts that the acquired land falls within the periphery of the Bishalghar Sub-division and for last more than two decades, there has been a phenomenon increasing price of landed property and in view of the rapid urbanization of the area and sharp escalation in prices over last two decades, he has enhanced rate of compensation for the acquired land from Rs.1,06,000/- to Rs. 1,50,000/- per kani together with usual solatium and interest as per provision of the L.A. Act.

10. Mr. Lodh while asking for setting aside the judgment impugned herein would contend that the learned L.A. Judge while enhancing the rate of compensation did not give any reason except that day to day increasement of the price of the landed property in the area from where the land was acquired due to rapid urbanization. He has also submitted that assessment of the L.A. collector is reasonable and fair.

11. On the other hand, Mrs. Deb Pal while supporting the judgment of the learned L.A. Judge would contend that when the learned L.A. Judge did not believe the sale instances placed by the claimant-respondents as well as the assessment of the L.A. collector, he had to give his own judgment taking note of the prevailing market value in and around area from where the land was acquired.

12. There is no doubt that when there is no reliable evidence and a market value is available, then the court should try to ascertain the market value from the materials before it. 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 might have different value and in that case some sort of guess work is inevitable and in the instant case also, the learned L.A. Judge determined the market value of the acquired land on some guess work.

13. This court has gone through the findings of the learned L.A Judge from which it appears that the L.A Judge while enhancing the rate of compensation has considered the nature of acquired land and also the fact that there has been a phenomenon increasing price of landed property due to rapid urbanization of the area. When no reliable evidence is available, then obviously, the court has certain power to take the judicial notice of the market value of the nearby place from where the land was acquired.

14. This court is also of considered opinion that the enhancement of the compensation from 1,06,000/- to Rs. 1,50,000/- per kani is not higher in side, particularly, when the land in question is within Badharghat mouja which is even near to the Agartala town, the capital of the State. The learned L.A. Judge did not commit any wrong taking judicial notice of the market value of the acquired land mainly noticing day to day increase of the market value of the land particularly in the locality from where the land was acquired.

15. Considering the entire facts and circumstances, the instant appeal is dismissed being devoid of merit.

Send down the L.C. records.

JUDGE

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