

**THE HIGH COURT OF TRIPURA
AGARTALA**

LA App. 14 of 2009

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

..... Appellant

Versus

- 1. Smt. Parul Deb,**
W/O Sankar Deb
Resident of Badharghat,
P.S. Amtali, District- West Tripura.

Referring claimant-respondent

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

..... Respondent

LA App. 15 of 2009

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

..... Appellant

Versus

- 1. Shri Sukhen Ch. Roy,**
S/O Shri Suresh Ch. Roy,
Resident of Badharghat,
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**

In both the cases

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)

The instant appeals are taken up together for disposal as the impugned awards are passed regarding the acquisition of lands for the same project of Mouja Badharghat and are covered by the same Notification No. F.9(8)Acq/Rev/xiv/97 dated 18.08.97 under Section 4 of the LA Act, and accordingly, these appeals are disposed of by this common judgment.

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. The factual matrix required to be discussed for disposal of these appeals are as follows:

The LA Collector, West Tripura, Agartala, respondent No. 2 herein, acquired 0.06 acres of Viti class of land under plot No. 9954, of Khatian No. 14606 as well as 0.16 acres of land under Plot Nos. 9975, 9976, 9974/20382/P of Khatian No. 13507 of Badharghat Mouja in Bishalgarh Sub-Division for the purpose of construction of NF Railway Station yard and Railway line belonging to the respondent-claimants herein. It is also the case of the claimant-respondents that the LA Collector has made the award of compensation arbitrarily without any reference to the prevailing market value and other surrounding factors and awarded Rs. 8,126/- and Rs. 21,669/- respectively, as compensation for the acquired lands and the referring claimant-

respondents demanded Rs. 10 lakhs per kani for the acquired lands in question.

4. The respondent-claimants 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. In the proceeding under Section 18, LA Collector appeared and vehemently opposed the claim of the referring respondent-claimants. 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 lands in question 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. 41,000/- per kani for Viti class of lands and for Bastu class of land awarded Rs. 74,000/- per kani for the acquired lands.

5. 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.

6. The learned LA Judge, after hearing the parties enhanced the market value of the acquired land in question from Rs.41,000/- to Rs.90,000/- per kani.

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

8. 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 areas, determined the market value of the acquired land but the learned LA Judge without any basis enhanced the awarded amount from Rs. 41,000/- to Rs.90,000/- 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.

9. 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.

10. 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.41,000/- to Rs.90,000/- per kani. It appears from the judgment and awards 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 the basis of what the learned LA Judge enhanced the awarded amount from Rs.41,000/- to Rs.90,000/- 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.

11. 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.

12. 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.

13. Accordingly, the judgment and award passed by the learned LA Judge as impugned in these appeals are hereby set aside and the order passed by the learned LA Collector is maintained.

14. With the above, the instant appeals are allowed. Send down the LCR.

JUDGE