HIGH COURT OF TRIPURA
AGARTALA

<u>L.A. App No. 18 of 2009</u>

1. The State of Tripura
Represented by the Secretary
to the Government of Tripura
Public Works Department
Civil Secretariat, Agartala
West Tripura

2. The Executive Engineer
Water Resource, Division No. IV
Belonia, South Tripura

…. Appellants

-vs.-

1. Smt. Hangani Tripura
W/o Mani Kumar Tripura
Vill. Champaknagar
P.O. Matai, P. S. Belonia
South Tripura

….. Respondent

2. The Land Acquisition Collector
having its office at the office of the
District Magistrate & Collector
South Tripura, Udaipur … Proforma-respondent

<u>L.A. App No. 19 of 2009</u>

1. The State of Tripura
represented by the Secretary
to the Government of Tripura
Public Works Department
Civil Secretariat, Agartala
West Tripura

2. The Executive Engineer
Water Resource, Division No. IV
Belonia, South Tripura …. Appellant

-vs.-

1. Sri Kamal Tripura
S/o Bisnu Tripura

Vill. Debipur, Champaknagar
P.O. Matai, P. S. Belonia
South Tripura ….. Respondent

2. The Land Acquisition Collector
having its office at the office
of the District Magistrate & Collector
South Tripura, Udaipur … Proforma-respondent

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

Advocate for the Appellants: Mr. J. Majumder
Advocate

Advocate for the Respondent
claimant : Mr. B.N. Majumder
Advocate

Date of hearing
& delivery
of the judgment: 18.6.2015

Whether fit for reporting: No

JUDGEMENT AND ORDER(oral)

1. These appeals are directed against the judgment and award dated 25.09.2008 in L.A(REF) 05 of 2008 and judgment and award dated 27.09.2008 in LA(REF) 08 of 2008 passed by the learned Land Acquisition Judge, Belonia, South Tripura whereby and whereunder the learned LA Judge enhanced the rate of acquired land in both the cases to Rs. 40,000/- per kani from Rs.25,000/- and Rs.30,000/- respectively.

2. Heard Mr. J Majumder, learned counsel for the appellants and Mr. BN Majumder, learned counsel appearing for the claimant respondent.

3. As agreed to by the learned counsel of both the parties and the lands acquired are for the same diversion scheme,

both the appeals are taken together for disposal by this common judgment.

4. The brief description of the lands involved in the instant LA Appeals are given below:

In LA Appeal No.18 of 2009 arising out of LA (REF) 05 of 2008, the land measuring 0.52 acres of lunga class of land relating to plot No.194 and 195 of Khatian No.7 at Mouja Takka of Hrishyamukh under Belonia Sub-Division, South Tripura belonging to claimant respondent was acquired vide Notification dated 28.01.06 for construction of Diversion Scheme over Mahish cherra at Mouja Champaknagar under Belonia Sub-Division. Learned LA Collector assessed the value of the acquired land of the respondent-claimant at the rate of Rs. 25,000/- per kani. Thus, the total value of the acquired land was assessed at Rs. 32,500/- and with additional compensation and solatiun given at the rate of 30%, the respondent claimant got Rs. 43,875/-.

5. Being dissatisfied with the amount, respondent claimant submitted a petition for reference under Section 18 of the LA Act claiming compensation at the rate of Rs.50,000/- per kani, as the adjacent land of Champaknagar Mouja was sold out at that rate. The certified copy of a registered sale deed was produced to support the sale of the land under Champaknagar at the rate of Rs.50,000/- per kani. One Smt. Chandana

Muhuri purchased the said land from one Smt. Monorama Dey. The deed was executed in the year 2007 being No.1/244.

6. The respondent LA Collector did not deny the certified copy of the sale deed and it was stated by the respondent LA Collector that as no transaction deed was produced before him, the valuation of the land was assessed as per valuation chart published by the SDM, Belonia, South Tripura.

7. Learned LA Judge after considering the assessment note noted that "*the LA Collector followed the valuation chart which is followed without any reason. There is no denying the fact that the acquired land is adjacent to the Champaknagar Mouja where recent transaction of the land is available. The deed of transaction produced shows that the value of the land at Chanpaknagar is Rs. 50,000/- per kani in the year 2007. So value of the land in the adjacent mouja cannot be less than Rs. 40,000/-. The respondent, LA Collector could not give any reason to show that value will be less than Rs.40,000/-*." Therefore, the learned LA Judge enhanced the awarded amount from Rs. 25,000/- to Rs. 40,000/- per kani with usual solatium and interest as per the LA Act.

8. In LA Appeal No. 19 of 2009 arising out of LA (REF) 08 of 2008, the land measuring 0.44 acres of Lunga and Nal class of land relating to plot No.1995 and 1639, Khatian No.518 and 119 of Mouja Champaknagar under TK Matai, Sub-Division Belonia, South Tripura, belonging to claimant respondent was

acquired vide Notification dated 28.01.2006 for construction of the same diversion Scheme over Mahish cherra, at Mouja Champaknagar under Belonia Sub-Division, South Tripura. The learned LA Collector assessed the value of the land at the rate of Rs. 30,000/- per kani. The total value of the acquired land with additional compensation and solatium, the claimant respondent got Rs. 46,238/-.

9. Dissatisfied with the amount, the respondent claimant submitted a petition for reference under Section 18 of the LA Act claiming compensation of Rs.80,000/- per kani. The respondent claimant also submitted the copy of the aforesaid sale deed being No.1/244 of 2007 to support the sale of the land under the Champaknagar Mouja at the rate of Rs.50,000/- per kani.

10. The case of the respondent LA Collector was that the value of the land given at the rate of Rs.30,000/- per kani on the basis of valuation chart prepared by SDM, Belonia, South Tripura.

11. Learned LA Judge after considering the assessment note noted that "*the contention of the respondent side is that value of the land given at the rate of Rs.30,000/- per kani on the basis of valuation chart prepared by SDM, Belonia. The S.D.M., Belonia, South Tripura has no power to determine the value of the land. He may prescribe rate for registration purpose only. But value of land depends on many factors like*

potentiality of the land, demand, market-rate etc. which are not taken into consideration. The valuation chart was prepared in March, 2005, but notification for acquisition of land given in the year 2006. The 1st party petitioner produced one sale deed (certified copy). From which it appears that one Smt. Chandana Muhuri purchased the land under the same mouja wherefrom the land is acquired at the rate of Rs. 50,000/- per kani. The deed was executed in the year 2007. The land transferred appertaining to Motai tehashil, mouja-Champaknagar. The land of the 1st party-petitioner also appertained to Champaknagar mouja under Motai Tehashil. So, the value of the land under same mouja cannot be less than Rs.40,000/- per kani in the year 2006." Therefore, the learned LA Judge enhanced the awarded amount from Rs.30,000/- to Rs. 40,000/- per kani with usual solatium and interest as per the LA Act.

12. Mr. Majumder, learned counsel for the appellants submits that the finding of the learned LA Judge regarding determination of the market-value of the acquired land is wholly perverse as the learned LA Judge assessed the market-value of the land on average basis. Mr. Majumder also submits that the learned LA Judge while enhancing the rate of acquired land committed error relying upon a sale instance of 2007 while the land in question was acquired in the year 2006 and the same is not permissible under Section 23 of the LA Act.

13. On the other hand, Mr. Nandi Majumder, learned counsel for the claimant-respondents in both the appeals submits that the leaned LA Judge has rightly determined the value of the acquired land at Rs. 40,000/- per kani as the adjacent land was sold out in the year 2007 i.e. only after one year, at the rate of Rs. 50,000/- per kani. Mr. Nandi Majumder while countering the submission of the learned counsel for the appellants further contended that as the sale instance was submitted of 2007 wherein price of the land was shown as Rs. 50,000/- per kani, the learned LA Judge considering that the said sale instance is of one year later, he has deducted almost 20% of the said land value. Therefore, it cannot be said that the rate which was determined by the learned LA Judge is higher in side. He also submits that the LA Collector also while determining the rate of acquired land did not rely upon any sale instance. Not only that even in the Court also, the L.A. Collector did not rely upon any sale instance. Thus, in absence of sale instance of the relevant time, the learned LA Judge had no other option except to go on some guess work.

14. Normally, at the time of determining the market value relating to an acquired land, the proximity of time relating to sale deed produced by the parties and the proximity of land involved in the sale deed as well as the land acquired in the project are of material consideration for identifying the comparable sale instances out of genuine instances and a court

is to give preference to the sale instances of adjacent land in comparison to sale instances of land situated far away from the acquired land. 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/plots might have different value and in that case some sort of guess work is inevitable and in the instant case also, the learned LA Judge determined the market value of the acquired land on some guess work taking note of sale instance produced by the respondent. This Court is of the considered opinion that the learned LA Judge did not commit any wrong fixing the market value of the acquired land at the rate of Rs.40,000/- per kani in both cases. Therefore, considering the entire facts and circumstances, this Court is of the considered opinion that the instant appeals filed by the appellants are devoid of merit and accordingly, the same are dismissed.

Send down the LCRs.

JUDGE

Mdn/m