

THE HIGH COURT OF TRIPURA AGARTALA

LA APP No. 43 of 2009

Appellant:

- 1. The Deputy Chief Engineer (Cons),**
North Eastern Frontier Railway,
Gurkha Basti, Kunjaban, Agartala,
West Tripura.

Respondent:

- 1. Smt. Maya Paul,**
W/O. Sudhangshu Ranjan Paul,
Resident of Vill. Dukli, PS-Amtali,
West Tripura District.

LA APP No. 45 of 2009

Appellant:

- 1. The Deputy Chief Engineer (Cons),**
North Eastern Frontier Railway,
Gurkha Basti, Kunjaban, Agartala,
West Tripura.

Respondents:

- 1. Shri Dulal Nama,**
S/O- Lt. Mohendra Nama,
Vill. Dukli,
P.S.- Amtali, West Tripura.
- 2. Shri Swapan Nama,**
S/O- Lt. Mohendra Nama,
Vill. Dukli,
P.S.- Amtali, West Tripura.
- 3. Shri Tapan Nama,**
S/O- Lt. Mohendra Nama,
Vill. Dukli,
P.S.- Amtali, West Tripura.

**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 & Order : **07.05.2015**

Whether fit for reporting : **YES/NO**

JUDGMENT & ORDER (ORAL)

1. By this common judgment, LA APP 43 of 2009 and LA APP 45 of 2009 are proposed to be disposed of as these appeals are related to the acquisition of lands for construction of new railway line by NF Railway and the lands involved were within the same Mouja and acquired by the same notification.
2. The LA Appeal No. 43 of 2009 arises against the judgment and award dated 27.05.2009 passed by the learned LA Judge, West Tripura, Agartala (Court No. 4) in Misc. (LA)-11 of 2003 and the LA Appeal No. 45 of 2009 arises against the judgment and award dated 20.06.2009 passed by the learned LA Judge, West Tripura, Agartala (Court No. 4) In Misc. (LA)-21 of 2003.

3. Heard Mr. A Lodh, learned counsel appearing on behalf of the DY. Chief Engineer (Const.) NFR, the appellant herein, the requiring authority as well as Ms. P Deb (Paul), learned counsel appearing on behalf of the claimant-respondents.

4. The lands involved in these appeals is as follows:

In LA APP 43 of 2009 arising out of Misc. (LA) APP 11 of 2003, 0.04 acres of bastu class of land situated at Mouja Dukli under Khatian No. 2267 appertaining to CS Plot No. 74 (P) was acquired and in LA APP 45 of 2009 arising out of Misc. (LA) APP 21 of 2003, 0.20 acres of bastu class of land situated at Mouja Dukli under Khatian No. 2168 appertaining to CS Plot No. 75(P) and 77(P) was acquired.

5. The pleaded case of the respondent-claimants are as follows:

That the lands of the claimant-respondents situated within the Dukli Mouja as stated supra were acquired by the LA Collector vide notification No. F. 9(1)-REV/Acq/XIV/98 dated 27.02.1998 under Section 4 of the Land Acquisition Act, which was published in the extraordinary issue of the Tripura Gazette dated 20.03.1998 and declaration under Section 6 of the LA Act was issued vide notification No. F. 9(1)-REV/Acq/XIV/98 dated 27.04.1998 for acquisition of 0.04 acres and 0.20 acres of bastu class of lands respectively.

6. In LA Appeal No. 43 of 2009, the LA Collector gave award of Rs. 7,400/- @ Rs. 74,000/- per kani and assessed

total compensation of Rs. 22,931/- together with admissible interest and in LA Appeal No. 45 of 2009, the LA Collector gave award of Rs. 37,000/- @ Rs. 74,000/- per kani and assessed total compensation of Rs. 85,846/- together with admissible interest and the referring claimants, the respondents herein in the respective appeal received the compensation under protest alleging that the compensation awarded towards the price of the acquired land was inadequate to that of the prevailing market price of the land in the area. Further, that the market value of the acquired land as assessed by the LA Collector, West Tripura was abnormally low.

7. Being aggrieved by and dissatisfied with the award passed by the LA Collector, the respondents referring claimants made an application for reference in the Court of LA Judge under Section 18 of the LA Act. Accordingly, the matter was referred to the concerned LA Judge and the learned LA Judge after hearing the parties decided the reference and passed the impugned award.

8. Being aggrieved by the judgment of the learned LA Judge, the appellant preferred the instant appeals on the ground that the learned LA Judge committed error while deciding the market value of the land enhancing the rate of compensation from Rs. 74,000/- to Rs. 1,18,612/- per kani. It is also stated that the acquired land was far away from the

road but the learned LA Judge did not consider the said aspect.

9. Mr. Lodh, learned counsel appearing for the appellant NF Railway while urging for setting aside the judgment and award would contend that the learned LA Judge failed to consider the sale deeds produced by the appellant. He also submits that the sale instances produced by the referring-claimants are of different mouja and also not adjacent to the road side. He has further submitted that the learned LA Judge failed to consider the judgment of the Apex Court in **H.P Housing Board v. Bharat S. Negi and Ors. , AIR 2004 SC 1800** and **Nelson Fernandes & Ors v. Spl. L.A.O., South Goa & Ors., 2007 AIR SCW 1782.**

10. On the other hand, Ms. Deb (Paul) while supporting the judgment and award passed by the learned L.A. Judge would contend that in the land acquisition case, the L.A. Judge has to go for some guess work, but in the instant case, the learned L.A. Judge taking all the sale instances into consideration calculated the average rate of the land in question.

11. She also submits that in appeal No. 10 of 2007 preferred by the present appellant, this Court awarded Rs. 6,00,000/- per kani for the acquired land situated at Badharghat Mouja which is adjacent to the Dukli Mouja. Thus,

the award passed by the learned LA Judge is not higher in side.

12. She further submits that in paragraph 13 of the impugned judgment the learned LA Judge has referred to the sale instances filed on behalf of the parties.

13. This Court has gone through the impugned judgment from which it appears that the learned LA Judge has considered the sale instances produced by the parties particularly, in paragraph 13 of the judgment which are as follows:

SALE INSTANCES FILED ON BEHALF OF THE REFERRING CLAIMANT:

Sl. No.	Description of the documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No. 1-1283 Dated 02.03.1996	1 Ganda 3 Kara	Rs. 26,000/-	Rs. 2,97,143/-
2.	Sale Deed No. 1-922 Dated 15.02.1997	2 Kara 2 Kranta 10 Dhurs	Rs. 15,000/-	Rs. 4,23,530/-
3.	Sale Deed No. 1-6012 Dated 20.11.1996	1 Ganda 3 Kara 3 ^{1/2} Dhur	Rs. 80,000/-	Rs. 9,06,730/-
4.	Sale Deed No. 1-2194 Dated 05.05.1995	1 Ganda 2 Kara	Rs. 20,000/-	Rs. 2,66,667/-

SALE INSTANCES FILED ON BEHALF OF O.P. NO. 1:

Sl. No.	Description of the documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No. 1-2400 Dated 18.05.1995	9 Ganda 2 Kara	Rs. 35,000/-	Rs. 73,684/-
2.	Sale Deed No. 1-5509 Dated 14.02.1996	1 Kani 2 Ganda	Rs. 40,000/-	Rs. 36,364/-
3.	Sale Deed No. 1-444 Dated 07.01.1997	12 Ganda 3 Kara	Rs. 20,000/-	Rs. 31,373/-

SALE INSTANCES FILED ON BEHALF OF O.P. NO. 2:

Sl. No.	Description of the documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No. 1-248 Dated 13.01.1997	2 Ganda 13 Dhur	Rs. 6,000/-	Rs. 58,418/-
2.	Sale Deed No. 1-583 Dated 30.01.1997	1 Ganda 2 Kara	Rs. 3,000/-	Rs. 40,000/-
3.	Sale Deed No. 1-1577 Dated 11.03.1997	4 Ganda 1 Kara	Rs. 10,000/-	Rs. 47,059/-
4.	Sale Deed No. 1-6252 Dated 28.10.1997	2 Ganda	Rs. 3,000/-	Rs. 30,000/-

5.	Sale Deed No. 1-899 Dated 14.02.1996	6 Ganda	Rs. 5,000/-	Rs. 16,667/-
6.	Sale Deed No. 1-479 Dated 25.01.1997	4 Ganda 1 Kara 2 Kranta 10 Dhurs	Rs. 4,000/-	Rs. 17,944/-
7.	Sale Deed No. 1-747 Dated 07.02.1997	2 Ganda	Rs. 2,000/-	Rs. 20,000/-
8.	Sale Deed No. 1-5467 Dated 21.12.1995	3 Ganda	Rs. 10,000/-	Rs. 66,667/-
9.	Sale Deed No. 1-2142 Dated 29.04.1995	5 Ganda	Rs. 10,000/-	Rs. 40,000/-

14. It also appears from the judgment of the learned LA Judge that he has considered 16 sale instances produced by the parties to determine the market price of the acquired land and 2 comparable sale instances filed by the referring claimant fall within the Pratapgarh Mouja, whereas the land acquired is situated at Dukli Mouja. Though the sale instances produced by the referring claimants are of different mouja but on a look of the certified copy of the land map of Pratapgarh Mouja and Dukli Mouja, it reveals that the lands of the said 2 comparable sale instances are situated in the adjoining area of the land though mouja is different. The total sale consideration of 16 sale instances is Rs. 23,72,246/- and on calculation the average market value of the said 16 sale transactions worked out by the learned LA Judge to Rs. 1,48,265/- per kani. He has also deducted 20% towards development cost and after

deduction of the development cost, the price of the acquired land comes to Rs. 1,18,612/- per kani.

15. It appears from the record that the lands involved in the sale instances produced by the parties were sold before issuance of the notification under Section 4 of the LA Act and the lands of the comparable sale deeds and the acquired land are located within the Dukli and Pratapgarh Mouja. It also appears from the pleadings that Dukli Higher Secondary School, Primary School, Tahashil Office, Banks, Bus Stand, Dukli Auto Stand, Forest Range Office, Stadium etc. are situated nearby the acquired land.

16. The learned LA Judge, rightly considered the judgment of the Apex Court in H.P. Housing Board v. Bharat S. Negi & Ors.(supra), wherein, it has been held that

“..... as all sale instances were proved, they were all to be taken into consideration. If all the sale instances are taken into consideration the average would work out to Rs. 1,11,660/- per Bigha. But as all the sale instances are of small pieces of lands and the accusation is of the large piece of land, a deduction of 33-1/3rd must be made towards development cost.”

17. In the instant case also the learned LA Judge took into consideration the average market value of the sale instances and also deducted the development cost of the acquired land. More so, this Court is of the considered opinion that the learned Judge did not commit any wrong fixing the market

value of the acquired land @ Rs. 1,18,612/- per kani with 20% deduction towards development cost.

18. In some other appeals preferred by the present appellant, this Court considered the market value of the land situated in Badharghat Mouja and modified the award passed by the learned LA Judge from Rs. 7,00,000/- to Rs. 6,00,000/- per kani. There is no doubt that the Badharghat Mouja and the Dukli Mouja are different but facts remain that both the moujas are side by side. If in Badharghat Mouja, the market value of the land can be Rs. 6,00,000/- per kani, in that case, the market value of the land situated in Dukli Mouja like the land in question in the instant appeal would not be less than the amount awarded by the learned LA Judge. Therefore, considering the entire facts and circumstances this Court is of the considered opinion that the instant appeal filed by the appellant is devoid of merit and accordingly the same is dismissed.

19. Prepare the decree accordingly.

Send down the LCRs.

JUDGE

m/mdn