

THE HIGH COURT OF TRIPURA AGARTALA

L.A. Appeal No. 53 of 2009

1. **The State of Tripura**

Represented by the Secretary
to the Government of Tripura
in the Food, Civil Supply & Consumer
Affairs Department having its office
at Civil Secretariat, Agartala, West Tripura.

2. **The Director,**

Food, Civil Supply & consumer
Affairs Department, Agartala,
West Tripura.

3. **The Sub-Divisional Controller**

Food, Civil Supply & consumer Affairs
Department, Udaipur, South Tripura.

.....Appellants

Versus

1. **Smt. Kanan Acherjee**

W/o late Nirmal Acherjee

2. **Sri Nitai Acherjee**

s/o late Ramesh Acherjee

Vill. Chandrapur Colony No.5

P.S. Radhakishorepur

Sub-division- Udaipur

South Tripura

.....Respondents

3. **Land Acquisition Collector**

Having its office at the
Office of District Magistrate & Collector,
South Tripura District, Udaipur.

.....Proforma-respondent

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA

For the Appellants : Mr. TD Majumdar, GA
For the Respondents : None
For the Proforma Respondent : None.

Date of hearing and delivery
of the Judgement & Order : **27. 05. 2015.**

Whether fit for reporting : **No**

JUDGMENT & ORDER (ORAL)

1. This appeal is directed against the judgment dated 5.5.2009 and decree dated 7.5.2009 passed by the learned LA Judge, South Tripura, Udaipur in Misc. L.A. 13 of 2008.

2. Heard Mr. TD Majumdar, learned Government Advocate for the appellants. None appears for the respondents.

3. The brief descriptions of the lands involved in the instant LA Appeal are given below:

4. The lands of the respondent-claimants measuring 0.02 acre mentioned in Plot No. 3424/P (Bastu) under Khatian No. 775 of Dakhin Chandrapur under Udaipur Sub-division were acquired by the LA Collector for construction of approach road for FCI food godown pursuant to Notification under Section 4 of the LA Act dated 18.10.2006 and the value of the land of the respondents was assessed @Rs. 1,50,000/- per kani by the Land Acquisition Collector. Dissatisfied with the awarded amount, the respondents sought for reference

under Section 18 of the LA Act claiming compensation @ Rs.10,00,000/- per kani.

5. In their claim statements, the respondent-claimants stated, *inter alia*, that the acquired land is very important for commercial and business purposes and that the Chandrapur High School, Gramin Bank, Sub Post Office, Telephone Exchange, Government Health Sub Centre, Electrical Sub Office and Market are near to the acquired land.

6. The appellants, being the opposite parties, resisted the claim by filing separate counter statement denying all the allegations made in the claim petition and also contended that compensation awarded by the LA Collector is just and adequate.

7. The learned LA Judge after considering the assessment note noted that the LA Collector has not considered the potentiality of the acquired land and did not adopt the correct procedure in determining the compensation as the acquired lands are situated in an important area. It is also stated that the method adopted by the LA Collector is whimsical and is not permissible under the law and cannot stand on.

8. The learned LA Judge further considered the fact of day to day increasement of the price of the landed property within the area where the acquired land is situated and thereafter, enhanced the awarded amount from Rs.1,50,000/- to Rs. 3,00,000/- per kani with usual solatium and interest as per the LA Act.

9. Mr. Majumdar, learned Government Advocate appearing for the appellants submits that the findings 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.

10. This Court has gone through the findings of the learned Court below which are as follows :

“7. In the instant case L.A. Collector, South Tripura has not considered the potentiality of the acquired land with the land of similar quality and potentiality and did not adopt the correct procedure in determining the compensation as the acquired lands are situated in the important area. The method adopted by the LA Collector, South Tripura is whimsical and is not permissible under the law and cannot stand on. A Court has inherent power to take judicial notice on facts that fall within the realm of public knowledge. The increased in price of landed property is a fact within the realm of public knowledge and therefore, a Court while determining the market value would be within its right to take judicial notice of increase in price of the landed property. The Judges are not computer and they are bound to call into aid their experience of life and test the evidence. The acquired land situated near the market area having all amenities and facilities thereby.

8. Having regard to the factual situation of the case and taking into account the fact that the value of land in Tripura is increasing day by day and I am of the considered opinion that the ends of justice would meet if the value of the acquired land would enhance to Rs.3,00,000/- per kani and I answer both the issues accordingly.”

11. The learned LA Judge was not satisfied with the evidence produced by the parties including the sale deeds placed before him. 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. In the instant case, the learned LA Judge neither

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relied upon the assessment report of the LA Collector nor the sale deeds produced by the claimant-respondents. He has only considered the fact that the value of the land in Tripura is increasing day by day and according to him it would meet justice if the value of the acquired land would be enhanced to Rs.3,00,000/- per kani.

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 LA Judge determined the market value of the acquired land on some guess work.

13. It would not be proper always to affirm the market value determined by the Court below on guess work but in the instant case, as the acquired lands are situated near the market area having all amenities and facilities and more so, area of the acquired lands are small pieces of lands and the same was acquired in the year 2006 and the acquisition of the lands is for the same project and from the same mouja, this Court is of considered opinion that the learned LA Judge did not commit any wrong taking the judicial notice of the market value of the acquired land mainly noticing the day to day increase of the market value of the land particularly in the locality from where the land was acquired.

14. In LA Appeal Nos. 55 of 2009 and 56 of 2009, the judgment and award passed by the LA Judge providing Rs. 3 lakhs per kani for the acquired land was affirmed by this Court. Therefore, it would also not be proper to give different findings in the instant case, as the land acquired in the instant case are also covered by the same notification and acquired for the same project.

15. In view of the above, the appeal is dismissed being devoid of merit. No order as to costs.

Send down the LCRs forthwith.

JUDGE