

THE HIGH COURT OF TRIPURA

AGARTALA

LA App. No. 61 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. **Sri Kamal Sharma,**

S/O Late Gouranga Chandra Sharma
Resident of Village-Chandrapur Colony No.5,
P.S. Radhakishorepur,
Subdivision-Udaipur, South Tripura

.....Respondent

2. **Land Acquisition Collector**

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

.....Proforma Respondent

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.....Appellants

Versus

1. Smt. Bijeta Saha,

W/O Late Khagendra Saha
Resident of Village-Chandrapur Colony No.5,
P.S. Radhakishorepur,
Subdivision-Udaipur, South Tripura

.....Respondent

2. Land Acquisition Collector

Having its office at the
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South Tripura District, Udaipur.

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

IN BOTH THE CASES

For the Appellants	: Mr. TD Majumdar, GA
For the Respondent	: Mr. D Bhattacharji, Advocate
For the Proforma Respondent	: None.

Date of hearing and delivery of Judgement & Order	: 07.04.2015.
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Whether fit for reporting	: YES/NO
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JUDGMENT & ORDER (ORAL)

These appeals are directed against the judgment dated 19.02.2009 passed in Misc. L.A. 21/2008 and Misc. L.A. 22/2008 by the learned LA Judge, South Tripura, Udaipur.

2. Heard Mr. TD Majumdar, learned Government Advocate for the appellants as well as Mr. D Bhattacharji, learned counsel for the respondents in both the cases.

3. As the impugned judgments in both the appeals are relating to the land acquired for the same project under the same Notification and learned LA Judge also determined the market value of the acquired land amounting to Rs. 3 lakhs per kani in all the cases, the instant appeals are taken up for disposal by this common judgment.

4. The brief descriptions of the lands involved in both the LA Appeals are given below:

4.1 In LA appeal No. 61/2009 arising out of Misc. (LA) 21/2008, land measuring 0.01 acres of bastu class of land relating to plot No. 3399/P under Khatian No. 1534 of Mouja Dakshin Chandrapur belonging to the claimant-respondent Sri Kamal Sharma was acquired.

4.2 In LA appeal No. 62/2009 arising out of Misc. (LA) 22/2008, land measuring 0.02 acres of bastu class of land relating to plot No. 3405/P under Khatian No. 566 of Mouja Dakshin Chandrapur belonging to the claimant-respondent Smt. Bijeta Saha was acquired.

5. Both the above lands 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 respective 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.

6. In their claim statement the 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.

7. 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.

8. 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 imaginary and is not permissible under law and cannot stand on.

9. 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/- per kani to Rs. 3,00,000/- per kani with usual solatium and interest as per the LA Act.

10. Mr. Majumdar, learned Government Advocate appearing 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.

11. On the other hand Mr. Bhattacharji, learned counsel appearing for the respondents submits that the acquired lands can be used either for commercial or business purposes and more so, the same is near to the Chandrapur Market.

12. 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.”

13. 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 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.

14. 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.

15. 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 are 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.

16. 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.

17. In view of the above, both the appeals are dismissed being devoid of merit. No order as to costs.

18. Send down the LCRs forthwith.

JUDGE

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