

THE HIGH COURT OF TRIPURA

AGARTALA

LA App. No. 44 of 2007

1. **Sri Chira Ranjan Deb Sharma**
2. **Sri Asit Ranjan Deb Sharma**
3. **Sri Paresh Ch. Deb Sharma**

All are sons of Late Debendra Deb Sharma,
All are the resident of South Badharghat,
Hapania, P.S. Amtali, District-West Tripura.

4(a). Sri Krishna Deb Sharma

S/O Lt. Debandra Deb Sharma
Vill. & PO – Dukli, P.S. Amtali
District-West Tripura.

4(b). Smt. Dipali Deb Sharma (Chakraborty)

W/O Sri Pran Gopal Chakraborty
Vill-Chowmuni Bazar, PO Sekerkote,
PS Amtali, District-West Tripura.

5. Smt. Laxmi Rani Deb Sharma

W/O Sri Gopal Sharma
Resident of South Badharghat,
Hapania, P.S. Amtali, District-West Tripura.

.....Appellants

VERSUS

1. **LA Collector,**
Agartala, West Tripura.
2. **The Dy. Chief Engineer (Construction)**
NF Railway, Gurkhabasti,
Agartala, West Tripura.

.....Respondents

B E F O R E

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

For the Appellants	: Mr. PK Debnath, Advocate
For the respondent No. 1	: Mr. TD Majumdar, GA
For the respondent No. 2	: Mr. A Lodh, Advocate
Date of hearing and delivery of Judgement & Order	: 16.07.2015.
Whether fit for reporting	: NO

JUDGMENT & ORDER (ORAL)

Challenge in this appeal is the judgment dated 20.01.2007 passed by the learned LA Judge, (Addl. District Judge, Court No. 4) in Misc. (LA) 78 of 2001 whereby and whereunder the learned LA Judge disposed of the reference under Section 18 of the LA Act allowing the value of acquired land of the appellants @ Rs. 2 lacs per kani. Besides that, he allowed additional amount @ 12% per annum on the market value w.e.f. the date of publication of the notification under Section 4 of the LA Act till the date of award of the Collector and also 30% solatium.

2. Heard Mr. PK Debnath, learned counsel for the appellants as well as Mr. TD Majumdar, learned GA for the respondent No. 1 and Mr. A Lodh, learned counsel for the respondent No. 2.

3. Facts needed to be discussed are that the Govt. of Tripura had acquired 0.46 acres of Bastu class of land under plot No. 8520,8521/P under Khatian No. 2392 of the appellants under Badharghat Mouja, Bishalgarh Sub-Division by Notification No. F.9(8)/REV/ACQ/XIV/1997 dated 19.11.1997 which was published in the extra ordinary issue of the Tripura Gazette dated 08.12.1997 for the purpose of construction of NF Railway line from Kumarghat to Agartala.

4. The LA Collector, assessed market rate of the land acquired from the claimant-appellants for the project by way of preparing assessment note after field inquiry and considering the relevant sale deeds produced by the respective parties and fixed the quantum of

compensation @ Rs. 1,06,000/- per kani for the Bastu class of land and in total the LA collector awarded Rs. 2,13,555/- for the acquired lands.

5. The appellants, being not satisfied with the award of the LA collector, made an application under Section 18 of the LA Act for referring their case before the learned LA Judge for proper determination of the market value. Accordingly, the LA Collector referred the case of the appellant before the learned LA Judge. The learned LA Judge taking note of the Plot No., Khatian No. and nature of the land acquired by the LA collector from the claimant-appellant and the evidence adduced by the respective parties, passed the impugned judgment.

6. The claimant-appellants contended before the LA Judge (**hereinafter referred to as "Reference Court"**) that the acquired land is most valuable Viti class of Jote land wherein the referring claimants used to grow fruit bearing trees like mango, jackfruit, coconut, jam, supari, lemon etc. and the acquired land is more suitable for commercial purpose and business centre. The land under acquisition is most suitable for residing and is very close to Siddhi Ashram and Amtali having all the modern amenities like Badharghat Class-XII School, Dukli Bazar, Aswini Market Road, Ramthakur College and all facilities of electricity, water supply, gas supply and other facilities of life and the value of the said Viti land is considered Rs. 4 lacs per kani as per the rate of the Sub-Registry, Sadar, West Tripura though the market value of the land was Rs. 10 lacs per kani in the year 1998.

7. The LA Collector, West Tripura, Agartala by filing his written statement against the prayer of the claimant-appellants vehemently opposed the claim of the claimant-appellants. It is contended by the LA Collector that the land in question of the claimant-appellants was not adjacent to the Agartala Bishalgarh Road, Ramthakur College, Majarajganja Bazar, Police Hospital, Stadium and Siddhi Ashram, etc. It is also asserted that consideration amount of the acquired lands were considered basing upon Rs.1,06,000/- per Kani for Bastu class of land. It was also contended that the land in question could not be compared with the other commercial lands of Agartala town.

8. The claimant-appellant No. 1 examined himself as PW 1 and also produced some sale deeds. The LA Collector as well as the respondent-requiring department examined two witnesses, namely, Brindaban Debnath, Surveyor, DM's Office, West Tripura, Agartala and Pallab Bhattacharji, Jr. Engineer (Drawing), Office of the Deputy Chief Engineer (Const.), NF Railway, Agartala.

9. The Reference Court referring to the deposition of the respondents and considering the sale deeds noted that the acquired land of the claimant-appellants was far away from the Agartala-Bishalgarh main road, Ram Thakur College, Maharajganja Bazar, police hospital and stadium. It is also noted that PW 1, one of the appellants herein, failed to produce any sale deed of any other land adjacent to the land in question. He further noted that on perusal of the documents of the OPs, he is of the considered opinion that they have not committed any serious error at the time of awarding the payment of compensation

@ Rs.1,06,000/- per kani for the acquired lands. Considering all aspects he has enhanced the rate of compensation from Rs.1,06,000/- to Rs. 2,00,000/- per kani.

10. Mr. Debnath submits that the Reference Court while determining the market value of the acquired land even did not consider the two sale deeds and the map produced by the claimant-appellants which were marked as Exhibit-1 series as well as the building assessment. He also submits that for the lands situated at Sheet No. 5 of Badharghat Mouja this court awarded an amount of Rs. 6 lakhs per kani and thus the appellants are also entitled to the said amount.

11. Mr. Debnath, in support of his contention has placed reliance on a decision of this Court in **Deputy Chief Engineer, NF Railway, Vs. Smt. Chaya Rani Sen and Anr., (2014) 1 TLR 101** wherein the learned LA Collector determined the compensation @ Rs.2,10,000/- per kani for all classes of the land under the 1st Belt and @ Rs.1,40,000/- per kani for the 2nd Belt except the Nal land and @ Rs.1,05,000/- per kani for the 3rd Belt comprising of Nal and Nalla class of land with 30% Solatium and 12% additional compensation and the LA Judge determined the market value of the land in question in sheet No. 5 of Bahdarghat Mouja @ Rs. 7,00,000/- per kani. This Court ultimately modified the award passed by the LA Judge of Rs. 7,00,000/- to Rs.6,00,000/- per kani excluding the rate of solatium and interest. Mr. Debnath further submitted that as the land in question is within sheet No. 5 of the Badharghat Mouja, the present appellants are also entitled to get the same rate.

12. On the other hand, Mr. Lodh, learned counsel for the respondent No. 2-NF Railway submits that the learned LA Judge did not commit any wrong while determining the market value of the acquired land. He also submits that the land of the claimant-appellants is far away from Siddhi Ashram, Badharghat Class-XII School, etc.

13. Mr. Dutta Majumdar, learned GA appearing for the respondent-LA Collector also supported the impugned judgment passed by the learned LA Judge.

14. OPW 1, Chiraranjan Deb Sharma, one of the appellants, in his cross examination specifically stated that the area of Badharghat Mouja, Sheet No. 5 will be about 1 ½ Kms and has submitted copy of the sale deeds. He further stated that the land transacted between Debasish Dey and Jayanta Rakshit in deed No. 1-2610 dated 30.04.1997 is nearer to his acquired land and the land mentioned in the deed was/is road side. He also stated that he has submitted certified copies of two numbers of deed and map and on identification, these were marked as exhibit 1 series. The OPW 1, in his cross examination specifically stated that the acquired land was very close to Siddhi Ashram, Badharghat Class XII School, etc.

15. Upon going through the judgment of the Reference Court and the evidence on record, this Court is of the considered opinion that the Reference Court did not go through the evidence in a proper way as in his judgment he has recorded that the claimant-petitioner failed to produce any sale deed of any other land adjacent to his land in question. More so, the Reference Court in its judgment did not discuss

anything why he has not accepted the sale deeds produced by the claimant-appellants. Not only that, on the one hand, the Reference Court says that on perusal of the documents of the OPs he is of the opinion that they have not committed any serious error at the time of awarding the payment of compensation but on the other hand, he has enhanced the rate of compensation from Rs.1,06,000/- to Rs. 2,00,000/- per kani without any basis. It also appears from the record that the claimant-appellants submitted some sale deeds which were marked as Exhibit-A series but in the deposition of PW 1, it was mentioned as Exhibit 1 Series.

16. This Court has gone through the judgment in the case of **Deputy Chief Engineer, NF Railway** (supra) from which it appears that the land in question in that case was admittedly under Sheet No. 5 and the PW 1, Sri Brindaban Debnath as well as Sri Pallab Bhattacharji, Jr. Engineer, (Drawing) O/O Deputy Chief Engineer (Cons.), NF Railway, Agartala were also examined in that case on behalf of the LA Collector.

17. In **Mehrawal Khewaji Trust (Registered), Faridkot and Ors, Vs State of Punjab and Ors., (2012) 5 SCC 432**, a Division Bench of the Apex Court held as under:

“It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest

value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.”

18. In a land acquisition proceeding, if sufficient direct evidence of market value is not available, then also the court should have tried 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/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, though the appellant produced some sale deeds but neither the vendor nor the vendee of those deeds were examined. Therefore, the Court has to see what was the market value at the relevant time.

19. Regarding some lands in Sheet No. 5, as mentioned in **Deputy Chief Engineer, NF Railway** (supra), this Court noted that the market value of the land acquired from the claimant-respondents in that case, could not have been in any way lesser than the prevailing rate in the year 1997, i.e. Rs. 4 to 5 lacs per kani.

20. The land involved in the case in **Deputy Chief Engineer, NF Railway** (supra) was acquired in the year 1998 whereas the lands involved in the instant case were acquired in the year 1997. It also appears from the evidence of OPW No. 1 that the acquired land is near to Siddhi Ashram, Badharghat Class XII School, etc. The claimant respondents in **Deputy Chief Engineer, NF Railway** (supra) stated in their claim petition that the acquired land was having commercial and industrial value, having road by the side of the lands and had all

amenities to town life, such as, water connection, pacca roads, drainage facility, gas line facility, electric connection facilities, besides having schools, police reserve, Ram Thakur College, State Bank, Dukli Market etc. As in that case, the value of lands in Sheet No. 5 was determined by this Court @ Rs. 6 lacs per kani, in the instant case also, admittedly the acquired land is within Sheet No. 5 and even if it is considered that the land is situated far away from those lands, then also the rate of land cannot be less than Rs. 4 lakhs per kani.

21. Considering the entire facts and circumstances, as stated above, it would be proper to modify the award passed by the learned LA Judge from Rs. 2 lakhs to Rs. 4 lakhs per kani along with solatium and interest as would be entitled to the claimant-appellants, as per the LA Act. Accordingly, it is ordered.

22. The appeal is accordingly allowed. No order as to costs.

23. Prepare the decree. Send down the LCRs.

JUDGE

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