

IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. APP. NO.28 OF 2011

Deputy Chief Engineer (Construction),
N.F. Railway, Gorkhabasti, Agartala, West Tripura

..... Appellant

– Vs –

1. Abdul Haque,
2. Nurul Inslam Maisan,
- both sons of late Alia Mia Maisan,
residents of Village : Dukli, Madhuban,
P.S. Amali, District : West Tripura.

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. A. Lodh, Advocate

For the respondent : None

Date of hearing & delivery
of judgment & order : 22.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal arises from the judgment and order dated 17.08.2009 delivered in Mis.(L.A.) No.24/2003 by the Land Acquisition Judge, West Tripura, Agartala, Court No.4.

2. For purpose of laying the railway track, by the notification dated 27.02.1998 under Section 4 of the Land Acquisition Act, ' L.A. Act' in short, an area of land measuring 0.05 acres of bastu class comprised in khatian no.14, appertaining to C.S. plot nos.39(P) and 38(P) at Mouja Dukli was acquired from the respondents-land losers. Following the due process, the Land Acquisition Collector, West Tripura, Agartala, having determined the market rate at ₹74,000 per kani and assessed the total compensation at ₹19,160 with interest. The land losers received the said award under protest and pressed for reference under Section 18 of the L.A. Act. The Land Acquisition Judge had considered various grounds assigned in the claim statement and the evidence as laid in support of that. According to the land losers, the acquired land is located nearby the Agartala-Udaipur National Highway, having in the vicinity various important offices, schools, colleges, hospital, bank etc. They claimed ₹10,00,000 per kani. The Land Acquisition Collector disputed such claim and contended that on examination of the relevant sale transactions of the adjoining areas, the market rate has been determined at the rate ranging from ₹15,000 to ₹80,000 per kani. It has been categorically denied by the Land Acquisition Collector that the land could be used for commercial purpose or the land is surrounded by civic amenities. The requisitioning agency, the Deputy Chief Engineer

(Construction), N.F. Railway also supported the Land Acquisition Collector by filing a separate written statement.

3. One of the referring claimants, namely Abdul Haque was adduced as PW.1 and he supported the averments made in the claim statement and introduced Exbt.1 series, comprising sale deed no.1-1283 dated 02.03.1996, sale deed no.1-922 dated 15.02.1997, sale deed no.1-6012 dated 20.11.1996 and sale deed no.1-2194 dated 05.05.1995.

4. From the Land Acquisition Collector, one Sri Nani Gopal Sarkar was examined as OPW.1 and he has introduced Exbt.A series, comprising sale deed no.1-2400 dated 18.05.1995, sale deed no.1-5509 dated 14.02.1996 and sale deed no.1-444 dated 07.01.1997.

5. One Sri Pallab Bhattacharjee, Junior Engineer of the N.F. Railway (Construction), Agartala, West Tripura, was examined as OPW.2. He has also introduced Exbt.B series, comprising sale deed no.1-248 dated 13.01.1997, sale deed no.1-583 dated 30.01.1997, sale deed no.1-1577 dated 11.03.1997, sale deed no.1-6252 dated 28.10.1997, sale deed no.1-899 dated 14.02.1996, sale deed no.1-479 dated 25.01.1997, sale deed no.1-747 dated 07.02.1997, sale deed no.1-5467 dated 21.12.1995 and sale deed no.1-2142 dated 29.04.1995.

6. The Land Acquisition Judge has made a comparison between the sale instances filed by the referring claimant and the Land Acquisition Collector and the requisitioning agency. Before determining the market rate, the Land Acquisition Judge formed three comparable tables on the basis of sale instances, which are as under :

SALE INSTANCES FILED ON BEHALF OF THE L.A. COLLECTOR

Sl. No.	Description of documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No. 1-1283 dated 02-03-1996	1 Ganda 3 Karas	Rs.26,000/-	Rs.2,97,143/-
2.	Sale Deed No. 1-922 dated 15-02-1997	2 Karas 2 Krantas 10 Dhurs	Rs.15,000/-	Rs.4,23,530/-
3.	Sale Deed No. 1-6012 dated 20-11-1996	1 Ganda 3 Karas 3½ Dhurs	Rs.80,000/-	Rs.9,06,730/-
4.	Sale Deed No. 1-2194 dated 05-05-1995	1 Ganda 2 Karas	Rs.20,000/-	Rs.2,66,667/-

SALE INSTANCES FILED ON BEHALF OF THE LA COLLECTOR :

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

SALE INSTANCES FILED ON BEHALF OF THE REQUIRING AGENCY :

Sl. No.	Description of documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No.1-248 dated 13.01.1997	2 Gandas 13 Dhurs	Rs.6,000/-	Rs.58,418/-
2.	Sale Deed No.1-583 dated 30.01.1997	1 Ganda 2 Karas	Rs.3,000/-	Rs.40,000/-
3.	Sale Deed No.1-1577 dated 11.03.1997	4 Gandas 1 Kara	Rs.10,000/-	Rs.47,059/-
4.	Sale Deed No.1-6252 dated 28.10.1997	2 Gandas	Rs.3,000/-	Rs.30,000/-
5.	Sale Deed No.1-899 dated 14.02.1996	6 Gandas	Rs.5,000/-	Rs.16,667/-
6.	Sale Deed No.1-479 dated 25.01.1997	4 Gandas 1 Kara 2 Krantas 10 Dhurs	Rs.4,000/-	Rs.17,944/-
7.	Sale Deed No.1-747 dated 07.02.1997	2 Gandas	Rs.2,000/-	Rs.20,000/-
8.	Sale Deed No.1-5467 dated 21.12.1995	3 Gandas	Rs.10,000/-	Rs.66,667/-
9.	Sale Deed No.1-2142 dated 29.04.1995	5 Gandas	Rs.10,000/-	Rs.40,000/-

7. It is apparent that all the sale instances were transacted before the notification under Section 4 of the L.A. Act. Thereafter, he made an average market value from the 16 sale instances at ₹1,48,265 per kani. He has exhibited the said market rate as the just and equitable market rate for acquisition of the referring claimant’s land. Thus, he answered the reference as under :

18. In the result, the petition U/S 18 of the L.A. Act as referred by the L.A. Collector, West Tripura, Agartala is allowed on contest. The

Referring claimants, namely Abdul Haque and Nurul Islam Maishan, are entitled to a compensation for the acquired land @ Rs. 1,18,612/- (Rupees one lac eighteen thousand six hundred and twelve) per kani. The compensation shall be added with 30% solatium U/S. 23(2) of the L.A. Act and 12% U/S. 23(i)(A) of the L.A. Act from the date of Notification U/S. 4 of the said Act till the date of possession or award whichever is earlier. The interest on the amount of compensation and solatium shall be at the rate of 9% per annum from the date of possession till one year and at the rate of 15% per annum from the date of expiry of one year till the date of payment of the enhanced amount of compensation.

8. The Land Acquisition Judge has further directed to adjust the amount already paid to the referring claimants. The said judgment and award dated 17.08.2009 is under challenge by the requisitioning agency fundamentally on two grounds of objection i.e. determination of quantum of compensation of the land is whimsical and the sale instances are not from the same mouja and there had been no proper inquiry as to the proximity, potentiality and the stage of development of those land.

9. Mr. A. Lodh, learned counsel appearing for the appellant has seriously criticised the said judgment, but what is surprising is that the market rate, according to the appellant, has been raised to ₹1,48,265 per kani, but the Land Acquisition Judge has enhanced the rate from ₹74,000 to ₹1,18,612 per kani.

None has appeared for the respondents, despite due notice.

10. It appears further that the method that has been followed is not sustainable on the face of it. Whatever sale instances are filed in the proceeding cannot be clustered together for purpose of getting an average rate. Only the relevant sale instances are to be considered having regard to the area of the land that has been acquired.

11. This court considered the sale instances filed by the referring claimants and it appears that the sale instance no.1-1283 dated 02.03.1996 and sale instance no.1-922 dated 15.02.1997, part of Exbt.1 series, demonstrate respectively ₹2,94,143 and ₹4,23,530 as the value of the land per kani. Two other sale instances are of different mouja. It is true that no map has been produced by the referring claimants. But, from the deposition of the witnesses it has been established that the acquired land is located in a developing area.

12 This court, in **Dy. Chief Engineer (Construction) Vs. Uttam Sutradhar & Anr. etc.**, decided by the judgment and order dated 08.06.2012 in L.A. App. No.14/2003 alongwith other appeals, has observed that "*in that area annual escalation rate has reached more than 30%*".

13. Having regard to those sale instances vis-a-vis the rate of enhancement of the market rate as well as the sale instances, admitted at the instance of the appellant and the Land Acquisition Collector, this court is of the view that the market rate as determined by the Land Acquisition Judge at ₹1,18,612 after deducting 20% as the development cost, is not at all liable to be interfered with inasmuch as, if the market rate was properly worked out, the rate would have gone much higher. In absence of any cross appeal by the referring claimants, this court is not inclined to exercise its power under Order XLI Rule 33 of the CPC to re-visit the rate as determined by the Land Acquisition Judge.

14. Having held so, this appeal stands dismissed. Draw the decree accordingly.

Send down the LCRs forthwith.

JUDGE

ROY