

**THE HIGH COURT OF TRIPURA
AGARTALA**

LA APP NO.09 OF 2010

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

..... *Appellant*

- *Vs* -

1. Smt. Sandhya Rani Ghosh,
W/O Late Raj Kumar Ghosh.

2. Smt. Gita Rani Ghosh,

3. Smt. Santa Ghosh,

4. Smt. Ratna Rani Ghosh.

All are daughters of late Raj Kumar Ghosh.

5. Smt. Mira Rani Ghosh,
W/O Sri Narayan Ghosh,

6. Smt. Swapna Rani Ghosh,
W/O Late Nikhil Ghosh,

All are represented by Smt. Santa Ghosh,
D/O Late Raj Kumar Ghosh,
Of Dukli P.S. Amtali,
West Tripura, Agartala.
By dint of power of attorney.

..... *Respondents*

**BEFORE
HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. A. Lodh, Advocate

For the respondents : None

Date of hearing &
delivery of
judgment & order : **21.03.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORDER)

This appeal under Section 54 of Land Acquisition Act is directed against judgment and award dated 26.10.2009 passed by learned L.A. Judge, West Tripura, Agartala(Court No.4) in connection with case No.Misc(LA) 38 of 2001.

2. Heard learned counsel, Mr. A. Lodh for the appellant. No representation on behalf of the respondents.

3. The brief fact is that by notification dated 27.02.1998 issued under Section 4 of the L.A. Act followed by declaration made under Section 6 of the L.A. Act dated 27.04.1998, land measuring 0.52 acres, classified as Nal of Mouja-Dukli recorded in Khatian No.158, C.S. Plot Nos.1126/P, 1130/P and 1131/P, belonged to the referring claimants, i.e. the respondent Nos.1 to 6 here in was acquired for construction of railway line from Kumarghat to Agartala at Mouja-Dukli and the L.A. Collector in due course determined compensation at the rate of ₹34,000/- per kani. The claimants, i.e. the respondent Nos.1 to 6 received the compensation under protest with a prayer for referring the case to the learned L.A. Judge for determination of actual market price of the acquired land on the ground that the price determined by the L.A. Collector was inadequate, and accordingly, the case was referred to the learned L.A. Judge and the learned LA Judge in due course after recording

evidence of both side determined compensation of the acquired land at the rate of ₹1,54,190/- per kani.

4. Felt aggrieved, the requiring Department, i.e. the Deputy Chief Engineer (Construction), N.F. Railway preferred the present appeal challenging the judgment and award passed by the learned L.A. Judge.

5. It is submitted by Mr. Lodh, learned counsel for the appellant that the L.A. Collector determined compensation considering the price of comparable land in the vicinity, which was appropriate whereas the learned L.A. Judge has taken into consideration all the sale transactions referred by the contesting parties and thereafter made an aggregate of the same and arrived at a wrong finding.

6. On perusal of the impugned judgment and the evidence on record I find that at the time of hearing before the learned L.A. Judge the referring claimants relied on 4(four) sale instances. On behalf of the L.A. Collector, i.e. the respondent No.7, 3(three) sale instances were proved and on behalf of the appellant, i.e. the requiring Department again 4(four) sale instances were referred. From the judgment of the learned L.A. Judge it appears that he has taken into consideration the prices obtained in all those sale instances and in a tabular form he has mentioned the prices of particular sale instance and thereafter he made an average of all

those 11(eleven) sale instances and determined the compensation after deducting 20% from the average of all those total 11(eleven) sale instances.

7. Some guess work and some hypothetical consideration is inevitable in determination of compensation in every case. It is quite settled that the best way to determine the compensation is to consider the price obtained in contemporaneous sale deeds whether of the same land or of some other land in the vicinity. There is no dispute that all those eleven sale instances were of the vicinity of the acquired land of the claimants and so the learned L.A. Judge has committed no wrong in taking into consideration all those sale instances and in making an average of the same.

8. The learned L.A. Judge relied on the principles laid down by the apex Court in the case of ***H.P. Housing Board v. V. Bharat S. Negi*** reported in ***AIR 2004 SC 1800*** and arrived at a conclusion that the reasonable price of the acquired land at the date of notification should be ₹1,54,190/- per kani. Taking into consideration the reasons assigned by the learned L.A. Judge and the documents taken to consideration for determination of market price of the acquired land at the date of execution I find no infirmity in the determination made by the learned L.A. Judge.

9. Learned counsel, Mr. Lodh has submitted that the interest on solatium shall be from 19.09.2001 as determined by the

apex Court in the case of **Gurpreet Singh v. Union of India** reported in **(2006) 8 SCC 457**. Referring to para 54 of the judgment it is submitted by Mr. Lodh that the apex Court referring to **Sundar's case**[**Sunder v. Union of India, (2001) 7 SCC 211**] has held that interest on solatium cannot be claimed prior to 19.09.2001, i.e. **Sunder's** case since there is no observation in the judgment of the learned L.A. Judge as to the calculation of interest on solatium. The Supreme Court in para 54 of the judgment in **Gurpreet Singh**(supra) has held thus:

"54. One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in Sunder (supra), the awardee/deGREE holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder (supra) on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the

appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of Sunder (supra) and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in Sunder (19-09-2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."

10. The submission of learned counsel, Mr. Lodh on the point of interest on solatium is misplaced, since on perusal of the judgment of learned L.A. Judge I find that the learned L.A. Judge has clearly indicated, *"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"*. Since it is directly mentioned in the order of learned L.A. Judge regarding the payment of interest on solatium the submission made by learned counsel, Mr. Lodh and the principles laid down by the apex Court in the cases mentioned above is not applicable in the facts of this case.

11. The appeal is found to be devoid of merit and accordingly it stands dismissed.

12. Parties to bear their own costs.

13. Send back the L.C. records along with a copy of this judgment.

JUDGE