

IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. APP. NO.07 OF 2011

1. Agartala Municipal Council,
represented by its Chief Executive Officer,
having its office at Paradise Chowmuhani,
Agartala, P.O. Agartala, West Tripura.
2. Executive Officer,
Agartala Municipal Council,
having its office at Paradise Chowmuhani,
Agartala, P.O. Agartala, West Tripura.

..... Appellants

Vs.

1. Sri Dilip Singh Roy,
2. Sri Nilu Singh Roy,
3. Sri Uttam Singh Roy,
4. Sri Gautam Singh Roy,
- all are sons of late Bidhu Buhion Singh Roy,
resident of Udaipur, P.O. Udaipur,
P.S. R.K. Pur, District : Gomati, Tripura
5. Smt. Swapna Singh Roy,
wife of late Dipak Singh Roy,
resident of Udaipur, P.O. Udaipur,
P.S. R.K. Pur, District : Gomati, Tripura
6. Land Acquisition Collector,
West Tripura, Agartala,
having its office at Old Civil Secretariat,
Akhaura Road, P.O. Agartala, West Tripura.

..... Respondents

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

For the appellants : Mr. T.D. Majumder, Advocate

For the respondents : Mr. P. Chakraborty, Advocate

Date of hearing & order : 29.07.2015

Whether fit for reporting:	Yes	No
		√

JUDGMENT & ORDER (ORAL)

Heard Mr. T.D. Majumder, learned counsel appearing for the appellants, Agartala Municipal Council, now Agartala Municipal Corporation in whose requisition, for purpose of development of the Nagerjala Bus Stand, the land from the respondents No. 1, 2, 3, 4 and 5 was acquired. Also heard Mr. P. Chakraborty, learned counsel appearing for the respondents No. 1 to 5, hereinafter referred to as the 'referring claimants'. But, there is no representation from the Land Acquisition Collector, despite due notice from this court.

2. By this appeal filed under Section 54 of the Land Acquisition Act, 1894, the judgment and award dated 09.06.2010 delivered in Misc.(LA) 60/2006 by the Land Acquisition Judge, West Tripura, Agartala, Court No.3, has been called in question.

3. The facts are mostly admitted.

By the notification No.F.9(12)-Rev/Acq/VI/2004 dated 01.07.2004 issued under Section 4 of the Land Acquisition Act, 1894 and which was published in the Tripura Gazette on

07.07.2004 for acquisition of land from the referring claimants, was proposed and thereafter on discharging the procedure under Section 5 of the said Act, the declaration under Section 6 of the said Act was made on 21.08.2004.

4. From the respondents, a piece of land measuring 0.085 acres pertained to Khatian No.206 and C.S. Plot No.256(Part) from Mouja Pratapgarh, was acquired and after inquiry the Land Acquisition Collector awarded a sum of ₹56,549, basing the assessment on the land value at ₹2,00,000 per kani.

5. Mr. Datta Majumder, learned counsel appearing for the appellants has submitted that the acquired land falls in the category of 'doba' class and after due inquiry and on consideration of various delineated factors, the L.A. Collector had correctly given ₹2,00,000 per knai. As the referring claimants were not satisfied with that offer, they pressed for a reference under Section 18 of the L.A. Act. On reference, the Land Acquisition Judge, by the impugned judgment has enhanced that rate from ₹2,00,000 per kani to ₹10,00,000 per kani, which is, according to the appellants, extremely unreasonable and not supported by any evidence. Mr. Datta Majumer, learned counsel has further submitted that the referring claimants have relied on the sale deed, being No.1-911 dated 27.01.2004 and the sale deed being No.1-12087 dated 24.12.2002 (Exbt.2 series). But those sale exemplars cannot be

applied for determining the land value for the reason that those land situate along the Agartala-Bishalgarh road and their commercial value is much higher. Mr. Datta Majumder, learned counsel has further submitted that those two sale exemplars are related to 'viti' class of land whereas the referring claimants' land falls in the category of 'doba' class.

6. Mr. P. Chakraborty, learned counsel appearing for the referring claimants has submitted that there is no infirmity in the assessment as made by the L.A. Judge. In addition, he has submitted that the land value would have been much higher. However, the referring claimants have not preferred any appeal. He has further submitted that if it transpires to this court that the referring claimants are entitled to much higher value, this may be awarded to them in exercise of the power as provided under Order 41 Rule 33 of the CPC.

7. For appreciating the rival contentions as projected by the learned counsel for the parties, this court has appreciated the analogy provided by the L.A. Judge while deciding the land value. The Land Acquisition Judge has observed as under :

"From the side of referring claimants two sale deeds are proved. In the sale deed No.I-911 dated 27.1.2004 land measuring 1 kara 10 1/4th dhur of class 'viti' (shop) was sold at Rs.1,55,000/- on 29.1.2004. In the sale deed No.I-12087 dated 24.12.2002 land measuring 1 kara 10 dhur of shop

class of land with 2 doors 'dokan viti' was sold at Rs.2,00,000/-. From the side of O.P. No.2 photo copy of the sale deed No.I-12099 dated 26.12.2002 is filed in which land measuring 1 ganda 1 kara 1 kranta 7½ dhur of 'viti' class of land of mouja Pratapgarh was sold at Rs.1,10,000/-. From neither side map of the area is filed so as to ascertain the nearness of acquired land from the sale instances. This makes the job in hand a difficult one. However, the Court is required to decide the issue on the basis of the documents made available by the parties. The land in question of mouja Pratapgarh was acquired in the year 2004. In the first sale deed of the referring claimant land measuring 1 kara 10 and one-fourth dhur of 'viti' class land was sold for Rs.1,55,000/- on 29.1.2004. In the second sale instance, land measuring 1 kara 10 dhur of 'dokan viti' was sold at Rs.2,00,000/- on 24.12.2002. In case of the sale deed filed from the side of the O.P. No.1 land measuring 1 ganda 1 kara 2 kranta and 7 dhur of 'viti' class was sold for Rs. 1,10,000/- on 26.12.2002. the acquired land as well as the land of all the three sale instances are situated at mouja Pratapgarh. Even taking into consideration the sale instance of the O.P. No.2 and taking note of the fact that the land of the sale instance was 'viti' class of land whereas the acquired land was of lunga class and also taking into consideration the quantum of the two lands and further taking into consideration the fact that in the sale instance of the O.P. No.2 the sale took place on 26.12.2002 whereas the land in acquisition was notified under Section 4 of the Act for acquirement on 1.7.2004, the market value fixed is considered to be very inadequate. In the circumstances of the case, where the Court is handicapped for want of documents like appropriate sale deed and the map of the area, it is considered safe to hold that the market value for the acquired land ought to have been Rs.10,00,000/- per kani."

It will be apparent therefrom that what the L.A. Collector had determined is less than what the land should have fetched if those two sale exemplars (Exbt.2 series) are taken up as the basis for such determination.

8. Mr. Datta Majumder, learned counsel appearing for the appellants was highly persuasive to contend that the land value as determined by the L.A. Judge is exorbitantly high for a ‘doba’ class of land. For that purpose and for a safer recourse to determine the land value, this court has considered the assessment sheet as submitted by the L.A. Collector. The L.A. Collector has considered 5(five) sale exemplars having regard to the proximity and class of land. Those sale deeds, their consideration money and distance from the acquired land as placed in the assessment note in L.A. Case No.17/SDR/04, is extracted hereunder.

Sl. No.	Mouja	Plot No.	Classi- fication of land	Area in acre	Deed No. & date	Total value of land	Value of land per kani	Distance of the proposed acquired land
1	2	3	4	5	6	7	8	9
1.	Pratapgarh/ Howrah sheet No.1	512	Viti	0.029	1-12099 Dt.26.12.02	Rs.1,10,000/-	Rs.15,17,241/-	630 ft.
2.	-do-	181	Bastu	0.066	1-1422 Dt.10.02.03	Rs.2,60,000/-	Rs.15,75,757/-	840 ft.
3.	-do-	543	Bastu	0.080	1-6034 Dt.10.02.03	Rs.1,50,000/-	Rs.15,00,000/-	980 ft.
4.	-do-	543/ 6212	Bastu	0.030	1-1635 Dt.10.02.03	Rs.1,10,000/-	Rs.14,66,667/-	920 ft.
5.	-do-	367	Bastu	0.081	1-12039 Dt.24.04.02	Rs.1,73,000/-	Rs.8,54,320/-	750 ft.

On the basis of that, the L.A. Collector determined the land value for ‘viti’ class at ₹15,00,000, for ‘nal’ class at ₹5,00,000 and for ‘pukur, pukurpar, doba’ class at ₹2,00,000.

9. In **Mehrawal Khewaji Trust (Regd.), Faridkot and Ors. Vs. State of Punjab and Ors.**, reported in **AIR 2012 SC**

2721, the apex court has held in the unequivocal terms that the highest comparable exemplar from the comparable sale exemplars has to be accepted. For purpose of reference, para-15 of the said report is reproduced herein :

15. 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.

[Emphasis added]

10. Out of the five sale instances, ₹15,75,757 is the highest value. It is apparent, therefore, that the said highest sale exemplar was made the basis for giving ₹15,00,000 per kani for the 'viti' class of land. But, in the highest sale exemplar as stated, the said consideration was for 'bastu' class of land. If the required deduction is made as the development cost of the 'doba' class of land, it would appear that ₹10,00,000 per kani for the 'doba' class of land is not exorbitant and unreasonable at all. Moreover, the

Supreme Court has laid down the law that in urban and semi-urban areas increase in the land value ranges between 10-15% per year.

11. Having regard to the cumulative effect of all these aspects, this court is of the considered opinion that the land value as determined by the L.A. Judge for the 'doba' class of land at ₹10,00,000 (Rupees ten lacs) is not required to be interfered.

12. Having observed thus, this appeal stands dismissed. Draw the decree accordingly and send down the LCRs thereafter.

JUDGE

ROY