

THE HIGH COURT OF TRIPURA
AGARTALA

L. A. App. No.17 of 2011

The Commandant,
192 Battalion, BSF,
Now 24 Battalion, BSF, Panisagar,
PO-Panisagar, PS-Panisagar,
District- North Tripura

.....**Appellant**

- Vs -

1. Sri Srikanta Deb,
2. Sri Subal Deb,
3. Sri Sudhangshu Deb,
4. Sri Sitangshu Deb,
5. Sri Suklangshu Deb,
6. Sri Subrata Deb,
7. Smti. Satyabati Deb,
8. Smti. Namita Deb,

all are sons and daughters of late Surendra Kumar Deb and
residents of Maguruli, Kailashahar, Sub-Division- Kailashahar,
P.S. Kailashahar, District-North Tripura

(Nos.1 to 5, 7and 8 above are being represented by their
constituted attorney No.6, i.e. Sri Subrata Deb)

.....**Respondents**

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

For the appellant	: Mr. B. Majumder, CGC
For the respondents	: Mr. A. C. Bhowmik, Sr. Advocate Mr. A. Bhowmik, Advocate
Date of hearing and delivery of judgment and order	: 17.07.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. B. Majumder, learned CGC appearing for the
appellant as well as Mr. A. C. Bhowmik, learned senior counsel

assisted by Mr. A. Bhowmik, learned counsel appearing for the respondents.

02. This is an appeal under Section 54 of the Land Acquisition Act, 1894 (L. A. Act, in short) by the requiring department against the judgment and award respectively dated 24.07.2010 and 28.07.2010 passed by the Land Acquisition Judge, North Tripura, Kailashahar in Civil Misc. (LA) 57 of 2008.

03. The undisputed facts as emerged from the records are that a total area of land being 1.27 acres has been acquired from the respondents for construction of BOP, Khawrabil (Maguruli) at Mouja-Khawrabil. The notification under Section 4 of the Land Acquisition Act was published for that purpose on 11.10.2006 whereas the declaration under Section 6 of the Land acquisition Act was published on 13.11.2006. After the purported inquiry, the Land Acquisition Collector, North Tripura by the award dated 29.11.2008 assessed the land value and other damages at Rs.1,97,348/- and the respondents were awarded the solatium and interest as per provisions of law.

04. Being aggrieved by that award, the respondents asked for reference under Section 18 of the Land Acquisition Act for determining the market value of the said land which comprised in Khatian No.145, plots No.1903, 1904, 1906 and 1907 classified as bagan, bastu, bagan and chara with an area of 0.67 acres, in Khatian No.149 plot Nos.1894, 1882 and 1879 classified as chara, bagan and bastu with an area of 0.46 acres and in Khatian No.606 plots No.1908(P) and 1875 classified as nal having an area of 0.14 acres. The said reference

having so made was registered as Civil Misc. (LA) No.57 of 2008 in the Court of the Land Acquisition Judge, North Tripura, Kailashahar.

05. By the judgment and award dated 24.07.2010, the Land Acquisition Judge reassessed both the land value and the damages that the referring claimants, the respondents herein, suffered for such acquisition. The Land Acquisition Judge assessed the damage for the construction, huts, trees of various species at Rs.4,50,000/- from Rs.1,37,973/- and the land value has been increased to Rs.50,000/- per kani from Rs.15,000/-, Rs.30,000/- and Rs.20,000/- per kani irrespective of their class.

06. The said judgment and award dated 24.07.2010 has been challenged in this appeal primarily on two grounds that while determining the damages, the Land Acquisition Judge acted whimsically and he followed no transparent method. It has been contended that without any basis for four mud wall huts a sum of Rs.2,00,000/- and for the pacca construction a sum of Rs.1,00,000/- were assessed by the Land Acquisition Judge and such assessment according to the appellant is perverse. The other ground is that for the acquisition of a contiguous land under the same project under another reference case being Civil Misc. (LA) No.56 of 2008, the same Land Acquisition Judge, North Tripura, Kailashahar awarded the rate per kani at Rs.25,000/- and Rs.40,000/- for bastu class of land by raising the rate from Rs.15,000/- and Rs.30,000/- for the same class of land.

07. Mr. B. Majumder, learned CGC has submitted that the referring claimants could not place any evidence to show that the

damage, as ascertained, is quantifiable by analysis of the evidence. Mr. Majumder, learned CGC has further brought the judgment and award dated 30.04.2010 delivered in Civil Misc. (LA) No.56 of 2008 to the notice of this court to contend that the plot No.1902 is contiguous land of plot No.1903. The land value of plot No.1902 was the subject matter of the reference being Civil Misc. (LA) No.56 of 2008, whereas the land value of the plot Nos.1903 and others were the subject matter of the Civil Misc. (LA) No.57 of 2008.

08. From the other side, Mr. A. C. Bhowmik, learned senior counsel has emphatically stated that if the finding so returned by the Land Acquisition Judge, North Tripura, Kailashahar is keenly analysed it would be apparent that there is no infirmity in the impugned judgment.

09. Before the contrasting submissions are appreciated, it would be appropriate to have visited the reasonings provided in the impugned judgment. The Land Acquisition Judge has analysed and given the reasons for the decision as under:

"9. The lands of the petitioners appertain to khatian No.145, 149 and 606. As per the Award the area of the land is .30 acre cherra class of land under khatian No.143, bastu .30 acre under khatian No.149, bagan 1.10 acres cherra .06 acre and under khatian No.606 .04 acre. Total 1.27 acres of land was acquired and total compensation was given at Rs.59,375/- @ Rs.15,000/- per kani. The petitioners claimed compensation @ Rs.1,00,000/- per kani in support of the claim, the petitioners produced one registered deed executed on 10-03-2006. By that deed 30 satak land was sold out at Rs.30,000/- per kani. So, the land value is Rs.40,000/- per kani as per that deed No.6472/73. But that deed was executed on 10-03-2006. L.A. Collector consulted some deeds 1/742, 1/635, 1/749, 1/620. Deeds were executed in the year 2006. As per the deed No.1/635 .15 satak land was sold out at Rs.26,666/-. By deed No.1/620 dated 7.4.2006 .20 acre was sold out for

Rs.20,000/-. But, if the value of those deeds were followed, the value of the land would come at around **Rs.50,000/- per kani**. But, the L. A. Collector followed the valuation chart prepared by the SDM. Such valuation chart is not prepared by any expert and it cannot be the basis for determining the market value.

Determination of the market value on average basis overlooking comparable methods and relying on classification shown in the revenue records is incorrect since such average method has no evidentiary value. Presumption has the genuineness of the contents of the documents as sale instance produced and relied on by the claimants permitted to be raised if the said presumption is not rebutted by other evidence. Determination of the market value relying on the instance of sale of the portion of some land as has been acquired or adjacent land made shortly before or after section 4 Notification is the most reliable way.

In this instant case the Notification under section 4 was given in the month of October, 2006, whereas the adjacent lands of the acquired and were sold out in the months of March and April, 2006. But the L.A. Collector did not give any notice in respect of those transactions and decided the market value on the basis of the valuation chart, prepared by the SDM. Market value can not be fixed with mathematical precision. But, must be based on the sound discretion of the Reference Court. Certified copy of the registered sale deeds are acceptable as reliable evidence without examination of the parties. The claimant-petitioners stated that value of the land was Rs.1,00,000/- per kani, but no definite evidence is given in support of it. After careful scrutiny and consultation of the Report of the L.A. Collector, Valuation Chart and the Deeds produced, it appears that the valuation of the land was not less than Rs.50,000/- per kani at the time of acquisition in the year 2006. So, value of the land is given @ Rs.50,000/- per kani and calculation is to be done on such basis for the total acquired land measuring 1.27 acres. Over the amount the petitioners are entitled to get 30% solatium and interest @ 12%.

10. In this land acquisition case, valuation is given for the trees separately. It is revealed from the evidence on record that one Deputy Collector and Magistrate was appointed to assess the valuation of the trees and buildings, construction, shed, mud wall etc. over the acquired land. Er. Rajesh Kumar Das and DCM, Kailashahar, North Tripura submitted the report after enquiry. On enquiry it was observed that the building structures, sheds, mud wall rooms are remained same as before. Some trees were felled and detailed report on the trees is given by the Agriculture Officer. That report is also submitted. There were four mango trees, four jackfruit trees and other trees in the three plots. In Form No.4 A description of the trees is given. Segun trees were

42 Nos. and rate is given @ Rs.800/- per tree. There were 22 matured segun trees and rate is given @ Rs.75/- per tree. There were 6 gamai trees and rate is given @ 600/- per tree. For another 34 segun trees Rs.800/- per tree is given. For segun plants Rs.75/- is given for each. Mango trees' valuation is given at Rs.700/-, lichi Rs.300/-, fruit bearing trees Rs.240/-, betel nut trees Rs.100/-. This is come out from the Report of the L. A. Collector. But, Enquiry Report reveals the existence of more trees like bamboo 70 Nos., mango tree, coconut trees, jackfruit trees, tejpatha tree, cinnamon tree, nut etc. From the perusal of the record and the materials collected by the L. A. Collector it appears that very less amount was awarded for trees and building. For trees Rs.71,470/- is awarded for land under plot No.1, Rs.66,503/- for trees and building in plot No.2. As per report there were mud wall with GCI sheet roofing, wooden structure, 33 ft X 15 Ft, brick wall GCI sheet roofing, wooden structure 34.50 ft X 6 ft. mud wall GCI sheet roofing wooden structure 21 ft X 15 ft, mud wall GCI sheet roofing wooden structure 34 ft x 15 ft, mud wall GCI sheet roofing wooden structure 25 ft x 19 ft, mud wall GCI sheet roofing wooden structure 21 ft x 15 ft and one ring well. This information is collected on the direction of the L. A. Collector. So, there were 5 (five) mud wall cottages, one brick wall GCI sheet roofing. For all those constructions only Rs.48,559/- was paid for pucca construction as stated by the respondent No.2. For damage cost of trees and building the L. A. Collector gave compensation of Rs.1,37,973/- only as mentioned in para-6 of the written statement. But, if it is properly assessed for four mud wall huts, which are going to be destroyed for construction of BSF BOP, at least the petitioners are entitled to get Rs.2,00,000/- for the construction and for another pucca construction the petitioners are entitled to get Rs.1,00,000/-. Thus, total Rs.3,00,000/- the petitioners are entitled to get for constructions. Those constructions could not be removed and the petitioners would suffer such damage on the demolition of those constructions by the requiring Department.

As per Report of the Agriculture Officer there were 90 Nos. of matured teak trees in plot No.1. For those trees the petitioners are entitled to get at least Rs.1,00,000/-. For mango trees and four jackfruit trees, 2 rata trees, bell tree and bamboo petitioners are entitled to get Rs.10,000/- for plot No.1. For another 7 mango trees, 2 koro trees, 1 neem tree, one agar tree, 6 coconut trees, 5 jackfruit trees, bamboo, 4 gamai and 24 betel nut in plot No.2 petitioners are entitled to get Rs.40,000/-. Thus, for trees on rough assessment the petitioners are entitled to get Rs.1,50,000/-. For demolition of the construction the petitioners are entitled to get Rs.3,00,000/-. Total compensation the petitioners are entitled to get for trees and buildings is Rs.4,50,000/-. Out of that, Rs.1,37,973/-, as already awarded, is to be deducted and the amount would stand

at Rs.3,12,027/-. The petitioners will also get the valuation of the land @ Rs.50,000/- per kani, as mentioned above.

10. What has appeared from Exbt.1, plot No.1902, which is the subject matter of Civil Misc. (LA) No.56 of 2008, is an isolated plot having no substantive access from the main road. From the map, Exbt.1, it would further transpire that the land of the respondents has substantive access from the main road and thus the land value as determined in Civil Misc. (LA) No.57 of 2008 cannot be squarely applied. The advantage of having substantive access is a very important indicator to the land value. It is true that the Land Acquisition Judge has given an average rate for all classes of land. While assessing the land value and the rate, it is desirable that as far as practicable the land value be determined according to the class of land. But at the same time, if it is found that hardly there is any distinguishable feature between the two classes of land, save and except their use, then if the average rate is given, it cannot be termed unsustainable.

11. From the finding as well as from the records, it has emerged that the land so acquired is classified as bastu, chara etc. Apart their use, hardly there is any distinguishable feature. In the circumstances as narrated and the way the value has been determined, this Court does not find any infirmity inasmuch as there is hardly any difference between the land value as awarded by the judgment and award dated 30.04.2010 delivered in Civil Misc. (LA) No.56 of 2008, Annexure-A/2, considering the advantage attached to the land of the respondents.

12. This court has taken judicial notice of the judgment dated 30.04.2010 under Section 57 of the Indian Evidence Act and having regard to the provisions of Section 51(a) of the Land Acquisition Act. The other grounds of objection, even though are apparently very attractive, but from the reasons given by the Land Acquisition Judge, it appears that the damage as determined by the Land Acquisition Collector was so unrealistic that it could hardly be sustained. By making an overall assessment of the damage, as there were no salvages, the damage as ascertained by the Land Acquisition Judge in the considered opinion of this Court does not require to be interfered with. Hence, this Court does not find any merit in this appeal and accordingly the same is dismissed.

Draw the decree accordingly.

Send down the LCRs thereafter.

JUDGE

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