

THE HIGH COURT OF TRIPURA
AGARTALA

W.A. 102 OF 2012

Union of India,
Represented by the Assistant Defence
Estates Officer, Agartala,
Post Office Abhaynagar,
West Tripura.

..... **Appellant.**

- V e r s u s -

1. Sri Ramsagar Chowhan,
Alias Ramsagar Nunia, Husband of
Kamalapati Nunia,
Son of Late Bachhu Chawhan,
Residing at Ananganagar,
District: West Tripura.
2. Sri Surjya Bhanu Nunia,
S/O. Lt. Ginu Ram Nunia.
3. Sri Chandra Nunia,
Son of Late Ginu Ram Nunia.
Both 2 and 3 resident of
Dhaleswar Road No.3,
Post office East Agartala,
District: West Tripura.
4. Land Acquisition Collector,
West Tripura, Post Office Agartala,
District West Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the appellant : Mr. A. Lodh, Advocate.

For the respondent No.4 : Mr. B.C. Das,
Advocate General,
Mr. B. Banerji, Advocate.

Date of hearing and
delivery of judgment
and order. : 14.07.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

In this writ appeal, the petitioner Union of India has raised challenge to the levy of sum of Rs.5,22,771/- imposed by the Land Acquisition Collector as incidental charges over and above the land acquisition charges assessed.

2. We had admitted the appeal on 03.7.2013 on the following question of law:-

"Whether the Land Acquisition Collector in addition to the assessment of compensation to be paid to the land owners can impose incidental charges under Law?"

3. We have heard Mr. B.C. Das, learned Advocate General appearing for the respondent No.4, Land Acquisition Collector, and Sri Arindam Lodh, learned counsel appearing for the Union of India.

4. Sri Das, learned Advocate General, has drawn our attention to Section 50 of the Land Acquisition Act, 1894 which reads as follows:-

"50. Acquisition of land at cost of a local authority or Company. - (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.”

5. He has also drawn our attention to para-166 of the Land Acquisition Manual issued by the Government of Tripura which reads as follows:-

“166. Estimates and final charges for establishment and contingencies—*Under section 50 of the Act local authorities and companies for whom land is acquired are required to bear the charges of, and incidental to acquisition. These charges comprise the salaries and traveling allowance of the land acquisition Officer and of the establishment, contingent charges including the cost of forms and stationery, rent and municipal taxes for the rooms occupied by the Land Acquisition Officer and Law charges incurred in conducting references.*

No preliminary estimate can be prepared for law charges; the actual expenditure incurred will be separately recorded for each project and charged to the local authority or company concerned.

In projects of companies and of local authorities the establishment and contingent charges must be separately estimated for and charged to the company or local authority as part of the cost of acquisition.

When the Land Acquisition Officer and his establishment are engaged solely on the projects of one company or authority these estimates and charges can be accurately calculated and present no difficulty. But when they are engaged on the projects of more than one company or authority or partly on acquisition of land for Government or for a State Railway and partly on acquisition of land for companies and local authorities or

when the Land Acquisition Officer or his staff are not employed solely on Land acquisition the following procedure will be adopted with a view to the equitable distribution of the charges for establishment and contingencies.

When the estimate cannot conveniently be based on a forecast of actual charges it will ordinarily be calculated by taking a percentage of the estimated compensation this percentage will ordinarily vary from 5 percent on expensive projects to 20 percent on small projects. The Land Acquisition Officer will very carefully prepare at the close of each month an apportionment statement in the prescribed Form No.29, of this Manual, showing the charge debitable to each project on account of establishment for that month, the charge in each case being based on the proportion of the time of the officer and his establishment devoted to such project provided however that special charges incurred solely on account of any individual project should be debited solely to that project. For the preparation of this statement it is not necessary to maintain any record of the actual time spent on the several project if it is prepared punctually at the end of each month the Land Acquisition Officer, with a list of the projects in hand before him, will have no difficulty in estimating the proportionate amount of time spent on each and of allocating the total cost of establishment accordingly. As regards contingent charges it is left to discretion of the Collector to base the final charges on the actual cost of forms, stationery, etc. or when this is impracticable to charge a fixed percentage which should however be based on a consideration of the actual contingent expenditure of his office in a given year and of the amount paid in compensation during that year. In apportioning charges for establishment the time devoted to references should be included. The total of the charges so apportioned under the orders of the Collector month by month will ultimately be entered in column 19 of Form 23 for each project in accordance with the instructions given in paragraph 115(3)."

6. Our attention has also been drawn by Mr. A. Lodh, learned counsel for the appellant-Union of India, to the memorandum dated 16.11.1995 which reads as follows:-

“NO.F.30(81)-REV/ACQ/95
GOVERNMENT OF TRIPURA
REVENUE DEPARTMENT

Dated, Agartala, the 16th Nov', 1995.

M E M O R A N D U M

Subject:- Increase of L.A. Contingency.

In supersession of all previous orders under the Section 166 of the Land Acquisition Manual (Section 50 of the Land Acquisition Act, 1894), the Governor is hereby pleased to fix the contingencies @ of 10% of all cases to the Acquisition of land by the State Government/State Government bodies and at the rate of 20% for central Government/Central Government undertaking in Tripura with immediate effect and until further order.

*Sd/- (14.11.95)
(Mrs. C. Deb Barma)
Under Secretary to the
Government of Tripura.”*

7. On behalf of the petitioner, Sri Lodh urges that under Section 50 the cost of acquisition of land cannot be charged when the acquisition is by the Union of India. A bare reading of Section 50 of the Land Acquisition Act, 1894 clearly shows that the intention of the legislature was that when the provisions of the Land Acquisition Act, 1894 are put into motion and used for the purpose of acquiring land at the cost of any local authority or any company or where the fund from which this land acquisition cost is payable is managed by any local authority or company, the State is

entitled to defray the expenses of acquisition from such fund or company.

8. Sub-section (2) of Section 50 clearly provides that before a Collector or Court in such cases the local authority or company may appear and adduce evidence for the purpose of determining the amount of compensation. This clearly envisages that the acquiring company or local authority has the right to contest the claim of the Government and lead evidence to show that the expenses asked for are excessive or not payable.

9. We shall first confine ourselves to the issue as to whether under Section 50 of the Act of 1894 the cost of acquisition can be charged by the State Government even when the acquisition is made by the Union of India. On a bare perusal of the language of Section 50, we have no doubt in our mind that under Section 50 of the Act of 1894 the cost of acquisition can be recovered from the acquiring person only if that person is a local authority or company and not where the acquiring authority is a Government. From the Union of India this amount cannot be recovered.

10. It is urged on behalf of the State that the acquisition in this case has been made for the Army and, therefore, the Army is like a local authority. We are unable to accept this submission. Defence of the country is the most pious of the sovereign duties of the State. The maintenance of the Army is the sovereign function

of the State and the Army can never be equated with being a local authority or a company. Therefore, we reject this contention.

11. Our attention has also been drawn to Section 95 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which reads as follows:-

“95. Acquisition of land at cost of a local authority or Requiring Body. - (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Requiring Body, the charges of land incidental to such acquisition shall be defrayed from or by such fund or Requiring Body.

(2) In any proceeding held before a Collector or Authority concerned in such cases the local authority or Requiring Body concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Requiring Body shall be entitled to demand a reference to the Authority concerned under section 64.”

12. Under Section 95, the cost of acquisition of land can be recovered where the acquisition is for a local authority or Requiring Body. The term “Requiring Body” has been defined in Section 3(zb) as follows:-

“3(zb).“Requiring Body” means a company, a body corporate, an institution, or any other organisation or person for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in for public purpose to a company, body corporate, an institution, or any other organisation,

as the case may be, under lease, licence or through any other mode of transfer of land;"

13. The word "Requiring Body" has now been defined in such a manner that it includes the appropriate Government, if the acquisition is for such Government either for its own use or for any subsequent transfer of land. Therefore, in cases of acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the State would be entitled to recover the cost of acquisition from the local authority or the Requiring Body, as the case may be.

14. That brings us to the next question as to what can be recovered as the cost of acquisition and charges incidental thereto. In this behalf, we may make reference to para-166 which is very well drafted and clearly lays down the guidelines and these charges comprise the salaries, traveling allowances of the land acquisition officer, the cost of running the establishment, contingent charges including cost of forms, stationery, rents, municipal taxes and legal charges incurred.

15. Para-166 of the Land Acquisition Manual is a complete answer to this question. Para-166 itself contemplates the various expenses which can be claimed. It mandates that the Land Acquisition Collector shall very carefully prepare at the close of each month an apportionment statement in Form No.29 of the Manual. The expenses of land acquisition including the salaries of the officers have to be apportioned project wise. In case, the

officers properly maintain the statement at the end of every month in Form 29, there can be no difficulty in this regard.

16. Sub para-3 of para-166 mandates that in projects of companies and local authorities the establishment and contingent charges must be separately estimated for and charged to the company or local authority as part of the cost of acquisition. Other than legal charges or other charges which cannot be properly estimated at the beginning, the State must have a clear cut view as to what are the charges which it has to charge so that the acquiring authority has a reasonable estimate of what it is likely to be held to pay. In many cases, the Land Acquisition Officers are also doing other jobs. Their staff is also doing other work and not only land acquisition work. Under the garb of recovering acquisition expenses and charges incidental thereto, the entire salary of the Officer cannot be charged under the said head. It will have to be shown by producing some documents that what percentage of his time is spent on land acquisition work.

17. To take another instance, supposing there is a separate Land Acquisition Officer posted in a district and only one piece of land is acquired during the entire financial year, can it be said that all the expenses of the Land Acquisition Officer and his staff have to be borne by the acquiring department or authority. In our view, that cannot be permitted. What can be recovered both under Section 50 of the old Act and under Section 95 of the new Act are the charges incidental to that particular acquisition. The acquiring

authority is not liable to pay all the expenses of the Land Acquisition Officer for that year. It is only that proportion of the expenses which are relatable to the acquisition of the land of an acquiring department which can be recovered from the said authority or company.

18. We have no doubt in our mind that what can be recovered either under Section 50 of the old Act or under Section 95 of the new Act is the actual expenses and nothing else. Under the garb of recovering expenses, the State cannot levy a tax or fees because such tax or fees is not within the legislative competence of the State. The State has also fixed an alternative varying percentage from 5 to 20% in para-166. This may not be legal.

19. We make it clear that it will be for the State to justify the expenses and any party which is the acquiring authority can both under sub-section (2) of Section 50 or sub-section (2) of Section 95 of the new Act raise a plea that the amount claimed is excessive and evidence will have to be led by the State to prove what are the expenses incurred by it if challenged by the acquiring department/requiring body. Merely specifying a percentage is not at all justified. What the State is entitled to recover under law is the actual amount of expenses incurred by it in relation to a particular acquisition and all other incidental expenses thereto. It cannot charge huge amounts by fixing a percentage of 20%.

20. The non-application of mind by the State is obvious from the notification dated 16.11.1995 wherein a rate of 10% has been fixed in all cases of acquisition by the State Government and 20% for Central Government undertakings in Tripura. How can there be different charges? As we have held above, the Central Government or the State Government is not liable to pay any charges under Section 50 of the old Act. Even if any undertaking is liable to pay such charges under the old Act and even the Government under the new Act, there can be no discrimination between the Central Government and the State Government. The charges for expenses for acquisition cannot be different in the case of the Central Government, State Government, company, or a local authority. They will be identical in all cases. It will be for the State in each case to justify its expenses and it cannot fall back on the percentage just to charge an amount which is exorbitant.

21. We have come across cases like the present case where the acquisition charges have been charged by the Land Acquisition Collector on the basis of the amount awarded by him on a percentage basis. The expenses as assessed by him are paid by the acquiring authority. The land owner files an appeal to the High Court and the High Court increases the compensation. We fail to understand how the Land Acquisition Collector or the office of the Land Acquisition is entitled to any percentage of the enhanced amount. The State or the land acquisition office has not incurred any expenses after the award has been made by the Land

Acquisition Collector and, therefore, if the Land Acquisition Judge or the High Court enhances the compensation, we fail to understand how the State can claim incidental charges on percentage basis on the enhanced amount. At best, it can charge the legal fees incurred by the Land Acquisition Officer or by the State Government in prosecuting or defending the appeals filed on behalf of such authority.

22. We have gone into this wider question because time and again these disputes are arising before us. We, therefore, hold as follows:-

(i) That, under the Act of 1894 acquisition charges could only be charged from local authorities or companies and not from the State Government or Central Government. However, this judgment is made prospective in future and no further charges will be charged under the old Act but if anything has been paid that shall not be liable to be returned by the State Government unless any judicial proceedings are pending where there is challenge to the imposition of such charges;

(ii) Under the Act of 2013 the State is entitled to defray the expenses of acquisition and all incidental charges in all cases of acquisition;

(iii) As set out in para-166, it is the duty of the State where it wants to recover expenses to give details of the expenses to the authority or person for whom the land is acquired so that the person can also challenge the veracity of the same and can

lead evidence in terms of sub-section (2) of Section 50 or sub-section (2) of Section 95, as the case may be, to show that the charges asked for are not justified. Once charges have to be determined by the Collector or authority, then obviously these have to be determined on the basis of evidence and cannot be determined on the basis of a notification fixing a percentage;

(iv) We are clearly of the view that fixing a percentage is contrary to the provisions of Section 50(2) and Section 95(2) because both these sub-sections clearly envisage the proof of the expenses by leading evidence though the authority or the requiring body cannot ask for a reference but that does not mean that it cannot challenge the demand. It can challenge the demand in appropriate proceedings in accordance with law including filing of a writ petition in which it can claim that the charges demanded are exorbitant or not at all relatable to the acquisition;

(v) The charges which can be demanded are those which are relatable to that particular acquisition only which will include the cost of the department incurred on its officials, traveling, stationery and all other expenses as set out in para-166.

23. As far as the present writ appeal is concerned, we are clearly of the view that the State Government had no authority to charge these expenses from the Union of India for acquisition which was made for the purposes of the Indian Army. Furthermore, the charges in this case relate to the enhanced amount of

compensation and cannot be charged under Section 50(2) of the Act.

24. Amount, if any deposited, shall be refunded to the Union of India within 3(three) months from today and in case, it is not refunded within three months the State shall also be liable to pay interest @ 12% per annum from today till payment is made.

25. The writ appeal is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE