

THE HIGH COURT OF TRIPURA
AGARTALA

LA. App. No. 36 of 2011

LA. App. No. 84 of 2011

In LA. App. No. 36 of 2011

Appellant :

Shri Nandalal Chouhan,
son of late Gangaram Chouhan,
resident of Ramnagar, Akhaura
Road, P.S. West Agartala, District –
West Tripura

By Advocate :

Mr. A.K. Bhowmik, Sr. Advocate,
Mr. R. Dutta, Advocate

- V E R S U S -

Respondents:

- 1. The Land Acquisition Collector,**
West Tripura, Agartala
- 2. The Agartala Municipal Council,**
Represented by its Executive Officer,
Agartala, West Tripura
- 3. The Director of Industries,**
Government of Tripura, Agartala,
West Tripura

By Advocate :

Mr. Mr. K.K. Pal, Advocate
Ms. P. Dhar, Advocate

In LA. App. No. 84 of 2011

Appellant :

Smt. Rukhu Jasowara,
wife of Shri Mantu Jasowara,
resident of Ramnagar, Akhaura
Road, P.S. West Agartala, District –
West Tripura

By Advocate :

Mr. A.K. Bhowmik, Sr. Advocate,
Mr. R. Dutta, Advocate

-V E R S U S-

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- 1. **The Land Acquisition Collector,**
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Government of Tripura, Agartala,
West Tripura

By Advocate :

Mr. Mr. K.K. Pal, Advocate
Ms. P. Dhar, Advocate

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

Date of hearing : 07.07.2015

Date of delivery of
Judgment and order : **29.07.2015**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

Both the appeals under Section 54 of the Land Acquisitum Act, 1954, directed against the judgment and award dated 22.12.2009 delivered in Misc. L.A. 41 of 2003 (Nandalal Chouhan vs. L.A. Collector & Others) and Misc. (LA) 43 of 2003 (Smt. Smt. Rukhu Jasowara vs. L.A. Collector & others) by the Land Acquisition Judge, West Tripura, Agartala are taken up together as the land from the appellants were

acquired for purpose of extension of the Golchakkar Market at Mouja- Agartala Sheet No.4 by the notification under No.F.9(34)-Rev/ACQ/VI/2000 dated 17.10.2001 under Section 4 of the L.A. Act, published in Tripura gazette dated 18.10.2010. The total land for the said project as acquired was 0.195 acre, out of which 0.118 acre pertained to '*doba*' class of land and 0.077 acre pertained to '*bastu*' class of land. After the purported inquiry, the L.A. Collector awarded the land value at Rs.9,00,000/- per kani for the *bastu* class of land and Rs.5,00,000/- per kani for the *doba* class of land and based thereon, the compensation under Section 23 of the L.A. Act has been assessed with interest in terms of Section 34 of the L.A. Act.

[2] In the process, the appellant in L.A. App. No.36 of 2011 was awarded a sum of Rs.2,39,497/- against the acquired land measuring 0.074 acre, pertained to *bastu* class of land whereas the appellant in the L.A. App. No.84 of 2011 was awarded a sum of Rs.4,53,240/- against the acquired land measuring 0.118 acre pertained to *doba* class of land and 0.077 acre pertained to *bastu* class of land. As the appellants were not satisfied, they pressed for reference under Section 18 of the L.A. Act for determination of just compensation for such compulsory acquisition.

[3] The Land Acquisition Judge on appreciation of the evidence, by the impugned judgment and award dated

22.12.2009 decided the market value at Rs.20,00,000/- per kani for *bastu* class of land and Rs.12,00,000/- for *doba* class of land but denying any enhancement for the damages against the dwelling hut etc. As the appellants felt aggrieved by the said judgment and award, they have preferred these appeals for further enhancement on proper appreciation of the evidence that the appellants have led in their reference cases.

[4] Mr. A.K. Bhowmik, learned senior counsel appearing for the appellants has submitted that the evidence as laid by the appellants in their respective reference cases were not appreciated having regard to the location, advantages and the potential of the land. Even the yearly increase in the market rate did not find due regard. Mr. Bhowmik, learned senior counsel has referred the part of the cross-examination of Nani Gopal Sarkar (OPW-1), a Senior Surveyor working under the L.A. Collector. In both the reference cases he has stated that the land as acquired falls under Agartala Municipal area. The area which falls outside the municipality is known as village and the area which falls within municipality is known as town. Golchakkar is about one and half kilometre away from the court premises. He has denied the suggestion that the sale instances as considered by the L.A. Collector are in respect of the land, far away from the acquired land. Mr. Bhowmik, learned senior counsel in the course of his submission has contended that the evidence led

by the referring claimants, the appellant herein, have not been properly considered resulting in the impugned assessment. In Misc.(LA) 41 of 2003 (related to L.A. App. 36 of 2011) the referring claimant adduced two witnesses including himself (PW-1). He has stated that over the acquired land he had one pucca building on RCC pillars covered by the RCC roof, which was used as the shop and one mud wall dwelling hut and kuccha shed. He used to reside in that house. His grievance was that for damage of those structure he was only awarded Rs.47,474/- inclusive of moveable properties. He has also contended that a vacant piece of land within the vicinity (154 ft. from Akhaura road) was sold at the relevant point of time at Rs.20,00,000/- per kani. He has claimed that his land should have fetched Rs.1,00,00,000/- per kani. He has further stated that in the vicinity of the location there are the international land-port, offices of the customs, BSF, food processing industry, one senior basic school, hospital etc. The amenities like electricity, telephone connectivity and good roads are available. He has further stated that the said acquired land had got high potential to be developed as the commercial area. He demanded Rs.2,00,000/- for the damages.

But in the cross-examination he could not show that he constructed the building by dint of permission from the Agartala Municipality. He had introduced a sale deed dated

25.05.1999 in the evidence (Exbt.1 series) showing the consideration money of Rs.20,00,000/- per kani.

[5] The other witness Smt. Sahara Chowdhury (PW-2) as adduced by the referring claimants has stated that the referring claimant in Misc. (LA) 41 of 2003 has only '2 *CI sheet dwelling huts*' and a kitchen on the acquired land and supported the statements of PW-1 so far the location is concerned. But she has stated that she had purchased on 25.05.1999 a piece of land measuring 0.040 acre on consideration of Rs.20,00,000/- per kani. That land was low lying and at a distance from the main road. The land is located behind the acquired land. Later on, she developed the said land by earth filling and constructed the structure thereon. She has further submitted that what has been estimated as the price of the acquired land it was more than five times in the market at the relevant point of time.

In the cross-examination, PW-2 failed to identify the land by giving the plot number and Khatian number.

[6] As stated, one Nani Gopal Sarkar, a Surveyor from the L.A. Collector was examined as OPW-1. He has stated that he surveyed that land and the L.A. Collector after considering the contemporaneous sale instances such as (i) 1-9344 dated 13.11.2000, value of land Rs.10,66,666/- per kani (ii) 1-2289 dated 08.03.2000, value of land Rs.13,33,333/-

per kani (iii) 1-1821 dated 22.02.1999, value of land Rs.10,66,666/- per kani (iv) 1-3177 dated 31.03.1999, value of land Rs.13,33,333/- per kani and (v) 1-2583 dated 03.03.2000, value of land Rs.6,00,000/- per kani has determined the land value. He has further stated that a uniform rate was curved out from those sale instances at Rs.12,00,000/- per kani for *bastu* class of land. But as those sale instances were related to very small pieces of land, deduction @25% was made by the L.A. Collector and thus, the land value was determined at Rs.9,00,000/- per kani for *bastu* and *viti* class of land. According to him the referring claimant did not produce any sale instance to support his claim of Rs.1,00,00,000/- per kani for the acquire land. Already referred is his part of the cross-examination.

[7] Another witness was adduced by the referring department, the Agartala Municipal Council, now Agartala Municipal Corporation. Sri Sudhir Sarkar (OPW-2) is the Assessor of Agartala Municipal Corporation and he has supported the statement in the counter claim filed by Agartala Municipal Council. He has not revealed anything of material importance. The land valuation chart even though has been produced from the L.A. Collector but that is of no utility as the said chart was published on 19.01.2005 and it shows the land alongside Akhaura road. From the sale deed (Exbt.1) it appears that what PW-2 has stated about the class of land

and the boundary of land is entirely wrong as the class of land is *viti* class of land and the said land is bounded by the road in the southern and the eastern boundaries and as such, the said land cannot be held as less disadvantageous. The L.A. Judge has relied the said rate for *bastu class* of land. In Misc (LA) 43 of 2003 (related to L.A. Appl.84 of 2011) except the referring claimant, Smt. Rukhu Jasowara (PW-1) other witnesses of Misc.(LA) 41 of 2003 (related to L.A. App.36 of 2011) were examined. Smt. Sahara Chowdhury (PW-2), Sri Nanigopal Sarkar (OPW-1), Sri Sudhir Sarkar (OPW-2) have stated exactly in the same manner and their statements are replica of what they stated in the other case. The referring claimant, the appellant in L.A. App. No.84 of 2011 has stated inter-alia that for the said project her land was acquired and he had 2 CI sheet roofed hut over the acquired land. The land of PW-2 according to him, situated at the distance of 150 ft. She has also stated about the location in the similar manner as stated by PW-1 in Misc.(LA) 41 of 2003 (related to L.A. App. 36 of 2011). The admitted position is that no sale deed has been produced for *doba* class of land. The sale deed of PW-2 (Exbt.1 series) was executed on 25.05.1999 whereas notice under Section 4 of the L.A. Act was issued on 18.10.2000. As such, the said sale instance was executed one year prior to the acquisition notification. There is no challenge as regards the transaction being not bona-fide. Hence, the L.A. Judge has correctly relied on Exbt.1 series for purpose of determining

the value of the land. The L.A. Judge has correctly discarded the plea that the lands of the referring claimants were having better advantage or were in the superior category. But this Court is of the considered opinion that yearly increase of price as the component for determining the land value was not considered by the L.A. Judge. According to this Court the referring claimants have well laid their evidence to show that the acquired land is in the urban area. The apex court has enunciated that there should be a yearly increase of 10-15 % per annum in urban/semi urban areas whereas in extreme rural areas the said rate of increase would be 5-7% per annum. The said principle has been laid down in **Delhi Development Authority vs. Bali Ram Sharma & Ors.**, reported in **(2004) 6 SCC 533** and in **ONGC Ltd. vs. Rameshbhai Jivanbhai Patel**, reported in **(2008) 14 SCC 745**. In **Union of India vs. Harpat Singh & Ors.**, reported in **(2009) 14 SCC 375**, the apex court applied the rule of 10% increase per annum. It is the discretion of the court to make inquiry into the annual increase but use of the rate of increase as the component for purpose of getting the market value is well accepted in the common law. The yearly increase in the land value may be determined within the range of 10-15%. Apart that, this Court does not find any reason to interfere with the award for damages for the moveable and immovable properties by the L.A. Collector.

[8] Having held so, it is directed that over the land value, what has been given by the L.A. Judge 15% yearly increase shall be added for one year, based on the date of execution of the Exbt.1 series and the date of notification under Section 4 of the LA Act, meaning 15% increase for one year over the land value of Rs.20,00,000/- per kani for the *bastu/viti* class of land and Rs.12,00,000/- per kani for the *doba* class of land. It has transpired from the records that the L.A. Collector has paid a substantial part of the compensation, now they shall pay the remainder of the amount in terms of this judgment and award.

[9] In the result, the appeals are partly allowed.
Draw the award accordingly.
Send down the LCRs thereafter.

JUDGE

Sujay