

IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. APP. NO.30 OF 2011

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

..... Appellant

- Vs -

Sri Krishna Lal Debnath,
son of late Chandra Mohan Debnath,
resident of Village : Anandanagar,
P.O. Renters Coloney, P.S. East Agartala,
District : West Tripura.

.....Respondent

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

For the appellant : Mr. A. Lodh, Advocate

For the respondent : None

Date of hearing & delivery
of judgment & order : 22.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

This appeal arises from the judgment and order dated
22.01.2010 delivered in Mis.(L.A.) No.58/2004 by the Land
Acquisition Judge, West Tripura, Agartala, Court No.4.

2. For purpose of laying the railway track, by the notification dated 27.02.1998 under Section 4 of the Land Acquisition Act, ' L.A. Act' in short, an area of land measuring 0.22 acres of tilla class comprised in khatian no.2234, appertaining to C.S. plot no.5967/P at Mouja Anananagar was acquired from the respondents-land losers. Following the due process, the Land Acquisition Collector, West Tripura, Agartala, gave award on the market rate considering at ₹35,000 per kani. The land losers received the said award under protest and pressed for reference under Section 18 of the L.A. Act. The Land Acquisition Judge had considered various factors as assigned in the written statement. According to the land losers, the acquired land is located nearby the industrial belt of Agartala town, having eminent schools, college etc. They claimed ₹10,00,000 per kani. The Land Acquisition Collector disputed such claim and contended that on examination of the relevant sale transactions of the adjoining areas, the market rate has been determined. It has been categorically denied that the land could fetch more rate or the land so acquired is surrounded by civic amenities. The requisitioning agency, the Deputy Chief Engineer (Construction), N.F. Railway also supported the Land Acquisition Collector by filing a separate written statement.

3. The referring claimant, namely Krishna Lal Debnath was adduced as PW.1 and he supported the averments made in

the claim statement and introduced photo-copy of the certified copy of the sale deed no.1-4547 dated 11.08.1998 (Exbt.1), certified copy of the sale deed no.1-7654 dated 21.09.1990 (Exbt.2) and certified copy of the judgment passed in case No.Misc.(L.A.)151/2003 (Exbt.3).

4. From the other side, one Sri Nani Gopal Sarkar was examined as OPW.1 and he has introduced in the evidence the documentary evidence viz.,

Assessment note (Exbt.A),
Map of Mouja Anandanagar (Exbt.B),
Registered Sale Deed No.1-1908 dated 17.04.1995 (Exbt.C),
Registered Sale Deed No.1-4829 dated 15.11.1995 (Exbt.D),
Registered Sale Deed No.1-4128 dated 02.08.1996 (Exbt.E),
Registered Sale Deed No.1-3625 dated 03.07.1996 (Exbt.F) &
Registered Sale Deed No.1-12147 dated 04.04.1997 (Exbt.F).

5. One Sri Pallab Bhattacharjee, Junior Engineer of the N.F. Railway (Construction), Agartala, West Tripura, was examined as OPW.2 and he has introduced in the evidence the documents viz.,

Photo copy of Sale Deed No.1-5583 dated 16.09.1997 (Exbt.H),
Photo copy of Sale Deed No.1-5136 dated 23.09.1996 (Exbt.I) &
Photo copy of Sale Deed No.1-1026 dated 08.02.1984 (Exbt.E)

6. The Land Acquisition Judge has made a comparison between the sale instances filed by the referring claimant, the Land Acquisition Collector and the requisitioning agency. Before determining the market rate, the Land Acquisition Judge formed

three comparable tables on the basis of sale instances, which are as under :

SALE INSTANCES FILED ON BEHALF OF THE REFERRING CLAIMANT :

Sl. No.	Description of documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No. 1-4547 dated 11-08-1998	2½ Gandas	Rs.45,000/-	Rs.3,60,000/-
2.	Sale Deed No. 1-7654 dated 21-09-1990	4 Gandas	Rs.40,000/-	Rs.2,00,000/-

SALE INSTANCES FILED ON BEHALF OF O.P. NO. 1 :

Sl. No.	Description of documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No.1-1908 dated 17.04.1995	3½ Gandas	Rs.10,000/-	Rs.57,143/-
2.	Sale Deed No.1-4829 dated 15.11.1995	5 Gandas	Rs.2,000/-	Rs.8,000/
3.	Sale Deed No.1-4128 dated 02.08.1996	2 Karas 2 Krantas 10 Dhurs	Rs.1,000/-	Rs.28,235/-
4.	Sale Deed No.1-3625 dated 03.07.1996	8 Gandas	Rs.8,000/-	Rs.20,000/-
5.	Sale Deed No.1-2147 dated 04.04.1997	2 Gandas 1 Kara	Rs.5,000/-	Rs.44,445/-

SALE INSTANCES FILED ON BEHALF OF O.P. NO. 2 :

Sl. No.	Description of documents	Measurement of land	Value	Rate per Kani
1.	Sale Deed No.1-5583 dated 16.09.1997	10 Gandas 1 Kara 1 Kranta 8 Dhurs	Rs10,000/-	Rs.19,293/-
2.	Sale Deed No.1-5136 dated 23.09.1996	22½ Gandas	Rs.25,000/-	Rs.22,222/
3.	Sale Deed No.1-1026 dated 08.02.1984	2½ Gandas	Rs.4,000/-	Rs.32,000/-

7. It is apparent that all the sale instances except one had taken place prior to issuance of the notification under Section 4 of the L.A. Act. Exbt.1 sale instance had taken place after the notification under Section 4 of the L.A. Act was issued. Thereafter, he made an average market rate from the 10 sale instances and worked out an average rate at ₹79,134 per kani. After deduction of 20% towards the development cost, the compensation for the acquired land was determined at ₹63,307 per kani. Thereafter, the Land Acquisition Judge, has observed as under :

18. In the result, the petition U/S 18 of the L.A. Act as referred by the L.A. Collector, West Tripura, Agartala is allowed on contest. The Referring claimant, Shri Krishna Lal Debnath, is entitled to a compensation for the acquired land @ Rs. 63,307/- (Rupees sixty three thousand three hundred and seven) per kani. The compensation shall be added with 30% solatium U/S. 23(2) of the L.A. Act and 12% U/S. 23(i)(A) of the L.A. Act from the date of Notification U/S. 4 of the said Act till the date of possession or award whichever is earlier. 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.

8. The Land Acquisition Judge has further directed to adjust the amount already paid to the referring claimant. The said judgment and award dated 22.01.2010 is under challenge by the requisitioning agency fundamentally on two grounds of

objection i.e. determination of quantum of compensation of the land is whimsical and the sale instances are not from the same mouja and there had been no proper inquiry as to the proximity, potentiality and the stage of development of those land.

9. Mr. A. Lodh, learned counsel appearing for the appellant has seriously criticised the said judgment, but what is surprising is that, according to the appellant, no deduction has been done in terms of the decision of the apex court in **H.P. Housing Board Vs. Bharat S. Negi & Ors.**, reported in **AIR 2004 SC 1800** and **Lucknow Development Authority vs. Krishna Gopal Lahori & Ors.**, reported in **AIR 2008 SC 399**. Without following the settled principle of determining the market rate, the Land Acquisition Judge has determined the rate at ₹79,134 per kani and thus the market value of the acquired land has been fixed at ₹63,307 per kani. It has been further directed that 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 expiry of one year till the date of payment.

None has appeared for the respondent, despite due notice.

10. It appears further that the method that has been followed is not sustainable on the face of it. Whatever sale

instances are filed in the proceeding cannot be clustered together for purpose of getting an average rate. Only the relevant sale instances are to be considered having regard to the area of the land that has been acquired.

11. This court has considered the sale instances filed by the referring claimant and finds that by the Exbt.2 sale instance, the market rate has been found to be ₹2,00,00 per kani. But, the sale instances filed by the OPW.1 demonstrates much lower rate ranging from ₹8,000 to ₹57,143. On relying the Exbt.C document, being sale deed no.1-1908 dated 17.04.1995 as introduced by OPW.1, the land Acquisition Collector assessed the rate per kani at ₹57,143. It appears from the assessment sheet dated 24.07.1998 that the said land is the adjoining plot. The other documents are not of much relevance as Exbt.A is a document relied by the Land Acquisition Collector.

12 This court, in **Dy. Chief Engineer (Construction) Vs. Uttam Sutradhar & Anr. etc.**, decided by the judgment and order dated 08.06.2012 in L.A. App. No.14/2003 alongwith other appeals, have observed that *"in that area annual escalation rate has reached more than 30%"*.

13. That apart, it would be apparent from the judgment and award dated 27.01.2007 delivered in Misc.(LA) No.151/2003 that for construction of new railway line between Kumarghat-

Agartala the market value was assessed by the Land Acquisition Judge on the basis of the sale deed dated 21.09.1990 and after deduction it was determined that the referring claimant was entitled to compensation at the rate of ₹1,60,000 kani.

14. Having regard to all these materials and record and the sale instances as referred, this court is of the view that the market rate as enhanced by the impugned judgment, does not call for any interference. If the market rate was properly worked out, the rate would have gone much higher. In absence of any cross appeal by the referring claimants, this court is not inclined to exercise its power under Order XLI Rule 33 of the CPC to re-visit the rate as determined by the Land Acquisition Judge.

15. Having held so, this appeal stands dismissed. Draw the decree accordingly.

Send down the LCRs forthwith.

JUDGE

ROY