

THE HIGH COURT OF TRIPURA
AGARTALA

LA. App. No. 41 of 2011
LA. App. No. 42 of 2011
LA. App. No. 45 of 2011
LA. App. No. 48 of 2011

In LA. App. No. 41 of 2011

Appellants :

- 1. Smti. Ratna Deb,**
wife of late Runu Bhushan Deb,
- 2. Miss. Sanghita Deb,**
daughter of late Runu Bhushan Deb,
- 3. Shri Kishalay Deb,**
son of late Runu Bhushna Deb

-all residents of Ramnagar Road No.
10, P.O. Ramnagar, P.S. West
Agartala, District- West Tripura

By Advocate :

Mr. R. Dutta, Advocate

- V E R S U S -

Respondents:

- 1. The Land Acquisition Collector,**
West Tripura, Agartala, Office of the
District Magistrate & Collector, West
Tripura District
- 2. The Executive Engineer,**
Public Works Department Division
No. 3, Agartala, West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In LA. App. No. 42 of 2011

Appellant :

Shri Arunendu Deb,
son of late Umesh Chandra Deb,
resident of Ramnagar Road No.10,
P.O. Ramnagar, P.S. West Tripura,
District- West Tripura

By Advocate :

Mr. R. Dutta, Advocate

-V E R S U S-

Respondents:

- 1. The Land Acquisition Collector,**
West Tripura, Agartala, Office of the
District Magistrate & Collector, West
Tripura District
- 2. The Executive Engineer,**
Public Works Department Division
No. 3, Agartala, West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In LA. App. No. 45 of 2011

Appellants:

- 1. Smti. Putul Deb,**
wife of late Sefal Chandra Deb
- 2. Legal heirs of Sekhar Deb**
 - (i) **Smt. Kaberi Deb,**
wife of late Sekhar Deb
 - (ii) **Subhradeep Deb, (minor)**
son of late Sekhar Deb
- 3. Smti. Sabita Deb (Nag)**
wife of late Moloy Nag
- 4. Smti. Namita Deb, (Sur)**
wife of Shri Sekhar Sur
- 5. Smti. Sumita Deb,**
wife of Shri Manik Dasgupta

[the appellants Nos. 3 to 5 are
daughters of late Sefal Chandra
Deb]

-all are residents of Durga
Chowmuhani, P.O. Ramnagar, P.S.
West Agartala, District: West
Tripura

By Advocate :

Mr. R. Dutta, Advocate

-V E R S U S-

Respondents:

- 1. The Land Acquisition Collector,**
West Tripura, Agartala, Office of the
District Magistrate & Collector, West
Tripura District
- 2. The Executive Engineer,**
Public Works Department Division
No. 3, Agartala, West Tripura

By Advocate :

Mr. N. Majumder, Advocate

In LA. App. No. 48 of 2011

Appellants:

Legal heirs of Amalendu Deb

- (i) Smt. Anjali Deb,**
wife of late Amalendu Deb,
- (ii) Shri. Arindam Deb,**
son of late Amalendu Deb
- (iii) Smt. Swapna Sarkar,**
daughter of late Amalendu Deb
-represented by her brother, the
appellant No.2 on the basis of power
of attorney]

-all are residents of Ramnagar Road
No. 9, P.O. Ramnagar, P.S. West
Agartala, District: West Tripura

By Advocate :

Mr. R. Dutta, Advocate

-V E R S U S-

Respondents:

- 1. The Land Acquisition Collector,**
West Tripura, Agartala, Office of the
District Magistrate & Collector, West
Tripura District

2. The Executive Engineer,
Public Works Department, Division
No. 3, Agartala, West Tripura

By Advocate :
Mr. N. Majumder, Advocate

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

Date of hearing : 02.07.2015

Date of delivery of
Judgment and order : **03.08.2015**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

All these appeals under Section 54 of the Land Acquisition Act, 1954 are clustered for disposal by a common judgment for the reason that the references made under Section 18 of the L.A. Act, 1984, in short the L.A. Act, at the instance of the appellants or their predecessor have been determined by the Land Acquisition Judge, West Tripura, Agartala by the common judgment and award dated 23.02.2011 and that judgment and award is under challenge in these appeals.

[2] The land from the referring claimants, the appellants herein were acquired for construction of the RCC bridge over the river Katakhal near Durga Chowmuhani under Sadar Sub-Division in the West Tripura District. The necessity of compulsory acquisition was notified vide Notification No.F.9(12)-Rev/ACQ/VI/2000 dated 25.08.2000 under Section

4 of the L.A Act. After the purported inquiry, the Land Acquisition Collector determined value of all classes of land fallen on the south of Durga Chowmuhani bridge at Rs.26,00,000/- per kani and for the land fallen on the north of the bridge was determined at Rs.10,00,000/- per kani. The south of Durga Chowmuhani Bridge is very proximate to the Durga Chowmuhani market area. As the appellants were aggrieved by such determination even though they did not file any sale exemplar in support of their claim, they pressed for reference under Section 18 of the L.A. Act. A table giving the details of the acquired land such as plot number, Khatian number, area of land acquired, reference case number, rate of the land given and the total compensation by the L.A. Collector, if formed, that would be as the undernoted:

Sl. N o.	L.A. App. No.	Reference Case No.	Name of the referring claimant	Short detail of the acquired land **	Area of the acquir ed land	Land value per kani by the L.A. Collector	Total compensati on with damages for moveable/s tructure on the acquired land by the L.A. Collector
1	L.A. App. No.41 of 2011	Misc (LA) 21 of 2005	Smti. Ratna Deb & 2 others	Khatian No. 23810, Plot No.925/447 42	0.013 acre	Rs.26,00, 000/- per kani	Rs.1,20,818/ - inclusive of Rs.3,000/- for shifting charge
2	L.A. App. No.42 of 2011	Misc (LA) 17 of 2005	Shri Arunendu Deb	Khatian No.23809, Plot No.925/447 42	0.013 acre	Same as above	Rs.1,20,818/ - inclusive of Rs.3,000/- for shifting charge
3	L.A. App. No.45 of 2011	Misc (LA) 18 of 2005	Smti. Putul Deb & 4 others	Khatian No.23808, Plot No.927/320 92	0.011 acre	Same as above	Rs.1,02,692 inclusive of Rs.3,000/- for shifting charge
4	L.A. App. No.48 of 2011	Misc (LA) 23 of 2005	Amalendu Deb represented	Khatian No.23813, Plot	0.013 acre	Same as	Rs.1,20,818/ - inclusive of Rs.3,000/-

			by his legal heirs	No.925/447 46		above	for shifting charge
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**** The acquired lands situate in Mouja- Agartala Sheet No.1**

[3] The L.A. Judge by the impugned judgment enhanced the land value from Rs.26,00,000/- to Rs.45,00,000/- per kani after following the principles laid down in **Ravinder Narain and Anr. vs. Union of India**, reported in **(2003) 4 SCC 481** where it has been observed that the principles underlying the determination of the market value having reference to comparable sale instances are (i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. The L.A. Judge has provided the analogy as under:

Considering the above, very meticulously I have examined all the materials available in my hand like sale deeds under Exbt.1 series and A series basing on the prevailing market price since 2000 A.D. while comparing the deeds under Exbt.1 series it appears that one deed No.1-1120 dated 25.02.1994 is the deed of gift between father and son. Since the said deed is not a sale deed, the same cannot be taken into consideration for the purpose of comparison and the another sale deed No.1-733 dated 22.01.2001, under Exbt.1 series shows that the land of the said sale deed falls under Mouja-Agartala, sheet No.2 but no authentic map was adduced to locate the land of the sale deed in question and acquired land. The acquired lands in question in the instant cases are under sheet No.1 so the sale instance under Exbt.1 series (sale deed No.1-73) is not comparable and accordingly, the same deserves no consideration to assess the value of the acquired lands but of the other hand, the copy of

the sale deed under Exbt.A series adduced on behalf of the L.A. Collector it appears that the land of the sale deed is undoubtedly situated in Mouja-Agartala Sheet No.1 and the said sale deed bearing No.3638 dated 26.04.2000 was executed at the consideration of Rs.38,09,523/- per kani. But the schedule of the mention in the sale deed under Exbt.A series, does not indicate that the said land within or nearby the acquired lands in question. Since the acquired land were situated in the commercial area of Durga Chowmuhani market, undoubtedly, the lands in acquisition had got high potentiality since the sale instances submitted under Exbt.1 series are not considered to be comparable in assessing the value of the acquired lands, except of the acquired lands of Misc.(LA) 110 of 2005 and Misc.(LA) 116 of 2005 this court has to go forward with guess work. Therefore, from guesswork this court is of the opinion that it would be justified if the valuation of the acquired lands are fixed as Rs.45,00,000/- per kani except the acquired lands of Misc (LA) 110/05 and Misc(LA) 116/2005, wherein the LA Collector assessed the valuation of land at Rs.26,00,000/- per kani.

[4] The L.A. Judge has denied to enhance the loss of business and damage of construction having held that '*they did not show any cogent evidence for further assessment of the loss of their business and damage of their construction and shop etc.*' The L.A. Judge affirmed whatever damage has been granted by the L.A. Collector and the L.A. Judge declined to reconsider whether the further damage can be granted to the appellants.

[5] There is no dispute that while assessing the rate, the L.A. Judge considered as many as 6(six) sale exemplars which are collected by one of the Amins working under the L.A. Collector. In the assessment note, those sale deeds with

description of the land and land value per kani with distance from the acquired land have been provided in a tabular form which is extracted hereunder:

Sl. No.	Deed No. & Date	Plot No.	Class	Area	Value of land	P.K. Value	Distance
1	1-2248, dt.05.09.1999	1292/45319	Dokan	0.008	50,000/-	Rs. 25,00,000/-	16 metr.
2	1-252253, dt.09.01.1998	1325 (P)	Do	0.004	70,000/-	Rs.70,00,000/-	114 metr.
3	1-8050, dt.18.09.2000	7274 (P)	Do	0.0056	60,000/-	Rs.42,85,714/-	7 metr.
4	1-3638 dt.26.04.2000	925 (P)	Do	0.021	2,00,000/-	Rs.38,09,523/-	Do
5	1-12181 dt.05.03.1999	7316 (P)	Bhiti	0.030	45,500/-	Rs.6,00,000/-	138 metr.
6	1-16 dt.01.01.1999	34071 (P)	Do	0.060	90,000/-	Rs.6,00,000/-	240 metr.

[6] The deed No.1-2248 dated 05.09.1999 was considered by the L.A. Collector as comparable for the all lands fallen under acquisition situated on the southern side of Durga Chowmuhani Bridge as the date of execution of the said deed was considered close to the date of the notification for acquisition and the land is also considered similar to the acquired land. It has been also observed by the L.A. Collector that the acquisition affected or damage of the construction standing on the acquired land. Thus, the land value of Rs.26,00,000/- per kani was determined for the acquired land, related to these appeals. The compensation was accordingly determined.

[7] Mr. A. K. Bhowmik, learned senior counsel along with Mr. R. Dutta, learned counsel appearing for the appellants has submitted that the determination of the land value is absolutely conservative and without regard to the rise in the market price of the land of the area inasmuch as the acquired land is part of the Durga Chowmuhan market area which is considered one of the valuable areas of the city of Agartala. He has further submitted that for extension of the approach road of the proposed bridge, the building of the appellants were damaged but no additional damage has been determined by the L.A. Collector which was commensurate to such damage. Even on reference, the L.A. Judge did not enhance the damage as according to the L.A. Judge, no evidence has been placed in this regard. Mr. Bhowmik, learned senior counsel has further submitted that even the enhancement of the land value from Rs.26,00,000/- per kani to Rs.45,00,000/- per kani is inadequate and unjust. He has submitted that exclusion of the Exbt.1 series is totally unreasonable. Mr. Bhowmik, learned senior counsel has submitted that the highest sale exemplar was discarded by the L.A. Collector without any reason. The highest sale exemplar is the deed No.1-152253 dated 09.01.1998 which reflects the consideration money at Rs.70,00,000/- per kani. The said land is situated, according to the L.A. Collector only 114 meter away from the acquired land. As in all the reference cases, the same evidence has been utilised by the

referring claimants, it would be evident that the referring claimants have asserted that they have lost the rent of the building which has been damaged beyond salvage and that value ought to have been added as the component of the compensation. Even some loss for severance to the extent of Rs.5,00,000/- was claimed. One Arunendu Deb, the appellant in L.A. App. No.42 of 2011 has stated that the L.A. Collector awarded Rs.84,607/- for the building in his favour whereas he awarded Rs.1,61,635/- to the referring claimants in Misc.(LA) 18 of 2005, Rs.84,607 to the referring claimants of Misc. (LA) 21 of 2005 and Rs.1,19,000/- to the referring claimants of Misc.(LA) 23 of 2005. According to Mr. Bhowmik, learned senior counsel, the L.A. Collector did not make even measurement of the damage suffered for acquisition of the land. Mr. Bhowmik, learned senior counsel in response to the query from this Court could not show any evidentiary material towards assessment of the damage that the referring claimants have suffered in the process of acquisition. Only in their depositions, they have made some bald statements. Mr. Bhowmik, learned senior counsel has referred a decision of the apex court in **Viluben Jhalejar Contractor (Dead) by Lrs. vs. State of Gujarat**, reported in **(2005) 4 SCC 789** where the apex court has observed that:

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various

positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

<i>Positive factors</i>	<i>Negative factors</i>
(i) Smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-a-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser
(vii) special value for an owner of an adjoining property to whom it may have some very special advantage	

[8] Mr. Bhowmik, learned senior counsel has further referred to a decision of the apex court in **Mehrawal Khewaji Trust (Regd.), Faridkot and Ors. vs. State of Punjab and Ors.**, reported in **AIR 2012 SC 2721** where it has been enunciated by the apex court that:

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.

[9] Thus, Mr. Bhowmik, learned senior counsel has submitted that on account of the damage of the building for the acquisition of land, the appellants are entitled to much higher amount and they are also entitled to receive the proper land value which would be not less than Rs.1.5 crore on the relevant point of time.

[10] From the other side, Mr. N. Majumder, learned counsel appearing for the requiring department and Mr. A. Pal, learned counsel appearing for the L.A. Collector have submitted in unison that the appellants have failed to produce any amount of reliable evidence for claiming further compensation on account of the damage that visited their building for acquisition and hence, the finding as returned by the L.A. Judge does not warrant any interference from this Court. They have further submitted that even though the requiring department or the L.A. Collector did not prefer any appeal but the land value as determined by the L.A. Judge is obviously on the higher side. If any further value is added to the acquired land that would unleash in the unjust enrichment vis-a-vis the value of the land. Mr. Majumder, learned counsel appearing for the requiring department and having referred to the distance from the acquired land *[see the table]* has contended that the highest sale exemplar has been correctly discarded by the L.A. Judge.

[11] Having regard to the rival contentions as projected by the learned counsel for the parties and on scrutinizing the records meticulously, this Court finds that the L.A. Collector in his assessment sheet has observed as to the location of the proposed bridge and the acquired land as under:

“the land under acquisition is situated on the south and north of Durga Chowmuhani Bridge along the main road running from Durga Chowmuhani to Airport. Out of 0.1098 acres of land, only an area of 0.0087 acres are situated on the north of the Durga Chowmuhani Bridge and the rest land situated on the south of the Durga Chowmuhani Bridge. The land under acquisition being the construction of approach road on both sides of the Durga Chowmuhani Bridge mainly concerned with widening of the existing road. In the instant project land falling on the eastern side of the main road is affected. Land falling on the south of the Durga Chowmuhani Bridge are the part land running shops. Land falling on the North of Durga Chowmuhani are the part of homestead being viti only. The land under acquisition has potentiality and the entire lands on the south of the bridge are being used as shops. Durga Chowmuhani market is within one furlong from the acquired land.’

[12] Having regard to that observation, this Court is of the view that the reason for discarding the sale exemplar being deed No.1-152253 dated 09.01.1998 is not sustainable as it has come to the fore that the land covered by the sale exemplar dated 09.01.1998 is at a distance of 114 meter from the acquired land. But the distance might not be so from the Durga Chowmuhani market area. There is no difficulty in comparing the said exemplar with the acquired land inasmuch as the said sale exemplar is also in respect of a small piece of land. Thus, a balance from the juxtaposition can be struck. It would be proper and just, having due regard to the potential vis-a-vis the yearly increase of the market value and location

to determine the land value @Rs.55,00,000/- at the time of the notification under Section 4 of the Land Acquisition Act. This Court is also in agreement with the finding as returned by the L.A. Judge that the referring claimants, the appellants herein, have utterly failed to produce any evidence of worth, based on which the Court can venture fresh assessment of the compensation given for the damages.

[13] Having held so, these appeals stands allowed. The referring claimants would get Rs.55,00,000/- as the land value, which would be basis for additional compensation @12% under Section 23(1A) of the L.A. Act and solatium @30%. The appellants would further be entitled to interest on all the said components of the compensation from the day of issuing the notification under Section 4 of the L.A. Act in terms of Section 34 of the said Act. It is needless to say that if any amount has been paid to the referring claimants, that shall be deducted at the time of making payment of the remainder in terms of this judgment and award.

Draw the award accordingly.

Send down the LCRs

JUDGE

Sujay