IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. APP. NO.73 OF 2011

The State of Tripura,
represented by the Executive Engineer,
P.W.D.(R&B), Ambassa Division, Jawharnagar
P.O. & P.S. Ambassa, Sub-Division : Ambassa,
District : Dhalai, Pin-799289.

…… Appellant

– Vs –

1. Sri Aditya Kumar Tewari,
   son of Adinath Tewari.

2. Sri. Siew Kumar Tewari,
   son of Adinath Tewari

   - both are residents of Village : Purba Nalichhera,
   P.O. & P.S. Ambassa, Sub-Division : Ambassa,
   District : Dhalai, Pin- 799289

.....Referring Claimant-Respondents

3. The L.A. Collector, Dhalai
   P.O.& P.S. Ambassa, Sub-Division : Ambassa,
   District : Dhalai, Pin- 799289

…..……. Respondent

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

For the appellant **:** Mr. A. Pal, Advocate

For the respondents **:** P.K. Dhar, Advocate

Date of hearing & order **:** 29.07.2015

Whether fit for reporting **:**

Yes	No

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Pal, learned counsel appearing for the appellant-Public Works Department as well as Mr. P.K. Dhar, learned counsel appearing for the respondent Nos. 1 and 2 (hereinafter referred to as the 'referring claimants'). Despite due notice from this court, none appears for the respondent No.3-Land Acquisition Collector, when the matter is taken up for hearing.

2. This is an appeal under Section 54 of the Land Acquisition Act, 1894 questioning the judgment and award dated 03.09.2010 delivered in Civil Misc.(LA) No. 01 of 2010 by the Land Acquisition Judge, North Tripura, Kailasahar in Civil Misc.(LA) No.01 of 2010.

3. Mostly the facts are admitted. A piece of land measuring .10 acre classified as nal (dokan viti) pertained to Khatian No.9 and C.S. plot No.6262(P) from Mouza East Nalichara was sought to be acquired for purpose of construction of a bridge by the notification No.F.9(4)/REV/ACQ/XV/06 dated 22.11.2006 under Section 4 of the Land Acquisition Act,1894, the L.A. Act in short. Thereafter, by the purported inquiry, the L.A. Collector awarded a sum of Rs.5,45,352/- to the referring claimants. In addition thereto, a sum of Rs.3,39,764/- was awarded as compensation as the cost of damage for pucca construction that existed on the acquired land. But the referring claimants were not

satisfied with the land value so awarded by the L.A. Collector and they pressed for reference under Section 18 of the Land Acquisition Act, 1984. The reference, being Civil Misc.(L.A.) No. 01 of 2010 has been determined by the judgment dated 03.09.2010 which has been called in question in this appeal.

4. The referring claimants staked their claim for the land value at Rs.1(one) crore per kani and projected their further claim of Rs.25(twenty five) lacs for the damages they had sustained for the pucca construction and another sum of Rs. 1(one) lac for the cost of trees standing over the acquired land. While determining the reference, the Land Acquisition Judge, by the impugned judgment awarded Rs.40(forty) lacs per kani and enhanced the damages for the construction to Rs.4(four) lacs and for the trees Rs.10,000/- in place of Rs.3,39,764/- and Rs.300/- respectively.

5. Mr. Pal, learned counsel appearing for the appellant has submitted that the determination of the land value has been carried out without any basis. He has submitted that the two sale exemplars as introduced by the referring-claimants are for a land situated at the centre of the Kulai Market. The land situated in the business hub cannot be compared, for the purpose of their value, with the land situated at a distance of 2 km from the said commercial hub. Mr. Pal, learned counsel, to emphasis this plea, has stated that to relate the said exemplars, the referring-claimants did not file any location Map nor led any evidence to that extent. The Land Acquisition Judge by returning the following observation, has determined the land value :

8. L.A. Collector acquired land measuring .10 acres under C.S. plot No.6262(P) of East Nalichhara mouja under khatian No.9. It was dokanviti (Nal) land. Value of the land was assessed by L.A. Collector @ 16 lacs per kani. In order to determine the value of the land L.A. Collector consulted the valuation chart 2001-2002 and re-valuation chart of 2005-2006 to decide the value of the acquired land of the claimant petitioners. Apart from this L.A. Collector also consulted five nos. of deeds executed in the year 2006. On the other hand claimant petitioners produced copy of registered sale deeds executed in the year 2001 & 2003 under said mouja and similar class of land out for Rs.1,10,000/-. So value of the land per kani in same mouja Nalichara was 44 lacs in the year 2003. But the claimants did not examine vender or vendee or other witnesses of the said deed. However, the scribes (PW-2) of the deeds was examined. One perusal of land valuation chart of 2001-2002 and re-assessment of land valuation of 2005-2006 it appears that value of dokanviti which is classified under Block-A, rose from eighty thousand to 30 lacs within the span of five years. The L.A. Collector also consulted five deeds of 2006 of the same mouja but those deeds were not in connection with sale of any class of dokan viti or commercial land and the lands of the said five nos of deeds is situated about and more than 2 km distance from the acquired land vide C.S. plot No. 6262 of the claimant petitioners, so valuation of those deeds cannot be taken into consideration to determine the value of the acquired land. On the other hand the land of the deed is in respect of small part of land measuring one satak. In land acquisition case value of small piece of land cannot be basis the determination of the value of large tract of land.

In AIR 2010 S.C.170 , our Hon'ble Apex Court held that certified copy of the sale deed may be received in evidence by the court. However, court has the discretion to rely upon it or reject it as unacceptable. Market value must relate to the last date notification u/s 4(1) of L.A. Act. It can not be determine by assumption or presumption of any authority.

In AIR 2008 S.C. 709 our Hon'ble Apex Court also held that market value is the price that willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantage and its potential when led out in most advantageous manner.

9. Market value as envisaged in section 23(1) of L.A. Act is designed to award just and fair compensation for the lands and postulates price of the lands prevailing on the date of publication of the notification. A land possessing similar advantage to the land in the neighbourhood of the land acquire in or about time of the notification would supply the data to assess the market value. Market value means the price which a purchaser willing to pay for similar land to willing seller. The potentialities of the developing must be taken into account in fixing the value of the land.

<u>Here in this case acquired land is 0.10 acres. It's value as reassessment of land valuation chart of 2005-06 was 30 lacs per kani. Land was acquired vide notification, dt.22.11.06 and Notice u/s 4 of L.A. Act was also</u>

> **published. So on careful examination of the assessment of land valuation chart of 2001-02 and re-assessment of land valuation chart of 2005-06 as revealed in the order sheet of the L.A. Collector in respect to the class of land of 'Dokan Viti' and considering copy of the registered 2 (two) deeds (Exbt.1 series), written statement and evidence of the parties and also considering the rise of land value and potentiality of the commercial land, the value of the acquired land should not be less than 40 lacs per kani. But the L.A. Collector has not assessed the proper valuation for the acquired land and decided the value of the land 16 lacs per kani. In my considered view, the value of the acquired land should be 40 lacs per kani. In view of the above discussion I am of the opinion that the assessment of the value of the acquired land made by the L.A. Collector, Dhalai District is inadequate, accordingly value of the land is decided Rs.40 lacs per kani.**

6. From the other side, Mr. P.K. Dhar, learned counsel appearing for the referring-claimants has submitted that there is no infirmity in the finding of the Land Acquisition Judge, inasmuch as the Land Acquisition Judge has not in its entirety relied the land value on the basis of the sale exemplars (Exbt.1 series) nor did he relied the land valuation chart of 2005-06 where the land value is shown as Rs.30 (thirty) lacs per kani. Mr. Dhar, learned counsel has submitted that the contention of the appellant that the land so acquired by the Land Acquisition Collector is not within the business hub of the Kulai, is entirely incorrect. Even the Land Acquisition Collector did not deny the close proximity of the acquired land with the Kulai market. For this purpose, Mr. Dhar, learned counsel has referred to the assessment order passed by the Land Acquisition Collector on 30.05.2007. The Land Acquisition Collector, for purpose of assessment, has formed three different blocks for various categories of land and determined the land value as under :

Sl. No.	Class of land	Block A	Block C	Block F
1.	Nal	Rs.10,00,000/-	Rs.2,50,000/-	Rs.30,000/-
2.	Bastu	Rs.14,00,000/-	Rs.30,00,000/-	Rs.40,000/-
3.	Bhiti	Rs.9,00,000/-	Rs.1,75,000/-	Rs.25,000/-
4.	Bagan	Rs.7,00,000/-	Rs.1,50,000/-	Rs.22,000/-
5.	Dokanbhiti	Rs.30,00,000/-	Rs.4,00,000/-	Rs.1,00,000/-

7. The Land Acquisition Collector considered as many as five sale instances for determining the rate in addition to the land valuation chart for the year 2001-02 with their latest amendment carried out in the year 2005-06. The sale deeds those were considered are as under :

Sl. No.	Deed No. & date	CS Plot No.	Area in acres	Class of land	Value of land sold	Rate per kani
1.	1-210 dt.21.08.06	1450/6370	0.40	Nal	Rs.45,000/-	Rs.45,000/-
2.	1-211 dt.21.08.06	1506/7132	0.18	Nal	Rs.22,000/-	Rs.48,888/-
3.	1-220 dt.11.09.06	4946,4945 4948,4947 4943,4944	0.32	Bastu, Nal, Pukurpar	Rs.1,12,000/-	Rs.1,40,000/-
4.	1-221 dt.11.09.06	4948/7754	0.64	Nal	Rs.1,88,000/-	Rs.1,17,500/-
5.	1-234 dt.26.09.06	3134	0.10	Bastu (tilla)	Rs.5,00,000/-	Rs.20,00,000/-

8. It is apparent from the said assessment order that a trace map of Purba Nalicherra sheet Nos.2, 4 & 8 was also considered, but the said trace map, for the reason best known to the Land Acquisition Collector has not been produced before the Land Acquisition Judge. This court is of the considered opinion, in

view of the law laid down by the apex court in **Mehrawal Khewaji Trust (Regd.) Faridkot & Ors Vs. State of Punjab & Ors.,** reported in **AIR 2012 SC 2721**, the sale exemplar which carried the highest price should be considered for this purpose of determining the compensation. The best exemplar out of what has been considered by the Land Acquisition Judge carried the land value of Rs.20 lakhs per kani for bastu(tilla) class of land, in view of the sale exemplar, being deed No.1-234 dated 26.09.2006, which according to the court is contemporaneous one.

9. Thereafter, the Land Acquisition Collector after considering the potentiality, market value and other circumstances, has considered the acquired land of the referring-claimants under Block A and granted Rs.16(sixteen) lacs for the land as it belonged to the category of Viti class. No reason whatsoever has been given by the Land Acquisition Judge for not considering the highest sale exemplar at Rs.20(twenty) lacs. It is true that the referring-claimants have referred two sale exemplars, the sale deed No.1-83 dated 23.04.2001 and sale deed No.1-149 dated 28.07.2003 (Exbt.1 series), wherefrom it appears that the land of a very small size was transferred. Another sale exemplar, being 1-149 dated 28.07.2003 has demonstrated the consideration money of Rs.1,10,000/- for a land measuring .01 acres, meaning Rs.44(forty four) lacs per kani. The Land Acquisition Judge has rightly discarded those documents. But it appears that he has taken a streak therefrom for determining the rate. Having regard to the highest sale exemplar

and using 10% increase in the yearly rate couched with the potential, this court is of the view that the land value is liable to be determined at Rs.30(thirty) lacs per kani considering the category of land being 'dokanviti'. But this court is not inclined to interfere with the damage that has been awarded by the Land Acquisition Judge. As a result, the compensation under Section 23 would be determined on the basis of the land value at Rs.30(thirty) lacs per kani. Needless to say, the referring claimants shall further be entitled to the other components of compensation, viz. 12% as additional compensation under section 23(1A) of the L.A. Act, 30% as the solatium and interest shall be paid on all the components in terms of section 34 of the Land Acquisition Act.

10. Having held so, this appeal is partly allowed.

Draw the award accordingly. Send down the LCRs thereafter.

JUDGE

Sabyasachi B