IN THE HIGH COURT OF TRIPURA
AGARTALA

L.A. App. No.74 of 2011

1. The State of Tripura,
   represented by the Secretary to the Govt. of Tripura,
   Public Works Department (Drinking Water and Sanitation),
   Agartala, West Tripura

2. The Chief Engineer,
   Public Works Department (Drinking Water and Sanitation),
   Kunjaban, Agartala, West Tripura

3. The Executive Engineer,
   Public Works Department (Drinking Water and Sanitation),
   Division No.I, Agartala, West Tripura

………………… Appellants

– Vs –

Sri Ranu Chandra Dey,
Son of late Abinash Chandra Dey,
resident of Bardowali, P.S. West Agartala,
District : West Tripura

…..………….Respondent

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

For the appellants **:** Mr. B. Dutta, Advocate

For the respondent **:** Mr. R. Debnath, Advocate

Date of hearing & order **:** 22.07.2015

Whether fit for reporting **:**

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. B. Dutta, learned counsel appearing for the appellants as well as Mr. R. Debnath, learned counsel appearing for the respondent.

2. This is an appeal under Section 54 of the Land Acquisition Act against the judgment and award dated 11.02.2011 delivered in Misc.(LA) No.04/2005 by the Land Acquisition Judge, West Tripura, Agartala, Court No.2.

3. The facts are mostly admitted.

A piece of land measuring 0·002 acres of bastu class comprised in khatian no.1936 situated at mouja Pratapgarh under Bishalgarh Sub-Division in plot nos.596/5967/P was acquired for laying the water supply pipe line from the Jawahar bridge to the police drop-gate by the notification no.F.9(1)Rev/Acq/XIV/99 dated 24.08.1999 under section 4 of the Land Acquisition Act, 1894 and the subsequent declaration no.F.9(1)Rev/Acq/SIV/99 dated 04.12.199 under section 6 of the said Act.

4. The Land Acquisition Collector, by means of the purported inquiry, determined the land value at Rs.16,25,000 per kani, having observed as under :

"The land under acquisition is situated by the eastern side of the National Highway road running from Milan Sangha to Police Drop Gate. The proposed acquired land is frontage of the land held by jotedar and is located immediate contiguity to Highway. It is within developing town having existing advantageous of Govt. offices, shops, Schools and all its possibilities and potentialities. The land proposed to be may be taken for high potentialities i.e. as urban land.

Now, I undertake to analyse the sale deeds which collected by Sri N. Chakraborty, Amin and accepted in the previous para and find out the average rate.

Sl. No.	Deed No. & Date	Plot No.	Class	Amount	Per kani value	Average rate
1.	1-1139 dt.21.2.97	175,176,179	Nal, Pukur, Pukur Par	Rs.90,000/-	Rs.10,00,000/-	Rs.7,81,42,750/-
2.	1-2951 dt. 14.5.97	888 16268	Viti	Rs. 40,000/-	Rs.6,40,0000/-	
3.	1-1853 dt.20.4.98	523,524, 525,526, 613,527, 526/5509	Viti	Rs.12,000/-	Rs.6,85,710/-	
4.	1-1854 dt.20.4.98	-Do-	Viti, Nal, Pukur	Rs.1,00,000/-	Rs. 8,00,000/-	

As laid down in state of Panjab Vrs. Poho/AIR, 1986 the market price of the acquired land has to be assessed according to average price of the relevant and comparable sale instances relied upon and not according to sale instances which might be fetching the maximum price. Here, I have taken 4 (four) comparable sale instances the market value of which is ranging from 6 lacs 40 thousand to 10 lacs. The average market price of 7 (seven) sale deeds comes to Rs.7,81,427/-

It has been pointed out in the foregoing paragraphs that the land under acquisition is the frontage of land held by the jotedars which

is immediate contiguity to the National Highway road. In Govt. of Bombay Vs. Karim Tar Mahammad, (1909) ILR, 33 Bombay, 325, it was emphasized that when determining the value of frontage land, the depth is the question of supreme importance. On the other hand, the acquired land having been a small portion of the land and structure held by the occupier jotedar may face part damage of structure which has not been acquired.

In this project, we also acquired some land under Badharghat mouja i.e the western side of Agartala- Bishalgarh road. We assessed in Badharghat mouja @ Rs.16,25,000/- per kani for all class of land under the project.

5. Being dissatisfied by the said land value determined by the L.A. Collector, the respondent, hereinafter referred to as the 'referring claimant', pressed for reference under section 18 of the L.A. Act, 1894. The said reference, being Misc.(LA) No.04/2005 has been determined by the Land Acquisition Judge, West Tripura, Agartala, Court No.2 by the judgment and award dated 11.02.2011, observing that :

13. The claimant has relied upon a sale deed marked as Exbt.1 which shows that 1 Kara 1 Kranta 2 and ½ dhoors of land were sold at the consideration of Rs.60,000/- i.e. Rs. 34,70,000/- per kani. On the other hand, the L.A. Collector also adduced copy of sale deed under Exbt. A series from which it appears that the land was sold @ Rs. 1,00,000/- per kani. It is an admitted fact that the acquired land is viti class of land. It is needless to mention here that viti class of land always fetch higher price than that of other lands. The claimant, however, claimed Rs.1 Crore per kani but no

sale deed has been submitted on behalf of the claimant showing the valuation of the land @ Rs.1 Crore per kani to strengthen his claim. However, the sale deed submitted under Exbt.1 series shows the land under Pratapgarh Mouja was sold in consideration of Rs.34,70,000/- per kani whereas the L.A. Collector assessed the land @ Rs. 16,25,000/- per kani. The acquired land in question in the present case is bastu/viti class of land and does not require further development. Considering the above facts, this Court is of the view that fixation of price @ Rs. 16,25,000/- per kani by the L.A. Collector is below the prevalent market rate. Considering the documents referred to above as well as the evidence on record, this Court holds it convenient to fix the market value of the acquired land @ Rs. 30,00,000/- per kani. As such the price of the acquired land on the date of notification is assessed @ Rs.30,00,000/- per kani.

14. Viewed in the above perspective, the valuation of the land in question assessed by the L.A. Collector is purely baseless and appears to be unreasonable. It is worth to mention here that the sale instances should be taken into the consideration @ Rs. 1 crore per kani as demanded by the referring claimants is purely on imaginary and not only that it is not inconformity with the prudent man's views considering the prevailing market price. Therefore, the demand of the referring Claimants in this regard carries no much of importance.

15. However, having regard to the fact and circumstances of this case as well as considering the discussion made above, I find it convenient to ascertain the market value of the acquired land heeding the decision of the afore-expressed L.A. Case, the referring claimants are entitled to Rs.30,00,000/- per kani basing on

the proximate date of sale instances as their respective share.

6. Mr. B. Dutta, learned counsel appearing for the appellant has basically raised two serious grounds to question the validity of the said judgment and award. Firstly, such determination of the land value is without any sustainable basis inasmuch as by relying on the sale deed no.1-538 (Exbt.1), without proper appreciation has caused serious miscarriage of justice and secondly, the location of the land vis-a-vis the said land as described in Exbt.1 has not been established by the cogent evidence. In addition thereto, he raised an objection as to the admissibility of Exbt.1 document, as neither the vendor nor the vendee was examined to establish the bona fide transaction as well as for purpose of admissibility of that deed. In support of that contention, Mr. Dutta, learned counsel has relied a decision of the apex court in **Parmeshwari Devi Vs. Punjab State Electricity Board**, reported in **AIR 1994 SC 1142**, where the apex court has held that :

> **"It is well settled law that it is the duty of the claimant to prove the sale deeds by adducing evidence either of the vendor or vendee or attesting witness of passing of the consideration under the sale deed, to prove that the sale transactions are genuine transactions**

> **between the willing vendor and willing vendee; that the consideration had in fact been passed under the document duly registered, represent the prevailing market value; and also the lands under acquisition and the lands concerning the sale are similarly situated and possessed of same or similar nature, advantages etc. The burden is always on the claimant."**

7. Mr. Dutta, learned counsel has submitted that while passing the award, the Land Acquisition Collector has made all necessary inquiry and he had leniently assessed the land value in the higher side as would be apparent from the award, which part has been extracted by this court. Hence on the purported basis of Exbt.1, the determination of the land value definitely warrants interference of this court as it is not the just determination and it would only create unjust enrichment. Mr. Dutta, learned counsel has submitted that, even if for argument sake it is assumed that Exbt.1 is a bona fide transaction, the said transaction was posterior to the acquisition by three years and as such the rate, the way that has been arrived for the present acquisition, is absolutely unreasonable. Always there is a presumption that a posterior sale transaction may not be all the time bona fide.

8. From the other side, Mr. Debnath, learned counsel while refuting such objection, has submitted that the appellants did not even admit in the evidence those sale deeds which were relied on by the L.A. Collector at the time of making the assessment. They have only introduced the assessment sheet which is nothing but a secondary evidence so far the valuation recorded in the sale deeds which were purportedly considered by the L.A. Collector. Mr. Debnath, learned counsel has further submitted that from the report itself and from the map as produced by the appellants, it is apparent that the land situated just along the Agartala-Bishalgarh road, similar to the land as described in Exbt.1 with the similar advantages. Thus the land value can be derived from the collation.

9. Mr. Debnath, learned counsel, in this regard, has submitted that this is the first time that an objection to admissibility of Exbt.1 has been raised before the court and that had not been projected before the L.A. Judge. In this regard, Mr. Debnath, learned counsel has further submitted that the sale transaction, Exbt.1, cannot be discarded, inasmuch as Exbt.1 has been admitted in the evidence following the provisions of law and without any objection from the appellants and now the appellants cannot be allowed to

raise such a question as to admissibility. So far the examination of the vendee or vendor as raised by Mr. B. Dutta, learned counsel is concerned, Mr. Debnath, learned counsel has referred a subsequent decision of the apex court in **State of Haryana Vs. Ram Singh**, reported in **2001 AIR SCW 2670**, where the apex court has observed as under :

> **"It was held that by virtue of Section 51-A, a certified copy of a document registered under the Registration Act, 1908 including a copy under Section 57 of the Act may be accepted as evidence of the transaction recorded in such documents. It is open to the Court to accept the certified copy as reliable evidence and without examining parties to the documents. This does not however preclude the Court from rejecting the transaction itself as being mala fide or sham provided such a challenge is laid before the Court." (Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah : (2001) 3 SCC 530)**

Mr. Debnath, learned counsel therefore has submitted that no such challenge has been laid before the court as to the genuineness of the transaction and as such the appellants are precluded from raising such objection. He has further submitted that the basic principles of using the sale exemplar for determining the land value is that if the sale exemplar is of an anterior date that certain increase by year has to be added by means of value addition and if it is a sale transaction of the posterior date, similar rate of deduction has to be made and as such there is no infirmity in the judgment as challenged in this appeal.

10. Having due regard to the submissions made by the learned counsel for the parties and on scrutinising the judgment, this court is of the view that there cannot be any amount of doubt that the acquired land however small it may be, it had the potentiality of being used commercially as it is situated along the Agartala-Bishalgarh road. As such, this potentiality has to be fitted with the prevalent market rate. Potentiality is a factor which cannot be excluded from the consideration when the land value is determined by the competent authority. Exbt.1 has shown a price of ₹34,70,000 per kani, but the Land Acquisition Judge has not accepted that value amounting to ₹34,70,000 per kani, but reduced the rate to ₹30,00,000 per kani. According to this court, this determination is also defective because the acquisition process started in the year 1999 and the said sale deed, Exbt.-1 was executed in the year 2001, clearly there is a gap of 2(two) years.

11. In view of that, this court is of the opinion that whatever the price has been projected in Exbt.1, 20% (10% per year) has to be deducted. After deducting 20%, the land

value comes to (₹34,70,000 - ₹6,94,000) = ₹27,76,000. According to this court, this would be the land value per kani. The respondent shall also be entitled to the additional compensation @ 12% under Section 23(1A) of the Land Acquisition Act and solatium of 30% under Section 23(2) of the Land Acquisition Act, alongwith interest from the day of notification i.e. 24.08.1999 in terms of Section 34 of the Land Acquisition Act. No other additional value has been added in view of the fact that most contemporary rate has been considered for determining the land value.

12. With this observation, this appeal stands partly allowed. Prepare the award accordingly.

Send down the LCRs forthwith.

JUDGE

ROY