

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**WP (C) 474 of 2011**

**Smt. Sima Bhowmik,**  
wife of Sri Khokan Bhowmik,  
resident of Vill- Baspara, P.O. Belonia  
P.S. Belonia, Dist: South Tripura

..... Petitioner

**- Vs -**

- 1. The State of Tripura,**  
represented by the Secretary Cum Commissioner,  
Department of Revenue,  
Govt. Of Tripura, P.O. Kunjaban,  
Dist: West Tripura
- 2. District Magistrate & Collector,**  
South Tripura, P.O Udaipur,  
District -South Tripura
- 3. Land Acquisition Collector,**  
office of the District Magistrate & Collector,  
P.O. Udaipur, District: South Tripura
- 4. The Sub-Divisional Magistrate,**  
Belonia, Govt. Of Tripura,  
P.O. Belonia, Dist: South Tripura
- 5. The Secretary-cum-Commissioner,**  
Public Works Department,  
Govt. of Tripura, P.O. Kunjaban,  
Dist: West Tripura, Agartala
- 6. The Chief Engineer,**  
Public Works Department,  
Govt. of Tripura, Agartala P.O. Kunjaban,  
Dist: West Tripura

.....Respondents

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

For the petitioner : Mr. A. Bhowmik, Advocate

For the respondents : Ms. P. Dhar, Advocate

Date of hearing  
Judgment & order : 15.07.2015

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| Yes | No |
|     |    |

Whether fit for reporting :

**JUDGMENT & ORDER (ORAL)**

Heard Mr. A. Bhowmik, learned counsel appearing for the petitioner as well as Ms. P. Dhar, learned state counsel for the respondents.

2. By means of this writ petition, the petitioner has projected a grievance related to the acquisition of land for the public project titled as improvement of road under Belonia Nagar Panchayet area from Ratanmani Setu to Revenue Dak Bunglow under Belonia Sub-Division in South Tripura District vide notification No. F.9(9) REV/ACQ/XII/10 dated 16.04.2010 published in terms of Section 4 of the Land Acquisition Act, 1894 read with Section 17(4) of the LA Act as the said acquisition was urgently required by the appropriate government and hence, there no right was available to the petitioner under Section 5A of the Land Acquisition Act. From the said notification dated 16.04.2010, Annexure P/1 to the rejoinder filed by the petitioner, it appears that a piece land pertaining to Khatian No. 2993 Plot No.930/8353 of bastu class measuring 0.03 acre was sought to be acquired along with other plots of land. The said plot of land being 930/8353 comprised in the Khatian No. 2993 is admittedly owned by the petitioner. But from the settlement records, it transpires that the petitioner does not have the land measuring 0.03 acre but

she was the owner in possession of a piece of land measuring 0.01 acre against the said plot, recorded in the said khatian. From the record as produced, it is found that the award has been made for the said amount of land after due assessment. However, the petitioner has not received that award as yet. From the Annexure-Y to the additional affidavit, filed by the petitioner on 29.06.2015 it transpires that the petitioner has handed over the land and that has been received by the representatives of the L.A. Collector, South Tripura District, Udaipur on 30.08.2010. From the said certificate of taking over under Section 16 of the L.A. Act, Annexure-Y to the additional affidavit dated 29.06.2015, it is apparent that the possession was taken over the land measuring 0.01 acre.

2. Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that the notification as published under Section 4 of the Land Acquisition Act, 1894 is erroneous and no corrigendum has been issued for correcting the said notification and as such, the entire proceeding is illegal. In support of his contention he has stated that one information has been disclosed by the Manager, State Public Information Officer of the General Administration (Revenue) Department that no corrigendum under No.F.9 (19)- REV/ACQ/XII/2010 dated 22.11.2010 has been published in Tripura Gazette. The information that was sought is that whether such corrigendum dated 22.11.2010 was issued by the Revenue Department, Govt. of Tripura as it was claimed that by the aforesaid corrigendum bearing No. F.9 (19)- REV/ACQ/XII/2010 dated

22.11.2010 was published in the extra ordinary issue of the Tripura Gazette.

3. Mr. Bhowmik, learned counsel has made an alternative submission that the petitioner has no objection if the actual land required for the improvement is utilised and the remainder of the land is released to her in as much as land she has a shop on the unutilised part of the land. In this regard, Mr. Bhowmik, learned counsel has drawn attention of this court to the communication dated 23.02.2011, Annexure-G to the writ petition, whereby the Sub-Divisional Magistrate, Belonia, South Tripura has informed the L.A. Collector, Udaipur that after field verification, the land measuring 0.01 acre is demarcated and physically verified by the Amin, Survey Section of the Sub-Divisional Magistrate, Belonia South Tripura.

4. From the other side, Ms. P. Dhar, learned counsel has submitted that the entire land is required for improvement of the road and its embankment and as such, no part of the land as acquired can be released. Moreover, the petitioner has handed over the possession of the said land without any objection whatsoever. Before the possession is taken, the L.A. Collector, South Tripura, Udaipur has assessed and awarded the compensation in respect of the acquired land. Ms. Dhar, learned counsel has submitted that when that error in respect of the area of the land acquired came to the notice of the appropriate government, a corrigendum under No. F.9 (19)-REV/ACQ/XII/2010 dated 22.11.2010 was issued. The said

corrigendum dated 22.11.2010 is part of the counter affidavit filed by the respondents. Even though it is required that the said corrigendum under be published in the extraordinary issue of the Tripura Gazette immediately, but from the information disclosed by the State Public Information Officer it has transpired that the corrigendum was not published in the Tripura Gazette. From the records and the averments, it appears that the petitioner is not averse to the acquisition but she intends to get back the land which would not be required for the improvement of the land. According to the field verification report, an area of land measuring 0.003 acre from her land is physically required. Hence, she has expectation that the remainder of the land, out of her land measuring 0.01 acre, be released to her. Apparently the process of acquisition is complete with handing over the possession. As the notification dated 16.04.2010 published under Section 4 of the L.A. Act, 1894 is found erroneous so far the description of the land as concerned, the petitioner seeks to derive advantage out of such error.

5. Mr. Bhowmik learned counsel has further submitted that on the basis of the said notification dated 16.04.2010 it cannot be held that the acquisition has been brought legally and logically to its end. In this regard, Mr. Bhowmik, learned counsel has referred a decision of the apex court in **The Collector (Distt. Magistrate), Allahabad and another v. Raja Ram Jaiswal**, reported in **AIR 1985 SC 1622**. In that decision, the apex court has held as under:

Repelling the contention, that the only purpose behind publication of a notice in the locality is to give opportunity to the person interested in the land to prefer objections under S. 5A which confers a valuable right, it was held that even though in the facts of that case, the enquiry under S.5A was dispensed with by a direction under S. 17(4) of the Act, the failure to comply with the second condition in S.4(1) is fatal. It was pertinently observed that provisions of S.4(1) cannot be held to be mandatory in one situation and directory in another and, therefore, it cannot be said that the only purpose behind making the publication of notice in the locality mandatory is to give an opportunity to the persons interested in the land to file objections under S.5A. Of course, what other object it seeks to sub-serve has been left unsaid. But the answer is not for us to seek. At least we have no doubt that the only visible and demonstrable purpose behind publication of the substance of the notification under S.4(1) in the locality where the land proposed to be acquired is situated, is to give the persons interested in the land due opportunity to submit their considered objections against the proposed notification.

6. It has been further observed in Para 16 and 17 of **The Collector (Distt. Magistrate), Allahabad and another v. Raja Ram Jaiswal** as under:

Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In *Mahendra Lal Jaini v. State of Uttar Pradesh*, (1963) Supp (1) SCR 912: (AIR 1963 SC 1019) it was held that a notification under S.4A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Sec 4(1) further requires that 'the collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.' The expression 'such notification' in the latter part of S.4(1) and sequence of events therein enumerated would clearly spell out that first the Government should

reach a decision to acquire land, then publish a notification under S.4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. The submission of Mr. Kacker does not commend to us.

In this context, it was next contended that at any rate the petitioner has not suffered any prejudice by the failure of the Government to publish a notice in the locality because the petitioner has filed detailed objections against the proposed acquisition. If the only purpose behind publishing the notice in the locality was to give an opportunity to the persons interested in the land to file their objections, the submission would have merited consideration, but the same has been expressly negatived and, therefore, it is futile to examine the same. To be brutally frank if this was the only ground for invalidating the notification, in the backdrop of facts we would have our serious reservations in upholding the decision, though as the law stands, the High Court. They stem from the facts of this case and our understanding of the purpose behind publication of notice as set out by us earlier. In such a situation, we would have developed the concept of prejudice and the absence of it resulting in negating the contention. But there are other formidable challenges to the validity of the impugned notification, which of course have not found favour with the High Court but we are inclined to take a different view of the matter. Therefore we let the decision of the High Court on this point stand.

7. Having regard to the submission made by the respondents that the entire land of the petitioner is required for the road or its embankments, this court is not in a position to determine whether the entire land is required for the improvement of road or its embankment or not, but this Court finds sufficient substance to the submission of Mr. Bhowmik, learned counsel appearing for the petitioner that unless a correct notification is issued, an acquisition proceeding cannot be held to be valid. To that extent, corrective steps as taken by the respondents by way of issuing a corrigendum cannot be accepted as an effective step

as that was not published in the gazzete. But at the same time, when a corrigendum is issued it only amends or makes necessary alternation in the original notification or the order and hence, from the date of publication of corrigendum, usually the original notification has to be deemed to have been corrected from the date of its issue, but in this case, the same cannot be so simply applied inasmuch as a notification under Section 4(1) of the Land Acquisition Act, 1894 have the object not only for the knowledge of the interested person but also for the various other purposes. Thus, unless the corrigendum is published in the gazette it cannot be held that by virtue of the notification dated 16.04.2010, Annexure P/1 to the rejoinder filed by the petitioner, the land of the petitioner can legally be acquired. But the petitioner has not raised any objection against the acquisition at no point of time not even in this writ petition. The petitioner has not pleaded any prejudice for non-publication of the said corrigendum. As such, the respondents shall publish the notification in the gazette for validating the said acquisition proceeding. After publication of the corrigendum, the respondents, particularly the L.A. Collector, South Tripura, Belonia shall formalise the award under Section 11 of the Land Acquisition Act, but it is made clear that notification under Section 4 of the Land Acquisition Act shall retain its effect and efficacy from 16.04.2010. As the acquired land has been handed over to the requiring department, no formal action need be taken so for handing over of the possession is concerned. But it is made clear that from the date of formalising the award, the petitioner shall have the right to raise objection or to seek reference under Section 18 of the L.A. Act. Again, the Land

Acquisition Collector, South Tripura, Belonia shall consider whether the entire land as sought to be acquired by virtue of the notification dated 16.04.2010 read with the corrigendum as contemplated to be published in the Tripura gazette is required for the improvement of the road or its embankment, for the purpose of which the land has been acquired. If the physical verification as made by the Sub-Divisional Magistrate, Belonia is relied, it appears that only a piece of land measuring 0.003 acre is required from the petitioner's land for improvement of the road etc. If that is so, the remainder of the land be released to the petitioner despite the possession has been taken by the L.A. Collector. The entire matter viz. what amount of land would actually be required for improvement of the road etc., is left for consideration of the L.A. Collector. According to A. Bhowmik, learned counsel that the petitioner is running a shop for her livelihood on the acquired land, but that part of land is not required for the construction of the road or its embankment. If it is found so, the L.A. Collector shall also modify the award and release the remainder of the land. The said exercise shall be completed within a period of three months from the date of publication of the corrigendum in the official gazette. Unless the corrigendum is published within a month from the day of receipt of a copy of this order in the official gazette, the entire land shall be released to the petitioner.

8. Having observed thus, the writ petition stands allowed to a limited extent as indicated above.

There shall be no order as to costs.

**JUDGE**

Moumita