

**THE HIGH COURT OF TRIPURA
AGARTALA**

LA APPL. 12 OF 2012

Sri Krishnadhan Bhattacharjee,
S/o Late Dharendra Chandra Bhattacharjee,
Resident of Hapaniya, P.O. ONGC,
P.S. Amtali, District-West Tripura.

... Appellant.

- Vs -

- 1. The Executive Engineer, PWD,**
Agartala Division No.IV, Gakulnagar,
Bishalgarh, West Tripura.
- 2. The Land Acquisition Collector,**
West Tripura, Agartala.

.... Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant	:	Mr. A. De, Advocate.
For the respondents	:	Mr. G.S. Bhattacharjee, Advocate.
Date of hearing	:	04.08.2015
Date of delivery of judgment & Order.	:	25.08.2015.
Whether fit for reporting	:	No

JUDGMENT & ORDER

This appeal under Section 54 of the Land Acquisition Act is directed against the judgment and award dated 13.09.2011, passed by the learned L.A. Judge, Court No.3, Agartala, West Tripura, in case No.Misc.(LA) 25 of 2010.

2. Heard learned counsel Mr. A. De for the appellant and learned counsel Mr. G.S. Bhattacharjee for the respondents.

3. Admitted facts are that the respondents acquired 0.125 acres of Vitti (tilla) and path class of land belonged to the appellant recorded in Khatian No.626, Plot No.21123/P and 21124/P of Mouja Badharghat, sheet No.4/P for the purpose of up-gradation of link road from NH-44(Amtali P.S.) to Dr. B.R.Ambedkar Hospital and the L.A. Collector in due course determined compensation @ Rs.4,40,000/- per kani for viti(tilla) class of land and Rs.1,00,000/- per kani for path class of land. The appellant-claimant received the compensation under protest with a request to refer the case to the L.A. Judge on the ground that the compensation determined by the L.A. Collector was inadequate and far below the existing market price of the land. Pursuant to that prayer of the claimant-appellant, the L.A. Collector made reference under Section 18 of the L.A. Act to the L.A. Judge and accordingly, the L.A. Judge, West Tripura, Agartala, registered Case No. Misc. (LA) 25 of 2010 and in course of trial of the reference the claimant-appellant submitted his claim statement *inter alia* contending that the acquired land situated by the side of the main road running between the junction of the road near Dr. B.R. Ambedkar Hospital to NH-44 near Amtali P.S. and the acquired land situated very near to the Hapania market, Para Medical College and Women's Polytechnic College and it is potential for commercial use. The L.A. Collector did not consider the market rate of the acquired land prevailing at the time of acquisition and the claimant prayed for awarding compensation @ Rs.87,00,000/- per kani.

4. The respondents i.e. the L.A. Collector and the requiring department also submitted counter statement contending that the L.A. Collector at the time of inquiry collected several Sale-deeds and considering the market price prevailing at the time of acquisition awarded compensation @ Rs.4,40,000/- per kani for viti class of land and Rs. 1,00,000/- for path class of land. The compensation so awarded by the L.A. Collector was just and reasonable and there was nothing to enhance the compensation.

5. In course of trial, the claimant-appellant examined himself as P.W.1 and in support of its claim produced four Sale-deeds i.e. the Sale-deed bearing Nos.1-68, dated 03-01-2001; 1-8832, dated 09-08-2004;1-9992, dated 08-09-2004 and 1-8457, dated 25-07-2005 and those Sale-deeds have been marked as Exhibit-1 series.

6. On the other hand, on behalf of the L.A. Collector one witness namely Sri Debananda Debbarma, a Surveyor of the Office of the District Collector has been examined as D.W.1 and in support of the contention of L.A. Collector, proved the copies of assessment note, map of the acquired land, copies of the registered Sale-deed Nos. 1-1307, dated 06-02-2004; 1-2810, dated 27-03-2002; 1-7187, dated 09-08-2001 and the order of apportionment of amount of compensation etc. and those were marked as Exhibit-A series.

7. Learned L.A. Judge discarded the sale instances proved by the claimant-petitioner marked as Exhibit-1 series on the ground that all those sale instances were of very small pieces of land which cannot be an instance of comparable price for the

acquired land of the claimant-petitioner. However, he found some sorts of justification in the determination of compensation by the L.A. Collector and observed that the price of land has been increased in the meantime and therefore, he enhanced the compensation by making the award @ Rs.7,10,000/- per kani for the viti (tilla) class of land and Rs.2,00,000/- per kani for path class of land.

8. The land was acquired for the purpose of up-gradation of the road running between NH-44 to Dr. B.R. Ambedkar Hospital which admittedly means that there was an existing road and for further extension of the road the land was acquired. Since the acquired land was situated by the side of the road and since it is admitted position that the acquired land was near the Dr. B.R. Ambedkar Hospital and other govt. establishments, it was a potential land.

9. The claimant in his deposition claimed compensation @ Rs.87,00,000/- per kani on the basis of the sale instance i.e. Sale-deed No.1-68, dated 03.01.2001. To prove that the land of that sale instance was of a comparable land, the claimant produced no map of the locality. Further, I find justification in the observation of the learned L.A. Judge that it was a sale transaction for a very small piece of land i.e. 2 'kranta' 15 'dhurs' and therefore, the L.A. Judge refused to consider that sale instance as the acceptable sale instance for determining the market price of the acquired land. The claimant produced 3(three) more sale instances which also show the price ranging from Rs.53.00 lakh to 66.00 lakh per kani but to justify the fact that those sale instances are of comparable land,

the claimant did not produce any map of the locality showing the location of those plot Nos. and therefore, all the sale instances proved by the claimant in support of his claim cannot be considered as a document for determination of market price of the acquired land.

10. Law in respect of determination of market value of the land acquired under the provisions of L.A. Act has fairly been well settled and the best method to determine the same is to consider the prices obtained by contemporaneous Sale-deeds whether of the same land or of lands in the vicinity. Various other factors may be taken into consideration such as the size and shape of the land, the location and its situation, the user and potential value and the rise or depreciation of value of the land in the locality. Where sale instances of comparable land are available on record, the Court can safely take into consideration and make the award relying on such sale instances. It is a settled law that example of sale transactions of small plot of land cannot be accepted as a sale instance for a bigger plot of land but such sale transactions can be considered after giving a reasonable reduction there from. It is also a settled law that where there are several exemplars with reference to similar lands, the highest exemplars should be taken into consideration of compensation.

11. Let us now see the documents which the L.A. Collector himself considered at the time of determination of compensation. The assessment note which has been proved as one of the items of Exhibit-A series shows that 7(seven) Sale-deeds were considered

by the L.A. Collector. D.W.1 in his examination-in-chief submitted by affidavit in Para-7 has reflected 7 sale instances as well as the observation of the L.A. Collector while determining the compensation. The relevant part of Para-7 of the examination-in-chief of D.W.1 reads thus:-

"7. That, the L.A. Collector, West Tripura, Agartala, i.e. the Opposite Party No.2 relied on the following Sale Deeds for assessment of compensation of the acquired land:-

<i>Sl. No.</i>	<i>Deed No. & Date.</i>	<i>Classification of land.</i>	<i>Value of land per kani.</i>	<i>Distance from the acquired land.</i>
<i>1.</i>	<i>1-1838 dt.17.02.04</i>	<i>Viti</i>	<i>Rs.14,49,275/-</i>	<i>400 ft.</i>
<i>2.</i>	<i>1-1307 dt.06.02.04</i>	<i>Viti</i>	<i>Rs.5,64,971/-</i>	<i>On the acquired land.</i>
<i>3.</i>	<i>1-2810 dt.27.03.02</i>	<i>Viti</i>	<i>Rs.2,00,000/-</i>	<i>19 ft.</i>
<i>4.</i>	<i>1-7745 dt.27.08.01</i>	<i>Tilla</i>	<i>Rs.4,00,000/-</i>	<i>370 ft.</i>
<i>5.</i>	<i>1-7187 dt.09.08.01</i>	<i>Tilla</i>	<i>Rs.3,08,000/-</i>	<i>On the acquired land.</i>
<i>6.</i>	<i>1-1237 dt.07.02.01</i>	<i>Dokan/tilla</i>	<i>Rs.1,33,33,333/-</i>	<i>On the acquired land</i>
<i>7.</i>	<i>1-9277 dt.22.10.01</i>	<i>Dokan/Tilla</i>	<i>Rs.73,84,615/-</i>	<i>On the acquired land.</i>

I also state that after careful observation of all the aforesaid sale deeds, it appears that the lands of Sl.Nos. 1 & 4 are far away from the proposed acquired land and near to Hapania Market. The amenities of these lands were far better than that of the proposed land, due to its advantageous position having link with Agartala-Bishalgarh Road. On this analogy the rates of these two sale deeds cannot be applicable for the land to be acquired. The Sale deeds at Sl.Nos._ 7 & are related to transfer of land having small quantum of land. According to the L.A. Manual acceptance of sale prices of such deeds are restricted. Other three sale deeds at Sl. Nos. 2,3 & 5 were executed in different years from 2001-2004 involving similar class of land for transfer of small quantum of land (more than the area transfer through deed No.6 & 7). In such cases of transfer normally the sale price of land do not reflect true picture because such land attracts more buyers to purchase such type of land at higher rates. As there was no other

alternative, this point was ignored for determination of value of land. But the rates of different deeds vary abnormally between Rs.2 lakhs to 5 lakhs which might be due to execution of deeds in different years. After careful consideration/observation of all the aforesaid sale deeds, L.A. Collector emphasized upon the deeds of Sl, Nos. 2, 3 & 5 which are relevant to determine the value of the acquired land. The L.A. Collector, West Tripura after making all formalities and on the basis of relevant provision considering all the facts and circumstances, value of the above sale instruments of land in the vicinity of the acquired land and near to the date of acquisition determined at the rate of Rs.4,40,000/- per kani for Viti (tilla) and at the time rate of Rs.1,00,000/- per kani for Path class of land."

12. Though seven sale instances were collected and considered by the L.A. Collector at the time of determination of compensation as reflected above in the statement of D.W.1, only the Sale-deeds at Sl. Nos. 2, 3 and 5 have been produced before the learned L.A. Judge and those are marked as Exhibit-A series. Other Sale-deeds not produced. Out of those 7(seven) Sale-deeds, it appears Sale-deeds at Sl. Nos. 6 & 7 relate to Dokan/tilla (shop) class of land and so the price might be different than that of ordinary viti(tilla) class of land. Out of other 5(five) Sale-deeds i.e. Sale-Deed No.1 to 5, it appears that Sale-deed at Sl. No.1 carries price of Rs.14,49,275/- per kani; Sale-deed at Sl. No.2 carries price of Rs.5,64,971/- per kani; Sale-deed at Sl. No.3 carries price of Rs.2,00,000/- per kani; Sale-deed at Sl. No.4 carries price of Rs.4,00,000/- per kani and Sale-deed at Sl.No.5 carries price of Rs.3,08,000/- per kani. All those sale instances relate to viti and tilla class of land. The acquired land of the petitioner is viti(tilla) class of land and that fact is undisputed fact. While determining compensation, it is apparent that L.A. Collector made an average of the different sale instances and did not accept the price carried

in the highest exemplar. The sale instance mentioned in Sl.No.1 i.e the Deed No.1-1838 dated 17.02.2004 shows that it was of viti class of land and the value of the land per kani was Rs.14,49,275/- and that plot of land was situated only 400 ft. away from the acquired land. There is no justification as to why that price of the Sale-deed was not awarded as compensation for acquisition of the land of the claimant-petitioner.

13. The Supreme Court in the case of ***Mehrawal Khewaji Trust (Regd) v. State Of Punjab & Ors.*** reported in ***AIR 2012 SC 2721*** has held that where there are several exemplars with reference to similar lands it is a general rule that the highest of the exemplar should be accepted for determination of market price of the acquired land. We may refer here Para 15 of the judgment which reads as follows:-

"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."

14. It is quite clear from the pleadings and the evidence on record that the acquired land is situated very near to the junction of the link road near Dr. B.R. Ambedkar Hospital and other Govt. establishments. The acquired land measures an area of 0.125 acres and the sale instances mentioned in Sl.No.1 of the assessment note was for 0.0552 acres. I, therefore, find nothing to deduct from the price reflected in the said sale instance. A deduction is proper where the exemplar is of a very small piece of land whereas the acquired land is a vast area of land. Here both the exemplars as well as the acquired land were of small piece of land and the acquired land is most potential land having several advantages and therefore, considering the pleadings and evidence on record, I find no minus factors and therefore, finds no justification at all to have any deduction from the price appeared in sale instance No.1 of the assessment note which reflected in item No.1 of the evidence of D.W.1 as reproduced hereinabove.

15. I am, therefore, of considered opinion that both the L.A. Collector as well as the L.A. Judge was not correct in fixing the price of the acquired land. There is no justification at all to fix different price for viti and path class of land. A path is also a viti class of land in a compact area. Therefore, I feel it proper to fix the price of the acquired land @ Rs.14,50,000/- per kani taking into the highest sale instance of viti class of land as per the documents relied upon by the L.A. Collector and the respondents are directed to pay compensation to the appellant-claimant for the acquired

land @ Rs.14,50,000/- (Rupees fourteen lakh fifty thousand) per kani. In addition thereto, the appellant-claimant shall be entitled to interest, solatium etc. as per the direction made by the learned L.A. Judge.

16. With the above observation and direction, the appeal is allowed and stands disposed of.

17. Send back the L.C. records along with a copy of this judgment.

JUDGE