HIGH COURT OF TRIPURA
AGARTALA

LA APP 12 OF 2018

The Deputy Chief Engineer (Construction),
N.F. Railway, Badharghat Railway Station,
P.O. Siddhi Ashram, P.S. Amtali, Agartala,
Dist. West Tripura.

----Appellant(s)

Versus

1. **Smt. Rekha Rani Shil,**
   W/o Lt. Malay Kumar Shil,

2. **Smt. Purnima (Roy) Shil,**
   D/o Lt. Malay Kumar Shil.

3. **Smt. Anima Shil,**
   D/o Lt. Malay Kumar Shil.

4. **Smt. Sima Shil,**
   D/o Lt. Malay Kumar Shil.

5. **Sri Debabrata Shil,**
   S/o Late Malay Kr.Shil.

   All are residents of North Chandrapur, Udaipur,
   P.S. R.K. Pur, District-Gomati Tripura.

6. **Land Acquisition Collector,**
   Udaipur, District-Gomati Tripura.

----Respondent(s)

For Appellant(s) : Mr. A. De, Advocate.

For Respondent(s) : None.

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Date of hearing & delivery
Of Judgment & Order : **18.12.2020**

Whether fit for reporting : **No**

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT(ORAL)

The appellant, Deputy Chief Engineer (Construction) has presented this appeal against the judgment and award dated 23.08.2016, passed by the learned Land Acquisition Judge, Court No.2, Gomati District, Udaipur, in connection with the case No. Misc. (LA) No. 59 of 2014.

2. Briefly stated, land measuring 0.12 acres of Nal class under Khatian No.418, Plot No. 1026 of Mouja-Uttar Chandrapur, under R.K.Pur P.S., Sub-Division-Udaipur belonging to the respondents No. 1 to 5 herein was acquired by the respondent No.6, the Land Acquisition Collector, vide notification No. F.9(02)-REV/ACQ/IX/2010, dated 28.01.2010 for the purpose of construction of N.F.Railway lines from Agartala to Subroom. The L.A. Collector has assessed the valuation of the land @ Rs.90,000/- per kani.

3. Being aggrieved by and dis-satisfied with the said assessment, on the basis of an application submitted by the claimant-

respondents, the dispute was referred to the learned L.A. Judge, Gomati District, Udaipur for determination of the actual market price of land.

4. After reference under Section 18 of the L.A. Act, the claimant-respondents had filed claim statement stating *inter alia* that the value of the land as assessed was quite inadequate and it ought to have been fixed @ Rs.30,00,000/- (Rupees Thirty Lakhs) per kani at the time of acquisition.

5. In this appeal, there is no representation for the Land Acquisition Collector-respondent, despite due notice from this Court. The matter is taken up for hearing in absence of the respondents. At the time of hearing, Mr. A. De, learned counsel appearing for the appellant submits that this appeal is covered by the common judgment and order dated 27.08.2018, delivered by a co-ordinate Bench ***(S. Talapatra,J.)*** of this Court in ***LA App.No.9 of 2017 [The Deputy Chief Engineer (Construction), N.F.Railway Vrs. Abdul Mazid & Ors***.] and other connected appeals since the land in question in this appeal was acquired by the same notification No. F.9(02)-REV/ACQ/IX/2010, dated 28.01.2010.

6. On the basis of the pleadings, the learned L.A. Judge has framed the following issues for determination of the actual market price of the land.

I. Whether the claim of the referring-claimants is maintainable?

II. Whether the referring claimants are entitled to get compensation at the enhanced rate for the acquired land?

III. Whether the referring claimants are entitled to get any compensation for future loss of income from agriculture and any other benefits as per LA Act?

7. During the proceedings, the Claimant-respondents had produced photocopy of Sale-deeds vide Sale-deed No.I-2820 dated 21.12.2006; Sale-deed No.I-10 dated 04.01.2010; Sale-deed No. I-11 dated 04.01.2010 and Sale-deed No.I-103 dated 13.01.2010 which were marked as Exhibit-1 series and the maps of Mouja-North Chandrapur which were marked as Exhibit-2 series.

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8. One of the claimants, namely Sri Debabrata Shil was examined himself as P.W.1 and cross-examined. On the other hand, on behalf of the respondent- L.A. Collector, one witness Sri Babul Chandra Debnath, Surveyor was examined as D.W.1 and some documents were taken into evidence having marked as Exhibit-A series. No evidence was adduced on behalf of the N.F.Railway-respondent.

9. Among the sale instances the only sale instance being Sale-deed No. 1-103 dated 13.01.2010 for 'Nal' class of land measuring 0.04 acre as produced by the claimant-respondents was sold and purchased at Rs.30,00,000/- per kani. This was the highest sale transaction amongst all the sale instances which is to be taken into account to determine the market price of land acquisition. But the learned L.A. Judge has observed that the transaction seemed to be registered at an unjustified rate and might be intentional. More so, the transaction was entered into between the members of one family with a motive to exaggerate the price of the land. But even though, learned LA Judge opined that a flat acceptance of the exemplar sale price may not be reasonable and proper because facts and circumstances of every case is different. Hence, some deduction from the exemplar sale price was considered necessary for proper assessment of the market value of the acquired land. Thus, the

learned LA Judge had awarded the compensation for the acquired land @ Rs.10,50,000/- to the claimant-respondents.

10. Mr. De, learned counsel submitted that the learned L.A. Judge ought not to have enhanced the market price of the acquired lands of the claimant-respondents. The award is exorbitant and the referring claimants have failed to substantiate and justify the potentialities and advantage condition of the lands in question.

11. I have perused the evidence led by the respective parties. I find that the claimant-respondents did not make any endeavour to prove the position/location of their land or the distance of their land from the lands described in the sale instances, as relied upon by the claimant-respondents.

12. The land of the claimant-respondents measures 0.12 acres i.e. approximately 6 gandas of land which is 'Nal' class of land. The P.W.1 has stated that it was fertile land.

13. I find the Sale-deed bearing No. 1-103 having 'Nal' class of land measuring 0.04 acres, having valuation of Rs.30,00,000/- lakhs per

kani was executed on 13.01.2010 whereas the land was acquired vide notification dated 28.01.2010.

14. The co-ordinate bench of this Court has observed in the referred judgment [**Abdul Mazid (supra)]** that –"*It has been asserted that even if the contention of Mr. De, learned counsel appearing for the appellants that the said deed has been executed between the relatives of the referring claimants for purpose of garnering undue advantage from the land acquisition proceeding is discarded, then also the said deed does not appear to be comparable for purpose of determining the rate of the acquired land for two reasons viz.*

(i) The deed has been executed on the day which is very close to the date of publication of the acquisition notification and

(ii) The quantum of the land that is under transaction is very small and that small land cannot be compared with the acquired land."

15. In the said judgment, in Para 9, it has been further held as under:

(9) Having considered the location of the land as acquired by the aid of the settlement map, it transpires that the lands are not in the advantageous position to garner such higher rate as claimed. It has

been admitted by the learned counsel appearing for the referring-claimants that similar kind of land, if not of the same nature of land, was purchased or acquired with much lesser rate, as examined and determined by the Land Acquisition Judge. By the Judgment and award dated 21.06.2016 delivered in Misc.(LA) No.53 of 2014, the Land Acquisition Judge has observed that the fair land rate would be Rs.6,00,000/- per kani for the acquired land."

16. In the instant case, I do not find any material to form a different opinion and arrive at a finding that the land was having some advantages or potentialities at the time of acquisition.

17. Having been considered all these aspects as aforestated, mainly on the basis of the common judgment and award dated 27.08.2018, passed in LA APP No.9 of 2017 and others, I find no other alternative but to reduce the compensation as determined by the learned L.A. Judge. I reduce it accordingly, and determine the rate of compensation @ Rs.6,00,000/- (Rupees six lakhs) per kani. L.A. Collector has to pay compensation to the claimants i.e. the respondent Nos. 1 to 5 of the instant appeal considering the market price of the land at Rs.6,00,000/- (Rupees six lakhs) only per kani for the acquired land in question.

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18. The claimant-respondents shall be entitled to other statutory benefits including interest under Section 34 of the Act from the date of notification.

19. With the aforesaid modification of the judgment and award dated 23.08.2016, the present appeal is disposed of. No costs.

20. Send back the L.C.Rs.

JUDGE

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