IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ravi Krishan Kapur
And
The Hon'ble Justice Atarup Banerjee

F.A.T. 35 of 2009
State of West Bengal
VS.
Tulsibala Mondal
with
F.A.T. 36 of 2009
with
F.A.T. 37 of 2009
with
F.A.T. 38 of 2009

For the appellants : Mr. Nikunj Berlia
Mr. Pratip Mukherjee
Ms. Sreetama Neogi
Mr. Aniruddha Dutta

For the respondent : Mr.Dipanjan Dutta
Ms. Riya Ballav
Ms. Esha Basak
Ms. Bindu Sah
Mr. Aindrik Chatterjee

Hearing concluded on : 6 October, 2026

Judgement on : 6 October, 2026

Ravi Krishan Kapur, J.:-

1. By consent of the parties, all these appeals are taken up for hearing analogously.

2. These appeals have been filed against a judgment and order dated 17 December, 2007 passed by the Learned 1st Court Land Acquisition

Judge, Purulia in L.A. Reference Case Nos. 50, 38, 45 and 51 of 2007 particulars whereof are set out below:

Appeal	L.A. Reference Case	Date of award	R.S. plot, classification and area	Awarded sum	Paper book pages
F.A.T. 35/2009	50/2007	16 Feb 2005	1721 — Danga, 0.01 acre 1722 — Gora, 0.35 acre	Rs. 11,850	9-10
F.A.T. 36/2009	38/2007	22 May 2007	1729 — Baid, 0.20 acre 1733 — Kanali, 0.12 acre 1740 — Kanali, 0.32 acre 1737 — Kanali, 0.17 acre	Rs. 82,950	9–10
F.A.T. 37/2009	51/2007	18 May 2007	1724 — Baid, 0.28 acre	Rs. 9,217	9–10
F.A.T. 38/2009	45/2007	22 May 2007	1771 — Bandh Khali, 0.83 acre 1772 — Bandh, 2.44 acres	Rs. 17,940	9-11

3. By the impugned awards, the Land Acquisition Judge has enhanced the awarded amount inclusive of interest and solatium in respect of all the above cases.

4. It is contended on behalf of the appellant that the impugned awards are liable to be set aside on the ground that the same have been passed in violation of the principles of natural justice. On merits, it is contended that the nature and classification of the land was not taken into account in passing the impugned awards. In addition, the sole witness who had adduced evidence had no authority or Power of Attorney to depose on behalf of the land losers. None of the respective land losers entered the witness box nor adduced any evidence. In support of such contentions, the appellant relies on *Mohinder Kaur v. Sant Paul Singh, (2019) 9 SCC 358* to contend that even a Power of Attorney cannot

replace the requirement of principal's testimony about matters which are purely within the personal knowledge of the principal.

5. On behalf of the private respondent, it is contended that the impugned order was passed after taking into account all the relevant facts and circumstances including the evidence. However, it is admitted on behalf of the respondent that none of the originals Powers of Attorney were disclosed in the proceedings before the Land Acquisition Judge.

6. In ***Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd., (2005) 2 SCC 217,*** the Hon'ble Supreme Court, while considering Order III Rules 1 and 2 of the Code of Civil Procedure, 1908, distinguished between the authority of an agent to act on behalf of the principal and the competence of such agent to give evidence concerning facts within the personal knowledge of the principal. The authority to act on behalf of a party does not, by itself, entitle the attorney holder to substitute himself for the principal as a witness.

7. A Power of Attorney holder may depose in respect of acts performed by him pursuant to the authority conferred upon him, but cannot depose in place of the principal in respect of matters which are within the principal's personal knowledge and in respect of which the principal is required to be cross examined. As a principle, the competence of a Power of Attorney holder to testify must be determined with reference to the nature of the facts sought to be proved and the witness's own knowledge of those facts.

8. Similarly, in *Rajesh Kumar vs. Anand Kumar, 2024 SCC OnLine SC 981* the Supreme Court reiterated that, in a suit for specific performance, where the plaintiff is required to establish readiness and willingness to perform the contractual obligations, the plaintiff's personal testimony may be necessary. An attorney who lacks personal knowledge of the transaction and of the plaintiff's readiness and willingness cannot substitute his testimony for that of the plaintiff.

9. In *Ramanlal Deochand Shah v. State of Maharashtra, (2013) 14 SCC 50,* (paragraphs 7-12), the Supreme Court held that, in a reference seeking enhancement of land acquisition compensation, the initial burden rests on the land loser to prove that the Collector's award is inadequate and to establish the higher market value claimed.

10. In view of the submissions on behalf of the respondents, the impugned awards are unsustainable and set aside. The non-production of the Original Power of Attorney in all the matters is a serious infirmity and vitiates the entire proceedings conducted before the Land Acquisition Judge. The burden of proof in seeking such enhancement is always on the party asserting it. [*State of West Bengal vs. Secretary Union Club, Purulia (1971) 7 CWN 296*]. This fact was fairly admitted by the private respondent. The question of incorrect classification of land has also not been dealt with in any of the impugned awards. The exercise to be followed and the factors to be considered before passing of any award for enhancement are simply not reflected in any of the impugned

awards. All these matters are remanded back to the Jurisdictional Land Acquisition Judge for reconsideration after hearing of all the parties on merits afresh. It is made clear that there has been no adjudication of the underlying merits of the case and all questions are left open for the concerned Land Acquisition Judge to decide in accordance with law. The Learned Land Acquisition Judge is requested to conclude all the hearings preferably within six months from the date of communication of this order.

11. To this extent, FAT 35 of 2009, FAT 36 of 2009, FAT 37 of 2009 and FAT 38 of 2009 stand allowed.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ravi Krishan Kapur, J.)

I agree.

(Atarup Banerjee, J.)

KAUSHIK CHATTERJEE