

THE HIGH COURT OF TRIPURA
A G A R T A L A

LA App. No. 27 of 2006

Appellant:

The Deputy Chief Engineer,
N.F. Railway, Gurkhabasti, Agartala, Dist.
West Tripura.

By Advocates :

Mr. A. Lodh Adv.
Mr. M. Dutta, Adv.

Respondent :

Smti. Maya Saha,
W/o Satish Ch. Saha of Jogendranagar, P.S-
East Agartala, Dist. West Tripura.

By Advocate :

MS. P. Deb Paul, Adv.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **31st March, 2014.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

By means of this appeal, the appellant has challenged the award dated 10.01.2006 passed by the Land Acquisition Judge, West Tripura, Agartala whereby he awarded compensation to the claimant @ Rs.1,50,000/- per kani.

[2] The relevant portion of the award reads as follows:

******* On hearing the parties to the case and after perusing the documents of both sides it appears to me that the acquired land of the petitioner was far away from Jogendranagar main road and Agartala town.**

So, inference can easily be drawn that the L.A Collector had not given less amount than the prevailing rate of that locality.

On the other hand on perusal of the documents of the opposite-parties I am of the opinion that they have not committed any serious error at the time of awarding the payment of compensation. They awarded Rs.35,000/- per kani for the acquired land as Bhati class. The petitioner failed to produce any concrete proof that the prevailing market value of the acquired land on the relevant date and time was more than that of awarded amount of compensation.

However, considering all aspects, I am of the view that the claim of the petitioner will be some justified if the rate of compensation for the acquired land is enhanced from Rs.35,000/- to Rs.1,50,000/- per kani. I also do not like to interfere with the other amounts which were awarded by the L.A Collector as consequential relief as I was/is of the view that there was/is no need to interfere with the same.*"**

[3] To say the least this award shows total lack of knowledge of the basic principles of law in respect of grant of compensation. On the one hand, the Land Acquisition Judge has come to the conclusion that the land of the petitioner was far away from the Jogendranagar main road and Agartala town. He has also come to the conclusion that the Land Acquisition Collector has awarded an amount not less than the prevailing market rate. He has also come to the conclusion that the respondent State has not committed any serious error in assessing the compensation at Rs.35,000/- per kani. After giving all these three findings he suddenly awards Rs.1,50,000/- per kani without giving any grounds only on the ground that he was of the view that the claim of the petitioner is justified for award of the same.

[4] Cases before the Court have been to be tried in accordance with law. Decisions have to be based on evidence and reasoning has to be given as to why particular evidence is relied upon and why particular

evidence is accepted. Cases cannot be decided on the whims and fancies of the Presiding Officers where he only states that he is of the view that the claim of the petitioner will be "some justified" if the rate of compensation is enhanced from Rs.35,000/- to Rs.1,50,000/-. If this is the only reasoning why could it not be enhanced from Rs.35,000/- to Rs.36,000/- or to Rs.36,00,000/- per kani, because no reasoning is given.

[5] One of the settled methods of assessing the market value of the land is the exemplar method that is on the basis of the examples of sales of similar pieces of land. In this case, unfortunately the claimants have led virtually no evidence to prove their case. However, both the Collector and the learned Land Acquisition Judge have relied upon two sale deeds which according to them pertain to same or similar land. One of the sale deeds which both the Collector and the Land Acquisition Judge has found to be a same and similar land is sale deed No. 3193 whereby six gandas of land was sold from Rs.20,000/- and the value of such land would work out to Rs.66,667/- per kani.

[6] The Apex Court in *Mehrawal Khewaji Trust (Regd.) Faridkot and Others Vrs. State of Punjab and Others : AIR 2012 SC 2721* has clearly held that if there are more than one example then unless there are very good reasons to exclude that sale deed the highest exemplar should be taken because that would be the rate at which a willing seller would be willing to sell his/her land to a willing purchaser. Relevant portion of the said judgment 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 bonafide 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 bonafide transaction entered into between a willing purchase and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deed 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."

[7] Therefore, I only take into consideration the sale deed No. 3193 whereby comparable land has been sold for Rs.66,666/- per kani. That sale deed was executed on 31.07.1995. The Section 4 notification was issued on 27th December, 1997 i.e. about 2¹/₂ years after the execution of the sale deed. The Apex Court in large number of cases has held that the Court can take judicial notice of the fact that an urban and semi-urban areas, the value of the land rises by 10 to 15% per year. Reference may be made to the judgment in ***Valliyammal and another V. Special Tahsildar (Land Acquisition) and another : [(2011) 8 SCC 91]***.

[8] In this case the area in question is semi-urban area because it has come in evidence that it is barely 3 kms from Agartala town close to M.B.B College and other industrial establishments. If it is a semi-urban area, I assess the per year increase at 10% per annum and for 2¹/₂ years the increase would be 25% and therefore the increase itself is comes to Rs.16,667/- and the value works out to Rs.83,334/- per kani.

[9] Now, we come to the question as to what should be the deductions. In the present case, the land is not being used for setting up of a housing colony, industrial area, building etc. but is only being used for

constructing a railway line. Therefore, there is very little cost of development of land because all the lands would virtually be utilized for the line. In any event, I feel that 20% deduction would be sufficient and, therefore, the value of the land is assessed at Rs.66,667.20 or say Rs.67,000/- per kani.

[10] In view of the above discussions, the appeal is allowed and the claimant is entitled to compensation for the acquired land at the rate of Rs.67,000/- per kani. The claimant shall also be entitled to additional compensation, interest and solatium in accordance with the provisions of the Land Acquisition Act, 1894,

[11] The appeal is allowed in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE