

**THE HIGH COURT OF TRIPURA
AGARTALA**

LA APP 04 OF 2003

Shri Tarun Kumar Jain,
S/o Shri Hiralal Jain,
Resident of H.G.B. Road,
Agartala, P.S. West Agartala,
District-West Tripura.

... **Appellant.**

- Vs -

- 1. The Land Acquisition Collector,**
West Tripura, Agartala.
- 2. The Oil & Natural Gas Corporation Ltd.,**
Tripura Project, Agartala.

... **Respondents.**

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

For the appellant	:	Mr. D.K.Biswas, Advocate.
For the respondent No.1	:	None
For the respondent No.2	:	Mr. S. Deb, Sr. Advocate. Mr. R. Dasgupta, Advocate.
Date of hearing	:	18.01.2016, 19.01.2016 & 20.01.2016.
Date of delivery of Judgment.	:	30.01.2016.
Whether fit for reporting	:	Yes

JUDGMENT & ORDER

This appeal under Section 54 of the Land Acquisition Act, 1894 (for short, L.A. Act) is directed against the judgment and award, dated 18.01.2003, passed by the learned L.A. Judge, West Tripura, Agartala, in Case No. Misc.(LA) 3/1991 arising out of a reference made under Section 18 of the L.A. Act by the L.A. Collector, West Tripura, Agartala in connection with L.A. Case

No.37/1987, whereunder land measuring 8.73 acres classified as 'tilla', 'chara', 'basat', 'bhiti', 'nal' etc. recorded in Khatian No.10656, plot Nos.4739/17517, 4740, 4741, 4742, 4743/P,4744,4745,4746,4747,4750/17519,4751,4752,4753,4754, 4755/P, 4756 of Mouja Badharghat, Sheet No.3 belonging to the appellant (hereinafter mentioned as referring-claimant) was acquired for the purpose of construction of Oil and Natural Gas Corporation (for short, ONGC) "Tools Yard".

2. Heard learned counsel Mr. D.K. Biswas for the appellant and learned Sr. counsel Mr. S. Deb assisted by learned counsel Mr. R. Das Gupta for the respondent No.2, ONGC (hereinafter mentioned as requiring department). No representation on behalf respondent No.1, Land Acquisition Collector (hereinafter mentioned as L.A. Collector) in spite of notice.

3. Let us first give a prelude of the case since it appears to be an old pending appeal before the Court.

3.1 By notification No. F.9(18)-Acq/Rev/IV/87, dated 27.03.1986, issued under Section 4 followed by declaration of even No., dated 10.09.1987, issued under Section 6 of the L.A. Act, 1894, land measuring 8.73 acres belonged to the referring-claimant i.e. the appellant herein, including other lands belonged to other land holders were acquired for the purpose of construction of ONGC tools yard and compensation @ Rs.40,000/- per kani i.e. Rs. 1,00,000/- per acre was awarded.

3.2 The referring-claimant alleged that he received the compensation under protest since according to him the price of the

land was inadequate and, therefore, he prayed for a reference under Section 18 of the L.A. Act to the L.A. Judge for proper determination of compensation.

3.3 Respondent L.A. Collector contended that on the date of hearing under Section 11 of the L.A. Act, the referring-claimant and other land holders appeared before him and submitted an application in writing that compensation may be paid to them @ Rs.40,000/- per kani and further he has made an inquiry about the price and found that Rs.40,000/- per kani was the adequate compensation for acquisition of the land as per the prevailing market price and so, the petition for reference which was made well before was not taken to consideration and the case was not referred to the L.A. Judge.

3.4 Since the reference was not made the referring-claimant preferred Civil Rule No.267/1990 before Agartala Bench of the Gauhati High Court and pursuant to an order passed by the High Court, the reference under Section 18 of the L.A. Act was made before the learned L.A. Judge, West Tripura, Agartala and accordingly, learned L.A. Judge registered Case No.Misc.(LA) 3/1991.

3.5 The referring-claimant submitted his claim statement before the learned L.A. Judge on 13.11.1991 and claimed compensation for the land @ Rs.70,000/- per kani and also claimed compensation for the trees, structures, etc. as well as the rubber plants which were on the acquired land. The respondent L.A. Collector also submitted written objection in the reference and in

course of hearing both side adduced oral and documentary evidence.

3.6 The requiring department i.e. ONGC was not made a party in the reference.

3.7 Learned L.A. Judge by judgment dated 04.03.1994 disposed the reference allowing compensation for the land at an enhanced rate of Rs.55,000/- per kani. Challenging that judgment, the respondents preferred first appeal No. 98 of 1994 and the appellant i.e. the referring-claimant preferred first appeal (CO) No.18/1995 before the Agartala Bench of Gauhati High Court and both the appeals were disposed of by a common judgment dated 21.06.2000 and thereby the judgment and award passed by the learned L.A. Judge on 04.03.1994 was set aside and the case was remanded back to the L.A. Judge for disposal in accordance with law after affording opportunity to the requiring department(ONGC) to file written statement and contest the claim by adducing oral or documentary evidence as the case may be. The Court also observed that the referring-claimant also will be entitled to adduce any additional evidence if so desired.

3.8 After remand of the case the requiring department i.e. the respondent-ONGC submitted written objection opposing the claim of the referring-claimant. In due course the referring-claimant examined himself afresh on 19.05.2001 and also adduced some documentary evidence. On behalf of the referring-claimant another witness namely P. Achyuthan Kutti was also examined as P.W.2.

3.9 The following documents were marked as Exhibits on behalf of the referring-claimant:-

Exhibit A series:

1. Sale Deed No.1-7425
2. Sale Deed No.1-3168

Exhibit B Series:

1. Letter of L.A.Collector to Tarun Kr. Jain, dt.15-06-88.
2. Certificate of Asstt. Development Officer, Rubber Board, dt.6-4-84.
3. Certificate of Rubber Board, dt.NIL.
4. Letter of D.F.O., Jiribam Divn., dt.30-06-82.
5. Letter of Divisional Soil Conservation Officer, dt.10-05-85.
6. Certificate issued by Rubber Board dt.20-02-80.
7. Letter of Divisional Soil Conservation Officer, Aizawl Divn. Mizoram dt. 02-07-85.
8. Letter of Divisional Soil Conservation Officer, Aizawl Divn., Mizoram dt.26-06-85.
9. Letter of Divisional Forest Officer, Jiribam Division, Govt. of Manipur, dt.08-07-82.
10. Letter of Jt. Director, Soil Conservation, Mizoram dt.27-02-81.
11. Letter of Jt. Director, Soil Conservation, Mizoram dt.18-03-82.
12. Letter of Director, Soil Conservation, Mizoram, dt.11-05-81.

Exhibit-1 Series:

- a) Letter of Divisional Manager Plantation Divn. Orissa Forest Corporation Ltd., Bhubaneswar dt.28.07.86.
- b) Letter of Managing Director, TRPC Ltd., dt. 08-7-87.
- c) Letter of Director, Soil Conservation, Mizoram, Aizawl, dated 16-06-87.
- d) Letter of Joint Rubber Production Commissioner, dated 02-07-87.

- e) Letter of Joint Rubber Production Commissioner, dated 27-06-87.

Exhibit-2(series):

- a) Certified copy of the Judgment dated 16-8-1994 passed by the L.A. Judge, West Tripura.
- b) Certified copy of the judgment dated 23-2-1996 passed by L.A. Judge, (Court No.2), West Tripura, Agartala.

3.10 The respondent-L.A. Collector, Dulal Krishna Dey, examined himself as OPW-1 and exhibited the following documents:-

Exhibit A- Letter of Sri Tarun Kr. Jain addressed to the L.A. Collector, dt. 15.02.1988.

Exhibit A/1- Signature of L.A. Collector in the letter of Sri Tarun Kr. Jain and others, dt.15.2.1988.

Exhibit B-Gazette notification dated 27-3-1986.

Exhibit C- Assessment Order of Land Acquisition Officer, dated 15-02-1988.

3.11 The requiring department also examined one witness namely Swapan Kr. Sarkar, Assistant Personal Administrative Officer of ONGC Assets as OPW-2 and exhibited the following documents:-

Exhibit D- Letter of Sri Tarun Kr. Jain addressed to the Addl. Director (P & A), ONGC, dated 25-7-1987.

Exhibit E(Series)-

- a) Letter of Sri Tarun Kr. Jain addressed to the Addl. Director ONGC dated 01-06-1988.
- b) Letter of Sri Tarun Kr. Jain addressed to the Dy. Director (P&A), ONGC.

Exhibit F- Envelop.

Exhibit G- Letter of Jt. Director (P&A), ONGC to L.A. Collector, West.

Exhibit H- Not available.

4. I am constrained to observe here that the learned L.A. Judge marked the documents of referring-claimant both alphabetically and arithmetically which was not according to law. The documents of plaintiff or petitioner side while exhibited, as prescribed by the rules, should be marked arithmetically and the documents of the defendant or respondent side should be marked alphabetically and I hope the L.A. Judge should follow the rule in future.

5. Learned L.A. Judge considering the pleadings and evidence by impugned judgment, dated 18.1.2003, disposed the reference holding that the referring-claimant was not entitled to get enhanced rate of compensation.

6. Felt aggrieved, the referring-claimant filed the present appeal before the then Gauhati High Court, Agartala Bench which was dismissed for default by Order dated 02.09.2009.

7. An appeal was preferred against that order before the Apex Court vide Civil Appeal Nos.6806-6807 of 2015 and the Apex Court by order dated 31.08.2015 directed restoration of the appeal to file as well as to dispose the appeal after hearing both side.

8. Learned counsel Mr. D.K.Biswas appearing for the appellant submitted that learned L.A. Judge failed to construe the scheme of L.A. Act as well as the constitutional provision of Article 31A and 300A of the Constitution of India and thereby arrived at a

wrong finding. According to Mr. Biswas, learned L.A. Judge wrongly and illegally taken into consideration Exbt.A and Exbt.D proved by the respondents and arrived at a wrong finding that the referring-claimant conceded to a price of Rs.40,000/- per kani of the acquired land. He has also submitted that it was the duty of the L.A. Collector not to bank upon any such document even if for argument sake it is accepted that those letters were filed by the referring-claimant. The L.A. Collector was supposed to arrive at an independent finding in respect of compensation for acquisition of land under the provisions of L.A. Act based on the market price prevailing on the date of issuance of notification under Section 4 and should not have taken a technical view of considering any petition even if submitted by the referring-claimant and other land holders. According to Mr. Biswas, second proviso to Clause-1 of Article 31A makes it mandatory to provide compensation at the rate which shall not be less than market value. The L.A. Collector was supposed to offer the compensation at the market rate and not less than that and thereafter if the referring-claimant refused to accept that amount, the case would have been otherwise. Both L.A. Collector as well as the L.A. Judge, submitted learned counsel Mr. Biswas, committed gross injustice to the referring-claimant and so the appeal should be allowed and the referring-claimant should be given compensation adequately based on Exbt.A series i.e. sale instances submitted by the referring-claimant.

8.1 It is further submitted by Mr. Biswas, learned counsel that Exbt.A proved by the L.A. Collector cannot be accepted since the referring-claimant did not accept his signature in that letter.

So, the L.A. Judge wrongly relied on Exbt. A and therefore, the judgment passed by the L.A. Judge is vitiated.

9. Appearing on behalf of the requiring department (ONGC), learned Sr. counsel Mr. Deb submitted that the assessment note was prepared on 15.02.1988 wherein it was clearly stipulated that the referring-claimant appeared before L.A. Collector and submitted a petition in writing to the effect that they may be paid compensation @ Rs.40,000/- per kani and that order passed by the L.A. Collector in assessing the compensation was never challenged by the referring-claimant. According to Mr. Deb, the referring-claimant was supposed to challenge it before the L.A. Collector itself and since the referring claimant did not challenge that part of the observation of the L.A. Collector made in the assessment note, he cannot challenge it at a later stage before any other forum. It is also submitted by learned Sr. counsel, Mr. Deb that the referring-claimant submitted his claim statement before L.A. Judge on 13.11.1991 but he did not say a single word that he did not appear before the L.A. Collector or that they did not file any such petition though in the assessment note there was clear mention that the referring-claimant and other land holders submitted petition seeking compensation towards price of land @ Rs.40,000/- per kani. The L.A. Collector submitted his counter statement/ written objection on 23.12.1992 clearly stating therein that the referring-claimant and other land holders submitted a petition claiming compensation @ Rs.40,000/- per kani and that the L.A. Collector also enquired about the market price and the compensation given in some other acquired land prior to the

present acquisition but those statements were never confronted by the claimant by filing any additional claim statement. The L.A. Collector proved Exbt.A and also proved his signature marked as Exbt.A/1 and the sequence of events as well as other documents clearly proved that on the date of assessment i.e.on 15.02.1988 the referring-claimant and other land holders appeared before the L.A. Collector and submitted a written application claiming compensation @ Rs.40,000/- per kani of the acquired land.

9.1 It is further submitted by Mr. Deb that Exbt.D is another document proved by the requiring department which shows that the referring claimant submitted petition before the Additional Director of ONGC on 25.07.1987 that he will not claim any value for the trees and plants existing on the land and insisted requiring department to take over possession of the acquired land. Exbt.E series also shows that the referring-claimant time and again filed petitions before the requiring department even to acquire the left out 0.35 acres of land belonged to the referring-claimant after acquisition of 8.73 acres of land. All those documents makes it clear that the referring-claimant was eager to get the land acquired at a flat price of Rs.40,000/- per kani. The L.A. Collector made an assessment that Rs.40,000/- per kani was the proper market rate of the land prevailing at that point of time which was demanded by the referring-claimant and other land holders. It is also submitted by Mr. Deb, learned counsel that the market price means a price which a seller ready to get and a buyer ready to give. Since the referring claimant himself was ready to accept compensation @ Rs.40,000/- per kani there was nothing wrong for the L.A. Collector

in awarding compensation @ Rs.40,000/- per kani since he was also satisfied that the market price was @ Rs.40,000/- per kani.

10. Burden lies on the referring claimant to prove that the compensation awarded by the L.A. Collector was inadequate. If the initial burden is discharged then it will be the onus on the part of the respondents to show that the compensation paid was justified.

By filing claim statement the referring-claimant contended that he had a rubber nursery on the acquired land with rubber buds and there were various other plants and also structure for employees and go-down as well as barbed wire fencing. He claimed compensation for the trees and structures etc. and also for the land @ Rs.70,000/- per kani.

11. The respondents i.e. the L.A. Collector as well as the requiring department by filing counter statement/written objection contended that the referring-claimant was insisting the requiring department to acquire his entire land and he submitted petition before the Additional Director of ONGC that he will not claim any value of trees, plants etc. existing on the land. In course of hearing by the L.A. Collector, the referring claimant and other land holders submitted a joint petition before the L.A. Collector contending that they were agreeable and ready to get the value of the land @ Rs.40,000/- per kani. The L.A. Collector made a physical inspection of the acquired land and thereafter hearing the claimants and the requiring department passed an assessment order on 15.02.1988 taking into account the market price prevailing at that point of time i.e. on the date of issuance of notification under Section 4 as well

as the price demanded by the claimants by filing written application before him and accordingly he made the award.

12. Exbt.C is the assessment note/order issued by the L.A. Collector. The document is proved by the L.A. Collector which reads as follows:-

"15.2.88

Sarbashri Sukumar Rn. Das, Gurupada Saha and T.K. Jain, interested parties have appeared today and prayed for finalization of the compensation rate of the land proposed for acquisition immediately. Gone through the records and also heard them.

It appears that a plot of land just adjacent to the land proposed for acquisition under this proceeding was acquired last year by this office @Rs.33,000/- per kani. The land acquired last year is tilla in nature. The land proposed for acquisition in this proceeding is also tilla and 100% similar of that of the land already acquired last year for ONGC.

The interested parties have prayed that after acquisition of the land last year there has been lot of improvement in the area and the price of land has gone very high. During my inspection of the site on 17.12.87 I also noticed that some improvement has taken place in the area after acquisition of the adjacent land by ONGC and it is quite likely that price of the land in the area has gone high. Although the interested parties have prayed for compensation @ Rs.75,000/- to 1,00,000/- per kani and also produced some documents showing transfer of land at much higher price but I do not consider the said rates as reasonable as the document produced by them relate to transfer of a very small quantity of land. Therefore, this could not be yardstick of price of land in the area.

However, in consideration of the development already taken place in the area because of acquisition of adjacent land by ONGC last year and the trend of increase in the price of land in the area, I consider that the present proper market value of land per kani in the area would be Rs.40,000/- only.

I have also given a hints of the above rate to the interested parties present today who have agreed to

the said offer of Rs.40,000/- per kani and given a petition in writing to that effect. It has also been agreed to by the said parties that they will not go to the courts for obtaining higher rate of land acquired under this proceeding.

In view of the above, it is decided that the land proposed for acquisition in this proceeding should be valued at Rs.40,000/- per kani. This will be in addition to 30% as solatium and interest @ 12% per annum from the date of notification as per provision of L.A. Act.

Shri Y. George, Estimator will prepare the award in favour of individual owner/interested party excluding the case of Smt. Saha (Sl.No.6) which will be decided after 28-2-88."

13. A bare reading of the assessment order makes it abundantly clear that the referring claimant and two other land holders appeared before the L.A. Collector on that day for finalization of compensation of the acquired land. The L.A. Collector considered the price given in some earlier acquisitions where compensation @ Rs.33,000/- per kani was paid. He has also mentioned that he inspected the acquired land on 17.12.1987 and found that the price of land at the date of acquisition would be Rs.40,000/- per kani only. The referring-claimant and other land holders submitted a petition before him in writing and thereby agreed to the rate of Rs.40,000/- per kani towards price of the land and accordingly he passed the assessment order.

An assessment order/award u/S 11 of the L.A. Act is an official act of L.A. Collector in the discharge of his official duty. It should be presumed to have regularly performed as prescribed u/S 114 of the Evidence Act [Illustration (B)], since it has not been challenged by the referring-claimant neither before the L.A.

Collector nor before the L.A. Judge by filing claims statement or adducing evidence.

13.1 The referring-claimant in his claim statement did not raise any voice in respect of the observation of the L.A. Collector in the assessment note and therefore it is to be presumed that the observation of the L.A. Collector in the assessment note that the referring-claimant and other land holders submitted a petition might be correct. In his cross examination, the referring-claimant clearly admitted that he appeared before the L.A. Collector. When Exbt.A, the letter dated 15.02.1988 proved by the L.A. Collector was referred to the referring claimant he denied his signature in that document which contained the signature of the L.A. Collector and two other land holders. Mr. Biswas, learned counsel submitted that the signature of the referring-claimant in Exbt.A since disputed by the referring-claimant, it was necessary to obtain an expert opinion and otherwise that document cannot be relied on. Exbt.A proved by the L.A. Collector shows that it was a petition filed by the referring-claimant and two others namely Sukumar Rn. Das and Gurupada Saha wherein they made a clear statement—

“Dear Sir, I shall be happy if the compensation for acquisition of my land at Mouja Badharghat is awarded at rate of Rs.40,000/- (forty thousand) per kani, plus other benefits as admissible under the law. We also assure you that we will not go to higher court for enhancement of the rate.”

13.2 The signature of referring claimant Tarun Kr. Jain appears in many other documents on record including his claim statement, his evidence before the L.A. Judge. In Exbt.D and Exbt.E Series, he did not dispute his signature and a comparison in

bare eye makes it abundantly clear that it was the signature of the referring-claimant Tarun Kr. Jain and so there was no necessity of sending it to obtain an expert opinion. Further, at the time of cross examination by ONGC, the referring-claimant was asked specific questions about his claim of compensation @ Rs.40,000/- per kani to which he did not deny it specifically that he did not make any such claim. The relevant part of the cross examination reads as follows:-

"I appeared before the L.A. Collector. I cannot say exactly whether I stated before the L.A. Collector in details about my claim, though I appeared before the L.A. Collector. I cannot say whether I agreed to the rate Rs.40,000/- per kani as determined by the L.A. Collector. I cannot remember whether I stated to the L.A. Collector that I would not go to any court if the rate is determined Rs.40,000/- per kani."

13.3 The L.A. Collector and the requiring department in their counter statement/written objection made specific statement that the referring-claimant and other land holders appeared before the L.A. Collector on 15.02.1988 at the time of hearing under Section 11 and submitted a written application claiming compensation @ Rs.40,000/- per kani. Though there was such specific pleading on the part of the L.A. Collector as well as the requiring department, the referring-claimant in his examination-in-chief did not utter a single word that he and other land holders did not file any such petition before the L.A. Collector claiming compensation @ Rs.40,000/- per kani. While the referring claimant did not make any statement contradicting the pleading of the respondents and further in cross examination he simply made an evasive statement and did not make a specific denial about the

claim @ Rs.40,000/- per kani, I am of considered opinion that the referring-claimant subsequent to the acceptance of the award made by the L.A. Collector went back to his previous stand and taken a false stand that he claimed compensation @ Rs.70,000/- per kani. Learned L.A. Judge rightly held that the referring-claimant and other land holders agreed to a compensation of Rs.40,000/- per kani which was determined by the L.A. Collector as the adequate and reasonable compensation as per market rate.

14. Let us now refer to Section 11 of the L.A. Act which reads as follows:-

11. Enquiry and award by Collector.—[(1)]

On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of---

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in

the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.]

[(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.]

[(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.]”

15. A bare reading of the assessment note i.e. Exbt.C clearly reveals that L.A. Collector taken into account the price fixed in respect of previous acquisition of land as well as after inspecting the acquired land physically, arrived at an opinion that the acquired land will carry a market price of Rs. 40,000/- per kani and thereafter the claimants agreed to the proposed opinion of the L.A. Collector and submitted a written petition. Sub Section [2] of Section 11 clearly prescribes that the L.A. Collector may be satisfied to a price if all the persons interested in the land appeared before him give in writing about the price in a prescribed format. Exbt.A proved by L.A. Collector is not in a prescribed format but it is a petition filed by all the land holders including the referring-claimant in writing and so there was nothing wrong on the part of the L.A. Collector in accepting the same and forming an opinion about the market price of the acquired land. The assessment note i.e. Exbt. C clearly reveals that all the land holders including the referring-claimant were present before the L.A. Collector and the referring-claimant in his cross examination also admitted that he

appeared before the L.A. Collector at the time of hearing under Section 11 on that day i.e. on 15.02.1988. So, I find no merit in the argument advanced by learned counsel Mr. Biswas.

16. Further, as I find OPW-1, Dulal Krishna Dey, i.e. the L.A. Collector appeared before the L.A. Judge, and in his evidence he stated—

".....On 15.2.1988 I assessed the valuation of the aforesaid acquired land and on that date the petitioners namely, Tarun Kumar Jain, Sukumar Ranjan Das and Gurupada Saha remained present before me. I myself visited and had seen the acquired land on 17.12.87. I assessed the valuation of the acquired land @ Rs.40,000/- per kani. One year prior to acquisition by the Government nearby areas of the acquired land were acquired by the Government and price was determined Rs.33,000/- per kani. Besides that also the present acquired land and aforesaid acquired land which was acquired one year earlier were similar type of land. During said one year some improvement was made in that area. Besides that aforesaid 3 petitioners also submitted an application praying for making payment of the acquired land @ Rs.40,000/- per kani. The witness identified the aforesaid original application. Accordingly these petitions containing the signature of aforesaid 3 petitioners was marked as Exbt.-'A' on identification. I also put my signature in that application. On identification signature of this witness is marked as Exbt.A/1. Document Exbt.A contains the signature of the aforesaid 3 petitioners including the signature of Tarun Kumar Jain. Regarding the prayer made by aforesaid 3 petitioners for determining the price of the acquired land @ Rs.40,000/- per kani was discussed in my chamber by those 3 petitioners and thereafter on being asked by me they had filed the aforesaid application. I determined the market rate properly.

The witness identified the Gazette Notification dated 27.3.86 containing the notification made U/S 4 of the Land Acquisition Act,1984 and accordingly it is marked as Exbt.B.

Original assessment note and photocopy of the same (duly attested) have been filed. Attested copies compared with the original and it is marked as Exbt.C."

In his cross examination he stated that—

"I deposed yesterday after going through the record. Besides the land of aforesaid 3 petitioners land of some other persons were also acquired. Personally I did not know Tarun Kr. Jain and Gurupada Saha. Only Sukumar Rn. Das was personally known to me. Aforesaid application was written outside my chamber. I cannot say where whether inside my chamber or outside the aforesaid three petitioners were put their signature. I did not dictate aforesaid letter. I do not remember whether said application was submitted to me by aforesaid Sukumar Ranjan Das. It is not a fact that no discussion had taken place in my chamber in respect of claim of Rs.40,000/- per kani by the aforesaid petitioners. It is not a fact that the price which was determined for the acquired land was not the prevailing market rate at the time of acquisition."

17. Let us now have a glimpse to the evidence of the claimant. In his examination-in-chief on 01.08.1992 he stated –

"I am the referring-claimant of this case, and Govt. acquired land measuring 8.73 acres out of the total land of 9'08 acres in the year 1987 and the said land is situated at Badharghat, Agartala under Badharghat Tahashil which was recorded in 10656 for the purpose of construction of O.N.G.C. Toolsyard. While acquiring the land I was the absolute owner and possessor and enjoying the land by carrying business by selling Rubber Buds, out of the mother plant planted therein. I have planted 65000 mother plants. Apart from Rubber nursery there were also many other plants of seasonal fruit bearing trees and details description was given in the plaint. The acquired land was developed plain land and all other facilities are available there like electric, schools, Govt. offices, P.W.D. office and the area was thickly populated. Out of the 65000 trees we collected 13 lakhs buds per year. The value of

each bud is Rs.3,50. We used to receive 40 to 45 lakhs gross per year. Our nursery is one of the biggest Rubber nursery in north Eastern Zone. We used to supply rubber bud to other north-eastern states and in support it I submitted all relevant papers. Govt. gave us inadequate sum of money as compensation for acquiring our land but govt. is not paid anything in respect of Rubber nursery. Our business has completely doomed after acquiring our land. I claimed Rs.70,000/- as compensation for naked land per kani and I also claimed additional compensation for fruit bearing trees and Rubber nursery. I have submitted two Nos. of deeds in support of my claim which are marked as exhibit-A series. I have also submitted some official papers (supply order etc.) which are marked exhibit-B series(12 Nos.)."

In cross examination made on behalf of the L.A. Collector, he stated—

"It is not a fact that there was no plantation in the acquired land. I did not produce any record regarding income from buds, quantum of buds produced each year from the acquired land. There was no production from the mother plantation. It is not a fact that there was no mother plant at the time of acquisition in the acquired land. It is not a fact that the acquired is not situated adjacent to the main road. It is situated in the side of a road 'Panchamukhi' by name. It is not a fact that L.A. Collector rightly assess the value of the acquired land after consulting proper documents. It is not a fact that document submitted by me and the land of those documents are far away from the acquired land. It is not a fact that there was no plantation at the time of acquisition for which no compensation was given. It is also not a fact that that I used to draw 40/42 lakhs as income from the acquired land."

18. The referring claimant examined himself again on 19.05.2001 and in his examination-in-chief he stated—

"I gave evidence on 1.8.1992 as a referring claimant. I also filed some documents earlier. Acquired land was used by me for production of bud wood from

the mother plants which I used to sell in the market. I have submitted some documents in order to show the less sustained by me in the business following acquisition. I also filed certified copies of some sale deeds in respect of the lands situated near the acquired lands. I used to supply bud wood to different states outside of Tripura such as Govt. of Meghalaya, Mizoram, and other states. I also used to supply the same to the Govt. of Tripura. I submitted different supplied order given by different Govts. where I was asked to supply bud woods. Rate of Bud wood is also there. On identification of those papers in respect of supply orders these are marked as Exbt.1 series. I have submitted two (certified copies) judgments relating to awards passed by the Ld. L.A. Judge, West Tripura relating to acquisition lands which are adjoining lands of the present acquired land. On identification these deeds are marked as Exb-2 series. Possession of my acquired land was taken by the Govt. on 5.5.1988. Concerning official of the L.A. Office, West Tripura, Agartala had taken note of the trees which were in the acquired lands prior to acquisition. These papers are lying in the office of the L.A. Collector, West Tripura. These documents were called for by this court. From the L.A. Office photo copies of those papers had sent to this court."

In cross examination on behalf of requiring department he stated—

"I appeared before the L.A. Collector. I cannot say exactly whether I stated before the L.A. Collector in details about my claim, though I appeared before the L.A. Collector. I cannot say whether I agreed to the rate Rs.40,000/- per kani as determined by the L.A. Collector. I cannot remember whether I stated to the L.A. Collector that I would not go to any court if the rate is determined Rs.40,000/- per kani. The witness identified his signature in a petition dated 25.7.1987 addressed to the Addl. Director, ONGC, Tripura Project, Agartala. The witness identified said letter given by me and accordingly it is marked as Exbt.1. Letter dt. 15.6.1988 given my L.A. Collector was received by me. I cannot recollect whether after receipt of the aforesaid letter I gave any reply. On seeing the signature in a letter addressed to L.A. Collector, West Tripura,

reference subject No.F.9(18)-ACQ/REV/IV/87 dt. 10. Sept, 1987. The witness said I did not put my signature therein though my name is written there along with one Sukumar Ranjan Das and another Gurupada Saha. In the left corner of that letter after giving one initial dt.15.2.88 has been written. It is not a fact that aforesaid letter was given by me to the L.A. Collector, West Tripura. It is not a fact that I have made an illegal and imaginary claim."

In his cross examination on behalf of the L.A. Collector he stated—

"It is not a fact that I did not supply the ordered articles to the State Government. It is not a fact that I gave consent to make payment @ 40,000/- per kani or that basing on that consent award was given. It is not a fact that as per market rate prevailed then compensation was given."

19. A bare reading of the above evidence makes it abundantly clear that the referring-claimant in his evidence did not utter a single word that the stand of the respondents in their counter statement/written objection that he appeared before the L.A. Collector along with other land holders and claimed compensation @ 40,000/- per kani and that by filing petition before the L.A. Collector he claimed compensation @ Rs.40,000/- per kani and further by writing letter dated 25.07.1987 (Exbt.D) he informed ONGC that he shall not claim value of the trees, plants, etc. has not been disputed and/or denied. Under such circumstances, the learned L.A. Judge, in my considered opinion has committed no wrong in relying on the documents proved by the respondents marked Exbt.A, Exbt.D and Exbt.E series.

20. No doubt it is the duty of the L.A. Collector to award compensation at prevailing market rate and it is a constitutional

mandate. Article 300A of the Constitution stipulates that no person shall be deprived of his property save by authority of law.

20.1 Second proviso to Clause-1 of Article 31A prescribes that in case of acquisition of land building or structure etc. compensation at a rate which shall not be less than market value thereof should be paid. The referring-claimant is to prove that the compensation as per the market rate was not paid. According to Mr. Biswas, learned counsel, the L.A. Collector assessed compensation simply based on Exbt.A i.e. the alleged petition submitted by the claimant and other land holders. According to Mr. Biswas, the L.A. Collector was bound to make an assessment of market value taking into account comparable sale instances and other factors but he did not do so and fixed the compensation stating that the claimant demanded Rs.40,000/- per kani.

20.2 On perusal of the assessment note i.e. Exbt.C, I find that L.A. Collector did not simply decide the market price based on the petition filed by the referring-claimant and other land holders but he has consulted the previous acquisition of similar land and also himself inspected the acquired land and then arrived at a finding that the market price of the acquired land would be Rs.40,000/- per kani and when he proposed that price the referring-claimant and other land holders agreed to that and thereafter they filed a written petition before the L.A. Collector at the time of hearing itself. The L.A. Collector proved his signature therein. It is abundantly proved that Exbt.A was a petition submitted by the referring-claimant and other two land holders

before the L.A. Collector on 15.02.1988 as already observed earlier, the referring claimant has taken a false stand that he did not sign the petition whereas it carries his signature which is similar to that of his signatures in other exhibited documents and claims statement etc.

21. Mr. Biswas, learned counsel for the appellant submitted that even if it is accepted that the referring-claimant submitted a petition to the L.A. Collector at the time of hearing under Section 11 of L.A. Act that he shall be happy if compensation for the acquired land is awarded @ Rs.40,000/- per kani, the L.A. Collector should not have taken it into consideration and any such concession even if proved to have given by the referring-claimant should not stand on the way of giving compensation at market rate since it is a constitutional obligation to award compensation not less than the market value of the acquired land. He has candidly submitted that right to property is not only a constitutional right but it is also a human right and there is obligation of all State functionaries to protect that right in letter and spirit. He has submitted that in the case of the referring-claimant i.e. the appellant, the L.A. Collector as well as the L.A. Judge failed to consider the claim of the appellant in the true spirit of the constitutional mandate and therefore, the judgment passed by the L.A. Judge should be interfered and the referring-claimant should be paid compensation at the rate of Rs.70,000/- per kani and also should be paid compensation for the rubber nursery plants and other assets.

In support of his contention he has referred the case of **Chairman, Indore Vikas Pradhikaran V. Pure Industrial Coke & Chemicals Ltd. & Ors.**, reported in **(2007) 8 SCC 705**. In that reported case the Apex Court has held that right to property is now considered to be not only a constitutional right but also a human right.

22. There is no doubt that right to property is considered to be a constitutional right or a human right. Here the fact of the case is different to that of the fact of the reported case. In this case, the right of the referring-claimant in respect of his claim of compensation for the acquisition is not in dispute. The question is the payment of compensation at the market rate prevailing on the date of notification for acquisition. The L.A. Collector by his assessment note assessed the compensation @ Rs.40,000/- per kani which was accepted by the petitioners allegedly by filing a petition before the L.A. Collector in writing at the time of hearing under Section 11. Therefore, I find nothing to accept the argument of learned counsel, Mr. Biswas that the constitutional provision of awarding adequate compensation at the prevailing market rate has been ignored by the L.A. Collector or that the L.A. Judge has failed to construe the evidence and materials on record.

23. It is a settled law that when a reference under Section 18 is made before the L.A. Judge, the Court should take an independent decision about the market price of the acquired land based on the pleadings and evidence produced before it irrespective of what was decided by the L.A. Collector.

24. I have already reproduced hereinbefore the evidence of the referring-claimant. In this evidence adduced on 01.08.1992 before the L.A. Judge he simply exhibited two sale instances which are marked as Exbt.A series. It is a settled law that to determine the market price, contemporaneous sale instances whether of the same land or of the land in the vicinity may be taken into consideration as an acceptable evidence to award compensation. The referring claimant while exhibiting sale-deed No.1-7425 and sale-deed No.1-3186 marked as Exbt.A series stated nothing that those were sale deeds of comparable lands of the same vicinity. Neither anything stated in details in his oral evidence about those two sale instances nor any map of the locality produced to show that those two sale instances were of comparable lands. I have gone through those two sale instances marked as Exbt.A series and it appears that those were of the lands situated at Mouja Badharghat i.e. the same Mouja of the acquired land but the boundary description of those sale instances does not show in any manner that those were adjacent to the acquired land. Therefore, two sale instances cannot be considered for determination of the market price of the acquired land.

25. It is an admitted position that the referring-claimant by submitting Exbt. D i.e. the letter dated 25.07.1987 declined to claim value of the trees and plants situated on the acquired land and therefore, he is estopped by his own conduct in raising any claim of compensation for the trees and plants situated on the acquired land.

26. The referring claimant on 19.05.2001 i.e. in his evidence in the second spell, after remand of the case, has exhibited two judgments passed by the L.A. Judge, West Tripura. One dated 16.08.1994 in Case No. Misc.(LA) 211 of 1992 and other similar cases (common judgment) and another judgment dated 23.02.1996 in Case No. Misc.(LA) 147 of 1992 and some other connected cases (common judgment) and in those two cases, as I find, compensation was awarded @ Rs.1,30,000/- per kani. Those two reference cases relate to acquisition of land of Mouja Badharghat but under a different notification dated 06.07.1988. The land of the referring-claimant was acquired by notification dated 27.03.1986. So the rate awarded in those two cases cannot be readily accepted as the rate for the acquired land of the referring-claimant. Further, as I find though the referring-claimant exhibited those two judgments of the L.A. Judge, West Tripura but in his oral evidence stated nothing to show that those acquired land involved in those two cases were of similar land to that of the referring-claimant's acquired land. Therefore, I find nothing wrong in the judgment of the L.A. Judge for not relying on those two judgments.

27. "Market Price" means a price which a willing vendor might reasonably expect to obtain from a willing vendee. The constitutional provision prescribes that the compensation shall not be less than market value. It is a settled law that the price of the acquired land means the price of all other structures, fixtures, etc. attached with the acquired land. The claimant by submitting Exbt.D letter to the requiring department contended that he shall not

claim value of the trees, plants, etc. By filing Exbt.A he and other land holders contended that they shall be happy to get compensation @ Rs.40,000/- per kani plus other benefits as admissible under the law. It is an admitted position that the compensation @ Rs.40,000/- per kani with other benefits as admissible as per law has been given to the referring-claimant. So, there is nothing to hold that the compensation at the market rate of the property was not paid to the referring-claimant.

28. Once the referring-claimant submitted before the L.A. Collector in writing that they were ready to get the compensation at a particular rate towards price of the acquired land and the L.A. Collector got satisfied and formed an opinion that the price claimed by the land holders is the market price of the acquired land on the date of notification under Section 4 of the L.A. Act, it is absolutely lawful to award compensation at such rate and the land holder is estopped by his own conduct to claim a higher price by way of further adjudication in respect of such acquisition of land.

29. In view of the discussions made above, I find no merit in the appeal and the appeal, therefore, stands dismissed.

30. Parties to bear their own costs.

31. Send back the L.C. record along with a copy of this judgment.

JUDGE