

**HIGH COURT OF TRIPURA
AGARTALA**

LA APP NO.37 OF 2017

The In-Charge, H.R. & E.R.,
Oil & Natural Gas Corporation Ltd.,
Tripura Asset, Agartala, P.O. Agartala ONGC,
P.S. Amtali, District: West Tripura,
PIN: 799 014

-----Appellant(s)

Versus

1. Sri Tapan Debnath,
son of Haralal Debnath,
resident of Gandhigram,
P.S. Airport, District: West Tripura,
PIN: 799 012

2. The State of Tripura ,
represented by the Secretary
to the Government of Tripura,
Revenue Department,
New Civil Secretariat Building,
P.S. New Capital Complex,
P.O. Secretariat, PIN: 799 010,
Agartala, District: West Tripura

3. The Land Acquisition Collector ,
West Tripura, Government of Tripura,
Old Secretariat Building,
P.O. Agartala, PIN: 799 001,
P.S. West Agartala, District: West Tripura

----- Respondent(s)

For Appellant(s) : Mr. S. Saha, Adv.

For Respondent(s) : Mr. D. Deb, Adv.

Whether fit for
Reporting : No

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order (Oral)

31/08/2018

Heard Mr. S. Saha, learned counsel appearing for the appellant as well as Mr. D. Deb, learned counsel appearing for the referring claimant-respondents. None appears for the remaining-respondents despite due notice from this court.

02. This is an appeal by the requiring department under Section L.A. Act, 1894 from the judgment and award dated 31.08.2016 delivered in Misc. (L.A) 285 of 2011 by the LA Judge, West Tripura, Agartala, Court No.2.

03. Certain facts are undisputed. By the notification under No.F.09(11)-REV/ACQ/XIV/10 dated 25.04.2010, issued under Section 4 of the LA Act, 1894, a tract of land from Mouja- Dakshin Champamura Sheet No-4/p measuring 1.8100 acre was acquired by the appropriate government for the appellant for construction of drill site for the location of KAD#17 under Bishalgarh Sub-Division in West Tripura District. In the said tract of land, the petitioner had a piece of land measuring 0.50 acre comprised in Khatian No.1259 and Plot No.3819/P of viti/tilla class.

04. The due notice was served to the referring-claimant under Section 9 of the LA Act and thereafter on completing the inquiry on various aspects of the land and

the comparables the Land Acquisition Collector, hereinafter referred to as the LA Collector, awarded under Section 11 of the LA Act on the land rate at Rs.1,00,000/- per kani. Thus, the total compensation was deduced on addition of the other components based on the said rate under Section 23 of the LA Act.

05. The LA Collector awarded the referring claimant-respondents a sum of Rs.1,70,000/- for the said piece of land measuring 0.50 acre. As the referring-claimant was not satisfied with the said rate, he pressed for a reference under Section 18 of the LA Act and the reference being Misc. (L.A) 285 of 2011 has been answered by the said LA Judge by his judgment and award dated 31.08.2016. It is apparent from the said judgment that on the basis of the comparable sale-deed No.1-1538 dated 31.08.2009 [Exbt.4] the LA Judge has re-determined the land rate @Rs.8,80,000/- per kani. For purpose of reference, the reasoning provided for such enhancement in the rate having relied on **Mehrawal Khewaji Trust (Regd) Faridkop vs. State of Punjab** reported in **AIR 2012 SC 2721**, is extracted hereunder:

"Considering the ratio laid down in the aforesaid decision of the Hon'ble Apex court, it is submitted by referring claimant that the land of Exhibit-2 is the Viti/Tilla class of land was sold at the rate of Rs.8,00,000/- per Kani executed on 31.08.2009 i.e. about one year prior to the notification, can be considered as comparable sale deed to assess the prevailing market rate of the acquired land adding 10% with it per year from 2009. At the same time the Sale deed (Exhibit-B) referred by L.A. Collector shows that it was a Lunga class of land and was sold at the rate of Rs.60,000/- per Kani on 10.10.2007 under South Champamura Mouja which in my view is much lower side of exemplar as the potential value of lunga land is much lower than Viti/Tilla class of land and the same was executed about 3 years prior to such notification. It is

admitted fact that the land in Tripura is increasing rapidly. Considering the sale deed No.1-1538 dated 31.08.2009 (Exhibit-2) as well as the totality of the facts of this case, it appears to me that the rate of the acquired land at the rate of Rs.1,00,000/- per Kani was in the lower side which ought to have been at the rate of Rs.8,80,000/- per kani and that would certainly compensate the referring claimant adequately. Accordingly, I do hereby opine that the referring claimant should get compensation of Rs.8,80,000/- per Kani for the acquired Vitti (Tilla) class of land covered in plot No.3819/p situated at South Champamura. Accordingly the same is allowed in favour of referring claimant."

This appeal has been filed by challenging the said finding as returned by the judgment dated 31.08.2016.

06. Mr. Saha, learned counsel appearing for the appellant has raised and emphasized two grounds of objection viz. (i) that the rate of a very small piece of land cannot be compared with the large tract of land as that create an anomalous situation and prejudice to the person who is purchasing or acquiring big tract of land and (ii) that the selection of the sale-exemplar is shrouded by collusiveness inasmuch as it is the referring claimant-respondents who instituted a writ petition being W.P.(C) No.62 of 1998 in this High Court asking for acquisition of the said land or in default releasing the land that was 'technically' acquired by the ONGC.

07. Mr. Saha, learned counsel has taken this court to the examination-in-chief of one of the referring-claimants namely Dipak Pal. In the said examination-in-chief, the order of the High Court has been extracted. For purpose of reference that part of the judgment dated 23.07.2008

whereby the said writ petition being W.P.(C) No.62 of 1998 was disposed of, is extracted hereunder:

"...it is directed that the ONGC shall within six months from today submit the proposal for permanent acquisition of the land under the provision of the Act to the appropriate authority. In case the entire land or any part of it belonging to the referring claimant i.e. the present referring claimant is not required permanently by the ONGC authority, same shall be released in favour of the referring claimant. The appropriate authority shall thereafter proceed to deal with such proposal for permanent acquisition of the land under the provision of the Act. It is open for the petitioner to seek reference in the event of he is not satisfied with the award that may be passed under the provision of the Act."

08. Mr. Saha, learned counsel appearing for the appellant has differently stated that the sale transaction as taken place by dint of the sale-deed No.1-1538 dated 31.08.2009 [Exbt.4] is a collusive deed and the deed was prepared for a very minimal area of land measuring .04 acre on an exaggerated price of land of Rs.8,00,000/-. Mr. Saha, learned counsel has further submitted that another 10% thereon has been added on account of the annual rate acceleration. Thus, the land rate was assessed @ Rs. 8,80,000/-. Mr. Saha, learned counsel has submitted that this method is highly unacceptable. In this regard he has referred to a decision of this court in **State of Tripura and Ors. vs. Mira Rani Kar (Datta)** [judgment and order dated 14.09.2016 delivered in LA APP No.79 of 2013 etc.] where this court had observed that:

"No doubt the land of Exhibit-1 is also at Mouja Gokulnagar which is a very big Mouja. Simply because the land of Exhibit-1 is situated in Mouja Gokulnagar, it cannot be treated or accepted as a comparable land to that of the acquired land."

Having considered that aspect of the matter, this court had accepted the principle of deduction of 50% in that case and accordingly the rate was re-fixed.

09. Mr. Saha, learned counsel appearing for the appellant has relied on another decision of this court in **Union of India vs. Abhimunya Das and Anr.** reported in **(2017) 1 TLR 85** where this court has observed that the determination must be based on some evidence and some sort of presumption or hypothesis.

10. Another decision of this court in **Union of India vs. Gopal Ch. Saha and Anr.** reported in **(2016) 1 TLR 1142** has been relied by Mr. Saha, learned counsel appearing for the appellant. In that case, the fundamental principles as evolved, had been applied for determination of the market price of the acquired land. Assessing the value of the acquired land all the time is a daunting task. It is a settled law is that the market price for the land under compulsory acquisition be determined taking into account the comparable sale instances. A sale transaction is ordinarily held after vigorous bargain between a seller and a purchaser and it reflects the actual market price at the time of transaction. So, a sale instance is held reliable for determining the rate of the acquired land. The price of the land from the vicinity, is taken as for determining the reliable compensation for the land under compulsory acquisition. If there are several sale instances of the

comparable land of the same locality or of the vicinity of the acquired land, then the sale instance carrying highest price should be accepted on strict **scrutiny** on similarity for determining the market price of the acquired land on the date of acquisition. It is a constitutional right of the land losers to get compensation at the market price along with the other components of compensation [see Section 23 of the LA Act]. While determining such compensation the increase or decrease in the price is to be taken into consideration. The future potential of the land shall be taken into account for assessing the just compensation.

11. In respect of adjustment of the value, Mr. Saha, learned counsel has referred to the decision of the apex court in **Himmat Singh and Others vs. State of Madhya Pradesh and Another** reported in **(2013) 16 SCC 392**. While enunciating the principle having referred **Mehrawal Khewaji Trust** (supra) it has been observed that when there are several exemplars with reference to the similar land, it is the general rule that the highest of the exemplars, if the court is satisfied that the transaction was a bona fide one has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value compare to the rate of the similar land in the locality, if shown to fetch in a bona fide transaction between a willing purchaser and a willing seller. In our view, it seems to be only fair that where sale deeds pertaining to

the 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 average of various sale deeds placed before the authority/court for fixing fair compensation.

12. Mr. Saha, learned counsel has again referred to the decision in **Himmat Singh** (supra) where the supreme court has deducted 50% from the determined rate on account of development. The decisions as referred have no universal application. These are delivered to a particular fact situation. The general principle is has to modulate for purpose of having the fair rate for the land-losers.

13. On the other side Mr. D. Deb, learned counsel appearing for the referring claimant-respondents has submitted that the allegation of collusion between the referring-claimant and the vendor of the sale-deed dated 31.08.2009 is nowhere in the record of evidence. A reference to the judgment dated 23.07.2008 of this court delivered in W.P.(C) No.62 of 1998, cannot be utilized to indicate to any collusion between the vendor and the referring-claimant. Mr. Deb, learned counsel has strenuously argued that the viti/tilla class of land fetches the most value in the market, which is growing with sharp acceleration. The component of potentiality cannot be discarded as a component for determining the rate.

14. Having heard the submission made by the learned counsel for the parties and scrutinized the records, this court is of the considered view that no direct evidence of collusion in creation of the deed dated 31.08.2009 and it also cannot be denied that by the said deed dated 31.08.2009, a very small piece of land measuring 0.04 acre was purchased whereas the acquired land measures 0.50. Thus, the comparison of the rate is unacceptable. That apart, it has been stated that the rate that has been given is the rate relating to the urban area, but the land acquired is from a rural area. In this regard, it would be appropriate to have glimpse of the deeds those were considered by the LA Collector. In a tabular form, number, name of the mouja, plot number, class of land, area in acre, deed number and date, total value of the land, value of the land per kani and the distance from the land proposed to be acquired has been provided which is as under:

Sl. No.	Mouja	Plot No.	Class of land	Area in acre	Deed No. & date	Total value of land	Value of land per kani	Distance from the land proposed to be acquired
1	2	3	4	5	6	7	8	9
1.	Dakshin Champamura Sheet No.3 & 4/P	3160 3163 3164	Bhiti, Bhiti, Bastu	0.28	1-1838 dt. 0.11.06	Rs.45,0000/-	Rs.64,286/-	2560 feet
2.	-do-	3787	Bhiti	0.14	1-1826 dt. 30.11.06	Rs.22,000/-	Rs.62,857/-	580 feet
3.	-do-	3334	Tilla	0.20	1-2733 dt. 27.08.07	Rs.20,800/-	Rs.41,800/-	5500 feet
4.	-do-	2612	Bhiti	0.40	1-3303 dt. 10.10.07	Rs.40,000/-	Rs.40,000/-	5100 feet
5.	-do-	2561, 2570	Bhiti, Bhiti	0.03 2	1-1448 dt. 04.08.08	Rs.10,000/-	Rs.1,25,000/-	5740 feet
6.	-do-	2428	Nal	0.30	1-148 dt. 28.01.10	Rs.30,000/-	Rs.40,000/-	5510 feet

It has been claimed that all those deeds are of the land from the far-away places in relation to the acquired land, whereas from the settlement map it appears that the land in the exemplar deed situated just next to the acquired land.

15. The only issue is therefore remains to be resolved by this court is that whether it was proper to compare the rate of small piece of land with the larger piece of land. The answer must be no. This court is of the further view that there is no sufficient material to hold that the exemplar deed is a collusive deed, but at the same time the rate of acceleration @ 10% also cannot be accepted by this court that may be in terms of the apex court decision 5% per year.

16. As a result, this court is of the view that the rate in the exemplar sale-deed dated 31.08.2009 is required to be adjusted and accordingly 20% deduction is made from the rate. After 20% deduction from the rate of the exemplar sale-deed the rate would be Rs.6,40,000/- per kani. With that the rate of acceleration be added @ 5%. The additional value that would be added is Rs.32,000/-. Thus the land rate would be Rs.6,72,000/- per kani.

17. On the basis of the said land rate, the compensation shall be assessed afresh by adding the component of the additional compensation under Section 23(1a) of the LA Act and the solatium @ 30% under Section

23(2) of the LA Act. The said amount which will be derived by the said process, as observed above, will carry interest in terms of Section 34 of the LA Act.

It is made clear, to obviate a confusion, that the solatium will also carry interest in terms of Section 34 of the LA Act from the date of notification under Section 4 of the LA Act. Thus, the impugned judgment and award dated 31.08.2016 is interfered with and the award is modified in terms of the above.

In the result, this appeal is partly allowed.

Draw the award accordingly.

Send down the LCRs thereafter.

JUDGE

