

**HIGH COURT OF TRIPURA
AGARTALA
L.A.APP.No.28 of 2024**

Smt. Jonaki Biswas (Sen),
wife of Shri Rakhal Chandra Sen,
resident of Sabroom, P.S. Sabroom,
P.O. Sabroom, District-South Tripura,
PIN-799145

----Appellant(s)

Versus

1. The Dy. Chief Engineer (Construction),
N.F. Railway, Badharghat Railway Station,
P.O. Siddhi Ashram, P.S. Amtali,
Agartala, West Tripura, PIN-799003

2. Land Acquisition Collector,
South Tripura, Belonia,
Office of the D.M. and Collector,
P.O. & P.S. Belonia, District-South Tripura,
PIN-799155

---- OP/Respondent (s)

For Appellant(s)	:	Mr. Suman Bhattacharjee, Adv.
For Respondent(s)	:	Mr. B. Majumder, DSGI.
Date of Hearing & Judgment & Order	:	30.09.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order(Oral)

This appeal is preferred challenging the judgment and award dated 26.07.2018 delivered by Learned L.A. Judge, South Tripura, Belonia in connection with Case No.L.A.(Ref.)53 of 2015. By the said judgment, Learned L.A. Judge has determined the value of the land @ Rs.1,24,000/- per kani along with other benefits.

[2] Heard Mr. Suman Bhattacharjee, Learned counsel appearing for the appellant as well as Mr. B. Majumder, Learned DSGI appearing for the respondent No.1.

[3] In course of hearing of argument, Mr. Suman Bhattacharjee, Learned counsel appearing for the appellant submitted that on the approach of the present appellant, the Learned L.A. Collector made the reference under Section 18 of L.A. Act before the Learned L.A. Judge, South Tripura, Belonia for appropriate and just compensation in view of the fact that at the time of acquisition of land, the market value of the acquired land was more than what was determined by the L.A. Collector. But the Learned L.A. Judge also failed to construe the documents submitted on behalf of the appellant claimant and assessed the market price of the acquired land @ Rs.1,24,000/- per kani which was too less and for that, this present appeal was preferred.

[4] In course of hearing of argument, Learned counsel appearing for the appellant drawn the attention of the Court that before the Learned L.A. Judge, the present appellant relied upon the exemplar deeds No.1-279 and 1-291 of the year 2010 which were adjacent to the acquired land. But the Learned L.A. Judge did not consider those documents and determined the market price of the acquired land @ Rs.1,24,000/- per kani.

[5] Learned counsel for the appellant further submitted that admittedly before the Learned L.A. Judge, the appellant could not submit any trace map to show the location of the acquired land and the land of the exemplar deeds as referred above for which the appellant has filed another application under Order 41 Rule 27(1)(aa) of CPC for permitting the appellant to adduce additional evidence.

[6] So, in summing up, Learned counsel for the appellant submitted that if the prayer of the appellant is not allowed and the judgment and award of the Learned L.A. Judge is not set aside than the appellant would be seriously prejudiced.

[7] On the other hand, Mr. B. Majumder, Learned DSGI appearing for the respondent No.1 submitted that based on the relevant exemplar deeds, the L.A. Collector and thereafter the Learned L.A. Judge determined the market

price of the acquired land @ Rs.1,24,000/- per kani and there is no infirmity in the judgment of the Learned L.A. Judge and submitted that at this stage, there is no scope to entertain the application filed by the appellant and urged for dismissal of this appeal with costs.

[8] The present appellant has preferred this appeal under Section 54 of L.A. Act. The gist of the case filed by the appellant is that the L.A. Collector for the purpose of construction of Railway line acquired land measuring 0.80 acres of land belonging to the present appellant of Khatian No.1913 appertaining to C.S. Plot No.5750 classified as Janga(Tilla) Mouja West Jalafa, Sub-Division-Sabroom vide notification No.F.9(04)-REV-ACQ/XIII/2012 dated 31.10.2012 and the L.A. Collector assessed the value of the acquired land @ Rs.78,000/- per kani for Jangal(Tilla) class of land. The referring-claimant i.e. the appellant being dissatisfied with the award of the L.A. Collector filed an application for referring the same to the L.A. Judge under Section 18 of the L.A. Act and accordingly the reference was made.

[9] Before the Learned L.A. Judge, the referring-claimant submitted claim statement and the requiring department i.e. the respondent No.1 herein submitted the counter statement and the L.A. Collector also submitted counter statement denying the entire assertions of the referring- claimant in the claim statement. The referring-claimant claimed compensation for the acquired land @ Rs.20,00,000/- per kani. The respondent No.1 as the requiring department and the L.A. Collector as respondent No.2 before the Learned L.A. Judge took the plea that considering the nature of the land, the L.A. Collector rightly determined the amount of compensation because the acquired land had no potential value and huge amount was required for the purpose of development of the said land. Admittedly, before the Learned L.A. Judge, the appellant relied upon sale deed No.1-279 and sale deed No.1-291 of the year 2010 under same Mouja. But as the said quantum of land involved in those deeds were very less, so, the Learned L.A. Judge took the plea that the small piece of

land cannot be the basis for determination of the value of the large tract of land and the claimant-appellant could not produce the trace map before the Learned L.A. Judge.

[10] In course of hearing of argument, Learned counsel for the appellant referred few citations which are discussed herein below :

In Nelson Fernandes and Ors. versus Special Land Acquisition Officer, South Goa & Ors. reported in **(2007) 9 SCC 447** the Hon'ble Supreme Court of India in para No.25 observed as under :

"25. We are not, however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, 1995 2 SCC 422 and L.A.O. vs. Nookala Rajamallu, 2003 (10) Scale 307 had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way, transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed. I.A. No. 1 of 2006 for substitution is ordered as prayed for."

Learned counsel for the appellant referred another citation of the Hon'ble Supreme Court of India in **Lal Chand versus Union of India & Anr.** reported in **(2009) 15 SCC 769** where the Hon'ble Apex Court in para Nos.30, 33, 34 & 35 has observed as under :

"30. This takes us to the value of "undervalued" sale deeds. When the respondents rely upon certain sale deeds to justify the value determined by the Land Acquisition Collector or to show that the market value was less than what is claimed by the claimants, and if the claimants produce satisfactory evidence (which may be either with reference to contemporaneous sale deeds or awards made in respect of acquisition of comparable land or by other acceptable evidence) to show that the market value was much higher, the sale deed relied upon by the respondents showing a lesser value may be inferred to be undervalued, or not showing the true value. Such deeds have to be excluded from consideration as being unreliable evidence. A document which is found to be undervalued cannot be used as evidence."

33. The sale transactions under Ex. A1 to A3 and A10 to A13 relate to plots used for residential or other non-agricultural purposes. Though these sale deeds describe the lands sold as agricultural lands, having regard to the prevailing land reforms laws, the size of the plots show that they were not used for agricultural purposes. For example, two of the sale deeds - Exs. A10 and A11, relate to 7 biswas of land each (about 350 sq. yds. each) and the purchaser is a business firm (M/s. Sant & Co.). Obviously, the land was not sold for agricultural purpose, as it is not possible to imagine plots measuring only 350 sq. yards being sold for agricultural purposes. Significantly, the other sale deeds, each of which relate to an area of one bigha and show a price of Rs.35000/- per bigha (three deeds) and Rs.49000/- per bigha (two deeds). It is evident the plots which were the subject matter of these sale deeds were sold as semi-urban land for residential or other non-residential purposes. There is no evidence or material to show that they were nominal or sham documents intended to create evidence of a higher market value. The variation in price between Rs.35000 to Rs.68571 may possibly be on account of several factors. It is possible that some plots were nearer while others were far away from roads or developed areas. In the absence of the evidence of vendors/vendees of these documents, we propose to take average of these transactions, which is approximately Rs.50,790/- per bigha, as the market value of small plots sold for residential or non- agricultural purposes.

34. But when the market value of such small plots intended for non- agricultural purposes is made the basis for determining the market value of large tracts of agricultural lands, it is necessary to make an appropriate deduction towards 'development' factor. The evidence shows that the acquired lands were at the relevant time (1981) in a rural area on the outskirts of Delhi, with access to roads and services nearby. In fact the Municipal Corporation of Delhi, within a few months after the acquisition, issued a notification dated 23/4/1982, under section 507(a) of Delhi Municipal Corporation Act, 1957 declaring that Rithala in the northern zone of Delhi shall cease to be a rural area. The appellants have also let in evidence to show that the acquired lands were situated in an area having a potential for development for residential use. The policy resolution dated 27.12.1980 of Delhi Development Authority in regard to development of Zones H7 and H8 (Rohini Scheme) in North-West Delh shows that the area was earmarked for fast urban development. Some facilities like roads, water, electricity had reached the area in a limited manner. Therefore, the appropriate deduction towards development, needs to be only 40% instead of the higher standard percentage of 60% to 70%.

35. On deduction of 40% from Rs.50790/- per bigha which the market value of small plots, the market value for the large tracts of lands acquired in December, 1981 would be Rs.30,474/- (rounded off to Rs.30500/-) per bigha. As the earlier three acquisitions were of the same year, but were in February and March (that is on 13.2.1981, 20.2.1981 and 13.3.1981) which are about 10 to 11 months earlier, the compensation in regard to the three earlier acquisitions is determined as Rs.28000/- per bigha. To this extent, the award of the High Court requires to be modified."

Similarly in **Central Warehousing Corporation versus Thakur**

Dwara Kalan UI-Maruf Baraglan Wala (dead) & Ors reported in **2023**

(14) SCR 926 the Hon'ble Supreme Court of India in para No.24 also observed as under:

"24. Taking an overall view in the matter and the consistent view of this Court, the fair and reasonable compensation in the present case would be best determined if we apply 8% annual increase with cumulative effect. This is for the reason that the gap is huge i.e. 11 years. For shorter period of 3-5 years, it could have been 10% or 12%. But in no case 15% would be justified for a period of 11 years as awarded by the High Court in the impugned order. In the present case, given the 11 years gap, 8% would be considered just and proper."

Referring the said citation, Learned counsel for the appellant submitted that those citations are very much relevant for decision of this case and furthermore, the observation made by the Learned L.A. Judge regarding exemplar deed in respect of small quantum of land cannot be discarded and furthermore, in respect of Railway Line, the concept of development would not arise. So, the determination of the value of the acquired land as determined by the Learned L.A. Judge was not proper.

[11] I have also gone through the certified copy of the map annexed by the referring-claimant i.e. the appellant herein. It appears that the land of the deeds relied upon by the appellant are adjacent to the acquired land, although, the said document could not be produced before the Learned L.A. Judge.

So, considering the facts and circumstances of this case and also in view of the principles of law laid down by the Hon'ble Apex Court in the aforementioned cases it appears to me that the determination of the amount of compensation made by the Learned L.A. Judge ignoring the deeds of the appellant was not proper. So, the matters needs to be remand back to the concerned L.A. Judge to re-determine the value of the acquired land in view of the principles of law laid down by the Hon'ble Apex Court in the afore noted cases and also to allow the appellant to adduce the certified copy of trace map in respect of the acquired land and other connected lands so substantiate his case properly before the Learned Trial Court.

[12] In the result, the appeal filed by the appellant is hereby allowed. The judgment and award dated 26.07.2018 delivered by Learned L.A. Judge, South Tripura, Belonia in connection with Case No.L.A.(Ref.)53 of 2015 is hereby set aside. The matter is remanded back to the Learned L.A. Judge with a direction to allow the appellant to adduce fresh evidence both oral and documentary in support of his claim in respect of the acquired land and also to allow him to adduce relevant documents including trace map, if any, and also to allow the contesting OPs to cross-examine the witnesses of the referring-claimant, i.e. the appellant herein and to allow them to adduce their witnesses, if any, afresh and thereafter to deliver a fresh judgment and award in accordance with law within a period of 6(six) months from the date of receipt of the copy of this judgment. Both the parties shall appear before the Learned L.A. Judge, South Tripura, Belonia on 05.11.2024.

The application for adducing additional evidence is accordingly stands allowed and disposed of.

The appeal is also accordingly stands allowed.

Send down the LCR along with a copy of the judgment.

JUDGE

SABYASACHI
BHATTACHAR
JEE

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BHATTACHARJEE
Date: 2024.09.30
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