

(2012) 01 GAU CK 0079
In the Gauhati High Court
Case No : L.A Appeal No. 02 of 2001

Santanu Kumar Jamatia

APPELLANT

Vs

Land Acquisition Controller, Agartala

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 51A, 51A

Citation : (2012) 4 GLR 25 : (2012) 3 GLT 488

Hon'ble Judges : P.K.Musahary, J

Bench : Single Bench

Advocate : Mr. S. Deb, Sr. Advocate , Mr. B. Debnath?? Advocate appeared for the Respondent: Mr. A.Ghosh, Addl.GA, Advocates appearing for Parties

Judgement

P.K.Musahary, J.—This appeal filed under Section 54 of the Land Acquisition Act, 1894 is directed against the judgment dated 12.12.2000 passed in Case No. Misc. (LA)11/1990 by the learned Court of Land Acquisition Judge, West Tripura, Agartala determining the market value of the acquired land at Rs. 1,58,000/ per kani with all statutory consequential benefits.

2. The facts of the case are that for the purpose of construction of a pump house and quarter for deep tube well scheme, a plot of land measuring 0.108 acre belonging to appellant Shri Santanu Kumar Jamatia was acquired by the State Government after issuing necessary notification and declaration. The Land Acquisition Collector, West Tripura district, Agartala, assessed the value of the land at Rs. 1 lac per kani but the appellant, as owner of the land, being dissatisfied and aggrieved, prayed for reference and accordingly reference was made under Section 18 of the Land Acquisition Act, 1894 (CLA Act" in short) to the Land Acquisition Judge concerned.

3. The appellant claimant claimed compensation at the rate of Rs. 15 lacs per kani keeping in view that the acquired land is in the neighbourhood of AgartalaTaliamura road adjacent to Taliamura town as well as connected with Agartala town with wide communication scope having all modern living facilities

linked by the National Highway and having State and Central Govt. offices like Tripura Road Transport office adjacent to it. To justify the valuation of the land @ Rs. 15 lacs per kani, the appellant produced certified copies of 2 sale deed instances contemporaneous to acquisition notification. The said documents were marked as Ext. 1 and 2. The appellant also produced certified copy of sale deed dated 26.11.1987 executed by one Amulya Charan Debnath in favour of one Nepal Chandra Das, as a contemporaneous sale instance, which was marked as Ext. 3. The son of the claimant/appellant, Shri Bijoy Kumar Jamatia, examined himself as PW 1 and another witness Shri Nepal Chandra Das as PW 2.

4. The said claim was opposed by the opposite party/respondent. One Shri Kalyan Kumar Das, who was an Amin in the office of the D.M., Agartala in the L.A. Section, was examined as OPW No. 1. He proved the assessment note prepared by the L. A. Collector, marked as Ext A and 6(six) nos. of sale deeds collected and submitted by him, on the basis of which the said assessment note was prepared. The Respondent's case is that the acquired land is a "Nal" type of land and it is of less value than the "Bastu land". The lands in the sale instances were "Bastu" lands and they are of higher value and the L.A. Collector rightly assessed the value of the acquired land.

5. On consideration of documents/materials placed and evidence on record, the learned LA Judge determined the market value of the land at the rate of Rs. 4 lacs per kani with all statutory consequential benefits vide judgment dated 30.6.1992 passed in Misc.(LA) No. 11 of 1990. On appeal preferred by the L.A. Collector, this Court by a judgment passed on 5.1.1999, relying upon the State of U.P., & Anr. Vs. Rajendra Singh AIR 1996 SC1564, set aside the said award and the matter to the learned L.A. Judge with liberty to both the parties to adduce further evidence. In compliance to the said order, the matter was taken up by the learned L.A. Judge. On behalf of the claimant/appellant, apart from the earlier evidence of Shri Bijoy Kumar Jamatia, PW 1 (son of the claimant), one Shri Nepal Chandra Das, the Vendee of the land contiguous to the acquired land was examined as PW 2 who proved the certified copy of his deed of purchase of land measuring 0.0085 acres which he purchased from one Amulya Charan Debnath at Rs. 40,000/-. On behalf of the LA Collector no further witness was examined.

6. Bijoy Kumar Jamatia, PW1, on behalf of his father stated that the acquired land lies in the neighbourhood of Agartala-Teliamura road adjacent to Teliamura town having all modern facilities. He further deposed that the land lies by the Assam Agartala National Highway and that some prominent shops are situated near the acquired land. He also stated that the acquired land lies by the side of Central Government Offices and TRTC station at Teliamura. His evidence stands unchallenged by the respondent/opposite party. PW 2 Nepal Chandra Das, the purchaser of lands (Exhibit3), deposed that he purchased the lands for Rs. 40,000.00 and also that the acquired lands lie near his purchased lands.

7. On behalf of the claimant/appellant also a certified copy of judgment dated 24.5.1989 rendered by L.A. Judge in Misc. (LA) No. 47(A) of 1989 (Sn. Bajendra

Chandra Dey & Anr. Vs. LA. Collector, West Tripura, Agaratala & Ors. which decided several other cases analogously, was produced. The cases decided on 24.05.1999 relate to lands acquired under notification dated 25.06.1986 i.e. 9 months prior the date of notification of the present case and the learned L. A. Judge by his said common judgment passed on 24.05.1999 determined the market "ialue of the said lands @ Rs. 12,00,000.00 per kani for "Dokanviti" lands while for "Bastu lands"? Rs. 6,00,000.00 per kani and also granted other benefits. The claimantappellant also proved the copies of other sale deeds marked as Exhibit 1 and Exhibit 2.

8. I have heard Mr. S. Deb, learned Senior Counsel assisted by Mr. B. Debnath, learned counsel for the appellant and also Mr. A. Ghosh, learned Additional Government Advocate, Tripura, for the Respondent.

9. Mr. Deb, learned Senior Counsel submits that while passing the impugned judgment, the learned L.A. Judge heavily relied on the decision of the Apex Court in P. Ram Reddy & Ors. Vs. Land Acquisition Officer, Hyderabad Development Authority, decided on 27.1.95 and reported in (1995) 2 SCC 305. According to him the said judgment has been overruled on the point of Section 51A of the LA Act in Land Acquisition Officer Vs. V.Narasaiah; reported in (2001) 3 SCC 530, wherein a 3Judge Bench of the Hon"ble Supreme Court explained the purport of Section 51 A. The said judgement in P. Ram Reddy(supra) was considered further and overruled by a Constitution Bench in Cement Corporation of India Ltd. Vs. Purya & Ors.", reported in (2004) 8 SCC 270, wherein it is held that the law laid down in V. Narasaiah (supra) does not lay down the correct law. The Constitution Bench, according to Mr. Deb, has settled the law that the certified copy of the sale deed could be relied upon for determination of market value of the land. In this context, he submits that the learned L.A. Judge committed grave error in law in not accepting the certified copy of the sale deeds (Ext 1, Ext 2 and Ext 3). He also submits that the learned L.A. Judge committed grave error in law in not accepting the certified copy of the judgment in Misc. (LA) No. 47(A) of 1989, which are on record, being public document. In this regard he refers to decision in Bhag Singh & Ors. Vs. Union Territory of Chandigarh, (1992) 4 SCC 692. To reinforce his submission, the learned Senior Counsel also refers to Printers House Private Ltd. Vs. MST Saiyadan & Ors.; reported in (1994) 2 SCC 133 and Administrator General Vs. Collector, Varanasi; (1988) 2 SCC 150 and Shri Radha Mohan Goenka Vs. Collector of Kamrup, Gauhati reported in (1985) 2 GLR 53.

10. Mr. Ghosh, learned Govt. Advocate, appearing for the respondent submits that no wrong, either in facts or in law, has been committed by the learned L.A. Judge. Referring to para 8 of the impugned judgment he submits that undisputedly, after remand, the claimant appellant examined neither the vendor nor the vendee to prove the contents of Ext. 1 and 2 and so the said documents can not be taken into consideration. Further, referring to Ext 3, he submits that the contents of the said document was proved by the Vendee (PW 3) but the learned L.A. Court found that the land as mentioned in the Ext 3 is "Dokan Viti"

alongwith tin shed structure thereon and as such it is of much more higher value than the value of an ordinary "Nal" and 6 Viti" land like the acquired land. Moreover, the learned L.A. Judge, as argued by Mr. Ghosh, came to conclusion that the Ext3 is not a contemporaneous sale deed inasmuch as it was executed and registered on 26.12.1987 whereas the acquisition of the land was made by issuing Govt Notification dated 21.3.1987 and as such there is no valid ground for interference with the impugned judgment in appeal.

11. The rival submission of the learned counsel for the parties, as could be understand, calls upon this Court to consider and decide the following issues

(1) Whether the certified copies of sale deed instances as produced by the claimant appellant and marked as Ext. 1 & 2, without proving the contents thereof by the Vendor or Vendee, could be taken into evidence and consideration for determining the market value of the land under acquisition?

(2) Whether the sale deed instance Ext3 executed and registered on 26.12.1987 i.e. 9(nine) months before the publication of acquisition notification could be treated as a contemporaneous document for the purpose of determining the market valuation of the land under acquisition.

(3) Whether the compensation awarded is just and reasonable?

In regard to issue No. 1, it may be noted that Section 51A was inserted in the LA Act providing the Court dealing with cases connected with land acquisition to give evidentiary value to certified copy of the registered sale transaction without examination of the Vendor or the Vendee. For a ready reference, the aforesaid Section 51A is quoted hereunder

"51A. Acceptance of certified copy as evidence in any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

12. A plain reading of the newly added provision gives an impression that the certified copy of the sale deed/transaction need not be proved by the Vendor or the Vendee or any party to the transaction. Different interpretations were given to the aforesaid provision under Section 51 A. In one interpretation it was not necessary to prove the contents of the certified copy of the sale deed but the said interpretation was questioned in other cases. It is contended that merely because a certified copy of the sale deed has been made admissible in evidence, the same by itself would not mean that the contents thereof stand proved inasmuch in the said Section the word "may" has been employed, which naturally means that the Court may or may not accept the evidence contained in a deed of sale. Such documents/material when brought on record by the parties concerned, the Court is entitled to appreciate the evidence for determining the issue raised before it and in such process the Court may or may not accept them as a piece of legal evidence and may reject the same. The acceptability of such

documents in evidence and the discretionary power of the Court has been discussed by the Constitution Bench in Cement Corporation of India Ltd(supra) with reference to several other cases decided earlier. It is needless to refer to all those cases. The issue posed is no longer res integra. The Constitution Bench in the above case, accepting the view taken earlier in V. Narasaiah's case, made observation as under

"35. A registered document in terms of Section 51 A of the Act carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof," it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden the Court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the Court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf:

And then held as under

"39. While it is clear that under Section 51 A of the LA Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion that the decision of this Court in the case of Land Acquisition Officer & Mandal Revenue Officer Vs. V. Narasaiah lays down the correct law."

13. The relevant undisputed fact in the present case is that the claimant/appellant did not examine the Vendor or Vendee of the Ext. 1 and 2. The learned reference Court, on that count, refused to accept the said two documents as legal evidence and consequently refused to determine the value of the acquired land at the same value mentioned in the certified copy of the sale deeds, Exts. 1 & 2. It is also an undisputed fact that the respondent raised objection to the admissibility of the said documents but failed to rebut by adducing other evidence. Under Section 51 A, the Court can draw a presumption of genuineness of a registered document which can be rebutted by the other party and if the presumption is not rebutted by discharging the burden, the Court may act on the basis of such presumption. The aforesaid change in law came into force before the impugned judgment was rendered but it is our bounden duty to take note of the change and settlement of law when a related issue has been raised even at subsequent stage. The settled law puts emphasis on effective rebuttal by adducing evidence and not merely by raising objection. From records it is found that land mentioned in Ext. 1 (Dhokan viti) and Ext.2 situated at Teliamura near Assam Agartala road were sold at Rs. 20 lacs and Rs. 16 lacs per kani respectively and the appellant claimed compensation @ Rs. 15 lacs per kani on the basis of the said valuation. Against the said claim the learned LA. Judge awarded compensation @ Rs. 1,58,000/ per kani. In my considered view there is no rational in not taking into consideration the Exts1 & 2 for fixing the valuation

of the acquired land.

14. As regards the second issue, it is an admitted position that the claimant relied on a sale deed instance dated 26.12.87 and the statutory acquisition notification was issued on 21.3.1987. The time gap between the said sale deed and the notification is about 9 months only. There is no difficulty in accepting the said sale deed as a contemporaneous document of sale instance in view of several judicial pronouncements, which needs no further reference. However, it may not be irrelevant to refer again to Narasaiah's case (supra), wherein it is held that the state has the burden to prove the market value of the lands acquired by it for which the State may have to depend upon the prices of lands similarly situated, which are transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. From the assessment note dated 10.1.89 it is an accepted position that the State, through its Amin, collected as many as 6 sale deeds executed between January, 1987 and March, 1987 for assessing the value of the acquired land. The sale deeds produced by the claimant/appellant were also executed in the same year, 1987. There is no justification in treating the Exts.1 & 2 as not contemporaneous sale documents. Of course, assessment of value of a particular land would depend on various factors which would be considered later accepting the documents relied upon by the appellant as contemporaneous sale instances. 15. The last issue is very important. At the outset it is pertinent to note that in Ram Reddy's case(supra), the Apex Court listed several factors to be considered for determining the value of acquired land. They are reproduced below:

- "(i) the situation of the acquired land visavis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;
- (ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;
- (iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;
- (iv) absence of statutory impediments or the like for using the acquired land for building purposes;
- (v) existence of high ways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;
- (vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and
- (vii) lands around the acquired land or the acquired land itself being in demand for building purposes, to speed up a few."

Next came the decision in Ravinder Narain Vs. Union of India, (2003) 4 SCC 481,

holding that the first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1) of the LA Act. It was held further that the value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Most important pronouncement has been made in paragraph 9 of the judgment which is reproduced below

"9. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages."

16. There is evidence on record that the acquired land is situated near the National Highway, well connected with public roads in a growing township, having the facilities of educational institutions, health care centre and other amenities; not far of from the State capital Agartala. With the aforesaid facilities and advantages, the Court can take judicial notice that the land in question is situated at an urbanised and commercialised place or having the potentials of being urbanised or commercialised. The Court can reasonably presume that the price of the land in such place is rising high and the owner of the land is entitled to existing market price or the reasonable price commensurate with the rising rate of land value in the adjoining place or in the locality. Unfortunately, it is noticed that the learned reference Court failed to take notice of these aspects and adopted conservative exercise for fixing the value of the acquired land unconcerned with the principles laid down by the Apex Court.

17. The correctness of fixing the value of the acquired land by the learned L. A. Judge at Rs. 1,58,000/ per kani is to be examined. The learned L.A. Judge proceeded on the premises that the acquired land is of "Nal" class which is of inferior class and of much less value compared to the "Bastu" land in the locality and the place adjoining to the acquired land. For that purpose reliance has been put on the prices of land reflected from the sale deeds collected and produced by the Amin, who was examined as OPW 1. As indicated in the sale deeds produced by the said Amin, the sale value varied from Rs. 10,000/ to Rs. 40,000/per kani in the year 1987. Admittedly, the respondent did not produce and examine any of the Vendors or the Vendees or any interested parties in the sale transaction to prove the contents of the certified copy of the sale deeds, hi spite of that, the learned L.A. Judge accepted the same as reliable evidence and in fact fixed the valuation of the acquired land at Rs. 1,58,000/ per kani in contravention of

Section 51A of the LA Act and the law laid down by the Hon'ble Supreme Court in various cases as already discussed and referred to earlier. It may not be out of relevance to state that the learned LA. Judge refused to accept the sale deed instances (Exts. 1, 2) which were produced by the appellant and the Ext. 3 produced by the appellant and testified by its Vendee (PW2), who proved the contents of the sale deed Ext. 3 saying that the land mentioned in the said Ext. 3 is "dokaan viti" alongwithtin shed structure which is of much higher value then the ordinary "NaF and "Viti" land like the acquired land. In the impugned judgment there is no indication as regards the difference of price of "Dhokaan Viti" land and "NaF" land. In the Ext. 3, it is stated that PW2 purchased V2 ganda land at Rs. 40,000/ in the year 1987. It is stated at the Bar that 20 gandas of land is equal to 1 kani. If the price of ? ganda of land is Rs. 40,000/, the price of 1 kani of land would be $2 \times 20 \times 40,000/ = \text{Rs. 16 lacs per kani}$. In his oral evidence PW 2 stated that the acquired land is situated at a distance of 200 cubits from his land which is of viti class land. In cross examination he denied the suggestion that his land is not situated by the side of the acquired land of Santanu Kumar Jamatia. He also denied the suggestion that the nature and location of the acquired land is not similar to his land. From the evidence of PW 2 it has been proved that his land and the acquired land are of same status and situated at the adjoining place. This evidence could not be demolished by the respondent by furnishing/adducing any other evidence. The respondent merely put some suggestions in cross examination which have been denied by the PW 2. In my considered view, the claimant appellant has been able to prove that the price of the land in the year 1987 at the adjoining place to the acquired land was Rs. 16 lacs per kani. The claimant appellant has been able to discharge his burden in proving the price of the acquired land in terms of the requirements under Section 51A of the LA Act and also in terms of the judgment of the Constitution Bench in Cement Corporation of India Ltd.(supra).

18. The respondent made no attempt to show or prove that the sale transaction through Ext. 3 is not bona fide or it was acquired fraudulently or in an illegal manner. In other words, the genuineness or legality of Ext 3 sale deed has not been challenged by the respondent. In such circumstances, the Ext. 3 sale deed is to be accepted as a piece of legal documentary evidence. Once the legality of the document is accepted and admitted into evidence, the contents of the same which have been proved by the Vendee (PW 2), cannot be questioned. It follows that the price of the land mentioned in Ext. 3 has been admitted. The Court is, of course, duty bound to compare the status of the acquired land with the sale instance land of Ext. 3 for fixing the price. The respondent has been able to prove that the land in Ext. 3 is a "Bastu" class land with tin shed and its value is higher than the value of the acquired land. But how much? The exact figure can never be found. The Court has to fix the price of the acquired land at reasonable rate. But what is the reasonable rate ? Court has to do some guesswork based on evidence on record. The evidence on record hi this case is that the distance between the acquired land and the Ext. 3 land is only 200 cubits. The potential of

both the plots of land should be presumed as same and equal in absence of contrary evidence on record. The Respondent side has not led any evidence in this regard. This being the position, the price of the acquired land can reasonably be fixed at Rs. 12 lacs per kani at the lowest, which the appellant/claimant can reasonably expect. At the same time if the price is fixed at the rate below Rs. 12 lacs per kani, it would amount to undue deprivation of legitimate compensation. Similarly, if the price of acquired land is fixed at Rs. 16 lacs per kani, it would amount to unjust enrichment. A balance is to be maintained so as to ensure payment of reasonable compensation to the land owner and save the public money from excess payment. I come to this conclusion in terms of the settled position of law in Ravinder Narain(supra) that the market value of the acquired land should be determined correctly and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner.

19. The sale deed instances collected and produced by the Amin (OP W1) on the basis of which the L. A. Collector prepared the assessment note were not testified and proved by examining the Vendors or Vendees as required under the established law including the judgment of the Constitution Bench in Cement Corporation of India Ltd.(supra). The aforesaid sale deed instances have been effectively rebutted by the claimant appellant by adducing sale deed in respect of the land adjoining to the acquired land and also by examining the Vendee Shri Nepal Ch. Das (PW 2) as discussed earlier. In my considered view the sale instances introduced and relied upon by the respondent, on being rebutted in accordance with law, cannot be taken into consideration for rejecting the claim of the appellant that the acquired land is valued at Rs. 12 lacs per kani. In coming to this conclusion, I have taken into account the status, location and potential of the acquired land and also the increasing rise in the price of lands at an urbanised and commercial place having all the essential establishments like educational institutions, hospitals etc., besides being located near the State capital well connected with National Highway and road communications.

20. From record I find the certified copy of common judgment dated 24.5.99 delivered by the L.A. Judge in Case No. Misc. (LA) 47(A) of 1989 and others, filed by the claimant through first instance on 28.2.2000. In this regard, in the impugned judgment, the learned L.A. Judge, held:

"I find nothing that the lands which is the subject matter of that cases is in any way connected or near to the present acquired land. No iota of oral evidence adduced to connect it with the present acquired land."

I am in agreement with the learned L. A. Judge in this respect. The material particulars regarding the acquired lands in the aforesaid L.A. case are lacking. The legal position on the binding character of a certified copy of the judgment and order in a similar matter is to be accepted but the same can not be accepted as a matter of general principle in L. A. case for the valuation of the acquired land is to be determined taking into account various factors, mainly the value of

the adjoining land. The point urged by the appellant calls for no consideration.

21. In view of the above discussion and findings, the impugned judgment dated 12.12.2000 passed in Misc.(LA) 11/1990 is liable to be quashed and set aside. It is accordingly quashed and set aside. It is declared that the appellant shall be entitled to payment of compensation of the acquired land @ Rs. 12 lacs per kani as against his claim of Rs. 15 lacs per kani with all statutory consequential benefits as awarded by the learned L. A. Judge in the impugned judgment with interest stipulated thereon within a period of 60 (sixty) days from the date of receipt of a certified copy of this judgment.

22. In the result, the appeal stands allowed. No costs.

23. Return the LCRs forthwith.