

(2009) 10 GAU CK 0036

In the Gauhati High Court

Case No : L.A. Appeal No's. 23 to 30 of 2000

State of Tripura and Another

APPELLANT

Vs

Brajendra Chandra Das

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 23(2)

Citation : (2010) 5 GLR 352 : (2010) 1 GLT 406

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : T.D. Majumdar, for the Appellant; P. Deb (Paul), for the Respondent

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Being aggrieved by the judgment and order passed by the learned Addl. District Judge, West Tripura, Agartala allowing the Misc. L.A. Case Nos. 43, 44, 45, 101, 103, 104,.106 and 107 of 1994 enhancing the rate of compensation in respect of the acquired land of the claimant respondent, the State of Tripura has preferred this batch of appeals.

2. Common question of facts and law being the subject matter of this batch of appeals which was disposed of by the learned L.A. Judge by a common judgment dated 27.2.1996, as prayed for by the learned Counsel appearing for the parties, all these appeals are heard analogously and disposed of by this common judgment.

3. I have heard Mr. T.D. Mazumdar, learned Government Advocate appearing for the appellant State and Mrs. P. Deb (Paul), learned Counsel appearing for the claimant respondents in all the cases.

4. State of Tripura, with a view to construct a link road from Jironia to Dusmanta Nagia via Subhas Nagar in the District of West Tripura issued a Notification u/s 4 of the Land Acquisition Act, 1894 being Notification dated 27.7.1987 which is published in the Tripura Gazette (FO) in its issue dated 16.9.1987. The aforesaid

Notification also included the land of the present claimant respondents. Ultimately, after following all the necessary procedures as contemplated under the L.A. Act described in the aforesaid Notification, the land was duly acquired by the State Government. The L.A. Collector assessed the compensation in respect of the acquired land as follows:

- (a) Rs. 60,000 per kani in respect of Nal land.
- (b) Rs. 40,000 per kani in respect of Bastu and Viti land.
- (c) Rs. 20,000 per kani of Chara land.
- (d) Rs. 12,000 per kani in respect of Tilla land.

5. That apart, additional compensation @ 30% u/s 23(2) of the L.A. Act and further 12% u/s 23(1)A of the Act from the date of publication of Notification to the date of award and also damage cost of trees and removal costs of huts were assessed. After assessment of their Damages, the amount was paid to the claimants to the extent of their entitlement. The claimant respondents, however, were not satisfied with the amount paid and accepting the amount on protest prayed for referring the matter to the court. In terms of their prayer, references u/s 18 of the L.A. were made by the L.A. Collector to the judicial authority, i.e., to the court of learned District Judge for necessary adjudication of the claim for enhanced compensation.

6. The grievance of the claimants was that the L.A. Collector has paid a very meager amount and the compensation was not paid according to the market value of the land in the area and accordingly the claimant respondents claim Rs. 8,00,000 to Rs. 10,00,000 per kani irrespective of the class of land. On being referred the matter to the learned District Judge, the cases were made over to the learned Addl. District Judge for necessary disposal wherein respective cases were registered as Misc. L.A. Case Nos. 43, 44, 45, 101, 103, 104, 106 and 107 of 1994. Both the parties contested the proceeding before the learned L.A. judge. Both the parties adduced oral and documentary evidence in support of their respective claim. The learned trial judge vide common judgment and order enhanced the compensation from Rs. 20,000 to 60,000 per kani in respect of Viti class of land, from Rs. 60,000 to 85,000 in respect of Nal class of land, from Rs. 40,000 to 60,000 in case of Bastu class of land and respect of Tilla class of land it was enhanced from Rs. 12,000 to Rs. 25,000 vide common judgment and order dated 27.2.1996. Challenging the aforesaid judgment, the present batch of appeals have been filed the State.

7. From the record of the case it appears that the respective area of land acquired from the claimant respondents are very small in quantity which are as follows:

- (a) In LA 23/2000, the acquired area of land is 0.070 acres.
- (b) In LA 24/2000, the acquired area of land is 0.090 acres.

- (c) In LA 25/2000, the acquired area of land is 0.030 acres.
- (d) In LA 26/2000, the acquired area of land is 0.064 acres.
- (e) In LA 27/2000, the acquired area of land is 0.120 acres covering three different plots.
- (f) In LA 28/2000, the acquired area of land is 0.185 acres.
- (g) In LA 29/2000, the acquired area of land is 0.085 acres.
- (h) In LA 30/2000, the acquired area of land is 0.145 acres.

8. Mr. Mazumdar, learned Government counsel appearing for the State submits that while passing the impugned judgment the learned trial judge did not consider at all the oral and documentary evidence adduced on behalf of the appellant and enhanced the compensation so awarded by the LA Collector without having any lawful basis thereof which requires interference by this Court in appeal. Per contra, Mrs. P. Deb, learned Counsel appearing for the claimants respondents strenuously urged that the land acquisition collector totally failed to recommend for payment of market value of the acquired land and the entitlement of compensation at higher rate was duly proved by the claimant respondent by producing oral and documentary evidence and accordingly the learned trial judge took a reasonable stand in enhancing the value of the acquired land, though the market value of the said acquired land is in fact more than what has been awarded by the learned L.A. Judge.

9. In the conspectus of submissions made by the learned Counsel appearing for the parties, the court is required to determine as to whether the enhancement of the compensation made by the learned trial judge as indicated above is justified under the law and facts of these appeal. The aforesaid query lead me to go through the evidence and materials available on record. Both the learned Counsel have also referred to the evidence and materials available on record.

10. In L.A. Appeal No. 23/2000 one claimant Gajendra Chahdra Das was examined as PW1 whereas Prabodh Ch. Roy Choudhury was examined as P.W.2. Similarly, in L.A. Appeal No. 24/2000 the son of the claimant Abhikal Mazumdar was examined as PW1 whereas OPW Prabodh Roy Choudhury was examined as witness by the L.A. collector. In other case also one PW1 was examined and the L.A. Collector examined said Prabodh Roy Choudhury as witness. Perusal of the statement of the witnesses discloses that although one individual PW was examined in each of the L.A. cases before the learned L.A. Judge but virtually their statements are almost one and same. All the witnesses relied on two documents namely copy of the Exts.1 and 2. OPW No. 1 Prabodh Ch. Roy Choudhury has also adduced common evidence on behalf of the respondent collector party wherein he relied on the Exts. A and B as produced by him.

11. PW1 in each of the cases have stated that the acquired land was a plain land and the land in question was kept vacant for construction hut to do business

therein. He also stated that Jirania P.S. Higher Secondary School, Block Office, Jirania Engineering College, etc., are closely situated with him acquired land and water supply and electric supply facilities are also available in that area and also 40 seater Jirania P.H.C. and Veterinary Hospital are nearer to his acquired land. He also stated that as the road runs towards south from the acquired land it is possible to go to the Head Office of TTAADC (District Council), Champaknagar, Jampaijala and the road runs towards north of our acquired land and it is possible to go to Mandainagar. He further stated that on the west of his acquired land the electric supply office is situated in the road-side and the road is extended up to Mohanpur (Jirania). On the eastern side also there is a road which goes up to Champaknagar and by the side of the said road Jirania P.H.C. is situated. He further stated that L.A. Collector paid the compensation @ Rs. 60,000 per kani and being dissatisfied with the said rate by making reference claims to enhance compensation @ Rs. 8/10 lakhs per kani. It is also seen from the evidence of PW1 that nearer to the acquired land Jirania bazaar is also situated which sits twice in a week and several brick fields are also situated making the shape of the locality as an industrial area. PW1 produced copies of the sale deed dated 7.5.1985 A.D. being Deed No. 1-3396 by which the land measuring 1.25 gandas was purchased by one Smt. Alpana Saha from one Prabir Kumar Das and others @ Rs. 4,00,000 per kani on 7.5.1985 which was exhibited as Ext.1. He has also produced Ext.2, Sale Deed No. 1-11083 dated 13.12.1975 executed by Paritosh Saha, purchaser and Pranballav Saha, seller by which a plot of land measuring 1 kara, 2 kranta, 8.75 dhur was sold at Rs. 10,000 @ Rs. 9,20,000 per kani. Although this witness was cross-examined but nothing adverse could be elicited affecting the statements made during in chief examination.

12. Scrutiny of the deposition of OPW Sri Probodh Roy Choudhury discloses that during relevant time he was working as Amin in the Office of the L.A. Collector, Vest Tripura, Agartala and he collected connected Sale Deeds for assessment of compensation in the related L.A. Cases. He stated, inter alia, that he proved the Gazette Notification, Assessment Notes and two Sale Deeds. The said Sale Deed No. 1-1007 is dated 18.3.1987 by which 5 gandas were purchased for Rs. 15,000 @ Rs. 60,000 per kani. Similarly, by another Sale Deed No. 1-6301 dated 5.8.1987, an area of land measuring 0.13 gandas were purchased for Rs. 11,000, i.e., @ 34,000. These documents were exhibited as Exts. A and B.

13. From the aforesaid evidence adduced on behalf of the claimant respondent we find that the advantage and facility pertaining to the acquired land was not denied by OPW 1. Out of two documents produced by the OPW 1. Ext.B is dated 5.8.1987, apparently executed after the issuance of the Notification u/s 4 of the L.A. Act. In contrast to the documents so filed by the PW1 as Exts.A and B it discloses that the date of the document, i.e., Ext.1 is dated 7.5.1985 whereas the Ext.2 is dated 13.12.1975. The Notification u/s 4 of the L.A. Act having issued on 27.7.1987 both the Exts. 1 and 2 are prior to the said Notification. Ext. 2 was executed 12 year prior to the said Notification which goes to show that the

land purchased through said Ext. was at Rs. 9,20,000 per kani on 13.12.1975. It is common knowledge that value of land does not decrease but goes on increasing year by year. From the record it is also found that the L.A. Collector while considering for payment for compensation for the damage caused to the claimant in acquiring the land", has taken note of as many as seven sale deeds. L.A. Collector while recommending for fixed compensation to the claimant u/s 11 of the Act is required to formulate his opinion about what amount should be granted as compensation for the said acquired land, apart from other requirement. Obviously, while making such consideration all the relevant factors including the advantages pertaining to the area of the land which has direct affect on the market value are also required to be considered. But from the record we find that the L.A. Collector while assessing such compensation did not consider this vital aspect of the matter. Consequently, being aggrieved the claimant respondents got the matter referred to the court u/s 18 of the L.A. Act. Dispute here is not as regard to the apportionment of the amount claimed by different person but it is as regards of quantum of amount of compensation only.

14. In deciding the claim in a reference case the compensation in respect of acquired land u/s 23 of the L.A. Act makes it obligatory upon the L.A. court to take into consideration the market value of the land at the time of publication of the Notification u/s 4(1) of the Act along with the other damages. The proceeding of a reference case is not to be treated as an appeal and it is an original proceeding before the learned L.A. Judge and accordingly both the parties were allowed to adduce their evidence as in an original proceeding and the same right was duly exercised by both the appellant and claimant respondents. In determining the market value, the court is to keep in mind the general price of the land as well as nature and character of the land.

15. In the instant case, the land in question was acquired for widening the public road which goes to show that the acquired land is road side land. The road side land normally fetch higher value then the land situated at the distant from the road. The claimant respondents in support of their claim has adduced clear, cogent and reliable evidence pertaining to the value and situation of the acquired land. It is also on record that the claimants were contemplating to construct hats to do business in the acquired land and such statement is very much relevant to the issue inasmuch as their land are situated just on the side of the road and the same would fetch much higher value or generate good income having high potentiality. The evidence so, adduced by PW 1 clearly disclose that advantages that could be derived from the acquired land. The topographical area of the land shows that there are various public institution including hospital and administrative buildings and other offices. OPW 1 though submitted two. Sale Deed in support of the assessment made by the L.A. Collector, one of the documents, i.e., Ext.B was executed after the issuance of the Notification u/s 4 of the Act has not consequence in support of the appellant. Looking into the acceptability of the value as disclose from Exts. 1 and 2 vis-a-vis Ext. A, coupled with advantage pertaining to the acquired land, the learned trial Judge accepted

the contentions of the claimant that there should be enhancement of the compensation of the land from what has been assessed by the learned L.A. Collector. Consequently, the learned L.A. judge enhanced the market value of the acquired land from Rs. 60,000 to Rs. 85,000 per kani in respect of nal class of land, from Rs. 40,000 to Rs. 65,000 in respect of Bastu and Vita Class of land per kani, from Rs. 20,000 to Rs. 40,000 in respect of Chara class of land and from Rs. 12,000 to Rs. 25,000 in respect of tilla class of land and there is no dispute in respect of those compensation awarded u/s 23 of the L.A. Act. The learned trial judge considered all aspect of the matter and in fact he did not accept the claim made by the claimant respondents claiming more compensation in terms of the Sale Deed so adduced by them.

16. Another important factor to be considered in the case is area of land acquired from the each of the claimant respondent which is much smaller in quantity as indicated above. From the perusal of the impugned judgment I find that the learned L.A. judge considered all the relevant factors necessary for such enhancement under the law and arrived at a just and proper decision to enhance the compensation in the manner as indicated above.

17. Consequently, I do not find any reason to interfere with the impugned judgment and accordingly, this batch of appeal stands dismissed. Interim order, if any, passed earlier stands vacated. Appellant is directed to pay the balance amount of compensation as early as possible with interest accrued thereon.

18. No costs.

19. Send back the LCRs forthwith.