

(2015) 08 TP CK 0052

In the Tripura High Court

Case No : L.A. Appeal No. 19, 20, 21, 22, 23, 24, 25, 26 of 2011 and C.O. (FA) 4, 5 of 2011

State of Tripura and Others

APPELLANT

Vs

Mon Mohini Debi and Others

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1-A), 23(2), 28, 4

Citation : (2015) 4 GLT 728

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : T.K. Roy, K.N. Bhattacharji, Sr. Advocates and D.C. Nath, Advocate, for the Appellant; R. Debnath, B. Debnath and D.C. Nath, Advocates, for the Respondent

Judgement

Utpalendu Bikas Saha, J.—All these appeals and cross-objections have arisen from the common judgment and award dated 27.1.2010 passed by the learned L.A. Judge, West Tripura, Agartala in Misc. L.A. 43 of 2005, Misc. L.A. 44 of 2005, Misc. L.A. 46 of 2005, Misc. L.A. 49 of 2005, Misc. L.A. 51 of 2005, Misc. L.A. 52 of 2005, Misc. L.A. 53 of 2005 and Misc. L.A. 91 of 2005. Heard the learned counsel for the parties.

2. Admittedly, a notification under Section 4 of the Land Acquisition Act, for short here in after referred to as "the Act", was issued on 29.5.2002 to acquire 24.83 acres of lands belonging to the claimant-respondents and others under kunjaban mouja for construction of residential quarter and prestigious bungalows within the new capital complex under Sadar sub-division, Agartala, West Tripura district.

3. In Misc. L.A. 43 of 2005, land measuring 3.17 acres of plot No. 2052 and 2050, Khatian No. 735/2 under Kunjaban mouja was acquired, in Misc. L.A. 44 of 2005, land measuring 0.73 acres, under sheet No. 3/P, plot No. 2007, Khatian No. 13 87 of viti class of land was acquired, in Misc. L.A. 46 of 2004, land measuring 0.20 acres of viti class of land under plot No. 1991, Khatian No. 547

was acquired, in Misc. L.A. 49 of 2005, land measuring 0.57 acres of viti class of land under plot No. 2066, Khatian No. 604 was acquired, in Misc. L.A. 51 of 2005, land measuring 0.17 acres of viti class of land under plot No. 1985, Khatian No. 495 was acquired, in Misc. L.A. 52 of 2005 under plot No. 198, 1986, 1990, 2049 and 2064, Khatian No. 496 land measuring 1.60 acres of viti class of land was acquired, in Misc. L.A. 53 of 2005, land measuring 0.40 acres of viti class land and 0.40 tilla class of land, in total 0.80 acres of land under C.S. plot No. 2070 and 1984, Khatian No. 622 was acquired and in Misc. L.A. 91 of 2005, land measuring 0.47 acres of plot No. 2034/1, 2045, 2046 and 0.05 acres of plot No. 2000, Khatian No. 807/2 and 807/3 was acquired.

4. At the time of acquisition, L.A. Collector assessed the market value of the acquired land vide his assessment note dated 30.10.2002 @ Rs. 2,36,000/- for bastu, tilla, vitti and chara and for lunga class of land, at the rate of Rs. 1,88,000/- per kani. However, no lunga class and chara class of land is involved in these appeals.

5. While making assessment, the L.A. collector has taken into consideration the sale deed No. 1-511 dated 18.01.2002, Deed No. 1-1875 dated 20.10.2000, Deed No. 1-1946 dated 12.8.2000 and Deed No. 1-749 dated 18.08.2000.

6. Being aggrieved by and dissatisfied with the award passed by the L.A. Collector, the respondent-claimants preferred applications for reference under Section 18 of the Act contending that the lands in question could not be valued at less than Rs. 60 lacs per kani, but without considering the factual position and demand, the L.A. Collector had fixed the rates of the acquired lands @ Rs. 2,36,000/- per kani. It is also contended by the claimant respondents that the acquired lands are situated within old Agartala Municipal area and also adjacent to G.B. market, medical college and State High Court building, banks, quarters etc.

7. After receipt of the applications under Section 18 of the Act, the cases of the respondent-claimants were referred to the LA Judge, West Tripura, Agartala, (the reference court) for decision.

8. Before the L.A. Judge, the claimant-respondents appeared and demanded Rs. 60,00,000/- per kani on the same plea as stated supra. Making a counter-claim, the L.A. Collector has contended that the claim of Rs. 60,00,000/- per kani is baseless and imaginary According to the L.A. Collector, the acquired land is not at all a developed area, rather a village type area, outskirts of the town area. The land has no potentiality and the fixation of the market value by the L.A. Collector was done after taking into consideration of the comparable sale deeds and obviously based on marked price.

9. To establish their respective claims, parties adduced their oral and documentary evidence.

10. The L.A. Judge considering the oral evidence and the sale deeds referred to

by the claimant-respondents, particularly sale deed No. 1-8708 dated 02.12.1991, Deed No. 1-10685 dated 11.12.2001 where transaction was taken place at the rate of Rs. 13,00,000/-, Rs. 17,70,000/- lacs per kani, and Deed No. 1-10686 dated 11.12.2001, 1-10687 dated 11.12.2001, 1-10689 dated 11.12.2001 and Deed No. 1-10690 of the same date of Rs. 17,70,000/-, Rs. 18 lacs, Rs. 17 lacs and Rs. 16 lacs per kani respectively finally awarded @ Rs. 17 lacs per kani basing on the proximate date of sale instances. The claimant-respondents are also allowed 30% solatium over the valuation of the said land as per provision of Section 23(2) of the L.A. Act and thereafter, there shall be increase at the rate of 12% on the market value as provided under Section 23(1-A) of the L.A. Act from the date of notification till the date of award, i.e., the amount awarded and they are also entitled to 9% interest per annum under Section 28 of the said Act from the date of taking over possession for a period of 1 (one) year and 15% interest per annum till the date of payment of the enhanced amount of compensation, i.e., the amount awarded by the impugned judgment.

11. Being dis-satisfied with the said judgment and award, the state appellants preferred appeals and some of the claimant respondents have filed the cross-objection.

12. Mr. Roy, learned senior counsel and Mr. D.C. Nath, learned counsel on behalf of the State appellants would contend that the learned L.A. Judge failed to determine market value of the land in question. It is also contended that the learned L.A. Judge did not consider that the sale instances produced by the claimant-respondents are of the lands far away from the acquired land and not only that, those sale instances are relating to small pieces of lands. Thus the same cannot be the basis for determining the market value of the acquired lands. It is further contended that the lands involved in the sale instances as produced by the L.A. Collector are in better position and the quality and facilities are also better than the lands involved in the sale deeds produced by the claimant respondents.

13. Mr. Roy again contended that the lands involved in the sale instances produced by the claimant-respondents were sold just before five months of the notification under Section 4 of the L.A. Act and in all those sale instances, vendor is one person and also on the same date. Thus those sale instances should not be relied upon as those sale instances are suspicious and except those sale instances, no other sale instances was brought on record.

14. Learned counsel appearing for the claimant respondents while countering the submission of Mr. Roy and Mr. Nam submit that the Reference court rightly determined the market value of the acquired land and according to them, lands involved in the sale instances produced by them are nearer to the acquired land. It is also contended that the acquired lands are in better condition than the lands involved in the sale instances produced by them. In L.A. Appl. No. 22 of 2011, Mr. Biswas, appearing in person has adopted the submission of the learned

counsel appearing for the respondents.

15. This court has gone through the order sheet of the Reference court as well as the evidence adduced by the parties and the impugned judgment. Neither in the order sheet nor in the judgment it is mentioned that the sale instances produced by the claimant - respondents were exhibited. Only in the chief of the claimant-respondents it is mentioned that the sale deeds in the Firsti are admitted to evidence and marked as Exbt. 1 series. No where the claimant-respondents have stated what are those sale instances, what are their numbers and what are the location of the lands. At the time of hearing of these appeals, when asked by this court, a map is placed before this court prepared by the settlement authority relating to sheet No. 3 of Kunjaban mouja, Tahashil Indranagar. This Court is not taking the said map either as evidence or a record, but it is taken only to see the location of the acquired lands and the sale instances. The said map is perused by this court. It would not be proper for this court to mention as to whether lands are betterly situated or the sale instances produced by the claimant-respondents are in better position.

16. This Court does not propose to express any opinion on merit, particularly regarding the determination of the market value, but as it appears that in the instant cases, neither the vendor nor the vendee of the sale instances were examined though by this time it is settled by the Apex Court that even in absence of the vendor or vendee, the sale instances can be considered by the Reference court. But here in these cases, though sale instances were marked as Exbt. 1 series, but it is no where mentioned in the judgment whether the sale instances which are referred to in the judgment are Ext. 1 series or not. The claimant-respondents who examined them also did not mention which sale deeds they have produced in their chief and what are the numbers of those sale deeds and where is the location of the lands involve in those sale deeds.

17. In view of the above, this Court is of considered opinion that neither the claimants nor the Land Acquisition Officer had adduced any legally admissible evidence in proof of the market value prevailing as on the date of notification or in rebuttal. It is also admitted position that neither party produced any survey map before the reference court for proving their own case, particularly what is the distance between the acquired land and the sale instances produced by the parties.

18. It is also mentioned that the reference court marked the sale instances of both the claimants and the land Acquisition Officer on production and merely marked the sale deeds without examining either the vendor or vendee to bring on record the circumstances in which the sale deeds came to be executed and the distance of the lands to the acquired lands, the nature of the respective lands and whether they would offer comparable sales to determine just and fair market value to the acquired land. In the absence of such relevant and material evidence, it would be difficult to determine compensation in respect of the acquired land. The appeals are allowed accordingly and the cross objections are

dismissed. The award and decree of the Reference Court is hereby set aside and the cases are remitted to the reference court for disposal in accordance with law.

19. The parties are directed to appear before the reference court on 14.9.2015.

20. Parties are also at liberty to adduce such legal evidence as is necessary to determine true and correct market value of the land prevailing as on the date of the notification. Reference court is directed to consider and dispose of these cases within six months from 14.9.2015 after giving opportunity to all the parties. The money deposited by the appellants, if lying with the Registry without disbursement, may be refunded to the appellants on being submitted application for withdrawal of the same and if any amount of deposited money has been withdrawn by the respondent claimants, that would be subject to the decision of the reference court.