(2016) 03 TP CK 0011

In the Tripura High Court

Case No : LA App. No. 96 of 2012, CO(FA) No. 4 of 2013, LA App. No. 97 of 2012, LA App. No. 98 of 2012, CO(FA) No. 6 of 2013, LA App. No. 99 of 2012, CO(FA) No. 5 of 2013 and LA App. No. 100 of 2012

The Executive Officer and Others APPELLANT

Vs

Karunamoy Paul and Others RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:
Land Acquisition Act, 1894 — Section 18, Section 4

Citation : (2016) 03 TP CK 0011

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : S. Deb, Sr. Advocate and S. Dutta, Advocate, for the Appellant; D.K. Biswas and S.S. Debnath, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.—1. All the above mentioned L.A. Appeals and Cross-Objections were directed against a common judgment and award dated 12.09.2012 passed by learned L.A. Judge, Khowai, West Tripura in Case Nos. Misc.(L.A.) 18 of 2010, Misc.(L.A.) 19 of 2010, Misc.(L.A.) 18 of 2011, Misc.(L.A.) 19 of 2011 and Misc.(L.A.) 20 of 2011. Since all the appeals and cross-objections have arisen out of acquisition of land under same mouja, same notification and same purpose and by a common judgment all those reference cases were disposed of, this common judgment is passed which shall govern all the appeals and cross-objections.

2. Heard learned counsel of both side as indicated hereinbefore.

3. For the purpose of construction of Khowai Bus Stand at Khowai town, land measuring 1.3120 acres of mouja Khowai town was acquired by notification dated 15.06.2007 followed by declaration dated 07.09.2007. The land so acquired consists of different classes of land in a compact area, such as pukur(nal), viti(nal), bastu(nal), doba(nal), pukurpar(nal) and chara(nal), etc. The L.A. Collector in the process assessed compensation at the rate of Rs.

5,50,000/- per kani for bastu(nal) class of land, at the rate of Rs. 5,00,000/- per kani for nal and its allied classes of land and at the rate of Rs. 4,00,000/- per kani for pukur(nal) and doba(nal) classes of land.

It is, therefore, apparent that L.A. Collector mainly classified the land in three categories, i.e. (i) bastu class of land, (ii) viti, pukurpar, nal and chara classes of land as nal and its allied classes of land and (iii) pukur and doba classes of land. No grouping has been made by the L.A. Collector as to which plots of land were adjacent to the road and which were in the backside of the compact area of land.

4. On the prayer of the land-holders, that the compensation awarded by the L.A. Collector was inadequate, reference under Section 18 was made and both side submitted claim statement and counter statement in the reference case and the learned L.A. Judge by impugned judgment and award dated 12.09.2012 awarded compensation at the rate of Rs. 16,00,000/- per kani for bastu, viti, nal, chara and pukurpar classes of land and Rs. 12,80,000/- per kani for pukur and doba classes of land.

5. The referring claimants relied on a Sale Deed No. 1-2025 dated 07.12.2007 which relates to a sale transaction of a very small plot of land i.e. 1 ganda one kara of bastu class of land. It was a sale transaction at the rate of Rs. 32,00,000/- per kani. The land is situated at mouja Khowai town. Admittedly that sale transaction occurred after about six months of the notification made under Section 4 of the L.A. Act. So it was a subsequent transaction than that of the date of notification for acquisition. The L.A. Collector at the time of his assessment considered six sale instances but while adducing evidence L.A. Collector proved Sale Deed No. 1-2135 dated 28.08.2006 which carries the price at the rate of Rs. 85,333/- per kani of nal class of land, Sale Deed No. 1-1972 dated 05.10.2005 which carries the price at the rate of Rs. 5,28,000/- per kani of bastu(nal) class of land, Sale Deed No. 1-1901 dated 29.12.2004 which carries the price at the rate of Rs. 32,00,000/- per kani of bastu(nal) and dokan(nal) classes of land, Sale Deed No. 1-1932 dated 31.12.2004 which carries the price at the rate of Rs. 83,833/- per kani of nal class of land and Sale Deed No. 1-1320 dated 20.08.2004 which carries the price at the rate of Rs. 90,909/- per kani of bastu(nal) and chara(nal) classes of land.

6. It is a settled position of law that if there are several exemplar deeds than the deed which carries the highest price of the comparable class of land shall be given to the land-holders for acquisition of land.

7. The L.A. Collector in his assessment note, which has also been exhibited, has stated that the price at the rate of Rs. 32,00,000/- per kani as per Sale Deed No. 1-1901 dated 29.12.2004 was not given to the land-holders since it was of very small piece of land and that it was used as a bastu as well as dokan i.e. the land is used for residential as well as commercial purpose and only on that ground the L.A. Collector did not fix compensation as per that document though it is stated in the assessment note that the land of that sale instance was situated at a

distance of 600-625 feet away from the acquired land.

8. In his cross-examination DW1 Sri Pranab Kanti Paul who adduced evidence on behalf of L.A. Collector has clearly admitted that the land of Sale Deed No. 1-1901 dated 29.12.2004 is close to the acquired land. The exemplar deed, i.e. Sale Deed No. 1-2025 dated 07.12.2007 relied by the referring claimants is also near to the acquired land and PW1 of Misc.(L.A.) 19 of 2010 has stated that the land of the exemplar deed was about 100 meters away from the acquired land. A copy of the map has been produced by the referring claimants in the records of Misc.(L.A.) 19 of 2010(L.A. Appeal No. 100 of 2012) and that map shows that the acquired land is placed in a better location than that of the exemplar deed dated 07.12.2007 of the referring claimants.

9. The land has been acquired for the purpose of construction of Khowai bus stand at Khowai town. All the sale instances relied by both side are of land of different categories located in the Khowai town mouja itself. The acquired land of all the referring claimants, under the notification, admittedly is in a compact area by the side of the main road. No doubt, land adjacent to the road would carry a better price than that of the land situated a little away from the road. In the present case neither the L.A. Collector grouped the land in different groups i.e. roadside and backside, nor the referring claimants also made any claim grouping the land situated in the roadside and backside. It is quite clear that the compact area of land has been acquired for motor stand and so it may be presumed that the quality and potential of the land altogether was almost same subject to its cost which would be required to develop the land for the purpose of construction of motor stand.

10. Learned L.A. Judge relied on the exemplar submitted by the referring claimants and determined compensation with observation in para 23 and 24 which reads thus:

"23. Taking the aspect that the exemplar deed was executed only after about six month from the date of Notification, in my considered opinion, 25% should be deducted while assessing the market value of acquired lands of bastu, viti and chara and pukurpar classes of lands considering all those categories of lands in the same footings and 40% should be deducted as development charge while assessing the value of doba and pukur classes of land which are comparatively low prices land. In addition, for the de-escalation charge, I consider there should be a deduction of 10% flatly for all classes of lands and another 10% should be deducted as a charge of waiting.

24. Now basing on that calculation, for the bastu class of land, viti class of land, chara class of land and pukurpar class of land, there should be a total deduction of 30% + 10% + 10%(50% in total) and for the pukur and doba class of land there should be deduction of 40% + 10% + 10% (60% in total) from the value of exemplar deed and thus; the value of the viti, bastu, chara and pukurpar classes of lands stands at (Rs. 32,00,000/- x 50%=) Rs. 16,00,000/- per kani

which means Rs. 40,00,000/- per acre and the market value of the pukur and doba classes of acquired lands is assessed at (Rs. 32,00,000/- x 60%=) Rs. 12,80,000/- per kani which means Rs. 32,00,000/- per acre."

11. Learned L.A. Judge has taken into consideration sale instance referred by the referring claimants dated 07.12.2007 though it was of a subsequent sale transaction to that of the date of notification but has ignored the sale instance dated 29.12.2004 which was proved by the L.A. Collector and that deed also carries same price of Rs. 32,00,000/- per kani. Substantially both the deeds show that it was of bastu class of land and in addition deed dated 29.12.2004 shows that it was also used as dokan class of land. In the town area land situated adjacent to the main road may be developed and used as a dokan as well as bastu classes of land. The L.A. Collector himself in his assessment note mentioned that the land of sale Deed dated 29.12.2004 situated at a distance of 600-625 feet away from the acquired land. As already stated hereinbefore, the witness of the L.A. Collector also admitted the same in his deposition that the land of Sale Deed dated 29.12.2004 is very near to the acquired land. It is therefore evident that the learned L.A. Judge would take the price contained in Sale Deed dated 29.12.2004 submitted and proved by the L.A. Collector. Admittedly, that deed also carries a price of Rs. 32,00,000/- per kani. It was a sale instance of only 0.025 acres of land i.e. a very very small plot of land whereas the acquired land is in a compact area of 1.312 acres and so even if that exemplar deed is taken to consideration there must be deduction for the exemplar is of a very small piece of land used as bastu and dokan whereas the acquired land used as bastu, nal, pukur, pukurpar, doba and chara classes of land.

12. Learned senior counsel referred the decision of the apex Court in the case of Chandrashekar v. Land Acquisition Officer reported in , (2012) 1 SCC 390 and candidly submitted that in this judgment all the earlier decisions have been discussed by the apex Court and the apex Court has also directed a gap of maximum deduction in respect of development and other charges.

Learned counsel, Mr. Biswas and learned counsel, Mr. Lodh submitted that since the exemplar deed is of a very small piece of land then there may be some deduction, but the deductions made by the learned L.A. Judge was irrational and has no sense at all.

There is no doubt that the land since situated at Khowai town and located by the side of the main road it has got high potential value for its use in future for commercial purpose. No doubt, for converting it to a land for commercial purpose there ought to be lot of development charges. Further, a small piece of land for commercial as well as residential purpose always carries a much higher price than that of a comparatively bigger compact plot of land. The acquired land is measuring 1.3120 acres whereas the sale instance which is relied by the L.A. Collector and not disputed by the referring claimants is of 0.025 acres. So there shall be at first some deduction for the price obtained by the exemplar deed. The apex Court in the case of Chandrashekar(supra) has discussed the law in details referring to its various earlier decisions on the same point. We may gainfully refer here para 18 and 19 of the judgment which reads thus:

"18. In the process of consideration hereinafter, we have referred to all the judgments relied upon by the learned counsel for the appellants, as well as, some recent judgments on the issue concerned:

(i) In Brigadier Sahib Singh Kalha v. Amritsar Improvement Trust, , (1982) 1 SCC 419, this Court opined, that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town life. Accordingly it was held, that a deduction of 20% of the total acquired land should be made for land over which infrastructure has to be raised (space for roads, etc.). Apart from the aforesaid, it was also held, that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) needs also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20% to 33%. Commutatively viewed, it was held, that deductions would range between 40% and 53%.

(ii) Noticing the determination rendered by this Court in Brigadier Sahib Singh Kalha''s case (supra), this Court in Administrator General of W.B. v. Collector, , (1988) 2 SCC 150, upheld the deduction of 40% (from the acquired land) as had been applied by the High Court.

(iii) In Chimanlal Hargovinddas v. Land Acquisition Officer, , (1988) 3 SCC 751, while referring to the factors which ought to be taken into consideration while determining the market value of the acquired land, it was observed that a smaller plot was within the reach of many, whereas for a larger block of land there were implicit disadvantages. As a matter of illustration it was mentioned that a large block of land would first have to be developed by preparing its lay out plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate, ranging from 20% to 50%. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iv) In Land Acquisition Officer v. L. Kamalamma, , (1998) 2 SCC 385 this Court arrived at the conclusion, that a deduction of 40% as developmental cost from the market value determined by the Reference Court would be just and proper for ascertaining the compensation payable to the landowner.

(v) In Kasturi v. State of Haryana, , (2003) 1 SCC 354, this Court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities, etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft and hard, the acquired land may have a hillock or may be low-lying or may have deep ditches. Accordingly, it was pointed out, that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi''s case(supra) it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

(vi) Following the decision rendered by this Court in Brigadier Sahib Singh Kalha''s case, this Court in Land Acquisition Officer v. Nookala Rajamallu & Ors., , (2003) 12 SCC 334, applied a deduction of 53%, to determine the compensation payable to the landowners.

(vii) In V. Hanumantha Reddy v. Land Acquisition Officer, , (2003) 12 SCC 642, this Court examined the propriety of compensation determined as payable to the land-loser by the High Court. The Reference Court had determined the market value of developed land at Rs. 78 per square yard. The Reference Court then applied a deduction of 1/4th to arrive at Rs. 58 per square yard as the compensation payable. The High Court however concluded, that compensation at Rs. 30 per square yard would be appropriate (this would mean a deduction of approximately 37%, as against market value of developed land at Rs. 78 per square yard). This Court having made a reference to Kasturi''s case (supra) did not find any infirmity in the order passed by the High Court. In other words, deduction of 37% was approved by this Court.

(viii) In para 21 of the judgment in Viluben Jhalejar Contractor v. State of Gujarat, , (2005) 4 SCC 789, it was held that for development i.e. preparation of layout plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers, and on account of other hazards of an entrepreneur, the deduction could range between 20% and 50% of the total market price of the exemplar land.

(ix) In Atma Singh v. State of Haryana, , (2008) 2 SCC 568, this Court after making a reference to a number of decisions on the point, and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land concluded that deductions of 20% onwards depending on the facts and circumstances of each case could be made.

(x) In Lal Chand v. Union of India, , (2009) 15 SCC 769, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made.

(xi) In Subh Ram v. State of Haryana, , (2010) 1 SCC 444, this Court opined, that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructural developmental costs (costs for raising infrastructure) i.e. in all 2/3rd (or 67%).

(xii) In A.P. Housing Board v. K. Manohar Reddy, , (2010) 12 SCC 707, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20% to 75%. In the peculiar facts of the case a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(xiii) In Land Acquisition Officer v. M.K. Rafiq Sahib, , (2011) 7 SCC 714, this Court after having concluded, that the land which was subject-matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50%, ought to be increased to 60%.

19. Based on the precedents on the issue referred to above it is seen that as the legal proposition on the point crystallized, this Court divided the quantum of deductions (to be made from the market value determined on the basis of the developed exemplar transaction) on account of development into two components."

13. In the same judgment the apex Court has further held that under the head of development the deduction should not exceed 67 percent and all deductions should not cumulatively exceed 75 percent. For ready reference we may refer her para 23, 24 and 25 of the judgment which reads as follows:

"23. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing four paragraphs, we are of the view that there is no discrepancy on the issue in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 331/3rd% can be made. Likewise, for the "second component" under the head of "development", a further deduction of 331/3rd% can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67%. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 331/3rd%, the two components under the head of "development" put together, should not exceed the upper benchmark.

24. In Lal Chand''s v. Union of India, , (2009) 15 SCC 769 and in A.P. Housing Board v. K. Monohar Reddy, , (2010) 12 SCC 707, this Court expressed the upper limit of permissible deductions as 75%. Deductions up to 67% can be made under the head of "development". Under what head then, would the remaining component of deductions fall? Further deductions would obviously pertain to considerations other than the head of "development".

25. Illustratively, a deduction could be made keeping in mind the waiting period required to raise infrastructure, as also, the waiting period for sale of developed plots and/or built-up areas. This nature of deduction may be placed under the head "waiting period". Illustratively again, deductions could also be made in cases where the exemplar sale transaction is of a date subsequent to the publication of the preliminary notification. This nature of deduction may be placed under the head "de-escalation". Likewise, deductions may be made for a variety of other causes which may arise in different cases. It is however necessary for us to conclude, in the backdrop of the precedents on the issue, that all deductions should not cumulatively exceed the upper benchmark of 75%. A deduction beyond 75% would give the impression of being lopsided, or contextually unreal, since the land-loser would seemingly get paid for only 25% of his land. This impression is unjustified, because deductions are made out of the market value of developed land, whereas, the acquired land is undeveloped(or not fully developed). Differences between the nature of the exemplar land and the acquired land, it should be remembered, is the reason/ cause for applying deductions."

14. In the cases at hand, the exemplar deed dated 07.12.2007 proved by the referring claimants is a deed six months after the date of notification. So that deed may be ignored. The sale deed dated 29.12.2004 proved by the L.A. Collector may well be taken to consideration since that deed is also of bastu/ dokan class of land and the acquired land was also since situated within the town and by the side of the main road could be used in future for bastu as well as commercial purpose and so I think that sale instance may be safely taken as an exemplar deed for determination of compensation with reasonable deduction as indicated by the apex Court in various decisions.

15. In my considered opinion there should be a flat 33 percent deduction from the price obtained in the exemplar deed on the ground that the exemplar deed is of a very small piece of land whereas the acquired land is comparatively a bigger plot of land. In addition thereto, in my considered opinion there shall be at least 15 percent deduction towards development charges for bastu, nal, pukurpar, viti and chara classes of land. Those classes of land can easily be converted and developed and therefore in my considered opinion a 15 percent deduction towards development charge may be appropriate and hence the total deduction for those classes of land arrives at 48 percent and if we deduct 48 percent from

that of Rs. 32,00,000/- the amount stands at Rs. 16,64,000/-, say Rs. 16,00,000/- per kani. Accordingly the reasonable market price of the acquired bastu, viti, nal, pukurpar and chara classes of land may be fixed at the rate of Rs. 16,00,000/- per kani which the learned L.A. Judge has also fixed.

Regarding doba and pukur class of land, to make it fit for any construction there shall be much more effort and so the development charge must not less than 30 percent and so for those classes of land there may be 63 percent deduction from the price of the exemplar deed and the amount stands at Rs. 11,84,000/- (Rs. 32,00,000 - Rs. 20,16,000), say Rs. 12,00,000/-. So this amount of Rs. 12,00,000/- may fairly be fixed as the price for the acquired pukur and doba classes of land.

16. Accordingly, the price in respect of bastu, viti, nal, pukurpar and chara classes of acquired land is fixed at the rate of Rs. 16,00,000/- per kani and in respect of pukur and boba classes of land at the rate of Rs. 12,00,000/- per kani. The claimant respondents may be paid enhanced compensation accordingly with all other statutory benefits and interests as directed by learned L.A. Judge. All the appeals and cross-objections accordingly stand disposed of.

17. Send back the L.C. records along with a copy of this judgment.

