
(2016) 01 TP CK 0003
In the Tripura High Court
Case No : L.A. APP No. 86 of 2012

The State of Tripura and Others	Vs	APPELLANT
Dhirendra Chandra Bhowmik		RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, Section 4, Section 54, Section 6

Citation : (2016) 01 TP CK 0003

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

Bench : Single Bench

Advocate : N. Majumder, for the Appellant; S. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—1. In view of the order passed today in IA No. 13 of 2016, the appeal is taken up for hearing and disposal today itself.

2. Heard learned State counsel, Mr. N. Majumder for the appellants and learned counsel, Mr. S. Lodh for the respondent.

3. In this appeal, filed under Section 54 of the Land Acquisition Act, 1894, the appellants, named above, challenged the judgment and award dated 11.05.2011 passed by learned L.A. Judge, Khawai in Case No. Misc.(LA) 01 of 2010.

4. By Notification No. F.9(4)/REV/ACQ/VII/2000 dated 23.03.2000 issued under Section 4 of the L.A. Act followed by declaration of even number and date issued under Section 6 of the L.A. Act, land measuring 0.013 acres of Bastu/Nal class belonged to the respondent, Sri Dhirendra Chandra Bhowmik, recorded in Khatian No. 235, plot No. 3074/P under Mouja-Khowai was acquired for the purpose of construction of "Approach road Khawai Degree College to D.K. Road" under Khawai Sub-Division, and the L.A. Collector in due course determined compensation @ Rs. 3,00,000/- per kani of the acquired land of the respondent and other lands acquired under same Notification. It was a flat rate of Rs. 3,00,000/- per kani awarded by the L.A. Collector for all class of land acquired

under the same Notification.

5. The referring claimant, i.e., respondent, Sri Dhirendra Chandra Bhowmik received the compensation determined by the L.A. Collector under protest with a request to refer the case to the learned L.A. Judge for fresh determination of compensation and he claimed compensation @ Rs. 12,00,000/- per kani. Accordingly, the reference was made before the learned L.A. Judge and it was registered as Case No. Misc.(LA) 01 of 2010. In course of hearing of the reference the referring claimant, i.e., respondent, submitted his claim statement, but the appellants, i.e., L.A. Collector and the requiring department did not submit any counter statement. The case was heard ex parte by the learned L.A. Judge and by impugned judgment dated 11.05.2011, the learned L.A. Judge enhanced the quantum of compensation @ Rs. 12,00,000/- per kani.

6. It is argued by learned State counsel, Mr. Majumder that the respondent, i.e., the claimant, adduced no sale instance of comparable land to show that he was entitled to get compensation @ Rs. 12,00,000/- per kani. The respondent at the time of hearing only placed on record a judgment passed by learned L.A. Judge in Misc.(LA) No. 26 of 2004, wherein compensation was awarded @ Rs. 12,00,000/- per kani and relying on that judgment learned L.A. Judge passed the impugned judgment enhancing compensation from Rs. 3,00,000/- per kani to Rs. 12,00,000/- per kani which was not tenable in law and fact. It is candidly submitted by Mr. Majumder, learned State counsel that no doubt the appellants were with fault since they did not submit any counter statement in the reference case but the burden lies on the claimant to prove that the award made by the L.A. Collector was not justified and the claimant, i.e., respondent was supposed to place on record the sale instance of comparable land to show that there was transaction @ Rs. 12,00,000/- per kani on the date of issuance of Notification under Section 4 of the L.A. Act. While no such evidence was placed the award made by the learned L.A. Judge following an earlier award made in a similar case was wholly unjustified and hence, the judgment and award passed by the learned L.A. Judge should be interfered and set aside.

7. Per contra, Mr. Lodh, learned counsel for the respondent, i.e., the referring claimant, has submitted that the referring claimant adduced evidence before the learned L.A. Judge, i.e., the judgment in Case No. Misc.(LA) 26 of 2004 and the order in Execution Case No. 02 of 2007, which shows that in Case No. Misc.(LA) 26 of 2004, arising out of acquisition of land under same Notification, same Mouja and same class of land compensation was awarded @ Rs. 12,00,000/- per kani and the order dated 11.04.2008 in Execution Case No. 02 of 2007 shows that the award was satisfied by the appellants. While for the acquisition of land under same Notification, same Mouja and same class, compensation was awarded by learned L.A. Judge @ Rs. 12,00,000/- per kani and it was accepted by the appellants and the award was satisfied, there is no reason for the appellants to take a different stand in the reference case of the present respondent. The learned L.A. Judge relying on the judgment in Misc.(LA) No. 26

of 2004 passed the award, which was wholly justified and no interference is called for.

8. It is an admitted position that for the purpose of construction of "Approach road between Khowai Degree College and D.K. Road" under Khowai Sub-Division, land measuring 0.214 acres belonged to the referring claimant and others classified as Vity, Bastu, Nal, Dokan etc. was acquired for the purpose of construction of approach road and the L.A. Collector awarded compensation at a flat rate of Rs. 3,00,000/- per kani for all class of land acquired under the same Notification. It is also an admitted position that arising out of acquisition of land under the same Notification there was a reference made earlier which was registered as Case No. Misc(LA) 26 of 2004 and that case was decided by the learned L.A. Judge, Khowai on 24.04.2006 enhancing compensation @ Rs. 12,00,000/- per kani from that of Rs. 3,00,000/- per kani as awarded by the L.A. Collector. It is also an admitted position that the said reference case was filed by one Nani Gopal Ghosh and after the award was made it was put in execution by filing Execution Case No. 02 of 2007 and order dated 11.04.2008 passed in the execution case shows that the award was satisfied by the L.A. Collector and the requiring department, i.e., appellants of this appeal.

9. It is candidly submitted by Mr. Majumder, learned State counsel that Misc.(LA) No. 26 of 2004 was a reference made in the year 2004, whereas the present reference is of 2010 and so, the claim of the referring claimant should have been refused by the learned L.A. Judge.

10. Learned counsel, Mr. Lodh, on the contrary, has submitted that the land owners received compensation under protest with a request to make reference under Section 18 of the L.A. Act, but the L.A. Collector did not make the reference in time. Therefore, the present respondent, i.e., referring claimant and the referring claimant of Misc.(LA) No. 26 of 2004 and other land owners approached the High Court by filing a writ petition and in that writ petition it was submitted by the State counsel that all those acquisition matters should be referred to the learned L.A. Judge, but ultimately only the case of Nani Gopal Ghosh, i.e., the referring claimant of Misc.(LA) No. 26 of 2004 was referred by the L.A. Collector and the cases of other land owners were not referred and as a result the respondent herein and others had to approach the High Court again and thereafter only the case of the referring claimant and other cases were referred. So, for this passing over of time the referring claimant had no fault, rather it was the fault of the appellant, L.A. Collector.

11. Be that as it may, irrespective of the fact that the reference was made earlier or later, it is an admitted position that arising out of acquisition of land under same Notification, same Mouja and same class of land in Case No. Misc.(LA) 26 of 2004, learned L.A. Judge enhanced the compensation towards price of land @ Rs. 12,00,000/- per kani from that of Rs. 3,00,000/- per kani what was awarded by the L.A. Collector and that award was satisfied by the appellants.

12. While there was a previous award made by learned L.A. Judge for the same class of land under same Notification and Mouja and that award was satisfied by the L.A. Collector and the requiring department, a subsequent award made by learned L.A. Judge in a subsequent reference, can safely rely on the earlier award which was acted upon. There is no legal compulsion for the referring claimant to produce any other evidence to establish his claim. The Court can take into consideration the award in earlier case of similar land provided and similarity established. Here it is not disputed at all that the land of Misc.(LA) No. 26 of 2004 and the land of the present reference case was similar and acquired for the same purpose under same Notification and situated under same Mouja and a flat rate was awarded by the L.A. Collector.

13. In my considered opinion, a previous award made by learned L.A. Judge in a reference is a good evidence for consideration in a subsequent reference arising out of acquisition of land under same Notification, same Mouja and same class of land.

14. I, therefore, find no infirmity in the judgment passed by the learned L.A. Judge in determining compensation @ Rs. 12,00,000/- and I find no reason to interfere in the judgment and hence, the appeal is found to be devoid of any merit and stands dismissed.

15. Send back the lower court records along with a copy of this judgment.