(2012) 01 GAU CK 0088

In the Gauhati High Court

Case No : L. A. Appeal No. 18 of 2011

Union of India & Anr. APPELLANT

Vs

Raj Karan Jain & Anr. RESPONDENT

Date of Decision : 05-01-2012

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

Citation : (2012) 4 GLR 655 : (2012) 2 GLT 302

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

Bench : Single Bench

Advocate : Advocates appeared for the Appellants: Mr. P.K. Biswas, Asstt. Solicitor & Mr. R. Debnath, Advocates appeared for the Respondents: Mr. K.N. Bhattacharjee, Sr. Advocate & Mr. A. Acharjee, 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 6.10.2010 rendered by the Land Acquisition Judge, West Tripura, Agartala (Court No.2) in case No. Misc.(LA)26/2005 declaring that the respondent no. 1 is entitled to Rs. 1 (one) lac per kani based on the proximate date of sale instances as well as from the guesswork along with 30% solatium over the valuation of the said land as per provision of Section 23(2) of the Land Acquisition Act, 1894 (herein after referred to as the ''LAAct'') and also declaring that there shall be increase @12% on the market value as provided under Section 23 (1A) of the LA Act from the date of notification till the date of award and also interest @ 9% per annum under Section 28 of the LA Act from the date of taking over possession for a period of one year and 15% interest per annum till the date of enhanced amount of compensation i.e. the amount awarded.

2. Briefly stated, facts leading to filing of this appeal are that the land measuring 1.88 acres covered under Khatian No.355/1 comprising C.S.plot No.725 of Mauza Narshinghar. under Gandhigram T.K of Sadar SubDivision was acquired by the Land Acquisition Collector on requisition made by the Boarder Security Force

Authorities for the construction of Bhagalpur B.O.P. BSF under Sadar SubDivision, in West Tripura vide notification No.F 9(24).REV/Acq/6/201 dated 01.10.2001 under Section 4 of the L.A.Act and subsequent declaration vide No. F/9/(24) REV/ ACQ/6/201 dated 7.12.2001 under Section 6 of the Act whereunder the L.A. Collector assessed the value of the land at the rate of Rs.9500/ per kani and also assessed 30 % solitium and 12% additional interest and Rs. 10,000/ for trees i.e. in total an amount of Rs.71,349/ as compensation in favour of the respondent No. 1.

3. Being dissatisfied with and aggrieved by the aforesaid award of compensation the claimant respondent No. 1 filed an application under Section 18 of the L. A. Act to refer the matter to the Land Acquisition Judge (hereinafter in short L. A. Judge) for determination of just compensation. The Land Acquisition Collector concerned referred the matter to the learned L.A.Judge vide impugned judgement and order dated 6.10.2010 enhencing the value of the land as stated earlier.

4. I have heard Mr. P K Biswas, learned counsel for the appellants and Mr. K N Bhattacharjee, learned senior counsel for the respondent No.1. I have also perused the record as made available at the time of hearing.

5. Mr. P K Biswas, learned counsel for the appellants submits that the finding of the learned L.A.Judge enhancing the amount of compensation from Rs.9500/ per kani to Rs. 1 (one) lac per kani are based on mere surmise and conjecture and against the evidence on record inasmuch as the sale deeds as produced by the claimantrespondent No. 1 are not pertaining to land of similar nature and character and many of the documents are not contemporaneous on the basis of which correct assessment could not be made and just compensation cannot be awarded.

Moroever, the land as referred to in the sale deeds as produced by the claimant respondent No. 1 are not situated near the land under acquisition but inspite of that the learned L.A.Judge came to conclusion that there is no alternative but to hold that the market value of the land might be at the rate of Rs. 1 lac per kani which is a mere guesswork based on no reality and as such the impugned judgment awarding the compensation is liable to be set aside and quashed.

6. Per contra, Mr. K. N. Bhattacharjee, learned senior counsel assisted by Mr. A. Acharjee, appearing for the claimant respondent No. 1 submits that the learned L. A. Judge failed to assess the value of the acquired land on the basis of the value of land purchased by Smti Tapasi Devnath which is situated near the acquired land of same status/class ie. ''bastu'' class of land sold by Sri Rakhal Chandra Dey and others, which is ''tilla'' class of land, whereas the acquired land is more valuable being the bastu class of land but the learned L. A.Collector wrongly assessed the market value of the acquired land at an abnormally lower rate and the learned L. A. Judge failed to take notice that the acquired land situates near the main PWD road having prospective market value although fresh

documentary and oral evidence was adduced by the claimant in support of such valuation of the acquired land. Had the learned L.A. Judge applied the judicial mind and considered all the relevant points, the value of the land should have been enhanced to Rs.4 lacs per kani as the just compensation in favour of the claimant/respondent No. 1. The compensation awarded at the rate of Rs.l lac per kani is contrary to the evidence on record and the same is liable to be set aside enhancing the rate of the acquired land to Rs,4 lacs per kani. He submits that the claimant/respondent No. 1 has filed cross objection which is registered as C.O.(FA)6/2011 claiming enhancement of the valuation of the land to Rs. 4 lacs per kani relying on contemporaneous documents.

7. The Land Acquisition Collector, as respondent no. 1 in the Misc. L. A.26/2005, filed counter before the learned L.A.Judge, stating amongst other, that Amin of the collectorate collected 6(six) sale deed instances for assessment of valuation of the land under reference which are quoted below:

SI. No. & name of Mouza

Plot No.

Classification of land

Deed No. & date

Value of land

Distance of the land from proposed acquired land

1 . Narsinghar

448,415

Chara Tilla

0.44, 1434 17.5.2000

Rs. 10,000/Rs. 9091/p.k.

308 Mtrs.

2. Narsinghar

783, 786, 787

Bastu Chara

0.35. 1706 18.1.2000

Rs. 9000/Rs. 10266/p.k.

420 Mtrs.

3. Narsinghar

501,499, Nal 2904, 3900, 404,515,516, 526, 537

2.87. 1706 22.1.2001

Rs. 50000/Rs. 6969/ pk.

124 Mtrs.

4. Narsinghar

2196/p

Tilla

0.04, 15528 18.2.02

Rs. 400000/p.k.

948 Mtrs. Near market area

5. Narsinghar

2196

Tilla

0.06 15527 18.2.02

Rs. 60000/Rs. 400000/p.k.

948 Mtrs. Near market area

6. Narsinghar

2400

Bastu

0.72 15467 18.2.02

Rs. 120000/Rs. 400000/p.k.

876 Mtrs.

8. Amongst the above six sale instances produced and relied upon by the respondent No. 1 claimant, one sale deed was executed between Shantibushan Deb and Jitu Bardhan on 18.6.06 and another sale deed was executed between Anil Ch.Deb and Pintu Kr. Choudhury on 25.5.2007. The other 4(four) sale deeds were executed in the year 2000. From these sale instances, as submitted by the respondent No. 1/claimant, it is found that the value of the land at the relevant point of time was between Rs. 2,66,000/ and Rs. 2,99,990/ per kani. Rs. 2,66,000/ per kani is the minimum and around Rs.4 lacs is the maximum rate as per assessment made by the L.A.Collector. The claimant is insisting on assessment of the value of the land at the maximum rate i.e. Rs.4 lacs per kani in respect of the acquired land.

9. The claim of the respondent No. 1 for assessment of the value of the land at

the rate of Rs.4 lacs per kani is to be considered on the basis of principle laid down by the Apex Court. The appropriate principle has been laid down in Ravinder Narain &Anr. Vs. Union of India, reported in (2003) 4 SCC 481, wherein it is held that the first criterion to be taken into consideration is the market value of the land on the date of publication of the notification under Section 4(1) of the L. A. Act and the value of the potentiality of the land is to be determined on the basis of such materials as are available without indulgence and fits of imagination. However, it is observed therein that there is always some amount of guesswork while determining the potentiality of the land. For determination of potentiality, first of all, the Court has to consider and find out whether the land of sale instances and the land under acquisition situate at the same place. The respondent L.A. Collector, in the present case, attempted to show that the land under acquisition near the place of sale instances, although they fall within the same Mauza, are located at different "sheet" of the Mauza. The land under the sale instances fall under or within market area whereas the land under acquisition is at a distant place and do not situate within the market place, rather it is situated near the Bangladesh Border where valuation of the land is far less. The assessment note was prepared by the L.A. Collector on the basis of six sale deed instances corresponding to sale deeds which were executed between 2000 2002. Three of the sale deeds executed in 20002001 have mentioned the valuation of the land below Rs. 10,000/ per kani while other three sale deeds, all dated 18.2.2002, have mentioned valuation of the lands at the rate of Rs.4 lacs per kani with further mention that they are near the market area. The L.A.Collector refused to accept the value of the land at Rs.4 lacs per kani in respect of the land under acquisition because the same is not situated near the said lands covered by sale deed instances which situate near the market place.

10. In order to appreciate the stand of the appellant, an extract of the assessment note pertaining to those six sale deed instances, is quoted below:

SI. No. & name of Mouza

Plot No.

Classification of land

Area (in Acres)

Deed No. & date

Value of land

Distance of the land from proposed acquired land

1. Narsingharh

2400

Jote Bastu

12 sataks

15467 17.6.2000

Rs. 1,20,000/Tapasee Debnath (vendee)

874 metres Near market area

2. Narsingarh

2691 Jote 499

Jote Tilla

0.18 (3 gondas)

15528 19.6.2000

Rs.40,000/Paritosh Ranjan Dutta

948 metres Near market area

3. Narsingarh

Dag No. 2654 26502196

Jote Hill rayati Chara Tilla

0.18 (3 gondas)

15527 19.6.2000

Rs. 60,000/Pranab Das

948 metres Near market area

4. Narsingarh

Dag No. 878/417/878/4157/880/4191

Jote Charra

60 acrs

13776 25.5.2009

Rs. 60,000/Anil Ch. Deb

5. Narsingarh

Dag No. 913(old) 866/4129 (New)

Jote Charra Tilla

10 acres

13707 18.3.2006

Rs. 50,000/ Shanti Busan Deb

6. Narsingarh

Dag No. 841,842 & 843

Ejmali Rayati, jote tilla (charra)

17? gonads

1536 18.1.2000

Rs. 9,000/ Gopal Ch. Choudhury

11. The respondentclaimant No. 1 also cited six sale deed instances to establish his claim for compensation. The same has been worked out and quoted as under:

SI. No. & name of Mouza

Plot No.

Classification of land

Area (in Acres)

Deed No. & date

Value of land

Distance of the land from proposed acquired land

1 . Narsingharh

448, 415

Chara Tilla

0.44

1434 17.5.2000

Rs. 10,000/ Rs. 9,091/pk

308 Mtrs.

2. Narsingarh

783, 786, 787

Bastu Chara

0.35

1536 18.1.2000

Rs.9,000/ Rs. 10,266/ p.k.

420 Mtrs.

3. Narsingarh

501, 499 Nal 2904, 3900, 404, 515,516, 526, 537

Nal Chara Tilla

2.87

1706 22.1.2011

Rs. 50,000/ Rs. 6,969/pk.

124 Mtrs.

4. Narsi ngarh

2196/p

Tilla

0.04

15528 18.2.2002

Rs. 4,00,000/ p.k.

948 Mtrs. Near market area

5. Narsingarh

2196

Tilla

0.06

15527 18.2.2002

Rs. 60,000/ Rs. 4,00,000/ p.k.

948 Mtrs.

Near market area

6. Narsingarh

2400

Bastu

72

15467 18.2.2002

Rs. 1,20,000/ Rs. 4,00,000/ p.k.

876 Mtrs.

12. The claim for higher rate of compensation by the claimant respondent No. 1 at Rs.4 lacs per kani is based on market value of the lands situated near the acquired land, To justify the claim the respondent claimant relied on five sale deeds which are on record.

The location and valuation of the acquired land has been compared with the lands described in the aforesaid sale deeds and it was stated that the sale deeds referred to lands which are situated in another sheet of Mauza Narsinghar and they are quite far away from the acquired land and the transaction of all the sale deeds took place after the issuance of notification of the acquired lands.

The first deed is dated 19.6.2000 executed between Sri P. Das as vendee and Rakhal Chandra Dey and two others as vendors in respect of 0.18 decimal (3 gondas) of jote right ''tilla'' class of land which was sold at Rs.60,000/.

The second sale deed was executed between Paritosh Ranjan Dutta and two others on 19.6.2000 as vendees and Shri Rakhal Ch. Dey and two others as vendors in respect of 0.18 decimal (3 ganda) ''tilla'' lands which was sold at Rs.40,000/.

The third sale deed was executed between Sri Anil Ch. Deb as vendee and Sri Pintu Kr.Choudhury as vendor in respect of 69 decimal chara ''tilla'' (hillock) class of land at Rs.60,000/.

The fourth sale deed was executed between Sri Santi Bhusan Deb and another as vendees and Sri Jitu Bardhan as vendor on 25.5.2007 in respect of land measuring 10 satakat Rs.50,000/.

The fifth sale deed was executed between Sri Gopal Chandra Choudhury and two others as vendees and Sri Gobinda Ch. Choudhury as vendor in respect of land measuring 17? gandas of jote chara land at Rs.9000/ on 18.1.2000.

The sixth sale deed was executed between Smti Tapasi Debnath as vendee and Sri Samarendra Chakraborty on 17.6.2000 as vendor in respect of bastu jote land measuring 12 satak at Rs. 1,20,000/.

The lands mentioned in the above sale deeds situate at T K Gandhigram under Mauza Narsinghar, Pargana Agartala under Airport Police Station within the SubRegistry office, Sadar.

13. The valuation of the land reflected in the sale instances as relied upon by the respondent/claimant has been rejected on the ground that SI. No. 1,2, and 3 are lands situated near the market place and the land under acquisition is not situated near the market place. SI No.4 & 5 relate to sale deed executed in the year 200607 respectively and as such the valuation of the land as mentioned in the sale deed instances cannot be made applicable to the land under acquisition. Although the sixth transaction took place on 18.1.2000, according to the L.A .Collector, the same is not acceptable as the said land situate at a distant place from the market area Broadly speaking the L. A. Collector determined the valuation of the land taking into consideration the location and distance from the market area/place. The lands which situate near the market place are given more valuation than the lands situated beyond the market area or at a distant place from the market area. The valuation of the land in question has been fixed at a lower rate as it is situated outside the market area. The learned L. A. Judge

adopted the similar consideration in fixing the value of the acquired land although valuation has been assessed as per the rate fixed by the L. A. Collector.

14. This Court is called upon to examine whether the learned L. A. Judge followed the correct principle in determining the valuation of the land in question. For answering this question several factors are to be considered.

15. The land in question is situated outside the market area as shown by the Revenue Authority. At the same time it is shown that it is located in the same Mauza under Airport Police Station. The locality is found to be within a prime area although it is not near the market place. Generally a place near the Airport or within the greater area of the Airport is considered to be prime locality for the reason that in such area there is possibility of establishment of important institutions of the Govt. and private organisations like schools, hospitals, industries, business set up etc. It may be noted that the Capital Agartala township, in the past few years, has started extending towards the Airport. No evidence has been led by the parties in this regard but definitely this Court can take judicial notice that even the permanent Bench of this Court has been established and now functioning in the new building located near the road towards Airport. The land in question is not near the new High Court building but looking at the rapid extension of the township, one can make a guesswork on the increasing valuation of the land under the Airport Police Station. The present rate of growth and expansion of Agartala township proves the potentiality of the entire area under the airport police station. One can easily understand that the area is being urbanised and commercialised. Once it is found that there is scope for urbanisation and commercialisation in the area concerned, one has to take it into consideration for determination of the valuation of the land. Unfortunately, the L. A. Collector as well as the L. A. Judge have failed to take into consideration this aspect of the matter and committed error in fixing the valuation of the land in question commensurate with the aforesaid pace of development and potentiality of the land in the said area. In my considered view Court should not turn its blind eye on the potentiality of the land which is being urbanised and commercialised. Although no evidence in this regard has been adduced by the claimant, it is difficult to agree that a land situated at the Bangladesh Border has much less potentiality without taking into consideration the other relevant factors like expansion/extension of the capital township and growth of other commercial establishments in the said area in this age of globalisation and rapid international trade and commercial activism. In fact, there is a common trend of extensive commercial and business activities along the international border areas for which the Govt. of India has given due importance on improvement of communication network along the Bangladesh Border, hi my opinion, LA Collector and the learned L. A. Judge have lost sight of all these important factors while fixing the valuation of the acquired land.

16, There is no evidence on record that the potentiality of the land under acquisition is much less than the valuation of the land mentioned in the Sale

Deed instances on whicfrthe L. A. Collector relied upon. There is also no evidence on the possibility of expansion of the market area or expansion of Agartala township to the land under acquisition for coming to a definite conclusion that the potentiality of the land would not enhance in the near future. I have gone through the reasoning of the learned L. A. Judge in fixing the value of the land at Rs. l lac per kani. No reason has been given by the learned L. A. Judge for fixing the said low rate except saying that the land under acquisition situate at the Bangladesh Border and it does not fall within the market area. The finding of the learned L.A.Judge may be correct. But he has not discussed the future scope or expansion of the airport township or Agartala Capital township to the aforesaid place and the growth in commercial and industrial activities around it which may eventually increase the rate of value of the land. If the aforesaid factors are taken into consideration the rate of Rs. 1 lac per kani as determined by the learned LA Judge is not found to be just and reasonable. While saying that the rate fixed is not just and reasonable, court has to see that while determining the market value of the acquired land it should cause neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. The law of compensation under the L. A. Act, as laid down in Vyriecherla Narayan Gajapati Raju Vs. Revenue Divisional Officer reported in AIR 1939 PC 98 followed in Ravinder Narayain Vs. Union of India reported in (2003) 4 SCC 481, is that the compensation must be determined by reference to the price which the willing vendor might reasonably expect to receive from the willing purchaser. It is also laid down in the later''s case that the first criterion to be taken into consideration is the market value of the land on the date of publication of the notification under Section 4(1) of the L.A. Act. Admittedly, from the assessment note of the L. A. Collector as referred to earlier, at least in three sale deed instances executed on 18.2.2002 including the land of Smti Tapasi Debnath which is stated to be not situated near the market area, value has been assessed at the rate of Rs.4 lacs per kani, irrespective of status of the land either ''tilla'' or ''bastu'' and the distance which is within 1000 mtrs from the market area. The revenue authority has not shown the distance of the acquired land from the market area or from the lands which have been valued at Rs.4 lacs per kani. Although such distance has not been shown, it is an accepted position that both the acquired land and the land in the sale deed instances fall under the same Mauza. They may come under different ''sheets'' of the same Mauza but no reason can be found to justify the rate fixed by the learned L. A. Judge at Rs. 1 lac only per kani which is far less than the rate of the lands mentioned in the sale instances. The expectation of the land owner has not been taken into account. In the present case the respondent No. 1/claimant can reasonably expect at least half of the rate i.e. Rs.2 lacs per kani as compared to Rs.4 lacs per kani in respect of land situated near the market area. The vendor, respondent1 claimant can reasonably expect to receive compensation at the rate of Rs.2 lacs per kani as the reasonable rate. Half of the market value is to be accepted by the claimant because of the ground reality that the land is yet to fall under the market area although there is scope for expansion of the airport township and its market area in future to the land under acquisition and he potentiality of the land in question has to be taken into account for enhancing the rate of value of the land to Rs.2 lacs per kani. In no case, because of the existing status of the land, the rate can be fixed at Rs.4 lacs per kani until it could be shown that the area has been covered under the market area due to extension oftownship.

17. In view of the above discussion, I am of the considered opinion that it would meet the interest of claimant and the acquirer of the land if the rate of the land is fixed at Rs.2 lacs per kani and calculate the compensation legally due to the claimant. The respondent authorities are accordingly directed to pay the compensation to respondent No. 1/claimant at the rate of Rs. 2 lacs per kani with the solitium and interest as was directed/ordered in the impugned judgment passed by the learned LA Judge.

18. This appeal stands dismissed with cost of Rs.5000/ (five thousand) only to be paid by the Appellants to the Respondent/Claimant.

Return the LCR, forthwith.