
(2015) 2 GLT 750

Gauhati High Court

Case No: L.A. Appeal Nos. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22/2013 and 9, 10, 11, 12, 13 of 2014

Hareswar Daimary and
Others

APPELLANT

Vs

The State of Assam
and Others

RESPONDENT

Date of Decision: March 25, 2015

Acts Referred:

- Constitution of India, 1950 - Article 300A
- Land Acquisition Act, 1894 - Section 18, 23, 23(1), 23(1A), 23(2)

Citation: (2015) 2 GLT 750

Hon'ble Judges: Rumi Kumari Phukan, J

Bench: Single Bench

Advocate: A. Mannaf, A.K. Ahmed and F. Begum, for the Appellant; G. Sarma, G.A., B. Devi and R.R. Borah, Advocates for the Respondent

Final Decision: Allowed

Judgement

Rumi Kumari Phukan, J

By this common judgment and order, I propose to dispose of all above 18 Nos. of appeals as all these appeals, preferred under Section 54 of the Land Acquisition At, 1894, have arisen out of the common judgment and order, dated 30.07.2013, passed by the District Judge, Goalpara, in LA Case No. 45/10, LA Case No. 46/10, LA Case No. 47/10, LA Case No. 48/10, LA Case No. 49/10, LA Case No. 50/10, LA Case No. 51/10, LA Case No. 52/10, LA Case No. 53/10, LA Case No. 54/10, LA Case No. 55/10, LA Case No. 56/10, LA Case No. 57/10, LA Case No. 59/10, LA Case No. 60/10, LA Case No. 61/10, LA Case No. 62/10 and LA Case No. 104/10.

2. The appellant, Hareswar Daimary, in LA No. 10/2013, who was petitioner in LA Case No. 46/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by

the District Judge, Goalpara, in Misc. L.A. Case No. 46/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 2 Katha 11 Lecha, covered by Dag No. 116, Patta No. 39 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case by giving the award at Rs. 32,589.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

3. The appellant, Smti Sabitri Bala Ray, in LA No. 11/2013, who was petitioner in LA Case No. 47/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 47/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 15 Katha 0 Lecha, covered by Dag No. 98, Patta No. 230 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 73,485.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

4. The appellant, Bhupen Rabha, in LA No. 12/2013, who was petitioner in LA Case No. 48/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 48/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 2 Katha 0 Lecha, covered by Dag No. 222, Patta No. 165 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 65,178.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

5. The appellants, Sri Samen Rabha, Pratap Rabha and Bhaben Rabha, in LA No. 13/2013, who were petitioner in LA Case No. 104/2010, have filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 104/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioners' land, measuring 2 Bigha 2 Katha 10 Lecha, covered by Dag No. 270/321(pt), 254, Patta No. 103, 219, 66 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs.

1,59,750.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

6. The appellant, Sri Kashi Nath Basumatary, in LA No. 14/2013, who was petitioner in LA Case No. 62/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 62/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 3 Katha 5 Lecha, covered by Dag No. 631/644, Patta No. 284 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 1,05,435.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

7. The appellant, Sri Yubok Rabha, in LA No. 15/2013, who was the petitioner in L.A. Case No. 60/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 60/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 3 Bigha 1 Katha 16 Lecha, covered by Dag No. 285/397, 414, 365, 283/398, Patta No. 10 (AP), 193 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 2,14,661.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

8. The appellants, Sri Ranjan Daimari and Smti. Jaymoti Daimari, in LA No. 16/2013, who were petitioner in LA Case No. 55/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 55/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 2 Bigha 1 Katha 10 Lecha, covered by Dag No. 308, Patta No. 108 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 1,46,970.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

9. The appellant, Sri Dhananjoy Rabha, in LA No. 17/2013, who was the petitioner in L.A. Case No. 53/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 53/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector-cum-Land Acquisition Officer, Goalpara, in LA Case No.

3/08-09, whereby the petitioner's land, measuring 02 Bigha 0 Katha 05 Lecha, covered by Dag No. 572/598, Patta No. 102 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA. 5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 1,30,995.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

10. The appellant, Sri Dadhilal Rabha, in LA No. 18/2013 who was petitioner in LA Case No. 59/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 59/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 9 Bigha 3 Katha 02 Lecha, covered by Dag No. 3, 96, 388, 424, 415, 287/426, Patta No. 314, 198, 19 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 18,96,960.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

11. The appellants, Sri Lalit Mohan Rabha and Smti. Brihot Rabha, in LA No. 19/2013, who were petitioner in LA Case No. 57/2010, have filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 57/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector-cum-Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 4 Bigha 2 Katha 4 Lecha, covered by Dag No. 313/309/252, Patta No. 218 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 2,99,478.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

12. The appellant, Chakrapoty Rabha, in LA No. 20/2013, who was petitioner in LA Case No. 56/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 56/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 0 Bigha 4 Katha 5 Lecha, covered by Dag No. 364(pt), Patta No. 57 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 54,315.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

13. The appellant, Sri Mon Bahadur Khati, in LA No. 21/2013, who was petitioner in LA Case No. 54/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 54/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 0 Bigha 0 Katha 10 Lecha, covered by Dag No. 315/250, Patta No. 315 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 10,863.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

14. The appellant, Smt. Satyaboti Basumatary, in LA No. 22/2013, who was petitioner in LA Case No. 61/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 61/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 0 Bigha 3 Katha 5 Lecha, covered by Dag No. 237/252, Patta No. 161 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 41,535.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

15. The appellant, Sri Bahuti Rabha, in LA No. 9/2014, who was petitioner in LA Case No. 51/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 51/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 0 Bigha 2 Katha 0 Lecha, covered by Dag No. 607, Patta No. Nil of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 25,560.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

16. The appellant, Sri Smt. Gita Rani Boro, in LA No. 10/2014, who was petitioner in LA Case No. 50/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 50/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 4 Bigha 01 Katha 10 Lecha, covered by Dag No. 223, Patta No. 49 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated

31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 2,74,770.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

17. The appellant, Sri Khari Rabha, in LA No. 11/2014, who was petitioner in LA Case No. 49/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 49/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 3 Katha 9 Lecha, covered by Dag No. 365(pt), Patta No. 10(A.P.) of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 1,07,993.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

18. The appellant, Smt. Rumi Rabha, in LA No. 12/2014, who was petitioner in LA Case No. 52/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 52/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 0 Katha 3 Lecha, covered by Dag No. 270/312(pt), 604/321 (pt), Patta No. 103, 219 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 65,817.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

19. The appellant, Smti. Binapani Rabha, in LA No. 13/2014, who was petitioner in LA Case No. 45/2010, has filed the instant appeal challenging order dated 30.07.2013, passed by the District Judge, Goalpara, in Misc. L.A. Case No. 45/2010 and a batch of Misc. Cases, dismissing the Misc. cases and upholding the award, dated 01.12.2009, given by the Deputy Collector cum Land Acquisition Officer, Goalpara, in LA Case No. 3/08-09, whereby the petitioner's land, measuring 1 Bigha 1 Katha 10 Lecha, covered by Dag No. 102, 103, Patta No. 231 of Digholi Revenue Village, had been acquired by the Deputy Collector on the strength of Govt. Notification No. RLA-5/2009/4 dated 31.01.2009, and by Declaration No. RLA.5/2009/7 dated 08.05.2009 of the said LA case, by giving an award of Rs. 83,070.00, including 30% solatium, 12% interest, and fixing the compensation at the rate of Rs. 45,000/- per Bigha.

20. The appellants have preferred these appeals assailing the impugned order on the ground that while determining the question of compensation to be paid to the appellants for acquisition of the land of the appellants, the learned court below had not taken into consideration, all the relevant factors and had failed to consider the exhibited sale deeds

in ascertaining the fair and reasonable market value of the acquired land prevailing at the time of acquisition. Another ground on which these appeals have been preferred is that the learned District Judge had not taken into consideration the fact that the award had been made by the Deputy Commissioner-cum-Collector, Goalpara, on 01.12.2009, taking the market value of the adjacent lands for the years, 2002 and 2003, which is not legally maintainable as it is violative of provision of Section 4 of the L.A. Act.

21. The learned State Counsel Mr. G. Sarmah, has submitted that the Collector has rightly fixed the market value at the rate of Rs. 45,000/- per bigha and such acquisition is always made for public interest and the appellant cannot take it as a matter of pleasure to claim compensation in their own manner. Similar is the stand of the learned standing counsel Ms. B. Devi, on behalf of the NF Railways who has urged that the learned Court below has rightly rejected the prayer for enhancement made by the appellant petitioners and there is nothing to interfere with the judgment given by the Court below.

22. Let us remind ourselves that the appellant has challenged the order of reference Court basically on two points that :- (i) the award was not made on the basis of the relevant documents/Sale Deed pertaining to the period of Notification; (ii) the Court has not taken into consideration the Sale Deed produced by the appellant side in the course of evidence.

23. After going through the entire evidence in the Court below, what basically strikes the mind of this Court, is that, though the Court has rightly hold that to assess the compensation, the market value of the land on the date of publication of the Notification under Section 4 of the L.A. Act, is relevant and for determination of the market value of the land, Sale Deeds executed within a reasonable time, from the date of Notification, can be relied on but while discussing the matter, the learned Court below proceeded in a different manner and failed to appreciate certain aspects such as what was the date of Notification, what is the market value at that time. Similarly, the Sale Deed so adduced in course of evidence by the petitioners, has out-rightly rejected by the learned Court below on some pretext that the said land is not adjacent to the acquired land and one of the village is under the different revenue circle. While coming to the conclusion, the Court has relied upon a Case Law reported in [Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another](#), AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , wherein certain guidelines were issued to be followed in a reference case under Section 18 of the L.A. Act. The learned Court below again misconstrued the inherent defect in the case and has simply guided himself on the general guideline issued by the Hon"ble Apex Court. Instead of going through the relevant provision, which should be followed by the Reference Court, the Court cannot generalize the case to any other matters which is not befitting to the case under reference. Each case and facts and circumstances has to be highlighted in its given factual background.

24. Now, after a matter has been referred by the Collector u/s. 18 of the Land Acquisition Act, what will be the course of action before the referral Court has been described by Section 23 of the Act. It will be worthwhile to refer the Section 23 of the Act which reads as under :

"23. Matters to be considered in determining compensation:-(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

Firstly, the market value of the land at the date of the publication of the notification under Section 4 Sub-section (1);

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage(if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land.

Fourthly, the damage(if any) sustained by the person interested, at the time of Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses(if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1-A) In addition to the market value of the land, as above prescribed, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4 sub-Section(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever, is earlier.

Explanation- In computing the period referred to in this sub-Section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court, shall be excluded.

(2) In addition to the market value of the land, as above prescribed, the Court shall in every case, award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."

Thus, the Section 23(1) of the Act charges determination of the amount of compensation for the acquired land taking into account firstly the market value of the land on the date of publication of notice under Section 4(1) of the Act, prevailing on the date of notification including the potentiality of the land possessed of or the realisable potentiality existing as on date of notification would be the relevant fact for consideration to determine the market value.

25. Similarly, in [Kolkata Metropolitan Development Authority Vs. Gobinda Chandra Makal and Another](#), AIR 2011 SC 3834 : (2011) 10 JT 573 : (2011) 4 RCR(Civil) 758 : (2011) 10 SCALE 41 : (2011) 5 UJ 3350 , it has been held that relevant date for determining compensation is the date of publication of Section 4 notification in the official gazette. One of the principle in regard to determination of market value under Section 23(1A) is that rise in the market value after the publication of notification under Section 4(1) would be taken into account for determination of market value. If the deeming definition of publication of notification in the amended section 4(1) is imported as the meaning of the said words in the first clause of Section 23(1), it will lead anomalous results. Owners of the land which are the subject matter of notification and the neighbouring land will come to know about the proposed acquisition on the date of publication in the gazette or in the newspaper. If the giving of public notice in the subject of notification is delayed 2 or 3 months, there may be several sale transactions in regard to nearby lands in the said period showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself. If the words publication of notification in Section 23(1) should be construed as referring to the last date of publication and public notice and the date of public notice in the locality, it should be considered as the date of publication and the land owners can legitimately claim that the sales which took place till date of public notice should be taken into account for the purpose of determination of compensation.

26. Dealing with similar question as to the determination of compensation, an application of principle of guesstimate for determining the amount of compensation to be awarded for the land acquired under the Act, the Hon'ble Apex Court in [Trishala Jain and Another Vs. State of Uttaranchal and Another](#), AIR 2011 SC 2458 : (2011) 2 RCR(Civil) 947 : (2011) 5 SCALE 469 : (2011) 6 SCC 47 : (2011) 8 SCR 520 : (2011) 4 UJ 2536 : (2011) AIRSCW 3582 , has made an observation, in Paragraphs No. 54 and 55, as under:

"54. Acquisition of land is an act of falling in the purview of eminent domain of the State. It is essentially relates to the concept of compulsory acquisition as opposed to voluntary sale. It is trite that no person can be deprived of his property save by authority of law in terms of Article 300A of the Constitution of India. The provision of the Act provide a complete mechanism for "deprivation of property in accordance with the law" as stated under the Act. Justifiability and fairness of such compensation is subject to judicial review within the confines of four corners of the Act.

55. Once the lands are acquired under the Act, the persons interested therein are entitled to compensation as per the provision of the Act. The compensation payable to the

claimants has to be computed in terms of Section 23 and 24 of the Act. The market value of the land has to be determined at the date of publication of the notification under Section 4(1) of the Act after taking into consideration what is stated under Sections 23(1), 3(1-A), 23(2) and excluding the consideration under Section 24 of the Act."

27. Herein, lies the crux of the matter. In the instant case, as it appears that, it escapes from the notice of the learned Court below while appreciating the matter that the Notification was issued on 13.01.2009 and the learned Collector assessed the market value of the land basing upon the Sale Deed executed on 29.09.2002, 26.03.2003 and 02.07.2003. In furnishing the report as it appears from the report of the Circle Officer that as they did not find the registered Sale Deed of the land of Digholi Gaon (wherefrom land was acquisitioned) from the office of the Sub-Registrar Goalpara from 2005 onwards as it was not entered into the Index Book so they furnished the comparative chart of 3 Sale Deeds which were found in the office for the year 2002-03 as mentioned above. In the said report given by Lat Mandals (annexed with the report of the Collector) dated 20.11.2008, the rate of per bigha cultivable land is shown as Rs. 45,000/- (approx.) and exactly the said amount has been taken as the value of the acquired land by the Collector. The report itself cannot be the basis of the assessment of the land acquired as it relates to a value of land in the year 2002-03 whereas the land was acquired in the year 2009. This is totally unfair on the part of the Collector to rely upon such a document without insisting for market value of the land for the year 2009 and it has certainly deprived the legitimate claim of the appellant petitioners. Law is very clear that the assessment of the value of the land must be as per the date of Notification.

28. Now regarding the assessment of the market value, the Hon"ble Apex Court, in [Gulzara Singh and Others Vs. State of Punjab and Others](#), (1993) 3 JT 668 : (1993) 2 SCALE 808(1) : (1993) 2 SCALE 808 : (1993) 4 SCC 245 : (1993) 3 SCR 645 , reported in Gulzara Singh v. State of Punjab, has held that " to determine the market value of the land under Section 23(1) of the Act, the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of a hypothetical willing vendor and willing vendee. The willing vendor who would offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of Notification or near about the date of the notification is the acid test. If sale transactions relate to the lands under acquisition and it found to be genuine and bona fide transactions between willing vendor and vendee then it may be considered but reasonable margin must be given in fixing wholesale price. The sale and purchase of lands at a throw away price at arm's length or depressed sales or facade of sales brought into existence in quick succession to inflate the market value would not offer any basis to determine just market value. In order to adjudge whether sales are bona fide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale deeds and relied

on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory. Every endeavour would be made to fix fair and reasonable market value."

29. In [State of Orissa Vs. Brij Lal Misra etc. etc.](#), AIR 1996 SC 221 : AIR 1995 SC 221 : (1996) 81 CLT 288 : (1995) 4 SCALE 592 : (1995) 5 SCC 203 : (1995) 2 SCR 354 Supp : (1995) 2 UJ 571 , and in [Attar Singh and Another Vs. Union of India \(UOI\) and Another](#), (2009) 11 JT 129 : (2009) 11 SCALE 57 : (2009) 9 SCC 289 : (2009) 12 SCR 315 , it has been held that the determination of the market value depend upon the facts and circumstances of each case.

30. Similar view was endorsed by the Apex Court in [P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others](#), (1995) 1 JT 593 : (1995) 1 SCALE 332(1) : (1995) 1 SCALE 332 : (1995) 2 SCC 305 : (1995) 1 SCR 584 , which relevant paragraph, is quoted as below :

"8. Market value of the land under the L.A. Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the L.A. Act. The market value of such land must relate to the date of publication of the notification of giving the public notice of substance of such notification according to Section 4(1) of the L.A. Act."

31. In the case of *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar & anr.* AIR 2004 SC 2895, it has been held by the Apex Court that for the purpose of land acquisition Act, the market value must be determined on the basis of Sale Deeds of comparable lands. In the given case, as has been noticed, the land Acquisition Officer has taken note of comparable Sale Deeds but it is far back from the date of the Notification.

32. In [Assam State Electricity Board Vs. On Death of Jethua Mikir, his Sons](#), (2004) 3 GLR 73 , His sons, it has also been held by this Court, that "Sale Deeds which have been executed within a reasonable time from the date of notification, which are bona fide transactions of land, situated nearby the acquired land and having similar advantages, can safely be relied upon by the reference Court for calculating the fair market value of the acquired land." For arriving at a fair market value, the Court may take into consideration of potentiality of the land being utilized in the near future at a building site although at the relevant time i.e. on the date of notification under Section 4 of the Act, the land is utilized for agricultural purpose. The reference Court held to have committed no error in ascertaining the price of the acquired land on the basis of the Sale Deeds.

33. In [Sagunthala \(Dead\) through LRs. Vs. Special Tehsildar \(L.A.\) and Others](#), AIR 2010 SC 984 : (2010) 2 JT 405 , the Hon"ble Apex Court reiterated the same status.

34. Further, regarding the assessment of the market value, the Hon"ble Apex Court in [Lal Chand Vs. Union of India \(UOI\) and Another](#), AIR 2010 SC 170 : (2009) 11 JT 490 :

(2009) 11 SCALE 627 : (2009) 15 SCC 769 : (2009) 13 SCR 622 , it has been discussed vide paragraph No. 3(b), that the Sale Deeds pertaining to the acquired land or nearby land would be the most relevant pieces of evidence and the High Court ought not to have ignored the Sale Deeds exhibited by the parties on the ground that neither the vendor nor the purchaser relating to the Sale Deeds were examined as witness. After remand of the case, the High Court determined the market value by taking average of the two Sale Deeds having regard to the land acquired under the Notification. Further in paragraph No. 26 of the judgment, it has been held that when the Statute enables a Court to assess Sale Deed on record evidencing its transaction, nothing further is required to be done. Even the vendor or vendee, thereof, is not required to examine themselves for giving the content thereof.

35. In view of the legal position, and the statutory mandate under the Land Acquisition Act itself, if we plunge into the evidence of the matters on record before the reference Court, we will find that the Collector has already assessed the land value in a wrong calculation which is beyond the statute and not in conformity to the Section 4 read with Section 23 of the Land Acquisition Act, which has defeated the lawful claim of the petitioners. So the order of the reference Court is liable to be interfered on this pretext alone.

36. On the other hand, the learned reference Court has discarded the evidence of the witnesses PW-2, PW-3, and PW-4, who have proved the different Sale Deeds (in sequence) like:

"(i) Ext. 3, vide Sale Deed No. 2118/1949 dated 27.11.2009, by which PW-2 purchased 2K of land at Rs. 1,00,000/-, and the market value of the land which was at Rs. 2,50,000/-, per bigha;

(ii) Ext. 4, Sale Deed No. 1883/1743 dated 30.12.2008, by which PW-3 purchased 1K-5L land at Rs. 50,000/- and the market value of the land which was at Rs. 2,00,000/-, per bigha;

(iii). Ext. 5, Sale Deed No. 49/40 dated 10.01.2007, by which PW-4 purchased 2 bighas-0K-16L of land, on payment of Rs. 4,26,000/- and the market value of the land which was at Rs. 2,00,000/-, per bigha;"

37. The observation of the learned Court below is that the land falls do not falls under Dudhnoi Revenue Circle but it falls under different part of Revenue Village Bagulamari and the acquired land of the petitioners lies at a distance from the land purchased and there is no government institution nearby the place and the acquired land falls under the Revenue Village Dighuli. On these grounds, the learned Court refused to accept the Sale Deeds, to assess the market value. On proper appreciation of the matters, on record, it is to be noted that the learned Court has taken into account that there was a 100 mtrs. distance from the acquired land to the land purchased and Revenue Circle is also different. Now, the law has contemplated that the value of nearby land can be the basis

for assessment of market value. All the witnesses of the petitioners have asserted in the evidence that they are residing in the same village and such a little amount of distance of 100 mtrs. is not a ground to discard the positive evidence so adduced by the petitioners. After going through the Sale Deeds so executed by the witnesses, it is apparent that the lands purchased or sold by the witnesses are within the Dudhnoi Circle and village Dighali and only in the Ext. 4, relates to Dudhnoi circle and village Bogulamari but within the same locality. Even if we take the average of all the remaining Sale Deeds, it will go in favour of the claim of the appellants that for 3 consecutive years, from 2007 to 2009, the land was sold at the rate of Rs. 2,00,000/- per bigha, which was the prevailing rate at the time of the Notification under Section 4 of the Land Acquisition Act and those lands sold were in and around the acquired land and similarly situated. There is no justification to discard such authentic evidence so produced by the appellants which have been duly proved and not doubtful, in any sense. There is also nothing to show that the lands sold/purchased was of different category like for building purpose, rather, it was sold as cultivable land and it is in evidence that it is about 1/2 KM from National Highway so future proximity of value of land is high. In view of all above, I am of considered opinion that value of comparable sale deeds relied by the respondents cannot be maintained. On the other hand, value of the Sale Deeds so proved by the witnesses of the appellants, the learned Court below, as has been discussed above, will represent the market value of the land.

38. Now, regarding the deduction of market value, the decision of the Hon"ble Apex Court in (i) [The Collector of Lakhimpur Vs. Bhuban Chandra Dutta](#), AIR 1971 SC 2015 : (1972) 4 SCC 236 : (1971) 3 UJ 274 (ii) [Land Acquisition Officer Vs. Nookala Rajamallu and Others](#) , (iii) [Viluben Jhalejar Contractor \(D\) by LRs. Vs. State of Gujarat](#), AIR 2005 SC 2214 : (2005) 4 CTC 71 : (2005) 4 JT 282 : (2005) 4 SCC 789 : (2005) 1 SCR 542 : (2005) 1 UJ 716 , can be referred into. The Hon"ble Apex Court laid down that it cannot be construed to be an absolute proposition of law that the rate fixed for the small plots cannot be the basis for fixation of the market rates. It was observed that when there is no other material, it will be open to the adjudicating Court to make comparison of the prices paid for the small plots of land. However, in such cases, necessary deduction/adjustment has to be made while determining the price.

39. In [Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality](#), AIR 1992 SC 2298 : (1991) 4 JT 56 : (1991) 2 SCALE 613 : (1991) 4 SCC 506 : (1991) 1 SCR 172 Supp : (1992) 1 UJ 1 , it has been held that in applying the principle of deduction, it is necessary to consider all relevant facts and it is not that in every case, such deduction is to be allowed.

40. Keeping in view of all legal propositions and the matter, in hand, where the respondent authority had brought nothing on record that they need to incur any further expenditure to develop the land so acquired and the land acquired was suitable cultivable land having good potentiality being nearer to National Highway, no order as to deduction, required to be made. According to the appellant's witnesses, some plots of land stated to

be sold at Rs. 2,50,000/-to Rs. 3,00,000/- also and the appellants were already deprived of their legitimate due while assessing by the Collector. Having regard to all the facts and circumstances of the case, the market value is fixed at Rs. 2,00,000/- per bigha.

41. Accordingly, the appeals are allowed, determining the market value at Rs. 2,00,000/- per bigha on the enhanced market value, the appellants shall be paid interest under Section 28 of the Land Acquisition Act at the rate of 9% per annum from the date of the issuance of Notification i.e. 13.01.2009 for the first year ending on 12.01.2010 and thereafter, at the rate of 15% per annum till the date of tender of compensation. Interest shall also be paid on the solatium and other statutory benefits. The impugned judgment & order dated 30.07.2013 passed by the learned District Judge, Goalpara, in the above mentioned Land Acquisition cases is modified to the extent as indicated above. The concerned Opposite Party is directed to pay the amount within 3(three) months from today.

42. Return the LCRs.