



ORDER SHEET
[RULE 129 OF THE RECORDS MANUAL, 1971]

Arbn. Case of Mouza- Kamdevpur , L.A. Case No. LA/NH-34/N-24Pgs./Amdanga/18 of 2011-12 for the applicants 1/2016 to 459/2016 of District : North 24-Parganas

Order Sheet, dated from 04.01.2017 to 03.04.2017

Nature of Case : Arbitration for enhancement of compensation for the land acquired under NH Act, 1956

Serial No. & Date of Order	Order and signature of Officer	Note of action on Order
<p style="text-align: center;">1 04.01.2017</p>	<p>Whereas it appears that 459 applications, relating to Mouza- Kamdevpur, J.L. No. 65, P.S.- Amdanga, have been filed by Rahima Bibi and 458 others for enhancement of compensation on acquired land of the purpose of widening of National Highway-34 disputing assessment made by the Competent Authority Land Acquisition, North 24-Parganas u/s 3G of National Highways Act, 1956, is very low and undervalued.</p> <p style="text-align: center;">AND</p> <p>Whereas it appears, on prima-facie scrutiny, of the said applications, that all the applications are more or less similar and identical. Principal prayer is for enhancement of compensation for the acquired land as the compensation awarded is too low and suffered by under valuation of the acquired land of the petitioners. And as such all the petitions having Arbitration case no. 1 of 2016 to 459 of 2016 are taken analogously for the convenience,</p> <p>I, Antara Acharya, Collector & District Magistrate, North 24-Parganas have been appointed Arbitrator in the Land Acquisition cases under National Highways Act, 1956, take up the arbitration Case Nos. 1/2016 to 459/2016 analogously for hearing and disposal of the cases affording opportunity being heard to all the interested parties and in accordance with law,</p> <p>Issue, therefore, notices u/s 3G(5) read with Sec. 3I of National Highway Act, 1956 upon the petitioners, the National Highways Authority & the Competent Authority fixing 21.03.2017 as date of hearing of the cases at 11:00 A.M. in the Conference Hall, 4th Floor, Administrative Building, Barasat, North 24-Parganas with direction to all the interested parties to appear before the Arbitrator personally or through representative with all relevant documents and papers in support of claim or counter claim.</p> <p style="text-align: center;"> Arbitrator & District Magistrate North 24-Parganas, Barasat</p>	
<p style="text-align: center;">2 31.01.2017</p>	<p>Notices served and S.R filed with this C.R.</p> <p style="text-align: center;"> Arbitrator & District Magistrate North 24-Parganas, Barasat</p>	

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<p style="text-align: center;">3 21.03.2017</p>	<p>Arbitration Case Nos. 1 of 2016 to 459 of 2016 are taken up analogously for hearing.</p> <p>Present on behalf of petitioners :- Basudev Gayen, Jiban Nath Ghosh, Dilip Chamaria & others and Ld. Advocate Arindam Das & Ld. Advocate Dipankar Das.</p> <p>Present on behalf of the Requiring Body :- Mr. Abhik Chakraborty, Ld. Advocate.</p> <p>Present on behalf of 'CALA' :- The Competent Authority.</p> <p>Heard the cases at length. Petitioners raised a preliminary objection in making the Requiring Body (NHAI) a party to the proceeding and then unequivocally prays for enhancement of compensation as per assessed land value as on the date of notification considering the entire strip of acquired land along side National Highway as similar class of land and the highest land value be offered. In elaborating the submission they refer the judgment reported in (2016) 3 SCC 364 in the matter Omkar Singh & ors. -vs- State of Hariyana, and (1997) 6 SCC 47 in the matter of Union of India -vs- Mangaturam. They further argue that Sec. 24 of the of the Act 30 of 2013 has since been applicable in National Highway Act and as maximum awardees have not been paid within 21.07.2015 and as such land value and components of compensation may be awarded to the awardees in enhancing the land value and adding other components of compensation too.</p> <p>A copy of the said judgment, a copy of the statement of assessed land value and copy of the order issued by the NHA, Govt. of India are placed and made them part of proceeding.</p> <p>The representative appearing for the NHAI met the preliminary objection by submitting that the proceeding is at their instance and the fund towards cost of acquisition has been provided by them and even further lawful financial liability as may be arisen in future is to be borne by them as such NHAI is materially interested party in the case. The Ld. Advocate relied on the decision reported in (2011) 2 SCC 54 in the matter of D.D.A -vs- Bholanath Sharma and also the judgment dated 20.09.11 in MAT No. 227 of 2011 of High Court, Calcutta in the matter of Bharat Sanchar Nigam Ltd. -vs- State.</p>	



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	<p>The Ld. Advocate on behalf of NHAI strongly opposes the submission of enhancement of land value on the basis of assessed market value of the land as on the date of notification. The acquisition proceeding has been started in 2010 and the legal procedure for determination of land value was prevailing on the principle as laid down in Act-I of 1894 and following the same the set forth value of the land was determine and award was duly declared before 01.01.2015 and as has been determined by the 'CALA' is just, proper and legally valid. Sec. 24 of the New Act in no way applicable in the case. He further argues that the entire strip of land does not and cannot be equally valued because the geographical situation, user of land, advantages attached to land and connectivity with other important roads and institutions are varied from each other. It is scientifically and logically acceptable to assess land value taking into consideration the user pattern and other advantages attached to each acquired land. In support Ld. Advocate refers the judgment of the Hon'ble Supreme Court in C.A. No. 6251 of 2010 (Bhuleram -vs- Union of India), C.A. No. 3590 of 2012 (S.M.Y.A. Hamid Molla -vs- Special L.A.O.), AIR 1976 SC 2219 and AIR 1977 SC 1560.</p> <p>The copy of reference cases are filed with C.R.</p> <p>The representative of the 'CALA' in supporting the argument of the Ld. Advocate of NHAI submits from the case records that the notification was published on 22.06.2010, declaration was made on 14.09.2011 and award was prepared on 21.07.2015. The compensation of acquired land has been determined on the basis of set forth value arrived at land value in the vicinity. Average of land value from sufficient no. of sale deeds executed within 1 year prior to the date of notification. In determining the land value as well as compensation provision of law and guideline in G.O. No. 16SS and 1705 as prevalent were duly followed. He further submits that entire strip of land along side NHA does not and cannot scientifically be allowed same land value which may leave room of resentment among the awardees with reference to the location of each and every plot of acquired land.</p> <p>A consolidated list showing relevant date of Notification, declaration, award are submitted and made part of proceedings.</p>	



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<p style="text-align: center;">4</p> <hr/> <p>03.04.2017</p>	<p>He, therefore, prays for affirming the award made as per provision of Sec. 3G of NH Act.</p> <p>The argument and counter argument are taken into consideration, judgment cited are gone through, Govt. orders and other relevant documents incidental to acquisition are also gone through.</p> <p>Hearing of the case is concluded. To 03.04.2017 for delivery of judgment and drawing of decree.</p> <div style="text-align: center;">  Arbitrator & District Magistrate North 24-Parganas, Barasat </div> <p>The Case is taken up for delivery of judgment. Arbitration case no. 1 of 2016 with 2 of 2016 to 459 of 2016 of Mouza- Kamdevpur, J.L. No. 65, P.S.- Amdanga, Dist.- North 24-Parganas are of similar nature and on similar points. All the cases were heard analogously and judgment is delivered accordingly.</p> <p>Rahima Bibi & 458 Ors. -Vs- (1) Competent Authority Land Acquisition under National Highway Act. (2) Project Director, National High Way Authority. Date of delivery of judgment : 21.03.2017.</p> <p>For the applicant :- Basudev Gayen, Jiban Nath Ghosh, Dilip Chamaria & others and Ld. Advocate Arindam Das & Ld. Advocate Dipankar Das & Ors.</p> <p>For the respondent No. 1 & 2 – Competent Authority, Land Acquisition and Mr. Abhik Chakraborty Ld. Advocate for the National Highway Authority respectively.</p> <p style="text-align: center;"><u>:- Judgement :-</u></p> <p>The Arbitration cases arise out of petitions filed under Sec. 3G(5) of the National Highways Act 1956 (Act 48 of 1956) herein after referred to as 'the said Act' and is directed against the award passed by the Ld. Competent Authority Land Acquisition, North 24 Parganas in respect of land measuring 7.7293 acre of land in 148 different plots of mouza – Kamdevpur, J.L. No. 65, P.S. – Amdanga, District – North 24 Parganas in connection with Land Acquisition Case No. LA/NH-34/N-24Pgs./Amdanga/18 of</p>	

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	<p>2011-12. The total area acquired in this mouza is 7.7293 acres. The claimant in filing the arbitration application vehemently raised inadequacy of the compensation as awarded by the 'CALA' and there by prays for enhancement of land value and resultant enhancement of other components of compensation as per assessed market value of the land acquired in applying the provision of New Act 2013.</p> <p>The Ld. Advocate appearing for the petitioners in the instant arbitration case in elaborating his argument put forward the following submissions:-</p> <ol style="list-style-type: none"> 1. That, the National Highway Authority of India (in short NHAI) is the department under the Central Government. The competent authority so also the Arbitrator have been appointed by the order of Central Government. As such, NHAI may not be a materially interested party to the proceeding before the Ld. Arbitrator. 2. With the aforesaid preliminary abjection, the Ld. Advocate submits that admittedly the subject land has been acquired for widening of National Highway stretching through 21 Mouzas of P.S.- Amdanga in this District and accordingly the entire acquired strip is to be treated as similar class of land irrespective of user / classification of the individual plot of land. So all the plots of land belonging to Mouza- Jirat should be treated as non agricultural land and he refers the Judgement of Hon'ble Supreme Court in the case of Omkar Singh & ors. -vs- State of Hariyana & ors. reported in (2016) 3SCC364. The Ld. Advocate refers paragraph no. 24 of the said judgement wherein the Hon'ble Court was pleased to observe that the compensation for the land situated at a breadth up to 500 meters on NH-8 is treated as same class of land. He further refers the judgement of the Hon'ble Supreme Court of India in the case of Union of India and Ors. -vs- Mangaturam etc. reported in 1997(6)SCC47 wherein the Hon'ble Apex Court observed that the strip of land at a breadth of 500 yard from the main road should be treated as A class land irrespective of the quality of the land. (Paragraph-3) 3. The Ld. Advocate appearing for the claimant petitioners submits that the land acquisition authority has erroneously determined the compensation of the land on 	



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	<p>the basis of set forth value of the land in vicinity. But there should be compensation on the basis of present market value (as on the date of notification) as assessed by the Registration Authority. And for that the highest assessed market value is to be offered irrespective of the classification / user / quality of each individual plot of land falling within project area.</p> <p>4. It is further submitted that classification of each individual land may not be the main criterion for determination of land value for the purpose of compensation of acquired land in as much as the Special Secretary, to the Government of West Bengal, L. & L.R. Department in his order 7818-IS.534/2002 dated Kokata the 25th October, 2002 imposed a ban on conversion of land at the side the National Highway or a prominent road and thereby the occupants are compelled to carry out their trade on the basis of licence issued by the competent authority, i.e. the Gram Panchayat in this case. So, the recorded classification does not and cannot reflect actual present user of the land and as such valuation of the land may not be on the basis of recorded classification and having done so the award has become vitiated.</p> <p>The Ld. Advocate concludes his argument that there should be determination by way of enhancement of land value of the acquired land by taking into consideration of the assessed land value as on the date of notification for the highest class of land as has been procured from the Registration Authority and allow other components of compensation as provided in section 24 of the New Act i.e. Act 30 of 2013 which stands applicable since in 01.01.2015 by issuance of appropriate order from the Govt. of India.</p> <p>The Ld. Advocate for the petitioners are asked to produce deed of reference of higher value than that of CALA within 7 days from date.</p> <p>The Ld. Advocate appearing for the Requiring Body opposes the submission of the Ld. Advocate appearing for the claimants and submits that :-</p> <p>1. With reference to preliminary objection raised by the Ld. Advocate for the claimants, the Ld. Advocate for 'NHAI' submits that the acquisition proceeding has been initiated at the proposal of 'NHAI'. The financial liability,</p>	



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	<p>therefore, is to be shouldered by the Requiring Body, as such, he is very much interested party. The Ld. Advocate in support of his argument relies on the judgement in the Case of Delhi Development Authority – Vs- Bholanath Sarma & Ors. reported in (2011) 2 SCC 54. He also refers the judgement dated 20.09.2011 of the Hon'ble Division Bench, High Court, Calcutta in the matter of Bharat Sanchar Nigam Ltd. –Vs- State of West Bengal & Ors. in MAT No. 227 of 2011. Moreover, natural justice demands that, in a proceeding either, judicial or quasi-judicial, all materially interested parties should be given opportunity of being heard, deviation thereof renders a preceding nullity. And thus he submits that 'NHAI' is materially interested party and by way of impleading 'NHAI' a party to this preceding, the Ld. Arbitrator has meted the natural justice.</p> <p>2. The Ld. Advocate submits that the Judgement cited by the Ld. Advocate for the claimants in the case of Omkar Singh & Ors. –vs- State of Hariyana & Ors. reported in (2016) 3 SCC 364 and Union of India and Ors. –vs- Mangaturam etc. reported in 1997 (6) SCC 47 are on a proceeding initiated and disposed of under Act-I of 1894 while the instant proceeding is under the NH Act 1956 wherein the provision of Act-I of 1894 shall not apply as provided in Sec. 3(J) of NH Act. So, the case under reference does not squarely apply in the present case in as much as facts and circumstances of the referred cases and the present case are altogether different and dissimilar.</p> <p>3. He, in supporting the award of the authority, has specifically refers the process and procedure adopted in determining the land value of the acquired land on the basis of the provision of law and also the provision of manual. He further submits that land value means the value / price of land which a willing buyer offers to a willing seller. Accordingly, value of land obviously depends on its quality and advantage attached to such land. He also refers the judgement of Hon'ble Apex Court in CA No. 6251 of 2010 in the matter of Bhuleram –vs- Union of India of ors. and also refers the decision of Hon'ble Apex Court in the case of Sabina Md. Yusuf Abdul Hamid Molla –vs- Special L.A.O. & ors. in C.A. No. 3590 of 2012.</p>	



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	<p>4. The Ld. Advocate further submits that determination of land value in a particular Land Acquisition proceeding depends on market value of land which a willing purchaser pays to a willing seller having due regard to the existing condition with all its existing advantages and its potential possibility but excluding any advantages due to carrying out the scheme for which the land is acquired. Reference cited AIR 1976 SC 2219 and AIR 1977 SC 1560. It is also settled by the Hon'ble Apex Court that valuation of immovable property is not an exact science nor it can be determined like algebraic problem as it abounds in uncertainties and there could be no strait jacket formula as such there remains room for conjecture. The factor for consideration is nature and position of land to be acquired. Reference cited C.A. No. 6251 of 2010 in the matter of Bhuleram -vs- Union of India & ors.</p> <p>He further refers that the Hon'ble Court observed. "It is settled law that while fixing market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:-</p> <ul style="list-style-type: none"> (i) Existing geographical situation of the land. (ii) Existing use of the land. (iii) Already available advantages, like proximity to National or State High way or road or developed area. (iv) Market value of other land situated in the same locality/ village/ area or adjacent or very near the acquired land. <p>The Ld. Advocate concludes that the award as has been declared by the competent authority is just, fair and proper and therefore there could be no interference by the Ld. Arbitrator, per contra, the award made by the authority may graciously be declared as final.</p> <p>The Representing Officer of the Competent Authority in placing the original case records draws attention to the Notification, Declaration, Award declared and payment thereof and submits that in this instant case Notification was published in the newspaper on 22.06.2010 in pursuance of Gazette of India Notification No. S.O. 3104(E) dated New Delhi, the 4th December, 2009 and following the Declaration and Award was duly made on 14.09.2011 and</p>	



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	<p>21.07.2015 respectively. It is submitted that land value was determined on the basis of Govt. orders and guidelines. It is elaborated that set forth value of land has been calculated on the basis of average of higher values gathered from a good number of registered deeds executed within one year prior to the date of notification and such land value has been determined mouza-wise and classification-wise and following the provision of the G.O. No. 16SS and 1705. All out attempts were made to maximize the valuation of the property. It is also submitted that all acquired land of this mouza has been categorised into two classes i.e. agriculture land and non-agriculture land. The procedure adopted that 2/3 of land value of non-agriculture land with 25% additional value has been given for agriculture land. The Danga land has been considered as Bastu keeping in view its situation adjacent to National Highway and bar to conversion of land by the Government of West Bengal. In determining the market value of the land other components namely solatium 30%, Additional compensation 12% have been allowed.</p> <p>He also submits that acquisition of the land is for the purpose of widening the National High Way for the greater interest and development of public at large. It is an admitted position that the NH-34 stretches from Duckbanglow, Barasat to Dalkhola, Uttar Dinajpur. The value and importance of land affected by acquisition obviously varies from mouza to mouza. For example, the land at Barasat, the land at Amdanga, the land under District Nadia, the land under Murshidabad and the land under District Malda, the land under District Uttar Dinajpur although situate beside National High Way No. 34 does not and cannot make the equal land value in as much as land value depends on other criteria specially dependent on distance from Kolkata and other varied advantages and amenities. As such, there may not be similar land value for all the lands irrespective of Mouza, Thana and District. It is no denying the fact that the real land value depends on the consideration money of transaction between willing buyer and a willing sealer. It is scientifically and Lawfully assessed by the competent authority taking into consideration of average of a good number of registered sale deeds.</p> <p>He, thus, prays for affirming the award made by the 'CALA'. However, on scrutiny, it has been found that most of the awardees were paid the compensation after 01.01.2015 and as such provision of section 24 of the New</p>	



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	<p>Act, i.e. Act 30 of 2013 may be applied by the Arbitrator, if deemed fit.</p> <p style="text-align: center;"><u>Decision with reasons:-</u></p> <p>Considered the submission of the parties appearing in the case and having gone through the Land Acquisition case records vis-a-vis the documents relating to Notification, Declaration, Award and Process of determination of structure value, relevant provision of the statute, Notification regarding applicability of the New Act of 2013 and Govt. orders issued time to time and upon due consideration of the arguments and counter arguments advanced by the parties I sum up my findings as under:-</p> <p>a. 7.7293 acres of land from several plots adjacent to NH-34 of Mouza- Kamdevpur, P.S.- Amdanga, Dist.- North 24-Parganas has been acquired Under National Highway act 1956, herein after referred to as "the said Act".</p> <p>b. Notification u/s 3A was published in newspaper on 22.06.2010 in pursuance of Government of India Gazette Notification No. S.O. 3104(E) dated New Delhi, the 4th December, 2009.</p> <p>c. Declaration u/s 3D was published on 14.09.2011.</p> <p>d. Award on land except structure value was declared on 21.07.2015.</p> <p>The point for considerations are:-</p> <ol style="list-style-type: none"> 1. Whether Requiring Body is interested party and is entitle to have opportunity of being heard? 2. Whether the 'CALA' has rightly determined the valuation of the land affected by acquisition? 3. Whether the award made by the 'CALA' needs interference and modification as per law? <p>Issue number 1 is taken up for disposal first in as much as it is preliminary objection. The acquisition proceeding is initiated at the instance of National Highways Authorities under the Govt. of India. In a land acquisition proceeding Requiring Body is an interested party and</p>	

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	<p>liability of providing fund towards compensation absolutely rests upon them. As such they have the right to participate in award making process so also subsequent prayer of enhancement and other legal forum. In MAT No. 227 of 2011 in the matter of Bharat Sanchar Nigam Ltd. -vs- State of West Bengal & ors. the Hon'ble Division Bench, High Court, Calcutta in judgement dated 20.09.2011 observed, "Very recently apex Court further has gone a step forward identifying the legal right of the Requiring Body to oppose the proceeding of reference Court under Section 18 of the said Act, by holding inter alia, that if any notice is not served to the Requiring Body, the judgement and decree, would be nullity. In the case Delhi Development Authority v. Bhol Nath Sharma & Ors. reported in (2011) 2 SCC 54 wherein on considering earlier five judges bench judgement regarding interpretation of Section 50 of the Land Acquisition Act, the Court held that non-service of notice to the Requiring Body by the reference Court goes to the root of the matter denying opportunity to oppose enhancement of compensation prayer when liability to pay that amount lies to said body and thereby held that the judgement and decree would be treated as nullity." [Page No. 11 & 12].</p> <p style="text-align: center;">A copy of the said judgement is placed in file marked-"J1".</p> <p style="text-align: center;">In appeal (Civil) no. 7067 of 1994 in the matter of U.P. Awam Vikas Parishad -vs- Gyan Devi (dead) by L.R.S. & ors. the Hon'ble Supreme Court in a decision dated 20.10.1994 held, "The Local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard" [Page No. 29 Paragraph No. 6].</p> <p style="text-align: center;">A copy of the judgement is kept in file marked as "J2".</p> <p style="text-align: center;">In SLPC No. 18056 to 18057 of 2003 in the matter of D.D.A -vs- S.S. Awarwal, the Hon'ble Supreme Court held, "In view of the law laid down in Delhi Development Authority v. Bhol Nath Sharma (2011) 2 SCC 54, the DDA shall be entitled to participate in the proceedings of the reference Court and raise objections against the claim made by the assignees for payment of compensation. The DDA</p>	



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	<p>shall also be entitled to raise all other legally permissible objections to contest the claim of the assignees" [Page No. 8 Paragraph 19(IV)].</p> <p>A copy of the judgement is kept in file marked as "J3".</p> <p>Moreover, natural justice demands offering of opportunity of being heard to all interested parties for the ends of justice.</p> <p>In view of above discussions and in terms of the judgement cited herein above it is concluded that the requiring body (NHAI) is an interested party and in giving notice to the Requiring Body in the instant arbitration proceeding, the law prevailing has duly been complied. And accordingly the objection raised by the claimants is over ruled.</p> <p>Now issue no. 2 & 3 are taken together for the brevity and disposal thereof.</p> <p>At the outset it is recorded that no reference deed as was called for in earlier order has been placed. Instead they adduce a xerox copy of rate of land value as on 31.03.2010 and that of 2016 supplied by the A.D.S.R., Amdanga. However, such a default cannot put an embargo upon the claim of the petitioners. It should be fair and proper to determine the exact land value and compensation thereof so as to meet the natural justice and legal entitlement of the land loser in a welfare state.</p> <p>It appears that the competent authority, North 24-Parganas fixed the valuation of agriculture land at Rs. 1,67,881/- per decimal and at Rs. 2,05,178/- per decimal for non-agriculture land. The claimants in objecting the said valuation prays for enhancement of land value as per assessed valuation by the registration authority on the date of Notification. According to them the same shall be more than what is given.</p> <p>Market value means the value which a parcel of land would realise if sold in market, (paragraph 68 of West Bengal Land Acquisition Manual). Market value means that a willing purchaser would pay to willing seller for the property having due regard to its existing condition with all existing advantages and its potential possibilities (AIR 1976</p>	



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Nature of Case : Arbitration for enhancement of compensation for the land acquired under NH Act, 1956

Serial No. & Date of Order	Order and signature of Officer	Note of action on Order
	<p>SC 2219, Thakur Kanta Prasad Singh -vs- State of Bihar, AIR 1987 SC 720, Mahabir Prasad Santukra -vs- Collector, Cuttack). This is the normal procedure for determination of land value by taking the average value from sufficient number of deed of transaction as per NH Act, prevailing up to 21.07.2015. But in CA No. 6251 of 2010 in the matter of Bhuleram -vs- Union of India & ors. the Hon'ble Apex Court observed that to determine market value various factors are to be taken into consideration, but excludes the advantages due to its carrying out the purpose of acquisition and remote potentiality. It is the duty of the claimant that he must produce the relevant evidence for determining the market value during Sec 9, or before trial Court of reference Court. It is also observed that valuation of the immovable property is not an exact science nor it can be determined like algebraic problem as it abounds in uncertainties and there could be no straight jacket formula as such there remains room for conjecture. The factor for consideration in the case is nature and position of the land acquired. In CA No. 3590 of 2012 Sabhina Mohammad Yusuf Abdul Hamid Molla -vs- Special L.A.O. & ors., the Hon'ble Apex Court held that for determining market value of land the following factors is to be kept in mind :-</p> <p>(i) Existing geographical situation of the land.</p> <p>(ii) Existing use of the land.</p> <p>(iii) Already available advantages, like proximity to National or State High way or road or developed area.</p> <p>(iv) Market value of other land situated in the same locality/ village/ area or adjacent or very near the acquired land.</p> <p>Again, in the case of Omkar Singh -vs- State of Hariyana, reported in (2016) 3 SCC 364, the Hon'ble Apex Court observed that there should be similar land value up to 500 meters in breadth adjacent to National Highway (paragraph 24 of the judgement). In Union of India & ors. -vs- Mangaturam & etc. reported in 1997 (6) SCC 47 the Hon'ble Apex Court observed that the strip of land at a breadth of 500 yards from the main road should be treated as A Class land irrespective of the quality of the land (paragraph 3 of the judgement).</p>	



Arbitrator & District Magistrate
North 24-Parganas, Barasat

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	<p>Acquisition for widening of the National Highway in P.S.- Amdanga is stretched through 21 mouzas and such a strip along side of the National Highway. Moreover, the land of respective mouzas has separate identity and distinguishing advantages, varied density of population rendering varied valuation of land dependent on flexibility of demand, commercial avenue and existence of important establishments like- School, College, Hospital, Bank and other institutional facilities. Thereby the importance and value of land differs from mouza to mouza. Moreover, situation and geographical position of the land is exclusively different from that of land of mouzas under district Nadia, Malda and Uttar Dinajpur considering the nearness of location of land in mouza North 24 Parganas with reference to situation of Air Port, Health Institution of Kolkata and Kolkata as a whole. Therefore, the valuation of land in Nadia cannot be reference to the land value of North 24 Parganas. Even, in the same concept the land of different mouzas in North 24 Parganas does also vary. However, I may not be in oblivion to the geographical position of land situated in each mouza, for example the land adjacent to "Gadamara Hat" is obviously has higher commercial importance and/or value than that of Mouza-Khelia (admittedly the widening stretches through both the mouzas). So, to protect the interest derived from the actual situation of the land and in evaluation of the varied positional importance / advantage and to avoid cause of grievance among the land owners with reference to different mouzas, I decide to classify the land of 24 Parganas in four groups considering their geographical situation, advantages attached to the land and for the ends of justice. Now a comparative assessment on the basis of valuation procured from A.D.S.R. office and from I.G.R. office as to differential value of land with reference to geographical location, economical potentiality, advantages attached to the land and connectivity of the land is shown below:-</p> <ol style="list-style-type: none"> i. From the LA Map it is evident that the location of the acquired land to the extent 7.7293 acres of mouza-Kamdevpur is alongside the NH-34 and that too within a breadth of 500 meters. ii. Situation of School, Bank, daily Market (forming a Gang) namely Gadamara Hat near the acquired land make the value of land is higher in comparison to that of other mouzas. 	



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	<p>iii. The area is well communicated through prominent Bus Routes. Nearness of Railway Station namely Naihati Junction add advantages of connectivity throughout the entire District as a whole and other adjoining districts.</p> <p>The observation finds support from the comparative assessed value of land situated in 18 mouzas as Arbitration of the said 18 Mouzas are in process (excluding sl. No. 5, 6 & 16), arbitration of which have already been completed).</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th rowspan="2">Sl. No.</th> <th rowspan="2">Name of Mouza</th> <th colspan="3">Nature of land and assessed value per decimal thereof as on the date of notification supplied by registration</th> <th rowspan="2">Highest value</th> <th rowspan="2">Remarks</th> <th rowspan="2">Land value as on 2016</th> </tr> <tr> <th>Shali</th> <th>Bastu</th> <th>Dokan</th> </tr> <tr> <th>A</th> <th>B</th> <th>C</th> <th>D</th> <th>E</th> <th>F</th> <th>G</th> <th>H</th> </tr> </thead> <tbody> <tr><td>1.</td><td>Jirat</td><td>26460/-</td><td>165375/-</td><td>529200/-</td><td>529200/-</td><td></td><td>1000000/-</td></tr> <tr><td>2.</td><td>Hisabi</td><td>26460/-</td><td>165375/-</td><td>529200/-</td><td>529200/-</td><td></td><td>866666/-</td></tr> <tr><td>3.</td><td>Mirhati</td><td>15876/-</td><td>18257/-</td><td>NA</td><td></td><td></td><td>666666/-</td></tr> <tr><td>4.</td><td>Kamdebpur</td><td>15876/-</td><td>99225/-</td><td>317520/-</td><td>317520/-</td><td></td><td>633333/-</td></tr> <tr><td>5.</td><td>Rafipur</td><td>13230/-</td><td>82688/-</td><td>NA</td><td></td><td></td><td>541666/-</td></tr> <tr><td>6.</td><td>Raypur</td><td>13230/-</td><td>82688/-</td><td>NA</td><td></td><td></td><td>500000/-</td></tr> <tr><td>7.</td><td>Dhania</td><td>13230/-</td><td>82688/-</td><td>NA</td><td></td><td></td><td>500000/-</td></tr> <tr><td>8.</td><td>Amdanga</td><td>60638/-</td><td>378988/-</td><td>NA</td><td></td><td></td><td>533333/-</td></tr> <tr><td>9.</td><td>Sonadanga</td><td>13230/-</td><td>82688/-</td><td>NA</td><td></td><td></td><td>450000/-</td></tr> <tr><td>10.</td><td>Adhata</td><td>12348/-</td><td>77195/-</td><td>246960/-</td><td>246960/-</td><td></td><td>450000/-</td></tr> <tr><td>11.</td><td>Khelia</td><td>11113/-</td><td>69458/-</td><td>222266/-</td><td>222266/-</td><td></td><td>416666/-</td></tr> <tr><td>12.</td><td>Khanda Sarkara</td><td>11113/-</td><td>69458/-</td><td>222266/-</td><td>222266/-</td><td></td><td>416666/-</td></tr> <tr><td>13.</td><td>Arkhali</td><td>10584/-</td><td>66150/-</td><td>211680/-</td><td>211680/-</td><td></td><td>416666/-</td></tr> <tr><td>14.</td><td>Rahana</td><td>11466/-</td><td>71663/-</td><td>229322/-</td><td>229322/-</td><td></td><td>416666/-</td></tr> <tr><td>15.</td><td>Uludanga</td><td>8820/-</td><td>55125/-</td><td>NA</td><td></td><td></td><td>291666/-</td></tr> <tr><td>16.</td><td>Sadhanpur</td><td>8820/-</td><td>10143/- (Danga)</td><td>NA</td><td></td><td></td><td>333333/-</td></tr> <tr><td>17.</td><td>Urala</td><td>8820/-</td><td>55125/-</td><td>NA</td><td></td><td></td><td>333333/-</td></tr> <tr><td>18.</td><td>Kaipukuria</td><td>8820/-</td><td>55125/-</td><td>NA</td><td></td><td></td><td>333333/-</td></tr> <tr><td>19.</td><td>Mahadebpur</td><td>8820/-</td><td>55125/-</td><td>NA</td><td></td><td></td><td>325000/-</td></tr> <tr><td>20.</td><td>Baikunthapur</td><td>10584/-</td><td>66150/-</td><td>211680/-</td><td>211680/-</td><td></td><td>390000/-</td></tr> <tr><td>21.</td><td>Madanpur</td><td>47628/- (Bagan)</td><td>66150/-</td><td>NA</td><td></td><td></td><td>416666/-</td></tr> </tbody> </table> <p>From the aforesaid comparative study it would appear that acquired land of mouzas falling under Sl. No. 1 & 2 are of similar advantages, similar advantageous connectivity, economical potentiality and nearness to the District Town. And at the same time maximum assessed land value of the registration department as per Indian Stamp Act both in 2010 and 2016 shown at column nos. F & H place the mouzas at the highest position in consideration of land value which obviously dependent on advantages, potentiality and connectivity. The said two mouzas shall rationally be grouped into Group-A.</p>	Sl. No.	Name of Mouza	Nature of land and assessed value per decimal thereof as on the date of notification supplied by registration			Highest value	Remarks	Land value as on 2016	Shali	Bastu	Dokan	A	B	C	D	E	F	G	H	1.	Jirat	26460/-	165375/-	529200/-	529200/-		1000000/-	2.	Hisabi	26460/-	165375/-	529200/-	529200/-		866666/-	3.	Mirhati	15876/-	18257/-	NA			666666/-	4.	Kamdebpur	15876/-	99225/-	317520/-	317520/-		633333/-	5.	Rafipur	13230/-	82688/-	NA			541666/-	6.	Raypur	13230/-	82688/-	NA			500000/-	7.	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	<p>The land value of the acquired land in this two mouzas have been assessed by the 'CALA' at Rs. 1,67,881/- per decimal for agricultural land and Rs. 2,05,178/- per decimal for non-agricultural land as set forth value, while assessed market value of Shali, Bastu & Dokan are Rs. 26,460/-, Rs. 1,65,375/- & Rs. 5,29,200/- respectively based on ADSR report as above. It is apparent from the case records that user of the acquired strip is divided into two categories – Agricultural & Non-Agricultural. Obviously, front side of the acquired land attached to NH is used for the purpose of Bastu or Dokan which is Non-Agricultural. It is not the common phenomenon that the entire Non-Agricultural land is used for the purpose of Dokan or for commercial purpose, per-contra it is rare and limited phenomenon. So, for making exact valuation of land it would be wise / prudent to take both the value of Bastu & Dokan and by making average of two the real value of the land would be available. On the other hand the rear portion of the acquired land is being used for Agricultural purpose but there remains viability of change of user subsequent to development and therefore it would be proper to make the valuation of agricultural land by way of allowing 2/3rd of the land value determined for non-agricultural land with additional benefit of 25% of the said 2/3rd considering the existing phenomenon for the ends of justice.</p> <p>In view of above findings and reason the land value of acquired non-agricultural land of Mouza- Jirat will be :-</p> <p style="text-align: center;">[[165375 + 529200]/2] = Rs. 3,47,288/- per decimal.</p> <p>The land value of agricultural land is determined at:-</p> <p style="text-align: center;">[[347288 x 2/3]+(347288 x 2/3 x 25%)] = Rs. 2,89,406/- per decimal.</p> <p>Thus, the land value is enhanced and determined as above in modifying the land value assessed by the CALA.</p> <p>Land falling within mouzas- Mirhati & Kamdebpur have the advantage of existing Educational Institution, Govt. Offices, Banks, Cold Storage, Tourist Place etc. but the land falling within the mouzas is slightly less value than that of Group-A lands so far as commercial activities are concerned. Moreover, the highest assessed land value of the said mouzas whose value is obviously less than that of</p>	

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	<p>Group-A land and valued as on 2010 as 3 lakhs + as reflected in the comparative assessment above. Therefore, the acquired land under Mouza- Mirhati & Kamdebpur, are grouped as Group-B for the ends of justice. And accordingly the land value of this group of land should be 80% of the land value of Group-A land such a percentage is calculated not only on the basis of advantages available but also taking into consideration of the market value of the land provided by District Registrar, North 24-Parganas. While highest land value of these mouzas is Rs. 347288/- x 80% = Rs. 2,77,830/- per decimal for non-agricultural land as on the date of notification. Similarly the land value for agricultural land would be 80% of the land value of the Group-A agricultural which comes to : (289406 x 80%) = 2,31,526/- per decimal. Thus, the land value is for Group-B land is determined and the assessment made by the CALA is modified and enhanced.</p> <p>Lands falling within the Mouzas- Sonadanga, Adhata, Khelia, Khanda Sarkara, Arkhali, Rahana, Madanpur, Dhania & Amdanga are grouped under Group-C as they are of lesser importance from the view of population, advantages, connectivity and other commercial enterprises than that of Group-B. Therefore, it will be just and proper to determine land value @70% that of Group-A. Such a calculation finds support to the land value of this mouzas supplied by the District Registrar. The comparative statement shown hereinabove is taken into consideration. Accordingly, the real value of non-agricultural land belonging to Group-C mouzas will be (347288 x 70%)= Rs. 2,43,102/- per decimal while land value of agricultural land would be 70% of the land value determined for agricultural land of Group-A. Thus, it comes to (289406 x 70%) = Rs. 2,02,585/- per decimal.</p> <p>Lands falling within the Mouzas- Baikunthapur, Kaipukuria, Urala, Mahadevpur & Uludanga are grouped under Group-D as they are of lesser importance from the view of population, advantages, connectivity and geographical situation than that of Group-C. Therefore, it will be just and proper to determine land value of non-agricultural land @60% of that of Group-A non-agricultural land. Such a calculation finds support to the land value of this mouzas supplied by the District Registrar. The comparative statement shown hereinabove is taken into consideration. Similarly, the agricultural land of these</p>	

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	<p>mouzas under Group-D should be determined at 60% of the land value of Group-A agricultural land.</p> <p>Thus, the land value of non-agricultural land belonging to Group-D is determined as $(347288 \times 60\%) = \text{Rs. } 2,08,373/-$ per decimal and land value of agricultural land is determined at $(289406 \times 60\%) = \text{Rs. } 1,73,644/-$ per decimal. The land value assessed by the CALA is modified and enhanced as above.</p> <p>A copy of the report of the Registration Authority is made part of the proceeding (Annexure - A).</p> <p>From the case records, it appears that the award has been prepared on the basis of the set forth value collected on individual classification of the land. It further appears that award has been paid after 01.01.2015 or on 01.01.2015 maximum awardees have not been paid the award. It appears from the records that all the structures awards made separately after 01.01.2015. Prima-facie it is a deviation for general concept of preparing award for the land looser which includes structure value also. But under a compelling circumstance 'CALA' was forced to prepare award of structure after thorough and detailed measurement of the structures along the stretches of 17.5 K.M. of land along the NH -34 which was almost impossible to do at that time of 3A Notification at Amdanga P.S. due to strong agitation started by the so called 'affected persons' under banner of "Bhumi-O-Babasaye Raksha Samiti" taking the advantage of the political situation of that period in this state. All the negotiation with the agitators and Dist. Administration failed repeatedly. Local News Papers and demands letters submitted by them bears the evidence of non-execution of the L.A. process. However, in a meeting dated 18.01.2013 in the chamber of the Divisional Commissioner Presidency Division it was decided to proceed with the L.A. Works of this project at any cost considering its economic importance for the development of the state. Only 7 (seven) mouzas out of 21 (twenty-one) award declared with structure value and thus the authority got penetration over the project. It raised hope in administration that the L.A. works may be concluded.</p> <p>So, a fresh measurement for structures taken by a joint team, a Govt. valuer engaged by 'NHAI', representative of the Project Officer 'NHAI', Surveyors from L.A. Collector and the owner of the structures or their representatives. On</p>	



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	<p>the basis of this fresh measurement considerable amount of time passed in declaring the awards of structure but the dead line of 01.01.2015 which was imposed subsequently changed the situation.</p> <p>That although in certain cases award was prepared on or before 21.07.2015 but the award toward structure value was neither determined finally nor payment could be made before 01.01.2015. It is seen that for determination of value of structure the 'NHAI' appointed the Govt. approved valuer. The said valuer including the other authority faced much public resistance and therefore valuation of structure could not be made at the time, and hence estimate u/s 3G was not finally prepared. Thereafter it was held prudent that the valuation work takes place without much field presence in order to avoid confrontation with the public. Hence, the assistance of local amins was taken to get the structure measurement and at the same time 'CALA' was directed to prepare the 3G estimate. Obviously, the valuation of structure was pending till 01.01.2015. It is also seen that the valuer was asked to re do the work as the structure owners are now co-operating. It is, therefore, evident that much time was consumed for finalization of the award and as such payment of total award was delayed due to the field situation as well as observation of the principle and procedure in tackling the situation prevalent at the time. Be that as it may, the fact remains that the entire / total compensation payable to the awardee was made in most of the cases after 01.01.2015.</p> <p>A copy of the Memo No. 3855 dated 15.09.2014 is made part of this proceeding (Annexure - B).</p> <p>It is clearly evident that proceeding although is sustainable but payment of award did not exceed 50% in any case before 01.01.2015.</p> <p>In the aforesaid facts and circumstances, it is held that the benefit of higher compensation as envisaged under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, hereinafter referred to as LARR Act, 2013 be extended to the present cases w.e.f. 01.01.2015 in considering Annexure 'B' to the proceeding being the G.O. dated 03.02.2016. Similarly G.O. being No. JS-296(13)-LA.III/1E-16/14 dated 09.02.2016 of L & L.R. Department, L.A. Branch, Govt. of West Bengal also confirms the consideration of the schedule I of LARR Act, 2013.</p> <p>In the aforesaid backdrops of the case I observe that the award of the 'CALA' needs interference and modification too as specified below:-</p>	

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[RULE 129 OF THE RECORDS MANUAL, 1971]

Arbn. Case of Mouza- Kamdevpur , L.A. Case No. LA/NH-34/N-24Pgs./Amdanga/18 of 2011-12 for the applicants 1/2016 to 459/2016 of District : North 24-Parganas

Order Sheet, dated from 04.01.2017 to 03.04.2017

Nature of Case : Arbitration for enhancement of compensation for the land acquired under NH Act, 1956

Serial No. & Date of Order	Order and signature of Officer	Note of action on Order
	<p>(1) The benefit of higher compensation as envisaged under LARR Act is extended to these cases with effect from 01.01.2015.</p> <p>(2) That since award has not been paid before 01.01.2015 in this Mouza under arbitration, all land losers are entitled to compensation in accordance with the principle adopted at Sl. No. 1 above.</p> <p>(3) That the land value is determined as per assessed value as on the date of Notification which has been detailed with reasons hereinbefore (page 16 of this proceeding).</p> <p>(4) Since award including the award for structure has been made and compensation in respect of majority of land holding has not been deposited in the account of beneficiaries prior to 31.12.2014, the land loser shall be entitled to get benefit of higher compensation as envisaged under LARR Act.</p> <p>(5) That the compensation is to be determined as per LARR Act (Act-30 of 2013) which comprises market value of land as specified in Indian Stamp Act (for registration of sale deeds) multiplied by the factor 1.1 (as applicable in the area) and 100% solatium with effect from 01.01.2015.</p> <p>In the facts and circumstances the concept of set forth value as has been done by the 'CALA' is of no relevance. Since mouza- Kamdevpur is placed under Group-B, market value of the non-agricultural land is determined that at Rs. 2,77,830/- per decimal as on the date of notification while land value of agricultural land of this mouza is determined at Rs. 2,31,526/- per decimal.</p> <p>Both the issues are thus answered as above and decided to re-determine the market value of land to give benefit of higher compensation as envisaged under LARR Act, 2013 w.e.f. 01.01.2015.</p> <p>Hence, <u>Ordered</u> That the arbitration case succeeds in part on contest. The valuation of the acquired land of Mouza- Kamdevpur is hereby determined and fixed at Rs. 2,77,830/- per decimal for non-agricultural land and Rs. 2,31,526/- per decimal</p>	



ORDER SHEET
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	<p>for agricultural land as on the date of Notification. Thereafter, the market value of land as determined is to be multiplied by 1.1 . The Claimants / awardees over the subject land involved in the notifications do also get 100% solatium over the market value of the land so as to extend benefit to higher compensation as per LARR Act, 2013. They also get interest @9% per annum over the differential compensation with effect from the date of taking possession of the land to the date of actual payment.</p> <p>The amount of compensation so calculated minus the compensation determined by the authority is to be paid as expeditiously as possible from the date of communication of this order, but not later than 8 months.</p> <p>It is further ordered that regarding compensation towards acquisition effected structure where re-measurement is running as per application before the Arbitrator. Appropriate compensation be awarded by the CALA in accordance with law on the basis of the report of joint inspection and assessment thereto. Be it indicated that compensation for entire building should be awarded if it is fact that extent of damage for part acquisition of the construction/structure is unsuitable for residence or stability of the building.</p> <p>The case is thus disposed of. This order will govern all the cases namely 2 of 2016 to 459 of 2016 and even the other awardees who have not submitted arbitration petition due to ignorance or otherwise but having same interest on the total lands as mentioned above will also be entitled to get the benefit of the arbitral award for the ends of justice and equity.</p> <p>Let a plain copy of the order be supplied to the Competent Authority for taking necessary action for payment of Arbitral Award.</p> <p>Certified copy, if applied for, should be provided as per prescribed rules.</p>	

Dictated & corrected by me.


Arbitrator &
District Magistrate
North 24-Parganas


Arbitrator, NH-34
&
District Magistrate
North 24 Parganas