

GAHC010009642021



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/366/2021

MD. BASER ALI AND ANR
S/O LATE ANTAZ ALI, VILL. SOWARI PAITARY, P.O. JAIBHUM, DIST.
GOALPARA, ASSAM.

2: ABDUL GONI SARKAR

S/O LATE SOMSHER ALI SARKAR
VILL. BORO PAITARY
P.O. JAIBHUM
DIST. GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM, WATER
RESOURCES DEPTT., DISPUR, GUWAHATI 781006

2: THE CHIEF ENGINEER

WATER RESOURCES DEPTT. ASSAM
CHANDMARI
GUWAHATI 781003

3: THE EXECUTIVE ENGINEER

GOALPARA WATER RESOURCES DIVISION
GOALPARA
DIST. GOALPARA
ASSAM
PIN 783120

4: THE DEPUTY COMMISSIONER CUM COLLECTOR

GOALPARA
DIST. GOALPARA
ASSAM
PIN 783120

5:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GUWAHATI 781006

6:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

REVENUE AND D.M. (LR) DEPTT.
DISPUR
GUWAHATI

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 22-01-2024

Heard the learned counsel for the parties.

2. The instant writ petition has been filed by the petitioners being aggrieved by the inadequacy of the compensation awarded to the petitioners in relation to L.A. Case No. 1/2011-12 arising out of the acquisition of the land of *bona fide* owners/pattadars of land, measuring 69 Bighas 1 Katha 10 Lechas, under a special scheme for construction of dyke, namely, "LA to immediate measures to close the breach at Ch. 13th km (at Solmari) of B/dyke from Kharmuja to Balikuchi due to diversion of channel of river Brahmaputra including A/E measures of 2010-11 under CRF".
3. It is the case of the petitioners that originally, while preparing the estimate, the Deputy Commissioner, Goalpara, had duly certified the total amount of the cost of land

to be Rs. 4,54,60,361/- . However, at the time of passing the award, the awarded amount was Rs. 2,71,37,631/- . Under such circumstances, the petitioners, being aggrieved, have approached this Court seeking a direction to the respondent authorities to re-determine the compensation and to pay the balance amount of Rs. 1,83,22,730/- .

4. This Court has also perused the materials on record including the documents which were placed before this Court by Mr. B. Goswami, learned Additional Advocate General, Assam, who has submitted that the final estimated amount for implementation of the scheme was Rs. 2,71,37,631/- , out of which the total payable compensation amount was Rs. 2,46,54,200/- . He has submitted that an amount of Rs. 2,45,90,139/- has already been paid to the petitioners and the remaining amount of Rs. 24,83,431/- was on account of Government contingency/establishment cost etc. However, an amount of Rs. 64,061/- could not be released to the petitioners in view of the fact that certain beneficiaries have not submitted all the required documents. The learned Additional Advocate General has further submitted that if the petitioners herein are aggrieved by the inadequacy of compensation, then the petitioners have to approach, in terms with Section 12 of the Assam Land (Requisition and Acquisition) Act, 1964 (for short, "Act of 1964"), before the Collector concerned and thereupon the Collector would make a reference to the Court wherein the aspect whether the petitioners are entitled to any higher amount of compensation or not would be adjudged.

5. This Court at this stage finds it very pertinent to take note of the judgment dated 14.11.2023, delivered by this Court in the case of ***Sawarmal Agarwalla and 27 Ors. Vs. The Union of India and 9 Ors.*** [WP(C) 4947/2014]. In the said judgment, this Court had duly taken note of the judgment of the Supreme Court in the case of ***Sharda Devi Vs. State of Bihar and Another***, reported in **(2003) 3 SCC 128**, wherein the Supreme Court had observed that the Award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have

appeared before the Collector or not, on the following issues:

- (i) as to the true area i.e. the measurement of land acquired;
- (ii) as to the value of the land i.e. the amount of compensation, and;
- (iii) as to the apportionment of the compensation amongst the "persons interested".

6. It was further observed by this Court that pursuant to passing of the award the Collector becomes *functus-officio* and the award made by the Collector is final and conclusive and the same can only be varied/superseded by a Civil Court in accordance with the provisions of law. Paragraphs 16 to 21 of ***Sawarmal Agarwalla*** (supra) being relevant, are quoted herein-below:

"16. Section 12 of the Act of 1894 is of relevance taking into account the issues involved inasmuch as the said Section stipulates as to when the award of the Collector becomes final. The said Section 12 is reproduced hereinunder:

"12. Award of Collector when to be final :

- (1) *Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.*
- (2) *The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."*

17. From a perusal of the above quoted Section, it stipulates that the award so made by the Collector under Section 11(1) of the Act of 1894 has to be filed in the Collector's Office and shall except as provided in the Act of 1894, be final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

*18. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***Sharda Devi Vs. State of Bihar and Another*** reported in (2003) 3 SCC 128 wherein the Supreme Court had observed at paragraph No.34 that the Award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have appeared before the Collector or not, on the following issues*

- (i) as to the true area i.e. the measurement of land acquired,*
- (ii) as to the value of the land i.e. the amount of compensation, and*

(iii) as to the apportionment of the compensation amongst the "persons interested".

However, the Supreme Court made it also clear in the said paragraph of the judgment that the said aspects would be final and conclusive insofar as between the Collector and the "persons interested" and not as amongst the "persons interested" inter se. It was further observed by the Supreme Court that the final and conclusive nature of the award can be varied/superseded by the Civil Court. Paragraph No.34 of the said judgment being relevant is quoted hereinbelow:

"34. The award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have appeared before the Collector or not, on two issues: (i) as to true area i.e. measurement of land acquired, (ii) as to value of the land i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the "persons interested" — again, between the Collector and the "persons interested" and not as amongst the "persons interested" inter se. In the event of a reference having been sought for under Section 18, the Collector's award on these issues, if varied by the civil court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by the Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum."

19. *This Court further finds it relevant to take note of Section 18 of the Act of 1894 which stipulates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation amongst the persons interested. Sub-Section (2) of Section 18 further mandates that the application to be filed to the Collector shall state the grounds on which objection(s) are made to the award. The proviso to Sub-Section (2) of Section 18 stipulates that such application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; or (b) in other case, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-Section (2), or within six months from the date of the Collector's award, whichever period shall first expire. Therefore, it would be seen that in order to supersede the finality and conclusive nature of the award statutorily mandated under Section 12 of the Act of 1894, the person interested has to file an application seeking a reference by the Collector for determination of the Court.*

20. *This Court before further proceeding however finds it relevant to mention as regards Section 30 of the Act of 1894 which is a provision relating to dispute as to the apportionment. A perusal of the said provision would reveal that when the amount of*

compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. This provision is referred to by this Court taking into account that though there is a finality and conclusiveness arrived at between the Collector and the person interested, then also, the Collector can make a reference suo moto without any application by the person interested on the issue as to the person to whom the compensation is payable. This very aspect of the matter can also be seen from a perusal of paragraph No.34 of the judgment of the Supreme Court in the case of Sharda Devi (supra).

21. *Be that as it may, as regards the true area i.e. measurement of the land and as to the value of the land i.e. the amount of compensation, the said award so made by the Collector is final and conclusive and the Collector in the opinion of this Court becomes functus-officio pursuant to the making of the award as regards the true area i.e. the measurement of the land as well as the value of the land i.e. the amount of compensation. The provisions of the Act of 1894 would show that the jurisdiction only available with the Collector pursuant to the making of the award is only to give effect to the Award. In fact, Section 30 of the Act of 1894 is also in the nature of giving effect to the Award inasmuch as while giving effect to the Award, any dispute arises as regards the apportionment or persons who are entitled, the discretion is conferred upon the Collector to refer the same to the Court."*

7. In the backdrop of the above settled principle of law and applying the same to the facts of the instant case, it is the opinion of this Court that the petitioners herein, if so aggrieved by the inadequacy of the amount of compensation, have to approach the Collector, i.e. the District Commissioner, Goalpara, in terms with Section 12 of the Act of 1964 and, thereupon, the District Commissioner, Goalpara, has to make a reference to the Court of the District Judge, Goalpara.

8. Accordingly, this Court, therefore, disposes of the instant writ petition with the following observations and directions:

(i) This Court is not inclined to issue a writ to the District Commissioner/Collector, Goalpara, to re-determine the quantum of compensation on the ground of inadequacy. However, this Court grants liberty to the petitioners to file respective application(s) seeking redressal of their grievance regarding inadequacy of the compensation, before the Collector/District Commissioner, Goalpara, forthwith and not later than 45 days

from today.

(ii) The District Commissioner/Collector, Goalpara, upon receipt of the respective application(s), so filed by the petitioners within the time permitted by this Court, shall, within a period of 30 days therefrom, make a reference to the Court of the District Judge, Goalpara.

(iii) This Court further takes note of the fact that the award was passed on 31.12.2011. However, the petitioners have not approached the Collector till date in terms with Section 12 of the Act of 1964. Under such circumstances, it is the opinion of this Court that if there is any enhancement on the compensation amount, the petitioners will not be entitled for payment of any interest for the period from the date of passing of the award till the date of filing of the application(s) by the petitioners before the District Commissioner/Collector. However, upon filing of the application(s) before the District Commissioner/Collector in terms with the liberty given hereinabove, if there is any enhancement of the compensation amount, the petitioners would be entitled to interest on the enhanced amount with effect from the date of filing of the application(s).

(iv) This Court further directs the District Commissioner/ Collector, Goalpara, to forthwith make the reference inasmuch as the delay in making the reference would lead to incurring of additional interest, if the amount of compensation is enhanced.

With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant