

GAHC010013622024



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

Case No. : WP(C)/357/2024

MOKSED ALI
S/O LATE JOBBAR ALI
R/O VILL- SAJUARKUTI
P.S. GAURIPUR
DIST. DHUBRI, ASSAM
PIN-783331

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF ROAD, TRANSPORT AND HIGHWAYS.

2:THE NATIONAL HIGHWAYS AUTHORITY OF INDIA

REPRESENTED BY ITS CHAIRMAN
HAVING ITS H.Q. AT SECTOR 10 DWARKA NEW DELHI
PIN-110075
NEW DELHI.

3:THE NATIONAL HIGH WAYS AUTHORITY OF INDIA

REGIONAL OFFICE AT GUWAHATI NEDFI HOUSE NO. 4TH FLOOR
G.S. ROAD
GHY-06 ASSAM
REPRESENTED BY ITS PROJECT DIRECTOR.

4:THE DEPUTY COMMISSIONER
DHUBRI

P.O. AND P.S. DHUBRI

DIST. DHUBRI
ASSAM
PIN-783301

5:THE ADDL. DY. COMMISSIONER
(LAND ACQUISITION BRANCH) DHUBRI
DIST. DHUBRI
ASSAM
COMPETENT AUTHORITY UNDER NATIONAL HIGHWAYS ACT-1956)
PIN-783301

6:JANNATULLAH HAQUE
S/O LATE YASIN ALI
VILL- SIJUARKUTI
P.O. SHILAIRPAR
P.S. GAURIPUR
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

17.07.2024

Heard Mr. A. Z. Ahmed, learned counsel for the petitioner. Also heard Ms. M. Barman, learned Government Advocate for respondent Nos. 5 and 6; Mr. A.C. Sarma, learned Senior Counsel assisted by Mr. G. Bharadaj, learned counsel for respondent No.7 and Ms. K. Phukan, learned CGC for respondent No.1.

2. The case projected by the petitioner is that the petitioner is the absolute owner of a plot of land measuring 2 B-1K-12.5 L bearing Dag No.30 patta No.51 situated at Gauripur Ward No.2 under Gauripur Revenue Circle. It is stated that out of the said plot of land, a plot of land measuring 1B-1K-5L has been

acquired by the Ministry of Road Transport and Highways for construction of Gauripur Bypass road and accordingly a L.A. Case has been registered vide L.A. Case No.1/2020-21 and an award was made vide Award No. 385 and the compensation award amount is assessed Rs.1,20,00,000/- . The petitioner approached the respondent authorities on several occasions claiming for the awarded amount but the respondent authorities declined to release the awarded amount. Being aggrieved, the petitioner has approached this Court.

3. It is submitted that the private respondent No.7 approached before the authorities concerned and submitted that the petitioner had already sold his share of land to the private respondent No.7 by executing a sale agreement.

4. The learned counsel for the petitioner has referred to Section 3 H of the National Highways Act, 1956 to submit that under the provisions of the Act, in case of any dispute, the matter has to be referred to the Competent Civil Court by the competent authority, who is nominated under the provisions of the Act.

5. Ms. M. Barman, learned Government Advocate has referred to the affidavit filed by the Additional District Commissioner and Competent Authority, Land Acquisition Officer, Dhubri. She submits that in the affidavit there is an averment that the share of land of the petitioner has been sold to the private respondent No.7.

6. Mr. A.C. Sarma, learned Senior Counsel assisted by Mr. G. Bharadaj, learned counsel for respondent No.7 submits that petitioner is not entitled to any claim as the land has already been sold to his client and therefore, it is the respondent No.7, who is entitled to be paid the compensation.

7. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The relevant provisions of the National Highways Act

have also been perused.

8. Section 3 H (4) of the National Highway Act, 1956 reads as under:-

“3H. Deposit and payment of amount.-

(1).....

(2).....

(3).....

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”

9. Perusal of the affidavit filed by the Additional District Commissioner also reveals that at paragraph 6 of the affidavit there is an averment that the land has been sold by the writ petitioner to the respondent No.7. The paragraph 6 of the affidavit is extracted below:-

“6. That during physical verification conducted by Lot Mondal, Gauripur Revenue Circle, it appears that the pattadar No.2 Moksed Ali, S/o Jobbar Ali has sold his portion of the aforesaid land to Jannatul Hoque, S/o- Late Yeasin Ali and accordingly the purchaser Jannatul Hoque, S/o Jobbar Ali has been possessed the said portion of land since 2 or 3 years and remaining portion of acquired land measuring 1 Bigha 0 Katha 0 Lecha out of 2 Bigha 1 Katha 5 Lecha is under the possession of the legal heirs of the deceased Pattadar Yeasin Ali as reported.

In view of the above, it is stated that the pattadar Moksed Ali, S/o-Late Jobbar Ali has sold his share of land to the legal heirs of the deceased Pattadar Yeasin Ali namely Jannatul Hoque by executing Sale Agreement instead of Registered Sale Deed. Being purchaser Jannatul Hoque possessed the said acquired portion of the land measuring 1 Bigha 1 Katha 5 Lecha out of 2 Bigha 1

Katha 5 Lecha and remaining portion of land measuring 1 Bigha 0 Katha 0 Lecha is under the possession of the legal heirs of the deceased pattadar Yeasin Ali as reported. On the basis of the objection petition filed by Moksed Ali S/o-Jobbar Ali dated 08/08/2023 enquiry is going on over the disputed land.”

10. From the pleadings perused and upon hearing the submissions of the learned counsels it is evident that there is a dispute between the petitioner and the private respondent with regard to the apportionment and/or the title of the land. Provisions of Section 3 H (4) of the National Highway Act, 1956 is very specific and categorical and under the provisions of the said section, the Competent Authority is required to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within whose jurisdiction the land is situated. Since the statute mandates such disputes to be referred by the Competent Authority to the Principal Court of Civil jurisdiction, this Court is of the view that since the affidavit of the Additional District Commissioner and Competent Authority, Land Acquisition Officer, Dhubri has clearly stated in the affidavit that the land claims to have been sold by the petitioner, which is disputed by the writ petitioner, this Court is of the view that there indeed exists the dispute with regard to the title of the said land between the petitioner and the private respondents.

11. In that view of the matter, this writ petition is disposed of with a direction to the respondent No.6, namely the Additional Deputy Commissioner (Land Acquisition Branch) Dhubri, Assam (Competent Authority under National Highways Act, 1956) to take necessary steps if not already undertaken in terms of the provisions of Section 3 H (4) of the National Highways Act, 1956.

12. The steps, if not yet taken by the respondent No.6 will be undertaken within a period of 3 (three) weeks from the date of receipt of a certified copy of

this order.

13. Writ petition is accordingly stands disposed of in terms of the above direction.

JUDGE

Comparing Assistant