

GAHC010015112014



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

WP(C)/4845/2014

MD. AZIZUL HAQUE
S/O LT. MAKADDAS ALI R/O VILL- LEVERPUTA PART-II
P.O. LEVERPUTA MOUZA- LEVERPUTA PART-II
DIST. CACHAR
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
THROUGH- THE SECRETARY
TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT L.R DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE SECRETARY

TO THE GOVT OF ASSAM
PUBLIC WORKS DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE CHIEF ENGINEER

P.W.D. BORDER ROADS ASSAM
CHANDMARI
GUWAHATI-3.
4:THE CHIEF ENGINEER

PWD BUILDING ASSAM
CHANDMARI
GUWAHATI-3.
5:THE DEPUTY COMMISSIONER-CUM- COLLECTOR

CACHAR
SILCHAR
DIST. CACHAR
ASSAM.
6:THE LAND ACQUISITION OFFICER

SILCHAR
CACHAR
P.O. SILCHAR DIST CACHAR
ASSAM
7:THE EXECUTIVE ENGINEER

PWD B.R.C. BADARPUR DIST. KARIMGANJ
ASSAM.
8:THE EXECUTIVE ENGINEER

PWD BUILDING DIVISION
SILCHAR
DIST. CACHAR
ASSAM.

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioners : Shri R. Mazumdar, Advocate

Advocates for respondents : Shri N. Goswami, GA, Assam,
Shri B. Choudhury, SC, PWD,
Shri A. Bhattacharya, SC, Revenue.

Date of hearing : **18.04.2024**

Date of judgment : **18.04.2024**

- 1.** An order dated 23.06.2014 passed by the Collector, Cachar rejecting the claim of the petitioner for the balance amount of acquisition compensation is the subject matter of challenge in this writ petition.
- 2.** There is a chequered history of this case which also involves previous litigations and a brief narration of the facts would be necessary.
- 3.** As per the projection made by the petitioner, in the year 2003, a land acquisition proceeding was initiated in the Cachar district for construction of the Indo-Bangladesh Border. Amongst the four numbers of such L.A. Cases, the concerned L.A. Case in this petition is L.A.15/2003-04 which was re-numbered as 16/2006-07. It is the contention of the petitioner that as per estimate prepared, an amount of Rs. 3.64 crores (approx.) was held to be the compensation amount and out of the same, Rs. 2.68 crores (approx.) was released with a deduction of 15% to 20%. As the balance amount was not released to the petitioner, he had approached this Court by filing WP(C)/1768/2010.
- 4.** In an analogous writ petition WP(C)/1746/2010 (***Taz Uddin vs. State of Assam & Ors.***), the Deputy Commissioner/ Collector, Cachar had filed an affidavit-in-opposition and in paragraph 4 thereof, there was an admission of deduction of 20%. This Court, accordingly vide order dated 07.04.2011 had disposed of the writ petition with a direction to verify the facts and if found sustainable and entitled, to pay the amount. It is the specific case of the petitioner that similarly placed incumbents had filed another writ petition

WP(C)/1538/2010 in which there was a direction of this Court vide order dated 11.11.2010 and in the concerned L.A. Case namely, L.A. Case No. 4/2006-07, the balance amount was released pursuant to the aforesaid order of this Court dated 11.11.2010.

5. The case of the petitioner is that while the balance amount in a similarly situated case was paid, a Speaking Order was passed on 21.07.2012 wherein some irrelevant observations were made resulting in denial of the claim.

6. The petitioner accordingly filed the second writ petition WP(C)/4435/2012. This Court vide order dated 03.04.2014 had disposed of the writ petition remanding the matter in which the ground of disparity was also taken into consideration vis-a-vis, the incumbent in L.A. Case 4/2006-2007. On such remand, the Collector, Cachar has passed an order dated 23.06.2014 by which the claim of the petitioner has again been rejected. It is the validity and legality of the order which has been questioned in this writ petition.

7. I have heard Shri R. Mazumdar, learned counsel for the petitioner. I have also heard Shri N. Goswami, learned State Counsel, Shri B. Choudhury, learned Standing Counsel, PWD and Shri A. Bhattacharya, learned Standing Counsel, Revenue Department.

8. Shri Mazumdar, the learned counsel for the petitioner has submitted that the impugned order dated 23.06.2014 is not sustainable in law inasmuch as there was no occasion on the part of the Collector to decline the claim as the same was already adjudicated in the earlier rounds of litigations. It is submitted

that the materials on record would show that 80 % of the estimated amount was paid from the end of the Collector as there was urgent requirement of taking over possession and the rest 20% was to be paid later. However, due to late furnishing of certain details, the said balance amount was not paid.

9. The learned counsel for the petitioner has also submitted that the earlier Speaking Order dated 21.07.2012 which was the subject matter of challenge in the second writ petition WP(C)/4435/2014 was interfered with and the matter was remanded by this Court vide order dated 03.04.2014 wherein a specific observations on the ground of disparity was made. It is submitted that the said observation of this Court has not been taken into consideration at all and on the same grounds, as recorded in the earlier order dated 21.07.2012, the present impugned order dated 23.06.2014 has been passed.

10. Shri Mazumdar, the learned counsel has also submitted that the authorities are required to maintain transparency and parity and so far as L.A. Case No. 04/2006-2007 is concerned, the balance amount has been paid. He also submits that as per information received by him, even for L.A. Case No. 29/2007-08, the balance amount has been paid.

11. The learned counsel accordingly submits that the writ petition be allowed and a direction be made for payment of the balance amount with interest.

12. *Per contra*, Shri N. Goswami, learned State Counsel has submitted that the Speaking Order dated 23.06.2014 has cited grounds which are reasonable and cogent and therefore no interference is called for. He has also referred to the

communication dated 10.11.2005 wherein it has been stated that the value of the houses and ponds were corrected as per re-assessment. He has also submitted that the present case cannot be equated with L.A. Case No. 04/2006-07 as the facts were different and the order passed by this Court in the writ petition 1538/2010 pertaining to the said case is also different.

13. Shri A. Bhattacharya, learned Standing Counsel, Revenue Department has endorsed the submission of Shri Goswami, the learned State Counsel.

14. Shri B. Choudhury, the learned Standing Counsel, PWD has submitted that the PWD being the requiring Department and the stand of the requiring Department being reflected in the documents, he would stick by the said stand. A perusal of the communications containing the stand of the requiring Department is that no objections were raised on the claim made by the petitioner.

15. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

16. It is not in dispute that four numbers of L.A. Case were instituted with regard to the acquisition proceeding for land for development of the Indo-Bangladesh Border. It is also not in dispute that the lands connected to the four numbers of L.A. Case are similarly situated and the procedure adopted was a uniform one. The petitioner herein had approached this Court for the first time by filing WP(C)/1768/2010 with a claim for payment of the balance amount which has been quantified as Rs. 96,35,476/- . This Court had disposed of the

aforesaid WP(C)/1768/2010 vide order dated 07.04.2011 by directing a verification and if the claim was found sustainable, to pay the amount. Subsequent thereto, a Speaking Order was passed on 21.07.2012 wherein the claim was rejected on the ground of a re-assessment done in the year 2005.

17. It has been contended that when the land was taken over in the year 2003 itself, a re-assessment of the *Zirats* in the year 2005 was practically impossible. Though in the second round of litigation namely WP(C)/4435/2012, the matter was remanded back by this Court vide order dated 03.04.2014 mainly on the ground of disparity, it appears that the impugned order dated 23.06.2014 has been passed by the Collector, Cachar citing the same grounds as the earlier Speaking Order dated 21.07.2012.

18. As a submission was raised on the last date that the facts in WP(C)/1538/2010 may not be similar, this Court vide order dated 14.03.2022 had directed listing of this case along with the records of WP(C)/1538/2010 and accordingly the said records have been placed before this Court today.

19. A perusal of the records of WP(C)/1538/2010 including the order dated 11.11.2010 passed therein would show that there is no discernible difference in the claim made by the petitioner in that case and the present case. It is also not disputed that pursuant to the order dated 11.11.2010 by which WP(C)/1538/2010 was disposed of, the balance amount was paid to the petitioner in that case. The only difference is with regard to the orders of disposal of the respective writ petitions and in the present case, a direction was given to verify and pay if found sustainable.

20. This Court had also noticed that the aforesaid ground of disparity has been specifically taken into consideration by this Court in the second writ petition WP(C)/4435/2012 which was disposed of on 03.04.2014 by which the matter was remanded.

21. A close scrutiny of the documents placed on record would show that vide communication dated 24.09.2009, the Deputy Commissioner, Cachar had informed the Revenue Department, Government of Assam that on the subject of deductions made, the requiring Department did not raise any objections for payment of the deducted amount and the matter was accordingly left to the Government to take an appropriate decision. Along with the said letter, details of all the four L.A. Cases were given including the estimated amount, approved amount and balance amount to be paid. The Revenue Department responded to the aforesaid letter vide communication dated 28.10.2009 whereby certain details including statements of funds received from the requiring Department were sought for. To be more specific, the following information were sought for from the Deputy Commissioner, Cachar.

“

- (i) *Total amount of fund received from the Requiring Department,*
- (ii) *Total amount of fund utilized so far in payment of compensation to land losers-L.A. Case –wise,*
- (iii) *Amount, if any, remained with you, which may cover the amount required to be paid / released towards 20 % balance fund as proposed by you.”*

22. The Deputy Commissioner, Cachar accordingly vide communication dated 15.12.2009 had furnished the Revenue Department the details sought for including the amount of funds received from the requiring Department, funds utilized so far and the amount remaining which may cover the 20 % balance.

23. When the aforesaid exercise was completed and it was only the details which were sought for from the Deputy Commissioner / Collector, Cachar, the question arises as to whether there was any further scope to decline the claim of the petitioner by the Deputy Commissioner. The first Speaking Order dated 21.07.2012 had cited a ground that re-assessment was done in the year 2005 as per which no *zirats* were found. Apart from the fact that such consideration was irrelevant as the land was acquired in the year 2003 itself, the said order was also interfered with by this Court vide order dated 03.04.2014 in WP(C)/4435/2012 and the matter was remanded back. As indicated above, the issue of disparity vis a vis L.A. Case No. 04/2006-07 was also taken into consideration.

24. The impugned order dated 23.06.2014 appears to contain the same reasons as the earlier order dated 21.07.2012 and it appears that a mechanical approach was taken while considering the matter.

25. This Court is of the considered opinion that when the entitlement of the petitioner was not disputed in principle, as would be evident from the series of communication mentioned above, there was no occasion for the Collector, Cachar to re-examine the aspect of entitlement.

26. There is another aspect of the matter which is worth mentioning. In the analogous writ petition i.e., WP(C)/1746/2010 (**Taz Uddin vs. State of Assam & Ors.**), the Deputy Commissioner, Cachar had filed an affidavit-in-opposition. The averments made in paragraph 4 would be of immense relevance which is extracted herein below:

“4. That with regard to the statements made in paragraph 3 of the writ petition the deponent begs to state that it is a fact that an amount to Rs.26,10,321.00 as 20% of zirath compensation as deducted by the Govt. vide letter No. RLA. 81/2004/27 dt.10.11.2005 of the said L.A. Case not yet been paid. In this connection it may be mentioned here that the total estimate for the said L.A. Case of Rs. 1,94,38,984.00 was sent to the Govt. in Form-5 for approval but the Govt. vide letter No. RLA.81/2004/27dt. 10.11.2005 reduced the estimate to Rs. 1,68,28,663.00 & approved accordingly after deducted Rs.26.10.321.00 and which is also disbursed to land losers/interested persons. Also the petition dt. 214.05.2008 in original already sent to the Govt. for taking necessary action. Further Govt. in Revenue Department asked to furnish statement in regard to detail fund position vide Govt. letter No. RLA.41/2004/Pt/40 Dt. 28.10.2009. Reply of the same in details along with statements was sent vide this office letter No. CLA. 1/2003-2004/611 Dt. 15.12.2009. Therefore the payment of compensation maybe made to the person concerned on receipt of required fund from the Requiring Department and for this reasons

the payment could not be made to the petitioner.

A copy of letter dt. 10.11.2005 and dt. 28.10.2009 is annexed herewith and marked as Annexure-1 & 2 respectively.

A copy of Office letter dated 15.12.2009 is annexed herewith and marked as Annexure-3.”

27. When the Deputy Commissioner, Cachar on affidavit, had taken the aforesaid stand in the analogous case that the compensation be made to the petitioner on receipt of the required fund from the requiring Department, the Deputy Commissioner / Collector, Cachar could not have taken a separate stand which is reflected in the impugned order dated 23.06.2014.

28. As indicated above, the records of WP(C)/1538/2010 which were requisitioned have been perused and it transpired that the petitioner in the said case is similarly placed with the petitioner of the present case and only because of the difference in language employed by this Court in disposing of the two writ petitions, a separate treatment cannot be given to the petitioner in the present case, more so when the claim / entitlement appears to have been admitted by the concerned Department vide the communications on record.

29. In view of the above, this Court is of the opinion that a case for interference is made out. The writ petition accordingly stands allowed and the impugned order dated 23.06.2014 passed by the Collector, Cachar is set aside and quashed.

30. Consequently, the balance amount as per the calculations made by the authorities is to be paid to the petitioner within a period of 60 days from today. The aspect of payment of interest on the balance amount is however left to the authorities to be decided strictly in accordance with law for which, the petitioner may submit a representation.

31. Writ petition accordingly stands allowed.

JUDGE

Comparing Assistant