

GAHC010168962024



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

Case No. : WP(C)/4266/2024

ANANTA ROY AND 7 ORS.

S/O- NARENDRA ROY, R/O- VILL.- ALAMKHANI, P.O. NILAMBAZAR, DIST.
KARIMGANJ, ASSAM

2: ABDUL SADIK

S/O- ABDUL MAZID

R/O- VILL.- ALAMKHANI

P.O. NILAMBAZAR

DIST. KARIMGANJ

ASSAM

3: SURAB ALI

S/O- ABDUL BARI

R/O- VILL.- BAGHIRKHALA

P.O. NILAMBAZAR

DIST. KARIMGANJ

ASSAM

4: CHITTA RANJAN NAMASUDRA

S/O- LATE ASHINI NAMASUDRA

R/O- VILL.- ALAMKHANI

P.O. NILAMBAZAR

DIST. KARIMGANJ

ASSAM

5: KHALIKJAN BEGUM

D/O- FARMUJ ALI

R/O- VILL.- ALAMKHANI

P.O. NILAMBAZAR

DIST. KARIMGANJ

ASSAM

6: ABDUL JALIL

S/O- YEAKUB ALI

R/O- VILL.- ALAMKHANI
P.O. NILAMBAZAR
DIST. KARIMGANJ
ASSAM

7: RAJIB ALI
S/O- FARJID ALI
R/O- VILL.- ALAMKHANI
P.O. NILAMBAZAR
DIST. KARIMGANJ
ASSAM

8: BILAL UDDIN
S/O- LATE ASSADAR ALI
R/O- VILL.- ALAMKHANI
P.O. NILAMBAZAR
DIST. KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE (SETTLEMENT) DEPARTMENT, DISPUR, GUWAHATI-
6.

2:THE DEPUTY GENERAL MANAGER (P)

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
PMU
PESKAR LANE
SONAI ROAD
SILCHAR-788006.

3:THE DISTRICT COMMISSIONER
KARIMGANJ
ASSAM

4:THE ASSISTANT DIRECTOR OF AGRICULTURE
KARIMGANJ
ASSAM

5:THE ADDITIONAL DISTRICT COMMISSIONER
(REVENUE AND LAND SETTLEMENT BRANCH)
KARIMGANJ
ASSAM

6:THE CIRCLE OFFICER
NILAMBAZAR REVENUE CIRCLE
DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR. S K TALUKDAR, MR. J M A CHOUDHURY,MR. A B T
HAQUE

Advocate for the Respondent : GA, ASSAM, SC, REVENUE,SC, NHIDC

Linked Case : WP(C)/203/2024

ABDUL MATIN AND 3 ORS
SON OF KUTU MIYA

RESIDENT OF VILLAGE- KEOTKUNA

P.O.- SINGARIA BAZAR

DISTRICT- KARIMGANJ

ASSAM.

2: IMTIAZ HUSSAIN CHOUDHURY
SON OF LATE MAHMUD HUSSAIN CHOUDHURY

RESIDENT OF 11 PARIJAT PATH

LITTLE FLOWER SCHOOL
HATIGAON

KAMRUP(M)
ASSAM

GUWAHATI-38.

3: IMRAN HUSSAIN CHOUDHURY
SON OF LATE MAHMUD HUSSAIN CHOUDHURY

RESIDENT OF 11 PARIJAT PATH

LITTLE FLOWER SCHOOL
HATIGAON

KAMRUP(M)
ASSAM

GUWAHATI-38.

4: SHAYEED AHMED
SON OF APTAR UDDIN

RESIDENT OF SETTLEMENT ROAD

KARIMGANJ
WARD NO. 5

P.O. AND DISTRICT- KARIMGANJ

ASSAM.
VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

REVENUE (SETTLEMENT) DEPARTMENT

DISPUR
GUWAHATI-6.

2:THE DEPUTY GENERAL MANAGER(P)
NATIONAL HIGHWAYS AND DEVELOPMENT CORPORATION LTD.
PMU
PESKAR LANE
SONAI ROAD

SILCHAR- 78806.

3:THE DISTRICT COMMISSIONER
KARIMGANJ
ASSAM.

4:THE ASSISTANT DIRECTOR OF AGRICULTURE
KARIMGANJ.

5:THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE AND LAND
SETTLEMENT BRANCH)
KARIMGANJ
ASSAM.

6:THE CIRCLE OFFICER
NILAMBAZAR REVENUE CIRCLE
DISTRICT- KARIMGANJ
ASSAM.

Advocate for : MR. S K TALUKDAR
Advocate for : SC
REVENUE appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/201/2024

ANANTA ROY AND 7 ORS
SON OF NARENDRA ROY

RESIDENT OF ALAMKHANI

P.O.- NILAMBAZAR

DISTRICT- KARIMGANJ
ASSAM.

2: ABDUL SADIK
SON OF ABDUL MAZID

RESIDENT OF VILLAGE- ALAMKHANI

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DISTRICT- KARIMGANJ
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SON OF LATE ASHINI NAMASUDRA

RESIDENT OF VILLAGE- ALAMKHANI

P.O.- NILAMBAZAR

DISTRICT- KARIMGANJ
ASSAM.

5: KHALIKJAN BEGUM
DAUGHTER OF FARMUJ ALI

RESIDENT OF VILLAGE- ALAMKHANI

P.O.- NILAMBAZAR

DISTRICT- KARIMGANJ
ASSAM.

6: ABDUL JALIL
SON OF YEAKUB ALI

RESIDENT OF VILLAGE- ALAMKHANI

P.O.- NILAMBAZAR

DISTRICT- KARIMGANJ
ASSAM.

7: RAJIB ALI
SON OF FARJID ALI

RESIDENT OF VILLAGE- ALAMKHANI

P.O.- NILAMBAZAR

DISTRICT- KARIMGANJ
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8: BILAL UDDIN
SON OF LATE ASSADAR ALI

RESIDENT OF VILLAGE- ALAMKHANI

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DISTRICT- KARIMGANJ
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5:THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE AND LAND
SETTLEMENT BRANCH)

KARIMGANJ

ASSAM.

6:THE CIRCLE OFFICER

NILAMBAZAR REVENUE CIRCLE

DISTRICT- KARIMGANJ

ASSAM.

Advocate for : MR. S K TALUKDAR

Advocate for : SC

REVENUE appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/4296/2024

ABDUL MATIN AND 3 ORS

SON OF KUTU MIYA

RESIDENT OF VILLAGE- KEOTKUNA

P.O.- SINGARIA BAZAR

DISTRICT- KARIMGANJ
ASSAM.

2: IMTIAZ HUSSAIN CHOUDHURY
SON OF LATE MAHMUD HUSSAIN CHOUDHURY

RESIDENT OF 11 PARIJAT PATH

LITTLE FLOWER SCHOOL
HATIGAON

KAMRUP(M)
ASSAM
GUWAHATI-38.

3: IMRAN HUSSAIN CHOUDHURY
SON OF LATE MAHMUD HUSSAIN CHOUDHURY

RESIDENT OF 11 PARIJAT PATH

LITTLE FLOWER SCHOOL
HATIGAON

KAMRUP(M)
ASSAM
PIN- 781038.

4: SHAYEED AHMED
SON OF APTAR UDDIN

RESIDENT OF SETTLEMENT ROAD

KARIMGANJ
WARD NO. 5

P.O. AND DISTRICT- KARIMGANJ
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KARIMGANJ
ASSAM.

6:THE CIRCLE OFFICER
NILAMBAZAR REVENUE CIRCLE
DISTRICT- KARIMGANJ
ASSAM.

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner(s): Mr. SK Talukdar
Mr. JMA Choudhury

Advocate for the respondent(s): Ms. G Hazarika
For respondent No.1
Mr. BJ Talukdar
Government Advocate, Assam
Mr. D Gogoi
Ms. R Borah
For NHIDCL

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 28-08-2024

JUDGMENT & ORDER(ORAL)

Heard Mr. SK Talukdar, the learned counsel appearing on behalf of the petitioners. Also heard Mr. BJ Talukdar, the learned Government Advocate appearing on behalf of the District Administration, as well as the competent authority. Ms. G Hazarika the learned counsel appears on behalf of the respondent No.1, Mrs. R Borah, the learned counsel appears on behalf of the NHIDCL in WP(C)No.4266/2024 & WP(C)No.4296/2024 and Mr. D Gogoi, the learned counsel appears on behalf of the NHIDCL in WP(C)No.201/2024 & WP(C)No.203/2024 respectively.

2. All the four writ petitions are taken up for disposal, taking into account that WP(C)No.201/2024 and WP(C)No.203/2024 have come up for admission before this Court and the pleadings are duly complete and WP(C)No.4266/2024 and WP(C)No.4296/2024, though, have come up before this Court for the first time, but being intrinsically connected with the subject matter of WP(C)No.201/2024 and WP(C)No.203/2024 and any order passed in WP(C)No.201/2024 and WP(C)No.203/2024 would effect the outcome of the WP(C)No.4266/2024 and WP(C)No.4296/2024.

3. The petitioners in both WP(C)No.201/2024 and WP(C)No.203/2024 had

applied for reclassification of the land in terms of the Assam Agricultural Land (Regulation of Reclassification and Transfer for Non- Agricultural Purpose) Act, 2015 (for short, the Act of 2015). It is stated that they initially applied manually, but subsequently, in the month of December, 2023 applied through the online portal. Mr. SK Talukdar, the learned counsel appearing on behalf of the petitioners, submitted that in the manual mode as per his instruction(s), the applications were filed in the early part of 2023. Subsequently, the petitioners were asked to submit the applications through the online portal and as such, the petitioners have again applied in the online mode in the month of December 2023. The said submission is a question of fact. However, from the records, it is seen that the Circle Officer of Nilambazar had proposed the reclassification of the lands belonging to the petitioners along with others on the basis of the Zonal Valuation proposed to the Government for approval vide a communication dated 12.07.2023. It is also seen from the records produced that on 20.12.2023, in the minutes of the meeting of the District Level Committee regarding reclassification of land, recommendations were made that the petitioners' land along with others be reclassified from the class Shailura to Shilpajat.

4. The records further reveal that on 02.01.2024, the Deputy General Manager (P) NHIDCL issued a communication to the District Commissioner, Karimganj. The subject mentioned in the said communication was "Status of Land for Publication in 3A Notification – Reg."

5. The contents of the said letter is very relevant. It was mentioned therein that NHIDCL was undertaking 4-laning of Badarpur – Churaibari Section of NH-08 and land acquisition for the same was under progress. It has also been

mentioned that it had come to the notice of the Deputy General Manager (P) of the NHIDCL that commercial diversion/change in class of several lands had taken place till date and there was a very high probability that land owners might have intentionally applied for change of land classification for obtaining higher compensation. It was also mentioned that as per the ratio laid down by the Supreme Court in several judgments, such motivated transactions are not to be considered for compensation purpose.

It is pertinent herein to take note of that in the said communication, it was mentioned that the survey in Karimganj district had commenced from 15.09.2023 and the stakeholder meeting was held on 21.09.2023. The District Commissioner, Karimganj was, therefore, requested not to consider any change in the classification of the land, for which, application had been made by the land owners on or after 15.09.2023.

6. On the basis of the communication dated 02.01.2024, all the 19 applications which were filed, seeking reclassification, including the applications of the petitioners, were cancelled vide an order dated 08.01.2024. This order dated 08.01.2024 is the subject matter of challenge in WP(C)No.201/2024 and WP(C)No.203/2024 and it is very pertinent to mention that these two writ petitions were filed on 10.01.2024 and notice was issued by this Court on 12.01.2024.

7. It is relevant to mention that pursuant to the filing of the instant writ petitions and notices being issued, on 18.01.2024, the Notification under Section 3A of the National Highway Act, 1956 (for short, 'the Act of 1956') was

issued.

8. It is very relevant to take note of that in the aforesaid Notification, under Section 3A of the Act of 1956, the lands of the petitioners have been shown as "Non-Agriculture (Industry)". The petitioners, taking into account the scope of objection under Section 3C of the Act of 1956, being limited only to the objection to the use of the land for the purpose or purposes mentioned in Section 3A of the Act of 1956, did not submit any objection *inasmuch as* the petitioners were not adverse to the acquisition of their lands more so, when the Notification dated 18.01.2024 issued under Section 3A of the Act of 1956 mentioned that the land of the petitioners were 'Non-Agriculture (Industry)'.

9. Subsequent thereto, on 16.02.2024, the Notification under Section 3D of the Act of 1956 was issued wherein the lands of the petitioners were shown as 'Agriculture (Shailura)' and it is under such circumstances, the petitioners have approached this Court challenging the Notification issued under Section 3D of the Act of 1956 dated 16.02.2024, by filing the subsequent writ petitions being WP(C)No.4266/2024 and WP(C)No.4296/2024.

10. In the backdrop of the above, let this Court, therefore, note down the respective submissions of the learned counsels appearing on behalf of the parties.

11. Mr. SK Talukdar, the learned counsel appearing on behalf of the petitioners in the four petitions submitted that the order dated 08.01.2024 passed by the

District Commissioner, Karimganj is an order which suffers from malice in law, *inasmuch as*, the District Commissioner Karimganj had taken into consideration certain aspects which are completely not relevant for the purpose of reclassification of the land. The learned counsel submitted that in terms with the Act of 2015, the procedure and the parameters under which the land can be reclassified has been duly mentioned. The learned counsel further submitted that in the instant case, the minutes of the meeting of the District Level Committee (for short, the DLC) which is a part of the record, would categorically show that the recommendation was made on 20.12.2023 by the DLC. The said recommendation is based upon the report of the Circle Officer. The learned counsel further submitted that if there is a recommendation, then the District Commissioner Karimganj ought to have acted within the purview of the Act of 2015 and ought not to have taken into account any extraneous consideration, which, however, was taken in passing the impugned order dated 08.01.2024. The learned counsel further submitted that the order dated 08.01.2024 was challenged by the petitioners immediately by approaching this Court on 10.01.2024 and this Court had issued notice on 12.01.2024. On the basis thereof, the learned counsel, therefore, submitted that issuance of the Notification under Section 3A as well as 3D of the Act of 1956 by the respondent authorities, having been issued *pendente lite* the instant writ petitions and as such, the outcome of the said acquisition proceedings has to be on the basis of the outcome of the instant writ petitions. The learned counsel for the petitioners further laid stress upon a judgment of the Supreme Court in the case of ***Purtabpore Co. Ltd Vs. Cane Commissioner Of Bihar & Ors***, reported in ***(1969) 1 SCC 308***, and relied upon in paragraphs 11, 12, 13 and 14 of the said judgment.

12. Mr. BJ Talukdar, the learned counsel appearing on behalf of the District Administration as well as the competent authority had placed before this Court the records of the reclassification proceedings pursuant to the order passed by this Court on 06.08.2024. As per the said learned counsel, the applications which were filed by the persons seeking reclassification are not a part of the records. The DLC minutes dated 20.12.2023 is a part of the record. The members present included the District Agricultural Officer, Karimganj. In the said minutes, there is a reference to the fact that the Circle Officer, Nilam Bazar had proposed the reclassification of the land on the basis of the zonal valuation proposed to the government for approval vide the letter dated 12.07.2023. The said communication dated 12.07.2023, however, is not a part of the record. He further submitted that from the records, it is seen that there is a communication issued by the Circle Officer on 16.12.2023, whereby the zonal value of reclassification proposal forwarded in online mode was provided. He submitted that this communication dated 16.12.2023 was issued pursuant to the applications filed by the petitioners along with others in the month of December, 2023. He submitted that in the records, the letter of the Deputy General Manager (P) NHIDCL dated 02.01.2024 as well as the order dated 08.01.2024 are there.

13. Mr. D Gogoi, the learned counsel appearing on behalf of the NHIDCL submitted that it has become a tendency on the part of the various persons on coming to learn about the initiation of land acquisition proceedings to apply for reclassification of the land so that they get a higher compensation. He submitted that these type of practices have been deprecated by the Supreme Court in various judgments and one of which is in the case of the ***Land Acquisition Officer and Assistant Commissioner Mangalore Vs. Beligal. Krishnabhat*** reported in ***(1996) 10 SCC 339***. He further submitted that the District Administration, while filing the affidavit, had also stated that in genuine cases, such application for reclassification is permitted and here in the instant case, it has been rejected and the obvious conclusion that can be drawn is that the applications so filed by the petitioners along with others were not genuine cases.

14. I have heard the learned counsels appearing on behalf of the parties and have given my anxious consideration to their respective submissions. From the respective submissions, two points for determination arises for consideration:

(i). Whether the impugned order dated 08.01.2024 calls for any interference?

(ii). Whether in the present facts, an interference is called for to the Notification dated 16.02.2024 issued under Section 3D of the Act of 1956?

15. For the purpose of deciding the first point for determination, this Court finds it relevant to take note of the Act of 2015. Agricultural land has been defined in Section 2(a), whereas the commercial purpose has been defined in

Section 2(b). Section 4 of the said Act stipulates which are the lands which are capable of reclassification. In terms with Sub-Section (1) of Section 4 of the Act of 2015, an agricultural land which had already become unfit for agricultural purpose and where there has been no agricultural activity for at least 10(ten) years can be reclassified or reclassified cum transferred for intended non-agricultural purposes with the prior approval of the Deputy Commissioner. However, in terms of Sub-Section (2) of Section 4, where there has been no agricultural activity less than ten years, reclassification or reclassification-cum-transfer for non-agricultural purpose can only be made by the Deputy Commissioner with the prior approval of the State Government in the Revenue Department. However, the embargo as stipulated in Sub-Section (1) and Sub-Section (2) of Section 4 of the Act of 2015 would not apply, when 'agricultural land' not exceeding one bigha is used or reclassified, or reclassified cum transferred for construction of one's own dwelling house and when the construction of the said structure is limited to two storeyed.

16. Section 5 of the Act of 2015 stipulates the manner and procedure by which reclassification and reclassification cum transfer is to be carried out. There is a requirement of filing an application with an affidavit. Upon such application being filed, the Deputy Commissioner shall call for a report from the Circle Officer under whose jurisdiction the agricultural land or part thereof is situated. The Circle Officer, thereupon, shall submit a report with his recommendation within 15 days from the date of receipt of the order of the Deputy Commissioner. In terms of Sub-Section (4) of Section 5 of the Act of 2015, the Deputy Commissioner shall accord an in-principle approval or deny approval altogether for allowing reclassification or reclassification cum transfer within 30

days of the receipt of the recommendation by the Circle Officer and while doing so the recommendation of the DLC headed by himself with officials be duly taken note of. This is the stage when the impugned order dated 08.01.2024 was passed. Therefore, the question arises as to whether, the District Commissioner, Karimganj, was justified in passing the order dated 08.01.2024, merely on the basis of the communication issued by the Deputy General Manager of NHIDCL or ought to have duly taken note of the provisions of Sub-Section (4) of Section 5 of the Act of 2015.

17. In this regard, this Court finds it relevant to refer to the judgment, placed by Mr. SK Talukdar, the learned counsel appearing on behalf of the petitioners i.e. ***Purtabpore Co. Ltd (supra)***. Paragraphs 11 and 12 of the said judgment being relevant is reproduced hereinunder:

“11. In the matter of exercise of the power under Rule 6(1) the State Government and the Cane Commissioner are concurrent authorities. Their jurisdiction is co-ordinate. There was some controversy before us whether a Cane Commissioner who had reserved an area for a sugar factory for a particular period can alter, amend, or modify the area reserved in the middle of the period fixed. As seen earlier 208 villages with which we are concerned in this case were reserved for the appellant for two seasons i.e. 1966-67 and 1967-68. The contention was that the Cane Commissioner could not have interfered with that reservation within that period. The High Court has come to the conclusion that the Cane Commissioner who had the power to make the reservation in question must be held to have had the power to alter or modify that reservation. But it is not necessary for us to pronounce on this question as we are of the opinion that the impugned orders though purported to have been made by the Cane Commissioner were in fact made by the Chief Minister and hence they are invalid. We have earlier seen that the Cane Commissioner was definitely of the view that the reservation made in favour of the appellant should not be disturbed but the Chief Minister did not agree with that view. It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the 5th respondent. In pursuance of that direction, the Cane Commissioner prepared two lists “Ka” and “Kha”. Under the orders of the Chief Minister, the villages contained in list “Ka” were allotted to the appellant and in list “Kha” to the 5th respondent. The Cane Commissioner merely carried out the orders of the Chief Minister. It is true that the impugned orders were issued in the name of the Cane Commissioner. He merely obeyed

the directions issued to him by the Chief Minister. We are unable to agree with the contention of Shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favour of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone — not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by clause (6) read with clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

12. The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

(emphasis applied on the underlined portions)

18. From the perusal of the above quoted paragraphs of the judgment in *Purtabpore Co. Ltd* (supra), the ratio that emerges is that when a statutory authority have been conferred a power, he alone should have exercise the said power without being influenced by extraneous consideration other than what is mandated in the statute. In the instant case, a perusal of the impugned order dated 08.01.2024 would show that the only reason assigned was the communication dated 02.01.2024 issued by the Deputy General Manager, NHIDCL. In other words, the order dated 08.01.2024 appears to have been passed by the District Commissioner at the dictates of the Deputy General Manager, NHIDCL. It is really a deplorable state of affairs where a statutory authority under the Act of 2015 is exercising jurisdiction at the instance of an authority who has no semblance of power under the Act of 2015. The act on the part of the District Commissioner in passing the order dated 08.01.2024 is a classic case of malice in law {see *para 25 of Kalabharati Advertising Vs. Hemant*

Vimalnath Narichania, reported in (2010) 9 SCC 437}.

19. Having opined the above that the impugned order dated 08.01.2024 suffers from illegalities, let this Court consider what considerations/ materials, the District Commissioner ought to have taken note of. The materials were the recommendation so made by the Circle Officer as well as the recommendations so made by the DLC and apply his mind as per the extant law. The District Commissioner could have rejected the application if not satisfied with the recommendations of either the Circle Officer or the DLC, but could not have rejected at the dictates of the Deputy General Manager, NHIDCL.

20. At this stage, this Court finds it relevant to take note of the submission of Mr. D Gogoi, the learned counsel appearing on behalf of the NHIDCL, who submits that from the affidavit filed by the District Administration, it is clear that in genuine cases, such orders of re-classification are permitted. However, in the instant case, it was not so and under such circumstances, the order dated 08.01.2024 was passed. The said statement so made by the District Commissioner in his affidavit and the submissions so made by the learned counsel for the NHIDCL, in the opinion of this Court is totally misconceived, in view of the well settled principles of law laid down by the Supreme Court, as far back as in the year 1952, in the case of **Commissioner Of Police, Bombay Vs. Gordhandas Bhanji**, reported in **AIR 1952 SC 16**, which was subsequently reiterated by the Constitution Bench of the Supreme Court in the case of **Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner**, reported in **1978 (1) SCC 405**. Paragraph 8 of the said judgment being relevant is quoted hereinunder:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

21. Therefore, from the above, it would be seen that the impugned order dated 08.01.2024 is *ex-facie*, bad in law, arbitrary as well as suffers from malice in law and accordingly set aside and quashed.

22. Now the question arises can this Court today direct the authorities concerned under the Act of 2015 to reconsider the applications of the petitioners seeking reclassification from the stage of Section 5(4) of the Act of 2015 onwards. To determine the same, this Court finds it very relevant to take note of the scheme of the Act of 1956. Section 3A of the Act of 1956 stipulates that when the Central Government is satisfied that for public purpose any land is required for building, maintenance, management or operation of a National Highway or part thereof, it may, by a Notification in the Official Gazette, declare its intention to acquire such land. Upon issuance of the said notification, in terms with Section 3B, any person duly authorized by the Central Government in that behalf can enter as well as survey etc., the powers which have been specifically mentioned in Sub-Clauses (a) to (f) of Section 3B.

23. Section 3C of the Act of 1956 is very pertinent. In this regard, this Court recapitulates the submissions of Mr. SK Talukdar, the learned counsel for the petitioners, who submits that as the land belonging to the petitioners have been shown as 'Non-Agriculture (Industry)' in the Notification under Section 3 A, the petitioners did not have any cause to object to the acquisition proceedings. If that be so, the question arises as to what is the scope of a hearing under Section 3 C of the Act of 1956? The scope of an objection in a hearing in terms with Section 3 C of the Act of 1956 is only to object to the use of the land for the purpose or purposes mentioned in Sub-Section 3A, or in other words, object to the acquisition proceedings itself. However, taking into account that it is the admitted case of the petitioners that they are not adverse to the acquisition proceedings, the mentioning of the classification of the land in the Notification under Section 3A as 'Non-Agriculture (Industry)' and subsequently being mentioned as agricultural do not make the Notification under Section 3D of the Act of 1956 bad.

24. The above aspect of the matter could be seen from a perusal of Section 3D of the Act of 1956 itself *inasmuch as* a Notification under the Section 3D of the Act of 1956 is issued when there is no objection received under Section 3C to the acquisition of land, or such objections so received is disallowed by the competent authorities. It is also very pertinent to take note of Sub-Section (2) of Section 3D of the Act of 1956, *inasmuch as*, upon the publication of the Notification under Section 3D of the Act of 1956, the land vests absolutely in the Central Government, free from all encumbrances.

25. The resultant effect, therefore, in the opinion of this Court, is that though

this Court has interfered with the order dated 08.01.2024, there can be no directions issued to the respondent authorities, more particularly to the District Administration of Karimganj to further proceed with the consideration of application seeking reclassification from the stage of Section 5(4) of the Act of 2015 *inasmuch as*, now the lands vests upon the Central Government.

26. It is seen that the subsequent writ petitions have been filed by the petitioners challenging the Notification dated 16.02.2024 issued under Section 3D of the Act of 1956. But can the challenge be sustained in view of the fact that the petitioners are not adverse to the acquisition proceedings. The answer to the said question has to be in the negative and accordingly this Court is of the opinion that the challenge to the Notification under Section 3D dated 16.02.2024 has to fail.

27. In the background of the above, this Court now finds it very relevant to take note of Section 3G of the Act of 1956. This is very pertinent inasmuch as, Section 3D Notification was challenged on the ground that as the classification of the lands of the petitioners were shown as 'Agriculture (Shailura)', the petitioners would now be entitled to less compensation. Section 3(G) of the Act of 1956 has various Sub-Sections. In terms with Sub-Section (1) of Section 3G of the Act of 1956, when any land has been acquired under the Act of 1956, there is a requirement to pay compensation which would be determined by the competent authority whom compensation would be paid has been set out in Sub-Section (2) of Section 3G of the Act of 1956. However, before determining the compensation, it is the requirement of law that the competent authority shall give a public notice in two local newspapers, one of which shall be in the

vernacular language, inviting claims from all persons interested in the land to be acquired as mandated in Sub-Section (3) of Section 3G and it is further seen that upon such notice being published, the person who are the persons interested would be at liberty to appear before the competent authority and state their respective interest in such land. It is upon such hearing being conducted, the competent authority is to determine the compensation in terms with Sub-Section (5) of Section 3G of the Act of 1956. Sub-Section (5) of Section 3G further mandates that in case any of the parties are dissatisfied with the quantum of the compensation, an application can be made challenging the determination of the compensation, which shall then be determined by the Arbitrator to be appointed by the Central Government. Sub-Section (7) of Section 3 (G) of the Act of 1956 stipulates the parameters which should be kept in mind, while determining the compensation. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***National Highways Authority of India Vs. P Nagaraju @ Cheluvaiah*** reported in ***(2022) 15 SCC 1***, wherein the Supreme Court discussed the interplay between Section 3G of the Act of 1956 and the provisions of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. (for short, the 'Act of 2013'). In that regard, this Court finds it relevant to quote paragraphs 25 to 29 of the said judgment are quoted hereinbelow:

“25. While arriving at the conclusion that the Notification bearing S.O. No. 2368(E) dated 28-8-2015 whereunder the provisions of the RFCTLARR Act, 2013 are made applicable, it is noted that the NH Act is also one of the enactments specified in the Fourth Schedule. The relevant portion of the Notification dated 28-8-2015 reads as hereunder:

“And whereas, the Central Government considers it necessary to extend the benefits available to the landowners under the RFCTLARR Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule;

and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the landowners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the landowners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely—

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

26. The observations contained also in paras 29, 30 and 31 in Tarsem Singh will make it more than evident that this Court was concerned about discrimination in determination of compensation under different enactments though in that case the issue was limited to solatium and interest. The said paragraphs read as hereunder: (SCC p. 332, paras 29-31)

“29. Both, P. Vajravelu Mudaliar and Nagpur Improvement Trust clinch the issue in favour of the respondents, as has been correctly held by the Punjab and Haryana High Court in Golden Iron & Steel Forging. First and foremost, it is important to note that, as has been seen hereinabove, the object of the 1997 Amendment was to speed up the process of acquiring lands for National Highways. This object has been achieved in the manner set out hereinabove. It will be noticed that the awarding of solatium and interest has nothing to do with achieving this object, as it is nobody’s case that land acquisition for the purpose of National Highways slows down as a result of award of solatium and interest. Thus, a classification made between different sets of landowners whose lands happen to be acquired for the purpose of National Highways and landowners whose lands are acquired for other public purposes has no rational relation to the object sought to be achieved by the Amendment Act i.e. speedy acquisition of lands for the purpose of National Highways. On this ground alone, the Amendment Act falls foul of Article 14.

30. Even otherwise, in P. Vajravelu Mudaliar, despite the fact that the object of the Amendment Act was to acquire lands for housing schemes at a low price, yet the Amendment Act was struck down when it provided for solatium @ 5% instead of 15%, that was provided in the Land Acquisition Act, the Court holding that whether adjacent lands of the same quality and value are acquired for a housing scheme or some other public purpose such as a hospital is a differentiation between two sets of landowners having no reasonable relation to the object sought to be achieved. More

pertinently, another example is given—out of two adjacent plots belonging to the same individual one may be acquired under the principal Act for a particular public purpose and one acquired under the amending Act for a housing scheme, which, when looked at from the point of view of the landowner, would be discriminatory, having no rational relation to the object sought to be achieved, which is compulsory acquisition of property for public purposes.

27. In that view of the matter, though Section 3-G(7)(a) of the NH Act provides the parameters to be taken into consideration, it only provides the basic parameters to be taken note of, for determining the amount payable as compensation. While applying the said parameters for determination of compensation, since the RFCTLARR Act, 2013 is also applicable as the NH Act is contained in the Fourth Schedule, the factors as provided under Sections 26 and 28 of the RFCTLARR Act, 2013 including the seventh factor will also be applicable in appropriate cases for the determination of the market value as fair compensation for the acquired land.

28. When land is acquired from a citizen, Articles 300-A and 31-A of the Constitution will have to be borne in mind since the deprivation of property should be with authority of law, after being duly compensated. Such law should provide for adequately compensating the landloser keeping in view the market value. Though each enactment may have a different procedure prescribed for the process of acquisition depending on the urgency, the method of determining the compensation cannot be different as the market value of the land and the hardship faced due to deprivation of the property would be the same irrespective of the Act under which it is acquired or the purpose for which it is acquired. In that light, if Section 28 of the RFCTLARR Act, 2013 is held not applicable in view of Section 3-J of the NH Act, the same will be violative of Article 14 of the Constitution. In that circumstance, the observation in Tarsem Singh that Section 3-J of the NH Act is unconstitutional to that extent though declared so while on the aspect of solatium and interest, it is held so on all aspects relating to determination of compensation.

29. In any event, the extracted portion of the Notification dated 28-8-2015 is explicit that the benefits available to the landowners under the RFCTLARR Act are to be also available to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule, among which the NH Act is one. Hence all aspects contained in Sections 26 to 28 of the RFCTLARR Act for determination of compensation will be applicable notwithstanding Sections 3-J and 3-G(7)(a) of the NH Act.

(emphasis supplied upon the underlined portion)

28. From the above quoted paragraphs, it would be seen that the petitioners herein would be entitled to compensation in terms with Section 3G (7) read with Sections 26 and 28 read with the first schedule to the Act of 2013. This aspect is relevant *inasmuch as*, Section 26 (1) of the Act of 2013 stipulates the criteria

to be followed in assessing and determining the market value. It not only includes the average sale price for similar lands, but also Sale Deeds and Agreements for Sale and highest of the exemptions is required to be applied. In the opinion of this Court that as the primary grievance to the Notification under Section 3D of the Act of 1956 is not as regards infraction to the provisions of Section 3A or that the land is not required for the purposes mentioned in Section 3A of the Act of 1956, but solely on the ground that the quantum of compensation would be reduced, the petitioners' interest would be well served by approaching the competent authority if the determination of the compensation had not yet been completed or if completed, submit due application to the competent authority seeking reference to the Arbitrator so appointed by the Central Government on the question of inadequacy of the compensation. This Court is of the opinion that as the order dated 08.01.2024 had been set aside, the petitioner shall be at liberty to raise the issue that the compensation in respect to their land shall be determined as Industrial land and not Agricultural land. The competent authority or as the case may be the Arbitrator shall decide such aspects on the basis of the extant law as well as the observations made by the Supreme Court in the case of P Nagaraju (supra) and the observations made hereinabove.

29. At this stage, this Court finds it very pertinent to take note of the submission of Mr. BJ Talukdar, the learned counsel appearing on behalf of the District Administration, as well as Ms. G Hazarika the learned counsel appearing on behalf of the Revenue Department of the Government of Assam, who submit that the Central Government had notified that Special Secretary to the Government of Assam, one Mr. Ashok Kumar Barman is the Arbitrator to decide

such arbitration proceedings.

30. Therefore, taking into account the above, the grievance of the petitioners in the instant proceedings have to be construed as a grievance as regards the determination of compensation on account of the land being mentioned in the Notification under Section 3D of the Act of 1956 as agricultural. This Court has already opined that this Court is not in a position to direct reconsideration of the applications of the petitioner for reclassification even after setting aside the order dated 08.01.2024 as the lands now vests upon the Central Government. This Court, therefore, in the interest of the justice grants the liberty to the petitioners herein to submit their claims within 30(thirty) days from today in terms with Section 3G of the Act of 1956, if the competent authority had till date not determined the compensation. If, however, during pendency of the writ proceedings, the compensation had already been determined, the competent authority shall forthwith and not later than 30(thirty) days from the date of submission of application by the petitioners refer the matter to the Arbitration of the Arbitrator, who has been duly appointed by the Central Government, as regards the inadequacy of the compensation. This Court further observes that the order dated 08.01.2024, having been set aside and quashed, the same shall not prejudice the petitioners in such application, so filed either before the competent authority or to the Arbitrator upon being referred to by the competent authority as directed upon. The competent authority or the Arbitrator, as the case may be, shall decide the compensation as indicated in paragraph 28 hereinabove.

31. With the above observation(s) and direction(s), the writ petitions stand disposed of.

JUDGE

Comparing Assistant