

GAHC010007862012



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

Case No. : WP(C)/4053/2012

ON THE DEATH OF MUNINDRA NATH ACHARYEE, HIS LEGAL HEIRS MRS.
RENUPROBHA ACHARYA
W/O LATE MUNINDRA NATH ACHARYA, PENGAREE CHARIALI, P.O.
PENGAREE, DIST- TINSUKIA, ASSAM, PIN-786174

2: DEBAJIT ACHARYYA
S/O LT. MUNINDRA NATH ACHARYEE
PENGAREE CHARIALI
P.O. PENGAREE
DIST- TINSUKIA
ASSAM
PIN-786174

3: PALLABI BORTHAKUR
W/O MADHURYA BORTHAKUR
GELLAPUKHURI ROAD
TINSUKIA
PIN-786125

4: BIDYUT ACHARYE
S/O LT. MUNINDRA NATH ACHARYEE
GELLAPUKHURI ROAD
TINSUKIA
PIN-786125

5: BIKASH ACHARYA
S/O LT. MUNINDRA NATH ACHARYEE
GELAPUKHURI ROAD
TINSUKIA
PIN-786125

6: NABAJIT ACHARYA
S/O LT. MUNINDRA NATH ACHARYEE
FLAT-6B

BLOCK-1
NESCON IMPERIAL
BHETAPARA NEAR NIRIBILI COMPLEX (BARNALI PATH)
P.O. BHETAPARA
GUWAHATI
ASSAM
PIN-78102

VERSUS

OIL INDIA LTD and ORS.
A GOVT. OF INDIA ENTERPRISE, REPRESENTED BY THE CHAIRMAN and
MANAGING DIRECTOR, OIL INDIA LTD., 5 SIKANDRA ROAD, NEW DELHI-
110001

2:GROUP GENERAL MANAGER
OIL INDIA LTD.
DULIAJAN
P.O. DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602

3:CHIEF MANAGER LAND
OIL INDIA LTD.
DULIAJAN
P.O. DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602

4:DISTRICT COLLECTOR and DY. COMMISSIONER
TINSUKIA
P.O. and DIST- TINSUKIA
ASSAM
PIN-786602

5:THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
REVENUE DEPARTMENT
DISPUR
GHY-

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri M. Saikia, Advocate.

Advocates for the respondents : Shri. I. Choudhury, Sr. Counsel,
Shri A. Sarma, Advocate
Shri K. Kalita, Advocate for
Oil India Ltd. (R-1 to 3)
Shri N. Goswami, GA, (R-4)
Shri A. Bhattacharyya, SC,
Revenue Department, (R-5).

Date of hearing : **18.04.2024**

Date of Judgment : **18.04.2024**

JUDGMENT & ORDER

Heard Shri M. Saikia, learned counsel for the petitioner. Also heard Shri I. Choudhury, learned Senior Counsel assisted by Shri A. Sarma & Shri K. Kalita, learned counsel for the Oil India Ltd. (respondent nos. 1 to 3) as well as Shri N. Goswami, learned State Counsel for the respondent no. 4 and Shri A. Bhattacharyya, learned Standing Counsel, Revenue Department for respondent no. 5.

2. The writ petition has been filed with the following prayers:-

*“In the premises aforesaid , it is humbly prayed that Your Lordships may be pleased to admit this petition, call for the records, issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Certiorari should not issue cancelling the respondent No. 4 fixing the land value of Rs.5.00 Lacs (Rupees Five Lacs) only per Bigha as communicated vide Letter No. TRQ.96/2009-86 dated 25.08.2011 (Annexure-D) and as to why a writ in the nature of Mandamus should not issue commanding the respondents to forebear from giving effect of the rate fixed by the respondent No. 4 and directing the respondents to fix the rate at Rs.10,00,000/- (Rupees Ten Lacs) only per Bigha as was given to others.
And further as to why a writ of Mandamus should not issue directing the respondents No. 1, 2 and 3 to complete the process of sale of the land by negotiation on payment*

of the land value to the petitioner at the rate of Rs.10,00,000/- (Rupees Ten Lacs) only per Bigha immediately.

And/or cause or causes being shown and on perusal of records and hearing the parties be pleased to make the Rule absolute and/or pass such other order or orders as Your Lordships may deem fit and proper"

3. The facts projected is that patta land of the petitioner admeasuring 4 Bighas 1 Katha 1 Lecha was taken over possession by the Oil India Ltd. (hereinafter OIL) in the year 2009. Though the receipt of Zirat for the land in question has been admitted, the primary contention is that no acquisition proceeding was ever initiated and no Notice required for the said purpose was ever issued. It is contended that by taking recourse to the ***Right to Information Act, 2005***, the value of the land as per the Government fixation was ascertained which was stated to be Rs.5,00,000/- (Rupees Five Lakh) per Bigha. It is also contended that similar persons whose lands were taken over by the OIL were paid compensation at the rate of Rs.10,00,000/- (Rupees Ten Lakh) per Bigha in the year 2010.

4. Shri Saikia, the learned counsel for the petitioner has submitted that the entire transaction was done in a hush-hush manner without there being any transparency and even the rates were not made known. It is also submitted that the rates otherwise fixed by the Government at Rs.5,00,000/- (Rupees Five Lakh) per Bigha is wholly inadequate and the same should be fixed at Rs.10,00,000/- (Rupees Ten Lakh) per Bigha and this is precisely the prayer in the writ petition. The learned counsel accordingly submits that appropriate direction be issued for payment of the compensation at an enhanced rate.

5. *Per contra*, Shri Choudhury, the learned Senior Counsel appearing for the OIL has submitted that the facts projected on behalf of the petitioner are not correct and there has been suppression of material facts. He has submitted that

in the instant case the OIL has filed an affidavit-in-opposition on 16.08.2013 followed by an additional affidavit-in-opposition on 28.08.2023. It is submitted that as per the prevalent practice, whenever there is requirement for any land, the same is at first attempted to be purchased outright and on failure to do so, the recourse is taken for acquiring the land by following the procedure laid down in law. It is submitted that in the present process, certain lands were required and out of the same, 4 Bigha 1 katha 1 lecha of land was owned by the petitioner. It is pointed out that so far as the other owners of lands are concerned, the sale transactions were duly completed and there is no complaint whatsoever and it is only the petitioner who had refused to cooperate in completion of the sale transaction. In this connection, the attention of this Court has been drawn to the application for sale permission jointly submitted by the parties in which the petitioner had put his signature. It is also submitted that similar applications were submitted by the other owners, which led to completion of the sale formalities in the form of sale deeds registered before the appropriate authorities. The attention of this Court has also been drawn to the No Objection Certificate dated 30.04.2012 in respect of the land of the petitioner in question. The learned Senior Counsel has also referred to the communication by which the petitioner was requested to cooperate and give further details so as to complete the sale formalities, in spite of which no steps were taken by the petitioner leading to a stalemate. It is submitted that when the petitioner himself is at fault, he is not entitled to any relief from a Court of equity.

6. The learned Senior Counsel has also referred to an order dated 26.06.2012 of a Division Bench of this Court passed in WP(C) No. 5449/2011. It is submitted that the facts and circumstances were similar pertaining to the district

of Dibrugarh. In paragraph 22 of the said order, it has been laid down that the rates fixed by the District Administration are to be adhered to determine the compensation. This Court has also been informed that though an SLP being SLP No. 36779 of 2012 was filed in the Hon'ble Supreme Court against the said order, the same was dismissed vide an order dated 18.07.2014.

7. Shri Saikia, the learned counsel for the petitioner in his rejoinder has submitted that the documents annexed in the affidavit-in-opposition and the additional affidavit-in-opposition are inconsistent and he reiterates that at no point of time, the petitioner was made aware of the rates and also of the process that the land has been tried to be taken over by way of a outright purchase. The learned counsel reiterates that in case the land is required, it has to be taken over by following the due process of law connected with an acquisition proceeding.

8. The learned counsel has also placed reliance on the case of ***Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.*** reported in **(2013) 1 SCC 353** and has contended that the Hon'ble Supreme Court has laid down that acquisition, if at all done has to be made by following the due process of law. He has referred to paragraphs 6 & 7 of the said judgment which is extracted herein below:-

"6. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat & Anr., AIR 1995 SC 142, it has been held as follows: -

"In other words, Article 300-A only limits the power of the State that no

person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram & Ors. (2007) 10 SCC 448; Amarjit Singh & Ors. v. State of Punjab & Ors. (2010) 10 SCC 43; Narmada Bachao Andolan v. State of Madhya Pradesh & Anr. AIR 2011 SC 1989; State of Haryana v. Mukesh Kumar & Ors. AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. v. State of U.P & Anr. AIR 2012 SC 573)".

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

10. The projection made in the time of oral argument on behalf of the petitioner is not consistent with the prayer of the writ petition which has already been extracted above. Be that as it may, even if the projection made presently is taken into consideration, the principal thrust is that the land has been taken over without an acquisition proceeding and the land compensation has not been paid. A question has also been raised on the procedure adopted alleging that the same is not transparent and the petitioner was kept in dark.

11. From the materials available on record, it appears that along with the petitioner, lands of many other persons in that area were taken over by way of outright purchase. There is no dispute to the fact that outright purchase is the first procedure to be adopted by the Oil India Ltd in case of requirement of land and only when the same is not possible, recourse to acquisition proceeding is to be taken.

12. It is also not in dispute that since the transaction, though private in nature is with a Government of India undertaking, the rates fixed by the District Administration is to be adhered to and in the instant case the rates per Bigha is found to be Rs.5,00,000/- (Rupees Five Lakh). Though there is some confusion with regard to the rate, the learned Senior Counsel has clarified that the rate per Bigha is Rs.5,00,000/- (Rupees Five Lakh) which is also reflected in the official communication dated 19.07.2005. The documents placed on record would also make it clear that an application for land sale permission was duly submitted by the parties jointly in which the signature of the petitioner appears. Further the communications made to the petitioner by the OIL on the aforesaid transaction have been placed on record which also contain acknowledgment of receipt. Though the learned counsel for the petitioner has denied receipt of such document, his conduct in submitting the joint application for sale which is not disputed would make the aforesaid aspect of non-receipt of the communications immaterial.

13. The projection made that the petitioner was not aware that a process for purchase of the land outright was on is not acceptable from the facts and circumstances in the case. This Court has also noticed that the rate fixed is as per the Government fixation and therefore the prayer made in this writ petition for interfering with such fixation and directing for payment of an enhanced amount is not within the ambit of a petition filed under Article 226 of the Constitution of India, more so when the petitioner was in his right to refuse for an outright purchase in which case, the Oil India Ltd. would have to take the recourse of acquiring the land. However, from the documents and records, the conduct of the petitioner becomes apparent wherein he had agreed for an outright sale of the land in question and has also made the joint sale permission

and only thereafter, he had refused to cooperate for which the transaction has not been able to be brought to a logical conclusion in the form of a registered sale deed. In the opinion of this Court, the petitioner has not only waived his right but is also estopped from making any other claim in this regard.

14. The documents placed on record and the pleadings would also indicate that the conduct of the petitioner in approaching a court of equity is questionable. It is apparent that when the transactions had reached the verge of completion, the petitioner had stopped cooperating and thereafter had filed this writ petition in the year 2012. As a result of which, the transaction could not be completed whereas for all other owners of the adjacent plots of land, the sale price have been paid.

15. As regards the case law of ***Tukaram Kana Joshi*** (supra) relied upon by the learned counsel for the petitioner is concerned, the same is not at all applicable in the instant case for more than one reason. Firstly, the consideration was of a situation of the year 1964 when Article 31 of the Constitution of India was a part of the fundamental rights. Secondly, in the instant case, there is no issue related to any acquisition of land.

16. In view of the above discussion, this Court is of the opinion that the petitioner has not been able to make out any case for interference more importantly with the nature of relief he has sought for.

17. The writ petition accordingly stands dismissed.

18. However, in the interest of justice, it is directed that the petitioner would complete all the formalities for execution and registration of the sale deed within a period of a month from today and on receipt of the necessary

documents/testimonials, the respondent OIL shall take all necessary steps for executing and registering the sale deed. It is needless to say that the petitioner would have to render all cooperation for such execution. It is further clarified that the rates would be on the basis of the prevailing rate during the time of taking over possession which was fixed at Rs.5,00,000/-(Rupees Five Lakh) per Bigha.

JUDGE

Comparing Assistant