

GAHC010179872015



2024:GAU-AS:11901

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

Case No. : WP(C)/1586/2015

ADHIGRAHAN KARIBA BICHARA KRISHI BHUMIR USIT MULYA DABI
SANGRAM SAMITI and 2 ORS.
JUST AWARD DEMAND COMMITTEE
VILL.- NO. 2 ALUBARI
KETETONG GAON PANCHAYAT
MARGHERITA
DIST.- TINSUKIA
ASSAM
THROUGH ITS PRESIDENT AND SECY.

2: SATYA NUNIA
PRESIDENT
ADHIGRAHAN KARIBA BICHARA KRISHI BHUMIR USIT MULYA DABI
SANGRAM SAMITI JUST AWARD DEMAND COMMITTEE
R/O- VILL. NO. 2 ALUBARI
MARGHERITA- 786181
DIST.- TINSUKIA
ASSAM.

3: LATHOI LAZUM
SECY.
ADHIGRAHAN KARIBA BICHARA KRISHI BHUMIR USIT MULYA DABI
SANGRAM SAMITI JUST AWARD DEMAND COMMITTEE
R/O VILL.- RAJKHOWA PATHAR
P.O.- MARGHERITA- 786181
DIST.- TINSUKIA
ASSAM.
VERSUS

THE STATE OF ASSAM AND 7 ORS
THOUGH THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT LR DEPTT.
DISPUR
GHY- 6.

2:THE SECY. TO THE GOVT. OF ASSAM
REVENUE DEPTT.
DISPUR
GHY- 6.

3:THE DY. SECY. TO THE GOVT. OF ASSAM
REVENUE LR DEPTT.
DISPUR
GHY- 6.

4:THE COLLECTOR/ DY. COMMISSIONER
TINSUKIA DIST.
TINSUKIA- 786125.

5:THE ADDL. DY. COMMISSIONER LA
TINSUKIA DIST.
TINSUKIA- 786125.

6:THE CIRCLE OFFICER
MARGHERITA REVENUE CIRCLE
MARGHERITA- 786181.

7:THE UNION OF INDIA
THROUGH THE SECY. TO THE GOVT. OF INDIA
DEPTT. OF ROAD TRANSPORT
HIGHWAYS AND SHIPPING
PARIVAHAN BHAVAN
NEW DELHI- 110001.

8:NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.
NHIDCL

Advocate for : MR. J LASKAR
Advocate for : SC
REVENUE appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (CAV)

Date : 29-11-2024

1. Heard Mr. B C Das, learned senior counsel for the petitioners.

Also heard Mr. R Barpujari, learned standing counsel for the Revenue Department and Mr. RK Talukdar, learned standing counsel for the NHIDCL.

2. The petitioner No.1 herein is a forum formed by the persons residing in different villages, namely, Rajkhowapathar, Alubari No.2, Alubari No.3 and No.2 Bapapung Chipe, Namdang Panbari, Golai, Aagbandha Bongali Gaon, Ledo, Masegaon etc under the Margherita sub division in the Tinsukia district of Assam, whose lands are acquired under the Land Acquisition Act, 1894 (hereinafter referred to as **Old Act**) and accordingly land acquisition proceeding under acquisition in LA Case No.32/2009 in LA Case No.33/2009; LA Case No.35/2009; LA Case No.36/2009; LA Case No.37/2009 and LA Case No.44/2009 was initiated.

3. It is stated that the present writ petition is filed to safeguard and protect the interest of the said villagers collectively in getting fair compensation from the authorities for their respective plots of land under acquisition proceeding in connection with construction of National Highway 38 Bypass from Digboi. According to the petitioner, the members of the petitioners' organization, are owners/possessors of individual/ejmali patta land, wherein they cultivate and produce varieties of agricultural produce.

4. It is the case of the petitioner that given the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the **New Act**), which became operational on 01.01.2014, the petitioners are entitled for land acquisition compensation in terms of the New Act. However, as their prayer was rejected and, the present writ petition is filed.

5. Mr. Borpujari, learned Standing Counsel for Revenue Department has raised a preliminary objection as to the maintainability of the present writ petition at the behest of an unregistered association. According to Mr.

Borpujari, learned counsel, the petitioner association cannot be treated as a legal person nor can such association be termed as an aggrieved person. That being the position, the writ petition is not maintainable at the behest of the present petitioner, which is admittedly an unregistered association of people, inasmuch as, such association cannot be branded either as legal or a juristic person for want of registration under the Societies Registration Act, 1860. Therefore, such petitioners are having no locus standi to file the present writ petition.

6. Relying on the decision of the Division Bench in the case of **Meghalaya Wine Dealers Association and Others Vs. State of Meghalaya & Others** reported in **2010 5 GLR 332**, in **Teacher's Educator's Association Vs. State of Assam and others** reported in **2022 2 GLT 932**, Mr. Borpujari, learned counsel has argued that as the petitioners had failed to show any indefeasible right in its favour and therefore, even if it is assumed that an unregistered association can maintain a writ petition on behalf of these persons, however, there is no indefeasible right explained in this present writ petition. It is further contended by Mr. Borpujari that the prayer in this writ petition is to give compensation under the National Highways Act 1956 and therefore, this court may not proceed and accept the argument of the petitioners to give them relief under the Act, 2013.

7. Countering such argument Mr. B.C. Das learned senior counsel submits that the law has been laid down by the Hon'ble Apex Court in this regard in **Akhil Bharatiya Soshit Karmachari Sangh (Railway) Vs. Union of India** reported in **1981 1 SCC 246**, inasmuch as the Hon'ble Apex court depreciated dismissal of writ petition on such technical point, more particularly, when people's rights are involved.

8. This court is of the view that this writ petition should not be dismissed on the ground of locus, more particularly, for the reason that the aggrieved individual land owners approached this court earlier by filing WP(C) No.4187/2014, WP(C) No. 4188/2014, WP(C) No.4189/2014, WP(C) No.4190/2014, WP(C) No.4190/14 and WP(C) No.4228/2014 and said writ petitions were disposed of by this court under its order dated 28.08.2014 and 01.09.2014 by identical order(s) relegating those petitioners to the Secretary, Revenue Department, Govt. of Assam to consider the representations submitted by them and to pass a speaking order thereof. It was even observed that the petitioners therein had joined hands under the umbrella of "*Odhigrohon Koribo Bisora Krishi Bhumir Usit Mulyo Dabi Sangram Samity*" and hearing was directed to be afforded to this entity also. Subsequently hearing was given to such samity. However, such representation was not positively considered and accordingly, the present writ petition is filed. Therefore, in the aforesaid background the petitioner cannot be non suited on the ground of locus and therefore, such objection of Mr. Borpujari stands negated.

9. On the merit, Mr. Das, learned senior counsel for the petitioner argues the following:

I. In term of Sub Section 1 of Section 11 of the Old Act, until and unless approval is granted by the State Government, it cannot be an award in the eye of law and admittedly in the case in hand the award were approved subsequent to coming into effect of the New Act, i.e. on 01.01.2014 and therefore, in terms of the determination made by the Hon'ble Apex Court in ***Indore Development Authority vs. Manoharlal*** reported in ***(2020) 8 SCC 129***, the petitioners are entitled for compensation in terms of the New Act inasmuch as nor compensation has yet been paid or

possession has been taken over.

10. Per contra, Mr. Barpujari, learned counsel representing the Collector argues :

I. As both the notices under Section 4 and Section 6 of the Old Act were issued before coming into effect of the New Act, therefore, the land acquisition proceeding shall neither lapse nor the petitioner shall be entitled to compensation under the new Act in terms of the determination made by the Hon'ble Apex Court in ***Indore Development Authority*** (supra) in the given fact of the present case inasmuch as the possession were also taken over before enactment of the New Act.

II. By virtue of the mandate of Section 6 of the Old Act, after issuance of the notice, the acquired property shall vest upon the State and accordingly, the State had taken over possession of the land in question. In support of his contention, Mr. Barpujari also places heavy reliance on the determination made by the Hon'ble Apex Court in paragraph No. 363 in ***Indore Development Authority*** (supra).

11. Mr. RK Talukdar, learned counsel appearing on behalf of NHIDCL argues that the land in question was initially acquired by the State for Assam Public Work Department (National Highway) and therefore, NHIDCL was nowhere involved during the land acquisition process. Subsequently, the construction of the road was handed over to NHIDCL with free land and therefore they should not be fastened with the liability, even if this court decides that compensation is liable to be paid under the New Act, for the reason that they continued with the project though construction of the road has not yet started. Mr. Talukdar while endorsing the argument of Mr.

Barpujari also places reliance on paragraph 363 of the judgment of the Hon'ble Apex Court in **Indore Development Authority** (supra).

12. While countering the argument of Mr. Barpujari, learned Standing Counsel as regards paragraph 363, Mr. Das, learned Counsel for the petitioner, referring to the order dated 27.10.2015, submits that admittedly the public notices under Section (9)(1)(2) and (3)(4) of the Old Act were issued on 13.01.2014 fixing the date for filing claims and objections if any from the person interested on 28.01.2014. Therefore, the argument of Mr. Barpujari that land was taken over prior to the coming into effect of the Act has no legs to stand. It is further contended that the NHIDCL being the owner of the road, it is the NHIDCL who is to pay the additional compensation inasmuch as the Deputy Commissioner is only the acquiring authority.

13. Mr. P Nayak, The Learned Standing Counsel for the Assam Public Works Department (APWD) submits that the highway in question is not under the control and management of the department. It is the National Highways Authority of India Limited, which is the owner of such national Highways and therefore, APWD cannot be treated as the acquiring department, rather it is the NHIDCL that is the acquiring authority and therefore, it is the NHIDCL, who is to pay compensation, if enhancement is made.

14. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.

15. Section 24 of the New Act deals with the land acquisition proceeding initiated under the Old Act which was pending as on coming into effect of the New Act. For brevity, Section 24 of the New Act is quoted

hereinbelow:

Section 24. Land acquisition process under Act No. 1 of 1984 shall be deemed to have lapsed in certain cases.

(1) *Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-*

a. *Where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply, or*

b. *Where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

2. *Notwithstanding anything contained in Sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:*

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. ”

16. On a reading of Section 24 of the New Act, it can be seen that three categories of pending acquisition have been perceived i.e. (i) where no award has been passed, (ii) where the award has been passed before 01.01.2014 and (iii) where the award has been passed more than 5 five

years before 01.01.2014.

17. In terms of the aforesaid provision, in the first two categories of cases, the proceeding shall not lapse. For the first category, the compensation is to be determined as per the New Act and in the case of the second category, the compensation is to be determined as per the Old Act. So far relating to the third category, the proceeding may lapse, when the physical possession of the land has not been taken or compensation has not been paid.

18. Section 24(1)(A) of the New Act deals with a deeming provision prescribing the circumstances under which the land acquisition process under the Old Act shall be deemed to have lapsed, which says that it will lapse irrespective of the existence of award, if possession has not been taken over and compensation has not been paid.

19. In ***Pune Municipal Corporation -Vs- Harakchand Misrimal Solanki***, reported ***2014 3 SCC 183***, the Hon'ble Apex Court amongst others, held that the deposit of compensation in Treasury after refusal by the land owner would not be regarded as payment of compensation and thereby, same would lead to lapse of a proceeding initiated under the Old Act.

20. A different view was expressed by a Bench of equal strengths to that of ***Pune Municipal Corporation*** (supra) in ***Indore Development Authority*** (supra) and ultimately the matter was referred to a Constitution Bench of five Judges which settled the proposition in ***Indore Development Authority*** (supra). The issues before the Constitution Bench was to the following effect:

- I. Whether the word "or" in Section 24(2) of the Act, 2013 used between possession has not been taken or compensation

has not been paid to be read as “and”?

II. Whether proviso to Section 24(2) of the Old Act has to be construed as part thereof or proviso to Section 24(1)(b)?

III. What meaning is to be given to the word “paid” under Section 24(2) and “deposited” used in proviso to Section 24(2)?

IV. What are the consequences of payment not made?

V. What are the consequences of amount not deposited?

VI. What is the effect of person refusing to accept compensation?

21. The Constitution Bench after elaborately dealing with the provisions of the New Act and principles of law applicable concluded the following:

I. Under the provision of Section 24(1)(A), in case the award is not made as of 01.01.2014, i.e., the date of commencement of the Act, 2013, there is no lapse of proceeding. However, compensation is to be determined under the provision of Act, 2013.

II. In the case the award has been passed within a window of a period of 5 years excluding the period covered by an interim order of this Court, then proceeding shall continue as directed under Section 24(1)(B) of the Act, 2013 under the Act of 1894 as it has not been repealed.

III. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceeding under Section 24(2) of the Act, 2013 takes place, where due to inaction of authorities

for 5 years or more prior to commencement of the said Act, the possession of the land has not been taken nor compensation has been paid.

IV. In other words, in case possession has been taken, compensation has not been paid, then there is no lapse. Similarly, if compensation has been paid, possession has not been taken, then there is no lapse.

V. The expression "paid" in the main part of Section 24(2) of the Act, 2013 does not include a deposit of compensation in court.

22. Now, coming to the date of award, Section 11(1) of the Old Act mandates that the Collector is to make an award under his hand in respect of the true area of land and the compensation thereof, which, in his opinion should be allowed for the land and also the apportionment of the said compensation, amongst all the persons interested in the land, whether or not those persons have appeared before him. Thus, an award is to be made by the Collector under the Scheme of the Old Act.

23. The first proviso to Section 11 (1) of the Old Act further mandates that no award shall be made by the Collector or such Officers as the Appropriate Government may authorise in this behalf, without the approval of the Appropriate Government. The second proviso to Section 11(1) further prescribes that it shall be competent for the Appropriate Government to direct that the Collector may make such award without such approval in such class or cases, as the Appropriate Government may satisfy in that behalf.

24. Thus, it is clear from the aforesaid provision of law that the approval of the Appropriate Government is necessary for an award to have

a legal sanctity i.e. to be an award under the authority of law. The exception in this regard is the permission/direction of the Appropriate Government allowing the Collector to pass an award without such approval if the Appropriate Government is satisfied in this regard.

25. This Court vide an order dated 28.06.2022 directed the State respondents to file an affidavit clarifying:

- (i) the date of publication of the notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short, the Act of 1894 in the Gazette and through newspaper;
- (ii) publication of the declaration under Section 6 (1) of the Act of 1894 in the Gazette and through the newspapers;
- (iii) finalization of the award by the Collector;
- (iv) approval by the Government to the award; and
- (v) disbursal of the compensation amount, if any, by way of additional affidavit.

26. In pursuance to the order so passed, an additional affidavit was filed by the respondent No.3 through one Sri Chinmoy Pathak, presently holding the post of the Circle Officer, Tinsukia Revenue Circle. In the said additional affidavit, which was in relation to 6 (six) LA Cases, certain details have been given.

27. In LA Case No.32/2009 it has been mentioned that the notification in the Official Gazette under Section 4 (1) of the Act of 1894 issued on 19.11.2013. A perusal of the said notification reveals that there was a dispensation of Section 5 A of the Act of 1894 by invoking the urgency clause stipulated in Section 17 (4) of the Act of 1894. It further reveals that the declaration under Section 6 of the Act of 1894 was issued on

28.11.2013 which was published in the Assam Gazette on 05.12.2013 and the same was subsequently published in a local Daily Newspaper on 31.01.2014. It is important to note here that the Competent Authority though had proceeded under Section 6 of the Act of 1894 but complied with one of the mandatory modes of publication under Section 4 (1) of the Act of 1894 only on 31.01.2014. It is apposite also to record here that the award was forwarded by the Collector on 30.12.2013 to the Government for approval and the Government approved it in terms with the proviso to Section 11 (1) of the Act of 1894 only on 06.01.2014 but Section 4 (1) of the Act of 1894 was complied only on 30.01.2014. It further is apparent that as the approval for the State Government came only on 06.01.2014, the award can only be published in terms with Section 12 (2) of the Act of 1894 on or after 06.01.2014.

28. Upon perusal of the additional affidavit filed and the details given in LA Case No.33/2009; LA Case No.35/2009; LA Case No.36/2009; LA Case No.37/2009 and LA Case No.44/2009, the approval was received from the Appropriate Government authorities only after 01.01.2014 and consequently the passing of the award would be after 01.01.2014.

29. In view of the notification dated 19.12.2013, published by the Ministry of Road and Surface Transport, Government of India (for short, the Act 2013) comes into effect with effect from 01.01.2014. It is also relevant to take note of Section 24 (1) (a) of the Act of 2013 which stipulates that if land acquisition proceedings have been initiated under the Act of 1894 and the award was passed subsequent to coming into effect the Act of 2013, the determination of compensation has to be made in terms with the Act of 2013.

30. In the case in hand, more particularly from the facts recorded

hereinabove on the basis of additional affidavit filed by the Circle Officer, it is clear that the Collector forwarded his award to the Government on 30.12.2013 and the government approved it on 06.01.2014 in respect of LA Case No. 32/2009. In other cases, approval was received only after 01.01.2014. Thus, in the case in hand, on the date of coming into effect of the New Act, there was no award in terms of section 11 (1) of the Old Act, inasmuch as the award can only be published in terms of section 12(2) of the Old Act on or after 01.01.2014.

31. Therefore, the awards passed in the LA cases have to be deemed to have passed after 01.01.2014 i.e., after coming into effect of the New Act. That being the position, though the proceeding initiated under the Old Act shall not lapse in terms of Section 24 of the New Act, however, the compensation is to be determined as per the New Act and a fresh award is required to be passed.

32. Accordingly, in view of the determination made hereinabove, this court is of the opinion that the compensation in the LA cases which are subject matter of this writ petition is to be determined and paid to the land owners in terms of the mandate of the New Act, though the proceeding initiated under the Old Act shall not lapse. Accordingly, the writ petition stands allowed to the aforesaid term. The District Collector is directed to determine the compensation in terms of the New Act and to pass a fresh award under the New Act. It is needless to say that the compensation already paid and received by the land owner, if any, be deducted from the compensation i.e to be determined in terms of this judgment. This writ petition is pending since the year 2015. Therefore, it is in the interest of both the parties that compensation is determined and paid at an earliest date. Accordingly, it is provided that the entire exercise be carried out as expeditiously as possible and not beyond 6 months from the date of receipt

of a certified copy of this order to be furnished before the Collector.

33. Now, coming to the ancillary issue who is to pay the enhanced compensation i.e. whether it is the APWD or the NHIDCL, it is an admitted position that though initially, the acquiring authority was APWD, however subsequently the Highway was handed over to NHIDCL. It is also admitted that the road in question has not yet been constructed and same is to be constructed by the NHIDCL and therefore, all meaning and purport the compensation that may be determined is to be paid by the NHIDCL.

34. Accordingly, the writ petition stands allowed in terms of the determination made hereinabove. Parties to bear their own costs.

35. While parting with the record, it is made clear that no compensation can be paid to the petitioner organization but to the individual land owners depending on the facts of their individual cases.

JUDGE

Comparing Assistant