

GAHC010014552015



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

Case No. : WP(C)/3144/2015

ON THE DEATH OF PROBUDHANANDA DUTTA HIS LEGAL HEIRS 1A.
BHANUMATI DUTTA,1B. PRAJAPATHI DUTTA,1C. P
W/O AND SON OF LATE PRABUDHANANDA DUTTA , RESIDENT OF VILL.
KESHORKAPONBOTORASHI P.O. DHARAKUNA , P.S. AND DIST-
KARIMGANJASSAM.

2: 1A BHANUMATI DUTTA
W/O LATE PRABUDANANDA DUTTA

3: 1B PRAJAPATHI DUTTA
S/O LATE PRAJAPATI DUTTA

4: 1C PANKAJ DUTTA
S/O LATE PRABUDANANDA DUTTA. ABOVE 1A TO 1C ARE THE
RESIDENTS OF VILLAGE- KESHORKAPON BOTOROSHI
P.O. DHARAKUNA
P.S. AND DIST. KARIMGANJ ASSAM

5: ABDUL MATIN
SON OF LATE BASU MIA
R/O VILL. BOTOROSHI
P.O.
TILLABAZAR
P.S. AND DIST. KARIMGANJASSAM

6: HELU MIA
S/O LATE KAZU MIA R/O VILL- BOTOROSHI
P.O. TILLABAZAR
P.S. AND DIST. KARIMGANJASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE and DISASTER

MANAGEMENT DEPTT., GAUHATI, DISPUR-6, ASSAM

2:THE DY. SECY. TO THE GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT LR
DEPTT.
GAUHATI
DISPUR
GHY-6
ASSAM

3:THE SECY. TO THE GOVT. OF ASSAM
FINANCE EandA DEPTT.
DISPUR
GHY-6
ASSAM

4:THE DY. COMMISSIONER CUM COLLECTOR
KARIMGANJ L.A. DEPTT.
KARIMGANJ
P.O.
P.S. and DIST- KARIMGNAJ
ASSAM

5:PRINCIPAL CHIEF CONSERVATOR OF FOREST
ASSAM
REHABARI
GHY-8
ASSAM

6:CHIEF CONSERVATOR OF FOREST
TERRITORIAL
ASSAM
GHY-1

7:THE CONSERVATOR OF FORESTS
S.A.C.
SILCHAR
P.O.
P.S. and DIST- KARIMGANJ
ASSAM

8:THE DIVISIONAL FOREST OFFICER
KARIMGANJ
P.O.
P.S. and DIST- KARIMGANJ
ASSA

Advocate for the Petitioners : Ms. R. Choudhury, Advocate.

Advocate for the Respondents : Ms. S. Sarma, Govt. Advocate.
Mr. R. Borpujari,
SC, Finance & Revenue

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 30.01.2024

Date of Judgment : 30.01.2024

JUDGMENT AND ORDER (ORAL)

Heard Ms. R. Choudhury, the learned counsel for the petitioners and Ms. S. Sarma, the learned counsel appearing on behalf of the respondent No.4 as well as Mr. R. Borpujari, the learned Standing Counsel, Finance Department as well as the Revenue Department. None has appeared on behalf of the Forest Department on call.

2. The case of the petitioner herein is that the Sub-Divisional Officer, Karimganj (L.A. Branch) had initiated steps for requisition of 15 bighas 17 kathas 11 chattaks of land which included the land of the petitioners for construction of the Departmental Building of the Forest Office at Karimganj. Annexure-A is the communication by which the said requisition proceedings was initiated. It further reveals from the records that the Divisional Forest Officer, Karimganj who is the respondent No.8 had issued a communication dated 04.10.2004 informing the respondent No.5, i.e. the Principal Chief Conservator of Forest, Assam that the original estimated value of the land was Rs.4,53,606.55 and the supplementary

estimated value as per the Deputy Commissioner, Karimganj was Rs.5,74,416.55p which was paid by the Department. Therefore, the balance amount of Rs.4,58,002.28 out of the revised estimate of Rs.10,32,418.83 was required to be paid.

3. The record reveals that there was inter-Departmental communications between the Deputy Commissioner, Karimganj and the Divisional Forest Officer as regards the acquisition of the said land. However, the petitioners along with others whose lands were taken over by the District Administration and handed over to the Forest Department filed an application before the District Commissioner, Karimganj on 16.03.2007 requesting the enhanced rate of assessment and to pay the amount to them without any further delay. The respondents, however, did not take any steps for disbursing the amounts to the petitioners and under such circumstances, the instant writ petition was filed seeking a direction to the respondent authorities to make payment to the petitioners by reassessing the valuation of land as fixed under the zonal valuation of the land acquired for construction of the Office Building of the Forest Department within a stipulated period of time.

4. The record further reveals that the instant writ petition was filed on 26.05.2015 and this Court vide an order dated 01.06.2015 issued notice. Though the writ petition was simply of payment of enhanced compensation but an interesting aspect had come to light, more particularly from the affidavit filed by the respondent No.4. It was mentioned in the affidavit that in connection with the LA Case No.8/84-85, an area of land measuring 15 bighas 17 kathas 11 chattaks covered by various Dag Numbers and Khatian Numbers were sought to be acquired

for establishment of Forest Departmental Building. It was mentioned that originally an amount of Rs.4,53,606.55 was assessed as the land compensation for acquisition of the aforesaid land, which was subsequently revised and re-assessed as supplementary estimate of land compensation for Rs. 1,20,809.61, the total amount being Rs. 5,74,416.16. The said amount of Rs.5,74,416.55 was deposited in the Karimganj Treasury vide (i) Challan No. 1364 dated 29.04.1982; (ii) Challan No. 77 dated 01.04.1986 and (iii) Challan No. 6810 dated 18.03.1991 by the Requiring Authority, i.e. the Divisional Forest Officer, Karimganj. However, the valuation of the land was again re-assessed by the District Administration and the amount determined was Rs. 10,32,818.83. However, the said land acquisition proceedings stood lapsed in view of not making the declaration in terms with Section 6 of the Land Acquisition Act, 1894. The Forest Department thereupon was again informed to deposit the additional amount of Rs.4,58,002.28 vide the communication dated 14.09.1992. But the Forest Department did not deposit the said balance amount. It was further mentioned that as per the Government instructions conveyed vide letter No.RLA.45/2004/2 dated 06.05.2004 by Deputy Secretary, Revenue (LR) Department, the said L.A. Case was again prepared afresh and compensation of the said land was estimated to the tune of Rs. 56,18,392/-. Under such circumstances, the Divisional Forest Officer, Karimganj was requested to deposit the balance amount of Rs. 50,43,975.45 which the Divisional Forest Officer, Karimganj did not do so. It was also mentioned that fresh L.A. papers were prepared as per Government direction dated 06.05.2004 and was sent to the requiring Department, for onward submission to the Government in the

Revenue Department of Assam for approval of notification and declaration etc. However, nothing was done. It was specifically mentioned that the final estimate was made was Rs.56,18,392/- for the acquisition of the land.

5. A perusal of the said affidavit filed by the respondent No.4, therefore, makes it apparently clear that as on the date of filing of the said affidavit, the respondent authorities were holding into the land of the petitioners without any authority of law in as much as the acquisition proceedings which were initially initiated stood lapsed and fresh acquisition proceedings were never initiated. It was also relevant that no payment was made to the petitioners.

6. In the backdrop of the above, this Court further finds it relevant to take note of the affidavit-in-opposition filed by the respondent No.8. In the said affidavit-in-opposition, it was mentioned that there was no statement in the writ petition as to how the petitioners were entitled to any compensation in respect to the land in question. It was specifically mentioned that the order dated 05.12.1981 clearly showed that neither the names of the petitioners nor the names of their predecessors were shown as the owners of the land so acquired in connection with RC No.7 of 1981-82 and there is no mention in the writ petition as to how the petitioners have become entitled to compensation. Additionally it was stated that out of the Khatian Numbers mentioned in paragraph No.2 of the writ petition, Khatian Nos.638 and 630 are not included in the said order. It was further mentioned that the Forest Department had duly deposited an amount of Rs.5,74,416.55 in three installments. It was mentioned that the compensation was duly deposited before the District

Commissioner, Karimganj but it was on account of the negligence on behalf of the Revenue Department that the notification was not published. It was further mentioned that there was no question of enhancement of the compensation.

7. This Court has duly heard the learned counsel appearing on behalf of the petitioners as well as the learned counsels appearing on behalf of the District Administration, Karimganj and the Revenue Department, Assam. However, none has appeared on behalf of the Forest Department.

8. From the materials on record and the contentions so made by the learned counsels for the parties, two issues arise for consideration, viz. (i) whether the respondent authorities would have any right to retain possession of the land without following the due process of law and (ii) what relief the petitioners are entitled to in the facts of the instant case.

9. From the pleadings, it is apparently clear that though the respondent authorities had initiated certain proceedings for acquiring the land in question, the said lands were not acquired. Under such circumstances, the question arises as to whether the respondents have an authority to be in possession of the land. The respondents are 'State' within the meaning of Article 12 of the Constitution, and as such, they cannot be permitted to take over the possession of the land of the private individual, save by the authority of law. Admittedly, as on date neither the land were acquired nor acquisition proceedings initiated. Under such circumstances, the question of the respondent Forest Department's right to retain and possess the land does not arise. The same would be an infraction to the rights under Article 300A of the Constitution.

10. Under such circumstances, this Court is of the opinion that the respondent Forest Department has no authority to remain in possession or construct any building over the land in question. The first point for determination is accordingly decided.

11. Now, let this Court deal with the second point for determination. This Court had duly perused the writ petition and made a pointed query upon the learned counsel for the petitioners as to on what basis the petitioners herein claim their rights over the land in question. Nothing could be shown except an application so filed before the District Commissioner, Karimganj seeking enhancement. The same is in the opinion of this Court is not sufficient for this Court to issue a writ against the respondent authorities. More so, when the relief which has been sought for is for making payment to the petitioners by reassessing the value of the land as per the zonal valuation of the land acquired. It is also the opinion of this Court that when the land has not been acquired as mandated under law, the question of issuance of a writ for reassessing the valuation of the land as fixed under zonal valuation of the land does not arise.

12. Be that as it may, this Court grants the liberty to the petitioners to approach the District Commissioner, Karimganj, on the basis of the observations so made herein above that the Forest Department does not have any right to remain in possession of the land in question and upon satisfying the District Commissioner that the petitioners have rights over the land in question, the District Commissioner, Karimganj shall take appropriate steps for evicting the Forest Department from the area of the land which the petitioners have rights. The said exercise be carried out

within a period of 6 (six) months from the date a certified copy of this order is served along with the details required to be furnished by the petitioners as regards their rights over the land which is under the possession of the Forest Department.

13. The above exercise though directed shall not however preclude the Revenue Department of Assam, the District Administration, Karimganj as well as the Forest Department of Assam to take a decision to initiate fresh proceedings for acquisition of the land and take effective steps in that regard.

14. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant