

GAHC010064952022



2024:GAU-AS:13121

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

Case No. : Review.Pet./64/2022

HADIA NILOFAR KHALIL AND ANR.

W/O. LT. KHALIL ULLAH, R/O. DERGAON TOWN, WARD NO.2, P.O.
DERGAON, GOLAGHAT.

2: MD. FARUK HUSSAIN
S/O. LT. MUHIB ULLAH
R/O. DERGAON TOWN
WARD NO.2
P.O. DERGAON
GOLAGHAT

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. THROUGH THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS, GOVT. OF INDIA, NEW DELHI.

2:THE COLLECTOR CUM DEPUTY COMMISSIONER

DIST. GOLAGHAT
ASSAM.

3:THE ADDL. DEPUTY COMMISSIONER CUM COMPETENT AUTHORITY
(LA)

DIST. GOLAGHAT
ASSAM

4:THE CIRCLE OFFICER
DERGAON REVENUE CIRCLE
DERGAON MOUZA
DIST. GOLAGHAT.

5:NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT CORP. LTD.

3RD FLOOR
PTI BUILDING
4-PARLIAMENT STREET
NEW DELHI.

6:THE GENERAL MANAGER (PROJECT)

NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT CORP. LTD.
OPPOSITE BRAHMAPUTRA ACADEMY JUNIOR COLLEGE
PIN-785001
DIST. JORHAT

Advocate for the Petitioner : MR. S K BARKATAKI, MR D K NATH

Advocate for the Respondent : SC, NHAI, MR. C BARUAH,CGC,SC, NHIDC,GA, ASSAM

Linked Case : WP(C)/1660/2022

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Advocate for : MR. S K BARKATAKI

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

25/01/2024

Heard Mr. D K Nath, learned counsel for the review petitioners and Mr. A Baruah, learned counsel appearing on behalf of Mr. C Baruah, learned Standing counsel, NHAI.

2. The petitioners earlier filed the connected writ petition being WP(C) No. 1660/2022 praying for a direction to the respondent authorities in the NHAI to recalculate and pay the compensation amount under the National Highways Act, 1956 pertaining to a plot of land measuring 4 (four) Kathas and 17 (Seventeen) Lessas at Dag No. 655 covered by annual Patta No. 44 at Dergaon Town under Mouza-Dergaon in the District of Golaghat, Assam setting aside the reply under No.

JRT/NHIDCL/GM/Dergaon Town/157/Pt.-1/2021/1914 dated 24.09.2021 issued by the General Manager (Project), National Highways and Infrastructure Development Corporation Limited, Ministry of Road Transport and Highways, Government of India, PMU-Jorhat, whereby the Additional Deputy Commissioner-cum-Competent Authority (Land Acquisition) (CALA), Golaghat, Assam was informed that pertaining to the land of the petitioners Award under Section 3G of the National Highways Act, 1956 have already been passed and that compensation amount for the said land has already been credited to the account of CALA, Golaghat and now change of nature of land is not possible as Corrigendum of Section 3D (of said 1956 Act) was not made prior to Section 3G Award.

3. Brief facts of the case is that said parcel of land of the petitioners, noted above, was taken over for widening/four laning of National Highway No. 37 on the stretch of land from KM 426.8 to KM 437.4 under the office of the Deputy Commissioner, Golaghat in the District of Golaghat, Assam under the provisions of the National Highways Act, 1956 in LA Case No. 5/2020-21.

4. For the said purpose, as required Notification under sub-Section (3) of Section 3A of the 1956 Act was published in the English Daily "*The Assam Tribune*" as well as Assamese Daily, "*Dainik Janambhumi*" on 20.03.2020.

5. As none of the concerned land holders submitted any objection before the CALA at Golaghat, after such Notification issued under Section 3A of 1956 Act and published in the local dailies, noted above, there was no hearing of any such objection under Section 3C of said 1956 Act and the said acquisition process straight away proceeded to Section 3D of the 1956 Act for the purpose of declaration of acquisition.

6. Accordingly, the Ministry of Road Transport and Highways, Government of India issued Notification on 29.09.2020 under sub-Section (1) of Section 3D of said 1956 Act published in the Gazette of India Extra-Ordinary Part-II Section 3(II) towards the declaration for acquisition of the land of the patta holders including the land of the petitioners for the said public purpose of widening NH-37 at the relevant place in the District of Golaghat, noted above.

7. In the acquisition compensation statement for the said land of the petitioners Class of land was shown as Agricultural land under annual patta.

8. The contention of the petitioners in its writ petition was that pursuant to the order of the Deputy Commissioner, Golaghat under GRC.9/89 Pt. 2/28 dated 17.05.1990 said annual patta land of the petitioners at Dag No. 655 covered by annual Patta No. 44 at Dergaon Town under Mouza-

Dergaon in the District of Golaghat, Assam which was initially a Baaz (Barren) Class of land was accordingly converted to first class commercial. However, Jamabandi was corrected later after issuance of Notification under Section 3D of the 1956 Act and the compensation amount for the said land was determined as agricultural land though it should have been assessed as first class commercial land.

9. As such, the petitioners filed the connected WP(C) No. 1660/2022.

10. After hearing the parties and considering the entire aspects of the matter, this Court by order dated 09.03.2022 passed in the connected WP(C) No. 1660/2022 observed that the petitioners may approach the Additional Commissioner, Upper Assam Division, Jorhat, the concerned Arbitrator under the National Highways Act, 1956 as provided under Section 3G (5) of said 1956 Act for enhancement of the Award pertaining to compensation of their land acquired under the NH Act, 1956 involved in the said writ petition for which the petitioners had already received compensation under Section 3G(1) of said 1956 Act as per the Award passed by CALA-cum-ADC, Golaghat.

11. Now the petitioners have filed this review petition stating that the petitioners after the required Notification under Section 3D dated 09.10.2020 approached and file application before CALA, Golaghat on 13.10.2020, which the CALA, Golaghat acknowledged and replied on 19.11.2020 stating that step for correction had been taken and therefore, the observation made by this Court in the said order dated 09.03.2022 that the petitioners approached CALA only on 29.06.2021 is not correct.

12. The another contention of the petitioners is that the Notification dated 21.06.2021 observed by the Court in its order dated 09.03.2022 does not relate to the land involved in the case but it relates to adjacent plot of land of the suit land of the same patta.

13. Since the land involved in the case has not been shown as first class commercial, lesser amount of compensation has been determined by the CALA-cum-ADC, Golaghat under the provisions of said 1956 Act and thereby for wrong assessment and determination of acquisition compensation, the petitioners are going to suffer the loss.

14. It is also submitted by the petitioners that they have not yet received the compensation amount as they have submitted objection before the authority concerned and followed by the writ petition.

15. The petitioners further submitted that the Arbitrator under the National Highways Act, 1956 is

the Commissioner, Upper Assam Division, Jorhat and not the Additional Commissioner, Upper Assam Division, Jorhat as observed in the order dated 09.03.2022 passed in WP(C) No. 1660/2022.

16. Hence, this review petition.

17. From the connected writ petition WP(C) No. 1660/2022, it can be seen that the petitioners specifically stated that their land along with others had been acquired under the said 1956 Act for public purpose, i.e., four laning of National Highway (NH 37) and that they came to know about the said process when the officials of the respondents visited their land as well as adjacent land in connection with necessary survey. Petitioners stated that no prior intimation was given to them nor they had any information about the said process.

18. Petitioners also stated that on 09.10.2020 when the required notification was published by the respondent authorities in the newspapers, Dainik Janambhumi after going through the same, they found that their land has been reflected as agricultural land instead of first class commercial land and then they filed their application on 13.10.2020 before the respondent authorities for stating their grievances.

19. But much prior to that in March, 2020, Notification under sub-Section (3) of Section 3A of 1956 Act relating to the land of the petitioners and others were already published in the Dainik Janambhumi and Assam Tribune on 20.03.2020 and the petitioners did not submit any objection as provided under Section 3C (1) of said 1956 Act. Since there was no objection before CALA-cum-ADC, Golaghat, Section 3D Notification was published on 09.10.2020, only thereafter petitioners filed their representations before the authority concerned stating their grievances showing their land to be agricultural land instead of first class commercial land but on publication of such notification on 09.10.2020 under Section 3D of the 1956 Act, land of the petitioners already stood acquired and thereafter, from the impugned communication of the General Manager (P), NHIDCL, PMU-Jorhat dated 24.09.2021, it can be seen that award under Section 3G of said 1956 Act for the said land has already been passed and at that stage without there being any corrigendum under Section 3D of 1956 Act, the authorities concerned cannot change the nature of the land.

20. Considering the same, the Court in the order dated 09.03.2022 passed in WP(C) No. 1660/2022 observed that the petitioners may approach the concerned Arbitrator under the National Highways Act, 1956 under Section 3G (5) for redressal of their grievances and enhancement of the award pertaining to compensation of their land acquired under the said 1956 Act showing it to be agricultural

land instead of first class commercial land.

21. The provisions specified under Section 3A to 3J including 3G of said 1956 Act are statutory in nature. As such, petitioners have no other alternative but only to approach the concerned arbitrator under Section 3G (5) of said 1956 Act for redressal of their grievances, noted above.

22. As the petitioners have now clarified that it is the Commissioner, Upper Assam Division, Jorhat is the Arbitrator under the National Highways Act, 1956, pertaining to the land acquired under the said 1956 Act for widening NH-37 relating to Golaghat District including the land of the petitioners involved in the case, therefore, the petitioners may approach the said Commissioner, Upper Assam Division, Jorhat, i.e., the concerned Arbitrator under the National Highways Act, 1956 for redressal of their grievances.

23. To that extent, the order dated 09.03.2022 passed earlier by this Court in WP(C) No. 1660/2022 stands reviewed.

24. This order shall be read together with the order dated 09.03.2022 passed in WP(C) No. 1660/2022 preferred by the petitioners.

25. With the above observation and direction, this review petition stands disposed of.

JUDGE

Comparing Assistant