

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 622 of 2023

Tofayel Hossain
S/o Abdul Latif
R/o Jatrapur Masjid
Block- Kathalia, PO: Jatrapur
District- Sepahijala Tripura
PIN: 799131

---Petitioner(s)

Versus

- 1. Union of India**
Represented by Secretary, Ministry of Defence
(Border Road Organization)
New Delhi, PIN: 110011
- 2. The Chief Engineer**
Chief Engineers Headquarter,
Project Pushpak,
C/O- 99 APO, Mizoram
- 3. Joint Director (ADMN.)**
Headquarter, Project Pushpak,
C/o-99 APO, Mizoram
- 4. The State of Tripura**
Represented by Secretary, Govt. of Tripura
New Secretariat Complex,
Agartala, West Tripura, PIN: 799006
- 5. The Land Acquisition Collector**
Sepahijala District, Bishramganj
PIN: 799103

---Respondent(s)

For Petitioner(s)	: Mr. A. Nandi, Advocate.
For Respondent(s)	: Mr. B. Majumder, Deputy SGI Mr. D. Bhattacharjee, GA. Mr. S. Saha, Advocate.
Date of hearing and date of judgment and order	: 04.10.2023
Whether fit for reporting	: Yes.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment Order (Oral)

Heard Mr. A. Nandi, learned counsel for the petitioner. Also
heard Mr. B. Majumder, learned Deputy SGI for the respondents No.1

to 3 and Mr. D. Bhattacharjee, learned GA assisted by Mr. S. Saha, learned counsel for the respondents No. 4 and 5.

[2] This is an application under Article 226 of the Constitution of India seeking following reliefs:

- (i) *Issue rule calling upon the respondents and each one of them to show cause as to why a writ of certiorari and/or in the nature thereof for directing the respondents to transmit the records, appertaining to the writ petition, lying with them, for rendering substantive and consignable justice to the petitioner.*
- (ii) *Issue rule asking the respondents to show cause as to why the respondent No.2 should not be directed to make fresh survey of the land for determination of the quantum of land belong to petitioner was utilized for construction of said IBB Road at Mouja-Birampur and then initiate the proceedings for determination of compensation under Section 28 of the RFCTLARR Act, 2013 for payment of due compensation to the land owner/Petitioner.*
- (iii) *After hearing the parties and being satisfied make the rule in terms of (ii) absolute.*
- (iv) *Issue rule asking the respondents to show cause as to why the respondent No.2 and 5 shall not be directed to conduct a joint survey to determine the actual measurement of land belonging to the petitioner was taken over for the construction of IBB Road within the periphery of Birampur Mouja.*
- (v) *Issue rule, asking the respondents to show cause as to why the respondent No.2 should not be directed to pay time bound and adequate compensation as per provision of RFCTLARR Act, 2013 in the letter spirit of Case No. WP(C) 148 of 2021 for ends of justice.*
- (vi) *After hearing the parties, being satisfied, make the rule in terms of (iv) and (v) absolute.*
- (vii) *Pass any other order/orders, writ/writs as may deem fit and proper for ends of justice.*

[3] The brief facts of the petitioner is that the Petitioner is one of the many land holders in Birampur Mouja of Sepahijala District, at present, whose land were utilized by the Respondent No. 1 for construction of IBB Road without observing any legal acquisition proceedings. No award of compensation was awarded despite repeated demand. Construction of IBB Road at Mouja - Birampur was completed in the year 1995 and at present, the same is in use and occupation of Respondents. Unfortunately, despite serious attempt for awarding compensation by the Petitioner the Respondents have miserably failed to render the equitable justice, otherwise guaranteed under Article

300A of the Constitution of India. Background fact is that a notification No. F.9(2)-Rev/Seq/VI/1993 dated 26.12.1995 for acquisition was published under Section 4 of the Old Land Acquisition Act, 1894. At the time of construction of the road, the alignment was changed and as a consequence land of other jotedar was also utilized without due acquisition procedure. No award was determined and disbursed under Section 11 of the Old L.A. Act in favour of the land holders. Office of L.A. Collector, West Tripura though made serious attempt for publication of corrigendum adding the other land considering the change in alignment of said road from Union Respondent, despite several reminder also, no positive attempt was made by the Union Respondent. As a result, the o/o LA Collector, at one point of time have withdrawn the entire notification dated 26.12.1995. IBB Road at Mouja-Birampur was constructed without following any due procedure of acquisition and as such, no compensation was paid in favour of the affected land owners.

[4] At one point of time, one writ petition was preferred numbered as WP(C) 952 of 2016. In the said judgment, there was a direction for actual measurement of the land utilized for said construction purpose (IBB Road) followed by further direction for determination of award under the provision of RFCTLARR Act and also ordered for exercising of all the components of RFCTLARR Act, 2013. Being inspired by the said writ petition, a series of i.e., total 10 nos. of writ petitions were also preferred. Those writ petitions were registered as WP(C) 1163 - 1168 of 2019 and WP(C) 1185-1188 of 2019 and disposed of in the same direction as is done in WP(C) 952 of 2016. Another 23 nos. of writ petitions were also instituted and registered as

WP(C) 585-597 & WP(C) 599-603 & WP(C) 626 & WP(C) 682-685 of 2020. Those writ petitions have also been allowed favouring the land holders confirming their legal right of compensation. Lastly, another 4 nos. of writ petitions have also preferred and registered as WP(C) 148 of 2021 to WP(C) 151 of 2021. On last, 05.04.2022, those 4 nos. of writ petitions were also disposed of confirming the claim of land holders, whose lands were utilized. The Petitioner herein is either land holders or legal representatives of original land holders. He had firm belief that Respondents would initiate the appropriate proceedings for disbursement of adequate compensation, though in the meantime more than three decades had elapsed. At this stage, the petitioner had decided to approach this Hon'ble Court demanding the compensation under the RFCTLARR Act, 2013 (the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013). Hence this instant petition.

[5] It is contended by the counsel for the petitioner that construction of Border Road adjacent to International Border (Bangladesh) covering the lands of various moujas of said Sonamura Sub-Division. In Birampur Mouja there are lands belonging to minimum 55 private land owner (raiyat) and total lands belonging to them measures more than 6 (six) acres. Initially, as per notification of the year 1993, land measuring 2.895 acres of land was reflected in the publication of Notification. Said notification was withdrawn due to failure of determination and disbursement of award (considering the non-adjustment of further land as a matter of change in alignment). On the other hand, IBB Road at Mouja –Birampur was constructed

covering the land belong to other land holders beyond notification without any acquisition process.

[6] The counsel for the petitioner further submitted that the land owners whose lands were taken over under the purported acquisition proceedings was under a process of compulsory acquisition, but to receive compensation for the land taken over though not a fundamental right but a constitutional right guaranteed under Article 31 and 300A of the Constitution of India.

[7] After a bare perusal of the entire record, it appears to this court that the subject land in question was acquired by the respondents vide notification No.F.9(2)-Rev/Acq/VI/1993 dated 12.03.1993. The counsel for the petitioner has stated that such notification was subsequently withdrawn by the respondents but he has not supported any document to support his submission regarding such withdrawal of notification dated 12.03.1993. No document has also been placed before this court with regard to the time of laying of roads and to what extent the land of the petitioner was affected. The petitioner seems not to have raised any objection regarding construction of road wayback in 1993-1995. It appears to this court that more than 20 years have been elapsed by this time and the petitioner has not taken a single step for seeking any relief against the respondents. The affidavit submitted by the petitioner is also silent about any action taken by the petitioner in order to extend any objection to such acquisition of land or to bring the matter before any appropriate forum for seeking relief.

[8] It is the contention of the counsel for the petitioner that in the case of similarly placed situation, some other owners approached

this Court and filed WP(C) 952 of 2016 which was disposed on 10.05.2018. In the said matter, this Court was pleased enough to direct the respondents for determination of the measurement of land actually utilized for said construction of road as well as determination of compensation under the provision of New L.A Act, 2013. Thus a similar relief be granted to him. Even for a moment, if such plea is considered by this court, the petitioner seems to have woken up from his slumber after 1995 and he approached this court in the year, 2023. This court has no hesitation to hold that the petitioner has not approached this court with clean hands. Moreover, the laches done on the part of the petitioner cannot be the grounds for extending all the benefits he has sought for by way of filing this writ petition. Neither did the petitioner place any document showing that he is the lawful owner of the land in question nor did he submit any document showing his right, title and interest to claim compensation. Therefore, this court has no hesitation to hold that the counsel for the petitioner has failed to make out his case. This is a chance litigation and such casual approach of the petitioner towards courts cannot be entertained. Accordingly, the writ petition being devoid of merit stands dismissed.

[9] In view of the above, the instant writ petition stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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