

GAHC010007022015



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

Case No. : WP(C)/98/2015

MOHAMMAD ALI and 20 ORS
S/O- LT. KUDDUSH ALI, VILL. and P.O.- GALIA, DIST.- BARPETA, ASSAM,
PIN- 781352.

2: MUBARAK ALI
S/O- LT. ABDUL RAHMAN MOLLAH
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

3: MOHIBUL MOLLAH
S/O- LT. MOHAMMAD MOLLAH
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

4: ABDUL MAJID
S/O- ABDUL BASER
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

5: HASHMAT KHAN
S/O- LT. HAIDAR KHAN
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

6: DARBESH ALI
S/O- LT. DAGO MIA

VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

7: TABIBAR RAHMAN
S/O- DARBESH ALI
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

8: SURATJAN NESSA
W/O- ABDUL RAHMAN MOLLAH
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

9: SATTAR ALI
S/O- LT. ABDUL ALI
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

10: BARENDRA NATH CHOUDHURY
S/O- LT. DEBENDRA NATH CHOUDHURY
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

11: BILASH CHANDRA DAS
S/O- LT. TIKENDRA JIT DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

12: GANGADHAR DAS
S/O- LT. BANESWAR DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

13: RAJMOHAN DAS

S/O- LT. TIKENDRA JIT DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

14: HAKANTA DAS
S/O- LT. UTSAB DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

15: SHAHIDUL ISLAM
S/O- LT. KUDDUS ALI
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

16: HARIPRASHAD KALITA
S/O- LT. NIRMAL KALITA
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

17: GHANASYAM DAS
S/O- LT. AHARU DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

18: MADHUSUDHAN CHOUDHURY
S/O- LT. DEBENDRA CHOUDHURY
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

19: SHYAM CHARAN DAS
S/O- TIKENDRA DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

20: MANOHAR DAS
S/O- LT. GOLAP DAS
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352.

21: SADAR AHMED
S/O- LT. SAYED ALI
VILL. and P.O.- GALIA
DIST.- BARPETA
ASSAM
PIN- 781352

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, LAND AND REVENUE
DEPTT., DISPUR, GHY- 6.

2:THE CHIEF ENGINEER
PWD
NATIONAL HIGHWAY
CHANDMARI
GHY- 3.

3:THE DY. COMMISSIONER
BARPETA
ASSAM- 781301.

4:THE CIRCLE OFFICER
SARUPETA REVENUE CIRCLE
BARPETA
ASSAM- 781318.

5:THE NATIONAL HIGHWAY AUTHORITY OF INDIA
REPRESENTED BY THE GENERALMANAGER / PROJECT DIRECTOR
NHAI
HOUSE NO. 1
1ST FLOOR
DILIP HUZURI PATH
NEAR BAGESWARI MANDIR
SORUMOTORIA
DISPUR
GUWAHATI-781001
ASSA

Advocate for the Petitioner : MR.M HAQUE

Advocate for the Respondent : MR.C BARUAHR-5

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri M Hoque, Advocate.

**Advocates for the respondents : Shri D Nath, Sr. Govt. Advocate, Assam,
Shri C Baruah, SC, NHA.**

Dates of hearing : 16.11.2023.

Date of judgment : 16.11.2023.

JUDGMENT & ORDER

Heard Shri M Hoque, learned counsel for the petitioners. Also heard Shri D Nath, learned Senior Government Advocate, Assam for the respondent nos. 1, 2, 3 and 4. Shri C Baruah, learned Standing Counsel, NHA is present for the respondent no.5 which was subsequently impleaded vide an order dated 27.04.2015.

2. The petitioners, who are twenty one in numbers, have raised a claim for compensation pertaining to acquisition of land for construction of the National Highway No. 31 in the district of Barpeta.

3. It is the case of the petitioners that the acquisition proceeding was initiated vide a Gazette Notification dated 16.02.2010 and in the said acquisition proceeding pertaining to a stretch of land from Km. 982.00 to 1041.00 (Nalbari-Bijni Section) in the district of Barpeta, the lands of the petitioners were also mentioned. However, in spite of that the compensation has not been paid.

4. Shri Hoque, learned counsel for the petitioners has submitted that though initially, the lands of the petitioners were not directly involved with the acquisition proceeding, subsequently, there was a need for which their lands were also affected. The learned counsel has referred to a document prepared by the Lat Mandal dated 03.12.2014 containing the names of the petitioners and according to him, the lands mentioned in the said document were affected. Shri Hoque, learned counsel has also referred to a statement of direct purchase of lands prepared by the Addl. Deputy Commissioner-cum-CALA, NHAI, Barpeta which contains 58 numbers of entities. It is the specific contention of the petitioners that while the entity against the Sl. No. 1, namely, President/Secretary, Dhupguri Satra, Galia has been paid the compensation, the petitioners have been left out. The learned counsel has raised the issue of discrimination in making the disbursement.

5. *Per contra*, Shri Nath, learned Senior Government Advocate has submitted that the respondent no. 5, namely, the NHAI has filed two numbers of affidavits. By referring to the affidavit-opposition filed on 03.03.2016, it is submitted that the projection made by the petitioners is incorrect. Shri Nath, learned State Counsel has made specific reference to the rejoinder-affidavit of the respondent no. 5 filed on 28.03.2017 and by referring to the averments made in paragraph

5 thereof, it is submitted that while it is a fact that there was a proposal for direct purchase from 58 numbers of entities, such purchase was made only from the entity no. 1 and accordingly, the price was paid.

6. It is submitted that the lands of the petitioners were not affected and therefore, the question of payment of compensation will not arise. By referring to the Annexure-3 of the said affidavit-in-opposition which is a letter dated 04.06.2014, the learned State Counsel has submitted that the plots of land were directly purchased only from 5 persons who are paid the price and the chart giving the details of such payments is enclosed to the said communication dated 04.06.2014.

7. Shri Nath, learned Senior Counsel, accordingly submits that the petition is misconceived and otherwise also involves disputed questions of fact and therefore, cannot be a matter of adjudication by a writ court.

8. Shri Baruah, learned Standing Counsel, NHAI while endorsing the submission of the learned State Counsel has submitted that the NHAI has discharged its obligation of releasing compensation to only the actually affected persons and in this case, the petitioners are not affected by the said acquisition proceeding. The learned Standing Counsel also clarifies that the rejoinder of the respondent no. 5 filed on 28.03.2017 explained the entire position.

9. In his rejoinder, Shri Hoque, learned counsel has submitted that the position can be verified by the Circle Officer upon which appropriate directions may be passed.

10. The rival contentions have been considered and the materials placed before this Court have been carefully examined.

11. The basis of the present claim is upon a statement allegedly made by the Lat Mandal giving the details of the lands of the petitioners. The statement, including its vernacular has been carefully examined and there is no description of any manner as to whether the plots of land *vis-a-vis* the petitioners were affected in the acquisition proceedings. The endeavour of the learned counsel for the petitioners to rely upon the statement prepared by the ADC containing 58 numbers of persons also does not appear to be acceptable as it has adequately explained that out of the 58 nos. of entities, only the entity against Sl. No. 1, namely, President/Secretary, Dhupguri Satra, Galia was the affected person and accordingly, the amount involved was paid. In any case, the aforesaid list pertains to direct purchase and not of any acquisition proceedings and it has been adequately explained in the affidavit that such direct purchase was made only from the entity against the Sl. No. 1. So far as the list contains five numbers of persons, the rejoinder dated 28.03.2017 has explained that lands were purchased from those persons and the same cannot be taken as a basis to make the present claim. For ready reference, the averments made in the paragraph 5 of the rejoinder-affidavit dated 28.03.2017 is extracted hereinbelow:

“5. That, with regard to statement made in Paragraph 4 of the Affidavit-in-Reply, it is replied that the proposal for direct purchase for 58 nos. of land owner was submitted by ADC cum Competent Authority of Land Acquisition, Barpeta vide letter No.

BRLA-45/2012/69 dated 12/03/2013. After physical verification by the Supervision Consultant of NHAI it was reported that 53 nos. of plots of land was in a strip of about 2m width on the edge of the Left Hand Side (LHS) and it was informed to the ADC cum Competent of Authority of land Acquisition, Barpeta vide letter No. NHAI/PIU/GHY/LA-Barpeta/2013/06/349 dated 17/7/2013 stating inter alia that the land in question Galia near Ch. 1016+000 Km of NH-31 is outside the toe of embankment and width is 2 m at the edge of Right of Way outside the 4 lane of NH-31. The aforesaid portion of land is not required as it is not affecting the 4 lane. Out of 53 nos. of plot of land on Left Hand Side (LHS) only 1 plot of land owned by the President/Secretary, Dhupguri Satra, Galia under Dag No., 446, Patta No. 228 was affecting the 4 lane as the Satra was in the toe line of the embankment. Further 5 nos. of plot of land belonging to:

(i) Sahara Khatun, wife of Feddus, under 6ea No. 475/5.

(ii) Banish Khan, Son of Kaddus under Dag/Patta No, 475/5.

(iii) Billal Zamadar, Son of Hamid under Dag No./Patta No. 624/227.

(iv) Mafizuddin Molla, Son of Abdul Rahim under Dag/Patta No. 470/234 and,

(v) Abdul Rahman Molla, Son of Danesh under Dag/Patta No. 467/18 was on the RHS and affecting the 4 lanning and accordingly after joint verification proposal of the S nos. of plot of land on the RHS was submitted by ADC cum Competent Authority of Land Acquisition, Barpeta vide letter No. BRLA-45/2012/100 dated 04/06/2014.”

12. On a consideration of the aforesaid facts and circumstances, it becomes clear that apart from the fact that the claim is based upon certain statements which are not only disputed, the explanation put forward by the respondent

authorities, more particularly, those made in the rejoinder-affidavit dated 28.03.2017 makes it clear that the claim is based more on presumption without any legal basis.

13. This Court has also considered the prayer made in the writ petition which pertains to a direction for release of the compensation. When the claim that the land has been acquired by the National Highway Authority is itself disputed by the respondents by way of an affidavit, supported by relevant document, such prayer cannot be granted. The submissions made on behalf of the petitioners that a verification exercise be directed by the Circle Officer is also not liable to be accepted inasmuch as, the Deputy Commissioner is a party in the proceeding and has contested the same.

14. In view of the above, this Court is of the unhesitant opinion that no case for interference is made out and the writ petition is accordingly dismissed.

JUDGE

Comparing Assistant