

GAHC010009602014



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

Case No. : WP(C)/2440/2014

JAGADISH CHANDRA SAIKIA
S/O- LT. JIBENDRA NATH SAIKIA, R/O- RAIDAONGIA GAON, P.O.-
KAMARBANDHA ALI, DIST.- GOLAGHAT, ASSAM, PIN- 785625.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE and DISASTER
MANAGEMENT, DISPUR, GHY- 6.

2:DY. COMMISSIONER
GOLAGHAT DIST.
GOLAGHAT
ASSAM.

3:ADDL. DY. COMMISSIONER LAND ACQUISITION
GOLAGHAT DIST.
GOLAGHAT
ASSAM.

4:SUB-DIVISIONAL OFFICER CIVIL
DHANSIRI
SORUPATHAR
DIST.- GOLAGHAT
ASSAM.

5:CIRCLE OFFICER
SARUPATHAR REVENUE CIRCLE
SARUPATHAR
DIST.- GOLAGHAT
ASSAM.

6:CHIEF ENGINEER
PWD ROAD
ASSAM
CHANDMARI
GHY- 3.

7:EXECUTIVE ENGINEER
PWD GOLAGHAT RURAL ROAD DIVISION
GOLAGHAT.

8:EXECUTIVE ENGINEER
GOLAGHAT STATE ROAD DIVISION
BOKAKHAT

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner	: Mr. R. Sarma ... Advocate
For the respondent no.1	: R. Borpujari ... SC, Revenue and Disaster Management Department.
For the respondent nos.2 - 5	: Mr. D. Nath Sr. Govt. Advocate
For the respondent nos.6 - 8	: Mr. R. Dhar ...SC, PWD
Date of hearing & judgment	: 30.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Sarma, learned counsel appearing on behalf of the petitioner.
Mr. R. Borpujari, learned Standing Counsel appears for the Revenue & Disaster

Management Department; Mr. D. Nath, learned Senior Government Advocate appears for the respondent nos.2 – 5 and Mr. R. Dhar, learned Standing Counsel, PWD appears of the respondent nos.6 – 8.

2. Taking into account the pleadings being complete and the materials available on record, this Court has taken up the instant writ petition for disposal at this stage.

3. The case of the petitioner herein is that the petitioner is the absolute owner of a plot of land measuring 12 Bighas covered by Dag No.121 of Patta No.7 of Revenue Village No.2, Herherigaon under Mouza-Borpathar, Revenue Circle-Sarupathar, Sub-Division-Dhansiri in the District of Golaghat. It is the case of the petitioner that out of the 12 Bighas of land measuring 5 Bighas 2 Kathas 3 Lechas with well grown up healthy tea bushes producing best quality tree, along with well built up drainage system, developed roads, fencing other valuable trees have been acquired by the Government of Assam in connection with development/construction of Kushal Konwar Setu over Daiyang river i.e. for converting road of Jamuguri Dhondasum. It is the further case of the petitioner that the petitioner also had another plot of land measuring 7 Bighas 3 Kathas 19 Lechas covered by Touzi Patta No.81 of Revenue Village- 2 No. Tamulygaon under Mouza-Borpothar, Revenue Circle-Sarupathar in the District of Golaghat, Assam. The said plot of land was purchased and occupied by the petitioner was later on given by him to his elder son Gautam Saikia (since deceased). During the lifetime of his son, started a small tea garden under the name and style of "Daiyang Seuj Mini Tea Garden" with due recommendation from the Small Tea Growers Advisory Programme, Assam Agricultural University, Jorhat. A portion

whereof measuring more than 3 Bighas was also acquired by the Government under the Land Acquisition Case No.2/90-91 by taking over possession thereof from the son of the petitioner in connection with the development/construction of said Kushal Konwar Setu over Daiyang river. In consequence to the said acquisition so made by the Government, it is the case of the petitioner that thousands of well grown up healthy tea bushes were damaged and uprooted along with other trees and properties as could be seen from the common Jirat list prepared by the then Circle Officer, Sorupathar Revenue Circle. It is submitted that though LA Case No.2/90-91 was initiated but in view of not issuing the declaration under Section 6 of the Land Acquisition Act, 1894 (for short "the Act of 1894") the said proceedings lapsed. However, the possession of land which was taken over by the authorities concerned continued to remain with the authorities. It is under such circumstances, the instant writ petition has been filed claiming compensation for the loss and damages suffered by the petitioner and his deceased son on account of the possession being taken over in respect to LA Case No.2/90-91, on the basis of fresh assessment to be made in the light of the judgment and order dated 28.06.1996 passed by the Division Bench of this Court in M.A.(P) Case No.106/1992 together with other cost and charges payable under the Act of 1894.

4. Be that as it may, it is relevant to take note of from a perusal of the writ petition as well as the pleadings exchanged between the parties it appears that a plot of land measuring 1 Bigha 4 Kathas 5 Lechas belonging to the petitioner was actually taken over by the respondent authorities for the purpose of construction of Kushal Konwar Setu over Daiyang river i.e. for converting the road of Jamuguri Dhondasum. No Award was passed pursuant to the lapse of

the proceeding under LA Case No.2/90-91 but the respondent authorities in the PWD continued to use the said land. It further appears that the case of the petitioner hinges upon the inaction of the respondent authorities, more particularly, the Revenue Department in taking over the land of the petitioner without following the due process, thereby violating the mandate of Article 300-A of the Constitution of India. From the various orders passed by this Court from time to time the respondent authorities, more particularly, the Deputy Commissioner, Golaghat have taken certain steps for the purpose of acquisition of land. It appears in pursuance to the orders passed by this Court, acquisition proceedings under the Assam Land (Requisition and Acquisition) Act, 1964 (for short "the Act of 1964") has been initiated in so far as the land measuring 1 Bigha 4 Kathas 5 Lechas in Village No.2 Herherigaon, Mouza-Borpathar which was used for the purpose of construction of RCC Bridge over the river Doyang at Dhondashyam Ali in Jamugurihat.

5. During the course of hearing, learned Senior Government Advocate, Mr. D. Nath have placed on record that a Notification under Section 6 of the Act of 1964 was issued which was subsequently published in the Assam Tribune on 10.12.2021. However, it is also the stand taken by the respondents herein that till date the Award which is required to be passed under Section 11(3) of the Act of 1964 have not yet been passed. The said document pertaining to Section 6 Notification is kept on record and marked with the letter 'X'.

6. It further appears that on 10.12.2021, the Deputy Commissioner, Golaghat had also placed a proposal before the Joint Secretary to the Government of Assam, Revenue & Disaster Management (LR) Department stating, *inter alia*, the amount of compensation in respect to the land measuring 1 Bigha 4 Kathas

5 Lechas have been determined. The details of the determination of the compensation enclosed to the said communication shows that the same have been worked out in terms with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013"). It further appears that on 08.05.2015, the Additional Chief Secretary to the Government of Assam, Revenue Department had issued a direction to the Deputy Commissioner that the acquisition even if done under the Act of 1964, the determination of the compensation has to be done as per the Act of 2013.

7. The said determination so made which have been to communication dated 10.12.2021 shows that the total amount of compensation to which the petitioner would be entitled to would be Rs.15,20,460/- and an additional amount of Rs.2,28,069/- shall be the administrative cost to which the office of the Deputy Commissioner would be entitled to. During the course of hearing, learned Senior Government Advocate have placed on record the manner in which the amount was determined and the Government and the Revenue Department of the Government of Assam have also approved the same. The said documents so placed are kept on record and marked with the letter 'Y'.

8. It is also relevant herein to mention that on the basis of the orders passed by this Court in the instant writ proceedings, the acquisition cost for the period from 2014 onwards have been also computed and determined that the petitioner would be entitled to an amount of Rs.51,529.88 for the period from 01.01.2004 to 30.12.2021. This Court however finds it relevant to take note of that though in the computation so placed on record it has been mentioned that

it was been done in terms with the Act of 2013 but the interest @ 12% in terms with Section 30(3) of the Act of 2013 stipulates that entitlement of the interest would be @ 12% which means that the interest has to be calculated from the date of the Notification under Section 11 of the Act of 2013, to the date of the award and in the instant case would be from the date of the Notification under Section 6 of the Act of 1964 till the date of the award. As it is an admitted case that till date no Award has been passed, therefore, the computation of the interest has to be calculated on the basis from the date of the Notification under Section 6 till the date of the Award. Be that as it may, this aspect of the matter, the petitioner can very well take while filing an application under Section 12 of the Act of 1964 pursuant to the passing of the Award.

9. I have heard the learned counsels for the parties and have perused the materials on record.

10. It appears from Section 6 of the Act of 1964 that upon issuance of the Notification under the said provision and published in the Official Gazette, the land absolutely vests upon the State and the requisition came to an end. Therefore, the land measuring 1 Bigha 4 Kathas 5 Lechas in respect to LA Case No.1/2021-2022 stood vested upon the State w.e.f. the date on which the Notification under Section 6 of the Act of 1964 was published in the Official Gazette. It further transpires that on 22.11.2021 the Joint Secretary to the Government of Assam Revenue Department issued the notice under Section 6 of the Act of 1964. On the very date, the Joint Secretary to the Government of Assam Revenue & Disaster Management Department had issued communication to the Deputy Commissioner, Golaghat, with copy forwarded to the Director,

Printing & Stationery, Assam Government Press for publishing of the substance of the Notification issued on 22.11.2021 under Section 6 of the Act within a week's time in the Assam Gazette.

11. The learned Senior Government Advocate submits that in pursuance to the said communication, the publication have been duly done in the official Assam Gazette. He further submitted that on 10.12.2021 the notice under Section 6 of the Act of 1964 was published in the "Assam Tribune" and the vernacular daily namely, "Dainik Janambhumi". Therefore, in terms with Section 6(2) of the Act of 1964, the land of the petitioner which was kept on requisition ended and the land stood vested upon the State free from all encumbrances.

12. Section 11 of the Act of 1964 stipulates about the compensation. Section 11(3) of the Act of 1964 mandates that when the compensation has been determined under Sub- Section (1) or Sub-Section (2), the Collector shall make an Award in accordance with the principles set out in Section 11 of the Act of 1894. It is relevant to note that the Section 11(3) of the Act of 1964 statutorily incorporates the provisions of Section 11 of the Act of 1894 on the basis of the principles of legislation by incorporation. Under such circumstances, it would be the mandate of law that while passing the Award under Section 11(3) of the Act of 1964, Section 11 of the Act of 1894 has to be followed.

13. Sub-Section (4) of Section 11 of the Act of 1964 further stipulates that where any land is requisitioned under Section 3 of the Act of 1894 compensation shall be paid subject to the provisions of Sub-Section (5) of

Section 11, to every person interested as may be agreed upon in writing between such person and the Collector or in the absence of agreement, reasonable compensation in respect of the requisition of such land and for the damage done during the period of requisition of such land, other than what has been sustained by reasonable wear and tear and irresistible force. Therefore by dint of Section 11(3) and 11(4) of the Act of 1964, the petitioner would be entitled to the amounts computed for requisition as well as acquisition.

14. Admittedly as of now as per the instructions placed by the Senior Government Advocate there is no Award passed in terms with Section 11(3) of the Act of 1964 which is mandate of law to do so. At this stage, this Court further finds it relevant to take note of the Circular issued by the Government of Assam, Revenue Disaster Management Department wherein it says that the land owners would be entitled to the compensation in terms with the Act of 2013. It is also relevant to take note of that as per Section 11 of the Act of 1964, it has been mentioned that the Collector shall make an Award in accordance with the principles set out in Section 11 of the Act of 1894. Both the Act of 1894 as well as the Act of 2013 stipulates the passing of an Award within a stipulated period of time else there would be payment of interest from the date of the Notifications, till the date of the Award @ 12% p.a. Under such circumstances, this Court is of the view that delay in passing of the Award has the effect of payment of additional interest which in turn effects the public exchequer. In the instant case as already noted with the issuance of the Section 6 Notification, the interest @ 12% per annum had already started to run. Any delay therefore in passing the Award would amount to accumulation of further interest which would be at the cost of the Public Exchequer. Considering the above, this Court

therefore directs the Deputy Commissioner, Golaghat to forthwith pass the Award, if not already passed and not later than 15 (fifteen) days from the date of passing of the instant judgment.

15. It is also relevant to take note of that pursuant to the passing of the Award and the possession being taken, the interest as per the Act of 1894 as well as the Act of 2013 is 9% for the first year and 15% after the completion of the first year. In the instant case, as the possession has already been taken, any delayed payment of the awarded sum after the passing of the Award would further incur additional burden upon the public exchequer and as such, this Court further directs the Deputy Commissioner, Golaghat to pay the said amount so determined within a period of fifteen days from the date of passing of the Award or thirty days if the Award has already been passed in the meantime from the date of the instant judgment. This Court further makes it clear that if the said amount is not paid and the State is liable to pay additional interest, the same shall be recovered by the State from the salaries of the erring officials.

16. During the course of the argument, the learned counsel for the petitioner further submitted that the amount which have been determined is not as per the provisions of the Act of 2013. He submitted that the same was done without taking into account the parameters of Section 26 to 30 of the Act of 2013 in the proper perspective. The said submission is duly noted. But this Court taking into account that there is a provision for seeking a reference in terms with Section 12 of the Act of 1964, grants the liberty to the petitioner to take such action, if so advised, under the provisions of the Act of 1964. This Court further directs that in the eventuality, the petitioner seeks a Reference as per the provisions of

the Act of 1964, the Deputy Commissioner, Golaghat shall forthwith make the reference to the Court and not later than 15 days from the date of filing the application under Section 12 of the Act of 1964.

17. With the above observations and directions, the writ petition stands disposed off.

JUDGE

Comparing Assistant