

GAHC010020902017



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

Case No. : WRIT PETITION (C) No. 2464/2017

Harish Ali Barbhuiya, S/o Lt. Nenu Mia Laskar, R/o Village
- Ramnagar [Tillargram], P.O. Tarapur Khelma, District -
Cachar, Assam.

.....Petitioner

-Versus-

1. The State of Assam, Represented by its Commissioner and Secretary To The Government of Assam, Land and Revenue Department, Dispur, Guwahati -6.
2. The Joint Secretary, Government of Assam, Revenue and Disaster Management Department, Dispur, Guwahati -6.
3. The Deputy Commissioner-cum-Collector, Cachar at Silchar, District – Cachar, Assam.
4. The Settlement Officer, Cachar at Silchar, P.O. – Silchar, District – Cachar, Assam.
5. The Union of India, Represented by the Secretary to the Government of India, Ministry of Defence, New

Delhi, Pin - 110001.

6. The Estate Officer, Gauhati Circle, Old Army School Building, Narengi Military Station Satgaon, Guwahati -27.

7. Station Commandant, Masimpur Military Station, P.O. Arunachal, District – Cachar, Pin - 788025

.....**Respondents**

Advocates :

Petitioner : Mr. N.H. Laskar, Advocate

Respondent nos. 1 & 2 : Ms. G. Hazarika, Standing Counsel,
Revenue and Disaster Management Department.

Respondent nos. 3 & 4 : Mr. N. Goswami, Junior Government Advocate

Respondent nos. 5, 6 & 7 : Mr. H. Gupta, Central Government Counsel

Date of Judgment & Order : 17.05.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

Heard Mr. N.H. Laskar, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue and Disaster Management Department for the respondent nos. 1 & 2; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4; and Mr. H. Gupta, learned Central Government Counsel for the respondent nos. 5, 6 & 7.

2. The petitioner has claimed that he is the owner of a few parcels of land, in total, 83 Bighas, 7 Kathas & 10 Chattaks, covered by Dag no. 40, 83, 266, 267

Kha & 268 & Patta no. 7, located at Village – Tarapur Part-II, Pargona - Barakpar, Silchar, District - Cachar, Assam. Annexing supporting documents with regard to his such claim, it is contended by the petitioner that the said parcels of land measuring 83 Bighas, 7 Kathas and 12 Chataks were acquired by the respondent authorities by acquisition proceedings initiated vide L.A. Case no. 12/2008-2009 for public purpose, viz. 'Construction of acquired land at Masimpur for the purpose of Defence [Pocket land]'.

3. From the Notification bearing no. RLA142/2009/2 dated 23.07.2009 and published in the Assam Gazette in its issue dated 23.07.2009, the Revenue & Disaster Management Department, Government of Assam issued a Notification under Section 4 of the Land Acquisition Act, 1894 ['the L.A. Act, 1894', for short] intimating that the lands within the boundaries described therein measuring more or less 196 Bighas, 1 Katha and 12 Chattaks in Village – Tarapur-II, Ph. Barakpar, Sub-Division – Silchar in the district of Cachar was likely to be needed for a public purpose viz. 'Construction of acquired land at Masimpur for the purpose of Defence [Pocket Land]'. The said Notification under Section 4 was issued in exercise of the power under Section 17[4] of the L.A. Act, 1894.

3.1. The Notification under Section 4 of the L.A. Act, 1894 dated 23.07.2009 was followed by a Declaration under Section 6 of the L.A. Act, 1894 bearing no. RLA.142/2009/24 dated 17.05.2010 for the same area of land, that is, 196 Bighas, 1 Katha and 12 Chattaks.

3.2. Both the Notifications dated 23.07.2009 and the declaration dated 17.05.2010 of the L.A. Act, 1894 were in connection with L.A. Case no.

12/2008-09. In the Schedule of land mentioned in the Notification under Section 4 and Declaration under Section 6 of the L.A. Act, 1894, the parcels of land in respect of which the petitioner has claimed to be the owner, are reflected.

4. It is on the basis of the above two notifications, the petitioner had approached this Court earlier by a writ petition, W.P.[C] no. 5404/2015, claiming that his parcels of land were acquired by the respondent authorities and that despite assessment of compensation amounts, the compensation amounts were not disbursed to the petitioner. It was projected therein since no compensation amount was released in favour of the petitioner and as in the meantime, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [‘the RFCTLARR Act, 2013’, for short] has come into effect repealing the L.A. Act, 1894, the petitioner was entitled to be awarded compensation in terms of the provisions of the RFCTLARR Act, 2013. The petitioner has made reference to an order dated 22.12.2010 passed earlier in connection with a writ petition, W.P.[C] no. 6737/2010. When the writ petition, W.P.[C] no. 5404/2015 came up for consideration on 11.09.2015, it was noticed that due steps were being taken in asking the requiring authority for making assessment of Zirat, etc. as per the provisions under the RFCTLARR Act, 2013. After noticing so, the Court had observed that there was no necessity to keep the writ petition pending, save and except, making a direction to the Deputy Commissioner-cum-Collector, Cachar, Silchar [the respondent no. 3 herein] to take steps for ensuring expeditious action on the part of the requiring authority for making fresh assessment in terms of the RFCTLARR Act, 2013. It was accordingly ordered.

5. From the stands taken by the respondent no. 3 in its counter affidavit in the present writ petition, it has emerged that after publication of the Notification under Section 4 and the Declaration under Section 6 of the L.A. Act, 1894, a land acquisition estimate amounting to Rs. 8,86,27,702/- was prepared and forwarded to the Requiring Authority i.e. the Indian Army for placement of fund at the disposal of the Collector, Cachar but in spite of several communications, the requiring department, i.e. Indian Army did not deposit any fund towards the land acquisition estimate and as such, there was no scope on his part to make payment of compensation amount for land acquisition to the concerned pattadars/parcels interested including the present petitioner.

6. It has emerged that HQ 57 Mtn Div [Q] vide Convening Order no. 57424/13/Q3 dated 25.08.2014, later amended vide HQ 57 Mtn Div Convening Order no. 57424/13/Q3 dated 22.01.2016, detailed a Board of Officers for acquisition of proposed land at Masimpur Military Station after a joint survey by the Army and State Government authorities to obtain sanction from the Ministry of Defence, Government of India. It has been categorically asserted that neither the Army has occupied the proposed land nor any compensation has been paid to any of the civilians land owners. It has also been categorically asserted that the land owners are utilizing the proposed land. It is mentioned that if the proposed land is acquired then the compensation would be paid on receipt of the same from the Ministry of Defence, Government of India. As the approval for the proposed acquisition of land was yet to be received from the Government of India, the Army did not take any steps for occupation of the proposed land and the same were still in possession of the land owners. However, a direction was made to the office of the respondent no. 6 to make

necessary arrangement for recounting of Zirat for preparation of fresh land acquisition estimate as per the provisions of the RFCTLARR Act, 2013 by the respondent no. 3 vide his letter no. CLA.106/86-87/PT./63 dated 31.03.2015. It is mentioned that there is no finalization of the acquisition of the proposed land due to non-receipt of approval from the Ministry of Defence, Government of India.

7. The respondent no. 6 in his counter-affidavit filed on 22.12.2020, has averred that the publication of the notifications, that is, the Notification dated 23.07.2009 and the Declaration dated 17.05.2010, were under the repealed L.A. Act, 1894 by the State Government was without sanction of the Government of India and the same had lapsed as there is no Award under the L.A. Act, 1894 [since repealed] prior to 01.01.2014. It is averred that the Government of India did not issue any sanction in any requisition, placed by the respondent no. 6 to the respondent no. 3 and as a result, the possession of the lands are still with the land owners.

8. From a Communication bearing no. 57424/13/Q3 [Annexure – D] dated 21.08.2014 of the HQ 57 Mtn Div, it is noticed that Indian Army neither acquired the land nor any payment had been made to the State Government authorities by the Ministry of Defence, Government of India. As on the date of the said letter i.e. 21.08.2014, the lands mentioned in the Notification under Section 4 and the Declaration under Section 6 of the L.A. Act, 1894 were utilized by the land owners, they were not entitled for payment of any compensation. The Deputy Commissioner, Cachar i.e. the respondent no. 3 was requested to intimate the said position to the petitioners in the writ petition, W.P.[C] no.

6737/2010 by passing a speaking order. It is pertinent to mention that the present petitioner is claiming that he is similarly situated to the petitioners in W.P.[C] no. 6737/2010.

9. Subsequently, the Deputy Commissioner-cum-Collector, Cachar, Silchar [respondent no. 3] passed a Speaking Order on 24.09.2014 enumerating the above sequence of events. As per the Speaking Order, the estimate amounting to Rs. 8,86,27,702/- was only a preliminary land acquisition estimate, which was forwarded to the requiring authority with a request to deposit the same at his disposal for disbursal to the land owners as compensation amounts on the basis of estimates. Reference is made to the Order dated 22.12.2010 passed in the writ petition, W.P.[C] no. 6737/2010 and the Order dated 02.04.2014 passed in Cont.Cas[C] no. 204/2011, arising out of the Order dated 22.12.2010. The Speaking Order has further reflected that the entire parcels of land, proposed to be acquired by acquisition proceedings initiated vide L.A. Case no. 12/2008-2009, are still in possession of the pattadars/land owners and they are still enjoying the same. The respondent no. 3 in the Speaking Order has ordered that the proceedings of L.A. Case no. 12/2008-2009 has already been lapsed due to non-deposit of fund by the Indian Army and since the RFCTLARR Act, 2013 has come into force, the proceedings for acquisition of land, if any, are to be initiated *de novo* as per the extant RFCTLARR Act, 2013.

10. In view of the above fact situation, obtaining in the case in hand, there is no cause of action for the petitioner who is enjoying his parcels of land, indicated above, till date without any acquisition proceedings pending, to claim for compensation. As the petitioner has no cause of action to claim compensation,

the writ petition is found to be devoid of any merit and the same is dismissed.
No cost.

JUDGE

Comparing Assistant