

GAHC010023932013



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

Case No. : WP(C)/1816/2013

SHANTI KUMAR JALAN and ANR
S/O- LT. JUGAL KISHORE JALAN, 3A PRAKASH ENCLAVE, HARBALA
ROAD, GHY- 7.

2: MANJU DEVI JALAN
W/O- SRI SHANTI KUMAR JALAN
3A PRAKASH ENCLAVE
HARBALA ROAD
GHY- 7

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE DY. SECY. TO THE GOVT. OF ASSAM, REVENUE L.R. DEPTT.,
DISPUR, GHY- 6.

2:THE DY. SECY. TO THE GOVT. OF ASSAM
REVENUE L.R. DEPTT.
DISPUR
GHY- 6.

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH and F.W. DEPTT.
DISPUR
GHY- 6.

4:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
DISPUR
GHY- 6.

5:THE DY. COMMISSIONER
KAMRUP
GHY- 1.

6:THE ADDL. DY. COMMISSIONER
KAMRUP
GUWAHATI

Advocate for the Petitioner : MR.D SENAPATI

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

O R D E R

Date : 15.06.2023

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Mr. H.K. Sarma, learned counsel for the petitioner. Also heard Mr. R. Borpujari, learned standing counsel for the Revenue and Disaster Management Department appearing for respondent nos. 1 and 2, Mr. B. Gogoi, learned standing counsel for the Health Department, representing respondent nos. 3 and 4 and Ms. M. Barman, learned Govt. advocate for respondent nos. 5 and 6.

2. The proceedings for acquisition of 3K-13L land covered by Dag No. 730 of KP No. 264 of village Japorigog, Mouza Beltola is under challenge in this writ petition filed under Article 26 of the Constitution of India.

3. In brief, the case of the petitioners is that they are the owners and recorded pattadars of the aforesaid land. In an about a year 1981, by virtue of Section 3(1) of the Assam Land (Requisition and Acquisition) Act, 1964 (hereinafter referred to as 1964 Act). The said land was requisitioned by the competent authority and was handed over to the authorities of GMCH. In course

of time, the said land was partly utilized for construction of Regional Dental College attached to the GMCH. Thereafter, vide notification issued under section 4(1) of the Land Acquisition Act, 1894, being No. RLA/88/2002/08 dated 25.10.2022, preliminary notification of the said land needed for public purpose was issued. The said notification was also published in the Assam Gazette. However, due to procedural delay, the said notification was elapsed.

4. Thereafter, the petitioners had approached this Court and filed a writ petition being WP(C) 834/2005 by which a prayer was made for de-requisition of the land. The respondents therein projected that the land was required for public purpose and accordingly, this Court by order dated 30.11.2010 passed in WP(C) 834/2005, expressed its opinion that the State respondents in exercise of their power of eminent domain can acquire any land belonging to a citizen for public purpose on payment of adequate compensation. Accordingly, the prayer of the petitioners for de-requisition of the land was disallowed, but to protect the interest of the petitioners, the State respondents were directed to complete the land acquisition proceedings in respect of the said land of the petitioners by paying compensation in accordance with the provisions of Land Acquisition Act, 1894 within a period of one year and at the same time direction was issued to the respondent authorities to pay the entire rental amount due to the petitioners w.e.f. February, 2007 together with interest @9% per annum within a period of 3(three) months from the date of the order.

5. It is projected in this writ petition that within the timeline as provided in the aforesaid order dated 30.11.2010 passed in WP(C) 834/2005, fresh land acquisition proceeding was not initiated. Accordingly, the petitioner had approached the Court again by filing WP(C) 2194/2012 with a prayer for

de-requisition of the land. In course of the said proceedings, the learned Addl. Advocate General (as he was then) has produced a copy of cheque dated 29.12.2012 for a sum of Rs.8,57,864/- purportedly towards requisition compensation upto February, 2012. However, taking into consideration that the Regional Dental College is located in the said land and is in occupation under the respondents since 1981, another opportunity was granted to the respondents to complete the requisition proceeding as expeditiously as possible but not later than 31.05.2013, failing which it was provided that the land would be reverted back to the petitioners without any reference to the Court and the petitioners were also held entitled to requisition compensation together with 9% interest per annum till the final acquisition compensation was paid.

6. On 16.03.2013, a land acquisition notification was published in the Assam Tribune in respect of the said land vide notification no. RAL 88/2002/62 dated 08.03.2013, in this writ petition issued under Section 4 of the Land Acquisition Act, 1894. According to the petitioners, the Deputy Secretary to the Govt. of Assam, Revenue & D.M. (L.R.) Department (respondent no.2) had arbitrarily invoked the provisions of section 17(4) of the Land Acquisition Act, 1894 and exempted the requirement of compliance of section 5A of the said 1894 Act.

7. Assailing the said notification dated 08.03.2013, in this writ petition, the learned senior counsel for the petitioners has submitted that none of the ingredients which are condition precedent for the exercise of power under section 17 of the Land Acquisition Act, 1894 was present on the date when such notification was issued. It is submitted that as the pre-requisites of invoking section 17 of the said 1894 Act was not present, the said provision was

arbitrarily and illegally invoked merely to deny an opportunity to the petitioners of being heard on their objections as was mandatory under Section 5A of the 1894 Act. It is submitted that the curtailment of the right of the petitioners to object has been deprecated in a series of judgments of the Courts and in this regard, reliance has been placed on the following case citations, viz., *Raja Anand Brahma Shah Vs. the State of U.P. & Ors.*, AIR 1967 SC 1081 (para 5 & 6), *Sri Radhy Shyam (Dead) Through LRs & Ors. Vs. State of U.P. & Ors.*, (2011) 5 SCC 553 (para 77), *Anand Singh & Anr. Vs. State of U.P. & Ors.*, (2010) 11 SCC 242 (para 16-20, 22, 24, 25, 41-51 & 55).

8. It is also submitted that in the process of dispensing with the objection and hearing the petitioner on such objection, the provision of section 9 of the said 1894 Act was also given a go-bye. Accordingly, it is submitted that an *ex parte* inquiry was made by the Collector, Kamrup (M), Guwahati. Accordingly, an award was passed for a sum of Rs.18,46,000/- in favour of petitioner no.1 and Rs.85,20,000/- for petitioner no.2 was also not sustainable. It is submitted that the petitioner no. 2 had submitted an objection dated 10.01.2014 of land acquisition being made in a discriminatory manner and that the RTI applications of the petitioners were also not responded to and then the petitioners had filed an appeal before the appellate authority i.e. State Public Information Officer, Office of the Deputy Commissioner, Kamrup (M), Guwahati and thereafter, the petitioners were provided with a copy of the award passed by the Collector in LA Case No. 11/2001. It is submitted that in respect of the RTI information regarding date and basis of inclusion of the names of Sushil Chandra Das, Shanti Devi Arjya and Raj Kumar Arjya was not disclosed as the matter was related to Circle Officer, Guwahati Revenue Circle.

9. Accordingly, it is submitted that the present writ petition has been filed on the ground that as the land was a developed land where Regional Dental College was operating, the land could not have been classified as arable land for the purpose of acquisition and in this regard dictionary meaning of arable land was submitted, and in this regard, the learned senior counsel for the petitioners has referred to the Webster's New Encyclopedia dictionary, Oxford Advanced Learner's Dictionary of current English published by Oxford University Press and Black's Law Dictionary: 5th Edition.

10. The learned senior counsel for the petitioners has also submitted that by virtue of leave granted by this Court by order dated 08.12.2014, the petitioners were permitted to withdraw the quantified compensation amount without prejudice to their rights.

11. Per contra, the learned standing counsel for the Revenue Department has submitted that as soon as the land in question was acquired by virtue of notification dated 08.03.2013, the acquired land stood vested with the State Government. It is further submitted that after the land was requisitioned earlier in point of time, the said land was put to its beneficial public use by constructing Regional Dental College and therefore, in view of larger public interest, there cannot be a question of reversal of the land back to the petitioners even if the Court finds any merit in the claim of the petitioners and in support of his submission that reversal of land is impressible, the learned standing counsel for the Revenue Department has referred to the case of *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, AIR 1970 SC 1576: (1970) 2 SCC 149*. It is also submitted that as the land is already been acquired, merely on technical reason no case would be made out for interfering

with the land acquisition notification. It is submitted that as the Regional Dental College has already been set up under the GMCH, that itself constitutes the urgency for the land acquisition which is well within the scope of action taken under Section 17(4) of the said 1894 Act.

12. Considered the materials available in the writ petition, five additional affidavits filed by the petitioners, affidavit in opposition filed by the respondent nos. 5 and 6, additional affidavit in opposition filed by the respondent no.6 and affidavit in reply filed by the petitioners and considered the rival submissions made at the bar.

13. It would be appropriate to extract the provisions of Section 4, 5A, 11 and 17 of the 1894 Act.

“S.4 Publication of preliminary notification and powers of officers thereupon-

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification).

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub- soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon; to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle: Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier

thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

S.5(A) Hearing of objections-

(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

S.11 Enquiry and award by Collector-

(1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land and at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him: Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate

Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

S.17 Special powers in cases of urgency-

(1) In cases of urgency, whenever the appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and
(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section. (3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue. (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time 8[after the date of the publication of the notification under section 4, sub-section (1)."

14. From the submissions made at the bar, it appears that under usual circumstances, the first preliminary notification is published under Section 4(1) of the Act followed by the procedure as prescribed by sub-section 2 of Section 4 and thereafter, to hear objections if any, from the persons interested in the land which has been notified under Section 4(1) and thereafter, there would be an enquiry and award by the Collector under Section 11 after issuance of notice to the interested persons under Section 9 and thereafter, the award passed by the Collector becomes final under section 12 of the said Act.

15. However, when special powers are invoked in cases of urgency, the provisions of Section 17 of the said Act would apply and under sub-section 4 of Section 17, power has been provided by the Act where the appropriate Government can direct that the provisions of section 5A shall not apply, if the consent of the person interested has been taken.

16. In the present case in hand, none of the exigencies envisaged under Sub-section 2 of Section 17 of Act exists. It is observed that while publishing the notification dated 08.03.2013 in the newspaper dated

16.03.2013, it has been mentioned as follows, *"In exercise of the powers conferred by Section 17(4) of the Project (sic), Govt. have decided that in view of the urgency of the project, the provision of Section 5A of the Act shall not apply to waste or arable land."*

17. In the order dated 11.01.2013 passed in WP(C) 2194/2012, this Court had taken note of the fact that the land in question was under occupation of Regional Dental College with a construction of two storied RCC building in the middle of the land. Therefore, it cannot be accepted that when notification dated 08.03.2013 was issued, the land in question was a waste or arable land. Moreover, in the affidavit-in-opposition filed by the respondent nos. 5 and 6, it is not the stand of the Addl. Deputy Commissioner that at the time of issuing land acquisition notification dated 08.03.2013, the Regional Dental College was not standing on the land when the land was arable and waste land.

18. Accordingly, the indelible impression of the Court is that neither the land of the petitioners that was acquired was an arable or waste land and nor the conditions envisaged under section 17(2) of the 1894 Act existed on the date when the notification dated 08.03.2013 was issued. The State respondents have not been able to demonstrate that in connection with the acquisition of the land in question of the petitioners, the provisions of sub-section 1 or sub-section 2 of Section 17 was applicable or that consent of the petitioners was obtained. It may be mentioned that there is nothing on record to show that a notice envisaged under Section 9 of the 1894 Act was issued, which is a pre-condition for exercise of power under section 17(1) of the 1894 Act. Therefore, as the provisions of sub-section 1 or sub-section 2 cannot be applied in the present case in hand, and thus, the Deputy Secretary to the Govt. of Assam, Revenue &

D.M. (LR) Department could not have invoked the power vested under subsection 4 of Section 17 of the 1894 Act to direct that the provisions of Section 5 A of the 1894 Act would not be applied.

19. Therefore, in view of the discussions above, the Court is of the considered opinion that the land acquisition notification dated 08.03.2023 in LA Case No. 11/2001, as published in the newspaper on 16.03.2023 is vitiated on account of acquisition being made in exercise of power under section 17(4), by exempting the requirement of section 5A of the 1894 Act.

20. At this stage, the learned standing counsel for the Revenue Department has submitted that as a public institution has already been set up by way of Regional Dental College on the acquired land, it would be contrary to the public interest to order that the said land be reverted back to the petitioners, and he has also submitted that notwithstanding this Court had found fault in the issuance of land acquisition notification dated 08.03.2013, a reasonable time be given to the competent authorities to issue a fresh land acquisition proceeding. It was further submitted that even if the State Government proceeds to acquire land under Assam Land (Requisition and Acquisition) Act, 1964 but the procedure for assessment would be same as prescribed under Right to Fair Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Accordingly, it is submitted that notwithstanding whatever Act is applied for acquisition, the petitioners would not be deprived of a reasonable and fair compensation. The said submissions is considered and found acceptable in view of the fact that this Court by order dated 30.11.2010 in WP(C) 834/2005 had also taken the same consideration.

21. It would be relevant to mention that in the cases cited by the

learned senior counsel for the petitioners, the Supreme Court of India had held that invoking of urgency provisions under section 17 to eliminate enquiry under section 5A of the Land Acquisition Act should be invoked only in deserving cases of real urgency and should not be adopted as a matter of practice. In the case of *Anand Singh (supra)* while restating the object of section 5 A of the 1894 Act, the right of the owner to file objections to proposal of acquisition was restated to be not only an important and valuable right but also makes the provisions for compulsory acquisition just and in conformity with the fundamental principles of natural justice. The Three Judge Bench of the Supreme Court of India while deciding the case of *Ishwarlal Girdhar Joshi Vs. State of Gujarat & Anr., AIR 1968 SC 870*, after discussing various case laws as well as definition of word "arable" in the Land Acquisition Act had held that "arable land" is meant not only the land capable of cultivation but actually cultivated by further observing that it is arable or not, not because it is cultivated, but because it is something else such as waste, pasture, ancient, meadow, etc. In the present case in hand, admittedly when the building of the Regional Dental College was already standing on the land, it cannot be said that the land is capable of being cultivated. In the present case in hand, the land was in occupation of the authorities under the GMCH since 1981 and therefore, there was no real and substantive urgency warranting invocation of urgency clause and to dispense with the enquiry under section 5A of the 1894 Act.

22. Taking note of the fact that the land in question is under possession of the authorities in the GMCH and the Regional Dental College is being operated there from, by following the judgment of the Supreme Court of India in the case of *Soorajmull Nagarmull Vs. State of Bihar and Ors. 2015 (10) SCC 270*, while setting aside the impugned land acquisition notification dated

08.03.2013 as well as the case of *Avinash Sharma (supra)*, as the land is under continuance possession of the State Government, the Court is inclined to hold that the present requisition proceedings with regard to the land in question of the petitioners must be deemed to have lapsed, however, the appropriate authority in the State Government is at liberty to initiate fresh acquisition proceedings or to take any other action that may be available in accordance with law within an outer period of 4(four) months from the date of service of certified copy of this order, failing which as the land acquisition proceeding is already been set aside and quashed, the land would become entitle to be restored back in the name of the petitioners in record of rights.

23. Insofar as the continued possession in respect of the land is concerned, which has been enjoyed by the State Govt. through the GMCH, till such time fresh notification is issued, the petitioners would be entitled to rental compensation. Moreover, as pointed out by the learned standing counsel for the Revenue Department that under protest the compensation amount of Rs.18,46,000/- and Rs.85,20,000/- respectively was already paid to the petitioner nos. 1 and 2, such payment is liable to be adjusted against rent and in future land acquisition compensation as it may be determined and in this regard the Court places reliance on the judgment and order dated 14.03.2019 passed by the Division Bench of this Court in WA 219/2017.

24. The petitioners are permitted to produce a certified copy of this order on the respondent nos. 2 and 5 to bring this order to the notice of the said authority.

25. The writ petition stands allowed in terms of discussion above.

26. The parties are left to bear their own cost.

JUDGE

Comparing Assistant