

GAHC010024662016



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

Case No. : WP(C)/5435/2016

late BHABENDRA NATH GOGOI, REP. BY SMTI. BRINDA GOGOI and 6 ORS
S/O. LT. DEBENDRA NATH GOGOI, R/O. NATUN BAZAR, HOJAI TOWN, P.O.
and P.S. HOJAI, DIST. HOJAI, ASSAM

1.1: SMTI. BRINDA GOGOI

W/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.2: SRI PRADIP KUMAR GOGOI

S/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.3: SMTI TULIKA BORGOHAIN

D/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.4: SRI PRANAB KUMAR GOGOI

S/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.5: SMTI. GITIKA GOGOI

D/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.6: SMTI. JUTIKA GOGOI

D/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSAM

1.7: SRI PRADYUT GOGOI

S/O LATE BHABENDRA NATH GOGOI
R/O NATUN BAZAR
SANKARDEV PATH
HOJAI
P.O.- HOJAI
DIST- HOJAI
ASSA

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
TRANSPORT and HIGH WAYS, NEW DELHI.

2:THE STATE OF ASSAM
THROUGH THE COMMISSIONER and SECRETARY TO THE GOVT. OF
ASSAM
REVENUE DEPTT.
DISPUR
GUWAHATI
ASSAM.

3:THE COMMISSIONER
NORTH ASSAM DIVISION
TEZPUR
ARBITRATOR N.H. 4 LANE OF NAGAON and MORIGAON DISTRICT.

4:THE DEPUTY COMMISSIONER
NAGAON DISTRICT
NAGAON
ASSAM.

5:THE CIRCLE OFFICER
RAHA REVENUE CIRCLE
RAHA
NAGAON
ASSAM

For the Petitioner (s) : Mr. S.M. Sarma, Advocate.

For the Respondent (s) : Mr. S.S. Roy, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

25.09.2023

The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondents to pay the compensation in respect to the acquired land @ 3,50,000/- per bigha as Faringtali/Faringati

homestead land including entire plot of land measuring 3 bighas 1 lecha covered by Dag No. 223 under Periodic Patta No. 145 of Gormari Kisam in Sahari Mouza under the Raha Revenue Circle, Nagaon.

2. The case of the Petitioner herein is that he is the owner in possession of 3 bighas 1 lechas of land covered by Dag No. 223 of Periodic Patta No. 145 of Gormari Kisam in Sahari Mouza under the Raha Revenue Circle, Nagaon in the District of Nagaon alongwith another plot of land measuring 1 bigha 1 katha 5 lechas covered by Dag No. 51 under Periodic Patta No. 146 of Dighaliati Kisam, Sahari Mouza under Raha Revenue Circle in the District of Nagaon. For the purpose of construction of the National Highway a plot of land belonging to the Petitioner admeasuring 3 kathas 4 lechas of the first plot and 1 katha 6 lechas in the second plot were acquired. Thereupon the competent authority passed an order under Section 3G of the National Highways Authority Act, 1956 (in short 'the Act of 1956') and the Petitioner was paid compensation of Rs.39,211/- and Rs.78,065/- respectively. The Petitioner thereupon being aggrieved filed a Writ Petition before this Court which was registered and numbered as W.P.(C) No. 719/2009.

3. This Court vide an order dated 13.03.2009 disposed of the said Writ Petition thereby giving the liberty to the Petitioner to apply before the competent authority for the purpose of making a reference to

arbitration in accordance with law. The Petitioner thereupon filed an application under Section 3G(5) of the Act of 1956 seeking a reference to the Arbitrator for determination of reasonable compensation. The said Arbitration Application was registered as Arbitration Case No. 182/2009. Vide an order dated 01.04.2014, the learned Arbitrator rejected the claim of the Petitioner. Being aggrieved, the Petitioner instead of approaching the appropriate Court in terms with Section 3G(6) of the Act of 1956 again approached the competent authority by filing an application seeking enhancement of the compensation. The said application having not been considered, the Petitioner has therefore approached this Court under Article 226 of the Constitution.

4. This Court further finds it relevant to take note of an affidavit filed by the wife of the Petitioner on 07.06.2018, wherein the instructions of the Circle Officer, Raha Revenue Circle, Nagaon dated 04.01.2010 was enclosed.

5. This Court have duly heard the learned counsels for the parties and perused the materials on record.

6. The Act of 1956 stipulates a self-contained Code for the purpose of determination of the compensation as well as also the remedies to the claimants or the requiring authority. In terms with Section 3G of the Act of 1956, the competent authority is required to determine the

amount to be paid in terms with Sub-section (1) of Section 3G keeping in mind Sub-Section (7) of Section 3G of the Act of 1956. In terms with Sub-Section (5) of Section 3G of the Act of 1956, if the amount so determined by the competent authority under Sub-Section (1) of Section 3G is not acceptable to either of the parties, the parties have a right to seek determination of the compensation by an Arbitrator to be appointed by the Central Government. It is further seen that the Arbitrator shall also be bound to determine the compensation in terms with Sub-Section (7) of Section 3G of the Act of 1956.

7. Coming back to the facts involved in the instant case, it would be seen that on 1st of April, 2014, the Arbitrator had passed the Award thereby rejecting the claim of the Petitioner. The remedy to such Award passed by the learned Arbitrator can be seen from Sub-Section (6) of Section 3 (G) of the Act of 1956 which stipulates that the provisions of the Arbitration and Conciliation Act, 1996 (in short 'the Act of 1996') shall apply to every arbitration under the Act of 1996. Therefore, the remedy which was available to the Petitioner against the Award passed by the learned Arbitrator was for setting aside the Award in terms with Section 34 of the Act of 1996. The Petitioner on the other hand has approached this Court after more than two years by filing the instant writ petition. It is the opinion of this Court that filing of the instant writ petition is nothing but to circumvent the

provisions of Sub-Section (6) of Section 3G of the Act of 1956 read with Section 34 of the Act of 1996 which cannot be allowed.

8. Considering the above, this Court does not find any merit in the instant writ petition for invoking the extraordinary jurisdiction under Article 226 of the Constitution. Accordingly, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant