

GAHC010028632016



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

Case No. : WP(C)/6591/2016

UTTAM PHANGSO and 4 ORS.

S/O. LT. SANTA RAM PHANGSO, VILL. KAMALAJARI, P.O. and P.S.
SONAPUR, MOUZA-SONAPUR, DIST. KAMRUP M, ASSAM.

2: SRI UPEN RAHANG
S/O. LT. BADU RAHANG
VILL. KAMALJARI
P.O. KAMALAGARI
P.S. SONAPUR
MOUZA- SONAPUR
DIST. KAMRUPM
ASSAM
PIN-782402.

3: SRI SURENDRA KR. RAHANG

S/O. LT. BINDA RAHANG
VILL. and P.O. KAMALAGARI
P.S. SONAPUR
DIST. KAMRUPM
ASSAM
PIN-782402.

4: SRI BHABEN TUMUNG

S/O. TUPALI TUMUNG
VILL. KAMALAJARI
P.O. and P.S. SONAPUR
DIST. KAMRUP M
ASSAM
PIN-782402.

5: SRI BHUPEN CHOUDHURY

S/O. SRI SIBA RAM CHOUDHURY
VILL. KAMALAJARI
P.O. KAMALJARI
MOUZA-SONAPUR
DIST. KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DEPTT. OF REVENUE
LR, DISPUR, GHY.-06.

2:THE DY. COMMISSIONER

KAMRUP METROPOLITAN DIST.
GHY.-01.

3:THE LAND ACQUISITION OFFICER

KAMRUP M DIST.
GHY.-01

For the Petitioners : Mr.S. A. Ahmed, Advocate.
Mr. A. Khanam, Advocate

For the Respondents :Ms. Sumitra Sarma, GA,
Assam.

Date of Hearing & Judgment : **07.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioners seeking a direction upon the Respondent Authorities not to carry out the works for construction of New BG Railway Line over the lands belonging to the Petitioners and not to evict the Petitioners from their lands in possession and/or settle the lands with the Petitioners for adequate payment of compensation for the lands under possession of the Petitioners which have been acquired by the Government covered by Dag Nos. 713, 379 and 496 of Patta No. K Touzi Patta 38, 21, 67 of Village- Kamalajari, Mouza Sonapur, under Sonapur Revenue Circle in the district of Kamrup(M), Assam.

2. The facts of the instant case are that the Petitioners were admittedly in possession of the Government lands wherein they had built houses and raised crops. For the purpose of construction of the BG line, the said lands wherein the Petitioners were in possession were settled with the Railways.

3. The Petitioners being aggrieved on account of non-payment of the compensation for the lands which they were in possession as well as on account of the zirat had approached this Court earlier by filing a writ petition being W.P.(C) No. 1787/2013.

4. This Court vide an order dated 03.05.2013 directed the Collector, Kamrup(Metro) to verify whether any compensation is payable to the Petitioners and upon verification if it is found that the Petitioners are entitled to any compensation in respect to the zirat or in respect to the land or both, the same be released to them within a period of two months from the date of production of the certified copy of the order passed by this Court by any of the Petitioners before the Collector.

5. It further transpires that thereupon the Petitioners herein were paid the zirat in respect to the standing crops as well as the houses standing thereon. However, as regards the lands in question, there was no compensation paid for which the Petitioners have approached this Court.

6. This Court vide order dated 09.04.2018 issued notice making it returnable by three months. It however reveals from the records that no affidavit has been filed by the Respondent Authorities. Be that as it may, there are certain instructions in the records, the reference of which this Court deems it proper to make taking into account the issue involved. It reveals from the records that the Deputy Commissioner, Kamrup(Metro) had issued a Communication on 09.02.2016 to the Additional Chief Secretary to the Government Assam, Revenue and Disaster Management (LR Department), Dispur wherein it was mentioned that the various possessors of the Government land of village Sonai had prayed for payment of land

compensation by giving settlement of their possessed land. It was further mentioned that the zirat/the building compensation standing over the Govt. land possessed by the various persons have already been paid and as such the Additional Chief Secretary to the Government of Assam, Revenue and Disaster Management were requested to issue necessary instructions whether settlement of the possessed Government land can be given to the persons concerned.

7. It further reveals that pursuant thereto, the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department had issued a Communication dated 19.03.2016 to the Deputy Commissioner, Kamrup (Metro) wherein it has been mentioned that the land covered by Dag No.218 (pt), 361 (pt) and 396(pt) of Village-Sonai acquired for the construction of the New BG Railway line from Teteliya to Byrnihat had already been transferred to the Railway on payment of premium and the zirat/building compensation have already been paid to the possessors of the said Government land and therefore there arose no question of settlement of the land as prayed by the possessors i.e. the Petitioners herein. It further reveals that thereupon the Deputy Commissioner, Kamrup(Metro) had passed two orders on 12.07.2016 and 13.07.2016 wherein referring to the Communication dated 19.03.2016 issued by the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department, the petition filed by the Petitioners seeking settlement of

the land was rejected and the Additional Deputy Commissioner, Land Settlement Branch was directed to issue notice of eviction of the structures/buildings/zirats standing over the lands/Dags in question. It is relevant to take note of that none of these orders, more particularly the orders dated 12.07.2016 and 13.07.2016 had been challenged before this Court, although the said orders were passed prior to the filing of the writ petitions.

8. Upon hearing the learned counsel for the parties, the question therefore arises as to whether the Petitioners herein would be entitled to settlement or compensation in respect to the lands being possessed by them which were settled with the Railways by the Respondent Authorities.

9. Taking into account that the lands had already been settled with the Railways, the question of granting any settlement to the Petitioners does not arise and as such the Communication dated 19.03.2016, wherein the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department had informed the Deputy Commissioner, Kamrup(Metro) that the question of settlement of the lands as prayed by the Petitioners did not arise is in conformity with the provisions of law.

10. Now the next question therefore arises as to whether the Petitioners being in possession of the land prior to the settlement

being made in favour of the Railways would be entitled to any form of compensation. A perusal of Section 3(b) of the Land Acquisition Act, 1894 clearly defines the term "person interested". Taking into account its importance the said definition is reproduced hereinunder :-

"3 (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

11. Now coming to the facts involved in the instant case, it would be seen that the Petitioners being in possession of the Government lands, no rights had accrued upon them on the basis of their possession howsoever long. It is admitted fact that the petitioners had already received the compensation as regards the zirat for their standing crops and the houses standing thereon. Under such circumstances, it is the opinion of this Court that the Petitioners having received the zirat compensation would not be entitled to any other compensation on the ground that they were in possession of Government lands in question.

12. Consequently, this Court finds no merit in the petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant