

GAHC010030922013



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

Case No. : WP(C)/2355/2013

BHASKAR KALITA
S/O LATE PADRAM KALITA, R/O BATADRAVA, P.O. and P.S. BATADRAVA,
DIST- NAGAON, PIN-782001, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, WATER RESOURCE/IRRIGATION DEPARTMENT, DISPUR, GHY-
6, ASSAM

2:THE CHIEF ENGINEER
WATER RESOURCE/IRRIGAON DEPARTMENT
CHANDMARI
GHY-3
ASSAM

3:THE SUPERINTENDENT ENGINEER
NAGAON CIRCLE IRRIGAON
DIST- NAGAON
PIN-782001
ASSAM

4:THE EXECUTIVE ENGINEER
NAGAON DIVISION IRRIGATION DIST- NAGAON
PIN-782001
ASSA

Advocate for the Petitioner : MRK SINGH

Advocate for the Respondent : DR.B AHMED

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

06.06.2023

Heard Mr. K.K. Mahanta, learned senior counsel assisted by Ms. M. Begum, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Govt. Advocate appears on behalf of Mr. N. Upadhyay, learned standing counsel for the Irrigation Department.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent authorities: (i) to initiate a land acquisition proceeding in respect of 1K-9L land covered by Dag No.322/420 of Patta no.284 and 77 of Batadrava Saruhisa Kissam under Batadrava mouza of Dhing revenue circle, Nagaon, (ii) to pay compensation and interest, (iii) to appoint the petitioner against the vacant grade-III post in the Water Resource Department and (iv) to return and restore the land to the petitioner and to pay a sum of Rs.1 crore as damages.

3. The case of the petitioner is that in the year 1974, a part of the herein before described land was used by the respondent authorities for construction of Power Pump Station Santijaan ELIS Pt. No.1, which is stated to be a lift Irrigation Project. It is projected that initially a pump station was set up in the said land and that some additional land of the petitioner was also thereafter used in the construction of the drain, godown house and residential house. It is

submitted that the father of the petitioner had approached the concerned authorities for appropriate remedy. The petitioner was born in the year 1979 and took-up the matter after he had attained majority. It is submitted that vide letter under Memo no.CEI.(E) 115/95/339 dated 02.06.2010, the Chief Engineer, Irrigation Department, Assam wrote to the Executive Engineer, Nagaon Division (Irrigation) to submit a proposal for acquisition of the land of the petitioner which was followed by submission of the proposal by the Executive Engineer, Nagaon Division (Irrigation) vide letter no.LA/31/6/Pt.II/3717 dated 19.01.2011. It is submitted that as the petitioner's father and the petitioner had waited patiently for a long period of time for compensation and/or for restoration of land alongwith damages and hence, this writ petition has been filed under Article 226 of the Constitution of India.

4. This present writ petition which was filed on 05.04.2013, and rule was issued by order dated 06.05.2013 and even after 10 years, the respondents have not filed their affidavit-in-opposition. The learned Govt. Advocate and learned departmental counsel had submitted that the petitioner may be relegated to the Civil Court for compensation.

5. Having regard to the projection made by the learned senior counsel for the petitioner that after several representations were submitted to the Irrigation Department, the Chief Engineer, Irrigation Assam by the hereinbefore referred letter dated 02.06.2010, had directed the Executive Engineer, Nagaon Division (Irrigation) to submit a proposal which was followed by the letter dated 19.01.2011.

6. Thus, the Court finds that the petitioner had done what was required of him to pursue the authorities to acquire the land. It is noted that in the proposal dated 19.01.2011 submitted by the Executive Engineer, Nagaon Division (Irrigation), it has been mentioned that as informed by the petitioner, they were offered compensation by means of cash or a job in the department for which no correspondence was available. The question of providing a job at this stage is out of question. Nonetheless in so far as the issue relating to acquisition of land is concerned, notwithstanding that there is an inordinate delay in approaching the Court but the Court is of the considered opinion that the State cannot be permitted to take shelter of the law of limitation to deprive a citizen of its right to have a reasonable land compensation for a land which was used by the authorities without acquisition or requisition either under the Land Acquisition Act, 1894 or under the Assam Land (Requisition and Acquisition) Act, 1964. Ordinarily, when the Court is exercising its jurisdiction under Article 226 of the Constitution of India, is also a Court of equity and when the State had taken the land of the petitioner without due process of law, in this case the Court is not inclined to invoke the principle of "delay in its equity".

7. Nonetheless, in this case the respondents have not filed any affidavit-in-opposition to deny that the land was not acquired without due process of law. The respondents have also not taken any stand that the land was offered to them without expecting any consideration. Under such circumstances, the Court is of the considered opinion that as the land of the petitioner, which is a patta land, was used by the respondents for creating Lift Irrigation system. Therefore, the petitioner would have a reasonable right to have his land acquired. The petitioner is entitled to a fair compensation and nothing more. The respondents

could not show that petitioner's predecessor-in-interest had offered the land gratuitously.

8. In so far as prayer for employment is concerned, the Court finds that the said prayer is not in accordance with the scheme of public employment, which is prevailing under the constitutional scheme of the country and therefore, the said prayer is rejected.

9. In so far as the claim of the petitioner for compensation is concerned, the Court is of the considered opinion that the quantum of compensation ought not to be examined in a writ petition under Article 226 of the Constitution of India as determination of compensation would require some amount of examination of evidence, both documentary and oral, and therefore, if the petitioner seeks to proceed for monetary compensation, it would be open to the petitioner to approach the competent Civil Court, if so advised, subject to law of limitation.

10. In view of the discussion above, the Court finds that the petitioner has a right to have his land acquired under the Assam Land (Requisition and Acquisition) Act, 1964 and/or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, as the Court finds the petitioner is entitled to fair compensation, in accordance with the acquisition laws.

11. To enable the respondent authorities to initiate land acquisition

proceeding, the petitioner shall produce a certified copy of this order before the Chief Engineer (Irrigation), Assam and the said authority take steps to initiate land acquisition proceedings in accordance with law.

12. If the proceedings are not initiated within a outer period of 6 months from the date of service of certified copy of the order, it would be open to the petitioner to move the Civil Court for eviction of the respondents in accordance with law and for restoration of land in his possession.

13. The writ petition stand allowed to the extend as indicated above. There shall be no order as to cost.

JUDGE

Comparing Assistant