

GAHC010048802020



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

**Case No. : WP(C)/1779/2020**

ABUL KALAM AZAD  
S/O. LT. ABDUS SATTAR, R/O. HASILAPARA, WARD NO.-13, GOALPARA  
TOWN, P.O., P.S. AND DIST. GOALPARA, ASSAM, PIN-783101.

VERSUS

THE STATE HIGHWAY AUTHORITY AND 6 ORS.  
REP. BY PWD (ROADS) DEPTT., ASSAM, DISPUR, GHY.-06.

2:THE COMMISSIONER AND SECRETARY  
TO THE GOVT. OF ASSAM  
PWD (ROADS) DEPTT.  
DISPUR  
GUWAHATI-06.

3:THE CHIEF ENGINEER

PWD (ARIASP AND RIDF) ASSAM ARRTI CAMPUS  
FATASHIL AMBARI  
GHY.-25.

4:THE DY. COMMISSIONER

GOALPARA  
ASSAM  
PIN-783101.

5:THE CIRCLE OFFICER

BALIJANA REVENUE CIRCLE  
GOALPARA  
P.O. BALIJANA

DIST. GOALPARA  
ASSAM  
PIN-783101.

6:THE EXECUTIVE ENGINEER

PWD  
AACPD DIVISION  
DHUBRI  
ASSAM  
PIN-783301.

7:SURAT JAMAL AHMED

RETIRED KANONGUH OF JALIJAN REVENUE CIRCLE  
AZAD NAGAR  
WARD NO.-19  
P.O. AND DIST. GOALPARA  
ASSAM  
PIN-783121

**Advocate for the Petitioner** : MR. M U MAHMUD

**Advocate for the Respondent** : SC, PWD

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**31.05.2023**

Heard Mr. M.U. Mahmud, learned counsel for the petitioner; Mr. B. Choudhury, learned Standing Counsel, Public Works Department [PWD] for the respondent nos. 1, 2, 3 & 6; Ms. S. Sarma, learned Junior Government Advocate, Assam for the respondent nos. 4 & 5; and Mr. A. Mannaf, learned counsel for the respondent no. 7.

2. The petitioner in this writ petition instituted under Article 226 of the Constitution of India, has claimed that he is the owner of a plot of land measuring 1 Katha 10 Lessas located within Village – Hasilapara, Mouza – Balijana, Balijana Revenue Circle, District – Goalpara [‘the subject-plot’, for short]. It is canvassed that for the purpose of construction of State Highway no. 46

[Dudhnoi-Matia-Pancharatna] by the State Highway authority, a process of land acquisition was initiated by the Deputy Commissioner, Goalpara with the respondent Public Works Department, Government of Assam as the Requiring Authority. It is contended that during the process of acquisition, the house of the petitioner constructed on the subject-plot was damaged. Another contention of the petitioner is to the effect that the electricity connection of the State Highway went over the house of the petitioner. It is canvassed that the petitioner had preferred an application before the Deputy Commissioner, Goalpara seeking compensation against the house but no compensation had been assessed and disbursed.

3. During the pendency of the writ petition, the learned counsel for the private respondent had submitted, on 10.03.2023, to the effect that on an application being preferred by the petitioner for reference, a reference case vide Misc. [Land Acquisition] Case no. 34/2016 got registered before the Court of Additional District Judge, Goalpara. Today, Ms. Sarma, learned Junior Government Advocate has produced a copy of the Judgment dated 28.02.2022 passed by the Court of learned Additional District Judge, Goalpara in Misc. [Land Acquisition] Case no. 34/2016 and a copy of the application in L.A. Case no. 3/2010-11 preferred by four applicants therein including the present petitioner.

4. On perusal of the contents of the application filed in L.A. Case no. 3/2010-11, it is noticed that the applicants therein had acknowledged the receipt of compensation @ Rs. 12,00,000/- per bigha towards compensation for the lands acquired along with solatium @ 30% and interest @ 12%. The applicants had also acknowledged receipt of amounts towards zirath compensation. The reference case, Misc. [Land Acquisition] Case no. 34/2016 was preferred by the applicants seeking enhancement of the compensation amount under those heads, expressing dissatisfaction about inadequacy of compensation amounts they already received towards acquired land and zirath. By the Judgment dated 28.02.2022, the Court of learned Additional District Judge, Goalpara as the Reference Court, rejected the prayer of the applicants therein regarding enhancement of compensation towards the acquired land and zirath. On perusal, it is also found that the petitioner in the application, Misc. [Land Acquisition] Case no. 34/2016 was conspicuously silent about existence of any house standing on of the subject-plot, for which compensation amounts for acquired land and zirath were already assessed in his name.

5. A Communication bearing no. GRQ 31/2010/198 dated 06.09.2018 of the Additional Deputy Commissioner, Goalpara providing information under the Right to Information Act, 2005, has mentioned that the house of the petitioner stands at Ward no. 11 at a distance of 8.80 metre from the State Highway no. 46. The respondent no. 4 in its counter affidavit, filed on 06.01.2021, has averred that the District Administration conducted a joint survey in respect of the State Highway no. 46 from Dudhnoi to Pancharatna with the officials of the PWD on 24.10.2017, 30.10.2017, 31.10.2017 and 10.01.2018. It is mentioned that at the time of such joint survey, it was noticed that some lands in patches, structures and ziraths were inadvertently left out from the original survey. Forwarding the joint survey report indicating the details of the left out portions of lands, structures and ziraths, a proposal was submitted vide a letter bearing no. GRQ-11/2015/2021 dated 22.03.2018 from the office of the Deputy Commissioner, Goalpara, to the Chief Engineer, PWRD [ARIASP & RIDF], Assam with the request to submit an additional land acquisition proposal. In the joint survey report so submitted, the office of the Deputy Commissioner, Goalpara made a proposal to include a pacca house of Assam Type, belonging to the petitioner, Standing on a parcel of land covered by Dag no. 417 and Patta no. 343, measuring 2 Lessas, in the additional acquisition proposal for the proposed State Highway no. 46. But the said proposal for acquisition of additional lands, etc. was declined by the Chief Engineer, PWD [ARIASP & RIDF] dated 23.03.2018 stating that apart from the lands already acquired for the project, there would be no further acquisition. It has, thus, emerged that the house, found existing during the joint survey and belonging to the petitioner, was not a part of the original acquisition process and subsequently, the proposal for its acquisition was not accepted.

6. It is also found alleged in paragraph 3 of the writ petition that due to construction of the State Highway, the house and boundary walls of the petitioner's house were damaged and found cracked at many places and had, thus, become unsafe. From the averments made in the writ petition, it transpires that the allegation of damage to the house of the petitioner standing over the subject-plot was subsequent to construction of the National Highway no. 46 but no supporting documents in support of such contention has been found annexed to the writ petition. The alleged damage was, thus, not relatable to the acquisition process for construction of State Highway no. 46. Moreover, any contention regarding damage of the house at a subsequent point of time would require determination for a number of disputed questions of fact requiring leading of evidence by the parties, which cannot be gone into in a writ petition under Article 226 of the

Constitution of India. In the above view of matter, this Court is of the view that the petitioner has not been able to make out any cause of action in the present writ petition for any compensation in relation to the alleged damage to his house by making it relatable to the acquisition process undertaken for construction of State Highway no. 46 and thus, the writ petition is found not maintainable in the facts and circumstances presented. Consequently, the writ petition is dismissed. The petitioner is, however, at liberty to avail any other remedy, if any, available to him under the law.

**JUDGE**

**Comparing Assistant**