

GAHC010187822023



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

Case No.: WP(C)/7846/2017

SUDHA JAIN
W/O. MR. MAHABIR PRASAD JAIN
R/O. RAJLAXMI APARTMENT
DANISH ROAD
PANBAZAR
P.O. and P.S. PANBAZAR
GUWAHATI
DIST. KAMRUP M
ASSAM
PIN-781001.

VERSUS

THE STATE OF ASSAM and 16 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
REVENUE LR DEPTT.
DISPUR
GHY.-781006.

2:THE SECRETARY
TO THE GOVT. OF ASSAM
REVENUE LR DEPTT.
DISPUR
GHY.-781006.
3:THE DY. COMMISSIONER

KAMRUP
AMINGAON
ASSAM.
4:THE CIRCLE OFFICER

PALASHBARI REVENUE CIRCLE
MIRZA

KAMRUP
ASSAM.
5:SRI JAGADHAR CHOUDHURY

S/O. LT. GUNADHAR CHOUDHURY
VILL. GORABARI
P.O. MONIARI TINIALI
P.S. PALASBARI
MOUZA- CHAYANI
DIST. KAMRUP
ASSAM.
6:SRI HEMADHAR CHOUDHURY

S/O. LT. GUNADHAR CHOUDHURY
VILL. GORABARI
P.O. MONIARI TINIALI
P.S. PALASBARI
MOUZA- CHAYANI
DIST. KAMRUP
ASSAM.
7:SRI SUKURA BORO

S/O. LT. MANJURA BORO
VILL. SONTOLA
P.S. PALASBARI
MOUZA- CHAYANI
DIST. KAMRUP
ASSAM.
8:SRI DIPAK BORO

S/O. LT. SUREN BORO
R/O. SONTOLA
P.S. PALASBARI
MOUZA- CHAYANI
DIST. KAMRUP
ASSAM.
9:PADMA NATH

S/O. LT. GERO NATH

10:SMT. DIPALI NATH

W/O. LT. MADHAB NATH

11:SRI AMRIT NATH

S/O. LT. RABIRAM NATH

12:SRI PRABIN NATH

S/O. LT. RABIRAM NATH

13:SMT. ANU BORO

W/O. LT. BHEBO BORO

14:SRI BHADRESWAR BORO

S/O. LT. BHEBO BORO

15:SRI DHIREN BORO

S/O. LT. BHEBO BORO

16:SRI KIRAN BORO

S/O. LT. BHEBO BORO

17:SRI HIREN BORO

S/O. LT. BHEBO BORO

NO. 9 TO 17 ARE RESIDENTS OF VILL. SONTOLA

P.S. PALASBARI

MOUZA- CHAYANI

DIST. KAMRUP

ASSAM.

Advocate for the Petitioner : Mr. K. K. Mahanta, Sr. Advocate
Mr. M. Hazariak, Advocate

Advocate for the Respondents : Ms. N. Begum, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.09.2023

Date of Judgment : 20.09.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the order dated 17.10.2017 passed by the Deputy Commissioner, Kamrup, Amingaon whereby the Deputy Commissioner, Kamrup, Amingaon passed an order that the ryots would also be entitled to a part of the compensation in respect to LA Case No.11/2012.

2. The facts involved in the instant case in brief are that one Shri Jagadhar Choudhury and Shri Hemadhar Choudhury were the original owners and Pattadars of agricultural lands measuring 19 bighas, 3 Kathas 6 Lechas covered by Dag Nos.108 and 109 of N.K. Patta No.6 of Maliata Revenue Village under Palashbari Revenue Circle in the district of Kamrup, Assam.

3. It is the further case of the petitioner that there were seven occupancy tenants who used to cultivate their lands earlier under the respondent Nos.5 & 6 were issued the Khatian No.43. Subsequent to the change of the character of the land and as the land became not suitable for agriculture purposes, there was no further cultivation over the said land by the said occupancy tenants. It is the further case of the petitioner that the respondent No.7 had executed a Deed of Relinquishment in favour of the respondent Nos.5 & 6 whereby the possession of 7 bighas out of 20 bighas of land covered by Dag No.108 of Patta No.6 (vide Khatian No.43, situated at village Maliata Revenue Village, Mouza-Chayani under Palashbari Revenue Circle) was handed over to the respondent Nos.5 & 6. This registered Deed of Relinquishment was executed on

16.02.2008, and thereupon, the petitioner purchased the said land vide the registered Deed of Sale bearing Deed No.5220/2008 dated 31.03.2008. It is the further case of the petitioner that the respondent Nos.8, 9 to 12 and 13 to 17 all executed the Deed of Relinquishment in favour of the respondent Nos.5 & 6, and thereupon, the respondent Nos.5 & 6 vide various Deeds of Sale bearing Deed No.5370/2008 dated 05.04.2008, Deed No.5426/2008 dated 07.04.2008 and Deed No.5281/2008 dated 04.04.2008 transferred the said land mentioned therein to the petitioner.

4. In the backdrop of the above, this Court further finds it relevant to take into account the dispute involved herein. A land acquisition proceedings was initiated for acquisition of land measuring 19 bighas 3 Kathas 6 Lechas for establishment of IIT at village - Maliata under Palasbari Revenue Circle. The said land acquisition proceedings, as per the petitioner and the counsel appearing on behalf of the Deputy Commissioner, was done so in terms with the provisions of the Land Acquisition Act, 1894. After the enquiry so conducted by the Deputy Commissioner, the petitioner received the notice dated 03.06.2017 issued by the respondent No.3 regarding the payment of compensation of land. In the said notice, it was mentioned that 1/4th of the said compensation shall be paid to the seven numbers of tenants whose names were recorded as per the report of the respondent No.4. It is relevant to mention that prior to the issuance of the notice dated 03.06.2017, the petitioner submitted objection to the Deputy Commissioner (Land Acquisition Branch) on 08.06.2016 which was followed by another objection dated 15.06.2016 objecting to the payment of any part of the

compensation to the tenants on the ground that the tenants have already relinquished their rights over the land in question. Further to that, the petitioner has issued another communication to the Additional Deputy Commissioner (Land Acquisition Branch) on 19.06.2017 requesting that the said payment should not be made to the seven tenants as they have already relinquished their rights in favour of the predecessors-in-interest of the petitioner, i.e. the respondent Nos.5 & 6. In spite of the said objection being filed, the Deputy Commissioner, Kamrup, Amingaon passed the impugned order dated 17.10.2020 whereby it was decided that the amount Rs.41,87,580/- would be paid to the seven tenants and the remaining amount would be paid to the petitioner. It is, however, relevant to mention that as per the impugned order dated 17.10.2020, the petitioner was held to be entitled to Rs.1,25,62, 740/-. The petitioner being aggrieved has assailed the impugned order by way of the present writ petition.

5. I have perused the materials on record and also heard the learned counsels for the parties. Mr. K. K. Mahanta, the learned senior counsel for the petitioner submitted by drawing the reference to the provisions of the Land Acquisition Act, 1894, and more particularly, to Section 18 as well as Section 30 of the Land Acquisition Act, 1894 wherein it has been stipulated that if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof, is payable, the Collector is statutorily bound to refer such dispute to the decision of the Court. Mr. K. K. Mahanta, the learned senior counsel for the petitioner, therefore, submitted that Deputy Commissioner, Kamrup, Amingaon on his own could not have passed the said order dated

17.10.2017, and as such, the said order is without authority and jurisdiction. Mr. K. K. Mahanta, the learned senior counsel for the petitioner further submitted that he has no instructions as to whether the petitioner has already received the amount of Rs.1,25,62,740/- which is 3/4th of the total compensation awarded in respect to the land.

6. Ms. U. Das, the learned counsel appearing on behalf the Deputy Commissioner, Kamrup, Amingaon submits with due fairness that the Deputy Commissioner, Kamrup, Amingaon instead of passing the impugned order ought to have referred the matter to the Court, i.e. the Court of the District Judge, Kamrup, Amingaon to adjudicate on the issue pertaining to the apportionment of the compensation.

7. Mr. K. Bhuyan, the learned counsel appearing on behalf of the private respondents including the newly impleaded respondents submitted that the said relinquishment deeds are fake and also had no sanctity in the eyes of law taking into account that as per the provisions of the Assam (Temporary Settled Areas) Tenancy Act, 1971, a relinquishment cannot be made by occupancy tenants in favour of any other person except the Government. The learned counsel for the private respondent Nos.7 to 22, however, submits that the entitlement of the private respondents are limited to 1/4th shares of the amount which has been granted by the Deputy Commissioner, Kamrup, Amingaon vide the impugned order.

8. Upon hearing the learned counsels for the parties this Court finds it relevant to take note of three provisions of the Land Acquisition Act, 1894. First, is Section 18 of the Land Acquisition Act 1894 which stipulates that any person interested who has not accepted the award may, by written

application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation amongst the persons interested. The second provision which also requires to be taken note of is Section 30 of the said Land Acquisition Act, 1894 which stipulates that when the amount of compensation has been settled under Section 11 and if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. This Court further finds it relevant to take note of another provisions, i.e. Section 31 (2) of the Land Acquisition Act, 1894 which stipulates inter-alia that if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 of the Land Acquisition Act, 1894 would be submitted.

9. In the instant case, the dispute only arises as to whether the private respondent Nos.7 to 22 herein would be entitled to 1/4th share of the compensation in LA Case No.11/2012 which has been adjudged by the Deputy Commissioner, Kamrup Amingaon in terms with the impugned order dated 17.10.2017. The record further shows that the petitioner during the enquiry proceedings had submitted objection to the fact that the private respondents or their predecessors-in-interest would not be entitled to any compensation. Be that as it may, vide the notice dated 03.06.2017, the petitioner has been informed that there are seven

recorded tenants and the petitioner was asked to submit the original copies of the relinquishment deeds. The petitioner thereupon on 19.06.2017 submitted a communication to the Additional Deputy Commissioner, Kamrup, Amingaon (Land Acquisition Branch) stating inter-alia that the private respondent Nos.7 to 22 or their predecessors would not be entitled to the $\frac{1}{4}^{\text{th}}$ of the compensation in respect of the land acquired vide LA Case No.11/2012. It is seen that thereupon vide the impugned order, the Deputy Commissioner, Kamrup, Amingaon adjudged that the private respondents herein/their predecessors-in-interest would be entitled to $\frac{1}{4}^{\text{th}}$ of the compensation, i.e. Rs.41,87,580/-. It is not known as to whether the petitioner thereupon approached the respondent authorities for making a reference under Section 18 of the Land Acquisition Act, 1894 in as much as the petitioner thereupon immediately approached this Court by filing the instant writ petition.

10. Taking into account the provisions of Sections 18, 30 and 31 (2) of the Land Acquisition Act 1894 and the question as to whether the private respondents or their predecessors-in-interest had relinquished their rights or could have relinquished their rights are questions of facts which can only be adjudicated upon by a Reference Court, it would not be proper on the part of this Court to decide the said dispute which had arisen in the instant writ petition. This Court, therefore, grants the liberty to the petitioner to file an application within six weeks from today seeking reference to the Court the dispute as to whether the private respondents herein would be entitled to $\frac{1}{4}^{\text{th}}$ of the compensation in respect of LA Case No.11/2012. For the sake of clarity, this Court makes it clear that the six weeks would expire on 02.11.2023.

11. This Court further observes and directs that if such application is filed within the said period as aforesaid, the Collector-cum-Deputy Commissioner, Kamrup, Amingaon shall refer the said dispute to the Court of the District Judge, Kamrup, Amingaon forthwith.

12. It is also made clear that if the application is not filed within the stipulated period, the Deputy Commissioner, Kamrup, Amingaon shall take effective steps for disbursement of the amount to the private respondents herein.

13. This Court further taking into consideration that there is no dispute as regards 3/4th of the compensation which as per the impugned order dated 17.10.2017 is Rs.1,25,62,740/-, the same be disbursed to the petitioner within 15 (fifteen) days from the date of receipt of the certified copy of the instant order, if not already disbursed. The acceptance of the said amount by the petitioner would not prejudice the petitioner in the Reference Proceedings, if initiated as per the liberty given herein above.

14. This Court further directs the Deputy Commissioner, Kamrup, Amingaon that no amount be released to the private respondents till the expiry of the period granted to the petitioner for filing the application seeking reference. If the petitioner file the said application within the time stipulated, the Deputy Commissioner, Kamrup, Amingaon while making the reference under Section 19 of the Land Acquisition Act, 1894 shall deposit the said amount to the Court of the District Judge, Kamrup, Amingaon in terms with Section 31 (2) of the Land Acquisition Act, 1894. The entitlement in respect to the said amount thereafter shall be subject the decision so passed by the Reference Court.

15. In view of the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant