

GAHC010074312022



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

Case No. : CRP(IO)/79/2022

SHAHIDUR RAHMAN AND 5 ORS
S/O LATE MOSLEM UDDIN AHMED, R/O VILL-CHATPARA, P.S.-JOGIGHOPA,
DIST-BONGAIGAON, ASSAM

2: OMAR ALI
S/O LATE MOSLEM UDDIN AHMED
R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

3: MOFIDUL ISLAM
S/O LATE MOSLEM UDDIN AHMED
R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

4: MOFAZZAL ISLAM
S/O LATE MOSLEM UDDIN AHMED
R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

5: ABDUL WAHAB
S/O LATE MOSLEM UDDIN AHMED
R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

6: NURUL ISLAM
S/O LATE MOSLEM UDDIN AHMED

R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND 27 ORS
REPRESENTED BY THE DEPUTY COMMISSIONER CUM DISTRICT
COLLECTOR, BONGAIGAON, P.O., P.S. AND DIST-BONGAIGAON, ASSAM

2:THE CIRCLE OFFICER
BOITAMARI REVENUE CIRCLE
P.O.-BOITAMARI
P.S.-ABHAYAPURI
DIST-BONGAIGAON
ASSAM

3:ANOWAR HUSSAIN
S/O ASHIM UDDIN

4:NALU SHIEKH
S/O MOTIBAR RAHMAN

5:MONOWAR HUSSAIN
S/O MOTIBAR RAHMAN

6:FAZAL HOQUE
S/O LATE SUKUR ALI

7:JOHIRUL HOQUE
S/O MOJIBAR RAHMAN

8:ATOWAR RAHMAN
S/O LATE MIJANUR RAHMAN

9:ANOWAR HUSSAIN
S/O LATE NUR KASIM

10:JOMIR ALI
S/O LATE ALIM UDDIN

11:TAYEB ALI
S/O LATE JIYA ULLAH SHEIKH

12:NUR SALAM
S/O ASIM UDDIN

13:SALAM ALI
S/O LATE SOBAHAN ALI

14:ABDUL HAKIM
S/O LATE ABDUL MOJID

15:RAJAB ALI
S/O TAHAZ ALI

16:MENAZ ALI
S/O LATE SORIF UDDIN

17:TAHAZ ALI
S/O LATE MUNDIR SHEIKH

18:USUF ALI
S/O LATE SUKUR ALI

19:MIJANUR RAHMAN
S/O MONNAF ALI

20:MOKBUL HUSSAIN
S/O LATE MONTAZ ALI
ALL ARE R/O VILL-CHATPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

21:MEENARA BEGUM
D/O LATE MOSLEM UDDIN AHMED
W/O ABU BAKKAR SIDDIQUE
VILL-CHALANTAPARA PART-IV
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

22:PARI BHANU
D/O LATE MOSLEM UDDIN AHMED
W/O ABDUL KUDDUS
VILL-BHOIRAB PAHAR NC
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

23:SAHAR BHANU
D/O LATE MOSLEM UDDIN AHMED
W/O NURUL ISLAM
VILL-KABAITARI PART-IV

P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

24:RUP BHANU
D/O LATE MOSLEM UDDIN AHMED
W/O NAJRUL ISLAM
VILL-CHALANTAPARA PART-V
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

25:SAN MEHERA BEGUM
D/O LATE MOSLEM UDDIN AHMED
W/O ABDUS SAMAD BANIYA
VILL-NACHANGURI PART-I
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

26:MONOWARA BEGUM
D/O LATE MOSLEM UDDIN AHMED
W/O ANOWAR HUSSAIN
VILL-KABAITARI PART-V
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

27:SAHANA SULTANA
D/O LATE MOSLEM UDDIN AHMED
W/O ABDUL MATIN
VILL-BHATIPARA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSAM

28:ROFIKA AHMED
D/O LATE MOSLEM UDDIN AHMED
VILL-SEDAMARI SANKAR GHOLA
P.S.-JOGIGHOPA
DIST-BONGAIGAON
ASSA

Advocates for the petitioners :

Ms. R. Choudhury

Mr. N. Rahman

Advocates for the respondents : Mr. D. Nath, Sr. G.A., Assam
Mr. C. Sarma
Mr. S. Roy
Mr. G. Baruah

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 07.12.2022
Date of Judgment & Order : 17.02.2023

JUDGMENT & ORDER (CAV)

Heard Ms. R. Choudhury, learned counsel assisted by Mr. N. Rahman, learned counsel for the petitioners. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam, for the respondent Nos. 1 & 2; Mr. C. Sarma, learned counsel for the respondent Nos. 3 to 18 & 20; Mrs. S. Roy, learned counsel for the respondent No. 21 to 28; and Mr. G. Baruah, learned counsel appearing on behalf of respondent/NHIDCL, who are impleaded in the instant revision petition as respondent Nos. 29 & 30, in view of the order dated 17.12.2022, passed in I.A.(Civil)/3100/2022.

2. This civil revision petition, under Article 227 of the Constitution of India *read with* Section 151 of the Code of Civil Procedure, 1908, is directed against the order dated 05.04.2022, passed by the learned District Judge, Bongaigaon,

in Title Suit No. 91/2021, allowing the petition No. 132/2022, filed by the learned Additional Deputy Commissioner, Bongaigaon, and directed the Circle Officer, Boitamari Circle, to demarcate the land of Dag No. 56 under Patta No. 66 for carrying out demarcation of Dag Nos. 38 & 55 under Patta No. 1 and to submit report.

3. The brief facts of the case of the petitioners is that the petitioners, as plaintiffs, filed a title suit, being Title Suit No. 59/2019, before the learned Civil Judge, Bongaigaon, seeking declaration of right, title, interest and possession over the suit land with a further declaration that the defendants have no right, title and interest individually or on behalf of any so called "Achuni Ambari Dong Committee" and also sought for further declaration that defendants have no right to change the existing mutation of record of rights of patta by cancelling the name of the plaintiffs along with a prayer for permanent injunction. The plaintiffs and the proforma defendants' father, namely, Moslem Uddin Ahmed, were the absolute owner and possessor of plot of land measuring 51 Bigha, 3 Katha, 11 Lessa at Koreya Pahar under Boitamari Revenue Circle in the district of Bongaigaon, Assam. Accordingly, the name of the father of the plaintiffs and the proforma defendants was mutated in the record of rights. But, in the said record of rights, there was a mistake committed by the Office and the name of "Secretary Dong Committee" was also mutated along with the name of original Khatiandar Moslem Uddin Ahmed. After the death of the father of the plaintiffs/petitioners, they inherited the suit land and the proforma defendants, i.e. the daughters of the Late Moslem Uddin Ahmed, relinquish their right over the suit land in favour of their brothers, i.e. the present petitioners/plaintiffs. Accordingly, all the petitioners/plaintiffs are in possession of the suit land and

their names have already been recorded in the record of rights. It is the case of the petitioner that the defendant Nos. 3 to 20 have no right, title and interest over any part of the suit land nor they are in possession of the same. But, in spite of having no right, title and interest over the suit land, the defendants filed a petition, being Misc. Case No. 17/2019, before the Circle Officer, Boitamari, for correction of the land records of the suit land in their names on behalf of Achuni Ambari, which is a non-existing identity. Accordingly, the name of Achuni Ambari Dong Committee was illegally mutated over the suit land. However, subsequently, that illegal mutation was cancelled from the record of rights and the suit land was mutated in the name of the present petitioners/plaintiffs. But, the defendants, in the name of Achuni Ambari Dong Committee, in collusion with the Boitamari Revenue Circle, constantly trying to change the record of land in favour of the defendants. Therefore, the plaintiffs/petitioners, along with the Title Suit No. 59/2019, also filed an application under Order 39 Rule 1 & 2 *read with* Section 151 of the Code of Civil Procedure praying for granting temporary injunction restraining the opposite party Nos. 1 & 2 from passing any order to change the existing record of rights of the suit land and further restraining the opposite party Nos. 3 to 20 not to disturb the peaceful possession of the suit land till disposal of the main suit. The said application was numbered as Misc. (J) Case No. 49/2019 and the learned Civil Judge, Bongaigaon, vide order dated 22.07.2019, was pleased to pass interim temporary injunction order restraining the defendant Nos. 1 & 2 from passing any order to change the existing record of rights of the suit land and not to disturb the peaceful possession of the plaintiffs/petitioners over the suit land. It is also stated that during the pendency of the Misc. Case No. 17/2019, before the Circle Officer, Boitamari, the petitioners submitted a representation, dated

03.07.2019, before the learned Deputy Commissioner, Bongaigaon, with a prayer for passing necessary order not to proceed with the Misc. Case No. 17/2019, which is still pending without assigning any reason.

4. It is further stated that the petitioners were regularly appearing before the Circle Officer, Boitamari, connection with Misc. (J) Case No. 17/2019 and dates were fixed on 09.07.2019, 15.07.2019 & 30.07.2019. However, coming to know about the order dated 20.07.2019, passed in injunction petition by the learned Civil Judge, Bongaigaon, the Circle Officer, Boitamari Revenue Circle, transferred the case record before the Additional Deputy Commissioner, Bongaigaon. Thereafter, the Additional Deputy Commissioner, Bongaigaon, on receipt of the record of Misc. (J) Case No. 17/2019, without having jurisdiction, registered a case, being Revenue Appeal No. 01/2019, and issued back dated notice on 18.07.2019 asking the petitioners to appear before the Additional Deputy Commissioner on 20.07.2019. Thereafter, on the next day, i.e. on 19.07.2019, the process server reported to the effect that the notice could not be served as the petitioners were not at home. However, the Additional Deputy Commissioner, Bongaigaon, without considering the service report of the process server, passed an order, dated 20.07.2019, in the Revenue Appeal No. 01/2019, to strike out the names of the petitioners/plaintiffs from the suit land and to mutate the name of the President/Secretary of the so called unregistered "Achuni Ambari Dong Committee". It is the contention of the petitioners that the order dated 20.07.2019 was a back dated order and in pursuance to the said order, the land record was corrected in the name of the President/Secretary of the above mentioned unregistered "Achuni Ambari Dong Committee".

5. On being highly aggrieved and dissatisfied with the order dated 20.07.2019, in Revenue Appeal Case No. 01/2019, the petitioners/plaintiffs preferred a Revenue Appeal before the Board of Revenue, Assam at Guwahati, which was numbered as R.A. No. 23 (BNG)/2020.

6. During the pendency of the Title Suit No. 59/2019 and the R.A. No. 23 (BNG)/2020, one notification, dated 20.05.2020, was issued by the Ministry of Road Transport and Highways, Govt. of India, whereby, the petitioners' land measuring 25 Bighas, 6 Kathas covered by Dag No. 58 and 62 under Patta No. 66 at Village Koreya Pahar, along with others land, were acquired in favour of the Deputy General Manager, National Highways and Infrastructure Development Corporation Limited (NHIDCL), Ministry of Road Transport and Highways, Govt. of India, through the Deputy Commissioner, Bongaigaon, the Additional Deputy Commissioner (Revenue), Bongaigaon and the Circle Officer, Boitamari Revenue Circle, for development of multi-model logistic park at Jogighopa without any information to the petitioners, who are the actual owner of the land acquired by Government of India and hence, such acquisition is illegal, arbitrary and in gross violation of judicial order dated 22.07.2019, passed by the learned Civil Judge, Bongaigaon, in Misc. (J) 49/2019. Thereafter, the Deputy General Manager, NHIDCL, sent a letter on 26.05.2020 to the Additional Deputy Commissioner (Revenue), Bongaigaon, for publication of 3A Gazette Notificationi, dated 20.05.2020, the aforesaid notification in 2 (two) newspapers in spite of the fact that the order dated 22.07.2019 was still in force. Further, the Deputy Commissioner, Bongaigaon, and Additional Deputy Commissioner (Revenue), Bongaigaon, also appeared in T.S. No. 59/2019 and contested the case. Therefore, they have no jurisdiction to clear the land in question till

disposal of the T.S. No. 59/2019 and the competent authorities are taking steps for payment of compensation for the aforesaid acquired land to the persons who are fraudulently mutated their names in the records of rights.

7. The Circle Officer, Boitamari Revenue Circle, issued notices dated 17.02.2021 and 06.03.2021 for demarcation of lands covered by Dag Nos. 56 and 55 under Patta No. 66 which are adjacent to boundary wall of Ashok Paper Mill (A) Limited Jogighopa. After receipt of the said notices, the petitioners submitted a representation, dated 20.02.2021, before the Managing Director of Ashok Paper Mill praying to stop the demarcation process in view of the fact that there is an existing interim order, dated 22.07.2019, passed in Misc. (J) Case No. 49/2019.

8. Thereafter, on being aggrieved with the acquisition notification, dated 20.05.2020 and demarcation notices dated 17.02.2021 and 06.03.2021, the petitioners approached this Court by invoking the writ jurisdiction, which is numbered as WP(C)/3336/2021. Accordingly, this Court, after hearing the petitioners and respondent Nos. 2, 3 & 4, issued notice and was further pleased to direct the respondents to maintain *status quo* in respect of disbursement of the compensation amount in respect of the notification dated 20.05.2020 under Section 3A of the National Highways Act, 1956.

9. On 12.11.2021, the learned Civil Judge, Bongaigaon, transferred the T.S. No. 59/2019 to the Court of learned District Judge, Bongaigaon, and accordingly, the same was renumbered as T.S. No. 91/2021.

10. During the pendency of T. S. No. 91/2021, the Additional Deputy Commissioner, on behalf of defendant No. 1, filed a petition under Section 151 of the Code of Civil Procedure for demarcation of the Dag Nos. 38 & 58 under Patta No. 1 of Village Koreya Pahar under Boitamari Revenue Circle and also requested for handing over the possession of land of Dag No. 58 to NHIDCL. The present petitioners filed their written objection against the said petition for demarcation. But the learned District Judge, Bongaigaon, vide order dated 05.04.2020, allowed the prayer for demarcation and accordingly directed the Circle Officer, Boitamari Revenue Circle to demarcate the land of Dag No. 56 under Patta No. 66 and for carrying out for demarcation of Dag Nos. 38 & 55 under Patta No. 1 and to submit report.

11. It is further stated that the petition, filed by the Additional Deputy Commissioner, Bongaigaon, under Section 151 of the Code of Civil Procedure, is not maintainable when there is a specific provision being Order 26 Rule 9 of the Code of Civil Procedure for the purpose of demarcation and elucidating any matter in dispute and as such, the impugned order is liable to be set aside. Further, it is stated that the prayer made by the Additional Deputy Commissioner, Bongaigaon, is in violation of order dated 22.07.2019, passed in Misc. (J) Case No. 49/2019, whereby, the learned Civil Judge, Bongaigaon, directed the defendants not to disturb the peaceful possession of the plaintiffs/petitioners over the suit land. The said order has already attained finality as the defendants did not challenge this order before any higher Court. The learned District Judge, Bongaigaon, acted beyond its jurisdiction by passing the impugned order allowing the defendant No. 2 to demarcate the land of Dag No. 56 under Patta No. 56 for carrying out demarcation of Dag Nos. 38 & 55,

which would cause disturbance to the peaceful possession of the present plaintiffs/petitioners over the suit land. The land under Dag Nos. 38 & 55 under Patta No. 1 is not the subject matter of the suit, but the Dag No. 56 of Patta No. 66 is the suit land measuring 25 Bighas 4 Kathas 3 Lessas and also the Dag No. 58 of periodic Patta No. 66 of land measuring 14 Bighas 2 Kathas 19 Lessas along with other two Dag Nos. 57 & 62 and in total the land measuring 51 Bighas 3 Kathas 11 Lessas is within one boundary and therefore, the land in Dag No. 56 cannot be separately identified and for which, the order passed by the learned District Judge, Bongaigaon, for demarcation of the land, cannot be executed. The land under Dag Nos. 56 under Patta No. 66, as stated above, cannot be separately identified as it is within the joint boundary land of other Dag No. 57, 58 & 62 and the petitioners have possession of the said land jointly situated within the aforesaid boundary and if the demarcation is allowed, the petitioners/plaintiffs would be affected by such demarcation and as such, the impugned order is liable to be set aside.

12. The petitioners have a *prima facie* case and balance of convenience is in their favour and the defendant No. 2, in pursuance of impugned order dated 05.04.2022, passed in Title Suit No. 91/2021, already issued Demarcation Notice, dated 08.04.2022, directing the parties to remain present on 19.04.2022 to demarcate the boundaries of the aforesaid Dags. Accordingly, the present petitioners prayed to stay the operation of the order dated 05.04.2022, passed by the learned District Judge, Bongaigaon, in Title Suit No. 91/2021, and also prayed to stay the Demarcation Notice, dated 08.04.2022, issued by the defendant No. 2.

13. Accordingly, the present petitioners prayed to set aside the impugned order dated 05.04.2022, passed by the learned District Judge, Bongaigaon, in Title Suit No. 91/2021, along with a prayer for interim order for stay of the said order and the impugned Demarcation Notice dated 08.04.2022.

14. Ms. R. Choudhury, learned counsel appearing on behalf of the petitioners, has submitted that the learned District Judge, Bongaigaon, passed the impugned order dated 05.04.2022 for demarcation of petitioners' land considering the application filed by the official respondents under Section 151 of the Code of Civil Procedure and against the said order, the present civil revision petition has been preferred before this Court. The Court can exercise the inherent power under Section 151 Code of Civil Procedure only if there is absence of any remedy under the statute. The Court can exercise its power under Section 151 of the Code of Civil Procedure to do justice within the parties if the circumstances warrants for implication of Section 151 of the Code of Civil Procedure. But, if there is any specific provision in Code of Civil Procedure, dealing with a particular topic, then the Court has to exhaust the said provision. But, here in the instant case, it is seen that the official defendant filed a petition under Section 151 of the Code of Civil Procedure when there is a specific provision under Order 26 Rule 9 of the Code of Civil Procedure to appoint Commissioner. But the learned District Judge, without considering the fact that the defendant cannot approach the Court under Section 151 of the Code of Civil Procedure seeking demarcation of land, has allowed the petition.

15. The learned counsel for the petitioners further relied on a decision of Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. Vs. Roshan Singh**

& Ors., reported in **2008 AIR (SCW) 1145**, and further put emphasized on the paragraph No. 7 of the said judgment, which reads as under:

“7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the CPC does not deal with, the Court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the CPC dealing with the particular topic and they expressly or necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the Court cannot be invoked in order to cut across the powers conferred by the CPC. The inherent powers of the Court are not to be used for the benefit of a litigant who has remedy under the CPC. Similar is the position vis-a-vis other statutes. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the CPC. Section 151 CPC will not be available when there is alternative remedy and same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the Court are in addition to the powers specifically conferred to it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the Court power of making such orders as may be necessary for the ends of justice of the Court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless less under the Act.”

16. Further, the learned counsel for the petitioners relied on another decision of the Hon’ble Allahabad High Court in **Phool Chand Tiwari Vs. Iind Addl District Judges, Jaunpur & Ors.**, reported in **2008 (3) ALR 838**, wherein also, the Hon’ble Allahabad High Court has expressed the view that the application under Section 151 of the Code of Civil Procedure is not maintainable when other remedy is available in the statute and Court can only exercise the power under Section 151 of the Code of Civil Procedure if the code did not

provide any specific provision which would meet the necessities of the case in question.

17. Further, it is submitted by the learned counsel for the petitioners that the learned Court below passed the order for demarcation without considering the fact that on 22.07.2019, injunction order was passed against the official respondents not to change the existing records of rights of the suit land and also the other respondents were directed not to disturb the peaceful possession of the plaintiffs/petitioners over the suit land.

18. In this context, Mr. D. Nath, learned Senior Government Advocate, Assam, has submitted that as per the injunction order passed by the learned Civil Judge, Bongaigaon, in Misc. (J) Case No. 49/2019, vide order dated 22.07.2019, it was only to restrain the official respondent/defendant from passing any order of existing records of rights of the suit land. But, the Additional Deputy Commissioner, Bongaigaon, has already passed an order dated 20.07.2019 prior to the order of injunction, whereby, the names of the petitioners/plaintiffs were strike out from the record of rights. More so, vide the said injunction order, the official respondents/defendants were only restrain from changing the record of rights. But, the petition was filed by the official respondent/defendant before the learned District Judge, Bongaigaon, only for the demarcation of land which is already acquired by the government after complying all required formalities. More so, vide order dated 19.04.2022, this Court has already passed the order for carrying out the demarcation as per order dated 05.04.2022, passed by the learned District Judge, Bongaigaon, in Title Suit No. 91/2021. Further, the government respondents were restricted not to follow up any further action without the permission of this Court. So, vide order dated 19.04.2022, This

Court has already allowed the government respondent to demarcate the land which is already acquired by the government by obtaining all necessary formalities as per law. Further, it is submitted by the learned Senior Government Advocate that the government is ready to pay the requisite compensation to the genuine land owners and the title suit, being Title Suit No. 91/2021, is only a dispute between the private parties and the government is ready to give adequate compensation to either of the party who will be declared as the owner of the land. Mr. Nath, learned Senior Government Advocate, further submitted that the land in question is a part of project which is very important for the State of Assam and the suit land of Title Suit No. 91/2021 is a part of the project and hence, irrespective of the result of the dispute between the private parties, the same will not have any effect or influence on the acquisition of the land and the owner of the land will definitely be entitled for the compensation for the acquisition of the land. Further, it is submitted by the learned Senior Government Advocate that the subject matter of the Writ Petition No. 3336/2021 is also for the disbursement of the compensation amount and not related with the subject matter of the present revision petition. The present revision petition is filed by the petitioner only against the order passed by the learned District Judge, dated 05.04.2022, whereby, the learned Court below allowed the petition filed by the official respondent for demarcation of the land.

19. Mr. G. Baruah, learned counsel appearing on behalf of the newly impleaded respondent, i.e. NHIDCL, has submitted that in the earlier title suit, they were not made as a party by the present petitioners as defendant. But, as the land is acquired by the government only for the development of Multi Model Logistic Park and the Deputy General Manager of NHIDCL, had already issued a

letter, dated 26.05.2020, to the Additional Deputy Commissioner-cum-Competent Authority, Land Acquisition, Bongaigaon District, for publishing of Notification dated 20.05.2020 in two newspapers for acquisition of land for the said project and the land in dispute falls under the part of the project and hence, the NHIDCL is the necessary party in the present petition where the interest of NHIDCL is also related in the present disputed land. As per the notification issued by the Ministry of Road Transportation & Highways, dated 20.05.2020, the notice has already been published in 2 (two) newspapers, one in English and another in local vernacular language. Thereafter, under the provision of Section 3D of National Highways Act, 1956, declaration of acquisition, notified under the provision of Section 3G of National Highway Act, 1956, for determination of amount payable as compensation, is also finalized. The petitioners/plaintiffs are fully aware about the aforesaid notification published under the provision of National Highway Act, 1956, for acquisition of land for development of Multi Model Logistic Park at Jogighopa and external trunk connectivity infrastructure of Multi Model Logistic Park site at Jogighopa. Though the land in question of the plaintiffs/petitioners was duly acquired by the central government showing notification for public purpose under the National Highway Act, 1956, yet, NHIDCL is unable to proceed with the work for development of Multi Model Logistic Park at Jogighopa due to obstruction raised by the petitioners/plaintiffs only with the ground that one civil suit is pending before the subordinate Court. The entire acquisition process has already been completed by observing all necessary formalities as per Sections 3A, 3C, 3D, 3E, 3G, 3F, 3H of the National Highway Act, 1956, for construction of Multi Model Logistic Park at Jogighopa, which is having a national interest. Further, it is submitted by the learned counsel appearing on behalf of NHIDCL/respondent

that this is the first project in the entire northeast, but, due to obstruction from the petitioners' site, the construction work could not be started and which otherwise affect the entire project of the central government. So far the process of acquisition of land is concerned, CALA Bongaigaon has followed all the provision of National Highway Act, 1956, and the compensation has also been declared which is already deposited by NHIDCL. But the implementation of the project is severely hampered on account of the present litigation which is purely private in nature and between the 2 (two) parties for declaration of right, title and interest. Accordingly, it is submitted by the learned counsel for the NHIDCL that the instant revision petition is liable to be dismissed.

20. Mr. G. Baruah, learned counsel appearing on behalf of the NHIDCL, further relied on the decision of Hon'ble Supreme Court in **Ramnikal N. Bhutta & Anr. Vs. State of Maharashtra & Ors.**, reported in **(1997) 1 SCC 134**, wherein it is held that "Land acquisition proceedings – Court should be slow in granting stay/injunction – Larger public interest of necessity of rapid acquisition of land for creating basic infrastructure facilities for development should be kept in mind while granting stay/injunction – Quashing of acquisition proceedings is not the only mode of redress – If finally acquisition is found vitiated the person interested can be awarded damages." Further, in the paragraph No. 10 of the said judgment, it has been held as under:

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on

all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under [Article 226](#) is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under [Article 226](#) - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

21. Further, the Hon'ble Apex Court in **G. Narsing Rao (died) Thr. Lrs. Vs. The National Highways Authority of India & Anr. (Special Leave Petition No. 9314-9315/2022)**, also observed that "it cannot be disputed that the public interest is the paramount consideration and the National Highway Authority can be said to be best judge to decide which land to be acquired and which not be acquired for the purpose of construction of the Highways."

22. Accordingly, the learned counsel appearing on behalf of NHIDCL/respondent prayed for dismissal of the present petition, which is filed against the order dated 05.04.2022, passed by the learned District Judge, Bongaigaon, in Title Suit No. 91/2021, whereby, the petition filed by the government respondent was allowed to demarcate the land which has already been acquired by the government by allowing their prayer made under Section 151 of the Code of Civil Procedure.

23. After careful perusal of the entire case record and hearing the arguments put forwarded by the learned counsels for both sides, it is seen that the petitioners have challenged the order passed by the learned District Judge, Bongaigaon, dated 05.04.2022, in Title Suit No. 91/2021, whereby, the learned Court below allowed the petition filed under Section 151 of the Code of Civil Procedure by the government respondent praying for demarcation of the acquisition of land by the government through National Highway Authority for development of Multi Model Logistic Park at Jogighopa.

24. From the pleadings as well as from the submissions of the learned counsels for both sides, it is seen that the title suit, being Title Suit No. 91/2021, is filed by the present petitioners against the same private respondents/ defendants claiming their right, title, interest and possession over the suit land and also prayed for further declaration that the defendants have no right, title and interest individually or on behalf of any so called "Achuni Ambari Dong Committee" and also sought for a declaration that the government defendants have no right to change the mutation of record of rights of Patta by

cancelling the name of the petitioners along with a prayer for injunction. It is also seen that along with the said Title Suit, one Misc. (J) Case No. 49/2019 was also filed by the petitioners under Order 39 Rule 1 & 2 *read with* Section 151 of the Code of Civil Procedure, praying for granting temporary injunction restraining the opposite party Nos. 1 & 2 from passing any order to change the existing records of rights of the suit land and further restraining the opposite party Nos. 3 to 20, i.e. the private respondents, not to disturb the peaceful possession of the suit land till disposal of the main suit. Accordingly, the learned Civil Judge, Bongaigaon (where the suit was earlier pending) was pleased to pass the interim temporary injunction restraining the government respondents from passing any order to change the existing record of rights of the suit land and the other private respondents were also restrained from disturbing from peaceful possession of the present petitioners/plaintiffs. So, the only prayer against the present government respondent was not to change the record of rights or to grant any mutation in favour of the private respondents/defendants. But it is alleged by the petitioners/plaintiffs that behind the back of the petitioners/plaintiffs and issuing a backdated notice, the mutation order was passed on 20.07.2019 by the Additional Deputy Commissioner, Bongaigaon, in Revenue Appeal No. 01/2019, i.e. the order is alleged to have been passed with a *mala fide* intention behind the back of the petitioners/plaintiffs only after the injunction order was passed by the learned Civil Judge, Bongaigaon, showing that the order have been passed prior to the order of injunction, to which the petitioners/plaintiffs were aggrieved and accordingly preferred the Revenue Appeal before the Board of Revenue Assam, which was numbered as Revenue Appeal No. 23(BNG)/2020.

25. It is also seen that during the pendency of the title suit as well as the Revenue Appeal, the Ministry of Road Transport & Highways, Government of India, issued a notification, dated 20.05.2020, whereby, they acquired land of the petitioners measuring 25 Bighas 6 Kathas covered by Dag Nos. 58 and 62 under Patta No. 66 at Village Koreya Pahar, along with other lands, through the Deputy Commissioner, Bongaigaon. So, for the acquisition of the land, it is claimed by the Government of India as well as NHIDCL that while acquiring the land they followed all the necessary rules and formalities and which has been acquired by the Government of India only for the public interest for a project of Multi Model Logistic Park and the same would be the first project in the entire North East of India. Further, the Title Suit filed by the petitioners/plaintiffs was only against the private respondents/defendants claiming their right, title and interest over the suit land, which in no case related with the acquisition of land by the Government of India for the national project which is for the public interest at large.

26. Coming to filing of petition under Section 151 of the Code of Civil Procedure, it is seen that the petition was filed by the government respondent only for demarcation of the land which has already been acquired by the government as the project has already been delayed only for the obstructions or objections raised by the petitioners/plaintiffs.

27. The learned counsel for the petitioners mainly stressed on the point that the learned District Judge, Bongaigaon, passed the impugned order, dated 05.04.2022, illegally and arbitrarily and did not consider the fact that the power under Section 151 of the Code of Civil Procedure is not maintainable when there

is a specific provision being Order 26 Rule 9 of the Code of Civil Procedure for demarcation and elucidating any matter in dispute and as such, the impugned order is liable to be set aside.

28. It is the admitted position that the Court can exercise its inherent power under Section 151 of the Code of Civil Procedure only if any other remedy is absent under the statute and Court can exercise its power only to do justice within the parties if circumstances warrants for implication of Section 151 of the Code of Civil Procedure.

29. Here in the instant case, it is seen that the prayer made by the government respondent/defendant was only to demarcate the land which has already been acquired by the government for the above mentioned project. The government respondent had no dispute with the present petitioners/plaintiffs and hence, there is no dispute between the government respondents/defendants and the present petitioners/plaintiffs on the land acquired by the government and the suit filed by the present petitioners is only against the private respondents/defendants seeking right, title and interest over the suit land, which is also the part of the acquired land. The only prayer against the government respondent was not to change the mutation which was earlier recorded in the name of the present petitioners/plaintiffs.

30. Order 26 Rule 9 of the Code of Civil Procedure is for appointment of Commissions to make local investigation if there is any land dispute, the parties or for the purpose of elucidating any matter in dispute or to ascertain the market value of any property and or to assess the damage or annual net profits etc.

31. But, here in the instant case, the petition under Section 151 of the Code of Civil Procedure was filed by the government respondent only to demarcate the land which is already acquired by the government for the purpose of the said national project, and accordingly, I find that no illegality has been committed by the learned Court below while allowing the petition filed under Section 151 of the Code of Civil Procedure for demarcation of the acquired land. Moreso, it is seen that the government respondents are ready to make the reasonable compensation to the land owner and it is already stated that the compensation money has already been paid by the National Highways Authority which is still under the possession of the government respondent and the same will be disbursed to the actual land owner as there is still a dispute between the petitioners/plaintiffs and the private respondents/defendants over the suit land. Moreso, it is seen that vide order dated 19.04.2022, this Court has already passed the order in carrying out the demarcation as per order of the learned District Judge, Bongaigaon, dated 05.04.2022.

32. Thus, it is seen that the order of demarcation has already been allowed by this Court vide order dated 19.04.2022, though the government respondents were restricted not to follow up any further action without the permission of this Court. Therefore, it is seen that vide order dated 19.04.2022, this Court has already affirmed the order of learned District Judge, Bongaigaon, dated 05.04.2022, passed in Title Suit No. 91/2021, considering the fact that the present government respondents were not restrained beyond what has been specifically mentioned in the order of injunction and there is no any restraintment order in respect of demarcation of the land which has already been

acquired by the government respondent and it is also not disputed that the suit land also falls inside the government acquired land for a project of national interest and the present petitioners/plaintiffs also not disputed the acquisition of the land. However, they raised objections in disbursing the compensation money in respect of the acquired land till disposal of the title suit pending against the present petitioners/plaintiffs and the private respondents/defendants.

33. So, from the entire discussions made above, I am of the opinion that the learned District Judge, Bongaigaon, committed no illegality or mistake while passing the order dated 05.04.2021 in Title Suit No. 91/2021 allowing the government respondents to demarcate the acquired land by the central government by allowing the petition filed under Section 151 of the Code of Civil Procedure and hence, I find that the impugned order, dated 05.04.2021, passed by the learned District Judge, Bongaigaon, in Title Suit No. 91/2021, against which the present revision petition has been filed by the petitioners, do not suffer from any illegality or impropriety or correctness for any interference of this Court.

34. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant