

GAHC010087622018



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

Case No. : WP(C)/3167/2018

PROMATHESH CHANDRA ROY AND 23 ORS.
S/O- LATE PROMODE CHANDRA ROY, R/O- GOVINDAPALLY, WARD NO. 6,
HOJAI TOWN, P.O- HOJAI- 782435, DIST- HOJAI, ASSAM

2: KISHORE KUMAR DAS
S/O- LATE ASWINI KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

3: MONORANJAN NATH
S/O- LATE NITYANANDA NATH
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

4: PRONoy CHANDRA ROY
S/O- LATE PROMODE CHANDRA ROY
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

5: PARITOSH CHANDRA ROY
S/O- LATE PROMODE CHANDRA ROY
R/O- GOVINDAPALLY

WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

6: GURUDAS ACHARJEE
S/O- LATE MAHESH CHANDRA ACHARJEE
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

7: GOPAL CHANDRA ROY
S/O- LATE PROMODE CHANDRA ROY
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

8: SUSHIL KUMAR DAS
S/O- LATE ASWINI KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

9: NARAYAN SAHA
S/O- LATE HIMANGSHU SAHA
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

10: PRASANTA SAHA
S/O- LATE HIMANGSHU SAHA
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435

DIST- HOJAI
ASSAM

11: SUKANTA SAHA
S/O- LATE HIMANGSHU SAHA
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

12: JHARNA SAHA
W/O- LATE HIMANGSHU SAHA
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

13: MILON DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

14: MINTU DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

15: JANTU DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

16: PINAK PANI DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

17: NINTU DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

18: SHAMAL DEB
S/O- LATE JATINDRA MOHON DEB
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

19: SHAMBHU KUMAR DAS
S/O- LATE ASWINI KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

20: JAYANTA KUMAR DAS
S/O- LATE ASWINI KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

21: RATAN KUMAR DAS
S/O- LATE NIPENDRA CHANDRA DAS
R/O- GOVINDAPALLY

WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

22: UTTAM KUMAR DAS
S/O- LATE NIPENDRA CHANDRA DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

23: DIPALI DAS
W/O- LATE SUNIL KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSAM

24: BIJIT DAS
S/O- LATE SUNIL KUMAR DAS
R/O- GOVINDAPALLY
WARD NO. 6
HOJAI TOWN
P.O- HOJAI- 782435
DIST- HOJAI
ASSA

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF RAILWAYS,
RAIL BHAWAN, NEW DELHI-110001

2: THE GENERAL MANAGER(CONS)
N F RAILWAY HQRS
MALIGAON
GUWAHATI- 781011

3: STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
REVENUE DEPTT
DISPUR

GUWAHATI- 781006

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
REVENUE(LAND ACQUISITION) DEPTT
DISPUR
P.O- GUWAHATI- 781006
ASSAM

5:THE DEPUTY COMMISSIONER AND DISTRICT COLLECTOR
HOJAI DISTRICT
P.O- HOJAI SANKARDEV NAGAR- 782435
DIST- HOJAI
ASSAM

6:THE ASSISTANT COMMISSIONER AND CONVENER
SOCIAL IMPACT ASSESSMENT STUDY COMMITTEE
OFFICE OF THE DEPUTY COMMISSIONER(LAND ACQUISITION BRANCH)
HOJAI DIST
P.O- HOJAI SANKARDEV NAGAR- 782435
DIST- HOJAI
ASSAM

7:THE CIRCLE OFFICER
HOJAI REVENUE CIRCLE
P.O- HOJAI- 782435
DIST- HOJAI
ASSA

For the Petitioner(s) : Mr. B. K. Sen, Advocate

For the Respondent(s) : Mr. D. Nath, Sr. Government Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 18-09-2023

1. The instant writ petition has been filed by the Petitioners who are 24 in numbers challenging the notice dated 24.05.2017 issued by Deputy

Commissioner, Hojai District, Sankardev Nagar for requisition of the land belonging to the Petitioners covered by Dag No.612, Periodic Patta No.14 as well as Dag No.614, Periodic Patta No.13 situated at Hojai Town in the district of Hojai, Assam as well as also for a writ in the nature of mandamus directing the Respondent Authorities to pay appropriate compensation to the Petitioners and also to provide rehabilitation to the Petitioners for acquisition of their lands as provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013").

2. From a perusal of the writ petition, it does not transpire that the Petitioners herein are aggrieved by the acquisition so made. However, the Petitioners have filed the instant writ petition only on the ground that the payment of compensation should be made in terms with the Act of 2013. It is further relevant to take note of that the Respondent No.2 had filed an Affidavit-in-Opposition as well as also an additional Affidavit-in-Opposition wherein it has been mentioned that as per the estimate so provided by the Office of the Collector, Hojai, an amount of Rs.4,55,66,961/- was sanctioned and was issued from GM/CON/MLG vide S/MC No.76(Land)/2017 dated 04.08.2017 and pay order has also been issued in favour of the Deputy Commissioner, Land Acquisition Branch, Hojai. It has also been mentioned that so far the list of beneficiaries is concerned, it lies within the domain of the Office of the Deputy Commissioner, Hojai.

3. This Court further finds it relevant to take note of that vide an order dated 09.08.2023, this Court had directed the Additional District Commissioner, In-charge, Hojai to produce the records of L.A. Case No.1/2017 and the

officials were also directed to ensure that in the records, the list of beneficiaries was there and accordingly, the matter was fixed on 25.08.2023. On 25.08.2023, Ms. S. Hazarika, the learned counsel appearing on behalf of the Railways submitted that in pursuance to the estimate given by the Deputy Commissioner cum Collector, Hojai, an amount of Rs.4,55,66,961/- for acquisition of the land measuring 2 Bighas 4 Kathas 15.79 Lechas of Village Hojai Town No.1 and Hojai Town No.2 Kissam under Hojai Mouza have been duly paid to the Deputy Commissioner, Land Acquisition Branch by a pay order as far back as on 04.08.2017. On the said date, certain records were produced by Ms. S. Sharma, the learned Junior Government Advocate but this Court found that the said records so produced had no relevance to the issue involved. Under such circumstances, this Court directed the ADC In-charge, Hojai to file an affidavit by 07.09.2023 as to how much amount have been disbursed to the Petitioners pursuant to the receipt of the said amount by the Office of the Deputy Commissioner, Land Acquisition Branch, Hojai as far back as in the year 2017. It was also directed that the affidavit shall also disclose, if no amounts have been disbursed, why so. Accordingly, the matter was directed to be listed on 08.09.2023 making it clear that if the affidavit is not filed, this Court would have no other option but to pass appropriate orders against the ADC, Hojai as well as the other officials of the Land Acquisition Branch of the Office of the ADC In-charge, Hojai.

4. Be that as it may, on 08.09.2023, it was informed to this Court by Ms. S. Sharma, the learned Junior Government Advocate that the ADC Hojai neither responded to her intimation nor given the instructions as sought. This Court was also apprised that the ADC In-Charge, Hojai had not made himself available for filing the affidavit in terms with the directions passed by this Court

on 25.08.2023. It is under such circumstances, this Court sought the personal appearance of the ADC, Hojai today i.e. on 18.09.2023 at 10:15 AM.

5. The Deputy Commissioner, Hojai is personally present today pursuant to the order passed by this Court on 08.09.2023 and had also filed an Affidavit-in-Opposition. This Court upon enquiring with the Deputy Commissioner, Hojai was informed that the order passed by this Court directing filing of the affidavit was not informed to him and as such the order passed by this Court on 25.08.2023 could not be complied in letter and spirit. He however submits that in future, the Deputy Commissioner, Hojai shall be more cautious, alert and will take steps to ensure prompt response to this Court's matters. In view of the said categorical statement being made paragraph No.2 of the said affidavit filed by the Deputy Commissioner, Hojai, this Court duly accepts the apology and dispenses with his personal appearance.

6. This Court further takes note of the Affidavit-in-Opposition so filed by the Deputy Commissioner, Hojai wherein at Paragraph No.4, it has been mentioned that the Petitioner Nos. 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23 and 24 have already been disbursed with the compensation and they have duly received the same. However the Petitioner Nos. 1, 2, 3, 4, 5, 7, 20, 21 and 22 refused to receive the compensation amount and as such the said amounts could not be disbursed. It has also been mentioned in the said affidavit that the Office of the Deputy Commissioner, Hojai is ready to disburse the pending amount, if the Petitioner Nos. 1, 2, 3, 4, 5, 7, 20, 21 and 22 agrees to accept the same.

7. Mr. B. K. Sen, the learned counsel appearing on behalf of the Petitioners submits that although some of the Petitioners have received the compensation

amount, but they have not received the entire amount to which they are entitled to as per law. He further submits that he would instruct the rest of the Petitioners i.e. the Petitioner Nos. 1, 2, 3, 4, 5, 7, 20, 21 and 22 to approach the Office of the Deputy commissioner by filing necessary applications for receiving the amount and accepting the same under protest.

8. Upon hearing the learned counsels for the parties, this Court is of the opinion that in view of Section 12 of the Assam Land (Requisition and Acquisition) Act, 1964 (for short "the Act of 1964"), a person who is aggrieved by the inadequacy of the compensation has a right to file an application before the Collector seeking a reference to the Court and Section 12(1)(a) of the Act of 1964 imposes a statutory duty upon the Collector to make a reference to the Court as defined under Section 2(b) of the Act of 1964. This Court further finds it relevant to take note of Section 12(2) of the Act of 1964 which stipulates that by virtue of legislation by incorporation, the provisions of the Land Acquisition Act, 1894 have been made applicable to a reference to be made under Section 12(1) of the Act of 1964. Under such circumstances, the provisions of Section 18, 19, 31(2) of the Land Acquisition Act, 1894 becomes applicable in respect to application filed seeking reference. This Court further finds it relevant to take note of that Section 31(2) of the Land Acquisition Act, 1894 which provides that the person to whom the compensation is paid has the option to receive the amount under protest.

9. Taking into account the above propositions, this Court therefore disposes of the instant writ petition thereby giving the Petitioners Nos. 1, 2, 3, 4, 5, 7, 20, 21 and 22 the liberty to file appropriate applications before the Collector, Hojai for getting the compensation. It is made clear that if the Petitioners are

aggrieved by the inadequacy of the compensation, the Petitioners would be at liberty to file appropriate application within 30 days from the date of the instant order and if such applications are filed by the Petitioners, the Collector, Hojai shall refer the same to the Court in view of the mandate of Section 12(1) of the Act of 1964.

10. With above, the instant petition stands disposed of.

11. The additional documents so placed by Mr. D. Nath, the learned Senior Government Advocate is kept on record and marked with the letter "X".

JUDGE

Comparing Assistant