

GAHC010089402020



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

Case No. : WP(C)/2750/2020

TOLARAM BAFNA ARTIFICIAL LIMB AND CALIPER CENTRE
A SOCIETY REGD. UNDER THE SOCIETIES REGISTRATION ACT, 1860,
HAVING ITS OFFICE AT BAFNA COMPLEX, AMINGAON, GUWAHATI,
KAMRUP (R), ASSAM, REP. BY ITS MANAGING TRUSTEE SRI SUBHKARAN
JAIN @ SUBHKARAN BAFNA.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY ITS SECRETARY, LAND AND REVENUE DEPTT., DISPUR, ASSAM.

2:THE DY. COMMISSIONER CUM COMPETENT AUTHORITY
UNDER PROVISIONS OF RIGHT TO FAIR COMPENSATION AND
TRANSPARENCY IN LAND ACQUISITION
REHABILITATION AND RESETTLEMENT ACT
2013
KAMRUP
AMINGAON
ASSAM.

3:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REP. BY ITS CHAIRMAN
BHANGAGARH
GUWAHATI-781005
ASSAM

For the Petitioner (s) : Mr. G.N. Sahewalla, Sr. Advocate.

Mr. H.K. Sarma, Advocate.

For the Respondent (s) : Mr. R. Borpujari, Advocate.

Date of hearing & Judgment : **30.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed seeking a direction upon the Deputy Commissioner, Kamrup, Amingaon cum Collector to determine the compensation of the land acquired from the Petitioner as a commercial land and not as agricultural land.

2. A perusal of the writ petition shows that the Petitioner herein is a Society registered under the provisions of the Societies Registration Act, 1860. The said Society owns various plots of land. It is the case of the Petitioner that pursuant to the issuance of the Master Plan and the Zoning Regulation of the Greater Guwahati, 2025 the lands of the Petitioner falls under the "Public & Semi Public Zone".

3. It reveals from the records that the Notification bearing No. KRA.140/Bridge/2017/102/740 dated 08.06.2018 was issued under Section 3(1) of the Assam Land Requisition and Acquisition Act, 1964 (in short 'the Act of 1964') for requisition of various plots of land. In the said Notification

so issued, various plots of land belonging to the Petitioner were included. On the basis of the said Notification so issued, a Land Acquisition Case being L.A. Case No. 18/2018 was registered. Subsequent thereto, a Notification was issued on 14.09.2018 under Section 6 (1) of the Act of 1964 stating interalia that the Collector, Kamrup was pleased to decide the acquisition of the lands with effect from the date of publication of the said notice of the land which was requisitioned under Section 3(1) of the Act of 1964 of an area admeasuring 46 bighas 3 kathas 14 lechas in Village-Gouripur, Mouza – Sila Sundarighopa in the District of Kamrup for “construction of bridge over river Brahmaputra connecting to Guwahati – North Guwahati”. It is the case of the Petitioner that in the said Notification issued under Section 6 of the Act of 1964 the lands belonging to the Petitioner have been mentioned at Serial No. 31 and 32 of the said Notification i.e. lands pertaining to Dag No. 486 covered by Patta No. 102 and Dag No. 487 with the corresponding K. P. Patta No. 101. It is the further case of the Petitioner that in the said Notification, though the said lands were classified in the Master Plan as “Public & Semi Public Zone” but however the said lands were classified as agricultural land. It is therefore

the case of the Petitioner that the determination of the compensation was improperly done by the Collector, Kamrup and consequently the compensation awarded in terms with Section 11 of the Act of 1964 was inadequate. It is under such circumstances that the instant writ petition was filed under Article 226 of the Constitution seeking a direction upon the Collector to re-determine the compensation by taking into account that the lands are commercial lands.

4. This Court have duly taken note of the materials on record and have also heard the learned counsels for the parties. This Court finds it relevant to take note of Section 12 of the Act of 1964 which stipulates as under :-

“12. (1) The Collector shall in every case –

(a) *Where any person aggrieved by an award made under Sub-section (3) of Section 11 Makes an application requiring the matter to be referred to the Court; or*

(b) *Where there is any disagreement with regard to the compensation payable under Sub-section (4) of Section 11 on the application of the person entitled to compensation requiring the matter to be referred to Court, refer the matter to the decision of the Court.*

(2) Subject to the provisions of this Act, the provisions of the Land Acquisition Act, 1894 (Act I of 1894), shall mutatis mutandis apply in respect of any reference made to the Court under Sub-section (1).”

5. From a perusal of the said Section, it would be seen that in terms with Section 12(1) (a) of the Act of 1964 if a person is aggrieved with the

inadequacy of the compensation, the person concerned can file an application before the Collector. A statutory duty is cast upon the Collector thereupon to refer the said grievances of the person concerned to the Court. This Court further finds it relevant that Sub-Section (2) of Section 12 of the Act of 1964 clearly stipulates that the provisions of the Land Acquisition Act, 1894 shall duly apply mutatis mutandis to a reference to be made under Section 12 (1) of the Act of 1964. Accordingly, the provisions of Sections 18, 19, 31(2) of the Land Acquisition Act, 1894 will duly apply on the basis of legislation by incorporation.

6. This Court further finds it relevant to take note of that once an award has been passed under Section 11 of the Act of 1964, the Collector become functus officio. Under such circumstances, this Court at this stage after the passing of the Award cannot direct the Collector to re-determine the compensation. The inadequacy of the compensation has to be decided by the Court as defined in Section 2(b) of the Act of 1964.

7. In that view of the matter, the writ of mandamus which have been sought by way of the instant writ petition cannot be issued thereby directing the Deputy Commissioner, Kamrup /the Collector to re-determine

the compensation at this stage. Be that as it may, taking into account the provisions of Section 12 of the Act of 1964 and reading the same alongwith Section 18 and 31 (2) of the Land Acquisition Act, 1894, this Court grants the liberty to the Petitioner to submit an application before the Collector, Kamrup within 30 days from the date of the instant order seeking a reference to the Court as regards the inadequacy of the compensation. This Court further directs the District Commissioner, Kamrup, Amingaon (Land Acquisition Branch) upon receipt of the said application, to forthwith refer the said dispute for determination by the Court within 15 days therefrom.

8. Mr. R. Borpujari, the learned Standing Counsel for the Revenue and Disaster Management Department pursuant to the order passed by this Court on 21.08.2023 had produced the instructions alongwith the award statement which is kept on record and marked with the letter "X".

9. With the above observations and directions, the instant writ petition stands disposed.

JUDGE

Comparing Assistant