

GAHC010074312022



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

Case No. : WP(C)/3336/2021

SHAHIDUR RAHMAN AND 5 ORS
S/O. LT. MOSLEM UDDIN AHMEND
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.

2: OMAR ALI
S/O. LT. MOSLEM UDDIN AHMEND
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.

3: MOFIDUL ISLAM
S/O. LT. MOSLEM UDDIN AHMEND
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.

4: MOFAZZAL ISLAM
S/O. LT. MOSLEM UDDIN AHMEND
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.

5: ABDUL WAHAB
S/O. LT. MOSLEM UDDIN AHMEND

VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.

6: NURUL ISLAM
S/O. LT. MOSLEM UDDIN AHMEND
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
PIN-783382.
VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GUWAHATI-06.

2:THE DY. COMMISSIONER

BONGAIGAON
P.O. AND DIST. BONGAIGAON
ASSAM
PIN-783380.

3:THE ADDL. DEPUTY COMMISSIONER
(REV.)

BONGAIGAON
P.O. AND DIST. BONGAIGAON
ASSAM
PIN-783380.

4:THE CIRCLE OFFICER

BOITAMARI REVENUE CIRCLE
BOITAMARI
P.O. BOITAMARI
P.S. ABHAYAPURI DIST. BONGAINGAON
ASSAM
PIN-783389.

5:THE SECRETARY

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
3RD FLOOR
PTI BUILDING
4-PARLIAMENT STREET

NEW DELHI-01.
6:THE DEPUTY GENERAL MANAGER

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEV. CORPORATION LTD.
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
BRANCH OFFICE DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN-783301.
7:THE MANAGING DIRECTOR

ASHOKAPAPER MILL (ASSAM) LTD. UDYOG BHAWAN
BAMUNIMOIDAN
GHY. PIN-781021.
8:TAYEB ALI
S/O. JIYA ULLAH SHEIKH
VILL. CHATPAR
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
-783382.

9:ATOWAR RAHMAN
S/O. LT. MIJANUR RAHMAN
VILL. CHATPARA
P.O. AND P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM
783382.

Advocate for : MS. R CHOUDHURY
Advocate for : SC
REVENUE appearing for THE STATE OF ASSAM AND 8 ORS

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 to 4; Mr. C. Sarma, learned counsel for the respondent Nos. 8 & 9; Mrs. S. Roy, learned counsel for the respondent No. 7; and Mr. G. Baruah, learned counsel appearing on behalf of respondent/NHIDCL, representing respondent Nos. 5 & 6.

2. This is an application under Article 226 of the Constitution of India for issuance of writ in nature of certiorari/mandamus and or any other appropriate writ, order or direction of like nature.

3. The brief facts of the case of the petitioners is that the father of the petitioners, namely, Lt. Moslem Uddin Ahmed, was the absolute owner of the

land measuring 51 Bighas 3 Kathas and 11 lessas at village Koreya Pahar under Boitamari Revenue Circle in the District of Bongaigaon, Assam. In the year 1961, final Khatian was also issued in favour of said Lt. Moslem Uddin Ahmed. But, in the said final Khatian, the name of "Secretary Dong Committee" was also wrongly been recorded along with the name of the original Khatiandar- Moslem Uddin Ahmed. The father of the petitioners, accordingly, possessed the entire land till his death and was paying land revenue to the competent authority, who issued land holding certificate in his name on 11.02.2004. But after the death of the father of the petitioners, the name of Secretary/President of the so called "Achoni Ambari Dong Committee" had recorded their names for their wrongful gain in place of the deceased father of the petitioners. But within 3 (three) months, the name of the 3 (three) petitioners were recorded in the Record of Right (Jamabandi) by right of inheritance. Accordingly, till the year 2019, the petitioners were possessing the land peacefully without any disturbance from any corner. But, suddenly, in the middle part of the year 2019, the President/Secretary of said Committee filed a time barred petition before the Circle Officer, Boitamari, for mutation and in pursuant to the said petition, the Circle Officer registered a Misc. Case no. 17/2019 and issued notice to the petitioners. The petitioners, accordingly, appeared before the Circle Officer in Misc. Case No. 17/2019 and contested the case. During the pendency of the said Misc. Case No. 17/2019, the petitioner submitted a representation dated 03.07.2019 before the respondent no. 2 with a prayer for passing necessary order not to proceed with the case no. 17/2019, which is still pending without assigning any valid reason.

4. It is stated that the petitioners were regularly appearing before the Circle

Officer, Boitamari, in connection with Misc. Case No. 17/2019 and dates were fixed on 09.07.2019, 15.07.2019 & 30.07.2019. But, before 30.07.2019, the matter was transferred to respondent No. 3 without any intimation to the petitioners, which was registered as Revenue Appeal Case No. 01/2019, and the respondent No. 3 issued a notice to the petitioners on 18.07.2019 for their appearance on 20.07.2019, i.e. after only 1 (one) day. But on the next date, i.e. on 19.07.2019, the process server submitted a report to the respondent No. 3 to the effect that although the process server visited the village of the petitioners on 19.07.2019 to serve the notice, dated 18.07.2019, but the notice could not be served as he could not meet them. But, the respondent No. 3, without considering the report of the process server, passed the impugned order dated 20.07.2019 in the Revenue Appeal No. 01/2019, whereby, the respondent No. 4 was directed to strike out the name of the petitioners from the land record and asked to mutate the land in the names of the private respondents/defendants. The names of the private respondents/ defendants were accordingly mutated by violating the judicial order dated 22.07.2019, passed in Misc. (J) Case No. 49/2019, arising out of Title Suit No. 59/2019.

5. It is to be mentioned here that, the petitioners, as plaintiffs, instituted a title suit, being Title Suit No. 59/2019, before the learned Civil Judge, Bongaigaon, for declaration of right, title, interest and possession over the land in question and also prayed for temporary injunction under Order 39 Rules 1 & 2 *read with* Section 151 Code of Civil Procedure, which was registered as Misc. (J) No. 49/2019. The learned Civil Judge, Bongaigaon, also granted interim temporary injunction order vide order dated 22.07.2019 and restrained the respondent Nos. 2 & 4 not to pass any adverse order to change the existing

record of rights of the suit land and also restrained the office bearer of so called "Achuni Ambari Dong Committee" not to disturb the peaceful possession of the petitioners over the suit land. But, in spite of having knowledge about impugned order of injunction, dated 22.07.2019, the respondent No. 3 passed the order dated 20.07.2019 in Revenue Appeal No. 01/2019 by cancelling the mutation of the present petitioners. The petitioners, therefore, submitted a representation before the respondent No. 2 on 23.09.2020 to recall the aforesaid impugned order dated 20.07.2019, passed in Revenue Appeal No. 01/2019. But, nothing has been done till date without assigning any valid reason.

6. It is further stated on 20.05.2020, one notification was issued by the Ministry of Road Transport & Highways, Government of India, whereby, the government acquired the land of the petitioners measuring 25 Bighas 6 Kathas covered by Dag Nos. 58 & 62 under Patta No. 66 of village Koriya Pahar, along with others land, through the respondent Nos. 2, 3 & 4 in favour of the respondent No. 6 for the development of Multi Model Logistic Park at Jogighopa without any information to the present petitioners. The notice was issued to the present petitioners in a very arbitrary manner and in gross violation of the judicial order dated 22.07.2019, passed in Misc. (J) Case No. 49/2019. The respondent No. 6 also issued a letter on 26.05.2020 to the respondent No. 3 for publication of aforesaid in 2 (two) newspapers which is not sustainable in law and the same is liable to be set aside and quashed. The order of injunction, dated 22.07.2019, is still in force and has not been vacated till date and the respondent Nos. 2 & 4 also appeared in the Title Suit No. 59/2019 (T.S. No. 91/2021) and contested the case and hence, the respondent Nos. 2, 3 & 4 have no jurisdiction to acquire the land in question till disposal of the title suit. The

government notification, dated 20.05.2020, issued by the Ministry of Road Transport & Highways, Government of India, is liable to be set aside as no formalities were followed and without paying proper compensation to the present petitioners.

7. Further, in the year 2018-2020, the respondent No. 7, i.e. the Ashok Paper Mill (A) Ltd., completed the boundary wall at Jogighopa covering its entire land. But, subsequently, the respondent No. 4 issued the impugned notices dated 17.02.2021 and 06.03.2021 for demarcation of land covering Dag No. 56 and 55 under Patta No. 66 at Korea Pahar, which are adjacent to boundary wall of Ashok Paper Mill.

8. After receiving the said demarcation notice dated 17.02.2021, the petitioners submitted a representation, dated 20.02.2021, before the respondent No. 7 to stop the demarcation process in view of the fact that there is an existing interim order of injunction dated 22.07.2019, whereby, the defendants were directed not to disturb the peaceful possession of the petitioners from the land in question.

9. In Title Suit No. 59/2019, the respondent No. 2 (the Deputy Commissioner, Bongaigaon) and the respondent No. 4 (Circle Officer, Boitamari Revenue Circle) were made as defendant Nos. 1 & 2, who also contested the case and hence, they have full knowledge about the ad-interim injunction order dated 22.07.2019, which is still in force. But in violation of the said judicial order, the respondent Nos. 2, 3 & 4 have illegally acquired the land of the petitioners for the purpose of development of Multi Model Logistic Park at Jogighopa, which is

not permissible under law and as such, the impugned acquisition notification, dated 20.05.2020, and the impugned demarcation notices, dated 17.02.2021 & 06.03.2021, are liable to be set aside and quashed in the interest of justice.

10. It is further stated that though the impugned notification was issued on 20.05.2020 and the demarcation notices were issued on 17.02.2021 & 06.03.2021, yet the petitioner got the aforesaid documents only on the first week of July, 2021, and as such, there is no delay or laches on the part of the petitioners in approaching this Court and the petitioners were also prevented from approaching this Court due to Covid-19 pandemic and accordingly, prayed for stay of the operation of the impugned notification dated 20.05.2020 and the impugned demarcation notices dated 17.02.2021 & 06.03.2021.

11. The petitioners, accordingly, stated that they have made out a *prima facie* case against the respondent authorities and therefore, it is prayed to stay the operation of the impugned notification dated 20.05.2020 as well as the impugned demarcation notices dated 17.02.2021 & 06.03.2021.

12. 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 respondents/defendants from passing any order to change the existing records of rights of the suit land. But, the Additional Deputy Commissioner, Bongaigaon, had already passed an order dated 20.07.2019, i.e. prior to the order of injunction, whereby, the names of the petitioners/plaintiffs were strike out from the record of rights. Moreso, vide

the said injunction order, the official respondents/defendants were only restrained from changing the record of rights. But, the petition was filed by the official respondents/defendants before the learned District Judge, Bongaigaon, only for the demarcation of land which has been already acquired by the government after complying all required formalities. More so, vide order dated 19.04.2022, passed in CRP(I/O)79/2022, this Court has already passed the order for carrying out the demarcation as per order dated 05.04.2022, passed in Title Suit No. 91/2021 by the learned District Judge, Bongaigaon. However, 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 respondents to demarcate the land which has been already acquired by the government by obtaining all necessary formalities as per law.

13. Further, it is submitted by the learned Senior Government Advocate that the government is ready to pay the requisite compensation to the land owners and the title suit, being numbered as Title Suit No. 91/2021, is only a dispute between the private parties and the government is ready to pay 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. The owner of the land will definitely be entitled for the compensation for the acquisition of the land. The present writ petition is filed by the petitioner only

against the impugned notification dated 20.05.2020 for the acquisition of the land and impugned demarcation notices dated 17.02.2021 & 06.03.2021, issued by the Ministry of Road Transport & Highways, Government of India, and the Deputy Commissioner, Bongaigaon, & the Circle Officer, Boitamari Revenue Circle, i.e. respondent Nos. 2 & 4, respectively. But the process of acquisition has already been completed and the demarcation process is also completed, which is done in pursuance of order dated 19.04.2022, passed in CRP(I/O) 79/2022. The government respondents are ready to pay the adequate compensation for the acquisition of the land of the petitioners which is required for the completion of the project, i.e. Multi Model Logistic Park at Jogighopa, which is concerned of the public interest at large.

14. Mr. G. Baruah, learned counsel appearing on behalf of the respondent Nos. 5 & 6, has submitted that the notification, dated 20.05.2020, issued by the Ministry of Road Transport & Highways, Government of India, has already been published in 2 (two) newspapers, one in English and another in local vernacular language, and the land is acquired by the Government of India for the development of Multi Model Logistic Park and the Deputy General Manager of NHIDCL had already sent the letter dated 26.05.2020, to the Additional Deputy Commissioner-cum-Competent Authority, Land Acquisition, Bongaigaon District, for publishing of 3A Gazettee Notification, dated 20.05.2020, for acquisition of land for the said project. Thereafter, under the provision of Section 3D of National Highways Act, 1956, declaration of acquisition, so 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 at Multi Model Logistic Park site at Jogighopa.

15. It is further submitted by the learned counsel appearing on behalf of the respondent Nos. 5 & 6 that 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 side, 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 writ petition is liable to be dismissed.

16. Mr. G. Baruah, learned counsel appearing on behalf of the NHIDCL, further relied on the decision of Hon'ble Supreme Court in **Ramniklal 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."

17. So, from the record as well as from the submissions of the learned counsels appearing on behalf of the parties, it is seen that the title suit, being Title Suit No. 91/2021 (Title Suit No. 59/2019), is for the land dispute between the 2 (two) private parties, i.e. the plaintiffs/petitioners and the private respondents/defendants, where the petitioners claimed their right, title, interest and possession over the said land and accordingly, filed the Title Suit for declaration of decree in their favour. In the said title suit, one injunction petition was also filed by the petitioners/plaintiffs seeking temporary injunction restraining the private respondents/defendants not to disturb the petitioners from their peaceful possession over the suit land till disposal of the title suit and also they made a prayer before the learned Court below to restrain the government respondents not to change the mutation or not to grant any mutation in favour of the private respondents/defendants.

18. It is also seen that during the pendency of the said title suit, the government issued notification on 20.05.2020 for acquisition of land and also issued 2 (two) notifications for demarcation, dated 17.02.2021 & 06.03.2021,

and the present writ petition is filed against the said 3 (three) notifications issued by the government for acquisition of land as well as for demarcation of the same to construct the Multi Model Logistic Park at Jogighopa.

19. From the affidavit-in-opposition as well as from the submissions made by the learned counsel appearing on behalf of the respondent Nos. 5 & 6, i.e. the NHIDCL, it is seen that the acquisition process was completed observing all necessary formalities as per Section 3A, 3C, 3D, 3E, 3G, 3F & 3H of National Highway Act, 1956. The petitioner also did not raise any dispute in regards to the acquisition of the land by the government for the said project. However, the present writ petition is filed only against those notification and notices which are termed as illegal and arbitrary. But, from the entire case record and also from the annexures filed by the respondent Nos. 5 & 6, it is seen that the National Highway Authority has complied all necessary formalities before acquisition of the land of the petitioners, along with other persons, which is for the project having the interest of general public at large. Moreso, it is seen that the government respondent Nos. 2, 3 & 4 are ready to provide adequate compensation to the actual owner of the land and it was submitted by the learned Senior Government Advocate, Mr. D. Nath, that the adequate compensation has already been given by the National Highway Authority which is still in their custody and the same will be disbursed after the disposal of the Title Suit No. 91/2021, which is still pending before the Court of learned District Judge, Bongaigaon. Moreso, it was submitted by the learned counsel appearing on behalf of NHIDCL as well as the learned Senior Government Advocate that it is the first project in the entire Northeast India and considering the public interest at large, development of the said project is necessary, which has been

already delayed due to obstruction created by the present petitioners/plaintiffs.

20. It cannot be disputed that the public interest is the paramount consideration and National Highway Authority can be said to be best judge to decide which land to be acquired and which not to be acquired for the purpose of construction of the Highways [SLP 9314/9315/2022, G. Narsing Rao (Died) Thr. Lrs. Vs. The National Highways Authority of India].

21. So, considering the entire discussions made above, it is seen that the acquisition process of the land has been completed by observing all required formalities as per National Highway Act, 1956, and in the same time it is also seen that the demarcation has also been done by the government respondents pursuant to order dated 19.04.2022, passed by this Court in CRP(I/O) No. 79/2022, and hence, the question of staying the operation of impugned notification dated 20.05.2022 and the impugned demarcation notices dated 17.02.2021 & 06.03.2021 do not arise, rather it will affect the interest of the public.

22. In the result, I find no merit in this writ petition and accordingly, the same stands dismissed. However, there shall be no order as to cost.

JUDGE

Comparing Assistant