



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

W.A No.232 of 2022

Sri Sekhar Dutta

S/O:- Sri Sukumar Dutta

R/O: N.N. Dutta Lane, Rongpur, Part IV,

P.O: Silchar-788009, District: Cachar, Assam being the
duly appointed attorney of 25 nos of villagers by virtue
of Special Irrevocable Power of Attorney executed in
favour of the appellant

.....Appellants

-Versus-

1. The State of Assam

Represented by the Chief Secretary, Govt. of Assam
Revenue and Disaster Management (LR) Department,
Dispur, Guwahati-6

2. The Secretary

Government of Assam, Revenue and Disaster
Management (LR) Department, Dispur, Guwahati-6,

3 The Joint Secretary,

Govt. of Assam, Revenue and Disaster Management (LR)
Department, Dispur,
Guwahati-6

4. The Deputy Commissioner,

District Cachar, Silchar, Assam

5. The Addl. Deputy Commissioner,

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

Advocate for the appellant : Ms. B. Devi, Advocate

Advocate for the respondents : Mr. D. Mazumder, Addl. AG, Assam and
Ms. N. Bordoloi, SC, Revenue Department

Date of Judgment & Order : **08.02.2023**

JUDGMENT AND ORDER

[Soumitra Saikia (J)]

Heard Ms. B. Devi, learned counsel for the appellant. Also heard Mr. D. Mazumder, learned Addl. Advocate General, Assam for the State and Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondents.

2. This writ appeal is preferred by the appellant being aggrieved by the order dated 25.08.2017 passed by the learned Single Judge in W.P(C) No. 1866/2014 whereby the learned Single Judge held that in view of the denial by the respondent No. 4, namely Deputy Commissioner, Cachar, the claim of the petitioner

that the possession of the land in question belonging to the petitioner was handed over to the respondent authorities. The learned Single Judge also held that as disputed questions of facts are involved, declined to invoke the writ jurisdiction and accordingly, disposed of the writ petition with a direction to the petitioner to raise his entitlement before the appropriate forum, if any. Aggrieved by the said findings of the learned Single Judge, this writ appeal is presented by the appellant on the following grounds.

"6.1 *For that the Hon'ble Single Judge failed to take into consideration the legal point involved in the writ petition which is being covered by the provision of the Land Acquisition Act, 1894 and as such the impugned judgment and order passed by the Hon'ble Single Judge is liable to be set aside and quashed.*

6.2. *For that the Hon'ble Single Judge while passing the impugned Judgment and Order had failed to appreciate the fact that the remedy available to the petitioner and there is violation of any mandatory provision of any Statue and in absence of any documents which would go to show that the possession of the land has not been handed over the finding of the Hon'ble Single Judge is perverse and as such the impugned Judgment and Order passed by the Hon'ble Single Judge is liable to be set aside and quashed.*

6.3. *For that the Hon'ble Single Judge while passing the impugned Judgment and order misconstrued the settled principle of law as enumerated in Section 48(2) of the Land Acquisition Act, 1894 which make it obligatory for the Collector/Deputy Commissioner to determine the amount of compensation due for the damages suffered by the owner in consequence of any notice or of any proceeding there under but the Hon'ble Single Judge failed to deal with these vital aspect of the matter and thereby arrived at an erroneous finding and as such the impugned*

Judgment and Order of the Hon'ble Single Judge is liable to be set aside and quashed.

6.4. *For that the Hon'ble Single Judge while passing the impugned Judgment and Order arrived at an erroneous finding by drawing logical inference that since the respondents have denied taking possession of the land as such the contention of the writ petitioner is a disputed question of fact and therefore, devoid of any merit for adjudication before this Hon'ble Court which is perverse and as such the impugned Judgment and order is liable to be set aside and quashed.*

6.5. *For that the respondent No. 4 being the Collector/Deputy Commissioner was bound to determine the amount the compensation immediately after issuance of notification for derequisition of the land and even after submission of representations the respondents authority did not responded which is reflective of the high handed attitude of the respondent authorities which can be enforced by way of a writ petition under Article 226 of the Constitution of India but the Hon'ble Single Judge committed error in passing the impugned Judgment and Order without ascertaining this vital aspect of the matter and thereby arrived at an erroneous finding as such the impugned Judgment and Order is liable to be set aside and quashed.*

6.6 *For that the Hon'ble Single Judge failed to appreciate the fact that the respondent authorities were duty bound to pay compensation from the date on which the land was acquired till the date of derequisition and as such in absence of any material to show to the contrary the denial of compensation amounts to violation of principle of natural justice, the impugned Judgment and Order is based on perverse finding and the same is liable to be set aside and quashed.*

6.7 *For that the Hon'ble Single Judge has passed the impugned Judgment and Order in a capricious manner putting much reliance on the contention of the respondents which has vitiated the impugned Judgment and Order as such the same is liable to be set aside and quashed.*

6.8 *For that in any view of the matter the impugned Judgment and Order of the Hon'ble Single Judge is liable to be set aside and quashed."*

3. The appellant claimed to be the Power of Attorney holder of the owners of plots of land situated in Village: Indragarh Block, Srikona, Porgona Chatla Haor in the district of Cachar, Assam. It is contended that by way of a Notification No. RLA.40/2009/12 dated 08.04.2009, the Government of Assam notified the land measuring 2121 Bighas 0 Kathas 8 Chataks situated at Village Indragarh Block Srikona, Porgona Chatla Haor in the district of Cachar, Assam to be required for public purposed namely, for construction of Indian Army Campus at Srikona.

4. It is contended that the plots of land belonging to several land owners were included within the specifications mentioned in the said notification.

5. It is contended that on the basis of the said Notification LA Case No. 5/2008-09 was initiated. Subsequently, the State respondents vide Notification No. CLA. 40/2009/298 dated 12.10.2011 issued under Section 48(1) of the Land Acquisition Act of 1894 withdrew from the acquisition of land required for the Indian Army in said village covered by Notification No. RLA.

40/2009/2, dated 08.04.2009 published at page 124 of the Assam Gazette of the 8th April, 2009.

6. It is contended by the appellant that vide the said Notification dated 08.04.2009, Government had authorized the concerned Officers along with their servants/workmen to enter upon and survey the land and do all acts required or permitted under Section 4(2) of the Act. It was further specified in the said Notification that any objections to the acquisition, if any, filed under Section 5-A, by any persons in interested within the meaning of that section before the Collector of Cachar within 30(thirty) days from the date of publication of Notification will be considered.

7. The further case of the appellant is that over the lands which were acquisitioned by the Government, homesteads and huts of about 25 nos. of villagers were situated and who are represented by the appellant by virtue of a special power of attorney. It is contended that pursuant to the acquisition, the land was taken into possession by the Government and survey works were stated to have been conducted upon the land. The said land remained in possession with the Government for almost 3 years and during this

period, valuable trees and belongings of the said 25 nos. of villagers were destroyed or taken away illegally by some other persons of the locality. Thereafter, by another Notification No. CLA. 40/2009/298 dated 12.10.2011 in L.A. Case No. 5/2008-09, it was notified under Section 48(1) of the Land Acquisition Act of 1894 that the Government of Assam has withdrawn from the acquisition of land required for the Indian Army in Village: Indragarh Block, Ph- Chatla Haor in the district of Cachar. However inspite of the relinquishment by the Government in pursuance to Notification dated 12.10.2011, the possession of the said land till date has not been handed over back to the 25 nos. of villagers by the Government. The said villagers were not even aware of the issuance of the Notification for relinquishment of land acquired and upon having subsequently being made aware of the relinquishment by the Government. The said villagers through the appellant preferred a representation dated 27.08.2013 addressed to the respondent No. 4, namely the Deputy Commissioner, Cachar intimating that the land in question has not been handed over to the land owners and further prayed for grant of compensation of Rs. 47,50,000/- to the persons affected.

However, despite the said notification, no initiative was taken by the respondent to determine the amount for compensation due to the land owners and to pay the amount as required. Since, no response was forthcoming from the respondent, another representation dated 09.10.2013 was addressed to the respondent No. 4 by the said 25 nos. of villagers through the appellant, which was more of a reminder to the earlier representation filed. The said representation was stated to have been received in the Office of the Deputy Commissioner on 09.10.2013 itself. According to the appellant, the land owners are entitled to be compensated under Section 36 of the Land Acquisition Act, 1894. However, no compensation has yet been released by the Government till date. It is further contended that although vide relinquishment Notification expressing the desire of the Government relinquish the land acquired. The said land is still in the possession of the Government and has till date not been handed over to the land owners. Before the learned Single Judge, an affidavit was filed by the Deputy Commissioner, Cachar where it was pleaded that the land in question was neither acquired nor possessed by the Government and on the contrary, the pattadars

and interested persons are still enjoying their right and title over the land. It was averred in the affidavit that the Indian Army for whose purpose the land was proposed to be acquired, found the land to be low lying and also a substantial portion of the land remains flooded and not suitable for the purpose intended and therefore, the de-requisition notification dated 12.10.2011 was published. However, the land in question was never acquired nor possession taken over from the pattadars.

8. In response to the affidavit-in-opposition, the appellant as the petitioner also filed an affidavit-in-reply. The appellant reiterated his contentions made in the writ petition and further submitted that Settlement Officers and other field Staffs had conducted the necessary survey and distributed the copies of the Notification to the respective pattadars/ land holders of the concerned land which was sought to be acquisitioned. It is contended that Zirath has also prepared by the Settlement Office Staffs and L.A. Staffs. According to the appellant, de-requisition Notification 12.10.2011 was published more than three years after the publication of the

Acquisition Notification and denied the averments of the respondent that the land was never acquired.

9. The learned Single Judge upon consideration of the matter came to the conclusion that disputed questions of facts are involved and therefore, declined to invoke the writ jurisdiction and directed the appellant to approach appropriate forum, if available.

10. Before this Court, it was urged by the appellant that the appellant referring to the Notification dated 12.10.2011 issued in L.A. Case No. 5/2008-09, which is enclosed to the affidavit filed by the Deputy Commissioner, Cachar. It is contended that the said Notification refers to Section 48(1) of the Land Acquisition Act of 1894. The learned counsel for the appellant submits that Section 48(1) prescribes compensation to be awarded when acquisition is not contemplated. As such since from their own Notification issued by the respondent/ authorities, it is apparent that they have invoked powers under Section 48(1) of the Land Acquisition Act, 1894. The entitlement of the compensation to the appellant cannot be disputed and the compensation due has to be released as per the mandate of the Act of 1894.

11. During the course of the hearing, since the Government maintained its stand that the land was never acquired nor possessed, a further affidavit was directed to be filed before this Court.

12. In pursuance to the directions of this Court, an affidavit was filed on behalf of respondent Nos. 4 & 5. By the said affidavit, it was contended that withdrawal of acquisition under Section 48(1) is required only if notice under Section 9 of the Act was issued. Moreover, withdrawal Notification under Section 48(1) of the Act would entail determination and payment of compensation as contemplated under Section 48(2) of the Act which would put unnecessary and unjustified burden on the Government for payment of such compensation. It was averred in the said affidavit that after publication of the Notification under Section 4 of the Act, no further steps as required under Section 4(2) or any other provisions of the Act including under Section 9 of the Act were taken. Consequently, no Officer was appointed to enter upon the land and cause any survey or verification to the land, building, dwelling-house etc. Such steps were not taken in view of the intimation received from the Indian Army that land was not required. Since there was no notice

issued under Section 9(1) of the Act, the question of withdrawing from the acquisition under Section 48(1) did not arise. The respondents averred that due to misconception of law, the authority proceeded as per Section 48(1) of the Act and which confusion may have arisen because of the language in Paragraph-100 of the Assam Land Acquisition Manual issued by the Directorate of Requisition Acquisition and Reforms. Reliance was also placed on the Judgment of the Apex Court in ***State of Madhya Pradesh and Ors. Vs. Vishnu Prasad Sharma and Ors.*** reported in ***AIR 1966 SC 1593*** as well as the Judgment of Gujarat High Court in ***C.C. Gandhi Vs. State*** reported in ***(1980) 2 GLR 132***. Relying on the Judgment, it is contended that withdrawal from acquisition under Section 48(1) is called for only when notice under Section 9 of the Act is issued. However, in the present case, after issuance of the preliminary Notification under Section 4, no Officer as required under Section 4(1) was authorized to enter the specified land. It is further averred in the affidavit that the Notification dated 12.10.2011 issued under Section 48(1) of the Act may be required to be cancelled or withdrawn under Section 4(1) of the Act, which

however, the respondents have not proceeded to in view of the present proceedings pending before this Court. The relevant paragraph of the said affidavit is extracted below:

"4. *That the deponent states that on 26.10.2022 when the instant writ appeal was listed and then up by this Hon'ble Court for consideration, one of the questions that came up for consideration was if after issuance and publication of the initial notification u/s 4 of Act, no further progress in the matter of acquisition of the land was made due to the intimation given by the Requiring Authority i.e., the Indian Army vide letter dated 08.11.2010 to the effect that the land is not required by them, whether the authority was required to withdraw from acquisition u/s 48(1) of the Act or simply an order/notice of withdrawal or rescission of the preliminary notification u/s 4 of the Act itself would suffice. Because, withdrawal from acquisition u/s 48(1) is required only if notice u/s 9 of the Act was issued. Moreover, a withdrawal u/s 48(1) of the Act would entail determination and payment of compensation as contemplated u/s 48(2) of the Act putting necessary and unjustified burden of payment of such compensation to pattadars/interested persons to which they are not entitled.*

5. *That in the instant case after the publication of preliminary notification u/s 4 of the Act not further steps u/s 4(2) or any other provisions of the Act including steps u/s 9 of the Act were taken. As a result, no Officer was appointed to enter upon the land and cause damage to the land, building, dwelling-house etc. As stated in the earlier Affidavit-in-Opposition no possession of the land was taken from the pattadars/interested persons. Because, after the publication of preliminary notification the Indian Army informed that the land was not required by them.*

6. *That since no notice u/s 9(1) of the Act was issued the question of withdrawing from the acquisition u/s 48(1) did not arise. This will be evident also from the fact that as stated above after the Indian Army informed the Collector, Cachar, Silchar that they have no requirement of the land in question vide letter dated 08.11.2010 the respondents decided to withdraw the*

notification u/s 4(1) itself. But due to misconception of the law the authority proceeded as per Section 48(1) of the Act. It is pertinent to mention herein that the confusion might have arisen because of the language of paragraph 100 of the Assam Land Acquisition Manual issued by the Directorate of Requisition, Acquisition and Reforms. The Judgment of the Hon'ble Supreme Court in State of Madhya Pradesh and Ors. –vs- Vishnu Prasad Shamra and Ors reported in AIR 1966 SC 1593 as well as Judgment of the Hon'ble Gujarat High Court in C.C. Gandhi –vs- State reported in (1980) 2 GLR 132 clearly held that unless notice under section 9 of the Act is issued withdrawal from acquisition under Section 48(1) is not necessary and all that the Government has to do is to pay for the damage cause as provided in Section 5.

But in this case after issuing of preliminary notification u/s 4 of the Act no Officer or his servants or workmen entered upon for survey or to take levels or to do any other act under Sub-section 2 of Section 4 of the Act. As a result, the writ petitioners and the pattadars/interested persons are not entitled to any payment as contemplated u/s 5 of the Act. The writ petition/writ appeal is therefore, liable to be dismissed.

7. *That in view of the aforesaid, the respondents may have to issue a fresh notification cancelling and/or withdrawing the notification dated 12.10.2011 u/s 48(1) of the Act and to issue a fresh notification to rescind and/or withdraw the notification u/s 4(1) of the Act if leave for the same is granted by this Hon'ble Court. It is because when this Hon'ble Court is in session of the matter the respondents cannot carry out a parallel proceeding. "*

13. The learned counsels for the parties have been heard. Pleadings have been duly perused and the Judgments referred to have also been taken note of.

14. A perusal of the Land Acquisition Act, 1894 reveals that publication of preliminary Notification expressing the intention of the

Government for acquisition of any land for public premises is required to be issued under Section 4.

15. As per the provisions of the Act, such Notification is required to be published in the newspapers. Pursuant to such publication, an Officer for this purpose will have to be authorized by the Government allowing the said authorized Officer along with his servants and workmen to enter upon and survey and take levels of the land etc. and to do all other acts necessary to ascertain whether the land is adapted for such purposes or not.

16. Under Section 5 of the Act, the Officer so authorized will pay for the damages at the time of entry of the land. Under Section 5(A), any person interested in any land which has been notified under Section 4(1) shall may object to the acquisition of the land as specified in the Notification. The said objection can be filed within 30 days from the date of publication of the notification. Every such objection shall be made to the Collection in writing, and after an opportunity of being heard is granted to the person concerned. The Collector after hearing all such objections and making of such inquiry, if any, as may be required, may either make a report in

respect of the land which has been notified under Section 4(1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendation on the objections together with the record of the proceedings held by him for the decision of that Government. The decision of the Government on the objections shall be final. After considering of the recommendation of the Collector under Section 5-A , the Secretary to the Government shall make a declaration that the specified land is needed for public purpose. Provided that no such declaration is made unless the compensation to be awarded for such property is paid. Every such declaration shall be published in the office Gazatte and in two daily newspapers circulating in the locality.

17. In view of the specific provisions of the Act of 1894, from the pleadings available before us, we find that pursuant to the Notification issued under Section 4(1), no other Notification has been issued nor any authorized officer has been appointed. The contention of the appellant is that the land was under the possession of the Government and their Officers and Servants had entered upon the land for survey and consequently, certain

damages were caused to the crops available on that land is disputed by the respondents. The appellant has also not been able to furnish any order etc. in support of such contentions.

18. In the context of acquisition of land under Land Acquisition Act, 1894 and the interpretations of the various sections, a reference is required to be made to the Judgment of Apex Court relied upon by the respondent in ***Vishnu Prasad Sharma (Supra)***. Although in that case, the issue was whether a number of declaration under Section 6 of the Land Acquisition Act, 1894 can be issued successively in respect of different pieces of land included within the locality specified in a Notification issued under Section 4 of the Act, the majority view is that the scope of Section 6 does not contemplate issuance of only a single Notification. It was held by the Apex Court that in a given case where notification under Section 4 included both arable and waste land as also lands of other descriptions, it will be necessary to issue to separate declaration under Section 6 in respect of different kinds of lands. However, in the context of the interpretation of the provisions of Sections 4, 5 and 6, the Apex court has authoritatively interpreted this provision

in this Judgment. In this Judgment, the Apex Court held that the Act of 1894 provides for acquisition of land of persons without their consent, though compensation is paid for such acquisition; the fact however remains that the land is acquired without the consent of the owner thereof and under such circumstances the provisions of the statute must be strictly construed as it deprives a person of his land without his consent. In interpreting these provisions, the Court must keep in view on the one hand the public interest which compels such acquisition and on the other hand, the interest of the person who is being deprived of his land without his consent. It was held by the Apex Court that a notification under Section 4 of the Act. The purpose of the notification under Section 4(1) is to enable the Government to take action under Section 4(2) in the matter of survey of land to decide what particular portion of the land as specified in the notification under Section 4(1) will be suitable for acquisition. Another purpose of the notification under Section 4(1) is to give opportunity to the persons owning the land in that locality to make objections under Section 5-A. These objections are considered by the Collector and thereafter a report containing his

recommendation on the objections is forwarded to the appropriate Government whose decision on the objection is final. It is the Government who finally decides these objections and thereafter proceeds to make declaration under Section 6. The Government has to be satisfied under Section 6 after considering the report made under Section 5-A that the particular land is needed for public purpose or for a company and then it makes a declaration to that effect under Section 6. A conjoint reading of Sections 4, 5-A and 6 makes, it clear that the notification under Section 4(1) specified merely declares the locality of the land sought to be acquired and thereafter under Section 4(2) survey is made to consider which portion of the land is suitable for the purpose for which the land is proposed to be acquired. The affected land owners are entitled to raise their objections against the acquisition proposed under Section 5-A and on the basis of which a report is to be forwarded by the Collector/Deputy Commissioner to the Government. It is the Government who finally decides what particular land out of the said locality specified in the notification under Section 4(1) will be acquired. It is upon such finding that the Government is required to

make a declaration under Section 6 notifying the particular land that is needed. The relevant paragraphs of the Judgment is extracted below:

"15. *It is in this background that we have to consider the question raised before us. Two things are plain when we come to consider the construction of Sections 4, 5-A and 6. The first is that the Act provides for acquisition of land of persons without their consent, though compensation is paid for such acquisition; the fact however remains that land is acquired without the consent of the owner thereof and that is a circumstance which must be borne in mind when we come to consider the question raised before us. In such a case the provisions of the statute must be strictly construed as it deprives a person of his land without his consent. Secondly, in interpreting these provisions the court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is not in dispute that it is open to the appropriate government to issue as many notifications as it deems fit under Section 4(1) even with respect to the same locality followed by a proper notification under Section 6 so that the power of the appropriate government to acquire land in any locality is not exhausted by the issue of one notification under Section 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification under Section 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under Section 4(1) and the notification under Section 6 in case prices have risen in the meantime. This delay is likely to be greater if successive notifications under Section 6 can be issued with respect to land comprised in the notification under Section 4 with greater consequential loss to the person whose land is being acquired if prices have risen in the meantime. It is however urged that prices may fall and in that case the person whose land is being acquired will stand to gain. But as it is open to the appropriate government to issue another notification under Section 4 with respect to the same locality after one such notification is exhausted by the issue of a*

notification under Section 6, it may proceed to do so where it feels that prices have fallen and more land in that locality is needed and thus take advantage of the fall in prices in the matter of acquisition. So it is clear that there is likely to be prejudice to the owner of the land if the interpretation urged on behalf of the appellant is accepted while there will be no prejudice to the Government if it is rejected for it can always issue a fresh notification under Section 4(1) after the previous one is exhausted in case prices have fallen. It is in this background that we have to consider the question raised before us.

16. *As we have said already, the process of acquisition always begins with a notification under Section 4(1). That provision authorises the appropriate government to notify that land in any locality is needed or is likely to be needed for any public purpose. It will be noticed that in this notification the land needed is not particularised but only the locality where the land is situate is mentioned. As was observed by this Court in Babu Barkya Thakur v. State of Bombay [(1961) 1 SCR 128] a notification under Section 4 of the Act envisages a preliminary investigation and it is only under Section 6 that the Government makes a firm declaration. The purpose of the notification under Section 4(1) clearly is to enable the Government to take action under Section 4(2) in the matter of survey of land to decide what particular land in the locality specified in the notification under Section 4(1) it will decide to acquire. Another purpose of the notification under Section 4(1) is to give opportunity to persons owning land in that locality to make objections under Section 5-A. These objections are considered by the Collector and after considering all objections he makes a report containing his recommendation on the objections to the appropriate government whose decision on the objections is final. Section 5-A obviously contemplates consideration of all objections made to the notification under Section 4(1) and one report thereafter by the Collector to the Government with respect to those objections. The Government then finally decides those objections and thereafter proceeds to make a declaration under Section 6. There is nothing in Section 5-A to suggest that the Collector can make a number of reports dealing with the objections piecemeal. On the other hand Section 5-A specifically provides that the Collector shall hear all objections made before him and then make a report i.e. only a single report to the Government containing his recommendation on the*

objections. It seems to us clear that when such a report is received from the Collector by the Government it must give a decision on all the objections at one stage and decide once for all what particular land out of the locality notified under Section 4(1) it wishes to acquire. It has to be satisfied under Section 6 after considering the report made under Section 5-A that a particular land is needed for a public purpose or for a company and it then makes a declaration to that effect under Section 6. Reading Sections 4, 5-A and 6 together it seems to us clear that the notification under Section 4(1) specifies merely the locality in which the land is to be acquired and then under Section 4(2) survey is made and it is considered whether the land or part of it is adapted to the purpose for which it is required and maps are prepared of the land proposed to be taken. Then after objections under Section 5-A have been disposed of the Government has to decide what particular land out of the locality specified in the notification under Section 4(1) it will acquire. It then makes a declaration under Section 6 specifying the particular land that is needed.”

19. Although it is submitted by the respondents that the objections of the land owners have been considered but since the land itself was not acquired, there can be no question of grant of any compensation. Whereas it is the contention of the appellant that the land was under the occupation of the respondent authorities and damages to crops and were caused during the survey undertaken. Although two affidavits have been filed by the respondents, it is not evident from the pleadings as to whether the Deputy Commissioner had actually decided on the objections raised by the affected land owners regarding the encroachments of land. The fact remains that

the respondent authorities had indeed issued the notification dated 12.10.2011 apparently under Section 48(1) of the Land Acquisition Act and Section 48(1) of the Land Acquisition Act prescribes payment of compensation when acquisition is not completed.

20. In view of the admission by the respondents in the subsequent affidavit filed before this Court that the reference to section 48(1) was wrongly mentioned, we consider it appropriate that the matter be relegated to the Deputy Commissioner, Cachar, Silchar to look into the grievances of the actual land owners and after verification of the records pertaining to the acquisition of the land in question and decide whether any survey at all was caused pursuant to the issuance of Section 4 of the Notification dated 08.04.2009 and as to whether in the process of such survey any damage was caused to the crops of the land belonging to the land owners. The Deputy Commissioner, Cachar will thereafter, upon hearing the land owners and upon verification of the records pass a speaking order, copies of which should be served upon the land owners.

21. The hearing shall be conducted within a period of 8 weeks from the date of receipt of certified copy of this order by giving due notice and opportunity of hearing to the affected land owners.

22. The appellant is also permitted to communicate a copy of this order to the Deputy Commissioner, Cachar for compliance.

23. In view of the above, the writ appeal stands disposed of. No order as to costs.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant