

GAHC010140412023



IN THE GAUHATI HIGH COURT

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

1. Writ Appeal No.280/2023

Tarini Deka And 6 Ors.

..... . Appellants

VERSUS

The Union Of India And 14 Ors.

..... Respondents

2. Writ Appeal No.309/2023

Pankaj Lochan Baishya And 170 Ors.

.....Appellants

VERSUS

The Union Of India And 16 Ors.

..... Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Appellants : Mr. M. Bhagabati
Ms. B. Talukdar

Advocate for the Respondents : Mr. D. Saikia, GA, Assam
Mr. R. Borpujari, SC, Revenue
Mr. R.K. Bora, Addl. Sr. GA
Mr. J. Roy, Sr. Advocate, NRL

Ms. R. Borah, Advocate, R-4

Date of Hearing : 14.08.2023

Date of Judgment : 14.08.2023

JUDGMENT & ORDER

(S.P. Khaund, J)

1. Heard Mr. M. Bhagabati, learned counsel for the appellants. Also heard Mr. D. Saikia, learned Advocate General, Assam, Mr. R. Barpujari, learned Standing Counsel, Revenue, Mr. R.K. Bora, learned Addl. Sr. Government Advocate, Mr. J. Roy, learned Senior Counsel, NRL assisted by learned counsel Mr. D. Das and Ms. R. Borah, learned counsel for respondent No. 4.

2. These intra court appeals are preferred by the appellants with prayer to set aside and quash the common judgment and order dated 22.05.2023 passed by the learned Single Judge in WP(C) 3989/2022 and WP(C) 3528/2022 and to direct the respondent authorities to stay the entire process of requisition and acquisition of land initiated for setting up of the Marketing Terminal of Numaligarh Refinery Limited.

3. Brief facts of the case are that the appellants are residents of different villages situated under the Hajo Revenue Circle in the district of Kamrup. The Government of Assam, vide several notices and orders dated 27.12.2021, 05.01.2022 and 13.01.2022, 23.03.2022 etc. issued by the Collector and the Deputy Commissioner, Kamrup, Amingaon had initiated a process for requisition of 427 bighas of land under Hajo Revenue Circle for setting up of a market terminal by Numaligarh Refinery Limited, covering the villages- Pacharia

(Napara, Gariapara), No. 1 Singimari & Alikakh.

Being aggrieved, the persons having interest over the land and being stakeholders filed two Writ applications being WP(C) No. 3528/2022 and WP(C) No. 3989/2022.

Vide order dated 08.07.2022, the learned Single Judge hearing the matter in detail was pleased to pass a common order staying the process of requisition/ acquisition by directing *status-quo* to be maintained and requiring the respondent authorities to clarify various issues.

However, vide a common final judgment passed on 22.05.2022, the aforementioned writ petitions were dismissed and the interim order dated 08.07.2022 was vacated.

The common judgment and order dated 22.05.2023 is subjected to challenge in these two writ appeals.

4. It may be noted that as per the Assam Land (Requisition and Acquisition) Act, 1964, (the 1964 Act for short), requisition and acquisition can only be made by the State Government or, any person authorised by the government in case of necessity to do so for maintaining supplies, essential services for accommodation etc. for providing land individually or in groups to landless, flood affected or displaced persons or to a Society registered under the Assam Co-Operative Societies Act, 1949, or a Company incorporated under the Companies Act, 1956, formed for benefit and rehabilitation of landless, flood affected or displaced persons or to provide land for border fencing and allied works. It is the case of the appellant/writ petitioner that the instant notices dated 27.12.2021, 05.01.2022 and 03.01.2022 were issued in 'Form-A' in a wrongful manner by modifying the prescribed format under the 1964 Act and rules and by violating the prevailing procedure.

5. It is averred that notices for requisition of land were not served to many of the stakeholders/owners/ possession holders of the land sought to be acquired, yet more than 70% of the people who have received notices have submitted written objection against the proposed requisition of land. It is alleged that notices were issued in the name of only one person, Mr. XXX and '10 others', and many stakeholders included and other interested persons were not even aware of the proposed requisition/ acquisition.

6. It is also averred by the appellants that the plots of land sought to be provided for setting up the marketing terminal by NRL are basically agricultural and residential in nature and the site is situated adjacent to the Singimari market as well as the first cold storage of agricultural products ever built in the North Eastern Region. The appellants have projected their own grievances as well as those of other local residents that the proposed market terminal dealing with petroleum products will deprive the local residents of agricultural activities, entailing loss of livelihood, pollution in the area with hazardous substances, pollution of water bodies and so on and so forth.

7. It is the pleaded case of the appellants that vide order dated 05.04.2022, the Deputy Commissioner, Kamrup, Amingaon rejected the objections and grievances of the appellants as well as the other land owners without considering their objections. On the contrary a misleading statement had been incorporated in the order of the Deputy Commissioner that less than 50% of the local residents had objected to the requisition process. It was wrongly observed in the order that the requisition and acquisition was meant for the greater interest of the public and for industrial development and for generating employment opportunities.

8. It is contended that vide order dated 10.05.2022 issued by the Kamrup Collector and Deputy Commissioner, Kamrup, Amingaon, without following the basic requirement of hearing all the stakeholders, the district administration directed the owner/tenant/person in occupation of the land described in the schedule to surrender or deliver possession of the land to the Circle Officer, Hajo Revenue Circle within 10 days from the date of service of the order.

9. It is further alleged that the company NRL cannot be considered as a "State" within the meaning of Article 12 of the Constitution of India.

10. Per contra, it has been averred by the respondents that the land acquisition proceedings have been initiated under the Provisions of the Assam Land (Requisition & Acquisition) Act, 1964. Notices were issued to all the recorded land holders/pattadars. Subsequently, meetings with the pattadars and the local public were held by the district administration alongwith NRL officials involving the Gaon Pradhans. After due explanation about the NRL marketing terminal project, its benefits in development of the local area, employment and business opportunity, the safety and environmental protection that will be incorporated in the terminal project, the pattadars along with the local public willingly gave consent to the land acquisition process. Those who have objected were personally heard and vide a speaking order dated 05.04.2022, the office of the Deputy Collector cum Deputy Commissioner, Kamrup, Amingaon rejected the said objections. Although the land acquisition proceedings have been initiated under the provisions of the Act of 1964, but in view of the Government Circular No.RLA.300/2013/PR-1/10 dated 08.05.2015 all benefits like additional compensation, rehabilitation to displaced persons and protection to land owners will be assessed and provided under the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It submitted that vide Government Notification No.RLA.300/2013/Pt/160 dated 07.04.2022, the District Collectors of the Districts of Assam except the 6th Scheduled areas, have been empowered to act as the "Appropriate Government" as per the Proviso to Clause (e) of Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, read with Rule 2 (1) (d) of the Assam Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Rules, 2015 (framed under Section 109 of the Act of 2013). It is contended that the corresponding WP(C) No.3989/2022, WP(C) No.3528/2022 and the instant writ appeals are indeed not maintainable on the ground that the petitions and the appeals were moved on mere speculation and the appellants have failed to establish infringement of any fundamental rights under the Constitution of India. Therefore, the appellants have no *locus standi* to move such writ petitions or appeals. It is averred that the appellants are misled by persons with vested interests. It has been falsely alleged that notices were not properly served on the recorded pattadars. A detailed field verification was carried out with the help of 'Survey of India' to ascertain that the notices were properly served to the stakeholders of the land proposed to be acquired land. Series of meetings with the pattadars and the local public were held by the District Administration and the NRL officials. Those who objected were personally heard. Furthermore, the land required for use of religious, residential and cemetery purposes have been kept outside the purview of the land acquisition process.

11. Mr. M. Bhagabati, learned counsel for the appellants laid stress in his arguments that notices were not received by all the stakeholders and

accordingly, very few could file their objections. It is submitted that the lands in question, are ancestral lands of the petitioners and such lands happen to be their only means of survival as they have no other sources of livelihood. By referring to Section 3 of the Act, it is submitted that the process is not connected to flood affected persons, which is the only consideration prescribed. The appellants counsel has also drawn the attention of this Court to Form-A of the Rules and submits that a bare perusal of Form-A reveals that the requirements have not been fulfilled. The speaking order dated 05.04.2022 has been passed mechanically by the Collector cum Deputy Commissioner without due application of mind. The entire procedure of acquisition of land has to be declared as null and void, as the process is arbitrary and violative of fundamental rights.

12. It is argued that neither the provisions laid down in the Act of 2013 has been followed nor has it fulfilled the needs of landless or displaced persons. In fact the entire process of requisition and acquisition does not fulfil any "*requisite of public purpose*". The speaking order of the Deputy Commissioner has undermined the dignity of the agriculturists and the cultivators, by insinuating that employment under the NRL Ltd. was more important than agricultural activities. On these grounds, Mr. Bhagabati, implored the Court to accept the appeals and set aside the impugned orders/notices.

13. Per contra, Sri D. Saikia, learned Advocate General, Assam has submitted that the entire set of projections made by the petitioners in both the writ petitions and the instant appeal are neither tenable in law nor on facts. As per Section 3 of the Act, transport and communication is to be provided and the object of setting up of the marketing terminal is only to aid transport and

communication. Elaborating on the ownership pattern of NRL, it is submitted that 56% is owned by the Govt. of Assam, and therefore, the bonafides of the acquisition process cannot be questioned. It is submitted that the speaking order dated 05.04.2022 issued by the Collector, Kamrup, would reveal that hearings on the objections were conducted on 7th, 8th, 10th and 11th of March, 2022 of all the concerned persons. The speaking order further discloses that the complainants constituted less than 50% of the total numbers of pattadars of the concerned lands. Reference was also made to the pertinent paragraphs of the order which reflect that the process was for the greater interest of industrial development as well as generation of employment opportunities. It was further submitted that the compensation would be paid as per the Rules of 2015.

14. It is also submitted on behalf of the respondents that as many as 64 petitioners are not recorded pattadars whose lands are involved in the requisition and acquisition process. On the contrary 10 of the bonafide pattadars of the land involved in the process do not have any objection in the process of acquisition and requisition and they have willingly given their consent. No objection certificates from the Central Pollution Control Board and State Pollution Control Board would be obtained before commencement of any construction activities and therefore there is no apprehension of damage to the agricultural lands surrounding the market terminal.

15. It is argued on behalf of the respondents that the *vires* of the Act of 1964, not being challenged, the present appeals arising out of the writ petitions are not tenable. There is no conflict between the Act of 1964 and the Central Act of 2013 and in fact, the afore-mentioned speaking order, itself clarifies that the compensation would be calculated and paid as per the Rehabilitation and

Resettlement Rules, 2015. It is submitted that there is no conflict between the State Act and the Central Act and no provision has been violated during the requisition and acquisition procedure. On the contrary, it is contended that the progress of the work has been delayed due to the unwarranted litigation, which lacks bonafides. It is also submitted on behalf of the respondents that the project is not only of immense importance for the State, but it is also of national importance. The project cost is around Rs.34,000 crores and would be also an extension of the NRL. Similar market terminals are already in operation at Golaghat and Siliguri without any instance of violation of the pollution norms or damage to the environment. The project is a 'state of art project' dealing with petroleum storage and loading of Tankers. The project is of immense public interest, with industrial development as its objective also.

On these submissions, learned counsel for the respondents implored the Court to dismiss the appeals and affirm the order passed by the learned Single Judge.

16. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the material available on record.

17. In this appeal, it could be deciphered through the contentions that the setting up the marketing terminal is a developmental project. It cannot be ignored that setting up a marketing terminal will enhance business activities and concomitantly boost the economic condition of the local area. A survey that was conducted by the authority portrays that the area in the vicinity of the terminal is not at present densely populated. Steps have been taken for safety measures to avoid pollution and to preserve environmental protection. It is projected that

the NRL proposed marketing terminal project will also include petroleum storage and tanker loading terminal, following all safety and environmental norms. The reasons furnished by the authority do not appear to be arbitrary, and therefore any interference in the matter relating to developmental projects, appears to be unjustified more particularly when such interference may lead to further delay and escalation in costs.

18. It has been observed by the Hon'ble Supreme Court in ***Bhagat Singh V. State of U.P. & Ors.***, reported in ***(1999) 2 SCC 384***, that:-

"We are of the view that the above facts do show that development of the market is in various phases and the future development of the market in a growing town like Agra was kept in mind while acquiring this area. It is not for this Court to say that there was no need to acquire the appellants' lands for the market and that the remaining land was sufficient. If such a contention were to be accepted, each of the owners could equally advance such an argument making the scheme wholly unworkable. These appeals are therefore liable to be dismissed."

19. It is manifest that the *vires* of the Act of 1964 is not the subject matter of challenge in this litigation. As the project has public interest in its objective, it has been assured by the respondents that the procedure of requisition and acquisition is well within the ambit of the provision of Section 3 of the 1964 Act. In fact the NRL terminal will be an aid in improvement of transport and communication as well as employment generation. It has been alluded by the submissions and affidavits that no loss would be caused to the environment and there will be no danger of pollution as No Objection Certificates from the Central Pollution Control Board as well as State Pollution Control Board would be obtained before commencement of the project.

20. It has been fairly submitted by the respondent side that there was an inadvertent error in the notice under Form-A and this can be ignored as there is

no application/requirement of such Form-A. It has already been held by the learned Single Judge that the order dated 05.04.2022 passed by the Collector-cum-Deputy Commissioner, Kamrup was a reasoned order and rightly so in our opinion. It would be germane to reiterate that most of the land owners have willingly accepted the acquisition process and less than 50% have objected to the same. Moreover, most of the objectors are not even land holders. The Speaking Order also reflects that the plots of land having religious institutions or residences have been excluded. The Speaking Order of the Collector Cum Deputy Commissioner dated 05.04.2022 (Annexure-H) explicitly reflects that the compensation would be paid as per the Rehabilitation and Resettlement Rules, 2015.

21. There appears to be no justified ground to interfere with the judgment & order dated 22.05.2023 passed by the learned Single Judge in WP(C) No. 3989/2022 and WP(C) No. 3528/2022. Both the writ appeals are devoid of merit and are hereby dismissed.

22. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant