



THE GAUHATI HIGH COURT

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

WRIT PETITION (C) No. 2238/2021

1. Sri Rajib Ram Phookan, aged about 50 years,
2. Sri Rajesh Ram Phookan, aged about 45 years,

Both are sons of Late Prabin Ram Phookan,
Residents of Swaraj Nagar, House No. 35,
Sarumataria, P.O. Assam Secretariat, P.S.
Dispur, Guwahati – 781006, District – Kamrup
[M], Assam.

.....Petitioners

-Versus-

1. The State of Assam, Represented by the
Secretary to the Government of Assam, Revenue
[S] Department, Dispur, Guwahati-06.
2. The Deputy Commissioner, Kamrup [M],
Guwahati-781001, District – Kamrup [M], Assam.
3. The Additional Deputy Commissioner, Kamrup
[M], Guwahati-781001, District-Kamrup [M],
Assam.
4. Indian Oil Corporation Ltd. [Assam Oil
Division] through its General Manager, Noonmati,
Guwahati-781020.

.....Respondents

WITH

WRIT PETITION (C) No. 4911/2019

Smti. Ilu Phukan, aged about 66 years, Wife of Late Suren Ram Phukan, Resident of Santipur Main Road, P.O. & P.S. Bharalumukh, Guwahati – 781008, District – Kamrup [M], Assam.

.....*Petitioner*

-Versus-

1. The State of Assam, Represented by the Secretary to the Government of Assam, Revenue [S] Department, Dispur, Guwahati-06.

2. The Deputy Commissioner, Kamrup [M], Guwahati-781001, District – Kamrup [M], Assam.

3. The Additional Deputy Commissioner, Kamrup [M], Guwahati-781001, District – Kamrup [M], Assam.

5. 4. Indian Oil Corporation Ltd. [Assam Oil Division] through its General Manager, Noonmati, Guwahati – 781020.

.....*Respondents*

Advocates :

Petitioners : Mr. S.K. Singha, Advocate

Respondent no. 1 : Ms. N. Bordoloi, Standing Counsel
Revenue Department

Respondent nos. 2 & 3 : Mr. B.J. Talukdar, Senior Counsel

: Mr. A. Chetry, Advocate

Respondent no. 4 : Mr. N. Baruah, Advocate

Date of Hearing, Judgment & Order : 21.07.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

Heard Mr. S.K. Singha, learned counsel for the petitioners; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. B.J. Talukdar, learned Senior Counsel assisted by Mr. A. Chetry, learned counsel for the respondent nos. 2 & 3; and Mr. N. Baruah, learned counsel for the respondent no. 4.

2. As the subject-matters of both the writ petitions are inter-connected, both the writ petitions are taken up for consideration, at the request of the learned counsel for the parties at the stage of admission.

3. The facts, in brief, relevant for consideration of the two writ petitions can be exposited as follows : Suren Ram Phookan and Prabin Ram Phookan were the joint owners and possessors of parcels of land measuring 59 Bighas 1 Katha 14 Lessas, covered by Dag nos. 435, 437, 376, 433, 434, 438, 439, 358, 361, 1348, 348 & 836 of Patta nos. 284 [New]/269 [Old], located in Village – Betkuchi, Mouza – Beltola, District – Kamrup [Metro], Assam. A sum of ₹ 731.70 was found payable from the owners towards land revenue against the aforesaid parcels of land and since the owners did not pay the said amount, the Deputy Commissioner put the aforesaid parcels of land for auction sale vide Sale Case no. 3/13 of 1976-77 on 29.06.1978 for realization of ₹ 731.70 as per the provisions of the Assam Land and Revenue Regulation, 1886. However, no bidder participated in the said auction proceedings and as a result, the Government of Assam had purchased the entire parcels of land at a token price of ₹ 1/-. Subsequent to such purchase by the State Government, the

State Government allotted 40 Bighas of land out of the total 59 Bighas 1 Katha 14 Lessas to the respondent Indian Oil Corporation Limited [IOCL] for the purpose of establishment of a terminal for storage of various petroleum products on payment of a premium @ ₹ 26,000/- per Katha. In addition, the State Government also directed the respondent IOCL to deposit a sum of ₹ 38,50,600/- towards compensation to the State Government. The respondent IOCL had accordingly deposited premium amount as well as ₹ 38,50,600/- and took possession of an area of land measuring 40 Bighas, out of the aforesaid 59 Bighas 1 Katha 14 Lessas and after possession of the same was handed over to it by the State Government. The respondent IOCL had accordingly established the terminal by investing a substantial amount of money.

4. The original land owners, that is, Surendra Ram Phookan and Prabin Ram Phookan initiated a proceeding before the Assam Land and Revenue Regulation, 1886 before the Board of Revenue, Assam seeking *inter alia* setting aside of the order of annulment passed by the Deputy Commissioner, Kamrup [Metro] in respect of the aforesaid parcels of land. The said proceeding was registered as Case no. 42/RA[K] of 1996. The Board of Revenue, Assam after hearing the learned counsel for the parties including the respondent IOCL, rendered its decision by Judgment dated 23.02.1998 whereby it set aside the said auction sale proceedings with the following directions : "[i] To restore the land to the appellants excepting the land already transferred to the Indian Oil Corporation; [ii] To allow the Indian Oil Corporation to retain possession of the land already transferred to the Corporation; and [iii] To pay the balance amount of compensation money to the appellants."

5. After the Order of the Board of Revenue, Assam, restoration of remaining parcels of land measuring 19 Bighas 1 Katha 14 Lessas were made to the original pattadars except the parcels of land already handed over to the respondent IOCL and necessary corrections in the revenue records were made by the revenue authority of the State Government on

payment of land revenue due from the original pattadars. With the allegation that direction no. [iii] of the Board of Revenue, Assam was not complied with, that is, the payment of compensation, the original pattadars filed a writ petition, W.P.[C] no. 2234/2000 before this Court seeking *inter alia* a direction in the nature of mandamus to the State respondents to pay the amount collected from the respondent IOCL. The said writ petition, W.P.[C] no. 2234/2000 was disposed of by an Order dated 26.02.2001 directing the State respondents to pay the amount of compensation, as ordered by the Board of Revenue within a period of 3 [three] months.

6. The State of Assam challenged the Order dated 26.02.2001 passed in the writ petition, W.P.[C] no. 2234/2000 by way of a writ appeal, W.A. no. 512/2002. The State also preferred an application for condonation of delay in preferring the intra-court appeal as the intra-court appeal was filed with delay of about 496 days beyond the period of limitation. A Division Bench of this Court by an order dated 27.05.2003, dismissed the writ appeal, W.A. no. 512/2002. Holding that no sufficient cause could be shown by the State for the delay occurred in preferring the intra-court appeal. Against the Order dated 27.05.2003, the State preferred a special leave petition, SLP[C] no. 874 of 2004 before the Hon'ble Supreme Court of India. By an order dated 03.09.2004, the Hon'ble Supreme Court of India granted leave and allowed the appeal, thereby, remanding the case to the Division Bench for a decision on merits in the appeal.

7. The State of Assam had also preferred a writ petition, W.P.[C] no. 5628/2004, challenging the Order dated 23.02.1998 passed by the Board of Revenue, Assam. A Division Bench of this Court took the writ appeal, W.A. no. 512/2002 and the writ petition, W.P.[C] no. 5628/2004 together for adjudication. By a common Judgment and Order dated 06.05.2005, the Division Bench allowed the writ appeal, W.A. no. 512/2002 as well as the writ petition, W.P.[C] no. 5628/2004 to the extent indicated therein. The Division Bench had observed that the conduct of auction sale of the parcels of land of the original pattadars leading to the divestment of the title of the

pattadars and the purchase of the parcels of land by the State was made in substantial, if not in full, compliance of the provisions of the Assam Land and Revenue Regulation, 1886 and the Rules framed there under and there was no illegality or irregularity in the procedure adopted leading to the extinguishment of the title of the original pattadars. Observing so, the contrary findings recorded by the Board of Revenue Assam were held to be unsustainable and the impugned directions issued by the Board of Revenue, Assam for payment of compensation to the original pattadars for the parcels of land handed over to the IOCL measuring 40 Bighas was held to be legally unsustainable. By setting aside of such part of the directions passed by the Board of Revenue, Assam, the Division Bench further observed that since the rest of the directions issued by the Board of Revenue, Assam had already been implemented, the other parts of the direction did not need any interference.

8. Aggrieved by the common Judgment and Order dated 06.05.2005 rendered by the Division Bench of this Court, the original pattadars carried the matter to the Hon'ble Supreme Court of India by way of civil appeals, Civil Appeal nos. 662-663 of 2008. The question that arose before the Hon'ble Supreme Court of India was whether the High Court was justified in allowing the writ appeal and the writ petition filed by the State and whether it was justified in setting aside the decision of the Board of Revenue, Assam impugned in the writ petition. The said civil appeals were disposed of by a judgment dated 11.12.2014 by the Hon'ble Supreme Court of India.

9. The relevant parts of the said judgment read as under :-

“37. Keeping this well settled principle in mind and applying the same to the facts of this case, we find that the auction was not held by the Deputy Commissioner in conformity with the aforesaid principle. It seems that the auction was held only on papers to show compliance of the Rules to enable the State to invoke Rule 141 and

acquire the land for Rs. 1/- as provided therein. As a matter of fact, no efforts were made by the State to file any document to prove that adequate publicity was given on all adjourned dates and despite such publicity no bidder participated in the auction. It is indeed inconceivable that a land in Kamrup district when put to auction sale despite publicity would go unnoticed and no person would come forward to bid for such land. It appears to us that the State had decided to allot the land to the IOC, who were interested to use the land for their own purpose and hence recourse to remedy of disposal of land by auction as provided in Section 70 followed by invocation of Rule 141 was taken to acquire the land on payment of Rs. 1/- by the State and then its major part was allotted to the IOC on payment of yearly premium and further payment of compensation by the IOC.

38. In our considered opinion, therefore, the auction held by the State was neither legal and nor in conformity with the requirements contained in the Regulation. It was, therefore, rightly set aside by the Board.

39. In the light of the foregoing discussion, the appeals succeed and are hereby allowed. The impugned judgment is set aside and that of the Board restored. As a consequence, the writ appeal and the writ petition filed by the State stand dismissed.

40. We direct the State [respondent no. 1] to pay the amount of compensation deposited by the IOC for the land allotted to them to the appellants along with interest on the said amount at the rate of 6 % payable from the date of deposit till paid to the appellants. The State is also directed to restore the possession of the remaining land, i.e., the land excluding the land allotted to IOC to the appellants within three months after making proper verification and demarcation of the land in question.”

9. From the reading of the directions contained in paragraph 14 of the judgment of the Hon’ble Supreme Court of India, it clearly emerges that, *firstly*, the State Government had to pay the amount of compensation deposited by the IOCL for the land allotted to them to the appellants i.e. the original pattadars along with interest on the said amount @ 6% from

the date of deposit till payment to the appellants; and *secondly*, the State Government was required to restore the possession of the remaining land, that is, the land excluding the land allotted to the appellants within three months after making proper verification and demarcation of the land in question.

10. It may be apposite to reiterate that when the possession of 40 Bighas of land was handed over to the IOCL on 1989, the State Government received a sum of ₹ 38,50,600/-.

11. The sole petitioner in the writ petition, W.P.[C] no. 4911/2019 is the wife of Suren Ram Phookan, one of the two original pattadars viz. Late Suren Ram Phookan whereas the two petitioners in the writ petition, W.P.[C] no. 2238/2021 are the sons of other original pattadar, Late Prabin Ram Phookan.

12. Subsequent to the decision of the Hon'ble Supreme Court of India, the Deputy Commissioner, Kamrup [Metro] accorded sanction for an amount of ₹ 98,36,364/- for payment towards compensation to the three legal heirs of the original two pattadars, that is, the petitioners in the present two writ petitions vide an Order dated 09.03.2018. As per Annexure-4 to the Order dated 09.03.2018, the said amount of ₹ 98,36,364.00 was disbursed to the present writ petitioners in the following manner :-

Sr. No.	Name of Payee [legal heir]	Amount	Account Number
1	Smti. Elu Phookan W/o Late Suren Ram Phookan	Rs. 49,18,182.00	A/C No. 0001010000024 [Bank of Baroda]
2	Sri Rajib Ram Phookan S/o Late Prabin Ram Phookan	Rs. 24,59,091.00	A/C No. 0177101011800 [Canara Bank]
3	Sri Rajib Ram Phookan S/o Late Prabin Ram Phookan	Rs. 24,59,091.00	A/C No. 0177101009967 [Canara Bank]

Total- Rs. 98,36,364.00 [Ninety eight lakhs thirty six thousand three hundred sixty four]

13. The petitioners in the two writ petitions have acknowledged the receipt of the afore-mentioned amounts. The petitioners have not also disputed as regards the calculation arrived at in the amount of ₹ 98,36,364.00 by the Deputy Commissioner, Kamrup [Metro], in deference to the first direction of the Hon'ble Supreme Court of India, that is, payment of the amount of compensation deposited by the IOCL for the lands allotted to them along with interest on it @ 6% from the date of deposit till the date of payment.

14. The petitioners in paragraph no. 4 in both the writ petitions have admitted that subsequent to the order of the Board of Revenue, Assam, the Deputy Commissioner returned 19 Bighas 1 Katha 14 Lessas after realization of ₹ 1092/- as land revenue and ₹ 273/- as local tax from the petitioners. Meaning thereby, the State respondents had complied with the second direction of the Hon'ble Supreme Court of India immediately after the order of the Board of Revenue, Assam.

15. It is in the backdrop of the afore-mentioned sequence of events the common prayer made in the present two writ petitions are to be looked into. The petitioners have instituted the two writ petitions seeking *inter alia* directions to the State respondents to acquire 40 Bighas of land, which earlier belonged to the original pattadars, afresh on the contention that the same were not acquired by a process of acquisition till date and to make payment of requisite compensation atleast at the rate of ₹ 30,00,000/- per Katha.

16. This Court is of the unhesitant view that by the two directions made in paragraph no. 40 of its judgment dated 11.12.2014 passed in Civil Appeal nos. 662-663 of 2008, the Hon'ble Supreme Court of India has given a quietus to all the issues involved in the proceedings. Thus, it is not open for the petitioners to re-agitate any issue in connection with the parcels of land measuring 59 Bighas 1 Katha 14 Lessas in a manner raised in these two writ petitions.

17. It is also relevant to mention that when the original pattadars agitated the issues before the Board of Revenue, Assam, it was submitted by them during the course of hearing that they would be satisfied if they received the compensation amount instead of their plots of land already transferred to the IOCL. It was on the basis of such submission advanced by the original pattadars, the Board of Revenue, Assam had recorded in its judgment dated 23.02.1998, also reproduced in the judgment dated 11.12.2014 of the Hon'ble Supreme Court of India, that as the compensation amount had already been deposited by the IOCL and the same was deposited to the Government after working out the share of the compensation amount, the same should be paid to the original pattadars and the land would remain with the IOCL.

18. In view of the above discussion, this Court does not find any merit in the two writ petitions and the same are liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant