

GAHC010171112021



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

Case No. : WP(C)/5515/2021

DEBAJANI DAS AND 2 ORS.
W/O LATE DEBEN DAS
RESIDENT OF VILLAGE PUB MAJIRGAON, PO BHATTAPARA, PS AZARA,
DIST KAMRUP (M) ASSAM, 781017

2: SRI SARAT KUMAR DAS
S/O LATE TAZORAM DAS
RESIDENT OF VILLAGE PUB MAJIRGAON
PO BHATTAPARA
PS AZARA
DIST KAMRUP (M) ASSAM
781017

3: SRIMOTI DAS
W/O LATE UMAKANTA DAS
RESIDENT OF VILLAGE PUB MAJIRGAON
PO BHATTAPARA
PS AZARA
DIST KAMRUP (M) ASSAM
78101

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE DEPARTMENT, DISPUR GUWAHATI 781006

2: THE DEPUTY COMMISSIONER CUM COLLECTOR
KAMRUP (M) M.G ROAD
PAN BAZAR
GUWAHATI 01

3: THE ADDITIONAL DEPUTY COMMISSIONER
I/C LAND ACQUISITION BRANCH

KAMRUP (M) GUWAHATI 781001

4:THE CIRCLE OFFICER
AZARA REVENUE CIRCLE
AZARA
KAMRUP (M) ASSAM 781017

5:SRI SABIN DAS
S/O LATE HORIRAM DAS
RESIDENT OF VILLAGE PUB MAJIRGAON
PO BHATTAPARA
PS AZARA
DIST KAMRUP (M) ASSAM
78101

Advocate for the Petitioner : Mr. B. D. Konwar, Sr. Advocate

Mr. R. Kalita, Advocate

Advocate for the Respondents : Mr. B. J. Talukdar,
SC Revenue Department
Mr. P. Kalita, Advocate
for the respondent No.5.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 17.08.2023

Date of Judgment : 17.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioners seeking a direction for setting aside and quashing the notice bearing No.KRA.29/2021/01 dated 16.09.2021 issued by the respondent No.3 as well as also for a direction to the respondent authorities, more particularly, to the respondent Nos.2 & 3 to release the compensation amount of Rs.78,93,750/- being the compensation for acquisition of a plot of land owned by the petitioners measuring 2 bighas 10 ½ lechas comprised in Dag No.184 (Pt) of Patta No.803 situated at village-Majirgaon, Mouza-Ramcharani under Azara Revenue Circle in the district of Kamrup (Metro), Assam.

2. From a perusal of the writ petition, it reveals that various plots of land were acquisitioned under the provisions of the Assam land (Requisition & Acquisition) Act, 1964 (for short, 'the Act of 1964') including a plot of land measuring 5 bighas out of a plot of land measuring 8 bighas 3 kathas 3 lechas covered by Dag No.148 of Patta No.803 of village-Majirgaon under Azara Revenue Circle in the district of Kamrup (Metro), Assam for the purpose of construction of a new terminal building for development of LGBI Airport.

3. Mr. B. J. Talukdar, the learned Additional Senior Government Advocate representing the Revenue Department of the Government of Assam had produced the Award Statement in respect to LA Case No.4/2018. The land in question has been also reflected in the said Award Statement at Sl. No.12 wherein it reveals that the total compensation so payable in respect to the land in question was Rs.1,87,50,000/-. The award statement also reflects the names of the pattadars and their fathers as well as the names of the claimants as per the Circle Officer's report. Mr. B. J. Talukdar, the learned Additional Senior Government Advocate further submitted that the land has been acquired under the provisions of the Act of 1964, but the compensation has been paid in terms with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013').

4. In the backdrop of the above, let this Court take note of the dispute involved in the instant case. The petitioners who were also the named pattadars and entitled to a portion of the awarded amount have sought for a direction that the amount of Rs.78,93,750/- be released to the petitioners as the petitioners are the owners of a plot of land measuring 2 bighas 10 ½ lechas out of the total 5 bighas of land of Dag No.184 (Pt) covered by Patta No.803. It is further seen from Annexure-7 to the writ petition that various persons were issued notice thereby fixing 22.09.2021 for hearing to determine the land compensation pertaining to acquisition of the land. This notice has been put to challenge. The grounds on which the said notice has been put to challenge is that the said notice had been issued

at the behest of the respondent No.5 who had raised an objection and that the respondent No.5 has no right to receive any amount for which the said notice dated 16.09.2021 is liable to be set aside and quashed.

5. Therefore, from the above dispute, it would be seen that the dispute falls within the ambit of the apportionment of the compensation. This Court finds it relevant to take note of Section 12 of the Act of 1964. Section 12, being relevant, is reproduced herein under:-

“12. Reference to Court.-(1) The Collector shall in every case-

(a) where any person aggrieved by an award made under sub-section (3) of Section 11 makes an application requiring the matter to be referred to the Court ; or

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

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

6. From a perusal of the above Section, it would show that the Collector shall in every case where any person is aggrieved by an award made under Sub-Section (3) of Section 11 of the Act of 1964 or whether there is an disagreement with regard to the compensation payable on the application of the person entitled to compensation requiring the matter to be referred to Court, refer the matter to the decision of the Court. Sub-Section (2) of Section 12 is further of relevance in as much as the provisions of the Land Acquisition Act, 1894 are made applicable in respect of any reference made to the Court under Sub-Section (1) of Section 12 of the Act of 1964, meaning thereby the provisions of Section 18 as well as Section 30 shall also apply on the basis of Legislation by incorporation. Therefore, it was the bounden duty of the Collector that if any dispute arises as to the apportionment of the said amount or any part thereof or as to the person to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision

of the Court. This Court further finds it relevant also to take note of Section 31 (2) of the Land Acquisition Act of 1894 wherein also it has been mentioned that if there is a dispute as to the entitlement to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference under Section 18 of the Land Acquisition Act of 1894 would be submitted. Therefore, the dispute in the instant case as to who would be entitle the amount of Rs.78,93,750/- if cannot be settled by the Collector, the Collector or the Land Acquisition Officer so authorized has to refer the dispute to the Court.

7. Under such circumstances, it is the opinion of this Court that the said dispute so raised in the instant writ petition cannot be decided by this Court. However, taking into account the provision of Section 12 of the Act of 1964 read with Sections 18, 30 & 31 (2) of the Land Acquisition Act of 1894, this Court gives liberty to the parties, if they have any dispute as regards the apportionment of the amount to file appropriate application before the Collector or the Land Acquisition Officer so entrusted with the acquisition proceedings pertaining to LA Case No.4/2018 thereby seeking a reference to the Court.

8. This Court further observes and directs, if such application is filed, the Collector and/or the Land Acquisition Officer, without any delay, shall refer the dispute to the Court for deciding the said dispute pertaining to apportionment. It is further observed and directed that if disputes as regards apportionment cannot be resolved, the Collector/Land Acquisition Officer shall deposit the said amount in the Court.

9. With the above observation and direction, the instant petition stands disposed of.

JUDGE

Comparing Assistant