

GAHC010186252014



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

Case No. : WP(C)/4060/2014

SMT. LESSON HAFLONGBAR and 2 ORS
W/O LT. JAY KUMAR HAFLONGBAR

2: RANENDRA HAFLONGBAR
S/O LT. JOYGESWAR HAFLONGBAR

3: PRADIP HAFLONGBAR
S/O LT. JOYGESWAR HAFLONGBAR
ALL ARE THE LEGAL HEIRS OF LT. JOYGESWAR HAFLONGBAR
PERMANENTLY R/O MANIGIPUR
MAIBONG
P.O. and P.S. MAIBONG
DIST- DIMA HASAO
ASSAM
PIN-78883

VERSUS

THE UNION OF INDIA and 8 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF SHIPPING,
ROAD TRANSPORT and HIGHWAYS, TRANSPORT BHAWAN-1, PARLIAMENT
STREET, NEW DELHI-01

2: THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
G 5 and 6
SECTOR-10
SWARKA
NEW DELHI-75

3: THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
REGIONAL OFFICE- HENGRABARI
BOROBARI BARTILA
VIP ROAD
NEAR PRATIKSHA HOSPITAL

GHY-36
ASSAM

4:THE GENERAL MANAGER TECH and PROJECT DIRECTOR
THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
PROJECT IMPLEMENTATION UNIT
SANKAR MISSION ROAD
OPP. ITI COLLEGE
PANIGAON
NAGAON
ASSAM
PIN-782001

5:THE PROJECT MANAGER
M/S NIRAJ KUMAR CONSTRUCTION PVT. LTD.
AUTHORISED CONTRACTOR OF NHAI
ASSAM ROAD PROJECT OF NHAI
ASSAM ROAD PROJECT PACKAGE NO.AS24
MAIBONG
DIST- DIMA HASAO
ASSAM
PIN-788831

6:THE DIMA HASAO AUTONOMOUS COUNCIL
REP. BY THE PRINCIPAL SECY. N
NC HILLS/DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM
PIN-788831

7:THE SECRETARY I/C
REVENUE
NC HILLS AUTONOMOUS COUNCIL
HAFLONG and COMPETENT AUTHORITY
NH-54 E LA WORKS
HAFLONG
ASSAM
PIN-788831

8:THE DY. COMMISSIONER
DIMA HASSAO
HAFLONG
ASSAM
PIN-788831

9:THE ADDL. DY. COMMISSIONER
DIMA HASSAO
HAFLONG

ASSAM
PIN-78883

Advocate for the Petitioner : MR.D C K HAZARIKA

Advocate for the Respondent : MR.K GOSWAMI

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 18.07.2023

Heard Ms. J. Bezbaruah, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned CGC appearing for the respondent no.1; Mr. C. Baruah, learned standing counsel for the NHAI, representing respondent nos.2 to 5; Mr. A. Khanikar, learned standing counsel for the N.C. Hills Autonomous Council, representing respondent nos.6 and 7; and Mr. M. Chetia, learned Govt. Advocate appearing for respondent nos.8 and 9.

2. Aggrieved by the non-payment of the land acquisition compensation bill amounting to Rs.35,19,407/- prepared pursuant to orders passed in Misc. Case No. 19/2013, the present writ petition has been filed under Article 226 of the Constitution of India.

3. The case projected in this writ petition is that the land of the petitioners was acquired for the purpose of construction/extension of NH-54(E). The petitioners have projected that there was anomalies in the assessment of compensation as certain trees forming part of zirats were not assessed and accordingly, the petitioners had approached the Court of Deputy Commissioner, Dima Hasao, Haflong and a proceeding, being Misc. Case No. 19/2013 was registered. In connection with the said proceeding, an order was passed on

19.02.2014 by the Additional District Magistrate, Dima Hasao District for conducting a re-verification regarding assessment of compensation. Pursuant to the said order, a joint re-verification was held on 25.02.2014 and 26.02.2014 and the detail report of joint re-verification was submitted to the District Magistrate, Dima Hasao, Haflong on 03.03.2014. Thereafter, the Secretary In-charge, Revenue, N.C. Hills Autonomous Council, Haflong, and Competent Authority NH-54(E), LA Works etc., had submitted a compensation bill in respect of the three petitioners herein for a sum of Rs.35,19,407/-. However, by the impugned communication dated 26.06.2014, the bill for compensation raised pursuant to Misc. Case No. 19/2013 was returned back by the Manager (Tech), NHAH.

4. The learned standing counsel for the NHAH has submitted that if the petitioners were aggrieved by the assessment of compensation made by the competent authority, the only remedy available to the petitioners were to file an appeal under section 3G(5) of the National Highways Act, 1956, but it was not open to the petitioners to approach the Court of Deputy Commissioner/District Magistrate and to have the assessment re-adjudicated through the said authority. Accordingly, it is submitted that the Deputy Commissioner and/or the Additional District Magistrate, who was adjudicating Misc. Case No. 19/2013 were acting without jurisdiction.

5. Considered the writ petition, affidavit-in-opposition filed by the respondent nos.2 to 4, affidavit-in-opposition filed by the respondent no.5, additional affidavit filed by the petitioners, affidavit-in-opposition filed by the respondent nos.6 and 7, affidavit-in-reply filed by the respondent nos.1 to 4 against affidavit filed by the respondent nos.6 and 7.

6. It is not in dispute that under the provision of sub-section (5) of

section 3G of the National Highways Act, if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the aggrieved parties are at liberty to move the nominated arbitrator appointed by the Central Govt. In the present case in hand, the Central Govt., by way of the Gazette Notification dated 31.12.2001 had appointed the Divisional Commissioner, Hills and Barak Valley Division as the arbitrator in terms of section 3G(5) of the National Highways Act, 1956. Nonetheless, despite the said statutory provision, it appears that the National Highways Authority of India, i.e. respondent nos.2 to 4 had participated in the proceedings of Misc. Case No. 19/2013. The order dated 19.02.2014, passed in the said proceeding is extracted below:

“19.2.2014. 1st Party. Concerned Land Revenue Officer, representative of NHAI and NKC Project Pvt. Ltd. Have appeared. Heard all of them.

The concerned Revenue Officer has stated that he has some doubts about the assessment, that had been made in the year 2005 in fixing the compensation amounts after acquiring lands of 1st Party. Specially, the Jerat value for Jeropha Plants were not considered at the time of assessment. He (The concerned Land Revenue Officer) has submitted land Revenue Records of Manigipur village area, wherein the acquired land of Joy Kumar Haflongbar, Ronendra Haflongbar and Prodig Haflongbar have been found mentioned.

After hearing in detail the persons concerned and the engaged Ld. Lawyer of 1st Party, it is decided to direct the concerned Land Revenue Officer to conduct re-verification to ascertain whether any lapse had been made at the time of assessing compensation amount against the acquired lands of 1st Party members and to see whether any deviation of alienment at the time of construction of Highway had been made by the NHAI or its authorized company.

So, the observations of the court to ascertain real facts, the concerned

Revenue Officer shall conduct verification immediately and shall take necessary steps regarding the assessment if any fault is found & that will be final one.

The representatives from NHAI and their engaged construction company, NKC Projects Pvt. Ltd also expressed their satisfaction over the decision of the court.

Thus this proceeding is disposed of with the aforesaid directions.

Inform all concerned B/A to take steps."

7. The said order has attained finality without any challenge to the legality of the said order. Pursuant to the said directions, a joint re-verification was conducted by the NHAI representatives, Revenue Department of the N.C. Hills Autonomous Council along with the affected persons and they had accepted anomalies in the computation of compensation as some zirat including land, trees and civil structures of the affected parties were left out in the acquisition process. Moreover, it appear from the contents of the communication dated 03.03.2014 by the Secretary and R.O.E., N.C. Hills Autonomous Council addressed to the Additional District Magistrate, Dima Hasao, Haflong that in order to straighten the road, 35 meters of the land of the petitioners were also taken over. Thereafter, as already indicated above, the Secretary, In-Charge Revenue, and Competent Authority, NH-54(E) LA Works etc., prepared and issued a bill dated 03.06.2014, addressed to the General Manager (Tech), and Project Director, NHAI PIU, Nagaon for a sum of Rs.35,19,407/-.

8. As already indicated above, the joint verification of land was conducted on 28.02.2005 and as per the stand taken in the affidavit-in-opposition filed by the respondent nos.6 and 7, valuable mature Gamari trees numbering 30 that were found in the joint verification report, were not included in the previous compensation bill and that it was also found that the homestead land and the residences of the petitioners were affected due to construction of

NH-54(E) and accordingly, the competent authority raised the bill dated 03.06.2014 for Rs.35,19,407/-. It may be stated that satisfied with the joint verification conducted on 28.02.2005, on the same day i.e. on 28.02.2005, the three petitioners herein had signed their no objection for relinquishment in respect of their land. Therefore, it appears that the no objection by the petitioners in respect of relinquishment of their land is not a stand-alone document, but the said relinquishment having been done on 28.02.2005 was on the same day when the joint verification was made.

9. It is not in dispute that the items which were found during earlier assessment, but was left out in the bill were included in the joint re-verification assessment done on 03.03.2014 in the presence of the petitioners as well as the representatives of the NHAI.

10. Therefore, the respondent nos.2 to 4, through their officers, having participated in the joint re-verification process, is prevented by the principles of estoppel from taking u-turn and disowning the re-verification assessment, for which bill dated 03.06.2014 was raised by the Competent Authority, NH-54(E).

11. As the Competent Authority, NH-54(E) was the original authority to assess the quantum of land acquisition compensation, in the event the NHAI is aggrieved by such assessment, the respondent no.2 to 4 were at liberty to assail the assessment under the provisions of sub-section (5) of section 3G of National Highways Act. The said procedure was not taken recourse to by the NHAI. Therefore, the Court is of the considered opinion that the impugned order bearing no. NHAI/NGN/LA/N.C Hills/10964 dated 26.06.2014, issued by the Manager (Tech), NHAI (respondent no.4), thereby rejecting and returning the bill No. REV/S/66/ROE/2013-2014 dated 03.06.2014, submitted vide forwarding letter no. REV/S/66/ROE/2013-2014/2014-18 dated 03.06.2014 is not

sustainable and the same is set aside and quashed.

12. At this stage, the learned standing counsel for the NHAI on the pin pointed query of the Court has submitted that the respondent no.4 authorities may not exist at this moment as the Project Implementation Unit, Nagaon has been merged with Project Implementation Unit, Guwahati, and therefore, he submits that the bill may be raised and sent to the Project Director, NHAI, Guwahati.

13. In view of the said submission made by the learned standing counsel for the NHAI, the Secretary, In-Charge, Revenue, N.C. Hills Autonomous Council (respondent no.7) shall raise the bill upon the authority as mentioned hereinbefore.

14. The writ petition stands allowed on terms as indicated above.

15. Parties are left to bear their own cost.

JUDGE

Comparing Assistant