

GAHC010187522021



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

Case No. : WP(C)/6038/2021

MASTOPHA AHMED
S/O LATE MOKTAR AHMED @ MOKTAR ALI, RESIDENT OF VILLAGE NO. 1,
DOBAK, PS RANGIA, 781380, DIST KAMRUP (R) ASSAM
VERSUS
THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF PETROLEUM AND NATURAL GAS, NEW DELHI 01
2:CHAIRMAN AND MANAGING DIRECTOR GAIL (INDIA) LTD.
FORMELY KNOWN AS GAS AUTHORITY OF INDIA LTD
. HEAD OFFICE
GAIL BHAWAN
16 BHIKAJI CAMA PLACE
R. K PURAM
NEW DELHI 110066
3:THE GENERAL MANAGER
GAIL (INDIA) LTD.
(GUWAHATI BRANCH OFFICE UNDER KOLKATA ZONAL OFFICE)
MAHARATNA COMPANY
BARAUNI GUWAHATI GAS PIPELINE (BGPL) PROJECT CONSTRUCTION
HOTEL VIVANTA BY TAJ
G. S ROAD
KHANAPARA
GUWAHATI 781022
4:DEPUTY SECRETARY TO THE GOVT. OF ASSAM
INDUSTRIES AND COMMERCE DEPARTMENT
AND COMPETANT AUTHORITY
GOVT. OF INDIA
GAIL (INDIA) LTD 5TH FLOOR
MEGHA PLAZA
BASISTHA CHARIALI
GUWAHATI 781029
5:SMTI GULBANU BEGUM
W/O LATE FAYEZ ALI

RESIDENT OF VILLAGE NO. 1
DOBAK
PO DOBAK
PS RANGIA
DIST KAMRUP (R) ASSA

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner : Mr. S. Alim ... Advocate
For the respondent no.1 : None appears.
For the respondent nos.2, 3 & 4 : Mr. S. Mitra Advocate.

Date of hearing & judgment : 25.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Alim, learned counsel appearing on behalf of the petitioner. None appears on behalf of the respondent no.1 on call. Mr. S. Mitra, learned counsel appears on behalf of the respondent nos.2, 3 & 4.

2. Taking into account the matter involved, the instant writ petition is taken up for disposal at the Motion stage itself.

3. As the dispute involved herein relates inaction on the part of the respondent authorities more particularly, the competent authority in not exercising the powers under Section 11(5) of the Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (hereinafter referred to as "Act

of 1962", notice upon the respondent no.5 is dispensed with.

4. The case of the petitioner herein is that the petitioner claims to be the grandson of one Bahar Ali since deceased, who was the original Pattadar of a plot of land measuring 1 Bigha 1 Katha 17 Lechas covered by Dag No.663 of Patta No.124 situated at Revenue Village No.1 Dobak under Pub Borigog Mouza in the District of Kamrup, Assam. It is the further case of the petitioner that after the death of the petitioner's grandfather Late Bahar Ali, the names of his four sons namely (i) Moktar Ahmed (father of the petitioner), (ii) Firoz Ali, (iii) Fayez Ali and (iv) Fokhruddin Ali Ahmed being the legal heirs of Late Bahar Ali were duly mutated against the said plot of land vide order dated 30.11.2016 passed by the concerned Circle Officer. Under such circumstances, it is the case of the petitioner that the father of the petitioner became a co-owner in respect to the entire land of Dag no.663 measuring 1 Bigha 1 Katha 17 Lechas and his share would be something more than 1 Katha 14 Lechas.

5. It further appears on record that a Notification SO No.5321 dated 10th October, 2018 was issued by the Ministry of Petroleum and Natural Gas of the Government of India on 16th October, 2018, whereby in public interest the right to use of various plots of land was to be acquired for laying of the Barauni-Guwahati Gas Pipeline by GAIL (India) Limited for transportation of gas. The said acquisition was to be done in terms with the provisions of the Act of 1962. Pursuant thereto, individual notices were issued to the various Pattadars including the petitioner herein as would be seen from Annexure-3 to the writ petition. It is the case of the petitioner that on 24.02.2021, one Fayez Ali along

with his sons obtained certain signatures by threatening him. Thereupon the petitioner submitted an application to the competent authority on 20.03.2021 stating *inter alia*, that he has a right to the compensation in respect of Dag No.663 which also belonged to his father.

6. It further appears from the records that on 04.07.2021, a Legal Notice was issued under Section 80 of the Code of Civil Procedure demanding payment of full compensation to the petitioner in respect to his entitlement in so far as Dag No.663 within period of 15 (fifteen) days.

7. To the said Legal Notice so issued by the petitioner, on 16.07.2021 the respondent competent authority through it's Lawyer had replied to the same stating *inter alia*, that the order dated 20.03.2021 was passed by the competent authority upon hearing all the parties including the petitioner wherein the petitioner agreed for releasing the compensation in favour of the respondent no.5 herein. It was further stated that written consent was given by the petitioner to release the compensation in favour of the respondent no.5. It further stated that the No Objection Certificate was also given by the petitioner and the compensation has been disbursed by the competent authority upon receipt of the stated documents.

8. It further appears that after receipt of the reply to the Legal Notice by the petitioner, on 01.08.2021 an FIR was lodged before the Officer-in-Charge, Dobok Police Station narrating the incident dated 24.02.2021. Accordingly, a case was registered being Rangia P.S. Case No.806/2021 under Section 506/420

IPC. Subsequent thereto on 05.08.2021 the petitioner requested the competent authority i.e. the respondent no.4 to refer the matter in terms with Section 11(5) of the Act of 1962 and till then the compensation should not be disbursed to the respondent no.5. It is the further case of the petitioner that as the respondent authorities did not take any steps in consequence to the request made on 05.08.2021, the petitioner has filed the instant writ petition on 08.11.2021.

9. It appears on records that on 17.11.2021, the respondent nos.1 – 4 were duly represented and as such this Court directed for serving extra copies of the writ petition, so that they could take instructions in the matter and accordingly fixed the matter on 23.11.2021 for Motion. On 23.11.2021 when the matter was again listed, the learned counsel appearing on behalf of the respondent nos.2, 3 & 4 submitted that the petitioner did not submit the said applications dated 20.03.2021 and 05.08.2021, alleged to have been submitted by the petitioner before the concerned authority of the respondent GAIL. It was further mentioned that the said documents enclosed to the Writ Petition as Annexure 4 & 8 respectively do not contain any seal and receipt number of the authority concerned. It was further mentioned that the respondent no.5 have already been released an amount of Rs.4,45,165/- in terms with the order dated 20.03.2021. This Court thereupon directed the respondent nos.2, 3 & 4 to place the relevant instructions in the matter on the next date fixed. It was further made clear that in the meantime for the land of Dag No.663 the respondent GAIL shall not release any further amount to the respondent no.5 until further orders of the Court.

10. It further appears from the records that on 13.12.2021, the Chief Manager (Construction) of the respondent no.2 being authorized by the respondent nos.2, 3 & 4 filed an affidavit-in-opposition. The contents of the said affidavit is *pari materia* to the reply to the Legal Notice issued by the counsel appearing on behalf of the respondent nos.2, 3 & 4. In paragraph no.13, it has been mentioned that on 20.03.2021, the petitioner was present along with the sons of the respondent no.5 and various other persons. It was mentioned that the field personnel of the respondent nos.2 & 3 had seen the petitioner, his wife and the sons of the respondent no.5 in person in the field during the course of the hearing on 20.03.2021. It was also mentioned that the petitioner had submitted his Voter ID issued by the Election Commission of India bearing No. HBP1851894, which was also verified with the original. In paragraph no.16, which is the reply to paragraph-7 of the writ petition, it was the specific stand taken by the respondent nos.2, 3 & 4 that the application dated 20.03.2021 was never received by the respondent nos.2, 3 & 4 at any point of time. It is relevant to take note of that in paragraph no.15 of the said affidavit-in-opposition, it was mentioned that on 17.06.2021, an amount of Rs.4,45,165/- being the final compensation amount in terms with the subject plot of the land was disbursed by the respondent no.4 in favour of the respondent no.5 directly into her bank account by NEFT bearing UTR No.BARBZ21168695155. It is also relevant to take note of Annexure-J to the affidavit-in-opposition which is the order dated 20.03.2021 wherein it has been mentioned that the petitioner was very much present on 20.03.2021 at 10:00 A.M. It is also seen that the compensation was to be released in favour of the respondent no.5 subject to the said Respondent submitting an Indemnity Bond.

11. The learned counsel appearing on behalf of the petitioner submits that the competent authority in terms with the Act of 1962 had no jurisdiction or authority to decide the entitlement of the amount of compensation when a dispute arises. In such a situation, in terms with Section 11(5) of the Act of 1962, the only jurisdiction left with the competent authority is to make a reference of the dispute to the decision of the District Judge within the limits of whose jurisdiction the land or any part thereof is situated and the decision rendered by the District Judge then shall be final. Referring to the communication dated 20.03.2021 as well as 05.08.2021, the learned counsel for the petitioner submitted that the petitioner duly informed the respondent competent authority not to grant the compensation as the petitioner was entitled to a part of the same being a co-owner. It was also informed that the NOC/undertaking so taken on 24.02.2021 was also under force and coercion and in spite of that as could be seen from the affidavit-in-opposition, on 17.06.2021 the amount has been released in favour of the respondent no.5. Referring to Section 11(4) of the Act of 1962, learned counsel for the petitioner submitted that the power of the competent authority to apportion the compensation would be there when there is no dispute between the parties but when any dispute arises, the competent authority had no jurisdiction to decide such dispute.

12. On the other hand, Mr. S. Mitra, learned counsel appearing on behalf of the respondent nos.2, 3 & 4 submitted that the instant writ petition is nothing but an afterthought, inasmuch as, neither the communication dated 20.03.2021 nor the communication dated 05.08.2021 were at any point of time received by the respondent authorities and this aspect of the matter would be evident from

the fact that there is no sign, seal or any endorsement being made by the respondent authorities. Referring to paragraph no.16 of the affidavit-in-opposition, the learned counsel submitted that it is the specific categorical stand of the respondent authorities that the communication dated 20.03.2021 was not received. The learned counsel further submitted that the fact that the entire proceedings as well as the litigation is an afterthought can also be discerned from the fact that there was no FIR filed in respect of the incident dated 24.02.2021 till 01.08.2021 and thereupon the petitioner took steps after coming to learn that the amount of Rs.4,45,165/- was disbursed to the respondent no.5 on 17.06.2021. The learned counsel further submitted that from a perusal of the order dated 20.03.2021 issued by the competent authority, it is also evident that the petitioner was very much present before the competent authority and he had no objection when the amount was decided to be paid to the respondent no.5.

13. I have heard the learned counsels for the parties and have perused the materials on record.

14. The issue involved in the instant writ petition as could be discerned from the pleadings as well as from the materials on record is as to whether the respondent competent authority i.e. respondent no.4 was justified in not making the reference in terms with Section 11(5) of the Act of 1962. It is on account of the specific issue involved that this Court is also of the opinion that the presence of the respondent no.5 is not required for the purpose of deciding the instant dispute.

15. Section 11(4) and 11(5) of the Act of 1962 being pertinent is reproduced hereinunder :

“11(4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.

11(5) If any dispute arises as to the appointment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the District Judge within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the District Judge thereon shall be final.”

16. A conjoint reading of the above two provisions would clearly show that when several persons claim to be interested in the amount of compensation deposited under sub-section (1) of Section 11 of the Act of 1962, the competent authority is empowered to determine the person or persons who in its opinion are entitled to receive the compensation and the amount payable to each of them. However, Section 11(5) comes into play when there is a dispute amongst the several persons in respect to the apportionment of the compensation. In that circumstance, it is outside the jurisdiction of the competent authority to decide the said dispute and the only authority left to the competent authority is to make a reference to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated. The facts as have been detailed out in the previous segments of the instant judgment clearly show serious disputed questions of facts, inasmuch as, it is the specific stand of the petitioner that on 20.03.2021 and 05.08.2021 he has submitted representation to the competent authority stating, *inter alia*, that no objection so given was taken by the

respondent no.5 and her sons forcefully on 24.02.2021. On the other hand, it is the specific stand of the respondent nos.2, 3 & 4 that the competent authority never received any of the communications dated 20.03.2021 and 05.08.2021. It is the further stand of the respondent nos.2, 3 & 4 that the petitioner was very much present on 20.03.2021 before the competent authority who had duly consented in payment of compensation to the respondent no.5. These disputed questions of facts however cannot be decided in a proceeding under Article 226 of the Constitution and it can only be decided in a forum where disputed questions of facts can be dealt with on the basis of the law of evidence.

17. A perusal of Section 14 of the Act of 1962 clearly shows that there is a bar of jurisdiction of the Civil Court in respect to various aspects including in respect of any action taken or proposed to be taken in pursuance of any power conferred under the Act of 1962. Therefore, the Civil Court cannot decide the *inter-se* dispute between the petitioner and the respondent nos.2, 3, 4 & 5. It is also well settled that a person cannot be made remediless, inasmuch as, any statute which renders any action to be without remedy would be affecting the rights under Article 14 of the Constitution. On the other hand, if this Court takes into consideration Section 11(5) of the Act of 1962, it empowers the competent authority to make a reference to the District Judge any dispute arising as regards the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part is payable. The said provision does not limit the powers of the competent authority if the compensation have already been disbursed and the same can duly be done even after the compensation is disbursed. It further appears from a perusal of the order dated 20.03.2021 that while disbursing the amount of compensation, the respondent no.5 was

required to furnish an Indemnity Bond. During the course of the hearing, this Court further enquired with Mr. S. Mitra, learned counsel appearing on behalf of the respondent nos.2, 3 & 4 as regards the contents of the Indemnity Bond and it was submitted that the Indemnity Bond is given for a purpose that if at any later point of time a dispute arises, the person receiving the amount shall indemnify the competent authority.

18. Under such circumstances, this Court therefore is of the opinion that in view of the dispute which had arisen, this Court is not in a position to decide the said dispute and it would involve intricate details of evidence. It would be in the interest of justice that the competent authority makes a reference to the District Judge in so far as the entitlement of the petitioner vis-a-vis the respondent no.5. The District Judge can very well decide as regards the veracity of the claims and counterclaims so made by the petitioner as well the respondent nos.2, 3 & 4 and also take into consideration the stand of the respondent no.5. Accordingly, this Court therefore disposes off the instant writ petition with a direction to the respondent no.4 to make a reference to the District Judge, Kamrup, Amingaon within 15 (fifteen) days from the date of receipt of a certified copy of the instant order and the learned District Judge, Kamrup, Amingaon thereupon shall decide the dispute in accordance with law.

19. With the above, the writ petition stands disposed off.

JUDGE

Comparing Assistant