

GAHC010204372021



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

Case No. : WP(C)/6393/2021

SUNIL KUMAR KHEMANI
SON OF LT. PARASHURAM KHEMANI, R/O GRAHEM BAZAR RED CROSS
ROAD, NEAR PHARMACIST GIRLS HOSTEL, DIBRUGARH TOWN, P.O., P.S.
AND DIST. DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY ITS SECRETARY, REVENUE AND DM (LR) DEPARTMENT, DISPUR,
GUWAHATI-781006, ASSAM

2:THE DEPUTY COMMISSIONER

OFFICE OF THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM

3:THE ADDITIONAL DEPUTY COMMISSIONER

(LA) DIBRUGARH DISTRICT
DIBRUGARH
ASSAM

4:SRI PARMESWAR LAL KHEMANI
S/O LT. MASULAL KHEMANI

R/O B3-402
GREENLAND APARTMENT
S.B. MARG
J.B. NAGAR
O.P. KHOINOOR HOTEL
ANDHERI EAST

MUMBAI-4000059.

5:SRI VIMAL KUMAR KHEMANI
SON OF LT. MASULAL KHEMANI

R/O 45/11
AROGYA SADAN J.B. NAGAR
NEAR LAXMI NARAYAN TEMPLE
ANDHERI EAST
MUMBAI-4000059

6:SMTI. MEENA DEVI PITTI
D/O LT. MASULAL KHEMANI
R/O 103/104
QUANTUM PARK A WING
UNION PARK
OFF. EASTER ROAD
BANDRA WEST MUMBAI -4000059

7:SRI SURENDRA KUMAR KHEMANI
SON OF LT. MASHULAL KHEMANI
R/O B3-402
GREENLAND APARTMENT
S.B. MARG
J.B. NAGAR
O.P. KOHINOOR HOTEL

ANDHERI EAST
MUMBAI-4000059.

8:SRI RAJESH KUMAR KHEMANI
S/O LT. MASHULAL KHEMANI
R/O B3-203
GREENLAND C.H.S.L. J.P. NAGAR
ANDHERI (EAST) MUMBAI-4000059.

9:SRI AAKASH KHEMANI
S/O RAJESH MASHULAL KHEMANI
R/O B-3-203
GREENLAND C.H.S.L.
J.P.NAGAR
ANDHERI (EAST)
MUMBAI-400005

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

09.08.2023

The instant writ petition has been filed challenging the order dated 17.11.2021 passed by the respondent No.3 as well as also seeking a writ of mandamus directing the respondent No.3 to refer the dispute to the appropriate Court/ Authority as regards the apportionment of the compensation awarded in LA Case No.DRA 16/2013 and LA Case No.6/2018.

2. It reveals from a perusal of the pleadings that for the purpose of upgrading of the DTP Dyke at Marwaripatty under Dibrugarh Town Mouza, a plot of land measuring 2 kathas 3 lechas covered by part of Dag No.8 of PP No.881(old)/883(old)/884(old)/885(old)/886(old)/169(new) as well as another plot of land measuring 2 kathas covered by Dag No.8 of PP No. No.881(old)/883(old) /884(old)/885(old)/ 886(old)/169(new), both land situated at Marwaripatti under Dibrugarh Town Mouza, Assam were acquired under LA Case No.DRA 16/2013 and LA Case No.DRA 6/2018 respectively. In respect to LA Case No.DRA 16/2013, the amount so awarded was Rs.42,60,000/- and in respect to LA Case No.DRA 6/2018, Rs.81,31,472/- was awarded. The petitioner claiming to be also entitled to a portion of the said awarded amount filed an application under Section 12 (1) (b) of the Assam Land (Requisition & Acquisition) Act, 1964. The said application having been rejected vide the order dated 17.11.2021

passed by the respondent No.3, the petitioner is before this Court under Article 226 of the Constitution.

3. This Court has duly perused the said application as well as the order dated 17.11.2021 passed by the respondent No.3. It is relevant to take note of that from the materials on record, it is not clear as to whether the acquisition was made under the provisions of Land Acquisition Act, 1894 or under the provisions of the Assam Land (Requisition & Acquisition) Act, 1964.

4. Be that as it may, Section 18 read with Section 30 of the Land Acquisition Act, 1894 or Section 12 (1) (b) of the Assam Land (Requisition & Acquisition) Act, 1964 permits a person who is entitled to compensation to file an application before the Collector requiring the matter to be referred to the Court for a decision.

5. Taking into account the above, a duty is cast upon the Collector to refer the dispute to the court for deciding as to who or how much a person would be entitled to compensation as awarded. It is the opinion of this Court that as and when such dispute arises amongst the parties as regards the apportionment of the compensation, such dispute cannot be decided by the Collector or as has been done in the instant case by the respondent No.3 as it is the mandate of the statute that it is only the Court who can decide the same.

6. Taking into account the above prescription of law, this Court, therefore, directs the respondent Nos.2 & 3 to refer the dispute as regards the apportionment of the compensation in respect to LA Case No. DRA 16/2013 and LA Case No.DRA 6/2016 to the Court of the competent

jurisdiction within 15 (fifteen) days from the date of receipt of a certified copy of the instant order. The order dated 17.11.2021 passed by the respondent No.3 stands interfered with.

7. It is made clear that the respondent Nos.4 to 9 would be at liberty to take all grounds of objections before the Reference Court including the grounds of limitation (if any).

8. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant