GAHC010218702023

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

Case No. : WP(C)/5712/2023

UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN
PARLIAMENT STREET
NEW DELHI 110 001

2: THE EXECUTIVE DIRECTOR
2ND FLOOR
AGNISHANTI BUSINESS PARK
OPP AGP OFFICE
AMBARI
GUWAHATI- 781 001

3: THE GENERAL MANAGER (LA AND COORD.)
NATIONAL HIGHWAYS INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD.
REGIONAL OFFICE-GUWAHATI
ASSAM. PIN- 781 001

4: THE GENERAL MANAGER (P)
NATIONAL HIGHWAYS INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.
PMU
DIPHU
PWD (IB)
PWD COLONY
LUMDING ROAD
DIPHU
PIN 782 460
VERSUS

THE STATE OF ASSAM AND 9 OTHERS

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI- 781 006

2:THE STATE OF ASSAM
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781 006
3:THE KARBI ANGLONG AUTONOMOUS COUNCIL
REPRESENTED BY THE ITS PRINCIPAL SECRETARY
DIPHU
KARBI ANGLONG
ASSAM
PIN- 782 460
4:THE PRINCIPAL SECRETARY
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU
KARBI ANGLONG
ASSAM
PIN- 782 460
5:THE JOINT SECRETARY CUM COMPETENT AUTHORITY FOR LAND ACQUISITION
KARBI ANGLONG AUTONOMOUS COUNCIL
ASSAM
PIN- 782 46
6:THE DEPUTY COMMISSIONER
KARBI ANGLONG AUTONOMOUS COUNCIL
ASSAM
PIN- 782 460
7:THE ASSISTANT SETTLEMENT OFFICER
PHULONI REVENUE CIRCLE
KARBI ANGLONG AUTONOMOUS COUNCIL
ASSAM
PIN- 782460
8:THE ASSISTANT REVENUE OFFICER
PHULONI REVENUE CIRCLE
KARBI ANGLONG AUTONOMOUS COUNCIL
ASSAM
PIN- 782460.
9:NATIONAL HIGH WAY AUTHORITY OF INDIA
REPRESENTED BY ITS CHAIRMAN G5 AND 6
SECTOR 10
DWARKA

NEW DELHI-110 075
10:SMT. REKHA BASUMATARY
WIFE OF SHRI KAMAL BASUMATARY
R.O VILLAGE HOWRAGHAT TINIALI
MOUZA LANGPHER
P.O. KACHUPUKHURI
P.S. HOWRAGHAT
DISTRICT KARBI ANGLONG
ASSAM
PIN-782 482

Advocate for : MR. R K TALUKDAR
Advocate for : SC
GAD appearing for THE STATE OF ASSAM AND 9 OTHERS

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 16/10/2023

Heard Mr. R.K. Talukdar, learned counsel appearing for the writ petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, General Administration Department, Assam, appearing for the respondent no. 1, Ms. N. Bordoloi, learned Standing Counsel, Revenue and Disaster Management Department, Assam, representing the respondent no. 2, Ms. S. Kemprai, learned Standing Counsel, KAAC appearing on behalf of the respondent nos. 3, 4, 5, 7 & 8, Ms. M. Barman, learned Government Advocate, Assam appearing on behalf of the respondent no. 6 and Mr. R. Boro, learned counsel has appeared on behalf of the respondent no. 9. Mr. G. Alom, learned counsel has appeared on behalf of the private respondents.

The facts of this case, in a nutshell, is that the National Highway and Infrastructure Development Corporation Ltd. (NHIDCL) has undertaken the work of widening/upgrading the existing National Highway No. 29 to a 4 (four) lane Highway. The Highway is passing through Karbi Anglong District of Assam. For the above purpose, plots of land belonging to the private respondents had been acquired. However, the respondents, being dissatisfied with the assessment of compensation made by the State PWD authorities pertaining to the valuation of the building and trees etc standing thereupon, had approached the Commissioner-cum-Arbitrator appointed under section 3G(5) of the National Highways Act, 1956 for re-assessment of value of the building and trees. The learned Arbitrator had passed order dated 19/04/2023 restraining the respondents from demolishing the

residential houses/structures standing over the land and also from uprooting trees planted therein, by fixing the next date on 02/05/2023.

On the next date i.e. 02/05/2023, the learned Commissioner-cum-Arbitrator had directed the Valuation Officer, Income Tax to assess the market value of the building/houses/structures of the petitioners at the rate applicable as on 31/11/2022. For assessing the plants/trees/crops attached to the land under acquisition, the District Commissioner, Karbi Anglong District, in association with the Divisional Forest Officer, Karbi Anglong East Division and the District Agriculture Officer, Karbi Anglong District, were directed to assess the names and numbers of the trees/plants/crops etc. attached to the acquired plots of land of the respective petitioners. The matter was fixed again on 09/05/2023. However, by that date, the State Government had abolished the post of Commissioner-cum-Arbitrator appointed under section 3G(5) of the National Highway Act, 1956, as a result of which, the matter could not proceed any further. The interim order dated 19/04/2023 passed by the learned Arbitrator is still holding the field and due to the abolition of the post of Arbitrator, there is no possibility of that order being vacated/modified in the near future. Hence, this writ petition.

The writ petitioners herein i.e. the Union of India as well as the NHIDCL, have primarily approached this Court seeking vacation/ modification of the interim order dated 19/04/2023 passed by the learned Arbitrator on the ground that due to the operation of the said order, the construction work of the National Highway has been stalled in that area.

By taking note of the submission made by the learned counsel for the parties, this Court had passed order dated 27/09/2023 requiring the learned State Counsel to obtain instruction and appraise this Court.

Today, when the matter is called up, Mr. B. Gogoi, learned Standing Counsel, GAD, Assam, submits that although the issue is being discussed at the apex level, yet, no concrete decision could be taken for appointment of Arbitrator and/or for replacement of the said authority by another competent authority. Mr. Gogoi further submits that the matter would take some more time. If that be so, the apprehensions expressed by the petitioners' counsel that the pendency of this proceeding as well as the operation of the interim order passed by the learned Arbitrator has the potential of seriously jeopardising the construction of the National Highway, stands fully substantiated. As such, an appropriate writ, order or direction would be called for from this Court to resolve the issue expeditiously.

At this stage, Mr. G. Alom, learned counsel for the private respondents submits that his clients would have no objection if a direction is issued for carrying out proper assessment of the building of

the petitioners as well as the trees/plants/crops in the line of the order dated 02/05/2023 passed by the learned Arbitrator and submit a report before demolition of the building and cutting of trees etc takes place.

The learned counsel for the parties have also invited the attention of this Court to the order dated 28/09/2023 passed by the Division Bench of this Court in WA 375/2023, disposing of a Writ Appeal arising out of a similar writ petition wherein, the central issue was also the interim order dated 19/04/2023 passed by the Commissioner-cum-Arbitrator. The operative part of the order dated 28/09/2023 is reproduced herein below for ready reference :-

> "*It may be stated herein that in the intervening period the post of Arbitrator has been abolished and, thus, the proceedings before the Arbitrator are stalled thereby construction/widening of the Highway in question has been adversely affected.*
>
> *In view of the peculiar facts narrated above, it is hereby directed that copy of this order shall be presented to the Valuation Officer, Central Public Works Department (CPWD).*
>
> *Copy of this order be provided to the competent authority in the CPWD within two days, whereupon the CPWD authority shall appoint a suitable date for the valuation of the property within the next five days. The valuation shall be carried out in terms of the order dated 02.05.2023, passed by the Arbitrator.*
>
> *The appellants herein and the representative(s) of the NHIDCL may remain present and shall be permitted to append their signatory during the measurement as well as in the valuation proceedings.*
>
> *The ad-interim stay order dated 19.04.2023 passed by the Arbitrator shall stand vacated after the valuation report is prepared and presented in the arbitration proceedings.*
>
> *Writ appeal stands disposed of in terms of the above observations and directions.*"

This matter appears to be substantially covered by the earlier order of the Division Bench. However, Mr. Talukdar submits that the Valuation Officer (IT) as well as the CPWD has expressed inability to carry out assessment of the building of the petitioners. Be that as it may, since there is already an order of the Division Bench holding the field, the order of the Court would have to be complied with by all concerned. In view of the facts and circumstances of this case as well as the agreement reached at the Bar, this writ petition is being disposed of by providing that within 4 (four) weeks from today, the assessment of the building of the petitioners shall be carried out by the Valuation Officer (Income Tax), Aayakar Bhawan, 7th Floor, Christian Basti, GS Road, Guwahati-

781005.

In so far as the valuation of the trees/plants/crops attached to the land in question is concerned, it is submitted at the Bar that the same has already been carried out as per the order dated 02/05/2023 and valuation report has also been submitted. Therefore, no further exercise is required in that regard.

It is, therefore, provided that subject to fulfillment of the above conditions, the interim order dated 19/04/2023 passed by the learned Arbitrator, would stand vacated on the submission of report by the Valuation Officer, Income Tax Authorities, before the respondent no. 1.

If the land owners continue to feel aggrieved in the matter even thereafter, it would be open for them to approach this Court again, by filing appropriate writ petition.

With the above observation, this writ petition stand disposed of.

JUDGE

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Comparing Assistant