

GAHC010219372013



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

Case No. : WP(C)/7196/2013

PRADIP SAHA
S/O PATIT PABAN SAHA R/O D.D. ROAD, WARD NO. 5, P.O. DHUBRI, DIST.
DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-6.

2:THE DEPUTY SECRETARY

GOVT. OF ASSAM
FINANCE BUDGET DEPARTMENT
REVENUE REFORMS DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE COMPENSATION OFFICER

DHUBRI
DIST. DHUBRI
ASSAM

For the Petitioner(s) : Mrs. N. Saikia, Advocate
: Ms. A. Jha, Advocate

For the Respondent(s) : Mr. A. Bhattacharjee, Advocate
: Mr. B. J. Talukdar, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 04-10-2023

1. The instant writ petition has been filed by the Petitioner claiming interest @12% per annum on the compensation amount paid to the Petitioner within a time frame.
2. The facts involved in the instant case is that Anawaruzzaman, Khairuzzaman and Kamaruzzaman, the legal heirs of Late Nurujjaman, Late Mohabbat Zaman Mandal and Late Samastabhan Bewa and Nobijan Bewa were the jote holders of a plot of land measuring 49 Bighas 7 Kathas 2 Dhurs under Touji No.4. The said three persons namely Anawaruzzaman, Khairuzzaman and Kamaruzzaman had given a power of attorney to the Petitioner empowering him to take steps in respect to the compensation arising out of the acquisition of their rights under the provisions of Assam State Acquisition of Zamindaries Act, 1951 (for short "the Act of 1951").
3. From the perusal of the writ petition, it transpires that the Government vide a notification dated 09.03.1963, had acquired the land measuring 49 Bighas 7 Kathas 2 Dhurs under the provisions of the Act of 1951. On the basis of the said notification, the said land stood transferred and vested in the State free from all encumbrances w.e.f. the 1st day of Bohag, 1370 B.S. i.e. 15.04.1963. It further reveals from a perusal of the writ petition that the Compensation Officer was appointed under the Act of 1951 and in respect to the compensation, a case was registered being Case No.III-135/G/63 to

determine the compensation payable to the tenure holders against the Acquired Estate in terms with the provisions of the Act of 1951. The Compensation Officer, Dhubri vide a letter dated 03.07.2010 issued to the Secretary, Government of Assam, Revenue (Reforms) Department submitted the final statement of compensation and award of ad interim compensation for an amount of Rs.20,16,162/- and for another amount of Rs.23,68,988/- in respect to the Compensation Case No.III-135/G/63 duly filled in Form-C for award of ad-interim compensation and Form-E for payment under Section 10-13 and under Section 20(2) of the Act of 1951. In spite of the said compensation being adjudged by the Compensation Officer and the issuance of the communication dated 03.07.2010, there was no payment made to the Principals of the Petitioner for which the Petitioner herein has approached this Court by filing a writ petition which was registered and numbered as WP(C) No.4063/2010.

4. This Court vide an order dated 26.07.2010 disposed of the writ petition directing the Principal Secretary to the Government of Assam, Finance Department, Assam to take necessary steps to examine the matter in full and in particular the tenability of the claim of the tenure holders whom the present petitioner represents and if on such scrutiny, they are found entitled to the compensation as contemplated under the Act of 1951, the Principal Secretary to the Government of Assam, Finance Department was directed to ensure that the quantified amount are defrayed without delay. It was further observed that as the tenure holders were waiting for long, the process indicated would be completed within a period of two months from the date of receipt of the certified copy of the order.

5. It further reveals that the Petitioner duly submitted the said copy of the order dated 26.07.2010 passed in WP(C) No.4063/2010 to the Principal Secretary to the Government of Assam, Finance Department. However, as there was no compliance to the said order, a contempt proceedings was initiated by the Petitioner being Contempt Case No.27/2011 before this Court. Pursuant thereto, the Deputy Secretary, to the Government of Assam, Revenue and Disaster Management Department issued two communications dated 23.05.2011 and 06.06.2011 whereby the sanction of the Governor of Assam was conveyed of an amount of Rs.20,16,162/- and 23,68,988/- respectively and it was further mentioned that the said amount be payable to the persons whom the Petitioner herein represent as the attorney holder. It was also mentioned that the compensation amount may be paid on production of succession certificate in case where the actual claimants had died. It was also stipulated that when the actual claimant are available and appeal for claiming compensation, the question of production would not arise.

6. Be that as it may, it is the further case of the Petitioner that the said amount of Rs.20,16,162/- and Rs.23,68,988/- were duly paid to the principals of the Petitioner. Taking into account that as far back as on 15.04.1963, the rights over the land have already been acquired and stood vested upon the State, the Petitioner filed a representation before the Compensation Officer on 15.02.2012 seeking interest @12% from the date of acquisition of the land. However, as the said representation was not considered, the Petitioner had approached this Court by filing the present writ petition.

7. It reveals from the records that this Court vide an order dated 18.12.2013 issued notice and thereupon vide another order dated 19.11.2014 the instant

writ petition was admitted. It further appears from the records that an affidavit-in-opposition was filed by the Respondent No.3 i.e. the Compensation Officer, Dhubri. It was the specific stand taken in the said affidavit-in-opposition that the question of payment of interest @12% or any other rate of interest does not arise taking into account that the provisions of the Act of 1951 does not visualize the payment of interest on delayed payment of compensation. It further appears that an affidavit-in-reply was filed by the petitioner on 20.11.2014 wherein the contentions of the Petitioner as stated in the writ petition was reiterated and further it was mentioned that in similar matters, the Supreme Court had also directed payment of interest even though, in those relevant Acts, there was no provision for payment of interest.

8. I have heard the learned counsels for the parties and have also perused the materials on record. From a perusal of the Act of 1951, it reveals that the said Act was enacted to provide for acquisition by the State of interests of the proprietors and tenure holders and certain other interest in the permanently settled areas and certain other estate in the district of Goalpara, Garo Hills and Cachar. Section 3 of the Act of 1951 stipulates that the State Government may from time, by notification declare that the estate or tenure of a proprietor or tenure holders specified in the notification shall stand transferred to and vest in the State free from all encumbrances. The consequences of the said notification issued under Section 3 of the Act of 1951 has been stipulated in Section 4 which provides that on the publication of the notification referred to in Sub-Section (1) of Section 3 of the Act of 1951, all rights and interests of the proprietor or the tenure holder named in the said notification in the estate or the tenure including his interest (i) in land with its sub-soil, mines and minerals, (ii) in forest and fisheries, (iii) in hats, bazars and ferries together

with the right to realize tolls from them, (iv) in any building or part of the building used primarily as office of cutcherry for collection of rent (of such estate or tenure), (v) his rights to realize rent, royalty, cess, fees and tolls in respect of any such interests shall save and otherwise expressly provided in the Act of 1951, cease and shall vest absolutely in the State free from all encumbrances in accordance with the provisions of the Act of 1951 w.e.f from the first day of the agricultural year next following the date of publication of such notification.

9. Taking into account the said provisions of Section 4 read with Section 3 of the Act of 1951 and applying the same to the facts of the instant case, it would be seen that by virtue of the notification dated 09.03.1963, the tenure of the Principals of the Petitioner in respect to the land measuring 49 Bighas 7 Kathas 2 Dhurs stood vested upon the State w.e.f. 15.04.1963.

10. A further perusal of the provisions of the Act shows that Section 5 of the Act of 1951 makes it clear that no compensation would be paid to any proprietor or tenure holder whose estate or tenure vests in the State under the provision of the Act of 1951 except as provided in the Act of 1951. The manner in which the compensation is to be fixed has been mentioned in Sections 10, 13, 16 and 18 of the Act of 1951. The manner in which the compensation would be payable have been mentioned in Sections 20 and 21. Section 20 of the Act of 1951 stipulates as regards the ad-interim payment of compensation. Section 21 is relevant for the purpose of the instant dispute and more particularly Sub-Section (2) and Sub-Section (3) of Section 21 for which the same is quoted hereinbelow:

“21. Mode of payment of compensation—(1) After the compensation

statement has been finally published, the Compensation Officer shall deduct from the amount shown in the compensation statement as payable to a proprietor or tenure-holder or any other person having interest in the estate or tenure named in the said compensation statement, the following amounts:

- (a)
- (b)
- (2) *Of the balance remaining after such deduction:—*
 - (a) *in case the amount of such balance is rupees two thousand and five hundred or less, the entire amount shall be paid in cash.*
 - (b) *in other cases, twelve and half per cent of the amount shall be paid in cash and the balance shall be paid in cash or bonds or partly in cash and partly in bonds.*
- (3) *The bonds referred to in (b) of sub-section (2) above may be either negotiable or non-negotiable, and transferable in such circumstances and in such manner as may be prescribed, and every such bond shall provide for repayment of the total amount thereof in twenty equal annual installments, and for the payment every year of interest at the rate of two and half per centum per annum on the amount outstanding thereon, with effect from the date of issue: provided that the bond shall be redeemable at the option of the Government at any time before the last installment falls due.*
- (4)
- (5)"

11. A perusal of the above quoted portion of Section 21 of the Act of 1951 would show that after payment of the interim compensation, if the balance remaining is Rs.2,500/- or less, the entire amount shall be paid in cash. However, in respect of other cases, twelve and half percent of the amount shall be paid in cash and the balance shall be paid in cash or bonds or partly in cash and partly in bonds. Sub-Section (3) of Section 21 stipulates that the said bonds would carry an interest at the rate of two and half percent per annum.

12. In the backdrop of the above provision, let this Court take into consideration the judgment of the Supreme Court in the case of **Aresh alias**

Ashok J. Mehta (Dead) by Prop. LRs Vs. Special Tahsildar, Balgaum, Karnataka and Another reported in **(2013) 4 SCC 349**. In the said case before the Supreme Court, the issue therein was similar to the issue arising in the instant writ petition. The question which arose for consideration before the Supreme Court in the said judgment was in respect to payment of the interest on the delayed payment of compensation taking into account that the Karnataka Land Reforms Act, 1961 did not contain a provision for payment of interest on the amount paid. The Supreme Court while taking into account the provisions of Section 44 of the Karnataka Land Reforms Act, 1961 which was *pari materia* to Section 4 of the Act of 1951 and Section 51 of the Karnataka Land Reforms Act, 1961 which was *pari materia* to Section 21 of the Act of 1951 observed that the land owner therein was entitled to the interest @5.5% taking into account that in Section 51 of the Karnataka Land Reforms Act, 1961 which is *pari materia* to Section 21 of the Act of 1951 stipulated that the bond amount shall carry interest @5.5%. The Supreme Court further took into account the judgment in the case of ***Satinder Singh Vs. Umrao Singh*** reported in **AIR 1961 SC 908** wherein it was observed that as the claimants were deprived of the right to receive the income from the property and there was time lag between the taking of the possession by the State and the payment of compensation by it to the claimants, the claimants had a right to receive interest.

13. In the instant case, it is also seen that w.e.f. 15.04.1963, the Principals of the Petitioner had lost right over their tenure on the basis of the notification issued under Section 3(1) of the Act of 1951. The payment was made to the Petitioner sometime in the year 2011 or 2012. During this entire period from 1964 till 2011 and 2012, the Principals of the Petitioner were deprived of enjoying the tenure and also the benefits which accrued on the basis of the

tenure. Under such circumstances, this Court is also of the opinion that the Principals of the Petitioner are entitled to interest from the date of vesting of the tenure upon the State i.e. 15.04.1963 till the date of payment.

14. Now the question arises as to what would be the rate of interest at which the Respondent Authorities are required to pay to the Principals of the Petitioner. Applying the same principle as was applied to by the Supreme Court in the Case of ***Aresh (supra)***, this Court grants the Principals of the Petitioner interest @2.5% on the compensation amount w.e.f. 15.04.1963 till the date of actual payment. This Court further directs the Respondent Authorities to assess the interest amount @2.5% per annum w.e.f. 15.04.1963 till the compensation was paid and thereupon disburse the said amount in favour of the Principals of the Petitioner within 60 days from the date of submission of the certified copy of the instant judgment to the Respondent No.2.

15. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant