

GAHC010147992019



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

Case No. : WP(C)/4651/2019

ABDUL MALIQUE AND 3 ORS.
S/O- LT JOWAID ALI CHOUDHURY, R/O- VILL AND P.O. SUTERKANDI, P.S.
AND DIST- KARIMGANJ, ASSAM

2: ABDUL KHALIQUE
S/O- LT JOWAID ALI CHOUDHURY
R/O- VILL AND P.O. SUTERKANDI
P.S. AND DIST- KARIMGANJ
ASSAM

3: SELIM AHMED CHOUDHURY
S/O- ABDUL HAQUE CHOUDHURY
R/O- VILL AND P.O. SUTERKANDI
P.S. AND DIST- KARIMGANJ
ASSAM

4: SUFIA AKTHAR
D/O- LT ABDUL HAQUE CHOUDHURY
R/O- VILL AND P.O. SUTERKANDI
P.S. AND DIST- KARIMGANJ
ASSA

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF INDIA, MINISTRY OF
HOME AFFAIRS, NEW DELHI-01

2: THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
REVENUE DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR
LAND PORT AUTHORITY OF INDIA
LOK NAYAK BHAWAN
1ST FLOOR
KHAN MARKET NEW DELHI-11

4:THE DY. COMMISSIONER
KARIMGANJ
PIN- 788710

5:THE CIRCLE OFFICER
KARIMGANJ SADAR CIRCLE
P.O. SETTLEMENT ROAD
KARIMGANJ
DIST- KARIMGANJ
ASSAM
78871

Linked Case : WP(C)/7263/2019

RAFIQUL ISLAM CHOUDHURY AND 10 ORS.
S/O- ABDUL MATIN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

2: AZIZUR RAHMAN CHOUDHURY
S/O- LT ABDUS SALAM CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

3: TAHIR RAJA CHOUDHURY
S/O- LT ABDUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

4: MUTIUR RAHMAN CHOUDHURY
S/O- LT MUHIBUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM

PIN- 788712

5: ABDUL MANIK CHOUDHURY
S/O- LT MUHIBUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

6: ABDUL KHALIK CHOUDHURY
S/O- LT MUHIBUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

7: SHELM AHMED CHOUDHURY
S/O- LT MUHIBUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

8: FOYJUL AHMED CHOUDHURY
S/O- LT KHALILUR RAHMAN CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

9: ABDUL MUMIT CHOUDHURY
S/O- LT ABDUL KHALIQUE CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

10: LILY BEGUM CHOUDHURY
W/O- LT HELAL AHMED CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ
ASSAM
PIN- 788712

11: ABDUL WAHAB CHOUDHURY
S/O- LT ABDUL BAKI CHOUDHURY
R/O- VILL AND P.O. SUTARKANDI
P.S. AND DIST- KARIMGANJ

ASSAM
PIN- 788712
VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
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2:THE STATE OF ASSAM
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NEW DELHI-11

4:THE DY. COMMISSIONER
MAIN ROAD
KARIMGANJ
DIST- KARIMGANJ
ASSAM

5:THE CIRCLE OFFICER
KARIMGANJ SADAR CIRCLE
P.O. SETTLEMENT ROAD
KARIMGANJ
DIST- KARIMGANJ
ASSAM
PIN- 788710

Linked Case : WP(C)/885/2022

GITA RANI DAS AND 8 ORS
W/O- LATE BIRENDRA KUMAR DAS

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

2: MONAJJIR ALI CHOUDHURY
S/O- LATE CHOUD ALI CHOUDHURY

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

3: FAKRUL ISLAM CHOUDHURY
S/O- LATE ABDUR RAHIM CHOUDHURY

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

4: ANAM UDDIN CHOUDHURY
S/O- LATE ABDUL BARI CHOUDHURY

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

5: JAYANTI RANI DAS
W/O- LATE JANTU RAM DAS

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

6: LECHU BEGUM
W/O- RAFIQUUL HAQUE

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

7: NOSIB UDDIN
S/O- LATE NIMAR ALI

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

8: ABDUL MALIK
S/O- LATE ABDUS SATTAR CHOUDHURY

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM

9: BIJON KUMAR DAS
S/O- LATE KAMINI RAM DAS

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM
VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE MINISTRY OF
HOME AFFAIRS
GOVT. OF INDIA
SASTRI BHAWAN
NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE DEPARTMENT
DISPUR

GUWAHATI-06
3:THE DIRECTOR
LAND PORT AUTHORITY OF INDIA
LOK NAYAK BHAWAN
1ST FLOOR
KHAN MARKET
NEW DELHI-11

4:THE DEPUTY COMMISSIONER
KARIMGANJ
DIST - KARIMGANJ
ASSAM

5:THE CIRCLE OFFICER
KARIMGANJ SADAR CIRCLE
P.O- SETTLEMENT ROAD
KARIMGANJ
DIST - KARIMGANJ
ASSAM
PIN-788710

6:ABDUL AHAD CHOUDHURY
S/O- LATE TAHIDUR RAHMAN CHOUDHURY

VILL AND P.O- SUTARKANDI
P.S AND DIST.- KARIMGANJ
ASSAM
PIN-788710

For the Petitioner(s) : Ms. R. Choudhury, Advocate.
Mr. H.R. Choudhury, Advocate.
Ms. S. Roy, Advocate.

For the Respondent(s) : Mr. K. Gogoi, CGSC.
Mr. J. Handique, GA.

Date of hearing & Judgment : **13.10.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The three writ petitions are taken up together for disposal by this common judgment.

2. The Petitioners in the three writ petitions have been either issued periodic pattas and/or are the successors in interest of those persons to whom periodic pattas have been issued by the concerned Respondent Authorities. The lands of the Petitioners alongwith other lands have been acquired by the Respondent Authorities under the provisions of the Assam Land (Requisition and Acquisition) Act, 1964 in three land acquisition proceedings i.e. LA Case No.21/2015-16, LA Case No. 22/2015-16 and LA Case No. 4/2016-17. At this stage, this Court finds it relevant to take note of that vide an order dated 25.09.2023, this Court had directed the Respondent Authorities to

produce the records of the three land acquisition cases and accordingly, Mr. J. Handique, the learned counsel appearing on behalf of the Deputy Commissioner-Cum-Collector, Karimganj have produced the records of the three land acquisition cases today.

3. Before dealing with the records, this Court finds it relevant to take into account the grievances of the Petitioners. It is the case of the Petitioners as could be seen from the writ petitions that the lands belonging to the Petitioners were fraudulently mutated by the concerned Respondent Authorities in the name of some other persons and thereby the Petitioners' rights to claim compensation have been deprived. It is the further case of the Petitioners that time and again the Petitioners have represented before the Deputy Commissioner-Cum-Collector, Karimganj, however, nothing has been done in that regard for which the Petitioners have been compelled to approach this Court by filing the writ petitions seeking direction that the Petitioners should be paid the land acquisition compensation.

4. In the backdrop of the above, let this Court therefore take note of the facts which can be discerned from a perusal of the records produced. It is seen from the records that all the three land acquisition cases have been registered for acquisition of lands for the Land Port Authority of India (LPAI), Ministry of Home Affairs, New Delhi for construction of integrated check post at Sutarkandi.

5. The records further reveals that in respect to LA Case No. 21/2015-16, the land which was proposed to be acquired is 11 bighas 5 kathas 7 chataks; in respect to Land Acquisition Case Nos. 22/2015-16, the land proposed to be acquired is 4 bighas 4 kathas 1 chataks and in respect to Land Acquisition Case No. 4/2016-17, the land proposed to be acquired was 30 bighas 8 kathas 14 chataks. The records further shows that the said three land acquisition proceedings were initiated under the provisions of Assam Land Requisition and Acquisition Act, 1964 (in short 'the Act of 1964'). It is also seen that the Office of the Collector, Karimganj had taken necessary steps for the purpose of assessing the market value of the land. It is also seen that the land acquisition assessment were made in terms with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 'Act of 2013'). On the basis of the land estimate prepared, the same was placed before the LPAI for release of the necessary funds. The records further reveals that the LPAI on the basis of the said requisition had deposited the said amounts before the Collector, Karimganj vide Demand Draft as far back as in the year 2017.

6. It is further seen that the final land estimate alongwith the connected LA papers were sent to the Revenue and Disaster Management Department of the Government of Assam for necessary

approval. The approval was duly granted by the Revenue and Disaster Management Department of the Government of Assam and on the basis of the approval, the Awards were passed in respect to the three LA cases and notice were issued to the recorded pattadars concerned for receiving the payment of land acquisition compensation. Pursuant to the issuance of notice, claims petitions were duly filed by the pattadars and after making necessary verification, the Additional Deputy Commissioner ordered to release payment of compensation on the basis of the documents received from the pattadars and the Circle Office, Karimganj.

7. The materials which could be discerned from the records therefore shows that the award has been duly passed and certain payment of compensation have also been made. Be that as it may, it is specific case of the Petitioners that they are the persons interested and accordingly ought to have received the said compensation. At this stage, this Court finds it relevant to take note of Section 12 of the Act of 1964. Taking into account the relevance of the said provisions, the same is reproduced hereinunder :

“12. Reference to Court – (1) The Collector shall in every case-- (a) where any person aggrieved by an award made under Sub-Section (3) of Section 11 makes an application requiring the matter to be referred to the Court; or

(b) where there is any disagreement with regard to the compensation payable under Sub-Section (4) of Section 11 on the application of the person entitled to compensation requiring the matter to be referred to Court, refer the matter to the decision of the Court. (2)

Subject to the provisions of this Act, the provisions of the Land Acquisition Act, 1894 (Act I of 1894), shall mutatis mutandis apply in respect of any reference made to the Court under sub-section (1)."

8. From a perusal of the said Section, it reveals that any person aggrieved by an award made under Sub-Section (3) of Section 11 of the Act of 1964 has a right to make application requiring the matter to be referred to the Court. Further to that, if there is a disagreement as regards the entitlement of the compensation, it is seen that it is only the Court who can decide the same and under such circumstances, when a person applies before a Collector, the Collector is under a statutory obligation to refer such matters to the Court. It is also relevant to take note of Section 2 (b) of the Act of 1964 which defines the term "Court" to mean the Principal Civil Court of original jurisdiction. Sub-Section (2) of Section 12 of the Act of 1964 further on the basis of the principles of legislation by incorporation incorporates the provisions of Section 18, 30 and 31 of the Land Acquisition Act, 1894 to the provisions of the Act of 1964 amongst others. Under such circumstances, by virtue of Section 12(2) of the Act of 1964 read with Sections 18, 30 and 31 of the Land Acquisition Act, 1894 what transpires is that a person, if he is aggrieved as regards the apportionment of the compensation or as regards the

entitlement of the compensation has a right to apply before the Collector and the Collector in such circumstances has a statutory obligation to refer the matter to the Court. In that view of the matter, taking into account the grievances of the Petitioners that they are actually the persons interested and not the persons who have received the compensation or whose names have been put in the list of the beneficiaries, the Petitioners would be well advised to approach the District Commissioner cum Collector, Karimganj in terms with Section 12 making an application seeking a reference to the Court. .

It is observed and directed that in the eventuality the Petitioners approaches the District Commissioner cum Collector, Karimganj, the said authority shall forthwith refer the matter to the District Judge, Karimganj to decide as regards the entitlement of such petitioners.

10. This Court further taking into account that the Petitioners have been diligently and bonafidely claiming their entitlement, grants 30 days to the Petitioners for the purpose of filing the necessary applications before the District Commissioner cum Collector, Karimganj from today. Further to that, this Court also directs that in the event the amount of compensation which the Petitioners claims to be entitled in respect to the land having not been disbursed, the same be deposited by the Collector before the Reference Court provided the said applications are filed within the time so stipulated.

11. Before concluding, this Court finds it relevant to mention that rights over a plot of land cannot be merely decided only on the basis of the record of rights as it is well settled that record of rights do not confer any title upon the person. Entry in the records of rights only creates a presumption that the person has title and possession which is however rebuttable by proving otherwise by evidence based on title document.

12. With the above observations and directions, all the three petitions stands disposed of.

13. The records so produced are returned.

JUDGE

Comparing Assistant