

GAHC010205332017



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

Case No. : WP(C)/7797/2017

OIL INDIA LTD.

A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT, HAVING
ITS REGISTERED OFFICE AT DULIAJAN, IN THE DISTRICT OF
DIBRUGARH, ASSAM, REPRESENTED BY ITS CHAIRMAN CUM
MANAGING DIRECTOR.

VERSUS

THE STATE OF ASSAM and 2 ORS.

REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-
6.

2:THE DEPUTY COMMISSIONER-CUM-COLLECTOR
TINSUKIA

DISTRICT TINSUKIA
ASSAM.

3:NANDALAL and SONS TEA INDUSTRIES PRIVATE LTD.

CHABUA
DISTRICT DIBRUGARH
ASSAM
PIN-786184

Advocate for the Petitioner : MR.S CHOUDHURY

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/6290/2017

NANDLALL and SONS TEA INDUSTRIES PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956
HAVING REGISTRATION NO. CIN-U51226WB1976PTC035856 ITS
REGISTERED OFFICE AT KOLKATA AND AN ADMINISTRATIVE OFFICE AT
BISH MILE
P.O. CHABUA
DIST. DIBRUGARH
ASSAM -786184
REP. BY ONE OF ITS DIRECTORS SHRI ANIL KUMAR AGARWAL
S/O. SHRI AMBICA PRASAD AGARWAL
A RESIDENT OF NANDKUNJ
GANDHI PARK ROAD
NAUPUKHURI
TINSUKIA -786125.

VERSUS

THE STATE OF ASSAM and ANR.
REP. BY THE COMM. and SECY. TO THE GOVT. FO ASSAM
REVENUE D.M. L.R. DEPTT.
DISPUR
GUWAHATI-781006.

2:THE DY. COMMISSIONER CUM COLLECTOR
TINSUKIA.

Advocate for : MR.M K RONGPI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM and ANR.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 02-03-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. UK Nair, learned senior counsel assisted by Mr. K Kalita, learned counsel for the petitioner in WP(C)No.7797/2017 and Mr. R Sarmah, learned counsel for the writ petitioner in WP(C)No.6290/2017. Also heard Ms. M Barman, learned Junior Government Advocate for the respondents No.1 and 2 respectively being the Government of Assam in the Revenue Department and the Deputy Commissioner-cum-Collector Tinsukia and Mr. S Dutta, learned Standing counsel, Revenue and Disaster Management (LR) Department, Government of Assam.

2. Certain land of the respondent No.3, Nandalal & Sons Tea Industries Private Ltd. of Chabua in WP(C)No.7797/2017, to be referred to as the land owner, had been taken over by the writ petitioner Oil India Ltd., sometime in the year 2000 for their own operational purpose. The issue raised by the land owner before the State respondent authorities is that no compensation as payable under the law had been paid to them by the petitioner OIL India Ltd., for their land having been taken over. The process resulted in an earlier proceeding being WP(C)No.1680/2002 and other writ petitions. In paragraph 9 of the judgment dated 05.04.2011 in WP(C)No.1680/2002 and other writ petitions, it has been provided as extracted:

“9. In course of the arguments, the learned counsel for the petitioner has urged that the acquisition of the land if done, the compensation awardable would relate to the period on and from which the same is initiated by a notification under Section 4 of the Act and thus its claim with regard thereto for the period prior to such proceeding would remain unattended. In the above view of the matter, we consider it appropriate to permit the petitioner company to lay its claim vis a vis the land for the period on and from which its possession had been taken over by the Respondent OIL till the initiation of the land acquisition proceeding under the Act. If such a claim is made by the

petitioner company, the Deputy Commissioner, Tinsukia would take a decision thereon after hearing both the parties and strictly in accordance with law applicable thereto. This issue would be independent of the one for the compensation under the Land Acquisition Act, 1894 and would be undertaken by the Deputy Commissioner, Tinsukia parallelly and completed within a period of three(3) months from the claim made by the petitioner."

3. A reading of the afore-extracted paragraph 9 of the judgment dated 05.04.2011 in WP(C)No.1680/2002 and other writ petitions makes it discernible that the Division Bench had distinguished the period of taking over the land by the OIL India Ltd. into two parts. The first part being the stage prior to issuing of the notification under Section 4 of the Land Acquisition Act of 1894 (for short, the Act of 1894) and the other part being the period subsequent to issuing of notification under Section 4 of the Act of 1894. In the premises, the Division Bench provided that the claim of the land owner for compensation for the period prior to the notification under Section 4 of the Act of 1894 being issued, the Deputy Commissioner Tinsukia would take a decision after hearing both the parties and strictly in accordance with the law applicable thereto. But the issue would be independent of the one for compensation under the Act of 1894. In other words, the Division Bench has made it explicitly clear that for the period prior to issuing of the notification under Section 4 of the Act of 1894, the Deputy Commissioner would take a decision on the amount of compensation that the land owner may be entitled to and such decision shall be independent of the compensation that is required to be paid under the Act of 1894.

4. In the process, the land owner Nandalal & Sons Tea Industries Private Ltd.,

instituted a subsequent writ petition being WP(C)No.587/2017 raising the issue of delayed payment by the writ petitioner Oil India Ltd., and whereas WP(C)No.5372/2013 was instituted by Oil India Ltd., raising the issue as regards the order dated 16.07.2011 of the Deputy Commissioner, Tinsukia. The order dated 16.07.2011 of the Deputy Commissioner, Tinsukia is extracted as below:

“To

The Head (Land Matters)
Oil India Limited,
Duliajan.

Sub Regarding payment of compensation amount fixed and ordered in L.A Case No. 192/2012 & 193/2012.

Sir,

With reference to the subject cited above, I would like to inform you that a sum of Es.5,90,94,812.00 (Rupees Five Corer Ninenty Lakh Ninety Four Thousand Eight Hundred Twelve) only against L.A. Case No192/2012 & Rs. 39,26,405.00 (Rupees Thirty Nine Lakh Twenty Six Thousand Four Hundred Five) only against L.A.Cae No. 193/2012 was fixed by the Deputy Commissioner, Tinsukia as per Hon'ble High Court's order against WP(C) No.1680/2002, 1681/2002, 1721/2002, 1722/2002 AT Para-9 of the judgement and order dtd 5.4.2011, whereby a meeting was convened on 30/4/2011 at D.C's office chamber alongwith representatives of OIL, Duliajan, Garden authority of Hukanpukhuri TE & District Administration, wherein the overall gross value of the Land of Hukanpukhuri TE under Acquisition was fixed at Rs.10,07,827.00 per Bigha only for the instant case. The rate was approved as a special case and will not be applicable to other OIL related cases or any other Acquisition what soever.

The value of the land was fixed as per valuation report received from Circle Officer, Tinsukia at Rs.4,06,400.00 + 30% addl. Compensation under Section 23(C) of LA Act @ Rs.12,192.00 + 12% damage under clause 23(1) of LA Act @ Rs.48,768.00 + rent for use of the land for about 12 years at Rs.4,30,784.00 @ Rs.35,000.00 per year + addl.

Rent of Rs.10,784.00 for addl. Part year. Together Totalling – Rs.10,07,872.00 (Rupees Ten Lakh Seven Thousand Eight Hundred Seventy Two) only per Bigha.

Therefore, you are requested to deposit the aforesaid amount of compensation of the Land under Acquisition to the office of the undersigned immediately.

Yours faithfully

Deputy Commissioner
Tinsukia"

5. By the order dated 16.07.2011 of the Deputy Commissioner, Tinsukia, the appropriate authority of the Oil India Ltd., was informed that the Deputy Commissioner had fixed an amount of Rs.5,90,94,812/- in respect of LA Case No.192/2012 and Rs.39,26,405/- in respect of LA Case No. 193/2012. The communication also provided that the said fixation by the Deputy Commissioner was as per the order of the High Court dated 05.04.2011 in WP(C)No.1680/2002 and other writ petitions which had already been referred hereinabove. The Deputy Commissioner in the communication also provided that the valuation was made by taking the value of the land to be Rs.10,07,872/- per bigha. The aforesaid two writ petitions i.e. WP(C)No.5372/2013 and WP(C)No.587/2017 had been given its consideration by the order dated 08.02.2017 by which a tentative conclusion was arrived that no award could be located to have been made by the Deputy Commissioner under Section 11 of the Act of 1894. Accordingly, the Deputy Commissioner was directed to re-visit the order dated 16.07.2011 and arrive at an appropriate compensation that may be payable to the land owners. As regards the other part of the judgment dated 05.04.2011 in WP(C)No.1680/2002 and other writ petitions it was provided in the said order of 08.02.2017 that the Deputy

Commissioner may take his own decision as regards the compensation for the period prior to the notification under Section 4 of the Act of 1894 being issued.

6. In the aforesaid circumstance, the present writ petition is instituted assailing the order dated 21.05.2017 of the Deputy Commissioner, Tinsukia. The order of 21.05.2017 is extracted as below:

“ORDER

In pursuance of the order dtd.08/02/2017 passed by Hon'ble High Court, Gauhati in WP(C)No.587/2017 and 5372/2013 and for compliance a meeting was caused upon inviting written statement from parties i.e., Oil India Limited and Hukanpukhuri Tea Estate.

AND

Whereas, both the parties has submitted their respective written statement in support of their claims and objection in regard to the value of the land as determined in the instant LA Case No.17/2008 and examining the case records of land acquisition case No.17/2008, the Oil India Limited has not deposited the award amount till date, whatever be the amount nor ask any time for depositing, the award amount till date, whatever be the amount nor ask any time for depositing the award amount consistent with the record that the Hukanpukhuri T.E has not received any amount of award and hence as per the provision of under Section 24(2) it is decided that since Oil India Limited has not deposited the award amount as per Section 11 of the LA Act, 1894, hence the proceeding drawn under provision of 1894, the same is deserved to be lapsed. In this context, the views furnished by Govt. Pleader, Tinsukia has also been seen.

In view of the above, further proceeding in the LA Case No.192 and 193 of 2011 should be carried out as per provision of the new Act i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to calculate the amount of compensation accordingly.

Let the parties concerned be informed accordingly. In the meantime, Land Acquisition Branch of the D.C.'s Office, Tinsukia will prepare proposal regarding quantum of compensation payable in accordance with the relevant provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a month from the date of passing this order for onward submission to the Government in the Revenue & DM (LR) Department.

*Deputy Commissioner
Tinsukia”*

7. A reading of the order of 21.05.2017 makes it discernible that the Deputy Commissioner had arrived at his conclusion that as the amount of compensation awarded against the petitioner Oil India Ltd., had not been deposited by them, therefore, in exercise of power under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013), the earlier award under Section 11 of the Act of 1894 had lapsed.

8. Mr. UK Nair, learned senior counsel for the petitioner Oil India Ltd., had raised the contention that Section 24(2) of the Act of 2013 begins with a non-obstante clause and is subject to the condition precedent that the award made under the Act of 1894 ought to be of five years or prior to the date on which the Act of 2013 had come into force.

9. In the instant case, the learned senior counsel points out that as per the records no such award is available which may have been made prior to five years of the date on which the Act of 2013 had come into force.

10. We have perused the records produced by Ms. M Barman, learned Junior Government Advocate appearing on behalf of the Deputy Commissioner, Tinsukia. Except for an order bearing No.TRQ.1/95-2005/PT-II dated 03.05.2011 of the Collector-cum-Deputy Commissioner, Tinsukia, no further order is noticed which may be in the nature of an award made under Section 11 of the Act of 1894. In the said order, it is provided as extracted:

“ORDER

Whereas Land Acquisition under L.A. Act, 1894 has been initiated for acquiring land for Oil India Limited in Hukanpukhuri Tea Estate, currently under possession of Oil India Limited as per Hon'ble High Court's order in WP (C) NO. 1631/2022;

Whereas approved land value as per DC Tinsukia's order dtd. 19th July, 2005 stands at Rs. 5 (five) lakhs per bigha for land in Tinsukia town and Semi Urban areas within 3 kms. from the periphery of the town;

Whereas, as per decision taken during tripartite meeting held on 12/10/2010 as per Hon'ble High Court's order between District Administration, Oil India Ltd. & Hukanpukhuri Tea Estate, Land Acquisition proposal is to be submitted at current market rates;

Whereas, process of Zonal valuation of Tinsukia district is still underway and approved of State Govt. is mandatory and could take more than 3 (three) months;

Whereas without Govt approval of Zonal valuation of Tinsukia district, land valuation for OIL related acquisitions as on 2011 cannot be fixed by Deputy Commissioner & Collector, Tinsukia;

Whereas as per Hon'ble High Court's order dtd. 18.2.2011 in the same case, duration of 4 (four) weeks was given for submission of Land Acquisition proposal for the said land in Hukanpukhuri Tea Estate to Collector & Deputy Commissioner, Tinsukia;

Whereas as per tripartite meeting held on 30/4/2011 in DC Office, Tinsukia, both parties agree to abide by order of DC Tinsukia for enhancement of land value in Hukanpukhuri Tea Estate as an interim measure pending approval of Zonal valuation report by Govt.

Hence, I, Sri S.S. Meenakshi Sundaram, IAS, Collector & Deputy Commissioner, Tinsukia, hereby fix the rate per bigha of land in Hukanpukhuri Tea Estate (falling within 3 kms, from the notified town boundary of Tinsukia town) currently under occupation by Oil India Ltd. To be acquired by Oil India Ltd. For Oil exploration/ location/ storage and any other purpose related to Oil exploration as Rs. 10,07,872/- (Rs. Ten lakhs seven thousand eight hundred and seventy two) only.

The terms and conditions of the order is as follows:

- *The rate of Rs.10,07,872/- per bugha for land in Semi Urban area i.e. Hukanpukhuri Tea Estate was approved to comply with Hon'ble High Court's order.*
- *The rate was approved as a special case will not be applicable to other OIL related cases.*
- *Any enhancement of rate at a later date after approval of Zonal valuation would have retrospective effect on this case provided Oil India has not yet done the payment to Deputy Commissioner, Tinsukia."*

11. A reading of the order dated 03.05.2011 of the Deputy Commissioner, Tinsukia does not enable the Court to arrive at a conclusion as to whether the said order fixing the rate of Rs. Rs.10,07,872/-, per bigha is an award under the Act of 1894.

12. A perusal of the records does not make it discernible that there exists any award under Section 11 of the Act of 1894 which was made prior to five years of the date of the Act of 2013 coming into force, although a confusion may remain whether there is any such award in existence, but atleast no award is discernible which may have been made prior to five years of the date of the Act

of 2013 coming into force, which came into force 01.01.2014. As no award is available on record that may have been made prior to five years of the date of the Act of 2013 coming into force, we are in agreement with the submission of the learned senior counsel Mr. UK Nair that the provisions of Section 24(2) of the Act of 2013 would be inapplicable in the present case. As the provisions of Section 24(2) of the Act of 2013 would be inapplicable, the conclusion arrived at by the Deputy Commissioner, Tinsukia in its order dated 21.05.2017 would be unsustainable in law whereby a conclusion is arrived that in view of the provision of Section 24(2) of the Act of 2013, the earlier proceeding under Section 11 of the Act of 1894 had lapsed in the meantime. But a further issue would remain whether there is any award made by the Deputy Commissioner at all in the aforesaid proceedings.

13. If the Deputy Commissioner upon perusal of his own records can find out whether there exists an award which may have been made under Section 11 of the Act of 1894, the provisions of Section 24(1)(b) of the Act of 2013 would be applicable and in such case, whatever award is available on record, the same has to be brought to its logical end, meaning thereby, that the beneficiaries of the land would have to make the payment of the compensation to the land owners. If, on the other hand, no award can be found out by the Deputy Commissioner, Tinsukia from the records which may have been made under Section 11 of the Act of 1894, the provisions of Section 24(1)(a) would be made applicable, meaning thereby, that the provisions of the Act of 2013 would be applicable in respect of the compensation that is to be made to the land owner namely, Nandalal & Sons Tea Industries Private Ltd.

14. Accordingly, we direct the Deputy Commissioner, Tinsukia to look into the records and arrive at its own fair conclusion. In the event, an award under Section 11 of the Act of 1894 exists, the implication thereof be followed so that the land owner receives the appropriate compensation for the land that had been acquired, and if on the other hand, the Deputy Commissioner, Tinsukia arrives at his conclusion that no award had been made under Section 11 of the Act of 1894, the provisions of Section 24(1)(a) be made applicable and the process be brought to its logical end.

15. The entire exercise be completed by the Deputy Commissioner, Tinsukia within a period of three months from the date of receipt of the certified copy of this order. But nevertheless, to arrive at the conclusion whether there exists any award or not, a reasoned order be passed within a period of one month of the receipt of the certified copy of this order and thereupon bring the process to its logical end within a period of another two months.

16. As regards the compensation to the land owner, for the period prior to the issuance of the Section 4 notification, the Deputy Commissioner is directed to expedite the process and make a determination and pass a separate reasoned order within the period of three months as indicated above from the date of receipt of the certified copy of this order.

17. We have taken note that the connected writ petition being WP(C)No.6290/2017 filed by the land owner, respondent No.3 herein namely, Nandalal & Sons Tea Industries Private Ltd., is for payment of the appropriate

compensation and the provisions of this order shall also be made applicable in respect of WP(C)No.6290/2017 and also prevail over the said writ petition.

18. In terms of the above, both the writ petitions stand disposed of.

JUDGE

Comparing Assistant