

GAHC010248292023



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

Case No. : WP(C)/6472/2023

NIDHENDU NATH AND ANR
S/O- LATE ANANDA NATH,
VILL.- TELETIKAR PART-II,
P.S.- KATIGORAH, P.O.- RAJATILLA,
DISTRICT- CACHAR, ASSAM,
PIN- 788805.

2: SELIM UDDIN CHOUDHURY
S/O- LATE ABDUS SHUKKUR CHOUDHURY

VILL- KOROIKANDI PART-II

P.S.- KATIGORAH
P.O.- RAJATILLA

PIN- 788805.
DIST.- CACHAR
ASSAM

VERSUS

THE UNION OF INDIA AND 9 ORS
TO BE REPRESENTED BY THE SECRETARY,
MINISTRY OF ROAD TRANSPORT AND HIGHWAY AUTHORITY OF INDIA,
NEW DELHI- 110075.

2:THE NATIONAL HIGHWAY AUTHORITY OF INDIA
REPRESENTED BY ITS CHAIRMAN

H.Q. G5 AND 6
LOCATION SECTOR-10

DWARKA
NEW DELHI- 110075.

3:THE REGIONAL DIRECTOR
NATIONAL HIGHWAY AUTHORITY OF INDIA
REGIONAL OFFICE AT NEDFI HOUSE

4TH FLOOR
G.S. ROAD
GUWAHATI- 781005.

4:THE DEPUTY GENERAL MANAGER
(PROJECT) BRANCH OFFICE

NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT
CORPORATION
SILCHAR

PIN- 788001.

5:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM

PWD(ROADS) DISPUR
GUWAHATI- 781006.

6:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DISTRICT CACHAR
ASSAM 788001.

7:THE EXECUTIVE ENGINEER
PWD (ROADS) DIVISION
DISTRICT CACHAR
ASSAM.

8:THE ASSTT. SETTLEMENT OFFICER
CACHAR REVENUE CIRCLE
SILCHAR
PIN- 788001.

9:THE CIRCLE OFFICER
KATIGORAH REVENUE CIRCLE
P.O.- KATIGORAH
ASSAM
PIN- 788805.

10:HUSSAIN AHMED LASKAR
S/O- LATE JAMILUR RAHMAN LASKAR

VILL- KARAIKANDI PART-II

P.O. RAJATILLA
DISTRICT- CACHAR

ASSAM
PIN- 788805

Advocate for the Petitioner : MR. N ISLAM

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20-12-2023

Heard Mr. T.K. Dey, learned counsel for the petitioners; Ms. K. Phukan, learned Central Government Counsel for the respondent no. 1; Mr. C. Baruah, learned Standing Counsel, National Highway Authority of India [NHAI] & National Highway and Infrastructure Development Corporation Ltd. [NHIDCL] for the respondent nos. 2 – 4; Ms. M. Das, learned Standing Counsel, PWD for the respondent nos. 5 & 7; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 6 – 9.

2. In view of the issue raised on behalf of the two petitioners herein and with the consent of the learned counsel for the afore-mentioned respondents, this writ petition is taken up for consideration at the motion stage itself.

3. It is the case of the petitioners that the petitioner no. 1 is the owner of a parcel of land, covered *inter alia* by Dag nos. 260, 261, 262, 264 & 265, situate at Village – Karai Kandi Pt II, Taluk – Katigora, District - Cachar. The petitioner

no. 2 has claimed that he is the owner of a parcel of land covered *inter alia* by Dag nos. 265 & 267, situate at the same village as of the petitioner no. 1. It is the further case of the petitioners that when the respondent no. 1 published a Notification dated 05.01.2023 under sub-section [1] of Section 3A of the National Highways Act, 1956 for 'Building [Widening/two lane with paved shoulder/four laning etc.], Maintenance, Management and Operation of National Highway no. 37', ['the Project', for short] in the stretch of lane from Km 27 + 300 to Km 36 + 850 ['the project'], for short] in the district of Cachar, the aforementioned parcels of land, belonging to the petitioners, figured in the said Notification. As the surveys made then by the respondent authorities for such acquisition, were likely to affect only a part of those parcels of land of the petitioners, they did not have any occasion to submit any objection to the acquisition process, as allowed by the Notification dated 05.01.2023.

4. It has been projected that the respondent no. 10 had submitted a Representation before the respondent authorities for re-alignment in a part of the Silchar-Badarpur-Churaibari stretch of the Project at Village – Karaikandi Pt II on the ground that the proposed alignment of National Highway no. 37 was going to affect a *Mazar* [Rawza Sarif] and a graveyard. As the request was at the stage of consideration by the respondent authorities, the respondent no. 10 had also preferred a writ petition, W.P.[C] no. 5380/2023 seeking expeditious consideration of the representation. After consideration of the request made by the respondent no. 10 for re-alignment, the respondent authorities in the NHIDCL had taken a decision to shift the alignment at a part of the Silchar-Badarpur-Churaibari stretch of the National Highway at Village – Karaikandi Pt II to save the *Mazar* and the graveyard, in view of the public demand. The decision about re-alignment was duly informed to the Additional Deputy

Commissioner-cum-Competent Authority of Land Acquisition [CALA], Cachar on 25.09.2023.

5. Subsequent to the said decision about re-alignment, fresh survey was carried for acquisition of land. It has been contended that the subsequent survey has been made by including a larger portion of the parcels of land belonging to the petitioners, as a result of which the petitioners' dwelling houses, standing on the afore-mentioned parcels of land, are also going to be affected if the alignment of the National Highway no. 37 is finalized as per the fresh survey. It has been stated that a representation was submitted before the Deputy Commissioner, Cachar and the Circle Officer, Katigorah, Revenue Circle by the two petitioners along with a number of other inhabitants of the locality whose parcels of land are also going to be affected by the proposed re-alignment, after the fresh survey. As such representation submitted on 09.10.2023 has not been considered till date, the petitioners have to approach by preferring the instant writ petition.

6. Mr. Baruah, learned Standing Counsel, NHAI & NHIDCL has submitted that it is the Additional Deputy Commissioner, Cachar who has been appointed as the Competent Authority, Land Acquisition [CALA] under Section 3[a] of the National Highways Act, 1956 by the Central Government. Neither the respondent no. 6 nor the respondent no. 9 has any role in the matter of re-alignment of that part of Silchar-Badarpur-Churaibari stretch of the Project at Village – Karaikandi Pt II. In any view of the matter, such decision about re-alignment is to be taken by the Central Government in consultation with the Project Implementing Agency like the NHIDCL in the case in hand and the Competent Authority Land Acquisition [CALA]. As such, since the petitioners have grievances to agitate as

regards the proposed re-alignment, the petitioners have to represent before the Competent Authority Land Acquisition [CALA] appointed for the Project.

7. Ms. Phukan, learned CGC and Mr. Goswami, learned Junior Government Advocate have also submitted in similar lines.

8. Mr. Dey, learned counsel for the petitioners has submitted that given the opportunity the petitioners are ready and willing to submit representation[s] before the Additional Deputy Commissioner-cum-Competent Authority of Land Acquisition [CALA], Cachar, appointed for the Project. He has submitted that the said concerned authority is to be given a direction to consider such representation in an expeditious manner.

9. As the two petitioners have claimed that their parcels of land are going to be affected by the proposed re-alignment of the National Highway no. 37 in a more prejudicial manner than contemplated earlier by the Notification dated 05.01.2023 published under sub-section [1] of Section 3 of the National Highways Act, 1956, this Court is of the considered view that the petitioners are to be given an opportunity to represent their cases before the appropriate authority i.e. the Additional Deputy Commissioner-cum-Competent Authority of Land Acquisition [CALA], Cachar, appointed for the Project under Section 3[a] of the National Highways Act, 1956 by the Central Government.

10. Therefore, the writ petition is disposed of granting an opportunity to the petitioners to submit a Representation before the Additional Deputy Commissioner, Cachar-cum-Competent Authority Land Acquisition [CALA], within a period of 10 days from today, highlighting their grievances as regards the proposed re-alignment of National Highway no. 37 along with all the supporting

documents in support of their respective cases. It is further observed that if the petitioners submit any Representation[s] within a period of 10 [ten] days, the said authority in consultation with the other authorities, if found necessary, shall consider such Representation[s] by taking into account the grievances made by the petitioners in the said Representation[s] and thereafter, to dispose of the said Representation[s] within a reasonable time period, but within an outer limit of 1 [one] month from the date of receipt of such Representation[s]. It is further observed that this Court while disposing of the writ petition, has not made any observation as regards the merits of the claims of the petitioners and therefore, the Competent Authority of Land Acquisition [CALA], shall consider the Representation[s] on its own merits and in accordance with law.

11. This order disposes of the writ petition.

JUDGE

Comparing Assistant