

GAHC010248762022



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

Case No. : Cont.Cas(C)/723/2022

ROFIQ UDDIN
S/O- LATE MOTIAR RAHMAN, R/O- VILL- ADABARI PART II, P.O-
SAGALCHARA, P.S- DHUBRI, DIST- DHUBRI, ASSAM, PIN-783324

VERSUS

DIBAKAR NATH AND ANR
DEPUTY COMMISSIONER , DHUBRI, DIST- DHUBRI, PIN-783301

2.:JAYANT NARLIKAR
COMMISSIONER LOWER ASSAM DIVISION
PAN BAZAR
GUWAHATI
ASSAM
PIN-78100

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.01.2023

Heard Mr. L.R. Mazumdar, learned counsel for the petitioner. Also heard

Mr. K. Gogoi, learned Govt. advocate present in Court.

2. The case of the petitioner, in brief, is that his particular land was acquired vide L.A. Case No. 07/16-17 for construction of Dhubri-Phulbari Bridge. It is not in dispute that the land was acquired under the National Highways Act, 1956. Aggrieved by the computation of compensation of the acquired land, the petitioner had submitted a representation dated 31.08.2021 before the Deputy Commissioner, Dhubri for enhancement of compensation. The grievance of the petitioner is that the representation for enhancement was neither acted upon by the Deputy Commissioner, Dhubri nor he had referred the matter before the Arbitrator within the meaning of Section 3G of the National Highways Act, 1956 for determination of the amount payable as compensation.

3. Accordingly, the aggrieved petitioner had approached this Court by filing WP(C) 5868/2021. The said writ petition was disposed of by order dated 16.08.2022 to the following effect:

“Heard Mr. L.R. Mazumder, learned counsel for the writ petitioners in all the six writ petitions. Also heard Mr. R. Borpujari, learned standing counsel, Revenue Department, Assam and Mr. R. Talukdar, learned Govt. Advocate, Assam appearing for the official respondents.

The grievance expressed by the writ petitioners in all these six writ petitions are identical in nature and therefore, all these writ petitions are being disposed of by this common order.

As per the case projected in the writ petitions, the lands belonging to the petitioners were acquired by the authorities in connection with L.A. Case No. 07/2016-17 for construction of Dhubri Phulbari Bridge. Compensation was also paid to the

respective petitioners pertaining to the lands which were acquired by the authorities. The petitioners are, however, not happy with the quantum of compensation paid to them and therefore, have approached this Court by filing these writ petitions seeking a direction to refer the matter to the Arbitrator for determination of just and fair compensation as per the actual market value of the land as well as the zirat properties standing thereupon.

Today when these matters are called up, Mr. Borpujari has produced a copy of the notification dated 15-03-2022 issued by the Joint Secretary to the Govt. of Assam, Revenue & (DMLR) Department, a perusal of which goes to show that the Divisional Commissioner, Lower Assam Division has been appointed as Arbitrator under the provision of Section 3(G) Sub-Section 5 of the National Highways Act, 1956 to verify as to whether the amount of compensation determined by the competent authority was just and fair.

Mr. Mazumder has also invited the attention of this Court to the order dated 13-06-2022 passed by the learned Single Judge in W.P.(C) No. 289/2022 instituted by the similarly situated land owners to submit that similar matters have already been disposed of with a direction upon the concerned Deputy Commissioner to refer the matter to the Arbitrator. Mr. Mazumder submits that these matters be also disposed of in the similar lines.

Having regard to the facts and circumstances of the case and the submissions made by the learned counsel for both the sides, these writ petitions are being disposed of with a direction upon the Deputy Commissioner, Dhubri to refer the respective cases of the petitioners to the Arbitrator appointed under Section 3(G) sub-Section 5 of the National Highways Act, 1956 within a period of 04 weeks from the date of receipt of a certified copy of this order.

All the writ petitions stand disposed of accordingly.

Copy of the notification dated 15-03-2022 be retained in the record of these cases."

4. The Deputy Commissioner, Dhubri did not comply with the order of this Court despite submission of representation dated 26.08.2022 and accordingly, by alleging deliberate and willful violation of the order of this Court passed in WP(C) 5868/2021, the present contempt petition has been filed under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India.

5. Considered the submissions made by the learned counsel for the petitioner and also duly considered the order dated 16.08.2022 passed by this Court in WP(C) 5868/2021.

6. It would be appropriate to mention that under Section 18(1) of the Land Acquisition Act, 1894 (since repealed), it was provided that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, amongst others, regarding the amount of compensation. A *para-materia* provision is not contained in the National Highways Act, 1956 requiring that the reference of the aggrieved party must be routed through the Deputy Commissioner/ Collector having jurisdiction. It would be relevant to quote the provision of Section 3G (5) of the National Highways Act, 1956, which provides as follows:

“(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”

7. From the aforesaid provisions of Section 3G(5) of the National Highways Act, 1956, it is seen that the said Act provides that if any party is aggrieved by the amount of determination made by the competent authority, he/ she has a right to have the compensation determined by the Arbitrator. In the present case in hand, it is not in dispute that the jurisdictional Commissioner of the Divisions of the State have been nominated as an Arbitrator by a notification issued by the Central Govt.

8. Under such circumstances, as the Deputy Commissioner/ Collector cannot be said to be an aggrieved party, the said authority is not required to file an appeal in the first place against the award determined by the competent authority. Moreover, in the absence of any enabling provisions in the National Highways Act, 1956, requiring that the reference for determination of compensation by an Arbitrator must be routed through the Deputy Commissioner/ Collector, the Collector is under no statutory duty or obligation to forward the application of the petitioner for determination of land acquisition compensation by the Arbitrator.

9. Therefore, as the petitioner has the competence to have the compensation regarding land acquisition to be determined by Arbitrator under Section 3G(5) of the National Highways Act, 1956, in the considered opinion of the, non-compliance of the directions contained in the order dated 16.08.2022 passed by this Court in WP(C) 5868/2021 would not amount to willful and deliberate disobedience of the order of this Court because independent of the said order, the petitioner has a right to approach the notified Arbitrator, appointed by the Central Govt., to have the amount of compensation determined in accordance

with law.

10. Therefore, as the petitioner is armed with statutory provisions under Section 3G(5) of the National Highways Act, 1956 to prefer an application for determination of the compensation by the Arbitrator, it is open to the petitioner to exercise her statutory right. Therefore, unless and until the notified Arbitrator refuses to entertain the application filed by the petitioner for determination of her land acquisition compensation unless it is routed through the Deputy Commissioner/ Collector, Dhubri, this present contempt petition would not survive.

11. Therefore, the Court is inclined to close this contempt petition. However, at the same time, liberty is granted to the petitioner to approach the Court in the event the notified Arbitrator refuses to accept the application of the petitioner for determination of compensation unless the same is routed through the Deputy Commissioner/ Collector, Dhubri.

12. In this regard, we record the assistance granted by Mr. K. Gogoi, learned Govt. advocate, who was heard in the matter.

13. With the liberty as indicated above, this contempt petition stands closed.

JUDGE

Comparing Assistant