

GAHC010259662023



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

Case No. : WP(C)/6828/2023

DILIP KUMAR JALLAN AND ANR
S/O LATE PUSHRAJ JALLAN, R/O DERGAON TOWN, WARD NO. 10, MOUZA,
P.O. AND P.S.-DERGAON, DIST-GOLAGHAT, ASSAM

2: PRADEEP KUMAR JALLAN
S/O LATE PUSHRAJ JALLAN
R/O DERGAON TOWN
WARD NO. 10
MOUZA
P.O. AND P.S.-DERGAON
DIST-GOLAGHAT
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF ROAD TRANSPORT AND HIGHWAY, TRANSPORT BHAWAN, 1,
PARLIAMENT STREET, NEW DELHI-110001

2:THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI)
(MINISTRY OF ROAD TRANSPORT AND HIGHWAY) GOVERNMENT OF
INDIA

A COMPANY HAVING ITS REGISTERED OFFICE AT G-5 AND 6
SECTOR-10
DWARKA
NEW DELHI-110075 AND REGIONAL OFFICE AT NEDFI HOUSE
4TH FLOOR
G.S. ROAD
DISPUR
GUWAHATI-781006
ASSAM AND IS REPRESENTED BY ITS CHAIRMAN

3:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT

CORPORATION LIMITED (NHIDCL)
HAVING ITS OFFICE AND PRINCIPAL PLACE OF BUSINESS AT 3RD FLOOR
PTI BUILDING
4-PARLIAMENT STREET
NEW DELHI-110001 AND HAVING ITS BRANCH OFFICE AT PMU JORHAT
OPPOSITE BRAHMAPUTRA ACADEMY 1ST FLOOR
C/O RUPJYOTI KALITA BORA
RAJATIA GAON
MALOW ALI
JORHAT
785001 AND IS REPRESENTED BY ITS MANAGING DIRECTOR

4:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-781006
KAMRUP (M)
ASSAM

5:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-781006
KAMRUP (M)

Advocate for the Petitioner : MR A K RAI

Advocate for the Respondent : SC, NH DEPARTMENT

Linked Case : **WP(C)/6841/2023**

RAJ KUMAR JALAN
S/O- LATE HANUMAN BUX JALAN
R/O- DERGAON TOWN
WARD NO-10
MOUZA- DERGAON
P.O AND P.S- DERGAON
DIST- GOLAGHAT
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY
TO THE GOVERNMENT OF INDIA

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN-1
PARLIAMENT STREET
NEW DELHI- 110001

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CORPORATION LIMITED (NHIDCL)
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TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-781006
KAMRUP (M)

Advocate for : MR A K RAI

Advocate for : GA ASSAM appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : **WP(C)/6830/2023**

DINDAYAL JALAN
S/O LATE HANUMAN BUX JALLAN
R/O DERGAON TOWN
WARD NO. 10
MOUZA-DERGAON
P.O. AND P.S.-DERGAON
DIST-GOLAGHAT
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAY
TRANSPORT BHAWAN
1
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CORPORATION LIMITED (NHIDCL)
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4:THE STATE OF ASSAM
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5:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-781006
KAMRUP (M)

Advocate for : MR A K RAI
Advocate for : SC, NH DEPARTMENT appearing for THE UNION OF INDIA AND 4
ORS

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 08-12-2023

Heard Mr. A.K. Rai, learned counsel for the petitioners; Ms. R. Bora, learned counsel representing the Ministry of Road Transport and Highways [MoRTH], Government of India [GoI] & the National Highways and Infrastructure Development Corporation Limited [NHIDCL] for the respondent nos. 1, 2 & 3; and Mr. P. Nayak, learned Standing Counsel, General Administration Department [GAD] for the respondent nos. 4 & 5.

2. As the issue involved in these 3 [three] writ petitions is same and the contesting parties are also same, all the 3 [three] writ petitions are taken up for disposal at the motion stage itself, at the request of the learned counsel for the parties considering the nature of the issue involved.

3. For the purpose of rehabilitation and upgradation of Dergaon Town Section of National Highway no. 37 from KM 426.800 to KM 437.400 to 4-Lane in the State of Assam on Engineering, Procurement and Construction [EPC] basis, a land acquisition process on

permanent basis was initiated by the Ministry of Road Transport and Highways [MoRTH], Government of India [GoI] under the provisions of the National Highways Act, 1956. The process was initiated with a number of Notifications including Corrigenda, issued and published in the year 2020 under Section 3A of the National Highways Act, 1956. After following the procedures prescribed under the National Highways Act, 1956, the Notifications required to be published under Section 3D of the National Highways Act, 1956 had also been issued and published. With the issuance and publication of the declaration under Section 3D, the acquired land vested absolutely in the Central Government free from all encumbrances. The possession of the parcels of land so acquired, have also been taken over by the Central Government and the Competent Authority – Land Acquisition [CALA], appointed under Section 3[a] of the National Highways Act, 1956 has also passed Awards under Section 3G[1] of the National Highways Act, 1956 in favour of the persons whose lands have been so acquired.

4. The two petitioners in the writ petition, W.P.[C] no. 6828/2023 were owners of a parcel of land measuring 1 Katha 17 Lessas, covered by Dag no. 2962 & K.P. Patta no. 760, situate at Village – Dergaon Town, Mouza – Dergaon, Dergaon Revenue Circle, District – Golaghat [‘the Subject-Plot no. 1’, for short] and out of the Subject-Plot no. 1, an area of 5 Lessas has been acquired by the respondent authorities for the said National Highway project. The CALA has thereafter, passed Awards, dated 27.10.2021 & dated 21.05.2022, towards compensation for land and zirat respectively under Section 3G[1] of the National Highways Act, 1956 whereby the petitioners have awarded an amount as compensation.

4.1. The petitioner in the writ petition, W.P.[C] no. 6830/2023, was the owner of parcels of land under two different Dags viz. Dag nos. 2965 & 2966 within K.P. Patta no. 762, situated at Village – Dergaon Town, Mouza – Dergaon, Dergaon Revenue Circle, District – Golaghat [‘the Subject-Plot no. 2’, for short]. Parts of the Subject-Plot no. 2 have also been acquired by the respondent authorities for the said National Highway project. After issuance and publication of Notifications under Section 3A and Section 3D of the National Highways Act, 1956, the CALA has passed an Award dated 27.10.2021 and a Supplementary Award dated 21.05.2022 towards compensation for acquisition of land and toward zirat respectively under

Section 3G[1] of the National Highways Act, 1956 whereby the petitioner has been awarded an amount as compensation.

4.2. The petitioner in the writ petition, W.P.[C] no. 6841/2023 was the owner of parcels of land under two different Dags viz. Dag nos. 2967 & 2968 within K.P. Patta no. 763, situate at Village – Dergaon Town, Mouza – Golaghat, Dergaon Revenue Circle, District – Golaghat, Assam [the Subject-Plot no. 3, for short]. Parts of the Subject-Plot no. 3 has also been acquired by the respondent authorities for the said National Highway project. After issuance and publication of the Notifications under Section 3A and Section 3D of the National Highways Act, 1956, the CALA has also passed an Award and a Supplementary Award dated 21.05.2021 towards compensation for acquired land and compensation for zirat under Section 3G[1] of the National Highways Act, 1956 for an amount as compensation.

6. It is the common case of the petitioners in all the three writ petitions that after acquisition of those parcels of land i.e. parts of Subject-Plot no. 1, Subject-Plot no. 2 & Subject-Plot no. 3, belonging to them, for construction of the National Highway no. 37, the respondent authorities have already taken over the possession of the parcels of land so acquired. The matters of awarding compensations also crystallised into Awards, mentioned above, under Section 3G[1] of the National Highways Act, 1956. Aggrieved by the amounts of compensation so awarded by the CALA under Section 3G[1], all the petitioners had also preferred applications under Section 3G[5] of the National Highways Act, 1956 before the Commissioner, Upper Assam Division, Assam immediately as the Commissioner, Upper Assam Division, Assam was appointed as an Arbitrator by the Central Government in terms of the provisions contained in Section 3G[5] of the National Highways Act, 1956.

7. When the applications of the petitioners seeking enhancement of the compensation amounts awarded under Section 3G[1] of the National Highways Act, 1956 were pending, the General Administration Department [GAD] vide a Notification bearing no. e file No 304149/1 dated 17.07.2023 had abolished the offices of the Divisional Commissioners and it has been notified that after such abolition of the offices of the Divisional Commissioners of Divisions, the statutory powers and the administrative powers as exercised by all the Divisional

Commissioners including the Divisional Commissioner, Upper Assam Division, Assam, would henceforth be exercised by the Commissioner and Secretary/Principal to the Government of Assam, General Administrative Department [GAD].

8. When the writ petitions were listed on the previous date, 29.11.2023, the learned counsel appearing for the respondent authorities had submitted that subsequent to the Notification dated 17.07.2023 of the General Administrative Department [GAD], another Notification bearing no. GAD-16031[11]1/2023/10 dated 16.11.2023 had been issued also by the General Administrative Department [GAD] whereby a number of subjects had been transferred from the erstwhile Divisional Commissioners to the Revenue and Disaster Management Department with immediate effect. The matters of arbitration in respect of 4-Lane matters which were earlier dealt with by the erstwhile Divisional Commissioners, have also been transferred/delegated to the Revenue and Disaster Management Department. The Notification has further provided that the Revenue and Disaster Management Department shall take the necessary steps for amendment in the relevant acts/rules/regulations/orders/notifications, etc., which were issued from their ends under the provisions of which the erstwhile Divisional Commissioners were made also appellate authorities and till completion of such amendment process, the Revenue and shall take the necessary steps for disposal of the matters/subjects related to them for which the erstwhile Divisional Commissioners were appellate authorities, as a stop-gap arrangement.

8.1. On the previous date, the learned counsel representing the MoRTH, GoI was asked to obtain instruction whether the Central Government of India had taken steps for appointment of an arbitrator under Section 3G[5] of the National Highways Act, 1956.

9. From the documents appended to the writ petitions, it clearly appears that the Competent Authority Land Acquisition [CALA] had already passed the awards under Section 3G[1] of the National Highways Act, 1956 in 2021 & 2022. With the abolition of the office of the Divisional Commissioners of Divisions, who were earlier appointed as Arbitrators under Section 3G[5], there is requirement of appointing an Arbitrator under Section 3G[5] to deal with the matters provided in sub-section [5] of Section 3G of the National Highways Act,

1956. As per sub-section [5] of Section 3G, if the amount determined by the Competent Authority Land Acquisition [CALA] under sub-section [1] 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. Thus, it is clear that an Arbitrator under Section 3G[5] of the National Highways Act, 1956 is to be appointed by the Central Government.

10. Ms. Bora, learned counsel representing the MoRTH and the NHIDCL has submitted that no Arbitrator has been appointed under Section 3G[5] of the National Highways Act, 1956 till date after abolition of the offices of the Divisional Commissioners pursuant to the Notifications, dated 17.07.2023 & dated 16.11.2023.

11. Persons like the petitioners herein, whose lands have been acquired and who are not satisfied with the amounts of compensation awarded under Section 3G[1] by the Competent Authority Land Acquisition [CALA], have a right to seek enhancement of the amount awarded as compensation under sub-section [1] of Section 3G and are not to be left remediless for an indefinite period.

12. It has been held in **General Manager [Project], National Highways and Infrastructure Development Corporation Limited vs. Prakash Chand Pradhan and others**, reported in [2020] 15 SCC 533, that the Central Government alone is to determine who is to be an Arbitrator under Section 3G[5] of the National Highways Act, 1956 and if a demand is made for appointment of an Arbitrator and the Central Government does not appoint an Arbitrator within a reasonable time, the remedy is a writ petition under Article 226 of the Constitution of India. It has been observed in **National Highways Authority of India vs. Sayedabad Tea Company Limited and others**, reported in [2020] 15 SCC 61, to the effect that so far as the appointment of Arbitrator is concerned, the power is exclusively vested with the Central Government as envisaged under sub-section [5] of Section 3G of the National Highways Act, 1956. It has also been observed therein that though there is no statutory limitation provided under sub-section [5] of Section 3G for the Central Government to appoint an Arbitrator that does not give an unguided discretion to the authority. In the absence of any statutory limitation, the Central

Government should appoint such an Arbitrator under sub-section [5] of Section 3G within a reasonable time period and if the Central Government fails in discharge of its statutory duty in appointing an Arbitrator on a request being made by either of the parties aggrieved, it is open for the party to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Thus, it is evident that in the event it is found that the Central Government has not appointed any Arbitrator under sub-section [5] of Section 3G of the National Highways Act, 1956 for a substantial period of time, it is open for a party aggrieved to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India seeking appointment of an Arbitrator under sub-section [5] of Section 3G. In **Sayedabad Tea Company Limited** [supra], the Hon'ble Supreme Court of India had directed the Central Government to consider and Appoint an arbitrator in terms of Section 3G[5] of the National Highways Act, 1956 within a period of 30 days, with the further observation that as the litigation had consumed a sufficient long time, the Arbitrator so appointed by the Central Government would adjudicate and decide the dispute within a reasonable time but in no case later than six months after receipt of the records of the proceedings.

13. Having regard to the above facts and circumstances obtaining in the case and more particularly, in view of non-appointment of any Arbitrator under sub-section [5] of Section 3G of the Act since the abolition of the offices of the erstwhile Divisional Commissioners including the office of the Divisional Commissioner, Upper Assam Division, Assam, this Court is of the considered view that these writ petitions can be disposed of by directing the respondent authorities, more particularly, the respondent no. 1 to take the necessary steps for consideration and appointment of an Arbitrator under sub-section [5] of Section 3G of National Highways Act, 1956. Accordingly, these writ petitions are disposed of with the following directions :-

[a] the respondent authorities, more particularly, the respondent no. 1 shall consider and appoint an Arbitrator under sub-section [5] of Section 3G of the National Highways Act, 1956 for the purpose of dealing with the proceedings arising out of the project of 'Rehabilitation and Upgradation of Dergaon Town Section of National Highway no. 37, within a period of 6 [six] weeks from today;

[b] In order to facilitate the Arbitrator so appointed, to deal with the arbitration proceedings relating to the applications of the petitioners, the respondent General Administration Department [GAD], Government of Assam shall transmit the records of the concerned cases as the petitioners herein have already submitted their applications seeking enhancement of the compensation amounts before the office of the erstwhile Divisional Commissioner, Upper Assam Division, Assam, within a period of 4 [four] weeks from the date of appointment of the Arbitrator; and

[c] On receipt of the records of the cases of the petitioners, the Arbitrator shall proceed to consider and dispose of the applications as expeditiously as possible, preferably within a period of 6 [six] months from the date of such receipt of the records.

14. With the observations made and directions given above, these writ petitions are disposed of.

15. A copy of this order be furnished to Ms. Bora, learned counsel representing the MoRTH & the NHIDCL and to Mr. Nayak, learned Standing Counsel, GAD for taking necessary steps from their ends.

JUDGE

Comparing Assistant