

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WA No. 26 of 2023

1. Fortuna Agro Plantation Limited, a company registered under the Companies Act, 1956 having its registered office at P.O. Sadhanashram, District: Unakoti, Kailashahar, Tripura-799277 represented by Ajoy Malakar, Son of late Sarbaram Malakar, authorized representative of the company.

.....Appellant

-VERSUS-

1. The Union of India, represented by the Secretary, Ministry of Home Affairs (Border Management Division) Room No.209, Griha Mantralaya, North Block, New Delhi-110001.
- 1(a). The Border Road Organization (Land Acquired by GREF wing of BRO) Director General Border Roads, Seema Sadak Bhawan, Ring Road, Delhi Cantt, New Delhi-110010.
2. The State of Tripura, represented by the Secretary to the Govt. of Tripura, Revenue Department, New Secretariat Building , Capital Complex, Agartala-799006.
3. The District Magistrate & Collector, North Tripura (Now Unakoti) Gournagar, Kailashahar, 799277.
4. Land Acquisition Collector, North Tripura (Now Unakoti) Gournagar, Kailashahar, 799277.
5. Sub-Divisional Manager, Gournagar, Kailashahar, 799277.
6. Dilkhusa Tea Company Ltd. a company incorporated under the Companies Act, 1956 having its registered office at 3, Wood Street, Kolkata-700016.
- ***As per direction of the Hon'ble Court's order dated 31.01.2024 passed in I.A. No. 02 of 2024 in W.A.No.26 of 2023 respondent No.7 has been added in the memo of appeal.
7. The DIG, BSF, Sector Head Quarter, Panishagar, North Tripura.

..... Respondents

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. S. M. Chakraborty, Sr. Advocate. Mrs. P. Chakraborty, Advocate.
For Respondent(s)	:	Mr. S. S. Dey, Advocate General. Mr. B. Majumder, Deputy SGI Mrs. S. Deb (Gupta), Advocate. Ms. A. Chakraborty, Advocate.
Date of hearing	:	14.08.2024
Date of delivery of judgment and order	:	21.08.2024
Whether fit for reporting	:	YES.

JUDGMENT & ORDER

[T. Amarnath, Goud, JJ]

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for the appellant also heard Mr. S. S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel, Mr. B. Majumder, learned Deputy SGI and Mrs. S. Deb (Gupta), learned counsel appearing for the respondents.

[2] This is an appeal filed under Chapter-V of Rule-2(III) of the Tripura High Court Rules against the judgment and order dated 05.01.2021 passed by the learned Single Judge in WP(C) No.1363 of 2016.

[3] The case of the petitioner is that the Petitioner Company i.e. the appellant herein, is planter and owner of the Murticherra Tea Estate in Unakoti. In 1995 the Union of India took over stretch of land with 66 ft. width along the Indo-Bangladesh Border measuring 26 acres from the Jote area of Murticherra Tea Estate for construction of the Indo Bangladesh Border Road (IBB Road) without initiating any process of acquisition. Road was constructed, thereafter in 1976 the revenue department of the Government issued notification for acquisition for the land. But the said notification for acquisition of the land was different from the land already used for construction of the IBB Road. After the notification observing all formalities land has been taken over and mutated and the Khatian opened by the name of the Government. Now the land actually used for the construction of the IBB Road prior to the acquisition, which measures about 26.00 acres no attempt was made for paying compensation of the land which went to the possession of the Union of India without acquisition.

[4] The Petitioner filed Writ Petition (C) No.228/2010 which was disposed of with a direction dated 17.01.2011 that the Collector shall make a joint survey of the actual area of the land which went in possession of the Union of India without acquisition. The said order was never challenged by the respondents and become final. Thereafter, since no survey was conducted in terms of order dated 17-01-2011, a Contempt Petition No.9 of 2011 was filed

thereafter, a survey was conducted which is merely an eye wash and was done behind the Petitioner and others, a re-survey was ordered vide order dated 06-04-2013 but yet the directions of the court were not truthfully complied with.

[5] Thereafter, Joint survey was conducted and report dated 30.07.2013 alongwith sketch map were filed by the respondents which were far from truth but Contempt Petition was disposed of by this Court with a finding that since respondents have filed Joint survey, contempt is not tenable. Ultimately, the matter went to the Hon'ble Apex Court which allowed the petitioner to file a writ petition for the purpose of getting compensation for the un-acquired land in possession of the Union of India by construction of the IBB Road. The Petitioner filed writ petition No.1363 of 2016 which was disposed of by learned Single Judge by judgment and order dated 05.01.2021. Since the finding of learned Single Judge in judgment and order dated 05.01.2021 while adjudicating the petition in favour of the petitioner were not correct and the required documents were available on record of this Court, which the learned Single Judge failed to notice and recorded a perverse finding as in point No.12 of the judgment and order dated 05.01.2021 resulting in miscarriage of justice.

[6] Hence, the present appeal has been preferred by the appellant.

[7] Mr. S. M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel has submitted that the learned Single Judge did not took into consideration that the respondents No. 1 to 5 illegally took the private land of an extent of 25.42/26.66 acre, admittedly belonging to the petitioner, for purposes of laying IBB Road in the year 1995 without any due process of law, and without any joint survey and compensation thereof is unconstitutional. The land for which the notification has been issued in 1997 has not been utilized for construction of IBB Road, except overlapping portions and the land records shows the land in the name of the government as already ROR has been changed after acquisition.

[8] The State authorities failed to redress the grievances of the petitioner with regard to different alignment of the IBB Road and the said road was constructed on area other than the acquired area and for which no

compensation has been paid to the petitioner company. The petitioner company has legal right under the Land Acquisition Act, 1894 to demand compensation for the assets on the land acquired by the State authorities under the provisions of the Land Acquisition Act, 1894. Admittedly, the State Government did not pay any compensation to the petitioner for the additional land on which the Road was laid and the same is required to be paid under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

[9] The respondent authorities have acted arbitrarily, unreasonably and with *mala-fide* intention by refusing to acquire the land of the petitioner under the Land Acquisition, 1894 after joint survey so that the value of the assets consisting of trees and bamboos situated on the land could be arrived at and the petitioner company be compensated in accordance with law.

[10] The land was acquired under Notification No. F.9(6)Rev/ACQ/II/97 dated 29.08.1997 under Sections-4,6 read with Section-17 of L.A. Act 1894 dispensing hearing under Section-5A has already vested in the Government but remain unused save and except, where the alignment crosses the un-acquired land on which the actual road constructed is shown in the sketch in colour green. 80% assessed compensation as envisaged under Section-17 (3A) of the Act were neither assessed nor paid violating the provisions of the Act. Section 7 of the Act was not followed at all. No permission, whatsoever were taken prior to acquisition as envisaged under the Act. For the said land Government Authorities has already made khatian No.230 evidencing transfer of ownership from the Petitioner to the Government.

[11] It has been further contended that the land on which the road was actually constructed and was handed over by the Srirampur Tehsil to M/S Gref and M/S Gref handed over the same to M/S CPWD was admitted by learned District Magistrate & Collector, Kailashahar in its affidavit dated 04.01.2014 at point 7g and letter of CPWD confirmed that, the possession of the un-acquired land taken in 1995 and or constructed for the purpose of maintenance.

[12] The National Building Construction Corporation (NBCC) acquired land of the petitioner Company for Indo Bangladesh Border (IBB) fencing. The 35 ft. wide land parallel to IBB Road which was separately acquired by a separate agency i.e. NBCC for IBB fencing in the year 2005 was taken in 2004 was separately handed over and taken over between Srirampur TK and M/S NBCC in the year 2006.

[13] It will not be out of place to mention that this Court in its order dated 06.02.2014 in Contempt Petition No. 9 of 2011 has accepted the fact that IBB Road which was acquired was not used and said IBB Road was constructed in separate alignment in separate land and hence direction was necessary on terms of order dated 11.01.2011 of this Court which has already attained finality for legal acquisition of the land on which the IBB Road already constructed by taking illegal possession measuring 25.42/26.64 acres and to pay compensation thereof.

[14] Reports/sketches prepared by the officials of the Government dated 08.01.2008, 4/5.04.2008 and 23.05.2008 clearly establish that the petitioner is striving for its valuable right for the land admittedly belonging to it which was admittedly taken away by the official respondents for the purpose of the said IBB road which is in physical enjoyment and occupation of the respondents without acquisition.

[15] Reports/sketches which were prepared by the officials of the Government were never challenged or controverted by the respondents in the Contempt Petition No.9 of 2011 and hence the reports and sketch maps can be said to be tested and final. The map and report submitted on 30.07.2013 did not consider the earlier maps as stated in the order dated 06.04.2013. Also, the report dated 30.07.2013 contradicts the map dated 30.07.2013 itself but matches with the map dated 23.05.2008 relied by the petitioner.

[16] The report dated 30.07.2013 states that it is found on the ground that the IBB fencing and IBB road are adjacent to each other and running parallel in the entire land in question and that the land measuring 18.31 acres acquired for IBB fencing has 35 feet width from the beginning to the end. On

ground, it is in existence and found correct. This alignment is shown in map by green colour. Therefore, as per the above report, if 35 ft. width land will require acquisition of 18.31 acres of land, then if 66 ft. width of land for IBB road, is parallel required to be acquired in the same land will need 34.53 acres of land, but since out of the said 34.53 acres of land, in few places road crosses/overlaps the acquired portion of land, further acquisition will need lesser quantity of land.

[17] The joint survey was conducted with a predetermined mind and the conclusion was derived much prior to the conduct of the survey. The Land Acquisition Collector, Kailashahar accepted and admitted that on which the IBB Road was constructed has not been acquired and thus change of alignment in the year 1998 and has reported the same to the requiring agency.

[18] In a reply dated 01.07.2013 against a RTI application of the petitioner dated 20.11.2012, the office of District Magistrate & Collector, Kailashahar has stated that the quantum of un-acquired and illegal possessed land on which IBB Road exists is 26.64 acres of land which is un-acquired instead of 25.42 acres as mentioned in reply dated 23.05.2008 and hence it is necessary to quantify the exact quantum of un-acquired and illegally possessed land after verifying the record.

[19] The only stand taken by the respondent in their report is that since two differently aligned road area are passing through the same plot number, of which one alignment alone has been acquired, the other aligned road/land may be exchanged which is on the face of it illegal and bad in law and unknown to any legal principle and logical interpretation. All the materials as required for adjudicating the petition in favour of the petitioner were available on record, which the learned Single Judge failed to notice and recorded a perverse findings as in point No. 12 of the judgment and order dated 05.01.2021 resulting in miscarriage of justice.

[20] Mr. S. S. Deb, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the respondents has submitted that the in compliance of the order dated 17.01.2011 passed in WP(C) No.228 of

2010, the joint survey had taken place and that from the final report of the joint survey it has been transpired that the entire existing IBB Road is running through the notified plots of land acquired for IBB fencing and IBB Roads and that no piece of land has been utilized for existing IBB Road outside the acquired land. The joint survey was carried out in presence of a contingent of highly qualified surveyors having experience of several decades and in presence of the representatives of the interested parties.

[21] There is no dispute that in terms of the order 17.01.2011 a joint survey was carried out. It is also pertinent to note that the report of the said joint survey dated 30.07.2013 has been challenged in this writ petition. The report of the joint survey has clearly observed that there is no piece of land utilized for existing IBB road outside the acquired land. No materials have been produced by the petitioner to dislodge this said finding.

[22] In view of the above, this Court is of the opinion that that the basic issue and root of the matter is something else which falls for consideration before this Court. It is the prima facie duty of a person to placed relevant documents/title deed if claimed for ownership. The petitioner has claimed to be the owner but there are no basic documents or any title deed filed in support of his contention to say that the petitioner is the owner.

[23] The petitioner has not filed any relevant document nor made any specific pleading as to how he became owner and who is their vendor and under what document, he is claiming the ownership. More particularly, the petitioner is a company and being a company has he should keep all necessary documents to establish his ownership over the property to justify his grievance. A registered company obviously if is an owner under the deed, they would submit in the registration of companies before the Tea Board and also retain originals with him. But no such averment or document is placed on record before this Court. In view of the same, this Court draws an adverse inference against the petitioner.

[24] This Court in an identical matter i.e. in WP(C) No.31 of 2023 [titled as The Silkote Tea Company Ltd v. The State of Tripura & Others] has observed that they have not placed any material documents or information on record to show that they were the owners of the property except banking upon the ceiling limit and some sections of TLR&LR Act and subsequently, the same was dismissed.

[25] In another matter i.e. in WA. No.268 of 2023 this Court held that it is reasonably construed that all land in a State is the property of a State unless it is claimed under lawful alienable title. The series of proceedings which relate to exemption, withdrawal of exemptions, are noticed by this Court that they have not dealt with the issue of ownership and there is no reference as to how the petitioners claimed ownership on the said properties. Unless the petitioners establish that he is the owner of the said land, it is not open for him to claim equities and thus, the same is also dismissed by this Court.

[26] In the light of the above, the present appeal stands dismissed. As sequel, miscellaneous application, pending if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghosh

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