

GAHC040003652024

2024:GAU-AP:848



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

Case No. : WP(C)/374/2022

THE UNION OF INDIA and 3 Ors.
Age: 0
Occupation :
Address:Through the Director General
ITBP
MHA
Govt. of India
CGO Complex
Lodhi Road
New Delhi.

2: The Inspector General
Age: 0
Occupation :
Address:North East Frontier HQ
ITBP
MHA
Govt. of India
Khatting Hill
Itanagar
Arunachal Pradesh. Pin 791111

3: The DIG SHQ
Age: 0
Occupation :
Address:Dibrugarh
ITBP
MHA
Govt. of India
Mohanbari
District Dibrugarh
Assam. Pin 786012

4: The Commandant
Age: 0
Occupation :
Address:9th ITBP
Lohitpur
PO Tezu
District Lohit
Arunachal Pradesh. PIN 792001
VERSUS

1:THE STATE OF AP and 3 Ors.
Age: 0
Occupation :
Address:Through the Chief Secretary
Govt. of Arunachal Pradesh
Civil Secretariat
Itanagar
Arunachal Pradesh.

2:The Secretary
Age: 0
Occupation :
Address:Land Management
Govt. of Arunachal Pradesh
Itanagar.

3:The Deputy Commissioner/Land Acquisition Authority
Age: 0
Occupation :
Address:Dibang Valley District
PO and PS Anini
Arunachal Pradesh.

4:Rohit Mele
Age: 0
Occupation :
Address:S/o Late D. Mele
Resident of Etalin Village
PO/PS Anini
Dibang Valley District
Arunachal Pradesh.

Advocate for : Marto Kato
Advocate for : GA (AP) appearing for THE STATE OF AP and 3 Ors.:

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

JUDGMENT & ORDER (ORAL)

Date : 16-09-2024

Heard Mr. M. Kato, learned D.S.G.I., appearing for the petitioners. Also heard Mr. S. Tapin, learned Senior Government Advocate for the respondents No. 1 and 3 as well as Mr. D. Kamduk, learned Standing Counsel, Land Management Department representing respondent No.2 and Mr. D. Das, learned senior counsel assisted by Mr. K. Barman, learned counsel for the respondent No.4.

2. The petitioner No.1 is the Union of India, represented by Director General, ITBP under Ministry of Home Affairs, Government of India; petitioner No.2 is the Inspector General, North-East Frontier Head Quarter, ITBP; and petitioner No.3 is the Deputy Inspector General, Section Head Quarter Dibrugarh, ITBP and the petitioner No.4 is the Commandant, 9th ITBP, Lohitpur in the District of Lohit.

3. By filing this writ petition under Section Article 226 of the Constitution of India, the petitioners have assailed the Notification dated 21.08.2019, published in the Arunachal Pradesh Gazette Extraordinary dated 26.09.2019, as well as the land acquisition award dated 01.06.2020, passed by the Deputy Commissioner,

Dibang Valley District, Anini with a prayer to set aside and quash the said notification and award.

4. It may be mentioned that in connection with this writ petition, an order was passed on 17.05.2023, by which, on being appraised to this Court that identical issue pertaining to another plot of land is the subject matter before the Hon'ble Division Bench in WA 41(AP)/2022, which is pending consideration, in the interest of justice, the proceeding of IA(C) 219(AP)/2022 with WP(C) 219(AP)/2022 with IA(C) 168(AP)/2022 was stayed.

5. It is clarified that IA(C) 219(AP)/2022 has been filed in connection with L.A. Appeal No.01/2021. Accordingly, though the order dated 17.05.2023 is shown to have been passed in IA(C) 219(AP)/2022 with WP(C) 219(AP)/2022 with IA(C) 168(AP)/2022, but from the facts and circumstances of this writ petition, it appears that the said stay order was intended to be applied in the proceedings of the present writ petition i.e. WP(C) 374(AP)/2022. There is no objection to this proposition.

6. It may also be mentioned that in the certified copy of the order dated 17.05.2023, perhaps due to inadvertence, IA(C) 219(AP)/2022 as well as IA(C) 168(AP)/2022 have been linked with the proceedings of this writ petition i.e. WP(C) 374(AP)/2022. This is also factually incorrect because both the said IA(C) 219(AP)/2022 and IA(C) 168(AP)/2022 are actually linked with L.A. Appeal No.01/2021, for which the records of L.A. Appeal No.01/2021 was

verified by the learned counsel/senior counsel for the appearing parties. Therefore, this clarification has been made in this order to clarify that the interim order dated 17.05.2023 was passed by this Court in connection with WP(C) 374(AP)/2022.

7. It appears from the copy of letter dated 04.09.2009, written by the Commandant 9th Battalion ITBP and annexed to this writ petition as Annexure-1(COLLY), the Deputy Commissioner, Upper Dibang Valley, Anini was informed that concerned land in this writ petition, which is a land at village Etalian (also spelt as 'Etalin' in some documents) measuring 3 Acres, was taken in possession by the Assam Rifles in the year 1959 along with description of other 5(five) plots of land mentioned therein, it has also been stated in the said letter that the land was in occupation with the Assam Rifles since 1950 and all the 6(six) plots of land including the land of Etalian which is subject matter of this writ petition, was handed over to ITBP force in the year 2005 as per orders of Ministry of Home Affairs.

8. Accordingly, the petitioner No.4 had made a prayer before the Deputy Commissioner, Anini for exemption of payment of one time land value and prayed that the land may be transferred in the name of ITBP force and it was also mentioned that all the lands had earlier been transferred in the name of Assam Rifles without any cost. However, on query of this Court, the learned DSGI has stated that no such document is made part of the writ petition to show that

earlier the land was transferred to Assam Rifles free of cost. This is relevant that if the land has already been transferred to Assam Rifles, there cannot be a re-acquisition of the same land when beneficiary would still be the Government of India, whether the land is occupied by Assam Rifles or by the ITBP.

9. The case of the petitioners is that by the order passed by this Court in WP(C) 11(AP)/2017, WP(C) 74(AP)/2017, WP(C) 77(AP)/2017, WP(C) 78(AP)/2017, WP(C) 79(AP)/2017 and WP(C) 80(AP)/2017, the Deputy Commissioner, Anini was directed to make an enquiry and ascertain as to whether the land in question was a Government land or a Community land. However, without complying with the orders passed in those writ petition, and without any requisition or initiation from the ITBP, the notification dated 21.08.2019, which was published in the Arunachal Pradesh Gazette on 26.09.2019 which is impugned in this writ petition, was issued by the Secretary, Land Management, Government of Arunachal Pradesh (respondent No.2). It is projected that the land acquisition notification was issued without consulting the petitioners. It is also projected that consequently, the Deputy Commissioner-cum-Land Acquisition Authority, Dibang Valley District (respondent No.3), had passed the land acquisition award on 01.06.2020.

10. Aggrieved by the award dated 01.06.2020, the petitioner No.4 i.e. the Commandant, 9th Battalion ITBP, had filed an objection under Section 64 of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "Act of 2013") before the Court of District Judge-cum-Presiding Officer, Land Acquisition, Rehabilitation & Settlement Authority, East Session Division, Tezu. The said objection was filed before the Deputy Commissioner-cum-Land Acquisition Authority, Dibang Valley District (respondent No.3). The said objection was registered as Reference Case No.01/DV/2021. The learned District Judge-cum-Presiding Officer, Land Acquisition, Rehabilitation & Settlement Authority, East Session Division, Tezu had passed the judgment and order dated 07.05.2021, by which the said objection was disposed of by directing the Union to the India through the respondent No.4 to make the payment of compensation amount of Rs.83,08,331/- (Rupees Eighty three lakh eight thousand three hundred thirty one only) to the petitioner within a period of 2(two) months with interest at the rate 6% from the date of award till realization.

11. The said judgment and order dated 07.05.2021 was assailed by the Union of India by filing L.A. Appeal No.01/2021 under Section 74 of the 2013 Act.

12. This Court vide judgment and order dated 21.02.2022, passed in L.A. Appeal No.01/2021, had held that the learned District Court while dealing with the Reference Case had failed to address the issues raised by the Union of India in its petition under Section 64 of the Act of 2013 and accordingly, for reasons assigned, the impugned judgment and order dated 07.05.2021, passed by the learned

District Judge, Tezu was set aside and the matter remanded back to the said learned court for a fresh decision.

13. On the matter being remanded, the learned District Judge re-heard the matter and vide order dated 27.07.2022, passed in Reference Case No.1/DV/2021, it was held that in light of Section 95(2) of the Act of 2013, which creates an embargo upon the beneficiary for whom the land was acquired to file the reference, the reference was not maintainable and the said reference was dismissed on the ground of lack of jurisdiction.

14. The learned D.S.G.I. has submitted that the petitioners dispute the title of the respondent No.4 over the land for which the land acquisition compensation was awarded. By referring to the cause title of WP(C) 78(AP)/2017, which appears in the certified copy of the order dated 14.03.2017, passed in the said writ petition, it is submitted that the said writ petition was filed by Shri Ngasi Mena. Accordingly, it is submitted that the land acquisition award could not have been passed in favour of the respondent No.4, namely, Rohit Mele. Accordingly, it is submitted that by virtue of the order passed by this Court in WP(C) 11(AP)/2017 and another writ petition referred hereinbefore, determination was required to be made as to who was the owner of the land and on such non- determination, the award is stated to be not sustainable. Referring to the objections raised before the Deputy Commissioner, Anini vide letter dated 09.06.2016, it is questioned that when the land was in a township area, how it could have been owned by the respondent No.4.

15. In terms of the letters and documents on record, the learned DSGI has further submitted that some part of land, which was acquired by the impugned notification, is no longer necessary for the purposes of ITBP and therefore, without an appropriate requisition, the land in question could not have been acquired by the impugned notification. Referring to the letter dated 20.06.2012, by the Deputy Commissioner, Dibang Valley District to the Post Commander 9th Battalion, ITBP, it is submitted that initially an exercise was being carried out for one time payment of land revenue and therefore, it is submitted that the initiation of acquisition proceedings was without the consideration of the petitioners, for which, it is illegal and same is required to be set aside and no other point was argued by the learned DSGI.

16. The learned Standing Counsel for the Land Management Department has submitted that from the land ownership Certificate dated 22.06.2020 issued by the Deputy Commissioner, Dibang Valley, Anini, there is no dispute with regard to the land ownership of the petitioners as it has been certified that the respondent No.4 has inherited the said land from his grandparents. Accordingly, it is submitted that the respondent No.2 supports the award dated 17.12.2019 for the sum amount of Rs.83,08,331/- (Rupees Eighty three lakh eight thousand three hundred thirty one only).

17. The learned Senior Government Advocate has submitted that the State is taking a neutral stand and he supports the land

acquisition award issued by the Deputy Commissioner, Dibang Valley District.

18. The learned senior counsel for the respondent No.4 has submitted that the award dated 17.12.2019 was initially a sum of Rs. 85,53,086/- (Rupees Eighty five lakh fifty three thousand eighty six only) owing to the subsequent notification dated 09.01.2015, by which multiplication factor was settled, and thereafter, the L.A. award dated 01.06.2020 was passed for altered amount of Rs.83,08,331/- (Rupees Eighty three lakhs eight thousand three hundred thirty one only). It has been submitted that prior to the issuance of the said award, the Department of Land Management, through its Director-cum-Ex-Officio Joint Secretary, had issued a letter dated 13.02.2020, conveying the approval in respect of the award. It has been also submitted that on enquiry being made by the petitioner No.4, the Deputy Commissioner, Dibang Valley District, vide letter 02.06.2020, gave reply to the specific query which was made by letter dated 12.02.2020 and against first query, a spot joint verification report was enclosed and with regard to the second query, it was mentioned that no value of trees and plants were estimated for valuation of compensation which was accepted by the Board Members and with regard to third query, the Land Ownership Certificate was enclosed thereto. Accordingly, it is submitted that it is too late in the day for the petitioners to challenge the ownership of the respondent No.4 in respect of the acquired land. Moreover by letter dated 12.02.2020, the petitioner No. 4 was requested to

deposit the compensation amount.

19. It is submitted that in view of the specific bar which is prescribed under the proviso sub-Section 2 of Section 95 of the Act of 2013, it was not open to the petitioners to demand a reference under Section 64 of the said Act of 2013. Accordingly, it is submitted that the learned District Judge had rightly dismissed the Reference made under Section 64 of the said Act of 2013 as not maintainable. In the context of his submission, the learned senior counsel for the respondent No.4 has referred to the provision of Section 3(x) for the definition of "person interested" and Section 3(ze) for the definition of the "Requiring Body".

20. Perused the materials available on record in the writ petition as well as connected IA(C) 48(AP)/2024 and considered the submissions made at the Bar.

21. There are no materials on record to show that initially when the land was occupied by the Assam Rifles in the year 1950 or 1959, as the case may be, the land had been acquired. The said statement is specifically referred in the letter dated 04.09.2009 by petitioner No.4 to the Deputy Commissioner, Anini. However, on query on this Court, the learned DSGI has submitted that there is no document on record to show that the land specifically in the village Etalian was transferred in the name of Assam Rifles. Therefore, notwithstanding that the land is being occupied by the ITBP through Assam Rifles in the year 1950 and/or 1959, it is not controverted by the petitioners

that the land remained in possession of the Assam Rifles and thereafter, in possession of the ITBP without the land being formally acquired.

22. The learned DSGI has submitted that requisition by the acquiring authority was never obtained before the land acquisition notification was issued. However, it is noted that prior to filing of this writ petition, the petitioners had not assailed the notification of land acquisition. In the objection filed under Section 64 of the Act of 2013, which was dismissed and even in L.A. Appeal No.01/2021, the petitioners did not raise a plea that their consent was not taken before land acquisition notification was issued. In the said context, the Court is of the considered opinion that even in connection with the writ petition, the principle of Rule 2 of Order II of the Civil Procedure Code is applicable as the petitioners ought to have raised such plea in earlier point of time to the effect that the acquisition was without any requisition by the petitioners. Therefore, as the Court finds that the petitioners have failed to seek any relief in the proceedings of L.A. Appeal No.01/2021 on the said ground, the projection made in this writ petition is that acquisition was made in respect of land without any requisition, is not found to be sustainable, that too after 60-65 years of possessing that land by the Government of India, first through Assam Rifles, and thereafter, by ITBP.

23. Although by referring to the plea taken by the respondents, the learned DSGI has submitted that there is no requirement for

some part of the land which could be de-notified, this Court is of the considered opinion that that when the Union of India Agency like the Assam Rifles as well ITBP has been occupying the land in question from the year 1950 to 1959, it is too late in the day, in the year 2024, i.e. after 60-65 years to take a plea that a part of land is not required. At least, it is not expected for Union of India, who is supposed to be a role model to have occupied the land for 65 years and to say that they do not require some portion of land after depriving the respondents or his ancestors or to anybody else through whom the petitioner is claiming, all the fruits of land.

24. The learned DSGI has referred that the original owner of the land was the Ngasi Mena and not the respondent No.4, the Court is of the considered opinion that such issues ought to have been raised before the land acquisition authority because Court could be slow to show to issue a declaration as to the right title of person in a writ petition when the title of the respondent No.4 to the land in question is not in question. These are initial issues which are ought to have been raised before the acquiring authority. Moreover, the position of the respondent No.4 as the owner of the land cannot be altered in the writ petition where the challenge is limited to the land acquisition notification dated 21.08.2019 as well as the award dated 01.06.2020. Such an attempt would amount to a collateral proceeding against the respondent No.4 as regard to his right title of interest for the land in question, which is not permissible in law.

25. Be that as it may, although it is not a prayer made in the writ

petition for return of the land, but having heard the learned DSGI, and with the consent given by the learned senior counsel for the respondent No.4, it is provided that, in the event, the appropriate authorities of the Union of India takes a decision that the entire land of the petitioner is not required, such a decision would be taken within 7(seven) days time from today i.e. within 23.09.2024 and the same be communicated to the respondent No.4 and disclose their readiness and willingness to hand over the entire land to the petitioner within next 7(seven) working days i.e. within 30.09.2024, it would be open to the Union of India to make such an offer to the respondent No.4 and it would be open to the respondent No.4 to take appropriate decision and communicate to the concerned authority within 2(two) working days from the date of receipt of such communication. The respondent No.4 shall communicate his e-mail address to the petitioner No.4 so as to facilitate faster communication between them.

26. As the above part of the order is not prayer for, this Court is inclined to provide that in the event the timeline mentioned above is not adhered to, the said offer would stand lapsed irretrievably for the petitioners and no prayer for extension of time would be entertained in the future.

27. It is also made clear that there would be no extension of time because the petitioners have not been able to show that under the Act of 2013, it is open for the State or for the acquiring authority to alter the position except under circumstances provided under

Section 101 of the Act of 2013.

28. It is also interesting to note that on the prayer made by the petitioner No.1, represented by petitioner No.4 in LA. Appeal No.01/2021 the order dated 20.07.2022 was passed by the learned District Judge in connection with Reference No.1/DV/2021. The said order is not assailed by the petitioners and therefore, the said order dated 20.07.2022 has attained finality. Accordingly, without any challenge to the order dated 20.07.2022, passed in Reference Case No.01/DV/2021, the challenge made in this writ petition against the land acquisition notification dated 21.08.2019, which was published in the Arunachal Pradesh Gazette on 26.09.2019 as well as the award dated 01.06.2020 cannot be held to be maintainable.

29. For the reasons assigned above, this Court does not find any merit in the writ petition and the same is dismissed, subject however, to observations made in paragraph-26 above.

30. The parties are left to bear their own costs.

JUDGE

Comparing Assistant