

GAHC010074082024



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

Case No. : Review.Pet./56/2024

ON THE DEATH OF JAHANGIR ALOM HIS LEGAL HEIRS KHURSID
SULTANA ALOM AND ORS
W/O LATE JAHANGIR ALOM
RESIDENT OF VILLAGE SAGOLIA PART II, PS GOLAKGANJ, DIST DHUBRI,
ASSAM

2: RUBUL ALOM
S/O LATE JAHANGIR ALOM
RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI
ASSAM

3: NILUFA SULTANA ALOM
D/O LATE JAHANGIR ALOM
RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI
ASSAM

4: JAMIR ALAM
S/O LATE EDOL SOBHAN

RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI
ASSAM

5: JAHID ALAM
S/O LATE EDOL SOBHAN

RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI

ASSAM

6: SAHID ALAM
S/O LATE EDOL SOBHAN

RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI
ASSAM

7: INAMUL @ ANAMUL ALOM
S/O LATE EDOL SOBHAN

RESIDENT OF VILLAGE SAGOLIA PART II
PS GOLAKGANJ
DIST DHUBRI
ASSA

VERSUS

THE DISTRICT COLLECTOR, DHUBRI AND ANR
DHUBRI, ASSAM 783301

Advocate for the petitioner(s): Mr. TJ Mahanta, Senior Advocate

Ms. P Bhattacharya

Advocate for the respondent(s): Mr. D Mozumder,

Additional Advocate General, Assam

Ms. A Gayan

CGC

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

06.05.2024

This is an application under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short, the Code) seeking review of the order

dated 01.12.2023 in CRP(IO)No.40/2020. For deciding as to whether the order dated 01.12.2023 comes within the ambit of the review jurisdiction to be exercised, this Court finds it relevant to refer to certain facts which led to passing of the order dated 01.12.2023 by this Court.

2. The petitioners herein filed an application under Section 18 of the Land Acquisition Act, 1894 (for short, the Act of 1894) being dissatisfied with the compensation so awarded in LA Case No.02/2004-05. Upon the said application being filed, the Collector Dhubri in exercise of his powers under Section 19 of the Act of 1894 made the reference to the Court of the learned District Judge Dhubri. The learned District Judge Dhubri vide an award dated 18.01.2012 enhanced the compensation. As the said awarded amount was not paid, the petitioners herein sought the assistance of the Court by filing an application seeking enforcement of the award dated 18.01.2012 in LA Appeal Case No.16/2009. The said application was registered and numbered as LA (Ex) Case No.02/2015. In the said application, the respondents herein who are the State of Assam as well as the Collector Dhubri duly participated. On 07.09.2019, the Court of the learned District Judge Dhubri attached the revenue account No.8443 C/D and 101 R/D lying in the Dhubri Treasury Office till payment of the award. This order was put to challenge by the District Collector Dhubri in CRP(IO)No.40/2020 and this Court vide order dated 11.03.2020 stayed the operation of the impugned order dated 07.09.2019 passed by the learned Executing Court i.e. the Court of the learned District Judge Dhubri in Misc. LA Execution Case No.3/2015 which was in respect to another proceeding initiated seeking the assistance of the Court.

3. The said proceedings i.e. CRP(IO)No.40/2020 remained pending before this Court. However, it is seen that the order dated 07.09.2019 which was stayed by this Court was vacated vide order dated 30.06.2021 by the learned Executing Court i.e. the Court of the learned District Judge Dhubri. It was vacated on the ground that an application was filed by the State of Assam stating, *inter alia*, that it was decided to make payment of the remaining part of the decretal amount and the payment in the meantime has been made ready in due process.

4. On 01.12.2023, when this Court had taken up the CRP(IO)40/2020, the impugned order dated 07.09.2019 was, therefore, not in existence. Be that as it may, this Court ought to have been informed by the counsel representing the State of Assam about the order dated 30.06.2021 whereby the order dated 07.09.2019 was vacated. More so, when the order dated 30.06.2021 was passed at the behest of an application being filed by the State of Assam.

5. Be that as it may, this Court while passing the order dated 01.12.2023, made certain remarks as regards the petitioners in abusing the process of law as well as closing of the execution proceedings. This Court further finds it very pertinent at this stage to mention that the observations were made by this Court on the ground that on that very date, the appeal filed by the NF Railways, wherein a condonation application for condoning the delay of 1849 days was also taken up for consideration by this Court. In the said condonation application being IA(C)No.3617/2019, this Court took into account an affidavit filed on 24.11.2023 by the requiring authority i.e. the NF Railways stating, *inter alia*, that the amount pursuant to the award passed on 18.01.2012 in LA Case

No.16/2009 have been duly deposited to the District Collector Dhubri and the District Collector Dhubri in turn had disbursed the amount to the lawful claimants. It is under such circumstances, these observations were being made by this Court, more particularly, in paragraphs 6 and 7 of the order dated 01.12.2023.

6. Mr. TJ Mahanta, the learned senior counsel appearing for the review petitioners submits that the order which was passed by this Court on 01.12.2023 was passed without taking into account the stand of the petitioners and the observations so made were not at all required taking into account that the order which was challenged in the said proceedings i.e. 07.09.2019 was no longer in existence in view of the order dated 30.06.2021 passed by the learned Executing Court by vacating the order dated 07.09.2019. He further submits that though the requiring authority may have paid the amount to the acquiring authority, but the fact remains as to whether the acquiring authority had duly deposited the said amount before the Court or had tendered it before the claimants is a question which can only be decided by the Executing Court and not by this Court. He, therefore, submitted that the closing of the of the Execution Case as directed by this Court, had, therefore, taken away the rights of the petitioners which were there to be agitated and decided by the Executing Court. Under such circumstances, it is, therefore, the submission of the learned senior counsel that an error apparent on the face of the records has crept in the order dated 01.12.2023.

7. On the other hand, Mr. D Mozumder, the learned Additional Advocate

General, Assam representing the State of Assam as well as the Collector Dhubri submits that the amount have been deposited by the requiring authority i.e. the NF Railway and the same have been duly disbursed to the petitioners and in that regard he wanted to place some documents before this Court. He further submitted that these amounts were duly paid through RTGS. He, however, duly admits that as on 01.12.2023, the order dated 07.09.2019 was no longer in existence.

8. Ms. A Gayan, the learned CGC appearing on behalf of the requiring authority i.e. the NF Railways submitted that the decretal amount as per the judgment and award dated 18.01.2012 in LA Appeal Case No.16/2009 had been duly deposited before the District Collector Dhubri and the said amount had also been duly disbursed by the District Collector Dhubri to her information.

9. This Court upon giving an anxious consideration to the respective submissions as mentioned hereinabove, and also taking into account the facts is of the opinion that the observations so made in paragraphs 6 and 7 was not at all necessary by this Court on the ground that as on 01.12.2023, the order which was impugned dated 07.09.2019 was no longer in existence and had that aspect of the matter been brought to the attention of this Court, the said order would not have passed. In addition to that, this Court also finds it relevant to take note of that when the Executing Court was seized with the matter and is the authority as per law to decide as to whether the said amount has been paid or not, this Court in exercise of powers under Article 227 of the Constitution ought not to have interfered with the said power sans the order of the

Executing Court was such which would shock the judicial conscience of this Court. Under such circumstances, this Court is of the opinion that there was an error apparent on the face of the records in passing the order dated 01.12.2023, in so far as the observations so made in paragraphs 6 and 7 of the order dated 01.12.2023.

10. Accordingly, this Court reviews the said order dated 01.12.2023 and takes up the CRP(IO)40/2020 for a fresh hearing.

11. With the above, the review petition stands disposed of.

JUDGE

Comparing Assistant