

GAHC010123042024



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

Case No. : WP(C)/3136/2024

PRADIP TIBREWAL
S/O- LATE BISWANATH TIBREWAL, R/O- GANESH MILL CHARIALI,
TEZPUR TOWN, P.O. AND P.S. TEZPUR, PIN- 784001, DIST. SONITPUR,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, REVENUE AND
DISASTER MANAGEMENT, GOVERNMENT OF ASSAM, DISPUR,
GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
DIST. SONITPUR
ASSAM
PIN- 784001.

3:THE CIRCLE OFFICER
TEZPUR REVENUE CIRCLE
DIST. SONITPUR
TEZPUR-784001.

4:THE UNION OF INDIA
THROUGH THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN
PARLIAMENT STREET
NEW DELHI-110001

For the Petitioner(s) : Mr. S. K. Singh, Advocate
: Mr. A. Dhanuka, Advocate

For the Respondent(s) : Mr. R. Borpujari, Standing Counsel
: Ms. S. Sharma, Government Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 05.08.2024

Heard Mr. S.K. Singh, the learned Senior counsel assisted by Mr. A. Dhanuka, the learned counsel appearing on behalf of the Petitioner. I have also heard Mr. R. Borpujari, the learned Standing counsel who appears on behalf of the Respondent No.1 as well as Ms. S. Sharma, the learned Government Advocate who appears on behalf of the Respondent Nos. 2 and 3. None has appeared on behalf of the Union of India on call.

2. The instant writ petition has been filed by the Petitioner claiming the following reliefs.

(a) A direction be issued to the authorities of the State of Assam to bring on record by way of affidavit or by providing authentic records showing the area of the land actually being acquired from the possession of the writ petitioner, the area of the building going to be demolished on such acquisition and the other areas, though not acquired, but going to be affected by the acquisition, the amount of compensation going to be paid to the Petitioner, the rationale behind such compensation and the details of the calculation of such compensation in respect to the land in possession of the Petitioner covered by Dag number 884 of Periodic Patta No.350 situated at village Gatanga, Kahdol under Mouza Haleswar in the district of Sonitpur, Assam.

(b) It is further prayed that in the event the State authorities claimed that no land is acquired and the writ petitioner is an encroacher of Government land, then the method and measurement adopted to identify the alleged encroachment, especially from the midpoint of the existing National Highway up to the land in possession of the writ petition and the area of house falling on such alleged encroachment.

3. To understand the dispute involved, it is relevant to take note of that the Petitioner claims to be the owner of a plot of land measuring 1 Katha 4 Lechas covered by Dag number 884 included in P.P. No. 350 situated at village Gatanga, Kahdol under Mouza Haleswar in the District of Sonitpur, Assam. The said land is hereafter referred to as the "land in question". It is the case of the Petitioner that the Respondent Authorities in order to carry out certain construction is trying to take over the land of the Petitioner that too, without following the due process.

4. Pursuant to the filing of the instant writ petition, this court vide an order dated 19.06.2024 issued notice making it returnable on 22.07.2024 and further directed that till the next date, the Respondents would not carry out any demolition in respect to the existing building without the leave of the Court. It was also mentioned in the said order that the extension of further interim order would be considered upon hearing the parties on the next date.

5. An affidavit has been filed by the Respondent No.2. At paragraph No.4 of the said affidavit-in-opposition, it is mentioned that the Petitioner was only found to have possession in the Roadside Reserved Land bearing Dag No.804 in EROW of Mission Chariali Flyover Project. The assessment was carried out by the competent authority and only the

Zirat amount was awarded as compensation to the petitioner. It is further seen from Annexure-1 of the said affidavit that the total Zirat amount was Rs. 1,60,000/- and the land in Dag No. 804 has been shown as Government land. At paragraph No.5 of the said affidavit, it has been categorically mentioned that the land in question which belongs to the Petitioner i.e. Dag No. 884 of P.P. No. 350 is not acquired for construction of the Mission Chariali Flyover Project. In addition to that, it has also been mentioned that the Roadside Reserved Land is being calculated from the middle point of NH-15 taking into account the settlement map of Gatanga Kahdol which is calculated to be 52 ft. and the Petitioner was found to have encroached within this 52 ft. It was categorically reiterated that no private land of the petitioner was acquired for the construction of the Tezpur Mission Chariali project.

6. This Court has duly heard the learned counsels appearing on behalf of the Petitioner as well as the Respondents. It is seen from Annexure-1 to the affidavit-in-opposition that the son of the Petitioner have already been held to be entitled to Rs. 1,60,000/- as a Zirat value in respect to the portion of the building standing over Dag No.804. It is also seen that Dag No.804 is a Government land. No document has also been placed to show otherwise by the petitioner.

7. It is also seen from the affidavit filed by the Respondent No.2 that the land in question of the Petitioner is not going to be acquired. Under such circumstances, the reliefs which have been sought for in the instant writ petition are no longer required to be passed.

8. This Court however observes that in the circumstance the land in question of the Petitioner is acquired, the Respondent Authorities is

constitutionally obligated to acquire the same by following the due process of law. In addition to that, the Responding Authorities are restrained from disturbing the possession of the land in question of the Petitioner without authority of law.

9. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant