

GAHC010141432024



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

Case No. : WP(C)/3676/2024

RAJ KUMAR SINGH AND ANR
S/O- JUGESHWAR SINGH, RESIDENT OF VILLAGE KAZIDAHAR PT-III, P.O.
BOALI JUR, P.S. SOAI, DIST.- CACHAR, DIST.- CACHAR, ASSAM, PIN- 788014

2: SWASTIKA SINGH
W/O- RAJ KUMAR SINGH
RESIDENT OF VILLAGE KAZIDAHAR PT-III
P.O. BOALI JUR
P.S. SOAI
DIST.- CACHAR
DIST.- CACHAR
ASSAM
PIN- 78801

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY MINISTRY OF ROAD TRANSPORT
HIGHWAY, GOVERNMENT OF INDIA, TRANSPORT BHAWAN 1,
PARLIAMENT STREET, NEW DELHI

2: THE DEPUTY COMMISSIONER
CACHAR
ASSAM

3: ADDITIONAL DEPUTY COMMISSIONER
LAND ACQUISITION BRANCH
CACHAR

4: THE EXECUTIVE DIRECTOR
NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD (NHIDCL)
3RD FLOOR
PTI BUILDING

4-PARLIAMENT STREET
NEW DELHI

5:THE GENERAL MANAGER (P) PMU/SILCHAR
NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD (NHIDCL) MINISTRY OF ROAD TRANSPORT HIGHWAY
GOVT. OF INDIA
PASKER LANE
SONAI ROAD
SILCHAR- 7888006

6:THE CIRCLE OFFICER
SONAI REVENUE CIRCLE
CACHAR
ASSA

For the Petitioner(s)	: Mr. F. Z. Mazumdar, Advocate
For the Respondent(s)	: Ms. S. Sharma, Government Advocate

Date of Hearing	: 16.08.2024
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Date of Judgment	: 16.08.2024
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**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. F. Z. Mazumdar, the learned counsel appearing on behalf of the Petitioners and Mr. R. K. D. Choudhury, the learned Dy. S.G.I. appearing on behalf of the Respondent No.1. I have also heard Ms. S. Sharma, the learned Government Advocate appearing on behalf of the Respondent Nos. 2, 3 & 6 and Mr. R. K. Talukdar, the learned Standing counsel appearing on behalf of the Respondent Nos. 4 and 5.

2. The Petitioners herein have filed the instant writ petition seeking a declaration that the lands which have been acquired by the Respondent Nos.

4 and 5 through the Respondent Nos.2 and 3 are industrial lands and not agricultural lands and in the alternative seeking a writ in the nature of mandamus for disposal of the representation dated 31.05.2024 which have been submitted to the competent authority i.e. the Respondent No.3.

3. The facts involved in the instant proceedings are that the Petitioner No.1 claims to be the owner and possessor of various plots of land measuring 15 Bighas 11 Kathas 15 Chataks covered by Dag Nos. 17, 18, 20, 12, 14 and 16 of 2nd R.S. Patta No. 8, 12, 13 and 15 situated at Mouza Kazidahar Part-III Porgona Bonraj in the District of Cachar. The Petitioner No.2 also claims to be owner and possessor of various plots of land measuring 17 Bighas 19 Kathas 4 Chataks 10 Gondas covered by Dag Nos. 17, 18, 20, 12, 14 and 16 of 2nd R.S. Patta No. 8, 12, 13 and 15 in the same Mouza and Porgona.

4. From the materials on record, it is seen that on 16.10.2023, the Ministry of Road Transport and Highways had issued a notification under Section 3D of the National Highways Act, 1956 (for short "the Act of 1956") acquiring various plots of land. In the said notification, some of the portions of the lands of the Petitioners have been shown as acquired. The classification of the lands of the Petitioners have been shown to be agriculture. It is the case of the Petitioners that the said lands are commercial lands and the Respondent Authorities while issuing the notification under Section 3D of the Act of 1956 had committed an error and in support thereof, have placed reliance on the provisional land occupation and status of land certificates issued on 07.08.2019 by the Circle Officer, Sonai Revenue Circle issued separately to both the Petitioners.

5. In addition to that, the Petitioners have also relied upon the order dated 14.09.2022 whereby the Petitioner No.2 has been granted the No Objection by the Additional Deputy Commissioner, Cachar to set up a brick kiln industry in the name and style of M/s Priya Brick Industry on the land belonging to the Petitioner No.2. It is the further case of the Petitioners that pursuant to the notification issued under section 3D of the Act of 1956, the Petitioners submitted an application seeking compensation for the acquired land claiming that the compensation should be paid in terms with commercial lands and not agricultural lands. This application was submitted on 31.05.2024 which however, as per the Petitioners have not received any favourable response for which the instant writ petition has been filed.

6. When the matter was listed before this Court on 26.07.2024 and 05.08.2024, this Court enquired as to whether any order has been passed by an authority competent to do so thereby classifying the land of the Petitioners as commercial lands. In that regard, the learned counsel appearing on behalf of this Petitioners submitted that he would file an additional affidavit. Accordingly, an additional affidavit was filed by the Petitioners on 13.08.2024. In the said additional affidavit, the Petitioners have enclosed two revenue receipts. Annexure-A to the said additional affidavit is a revenue receipt dated 17.07.2023 and Annexure-B is a revenue receipt dated the 12.08.2024. The said revenue receipt enclosed as Annexure-B to the additional affidavit is a document which had come into existence pursuant to the filing of the instant writ petition and more particularly, after the notification under Section 3D of the Act of 1956. The said two documents have been placed before this court to show that the Revenue Authorities have treated the lands of the Petitioners as commercial

lands and as such have realized revenue commensurating with commercial lands and not agricultural lands.

7. In the backdrop of the above, this Court has heard the learned counsels appearing on behalf of both the parties. This Court before deciding the question on merits, finds it relevant to take note of The Assam Agricultural Land (Regulation of Reclassification and Transfer for Non-Agricultural Purpose) Act 2015. The said Act for the sake of convenience is referred to as the "Act of 2015". This Act in question was enacted to regulate the reclassification and transfer of agricultural lands for intended non-agricultural purpose in the State of Assam and for matters connected therewith or incidentally thereto.

8. A perusal of the provisions of the said Act of 2015 mandates what types of lands can be reclassified and the procedure for land reclassification and reclassification cum transfer. Section 4 of the Act of 2015 stipulates the nature of the land which are capable of reclassification. In terms of Sub-Section (1) of Section 4 of the Act of 2015, such land which is recorded as agricultural land but has already become unfit for agricultural purposes or where there has been no agricultural activity for at least ten years preceding the date of application for permission shall only be reclassified or reclassified cum transferred for intended non-agricultural purposes with the prior approval of the Deputy Commissioner. Sub-Section (2) of Section 4 of the Act of 2015 imposes a bar upon the Deputy Commissioner to reclassify or reclassify cum transfer for non-agricultural purposes any agricultural land under cultivation prior to ten years preceding the date of application for permission and it can only be done so with the prior approval of the State

Government in the Revenue Department. Sub-Section (3) of Section 4 of the Act of 2015 stipulates that the mandate contained in Sub-Section (1) and Sub-Section (2) of Section 4 of the Act of 2015 shall not apply when agricultural land not exceeding 1 Bigha is used or reclassified or reclassified cum transferred for construction of one's own dwelling house and when construction of the said structure is limited to two-storeys.

9. Therefore, it would be seen that any agricultural land which have become unfit for agricultural purpose or where there is no agricultural activity for at least ten years preceding the date of the application for permission, such reclassification is permissible only with the approval of the Deputy Commissioner. However, if the period is less than ten years, it can only be done with the prior approval of the State Government in the Revenue Department. This aspect of the matter assumes importance taking into account that the Petitioners' claim herein is on the basis of two documents enclosed as Annexure-A to the writ petition which are certificates issued by the Circle Officer of the Sonai Revenue Circle. A perusal of those certificates would show that there is no mention whatsoever as regards the period for which the said land in question is not fit for agriculture. There is no document also to show that the Deputy Commissioner in question or for that matter, the State Government in the Revenue Department have given any prior approval.

10. Section 5 of the Act of 2015 deals with the procedure for land reclassification and reclassification cum transfer. From a perusal of the said Section, it would be seen that there is a manner in which the in-principle approval can be given by the Deputy Commissioner for reclassification or

reclassification-cum-transfer. It is also seen that after the in-principle approval being granted by the Deputy Commissioner, the payment of the premium has to be made within 30 days from the date of receipt of the approval. No documents whatsoever have been enclosed to that effect that any payment of premium has been made by the Petitioners after the in-principle approval so given by the Deputy Commissioner. Section 7 of the Act of 2015 also is relevant taking into account that the Government may by notification in the official gazette authorize any other Officer to be competent to pass order in respect of land situated within his territorial jurisdiction for reclassification of lands from agricultural purpose to non-agricultural purpose or reclassification-cum-transfer of agricultural land for non agricultural purpose. However, nothing has been shown that the Circle Officer has been authorized to do so by way of any official gazette. Under such circumstances, this Court is of the opinion that the declaration which has been sought for by the Petitioners that the lands of the Petitioners should be declared as non-agricultural lands, cannot be issued in view of the mandate of the Act of 2015 on the ground that there is nothing on record to show that the Petitioners' land have been unfit for agricultural purposes for at least ten years preceding the date of application for permission. There is also nothing on record to show that any approval have been granted by the Revenue Department of the Government of Assam if the lands of the Petitioners have been unfit for cultivation for less than ten years. This aspect of the matter is relevant taking into account that it was only on 07.08.2019, the Circle Officer had issued a certificate that the said lands of the Petitioners are not fit for agriculture. In addition to that, there is also nothing on record to show that the Petitioners herein had submitted any application

seeking permission for reclassification. There is also nothing on record to show that the Petitioners had paid the premium in terms with Sub-Section (6) and (8) of Section 5 of the Act of 2015 read with Section 6 of the said Act of 2015.

11. In that view of the matter, this Court rejects the prayer of the Petitioners insofar as the declaration so sought for reclassification of the Petitioners' land as industrial land instead of agricultural land.

12. Now, let this Court take into consideration the question of the representation dated 31.05.2024. From a perusal of the Act of 1956, it is seen that pursuant to the notification under Section 3D of the Act of 1956, a duty is imposed upon the competent authority to pay the compensation. In terms of Section 3G(2) of the Act of 1956, it is the requirement that the competent authority shall give a public notice inviting claims from all persons interested in the land to be acquired and pursuant thereto, shall determine the compensation. It is the case of a Petitioners that the representation dated 31.05.2024 is a representation bringing to the notice of the competent authority the nature of the interest of the Petitioners on the land and the manner in which the compensation ought to be determined. It is further seen from Sub-Section (5) of Section 3G of the Act of 1956 that if the amount so determined is not acceptable, on an application by either of the parties, the said amount be determined by the Arbitrator to be appointed by the Central Government.

13. Now, from a perusal of the representation dated 31.05.2024 or for that matter, from a perusal of the writ petition, it is not clear as to whether the determination of the compensation has been done by the competent

authority. Be that as it may, this Court is of the opinion that there is a right which is vested upon the Petitioners in terms with Section 3G(5) of the Act of 1956 to seek a reference for determination by the Arbitrator if the Petitioners are aggrieved by the inadequacy of the compensation.

14. Accordingly, this Court therefore disposes of the instant writ petition thereby granting the liberty to Petitioners to submit an application, if so aggrieved with the inadequacy of compensation within 30 days from the date of the instant order and upon filing of the such application, the Respondent No.3 shall refer the matter to the Arbitrator who is presently the Special Secretary to the Government of Assam for deciding as regards the inadequacy of compensation. If such application is filed, the learned Arbitrator shall decide the said reference on the inadequacy of compensation as per the extant laws and without being influenced by the observations made in the instant writ petition.

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

JUDGE

Comparing Assistant