

GAHC010206602023



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

Case No. : WP(C)/5324/2023

MASUDA KHATUN
W/O AHMED ALI SHEIKH D/O LT. MOTIOR RAHMAN R/O VIL.
VIDYANAGAR NEAR PHE OFFICE WARD NO. 7 GOALPARA TOWN P.O
BALADMARI P.S GOALPARA DIST. GOALPARA PIN 783121 PH NO.
9864026042 , 8287503106

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE MINISTRY OF ROAD TRANSPORT AND HIGH WAY GOVT. OF
INDIA NEW DELHI 1

2:THE NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI)
MINISTRY OF ROAD TRANSPORT AND HIGHWAY GOVT. OF INDIA A
COMPANY HAVING ITR REGISTRED OFFICE AT G 5 AND 6 SECTOR 10
DWARKA NEW DELHI 110075 AND REGIONAL OFFICE GUWAHATI NEDFI
HOUSE 4 TH FLOOR G S ROAD DISPUR GUWAHATI 781006 ASSAM AND IS
REP .BY ITS CHAIRMAN

3:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATIONN LTD.
A FULLY OWNED COMPANY OF MINISTRY OF ROAD TRANSPORT AND
HIGHWAY GOVT OF INDIA HAVING ITS OFFICE AND PRINCIPAL PLACE OF
BUSINESSA AT 3RD FLOOR PTI BUILDING 4 PARLIAMENT STREET NEW
DELHI 110001 AND HAVING ITS BRANCH OFFICE AT PMU BONGAIGAON
ASSAM PO PS AND DIST BONGAIGAON ASSAM REP. BY ITS GENERAL
MANAGER (P)

4:THE STATE OF ASSAM
REP BY THE COMMISSIONER AND SECRETARY GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT. DISPUR GHY 6

5:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM

6:THE COMPETET AUTHORITY FOR LAND ACQUISITION CALA CUM ADC
GOALPARA DISTRICT ASSAM

7:THE EXECUTIVE ENGINEER PW BLDG AND NH DIVISION
GOALPARA AND SOUTH SALMARA MANKACHAR TR BUILDING
DIVISION GOALPARA ASSAM

8:THE COMMISSIONER CUM ARBITRATOR
LOWER ASSAM DIVISION PANBAZAR GHY

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. M U MONDAL,MS. N NASRIN,MR K ISLAM,MR A ALIM SK

Advocate for the Respondent : GA, ASSAM, MRS. R DEVI,SC, NHAIDY.S.G.I.,SC. REVENUE,SC, NHIDC

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

06.08.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned Standing Counsel, Revenue Department; Ms. R. Bora, learned Standing Counsel, NHIDCL and Mr. H. Sarma, learned Addl. Sr. Government Advocate for the respondents No. 5 & 6.

2. The petitioner is aggrieved that for construction of National Highway Roads, the land belonging to the petitioner along with the building have been acquired by the state authority for the purposes of the constructions and compensation of Rs. 1,68,53,096/- (Rupees One Crore Sixty Eight Lakh Fifty Three Thousand and Ninety Six Only) has been determined as the compensation for the land and building along with Zirat in respect of the writ petitioner. The petitioner is aggrieved by the

quantification of this compensation amount. According to the writ petitioner, the three storied RCC building which is used for commercial purposes and the land together should be more than 5 crores and the land measuring three bighas is required to be valued at Rs. 12 lakhs of three bighas of land and total compensation payable to the petitioner ought to have been Rs. 5,39,48,937/- (Rupees Five Crore Thirty Nine Lakh Forty Eighty Thousand Nine Hundred Thirty Seven Only) along with interest payable that having not been paid. Petitioner is before this Court seeking an appropriate direction.

3. The respondents had contested the matter. The NHIDCL filed their affidavit and submitted that the amount of compensation assessed has already been deposited with the competent authority namely the respondent No. 5 and therefore under the provisions of the National Highway Act, 1956, the petitioner is required to approach the competent authority to receive the compensation. In the event the compensation amount estimated is not agreeable to the petitioner then there are remedies provided under the provisions of the NH Act to ventilate the grievances raised by the writ petitioner.

4. During the course of the hearing, the respondent counsel appearing for the Revenue Department and the Government Counsel representing the competent authority namely the Additional District Commissioner were permitted opportunities to obtain their instructions.

5. The Government Counsel and the Standing Counsel for the Revenue Department has submitted before the Court that the amount assessed is lying with the competent authority and the same could not be released to the writ petitioner because of non furnishing the relevant and adequate documents sought for from the writ petitioner.

6. The learned Senior counsel on the other hand submits that in terms of the

provisions of Section 3G(5), the amount determined by the competent authority was not accepted and therefore she has filed an application before the competent authority who has however failed to take necessary steps as mandated under the provisions of the Act.

7. The learned Standing Counsel, Revenue Department has placed a copy of the instructions received from the department to submit that the representation dated 28.06.2024 stated to have been submitted by the writ petitioner was not received by the department which however is disputed by the Senior counsel for the petitioner.

8. The learned Senior counsel for the petitioner disputes the submissions made by the respondents and refers to an extract of the transcript showing the E-mail sent by the writ petitioner. The learned counsel for the respondents however submits that this E-mail address is not the E-mail address prescribed for the competent authority namely the Additional District Commissioner in the District of Goalpara rather it is the E-mail address of the PWD authority.

9. The learned Senior counsel referring to Section 3H of the National Highways Act submits that the amount which is to be determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by the Rules made on this behalf with the competent authority before taking possession of the land. He strenuously submits that since the amount determined by the competent authority under 3G has not been accepted by the writ petitioner as the petitioner is aggrieved by the quantum of compensation quantified and as the petitioner has already filed an application seeking arbitration under Section 3G(5), therefore until the Arbitrator appointed decides the entitlement of higher compensation by the writ petitioner and until the said amount if determined in favour of the writ petitioner is deposited by the Central Government with the

competent authority, the possession of the land cannot be handed over to the Central Government or the National Highways. He submits that this is the mandate of Section 3H(1). He submits that there is no dispute that as on date the quantification of a higher amount by the Arbitrator is yet to be decided and until such an order is passed by the Arbitrator, the land cannot be handed over to the National Highway Authority. He submits that it will be in violation of the provisions of the National Highway Act more particularly the prescription under Section 3H.

10. The respondents strongly dispute the contention raised by the learned counsel for the petitioner. The respondents submit that the petitioner has already been intimated about the amount being deposited by the acquiring authority with the competent authority and the petitioner is required to collect the same by furnishing the necessary documents to verify the particulars of the writ petitioner. Under such circumstances, it cannot be said that the amount has not been deposited by the Central Government/ National Highways with the competent authority. On the contrary, it is the petitioner who did not come forward to receive the amount of compensation deposited. It is therefore submitted that the claims of the writ petitioner ought not to be entertained and the writ petition should be dismissed as the petitioner has no claim over the land after the same has been vested on the Central Government and the amount calculated by the competent authority has been deposited by the acquiring authority with the competent authority.

11. The rival submissions have been considered. Pleadings available on record are also considered. At this stage, it is necessary to refer to the relevant provisions of the National Highway Act.

12. The National Highways Act lays down the specific provisions with regard to acquisition, survey, hearing of objections, declaration of acquisition, power to take

possession etc. The Act makes elaborate provisions for each of these steps to be taken by the competent authorities/the Government.

13. In the facts of this case, there is no dispute between the parties that the steps prescribed under the National Highways Act with regard to acquisition, hearing of objections, declaration of acquisition have been completed as per the prescribed provisions. The writ petition has been filed with a limited prayer seeking direction to the respondents to pay award of the compensation in respect of a land measuring three (3) Bighas belonging to the writ petitioner. The prayer is for a direction to make the compensation taking into account the market value of the land as well as the value of the RCC (G+2 commercial building) as per plan and estimate of the cost submitted by the Chartered Accountant employed by the writ petitioner. The further prayer is to release this amount with an interest of 12% w.e.f. 18.12.2021 which is the date of the notification published in the newspaper notifying the acquisition of the land. There is no challenge made to the acquisition proceedings by the respondent authorities. The limited prayer is only to the extent of enhancement of the compensation to be paid to the writ petitioner.

14. In order to resolve the dispute urged before this Court, it is necessary to refer to the various provisions of the National Highways Act, 1956. The said Act of 1956 was enacted to provide for the declaration of certain Highways to be National Highways and for matters connected therewith.

Under Section 3A, the Central Government upon being satisfied that for public purpose, any land is required for the building maintenance, management or operation of a National Highway or any part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land. Such Notification shall give a brief description of the land. The said Notification is required to be published in two local newspapers by the competent authority.

Under Section 3B pursuant to issuance of the Notification under Section 3A(1), the Central Government or any person authorized by it is empowered to enter into the said land for inspection, survey, measurement, take levels, dig or bore into sub-soil, set out boundaries and lines of work and to all such things as may be laid down by the Rules made in this behalf by the Government.

Under Section 3C upon publication of the Notification under Section 3A(1), any person interested in the land may within 21 days from the date from the publication of the said notification, object to the use of the land for the purpose or purposes mentioned. Such objection shall be made to the competent authority in writing and it shall set out the grounds thereof. The competent authority will give the objector an opportunity of being heard either in person or by a legal practitioner and thereafter pass necessary order either allowing or disallowing the objections raised.

Under Section 3D where no objections under Section 3C(1) were made within the period stipulated or where the competent authority disallowed the objection under Sub-section 2 of that section, the competent authority shall submit a report to the Central Government and on receipt of such report, the Central Government shall declare by Notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in sub-section 1 of Section 3(A).

Under Sub-section 2 of Section 3D, it is provided that on the publication of the declaration under Sub-section 1, the land shall vest absolutely in the Central Government free from all encumbrances.

Under Section 3E where the land has vested in the Central Government under Section 3D(2) and the amount determined by the competent authority under Section 3G with respect to the said land has been deposited under Section 3H(1) with the competent authority by the Central Government, the competent authority

may by notice in writing direct the owner as well as any other person who may be in possession of the land to surrender or deliver possession thereof to the competent authority or to any person duly authorized by it in its behalf within sixty days of the service of the notice. It is further provided in the said section that if any person refuses or fails to comply with any direction made under sub-section (1) of Section 3E, the competent authority may apply, in case of metropolitan area, to the Commissioner of Police and in case of any land situated in any other area to the Collector of the District, and such Commissioner or Collector as the case may be shall enforce be surrender of the land to the competent authority or to that person duly authorized by it.

Under Section 3G(1) where any land is acquired under this Act there shall be paid an amount which shall be determined by an order of the competent authority. The Section 3G lays down the procedure for determination of the amount payable as compensation to the land owner. Under sub-section 5 of Section 3G, if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government. The matter of determination of the amount payable to the land owner by the arbitrator is prescribed under Sub-section 7 of Section 3G.

Under Section 3H, the amount determined under Section 3G is to be deposited by the Central Government in such manner as may be laid down by the rules made in this behalf by that Government, with the competent authority *before taking possession of the land*.

15. The learned senior counsel for the petitioner has urged before this Court that notwithstanding any amount being determined and deposited by the Central Government with the competent authority, the petitioner being aggrieved with the

quantification with the compensation has approached or is required to approach the arbitrator appointed for this purpose as prescribed under Section 3G(5). It is the submission on behalf of the petitioner that in view of this specific provision under Section 3H that the amount determined under Section 3G should be deposited by the Central Government in the manner as prescribed in the Rules made on that behalf, with the competent authority before taking possession of the land, the matter being now required to be looked into by the arbitrator and to determine the claim of the writ petitioner for enhancement of higher compensation, it is submitted that the land cannot be acquired by the respondent authorities as the provision under Section 3H(1) have not been complied with as there is every likelihood of enhancement of the amount of compensation as claimed by the petitioner, likely to be determined by the arbitrator and in which event until such enhanced amount as may be determined by the arbitrator, is deposited with the competent authority, the determination of the compensation as prescribed under Section 3G of the Act cannot be held to be complete and concluded and thereby the respondents are precluded from taking over possession of the land.

16. In this context, a reference to a Judgment rendered by a Co-ordinate Bench of this Court in *Zakir Hussain Vs. State of Assam*, reported in 2003 (1) GLT 644 where this Court has interpreted the term “vests” as it appears in the National Highways Act, 1956. This Court while considering the provisions of Section 3D(2) has held that vesting in the context of the provisions of the Act shows that the right, interest and title of the land holder are extinguished and the right and title vests absolutely in the Government free from all encumbrances. It further held that the inference that the vesting of land acquired by the Central Government under Section 3A is absolutely entitled, rights and interest is strengthened from the fact that section 3F of the National Highway Act, 1956 clearly lays down that it will be

lawful for the person to enter and do other necessary acts upon the land for carrying out the building, maintenance, management or operation of the National Highway when such person is authorized with the Central Government. It is held that in order to give a meaningful interpretation to Section 3F in this statute, it will have to be held that the term "vest" occurring in Section 3D must be held to mean that "vesting" is absolute in title, rights and interest. The relevant paragraphs of the said Judgment are extracted below:

"(92) The inference that the vesting of the land acquired by the Central Government under Section 3a is absolute in title, rights and interest is strengthened from the fact that Section 3f of the NH Act, 1956, clearly lays down that it shall be lawful for a person to enter and do other acts necessary upon the land for carrying out the building, maintenance, management or operation of a National Highway only when such person is "authorized" by the central Government. In other words, unless the Central Government so authorizes, the State Government or any other authorities cannot even enter into such acquired land. Section 3f will have meaningful existence on the statute book only if we attribute to word "vest", occurring in Section 3d, the meaning that it deserves, namely, that the vesting is absolute in title, rights and interest.

(93) It is also of paramount importance to note that while Section 3d(2) speaks of such absolute vesting of land in favour of the Central Government, as indicated hereinabove, Section 4 of the said Act speaks of vesting of National Highways (built on such land of the Central Government), in the Union with further responsibility, as per Section 5 of the Act, to develop and maintain the same unless and until such responsibility is delegated by the Central Government to the government of a State.

(94) Thus, if Section 4 is now, analysed in the context of changes, which have taken place in the NH Act, 1956, and the scheme of the NHA Act, 1988, it would become clear that the vesting of National Highways in the Central Government is absolute in right as well as title and it has, therefore, been given the right to control, regulate and operate the National Highways, which will in turn, will mean that it has the right to determine the manner in which it will allow its possessory right over such National Highways to be relaxed in favour of others so that others can use such National Highways."

17. From a perusal of the provisions of the Act read with the ratio laid down in Zakir Hussain (Supra), it is clear that the term "vest" as it appear under Section 3D has to be treated to be vesting absolutely in the Government in terms of right, title and interest over the said land after the publication of the declaration as provided for under Section 3D(1).

18. As discussed above, the Act provides for taking care of such cases enabling such parties to prefer an application before the Arbitrator to be appointed by the Central Government. This is provided under Section 3G(5) of the Act. During the course of the hearing, the respondents placed before the Court notification dated 21.02.2024 by which the Special Secretary to the Government of Assam has been appointed as an Arbitrator under Section 3G for passing awards in respect of the Districts mentioned in the said notification. The land and building of the writ petitioner is situated in the district of Goalpara and the said district also seen to be mentioned in the said notification. Under such circumstances, it is now open to the writ petitioner to approach the Arbitrator as specified under Section 3G(5) to prefer necessary application seeking enhancement of the compensation amount awarded. The learned Senior counsel for the petitioner fairly submits that during the course of the hearing, the writ petitioner has already preferred necessary application

before the Arbitrator appointed for filing for arbitration and the matter is still pending before the authorities.

19. The interpretation sought to be projected by the Senior counsel for the petitioner that till the time the Arbitrator decides on the enhancement of quantum and if the same is accepted and till such time the amount is not deposited by the Central Government with the competent authority, the land cannot be taken over by the respondents. This interpretation by the learned Senior counsel cannot be accepted in view of the provision of the Act of the National Highway. Under Section 3D(2), it is provided that the land shall vest absolutely in the Central Government free from all encumbrances on publication of the declaration under Sub-section 1 of the said section. Such specific provision of the Act is absolute and the same cannot be read to be understood to be dependent on the compensation required to be paid for enhance on the writ petitioner.

20. From the facts pleaded, it is clear that the petitioner is not aggrieved with the acquisition as there is no challenge made to that effect in the present writ petition. The petitioner's only grievance is the enhancement of the compensation. Under such circumstances, the petitioner cannot be expected to be in possession of the land sought to be acquired by the Central Government for the purposes of the National Highway in view of the categorical provisions of Section 3D(2). The notification by which the land was acquired which is 18.12.2021 is also not put to challenge. In the present writ petition, the petitioner claims an interest of 12% on the enhance rate with effect from the date of the said notification which is 18.12.2021. Under such circumstances, it is clear that the petitioner had accepted the acquisition of her land along with a building and no challenge is made to the acquisition. The writ petitioner, therefore, cannot be permitted to be in possession of the said land till such time her application under Section 3G(5) is decided by the Arbitrator appointed.

21. Under such circumstances and in view of the discussions above, this writ petition is disposed of with a direction to the competent authority to effectively dispose of the application stated to have been filed by the writ petitioner under Section 3G(5) within a period of 60 days from the date of receipt of a certified copy of this order. If the petitioner is found to be entitled to enhance rate, the same should be released without any further delay. Meanwhile, the petitioner is at liberty to approach the competent authority in terms of the notice dated 08.07.2024 issued by the authorities concerned for receipt of the amount of compensation already deposited by the National Highway Authority. If the petitioner approaches the authority in terms of the said notification, the amount may be released upon furnishing the necessary documents as sought for. The petitioner will vacate the premises forthwith and the respondents are at liberty to carry on their construction work for the National Highway strictly in terms of the provisions of the National Highways Act, 1956 and the Rules made thereunder.

22. The writ petition accordingly stands disposed of in terms of the above. Interim order passed earlier stands merged with this order. Pending I.A.s, if any, are also disposed of.

JUDGE

Comparing Assistant