

GAHC010227692024



2024:GAU-AS:11130

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

Case No. : WP(C)/5692/2024

CHANDAN DEB
S/O- BHUPENDRA DEB,
VILL.- AGIA PT. II (ULUPARA),
P.S.- AGIA, DIST.- GOALPARA,
PIN- 783120.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF LAND REVENUE ETC.,
DISPUR, GUWAHATI- 781006.

2:THE ADDITIONAL DISTRICT COMMISSIONER
L.A. BRANCH
GOALPARA
(CALA)
PIN- 783101.

3:THE CIRCLE OFFICER
BALIJANA
P.O.- BALIJANA

P.S.- AGIA

DIST.- GOALPARA

PIN- 783120.

4:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY

GOVT. OF INDIA

DEPTT. OF NHAI
DELHI-11.

5:THE DEPUTY GENERAL MANAGER (P)
NHIDCL
PMU
BONGAIGAON
ASSAM

PIN- 783385

Advocate for the Petitioner : MR. A ROSHID, MS. T BEGUM

Advocate for the Respondent : SC, REVENUE, SC, NHIDC,SC, NHAI,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

08.11.2024

Heard Mr. A. Roshid, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3; and Mr. C. Baruah, learned Standing Counsel, NHIDCL for the respondent nos. 4 & 5.

2. The learned counsel for the parties have submitted that this is the 3rd round of litigation.

3. The petitioner has been projecting that he constructed structures on a plot of land having 60 ft. length and 80 ft. width at a place in Village – Agia, Part –II [Ulupara], Balijana Revenue Circle, District – Goalpara near National Highway no. 17. A process of land acquisition was initiated by the State respondent authorities at the instance of the Ministry of Road Transport and Highways [MoRT&H], Government of India [GoI] as the requiring authority for 4-lanning of National Highway no. 17. When the process of acquisition was being

undertaken, the petitioner approached this Court by way of a writ petition, W.P.[C] no. 5060/2023 with the projection that the petitioner was in occupation of a plot of land measuring 4 Bighas 2 Kathas 8 Lessas, covered by Dag no. 663 at Village – Agia, Part –II [Ulupara], Balijana Revenue Circle. During the said proceedings, no land document was produced by the petitioner to show that he was the owner of the said plot of land. It was projected that he was in occupation of a Government plot of land and as such, he would be entitled to compensation as a person interested.

4. The writ petition, W.P.[C] no. 5060/2023 came up for consideration on 01.09.2023 and the same was disposed of with a direction to the respondent authorities to verify whether the land wherein the petitioner was in occupation had been included in the Notifications issued under Section 3A and Section 3D of the National Highways Act, 1956 and if the said land had been included in the Notifications under Section 3A and Section 3D of the National Highways Act, 1956, then the respondent authorities would be at liberty to evict the petitioner from the said land. It was further observed that the petitioner would be entitled to zirat compensation if there were any structures constructed by the petitioner or there were any standing crops belonging to the petitioner.

5. Subsequently on 22.03.2024, a notice was served upon the petitioner by the Competent Authority Land Acquisition [CALA], Goalpara, that is, the respondent no. 2 informing that the petitioner had constructed some unauthorized structures over the land covered by Dag no. 363, as mentioned hereinabove, which falls within the existing Right of Way [RoW] of the National Highway no. 17 already acquired, as per the Joint Verification Report of the Circle Officer, Balijana Revenue Circle dated 28.02.2024. The petitioner was informed that as his occupation of the land, already acquired, was creating obstruction in the construction works of 4-lanning National Highway no. 17 from Agia [Nichinta] to Paikan [PKG-7] by the NHIDCL and the project is a time-bound central project, he should immediately vacate the plot of land, else, he would be evicted from the plot of land forcibly. Aggrieved thereby, the petitioner had again approached before the Court by way of another writ petition, W.P.[C] no. 1858/2024.

6. The Competent Authority Land Acquisition [CALA] who was impleaded as the respondent no. 3, filed an affidavit in the writ petition, W.P.[C] no. 1858/2024 stating inter alia that in an enquiry conducted it was found that the petitioner would not be entitled to any compensation. In the enquiry, it was revealed that the structures constructed by the petitioner in the plot of land covered by Dag no. 363, mentioned above, falls within the RoW of 21 metres [required for current work], which was recorded already in the chitha copy as National Highway, meaning thereby, the land was already acquired for National Highway no. 17, which was earlier National Highway no. 37. When such facts were brought to light, the learned counsel for the petitioner made a submission on 06.09.2024, when the writ petition, W.P.[C] no. 1858/2024 was taken up for consideration, to the effect that since there were disputed questions of fact, he may be permitted to withdraw the writ petition, with a liberty to approach the competent court agitating the grievance as regards claim for zirat compensation in connection with the aforesaid plot of land. In view of such submission of the learned counsel for the petitioner, the writ petition, W.P.[C] no. 1858/2024 was closed with the liberty to the petitioner, as prayed for.

7. By this writ petition, the petitioner has sought to open up the litigation for the third occasion seeking inter alia a direction to the respondent authorities to assess the amount of zirat compensation in respect of the plot of land covered by Dag no. 363. When the writ petition, W.P.[C] no. 1858/2024 was taken up for consideration on 06.09.2024, the learned counsel for the petitioner submitted that since disputed questions of fact were involved, the petitioner be permitted to withdraw the writ petition with the liberty to approach the competent court. In view of such submission of the learned counsel for the petitioner, the writ petition was closed with the liberty as sought for by the learned counsel for the petitioner. It is, thus, clear that the competent court where the petitioner required to approach is not this Court exercising jurisdiction under Article 226 of the Constitution of India. The very reason for which the petitioner made the prayer to approach the competent court was involvement of disputed questions of facts.

8. It is well settled that a writ petition involving disputed questions of facts which require leading of evidence by the parties, is ordinarily not to be entertained. Thus, it is clear that

liberty granted to the petitioner vide Order dated 06.09.2024 cannot be a writ petition and as such, this writ petition is not to be entertained. The writ petition is accordingly, dismissed.

9. Despite order dated 06.09.2024, the petitioner has approached again without approaching the competent court of law. Such an approach is clearly an abuse of the process and as such, the petitioner is imposed with a cost of Rs. 2,000/-, which sum is to be deposited by the petitioner in favour of the Gauhati High Court Bar Association within a period of 2 [two] weeks from today.

JUDGE

Comparing Assistant