

GAHC010228912016



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

Case No. : WP(C)/3293/2016

GILLAPUKRI TEA COMPANY LIMITED
OWNER- GILLAPUKRI TEA ESTATE, HAVING ITS REGISTERED OFFICE AT
9, BRABOURNE ROAD, 3RD FLOOR, KOLKATA- 1, OWNING GILLAPUKRI
TEA ESTATE AT VILLAGE- GILLAPUKRI ROAD, P.O. and DIST.- TINSUKIA,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
DULY REP. BY THE DY. SECY., REVENUE and D.M. LR DEPTT., LAND
ACQUISITION BRANCH, DISPUR, GHY- 6.

2:THE DY. COMMISSIONER and COLLECTOR
TINSUKIA
P.O. and DIST.- TINSUKIA
ASSAM.

3:THE ADDL. DY. COMMISSIONER
OFFICE OF THE DY. COMMISSIONER
TINSUKIA
P.O. and DIST.- TINSUKIA
ASSAM.

4:ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD.
HAVING ITS REGISTERED OFFICE AT R.G. BARUAH ROAD
GHY- 24
ASSAM
DULY REP. BY ITS MANAGING DIRECTOR

Advocate for the Petitioner : MRS S KEJRIWAL

Advocate for the Respondent : MS. U. DAS, ADDL. SR. GOVT. ADVOCATE.
MS. G. HAZARIKA, SC, REVENUE DEPARTMENT AND
MR. S. DAS, ADVOCATE FOR RESPONENT NO.4

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 29-04-2024

Heard Mr. S. K. Kejriwal, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned Standing Counsel, Revenue and D.M. (LR) Department for respondent No.1, Ms. U. Das, learned Addl. Senior Government Advocate, Assam for the respondent Nos.2 & 3 and Mr. S. Das, learned counsel for the respondent No.4.

2. By filing this writ petition, the petitioner has challenged the impugned letter dated 06.02.2014, issued by the Deputy Secretary to the Govt. of Assam, Revenue & D.M. (LR) Department, whereby an award amounting to Rs.5,95,41,736/- (Rupees five crore ninety five lakh forty one thousand seven hundred and thirty six) only has been approved in connection with acquisition of land for construction of "Plastic Park" in Village Gillapukhuri Tea Estate in respect of L.A. Case No.1/2008/Pt.I. The challenge is also made to the acquisition proceedings initiated under the Land Acquisition Act, 1894 (here-in-after referred to as 'the L.A. Act, 1894'), after coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here-in-after referred to as 'the LARR Act, 2013'), which had come into force w.e.f. 01.01.2014, on the ground that apart from not affording reasonable opportunity of hearing, same violates the provision of Section 24 of the LARR Act, 2013.

3. The case, in brief, is that the petitioner is a company incorporated under

the Companies Act, 1956. It owns a Tea Estate and is situated over an area of land measuring more than 4380 Bighas at Tinsukia. The State Government decided to acquire a portion of the above Tea Estate land for the purpose of establishing a "Plastic Park" vide dated 04.08.2008 and 28.01.2010 in exercise of power under Section 4 of the L.A. Act, 1894, for 1166 bighas, 1 katha, 14 lechas of the land of Gillapukhuri Tea Estate, owned by the petitioner. Accordingly, a proceeding being L.A. Case No.1/2008 was also initiated. Thereafter, vide dated 17.06.2009, a declaration under Section 6(1) of the L.A. Act, 1894 was published. In the same manner, the Government proposed to acquire petitioner's additional plot of land measuring 333 bighas, 3 kathas, 6 lechas in Village Gillapukhuri NLR Grant No.261 covered by Dag No.8 (part), 9 (Part), 10, 11, 14 (part) and 24 (part), Mouza – Rongagora in District Tinsukia, for the purpose of construction of "Plastic Park" and accordingly a proceeding being L.A. Case No.1/2008/Pt.-I was also initiated. In order to give effect to said proposal, a Notification dated 28.01.2010 was also issued under Section 4 of the L.A. Act, 1894.

4. It is contended that violating the mandate of Section 4 of the L.A. Act, 1894, neither the copy of the said Notification was supplied to the petitioner nor was public notice of the substance of the said Notification given at a convenient place in the Gillapukhuri locality. It is contended that the petitioner having learned the issuance of the aforesaid Notification vide letter dated 21.05.2010, lodged its protest basically on the ground of selection of its prime tea bearing land. Thereafter, another representation dated 10.06.2010 was submitted to the authority offering another equivalent portion of land which was adjacent to the earlier acquired land measuring 1166 bighas, 1 katha, 14 lechas and prayed for consideration of the same regarding the selection of area.

5. It is contended that thereafter, in continuation of the aforesaid Notification dated 28-01-2010, a Declaration bearing No. RLA.25/2010/5 dated 22-09-2010 was also issued under Section 6 of the L.A. Act, 1894. Neither any copy of the Declaration was supplied to the petitioner nor was the public notice of the substance of such notification affixed/circulated at convenient places in the Gillapukri Tea Estate Locality in violation of the mandatory requirement of Section 6(2) of the L. A. Act, 1894. Even the provision contained under Section 5A of the L. A. Act, 1894 were not followed before issuance of Declaration and consequently, the petitioner was deprived of the right to file objection and avail an opportunity of hearing as mandatorily provided under Section 5A of the L.A. Act, 1894. As such vide another letter dated 09-12-2010, the petitioner lodged its protest against the proposed acquisition of its prime tea bearing land.

6. It is contended by the petitioner that as all efforts made by the petitioner failed to evoke any response, the petitioner approached this Court by filing Writ Petition (C) No.3022/2011, assailing the legality and validity of proposed acquisition of its prime tea bearing land measuring 333 Bighas, 3 Kathas, 06 Lechas and inaction of the Respondent No.2 to dispose of its various representations more particularly, the representation dated 10-06-2010. This Hon'ble Court after hearing the parties and having noticed that the representation dated 10-06-2010 was not disposed of, vide Order dated 22-06-2011 disposed of the said writ petition, with a direction to the Deputy Commissioner to examine the grievances of the petitioner in the light of relevant provisions of law and to dispose of the representation in accordance with law. It was also directed that until disposal of the representation, possession of the land in question shall not be taken over by the respondents except in accordance with law. It was also made clear that if the petitioner is aggrieved

by the decision of the authority, it may take recourse to such provision of law as may be permissible.

7. It is contended by the petitioner that after the aforesaid order, the petitioner vide yet another letter dated 19-07-2011 requested the Respondent No.2 to reconsider the decision regarding selection of area and to acquire alternate vacant land adjacent to earlier land measuring 1166 Bighas.

8. After series of deliberations, on the alternate proposal for acquisition of the land by the petitioner, the petitioner came to learnt that the respondent No.2 had already passed an order dated 13-03-2012, holding that it was not possible to acquire alternative plot of land, as proposed by the petitioner and urged upon the Government to urgently issue Section 6(1) declaration ignoring the fact that such declaration was already issued on 22.09.2010.

9. The petitioner further contended that before the Government could act on the basis of letter dated 04-06-2012, the period of 2 years already expired from the date of issuance of Declaration dated 22-09-2010. As such, the acquisition proceeding initiated pursuant to Notification dated 28-01-2010 lapsed in terms of provision contained under Section 11-A of the L.A. Act, 1894 and there was no scope for the State Government to revive the lapsed acquisition proceeding under the Scheme of the L.A. Act, 1894 save and except to initiate fresh acquisition proceeding in respect of land measuring 333 Bighas, 3 Kathas, 6 Lechas and accordingly, the State Govt. issued a fresh Notification under Section 4 of the L.A. Act, 1894 on 19-10-2012. This time also, neither the copy of Section 4 notification was provided to the petitioner nor was the public notice of the substance of said notification was circulated in the Gillapukri Locality. However, a notice dated 03-05-2013 was issued to the petitioner to file its objection, if any, against the acquisition of aforesaid land under Section 5-A of

the L.A. Act, 1894 on or before 01-06-2013. It was made clear that if no representation is received on or before the date fixed, it would be presumed that there is no objection from any quarter on the acquisition of the land in question. Upon receipt of aforesaid Notice, the petitioner could learn that fresh acquisition notification was issued on 19-10-2012.

10. In response to the aforesaid Notification dated 19.10.2012, the petitioner while filing its objection dated 22-05-2013 against the proposed acquisition, by proposing for acquisition of alternate plot of land covered by Grant Nos.266 and 285 and also submitted its claim on different counts and prayed for affording reasonable opportunity of hearing in the matter as per Section 5A(2) of the L.A. Act, 1894. Thereafter, vide notice dated 06.07.2013, the petitioner was served with notice by fixing the date 16.07.2013, for hearing in connection with the land measuring 333 Bighas, 3 Kathas, 6 Lechas, according to petitioner, as if this High Court has directed in WP(C) No.2349/2014, to afford an opportunity of hearing in connection with the aforesaid land, as the said direction was against non-affording of hearing in terms of provisions contained under Section 9 of the L.A. Act, 1894, in respect of land measuring 1166 bighas 1 katha 14 lechas which has no relevance with the land measuring 333 Bighas, 3 Kathas, 6 Lechas.

11. The petitioner further contended that the petitioner appeared in the office of the Respondents No.2 and 3 for conducting hearing on the objection filed on 22-05-2013. However, as the hearing in connection with Section 9 Notice relating to land measuring 1166 bighas 1 katha 14 lechas was also fixed on the same date in terms of the Judgment and order dated 06-06-2013 passed in WP(C) No. 2349/2013, the Respondent No.2 and 3 informed the petitioner that the hearing on the objection in connection with land measuring 333 Bighas, 3

kathas, 6 lechas i.e. the land in question, would be taken on some other date, in as much as, there was no immediate urgency in the said acquisition proceeding and hearing in connection with land measuring 1166 bighas 1 katha 14 lechas was held on 16-07-2013. Accordingly, the petitioner addressed a letter dated 06-08-2013 to the Respondent No.2 intimating the aforesaid facts with a request to issue advance notice of hearing in connection with land measuring 333 Bighas, 3 kathas, 6 lechas (i.e., land in question) on the objection filed so as to afford ample opportunity of hearing in the matter as and when the next date of hearing is fixed. In continuation of aforesaid letter, the petitioner issued yet another letter dated 24-10-2013 requesting the Respondent No.2 to provide a copy of the order postponing the date of hearing in connection with land measuring 333 Bighas.

12. In the meantime, the LARR Act, 2013 was enacted by the Parliament which has come into force w.e.f. 01.01.2014. The statements of objects and reasons of the LARR Act, 2013 indicates that the benefit under the New Act of 2013 would be available in all the cases of land acquisition under the L.A. Act, 1894 where award has not been made or possession of the land has not been taken.

13. It is the further contention of the petitioner that thereafter, without affording any opportunity of hearing to the petitioner under Section 5A(2) of the L.A. Act, 1894 or Section 15(2) of the LARR Act, 2013, the Respondent No.3 issued a Notice dated 12-01-2014 purportedly in exercise of powers conferred under Section 9 of the L.A. Act, 1894 informing that land measuring 333 Bighas, 3 Kathas, 6 Lechas had been acquired in terms of Section 6 of the L.A. Act, 1894, by issuing Declaration dated 28-11-2013 for the public purpose of construction of Plastic Park requiring the petitioner to submit its objection and claim for the same on or before 27-01-2014. The fact that while issuing the

aforesaid Notice, the Respondents No.2 and 3 had violated the mandatory requirement of law is evident from the fact that after issuance of notice dated 03-05-2013 under Section 5A of the L.A. Act, 1894, the Deputy Commissioner was required to hear the objection of the petitioner and only thereafter, to submit his report before the appropriate Government and then only, question of issuance of Declaration under Section 6 of the L.A. Act, 1894 would have arisen. As no hearing whatsoever on Section 5A notice having been held/provided, it can be safely presumed that the Respondent No.2 had submitted a false report with the Government which resulted in issuance of Declaration dated 28-11-2013. Therefore, the entire exercise of acquisition of aforesaid land having been undertaken in violation of mandatory provision of law, the same is nullity and is liable to be set aside and quashed. Even the Copy of Declaration was neither served upon the petitioner nor was any public notice of the substance of said Declaration given at convenient place of the Gillapukri Locality.

14. Thereafter, the petitioner had submitted several letters including letter dated 27-01-2014 and 07.02.2014, with a request for determination of compensation in terms of Section 24(1)(a) of the LARR Act, 2013, as in the meantime, the LARR Act, 2013 had come into force with effect from 01-01-2014 and as by then neither any award whatsoever was approved nor the possession of the land was taken over. It is the contention of the petitioner that as per Section 24(1)(a) of the LARR Act, 2013, it provides that in any case of land acquisition under the L.A. Act, 1984, where no award under Section 11 of the said Act had been made, all provisions of LARR Act, 2013 are to be applied for determination of compensation. As per Section 21 of the LARR Act, 2013, the notice to the person interested in the land was required to be issued for claiming compensation and rehabilitation and resettlement for all interests in

such land. As per Section 26(a) of the LARR Act, 2013, the Collector is required to determine the market value of the land by taking into consideration the market value specified in the Indian Stamp Act for registration of Sale Deeds. So far as the value of land in question is concerned, it was stated that the Respondent No.2 himself vide Order dated 07-01-2012, had fixed the value of land at Rs.8,00,000/- (Rupees eight lakhs) only, per Bigha and that the Collector was required to follow other provisions contained in the LARR Act, 2013, while determining the land value. Accordingly, the petitioner has requested the authorities to examine the matter afresh, in the light of the provision contained under the LARR Act, 2013 and to provide opportunity of hearing before taking any decision in the matter.

15. It is the contention of the petitioner that in the month of February, 2016, when the petitioner was served with a copy of the Review Petition filed by Respondent No.4, in WP (C) No.2269/2014, the respondent authority vide letter dated 31-12-2013 had approved the land acquisition estimate in connection with the land in question at Rs. 6,54,95,910/-. It is the further contention of the petitioner that the said approval was given back dated, is evident from the fact that notice under Section 9 having been issued only on 12-01-2014, there cannot be any question of approving any land acquisition estimate on 31-12-2013, in as much as, no enquiry into the respective claims having been made by the Respondent No.2, there cannot be any question of submission of any land acquisition estimate by the Collector. Vide letter dated 06-02-2014, the authority had shown to have approved the land acquisition award, in connection with the land in question at Rs. 5,95,41,736/-, with reference to some letter dated 27-12-2013 issued by the Respondent No.2. It is the contention of the petitioner that a bare perusal of the Land Acquisition Estimate would show that although

the award was approved on 06-02-2014 but the same was prepared by applying the provisions contained under the repealed L.A. Act, 1894 and as such, the same is violative of provision of Section 24 of the LARR Act, 2013 and is nullity and liable to be set aside. Being aggrieved by the said approval dated 06-02-2014, the present petition has been filed.

16. Mr. S. K. Kejriwal, learned counsel for the petitioner, submits that no award having been made by the Respondent No.2 upto 06-02-2014, on which date the estimate was approved and communicated to the Respondent No.2 and the possession of the land is yet to be taken, it is incumbent for the Respondent authority to determine the compensation, payable to the petitioner in terms of the provisions contained under the LARR Act, 2013, as the LARR Act, 2013 had come into force w.e.f. 01.01.2014 and the alleged approval of any award on 06.02.2014, as per repealed provisions of the L.A. Act, 1894 is not sustainable in law and is a fit case to direct the Respondent No.2 to pass fresh award after affording reasonable opportunity of hearing to the petitioner, as per the provision of the LARR Act, 2013.

17. Mr. S. K. Kejriwal, learned counsel further submits that Section 24 (1)(a) of the LARR Act, 2013 provides that in case of land acquisition proceeding initiated under the L.A. Act, 1894 where no award under Section 11 of the said Act has been made (i.e., up to the date of coming into force of the LARR Act, 2013), then, all provisions of the LARR Act, 2013, relating to the determination of compensation shall apply. As per first proviso to Section 11(1) of the L.A. Act, 1894, no award can be passed by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf. Admittedly, the approval to the land acquisition award was communicated on 06-02-2014 and the same was received by the

office of the Collector on or about 10/11-02-2014. Therefore, the impugned award having been approved after coming into force of the LARR Act, 2013, the award prepared under the provisions of L.A. Act, 1894 is nullity and cannot be enforced and the same is liable to be set aside and consequently, it is a fit case to direct the Respondent No.2 to pass fresh award after affording reasonable opportunity of hearing to the petitioner in terms of provision contained under the LARR Act, 2013.

18. It is further submitted by Mr. Kejriwal, learned counsel for the petitioner that neither any opportunity of hearing in terms of the Notice issued under Section 5A of L.A. Act, 1894 was provided nor any opportunity of hearing in terms of notice issued under Section 9 of the L.A. Act, 1894 was provided in respect of land measuring 333 Bighas, 3 kathas, 6 lechas whereas, in respect of its another plot of land measuring 1166 bighas 1 katha 14 lechas which was also acquired for the construction of Plastic Park, due opportunity of hearing at least against Section 9 (of the L.A. Act, 1894) notice was provided to the petitioner on 16-07-2013 in terms of the order dated 06-06-2013 passed by this Court in WP (C) No.2349/2013. The Respondent No.2 having failed to provide due opportunity of hearing against the notices issued under Sections 5A and 9 of the L.A. Act, 1894, the entire land acquisition proceeding vitiates for non compliance of mandatory requirement of law, in as much as, the Land Acquisition Act being Ex proprietary Legislation wherein power of eminent domain can be exercised by the Government, the lone protection provided to the land owner is to file its objection against the acquisition of its land and to submit its claim. The same having not been allowed, the entire acquisition proceeding vitiates and the award is liable to be set aside.

19. Mr. Kejriwal, learned counsel, further submits that the Respondents are

statutory/constitutional authorities and, as such, they are required to follow the mandate of law while dealing with private properties but from the conduct of the Respondents, it can be seen that at every stage of the acquisition proceeding, they violated the mandate of law and the same is nothing but Constitutional Fraud and, as such, it is a fit case to direct the Respondents to pass fresh award by following the provisions contained under the LARR Act, 2013, after affording due opportunity of hearing to the petitioner. The further submission of learned counsel is that even in respect of its land measuring 1166 bighas 1 katha 14 lechas, since the approval of the award was communicated on 06-01-2014, by the State Government after coming Into force of the LARR Act, 2013, this Court vide Judgment and Order dated 18-08-15, passed in W.P. (C) No.2269/2014 directed the Respondent No.2 to pass fresh award as per provision of the Act of 2013. In the instant case, admittedly, the alleged approval under Section 11 of the L.A. Act, 1894 having been communicated only on 06-02-2014, it is just and fit for this Court to pass similar order directing the Respondents to pass fresh award in terms of the LARR Act, 2013, after affording reasonable opportunity of hearing to the petitioner and by taking into consideration the prevailing market value of the land and other properties as on the date of issuance of Notification dated 19-10-2012.

20. Mr. Kejriwal further contended that even assuming but not admitting that any award is approved by the State Government, the approval thereof having been communicated only on 06-02-2014, i.e. after coming into force of the LARR Act, 2013, the provisions of the LARR Act, 2013 would be applicable for the purpose of instant acquisition proceeding and for determining the compensation payable to the petitioner in terms of Section 24 of the LARR Act, 2013, even though acquisition proceeding was initiated pursuant to the

Notification dated 19-10-2012 and Declaration dated 28-11-2013 and, as such, it is a fit case for this Court to direct the Respondent No.2 to pass fresh award in terms of the provision of the LARR Act, 2013.

21. Further, it is submitted by the learned counsel that the Respondent No.2 having failed to observe various mandatory requirements of the L.A. Act, 1894 as well as the LARR Act, 2013, while proceeding to acquire aforesaid large strip of land belonging to the petitioner, has violated petitioner's fundamental rights guaranteed under Articles 14, 19(1)(g), 21 and 300A of the Constitution of India, in as much as, the acquisition of petitioner's aforesaid large strip of land would not only take away the petitioner's right to carry on trade, business and avocation and its property but also the bread and butter including that of the huge labour force engaged in the Tea Estate. As such, it is a fit case warranting interference by this Court.

22. Ms. U. Das, learned Addl. Senior Government Advocate, while referring to the affidavit-in-opposition filed on behalf of the respondent No.3, submits that the Land Acquisition Case No.1/2008/Pt.I was initiated for the purpose of construction of Plastic Park, covered by land measuring 333B-3K-6L belonging to Gillapukhuri T.E. Accordingly notification U/s. 4(1) dated 28.01.2010 was issued under urgency clause in exercise of the powers conferred under Section 17(4) of the L.A. Act, 1894, where there is no necessity to provide any opportunity of hearing and as such there is violation of the mandate of Section 4 of L.A., Act, 1894.

23. Ms. Das, learned Addl. Senior Government Advocate, submitted that the petitioner had proposed vide letter dated 26.05.2010 for acquisition of alternative land, instead of proposed notified land. But after enquiry of the land, it was observed that the proposed land was not free from encroachment and

occupied by the local extra garden workers who vehemently opposed to the proposed alternative land. The learned Addl. Senior Government Advocate, further submitted that the petitioner's averments relating to issuance of declaration bearing No.RLA.25/210/15, dated 22.07.2010 was not correct and true. As such, the question of notice to the petitioner as well as in convenient places for inviting claims and objections U/s. 9(1)(2) and (3)(4) does not arise.

24. It is further submitted by the learned State counsel that all petitions made by the petitioner were accepted and tried to resolve the issue amicably. But the proposal for alternative land could not be considered due to encroachment. During the period of communication and discussion with the petitioner for solution of the issue, a writ petition No. WP(C) No.3022/2011 was filed before this Court praying for directing the Deputy Commissioner to examine the grievances of the petitioner and as per this Court's order dated 22.06.2011, passed in WP(C) No.3022/2011, the representation of the petitioner dated 10.06.2010 was duly considered and the matter was tried to be resolved but the proposal for determination could not be accepted due to encroachment and acquisition which may lead to litigation.

25. Ms. Das, learned Addl. Senior Government Advocate, further submitted that as the Notice U/s. 4(1) was issued invoking urgency clause, as provided under Section 17(4), no opportunity for hearing was required to be provided to the petitioner and as such there has been no violation of the provisions of the law by the respondents as alleged by the petitioner. It is further pleaded that Notice No.TRQ.72/2009/Pt.1, dated 12.01.2014 was issued under Section 9(1) (2) & (3) (4) to the petitioner for filing claims and objections, if any, fixing the date on 27.01.2014 but the petitioner failed to submit the same. Rather, the petitioner's petition dated 27.01.2014, requesting for determination of

compensation in terms of Section 24(1)(a) of the LARR Act, 2013 could not be considered as the Government had not framed any rule on the new LARR Act and as the land in question was acquired under the L.A. Act, 1894, therefore determination of market value of the land could not be considered in terms of Section 26 (1)(a) of the LARR Act, 2013.

26. Due consideration has been extended to the submissions of learned counsel for the parties and the examined the materials on record.

27. The fundamental question involved in the present proceedings in respect of assessment of the compensation against the acquisition of land of the petitioner, is as to whether the proceeding shall be under the L.A. Act, 1894 or under the LARR Act, 2013.

28. On the perusal of the record, it reveals that the proceeding has been initiated under the L.A. Act, 1894 (now repealed) and when the proceeding was under process, the new Act i.e. the LARR Act, 2013 has come into force w.e.f. 01.01.2014. Though, there were several notices issued by the respondents under the old L.A. Act, 1894 and corresponding representations and objections were filed by the petitioner from time to time in respect of 333 bighas 3 kathas 6 lechas in Village Gillapukhuri NLR Grant No.261 covered by Dag No.8 (part), 9 (Part), 10, 11, 14 (part) and 24 (part), Mouza – Rongagora in District Tinsukia, the notice dated 12.01.2024, issued by the Addl. Deputy Commissioner, in-charge of Acquisition and Requisition Branch, Tinsukia, goes to show that the authority had sought for objection from the interested persons as against the acquisition to be initiated in respect of the said land of the petitioner in L.A. Case No.1/2008/Pt.I. under L.A. Act, 1894, despite the coming into force of the new LARR Act, 2013 which has come into force on 01.01.2014, repealing the old L.A. Act, 1894.

29. It is the stand of the learned counsel for the respondent that the estimate prepared by the Acquisition and Requisition Branch of the Deputy Commissioner's office at Tinsukia, in respect of the aforesaid land which has been acquired, was approved on 31.12.2013. Therefore, the earlier proceedings under the old L.A. Act, 1894 did not lapse in as much as a valid award was approved within the period of two years from the date of Notification under Section 6(1) of the old L.A. Act, 1894 which was very much in existence as on 01.01.2014.

30. As noted herein above, it is noticed that before the Government could act on the basis of letter dated 04-06-2012, even after the period of 2 years already expired from the date of issuance of declaration dated 22-09-2010. Therefore, the acquisition proceeding initiated pursuant to Notification dated 28-01-2010 got lapsed in terms of provision contained under Section 11-A of the L.A. Act, 1894 and in my view there was no scope for the authorities to revive the lapsed acquisition proceeding under the scheme of the L.A. Act, 1894 other than to initiate fresh acquisition proceeding in respect of land measuring 333 Bighas, 3 Kathas, 06 Lechas.

31. It is noticed that the Respondent No.3 has issued a Notice dated 12-01-2014 in exercise of powers conferred under Section 9 of the L.A. Act, 1894 informing that land measuring 333 Bighas, 3 Kathas, 06 Lechas had been acquired in terms of Section 6 of the L.A. Act, 1894, by issuing declaration dated 28-11-2013 for the public purpose of construction of Plastic Park requiring the petitioner to submit its objection and claim for the same on or before 27-01-2014. Under the provision after issuance of notice dated 03-05-2013 under Section 5A of the L.A. Act, 1894, the authority is required to hear the objection of the petitioner and only thereafter, to submit his report before the appropriate

Government and then only, question of issuance of declaration under Section 6 would have arisen. It appears that no hearing on Section 5A notice held as required. Therefore, no declaration on 28-11-2013 could have been made. Having considered the materials on record, it appears that the entire exercise of acquisition of the land has been undertaken in violation of mandatory provision of law.

32. The record also reveals that a notice dated 12.01.2014, in respect of the land in L.A. Case No.1/2008/Pt.I was issued which shows that no award was passed before coming into force of the LARR Act, 2013. If no award is passed and possession is taken, section 24 (1) (a) of the LARR Act, 2013 would apply with full force.

33. For better appreciation, it is apposite to refer to the relevant provisions of the LARR Act, 2013, which are as follows:

“Section 21 : Notice to persons interested.

(1) The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

(2) The public notice referred to in sub-section (1) shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

(3) The Collector may in any case require such statement referred to in sub-section (2) to be made in writing and signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated.

(5) In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last

known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website.

Section 24 : Land acquisition process under Act No. 1 of 1984 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

Section 26 :Determination of market value of land by Collector.

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.”

34. A bare reading of the above provisions, reflects that a requirement of notice and lapsing provision as well as determination of market value in the new LARR Act, 2013 are provided. Section 24(1)(a) of the LARR Act, 2013 provides that where no award under section 11 of the L.A. Act, 1894 has been made, then, all provisions of LARR Act, 2013 relating to the determination of compensation shall apply. Under section 24 (1)(b) it provides that where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

35. On consideration of the above provision, this Court is of the considered view that Section 24(1)(a) of the LARR Act, 2013 shall invariably apply in the present case in as much as, shorn of all the notices, objections as well as proceedings thereof under the Act, a notice was issued on 12.01.2014, which is after the coming into force of the LARR Act, 2013, w.e.f. 01.01.2014.

36. The law with regard to the present controversy is no longer *res integra*, for which this Court would refer to the case of **Indore Development Authority vs. Manoharlal and others**, reported in **(2020) 8 SCC 129**, wherein the Hon'ble Supreme Court has held, which is reproduced here-in-under:-

“94. Undoubtedly, the 2013 Act has provided safeguards, in the form of higher compensation and provisions for rehabilitation, which are necessary. In that light, the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions, it is not for the court to legislate. The Court can only iron out creases to clear ambiguity. The intended benefit should not be taken away. At the same time, since the 2013 Act, envisages lapse of acquisitions notified (and in many cases, completed by the issuance of the award) due to indolence and inaction on the part of the authorities and therefore, intends acquisition at a fast track, the full effect has to be given to the provisions contained in Section 24.

95. Section 24 begins with a non-obstante clause, overriding all other provisions of the 2013 Act including Section 114 of the 2013 Act, dealing with repeal and saving. In terms of Section 114 of the 2013 Act, the general application of Section 6 of the General Clauses Act, 1897, except otherwise provided in the Act, has been saved. Section 6(a) of the General Clauses Act, 1897 provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time when the repeal has been made. The effect of the previous operation of any enactment so repealed or anything duly done or suffered there under is also saved by the provisions contained in Section 6(b). As per Section 6(c), the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred.

96. Section 24(1)(a) of the 2013 Act read with the non-obstante clause provides that in case of proceedings initiated under the 1894 Act the award had not been made under Section 11, then the provisions of the 2013 Act, relating to the determination of compensation would apply. However; the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11 is made, then such proceedings shall continue under the provisions of the 1894 Act. It contemplates that such pending proceedings, as on the date on which the 2013 Act came into force shall continue, and taken to their logical end. However, the exception to Section 24(1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed five years or more prior to the commencement of the 2013 Act, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the 2013 Act.

.....

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

366.3. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceedings under Section

24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

.....”

37. The Hon’ble Supreme Court has clearly held herein above that Section 24(1)(a) of the LARR Act, 2013, read with the non-obstante clause provides that in case of proceedings initiated under the L.A. Act, 1894 the award had not been made under Section 11, then the provisions of the LARR Act, 2013, relating to the determination of compensation would apply. However, the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11 is made, then such proceedings shall continue under the provisions of the L.A. Act, 1894. It contemplates that such pending proceedings, as on the date on which the LARR Act, 2013 came into force shall continue, and taken to their logical end. However, the exception to Section 24(1)(b) is provided in Section 24(2) in case of pending proceedings, in case where the award has been passed five years or more prior to the commencement of the LARR Act, 2013, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the LARR Act, 2013. It clearly has held that under the provisions of Section 24(1)(a) in case the award is not made as on 01.01.2014, the date of commencement of the LARR Act, 2013, there is no lapse of proceedings and the compensation has to be determined under the provisions of the LARR Act, 2013.

38. Applying the law laid down by the Hon’ble Supreme Court in the above

case in the present proceedings, I am of the considered view that the provisions of Section 24 of the LARR Act, 2013 shall apply in view of the fact that a notice was issued on 12.01.2014, although attempt has been made to show that the award was approved on 31.12.2013 and accordingly, the approval was finally granted on 06.02.2014. That apart, no possession of the land was taken by the authority. Thus, the provisions of Section 24(1)(a) of the LARR Act, 2013 will apply. Accordingly, compensation has to be determined under the provisions of the LARR Act, 2013.

39. In view of the discussions and conclusion herein above, the impugned letter 06.02.2014, issued by the Deputy Secretary to the Govt. of Assam, Revenue & D.M. (LR) Department, whereby an award amounting to Rs.5,95,41,736/- (Rupees five crore ninety five lakh forty one thousand seven hundred and thirty six) only has been approved in connection with acquisition of land for construction of "Plastic Park" in Village Gellapukuri Tea Estate in respect of L.A. Case No.1/2008/Pt.I is hereby set aside and quashed. Consequently, the respondent authorities are directed to determine the compensation for the land in question under the provisions of the LARR, Act of 2013 within a period of 3 (three) months from the date of receipt of the certified copy of this order.

40. Writ petition stands allowed and disposed of, accordingly. However, no order as to costs.

JUDGE

Comparing Assistant