

GAHC010240842012



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

Case No. : WP(C)/4271/2012

RISHI GUPTA
S/O LT. RAGHUBIR SINGH GUPTA, R/O A.C. DUTTA LANE, F.A. ROAD
KUMARPARA, P.S. BHARALUMUKH, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER and SECRETAY , REVENUE AND DISASTER
MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
LAND REVENUE BRANCH
KAMRUP METRO
ASSAM.

3:THE CIRCLE OFFICER

AZARA REVENUE CIRCLE
AZARA
DIST. KAMRUP
ASSAM.

4:UNION OF INIDA

REP. BY THE SECRETARY
DEPARTMENT OF CIVIL AVIATION
NEW DELHI-1.

5:THE AIRPORT AUTHORITY OF INDIA

REP. BY THE REGIONAL EXECUTIVE DIRECTOR
LOKOPRIYA
GOPINATH BORDOLOI INTERNATIONAL AIRPORT
GUWAHATI-15.

6:THE AIRPORT AUTHORITY OF INDIA

NE REGION
LOKOPRIYA GOPINATH BORDOLOI INTERNATIONAL AIRPORT
GUWAHATI-15.

7:ATIKUR RAHMAN

S/O LT. ADIDUR RAHMAN R/O S.S. ROAD
LAKHTOKIA
GUWAHATI-1
P.S. PANBAZAR
DIST. KAMRUP
ASSAM

For the Petitioner(s) : None appears

For the Respondent(s) : Ms. M. Barman, Addl. Jr. GA
: Mr. A. Bhattacharjee, Standing Counsel
: Mr. P. K. Garodia, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 02.02.2024

None appears on behalf of the Petitioner on call. Mr. A. Bhattacharjee, the learned Standing counsel appears on behalf of the Respondent No.1 and Ms. M. Barman, the learned Additional Junior Government Advocate appears on behalf of the Respondent Nos. 2 and 3. I have also heard Mr. P. K. Garodia, the learned Standing counsel appearing on behalf of the Respondent Nos. 5 and 6. None appears on behalf of the Respondent No.4 i.e. the Union of India as well as the Respondent No.7.

2. The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondents not to requisition the Petitioner's land being contiguous and similarly situated to the land of the SOS village; a direction to the

Respondents/Competent Authority to issue notice to the Petitioner under Section 5(A) and any other relevant provision of the Land Acquisition Act on the ground that no notice whatsoever was issued to the erstwhile owner/seller and thereupon to take consequential steps including payment of adequate compensation and/or exempt the Petitioner's land measuring 10 Bighas 14.5 Lechas from the land acquisition process.

3. Pursuant to the filing of the writ petition, an affidavit-in-opposition has been filed by the Respondent No.1 stating inter alia that there was a notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act of 1894") for acquisition of 74 Bighas 1 Katha 4.5 Lechas of land at Village Mirzapur. The said acquisition proceedings was registered as L.A. Case No.2/2008. Objections were also invited from the pattadars/the persons interested under Section 5(A) of the Act of 1894. However, the said notification lapsed. Subsequent thereto, another notification was issued on 22.11.2010 under Section 4 of the Act of 1894. Pursuant thereto, notices were also issued to the Pattadars and hearing was conducted in terms with Section 5(A) of the Act of 1894. Subsequent thereto, report was submitted and declaration was made under Section 6 of the Act of 1894.

4. The record reveals that the award was duly passed and the requiring authority i.e. Airport Authority of India had also deposited the awarded amount. Thereupon, an objection petition was filed by the Petitioner bearing No. 653 dated 07.05.2012 that no compensation be made to any party concerned for which the entire amount is still intact at the disposal of the Deputy Commissioner, Kamrup.

5. It is relevant to take note of from the orders passed by this Court that the question duly arose as to whether the Petitioner would be entitled to

compensation in terms with the provisions of the Act of 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in view of Section 24 of the Act of 2013. The record further reveals that on account of the issue being pending, the matter was adjourned on the last occasion. In the meantime, the Constitution Bench of the Supreme Court had already decided the applicability of Section 24 in its judgment in the case of ***Indore Development Authority Vs. Manoharlal and Others Etc. reported in (2020) 8 SCC 129***. Paragraph 366.4 and 366.5 of the said judgment being relevant are quoted herein under.

366.4. *The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.*

366.5. *In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013*

Act.

6. From the above quoted paragraphs, it is clear that the Constitution Bench of the Supreme Court had observed that the expression "paid" appearing in Section 24(2) of the Act of 2013 does not include a deposit of compensation in Court. It was further mentioned that non-deposit of compensation (in Court) does not result in the lapse of the land acquisition proceedings. It was observed that in case of non-deposit with respect to the majority of the holdings for five years or more, compensation under the Act of 2013 has to be paid to the land owners as on the date of the notification for land acquisition under Section 4 of the Act of 1894. It was also observed that in case a person was tendered, the compensation as provided under Section 31(i) of the Act of 1894, it would not be open to him to claim that the acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in the Court inasmuch as the obligation to pay is complete by tendering the amount under Section 31(1) of the Act of 1894. It was further observed that the land owner who had refused to accept the compensation or who sought reference for higher compensation cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

7. In the backdrop of the above, if these propositions as settled by the Constitution Bench of the Supreme Court are taken note of and applied to the facts of the instant case, it would be seen that it is at the behest of the Petitioner, the payment of compensation has not been made although the Petitioner was duly tendered the said amount as could be seen from the affidavit-in-opposition filed by the Respondent No.1. Under such circumstances, it is therefore the opinion of this Court that the writ which has been sought for in the instant proceedings cannot be issued.

8. Be that as it may, this Court however observes that the Petitioner has been diligently and bonafidely on due advice has been pursuing his remedies before this Court by filing the present writ petition and it has been pending since 04.09.2012. Under such circumstances, this Court grants the liberty to the Petitioner to file applications before the Deputy Commissioner, Kamrup (M) seeking a reference, if so aggrieved with the inadequacy of the compensation. The said application has to be filed within 42 days from the date of the instant order.

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

JUDGE

Comparing Assistant