

GAHC010258262023



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

Case No. : WP(C)/6625/2023

GOPAL CH GHOSH
S/O- LATE SURENDRA NATH GHOSH,
R/O- VILL. NO. 1 SRIRAMPUR,
REVENUE CIRCLE- GOSSAIGAON,
DIST.- KOKRAJHAR, BTR, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS (MORTH),
TRANSPORT BHAWAN, PARLIAMENT STREET,
NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM

DISPUR
GUWAHATI- 781006.

3:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY ITS SECRETARY

LAND
REVENUE AND DISASTER MANAGEMENT DEPARTMENT

BODOFA NWGWR
BTC SECRETARIAT

KOKRAJHAR (BTR)
ASSAM.

4:THE COMPETANT AUTHORITY FOR LAND ACQUISITION (CALA)
BODOLAND TERRITORIAL COUNCIL
BODOFA NWGWR
BTC SECRETARIAT

KOKRAJHAR (BTR)
ASSAM.

5:THE DISTRICT COMMISSIONER
KOKRAJHAR DISTRICT
KOKRAJHAR
ASSAM.

6:THE SUB DIVISIONAL OFFICER (CIVIL)
GOSSAIGAON
DIST.- KOKRAJHAR (BTR)
ASSAM.

7:THE CIRCLE OFFICER
GOSSAIGAON REVENUE CIRCLE
GOSSAIGAON

DIST.- KOKRAJHAR (BTR)
ASSAM

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

09.01.2024

Heard Mr. B.J. Mukherjee, learned counsel for the petitioner; Mr. B.J. Talukdar, learned senior counsel assisted by Mr. A. Chetri, learned counsel for the respondent nos. 2 & 5; and Ms. R.B. Bora, learned Standing Counsel, BTC for the respondent nos. 3, 4, 6 & 7.

2. The petitioner, by instituting the instant writ petition under Article 226 of the

Constitution of India, has approached this Court claiming that he is a recorded Rayat in respect of a plot of land measuring 11 Lessas of land, covered by Dag no. 34 & Patta no. 90[A], situate at village- Srirampur, Gossaigaon Revenue Circle, District – Kokrajhar, BTR, Assam [‘the subject-plot’, for short]. The petitioner has claimed that he and his family members were in possession of the entire area of the subject-plot since 1950s by constructing an Assam Type house and were cultivating a small part thereon. It is also asserted that they are still in possession of the subject-plot. To substantiate such claim, the petitioner has annexed a Rayati Kaccha Khatian, stated to have been issued by the Assistant Settlement Officer, Gossaigaon on 09.04.1976, as Annexure-1. It is the further case of the petitioner that for construction/widening of National Highway no. 127-B, a part of the subject-plot, measuring 9 Lessas, came to be acquired by the Competent Authority Land Acquisition [CALA] i.e. the respondent no. 4 on behalf of the Ministry of Road Transport & Highways [MoRT&H], Government of India [GoI] by exercising the powers conferred under the provisions of the National Highways Act, 1956. The petitioner has approached this Court on the ground that the requisite compensation against such acquisition of land has not been received by him despite duly making a claim to that effect before the respondent no. 4.

3. From the notice dated 09.03.2023 annexed to the case papers as Annexure-2, it is noticed that the respondent no. 4 had issued the notice in the name of Indra Sao, son of Late Baburam Sao informing him that an area of land measuring 9 Lessas, covered by Dag no. 34, at Village – no. 1 Srirampur no. 1, Gossaigaon Revenue Circle had been acquired for the purpose of construction/widening of National Highway no. 127-B under the provisions of the National Highways Act, 1956 [‘the Act, 1956’, for short] vide proceedings drawn up by way of a land acquisition case, L.A. Case no. 01/2023. The notice dated 09.03.2023 was purportedly issued under Section 3H[2] of the Act, 1956. A perusal of the said notice goes to indicate that the respondent no. 4 as the Competent Authority Land Acquisition [CALA], had passed an Award being Award no. 229 under Section 3G of the Act, 1956 in favour of Sri Indra Sao by assessing a compensation amount of Rs. 14,49,623/- for the acquired area of land measuring 9 Lessas under Dag no. 34. It has been further mentioned in the notice dated 09.03.2023 that the compensation amount had already been deposited in the account of the Competent Authority Land Acquisition [CALA] and the noticee, Sri Indra Sao was required to hand over

possession of the land measuring 9 Lessas, covered by Dag no. 34, to the Competent Authority and after such handing over of the possession, the noticee would require to make an application at his office to receive the compensation amount of Rs. 14,49,623/- awarded vide Award no. 229.

4. The petitioner has asserted that he is recorded tenant/khatian holder under Sri Indra Sao and as such, the petitioner is also entitled to receive a part of the compensation amount as a person interested as per the provisions of the National Highways Act, 1956 as his right of enjoyment over the subject-plot has been affected in view of acquisition of an area of land measuring 9 Lessas from the subject-plot, vide L.A. Case no. 01/2023.

5. This Court on the previous date of listing, 03.01.2024, had asked the learned Standing Counsel, BTC to obtain instructions as to whether the compensation amount awarded by the Competent Authority Land Acquisition [CALA] [the respondent no. 4] under Section 3G of the Act, 1956 had been disbursed to the beneficiaries, in the meantime, pursuant to the notice dated 09.03.2023.

6. Ms. Bora, learned Standing Counsel, BTC has placed a set of instructions sent by a Communication bearing no. BTC/LR-21/2024/35 dated 08.01.2024 by the respondent no. 4. In the para-wise comments annexed thereto, the respondent no. 4 has stated that Sri Indra Sao is the pattadar in respect of landed property, covered by Dag no. 34 & Patta no. 90[A]. The respondent no. 4 is the Competent Authority Land Acquisition [CALA], appointed under Section 3A of the Act, 1956, has further mentioned that the eligible persons were issued notices for receiving compensation amounts after following due process by law and the petitioner herein was not found to be in the category of eligible persons to receive any compensation and as such, his name was not included in the list of beneficiaries. The respondent no. 4 has further mentioned that the compensation amount so assessed, has already been received by the actual beneficiaries.

7. As per sub-section [1] of Section 3H of the Act, 1956, the amount determined under Section 3G is to be deposited by the Central Government with the Competent Authority

before taking possession of the acquired land. Sub-section [2] of Section 3H has provided that as soon as may be after the amount has been deposited under sub-section [1], the Competent Authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto. The petitioner herein has claimed that he is also entitled to receive the compensation against Award no. 229 which has been passed in respect of acquisition of 9 Lessas of land, covered by Dag no. 34. The petitioner did not lodge any claim at any prior point of time, as per the provisions of sub-section [2] of Section 3G of the Act, 1956. The petitioner has averred that he has not been served any notice under Section 3H[2]. Considering the fact that the compensation amount of Rs. 14,49,623/-assessed vide Award no. 229 under L.A. Case no. 01/2023 has already been disbursed, according to the Competent Authority Land Acquisition [CALA], to the eligible beneficiaries, the petitioner is required to approach the Competent Authority Land Acquisition [CALA] by way of an application to substantiate his claim as a person interested in respect of the acquired land measuring 9 Lessas under Dag no. 34 the compensation amount which has been assessed vide Award no. 229 and disbursed thereafter. If such an application is submitted by the petitioner, the Competent Authority Land Acquisition [CALA] shall consider such application as per the provisions of Section 3H[3] of the Act, 1956 to determine as to whether the petitioner is a person eligible to receive any compensation in respect of the acquired land measuring 9 Lessas, covered by Dag no. 34. In such view of the matter, this writ petition is closed, with the observations that is open for the petitioner to approach the Competent Authority Land Acquisition [CALA] and to submit an application in the afore-stated manner, before the Competent Authority Land Acquisition [CALA] i.e. the respondent no. 4 within a period of 15 [fifteen] days from today, and if such an application is submitted by the petitioner, the Competent Authority Land Acquisition [CALA] [the respondent no. 4] shall consider such application in terms of the provisions of Section 3H[3] of the Act, 1956. After such consideration, the respondent no. 4 shall inform the petitioner about the outcome of such determination immediately thereafter. It is observed that such determination would be made by the Competent Authority Land Acquisition [CALA] [the respondent no. 4] on receipt of the application, as expeditiously as possible, but within a outer limit of 6 [six] weeks from the date of receipt of such application. This order disposes of the writ petition.

8. A copy of the Communication bearing no. BTC/LR-21/2024/35 dated 08.01.2024, placed by Ms. Bora, learned Standing Counsel, BTC is kept with the case records.

JUDGE

Comparing Assistant