

GAHC010270192022



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

Case No. : WP(C)/453/2023

ANIL BARUAH AND 6 ORS.
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

2: JITEN BARUAH @ DHANTI SHARMA BARUAH
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

3: TILAK BARUAH
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

4: GIRISH BARUAH
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

5: MANISHA SARMA BARUAH
W/O LT. DIP BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

6: JATINDRA BARUAH
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 784180

7: RANJIT BARUAH
S/O JOGEN BARUAH VILL. AND P.O. NANDIKESWAR DIST. SONITPUR
ASSAM PIN 78418

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER OF INDUSTRIES AND COMMERCE UDYOG
BHAWAN BAMINIMAIMDAM GUWAHATI PIN 781021

2:THE COMPETENT AUTHORITY (CA) ASSAM
INDRADHANUSH GAS GRID LTD. (IGGL) INDUSTRY AND COMMERCE
DEPTT. BLOCK D 3RD FLOOR ASSAM ASSAM SECRETARIAT DISPUR
GUWAHATI ASSAM PIN 781006

3:THE DEPUTY COMMISSIONER
SONITPUR
DIST. SONITPUR ASSAM

4:THE CIRCLE OFFICER
N DUAR REVENUE CIRCLE DIST. SONITPUR ASSAM

5:THE ADDITIONAL DEPUTY COMMISSIONER
DIST. SONITPUR ASSA

Advocate for the Petitioner : MR. R K TALUKDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

03.01.2024

In this writ petition instituted under Article 226 of the Constitution of India, the petitioners have sought for a direction to the respondent authorities to pay just, proper and adequate compensation for two parcels of land, situate in Village – Nandikeswar, Mouza – Chilabandha, Na-Duar Revenue Circle, District - Sonitpur in respect of which the Right of User [RoU] had been acquired by the Government of India in the Ministry of Petroleum and Natural Gas in exercise of the powers conferred under the provisions of the Petroleum and Mineral Pipelines [Acquisition of Right of User in Land] Act, 1962.

2. The petitioners, 7 [seven] in nos., are from the same family and their predecessor was one Late Jogen Baruah. While the petitioner no. 1, the petitioner no. 2, the petitioner no. 3, the petitioner no. 4, the petitioner no. 6 and the petitioner no. 7 are brothers, all sons of Late Jogen Baruah, the petitioner no. 5 is the wife of one Late Dip Baruah, who was another son of Late

Jogen Baruah. It is the case of the petitioners that they are owners of two parcels of land measuring - [i] 4 Kathas, covered by Dag no. 605 & Patta no. 224; and [ii] 1 Bigha 4 Lessas, covered by Dag no. 634 & Patta no. 224, – situate in Village – Nandikeswar, Mouza – Chilabandha, Na-Duar Revenue Circle, District – Sonitpur [‘the subject-plot’, for short]. The petitioners were served notices, all dated 18.09.2020, by the respondent no. 3 whereby they were informed that the areas of land mentioned therein would be acquired by the Central Government exercising the Right of User [RoU] in public interest for laying of underground Pipeline by M/s Indradhanush Gas Grid Limited [IGGL]. The Schedule of Land within the subject-plot, situate in Village - Nandikeswar, Mouza - Chilabanda, Revenue Circle – Naduar, District – Sonitpur, in respect of the Right of User had been sought to be exercised were as under :-

SCHEDULE OF LAND

- i. Dag no. 605 Patta no. 224, oB-04K-00Ls [Fair Land/Bhat Bari] out of the o3B-03K-09Ls of Village - Nandikeswar, Mouza - Chilabanda, Revenue Circle – Naduar, District – Sonitpur, Assam and*
- ii. Dag no. 634 Patta no. 224, oB-01K-04Ls [Hali Toli] out of the o1B-00K-15Ls of Village - Nandikeswar, Mouza - Chilabanda, Revenue Circle – Naduar, District – Sonitpur, Assam*

2.1. The notices, dated 18.09.2020, were issued in exercise of the powers under sub-section [1] of Section 3 of the Petroleum and Mineral Pipelines [Acquisition of Right of User in Land] Act, 1962 [‘the 1962 Act’, for short]. By the notices dated 18.09.2020, it was further informed that the compensation for the land, crops and other properties would be made according to the provisions of Section 10 and Section 11 of the 1962 Act. The petitioners were also informed that in case they had any objection for laying of the said pipeline on the Schedule of Land, objections could be filed before the respondent no. 2 who was appointed as the Competent Authority under Section 2[a] of the 1962 Act. Subsequent to assessments made for the Schedule of Land, crops standing thereon, other properties, the respondent authorities had deposited a total amount of Rs. 10,06,752/- [= Rs. 4,18,200.00 + Rs. 4,50,414.00 + Rs. 1,38,138.00] towards compensation for acquisition of Right of User [RoU] of the Schedule of Land, *zirat*, etc.

3. I have heard Mr. D. Borah, learned counsel for the petitioners; Mr. N. Kalita, learned counsel representing Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department for the respondent no. 1; Mr. B.P. Sarma, learned counsel representing Mr. J. Roy, learned senior counsel for the respondent no. 2; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4.

4. Mr. Baruah, learned counsel for the petitioners has submitted that the compensation amount assessed by the respondent authorities is inadequate inasmuch as valuation of the Schedule of Land within the subject-plot should have been assessed as 'highest trade site'. He has submitted that as per an office order published subsequent to the notice dated 18.09.2020, the zonal valuation of the lands at Village – Nandikeswar which also includes the subject-plot, has been fixed @ Rs. 14 lakhs per Bigha. It is further submitted that highlighting the said facts, the petitioners had submitted a Representation before the Competent Authority, that is, the respondent no. 2 on 21.10.2022 seeking enhancement of the compensation amount. When the Representation submitted by the petitioners was found to have been not considered, the petitioners had to prefer the writ petition seeking the relief, mentioned above.

5. Mr. Sarma, learned counsel representing the respondent no. 2 has submitted that on receipt of the Representation dated 21.10.2022, the same was duly considered by the Competent Authority i.e. the respondent no. 2 and after due consideration, a Speaking Order dated 11.07.2023 was passed. He has drawn attention to the Speaking Order dated 11.07.2023, annexed as Annexure-1 to the Affidavit-in-Opposition filed by the respondent no. 2.

6. I have considered the submissions of the learned counsel for the parties and have also gone through the materials brought on records by the parties through their pleadings.

7. The Petroleum and Mineral Pipelines [Acquisition of Right of User in Land] Act, 1962 has provided for the acquisition for Right of User [RoU] in land for laying pipelines for the transport of petroleum and minerals and for matters connected therewith. The Schedule of Land, mentioned above, were required for Right of User [RoU] by the Ministry of Petroleum and Natural Gas, Government of India for laying of underground Pipeline by M/s Indradhanush Gas Grid Limited [IGGL] for transportation of natural gas in the State of Assam. The Right of User [RoU] in the

Schedule of Land has been acquired accordingly, in exercise of the powers conferred by the provisions of the 1962 Act. It has transpired that M/s Indradhanush Gas Grid Limited [IGGL] has been entrusted to complete the activities of laying of underground Pipeline for transportation of natural gas in the State of Assam in respect of the said project. The respondent no. 2 was authorized by the Government of India to perform the functions of the Competent Authority under Section 2[a] of the 1962 Act for the project. The Schedule of Land which is part of the subject-plot, was acquired to exercise the Right of User [RoU] in exercise of the powers under the provisions of the 1962 Act. It has emerged that the petitioners have already received amounts towards compensation for the Schedule of Land and the amounts towards *zirat*, etc. The said amounts were disbursed to the petitioners prior to the institution of the writ petition. From the contentions raised in the writ petition as well as from the Representation dated 21.10.2022, the only issue which has remained for consideration is the grievance of the petitioners regarding inadequate amount of compensation in respect of the Schedule of Land whereby the Right of User [RoU] has already been acquired by the Government of India for the project. In the Speaking Order dated 11.07.2023, the Competent Authority has observed that if the petitioners are not satisfied with the amount of compensation disbursed in their favour, they could approach the Court of learned District Judge under the provisions of Section 10[2] or Section 10[5] of the 1962 Act.

8. For appreciation of the issue involved in this writ petition, it is apposite to refer to the provisions of Section 10 of the 1962 Act, which read as under :-

Section 10 - Compensation

[1] Where in the exercise of the powers conferred by Section 4, Section 7 or Section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the Competent Authority in the first instance.

[2] If the amount of compensation determined by the Competent Authority under sub-section [1] is not acceptable to either of the parties, the amount of

compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

[3] The Competent Authority or the District Judge while determining the compensation under sub-section [1] or sub-section [2], as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of –

[i] the removal of trees or standing crops, if any, on the land while exercising the powers under Section 4, Section 7 or Section 8;

[ii] the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

[iii] any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner :

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section [1] of Section 3.

[4] Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section [1], be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of the notification under sub-section [1] of Section 3.

[5] The market value of the land on the said date shall be determined by the Competent Authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section [2], be determined by that District Judge.

[6] The decision of the District Judge under sub-section [2] or sub-section [5] shall be final.

[Acquisition of Right of User in Land] Act, 1962 has provided for a remedy. It is apt to say that when a statutory forum is created by law for redressal of grievances, a writ petition under Article 226 of the Constitution should not ordinarily be entertained ignoring the statutory prescription, more so, when such statutory remedy is adequate and efficacious. At the same time, it is also true that the rule of exclusion of writ jurisdiction in view of availability of an alternative remedy is a rule of discretion and not of compulsion. A Constitution Bench of the Hon'ble Supreme Court of India in *Thansingh Nathmal vs. the Superintendent of Taxes, Dhubri and others*, reported in *AIR 1964 SC 1419*, discussing the scope of jurisdiction under Article 226 of the Constitution of India, observed as under :-

“7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

10. Admittedly, the assessment of compensation for the Schedule of Land within the subject-plot has already been determined by the Competent Authority and there is already a statutory remedy available to the petitioners with regard to their grievance pertaining to inadequate

compensation which can be redressed if they approach the learned District Judge of the territorial jurisdiction where the subject-plot is located. The grievance regarding lower valuation of land is definitely a subject-matter, which comes within the purview of Section 10[5] of the 1962 Act. For determination, the District Judge shall have to give due regard to the damage or loss sustained by the person by taking note of the factors indicated in sub-section [3] and sub-section [5] of Section 10 of the 1962 Act, for which evidence – oral and/or documentary – may have to be led by the parties, for which the writ jurisdiction is not a proper remedy. The aforesaid view has also been recorded by this Court in the case of *Nur Ali vs. The State of Assam and others*, reported in 2022 [2] GLR 236.

11. Accordingly, this writ petition with regard to the issue raised by the petitioners regarding inadequate amount of compensation is not entertained, reserving, however, the liberty to the petitioners to approach the jurisdictional District Judge by filing application regarding their grievance about assessment of inadequate compensation. In the event such an application is filed, the concerned District Judge shall dispose of the same as per the provisions of the 1962 Act. It is also observed that the receipt of the compensation amount assessed by the Competent Authority by the petitioner shall not be a bar for them in approaching the District Judge for enhancement of the said compensation. The petitioners shall, accordingly, approach the District Judge within a period of 1 [one] month from today and on receipt of such application, if any, the learned District Judge shall dispose of the same after giving due notice to all the concerned stakeholders and in accordance with the provisions of Section 10 of the 1962 Act. With the observations made and the directions given above, this writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant