

GAHC010292482023



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

Case No. : WP(C)/7563/2023

SANDEEP MODI AND ANR
SON OF LATE BIHARILAL MODI,
RESIDENT OF FLAT NO. 5-D, HOUSE NO. 23,
NILOMONI PHUKAN ROAD, CHRISTIAN BASTI,
G.S. ROAD, GUWAHATI- 781005,
DISTRICT- KAMRUP(M), ASSAM.

2: BINITA MODI
WIFE OF MR. SANDEEP MODI
RESIDENT OF FLAT NO. 5-D
HOUSE NO. 23
NILOMONI PHUKAN ROAD
CHRISTIAN BASTI
G.S. ROAD
GUWAHATI- 781005
DISTRICT- KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY,
REVENUE (SETTLEMENT) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COLLECTOR AND DEPUTY COMMISSIONER
KAMRUP
AMINGAON
NAMATI JALAH
ASSAM- 781039

3:THE CIRCLE OFFICER
NORTH GUWAHATI REVENUE CIRCLE
INDOOR STADIUM ROAD

AMINGAON
GUWAHATI
NAMATI JALAH
ASSAM- 781039.

4:THE CHIEF ENGINEER
PWRD (EAP)
ASSAM
ARRTI CAMPUS
FATASIL-AMBARI
GUWAHATI- 781025
ASSAM

Advocate for the Petitioner : MR. A DHAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 29-01-2024

Heard Mr. F. Faridi, learned counsel for the petitioners and Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department, Mr. N. Goswami, learned Junior Government Advocate, Assam and Mr. M. Bhuyan, learned counsel representing Mr. B. Gogoi, learned Standing Counsel, Public Works Department for all the respondents.

2. The petitioners have preferred the writ petition to contend that after serving a Notice under Rule 3 of the Assam [Land Requisition and Acquisition] Rules, 1964, no order under Rule 4 of the Assam [Land Requisition and Acquisition] Rules, 1964 had been served upon the petitioner despite submission of a representation in response to the notice within the stipulated time period of 15 [fifteen] days. It is the contention of the petitioners that without serving any copy of the order to be passed under Rule 4, the respondent authorities had proceeded with the construction works by making construction in the middle part of the parcel of land of the petitioners measuring 3 Bighas 3 Kathas, falling within Dag no. 293 & K.P. Patta no. 55, situate at Village – Gauripur, North Guwahati Revenue Circle, District – Kamrup [‘the subject-plot’, for short].

3. From the contents of the notice [Annexure-3], stated to have been issued under Rule 3 and the second proviso to Section 3[1] of the Assam [Land Requisition and Acquisition] Act, 1964, it is discernible that an area of land, measuring 9.5 Lessas, out of the subject-plot, had been sought to be requisitioned for providing land for installation of shifted AEGCL high tension tower for Right of Way. Such power had been purportedly exercised under the provisions of the Assam [Land Requisition and Acquisition] Act, 1964.

4. One of the grievances of the petitioners is that the respondent authorities could have taken appropriate steps by relocation of the towers for the project, thereby, reducing the area of requisition/acquisition.

5. Learned Additional Advocate General, Assam has submitted that after the writ petition was moved, joint surveys were conducted by the respondent authorities with due information to the petitioners, more particularly, the petitioner no. 1. After conducting joint surveys on 04.01.2024 and on 17.01.2024 by the Additional District Commissioner, Kamrup with the assistance of the PWRD Officials, AEGCL Officials and Revenue Officials of North Guwahati Revenue Circle, a decision has been taken to relocate two out of four legs of the tower to the adjacent Government land bearing Dag no. 292 and only to keep the remaining two legs within the subject-plot, covered by Dag no. 293, belonging to the petitioners. It is relevant to mention that all the four legs of the tower were originally sought to be located within the petitioners' plot of land and an area of land measuring 9.5 Lessas was sought to be requisitioned. Learned Additional Advocate General, Assam has submitted that the decision of relocation to relocate two out of four legs of the tower to the adjacent Government land bearing Dag no. 293 and to keep the remaining two legs of the tower in the subject-plot has been conveyed to him by the Additional District Commissioner, Kamrup vide a Communication bearing no. LA-17/54/2023-KRA dated 18.01.2024 and the said Communication has been placed before the Court by the learned Additional Advocate General, Assam. A copy of the said Communication dated 18.01.2024 was also furnished to Mr. Faridi, learned counsel for the petitioner on 19.01.2024 for the purpose of obtaining instructions from the petitioners and the matter was directed to be listed today.

6. Mr. Faridi, learned counsel for the petitioners after obtaining instructions from his client, has submitted that the petitioners will not have any objection if two out of four legs of the tower are relocated to the adjacent Government land bearing Dag no. 292 and the remaining two legs of the tower are located within the subject-plot. The petitioners will have no objection if the requisition process initiated for location of only two legs of the tower utilizes only 5 Lessas of land of the petitioners instead of 9.5 Lessas of land, which was originally contemplated.

7. In view of such consensus arrived at by the learned counsel for the parties to the effect that there will be only two legs of the tower inside the subject-plot and only 5 Lessas of the petitioners' land will be utilized, there is no necessity to proceed further with the writ petition. Accordingly, by taking note of the consensus arrived at in the afore-stated manner, this writ petition is disposed of observing that such requisition process shall be strictly in terms of the provisions of the Assam [Land Requisition and Acquisition] Act, 1964 and subject to payment of due compensation. It is, however, observed that if the petitioners are aggrieved by any subsequent cause of action, the petitioners would be at liberty to avail appropriate remedy, as permissible under the law.

8. The Communications bearing no. LA-17/54/2023-KRA dated 05.01.2023; bearing no. LA-17/54/2023-KRA dated 29.12.2023; bearing no. LA-17/54/2023-KRA dated 03.01.2024; and AEGCL/AGM/GTD/Tech-156/2023/498 dated 06.01.2024, placed by Mr. Goswami, learned Additional Advocate General, Assam, are kept as part of the case records.

JUDGE

Comparing Assistant