

GAHC030002422024



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

Case No. : WA/10/2024

NHIDCL r/b its Executive Director (Projects) and 2 Ors.
Tukhuahtlang, Aizawl2: Govt. of India r/b the Secretary
Ministry of Road Transport and Highways

3: NHIDCL r/b its Managing Directo

VERSUS

Smt. T.Lalramchhuani and 8 Ors.
D/o Late T Malsawma
R/o Keifang Vengsang
Saitual District, Mizoram 2:Sh Ralmanliana

3:Sh. John M.S.Dawnga

4:Sh K.Vanlalruata (L) r/b his mother Smt. Biaklawmi

5:Sh. Martin Lalthamawia

6:Sh. T.Robert Rohmingliana

7:The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram

8:The Secretary
Land Revenue and Settlement Deptt Govt. of Mizoram

9:Deputy Commissioner cum CALA
Saitual Distric

Advocate for the Appellants : Mr. C. Zoramchhana, Advocate

Advocate for the Respondents : Mr. A. R. Malhotra, Advocate
Ms. Linda L. Fambawl,
Addl. AG, Mizoram

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of Hearing : 24.10.2024
Date of Judgment : 24.10.2024

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J.)

Heard Mr. C. Zoramchhana, the learned counsel appearing on behalf of the Appellants. Mr. A. R. Malhotra, the learned counsel appears on behalf of the Respondent Nos.1 to 6 and Ms. Linda L. Fambawl, the learned Additional Advocate General, Mizoram appears on behalf of the Respondent Nos.7, 8 & 9.

2. The instant intra-Court Appeal is directed against the judgment and order dated 05.03.2024 passed in WP(C) No.106/2021 whereby the learned Single Judge had allowed the writ petition thereby opining that the Petitioners therein who are the respondent Nos.1 to 6 herein would be entitled to receive compensation as per the Award dated 17.04.2021 prepared by the Competent Authority for Land Acquisition (CALA) as well as also gave the liberty to the Appellants herein to

prefer an application under Section 3G (5) of the National Highways Act, 1956 (for short, 'the Act of 1956'), if aggrieved with the quantum of compensation and further directed that the amount which was determined as per the revised Award dated 18.08.2021 be deposited before the Competent Authority for Land Acquisition (CALA) within 1 (one) month from the date of the application made under Section 3G (5) of the Act of 1956.

3. For deciding the present intra-Court Appeal, we find it relevant to take note of certain brief facts which are narrated infra.

4. From the materials on record, it reveals that for the purpose of building (widening/two lane with paved shoulder/four laning etc.), maintenance, management and operation of NH-6 (NH-53) in the stretch of land from Km. 15 to Km. 30.05 (Office of the Deputy Commissioner, Saitual, PWD Veng, Saitual) in the district of Saitual in the State of Mizoram, the Ministry of Road Transport and Highways had issued a notification in terms with Section 3A of the Act of 1956 to acquire land as has been described in the said notification dated 11.08.2020. Pursuant thereto, another notification dated 29.09.2020 under Section 3D of the Act of 1956 was issued. By virtue of the said notification and more particularly in view of Section 3D (2) of the Act of 1956, the land stood vested upon the Central Government. It is relevant to take note of that in terms with Section 3G (1) of the Act of 1956, the Competent Authority who was duly

appointed by the Central Government in terms with Section 3 (a) of the Act of 1956 had passed the order on 17.04.2021. Thereupon, on the intervention made by the State Respondents vide the communication dated 13.08.2021, another order was passed on 18.08.2021. The Respondent Nos.1 to 6 herein who were the Petitioners in WP(C) No.106/2021, being aggrieved had preferred a writ petition challenging the jurisdiction of the Competent Authority for Land Acquisition (CALA) to revise its order passed under Section 3G (1) of the Act of 1956 in as much as the Act of 1956 did not provide for such a power of review. The Petitioners therein further sought for a direction that the payment of the compensation be disbursed in favour of the Petitioners on the basis of the order dated 17.04.2021.

5. The said writ petition was allowed by the learned Single Judge vide the impugned judgment dated 05.03.2024 whereby the learned Single Judge opined that the Petitioners, i.e. the Respondent Nos.1 to 6 herein would be entitled to compensation in terms with the order dated 17.04.2021 on the basis that the Competent Authority for Land Acquisition (CALA) did not have the jurisdiction to revise its order passed under Section 3G (1) of the Act of 1956. The learned Single Judge further taking into account Section 3G (5) of the Act of 1956 and the aspect that the said provision provided either of the parties to approach the Arbitrator in the circumstance any of the parties are

aggrieved as regards the quantum of compensation, granted the liberty to the Appellants herein to prefer such application. The learned Single Judge further taking into account that Appellants herein who were the Respondents in the writ petition had no issue in respect to the quantum of compensation as per the order dated 18.08.2021 directed the Appellants herein to deposit the said amount before CALA within one month from the date of filing of the application under Section 3G (5) of the Act of 1956.

6. The Appellants herein being aggrieved by the impugned judgment and order have filed the instant Appeal primarily on the ground that the learned Single Judge erred in law in arriving at the finding that the Petitioners, i.e. the Respondent Nos.1 to 6 herein were entitled to compensation in terms with the order dated 17.04.2021. The Appellants' further case is that the Petitioners on the other hand ought to have filed application seeking reference to Arbitration if the Petitioners were aggrieved by the order dated 18.08.2021.

7. We have duly heard the learned counsels appearing on behalf of both the parties and given our anxious consideration to their respective submissions. We have also perused the provisions of Section 3 (a) of the Act of 1956 which empowers the Central Government vide the notification in the Official Gazette to appoint a person to perform the functions of the Competent Authority for such

areas as may be specified in the said notification. We have also perused Section 3G (1) of the Act of 1956 which empowers only the Competent Authority to determine the said compensation and to pass an order. It is also relevant to take note of that a perusal of Section 3G of the Act of 1956 do not provide the jurisdiction upon the Competent Authority after passing of an order in terms with Section 3G (1) of the Act of 1956 to review or reverse its order. Rather a perusal of Section 3G (5) of the Act of 1956 stipulates that if the amount determined by the Competent Authority is not acceptable, either of the parties are at liberty to seek determination by the Arbitrator to be appointed by the Central Government. Section 3G (5) of the Act of 1956 is reproduced herein below:-

“3G(5). If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”

8. In view of the above, we are therefore of the opinion that the learned Single Judge was justified in opining that the Petitioners, i.e. the Respondent Nos.1 to 6 herein would be entitled to the compensation in terms with the order dated 17.04.2021 and not the order dated 18.08.2021.

9. We have also taken note of Section 3H of the Act of 1956 which

categorically stipulates that the Central Government is statutorily obligated to deposit the amount determined under Section 3G of the Act of 1956 in such manner as may be laid down by Rules made in that behalf by that Government with the Competent Authority before taking possession of the land. In fact at this stage, we find it relevant to take note of that upon the determination made by the Competent Authority, delay in disbursal of the amount under the provisions of the Act of 1956 amounts to violation of the Article 300A of the Constitution, more so when by virtue of Section 3D (2) of the Act of 1956, the person interested is divested his/her rights over the land in question. The judgment of the Supreme Court in the case of ***Kolkata Municipal Corporation and Another vs. Bimal Kumar Shah and Others***, reported in ***2024 SCC OnLine SC 968*** wherein the Supreme Court at paragraph Nos.25 to 28 of the said judgment dealt with the seven sub rights under Article 300A of the Constitution. The said paragraphs are reproduced herein below:-

“25. While it is true that after the 44th Constitutional Amendment, the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300A which declares that “no person shall be deprived of his property save by authority of law” has been characterised both as a constitutional and also a human right. To assume that constitutional protection gets

constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

26. The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

27. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub rights can be identified, albeit non-exhaustive. These are : i) duty of the State to inform the person that it intends to acquire his property- the right to notice, ii) the duty of the State to hear

objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading to vesting - the right of conclusion.

28. These seven rights are foundational components of a law that is tune with Article 300A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantations (supra) declares that the law envisaged

under Article 300A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub-rights as 'procedural', a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, non-compliance of these will amount to violation of the right, being without the authority of law."

10. Taking into account the above principles, we are of the opinion that the Petitioners who are the Respondent Nos.1 to 6 herein would

be entitled to the payment of compensation in terms with the order dated 17.04.2021 passed under Section 3G (1) of the Act of 1956 as held herein above and the Central Government is statutorily obligated to deposit in terms with Section 3H (1) of the Act of 1956, the amounts mentioned in the order dated 17.04.2021 before the Competent Authority. It is further relevant to mention that upon such deposit, the Competent Authority is required to follow the mandate of Section 3H of the Act of 1956 so that the acquisition proceedings are brought to a logical conclusion at the earliest.

11. Accordingly, we are of the opinion that the impugned judgment and order dated 05.03.2024 suffers from no infirmity. However, in view of the above observations, we modify the impugned judgment and order dated 05.03.2024 thereby directing the Central Government to deposit the amount of compensation as determined in the order dated 17.04.2021 before the Competent Authority at the earliest and not later than 30 days from the date of our judgment. We further direct the Competent Authority to disburse the amount of compensation in terms with Section 3H of the Act of 1956.

12. With the above observations and directions, the Writ Appeal stands disposed of.

13. Before parting with the records, we find it apposite to observe that the observations and findings recorded above shall not effect the

adjudication in respect to the quantum of compensation, in the event the Appellants seek reference for Arbitration in terms with Section 3G (5) of the Act of 1956 within a reasonable time and not later than 6 (six) weeks from the date of the instant judgment.

JUDGE

JUDGE

Comparing Assistant