

GAHC030003662023



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

Case No. : WA/5/2023

The National Projects Construction Corporation Ltd.
(A Govt. of India Enterprise) r/b its Zonal Manager

VERSUS

Smt. Gopa Devi Chakma w/o Doya Ranjan (L) and 717 Ors.
S/o Kamal Kisto, Jarulsury 2:Taroka

3:Nilo Ranjan

4:Jorna

5:Sobika

6:Anga Dhan

7:Senci

8:Kamal Kisto

9:Kali Prasad

10:Molai Pudi

11:Shanti Lal

12:Guno Muni

13:Amulya Dhan

14:Sadhanya

15:Pukkon

16:Ganga Dhah

17:Kina Muni

18:Moha Ranj

19:Binoy Kanti

20:Ganga

21:Janu

22:Shanti Kumar

23:Asapuron

24:Bana Sova

25:Gandhi

26:Juddha Dhan

27:Ganga Dhan

28:Birosen

29:Monga Dhan

30:Bimanda Kumar

31:Chandra Sekar

32:Mirogo Tara

33:Mena Kumari

34:Kandra

35:Rashna

36:Rattua Ram

37:Jama Anguli

38:Kalia Muni

39:Sushil Bikas

40:Subhas

41:Raja Lokhi

42:Debendra

43:Indra Bahu

44:Indu Kumar

45:Gyanamoy

46:Jugendra

47:Arun Kumar

48:Chibo Rattan

49:Chigon Mila

50:Padha Kumari

51:Kali Prasad

52:Anil Prasad

53:Shanti Kumar

54:Lokhi Muni

55:Adhai Sur

56:Bimal Kanti

57:Gyana Jyoti

58:Shanga Kumar

59:Chandra Sushi

60:Sonati

61:Allo Sundoni

62:Anudra

63:Dobona

64:Som Muni

65:Mallika

66:Anjum Muni

67:Mereya

68:Bar Pallya

69:Shanti Ranjan

70:Jingya

71:Aduri

72:Shanti Bihari

73:Shanti Lal

74:Nilo Banan

75:Anil Banan

76:Sunil Banan

77:Dilip Kumar

78:Badsha Dhan

79:Kushal Kumar

80:Jashna Maya

81:Anil Mala

82:Amarson

83:Danjyo

84:Lakkhan

85:Chanjyo Kumar

86:Rajesh

87:Kalpana

88:Monika

89:Zothanliana

90:Hmangaihsanga

91:Rananjoy

92:Bara

93:Suro Naksha

94:Doya Sova

95:Nanda Kumar

96:Arun Kumar

97:Gyana

98:Chigon Mon

99:Punong Chand

100:Doyal Kumar

101:Meyabi

102:Basanta Kumar

103:Provat Kusum

104:Mangala Pudhi

105:Urijoy

106:Madhan Kumar

107:Mona

108:Adi Chandra

109:Surjyo Kumar

110:Krishna

111:Jorbo Dhan

112:Bubeneshwar

113:Bhagyo Dhan

114:Chandra Hangsha

115:Doya Lal

116:Lalmon

117:Sumbuda

118:Purna Jyoti

119:Gutyoo

120:Binanda

121:Jostnat Dhan

122:Kalasoga

123:Joyno Mohan

124:Kina Mon

125:Biroda

126:Kala Badhi

127:Ptttya Ban

128:Kina Ranjan

129:Sanzeukaka

130:Ratti Jabta

131:Gyana Rattan

132:Bijoy Kumar

133:Ranjan

134:Soroda

135:Dhai Kumar

136:Bimileshwar

137:Bishnu Kanta

138:Satya Bikash

139:V.Vanlalruata

140:Bannyo

141:Khuchuhma

142:Kala

143:Binu Mon

144:Bana Chandra

145:Mohedra

146:Biju Joy

147:Priyo Lal

148:Surath

149:Rannyabi

150:Vanlalrema

151:Mangala

152:Bana Ram

153:Kalabija

154:Indu Kumar

155:Jodi Moy

156:Chalzuama

157:Dhana Kumar

158:Pattor Muni-III

159:Rashya

160:Surosen

161:Lalnunsanga

162:Indrasur

163:Ananda Mugh

164:Sushi Mon

165:Dema

166:Bijolal

167:Guri Chandra

168:Barakana

169:Robi Chand

170:Dino Mon

171:Punyoban

172:Pattor Muni

173:Punyosova

174:Ripon

175:Indra Ban

176:Santa Shil

177:Satyo Priyo

178:Sawpna Devi

179:Gunoban

180:Ananda Tara

181:Delhi Kumar

182:Mritujoy

183:Bimal Chandra

184:Doy

185:Birobahu

186:Doya Mon

187:Jalanta

188:Bangallo

189:Sodiong

190:Subhashine

191:Lokhitama

192:Jeeban

193:Asonia

194:Bhim

195:Ronjitto

196:Meya Ranja

Advocate for the Appellant : Mr. S. Dutta, Sr. Advocate
: Mr. R. Subedi, Advocate

Advocate for the Respondents : Mr. C. Lalfakzuala, Advocate
: Ms. Zairemsangpuii, CGC

Date of Hearing : **28.10.2024**

Date of Judgment : **28.10.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGEMENT AND ORDER (ORAL)

(D. Baruah, J.)

Heard Mr. S. Dutta, the learned Senior counsel assisted by Mr. R. Subedi, the learned counsel appearing on behalf of the Appellants and Mr. C. Lalfakzuala, the learned counsel appearing on

behalf of the private Respondents. I have also heard Ms. Zairemsangpuii, the learned CGC, appearing on behalf of the Union of India.

2. This intra-Court Writ Appeal is directed against the judgment and order dated 04.12.2019 passed in WP(C) No.71/2018 whereby the learned Single Judge directed the District Collector Lawngtlai District, Lawngtlai to make appropriate calculation on the interest payable to the Petitioners which should be for the entire amount of compensation i.e. including the solatium and interest. The learned Single Judge further directed that the said calculation should be done within a period of 6 (six) weeks from the date of receipt of the certified copy of the impugned judgment and order. Further to that, the learned Single Judge directed that upon such calculation being made, the Collector shall forward the same to the Respondent Nos. 3 to 6 of the writ petition who shall make necessary arrangements of the funds required as expeditiously as possible and preferably within a period of 3 (three) months from the date of receipt of the requisition for funds from the Collector. It was further directed that the Respondents in the writ petition shall co-ordinate and ensure that the petitioners get their due compensation without delay.

3. To adjudicate the challenge to the impugned judgment and order, it is relevant to take note of the brief facts which led to the

filing of the writ petition as well as the present Writ Appeal.

4. For the purpose of convenience, the parties herein are referred to in the same status as was arrayed in the Writ Petition. The Government of Mizoram through its Principal Secretary, Land Revenue and Settlement Department had published a notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') on 26.10.2012 for construction of Indo-Bangla Border Fencing (IBBF) and approach road to BOPs within Lawngtlai District. Subsequent thereto, a declaration was made in terms with Section 6 of the Act of 1894 on 08.04.2013 that the land specified in the Schedule which included the land of the Petitioners, were required for public purpose. The Deputy Commissioner, Lawngtlai District was also appointed to perform the functions of a Collector and directed to take order for acquisition of the said land. Thereafter, the necessary formalities in terms with the provisions of the Act of 1894 were carried out and two awards were prepared. The first award pertained to Award No. 1'A' of 2015 amounting to Rs.16,24,94,217/- and the second award being Award No. 1'B' of 2015 amounting to Rs.8,65,75,526/-. Both these awards were approved by the Government of Mizoram vide Memo No. K.12011/53/13-REV/Pt dated 18.09.2015. The contents of the approval of Award No. 1'A' of 2015 and Award No. 1'B' of 2015 dated 18.09.2015 are reproduced herein under:

**“NO.K. 12011/53/13-REV/PT
GOVERNMENT OF MIZORAM
LAND REVENUE & SETTLEMENT DEPARTMENT**

Secretariat Annex-1, 2nd Floor, Room No.205

Treasury Square, Aizawl – 796001

Aizawl, the 18th Sept., 2015

To

*The Deputy Commissioner/District Collector,
Lawngtlai District, Lawngtlai.
Mizoram.*

Subj. : Approval of Award No. 1'A' of 2015 and Award No. 1'B' of 2015

Sir,

With reference to the subject cited above, I am directed to convey herewith approval of Draft Award No.1'A' of 2015 amounting to Rs.16,24,94,217/- (Rupees sixteen crore twenty four lakh ninety four thousand two hundred seventeen) only and Draft Award No.1'B' of 2015 amounting to Rs.8,65,75,526/- (Rupees eight crore sixty five lakh seventy five thousand five hundred twenty six) only respectively for acquisition of land for construction of IBB Fencing and approach road within Lawngtlai District.

Payment should be made by crossed cheque and not in cash.

Compensation should be disbursed subject to the conditions stated below:

- 1. Genuineness and authentication of passes should be as per registration/record/register maintained.*
- 2. Proper marking of the land acquired should be done at the spot.*

This superceed previous letter of even no. dt. 11.9.2015

Yours faithfully,

(MARTINI LALHLUPUII)

Under Secretary to the Govt. of Mizoram

Land Revenue & Settlement Deptt."

5. From the above quoted communication, it would be seen that the approval so granted in respect to the quantum of compensation as well as the area have been approved. However, as regards the payment of compensation, the manner in which it is to be paid have only been mentioned.

6. It is further seen from the records that in respect to the compensation awarded pertaining to the Draft Award No. 1'A' of 2015, the amount of Rs.16,24,94,217/- have already been released and disbursed to the beneficiaries. However, in respect to the Draft Award No.1'B' of 2015 which pertained to Indo-Bangla Border Fencing Phase-II , BP No.2350 to BP No.2364, the amount of Rs.8,65,75,526/- was not paid to the Petitioners.

7. It is further relevant to take note of that there have been various inter-departmental communications regarding payment of compensation in respect to the Award No. 1'B' of 2015. Further to that, the beneficiaries in respect to the Award No. 1'B' of 2015 had also filed an application seeking reference challenging the quantum of compensation under Section 18 of the Act of 1894. Pursuant to

that, a reference proceedings being L.A. Case No.3/2015 was initiated. In the said proceedings, the Respondent Nos. 3 to 6 were parties in the said proceedings. The learned Additional District Judge, Lawngtlai District vide a judgment dated 11.12.2017 rejected the enhancement of the market value of the acquired land however, granted the claim for compensation in respect to solatium and interest.

8. At this stage, it is very pertinent to mention that a perusal of Draft Award No. 1'B' of 2015 would show that the Collector while determining the compensation, only took into consideration the market value of the land as well as the crops/trees etc. but there was no determination of compensation in terms with Section 23(1A) as well as Section 23(2) of the Act of 1894 which pertained to payment of interest @12% from the date of the notification under Section 4 of the Act of 1894 till the date of passing of the Award as well as solatium @30% on such market value. This aspect of the matter was allowed by the Reference Court in the proceedings.

9. The record further reveals that the Respondents have paid an amount of Rs.4,57,55,437/- and the remaining amount have not been paid. It is also seen that a written objection was filed on 29.11.2016 by the Respondents stating that the award included the assessment of several border roads and link roads which were not

acquired by the Respondents. It is also relevant to take note of that vide the written objection dated 29.11.2016, the Deputy Commissioner, Lawngtlai District was requested to make a fresh assessment by deleting the assessment made towards link roads and border roads. It is also seen that in view of the filing of the said written objections and as no verification was done, the Respondents who were the requiring authority did not deposit the remaining amounts in terms with the Award No. 1'B' of 2015. It is under such circumstances, the writ petition was filed seeking appropriate directions for release of the said amounts to which the Petitioners were entitled to in view of the Award No. 1'B' of 2015 as well as the judgment dated 11.12.2017 passed in L.A. Case No.3/2015.

10. Pursuant to the filing of the instant Writ Appeal, pleadings were exchanged and the learned Single Judge vide the impugned judgment and order taking into account that the Award in question had not been challenged in any proceedings and there was an approval of the award directed the Collector to make necessary calculation within a period of 6 (six) weeks and thereupon forward the same to the Respondent Nos. 3 to 6 who were further directed to make payment within the time frame. It is under such circumstances, the instant Writ Appeal has been preferred.

11. In the backdrop of the above, let this Court now take into

consideration the case of the Appellants insofar as the challenge to the impugned judgment and order. The case of the Appellants as submitted by Mr. S. Dutta, the learned Senior counsel is that there was no proper verification being carried out as requested vide letter dated 29.11.2016 which the learned Single Judge failed to take into consideration. It was submitted by the learned Senior counsel that the learned Single Judge had acted as an Executing Court which was not permissible in view of the judgment of the Supreme Court in the case of ***National Highways Authority of India Vs. Sheetal Jaidev Vade and Others*** reported in ***AIR (2022) SC 3980***.

12. We have also heard the learned counsels for the Appellants as well as the State Respondents.

13. The Award No. 1'B' of 2015 was made in the year 2015 pursuant to the approval on 18.09.2015. In terms with the provisions of Section 18 of the Act of 1894, objections in terms with Section 18(1) of the Act of 1894 could have been filed within a period of 6 (six) weeks from the date of the Collector's award if the person was present or represented before the Collector at the time when the award was made or in other cases, within 6 (six) weeks of the receipt of the notice from the Collector under Section 12(2) of the Act of 1894 or within 6 (six) months from the date of the Collector's award whichever period shall expire first.

14. In the instant case, it would be seen that an objection was filed on 29.11.2016 much after the statutory period in terms with Section 18(2) of the Act of 1894. It would also be relevant to take note of that in view of the judgment of the Supreme Court in the case of ***Neyvely Lignite Corporation Ltd. Vs. Special Tahsildar (Land Acquisition) Neyvely and Others reported in (1995) 1 SCC 221***, the Respondents Nos. 3 to 6 who are the Appellants in the instant proceedings would be “persons interested” in terms with Section 3(b) of the Act of 1894. It would also be seen that the Respondent Nos. 3 to 6 were parties before the Reference Court and there is no appeal filed in terms with Section 54 of the Act of 1894. The Respondent Nos. 3 to 6 who are the Appellants before this Court have allowed the Award No. 1'B' of 2015 to attain finality. This aspect of the matter was duly taken into consideration by the learned Single Judge in passing the impugned judgment and order.

15. The issue as regards certain lands not acquired was taken into consideration in the Award having not been put to challenge cannot be agitated by filing the present Writ Appeal or by objecting to the enforcement of the award in a writ proceedings more so when by virtue of Section 12(1) of the Act of 1894, the subject matter of acquisition had become final and conclusive. Under such circumstances, we are of the opinion that the learned Single Judge was justified in arriving at a finding that as there was no challenge

to the Award No. 1'B' of 2015 which stood modified in terms with the judgment dated 11.12.2017 passed in LA Case No.3/2015, the Respondents were bound to pay the awarded compensation.

16. Now let this Court take into consideration the submission of the learned Senior counsel that the learned Single Judge had converted the proceedings under Article 226 of the Constitution to an Executing Court. In that regard, the learned Senior counsel had relied upon the judgment of the Supreme Court in the case of ***Sheetal Jaidev Vade (supra)***. A perusal of the facts involved in the said judgment reveals that pursuant to the award passed by the Arbitrator in terms with Section 3G of the National Highways Authorities Act, 1956, there was a challenge to the said award by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"). While the said challenge was pending and no stay being granted, a writ petition was filed by the beneficiaries of the award for payment of the amount as awarded by the Arbitrator. The Supreme Court observed in Paragraph No.6.2 of the said judgment that when the award dated 12.06.2018 was challenged by the National Highways Authority of India by initiating a proceedings under Section 34 of the Act of 1996, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution seeking the relief to execute the award passed by the learned Arbitral Tribunal/Court.

17. The facts in the instant case are different taking into account there is no challenge to the Award No. 1'B' of 2015 in any proceedings. There being no challenge to the award and the Respondents in the writ petition i.e. the acquiring authority as well as the requiring authority were statutorily obligated to make payments to the beneficiaries of the award.

18. We have also taken note of that the possession of the lands in question were taken in the year 2013 and as such the Petitioners have been divested their rights over the land in question by operation of law that too without receiving the compensation to which they are entitled to as per law. It is very pertinent to mention that Article 300A of the Constitution declares that no person shall be deprived of his property save by authority of law. It therefore mandates the twin requirement to be satisfied i.e the acquisition has to be for a public purpose which is subject to payment of compensation in lieu of acquisition. It is also seen as settled by 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** that the rights under Article 300A is a combination of various sub-rights which weave themselves into each other. Amongst the seven sub-rights, one of such sub-rights is that the duty of the State to restitute and to rehabilitate i.e. the right of restitution or fair compensation. It also includes the duty of the

State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings i.e. the right to an efficient and expeditious process. Each of these seven sub-rights are foundational components of law i.e. in tune with Article 300A of the Constitution and the absence of one of these or some of them would render the law susceptible to challenge. Paragraph Nos. 25 to 29 of the said judgment is quoted herein under:

“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.*

29. *These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional*

courts while reviewing administrative actions for compulsory acquisition of private property. The following will demonstrate how these seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time."

19. In the backdrop of the above, it would be seen that the learned Single Judge while passing the impugned judgment and order have duly taken note of that since 2013, the Petitioners have been divested their rights to enjoy their property and the Award was passed in the year 2015 which were subsequently enhanced with the inclusion of the solatium and interest. The learned Single Judge taking into account these aspects had invoked the jurisdiction under Article 226 of the Constitution more so taking into account that there was no challenge to the Award and thereby had issued the mandamus issuing the directions as stated therein.

20. We are of the opinion that the said directions so issued by the learned Single Judge cannot in any circumstances be said to be a direction issued in excess of its jurisdiction or there is any infirmity.

21. Accordingly, we do not find any ground to interfere with the impugned judgment and order. We accordingly dismiss the Writ Appeal and direct the authorities to comply with the directions passed by the learned Single Judge as state therein forthwith.

22. Interim order passed if any, stands vacated.

JUDGE

JUDGE

Comparing Assistant