

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 39 of 2024

Fortuna Agro Plantations Ltd.

A company incorporated under the provisions of the Companies Act, 1956
having its registered office at PO- Sadhanashram, Kailashahar,
Dist- Unakoti, Tripura, PIN-799277

---Petitioner(s)

Versus

1. Union of India,
Service through the Secretary, Ministry of Home Affairs 10 Janpath Road, North Block, Central Secretariat, Janpath Road Areas, Motilal Nehru Marg Area, New Delhi-110001
2. The Director (BM1), Ministry of Home Affairs (Border Management Division,) having his office at Room no 20,2nd floor, Major Dhyani Chand National Stadium, India Gate, New Delhi-110001
3. The Chief Secretary Govt. of Tripura New Secretariat Agartala, Tripura
4. The State of Tripura, Service through the Secretary, Ministry of Revenue Government of Tripura, having his office at New Secretariat, Agartala
5. The District Magistrate and Collector, District- Unakoti, PO- Gournagar, Kailashahar, Tripura-799277
6. The Land Acquisition Collector, Gournagar, Kailashahar, District- Unakoti, Tripura-799277;
7. Sub - Divisional Magistrate, Kailashahar, Dist: Unakoti, Tripura -799277
8. NBCC (India) Limited (formerly known as The National Building Construction Corporation Limited) service through the Chairman cum Managing Director, having his office at NBCC House, Lodhi Road, New Delhi-110003.
9. The General Manager, NBCC (India) Limited (formerly known as The. National Building Construction Corporation Limited), SBG- NER having his office at NBCC House, 6th Floor, West End Block, Housefed Complex, Dispur, Guwahati- 781006.

---Respondent(s)

For Petitioner(s)	:	Mr. K. Raghavacharyulu, Advocate. Ms. P. Shreeagarwal, Advocate.
For Respondent(s)	:	Mr. Raju Datta, Advocate. Mr. K. K. Pal, Advocate. Mr. P. Gautam, Sr. GA.
Date of hearing and date of judgment and order	:	09.04.2025
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel appearing for the parties.

[2] This is a petition under Article 226 of the Constitution of India for seeking the following relief(s):

- a) *Admit the writ petition and issue notice upon the respondents and/or each of them directing them to transmit all relevant records pertaining to this case before this Hon'ble Court so that conscionable justice may be administered.*
- b) *A writ in the nature of Mandamus or of similar nature be issued directing the respondents to pay a sum of Rs. 1703271827/- (Rs. One hundred seventy crore thirty two lakhs seventy one thousand eight hundred twenty seven only) as awarded in the award dated 25.03.2021.*
- c) *Interim order be passed directing the Chief Secretary, Govt. of Tripura, New Secretariat, Agartala, Tripura (Respondent No. 3) and also other respondents to file a report before this Hon'ble Court together with details the bank/Treasury/ of all RBI Accounts maintained by Govt. of Tripura, Ministry of Home Affairs, Govt. of India and also M/s. NBCC India Ltd., Head Office New Delhi and Regional Office -Guwahati within 15 days from the date of Order.*
- d) *Interim order be passed to attach the awarded amount as in para B above in terms of prayer above from the proceeds of Bank/Treasury/ RBI Accounts maintained by the respondents and necessary order be passed for remittance of the same to the following account of Petitioner.*
Fortuna Agro Plantations Ltd.
ICICI Bank
A/C No. 216805000814
IFSC: ICIC0002168
Kailasahar Branch,
Kailasahar:
District: Unakoti
- e) *Ad-interim order in terms of prayer (a) to (d) herein above.*
- f) *Allow cost of the petition and incidental charges.*
- g) *Any other order and further orders as your Lordship may deem fit & proper*

[3] It is submitted by Mr. K. Raghavacharyulu, learned counsel for the petitioner that that the petitioner M/s. Fortuna Agro Plantations Ltd. has taken about 2100 acres of land on lease for a period of 99 years from M/s. Dilkhusa Tea Co. Ltd. in the year 1997-98 and is in a possession of the said land from that period. The land is situated near border with Bangladesh.

[4] In or around 2005, Notification under Section 4 and under Section 6 was published by Revenue Department, Government of Tripura for acquisition of 18.31 acres of land belonging to petitioner for the purpose of construction of barbed

wire fencing (150 mtrs inside the zero line between Indo-Bangladesh Border as per accord between India and Bangladesh) and thereafter notice under Section 9 was received on 26.09.2005 for submission of claim on 20.10.2005. The petitioner submitted its claim on 20.10.2005 and amended the same on 28.10.2005. Since about 225.80 acres of land of the petitioner went on the other side of border fencing (In between zero line and IBB fencing), the petitioner in its claim dated 20.10.2005 claimed compensation land on the other side of fencing and for trees/bamboos therein since due to construction of fencing and only few gates were constructed, the petitioner was of firm believe that extraction of timber from the other side of border fencing may not be possible.

[5] It is further stated that the petitioner sent a representation to DM & Collector, Gournagar, Kailasahar, Dist. Unakoti for arranging to extract the timber from the other side of border fencing to save them from national loss and Learned DM & Collector, Gournagar, Kailasahar, Dist. Unakoti vide its letter dated 01.06.2005 sought approval from Revenue Department, Government of Tripura to conduct survey of assets on the land through forest department and bare land with the official of Sub-Divisional Magistrate, Kailasahar to compensate your petitioner for the loss suffered, but since no approval was received from Revenue Department, Government of Tripura, the matter of survey was dropped by office of DM and Collector, although pursued by petitioner.

[6] The petitioner all alone asking the authorities to extract the trees/bamboos on the other side of border fencing which was the target of Bangladeshi criminals/miscreants and the random theft continued.

[7] After getting no response from Authorities, in or around 2016, Writ Petition No. 1381 of 2016 was filed and in the said writ petition, Judgment and Order dated 05.01.2021 was passed by this Court directing Land Acquisition Collector, Gournagar, Kailasahar, Dist. Unakoti to survey/enquire and assess the

loss of land and the asset on the other side of border fencing due to construction of IBB Fencing through competent authorities and pass award and pay the compensation within 4 months from the date of serving the Judgment and Order dated 05.01.2021 in the office of Land Acquisition Collector, Gournagar, Kailasahar, Dist. Unakoti.

[8] The relevant portion of the said judgment dated 05.01.2021 is extracted herein below:

[9] Having read the entire reply of the respondents No.2-6 it appears that no specific reply to the allegation has been made by the petitioner. The reply, on the other hand, is totally evasive and not relating to the specific allegations. Thus, this court is of the view that if the land is severed for reason of acquisition and construction of the IBB fencing, the petitioner has a right to get compensation for the damage which has occurred for severance of the land in terms of the said provision of law as reproduced above. It appears that the respondents have failed to produce a chit of paper in this regard. The cumulative effect of such observations is that there should be a serious exercise for determining the damage which has been caused by severance. Therefore, the Land Acquisition Collector, Unakoti District is directed to cause survey by the technically sound persons to determine the land which has been severed for construction of the IBB fencing. The damage shall be assessed ascertaining the value of the land and the damage that has been caused for acquisition. It is clearly mentioned that this court has not endorsed to any fact to be considered. The Land Acquisition Collector shall exercise his statutory power for determining the damage including the damage caused by severance.

[10] Taking a holistic view of that aspect, it is directed that within 4(four) months from the date on which the petitioner shall supply a copy of this order to the Land Acquisition Collector, Unakoti District, the said exercise as indicated above, shall be completed and the payment be made in terms of the Land Acquisition Act, 1894 if it is so ascertained.

[9] To comply with the Judgment and Order dated 05.01.2021, land Acquisition Collector, Gournagar, Kailasahar, Dist. Unakoti directed Sub-Divisional Magistrate and Sub-Divisional Forest Officer, Kailasahar to assess the loss and on receipt of reports passed award in favour petitioner and also for the lessor M/s. Dilkhusa Tea Co. Ltd. and thereafter demanded awarded money from acquiring agency.

[10] The respondents filed a Writ Appeal No. 268 of 2021 against the Judgment and Order dated 05.01.2021 which was dismissed by the Division Bench

by order dated 28.09.2022 with a direction to comply the Judgment & Order dated 05.01.2021 passed in Writ Petition No. 1381 of 2016 and pay the awarded amount within 6 months from the date of Judgment & Order.

[11] For ready reference, the relevant portion of the judgment and order dated 28.09.2022 passed in WA 268 of 2021 is reproduced herein below:

[25] The learned Single Judge has categorically held that the severance of land has occurred solely for the reason of acquisition of land and construction of IBB fencing and therefore, the petitioner has a right to get compensation for the damage which has occurred for severance of the land in terms of the provision of law. Since the work of assessment of compensation for the severed land was not undertaken, learned Single Judge directed the Land Acquisition Collector, Unakoti District to cause survey by technically sound persons to survey the land which has been severed for construction of IBB fencing and assess the damages ascertaining the value of the land in exercise of the statutory power of the LA Collector and make payment of compensation in terms of the Land Acquisition Act, 1894 within a period of 4 months from the date of communication of the order of the learned Single Judge to the LA Collector of Unakoti District by the writ petitioner.

[26] Section 23 of the Land Acquisition Act 1894 contemplates that for determining the amount of compensation to be awarded for land acquired under the Act, damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land shall also be taken into consideration. Therefore, the writ petitioner is, undoubtedly, entitled to compensation for severance of land arising out of the land acquisition for construction of barbed wire fencing at the Indo-Bangladesh border particularly when the fact of severance of land has not been controverted by the state. Apparently, the writ petitioner has lost the utility of the severed land for all purposes as a result of the stalling of his free movement to the severed land.

[27] For the reasons stated above, we find no infirmity in the judgment of the learned single Judge. Resultantly the appeal stands dismissed. Appellants are directed to comply with the judgment of the learned Single Judge within a period of 6 months from today."

[12] Since the payment of awarded amount was not paid even after 6 months contempt petition No. 68 of 2023 was filed which is pending. Thereafter, the state respondents filed review petition no 39 of 2023 on 26-05- 2023 against the Judgment and order dated 28-09-2022 which was tagged with Cont Case (C) 68 of 2023 filed by the petitioner herein. However the state respondents withdrew the Review petition no 39 of 2023 on 20-12-2023.

[13] Aggrieved by the order in contempt, the petitioner preferred an SLP before the Hon'ble Supreme Court being SLP(C) no. 20856 of 2024 and the same was taken on record and interim stay has been granted on 06.09.2024. Since the said SLP is pending before the Hon'ble Supreme Court and the learned counsel for the petitioner argues by way of filing the writ petition that the respondents be directed to pay the compensation by executing the Order dated 05.01.2021 passed by Single Judge & also Judgment and order dated 28.09.2022 passed by the Division Bench of this court.

[14] On the contrary, Mr. Raju Datta, learned counsel appearing for the respondents submits before this court that there is a direction dated 14.08.2024 of this court passed in WP(C) 268 of 2023 stating that the petitioner does not have any locus and cannot claim any compensation. They are not lawful owners and has no authority to claim the compensation since they are not entitled.

[15] For ready reference, the relevant portion of the order dated 14.08.2024 is reproduced herein under:

[39] It is reasonably construed that all land in a State is the property of a State unless it is claimed under lawful alienable title. The series of proceedings which relate to exemption, withdrawal of exemptions, are noticed by this Court that they have not dealt with the issue of ownership and there is no reference as to how the petitioners claimed ownership on the said properties. Unless the petitioners establish that he is the owner of the said land, it is not open for him to claim equities. Insofar as the contention that petitioner No.1 has granted long lease in favour of petitioner No.2 is concerned, petitioner No.1 cannot transfer a better title upon petitioner No.2, when petitioner No.1 itself is not having a proven lawful alienable title. The said proposition is settled law.

[40] Insofar as the change of entries in the khatian by replacing the name of the petitioners with the government as owner is concerned, this Court is of the view that no notice is required and there is no violation of principle of natural justice since the petitioners were already represented before this Court in earlier round of litigation and in pursuance of the same, consequential steps have been initiated by the respondents in changing the entries in the Record of Right i.e. the Khatian.

[41] Accordingly, the writ petition fails and is liable to be dismissed.

[42] However, in the event, if the petitioners feel that they are the lawful owners of the said property, they shall approach before the Revenue Secretary on or before 31.08.2024 and submit relevant documents i.e. title deed enabling the Revenue Secretary for taking appropriate steps in accordance with law as expeditiously as possible.

[43] In the light of the above, the present petition stands dismissed. As sequel, miscellaneous application, pending if any, shall stand closed.

[16] The petitioner has taken the lease of the subject land from M/s. Dilkhusa Tea Co. Ltd. who is not the lawful owner of the land. Even the M/s Dilkhusa Tea Col Ltd. does not have any ownership or alienable right. Therefore, the petitioner herein (Fortuna Agro Plantations Ltd.) cannot have any better position for claiming any demand upon the land or the Tea Garden for the so called damages or loss.

[17] The subject land belongs to government and any person/company without any authority if enters into the land, these actions attract trespass and are liable for criminal prosecution but not for making a request for claiming compensation.

[18] The petitioner had approached earlier before this court by way of filing a writ petition being WP(C) No. 1381 of 2016 and the same was dismissed by the order dated 05.01.2021 on the ground that both the writ petitioners (i.e. 1. M/s Dilkhusa Tea Co. Ltd. & 2. M/s Fortuna Agro Plantation Ltd.) are not the lawful owners. However, this court granted an opportunity to the petitioners to approach before the Revenue Secretary on or before 31.08.2024 and submit relevant documents i.e. title deed enabling the Revenue Secretary for taking appropriate steps in accordance with law as expeditiously as possible. But they have not approached the respondents with the documents.

[19] A writ appeal being Writ Appeal No. 118 of 2024 against the said order dated 14.08.2024 in WP(C) 268 of 2023 was filed and the said appeal has been admitted and is still pending before a Division Bench of this Court. No interim orders are granted.

[20] Since there is no positive direction so far in favour of the petitioner holding them as the lawful owner or lawfully entitled of any such land or trees, there cannot be any claim for compensation.

[21] Heard both sides.

[22] The prayer of the petitioner in the present writ petition is that the respondents be directed to pay the amount of awarded dated 25.03.2021 to the petitioner by fixing a definite time frame. It is seen from the record that no claim/demand is made by the petitioner before the respondents asking them to pay the loss/damages that have been sustained by them and accordingly the petitioner is entitled for such compensation. It also surfaces from the record that there is no impugned order in the present writ petition which is under challenge.

[23] Mr. K. Raghavacharyulu, learned counsel for the petitioner in all fairness submits before this court that the instant writ petition itself would not survive since there is no impugned order and since there is no impugned action from the end of the respondents which can be held as unjust and direction be issued upon the respondents.

[24] He further submits that the subject matter is pending before the Hon'ble Supreme Court vide SLP No. 20856 of 2024 and therefore no order needs to be passed.

[25] As stated (supra), since there is no impugned action or no impugned order under challenge, mandamus cannot be issued. It is also not for the writ court to assess the damages that is caused and to award compensation as disputed question of facts are involved with regard to the ownership, trespass, damages occurred as projected by the petitioner. Writ itself is not maintainable.

[26] This court is of the view that this is purely a frivolous and a chance litigation and is liable to be dismissed with costs.

[27] The petitioner shall pay cost of Rs.1,00,000/- i.e. a sum of Rs.50,000/- to the High Court Employees' Association, High Court of Tripura and Rs.50,000/- to the High Court Bar Association, High Court of Tripura, Agartala. The said amount shall be deposited on or before 10.05.2025.

[28] This court has not hesitation to hold that the petitioner has failed to make out his case and thus it is not a fit case to be entertained under Article 226 of the Constitution of India under the writ jurisdiction. The case being devoid of merit is liable to be dismissed.

[29] With the above observation and direction, this present writ petition stands dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

Copy of this order be furnished to the President of High Court Bar Association and President of the High Court Employees Association.



JUDGE

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