HIGH COURT OF TRIPURA
AGARTALA

1. WP(C) No.1163/2019

Imam Hussain

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

Connected with

2. WP(C) No.1164/2019

Harun Miah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

3. WP(C) No.1165/2019

Harmuj Miah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

4. WP(C) No.1166/2019

Basirullah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

5. WP(C) No.1167/2019

Assanullah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

6. WP(C) No.1168/2019

Abdul Kadir & others

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

7. WP(C) No.1185/2019

Samsul Miah alias Haque

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

8. WP(C) No.1186/2019

Chetu Miah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

9. WP(C) No.1187/2019

Ismail Miah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

10. WP(C) No.1188/2019

Safiq Miah

----Petitioner(s)

Versus

The Union of India & others

-----Respondent(s)

For Petitioner(s)	:	Mr. Ashish Nandi, Advocate.
For Respondents No.1 & 2	:	Mr. Biswanath Majumder, CGC.
For Respondents No.3 & 4	:	Mr. Dipankar Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

26/02/2020

Heard learned counsel for the parties for final disposal of the petitions.

2. Learned advocates for the parties are broadly in agreement that cases of these petitioners are similar to those in

WP(C) No.952 of 2016 in case of ***Shri Nepal Paul & others vrs. The Union of India & others*** decided by learned Single Judge in a judgment dated 10.05.2018.

3. The Union of India needed to construct a road for which the Border Security Force invoked emergency powers under Section 17(1) of the Land Acquisition Act, 1894 way back in the year 1993. It appears that the alignment of the proposed road changed and the road was constructed as per the changed alignment. In the process lands of the petitioners were utilized without acquisition. Further attempts at acquisition and passing awards failed due to lapsing. Undisputedly, the Government of India has utilized private lands for public purpose without payment of compensation. In this background, the petitioners have filed these petitions with following prayer:

> "Issue rule asking the respondents to show cause as to why the respondents No.2 should not be directed to made a fresh requisition and to make a fresh survey of the land possession of which was actually taken over for construction of IBB road within periphery of Birampur Mouza and then initiate proceeding for acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for payment of due compensation to the land owners."

4. Identical situation was considered by the learned Single Judge of this Court in case of ***Nepal Paul*** (supra) in which following discussion and directions were made:

> "**03.** Mr. D. K. Biswas, learned counsel appearing for the petitioners has submitted that the

notice under Section 9 of the LA Act, 1894 in L.A. Case No.3/SON/93 was issued, but later on, the Land Acquisition Collector did not pass any award. Situated thus, the petitioners issued a demand notice through Mr. A. Nandi, learned counsel, for payment of compensation.

04. In response to the said demand notice, the Land Acquisition Collector by a communication asked the Sub-Divisional Magistrate, Sonamura, Sepahijala District to furnish the reply to the demand notice. But according to the petitioners, neither the reply was received by them nor the payment of compensation made.

05. The respondents No.3 and 4 by filing the reply have contested the position taken by the petitioners and submitted that after the notice under Section 9 of the Land Acquisition Act was issued, the Officer Commanding, 78 Road Construction COY(GREF) under No.2103/E2 informed the LA Collector that the alternative alignment of IBB Road under mouja Birampur and Pharapur at Kulubari, Nidaya Road Sector have been forwarded to the HQ, TC & M BSF Shalbagan, Agartala for examining the feasibility of the proposed change. They have further disclosed in the reply that it was also informed by the said Commandant that the proposed acquisition has 'lapsed due to change of alignment of IBB Road'.

06. It appears from the notification dated 12.03.1993 [Annexure-R/1 to the reply] that the acquisition was made under Section 17(1) of the Land Acquisition Act for meeting urgent need of construction of the said road. For acquisition the due process was followed, but no award was made. From the communication of the Land Acquisition Collector dated 13.01.2005 under No.676-77/F.DM/ W/ LA/ SON/13/92 [Annexure-R/4 to the reply] it appears as follows:

"Please refer to your letter No.2128/86/E2 dated 4.9.1993 (copy enclosed) and No.201/112/59/E2 dated 8.12.2004 on the subject stated above.

In this regard, I am to inform you that the proposal was initiated in the year 1993 and Declaration U/S 6 was issued on 26.12.1995. Since then, about 9 years has been elapsed and we are yet to make award for the proposal. Ad per Section 11(A) of the Land Acquisition Act, the entire proposal lapses if no award is prepared within 2 years from the date of publication of Declaration U/S 6. Though the proposal was initiated in the year 1993, your Deptt. made delay in sending the final revised proposal showing the revised alignment in time. Therefore, we could not able to finalize the proposal in time and the instant proposal therefore lapses. <u>We are sending the withdrawal proposal to the Govt. U/S 48 of L.A. Act for the entire proposal.</u>

Under the position, I would request you to submit a new requisition for the same proposal as per land schedule enclosed for initiating fresh proposal to the Govt. early after conducting joint field survey."

[Emphasis added]

07. But thereafter, no formal notification under Section 48 of the Land Acquisition Act was published by the competent authority i.e., Land Acquisition Collector, the respondent No.4. Again on 20.06.2007 by a communication under No.2471-73/F.DM/W/LA/SON/13/92 [Annexure-R/5 to the reply] the LA Collector, West Tripura informed the Commandant, 755 BRTF (GREF), C/O 99 APO,

Lichubagan, Agartala that 9 years had been elapsed so far the entire proposal was withdrawn from the acquisition process U/S-48 of the L.A. act. Therefore, they could not finalize the proposal and incur any expenditure for payment of compensation against the acquisition under reference. But in the said communication it has been clearly mentioned as follows:

> **"The under signed requested earlier vide this office letter No.676-77/F.DM/ W/LA/SON/13/92 dated 13/1/05 (copy enclosed) to submit fresh proposal for the construction of IBB road at Birampur mouja, but no response has yet been received from your end. Though IBB road also constructed by BRO (GREF) at Birampur area in the year 1994.**
>
> **In the meantime, one Shri Ramesh Ch. Paul, S/O Lt. Brajabasi Paul in his prayer stated that BRTF (GREF) has been possessing his plot of land measuring 0.42 acres since 14/15 years back without providing compensation."**

08. The said reply has been adopted by the respondent No.2. Strangely enough that no notification under Section 48 of the LA Act has been placed on the record even there is no denial against the possession as asserted by the predecessor of the petitioners namely, Ramesh Chandra Paul.

09. Be that as it may, it is obvious that when the acquisition was made invoking the provisions of Section 17(1) of the LA Act, possession has definitely been taken. but no compensation has been made so far.

10. Mr. M. Debbarma, learned Addl. G.A. having regard to the paras-(A)(B) and (C) has submitted that the respondents No.3 and 4 does not

have any opposition to resurvey the acquired plot and grant the due compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of Section 24(1)(a) of the new Act no notification under Section 48 of the Land Acquisition Act, 1894 has been made. The compensation has to be determined under the provisions of the new act.

11. There is no dispute in respect of taking over possession. The question therefore falls for consideration is that how to determine the compensation in the circumstance. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (the new Act) provides that notwithstanding anything contained in the Act, in any case of land acquisition proceeding initiated under the Land Acquisition Act, 1894 and no award under Section 11 of the LA Act has been made, then all provisions of the new Act shall apply.

12. Hence, the Collector having determined the market value of the land under reference following the due process as laid down under Section 28 of the new Act, shall determine the compensation under Section 27 of the new Act within 6(six) months in the circumstances of the case. The compensation shall include all components as expounded by the new Act.

13. Having observed thus, this petition stands allowed to the extent as indicated above."

5. The Union of India had filed a review petition in the said case which came to be dismissed by an order dated 07.03.2019. I am informed that there was no further challenge to the said judgment. Learned counsel for the petitioners stated that pursuant to the said judgment of the learned Single Judge, in case of those

petitioners the Collector has also passed award under Section 27 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. The situation being similar these petitions would also be disposed of adopting the same directions contained in the said judgment in case of ***Nepal Paul*** (supra). The time of 6(six) months for determining compensation under Section 27 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall commence from today.

7. In paragraph-10 of the said judgment it is already provided for carrying out survey of the acquired land. For clarity and emphasis it is provided that in the present group of cases also the Collector shall carry out a survey to determine the exact area of land of each set of landowners which has been utilized for the purpose of road construction upon which the compensation to be paid would be worked out. If it is found that in case of any of the landowners no land is utilized for such public purpose a communication to this effect would be made to such of them.

8. All petitions are disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak