GAHC010317142019

2024:GAU-AS:10730

# THE GAUHATI HIGH COURT

**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

## WRIT PETITION [C] NO. 9534/2019

Dibyajyoti Goswami, D/o Late U.N. Goswami, W/o- Sri Ranjit Kr. Mahanta, R/o- Vill- Tongana Gaon, P.O. and P.S.- Gahpur, Dist- Biswanath, Assam.

**.....Petitioner**

-**VERSUS**-

1. The State of Assam, rep. by the Commissioner and Secretary to the Govt of Assam, Department of Revenue and DM, Dispur, Ghy-62.
2. The Deputy Commissioner, Biswanath, Biswanath Chariali, Assam.
3. The Addl. Deputy Commissioner, Biswanath Chariali, Assam.
4. The Circle Officer, Gohpur Revenue Circle, Gohpur, Dist- Biswanath, Assam.
5. The Union of India, Represented by the Secretary to the Union of India, Ministry of Road Transport, Transport Bhawan 1, Parliament Street, New Delhi-110001.

6. The National Highways and Infrastructure Development, Corporation Limited [NHIDCL], represented by its Managing Director, World Trade Centre, Nauroji Nagar Delhi, Pin-110029.
7. The Deputy General Manager [P], NHIDCL, PMU, Tezpur, Mazgaon, Pin-78400.

.....**Respondents**

**BEFORE**
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**Advocates** :

| | | |
|---|---|---|
| Advocate for the Petitioner | : | Mr. D. Baruah, Advocate |
| Advocate for the Respondent no. 1 | : | Ms. N. Bordoloi, Standing Counsel, Revenue Department |
| Advocate for the Respondent nos. 2 – 4 | : | Mr. H.K. Hazarika, Junior Government Advocate, Assam |
| Advocate for the Respondent nos. 6 & 7 | : | Mr. D. Gogoi, Standing Counsel, National Highways & Infrastructure Development Corporation Limited [NHIDCL] |
| Dates of hearing | : | 17.11.2026 |
| Date of pronouncement of judgment | : | 17.11.2026 |
| Whether the pronouncement is of the Operative part of the judgment ? | : | No |

Whether the full judgment has been
Pronounced ? : Yes

# JUDGMENT & ORDER

1. By presenting this writ petition under Article 226 of the of the Constitution of India, the petitioner has sought for a direction to the respondent authorities to release an amount of Rs. 11,00,000/-, which amount the petitioner claims to have been not disbursed to her towards zirat compensation assessed in a land acquisition proceedings for the structures existing on the plot of land acquired from her. Initially, at the time of filing the writ petition, the petitioner claimed that an amount of Rs. 34,12,785/- towards balance amount of zirat compensation was not paid. However, as an amount of Rs. 23,12,785/- was credited to the bank account of the petitioner on 21.03.2020 during the pendency of the writ petition, the petitioner's claim has got reduced for a direction to release the remaining amount of Rs. 11,00,000/-.

2. I have heard Mr. D. Baruah, learned counsel for the petitioner; Mr. N. Bordoloi, learned Standing Counsel, Revenue Department, Government of Assam for the respondent no. 1; Mr. H.K. Hazarika, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4; and Mr. D. Gogoi, learned Standing Counsel, Standing Counsel, National Highways & Infrastructure Development Corporation Limited [NHIDCL] for the respondent nos. 6 & 7. The respondent no. 5 is to be represented by the learned Central Government Counsel [CGC]. Today, the learned CGC is found absent on call.

3. The facts which are not in dispute, can be exposited, at first, in order to understand the controversy involved in this writ petition.

4. A land acquisition proceeding was initiated by the Central Government under the provisions of the National Highways Act, 1956 [‘the Act’, for short] for a project, ‘Four Laning of NH-52 from end of Biswanath Chariali Bypass [km 208+000] to Gohpur [km 265+500] having total length of 57.50 km in the State of Assam on EPC mode’ [‘the Project’, for short], wherein the National Highways & Infrastructure Development Corporation Limited [NHIDCL] is the Project Implementing Agency. The Notification under Section 3A of the Act was published in the Gazette of India on 12.01.2015. By the Notification issued under Section 3A, objections were called for by the Competent Authority for Land Acquisition [CALA]-cum-Additional District Commissioner, Biswanath and after consideration of the objections and completion of the other procedural formalities, the Notification under Section 3D[2] was published in the Gazette of India on 08.01.2016.

5. Apart from assessment of valuation of the parcels of land acquired, which were in villages of a number of revenue circles including Gohpur Revenue Circle and Biswanath Revenue Circle, assessments for zirat competition were made for the structures, etc. existing on the acquired parcels of land by the Competent Authority for Land Acquisition [CALA] in order to pass the Awards under Section 3G[1] of the Act. It has emerged from the materials on records that for determination of the Awards under Section 3G[1], the Schedule of Rates [SoR] of the Assam Public Works Department [APWD] for the year : 2013-2014 was applied by the Competent Authority for Land Acquisition [CALA] for estimating the values of structures, etc.

6. The petitioner was the owner of a plot of land measuring 2 Kathas, covered by Dag no. 233 of Periodic Patta no. 13, situate at Village – Tongana Gaon, Mouza – Gohpur, Gohpur Revenue Circle, District – Biswanath, Assam [‘the subject-plot’, for short]. With publication of the Notification under Section 3D[2] of the Act on 08.01.2016, the subject-plot stood vested in the Central Government, free from all encumbrances, on and from the said date.

7. It is to be noted that in so far as the payment of land compensation towards acquisition of the subject-plot is concerned, the petitioner has raised no dispute as the petitioner had received the component of compensation towards acquisition of the subject-plot along with one Jiban Chandra Hazarika, Keshab Dutta and Hari Prasanna Goswami. Thus, the lis stands limited to the component assessed as zirat compensation for the structures existing on the subject-plot.

8. It is the case of the petitioner that prior to the acquisition process, she had constructed one RCC building [G+1] on the subject-plot. That apart, the petitioner has asserted that she had constructed boundary walls around the subject-plot and made other constructions also on the subject-plot.

9. It is an admitted position that the Competent Authority for Land Acquisition [CALA] had initially assessed an amount of Rs. 44,81,215/- as zirat compensation for the structures existing on the subject-plot. The petitioner then preferred a writ petition, W.P.[C] no. 7396/2015 seeking inter-alia a direction to the respondent authorities impleaded therein to do re-valuation of the structures existing on the subject-plot. Notices were issued to the respondents impleaded therein on 07.12.2015. The petitioner decided to withdraw the writ petition, W.P.[C] no. 7396/2015 when the amount of Rs. 44,81,215/- was credited to the bank account of the petitioner on 28.04.2016, and the Executive Engineer, Tezpur Building Division, APWD forwarded a report to the Competent Authority for Land Acquisition [CALA] reporting that on re-assessment of the structures an additional amount of Rs. 39,47,000/- was found payable for the structures. Accordingly on 19.07.2017, the writ petition was withdrawn.

10. In the interregnum, the District Commissioner-cum-Collector, Sonitpur seeking clarifications on certain aspects relating to the land acquisition proceeding concerned with the Project, and a large number of members of the public affected due to acquisition of their lands for construction/widening of National Highway nos. 37-A, 52, and 52-A claiming higher compensation and other

benefits, approached the Commissioner, North Assam Division, Assam, who was appointed by the Central Government as the Arbitrator under Section 3G[5] of the Act to decide and resolve the issues pertaining to the Project. A number of issues were raised by the parties before the Arbitrator. Three of the prominent issues, which were raised before the Arbitrator, pertained to, [i] applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [RFCTLARR Act]; [ii] applicability of the Schedule of Rate [SoR] of the APWD for assessment of zirat compensation; and [iii] the zonal valuation applied and to be applied in determining the land compensation part of the Project in the Awards under Section 3G[1] of the Act.

10.1. The Arbitrator found that the Zonal Valuation of 2013 was applied for determining the land compensation part and the APWD's SoR of 2009-2010 was applied for estimating the values of the structures existing on the acquired parcels of land. Upon hearing, the Arbitrator observed that the RFCTLARR Act, 2013 would be applicable in determination of compensation in all cases of land acquisition under the Act w.e.f. 01.01.2015. Therefore, as the preliminary notifications under Section 3A of the Act in the land acquisition cases for the Project under consideration were issued after 01.01.2015 and the Collectors did not apply the provisions of the RFCTLARR Act, 2013 to determine the compensation, etc., the Arbitrator observed in the Final Award dated 28.05.2018 that the landowners were found justified for claiming the benefits under the RFCTLARR Act, 2013 for acquisition of their lands. Consequently, the Collector was found justified in preparing supplementary land acquisition estimates following the provisions of the RFTCLARR Act, 2013.

10.2. On the issue of revised zonal valuation, the Arbitrator verified the land values at various places including the places within Gohpur Revenue Circle and Biswanath Chariali Revenue Circle. The Arbitrator held that since the preliminary notifications under the Act for the Project were issued in 2015, there should be an increase of the zonal valuation by an increment of 20% for giving fair compensation to the landowners-pattadars of the entire stretch of land except

in areas within Gohpur Revenue Circle. In respect of Gohpur Revenue Circle, the Arbitrator held that 25% increase in zonal valuation above the valuation fixed by the Collector would be fair.

10.3. On the point of assessment of zirat compensation, the Arbitrator advised that the Collector shall revisit the zirat values of 2014 and to fix fair values keeping clear logic of rate fixation by utilizing services of experts and experienced persons in the field of agriculture, forestry, horticulture, sericulture or any other field, as may be considered necessary, and the Award was made accordingly.

11. The Final Award was passed by the Arbitrator on 28.05.2018 holding, inter-alia, as above. On query, it is submitted at the Bar, there is no challenge to the Final Award dated 28.05.2018. The Competent Authority for Land Acquisition [CALA], thereafter, proceeded to revise the Awards under Section 3G[1] afresh in terms of the directions given by the Arbitrator in his Final Award dated 28.05.2018.

12. In so far as the revised estimate for the Award under Section 3G[1] of the Act in respect of the structures existing on the subject-plot is concerned, the Competent Authority for Land Acquisition [CALA] had estimated the total compensation payable to the petitioner for the structures existing on the subject-plot @ Rs. 78,94,000/-. The relevant parts of the revised estimate are extracted hereinbelow for easy reference :-

| Total compensation Col. [16 + 17 + 18] | Amount already sanctioned & transferred to interested persons bank account [if any] | Balance amount to be sanctioned and payable to Pattadars Col. [19 – 20] |
|---|---|---|
| 19 | 20 | 21 |
| 78,94,000/- | 55,81,215/- | 23,12,785/- |

13. The petitioner has asserted, as already mentioned hereinabove, that an amount of Rs. 44,81,215/- was credited to her Bank Account on 28.04.2016.

Subsequently, on 21.03.2020, an amount of Rs. 23,12,785/- was credited in her Bank Account no. 11847695634, maintained at Balijan Branch of the State Bank of India, which Bank Account the petitioner had given to the respondent authorities for deposit of the compensation amounts receivable against the subject-plot and the structures existing thereon. On perusal of the relevant entries in the Bank Statement, made part of the writ petition, it is noticed that the amount of Rs. 44,81,215/- was credited with entry, 'L.A. Case', and the amount of Rs. 23,12,785/- was credited with entry, 'Addl. CALA, Biswanath'. The petitioner had, thus, asserted that he had received, till date, a total amount of Rs. 67,94,000/- [= Rs. 44,81,215/- + Rs. 23,12,785/-]. Therefore, according to the petitioner, an amount of Rs. 11,00,000/- out of the revised Award amounting to Rs. 78,94,000/- for the structures existing of the acquired subject-plot, is yet to be released.

14. Referring to the parts of the revised Award, extracted above, Mr. Gogoi, learned Standing Counsel, NHIDCL has submitted that the figure of Rs. 55,81,215/- was mistakenly showed as the amount already sanctioned and transferred to interested person's Bank Account. He has referred to the affidavit-in-opposition filed by the respondent no. 7 to buttress his submission, wherein it is averred that the value of compensation determined against the acquisition was re-assessed and the revised Award under Section 3G[1] of the Act was prepared in the light of the prior order passed by the Arbitrator on 28.05.2018.

15. It is averred by the respondent no. 7 in the affidavit-in-opposition to the effect that the original amount which was sanctioned towards compensation payable to the petitioner was Rs. 44,81,215/- and it was incorrectly written as Rs. 55,81,215/- in the revised Award and the same had created the difference of Rs. 11,00,000/- for which the petitioner has staked his claim. It is further averred that as per the records available at the end of the NHIDCL, the Competent Authority for Land Acquisition [CALA] assessed and determined the amount payable to the petitioner @ Rs. 44,81,215/- in the original Award and the same was deposited to the Competent Authority for Land Acquisition

[CALA]. It has been reiterated that while preparing the revised award, the original Award was mistakenly written as Rs. 55,81,215/-.

16. From the discussion made above, it has emerged that in the revised Award prepared under Section 3G[1] of the Act, the amount shown at Column 20 as already sanctioned and transferred to the petitioner's Bank Account should have been Rs. 67,94,000/- instead of Rs. 55,81,215/-, and the balance amount to be sanctioned and payable to the petitioner at Column 21 should have been shown as Rs. 11,00,000/- instead of Rs. 23,12,785/-, as the petitioner has already received the amount of Rs. 67,94,000/- in total in two installments, that is, Rs. 44,81,215/- on 28.04.2016 and Rs. 23,12,785/- on 21.03.2020.

17. It is not the case of any of the parties that the Final Award dated 28.05.2018 passed by the Arbitrator has been assailed in any manner by any of the parties under Section 34 of the Arbitration and Conciliation Act, 1996 and therefore, it is to be treated, as on date, as having attaining finality.

18. The determination of the compensation payable for the structures existing on the subject-plot assessed under Section 3G[1] of the Act @ Rs. 78,94,000/- is in terms of the said Final Award of the Arbitrator dated 28.05.2018. The respondent authorities have not been able to bring on record that in addition to the amount of Rs. 67,94,000/-, any other amount has been released to the petitioner as zirat compensation for the structures existing on the acquired subject-plot. Therefore, the petitioner is entitled to receive the remaining amount of Rs. 11,00,000/- out of the compensation assessed for the structure existing on the subject-plot @ Rs. Rs. 78,94,000/-. It is, therefore, directed to the respondent authorities, more particularly, the Competent Authority for Land Acquisition [CALA]-cum-Additional District Commissioner, Biswanath [the respondent no. 3] and the respondent no. 7 to disburse the amount of Rs. 11,00,000/- in the strict compliance of the provisions of the Act within a period of one month from the date of submission of a copy of this order by the petitioner at the offices of the respondent no. 3 and the respondent no. 7.

19. The writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

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**JUDGE**

**Comparing Assistant**