
Ali Hussain Barbhuiya And 3 Ors. Vs State Of Assam And 5 Ors.

Writ Petition (Civil) No. 8142 Of 2019

Court: Gauhati High Court

Date of Decision: June 27, 2022

Acts Referred:

Assam Land Acquisition Act, 1894 " Section 4(1), 6, 6(1), 23A, 23(1A), 36, 48, 48(1), 48(3)

Hon'ble Judges: Arun Dev Choudhury, J

Bench: Single Bench

Advocate: F Z Mazumder, G. N. Sahewalla, R. Borpujari, R. Talukdar, N. N. B. Choudhury

Final Decision: Allowed

Judgement

1. Heard Mr. F. Z. Mazumdar, learned counsel for the petitioners. Also heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. N. A.

Singh, learned counsel for the respondent No. 5, Mr. R. Borpujari, learned counsel for the respondent Nos. 2 and 3 and Mr. R. Talukdar, learned

counsel for the respondent No. 1 and 4. Also heard Mr. N. N. B. Choudhury, learned counsel who was requested by this court to assist in this matter.

2. This writ petition is filed with a prayer to re-assess the restoration cost of the acquired land and to make payment as per re-assessment and

compensate the petitioner by giving interest on damage cost and solatium.

3. The background facts of the present case are as under:-

I. On 21.07.2010, the office of the Deputy Commissioner, Cachar, Silchar issued a notice under Rule 189, 190 under Chapter VIII of the Rules

formulated under Assam Land and Revenue Regulation 1886 (as amended) by authorizing the officers /servants /workman etc. of the Oil & Natural

Gas Corporation Ltd. (ONGC) to enter upon the land belong to the petitioners for the purpose of drilling operation and approach road and to do all

other acts and deeds required to be done for the purpose with or without the consent of the occupier of the land.

II. Though, on 21.07.2012, a notice under Section 4(1) of Assam Land Acquisition Act, 1894 was issued relating to land measuring more or less 26

Bigha, 16 Katha, 13 Chotak, which was also subject matter of the aforesaid notice dtd.21.07.2010. The ONGC authority had took possession of the

land in question after the said Notice dtd.21.07.2010.

III. While the matter was pending at that stage and no notice/proceeding whatsoever was initiated under Section 6 of the Assam Land Acquisition

Act, 1894, the Additional Deputy Commissioner cum In-Charge of Land Acquisition Branch, Cachar, Silchar, by a communication dated 31.05.2014

intimated the respondent ONGC that now the proceeding are to be initiated as per Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 and in the mean time damage cost amounting to Rs.3,94,264/- was forwarded to the ONGC for deposit of

the same. In the said communication, it was further intimated that solatium as per the provisions of the New L.A. Act will be adjusted in due course.

IV. Thereafter, the petitioners raised their grievances before the respondent authorities regarding the assessment of damages and further prayed for

enhancement of such compensation.

4. The estimate of damage calculated at Rs. 3,94,264/- as stated hereinabove, was done on 31.05.2014 by the Additional Deputy Commissioner. Such

communication was forwarded by the Additional Deputy Commissioner to the respondent ONGC on the same date.

5. Thereafter, the respondent ONGC took a stand that, the ONGC is not going to drill due to technical problem and therefore, a draft De-notification

under Section 48(1) of the Assam Land Acquisition Act, 1894 to them by the Additional Deputy Commissioner in connection with Notification issued

earlier under Section 4 (1) of the Assam Land Acquisition Act, 1894 in respect of proposed acquisition of land for ONGC on 08.01.2014. It is the

stand of the ONGC that they had already deposited the estimated demand on 19.05.2014.

6. The respondent ONGC has filed an affidavit-in-opposition and took a stand that they have already deposited the zirat and as they no more require

the land for the purpose of drilling, therefore, way back in the year 2013, they had requested for issuance of de-notification under Section 48 (1) of the

Assam Land Acquisition Act, 1894 by their communication dtd.07.06.2013 and the Additional Deputy Commissioner by its communication dated

08.01.2014 forwarded the draft de-notification issued under Section 48 (1) of the Assam Land Acquisition Act, 1894.

7. Subsequently, on 11.02.2014, the Land Acquisition Officer, Silchar forwarded an estimate of Rs. 8,39,310/- against estimated cost of zirat and

restoration cost of the land in question. Such estimate was prepared by the Land Acquisition Officer, Silchar, the Additional Deputy Commissioner,

Cachar, Silchar and the Deputy Commissioner, Cachar, Silchar.

8. Though the Revenue authority has not filed any affidavit, the learned counsel for the Revenue and Disaster Management Department has produced

a para-wise comments issued by the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department which reflects

that due to non-placement of fund by the Requiring Department, declaration under Section 6(1) could not be approved. As such the preliminary

notification got lapsed after completion of 1 (one) year from the date of publication of Notification. It is the further stand of the respondent authority

that as the Notification under Section 4(1) of the Land Acquisition Act, 1894 lapsed and therefore there was no necessity for issuance of any

notification under Section 48(1) of the Land Acquisition Act, 1894 for withdrawal of the same. It is also their contention that the petitioners had

already got the damage cost. However, the authority is silent regarding amount of compensation and on which date the same was disbursed.

9. From the aforesaid pleadings and submissions of the parties, it is clear that before issuance of preliminary notification under Section 48(1) of the

Land Acquisition Act, 1894, the possession of the land in question was taken over in exercise of power under the Rules formulated under Assam Land

and Revenue Regulation 1886.

10. The fact also remains that there were two assessments made by the learned Collector against the (1) damages and solatium etc and (2) damages

and restoration of cost amounting to Rs. 3,94,264/- (Annexure-VII). The fact also remains that after taking possession of the land, drilling operation

were started, the land were damaged and subsequently ONGC decided not to go with the drilling process and in the process, the property of the

petitioners got damaged.

11. The amount of Rs. 3,94,264/- was calculated on 31.05.2014 consisting of cost of trees, cost of houses, cost of well, cost of tanks etc with an

establishment cost at the rate of 12% and contingencies at the rate of 3%. The other estimate prepared by the Land Acquisition Officer, the

Additional Deputy Commissioner and the Deputy Commissioner includes 30% additional compensation and 12% additional market value and

restoration cost of Rs. 2,76,179/- and also an establishment cost at the rate of 8% and contingencies at the rate of 2% and thus calculated to be Rs.

8,39,310/-. Such calculation was made on 07.01.2014, earlier to calculation dtd.31.05.2014. However, there is no explanation how and why the

estimation made by the aforesaid three officials on 07.01.2014 was modified by the Additional Deputy Commissioner on 30.05.2014.

12. Mr. N.N.B Choudhury, learned Amicus submits that the Hon'ble Apex Court in the case of R. L. Jain Vs- DDA and Others reported in

(2004) 4 SCC 79 held that in a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the

Act, 1894, the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the

landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore entitled to get rent or damages for use and

occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary

notification, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is

entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the

Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded. He

further submits that, even in the event of de-notification, under Section 48(1) of the Act, 1894 the petitioners are entitled for compensate and interest.

13. Mr. N.N.B. Choudhury, learned Amicus further submits that the Hon'ble Apex Court in the case of Siddappa Vasappa Kuri & Vs- LAO

reported in 2002 1 SCC 142 held that the starting point for the purposes of calculating the amount to be awarded Section 23(1-A), the terminal point

for the purpose is either the date of the award or the date of taking possession, whichever is earlier. And additional compensation under Section 23

(1A) can be granted.

14. In view of the uncontroverted fact that the possession was taken over, prior to the issuance of preliminary notice under Section 4(1) of the Land

Acquisition Act, 1894, the petitioners are entitled for rent or damages for use of the property by the ONGC inasmuch as Section 23 (A) of the Act,

1894 makes provision for additional compensation and section 48 (3) makes it clear that compensation on withdrawal of acquisition proceeding need to

be determined as per part-III of the Act, 1894. Section 48(1) of the Act, 1894 provides that withdrawal of acquisition is barred when possession has

already been taken over subject to provision of Section 36 of the Act, 1894, which further provides for power to enter possession and compensate etc.

however, in the peculiar facts of the case no procedure under Section 48 of the Act, 1894 was even initiated.

15. In the peculiar facts of the present case in hand, no award was passed and if this Court goes by the stand of the Revenue department that the

proceeding itself lapsed for non issuance of the notification under Section 6(1) of the Land Acquisition Act, 1894, the starting point for the purpose of

calculating the amount of damage or rent or interest shall be the date of issuance of notification in exercise of power under Rule 189, 190 under

Chapter VIII of the Rules formulated under Assam Land and Revenue Regulation 1886, on 21.07.2010, issued by the office of the Deputy

Commissioner, Cachar, Silchar.

16. In the present case, possession of the land having been taken prior to the publication of the Section 4(1) notification, the award is not available.

The only available terminal is the date of possession. Therefore, in the considered opinion of this Court, based on the principles of law cited by the

learned Amicus, the appellants were entitled to the additional compensation under Section 23(1-A) for the period from 21.07.2010 and the same has

already been calculated by the Deputy Commissioner, the Land Acquisition Officer, and the Additional Deputy Commissioner in their Calculation

dated. 11.02.2014 (Annexure-XII)

17. Therefore, in the considered opinion of this Court, the ends of justice would be met if the respondent authorities are directed to pay the

compensation to the petitioners as calculated by Annexure-XII inasmuch as the learned counsel for the petitioners has also submitted that his clients

are also agreeable to the same. The petitioners are also entitled for interest for the delayed payment.

18. Accordingly, this writ petition is allowed with the following directions:

I. The respondent authorities are directed to pay the compensation to the petitioners as calculated by competent authority (Rs.8,39,310/-) and reflected

at Annexure-XII, after deducting any payment already made to the petitioners for the same purpose.

II. The amount shall bear an interest @5% per annum from the date of taking possession of the land till such payment is made. However, such

interest shall not be calculated on any amount paid earlier and from the date it was paid.

III. The entire payment be made within a period of eight weeks from receipt of a certified copy of this order to be furnished by the petitioners before

the respondent ONGC and Deputy Commissioner, Cachar, Silchar.

IV. The ONGC Shall deposit the amount before the Collector/ Deputy Commissioner, Cachar Silchar, within a period of six weeks from receipt of a

certified copy of this order to be furnished by the petitioners before the respondent ONGC.

V. A copy of this order be furnished to All the learned Counsels representing the parties, including the learned Amicus.

19. While parting with the record, this Court puts on record the able and enlightened assistance rendered by the Learned Amicus, Mr. N.N.B

Choudhury. Though this Court was inclined to direct payment of a fees of Rs. 10,000/- to the learned Amicus for his able assistance, Mr. N. N. B.

Choudhury, learned Amicus Curiae has humbly declined to accept the same.