

(2022) 12 GAU CK 0022

Gauhati High Court

Case No: Writ Petition (Civil) No. 4500 Of 2022

John Millik

APPELLANT

Vs

Union Of India And 6
Ors

RESPONDENT

Date of Decision: Dec. 9, 2022

Acts Referred:

- National Highways Act, 1956 - Section 3A, 3A(1), 3C, 3D, 3H, 3H(3), 3H(4)

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: S Mitra

Final Decision: Disposed Of

Judgement

1. Heard Shri S. Mitra, learned counsel for the petitioner. Also heard Shri CKS Baruah, learned CGC for the respondent no. 1; Shri RK Talukdar,

learned Standing Counsel, NHIDCL for the respondent nos. 2 and 7; Shri J. Handique, learned State Counsel for the respondent no. 3 and Shri J.

Chutia, learned Standing Counsel, KAAC for the respondent nos. 4 to 6.

2. Considering the nature of the dispute and as agreed to by the learned counsel for the parties, the instant writ petition is taken up for disposal at the admission stage.

3. The issue is on a very narrow compass.

4. The facts projected is that the petitioner is the absolute owner of a plot of land measuring 3 bigha in the district of Karbi Anglong, Assam. On

14.12.2021, the Government of India had published a Gazette Notification under Section 3A(1) of the National Highways Act, 1956 for acquiring land

for building, maintenance, management and operation of NH-29 in the district of Karbi Anglong. It is the case of the petitioner that though the plot of land purchased by him is not mentioned in the schedule, the official of the respondents had come to his plot and had also done a survey. The petitioner claims to have filed an objection under Section 3C of the Act on which an order of re-survey and correction of land records in the schedule was made. After the corrections, it was detected that out of total land area of 0.4016 hectare, 0.1459 hectare was the petitioner's land. The Notification under Section 3D of the Act was published in the Gazette on 30.03.2022 for the aforesaid Highway in which the petitioner's plot was again found missing from the schedule. The contention of the petitioner is that if his plot of land is a part of the acquisition proceeding, it should be properly reflected and due compensation should be paid to him.

5. Shri Mitra, learned counsel for the petitioner has submitted that the petitioner has not been treated fairly and the matter of acquiring his land has not been done in a transparent manner. He submits that the petitioner seriously apprehends that he would be deprived of the compensation amount in spite of the fact that his land has been acquired in the aforesaid process. He accordingly prays for necessary intervention by this Court.

6. This Court vide an order dated 05.07.2022 while issuing notice had observed that if the acquisition process is inclusive of the land of the petitioner, the same would be subject to the outcome of the writ petition. However, the Notification under Section 3D of the Act dated 30.03.2022 was refused to be stayed.

7. After service of notice, the contesting respondents have appeared.

8. Shri Chutia, learned Standing Counsel, KAAC submits that the facts have not been projected in a correct manner. He submits that though it is a fact that land has been acquired, the petitioner's right came into being after the initial notice of acquisition was published. The learned Standing Counsel emphatically submits that after the publication in the Gazette wherein land under Dag No. 400 was sought to be acquired the petitioner had purchased a part of the Dag from the original owner which however was recreated as a new Dag and numbered as 363. As a consequence thereof,

all further communications happen to be in the name where reference to the old Dag i.e. 400 which was recorded by the NHIDCL authorities and

was included in the 3A Notification. The learned Standing Counsel however fairly submits that since the plot of land which has been newly marked as

Dag No. 363 is also a part of the acquisition proceedings and was originally a part of Dag No. 400, the remedy of the petitioner would lie in Section

3H of the Act. The learned Standing Counsel specifically drawn the attention of this Court to the provision of Section 3H(3) and 3H(4) and submits

that both the apprehension of the petitioner and his rightful dues can be achieved if recourse to the aforesaid provision of law is taken.

9. Shri RK Talukdar, learned Standing Counsel, NHIDC submits that the requiring authority has acted in accordance with law and the compensation

amount has already been deposited before the appropriate authority and the law provides for filing an application for apportionment in case of any

dispute between the parties who are entitled to for such compensation.

10. Shri CKS Baruah, learned CGC as well as Shri J. Handique, learned State Counsel endorses the submissions made by Shri J. Chutia, learned

Standing Counsel, KAAC as well as Ms. Bora, learned Standing Counsel, NHIDCL and submit that the petitioner may be directed to take appropriate

recourse under Section 3H of the Act of 1956.

11. In his reply, Shri Mitra, learned counsel for the petitioner submits that there being no reference at all in the proceedings of the Dag under his

possession, the apprehension was a genuine one as without a clarification from any authority, he would be deprived from his dues. The learned

counsel however fairly submits that appropriate direction may be given by this Court by giving him opportunity to approach the appropriate forum

under the provisions of Section 3H of the Act.

12. After hearing the learned counsel for the parties and on perusal of the materials on record, it appears that the initial notice under Section 3A

indeed contained only Dag No. 400 and not 363. However after purchase of the land by the petitioner, his land was newly marked as Dag No. 363

which is actually part of the original plot of land under Dag No. 400. It also transpires that the entire amount of compensation for the land acquired

would definitely include the land under Dag No. 363 which was purchased by the petitioner is in the custody of CALA and is yet to be disbursed to the affected parties. Under those circumstances, the rightful dues of the petitioner can be secured if the petitioner takes into recourse the avenue made available by Section 3H(3) and 3H(4) of the Act. For ready reference, the relevant provisions of law are extracted hereinbelow-

â€œ3H. Deposit and payment of amount.-

â€¦

(3) Where several persons claim to be interested in the amount deposited under Sub-Section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

â€¦â€¦

13. Under Section 3H(3), the powers is given to the competent authority to identify the person who would be interested and would be entitled to the compensation and in this regard, the petitioner will have all the scope and an opportunity to show his right and interest on the plot of land which he has purchased from the original owner. The provision of Section 3H(4) would come into operation for the purpose of apportionment of the amount as admittedly in the instant case the plot of land presently owned by the petitioner was originally owned by another person, namely, Shri Dhonsing Timung and the records of the land acquisition only reflects the original Dag from which the Dag of the petitioner has been carved out.

14. In view of the above, the writ petition is closed with a liberty to the petitioner to approach the competent authority under Sections 3H(3) and 3H(4) of the Act which may be done within a period of three weeks from today. The competent authority is however directed not to make any disbursement till the matter is adjudicated on the petition to be filed by the petitioner and the entire exercise be completed expeditiously and preferably within a

period of three months from the date of receipt of the application.

15. It is needless to state that it is not only the petitioner but all other affected parties which are required to be given an opportunity of hearing and to place their respective cases by the Competent Authority.

16. The writ petition accordingly stands disposed of.