
(2023) 08 GAU CK 0031

Gauhati High Court

Case No: Writ Petition (Civil) No. 5922 Of 2021

Deba Kanta Das

APPELLANT

Vs

State Of Assam And 6
Ors

RESPONDENT

Date of Decision: Aug. 9, 2023

Acts Referred:

- Assam Land (Requisition and Acquisition) Act, 1964 - Section 3(1), 6, 9, 11(3), 11(4), 12, 12(1), 12(1)(a), 12(1)(b), 12(2)
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 4(2), 103, 105, 106, 107
- Land Acquisition Act, 1894 - Section 4

Citation: (2023) 08 GAU CK 0031

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: J. Payeng, P. R. Mahanta, S. Sarma

Final Decision: Dismissed

Judgement

1. The petitioner herein is aggrieved by the inaction on the part of the Deputy Commissioner, Kamrup, Amingaon for not referring his request to the

Court for determination of the actual market value of the acquired land as mandated under Section 12 (1) (b) of the Assam Land (Requisition and

Acquisition) Act, 1964.

2. The record further reveals that for construction of a bridge over the river Brahmaputra connecting Panbazar to North Guwahati, a notification dated

29.05.2018 was issued under the provision of Section 3 (1) of the Assam land (Requisition & Acquisition) Act, 1964 for acquisition of different plots of

land as mentioned in the said notification. In terms with the said notification, three plots of land of the petitioner, covered by Dag Nos.984, 985 & 986

of KP Patta Nos.138, 131 & 85 measuring different areas including residential houses, were acquisitioned. Subsequent thereto, separate notices dated

05.02.2019 were issued to the petitioner in LA Case No.17/2018 asking him to hand over the acquired land to the Circle Officer of North Guwahati

Revenue Circle.

3. It is the case of the petitioner that the compensation of Rs.25 lakh per bigha which was awarded to the petitioner was not fixed by taking into

account the market value of the land in question. It is the specific case of the petitioner that the market value of land at that relevant point of time was

Rs.40 lakh per bigha. It is under such circumstances that the petitioner has submitted an application under Section 12 of the Assam land (Requisition

& Acquisition) Act, 1964 seeking a reference to the Court to determine the actual market value of the acquired land. It is the further case of the

petitioner that although the said application was filed and received as far back on 01.10.2019, but four years have already passed by and the

respondent No.3 had not taken any action and the said application continues to remain pending.

4. This Court finds it relevant to take note of Section 12 of the Assam land (Requisition & Acquisition) Act, 1964. Section 12, being relevant, is

reproduced herein under:-

“12. Reference to Court.-(1) The Collector shall in every case-

(a) where any person aggrieved by an award made under sub-section (3) of Section 11 makes an application requiring the matter to be referred to the

Court ; or

(b) where there is any disagreement with regard to the compensation payable under Sub-section (4) of Section 11 on the application of the person

entitled to compensation requiring the matter to be referred to Court, refer the matter to the decision of the Court .

(2) Subject to the provisions of this Act, the Act provisions of the Land Acquisition Act, 1894, shall 1894 (Act I of 1894), shall mutatis mutandis apply

in respect of any reference made to the Court under sub-section (1).
5.

From a perusal of Clause (a) of Section 12 (1) of the Act of 1964 shows that a statutory duty is cast upon the Collector in every case where any

person aggrieved by an award made under Sub-section (3) of Section 11 of the Act of 1964 and makes an application requiring the matter to be

referred to the Court. In similar terms, as per Clause (b) of Sub-Section (1) of Section 12 of the Act of 1964, when there is any disagreement as

regards the compensation under Section 11 (4) of the Act of 1964, the Collector is duty bound under the law to refer the dispute for a decision of the

Court. This Court further finds it relevant to observe that as per Sub-Section (2) of Section 12 of the Act of 1964, the provisions of Land Acquisition

Act, 1894 was made applicable, subject to the provisions of the Act of 1964. In that view of the matter, the reference so required to be made in terms

with Section 12 (1) of the Act of 1964 has to be read along with Part III of the Land Acquisition Act, 1894.

6. In that view of the matter as a statutory duty is cast upon the Collector, i.e. the respondent No.3 was mandated under law to make the reference to

the Court in terms with the application dated 01.10.2019. Having not done so, the petitioner has been able to make out a case for issuance of

mandamus.

7. Under such circumstances, this Court directs the respondent No.3 to forthwith make a reference as regards the determination of compensation to

the Court. This Court directs Ms. S. Sarma, the learned counsel for the respondent No.3 to communicate the present directions to the respondent

No.3.

8. Before parting with the record, this Court finds it relevant to note that it is noticed in various cases that when applications are filed under the Act of

1964 or the Land Acquisition Act, 1894 as well under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short, "Act of 2013"), there is a tendency on the part of the Collector or the Office entrusted with the Acquisition

proceedings to delay or not to make the Reference. It is further relevant herein to note that the Government of Assam had also issued Notification

that for acquisition proceedings made under the Act of 1964, the compensation would be payable as per the Act of 2013. The said Notification is in

terms with Sections 103, 105, 106 & 107 read with the First Schedule to the Act of 2013.

9. This Court further finds it relevant to note that once possession of land is taken over or stands vested by operation of law, the Acquiring Authority

has to pay interest on delayed payment of compensation after the Award is passed. The interest so payable would be 9% for the first year and 15%

after the expiry of one year. It is also seen that delay in passing the Award would also result in payment of interest @ 12% per annum from the date

of the Notification under Section 4 of the Land Acquisition Act, 1894 or Section 4 (2) of the Act of 2013 or the Notification under Section 6 or 9 of the

Act of 1964.

10. Therefore, the delay in passing the Award after the initial Notification as referred to above, would effect prejudicially to the Public Exchequer. In

the similar vein, if after the Award, a request so made seeking Reference to Court/Tribunal for determination of the compensation and the Collector

who is otherwise duty bound to act upon it, sits upon the said Application for years as has been done in the instant case and upon Reference made

eventually, the amount of compensation is increased, the increased compensation shall also incur interest @ 9% for the first year and then 15% from

the expiry of one year. This interest on the enhanced compensation has to be paid from the date of taking over of the possession. Therefore, the delay

in making a Reference unnecessarily imposes an additional burden upon the Public Exchequer or to the Requiring Authority for which the Collector or

the Land Acquisition Officer who was bound to refer as per the mandate of law, is solely responsible.

11. In that view of the matter, this Court taking into account the above provisions of law as well as in public interest, directs the Commissioner and

Secretary to the Government of Assam, Revenue and Disaster Management Department to issue necessary Circulars/Instructions to the Collector to

take prompt actions when applications are filed seeking Reference to the Court as well as also notifying therein that what actions shall be taken if the

Public Exchequer is effected on account of the inaction of the officials. A copy of this judgment be served upon Mrs. P. R. Mahanta, the learned

counsel appearing for the Revenue Department for bringing to the attention of the highest Authority of the Revenue Department for necessary

compliance.

12. This Court also takes note of that the record of Title Suit No.83/2018 was called for. Taking into account the order so passed, the Registry is

directed forthwith to return the record of Title Suit No.83/2018 to the Court from where the same has been requisitioned.