
(2007) 03 GAU CK 0033

Gauhati High Court (Shillong Bench)

Case No: None

Gopal Koch

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision: March 26, 2007

Acts Referred:

- Land Acquisition Act, 1894 - Section 10, 23, 9

Citation: (2007) 3 GLT 392

Hon'ble Judges: Tinlianthang Vaiphei, J

Bench: Single Bench

Judgement

T. Vaiphei, J.

Heard Mr. N. Anix Singh, the learned Counsel for the petitioner and Mr. B. Bhattacharjee, the learned Counsel for the State-respondents.

2. With the consent of both the counsel appearing for the rival parties, this writ petition is being heard and disposed of at the Motion stage.

3. The case of the petitioner is that, he is representing the Khanapara Nava Yuvak Durga Puja Committee situated at Khanapara under Raid Marwet Syiemship area and as per customary law, the Syiem and its local Durbar is the custodian of "Elaka" and there are two types of land in the Syiemship area i.e. Ri-Kynti (private land) and Ri-Raid land (People land) and the Government has no power over the said land and the Syiem of the area and its Durbar looks after the said land and they can issue certificates regarding possession of the land as per customary law of Meghalaya which was not interfered by the British at that time also.

4. The petitioner's Durga Puja Committee has been possessing land and buildings permanently since 1972 and the local people have also been performing Durga and other puja festivals every year till date. The Syiem and its local Durbar permitted them to perform puja without any objection from any corner.

5. The petitioner, after coming to know about the acquisition of land by the respondents-authority and its declaration dated 7.9.06 approached the authority to include the name of their Puja Committee in Acquisition List as the respondents have already included the names of their Eastern and Western side neighbours in Acquisition List without including the names of Puja Committee. But on 5.12.06, the respondent No. 2 demolished 5 numbers of shops of the petitioner's Puja Committee without serving any notice whatsoever manner and without inclusion of their names in Acquisition List and they also directed the petitioner's Committee to remove all the structures from the said land. Thereafter, also the petitioner's Committee submitted representation to include their names in Acquisition List and pay compensation but the respondent No. 2 without hearing the petitioner, now they are going to remove all buildings and structures from the land of the petitioner which is illegal and arbitrary and as such the petitioner has approached this Hon'ble Court for a direction to the respondents-authority not to interfere with his possession of the Khanapara Nava Yuvak Puja Committee, Khanapara till inclusion of its name in Acquisition List and till making compensation for their land and building as per Land Acquisition Act.

6. I have gone through the Notification dated 7.9.2006, which is at Annexure-3 to the writ petition declaring that some 1,12,084,51 sq. metre are required for construction of 4-laning of NH-37.1 have also perused the representation dated 11.12.2006 made by the petitioner to the respondent No. 2 to include their names among the land proposed for acquisition. From Annexure-6 to the writ petition, it is seen that the respondent No. 2 required the petitioner to produce registered land document to support and identify the plot of land claimed by them so that joint inspection could held by his Office. From the aforesaid documents, one thing is clear, that is, the aforesaid land of the petitioner has been included for widening of National Highway to 4-lane, but the name of the petitioner has not been included as the person interested, who can make a statement of claim u/s 9 of the Land Acquisition Act, 1894. The petitioner claimed that the respondents have already completed demolition of 5 shops under its possession while the remaining 11 shops are being demolished by the respondents. The learned Counsel for the petitioner submits that the proposed acquisition of his land for the purpose of widening the National Highway is not objected to by the petitioner but his grievance is with respect to the non-inclusion of his name in the proposed acquisition. Whether the petitioner has been in possession of the aforesaid land as the owner or not, there can be no dispute that he is an interested person and is, therefore, entitled to be given a notice u/s 9 of the Land Acquisition Act, 1894. The Collector, while making acquisition proceeding, is to make enquiry on the true area of the land, the interest of the petitioner on the land, the compensation payable to him if he is found to be entitled to compensation. If the land in the name of the petitioner is not included in the proposed acquisition, his right to make statement of claim under Sections 9 and 10 of the Act will certainly be defeated. There is also another aspect of the matter,

which cannot be lost sight of. Since the demolition of the structures under the possession of the petitioner goes ahead without first ascertaining the value of such structures/building, it will not be possible for me respondents to determine the damage being caused to such structures/building etc. should the petitioner be eventually found to be entitled to damages u/s 23 of the Act. Therefore, it is imperative that the respondents make necessary survey of the buildings/structures standing on the aforesaid land.

7. Under the circumstances, this writ petition is disposed of with the following directions--

1. The respondents, particularly the respondent No. 2 shall include the name of the petitioner in the list of land to be acquired by him for construction of 4-lane on NH-37 and to that end shall also issue a notice u/s 9 of the Act upon the petitioner and mere-after, proceed with the land acquisition proceeding in accordance with law.

2. The respondent No. 2 shall make survey of the structures/building standing on the aforesaid land and also make the assessment report on that basis for determining the market value thereof as indicated earlier within fifteen (15) days from the date of receipt of this order.

3. Till such survey is completed, the respondent No. 2 shall not demolish the structures/houses standing on land under the possession of the petitioner.

8. With the above observation and directions, this writ petition is disposed of.