



GAHC010235112013

Page No.# 1/15



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6414/2013

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA and 2 ORS.
G-5 and 6, SECTOR -10, DWARKA, NEW DELHI-110075

2: THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
REGIONAL OFFICE- HENGRABARI
BORBORI BORTILLA
VIP ROAD
NEAR PRATIKSHA HOSPITAL
GHY-36

3: THE PROJECT DIRECTOR
NHAI
PIU- SILCHAR
H/NO.328
1ST FLOOR
COLLEGE ROAD
AMBICA PATTY
SILCHAR-78800

VERSUS

THE DIMA HASAO AUTONOMOUS COUNCIL and 8 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY N, DIMA HASAO
AUTONOMOUS COUNCIL, HAFLONG

2: THE SECRETARY
REVENUE
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM

3: THE ADDL. DY. COMMISSIONER
DIMA HASAO DISTRICT
HAFLONG



ASSAM

4:THE SUB DIVISIONAL OFFICER CIVIL
MAIBANG
DIMA HASAO DISTRICT
HAFLONG, ASSAM

5:THE SETTLEMENT OFFICER
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG, ASSAM
AN ASSESSOR OF L.A.and WORKS FOR THE STRETCHED FROM NUTON
LAMPU TO BORO WAPU

6:THE DIVISIONAL COMMISSIONER
HILLS and BARAK VALLEY DIVISION
DISPUR, GHY-6

7:JUNIAL JIDUNG
G.B.
S/O LT. PURNACHAN JIDUNG
VILL. KHAILIMDISA
HAFLONG
P.O. and P.S. MAIBONG
DIST- DIMA HASAO
ASSAM

8:SORUN HOJAI
G.B.
S/O LT. BISHU HOJAI
VILL. DIDAODIP
HAFLONG
P.O. and P.S. MAIBONG
DIST- DIMA HASAO
ASSAM

9:DEBEN PHONGIO
G.B.
S/O LT. THAIREKDAU PHONGLO
VILL. LONGKHOR
HAFLONG
DIST- DIMA HASAO
ASSA

Advocate for the Petitioner : C.G.C.

Advocate for the Respondent : MR.K GOSWAMI



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 23.05.2023

Heard Mr. C. Baruah, the learned counsel appearing on behalf of the petitioners. Mr. D.C. Kath Hazarika, the learned counsel appears on behalf of the respondent Nos. 7, 8 & 9, Mr. A.Khanikar, the learned counsel appears on behalf of the respondent Nos. 1,2 & 5 and Mr. N. Goswami, the learned counsel appears on behalf of the respondent Nos. 3, 4 and 6.

2. The instant writ petition has been filed challenging the order dated 4/10/2013 passed by the Additional Deputy Commissioner, Dima Hasao, District-Haflong in Misc. Case No.20/2012.

3. The facts involved in the instant case is that on 28th of January, 2005, the Central Government vide a notification under Section 3(a) of the National Highway Act, 1956(for short 'the Act of 1956') authorised the Secretary, Revenue, N.C. Hills Autonomous Council, Haflong, Assam as a competent authority to perform the functions of such authority under the said Act of 1956 with effect from the date of publication of the said notification in the official Gazette in respect of a stretch of land from Km. 66.00 to km. 244.00 (Lumding-Maibong-Harangajo Section) for building, maintenance, management and



operation of National Highway No. 54(including construction of by-pass and realignment, if any) in N.C. Hills. Pursuant to that, the record reveals that the acquisitions were made in connection with the said project of the petitioner under the Act of 1956.

4. It appears further that the respondent Nos. 7, 8 and 9 who are the Gaoburahs of the respective villages filed an application before the Deputy Commissioner, Haflong under Section 3 G (7) (c) of the Act of 1956 for determination of additional compensation for the land situated in Khailimdisa, Didaodip and Longkhor, as required for construction of National Highways and any other benefit entitled under the said law. The said case was registered as Misc. Case No. 20/2012.

5. A perusal of the said application enclosed as Annexure-6 to the writ petition reveals that the National Highway Authority of India i.e. the writ petitioner had implemented a project for constructing the Highway which runs from Maibong town in the north to Mahur town in the south through villages of Khailimdisa, Didaodip and Longkhor. It was the case of the respondent Nos. 7, 8 and 9 herein, as applicants in the said proceedings, that the Highway was constructed by cutting the top hill ranges just by the side of the Highway are the slopes of the hills. On the eastern slopes of the Highway, the village -



Khailimdisa and Didaodip and on the western slopes of the Highway, the village Longkhor are situated. It is the further case of the applicants/respondent Nos. 7, 8 & 9 that a promise was made to the villagers that only 60 meters land would be affected which meant 30 meters from either of the existing PWD Road. However, while making the construction, the National Highway Authority continued the earth-cutting on the non-acquired land i.e. beyond the marks of the acquired land and due to unplanned construction, it caused heavy damage to the lands belonging to the village of the respondent Nos. 7, 8 & 9. It was further mentioned that the respondent Nos. 7, 8 & 9 thereafter filed objections dated 4/11/2009 and 18/6/2010 against such construction of the National Highway Authority of India before the Deputy Commissioner and the Respondent No. 4 respectively with a prayer for making physical enquiry so that the affected villagers would receive their compensation without delay with proper valuation under the provisions of law in force i.e. under Section 3G (7) (c) of the Act of 1956. It further reveals that a notice under Section 80 of the Code of Civil Procedure, 1908 was also issued to respondents herein. It has been specifically mentioned in paragraph No. 7 of the said application that compensation was paid to the affected villagers only for the acquired land in terms with the notification dated 20/3/2007 without following the established procedure of law. It is under such circumstances, the prayer so made in the said



application was for determination of additional compensation for additional damage caused to the land of the petitioners' village in terms with Section 3G (7) (c) of the Act of 1956 as well as additional compensation with interest as prescribed under the provisions of the Act of 1956.

6. To the said proceedings, it reveals that the petitioners herein have filed their written statement. In the written statement, it was mentioned that due compensation had been paid to the affected villagers as per the assessment made by the Revenue Department of the Dima Hasao Autonomous Council. It was further mentioned that the writ petitioners are not responsible for the deposition of cutting debris by the construction company and it is the sole responsibility of the contractors as per the contract provisions. However, from a perusal of the written statement enclosed as Annexure-7 to the writ petition, there was no objection taken insofar as jurisdiction was concerned.

7. It appears from the records that evidence were tendered and the learned Additional Deputy Commissioner, Dima Hasao District vide an order dated 4/10/2013 disposed of the said application i.e. Misc. Case No. 20/2012 by directing the petitioners herein to make payment of additional compensation to the tune of 6,88,31,700/- to the respondent Nos. 7, 8 & 9 and other affected persons of the villages in question. It is against the said order the instant writ



petition has been filed.

8. It is relevant to take note of that on 11/11/2013, this Court issued notice making it returnable by six weeks and the judgment dated 4/10/2013 passed by the Additional Deputy Commissioner, Dima Hasao District in Misc. Case No. 20/2012 was stayed.

9. It further appears from the records that the respondent No. 3 had filed an affidavit-in-opposition on 29th of January, 2014. In the said affidavit-in-opposition, it was the categorical statement being made by the Additional Deputy Commissioner, Dima Hasao that the writ petitioner had maliciously caused extensive damage to the non-acquired land and properties of the villages under the respondent Nos. 7, 8 and 9 during the course of construction of 4 laning National Highway Section of NH 54 (E) under the contract package No. EW II (AS-23) across the recognized Revenue villages of the said respondents by using their men and machines without proper care and attention. It was further mentioned that the writ petitioners had constructed the 4 laning National Highway over the non-acquired land by way of encroachment in unplanned manner and dumped the unwanted excess earth cutting gravel soil inside the boundary of the village common for which extensive damage has been caused. It was further mentioned that the learned Court of the Deputy



Commissioner, Dima Hasao, Haflong while exercising the jurisdiction had acted as a Civil Judge. It was further stated that in the said proceedings the petitioners herein never raised the issue of jurisdiction at any point of time. It was further mentioned that the Additional Secretary and Revenue Officer(W), Dima Hasao Autonomous Council, Haflong who was the competent authority to assess damage and to determine compensation has submitted the assessment and determination of compensation report on 31/7/2013 and 12/9/2013 respectively after joint verification of the affected land of the said villages before the court of law without the objection of the writ petitioners and their authorised contractors. It was further mentioned that it is the Additional Secretary and the Revenue Officer (W) of Dima Hasao Autonomous Council, Haflong who was the competent authority to do so and not the Secretary in Charge, Revenue. It was further stated in the affidavit that there was no illegality in the order impugned in the instant proceedings.

10. The respondent Nos. 7, 8 and 9 have also filed an affidavit in opposition on 22nd of July, 2015. In the said affidavit in opposition it is the specific stand taken that the writ petitioners have constructed the 4 lane over the non-acquired land by way of encroachment in the unplanned manner and dumped the unwanted excess earth cutting gravel soil inside the boundary of the village



common land for which extensive damage have been caused. The invoking of the jurisdiction of this Court under Article 226 of the Constitution have also been challenged on the ground that there is an effective alternative remedy by way of an appeal.

11. To the said affidavit-in-opposition so filed by the respondent No. 3 and respondent Nos. 7, 8 and 9, the petitioners have also filed replies.

12. It is however, interesting to note that an affidavit-in-opposition has been filed by the respondent No. 2 on 24/1/2023. This affidavit-in-opposition is of vital importance taking into account that the said affidavit was filed by the Secretary, Revenue, NC Hills Autonomous Council, who was appointed as the competent authority. In paragraph No. 3 of the said affidavit-in-opposition it has been mentioned that the site mentioned by the petitioners seems to be beyond the Right of Way and the Land and Revenue Department have not acquired the said site nor the NH authority informed the Land and Revenue Department, Dima Hasao, Haflong for such requirement of land for dumping purpose and taking action as required under Section 3G and 3 H of the Act of 1956 did not arise. It was further mentioned that the Standing counsel of the NC Hills was duly intimated by a necessary communication dated 31/12/2022. In the backdrop of the above pleadings, let this Court take into



consideration the respective submission of the learned counsels for the parties.

13. Mr. C. Baruah, the learned counsel appearing on behalf of the petitioners submitted that a perusal of Section 3G of the Act of 1956 shows that the determination of the amount payable as compensation as well as additional compensation can only be done by the competent authority or the arbitrator as the case may be. The learned counsel submitted that a perusal of Section 3 (a) of the Act of 1956 duly defines the term 'competent authority' as the person or authority authorised by the Central Government by a notification in the Official Gazette to perform the functions of the competent authority for such area as may be specified in the notification. In that regard, the learned counsel has drawn the attention of this Court to the notification dated 28/1/2005 whereby the Secretary, Revenue NC Hills Autonomous Council, Haflong was appointed as the competent authority. The learned counsel further submitted that in terms with Section 3 G (5) of the Act of 1956, if the amount so determined by the competent authority was not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the Arbitrator to be appointed by the Central Government. The learned counsel therefore submitted that the Additional Deputy Commissioner, who passed the impugned order was never appointed as the Arbitrator. In fact, vide a specific order passed by the Govt. of India, Ministry of Road Transport and Highway dated



31/12/2001, the Central Government had appointed the Divisional Commissioner, Hills and Barak Valley Division, Dispur as the Arbitrator. The learned counsel for the petitioner further submitted that in the meantime vide a Notification dated 29/10/2015, the Hills & Barak Valley Division was renamed as Barak Valley Division with the Districts of Cachar, Karimganj and Hailakandi. Vide the same Notification, the two Hill Districts of Karbi Anglong and Dima Hasao were brought within the fold of the Central Assam Division with Head Quarters at Nagaon. It was further mentioned that one Mr. Manish Thakur has been given the additional Charge of the Divisional Commissioner, Central Assam Division. It is therefore, the case of the petitioners that the impugned order so passed by the Additional Deputy Commissioner is an order passed without jurisdiction under the Act of 1956 and as such the present writ petition has been filed.

14. On the other hand, Mr. D.C. Kath Hazarika, the learned counsel appearing on behalf of the respondent Nos. 7, 8 & 9 submitted that initially the writ petitioners had acquired certain portion of the land but subsequently when various other lands which was the subject matter of the proceedings in the application so filed being Misc. Case No. 20/2012, the petitioners as well as the respondent authorities had taken steps for acquisition of the land. He however submits that the application being Misc. Case No. 20/2012 so filed was for compensation on account of the damage so caused to the villages of the



respondent Nos. 7, 8 and 9 on account of construction as well as cutting of the hills which had damaged the land as well as the property belonging to the villagers of the villages of the respondent Nos. 7, 8 and 9. The learned counsel further submitted that during the pendency of the proceedings before the Additional Deputy Commissioner and prior to passing of the impugned order, the land was acquired. In that regard, the counsel referred to Annexure B 11 of the Affidavit-in-Opposition filed by the respondent Nos. 7, 8 & 9.

15. Mr. A. Khanikar, the learned counsel appearing on behalf of the Dima Hasao District Council submitted that the land in question which was the subject matter of the proceedings in Misc. Case No. 20/2012 was not acquired.

16. Mr. N. Goswami, the learned counsel appearing on behalf of the Deputy Commissioner, Dima Hasao supporting the impugned judgment and order submitted that the same order was passed not in exercise of the powers under the Act of 1956 but the order so passed as a Civil Court and as such the Additional Deputy Commissioner had the jurisdiction to pass the impugned order.

17. Upon hearing the learned counsels for the parties and on perusal of the materials on record, it transpires that if there is a damage sustained by a person interested at the time of taking possession of the land, by reason of the

acquisition, injuriously affecting his other immovable property in any manner or his earnings, it is the competent authority or the arbitrator who can decide in terms with Section 3G (7) (c) of the Act of 1956. In the instant case, the damage which have been caused as alleged to the villages of the respondent Nos. 7, 8 and 9 on account of the acquisition or on account of the work carried out by the National Highway Authority of India through its contractor, in the opinion of this Court, will come within the ambit of Section 3G (7) (c) of the Act of 1956. It is also apparent from a perusal of the Application being registered and numbered as Misc. Case No.20/2012, the jurisdiction invoked is under the Act of 1956. Accordingly, this Court taking into account the mandate of the Act of 1956 which only permits such determination to be done either by the competent authority or by the arbitrator so appointed in terms with Section 3G (5), the passing of the impugned order by the Additional Deputy Commissioner, Dima Hasao district in the opinion of this Court is outside the jurisdiction conferred upon him by law.

18. It is no longer res integra when an authority/Court does not have the jurisdiction over the subject matter, the order/decreed if any passed is a nullity in the eyes of law which can be challenged in any collateral proceedings. The submission therefore of the learned counsel for the Respondent Nos. 7, 8 & 9 do not appeal to this Court that there is an alternative efficacious remedy in the



form of an Appeal before this Court. Further the writ petition have been pending before this Court for a decade and it would not be reasonable to relegate the writ petitioner to the usual remedy of appeal at this stage when apparently the impugned order passed by the Additional Deputy Commissioner is on the face of it is outside the jurisdiction of the said authority.

19. Accordingly, as the impugned order was passed by the additional Deputy Commissioner, without any authority or competence to do so, the impugned order dated 4/10/2013 passed in Misc. Case No. 20/2012 stands sets aside and quashed.

20. Taking into account that there is a dispute which requires a determination, the arbitrator so appointed by the Central Government in terms with its order dated 31/12/2001 who now as submitted by the petitioner is the Divisional Commissioner, Central Assam Division, this Court therefore refers the dispute to the said Divisional Commissioner, Central Assam Division to determine the said dispute as regards the entitlement of the respondent Nos. 7, 8 and 9 to any additional compensation on account of their land as well as the land of the villagers being affected, due to the acquisition made by the National Highway Authority of India in terms with Section 3G (7) (c) of the Act of 1956. As the reference has been made to the Divisional Commissioner, Central Assam



Division, the said Authority shall determine the dispute in terms with the provisions of the Arbitration and Conciliation Act, 1996 as mandated under Section 3G (6) of the Act of 1996.

21. The records which have been called for shall be sent back by the Registry to the Revenue Department of the Dima Hasao Autonomous Council who shall place the records before the Arbitrator i.e. the Divisional Commissioner, Central Assam Division, who has its office at Assam Secretariat, D-Block, Ground Floor, Guwahati-781006 as expeditiously as possible and not later than 15 days from the date of receipt of the records from the Registry of the Court.

22. This Court further directs the Divisional Commissioner, Central Assam Division to take appropriate steps in terms of the Arbitration & Conciliation Act, 1996 and taking into account that it is an old dispute, the adjudication be completed in terms with the mandate of Section 29A of the said Act of 1996. The petitioner and the respondents herein are given the liberty to file additional pleadings and the same be filed within the time granted by the Arbitrator.

23. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant