



GAHC010025462015

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

Case No. : WP(C)/6979/2015

SHARDA DEVI DAMANI @ SHARDA DEVI MAHESWARI
W/O LT. OM PRAKASH DAMANI R/O BLOCK-A, NIRMAL SAGAR
APARTMENT, OLD POST OFFICE LANE, A.K. AZAD ROAD, REHABARI, P.S.
PALTAN BAZAR, GUWAHATI-8, KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER and SECRETARY

REVENUE DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
KAMRUP METRO DISTRICT
GUWAHATI-1
ASSAM.

4:THE SUB-DIVISIONAL OFFICER S
I/C LAND ACQUISITION OFFICER
KAMRUP METROPOLITAN DISTRICT
GUWAHATI-1
ASSAM.

5:THE ALLAHABAD BANK
PANBAZAR BRNCH



C.K. ROAD
PANBAZAR
GUWAHATI-1
KAMURP M
ASSAM.

6:THE GENERAL MANAGER

INDIAN OIL COPORATION LIMITED IOCL
NOONMATI
GUWAHATI
KAMRUP M
ASSAM

Advocate for the Petitioner : MR.G N SAHEWALLA

Advocate for the Respondent : MR.K K BHATRAR-5

Linked Case : WP(C)/5956/2016

DEEPAK DAMANI and ANR.
S/O LT. OMPRAKASH DMANI
R/O NAVUDIT PHARMA SERVIES
A.K. AZD AROD
BYE LANE 2
NEAR MEGHALAYA HOUSE
REHABARI
GUWAHATI - 781008.

2: MANIK LAL DAMANI
S/O LT. PRABHU DAYAL DAMANI
R/O DWWDA COMPLEX
501
NEAR GUWAHATI GAUSALA
CHATRIBARI
GUWAHATI - 781008.
VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE CHIEF SECRETARY
GOVT. OF ASSAM
DISPUR



GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
REVENUE DEPARTMENT GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

KAMRUP METROPOLITAN DISTRICT
GUWAHATI-1.

4:THE SUB-DIVISIONAL OFFICER
S I/C LAND ACQUISITION OFFICER
KAMRUP METROPOLITAN DISTRICT
GUWAHATI-1.

5:THE CIRCLE OFFICER

BELTOLA
GUWAHATI.

6:THE INDIAN OIL CORPORATION LIMITED

HAVING ITS REGISTERED OFFICE AT INDIAN OIL BHAVAN
G-9

ALI YAVAR JUNG MARG
BANDRA EAST
MUMBAI - 400051

MAHARASHTRA AND IS REPRESENTED BY ITS CHAIRMAN.

7:THE GENERAL MANAGER

INDIAN OIL CORPORATION LIMITED IOCL

NOONMATI
GUWAHATI
KAMRUP M

ASSAM.

8:SHARDA DEVI DAMANI
W/O LT. OMPRAKASH DAMANI

R/O BLOCK-A
NIRMAL SAGAR APARTMENT
OLD POST OFFICE LANE
A.K. AZAD ROAD
REHAARI
P.S. PALTAN BAZAR
GUWAHATI- 781008.

Advocate for : MS.A AGARWAL



Advocate for : MR.P DEKA R-8 appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : **24.08.2022**
Date of Judgment : **13.09.2022**

JUDGMENT & ORDER

Both the writ petitions being connected with the same LA Case No. 7/2011 and are pending since long are taken up for final disposal at the admission stage itself.

2. The first writ petition being WP(C)/6979/2015 has been instituted questioning a land acquisition proceeding.
3. The second writ petition being WP(C)/5956/2016 has been filed by two petitioners having adjacent land at Betkuchi under Beltola Mauza in the district of Kamrup (M). Their lands are contiguous to the land owned by the petitioner in WP(C)/6979/2015, who is also the respondent no. 8 in this writ petition and mother of the petitioner no. 1. At the time of purchase of the said plot of land, the land belonging to the respondent no. 8 was used for ingress or egress. However, after issuance of the notice dated 09.10.2015 on the Assam Tribune from which the petitioner had come to know regarding acquisition of the land of the respondent no. 8, the present writ petition has been filed as their right to ingress or egress would be adversely affected by such acquisition.
4. The facts of the cases may be put in a nutshell as follows.
5. The petitioner in WP(C)/6979/2015 claims to be the owner of a plot of land measuring 10-11 bighas (approx.) covered by Dag No. 406, 407, 408 and 413 of KP



Patta No. 263 situated at Betkuchi village under Beltola Mauza in the district of Kamrup (M). The petitioner claims that after purchase of the said plot of land, the same was developed by investing huge amount by taking money on loan from Bank with the said property as collateral security. In the year 2013, the aforesaid land was acquired under the provision of the Land Acquisition Act, 1894 for the purpose of construction of Petroleum Storage Terminal of the IOC and the acquisition is required for the safety and security of the entire area as the product in question is hazardous. However, it is the case of the petitioner that no effective steps were taken for payment of any compensation and the authorities are contemplating to determine the compensation in terms of the Land Acquisition Act, 1894 whereas according to the petitioner, the compensation should be under the Land Acquisition, Rehabilitation and Resettlement Act, 2013. As indicated above, the two petitioners in the second petition have land contiguous to the land of the petitioner in the first case and have their ingress and egress to their land through the plot of the subject land and therefore, they claim to be adversely affected by the aforesaid acquisition proceedings.

6. I have heard Shri GN Sahewalla, learned Senior Counsel assisted by Shri B. Sarma, learned counsel for the petitioners whereas the State is represented by Shri D. Nath, learned Senior Government Advocate, Assam and the IOCL is represented by Shri P. Bhardwaj, learned Standing Counsel.

7. Shri Sahewalla, learned Senior Counsel for the petitioners has submitted that pertaining to the first case, objections were filed before the competent authority on 04.04.2013 and 05.04.2013 not to acquire the land in question. A representation was also filed on 05.10.2015. The learned Senior Counsel submits that on 09.10.2015, the petitioner came to know from a newspaper report directing the petitioner to be present at the property. Under those circumstances, the petitioner had earlier approached this Court by filing WP(C)/6415/2015 with a prayer to dispose of the representation dated 05.10.2015 and also against the notice dated 09.10.2015. In

paragraph 4 of the petition, it has however been stated that no notice was issued in the said writ petition as the representation dated 05.10.2015 was disposed of by a letter dated 28.10.2015, accordingly the writ petition was withdrawn. The learned Senior Counsel has submitted that there is violation of Article 300A of the Constitution of India and therefore a direction is required to be issued for applying the provisions of the Right to Fair Compensation Act, 2013. In so far as the second writ petition is concerned, the learned Senior Counsel submits that the relief claimed would be dependent upon the outcome of the first writ petition as the plot of land which is the subject matter of acquisition is claimed to be the only way of ingress and egress.

8. The learned Senior Counsel in the course of his argument had also referred to Section 49 of the Act of 1894 which provides for offering by the owner any part of land which is adjacent to the plot of land for acquisition. However, the said submission is not part of the pleadings.

9. In support of his submission, the learned Senior Counsel for the petitioners has placed reliance upon the following case laws.

i. 1963 STPL 1313 Madras (decided on 05.07.1963) (M. Ratanchand Chordia and Ors. Vs. Kasim Khaleeli);

ii. (1975) 2 SCC 256 (M/s. Harsook Das Bal Kishan Das Vs. The First Land Acquisition Collector and Ors.);

iii. 2004 STPL 12853 [WP(C)/17934/2004 decided on 19.08.2004] (Vijayan Vs. State of Kerala);

iv. Second Appeal No. 90 of 1988 decided on 21.04.2016 (Thakarda Somaji Vaghaji & 11 Vs. Union of India.).

10. In the case of ***Kasim Khaleeli*** (supra), the Hon'ble Madras High Court has laid down the following in paragraph 21, which reads as follows:

"21. The holder of an easement right can file objections to the notification under Section 4 of the Act, Section 9 of the Land Acquisition Act which provides for issue of notice to person interested would of course govern also the holder of an encumbrance. If a person has a right of way over the property acquired under the Land Acquisition Act to go to his property which is not acquired and if there is no other access to his property, the acquiring authority would certainly take into account that fact before acquiring the servient tenement and safeguard the interest of the objector, viz., the owner of the dominant tenement. It stands to reason to assume that in such cases either the acquisition will be dropped or an alternative right of way would be provided for, for the objector. But there is no such provision for objection in the Displaced Persons (Compensation and Rehabilitation) Act of 1954, and, if the construction contended for by the appellants were to be accepted he would practically be remediless. We are quite unwilling to hold that the word "encumbrance" in the Displaced Persons (Compensation and Rehabilitation) Act should include a right of easement following the decisions rendered under the Land Acquisition Act."

11. The case of **Harsook Das** (supra) has been cited to bring home the provision of Section 49 of the Land Acquisition Act, 1894 and its applicability. The Hon'ble Supreme Court has laid down the meaning of the said Section in the following manner-

"9. Section 49 (2) of the Act states that where on account of the severing of the land to be acquired from his other land, the person interested prefers a claim under the third clause under Section 23 (1) of the Act and the Government is of opinion that the claim is unreasonable or excessive, the Collector may at any time before the award is made, order the acquisition of the land."

12. In the case of **Vijayan** (supra), the Hon'ble Kerala High Court while considering the facts of the case wherein there was a requirement of a bus-bay, the following was



laid down-

"8. The counsel further submits that the property had been acquired for a bus bay, Buses will be parked there for facilitating boarding and for passengers to get down. There is possibility of even putting up a bus shelter, in due course. A pathway, or an entry to the property, as now claimed therefore is a proposition which does not go hand in hand with the purpose of acquisition. The KDA has all the rights to develop the acquired portion at its discretion, and also for barring entry or thoroughfare by whatever means it decides.

9. The proposition mooted as above appears to be made unmindful of the arbitrariness which it brings along. If we accept the argument, the position would not have been different from a case if the petitioners had a residential house there. It should be idle to contend that merely because of the acquisition and shifting of boundaries, the petitioners will have no more right to reside in the premises or can have no access to public road. Acquisition proceedings cannot nullify the rights of movement. This is essentially different from the encumbrance spoken to by Section 16 of the Land Acquisition Act. Easement of access and easement of necessity is not to be mixed up with principles relating to encumbrances. If the KDA was to construct a compound wall from one end of the property to the other in the portion taken possession of, it would have been objectionable. Likewise, digging of trenches, so as to suffocate the property owner, also could not have received any stamp of approval, if it affected their right for access. The authorities cannot take a decision in their absolute discretion that they were entitled to bar access even. By the act of acquisition, respondents have not been able to secure any better or greater rights, than those they had earlier. If on the road margin, a blockade could not have been placed earlier, an acquisition coupled with alteration of boundary by itself did not confer on them any more rights. The contention of the respondent if accepted

L.A. proceeding of L.A. Case No. 7/2011 had already reached the final stage i.e. the award stage. In this instant case, Notification u/s 4(1) was approved by the Govt. vide letter No.RLA.279/2010/27 dated 06.07.2011 and was published in the Assam Gazette on 18.10.2012 and the same was published in two local dailies namely "The Sentinel" on 27.11.2012 and "Nimamiya Barta" on 27.11.2012. Again, the copy of the Gazette publication was sent to the Circle Officer, Dispur Revenue Circle vide letter No.LA.7/2011/449 dated 11.09.2013 for service of Notification u/s 4(1) of the L.A. Act, 1894. Also, notice to the concerned pattadars was published through the Circle Officer, Sonapur Revenue Circle. But, no objection was received at that time against the acquisition of land.

5. That as regards to the statements made in paragraph 5 of the writ petition the deponent begs to state that the notice dated 09.10.2015 was published as concerned pattadars / interested persons could not be located finding no proper address. Unfortunately, the notice was published only on the 09.10.2015. However, the date mentioned is not binding and field verification is still being carried out now as pattadars / interested persons are turning up after seeing the notice. The petitioners can approach the office of the Circle Officer, Dispur Revenue Circle even now for field verification of the acquired and. It is totally denied that there as any ulterior motive behind the publication of notice."

16. As regards the other writ petition namely, WP(C)/5956/2016, the learned State Counsel has submitted that two petitioners in this case are not affected parties as no land of theirs is the subject matter of the acquisition proceedings. The learned State Counsel further submits that though a ground has been sought to be developed by taking into recourse Section 49 of the Act of 1894, such ground would be wholly inconsistent with the principal prayer. The learned State Counsel ultimately submits that the acquisition is for a public purpose connected with the Petroleum Storage Terminal of the IOC and a writ petition against such acquisition proceedings is not



maintainable.

17. Shri Bhardwaj, learned Standing Counsel has appeared for the IOCL and has submitted that the affidavit-in-opposition has been filed in both the writ petitions wherein it has been stated that the estimate value of the acquisition of Rs.61,52,44,611/- has already been paid to the Deputy Commissioner on 09.09.2015 which is the revised land acquisition estimate. The learned Standing Counsel submits that the acquisition is required for the safety and security as the product in question is hazardous and the entire area would be treated as a protected area. The learned Standing Counsel further submits that concrete wall has been fully constructed by following the due procedures. He denies that there was any memorandum of understanding regarding acquiring of further lands. As regards the submission concerning Section 49 of the Act of 1894, the IOCL Counsel submits that the said provision does not confer any right upon the owner of the land and is only dependent upon the discretion and requirement of the requiring authority.

18. In his rejoinder, the learned Senior Counsel for the petitioners has submitted that objections were indeed received in the Office of the Deputy Commissioner and it appears that the provisions of Section 5A of the Act of 1894 has been given a go-by. He further submits that an FIR was lodged against forceful acquisition of land.

19. The rival submissions made by the learned counsel for the parties have been duly considered.

20. Let us first deal with the submissions and relief prayed in the first writ petition being WP(C)/6979/2015. The pleadings, as would appear in paragraphs 8 and 9 of the petition, read as follows:

"8. That the petitioner states that it is a bounded duty of the state to issue notice upon the pattadar either by post or by paper notification but in the present case in hand it would goes to show that the notice was published in the



Assam Tribune on 09.10.2015 wherein in the said Notice the date for verification of the plot of land was given on 08.10.2015 w.e.f. 11:00 A.M. thereby it means that after the plot verification by the respondent the notice published in Assam Tribune which is a malafide exercise b the respondent in order to deprive the petitioner.

9. *That the petitioner states that as per law laid down in the Land Acquisition Rehabilitation and Resettlement Act, 2013 the authority before acquiring the land has to go for a public hearing as per Section 5 of the act but in the instant case the notification published in the paper dated 09.10.2015 would goes to show that the date was given on 08.10.2015 without giving any public hearing as required under the act and as such the impugned notice is liable to be set aside."*

21. Nowhere in the pleadings there have been any specific averments regarding violation of any provisions of the Land Acquisition Act, 1894. The pleadings are equally silent on the applicability of Section 49 of the Act 1894. However, in the subsequent writ petition instituted by two petitioners who are not the affected persons, certain allegations regarding easement rights through the land which has been acquired, have been made.

22. However during the submission, the learned Senior Counsel for the petitioners has taken the plea of violation of the provisions of the Act of 1894. Whether in absence of pleadings of any kind such submissions can be made at the time of hearing is itself a debatable issue. Even assuming that the point involves questions of law and are therefore permitted to be urged, such wavering stands would be wholly detrimental to the entire case of the petitioner in the first writ petition being WP(C)/6979/2015 in connection with the prayer made that it is the Act of 2013 which should prevail and not the Act of 1894. So far as the principal submission is made, the



acquisition proceeding was over even before coming into force of the Act of 2013 and even otherwise, in a continuing proceeding, there is no manner of doubt that the enhanced benefits of compensation shall be paid to the land owner. Further, even though no pleadings regarding violation of the Act of 1894 has been made, the records produced by Shri Nath, learned Senior Government Advocate would show that all the mandatory provisions connected with the acquisition proceedings have been fulfilled and the petitioner in WP(C)/6979/2015, who is the affected party had chosen not to raise any objection. In any case, in a case of compulsory acquisition, unless there is violation of the procedures laid down or the acquisition is bad for lack of *bona-fide*, there is hardly any scope to challenge the acquisition proceeding *per se* except to submit an application for enhancement of the compensation for making a reference.

23. In the instant case, no apparent violation of the provisions of the Act of 1894 is seen apart from the fact that no such pleadings are also there.

24. Though Section 49 of the Act, 1894 was pressed into service, it is only an option given to the owner to offer the entire land and there is no provision that such offer has to be accepted and everything depends on the requirement of the requiring authority which in this case is the IOCL. As noted above, Shri Bhardwaj, learned Standing Counsel, IOCL in clear terms has submitted that there is no requirement of any further area for the said purpose.

25. The acquisition in the instant case, is for a public purpose namely for construction of Petroleum Storage Terminal. The product as well as the activity associated with the same being hazardous, the acquisition is a paramount importance for public safety. In that view of the matter also, the acquisition proceeding cannot be interfered with.

26. As regards the alleged violation of the rights of the two petitioners in



WP(C)/5956/2016, they are not the affected parties of the acquisition proceedings and to enforce any easement rights, a Writ Court would not be the appropriate forum.

27. The case laws referred to by the learned Senior Counsel for the petitioners have no applications with the facts of the instant cases and would not therefore come to the aid of the petitioners.

28. In view of the above, both the writ petitions stand dismissed.

29. No order as to cost.

30. The records in original are returned back to the learned Government Advocate, Assam.

JUDGE

Comparing Assistant