



GAHC010237432017

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

Case No. : WP(C)/3563/2017

ETHELWOLD ESTATE PVT. LTD.
JALAN NAGAR, DIBRUGARH, ASSAM, REP. BY THE EXECUTIVE
DIRECTOR

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM REVENUE
AND DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI- 781006

2:THE DEPUTY COMMISSIONER
DIBRUGARH
DIST- DIBRUGARH
ASSAM

3:THE ADDITIONAL DEPUTY COMMISSIONER
DIBRUGARH
DIST- DIBRUGARH
ASSAM

4:THE UNION OF INDIA
REP. BY THE SECY
GOVT OF INDIA
MIN OF ROAD TRANSPORT AND HIGHWAYS
NEW DELHI

5:B AND G TEA AND AGRO NURSERY
REPRESENTED BY ITS POWER-OF-ATTORNEY HOLDER SRI MANOJ
NARMAN
S/O. LATE KALICHARAN BARMAN
CIRCUIT HOUSE ROAD
DIBRUGARH
P.S. DIBRUGARH
DIST. DIBRUGARH



ASSAM

Advocate for the Petitioner : MR.Y S MANNAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 31-01-2022

Heard Mr. Y S Mannan, learned counsel for the petitioner. Also heard Mr. R Borpujari, learned Standing counsel appearing on behalf of respondent No.1, Mr. B Deuri, learned counsel appearing on behalf of respondent Nos.2 & 3 and Mr. KN Choudhury, learned senior counsel appearing on behalf of respondent No.5

2. None appears on behalf of respondent No.4, Union of India.

3. The instant writ petition has been filed being aggrieved by the action of the respondent authorities in not disbursing the payment of the land acquisition compensation to the petitioner in respect to the acquisition of land belonging to the petitioner company acquired under the National Highway Authority Act, 1956 for building/ widening/furlaning etc maintenance, management and operation of National Highway No.37 on the stretch of land from 583.350 km to 595.822 (Dibrugarh By-pass section) in the district of Dibrugarh.

4. The case of the petitioner in brief is that a Tea Estate

in the name and style of Chowkidingee Tea Estate was owned and possessed by a company in the name and style of Chowkidingee Tea Estate Ltd. Subsequent there to, the said Chowkidingee Tea Estate Ltd was renamed as Jalan Nagar South Estates Limited and a certificate to that effect was issued under Section 13(3) of the Companies Act, 1908 on 11.02.1955. On the basis of the proceedings under Section 391 and 394 of the Companies Act, 1956, the Calcutta High Court in Suit No.369/1976 permitted the merger of the said Jalan Nagar South Estates Limited merged with the petitioner company by an order dated 26.04.1977 and thereupon all the assets and liabilities of the said Jalan Nagar South Estate Limited stood vested upon the petitioner company on the basis of the order passed by the Calcutta High Court on and from 01.01.1977 which was the effective date. In view of the said amalgamation of Jalan Nagar South Estates Limited with the Petitioner Company the Tea Estate, namely, Chowkidingee Tea Estate which was a part of the assets of Jalan Nagar South Estates Limited also stood transferred by operation of law to the Petitioner Company.

5. The record reveals that on the basis of the order passed by the Calcutta High Court, the land of Chowkidingee Tea Estate was mutated in the name of the Petitioner Company vide an order dated 21.10.2009. Subsequent there to, vide an order dated 21.07.2010 the Additional Deputy Commissioner directed that in view of the letter dated 07.12.2009 the name of the former patta holder would remain and thereby the mutation

done in favour of the Petitioner vide the order dated 21.10.2009 should be cancelled. It is the petitioner's case that the Ministry of Road Transport and Highway published a notification dated 12.02.2014 under Section 3A of the National Highways Act, 1956 in the news daily 'Assam Tribune' on 08.06.2014 and sought for objection. The Petitioner filed objections objecting to the acquisition. The objection filed by the petitioner was disallowed and the notification under Section 3D of the National Highway Act 1956 (Act of 1956) was issued. In the said notification dated 15.10.2014, published in the 'Assam Tribune', the land in question was shown as 'Chowkindgee Tea Estate Ltd' and not the petitioner company. Thereafter, the petitioners company on enquiry came to learn about the order dated 21.07.2010 and submitted a communication dated 05.02.2015 to the Deputy Commissioner, Dibrugarh whereby the petitioner company prayed for restoration of its name in terms with the order dated 21.10.2009. On the basis of the said application dated 05.12.2015, a grant mutation Case No.11/2014-2015 was started. As the concerned respondent authorities did not take any steps in respect to the said mutation case, the petitioner approached this Court by way of a writ petition under Article 226 of the Constitution of India which was registered and numbered as WP(C) No.2926/2014.

6. This Court vide an order dated 22.09.2016 after taking into account that the land of Chowkidingee Tea Estate vested upon the petitioner on the basis of the order passed by the Calcutta High Court in the amalgamation proceedings dated

26.04.1977 with effect from 01.01.1977 and also taking into account that the respondent No.4 has cancelled the mutation made in favour of the petitioner without granting an opportunity of hearing set aside the endorsement dated 21.07.2010 in the record of rights and restored the record of rights in terms with the order dated 21.10.2009.

7. As already stated herein above, notification dated 15.10.2014 in exercise of powers under sub-section (2) of Section 3D of the 1956 Act, the Central Govt. declared that on the publication of the said notification dated 15.10.2014 in the official gazette the land specified in the said schedule shall vest absolutely in the Central Govt. free from all encumbrances. The land of the petitioner company which was acquired vide the said notification measured 98 Bighas, 2 Kathas 16 Lechas.

8. It may be noted herein that on the basis of the said notification issued under sub-section (2) of Section 3D of the Act of 1956, the land mentioned in the schedule stood vested upon the Central Govt. free from all encumbrances. Thereupon the competent authority took over the possession in terms of Section 3(E) of the Act of 1956 and it is an admitted case that at present the construction of the fourlaning have already been completed by National Highway Authorities. At this stage, it may be relevant to take into consideration, the provision of section 3G and 3H of the Act of 1956 which stipulates the manner in which the Award is to be passed and how the payment is to be disbursed. Section 3G and 3H are quoted

herein below:

3G. Determination of amount payable as compensation.—

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is 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.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the 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;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.]

[3H. Deposit and payment of amount.—

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(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.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.]

9. From a perusal of the said sections quoted herein above it would reveals that when a land is acquired under the Act of 1956 there shall be paid an amount which shall be determined by an order of the competent authority. The right of the user or any right in the nature of easement on any land acquired under the Act of 1956 has also to be taken into consideration in terms with Sub-Section (2) of Section 3G and the amount of compensation to be paid to such persons covered with the ambit of said Sub-Section is also mentioned therein. Sub-Section (3) and sub-Section (4) of Section 3G stipulates the manner in which the enquiry is to be conducted by the competent authority and sub-Section (5) of Section 3G stipulates what steps a person interested can take if he is aggrieved by the amount determined by the competent authority. It stipulates that if the amount so determined is not acceptable to either of the parties, the said amount shall, on an application of the either of the parties be determined by the Arbitrator to be appointed by the Central government. In terms with sub-Section (6) of Section 3G, the provisions of the Arbitration and Conciliation Act, 1996 shall apply. The parameter by which the competent authority or the arbitrator shall determine the compensation has been stipulated in sub-Section (7) of Section 3G.

10. At this stage it may also be relevant to take note of that on perusal of Sub-Section (4) and Section (5) of Section 3G, the scheme that is envisaged is once the competent authority has already determined the amount of compensation, it is only the

parties i.e., the person interested or the requiring authority that can be parties in a proceedings under Sub-Section (5) of Section 3G. The competent authority after determination of the compensation becomes *functus officio* in so far as the determination so made by the competent authority. It is only the parties to whom the amount is not acceptable only can seek a reference to Arbitrator for determination of the compensation.

11. The Scheme of Section 3H is that the amount once determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by the Rules made in that behalf by that Government with the competent authority before taking possession of the land and Sub-Section (2) of Section 3H clearly stipulate the role of the competent authority to pay the amount so deposited by the Central Govt. to the person or persons entitled thereto.

12. At the stage of Section 3(H) of the Act of 1956, the competent authority has no authority or jurisdiction thereupon to decide on the question of quantum of compensation and its only authority is to pay the amount to the person or persons entitled thereto. Sub-Section (3) of Section 3H authorises the Competent Authority to determine the person(s) who in its opinion is/are entitled to receive the compensation payable to each of them when there are several persons claiming to be interested in the amount deposited under Sub-Section (1) of Section 3(H) and if any dispute arises as regards 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 thereupon loses its jurisdiction to determine the amount payable and has the only option left to refer the dispute to the decision of the Principal Civil Court of Original jurisdiction within the limits of whose jurisdiction the land is situated as in the instant case it would be the Court of the District Judge, Dibrugarh. Sub-Section (5) and Sub-Section (6) of Section 3H is relating to interest on additional compensation which, however, has no relevance for the purpose of the instant case.

13. In the backdrop of the scheme of the Act of 1956 as noted hereinabove, this Court further takes into consideration that on 04.11.2015 two notices were issued to the Proprietor/Senior Manager/Manager of Chowkidingee Tea Estate Limited whereby it has been mentioned that an amount of Rs.14,50,31,040.00 and an amount of Rs.21,09,13,920.00 has been approved as the amount to which the said Tea Estate is entitled as compensation and the addressee to the said notices was requested to collect the compensation from the office of the Deputy Commissioner, Land Acquisition Branch, Dibrugarh by submitting the necessary documents. Further to that, another notice was issued on 12.12.2015 to the Chowkidingee Tea Estate Limited & Co. stating inter alia that an amount of Rs.3,31,29,600.00 is the amount adjudged as compensation and the addressee was requested to submit necessary documents as mentioned in the said communication before the authority concerned.

14. The petitioner's further case is that pursuant to the said notices, the petitioner submitted the necessary documents and have been from time and again representing before the authority concerned but the respondent authorities have not released the compensation. In that regard the learned counsel for the petitioner also draws the attention of this Court to the minutes of the meeting held on 20.10.2016 whereby certain decision has been taken as regards the utilisation of the share of compensation for development of the tea garden workers. He submits that this imposition upon the petitioner as recorded in the said minutes is completely foreign to the provisions of Act of 1956. However, he submits that the petitioner have already complied in terms with the decision taken in the said minutes of the said meeting. The petitioner's further case is that in spite of the petitioner taking all necessary steps, the respondent authorities have not disbursed the compensation to the petitioner and as such the petitioner has approached this Court under article 226 of the Constitution of India.

15. The Respondent No.2 had filed an affidavit-in-opposition wherein at paragraph 15 the respondent No.2 stipulates the ground for which the payment of compensation has not been disbursed. A perusal of said paragraph 15 would show that the Respondent No.2 stand for not disbursing the compensation is on account of the Petitioner failing to fulfil the assurance and commitments made by them on 21.02.2015 and 20.10.2016. Further to that it appears that the Respondent No.2 also challenges the quantum of compensation given to the petitioner

on the ground that the land acquired is a land reserved for special cultivation.

16. The Respondent No.5 had filed an Affidavit-in-Opposition wherein the said Respondent claimed that they are 'person interested' in respect to 25 bighas of acquisition land and as there is a suit pending as regards its entitlement on the ground of adverse possession. The compensation should not be disbursed to the petitioner till the final adjudication of their rights in the said suit. The petitioner had filed affidavit in reply to both the affidavits in opposition filed by the respondent No.2 as well as the respondent No.5 thereby denying to the statements and averments made therein.

17. Mr. YS Mannan, learned counsel for the petitioner submits that the perusal of the scheme of the Act of 1956 would categorically show that the competent authority has no authority under the Act of 1956 to withhold the compensation as by virtue of Sub-Section (2) of Section 3H, the competent authority has to make the payment when the Central Government had deposited the amount. He submits that the stand taken by the respondent No.2 in the affidavit in opposition is totally foreign to the provisions of the Act of 1956 inasmuch as, once the competent authority has already adjudicated upon the compensation it has no authority to question the said compensation. He further submits that the stand taken by the Respondent No.2 that on account that the petitioner having not fulfilled certain demands, the land

acquisition compensation has not been disbursed is nothing but a colourable exercise of power by an authority which had no jurisdiction to do so.

18. On the other hand, Mr. R Borpujari learned standing counsel, Revenue Department submits that the Respondent Authorities would be taking steps to disburse the amount by taking into account the provisions of Section 3H of the Act of 1956. He candidly submits that the jurisdiction of the competent authority who has the power to disburse is limited but when there is a dispute as regards the entitlement, it is the Principal Civil Court who can decide the said aspect of the matter.

19. Mr. KN Choudhury, learned counsel for the Respondent No.5 has drawn my attention to the order dated 03.12.2018 passed in Misc Case No.149/2017 as well as Review Petition No.306715/2017, wherein it has been categorically mentioned that the restoration of the name of the Petitioner Company in respect to the Chowkidingee Tea Estate will be subject to the outcome of the suit. He further submits that the stand taken by the Respondent No.2 requires to be seriously taken into consideration as regards the entitlement of the petitioner in respect of the land which admittedly are grant lands specifically given for tea cultivation.

20. I have heard the learned counsel for the parties, perused the materials on record and given my anxious consideration to the matter.

21. The facts above mentioned would clearly goes to show that by virtue of the order passed by the Calcutta High Court on 26.04.1977 the land of Chowkidingee Tea Estate stood vested by operation of law with effect from 01.01.1977 to the petitioner company and as such, the petitioner is a person interested in respect to lands of Chowkidingee Tea Estate which is an asset of the petitioner if being acquired under the provisions of Act of 1956. The competent authority admittedly have determined the compensation and as already stated herein above, the competent authority after having determined the compensation becomes *functus officio* in so far as the question of compensation adjudicated upon is concerned. It is only the person interested or the requiring authority i.e., Central Govt. in the instant case can be parties under the proceedings under section 3G(5) of the Act of 1956. The notices which have been issued to the petitioner on 04.11.2015 and 12.12.2015 categorically shows that the competent authority have already after determination of the compensation amount stated therein and approved for disbursal in favour of the erstwhile Chowkidingee Tea Estate Ltd., who admittedly stood merged with the petitioner company along with all its assets and liabilities w.e.f 01.01.1977.

22. In the backdrop of the same, if sub-section (2) of Section 3H of the Act of 1956 is looked into, the jurisdiction of the competent authority is nothing but to pay the compensation to the person or persons entitled thereto. At the cost of repetition, it again reiterated that the issuance of the notices on

04.11.2015 and 12.12.2015 also shows that the authority concerned have already determined that the amount mentioned in the said notices has been approved for disbursal and as such, the competent authority had no jurisdiction to withhold the disbursement unless and until a situation arises in terms with Section (4) of Section 3H.

23. In the instant case, it would be further seen that the respondent No.5 claims to be person interested in respect of the 25 bighas of land out of the total acquired land of 98 bighas , 2 kathas, 16 lechas and as such, the competent authority would have no authority to withhold the compensation in respect to the remaining portion of the land to which there was no claim by any party.

24. It is further relevant to take note of that Sub-Section (3) of Section 3H postulates that the competent authority can determine who are the persons entitled, as in the instant case, by issuance of the notice dated 04.11.2015 and 12.12.2015, the competent authority has already decided the said aspect of the matter. The respondent No.5 claims to be 'person interested' in respect of 25 bighas of land and as per the contention of the learned senior counsel appearing on behalf of the respondent No.5, there is a suit pending. At this stage, it may be taken into consideration that the order on the basis of which the learned counsel for the respondent No.5 relied upon passed in the Review proceedings is in respect to a mutation order and the said mutation order i.e., in respect to a review

order wherein, this Court had stated that in respect of 25 bighas of land which forms the subject matter of the suit, the same shall be subject to the outcome of the suit. The said order which has been passed by this Court on 22.09.2019 as well as the subsequent order dated 03.12.2018 as in respect to the mutation proceedings having no relevance to the land acquisition proceedings under the Act of 1956 as a manner is prescribed to ventilate such claims in section 3(H)(4) of the Act of 1956. If the respondent No.5 claims to be the person interested in respect of the part of the acquisition proceeding, it can very well take appropriate steps as envisaged under Section 3(H)(3) & (4) of Act of 1956 by bringing to the notice of the competent authority as regards its claim in respect to the 25 bighas of land which it claims to be the subject matter of the acquisition proceedings.

25. The competent authority then on the basis of the such claim being made by the Respondent No.5, if is in a position to determine, may determine the entitlement of the Respondent No.5 in respect to its claims but if disputes arises, the competent authority shall exercise the jurisdiction under Section 3H(4) by referring it to the Court of District Judge, Dibrugarh for adjudication in respect to the claim of the respondent No.5 vis a vis the petitioner provided the said 25 bighas which is said to be the subject matter of the suit is a part of the acquisition proceedings.

26. It is also relevant to take note of that the respondent

No.2 in its affidavit had taken into consideration certain aspects of the matter which are not relevant viz that not settling certain entitlement of the workers and as also as regards the right of the petitioner to claim compensation in respect of tea garden lands. It is observed that the respondent No.2 cannot question the determination of the compensation once it has been done by the competent authority. At best, the only jurisdiction left after such determination is to exercise the powers under Sub-Section (2) & (3) of Section 3H and if there is any dispute, it can exercise the powers under Sub-Section (4) of Section 3H and nothing beyond that.

27. Consequently, the instant writ petition stands allowed with a direction to the competent authority i.e. respondent No.3 to disburse the entitlement of the Petitioner in respect to the acquisition proceedings in terms with the notices dated 04.11.2015 and 12.12.2015 within a period of 30 days from the date of a certified copy of this order is served upon the Respondent No.3 subject to the observations made in paragraph No.28 herein below.

28. It is further directed that in case the respondent No.5 submits their claim to the compensation before the respondent No.3 in respect to the suit land within a period of 20 days from today, the competent authority shall verify as to whether the suit land is a part of the acquisition proceedings and on verification if it is found that the suit land is; or part thereof is a part of the acquisition proceedings, then so far the



compensation for that part of the suit land which falls within the acquisition proceedings shall be referred to the District Judge, Dibrugarh in terms of Sub-Section (4) of Section 3H of the Act of 1956. It is made clear that the compensation in respect to the remaining land acquired by the petitioner company i.e. after deducting the land compensation for which the reference has been made to the District Judge, Dibrugarh, the same shall be paid within such time as mentioned in paragraph 27 hereinabove. It is also observed that the compensation so withheld/not disbursed shall be deposited in the Reference Court, which shall be paid subject to the decision of the entitlement by the Court of the District Judge, Dibrugarh. However, if the respondent No.5 does not file any application within the time stated herein above, the entire amount be disbursed to the petitioner in terms with paragraph 27 herein above.

29. With the above directions, the writ petition stands allowed. No costs.

JUDGE

Comparing Assistant