



GAHC010133252017

Page No.# 1/14



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

Case No. : WP(C)/3883/2017

ROUSHANARA BEGUM
W/O LATE FERAZ SHAH, R/O PALTAN BAZAR, GUWAHATI, PS-PALTAN
BAZAR, DIST KAMRUP M

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER, REVENUE and DISASTER MANAGEMENT
DEPTT., GOVT. OF ASSAM, DISPUR, GUWAHATI-781006

2:THE DEPUTY COMMISSIONER CUM COLLECTOR
KAMRUP M
GUWAHATI
ASSAM
PIN-781001

3:ADDITIONAL DEPUTY COMMISSIONER
KAMRUP M AND IN-CHARGE
THE LAND ACQUISITION BRACH
KAMRUP M
GUWAHATI
ASSAM
781001

4:LAND ACQUISITION OFFICER

KAMRUP METRO
GUWAHATI
ASSAM
781001

5:MD. MUHIBUR RAHMAN TAJ



S/O LATE MOFIZUR RAHMAN
KUMARPARA
GUWAHATI
ASSAM
78100

For the Petitioner (s) : Mr. P.P. Dutta, Advocate.

For the Respondent (s) : Mr. S. Sarma, Advocate.

Date of hearing & Judgment : **14.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner challenging the order dated 04.08.2016 passed by the Additional Deputy Commissioner, Kamrup (Metro) whereby it was decided that the acquisition compensation in respect to 9 bighas 2 kathas 18 lechas of land covered by Dag Nos.564, 557, 715, 718 (Part) of K.P. Patta No. 39 and Dag No. 414 (Part) of K.P.Patta No.164 of Village-Pachanipara under Dakshin Rani Mouza be paid to the Respondent No. 5 and if the parties are in any manner aggrieved, liberty was given to them to approach the competent court for legal remedy within one month of time from the date of receipt of the order.

2. The facts involved in the instant writ petition is that a proceedings

under the Land Acquisition Act, 1894(for short 'the Act of 1894') was initiated for acquiring various plots of lands for the purpose of construction of Assam Rifles Headquarter. The said proceedings was registered as LA Case No. 6/2005. The Petitioner herein admittedly is the owner of 22 bighas of land covered by Dag Nos. 412, 413, 414, 418, 469, 471, 564, 557, 715, 718 included in K.P.Patta No.164 and 39 of Village-Pachanipara under Mouza-Dakshin Rani, P.S. – Palashbari in the District of Kamrup (Metro). It is also an admitted fact that the Petitioner had entered into an Agreement for Sale on 18.03.2001 for sale of the said 22 bighas of land to the Respondent No. 5 for a total consideration of Rs. 4,50,000/-. At the time of entering into the said Agreement for Sale, an amount of Rs.50,000/- was paid out of the total consideration of Rs.4,50,000/- and thereupon as per the stand taken by the Respondent No. 5 in his affidavit and the documents enclosed, it transpires that the remaining consideration of Rs. 4,00,000/- was paid in five installments to the Petitioner. The records further reveals that there is an acknowledgement of the receipt of the entire consideration by the Petitioner. Subsequent thereto, on 04.08.2004, a Special Power of Attorney was executed and registered by the Petitioner whereby the Respondent No. 5 was appointed as a constituted Attorney. It is relevant to take note of what are the powers which have been conferred upon the Attorney in the Special Power of Attorney. The powers which have been conferred upon the Attorney are – to execute the Sale Deeds/Deeds for the plot of land measuring 22 bighas described in the Schedule to the Special Power of Attorney in favour of the

intending purchaser, present the same before the authority concerned for its registration, admit execution thereof, grant receipt and to do all other acts, deeds and things necessary for completing the transactions. The Attorney was also authorized to obtain permission to register the Sale Deeds from the concerned authorities.

3. This Court further finds it relevant herein to take note of that pursuant thereto, the lands in question which was the subject matter of the Agreement for Sale dated 18.03.2001 admeasuring 22 bighas was never sold or conveyed in pursuance to the said Agreement for Sale as well as acting on the basis of the Special Power of Attorney. Be that as it may, out of this 22 bighas of land for which the Agreement for Sale was entered into between the Petitioner and the Respondent No. 5, 9 bighas 2 kathas 18 lechas of land which was covered by Dag No, 564, 557,715,718 (Part) of K.P. Patta No.39 and Dag No. 441 (Part) of K.P. Patta No. 164 was acquired by the Respondent Authorities in Land Acquisition Proceedings which have been registered and numbered as LA Case No.6/2005.

4. The records further reveals that the Petitioner herein was issued notices initially for collecting the compensation. Subsequent thereto, the Respondent No. 5 also made a claim to the compensation on the basis that in respect to the land in question, the Petitioner already received the entire consideration and as such had no right to receive the compensation for which the Respondent No. 5 should be paid the entire compensation.

5. On the basis of the above, both the Petitioner as well as the Respondent No. 5 made claims before the Land Acquisition Officer i.e. the

Additional Deputy Commissioner, Kamrup(Metro). On 04.08.2016, the impugned order was passed by the Additional Deputy Commissioner, Kamrup(Metro) holding inter alia that the compensation in respect to the lands in LA Case No. 6/2005 pertaining to 9 bighas 2 kathas 18 lechas be paid in favour of the Respondent No. 5. However, liberty was given to the parties to approach the competent court for legal remedy within one month from the date of receipt of the said order. Thereupon the Petitioner filed an Appeal before the District Collector of Kamrup (Metro) against the order dated 04.08.2016 and the said Appeal having not been decided, the Petitioner have approached this Court under Article 226 of the Constitution of India.

6. The records further reveals that on 26.07.2017, this Court issued notice and in the meantime, it was provided that the payment in terms with the impugned order dated 04.08.2016, if not released, the same shall not be done till the returnable date. At this stage, it is relevant to note that till date, neither the Petitioner nor the Respondent No. 5 have been disbursed any amount.

7. Pursuant to receipt of notice, the Respondent No. 5 had filed an affidavit-in-opposition raising various preliminary objection as regards the maintainability of the writ petition and also stating inter alia on the facts which have already been narrated hereinabove. In the said affidavit-in-opposition, the Agreement for Sale dated 18.03.2001, the Acknowledgement of the Sale Consideration of the land and the Registered Special Power of Attorney have been enclosed to the affidavit-in-

opposition.

8. To the said affidavit-in-opposition, the Petitioner had filed an affidavit-in-reply wherein the statements and allegations made in the affidavit-in-opposition were denied more particularly in respect to delivery of possession and it was only stated that only a power of attorney was executed.

9. In the backdrop of the above facts, let this Court therefore take into consideration the respective submissions made by the learned counsels for the parties.

10. Mr. P.P. Dutta, the learned counsel appearing on behalf of the Petitioner submitted that the Agreement for Sale dated 18.03.2001 does not confer any right over the land in question upon the Respondent No. 5. Referring to Section 54 of the Transfer of Property Act, 1882 (in short 'the Act of 1882'), the learned counsel submitted that a contract for sale merely confers a right that the property shall be transferred on the terms and conditions mentioned in the said contract for sale. The learned counsel further referring to the Special Power of Attorney submits that by virtue of a Special Power Attorney, no right over the land in question stood transferred in favour of the Respondent No. 5. The power so conferred as per the Special Power of Attorney was limited to execution of a registered Deed of Sale and to seek permission and grant receipts in pursuance to a sale and nothing more. Under such circumstances, Mr. P.P. Dutta, the learned counsel therefore submitted that merely on the basis of an Agreement for Sale as well as the Special Power of Attorney, the



Respondent/Additional Deputy Commissioner, Kamrup (Metro) ought not to have passed the order dated 14.08.2016 thereby directing that the acquisition compensation be paid to the Respondent No. 5. In that regard, reference was made to the judgment of the Supreme Court in the case of **Suraj Lamp and Industries Pvt. Ltd. (2) Through Director Vs. The State of Haryana & Anr.** reported in (2012) 1 SCC 656 and specifically referred to paragraph Nos. 16,17, 18, 19 & 20. Adding to the said submission, Mr. P.P. Dutta further submitted that the Act of 1894 does not empower the Collector/the Deputy Commissioner to decide complicated questions of law as regards the entitlement and apportionment of the amount. He submits that though the Petitioner had a right under Section 18 of the Act of 1894 to seek a reference by filing an application before the Collector as regards the entitlement of the amount of compensation as well as the apportionment of the compensation, the Respondent Authorities were also statutorily obligated in view of the provisions of Section 30 of the Act of 1894 to make such reference when complicated questions arose as regards title over the land while deciding entitlement and apportionment of the compensation. In that regard, the learned counsel referred to the judgment of the Supreme Court in the case of **Sharda Devi Vs. State of Bihar and Ors.** reported in (2003) 3 SCC 128 and more particularly referred to paragraph Nos. 23, 25 & 26 of the said judgment. The learned counsel for the Petitioner submitted that as the Respondent Authorities more particularly the Additional Deputy Commissioner, Kamrup (Metro) have exercised the jurisdiction, which it



ought not to have, taking into account that complicated questions of facts and law were involved, the impugned order dated 14.08.2016 is required to be set aside and quashed and a direction be issued to the Deputy Commissioner–cum-Collector, Kamrup (Metro) to make reference within a time frame to the Court.

11. On the other hand Mr. S. Sarma, the learned Senior Counsel representing the Respondent No. 5 submitted that the instant writ petition should be dismissed on the ground of suppression of material facts inasmuch as the Agreement for Sale, the Special Power of Attorney and the fact that the Petitioner have received the entire compensation have not been disclosed in the instant writ petition. He further submitted that from the documents enclosed to the affidavit-in-opposition more particularly the Agreement for Sale, Acknowledgment of the Sale Consideration as well as the Special Power of Attorney would clearly show that the Petitioner have relinquished their rights in respect to 22 bighas of land and as such the Petitioner had no right to receive any part of the compensation amount for which the Additional Deputy Commissioner, Kamrup(Metro) was within his jurisdiction to pass the impugned order dated 14.08.2016 thereby directing payment to be made in favour of the Respondent No. 5. He therefore referred to the judgment of a Coordinate Bench of this Court in the case of **GD Tie Up Pvt. Ltd. Vs. State of Assam and Ors.** reported in **2012 (2) GLT 851** and referred to paragraph Nos. 41, 42 and 43 of the said judgment.

12. This Court upon hearing the learned counsels for the parties and

upon perusal of the materials on record is of the opinion that the point of determination which arises is whether in the facts of the case, the Additional Deputy Commissioner, Kamrup(M) was justified in passing the order dated 04.08.2016 or the learned Additional Deputy Commissioner, Kamrup(M) ought to have made a reference in terms with Section 30 of the Act of 1894.

13. Section 54 of the Act of 1882 clearly stipulates that a contract for sale is a contract that the sale of such property shall take place on terms settled between the parties. Furthermore, a contract of sale does not itself create any interest in or charge on such property. The Supreme Court had in its judgment rendered in the case of **Suraj Lamp and Industries Pvt. Ltd.**(supra) had also observed that a transfer of an immovable property by way of sale can only be by a Deed of Conveyance and in absence of a Deed of Conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. It was also observed that an Agreement for Sale with possession or without possession is not a conveyance and as per Section 54 of the Act of 1882, a sale of an immovable property can only be made by a registered instrument and an Agreement for Sale does not create any interest in or charge on its subject-matter. At this stage, if this Court takes note of the Agreement for Sale dated 18.03.2001, it would show that the said Agreement of Sale is not also a registered document. It is relevant to mention that an agreement for sale is not compulsorily registrable; the reason being that an Agreement for Sale does not create any interest in or



charge on such property for which the Agreement for Sale does not come within the ambit of a document stipulated in Sub-Section (1) of Section 17 of the Registration Act, 1908. Therefore, on the basis of the said Agreement for Sale dated 18.03.2001 neither any right stood transferred nor any charge was created in favour of the Respondent No. 5 in respect to the land in question.

14. This Court have also taken note of the acknowledgment signed by the Petitioner of the receipt of the entire consideration. It is the opinion of this Court that even though the Petitioner received the entire consideration, the right, title and interest over the land acquired still continues to remain vested upon the Petitioner as admittedly there exists no registered deed of sale in favour of the Respondent No.5. Under such circumstances, the Petitioner continues to be a person interested within the meaning of the Act of 1894.

15. In the backdrop of the above, let this Court consider the Registered Special Power of Attorney. The Supreme Court had in the judgment rendered in **Suraj Lamp and Industries Pvt. Ltd.**(supra) had also dealt with the scope of a power of attorney and held that the power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The Supreme Court observed that the power of attorney is creation of an agency whereby the grantor authorizes the grantee to do acts specified therein on behalf of the grantor which when executed would be binding on the grantor as if done by him. It was further observed that a power of attorney is revocable or terminable at any time

unless it is made irrevocable in a manner known to law. It was also categorically observed that even an irrevocable power of attorney does not have the effect of transferring title to the grantee. This Court had duly perused the Special Power of Attorney. The said Power of Attorney as already observed in the preceding segments of the instant judgment is a Special Power of Attorney granting specified powers. The said power of Attorney did not however empower the Respondent No. 5 to accept or claim any acquisition compensation.

16. In the backdrop of the above observations and taking into consideration that it being the claim of the Respondent No. 5 that the Petitioner had received the entire consideration pursuant to the Agreement of Sale; the materials on record shows that the Petitioner still continues to have title over the land acquired and there being dispute between the parties who are in possession of the land; complicated issues of law and fact arises as to whether the Petitioner would be entitled to the entire compensation or part thereof. In the similar manner, issues also arises as to whether the Respondent No. 5 is entitled to any or whole or part of the compensation. At this stage, this Court therefore finds it relevant to take note of Section 30 of the Act of 1894 and taking into account its relevance, the same is reproduced hereinunder :-

“30. Dispute as to apportionment. ---When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”

17. From a perusal of the above quoted provision, it would transpire that

when any dispute arises as to the apportionment of the compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable, a discretion is conferred upon the Collector to refer such dispute to the decision of the Court. This Court further finds it relevant to observe that although a discretion is being conferred upon the Collector to refer such disputes as regards apportionment or entitlement of the compensation to the decision of the Court, it is the opinion of this Court that when complicated questions arises as regards title to receive the compensation as well as also the apportionment, the Collector, in the opinion of this Court, ought not to decide such complicated questions of law and fact, rather should make a reference to the Court. This very aspect of the matter can also be seen from a perusal of Section 31 (2) of the Act of 1894, wherein it has been inter alia mentioned that if there is any dispute as regards the title to receive the compensation or as to the apportionment, the Collector shall deposit the amount of compensation in the Court to which reference under Section 18 could have been submitted.

18. Taking into account the facts in the instant matter which raises complicated questions as regards inter-se rights of the parties to claim acquisition compensation, in the opinion of this Court, the learned Additional Deputy Commissioner, Kamrup (Metro) was not justified to pass the order dated 04.08.2016 thereby directing the payment of the compensation to be made in favour of the Respondent No. 5. It is also the opinion of this Court that the learned Additional Deputy Commissioner, Kamrup (Metro) ought to have made a reference in terms with Section 30

of the Act of 1894. In fact, it surprises this Court that the Additional Deputy Commissioner had in his order dated 04.08.2016 relegated the parties to the appropriate forum after disbursal of the amount in favour of the Respondent No. 5 which is completely contrary to the provisions of the Act of 1894.

19. Accordingly, the impugned order dated 04.08.2016 is set aside and quashed. This Court further taking into account that there are disputes which continue between the Petitioner and the Respondent No. 5 as regards entitlement and apportionment of the compensation, directs the Deputy Commissioner, Kamrup (Metro) to make a reference to the Court of the District Judge, Kamrup(Metro) within 15 days from the date a certified copy of the instant judgment is served upon the Deputy Commissioner, Kamrup(Metro). The reference to be made shall be confined only to the question as regards the entitlement and apportionment of the acquisition compensation.

20. This Court further directs that the acquisition compensation amount be remitted/deposited before the Reference Court by the Deputy Commissioner, Kamrup (Metro) while making the reference in terms with Section 31 (2) of the Act of 1894 and the Reference Court shall upon receipt of the said amount shall keep the same in a fixed deposit of a Nationalised Bank which could be liquidated upon the pronouncement of the decision of the Reference Court.

21. Before parting with the records, this Court makes it clear that the observations made in the instant judgment shall not prejudice either of the



parties in the reference proceedings.

22. With the above observations and directions, the petition stands disposed. No costs.

JUDGE

Comparing Assistant