



GAHC010208782018

Page No.# 1/13



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

Case No. : WP(C)/6465/2018

M/S. LAXMI NARAYAN PACKAGING INDUSTRIES AND 2 ORS.
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE
INDIAN PARTNERSHIP ACT, 1932 HAVING ITS REGISTERED OFFICE
SITUATED AT ADAMS PLAZA, 1 COM. 2, 2ND FLOOR, UDAYACHAL PATH,
G.S. ROAD, GUWAHATI- 781005, AND ITS FACTORY AT NATIONAL
HIGHWAY 41, NAKUCHI, RANGIA,
KAMRUP, ASSAM

2: SRI BASANT KR. AGARWAL
S/O LT. OM PRAKASH AGARWAL

R/O ASTHA APARTMENTS
SUHAGPUR
REHABARI

GUWAHATI
KAMRUP
ASSAM

3: SRI VIVEK AGARWAL
S/O SRI BASANT KUMAR AGARWAL

R/O ASTHA APARTMENTS
SUHAGPUR
REHABARI
GUWAHATI
KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
LAND AND REVENUE AND DISASTER MANAGEMENT DEPARTMENT,



DISPUR, GUWAHATI - 781006.

2:THE DEPUTY COMMISSIONER

KAMRUP
AMINGAON
GUWAHATI-31

3:THE SUB-DIVISIONAL OFFICER

RANGIA SUB-DIVISION
RANGIA
KAMRUP
ASSAM
PIN - 781354.

4:THE CIRCLE OFFICER

RANGIA SUB-DIVISION
RANGIA
KAMRUP
ASSAM

PIN - 781354.

5:THE NATIONAL HIGHWAY AUTHORITIES

REP. BY THE GENERAL MANAGER (P)
TEZPUR
ASSAM

PIN - 784001

For the Petitioner(s)

: Mr. R. Dubey, Advocate
: Ms. A. B. Kayastha, Advocate

For the Respondent(s)

: Mr. C. Baruah, Standing Advocate
: Mr. H. Sharma, Standing Counsel



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 16-11-2023

1. The instant writ petition has been filed by the Petitioners seeking a direction upon the Respondents not to demolish the boundary wall of the factory premises of the Petitioners and not to evict them from the part of their factory land without following due process of law.

2. The facts as could be discerned from a perusal of the writ petition are that the Petitioner No.3 along with one Shri Suraj Kumar Agarwal and Shri Lalit Kumar Agarwal had purchased a plot of land measuring 1 Bighas 2 Kathas covered by Dag No.14, 35 and 36 of K.P. Patta No.106 situated at Revenue Village Nakuchi under Mouza – Pub Borigog under Rangia Revenue Circle, Rangia in the district of Kamrup vide a registered Deed of Sale dated 07.09.2007. On the same date, vide another registered Deed of Sale, the Petitioner No.2 had purchased another plot of land measuring 1 Bigha covered by Dag No.14, 35, 36 of K. P. Patta No.106 situated at village Nakuchi, Rangia under Mouza – Pub Borigog under Rangia Revenue Circle, Rangia in the district of Kamrup, Assam. It is the case of the Petitioners herein that the Petitioner No.1 firm established a factory at the aforesaid plot of land leaving 25 feet from the National Highway. The said factory including the boundary as per the Petitioners was constructed in the year 2008 after getting the land demarcated from the Revenue Authorities.

3. It is the case of the Petitioners that on 13.09.2018, the Circle Officer, Rangia Revenue Circle along with his staff visited the factory premises of the

Petitioner No.1 and directed his officials to demolish the boundary wall of the factory. Thereupon, one of the partners of the Petitioner firm visited the Office of the Circle Officer, Rangia and submitted a representation on 14.09.2018 requesting her not to demolish the boundary wall without notice and without following the due process of law. However, as the Respondent Authorities were threatening to carry out the demolition for widening the National Highway No.41 being managed by the National Highway Authorities, the Petitioners had approached this Court by filing the instant writ petition seeking for a direction upon the Respondents that the boundary wall of the factory premises of the Petitioners should not be demolished. It is however relevant to take note of that in the instant writ petition, apart from making the State Revenue Authorities parties to the instant proceedings, only the National Highway Authority was impleaded as Respondent No.5. However, the Highway Administration, an Authority constituted under the provisions of Section 3 of the Control of National Highways (Land and Traffic) Act, 2002 (for short "the Act of 2002") was not impleaded as a party.

4. Pursuant to the filing of the instant writ petition, this Court vide an order dated 15.09.2018 directed the Respondent State Authorities to obtain instructions and in the meantime directed that the status quo as on that day be maintained in respect of the boundary wall in question.

5. The record further reveals that on 08.10.2018, notice was issued and the interim order was directed to be continued. The matter thereupon had been pending. The record further reveals that the Respondent No.5 had filed an affidavit-in-opposition on 21.09.2018 through the Project Director, National Highway Authority of India. From the said affidavit, it reveals that an

acquisition proceedings was initiated under the National Highways Act, 1956 and various lands were acquired including land in K.P. Patta No.106, an area measuring 0.18 Hectares. From the said affidavit, it is further seen that on 01.03.2012, compensation was released in favour of the Petitioner No.3 in respect to land covered by Dag No.14 of K.P. Patta No.106 of an area of 0.072 Hectares and the said compensation of Rs.1,50,678/- was duly paid to the Petitioner No.3 as is apparent from the money receipt enclosed as Annexure-4 to the affidavit filed by the Respondent No.5.

6. When the matter was listed before this Court on 02.08.2023, this Court was apprised by the learned counsel appearing on behalf of the State Authorities that the Circle Officer, Rangia Revenue Circle with the assistance of the Supervisory Kanongoh, Lot Mondal and Gaonbura had carried out the detail measurement in presence of the representatives of the National Highway Authority of India as well as the Petitioners and it was found that the front wall of the Petitioners and some tin houses belonging to the Petitioners had encroached on the portion of the National Highway Authority of India's acquired land. On the very date, Mr. R. Dubey, the learned counsel appearing on behalf of the Petitioners had also submitted that on 24.07.2023, another measurement was carried out by the National Highway Authority of India wherein they had put certain pillars in front of the land of the Petitioners. Under such circumstances, this Court for the purpose of having an effective adjudication of the matter, issued a direction to the Sub-Divisional Officer (Civil), Rangia to carry out the demarcation proceedings in respect to the land which was acquired from the Petitioners in presence of representatives of the National Highway Authority of India as well as the Petitioners and such report was directed to be placed before this Court. This Court further directed the

Sub-Divisional Officer (Civil), Rangia to carry out the demarcation proceedings with due notice to the National Highway Authority of India as well as the Petitioners and submit the report on or before 03.10.2023.

7. It further reveals from the affidavit filed by the Additional District Commissioner, In-charge, Rangia Sub-Division that the joint verification was carried out on 30.09.2023 and during the demarcation proceedings, it was found that the Petitioners had encroached 9 feet National Highway Authority of India's acquired land in the southern side and 20 feet National Highway Authority of India's land in the northern side and the boundary wall of the Petitioners was situated over the National Highway Authority of India's acquired land. The said joint verification report has been brought on record by way of the affidavit filed by the Additional Deputy Commissioner, In-charge, Rangia Sub-Division pursuant to the order passed by this Court on 09.10.2023 and this Court directed that the matter to be listed again on 18.10.2023. When the matter was listed on 18.10.2023, the learned counsel appearing on behalf of the Petitioners contradicted the said report submitted by the Respondent Authorities to the effect that the Petitioners are not in occupation of any land of NHAI and sought for accommodation to file an affidavit and accordingly, this Court directed the matter to be listed again on 15.11.2023.

8. The record reveals that on 15.11.2023, the Petitioners filed an affidavit-in-reply through the Petitioner No.3. In the said affidavit-in-reply, serious allegations have been made as regards fabrication of the signature of the Manager of the Petitioner's firm in the attendance sheet and also stated that the Circle Officer though had signed the verification but he himself was not present when the verification was carried out. It is however very interesting to

take note of Annexure-1 to the said affidavit-in-reply which is a communication dated 30.09.2023 issued to the Circle Officer, Rangia Circle by the Petitioner Nos. 2 and 3. In the said communication, it was duly mentioned that 2 Kathas of land was acquired out of 2 Bighas 2 Kathas of land belonging to the Petitioners and the Petitioners were in occupation of 2 Bighas of land and as such had sought for demarcation of the land. This communication is very vital for the adjudication of the instant dispute taking into account that it is the categorical admission on the part of the Petitioners that they are in occupation of 2 Bighas of land and only 2 Kathas of land was handed over. Taking into account that the affidavit was filed on 15.11.2023 and very serious allegations were made against the Revenue Officials, this Court fixed the matter again on 16.11.2023 i.e. today directing Mr. H. Sarma, the learned Government Advocate appearing on behalf of the State Authorities to obtain instructions.

9. In the backdrop of the above, let this Court therefore take note of respective contentions of the parties. Mr. R. Dubey, the learned counsel appearing on behalf of the Petitioners submitted that if the Petitioners are in occupation of any land which were acquired, the Petitioners can only be dispossessed by following the due process as per the procedure stipulated in the Act of 2002 and more particularly referred to Section 26 of the said Act of 2002 which provides the due procedure of law. It is therefore the submission of the learned counsel on behalf of the Petitioners that the State Authorities have no business to demolish the boundary wall of the Petitioners in the manner which has been sought to be done and it is only the Highway Administration constituted under Section 3 of the Act of 2002 or Officer authorized by the Highway Administration who can act as per the Act of 2002. He further submitted that the Highway Administration as per Section 23 of the

Act of 2002 is also required to maintain record in the prescribed manner in respect to all lands of the Central Government and it is on the basis of those records, the Highway Administration or the Officer authorized can act in terms with Section 26 of the Act of 2002.

10. Mr. H. Sarma, the learned Government Advocate appearing on behalf of the Respondent State Authority submits that the instant writ petition should have been dismissed on the question of suppression of materials facts inasmuch as the Petitioners have not disclosed anything as regards the acquisition of the land of the Petitioners in the writ petition. It is only on the basis of the affidavit filed by the Respondent No.5 that the said aspect has been brought into light to the effect that the Petitioner No.3 had already received compensation in respect of 0.072 Hectares of land. He further submitted that the demarcation so carried out was on the basis of the orders passed by this Court and from the affidavit-in-reply filed by the Petitioners, it is apparent that they were very much present during the demarcation proceedings but for reasons best known did not sign on the joint verification report. He further submitted on instructions that the allegation as regards fabrication on the signature as well as other allegations so made in the affidavit-in-reply are nothing but only to delay the disposal of the instant writ petition. The learned counsel further submitted that if there was any truth to the said allegations that the factory manager's signature was fabricated, it is beyond comprehension as to why the factory manager in question had not lodged any FIR though a period of almost 40 days had elapsed. He further submitted that the competent authority as per the National Highways Act, 1956 is the Additional Deputy Commissioner (Revenue) and power had been vested under the National Highways Act, 1956 to the competent Authority to enter

and to do other act necessary upon the land for carrying out the building, maintenance, management or operation of the National Highway or any part thereof or any other work connected therewith pursuant to the land vesting in the Central Government by operation of law in view of the notification issued under Section 3D. The Government Advocate further submitted that from the communication dated 30.09.2023, it is an admitted fact that the Petitioners are owners of only 2 Bighas 2 Kathas of land and they have only parted with 2 Kathas of land and have not handed over the possession of the remaining land. The Respondent State Authorities therefore were within the jurisdiction under the National Highways Act, 1956 to take necessary steps for taking over the possession.

11. Mr. C. Baruah, the learned Standing Counsel appearing on behalf of the Respondent No.5 had also submitted that the instant writ petition should be dismissed on the ground of suppression of material facts. After adopting the submissions made by Mr. H. Sarma, the learned Government Advocate appearing on behalf of the Revenue Authorities submitted that the plea as regards the provisions of the Act of 2002 was never taken by the Petitioners in their writ petition and it is only by way of his affidavit-in-reply to the affidavit filed to bring on record the joint verification report that the Petitioners for the first time raised such issues. He further submitted that if the Petitioners had relied upon the said provisions of the said Act of 2002, the Petitioners ought to have made Highway Administration, a party to the instant proceedings which the Petitioners did not do and therefore submitted that the instant writ petition so filed is nothing but a clever ploy in order to deprive the Respondent Highway Authority of their land which have already been acquired and stands vested upon the Central Government by operation of law.

12. During the course of the hearing, this Court also enquired as to what would be the actual measurement of the land which have been acquired from the Petitioners taking into account that the land as shown in the 3D notification as well as in the compensation payment notification stipulates 0.072 Hectares for which the Petitioners have received the compensation. The learned counsels at the bar therefore submitted that the said area of 0.072 Hectares would be equivalent to 2 Kathas 13.8 Lechas.

13. In the backdrop of the above, let this Court therefore analyze the submissions made by the learned counsels for the parties on the basis of the materials on record. From the materials on record and from a perusal of the writ petition it is seen that the petition is completely silent about the fact that any part of the land purchased by the Petitioner Nos. 2 and 3 along with others wherein the Petitioner No.1's factory is situated was acquired under the provisions of the National Highways Act, 1956. It is only on the basis of the affidavit filed by the Respondent No.5, it is seen that the land measuring 0.072 Hectares covered by Dag No.14 of K.P. Patta No.106 was acquired and an amount of Rs.1,50,678/- was duly paid. It is really unfortunate to note that this very vital aspect of the matter was not disclosed which is a material fact more so when the Petitioners had invoked the extraordinary and equitable jurisdiction under Article 226 of the Constitution. It is no longer res integra that when a person approaches the Court and more particularly the writ Court which exercises equitable and discretionary jurisdiction, the person is expected to approach the Court by disclosing all the material facts. In the instant case, if the Petitioners had disclosed the material fact that 0.072 Hectares of land already been acquired and compensation was duly received, this Court would have been reluctant to issue the interim direction in the year 2018 which is 5

years from today. Under such circumstances, it is the opinion of this Court that the writ petition ought to be dismissed on the ground of suppression of material facts.

14. Be that as it may, this Court however finds it relevant to take note also of the merits of the case inasmuch as the same would be necessary for the effective adjudication of the dispute. From the records available, it is clear that 2 Bighas 2 Kathas of land belonged to the Petitioners. It has also been mentioned in the writ petition that on the said land, the Petitioners have established their factory and a boundary wall was constructed. From a perusal of the affidavit filed by the Respondent No.5 and more particularly the enclosures thereto clearly shows that 0.072 Hectares which corresponds 2 Kathas 13.8 Lechas of land was acquired under the provisions of the National Highways Act, 1956. Therefore, the remaining land of the Petitioners pursuant to the said acquisition would be 1 Bigha 4 Kathas 6.2 Lechas. From the communication issued by the Petitioners to the Circle Officer dated 30.09.2023, it is an admitted fact that the Petitioners are in possession of 2 Bighas of land which means that the Petitioners are in the possession of an excess land measuring 13.8 Lechas. The Petitioners have no right on the additional excess land which are in occupation of the Petitioners. However to identify the said land, there is a requirement of a demarcation. This Court has also duly taken note of that there was a demarcation done on 13.09.2023 and during the demarcation it was found that the Petitioners had encroached 9 feet of land of NHAI in the southern side and 20 feet of land in the northern side and the boundary wall of the Petitioner No.1's factory was situated on the NHAI acquired land. This Court cannot also be unmindful of the candid submission of Mr. H. Sarma, the learned Government Advocate that the Circle Officer, Rangia

Revenue Circle was not present during the joint verification carried out. Under such circumstances, in order to identify the excess land measuring 13.8 Lechas which belongs to the NHAI pursuant to the acquisition or for that matter, the entire plot of land measuring 2 Kathas 13.8 Lechas which was acquired from the Petitioner No.3, this Court directs the Respondent Authorities more particularly the Circle Officer, Rangia Revenue Circle by himself along with the Revenue Officials to carry out the said demarcation and identify the said plot of land and take possession in terms with Section 3E of the National Highways Act, 1956 and handover the same to the National Highway Authority of India. The representatives of the National Highway Authority of India are directed to be present also on the date and at the time fixed by this Court hereinafter.

15. The said demarcation would be carried out on 30.11.2023 at 11 AM. The Petitioners are given the liberty to participate in the said demarcation proceedings. This Court further directs that while carrying out the said demarcation proceedings, the Respondent Authorities shall also take into account the maps prepared during the said acquisition proceedings. This Court further makes it clear that if the Petitioners participate in the said demarcation proceedings, a copy of the demarcation report shall be furnished to them immediately upon the report being prepared.

16. A certified copy of the instant judgment be served upon Mr. H. Sarma, the learned Government Advocate for necessary compliance. Pursuant to the carrying out the demarcation as directed above, this Court further directs the Circle Officer, Rangia Revenue Circle to submit a compliance report by filing an affidavit before the Registry of this Court.

17. With above observations and directions, the instant writ petition stands



disposed of. The interim order so passed no longer survives in view of the passing of the instant judgment.

JUDGE

Comparing Assistant