



GAHC010057902022

Page No.# 1/7



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

Case No. : WP(C)/2300/2022

KAMALA PHUKAN
W/O- SRI DZEN PHUKAN, R/O- AMERIGOG , 9TH MILE, DIST- KAMRUP (M),
ASSAM, REP. BY HER DULY CONSTITUTED ATTORNEY,
DEBAJIT KUMAR BARUAH
AGE 62 YRS, S/O LATE AJIT KUMAR BARUAH, R/O- NILMONI PHUKAN
PATH, CHRISTIAN BASTI, GUWAHATI- 781005, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR,
GUWAHATI-6., ASSAM

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI-781001
ASSAM

3:THE LAND ACQUISITION OFFICER
KAMRUP (M)
GUWAHATI-781001
ASSAM

4:THE SECRETARY
TO THE GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI.

5:THE COMMANDANT
OF 33RD ITB POLICE
MHA
GOVERNMENT OF INDIA



Advocate for the Petitioner : S ALI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : **31.08.2023.**

Date of judgment : **31.08.2023.**

JUDGMENT & ORDER (Oral)

Heard Mr. S. Ali, learned counsel assisted by Mr. R. Baruah, learned counsel appearing for the writ petitioner. Also heard Ms. G. Hazarika, learned Standing Counsel, Revenue and Disaster Management Department, Assam appearing for the respondent No.1, Mr. H. Sarma, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.2 and 3 and Mr. C. K. S. Baruah, learned Central Government Counsel appearing for the respondent Nos.4 and 5.

2. This writ petition has been filed seeking a writ of mandamus directing the respondents to disburse the amount of compensation payable to the writ petitioner for acquiring her land measuring 21 bighas 15 lechas. The facts of the case, in a nutshell, are that the respondent Nos.4 and 5 were in requirement of land in the Kamrup (Metro) District for setting up Indo Tibetan Border Police (ITBP) Battalion Headquarters. Accordingly, land measuring approximately 184 bighas was identified at Sonapur area under Panbari Mouza in the District of Kamrup. Notification under



Section 4 of the Land Acquisition Act, 1894 was issued on 04.05.2013 and on 18.04.2014, notices under Section 5A of the Land Acquisition Act was issued/served upon individual pattadars/land owners inviting objections. After the objections were dealt with, a declaration under Section 6 of the Land Acquisition Act, 1894 was issued notifying the intention of the Government to acquire the land in question for construction of ITBP Headquarters. After following the due process laid down in the Land Acquisition Act, 1894, possession of the land was taken over and the ITBP Headquarters had been constructed over the said plot of land.

3. The writ petitioner herein claims to be the owner of 21 Bighas 15 Lechas of land which forms part of the land acquired by the District Administration for construction of the ITBPP headquarters. According to the case projected by the petitioner, notice under Section 54 of the Land Acquisition Act, 1894 was served upon her and she had duly responded to the same. Notwithstanding the same, no compensation for acquiring her land has been paid till today. Aggrieved thereby, the instant writ petition has been filed.

4. It appears from the record that the Collector had originally assessed the value of the land at the rate of Rs.50,000/- per bigha. However, some of the land owners, being aggrieved with the aforesaid determination, had raised objection as a result of which, the matter was referred to the Court of Additional District Judge No.1, Kamrup(M), Guwahati and L.A. Ref. Case No.25/2016 was registered with as many as 27 land owners as the petitioners therein. However, the present writ petitioner was not a party to the said proceeding. After hearing the parties the learned Additional District Judge had passed judgment dated 09.08.2019 answering the Reference, by

holding that the sum of Rs.50,000/- per bigha was inadequate and that the market value of the land ought to be Rs.8,16,000/- per bigha. It appears that, in the meantime, the ITBP authorities had deposited some amount with the Collector by treating the value of the land as Rs.50,000/- per bigha, out of which, some amounts have been paid to the land owners. However, the writ petitioner herein did not receive a single farthing. Eventually, some of the land owners had approached this Court by filing LA. Appeal No.18/2019 seeking further enhancement of the land value by questioning the validity of the judgment and order dated 09.08.2019. The said appeal is pending disposal before this Court.

5. Mr. S. Ali, learned counsel for the writ petitioner submits that there is no dispute about the fact that the writ petitioner is the recorded pattadar and owner in possession in respect of 21 bighas 15 lechas of land covered by Dag No.103 of Periodic Patta No.3 located at village- Karsia NC, Mouza-Panbari, District- Kamrup(M), Assam, which plot of land was acquired by the Collector for construction of the ITBP Battalion Headquarters. Therefore, as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 she was entitled to receive compensation but no compensation has been paid to her till today. Mr. Ali further submits that the pendency of LA. Appeal No.18/2019 before this Court would not have any bearing in the case of the petitioner since she is agreeable to receive compensation at the rate of Rs.8,16,000/- per bigha as per the determination made by the Reference Court.

6. Responding to the above, Mr. H. Sarma, learned Additional Senior Government Advocate, Assam submits that although some amount was deposited



with the Collector by the ITBP authorities by calculating the land value as Rs.50,000/- per bigha, yet, at the relevant point of time, the amount could not be released in favour of the petitioner since a person by the name "Dimple Das" had raised objection and a title suit being Title Suit No.274/2014 was pending in the Court of Civil Judge No.3, Kamrup(M), Guwahati pertaining to the above plot of land. Mr. Sarma has, however, fairly submitted that the said Title Suit has since been dismissed on 26.06.2019 and therefore, at this point of time there is no challenge to the title and ownership of the petitioner in respect of the above land. Mr. Sarma has submitted that as soon as the balance amount of fund is received by the Collector, the amount due and payable to the petitioner shall be released after verifying her claim.

7. Mr. C. K. S. Baruah, learned Central Government Counsel has also submitted, by referring to Annexure-B of the counter-affidavit filed by the respondent Nos.4 and 5, that a sum of Rs.1,74,82,135.00 and another amount of Rs.2,57,99,309.00 totalling to Rs.4,32,81,444.00 as per the estimate originally submitted by the Collector, was deposited with the authorities for disbursement of compensation to the land owners. However, after the enhancement of the amount of compensation, no further amount has been deposited due to the pendency of the Land Acquisition Appeal before this Court. Mr. C.K.S. Baruah has further submitted that a controversy had also arisen in this case due to the claim made by one Smti. Dimple Das, coming in the way of release of amount of compensation in favour of the writ petitioner. The learned Central Government Counsel has, however, submitted that the respondent Nos.4 and 5 would deposit the amount for payment of compensation to the owners of the land as per determination made by the Court.



8. After hearing the submissions of the learned counsel for both the sides, it is apparent that there is no dispute about the fact that land measuring 21 Bighas 15 Lechas covered by Dag No.103 of Periodic Patta No.3 located at village- Karsia NC, Mouza-Panbari, District- Kamrup(M), Assam was acquired by the authorities as a part of the larger plot of land required for construction of ITBP Battalion Headquarters. It *prima-facie* appears from the record that the plot of land is also recorded in the name of the writ petitioner i.e. Smti. Kamala Phukan, wife of Sri Dwijen Phukan. She was also served with the notice under Section 5 of the Land Acquisition Act, 1894 treating her as the owner of the land. Under the circumstances, merely because one Smti. Dimple Das had raised a claim over the land and filed a Title Suit, as noted above, in the absence of any restraint order passed by the Court, there was no justifiable ground for the authorities to deny the compensation payable to the petitioner on account of the land.

9. Be that as it may, since it has now been brought to the notice of the Court that the suit filed by Smti. Dimple Das has been dismissed on 26.06.2019 and at present, there is no proceeding pending before any court of law pertaining to the land in question, this Court is of the opinion that the claim of the writ petitioner deserves to be settled expeditiously. This is more so on account of the fact that Mr. Ali, learned counsel for the petitioner has disarmingly submitted that his client will be satisfied to receive compensation as per the rate fixed by the Reference Court at the rate of Rs.8,16,000/- per bigha along with any other ancillary benefits, as may be prescribed by the statute.

10. Having heard the submissions made at the bar and taking note of the peculiar



facts and circumstances of the case, this Court is of the opinion that the matter can be resolved by issuing a direction upon the respondents to make payment of the amount of compensation to the writ petitioner after verifying her claim of ownership and possession as per the revenue records.

11. The writ petition is, therefore, disposed of by directing the respondents to pay compensation for acquiring the land of the petitioner, as per the rate fixed by the Reference Court by judgment dated 09.08.2019 along with other dues as may be statutorily prescribed. Facilitating the above, the respondent Nos.4 and 5 to deposit the requisite amount after adjusting the money, if any, earlier released/deposited with the Collector for making payment of compensation to the owner of this 21 Bighas 15 Lechas of land. The aforesaid exercise be carried out and completed as expeditiously as possible, preferably within a period of three months from the date of receipt of a certified copy of this order.

Writ petition stands disposed of.

JUDGE

T U Choudhury/SrPS

Comparing Assistant