



GAHC010120832022

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

Case No. : LA.App./11/2022

THE DEPUTY COMMISSIONER, NAGAON
ASSAM

VERSUS

HARESHWAR BORAH AND ANR.
S/O LATE KAMALESWAR BORA RESIDENT OF LAOKHUWA ROAD, NORTH
HAIBORGAON, NAGAON TOWN, PO, PS AND DIST NAGAON, ASSAM
782002

2:SMTI MADHUMITA BORAH
W/O SRI HARESWAR BORAH
RESIDENT OF LAOKHUWA ROAD
NORTH HAIBORGAON
NAGAON TOWN
PO
PS AND DIST NAGAON
ASSAM 78200

Advocate for the Petitioner : MR. R BORPUJARI

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the applicant : Shri R. Borpujari



Respondents in person : Shri Hareshwar Borah,
Smti Madhumita Borah

Date of hearing & Judgment : **24.01.2023**

JUDGMENT & ORDER

This is an appeal filed under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called the Act) against the judgment and award dated 25.02.2022 passed by the learned District Judge-cum-Land Acquisition Rehabilitation and Resettlement Authority, Nagaon in Ref. (LA) Case No. 1/2018. The appellant in this case is the Deputy Commissioner, Nagaon.

2. I have heard Shri R. Borpujari, learned counsel for the appellant. I have also heard Shri Hareshwar Borah as well as Smti Madhumita Borah, the respondent nos. 1 and 2, who are appearing in person.

3. It appears from the case records and the order sheets that on the maintainability of the appeal, a preliminary objection has been raised questioning the locus of the Deputy Commissioner to maintain such an appeal. Accordingly, this Court vide an order dated 24.11.2022 had fixed the matter for hearing on the said issue.

4. In an attempt to persuade this Court that the Deputy Commissioner has the locus, certain provisions of the Act in question has been referred to. Under Section 3(f), Authority has been defined which reads as follows:

“Authority” means the Land Acquisition and Rehabilitation and Resettlement Authority established under section 51.”

5. Section 51 is with regard to Establishment of Land Acquisition, Rehabilitation and Resettlement Authority which is also extracted hereinbelow along with the contents of Section 52 regarding Composition of Authority and Section 53 regarding Qualifications for Appointment as Presiding officer:

“51. Establishment of Land Acquisition, Rehabilitation and Resettlement Authority.-

- (1) *The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as "the Land Acquisition, Rehabilitation and Resettlement Authority" to exercise jurisdiction, powers and authority conferred on it by or under this Act.*
- (2) *The appropriate Government shall also specify in the notification referred to in sub-section (1) the areas within which the Authority may exercise jurisdiction for entertaining and deciding the references made to it under Section 64 or applications made by the applicant under second proviso to sub-section (1) of Section 64.*

52. Composition of Authority.-

- (1) *The Authority shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the appropriate Government.*
- (2) *Notwithstanding anything contained in sub-section (1), the appropriate Government may authorise the Presiding Officer of one Authority to discharge also the functions of the Presiding Officer of another Authority.*

53. Qualifications for appointment as Presiding Officer.- (1) A person shall not be qualified for appointment as the Presiding Officer of an Authority unless,-

- (a) *he is or has been a District Judge; or*
- (b) *he is a qualified legal practitioner for not less than seven years.*

(2) *A Presiding Officer shall be appointed by the appropriate Government in*

consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established.”

6. There is no dispute to the fact that the District Judge of the respective districts have been designated as the Authority under the Act of 2013. The provision of reference is given in Section 64 which is also extracted hereinbelow:

“64. Reference to Authority.-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the person interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made -
(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
(b) in other cases, within six weeks of the receipt of the notice from the

Collector under Section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

7. The aforesaid Section 64 of the new Act is *pari materia* to Section 18 of the Land Acquisition Act, 1894. The question which has arisen for determination as to whether the Deputy Commissioner can be an aggrieved person has to maintain this appeal.

8. Section 74 of the Act provides for an appeal to the High Court which reads as follows:

“(1) The Requiring Body or any person aggrieved by the Award passed by an Authority under Section 69 may file an appeal to the High Court within sixty days from the date of Award:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Explanation.-For the purposes of this section, "High Court" means the High Court within the jurisdiction of which the land acquired or proposed to be acquired is situated."

9. Under the aforesaid Sections, the appeal can be preferred by the requiring body or any person aggrieved by the award passed by an Authority. In the instant case, it is not in dispute that the requiring body is the CRPF for whose benefit the land

has been acquired.

10. Shri R. Borpujari, learned counsel for the appellant has submitted that it is also not in dispute that in the present case the reference was made on an application by the claimants under Section 64. However, in the said reference, the requisitioning authority namely, the CRPF was not made a party and the award by the Reference Court was *ex-parte* the CRPF. It is the contention of the learned counsel for the appellant that under such facts and circumstances, if the award is put to execution, it would be executed only against the Deputy Commissioner who then would be relegated to the position of the judgment debtor which probably is not the scheme of the Act. In this connection, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of ***NTPC Ltd. Vs. State of Bihar & Ors.*** reported in **(2004) 12 SCC 96**.

11. In the said case before the Hon'ble Supreme Court, the appellant was the requiring authority and in paragraph 12, the necessity to implead a requiring authority in the reference case has been emphasized.

12. It is the settled position of law that under the earlier Act of 1894 wherein provision to appeal was given in Section 54, a Requiring Authority could file such an appeal even if the said authority was not made a party in the reference proceedings. The Hon'ble Supreme Court in the case of ***Himalayan Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho***, reported in **(1980) 3 SCC 223**, has also recognized the right of a Requisitioning Authority to maintain an appeal. The relevant part is extracted hereinbelow-

“8. It seems to us that the definition of “a person interested” given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once

the land vested, in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus, it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation."

13. In fact, Section 50 of the earlier Act recognizes the rights of such Requisitioning Authority to appear and adduce evidence before the Collector or Court. However, in the instant case, the appellant is not the requisitioning authority but the Deputy Commissioner of the district, who is only a Nodal Agency through whom the acquisition proceeding has been initiated and completed. The Deputy Commissioner, by any stretch of imagination cannot be held to be an aggrieved party either by the quantum or any other matter in an award duly passed by the authority constituted under the new Act. This Court is of the unhesitant opinion that an appeal cannot be maintained on the behest of the Deputy Commissioner of the District.

14. Accordingly, the present appeal stands dismissed.

JUDGE

Comparing Assistant