
(1983) 12 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1059 of 1981

Abdur Rahman Mia Ors.

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 06-12-1983

Acts Referred:

Assam Land (Requisition and Acquisition) (Amendment) Act, 1964 — Section 10, 10(2), 11, 9, 9(2)
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1984) 1 GLR 154

Hon'ble Judges : T.S. Misra, C.J; T. Nandakumar Singh, J

Bench : Division Bench

Advocate : D.C. Mahanta, for the Appellant; D.K. Choudhury, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.S. Misra, C.J.—The Petitioners, who are 102 in number, are residents of different villages in the Dhubri Sub-Division within the district of Goalpara. They made their living by cultivating their plots of land, most of them being small land-holders. The Government of Assam started a project for construction of embankment on the left bank of river Gadadhar from Golokganj to Purni in the year 1962-63. The land of these Petitioners was covered by the said project. It is alleged by the Petitioners that without resorting to proper acquisition proceedings the Governmental authority took over possession of their land for the purpose of constructing the embankment. The said scheme was firstly taken over by Goalpara E and D Division under the Flood Control Department, but ultimately was transferred to the Dhubri Division in the year 1971-72. The embankment was constructed by the E and D Department in the year 1963. It appears from the various papers placed before us as also the Annexures to the writ petition that though the Petitioners were dispossessed from their land in the year 1962

by the Governmental authorities, formal possession of the land was handed over to E and D Department on paper on 13th November, 1965. An attempt was made by the authorities concerned to take acquisition proceedings under the provisions of the Land Acquisition Act, 1894 and a draft notification u/s 4(1) of the Act was issued for publication in the Gazette. However, that was cancelled subsequently and proceedings under the provisions of Section 9 of the Assam Land (Requisition and Acquisition) Act, 1964 were resettled to and a notification was issued on 13th December, 1965 though the formal possession had already been handed over on paper to the E and D Department on 13th November, 1965. Ultimately an award was made determining the compensation to be payable to the land owners who were, on the basis of the award, paid the compensation to be payable to the land owners who were, on the basis of the award, paid the compensation. The Petitioners then made claim for the loss of the prospective crops for 3 years prior to the date of notification u/s 9 of the Assam Land (Requisition and Acquisition) Act, 1964. The claim was examined by the various authorities at different levels. The Deputy Commissioner, Goalpara, Dhubri by his letter dated 24th October, 1977 to the Under Secretary (C) to the Govt. of Assam. Flood Control Department (C) Branch, Chandmari, Gauhati, estimated the amount of compensation for the loss of the prospective crops for 3 years at Rs. 92,724.30 and stated that with respect to the claim made by the Petitioners the financial implication would amount to that figure. The estimate was prepared by him on the basis of the report submitted by the Executive Engineer and related to the crops on the cultivable land only for the period of three years, i.e. 1963, 1964 and 1965, the period prior to acquisition of the land under the provisions of Section 9 of the said Act. The Deputy Secretary to the Government of Assam, however, declined to accept the claim of the Petitioners and that is how the matter has reached this Court by way of this petition under Article 226 of the Constitution.

2. The Respondents have not filed any affidavit-in-opposition. The learned Government Advocate has, however, placed before us a file containing certain papers relating to the matter in question, and has orally submitted that the petition is not maintainable, inasmuch as, the Petitioners had already been paid compensation in terms of an award and if they had any grievance with respect to any claim for prospective crops for the years in question, they could have agitated the same before the authority which made the award. Further it was urged that at any event the Petitioners should have gone to the Civil Court for redress.

3. The learned Counsel for the Petitioners, on the other hand submitted that it was no doubt true that an award had been made and the Petitioners had been paid compensation on the basis of the said award. The Petitioners are not aggrieved by that award. Their grouse is that they had been dispossessed from their land without the authority of law and were deprived of their cultivable land for a period of three years. They, therefore, approached the authorities for payment of compensation for the prospective crops for three years and as the

Deputy Commissioner and the Executive Engineer concerned have reported the financial implication by assessing the amount of compensation, they should be paid that much amount which has been so determined. It was further urged that the claim relating to the compensation for prospective crops for three years could not be the subject matter of the award, hence the same could not be pressed or agitated before that authority. It was also urged that since the Petitioner had been deprived of their property without payment of compensation, they were entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

4. We have given our anxious consideration to the entire matter and we find force in the claim of the Petitioner set up before us. It is not in dispute that the project of construction of the embankment on the left bank of river Gadabar from Golokganj to Purni was undertaken in the year 1962 and the Petitioners were actually dispossessed from their land in the year 1962. No action was taken either under the provisions of the Land Acquisition Act or under the Provisions of the Assam Act XI of 1964 at any time before these Petitioners were actually dispossessed from their land, it seems that an effort was made subsequently to im(sic) proceeding under the Land Acquisition Act had a draft notification u/s 4(1) of that Act was issued for publication in the Gazette on 15th May, 1964. But that notification was also subsequently cancelled and the authority concerned thought it fit to take recourse to the provision of the Section 9 of the Assam and (Requisition and Acquisition) Act, 1964, hereinafter called "the Act".

5. Section 9 this Act deals with speedy acquisition of land in certain cases. It provides that if in the opinion of the State Government or the Collector it is necessary or expedient to acquire speedily any land for works or other development measures in connection with flood control and anti-erosion measures including embankment and drainage, the State Government or the Collector by order in writing acquire the land stating the area and boundaries thereof. The Collector shall cause the order passed under Sub-section (1) to be served in such manner as may be prescribed on the owner of the land and also on the tenant or the occupant in cases where the owner is not in occupation of the land and also a notice to the same effect stating that claims to compensation for all interests in the land may be made to him within such time as may be prescribed.

Section 10 of the Act reads as under:

10. (1) When an order of requisition served or published under Sub-section (2) of Section 9, the land (sic) vest absolutely in the State Government free from all encumbrances on the date the order is so served or published.

(2) The Collector may, at any time after land becomes so vested, proceed to take possession thereof.

(3)

6. The proceeding u/s 9 of the said Act initially had been taken admittedly on 13th December, 1965 when the notification was published in the Gazette. It was only on the publication of that notification that the land vested absolutely in the State Government free from all encumbrances. The land did not therefore vest in the Government on any date prior to 13th December, 1965. The Collector could not also take possession of the land prior to 13th December, 1965 for the simple reason that under Sub-section (2) of Section 10 the Collector could proceed to take possession of the land only when it vested in the Government. The notification having been issued u/s 9 of the Act on 13th December, 1965, the Collector could proceed to take possession of the land on or after 13th December, 1965 but not before that date. From the record it is quite manifest that the Petitioners were dispossessed from their plots of land by the authorities in the year 1962 and even formal possession on paper was handed over to E and D Department on 13th November 1965, that is, a month prior to the issuance of the notification u/s 9 of the Act. These facts speak eloquently of the legal manner in which these Petitioners were dispossessed from their land. Quite obviously the Petitioners were dispossessed without the authority of law in the year 1962 and they were deprived of their right to cultivate their land and to earn their (sic) livelihood. They were deprived of the use of their land at least for three years till 13th December 1965 when the notification u/s 9 of the Act was issued. The award was made under the Assam Act XV of 1964 u/s 11 of the said Act. Section 11 of the Act deals with various matters which are taken into account while determining the compensation to be paid to the land owner or to the tenant or to the occupant of the land which is acquired u/s 9 of the Act. The compensation was so determined and award was made accordingly and the Petitioners were paid compensation for it. They, as pointed out earlier, are not aggrieved by the award. They approached the authority for payment of compensation with respect to the loss of prospective crops for three years, that is, 1963, 1964 and 1965. The Executive Engineer reported the matter to the Deputy Commissioner who pointed out to the Government the financial implication and submitted that the amount of compensation would work out to Rs. 92,724.30 vide Annexure 5 to the writ petition. This is the total amount which is payable to the various cultivators whose land was acquired and who were actually dispossessed from their land without the authority of law. The learned Counsel for the Petitioners submitted before us that they would be satisfied if the amount so determined by the Deputy Commissioner towards compensation for loss of crops of three years, is paid to them. They had given notice u/s 80, Code of Civil Procedure, but the Government instead of honouring the claim of the Petitioners in spite of the reports of the Deputy Commissioner and the Executive Engineer, turned down the claim and drove these Petitioners to this Court. This is a clear instance where certain persons who were in lawful possession of their land and were deprived (sic) of their property without authority of law and without payment of compensation; and even when the authorities were approached to honour the claim of the Petitioners, the higher authorities declined to listen to these Petitioners and turned down their claim on whimsical and illegal ground. Needless to say that at

the material time no person could be deprived of his property save by authority of law and if any person was so deprived, he could certainly invoke the jurisdiction of this Court under Article 226 of the Constitution for a proper remedy, We, therefore, do not find any merit in the contention of the learned Government Advocate that the Petitioners should have approached the Civil Court for redress or should have pressed their claim before the authority which proceeded to make an award u/s 11 of the Act. Section 11 of the Act did not enable either the authority or the Petitioners to entertain or maintain the claim which is the subject matter of the dispute before us. The claim was almost admitted by the Deputy Commissioner and the Executive Engineer but ultimately it did not find favour with the Deputy Secretary to the Government of Assam. The reasons advanced by the Deputy Secretary to his letter dated 8th March, 1976, a copy of which is Annexure 3 to the writ petition, are illegal and unwarranted.

7. For the reasons in the foregoing we are satisfied that the Petitioners have made out a case for a writ in the nature of mandamus. They asked for justice which was wrongly denied to them by the Deputy Secretary to the Government of Assam.

8. In the result, we allow the petition and direct the Respondents 1 and 2 to pay the Petitioners within two months the amount of compensation for loss of crops for three years in question. The amount payable to each of the Petitioners shall be in accordance with the estimate already prepared by the Deputy Commissioner vide statement already on the Government file duly signed by the Deputy Commissioner, Goalpara and also by the Land Acquisition Officer, Goalpara at Dhubri and which was shown to us at the time of hearing.

9. The Petitioners shall be entitled to get Rs. 300/- as costs from the Respondents 1 and 2.

The Rule is made absolute.