
(2007) 12 GAU CK 0006
In the Gauhati High Court

Anupam Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 15, 18, 23

Citation : AIR 2008 Guw 189 : (2008) 2 GLT 589

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—This case depicts a pathetic situation of a citizen, suffering at the hands of the respondent who has taken possession of his landed property without any formal acquisition order under the provisions of Land Acquisition Act, and not provided any compensation till date.

2. Heard Mr. U. Bhuyan, learned Counsel for the petitioner and Mr. S. Saikia, learned standing counsel appearing for the Public Works Department.

3. The pleaded case of the petitioner, in this writ petition, inter alia is that, he is the absolute owner of an area of land measuring 2 Katha, 7 lechas, situated in the village Ramcha Hill under Dag No. 1 of Patta No. F.S. Grant-1 Ulubari Mouza, Guwahati (Sadar) Circle in the revenue district of Kamrup (Assam). The name of the petitioner has been entered in the revenue records of right as pattadar. The Public Works Department of the State of Assam (respondent authorities) proposed to construct a road through the aforesaid land of the petitioner. In the process the respondent authorities themselves took possession of 1 Katha, 3 lechas of the land out of total area of 2 kathas, 7 lessas belonging to the petitioner. The remaining 1 katha, 4 lechas, is lying on other side of the road. Due to construction of said road, the remaining area is also got divided into two parts, one part being 1 katha and the other part being 4 lechas, on both sides of the road.

Although the aforesaid land was taken possession by the respondent authorities way back in the year, 1994, neither compensation for the same has been paid to him nor the said land was acquired by following the relevant provisions of the Land Acquisition Act. The petitioner did not get any scope to raise objection under the said Act at any point of time as no public notice was issued. Since the land has been utilised for public purpose, the petitioner as a good citizen did not object the same, but he has seriously objected the manner and method by which the same has been taken possession by the authority, without following the provisions of the Land Acquisition Act, thereby not paying/depositing necessary compensation before taking possession of the land. Repeated request and demand, ultimately followed by a lawyers notice, having resulted no positive response from the respondents, the petitioner ultimately approached this Court by filing this writ petition.

4. In this writ petition, the petitioner has prayed for passing necessary orders, directing the respondent authorities to pay compensation in respect of the aforesaid area of land measuring 1 katha, 3 lechas referred to above along with interest @ 15% per annum from the date of taking possession.

5. Contesting the claim of the petitioner, a counter has been filed on behalf of the respondents. The stand of the respondents in the counter is that the grievance of the petitioner was taken up with the DC, Kamrup by the Superintending Engineer, Public Works Department (Roads) Guwahati Circle, respondent No. 3 by issuing the letter No. T/COM/82/204/Pt-V/2776 dated 23.05.1995, requesting him to submit land acquisition estimate, but since the same has not been made available to the respondents, a subsequent request was also made to the same effect on 05.05.1997. No reply having been received from the Deputy Commissioner, Kamrup fixing compensation, the respondents have not been able to process the payment of compensation to the petitioner. In the counter, it is also admitted that the acquisition was carried without following the procedures laid under Sections 4, 5, 5A, 6, 7, 8 and 9 of the Land Acquisition Act, 1894 or the provisions of the Assam Land (Requisition and Acquisition) Act, 1964.

6. The facts that emerge from the pleadings of the parties supported by the submissions made by the learned Counsels appearing for the respective parties, clearly disclose, that there is no dispute to the fact, that the petitioner is the owner/recorded pattadar of an area of land measuring 2 kathas, 7 lechas covered by Dag No. 1 of Patta No. F.S. Grant-1, Ulubari Mouza, Guwahati (Sadar) Circle in the revenue district of Kamrup (Assam) situated at revenue village Ramcha Hill. The part of the said land measuring 1 katha, 3 lechas has been taken possession by the respondents for construction of a public road through the same. The letter written by the respondent No. 4 to respondent No. 2 coupled with the related records submitted by the learned Counsel for the respondents, clearly go to show that the land in question was not acquired by the authority under the provisions of the Land Acquisition Act and they took possession and utilised the same without such acquisition.

The Land Acquisition Act provides a complete procedures and machinery for acquisition of land belonging to a private individual when requirement for such acquisition arises as per the demand of any department or authority/company.

Section 4 of the Land Acquisition Act prescribes that, whenever, it appears to the appropriate government that a land or property in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality. It is also necessary for the Collector of the district to cause publication of the substance of such notification to be given at convenient places in the said locality. After issuance of such notification it would be lawful for any officer (i) to enter upon and survey and take levels of any land in such locality; ii) to dig or bore into the sub-soil; and iii) to do other acts as mentioned u/s 4(2) of the Act in respect of the said notified land.

Section 5 of the Act provides for providing damage by the officer authorised by the Superintending Engineer at the time of entry into the land. After issuance of notification u/s 4, any persons interested in the land, may object to such acquisition and such objection are to be dealt with, as provided u/s 5A of the Act.

Under Section 6 of the Act, the appropriate Government after considering the report, if any, made u/s 5A(2) is satisfied that the particular land is needed for public purpose, a declaration to that affect shall be made with acknowledgment of the Secretary to the appropriate Government or its authorised officer, which shall be published in the Official Gazette and two daily newspapers having circulation in that locality at least one of which shall be in the regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places of that locality and such declaration shall be the conclusive evidence that the land is needed for public purpose and after such declaration, the appropriate Government may acquire the land in question.

Under Section 7 of the Act, after such declaration the Collector is to make order for acquisition of such declared land and it shall be marked out, measured and planned in terms of Section 8 of the Act. After exercising the aforesaid procedure, notice to the persons interested in the land is to be served u/s 9 of the Act by the Collector intending to take possession of the land and that claim to compensation for all interests in such land may be made to him.

Section 11 of the Act interalia provides for enquiry and making of an award in relation to any claim that may be raised by the persons interested. Thereupon the Collector shall make an award within two years from the date of publication of the declaration and if, such award is made within the period, the entire proceeding for acquisition would stand elapse.

Section 12 of the Act makes the award so made by the Collector as final. However, that finality of the award is subject to the provision u/s 18 of the Act under which a dissatisfied person may pray for referring the matter in dispute

regarding the compensation or on apportionment of the award to the Reference Court and whose decision shall be final.

It is to be noted, herein that, u/s 15 of the Act, in the matter of determining the amount of compensation, the Collector shall be guided by the provisions contain u/s 23 and 24 of the Act.

Section 23 lay down the factors which are required to be considered in fixing such compensation and these factors include marked value of the land at the date of the publication of the notification; the damage sustained by the person interested, by reason of taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of severing such land from his other land; the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of acquisition injuriously affecting his other property, in any other manner, or his earnings; if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and the damages (if any) bonafide resulting from diminution of the profits of the land between the time of publication of the declaration u/s 6 and the time of Collector's taking possession of the land. That apart, u/s 23(1) A in addition to the market value of the land, an amount of compensation @ 12% per annum on such market value is also entitled to be paid to the person interested, by the Reference Court. u/s 23(2), the person interested is also entitled to get solatium @ 30% of such market value in consideration of the compulsory nature of acquisition which is commonly known as solatium.

Section 24 on the other hand, provides the matters which are related, to be neglected in determining compensation.

Section 34 of the Act provides that when the amount of such compensation is not paid or deposited before taking possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% per annum and if such compensation awarded by the Collector or by Court is not paid or deposited within a period of one month from the date of taking possession, the rate of interest would be increased to 15% per annum.

Section 46 provides penalty for willful obstruction by any person in doing any of the acts authorized by Section 4 or Section 8 of the Act.

The aforesaid relevant provisions of the Land Acquisition Act authorises that the appropriate government is entitled to acquire land of a private individual on public interest but before such acquisition, the relevant procedures referred to above shall be followed and the compensation thereof is to be paid to the owner or person interested over the acquired land.

The nature of acquisition of the land by the respondent disclose that the provisions of the Assam Land Requisition or Acquisition Act would not be applicable and the case falls under the provisions of Land Acquisition Act, 1894. Admittedly right from the stage of publication of notification u/s 4 of the Act till reference of the dispute to the Court and the payment of the awarded sum, the land owner or person interested has got statutory right to raise his grievance at the appropriate stages.

7. In the instant case what is discernible from materials available before the Court, is that the provisions of the Land Acquisition Act has not at all been complied with and the officers in the PWD Department took possession of the land in question and constructed the road without such compliance. No doubt, the acquisition of the land in question, in the instant case, is for public purpose but that must be done following due process of law as contained in the Land Acquisition Act, and that having not been done, the action of the authority cannot be an appropriate action under the law and no material has been shown to justify such action. The State or its executive Officers cannot interfere with the rights of a citizen unless they point out some specific rules of law which authorises their act. The State or its executive officers cannot interfere with the rights of the petitioner in the manner it has done in the instant case.

In the case of Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, , the Apex Court observed that it is impossible to conceive of a worst form of discrimination than the one which differentiates a particular individual from all his fellow subjects and visits him with a disability which is not imposed upon anybody.

8. The stage at which the matter standi rested by now is that the landed property of the petitioner has been taken over by the respondent authorities for construction of road without any acquisition and without paying compensation thereon.

From the counter of the respondent authorities, it is clear that after raising all the issues, the respondent authorities shall taken up the matter with the DC, Kamrup, so that the payment of compensation of the petitioner can be finalized.

9. Since the land of the petitioner has been taken over in the year, 1994 itself, the respondents are required to take appropriate action at the earliest so that the necessary compensation due to the petitioner is paid to him in tune and principles prescribed under the Land Acquisition Act without any further delay. Mr. Saikia, learned standing counsel has assumed that the matter is expected to be sorted out quickly and once such determination is made by the Collector, the petitioner would be paid the amount forthwith.

10. Accordingly, upon consideration of the above, it is directed that the respondent authorities shall complete the process of payment of compensation of the petitioner to be calculated on the principles laid down under the Land Acquisition Act and the DC, Kamrup shall do the needful as early as possible, at

any rate not later than seventy days from the date of receipt of a certified copy of this order and therefore the PWD shall make the same available to the petitioner forthwith.

11. With the aforesaid directions and observations, this writ petition stands allowed.