
(1977) 01 GAU CK 0018
In the Gauhati High Court

Benoy Mazumdar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 06-01-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 12, 4, 5A, 6

Citation : AIR 1977 Guw 54

Hon'ble Judges : M.C. Pathak, C.J;N. Ibotombi Singh, J;M.C. Pathak, J

Bench : Full Bench

Final Decision : Allowed

Judgement

M.C. Pathak, C.J.—By this application under Article 226 of the Constitution of India the petitioner has prayed for a writ of mandamus or a writ of like nature directing the Respondent No. 2, Collector of Cachar, Silchar, to pass an award in L.A. Case No. 1/67-68 and to pay adequate compensation to the petitioner for acquiring petitioner's land mentioned in the petition.

2. By Notification No. R.L.A 467/69/2 dated 7-2-1970, issued under the provisions of Section 4 of the Land Acquisition Act, 1894 (Act I of 1894) (hereinafter referred to as "the Act") and published in the Assam Gazette dated 18-2-1970, the Government of Assam in the Revenue Department acquired an area of 17 Bighas 18 Kathas 15 Chattaks of land belonging to the petitioner and situated in village Bhorakhai Grant (2nd sheet), Mouza or Pargana Chatla Haor, Sub-division Silchar in the district of Cachar, for the purpose of expansion of Live Stock Farm at Ghoongoor, Cachar. A copy of the notification is at Annexure-1 to the petition. By the same notification objection u/s 5A of the Act was also called for to be filed on or before 11-3-1970 or within 30 days from the date of publication of the notification in the Gazette whichever is later.

3. It is submitted that thereafter a notice u/s 6 of the Act was also published and after that notice u/s 9 of the Act was published, under Notification No. RLA. 467/69/19. By that notice u/s 9, claims to compensation, if any, for all interested

in the said land were required to be submitted to the Collector, Cachar, on or before 31-8-1971. A copy of the notice u/s 9 of the Act is annexed to the petition as Annexure-2.

4. It is stated in the petition that possession of the acquired land had already been taken by the Deputy Director, Department of Animal Husbandry and Veterinary, Silchar, that is to say, 11 Bighas and odd in February, 1965 and 5 Bighas and odd in 1967. The petitioner submitted his claim for compensation and he claimed compensation at the rate of Rs. 13,000/- per bigha. It is stated by the petitioner that sale deeds of neighbouring land pertaining to the period from 1968 to 1970 were filed by the petitioner and the Collector after perusal of the sale deeds and other relevant records by his order dated 21-10-1971 passed in L.A. Case No. 1/67-68 determined the value of the aforesaid land at the rate of Rs. 6878/- per bigha, but up till now no formal award has been passed by the Collector nor any compensation has been paid to the petitioner for the acquisition of his valuable property. A copy of the order dated 21-10-1971 is annexed to the petition as Annexure-4 to the petition, which reads as follows:

21-10-1971. Seen the sale statement prepared by the S.K. The sale deeds relate to the period 1968-1970 and the neighbouring village Ambikapur Part VI as no transactions were reported in respect of Barakai Grant. The av. value of "Sailura" class of land as per the sale statement is Rs. 11006.00, whereas the land under acquisition is not "Bhit" but "chara" class of land as the land was not utilised nor anything grown over there. The bigha portion of Sailura is 16 while of chara is 10. Taking these factors into consideration the proportionate value of "chara" class of land would be Rs. 6878/-per bigha in 1970. Considering also the impact of developmental activities in the neighbouring land, such as, construction of Medical College, Regional Engineering College, price has considerably grown up since 1967 when the acquisition proceedings were first drawn up. Therefore Rs. 6878/- per bigha appears to be reasonable. This rate is therefore approved.

Sd/-T.L. Boruah A.D.C, Cachar.

5. After this order dated 21-10-1971 no award has been passed as required u/s 11 of the Act nor the award has been filed in the Collector's office as required u/s 12 of the Act. By this writ petition the petitioner submits that by not passing the award the petitioner is not only unable to get the amount of compensation but he is also unable to challenge the inadequacy of the compensation, if any in a proper court. Whatever that may be, there is no reason why the Collector, who is the author of the notifications under Sections 4, 6 and 9 of the Act and who has acquired the land in question, should not pass the award in terms of Section 11 and file the same in terms of Section 12 of the Act.

6. Though notices were served no affidavit-in-opposition has been filed by the Respondent No. 2, the Collector of Cachar. An affidavit-in-opposition has been filed on behalf of the Respondent No. 3, the Secretary to the Government of Assam, Revenue Department, wherein taking over possession of the land in

question is admitted but objection has been raised regarding the amount of compensation awarded per bigha, stating it to be too high and to that effect some facts have been stated. We are, however, not concerned with that matter in the present case. When notices under Sections 4, 6 and 9 of the Act have been issued and the land in question has been acquired, it is the legal duty on the part of the, Collector to pass the award as required u/s 11 and to file the same in the Collector's office as required u/s 12 of the Act. The Collector has unreasonably failed to do his duty, enjoined upon him under Sections 11 and 12 of the Act.

7. In the circumstances, we issue a writ of mandamus directing the Collector to pass the award in L.A. Case No. 1/67-68 and file the same in the Collector's office within three months from today.

8. The petition is accordingly allowed and the Rule is made absolute. The Respondents shall pay cost of this petition to the petitioner which we assess at Rs. 100/-.

N. Ibotombi Singh, J.

9. I agree.