
(2012) 01 GAU CK 0117
In the Gauhati High Court
Case No : WP (C) No. 1500 of 2011

G.D. Tie UP Pvt. Ltd

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 18, 3(b), 30
Wild Life (Protection) Act, 1972 — Section 35(1)

Citation : (2012) 2 GLT 851

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : K.K. Bhattacharjee, for the Appellant; B.J. Ghosh and D. Baruah, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Heard Mr. K.K. Bhattacharjee, learned advocate for the petitioner. Also heard Mr. B.J. Ghosh, learned Govt. Advocate, Assam for the respondent Nos. 1 to 7 and Mr. D. Baruah, learned counsel for the respondent No. 8. The facts of the case as pleaded in the writ petition may be stated at the very outset.

2. The petitioner is a company registered under the Companies Act, 1956 carrying on the business of selling tea within the country and also engaged in the business of import and export of tea (hereafter referred to as "the petitioner company"). It also carries on other businesses. The petitioner company entered into a memorandum of understanding (MOU) with M/S. Chandmari Tea Company Pvt. Ltd. (respondent No. 8 hereafter) on 31.5.2008 to purchase the Burrpahar Tea Estate belonging to the respondent No. 8. Pursuant to the said MOU, the petitioner company took over the possession and management of the Burrpahar Tea Estate (briefly the "Tea Estate" hereafter) with effect from 1.6.2008. Presently, the petitioner company is in possession and in control over the management and business of the Tea Estate.

3. Thereafter, an agreement for sale was executed between the petitioner company and the respondent No. 8 on 27.9.2008 for sale of the Tea Estate. The respondent No. 8 was represented by Mr. Pratiti Kumar Barooah, Managing Director and Mr. Probob Kumar Borooah, the Joint Managing Director whereas the petitioner company was represented by Mr. Mukesh Agarwal, one of the Directors of the petitioner company. The execution of the said agreement for sale was registered before the Deputy Registrar, Nagaon on 30.9.2008.

4. Before proceeding further, it would be apposite to mention and refer to certain relevant provisions of the said agreement for sale, which is annexed to the writ petition as Annexure-1.

5. As per Clause 26, the respondent No. 8 agreed to execute, register and deliver an irrevocable general power of attorney in favour of the petitioner company authorizing the latter to appear before all the authorities as may be necessary for the purpose of smooth running of the Tea Estate and entitling the petitioner company to under take the business of manufacture and sale of tea and also to get the formal deed of conveyance executed in its favour. Clause 34 provides that since a major portion of the land of the Tea Estate is still standing in the name of the original pattadar i.e. Someswar Borooah in spite of execution/registration of the Deed of Conveyance in favour of the respondent No. 8, the petitioner company would be entitled to apply for and obtain double mutation of the same from the concerned revenue authorities after transferring of the same in its favour. As per Clause 36, the respondent No. 8 declared and agreed that since the land to be sold to the petitioner company included land having dispute with the Kaziranga National Park, the petitioner company would be entitled to take steps for resolving the dispute and for that purpose to appoint any pleader, sign any document or institute any proceeding and shall also be entitled to settle, compromise and to receive compensation for the same.

6. In terms of Clause 26 of the agreement for sale, the respondent No. 8 executed, registered and delivered an irrevocable general power of attorney in favour of the petitioner company on the same date i.e. on 27.9.2008. By the said power of attorney, which was also registered before the Deputy Registrar, Nagaon on 30.9.2008, respondent No. 8 completely transferred the day to day business of the Tea Estate to the petitioner company.

7. In terms of the agreement for sale, the petitioner company agreed to purchase the Tea Estate for the total consideration of Rs. 5,81,25,000/-, out of which the liabilities of the Tea Estate stood at Rs. 5,55,85,717/-, which the petitioner company undertook to pay. The said liabilities included statutory liabilities like payment of provident fund etc.. Till 31-12-2010, the petitioner company had liquidated liabilities of the respondent No. 8 to the tune of Rs. 3,69,04,130/- besides making other investments in the Tea Estate. After deducting Rs. 5,44,283/- on account of expenditure and expenses in terms of Clause 6 of the agreement for sale and the amount of liabilities, the petitioner company paid the balance consideration money of Rs. 20,00,000/- to the

respondent No. 8. On an application by the petitioner company, the office of the Board of Trustees, the Assam Tea Plantations Provident Fund & Pension Fund Scheme & D.L.I. Scheme by order dated 22.12.2008 permitted the petitioner company to pay the outstanding arrear provident fund dues/D.L.I dues in respect of the Tea Estate in installments. According to the petitioner company, in terms of the aforesaid order, it is regularly paying the said outstanding dues along with the current dues.

8. The petitioner company has also obtained trade license in its name from the concerned Gaon Panchayat to operate the tea factory and also the registration and license to operate the said factory from the Chief Inspector of Factories, Assam. The petitioner company has also obtained the registration certificates from the taxing authorities, both Central and State, in its name. The petitioner is also paying the land revenue in respect of the Tea Estate regularly.

9. All the conditions/clauses of the agreement for sale as well as the irrevocable general power of attorney has been complied with by the petitioner company. But because of certain proceedings filed in various courts of law in Assam by some alleged creditors against the respondent No. 8, the petitioner company has not been able to execute the formal Deed of Conveyance.

10. On 2.1.2009, the Government of Assam issued a proclamation declaring its intention to constitute the land described in the schedule to the said proclamation as national park in the name of 4th Addition to Kaziranga National Park as per provision of Section 35(1) of the Wild Life (Protection) Act, 1972. It was further declared that Sri H. M. Cairae, IAS, Principal Secretary to the Govt. of Assam, Public Enterprises Department and Higher Education Department had been appointed as Collector for the investigation and determination of claims and extinguishment of rights in relation to the land within the limits described in the schedule. The concerned members of the public were requested to submit their claims in the prescribed proforma of any right in or over the land, comprised within the limits of the 4th Addition to Kaziranga National Park.

11. According to the petitioner company, a portion of the land of the Tea Estate was included in the schedule of the said proclamation. Accordingly, on 14.3.2009, the petitioner company through its Manager, Sri Lalan Kr. Pandey submitted its claim in the prescribed form. The said Manager received a notice dated 27.4.2009 from the Collector informing him that his claim application dated 14.3.2009 would be heard on 29.5.2009. Accordingly, the petitioner company appeared before the Collector on 29.5.2009 through its duly authorized counsel.

12. The petitioner company was surprised to come across a notification dated 27.8.2009 issued by the Government of Assam in the Revenue and Disaster Management (L.R.) Department u/s 4 of the Land Acquisition Act, 1894 in the daily newspaper, The Assam Tribune on 31.10.2009. It was only then that the petitioner company could come to know that the State Government had

proposed to acquire 221 Bighas 0 Katha 8 Lessas of the land of the Tea Estate under Land Acquisition (L.A.) Case No. 1 of 2009.

13. By notice dated 1.12.2009, the Collector directed amongst others the Manager of the Tea Estate to appear in the hearing on 24.12.2009. In terms of the said notice, the petitioner company appeared before the Collector and submitted a prayer petition dated 24.12.2009. In the said petition, the petitioner company stated that pursuant to the agreement for sale, the possession and management of the Tea Estate had been taken over by the petitioner company. Stating that the petitioner company had carried out part performance of the contract since execution of the agreement for sale and that the sale is on the verge of completion, the petitioner company claimed that it is a "person interested" in the land acquisition proceeding. Since the Section 4 notification included the said land belonging to the Tea Estate, the compensation amount should be paid to the petitioner company. The petitioner company, therefore, prayed that any compensation determined should be done after giving the petitioner company a proper opportunity of hearing and the compensation amount on account of the Tea Estate should be paid to the petitioner company only. This prayer was reiterated by a subsequent prayer petition dated 5.3.2010.

14. Thereafter, a notice dated 24.3.2010 was issued to the petitioner company by the Collector asking the former to appear before the latter on 9.4.2010 for hearing on the petition dated 5.3.2010 as per provision of Section 11 of the Land Acquisition Act, 1894 (briefly ("the Act" hereafter) in connection with the acquisition of land for the 4th Addition to the Kaziranga National Park. Accordingly, the petitioner company appeared before the Collector on 9.4.2010 and furnished all the necessary documents in support of its claim.

15. In September-2010, when the petitioner company came to know that the State respondents were taking the final steps in the land acquisition proceeding, it submitted a written representation dated 30.9.2010 before the Collector calling upon him to make the payment of the compensation amount to the petitioner company.

16. The Sub-Divisional Officer (Civil), Kaliabor in his letter dated 4.10.2010 informed the Circle Officer, Kaliabor Revenue Circle to keep the land in readiness to enable handing over of the same to the Kaziranga National Park authority. Copy of the said letter was also marked to the Manager of the said Tea Estate. On the same date, another letter was issued by the said Sub-Divisional Officer to Sri Pratiti Kr. Barooah and the Manager of the Tea Estate informing them that the compensation awarded by the Collector amounting to Rs. 1,6368,969/- had been received and that steps had been taken for keeping it as a revenue deposit in pursuance of the instructions of the Collector. The parties were requested to approach a Civil Court of competent jurisdiction for determining their respective claims in this regard, stating that the compensation amount would be paid after the dispute is settled in such civil Court and till such time, the amount would be kept deposited in Government account as revenue deposit. However, in the

greater interest of preservation of ecology, bio-diversity and development of World Heritage Site Kaziranga National Park, the Manager of the Tea Estate was requested to hand over the possession of the acquired land. By the sub-sequent letter dated 6.10.2010, the said Sub-Divisional Officer informed the Manager of the Tea Estate that out of the total amount of Rs. 1,63,68,969/- awarded by the Collector, the actual amount payable to the claimant(s) as compensation value of land and trees etc. in the acquired land is Rs. 1,51,50,071/-. Thereafter, the possession of the acquired land measuring 221 Bighas 0 Katha 8 Lessas of the Tea Estate was handed over/taken over on 25.10.2010. The possession was handed over by the petitioner company and taken over by the Circle Officer, Kaliabor Revenue Circle.

17. Aggrieved by the action of the State respondents in not paying any compensation to it but relegation it to the Civil Court for a judicial determination of its claim, keeping the compensation amount in the Govt. account as revenue deposit in the interregnum, the petitioner company has filed the present writ petition. The prayer made in the writ petition is to direct the State respondents to pay the compensation amount to the petitioner company in lieu of the acquisition of land in Land Acquisition Case No. 1 of 2009 and for other connected reliefs.

18. The respondent No. 1 i.e. the State of Assam in the Revenue and Disaster Management (L.R) Department has filed its affidavit-in-opposition. The respondent No. 1 has stated that it received a proposal from the Collector for acquisition of land measuring 221 Bighas 0 Katha 8 Lessas in village Malini Grant, Mouza-Dwar Bagori, Sub-Division-Kaliabor in the district of Nagaon vide L.A. Case No. 1 of 2009. The said proposal was approved by the Government and thereafter notification u/s 4(1) of the Act dated 27.8.2009 was issued, which was published in the Assam Gazette on 27.9.2009. It is further stated in the said affidavit that the Collector submitted the land acquisition estimate in L.A. Case No. 1 of 2009 assessing the same at Rs. 1,63,68,969/-, out of which Rs. 1,51,50,071.00 is to be paid as compensation. The said estimate was submitted to the Joint Secretary of the concerned department vide letter dated 9.4.2010. The break up of the estimate is as under:

(1)

For land belonging to the Burrapahar Tea Estate -Rs. 57,48,080.00

(2)

For Tea Bushes and standing trees

-Rs. 49,20,984.00

(3)

Solatium? 30%

-Rs. 32,00,719.00

(4)

Cost 12%

-Rs. 12.80.288.00

Total

: Rs. 1,51,50,071.00

19. The State Government in the Revenue and Disaster Management (L.R) Department approved the said land acquisition estimate and communicated it to the Collector vide the letter bearing No. RLA. 190/2009/44 dated 29.4.2010 for taking necessary action at his end. 21. Thereafter, the Collector by his letter dated 8.9.2011 submitted the duly filled up form of award in respect of LA Case No. 1 of 2009 to the Principal Secretary of the Department for acquisition of the land. In the award statement, the Collector mentioned as under:-

Names of the person interested in the land and the nature of their respective interests.

As per land record, the acquired land is recorded in the name of Someswar Barooah, S/o. Late Damodar. However, during hearing, one Sri L.K. Pandey, Manager, Burapathar Tea Estate submitted a letter on behalf of G.D. Tie Up Pvt. Ltd. stating that they have entered into an agreement to purchase the Tea Estate but the process is not completed and therefore compensation should be paid to them. On the other hand, one Sri Pratiti Kr. Barooah, S/o. Someswar Barooah, the Pattadar, also submitted his claim for receiving the compensation award. In view of the above claims, the claim petitions of the parties have been disposed of by giving an order that the money of compensation be kept in Revenue Deposit and the parties be advised to approach a Civil Court of competent jurisdiction for setting their dispute. The compensation be paid as per the Court order thereafter. (Copies of office order sheets are enclosed herewith)

20. Apportionment of the amount of compensation

Name of claimants

Amount payable to each

Remarks

Rs.

P.

1,51,50,071

00

Compensation money has not been paid yet but kept in Revenue Deposit due to dispute between two parties. The parties have been advised to approach a Civil

Court of competent jurisdiction for settling their dispute and the compensation will be paid as per Court order thereafter. In this connection, the remark at page 2 in the column of "Names of the persons interested...." may be referred to (copy of TC depositing the award money in Revenue Deposit enclosed.)

Total

1,51,50,071

00

21. The affidavit also encloses the various orders passed by the Collector in connection with the LA Case No. 1 of 2009 which shall be considered in the later part of this Judgment.

22. The State Government in the Revenue and Disaster Management (L.R) Department wrote to the Collector vide letter dated 21.9.2011 forwarding therewith the approved copy of the award amounting to Rs. 1,51,50,071/- for acquisition of the land in L.A Case No. 1 of 2009. It was stated that the amount should be paid as per order of the competent Court after being referred by the Collector to the Court u/s 30 of the Act.

23. The respondent No. 8 has not filed its counter affidavit. Though the learned counsel appearing for the respondent No. 8 was asked as to whether the said respondent would like to file its counter, he declined, saying that he would rely on the documents already on record.

24. Having noted the facts above, the moot question which, therefore, arises for consideration and determination in this case is as to whether the Collector acted in accordance with the procedure as prescribed under the Act while dealing with the related land acquisition case No. 1 of 2009.

25. For the sake of brevity, it is considered not necessary to re-state the various provisions of the Act. Be that as it may, it would be evident from the various provisions of the Act that the Act is primarily concerned with only "person interested". The expression "person interested" is defined in Section 3(b) of the Act, which is as under:

3(b). the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

26. From a reading of the said definition, it is clear that the said definition is an inclusive definition. In other words, the said definition is extensive. The Apex Court has held that the definition of "person interested" is an inclusive definition and must be liberally construed so as to embrace within its fold all the persons who may be directly or indirectly interested in the land or in the amount of compensation that may be paid for the acquisition of such land. u/s 3(b) of the Act, the expression "person interested" would include all persons claiming

compensation on account of acquisition of land under the Act and such a person interested in compensation money may not have an interest in the land in the strict legal sense of the term.

27. Coming to the facts of the present case, from the documents on record placed by the petitioner company, which has not been controverted by the State respondents in the counter affidavit or by the respondent No. 8 by not filing its counter, it is seen that there was a MOU between the petitioner company and the respondent No. 8 following which the possession of the Tea Estate was taken over by the petitioner company on 01.06.2008. On and from the said date, the petitioner company is in control over the management of the Tea Estate and is also looking after its day to day affairs. Thereafter, the agreement for sale dated 27.9.2008 was executed between the petitioner company and the respondent No. 8 for sale of the Tea Estate. In terms of the said agreement, which is a registered document, an irrevocable general power of attorney was executed by the respondent No. 8 in favour of the petitioner company. As noticed in the earlier part of this judgment, as per Clause 36 of the agreement, the petitioner company is entitled to take all necessary steps in respect of that portion of the land of the Tea Estate which is under dispute with the Kaziranga National Park authority and is also entitled to settle or compromise the same and to receive compensation in respect thereof. As already noticed, the petitioner company has paid the consideration money to the respondent No. 8 for sale of the Tea Estate in terms of the agreement for sale. It has substantially cleared the liabilities of the Tea Estate, both statutory and non-statutory. The Provident Fund authorities have issued necessary order in the name of the petitioner company granting permission to pay the arrear provident fund dues in respect of the Tea Estate in installments, which is being regularly paid by the petitioner company along with the current dues. The registration certificate by the taxing authorities, both State and Central, are in the name of the petitioner company, which has also obtained the trade license in its name from the competent authority. When the notification dated 27.8.2009 u/s 4(1) of the Act was issued and subsequently published in the Assam Gazette on 7.9.2009, the petitioner company was in possession of the land in question; even earlier, when the proclamation dated 2.1.2009 was issued under the Wild Life (Protection) Act, the petitioner company was in possession of the land and had submitted the requisite claim form through its Manager, Sri Lalan Kr. Pandey. Thereafter, in the land acquisition proceeding, the possession of the land in question belonging to the Tea Estate was handed over to the concerned Circle Officer by the petitioner company, which fact is admitted by the respondent No. 1 in his counter affidavit.

28. Therefore, considering the totality of the facts and circumstances of the case and in view of the discussions made above, I am of the considered view that the petitioner company is a "person interested" within the meaning of Section 3(b) of the Act and the Collector is bound to treat the petitioner company in respect of the related land acquisition proceeding as a "person interested" and consider its claim for compensation in accordance with law.

29. u/s 11 of the Act, the Collector shall proceed to enquire into the objections (if any) which any person interested has made as to the measurement of the land, the value of the land and into the respective interests of the persons claiming the compensation and thereafter, he shall make the award. The award, therefore, comprises of the following:

(1) the true area of the land,

(2) the compensation which in the opinion of the Collector should be allowed for the land, and

(3) the apportionment of the said compensation amount among all the persons known or believed to be interested in the land.

However, before making the award, the Collector is to obtain the previous approval of the appropriate Government, which in a particular case, may direct the Collector to make the award without such approval.

30. Thus, as seen above, the Collector has to enquire into the area of the land, the value of the land i.e. the compensation amount and to determine the person to whom the compensation is to be paid. If there are more than one person interested, the Collector has to enquire into the respective interests of the persons claiming compensation. If he is satisfied that the compensation amount should be paid to more than one person interested, he has to apportion the compensation amount amongst them. The Act is silent as to how the apportionment is to be made; it is left to the discretion of the Collector.

31. A Collector acting under the Act is not a judicial officer nor is the proceeding before him a judicial proceeding. He acts as the agent of the Government and his inquiry is departmental in character, made for the purpose of enabling the Government to make an offer through him to the person interested. As noticed above, the duty of the Collector is to assess the compensation amount to be offered to the person interested to the best of his judgment and if there are more than one person interested, who according to the Collector should be paid the compensation, to apportion the compensation amount amongst them. The decision of the Collector being departmental in nature, it would have no legal bearing on the title or claim of title over the land. However, such award by the Collector is binding on the Government but not on the person interested. If a person interested is aggrieved by the award, he can claim a reference to the Civil Court to settle the matter in the dispute judicially.

32. u/s 11 of the Act, it is the duty of the Collector to make an award. As discussed above, the expression award means the decision arrived at by the Collector administratively on the matters mentioned in Section 11. The crucial word used in that Section is "shall". The use of the word "shall" is a clear indication of the legislative intent that the duty of making an award by the Collector is mandatory. It is his statutory duty to make an award. This view is reinforced by the provision contained in Section 11A of the Act which provides

that the Collector shall make an award u/s 11 of the Act within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire land acquisition proceeding shall lapse.

33. As indicated above, the Collector is required to consider the claim of the person interested before him and award the compensation to such person as in his opinion should receive the compensation and if in his opinion, there are more than one person interested entitled to the compensation, then he is to apportion the compensation amount amongst them in such a manner as he thinks fit and proper on the materials before him.

34. In the present case, let us see what the Collector had done in the related land acquisition case. From the order sheet annexed to the counter affidavit filed by the respondent No. 1, it is seen that by the order dated 1.12.2009, the Collector issued notice to the parties fixing 24.12.2009 as the date of hearing of the objection. It was clarified that the parties would be at liberty to file further objections on that day and that they would also be heard. The parties were given liberty to bring evidence on their further objections. On 24.12.2009, the order sheet reflects that Sri L.K. Pandey, Manager of the Tea Estate had appeared on behalf of the management of the Tea Estate. Sri Pratiti Kr. Barooah also appeared. Mr. Pandey had submitted a letter on behalf of the petitioner company stating that they had entered into an agreement to purchase the Tea Estate but the process is not complete. It is recorded in the order dated 24.12.2009 that Sri Barooah had also confirmed the position. The said order reflects that the papers submitted were taken on record and that the decision on the objections would be considered. In the order dated 1.01.2010, the above admission by Sri Pratiti Kr. Barooah was also re-stated. The Collector examined the claims of the claimants and admitted that the Tea Estate had ownership over certain portions of the land falling within the 4th Addition to Kaziranga National Park. Holding that the claim over the land having been admitted, further exercise had to be taken up to extinguish the rights by acquiring the said land under the Act for which a notification had been issued u/s 4 of the Act. Disposing of the objections vis-a-vis issuance of notification u/s 4 of the Act, the matter was referred to the Government to issue formal declaration u/s 6 of the Act. The order dated 19.1.2010 indicates that the declaration u/s 6 of the Act was issued by the Government. The Collector, therefore, directed publication of the same in the Gazette and in two local newspapers and also to cause a public notice in the locality. The order dated 16.2.2010 indicates compliance of the aforesaid directions. By order dated 20.2.2010, the Collector noted that the measurement of the land was in order and directed issuance of notice u/s 9 for objections on the measurement and valuation of the land. The order dated 22.3.2010 indicates that the pursuant to the notice issued u/s 9 of the Act, Sri Pratiti Kr. Barooah had appeared on 10.3.2010 i.e. the date fixed for filing claims/objections. The Collector recorded that though no objection or claim had been filed by him, he would be heard as the Collector was not present on 10.3.2010. The order further reflects that a letter dated 5.3.2010 was received from the petitioner company

which was similar in content to the previous letter received from it. By that letter, the petitioner company again stated that they had entered into an agreement for sale of the Tea Estate and had made final payment for the same. The petitioner company prayed that the compensation may be determined after giving them a hearing and all compensation payment should be paid to the petitioner company. The Collector thereafter directed issuance of notice to the above mentioned parties and to the Manager of the Tea Estate for hearing u/s 11 of the Act, fixing 9.4.2010. On 9.4.2010, Sri Pratiti Kr. Barooah and Sri Lalan Kr. Pandey appeared before the Collector. The Collector noted that there is a dispute as to the ownership as the petitioner company had claimed that it had entered into an agreement to buy the Tea Estate and so the compensation should be paid to them. In view of this, the Collector passed the order that the compensation amount be kept in Government revenue deposit and the parties be advised to approach a Civil Court of competent jurisdiction for settling the dispute and that the compensation would be paid as per the Court order thereafter. By order dated 4.5.2010, the Collector noted that the Government had approved the award prepared and that the award had been made final accordingly u/s 11 of the Act. By order dated 14.6.2010, the Collector noted that Sri Pratiti Kr. Barooah had submitted a letter accepting the award, which was placed in the file.

35. By letter dated 8.9.2011 (Annexure-VII to the counter affidavit), the Collector submitted the award in the related L. A Case No. 1 of 2009 before the Government in the prescribed form, the relevant portion of which has already been noticed in the earlier part of this judgment. The Collector had noted that the claim petitions of the parties had been disposed of by ordering that the money of compensation be kept in revenue deposit, advising the parties to approach the competent Civil Court for settling the dispute and that the compensation would be made as per the Court order thereafter. By letter dated 21.9.2011 (Annexure-X to the counter affidavit), the Deputy Secretary of the Revenue and Disaster Management (L.R) Department forwarded the approved copy of the award with compensation amounting to Rs. 1,51,50,071.00 to the Collector for taking necessary action at his end. It was stated that the amount should be paid as per order of the competent Court after it being referred by the Collector to the Court u/s 30 of the Act.

36. Since the Government by the aforesaid communication had directed the Collector to make a reference to the competent Court i.e. the District Court u/s 30 of the Act, the provision of the said Section may be looked into. As per the said Section, when the amount of compensation has been settled u/s 11 of the Act, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the compensation should be paid or any part thereof, the Collector may refer such dispute to the decision of the Court.

37. Section 11 of the Act as discussed above, enjoins a Collector to enquire amongst others into the respective interests of the persons interested and to take a decision as to whom the award is to be paid or if according to him, it

should be paid to more than one person, he must decide on the apportionment of the compensation amount between them. The Collector has not only to fix the amount of compensation, he has also to decide to whom it is to be paid and if in his opinion, more than one person is entitled to compensation, to apportion the same amongst them. A reading of Section 31 of the Act would show that the Collector is required to make the payment of the compensation awarded by him to the person or persons according to the award. If such a person do not accept the payment as per the award or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the compensation amount in the Court to which a reference u/s 18 would be submitted. As seen from the above, the Act do not provide for depositing the compensation amount in the Government revenue deposit till a decision is given by the District Court as to whom the said amount is to be paid or in what proportion. Therefore, from a conjoint reading of Sections 11 and 31 of the Act, it becomes clear that without determining the question as to whom the compensation amount is to be paid or, if in the opinion of the Collector, more than one person is entitled to the compensation, without determining the apportionment of the compensation amount amongst them, the award is not complete.

38. In the present case, the Collector had finalized the area of the land to be acquired and the quantum of compensation. But he did not decide as to whether the compensation is to be paid to the petitioner company only or as to whether there should be any apportionment between the petitioner company and the respondent No. 8. This does not amount to making an award of compensation. It amounts to deciding nothing and deferring the decision to a future date. The most crucial question, therefore, has not been decided by the Collector, which was his statutory duty u/s 11 of the Act.

39. In the circumstances noted above, I am constrained to hold that the Collector had failed to perform his statutory duty u/s 11 of the Act. That being the position, in the considered opinion of this Court, the award claimed to have been made is not in accordance with law and in fact, there is no award in the eye of law.

40. Without performing his statutory duties as indicated above, the Collector could not have relegated the petitioner company to the Civil Court for a judicial determination of its claim. u/s 30 of the Act, a reference can be made to the Court if any dispute arises as to the person to whom the compensation is to be paid or as to the apportionment of the same, if according to the Collector more than one person is entitled to receive the compensation. The invoking of powers u/s 30 of the Act is, therefore, contingent upon arising of a dispute in respect of the above two issues. As has been held by this Court in the case of *Phongseh Misao Vs. Collector of Land Acquisition & Ors.*; reported in AIR 1977 Guwahati 47, a dispute of this nature pre-supposes the rival claims of two or more contending parties. Deliberating on the meaning of the word dispute, this court

was of the opinion that the word dispute occurring in Section 30 of the Act means a quarrel between two or more rival parties laying claim over the whole or in part of the compensation money. A mere doubt about the eligibility of a party to receive the compensation amount will not constitute a dispute within the meaning of Section 30.

41. From the order sheet of the related land acquisition case, as has been noted above, it is clearly seen that the petitioner company had stated before the Collector that they had entered into an agreement for sale of the Tea Estate with the respondent No. 8 and that the final execution of the sale deed is on the (sic) of completion. The petitioner company had specifically prayed before the Collector that any compensation determined for the Tea Estate should be paid to them. From the order sheet, particularly from the orders dated 24.12.2009 and 1.1.2010, it clearly transpires that Sri Pratiti Kr. Barooah appearing on behalf of the respondent No. 8 had confirmed the above position. It further transpires from the order dated 22.3.2010 that pursuant to the notice issued u/s 9 of the Act, Sri Barooah had appeared on 10.3.2010 but did not file any objection or claim. It further appears from the order dated 9.4.2010 that the Collector took the view that there is a dispute over the ownership of the land. In the considered opinion of this Court, it was nothing but an expression of doubt by the Collector about the eligibility of the petitioner company to receive the compensation amount.

42. From the discussions made above and the conclusion reached that the Collector had failed to discharge his statutory duties u/s 11 of the Act, the subsequent decision by him relegating the petitioner company to the Civil Court to "settle the dispute" and to keep the compensation money in the Government revenue deposit in the interregnum is not at all justified in the facts and circumstances of the case. The limited modification of the aforesaid decision of the Collector by the Government by directing the Collector to make the reference himself does not alter the situation in any significant manner.

43. In view of the above discussions and in the considered opinion of this Court, the procedure adopted by the Collector in the related Land Acquisition Case No. 1 of 2009 is not in accordance with law and the same is required to be interfered with, which I hereby do. Accordingly, the Collector is directed to make the award in L.A Case No. 1 of 2009 in terms of Section 11 of the Act keeping in mind the discussions and observations made above. The said exercise shall be completed within a period of 8(eight) weeks from the date of receipt of a certified copy of this order. The writ petition stands allowed to the extent indicated above. However, there will be no order as to cost.