

(2018) 09 GAU CK 0013

In the Gauhati High Court

Case No : Civil Writ Petition No.3150 Of 2015

Hemendra Nath Deka And 2 Ors

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Citation : (2018) 09 GAU CK 0013

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S. P. Deka, D. Saikia, C. Baruah

Final Decision : Disposed Off

Judgement

1. Heard Mr. S. P. Deka, learned counsel appearing for the writ petitioners. I have also heard Mr. D. Saikia, learned Senior Additional Advocate

General, Assam, appearing for the respondent Nos.2, 3, 4 and 6 as well as Mr. C. Baruah, learned Standing Counsel, National Highway Authority of

India (NHAI), representing the respondent No.5. None appears for respondent No.1.

2. The case of the writ petitioners, in a nutshell, is that their ancestral land measuring 4 bigha 2.5 lechas in total covered by different dag numbers

situated at Uttar Dimoria under Sonapur Revenue Circle in the district of Kamrup(M) had been acquired for widening of the existing National

Highway No.37 on the strength of the Notification published in the Official Gazette on 19.04.2005. According to the petitioners, there were valuable

trees besides horticultural crops, RCC building, safety tank, culvert and a fishery standing upon the acquired land for which no proper compensation

had been paid to them.

That apart, it is also the claim of the petitioners that the market value of the land was at least Rs.12 Lacs per bigha on the date on which the possession of the land was taken over, but the writ petitioners were paid compensation at the rate of Rs.4 Lacs per bigha, that too, only in respect of land measuring 2 Katha 2.5 Lechas.

3. Mr. Deka submits that although an amount of Rs.16,76,867/- was paid to the petitioners as zirat compensation and a further amount of Rs.4,67,586/-

as compensation for the building and constructions standing thereon, yet, the total amount is far less than what was due and payable to the petitioners

under the law. Being dissatisfied by the determination of compensation made by the competent authority i.e. SDO(S), the matter was referred to the

arbitrator for determination of the correct compensation. Mr. Deka submits that the learned arbitrator had passed order dated 04.10.2014 referring the

matter back to the competent authority for reassessing the amount of compensation required to be paid to the petitioner on account of zirat and for

payment of solatium and also compensation for the value of the land as on the date of taking over possession of the same. The primary grievance of

the writ petitioners in this case is that despite receipt of the copy of the order dated 04.10.2014, the competent authority in this case had not taken any

action for redressal of the grievance of the petitioners.

4. Mr. Deka, the learned counsel for the petitioners has placed heavy reliance on the written argument submitted by him in support of the petitioners to

contend that the breakup of the amount due and payable to the petitioners have been lucidly given in the written argument which would go to show

that his clients have been deprived of their genuine dues for more than 12 years now due to the inaction on the part of the respondents. Under the

circumstances, Mr. Deka has prayed for issuing a writ of mandamus to the respondents to assess the proper compensation and solatium on account of

the acquired land, building and zirat along with interest payable in the matter.

5. Mr. D. Saikia, learned Senior Additional Advocate General, Assam, has not opposed the prayer of the petitioners in principle but by referring to the

order dated 04.10.2014 he submits that the reassessment of compensation would now have to be made by the competent authority, which in the

present case would be the Deputy Commissioner, Kamrup (Metro).

6. Mr. C. Baruah, learned Standing Counsel, NHAI, also submits that he would

have no objection if the writ petition is disposed of with a direction

upon the competent authority to act in terms of the order dated 04.10.2014, but, referring to the affidavit filed on behalf of his clients Mr. Baruah

submits that since the land in question had been acquired before the coming into force of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and RE-settlement Act, 2013, hence, the competent authority in this case would be the SDO (Sadar).

7. It is not in dispute that the claim of the petitioners was referred to the arbitrator for determining the amount of compensation payable to them and by

the order dated 04.10.2014 the learned arbitrator had disposed of the petition by passing the following order :-

Case No.RR 64/2011

O R D E R

Dated Guwahati, the 4th October/2014 Appellant present. Competent Authority absent.

The Deputy Commissioner fixed the valuation of land with certain procedure and notified as such. It is therefore, not considered to intervene in this

issue as the compensation for all have been as per notified valuation. However, it is not clear whether solatium and such other benefits as stipulated by

Law and directed by the State Govt. has been included in calculating the compensation. If not, the same require to be included. Regarding

compensation of Zirrat, the valuation fixed by the Agriculture Department as on date of taking over possession of land shall prevail. The Competent

Authority is directed to reassess the compensation in the above light and pay accordingly. The petition is disposed of.

8. It is the admitted position of fact that no action has been taken by the competent authority in terms of the order dated 04.10.2014 till date. As such,

there can hardly be any doubt about the fact that the grievance of the petitioners, in so far as their claim for payment of just compensation, together

with solatium and interest has remained unredressed even till today.

9. In view of the discussions made herein above, the writ petition is disposed of with a direction upon the respondent No.3 to verify as to who would

be the competent authority in this case to carry out the order dated 04.10.2014 and on such verification refer the matter for doing the needful in terms

of the order of the Arbitrator. It would be open for the petitioners to raise all plea

before the competent authority, who shall consider the same in the light of the order dated 04.10.2014 as well as the relevant provisions of law applicable in this case.

10. Since the land in question had been acquired way back in the year 2005, hence, there has already been substantial delay in this case. In view of

the above, the exercise, as directed above, be carried out and completed within a period of four months from the date of receipt of certified copy of

this order. Facilitating the above exercise, the petitioners to submit certified copy of this order to the respondent No.3. The writ petition stands

disposed of accordingly.