

(2001) 01 GAU CK 0017
In the Gauhati High Court
Case No : WP (C) No. 93 of 2000

Himangshu Ranjan Roy

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17, 4, 48(1), 5(A)

Citation : (2001) 1 GLT 309

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : Mr. D.B. Sengupta and Ms. K. Mazumdar, for the Appellant; Mr. T. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

1. In this application under Article 226 of the Constitution of India, the petitioner has prayed for a direction on the respondents to make payment of compensation, solatium and interest under the Land Acquisition Act, 1894, for the land measuring 0.22 acre as per direction of this court in First Appeal No. 19 of 1990.

2. The petitioner's case is that pursuant to notification dated 15.1.1982 under sections 4, 5(A) and 17 of the Land Acquisition Act, 1894, land measuring 0.65 acre belonging to the petitioner in Khatian No. 355, Jote No. 262, plot Nos. 705 and 1152 in Mouza-Harerkhala, was acquired by the State Government of Tripura. The possession of the entire land measuring 0.65 acre was taken by the Sub-Divisional Officer, Kamalpur Sub-Division, North Tripura on 12.12.1987. But compensation was awarded by the Land Acquisition Collector, North Tripura, Kailasahar, for only 0.43 acre of land. In the reference to the Land Acquisition Judge, North Tripura, the petitioner raised the plea, inter alia, that compensation has been awarded for 0.43 acre of land although the land of the petitioner to the extent of 0.65 acre was acquired. Against the judgment of learned Land

Acquisition Judge. North Tripura, determining the rate of compensation at Rs. 40,000 per kani, the Land Acquisition Collector filed First Appeal No. 19/1990 before this Court and the petitioner also filed Cross Objection (Appeal) No. 199/1990 in this court. This Court disposed of the First Appeal and the said Cross Objection (Appeal) by judgment and order dated 5.8.1997. In paragraphs-20 and 21 of the said judgment in First Appeal and the Cross Objection, this court dealt with the plea of the petitioner that although land to the extent of 0.65 acre had been acquired and taken over possession, compensation had been paid only to the extent of 0.43 acre. The said paragraphs-20 and 21 of the judgment are quoted herein below:

"20. It is true that in the notification u/s 4 of the LA Act, it was proposed by the Government to acquire 0.65 acre of land, but from the record of the Land Acquisition Case No. 8/ KMP of 1982 before the LA Collector, it appears that 0.43 acre of land was acquired and compensation has been assessed and paid on the 0.43 acre of land.

21. Mr. TD Mazumdar, learned counsel appearing on behalf of the LA Collector submitted that though in the notification u/s 4 of the LA Act it was proposed to acquire 0.65 acre of land, but ultimately the Government has acquired 0.43 acre of land and compensation has been assessed on 0.43 acre of land only. It is further submitted by Mr. Mazumdar that the Government has acquired 0.43 acre of land and remaining 0.22 acre of land has not been acquired or taken possession by the Government. This dispute cannot be settled in this case, because it requires a local investigation to ascertain how much land was acquired and taken possession by the Government. The L.A. Collector, North Tripura, Kailasahar is, therefore, directed to make a local investigation through a competent officer to ascertain the actual land acquired by the Government and the actual quantity of land of which possession has been taken by the Government. If in the-enquiry it is found that the Government has acquired 0.65 acre of land and has taken possession of the same, then the LA Collector. North Tripura. Kailasahar shall pay the compensation for the remaining 0.22 acre of land to the claimant-appellant @ Rs. 30,000 (Rupees Thirty thousand) only per kani. This should be done within a period of 3 (three) months from today."

By the said judgment, therefore, this court had observed that the dispute between the petitioner and the respondents with regard to the extent of land that has been acquired and taken possession by the Government could be settled by a local investigation to ascertain as to how much of land was actually acquired and taken possession by the Government and the Land Acquisition Collector. North Tripura, Kailashar was directed to make such local investigation through a competent officer. By the said judgment, it was further observed that if in the enquiry it was found that the Government had acquired 0.65 acre of land and had taken possession of the same, the Land Acquisition Collector, North Tripura Kailasahar would pay compensation for the remaining 0.22 acre of land to the claimant (r) Rs. 30,000 per kani and that would be done within three months

from the date of delivery of the judgment.

3. In paragraph-7 of the counter-affidavit filed on behalf of the respondents, it has been stated that such enquiry was made and it was revealed that the requiring department occupied 0.43 acre of land for the project and did not require any more land for the said project, and the Executive Engineer. MIFC informed the Land Acquisition Collector that 0.43 acre of land had been acquired by the requiring department, and the said information was also communicated to the petitioner by the Land Acquisition Collector. With regard to the Certificate of possession of 0.65 acre of land belonging to the petitioner issued by the Sub-Divisional Officer, it has been stated in the said counter-affidavit in paragraph-7 that the said certificate has been issued by the Sub-Divisional Officer on mistaken facts as would be revealed from the CS Plot Nos. mentioned in the certificate, and the wrong recording in the certificate was rectified by issuance of a new one regarding handing over and taking over possession, and the same has also been informed to the petitioner. In the said paragraph-7 of the counter-affidavit, it has further been stated that the Revenue Department has issued a withdrawal notification u/s 48(1) of the LA Act. 1894, and the petitioner has been informed about the same and that the Government is not utilizing the aforesaid excess land of the petitioner for any purpose.

4. Mr. DB Sengupta, learned counsel for the petitioner, submitted that it will be clear from the certificate dated 12.12.1987 issued by the Sub-Divisional Officer that possession of 0.65 acre of land belonging to the petitioner was taken by the Government of Tripura. He clarified that in the certificate issued by the Sub-Divisional Officer on 12.12.1987. reference was made to RS plot Nos. 1241. 1240 and 1238 of Mouza-Harerkhala, as the original plot Nos. 705 and 1152 had in the meanwhile been revised in the revised settlement and this would be clear from revised Khatian No. 355, copy of which has been annexed to counter-affidavit as Annexure-4(1). Mr. Sengupta vehemently argued that it will be clear from section 48(1) of the Land Acquisition Act. 1894, that Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken, and in the instant case, since the entire land measuring 0.65 acre belonging to the petitioner had been taken possession of by the Government through the Sub-Divisional Officer the Government could not withdraw from the acquisition of the balance land of 0.22 acre.

5. Mr. TD Mazumdar, learned State counsel, on the other hand, submitted that whatever mistakes had been recorded in the certificate of possession granted by the Sub-Divisional Officer on 12.12.1987 have now been corrected on local investigation, and as a matter of fact physical possession has not been taken over in respect of 0.22 acre of land out of 0.65 acre of land.

6. It is difficult to accept the aforesaid submission of Mr. Mazumdar. The law is well-settled that pursuant to notifications of acquisition, if possession of the acquired land is taken over, the Government becomes the absolute owner of such and the title to the land in respect of which notifications of acquisition have been

issued and possession has been taken over vests absolutely in the Government. It is for this reason that under sub-section (1) of section 48 of the LA Act, 1894, liberty is given to the Government to withdraw from the acquisition of any land of which possession has not been taken.

7. In the instant case, it is clear from Annexurc-3 to the writ petition that a certificate dated 12.12.1987 was issued by the Sub-Divisional Officer, Kamalpur, indicating therein clearly that physical possession of land measuring 0.65 acre (and not measuring 0.43 acre) has been taken over by the Government. In the said certificate, however, the original CS Plot Nos. 705 and 1152 have not been mentioned, instead Revised Plot Nos. 1241, 1240 and 1238 have been mentioned but the fact remains that in the said certificate the area of land measuring 0.65 acre belonging to the petitioner has been mentioned and the boundaries of the said land as described in the notification for acquisition dated 15.1.1982 have also been mentioned. It appears that in the revised settlement, plot Nos. were revised and the very same land measuring 0.65 acre has been given plot Nos. 1241, 1240 and 1238 in Mouza-Harerkhala. I have, therefore, no doubt over the fact that physical possession of the entire land measuring 0.65 acre sought to be acquired under the notification dated 15.1.1982 was taken over by the Government through the Sub-Divisional Officer on 12.12.1987. If that be so, the title to the said land measuring 0.65 acre came to be vested in the Government with effect from 12.12.1987 and the possession thereof could not be reversed by subsequent stand taken by the Government either in the Land Acquisition Reference before the Land Acquisition Judge or before this court that actually 0.43 acre of land out of the said land measuring 0.65 acre was acquired and 0.22 acre was not acquired by the Government. Further, once possession was taken over of the entire land measuring 0.65 acre on 12.12.1987, a notification could not be issued thereafter u/s 48(1) of the Act, 1894, withdrawing from acquisition in respect of part of the said land measuring 0.22 acre.

8. For the aforesaid reasons, I hold that the notification dated 31.5.2000 u/s 48(1) of the Land Acquisition Act, 1894, is a nullity, and that the entire land measuring 0.65 acre including 0.22 acre sought to be withdrawn from acquisition under the said notification stands vested in the Government with effect from 12.12.1987. The petitioner has already been paid compensation for 0.43 acre of land @ Rs. 30,000 per kani as fixed by this court in the aforesaid First Appeal. The petitioner be now paid compensation at the said rate of Rs. 30,000 per kani in respect of 0.22 acre of land as well as solatium and interest in accordance with the Land Acquisition Act, 1894, within three months of the date of receipt of a certified copy of this judgment and order by the Land Acquisition Collector, North Tripura, from the petitioner.

9. In the result, the writ petition stands allowed. However, the parties shall bear their respective costs.