
(2021) 07 GAU CK 0101

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3870 Of 2016

Mala Chowdhury Dandiwala

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6(1)

Citation : (2021) 07 GAU CK 0101

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : M Talukdar

Judgement

1. The Court proceedings have been conducted through online court proceeding services.

2. Heard Mr. M. Talukdar, learned counsel for the petitioners. Also heard Mr. R. Borpujari, learned Standing Counsel, Revenue and Disaster

Management Department and Standing Counsel, Finance Department for respondent nos. 1 and 3 respectively; Mr. D. Upamanyu, learned Standing

Counsel, Health and Family Welfare Department for respondent nos. 2, 4 and 5; and Mr. K. Gogoi, learned Additional Senior Government Advocate

for respondent nos. 6 and 7.

3. The subject-matter of this writ petition pertains to two parcels of land, covered by Dag Nos. 770 & 772 (New) [879 & 880 (Old)] and K.P. Patta

no. 32 (New)[170 (Old)], located in Village "Japorigog, Mouza "Beltola and measuring about 2 Bighas and 10 Lessas (hereinafter referred to as

"the subject-plot", for easy reference).

4. The case of the original petitioner [Madhuri Choudhury] was that she was a

recorded pattadar in respect of the subject-plot. The subject-plot originally belonged to Kumar Jatindra Narayan Dev and Kumar Dwijendra Narayan Dev, sons of Rajendra Narayan and their mother Lakhipriya. The original petitioner [Madhuri Choudhury] was one of the legal heirs of the said predecessor-in-interest and on the strength of the family partition deed no. 2894 dated 16.06.1965, the subject-plot fell in her share. The land records were accordingly corrected with the incorporation of the name of the original petitioner [Madhuri Choudhury]. It was the further case of the original petitioner that the subject-plot was taken over by the respondent authorities in the year 1962. The respondent sides through their officials occupied the subject-plot and constructed buildings for the present Gauhati Medical College and Hospital (GMCH) without undertaking any process for requisition and/or acquisition of the subject-plot. Though the original subject-plot was acquired under the Urban Land Ceiling Act but the same was subsequently released from the acquisition under the Ceiling Act.

5. The writ petition was filed by the original petitioner [Madhuri Choudhury] praying for a direction for vacant possession of the subject-plot or in the alternative, for a direction for acquisition of the subject-plot.

6. The original petitioner [Madhuri Choudhury] had, during the pendency of the writ petition, expired on 21.01.2019 and her husband had also expired during the pendency of the writ petition on 11.01.2020.

7. By an order dated 09.02.2021, the present three petitioners who are the legal heirs of the original petitioner [Madhuri Choudhury] have been brought in by way of substitution to pursue the writ petition.

8. It is the further case of the petitioners that since taking over possession of the subject-plot, a meagre amount of Rs. 3,99,190/- was paid by the respondent authorities for the period from 01.09.1988 to 30.04.2000 as ground rent of the subject-plot.

9. The respondent no. 6 has filed an affidavit-in-opposition on 22.02.2018. In the said affidavit, it has been stated that an area of land measuring 13 Bighas, covered by Dag no. 770 (6 Bighas, 3 Kathas and 0 Lessas) and Dag no. 772 (6 Bighas, 2 Kathas and 0 Lessas) under K.P. Patta no. 32, located in Village â?" Japorigog, Mouza â?" Beltola was requisitioned vide an order dated 06.05.1981 for construction of the GMCH vide L.A. Case No. 17/1974. It has been admitted herein that requisition rent amounting to Rs.

3,99,190/- only for the period from 06.05.1981 to 30.04.2000 for the subject-plot was paid to the original petitioner for her share of land out of the aforesaid 13 Bighas.

10. It is further stated that a land acquisition process for construction of the GMCH was initiated vide L.A. Case No. 8/2005 for an area of 8 Bighas,

0 katha and 18 Lessas though an area of land measuring 13 Bighas was requisitioned vide order dated 06.05.1981. The remaining area of land

measuring 4 Bighas, 4 Kathas and 2 Lessas (=13 Bighas â?" 8 Bighas, 0 Katha and 18 Lessas) was involved in Urban Land Ceiling Case at that time.

It further transpires that requisite papers for land acquisition like Chitha, Jamabandi, Trace Map, P.P. Rule, Ceiling Free Certificate along with a

notification under Section 4(1) of the Land Acquisition Act, 1894 (Since repealed) were forwarded to the Director of Medical Education, Assam.

From the said affidavit, it, thus, transpires that the subject-plot was not under the purview of the said land acquisition proceeding which was initiated

vide L.A. Case no. 8/2005. The notification under Section 4(1), Land Acquisition Act, 1894 (since repealed) was approved by the State Government

and the same was published in the Official Gazzette. After publication of the notification under Section 4(1), the State Government vide letter no.

RLA.71/2006/9 dated 15.11.2006 requested for preparation of land acquisition estimate and the declaration under Section 6(1), Land Acquisition Act,

1894 (since repealed) and to place the estimated amount at the disposal of the District Collector, Kamrup by the Requiring Department for taking

further steps. The land acquisition papers were thereafter, forwarded to the Director of Medical Education, Assam for onward transmission to the

Government in the Revenue (L.R.) Department for approval and publication of the notification in the Official Gazette vide letter no. 12.01.2016 but no

action is found to have been taken on the same till date.

11. From the affidavit of the respondent no. 6, it has further transpired that requisition rent for the subject-plot has not been paid since 01.05.2000. It

has been further averred that land acquisition proceeding will be initiated as per the provisions of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013. It has been further averred that preparation of a statement for requisition rent w.e.f.

01.05.2000 for the subject-plot is under consideration.

12. Since after filing of the said affidavit on 22.02.2018, the respondent authorities have not placed any instructions either with regard to initiation of any land acquisition process under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, or regarding finalization of requisition land w.e.f. 01.05.2000 for the subject-plot.

13. The learned counsel for the respondent authorities, mentioned above, have sought for 4 (four) weeksâ?? time to obtain up-to-date instructions on the aspects and place the same on the next date of listing.

14. List the case on 01.09.2021.

A copy of this order be furnished to Mr. Borpujari and Mr. Gogoi as per their request.