

(2014) 09 MEG CK 0002
In the Meghalaya High Court
Case No : WP(C) No. 378/2013

Mody M. Sangma

APPELLANT

Vs

The Garo Hills Autonomous District Council

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Constitution of India, 1950 — Article 244(2), 245, 246, 275(1), 300A
Land Acquisition Act, 1894 — Section 11, 11-A, 15, 23, 24
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 19, 25, 26
Stamp Act, 1899 — Section 2

Citation : (2014) 5 GLT 385

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—By this writ petition, the petitioner is assailing the Notification dated 01.10.2012 issued by the Garo Hills Autonomous District Council (for short "GHADC"), Tura, for fixing the value of the land acquired or to be acquired by the State Govt. under "the Land Acquisition Act, 1894" and "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013".

2. Heard Mr. S Sen learned counsel for the petitioner and Mr. S Dey, learned counsel for the respondents.

3. Flittering unnecessary details only the concise fact sufficient for deciding the matter in issue in the present writ petition is noted.

4. The petitioner is the owner of a plot of land measuring about one bigha more or less located at Dalamgre village falling under Dalamgre Akhing P.S. Dalu, West Garo Hills District. The said land had been acquired by the Govt. of India for the purpose of erecting fencing on the International Border. The petitioner is yet to receive adequate compensation and the concerned Collector is conducting an

enquiry for determining the amount of compensation to be paid for the said land of the petitioner acquired by the Govt. of India. The petitioner and others, whose lands had been acquired by the Govt. of India for the said purpose, formed an association called "International Border Area Association". The said association had come across the decision of the GHADC in exercise of the power under clause (a) of Rule 30 of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 vide the said Notification i.e. the impugned Notification dated 01.10.2012 published in the Meghalaya Gazette, Shillong Thursday February 14, 2013 for fixing the amount of compensation or rate of compensation to be paid for the land acquired by the Central Govt. as well as by the Govt. of Meghalaya. The rate of compensation to be paid per bigha 1st class Homestead (per bigha or 1337.8 sqm) in the Rural areas is Rs. 1 lakhs (enhanced rates). The case of the petitioner is that the value of the said land of the petitioner i.e. 1 bigha 1st class Homestead in the Rural areas is Rs. 4,30,000/- in the year 2010 and at present market value of the same would be much higher than the rate prescribed by the District Council arbitrarily and if the award of the land acquired by the Govt. is to be prepared on the basis of the rate prescribed by the District Council under the impugned Notification dated 01.10.2012, the petitioner and others would be virtually deprived off their properties unfairly and the same would be violative of Article 300A of the Constitution of India.

5. The further case of the petitioner is that the District Council is not the concerned authority to determine the amount of compensation for the land acquired by the Govt. under "the Land Acquisition Act, 1894" and "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013". It is the further case of the petitioner that the District Council has no jurisdiction to fix the amount of compensation to be paid for the land acquired by the Govt. under the said Acts. The land-in-question in the present case is situated within the Sixth Schedule areas of the State of Meghalaya. In exercise of the power conferred by Sub-Paragraph (6) of Paragraph 2 of the Sixth Schedule to the Constitution of India, the Governor of Assam was pleased to make the Rules called Assam [and Meghalaya] Autonomous Districts (Constitution of District Councils) Rules, 1951 (for short "the said Rules, 1951") for the first Constitution of the District Councils for the Autonomous Districts comprising the tribal areas specified in Part II of the table appended to paragraph 20 of the said Schedule. For easy reference, Sub-Paragraph (6) of Paragraph 2 of the Sixth Schedule and the relevant portions of the Sixth Schedule to the Constitution of India are quoted hereunder:--

"SIXTH SCHEDULE

[Article 244(2) and 275(1)

PROVISIONS AS TO THE ADMINISTRATION OF TRIBAL AREAS IN THE STATES OF ASSAM, [MEGHALAYA, TRIPURA AND MIZORAM]

" ***** ***** ***** *****

2. Constitution of District Councils and Regional Councils.-

[(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.]

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of district)" and "the Regional Council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned, and such rules shall provide for-

(a) the composition of the District Councils and Regional Councils and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those Councils;

(c) the qualifications for voting at such elections and the preparation of electoral rolls therefor;

(d) the qualifications for being elected at such elections as members of such Councils;

(e) the term of office of members of [Regional Councils];

(f) any other matter relating to or connected with elections or nominations to such Councils;

(g) the procedure and the conduct of business [(including the power to act

notwithstanding any vacancy)] in the District and Regional Councils;

(h) the appointment of officers and staff of the District and Regional Councils."

6. Rule 29 of the said Rules 1951 provides the functions of the Executive Committee of the District Council and Rule 30 further prescribed the emergency matters for which the actions could be taken up by the District Council immediately and actions so taken, shall be laid before the District Council at its next session. For easy reference, Rules 29 & 30 of the Said Rules 1951 are quoted hereunder:--

"Functions of Executive Committee

29. (1) The Executive Committee shall dispose of all matters falling within its purview, except certain matters hereinafter specified, which shall be referred to the District Council for final approval.

(2) The matters excepted under sub-rule (1) are-

(a) cases involving any important change in the administrative system of the autonomous districts or any important departure from accepted policy of practice;

(b) proposal for making regulations, rules or laws as authorized under the provisions of the Sixth Schedule to the Constitution;

(c) cases which seriously affect or are likely to affect seriously, the peace or good government of any autonomous district or likely to affect relations with any such area;

(d) cases affecting the relation of Government with the autonomous district;

(e) all correspondences of importance with the Government.

(f) all important appointments.

Sarings.

30. Notwithstanding anything contained in rule 29-

If any time, except when the District Council is in session, an emergency arises which renders it necessary for the Executive Committee to take immediate action in respect of any matter or matters specified in clauses (a), (b), (c), (d), (e) and (f) of sub-rule 2 of that rule, the Executive Committee of a District Council other than that of Mikir Hills or the North Cachar Hills may take such action thereon as the emergency appears to it to acquire, but every such case shall be laid before the District Council at its next session."

7. Articles 245 and 246 of the Constitution of India clearly provide the extension of laws made by the Parliament and Legislatures of the States and subject matter of laws made by the Parliament and Legislatures of the States. The Land Acquisition Act, 1894 was enacted with the objects and reasons that "whereas it

is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition". It is clear from the objects of the Land Acquisition Act, 1894 that the Act is enacted for determining the amount of compensation to be made on account of such acquisition. u/s 11 of the Land Acquisition Act, 1894 (for short "the said Act 1894"), it is the Collector of the land acquisition who shall make the award for compensation which in his opinion should be allowed for the land so acquired. u/s 15 of the said Act of 1894, the Collector in determining the amount of compensation shall be guided by the provisions contained in Sections 23 and 24 of the said Act 1894. The relevant portions of Sections 11, 23 & 24 of the said Act of 1894 read as follows:--

"11. Enquiry and award by Collector.--[1] On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land [at the date of the publication of the notification u/s 4, sub-section (1)], and into respective interests of the persons claiming the compensation, and shall make an award under his hand of -

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him."

23. Matters to be considered in determining compensation.

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

firstly, the market value of the land at the date of the publication of the [notification u/s 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

[(1-A)] in addition to the market-value of the land as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.--In computing the period referred to in this subsection, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.]

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation.--

But the Court shall not take into consideration-

firstly, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration u/s 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification u/s 4, sub-section (1)]; or

[eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy]."

8. The Parliament enacted the Act called "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (for short "the said Act 2013"). The objects of the said Act 2013 read as follows:--

"An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

9. u/s 114 of the said Act 2013, Land Acquisition Act, 1894 is repealed. Again under the said Act 2013, it is the Collector of land acquisition who is to assess and determine the value of the land acquired or to be acquired. Sections 25 & 26 of the said Act of 2013 read as follows:--

"25. The Collector shall make an award within a period of twelve months from the date of publication of the declaration u/s 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

Provided further that if any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

26. (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:--

(a) the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued u/s 11.

Explanation 1.--The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.--For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.--While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.--While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

2. The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

3. Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that--

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or Sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

10. On reading of Sub-Paragraph (6) of Paragraph 2 of the Sixth Schedule to the Constitution of India, the Assam [and Meghalaya] Autonomous Districts (Constitution of District Councils) Rules, 1951, vis-?-vis, the Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it is crystal clear that the competent authority is the Collector of land acquisition, who can assess the value of the land acquired under the said Special Acts. The District Council is not the authority to assess the value of the land acquired and the said Rules i.e. Assam [and Meghalaya] Autonomous Districts (Constitution of District Councils) Rules, 1951, do not provide any provision under which the District Council could assess the value of the land acquired under the Land Acquisition Act, 1894; over and above, the Special Acts enacted by the Central Govt. shall prevail the Rules makes by the Governor in exercise of the power conferred under Sub-Section (6) of Paragraph 2 of the Sixth Schedule to the Constitution of India. The Apex Court, in view of the principle "*Generalia specialibus non derogant* or *generalibus specialia derogant*" in *Maya Mathew Vs. State of Kerala and Others*, held:

"12. The Rules of interpretation when a subject is governed by two sets of rules are well settled. They are:

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the latter rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

(ii) When two provisions of law - one being a general law and the other being a special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the latter general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later

general law, then the later general law, will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law."

11. It is well settled law that the Constitutional authority cannot do indirectly what is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the Constitutional provisions. (Ref: Dr D.C. Wadhwa and Others Vs. State of Bihar and Others,). It is also well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. (Ref: Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others,). The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that:-

"44. In Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, , it was held as under: (AIR p. 185, para 7)

"[G]enerally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

45. In Craies on Statute Law, VIII Edn. at page 262, it is stated thus:

".... "It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

55. However, we may notice that the Parliament amended the Land Acquisition Act, 1894 in terms whereof, inter alia, Section 11-A was inserted. In the Objects and Reasons of the said Act, it was stated:--

"With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose

has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long period often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them."

12. For the foregoing reasons, this Court is of the considered view that the GHADC, Tura is not the competent authority to issue the impugned Notification dated 01.10.2012 and is accordingly hereby quashed.

13. Writ petition is allowed.