

**(2014) 02 MEG CK 0006**

**In the Meghalaya High Court**

**Case No : W.A. No. 9 of 2013 and Old No. W.A. 168 of 2007**

Smti. Krishna Baruah

APPELLANT

Vs

State of Meghalaya

RESPONDENT

**Date of Decision : 10-02-2014**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17, 17(4), 4, 5A, 6

**Citation : (2014) 3 GLD 232 : (2014) 2 GLT 249**

**Hon'ble Judges : Prafulla C. Pant, C.J.;Sudip Ranjan Sen, J**

**Bench : Division Bench**

**Advocate : M. Hazarika, for the Appellant; K.S. Kynjing, Advocate General assisted by Shri K.P. Bhattacharjee, Govt. Advocate, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Prafulla. C. Pant, C.J.—This writ appeal is directed against judgment and order dated 13-4-2007 passed by learned Single Judge in WP(C) No. 44(SH) of 2003 whereby said court has dismissed the writ petition. In the writ petition, the petitioner had challenged notifications dated 5-1-2001 and 16-1-2001 issued by Govt. of Meghalaya u/s 4 and u/s 17(4) of Land Acquisition Act, 1894. Heard learned counsel for the parties and perused the record.

2. Brief facts of the case are that the writ petitioner/appellant resides in Bashistha Road, Beltolla, Guwahati, District Kamrup with her children after the death of her husband. (Late) Chittaranjan Baruah (husband of the appellant), before his death owned properties including the property known as "Maxwelton Estate" situated at Kench"s Trace, Laban, Shillong which consisted of 2 plots, one measuring 8.73 acres and another 1.5 acres. Said property was inherited by the writ petitioner/appellant, Smti. Krishna Baruah and her children, on the death of her husband on 17-8-1991. A house was constructed over one of the plots by one Shri J.N. Bawri, Power of Attorney holder over a part of the land in question. The State of Meghalaya vide notification No. RDA. 1/2001/39, dated 5-1-2001 declared u/s 4 of the Land Acquisition Act, 1894 that the land Maxwelton Estate,

Kench's Trace, Shillong is required for public purpose and is to be acquired with the boundaries shown in the schedule as under:

North: Stream

South: P.W.D. Road.

East: P.W.D. Road.

West: Land of (L) B.K. Dey and Smti. Rajashree Bhattacharjee.

3. The State of Meghalaya thereafter invoking its power u/s 17(4) of the Land Acquisition Act, 1894 expressed urgency of the project whereby the right of the petitioner to file objections u/s 5A of the Act was curtailed. Said notification was also published in the Extra Ordinary Gazette of Meghalaya dated 5-1-2001. On 16-1-2001, a public notice was issued by Additional Deputy Commissioner (Revenue), East Khasi Hills District, Shillong in terms of notification dated 5-1-2001. On 19-1-2001, a declaration was made by the State Government u/s 6 of the Land Acquisition Act, 1894 stating that the land in question was acquired by the Government for public purpose namely, construction of office complexes of the State Government in the aforesaid land. The said declaration was published in English daily namely, Shillong Times on 20-1-2001. On this, the writ petitioner filed WP(C) No. 44(SH) of 2003, (Old No. 505 of 2001) challenging the notifications issued by the Government for acquisition of the land mentioned above. Interim order was obtained on 24-1-2001 in said writ petition.

4. The respondents contested the writ petition before the Single Judge, and filed affidavit-in-opposition. It is stated in said counter affidavit that Maxwellton Estate was in occupation of Shri. J.N. Bawri who constructed a residential house and the appellant actually stays in Guwahati and Nagoan with her children. As to the urgency and the public purpose, it is stated in the counter affidavit that Ministry of Defence had requested the State Government to vacate their land. As such, the offices of Meghalaya State Home Guards, Sericulture & Weaving Departments were immediately required to be shifted. It is further stated in the affidavit-in-opposition that since the offices of the Commissioner of Taxes and that of the Commissioner of Excise were also required to be shifted from the land which was required by the Law Department of the State for construction of the High Court building at Shillong, the acquisition and invocation of urgency clause became imminent. It is also pleaded in the affidavit-in-opposition that since the appellant (writ petitioner) had herself surrendered her rights to the Power of Attorney holder who raised the construction, as such, she has practically no grievance against the acquisition.

5. After hearing the parties, learned Single Judge agreed with the respondents and dismissed the writ petition. Hence, this appeal.

6. Smti. M. Hazarika, learned counsel for the appellant (writ petitioner) drew attention of this court to Sub-Section (4) of Section 17 of the Land Acquisition Act, 1894 and argued that the power under Sub-section (4) of Section 17, can be

exercised by the Government only in the cases of emergency and in normal circumstances the owner of the land cannot be deprived from raising his objections to acquisition u/s 5A of the Act. In this connection, reliance was placed on behalf of the appellant (writ petitioner) in the case of Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, , Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, and Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others, .

7. We have considered the submissions of learned counsel for the appellant and also went through the above mentioned judgments of the Apex Court. In our opinion, the facts of the present case are different to the cases referred above. We concur with the learned Single Judge that there was genuine urgency of acquisition for the State Government to invoke its powers u/s 17 of the Land Acquisition Act, 1894. We cannot close our eyes to the fact stated in paragraph 9 and 15 of the affidavit-in-opposition filed on behalf of the respondents before the learned Single Judge which read as under:

9. That with regard to the statements made in paragraph 38, 39, 40, 41 and 42 of the Petition, I say that as per the Government decision, Land Acquisition proceeding has been initiated since the land is urgently required for construction of the Meghalaya Public Service Complex including Examination Hall, the Office Complex of the Meghalaya Home Guard and Civil Divisions, the Office Complexes of the Commissioner of Taxes and the Commissioner of Excise. In this connection I say that the Ministry of Defence by D.O. No. 25(3)/2000 dated 22.11.2000 requested the Government to vacate the Defence land which is under occupation of the Meghalaya State Home Guards and Sericulture and Weaving Department. Moreover, the plot of land where the office of the Commissioner of Taxes and the Commissioner of Excise are situated has been allotted to the Law Department for construction of the High Court building at Shillong by Government Order No. RDS/29/81/Pt/141 dated 1.3.2000. The Law Department could not initiate action for construction of High Court building since the aforesaid Offices could not be shifted so far for want of accommodation. Moreover, the Law Department is now pressing hard for shifting those offices to enable them to start construction of the High Court building which would be evident from letter dated 1.12.2000.

That, I say that on account of the urgency having arisen as stated herein in this Affidavit, immediate possession of the property become imperative to meet the pressing need of the Ministry of Defence and also of the urgent need to shift the said Government Offices for facilitating immediate construction of High Court premises. As such the Government duly and validly issued Notification invoking the provisions of Sub-section 4 of Section 17 of the Land Acquisition Act (hereinafter called the Act) for the purpose of avoiding delay in construction urgently needed as aforesaid.

A copy of the aforesaid D.O. letter dated 22.11.2000 and Government Order dated 1.3.2000 and the Law Department letter dated 1.12.2000 are annexed hereto and are marked as ANNEXURE-1, 2 & 3 respectively.

15. That I deny the correctness of the statement made in paragraphs 51 and 53 of the Petition and say that Government never wants to put any hindrance or obstacles on the right of the petitioner to enjoy the land. In this connection I say that the petitioner or her family members had never used the land for their residential purpose and in fact admittedly the alleged Power of Attorney given to one Sri. J.N. Bawri for major portion of the Maxwellton Estate and the alleged Power of Attorney holder is in occupation of the said plot of land by constructing houses thereon. I further say that the petitioner herself admitted that she is staying at Guwahati/Nagaon with her minor children. In this connection I say that there is no available vacant Government land for the purpose of construction of Office Complexes.

8. In view of the above mentioned facts, we find that learned Single Judge has committed no error of law in dismissing the writ petition. Learned counsel for the appellant lastly submitted that leaving the residential house if the remaining land of Maxwellton Estate is acquired, the appellant has no objection. However, there is nothing on the record as to over how much portion the residential house, if any, is constructed. Apart from this, admittedly, the writ petitioner/appellant lives in Guwahati with her children and not in the house said to have been constructed by the Power of Attorney holder on a part of the land acquired by the State Government. For the reasons as discussed above, this appeal is dismissed. No order as to costs.