

(2016) 06 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 3250 of 2009

Sri Rangnath Kakoti

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 37 : (2016) 5 GauLR 54

Hon'ble Judges : Mr. Hrishikesh Roy, J.

Bench : Single Bench

Advocate : Mr. S. Medhi and Mr. Sheeladitya, Advocates, for the Petitioner; Mr. SC Keyal, Asstt. Solicitor General of India, for the Respondents

Final Decision : Allowed

Judgement

Mr. Hrishikesh Roy, J. (Oral)— Heard Mr. Sheeladitya, the learned counsel appearing for the affected land owners. Also heard Mr. SC Keyal, the learned Asstt. Solicitor General of India representing the defence authorities.

2. The 16 petitioners are the residents of Dighalipar, Tamulpur, Charangbari and Boragaon Villages in the Tamulpur Revenue Circle of Baska District and they seek recovery of arrear rent for their land occupied by the Army since 1962/1963. Further direction is also sought for acquisition of the long possessed land so that the affected land owners can receive due compensation or alternately the land should be returned.

3. The occupied area measures 38.608 acres (approximately 106 Bighas) but only nominal rent @ Rs. 403/- per Bigha per annum was paid to the affected land owners since 1963. The respondents intermittently tendered the rent until 2007 but the demand made by the petitioners for enhancement of rent was never considered. Therefore the land owners requested the defence authorities to formally acquire the land or release the same, for productive use by the villagers.

4. In the counter affidavit filed by the respondents on 7.9.2009, the possession of the land for operational purpose by the defence authorities since 1962 is admitted. Documents are also annexed to the counter affidavit to show the sanction of some amount to disburse rent for the occupied land. The Board of Officers of the Army had physically inspected the area and found that the land is under active occupation of the Army and it is needed to be continued, to meet the defence requirement. Hence proposal was mooted for revising the rental and also to acquire the land. Thereafter the evaluation of the land value was done by the Circle Officer, Tamulpur and the concerned land owners have expressed their willingness to give up the land, on payment of compensation.

5. In fact the proceedings of the Board of Officers recorded on 27.11.2007, is enclosed to the counter affidavit and it indicates that administrative sanction of the Defence Ministry was accorded, for acquisition of the land already under the possession of the Army and the cost of acquisition was then estimated.

6. The learned counsel for the petitioners submits that notwithstanding the long occupation of the petitioners' land for last over 50 years, the land owners have been irregularly paid rental at a paltry rate and in fact, for the last few years, there is accumulation of arrear rental. Mr. Sheeladitya contends that either their lands should be duly acquired or they be returned to the land owners, so that it can be gainfully utilised by the petitioners.

7. In his turn, Mr. SC Keyal, the learned counsel for the respondents refers to the recent counter affidavit filed on 7.6.2016 to project that steps have been taken to secure sanction of the arrear rental and as soon as fund is provided, the same will be disbursed to the land owners. The Central Govt. counsel further submits that the Army authorities have proposed for acquisition of the land under the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") and necessary steps are now being taken to ascertain the market price of the land for the purpose of acquisition.

8. The case papers indicate that besides the land of the 16 petitioners, additional land in the Tamulpur Circle is also occupied by the defence establishment for security reasons but the Court is concerned here with the land of the 16 petitioners, which measures 38.608 acres.

9. Mr. Keyal submits that separate agreements have been signed by the individual land owners with the defence authorities and that is how, the respondents claim to be permissive occupier of the land. But what is discernible here is that the petitioners have continuously prayed for enhancement of rent, as the stipulated annual rent for one Bigha of land is only Rs.403/-. That apart, the land is under occupation since over five decades and the necessity to permanently acquire the land is also acknowledged by the competent authorities of the Army i.e. the Board of Officers.

10. As the petitioners have been deprived of their land for last over 50 years,

they are definitely entitled to reasonable rent for use of their land by the respondents. The requirement of the Army authorities appear to be permanent and hence the land should be acquired by paying fair compensation to the land owners, otherwise serious prejudice is caused to the petitioners who are prevented from putting their land to productive use.

11. In the above circumstances, the respondents are directed to take steps for acquisition of the land under the 2013 Act. As the possession of the land has been taken in the year 1962 itself, the respondents should expedite the process of acquisition and try to complete the exercise in the next six months. Simultaneously, fair rental should also be decided and paid, until the land is formally acquired, so that the land owners are able to receive reasonable sum for dispossession of their land.

12. With the above direction, the case stands allowed in the manner indicated. No cost. A copy of this order by furnished to Mr. S.C. Keyal, the learned Asstt. Solicitor General of India, for communication with the concerned authorities.