

(1999) 06 GAU CK 0033

In the Gauhati High Court

Case No : Writ Appeal No's. 92 and 93 of 1996

State of Assam and Others

APPELLANT

Vs

Bisheswar Chattapadhy and Others

RESPONDENT

Date of Decision : 10-06-1999

Acts Referred:

Assam Land (Requisition and Acquisition) Act, 1964 — Section 11(1), 11(2), 11A, 16, 17(1)

Citation : (1999) 2 GLT 221

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : B.P. Bora, for the Appellant; N.M. Lahiri, G.N. Sahewalla, A. Goswami and B. Goel, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal by the State of Assam is directed against a common judgment and order dated 20.6.1995 passed by the learned Single Judge in Civil Rule No. 973 of 1987 and Civil Rule No. 124 of 1989.

2. The facts in brief are that Shri Bisheswar Chattapadhy, a Charitable and Religious Trust, herein-after referred as the writ Petitioner was the owner of a plot of land measuring 2 Bighas 13 Kathas 5 chattaks along with the building and structures standing thereon. On 23.2.1966 the said land (including 5 Chataks) was requisitioned under the Defence of India Rules. Thereafter on 30.3.1966 the land was released but it was again requisitioned by another order u/s 3(1) of the Assam Land Requisition and Acquisition Act, 1964. The writ Petitioner preferred an appeal against the said order of requisition before the State Government, but the said appeal was rejected. The writ Petitioner thereafter filed the Civil Rule No. 25 of 1967 but the said Civil Rule was also dismissed. Thereafter, a Notification u/s 4(1) of the Land Acquisition. Act, 1964 for short "the Act" was published in the Assam Gazette on 10.1.1979 for acquisition of the entire land stated above. Declaration u/s 6(1) was published on 3.10.1979. Claims were invited as

required u/s 9. The writ Petitioner submitted his claim demanding compensation Rs. 14,75,767.50. No award was passed by the District Collector and in the meantime the Land Acquisition Act was amended. In view of the amended provisions of Section 11-A the writ Petitioner demanded back the possession of the land, but the prayer was rejected and the writ Petitioner was asked to collect 50% of the awarded sum. The Petitioner thereafter instituted Civil Revision No. 973 of 1987.

3. The Land Acquisition Collector, Cachar was also of the view that in view of the amended provision of Sub-Section 11-A, the earlier proceeding in L.A. 2 of 1977-78 and the Notification u/s 4(1) and 6(1) has lapsed, as disclosed from the order dated 31.1.87. Thereafter, a fresh notification u/s 4(1) of the Act dated 29.3.1988 was published in the Assam Gazette dated April 28, 1988. Further, dispensing with the enquiry u/s 5-A of the Act read with Section 17(4) of the Act, a declaration u/s 6(i) of the Act was published on the same day for acquisition of the land. The writ Petitioner challenged the above notification in Civil Rule No. 124 of 1989.

4. The learned Single Judge held that the land acquisition proceeding had lapsed and the subsequent notification u/s 4(1) and 6(1) (Annexures-8 and 9) shall have no force. Learned Single Judge therefore directed the Collector, Cachar to determine the compensation for requisition of the land and make payment within a period of 2 months. The District Collector was also directed to release the land under acquisition proceeding and return the same to the writ Petitioner. Hence the present appeal.

5. In this appeal the only point urged before us is that Section 11-A of the Act is not applicable as the land in question stood vested with the State Government.

6. In the case of Satendra Prasad Jain and Others Vs. State of U.P. and Others, the Apex Court placing its reliance on its earlier 2 decisions in the case of Rajasthan Housing Board and Others Vs. Shri Kishan and Others, and Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, held:

Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner. If the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government taken possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in

the Government, Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

7. In the present case there is no dispute at the Bar that the possession of the land which was going to be acquired was taken over by the state on 23.2.1966 and since then the possession is with them, the writ Petitioner made all efforts to get the land released and take back the possession but the possession continues with the Appellant. The learned Counsel for the writ Petitioner has, however, submitted that the possession of the Appellant cannot be construed as a possession u/s 17(1) of the Act and, as such, ratio of possession in Sachindra Prasad Jain (supra) is not applicable and the land did not vest with the State Government u/s 16 of the Act. Admittedly, the possession of the land was taken over initially under the provision of the Defence of India Rules and, thereafter, under the provision of Assam Land Requisition and Acquisition Act, 1964 the first notification u/s 4 of the Act was issued on January 10, 1979 and the second notification u/s 4(1) was issued on 29th March, 1988. Thus, atleast from the date on which the notification u/s 4(1) of the Act was issued the possession of the land must be construed to be under the Act and not under the Assam Land Requisition and Acquisition Act, 1964. In the case of Collector of Cachar v. Barjolngah Tea Co. (1983) 1 GLR 8 a Division Bench of this Court held:

Acquisition begins when requisition ends before acquisition there is national reversion of the acquisitioned land to its pre-requisition state as if the land was released from requisition for the purpose of acquisition. It is, therefore, necessary to ascertain the pre-requisition state of the acquired land for the purpose of ascertaining whether the compensation would be payable u/s 11(1) or 11(2) of the Act, (Decisions of the Gauhati High Court in the following cases referred and followed:

First Appeal No. 21 of 1969 M/s British India Tea Co. Ltd. v. Collector of Lakhimpur and First Appeal No. 58 of 1967 Northern Tea Estate (P) Ltd. v. Collector of Cachar decided on 11.2.83; First Appeal No. 36 of 1968 Rukni Tea Company Ltd. v. Collector of Cachar decided on 2.12.1981; First Appeal No. 23 of 1968 Sri Benoy Mazumdar v. Collector of Cachar decided on 17.12.81 and in First Appeal No. 9 of 1967 Collector of Cachar v. Madhujayanti Private Ltd) decided on 1.12.81.

8. In the instant case after the publication of the Notification u/s 4(1) claim as required u/s 9 were invited and as stated above the writ Petitioner submitted a claim for Rs. 14 lakhs odd. Although the writ Petitioner was directed to receive 50% of the amount vide letter dated 31.7.87, no such payment was received by the writ Petitioner and the requirement of payment of 80% of the estimated amount u/s 17(3A) of the Act has not been complied with. The law is well settled that non-payment of the above 80% of the compensation amount will not affect the vesting of the land u/s 16 read with Section 17(1) of the Act.

9. As the State Government itself issued fresh notification under Sections 4 and 6 of the Act, it may be held that the earlier notification of 1979 have lapsed. Now coming to the notification of 1988, we find that the State Government has exercised the urgency clause under Sub-section (4) of Section 17 and has dispensed with the enquiry u/s 5A of the Act. Under the facts and circumstances of the case merely because the Appellant retained the possession of the acquired land the acquisition cannot be said to be bad in law See Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others,

10. The learned Counsel for the Petitioner has further submitted that the notification under Sub-Section 4(1) of Section 6(1) issued on 29th March, 1988 are bad in law as both these notifications were issued on the same day. In Bal Makhan (supra) the notification u/s 4(1) of the Act and declaration u/s 6 was published on the same day but the Apex Court did not hold the acquisition to be bad in law.

11. We are, therefore, of the view that the land vested with the State Government u/s 16 of the Act and, as such, provisions of Section 11-A of the Act are not applicable. In the impugned judgment the learned Single Judge did not consider this question. The learned Single Judge also gave a direction to the Appellants to immediately release the land under acquisition proceeding and return the same to the writ Petitioner. It was further observed that if however the Respondents feel that the land is necessary, it is open to the Respondents to take appropriate action". It may be mentioned here that the writ Petitioner had approached this Court challenging the order of requisition of the land u/s 3(1) of the Assam Land Requisition and Acquisition Act. The said writ petition was dismissed, that means, the requisition of land was held to be an order. Thus, even if this acquisition proceeding is quashed, the writ Petitioner will not be entitled to take back possession and the requisition will continue in view of the decision of this Court in the case of Gour Nitai Tea Co. Ltd. v. The State of Assam and Ors. (1983) 2 GLR 35. The Division Bench held:

When the requisitioned land is acquired by the Government and, thereafter, the Govt. validly withdraws the order of acquisition the ownership of the land divests to the owner of the property but the order of requisition continues, unless it is released from requisition u/s 8 of "the Act of 1964.". Until an order u/s 8 of "the Act" is made the land is never released from requisition.

Withdrawal of a Notification of acquisition does not per-se cancel, the order of requisition. A separate and independent order u/s 8 of "the Act of 1964" is necessary for releasing the land from requisition.

Assam Land (Requisition and Acquisition) Act, 1964, Sections 8 and 14
Withdrawal of order of acquisition of land-Land not released from requisition-Land continues under requisition throughout-owner of the land entitled to requisition compensation but not damages for illegal occupation-Owner also not entitled to refund of land revenue because there was no valid acquisition of land

at any point of time.

12. In the result, the writ appeal is allowed and the impugned order passed on 20.6.1995 is set aside. As the concerned land stands vested with the State Government, the writ Appellants are directed:

- 1) to pay the compensation for requisition of the land from 30.3.1966 to 29.3.1988 less the amount paid, if any,
- 2) the writ Appellants are directed to assess the compensation and pass the award within a period of 45 days and release the payment to the writ Petitioner within 30 days of passing of the said award.

There is no order as to costs.