

(2022) 01 GAU CK 0018
In the Gauhati High Court
Case No : Writ Appeal No. 15 Of 2021

Union Of India And 4 Ors

APPELLANT

Vs

Cholingso Kora And 4 Ors

RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 3(e)(v), 40, 40(1), 51 69, 74

Citation : (2022) 01 GAU CK 0018

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : B. Chakravarty, D. Mozumder, S. Rabha, B. D. Goswami, A. Chandran

Final Decision : Disposed Of

Judgement

1. Heard Mr. B. Chakravarty, learned Central Government counsel for the appellants. Also heard Mr. D. Mozumder, learned senior counsel assisted

by Mr. S. Rabha, learned counsel for the respondent No. 1 as well as Mr. B. D. Goswami, learned Additional Advocate General, Arunachal Pradesh

assisted by Mr. A. Chandran, learned Additional senior Government Advocate appearing for the State of Arunachal Pradesh, respondents No. 2 to 5.

2. This writ appeal is preferred by the Union of India being aggrieved by the order dated 26.09.2019 passed in WP(C) No. 480(AP)/2018 by the

learned Single Judge.

3. The appellant i.e. the Army Authority at a relevant point in time had sought for acquisition of land belonging to some of the residents in the Village

of Khoraliang, P.O & P.S.- Tezu, Lohit district in the State of Arunachal Pradesh. Portions of the land, which were sought to be acquired were

already under the Army Authorities under lease. The Defence Estate Officer,

(DEO) Jorhat in furtherance of requirement of land for establishing Army bases in Arunachal Pradesh approached the State authorities seeking details of available, empty and unused land along the border areas. A thorough survey was conducted by the State Authorities and detailed report to that effect was given to the DEO. Pursuant to the report being received, it is the case of the appellant that the Defence Estate Officer cautioned the State Authorities not to proceed for acquisition of land unless the proposal is sanctioned by the appropriate authority in the Ministry of Defence, Government of India. However, according to the appellant, despite the requests made by the DEO to the State Authorities not to proceed with the acquisition of land, the State Authorities went ahead with the acquisition proceedings and suo motu issued notifications under Section 40(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The land was accordingly acquired by the State Authorities and all persons were asked to stop their activities on the said land. Since, the Ministry of Defence, Government of India did not approve the proposal for acquisition of land, no compensation was sanctioned and/or deposited by the Defence Authorities. The land owners who claimed to be affected by the acquisition process filed a writ petition before this Court through their power of attorney holder. The said writ petition was numbered as WP(C) No. 480(AP)/2018. During the course of hearing, the learned Single Judge examined the records and upon being satisfied, disposed of the writ petition without entering into merits of the disputes. The respondent Nos. 1 to 5 in the writ petition, namely, the appellants herein were directed to deposit the payable amount before the Additional District Judge through whom the acquisition proceedings were conducted. The assessed amount was directed to be deposited within 3(three) weeks from the date of impugned order and whereafter the distribution will be done by the authority strictly in accordance with law and proper identification.

4. The appellants before this Court assail the order of the Rightlearnedto FairSingleCompensationJudgetheandgroundTransparencythatas perinLandthe provisionsAcquisition,ofRehabilitation and Resettlement Act 2013, acquisition proceedings in cases of urgency under Section 40 of the Act is to be initiated by the appropriate Government.

The appropriate Government as defined under Section 3(e)(v) of the Act in relation to acquisition of land for the purpose of the Union will be the Central Government.

5. The learned counsel for the appellant submits that since no proposal was issued by "Appropriate Government" i.e. Central Government, there can be no acquisition proceedings under Section 40 of the Act and, therefore, the direction of the learned Single Judge to the Army Authorities as respondents No. 1, 2, 3, 4 & 5 to deposit the amount payable, before the Additional Deputy Commissioner through whom the acquisition proceedings were stated to have been conducted, is a finding not based on records and, therefore, the same needs to be interfered with and set aside.

6. Mr. D. Mozumder, learned senior counsel assisted by Mr. S. Rabha, learned counsel for the respondent No. 1 (power of attorney holder of the land owners) vehemently opposed the contentions of the learned counsel for the appellants and submits by referring to pleadings that there were several correspondences between the Army Authorities and the Government of Arunachal Pradesh regarding the said acquisition proceedings and, therefore, it is too late in a day to contend that there was no sanction from the Central Government received for the acquisition proceedings. The learned counsel for the land holders submits that the learned Single Judge had duly examined the records and thereupon had passed the order which is impugned in the present appeal, and therefore, the same needs no interference at all.

7. Mr. B. D. Goswami, learned Additional Advocate General, Arunachal Pradesh assisted by Mr. A. Chandran, learned Additional senior Government Advocate for the respondent Nos. 2 to 5 submits that insofar as the State Government is concerned, notification was indeed issued for acquisition of land and which could not have been issued unilaterally unless the Army Authorities have sought for such acquisition. He refers to the Notification under Section 40 of the Act of 2013 which is enclosed as Annexure- B to the affidavit-in-opposition filed by the State of Arunachal Pradesh.

8. We have heard the learned counsel for the parties and we have also perused the pleadings on record. We have also carefully perused the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Under Section 3(e)(v), insofar where the Central Government is concerned appropriate

Government? would mean the Central Government. Section 11 of the Act prescribes for publication of preliminary notification. There is no dispute at the Bar that the acquisition proceedings were initiated under Section 40 of the Act which empowers the "Appropriate Government" to acquire land in cases of urgency. Although, it has been submitted that the Notification under Section 40 of the Act of 2013 was issued by the Secretary (Land Management), Government of Arunachal Pradesh, however, the State counsels have not been able to furnish from the record any such requisition received from the Central Government under Section 40 for urgent acquisition of land. The 2013 Act is a complete code in itself. There are provisions for return of unutilized land pursuant to proceedings as well as provisions for references to be made by the Collector to the Authority established under Section 51 of the Act. Against an award determined by the Authority under Section 69, an appeal lies to the High Court under Section 74 of the Act.

9. Since, there are several disputed questions of facts which arise as regards the acquisition proceedings and the compensation required to be deposited by the acquiring authority as well as with regard to the compensation amount thereafter required to be released to the affected land owners, ordinarily a Writ Court would not entertain any such proceedings involving disputed questions of fact, especially, in view of statutory remedies being available to such aggrieved parties under the Act of 2013. However, upon perusal of the impugned order passed by the learned Single Judge, we find that the learned Single Judge had perused the records of the case and had thereupon being satisfied, had disposed of the writ petition directing the assessed amount to be deposited within a period of 3(three) months from the date of the order. Although records of the case were duly perused, the learned Single Judge however declined to enter into the merits of the disputes and thereupon disposed of the writ petition with a direction to deposit the compensation amount within the period specified.

10. Although in the impugned order, it is reflected that the records have been duly perused by the learned Single Judge, however, no reference in respect of any sanction for acquisition proceeding issued by the Ministry of Defence/Central Government as may be available in the records, has been referred to by the learned Single Judge. Under such circumstances, since the

learned Single Judge after perusal of the records of the case had passed the impugned order and had issued such directions to the respondent Nos. 1 to 5, namely, the appellants herein, we deem it appropriate to remand the matter back to the learned Single Judge for a fresh decision on the disputes between the parties. The question of whether a power of attorney holder can maintain a writ petition on behalf of the actual land owners may also be an issue that the learned Single Judge may decide to deal with while re-hearing the matter.

11. In view of the above, we hereby set aside the impugned order dated 26.09.2019 and remand the matter to the learned Single Judge for a fresh decision in respect of the disputes between the parties.

12. The Writ Appeal is accordingly disposed of in terms of above.