

(2023) 08 GAU CK 0067

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3379 Of 2019

Wahida Rahman

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(1), 24(2)

Citation : (2023) 08 GAU CK 0067

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : R. Chaudhury, B.J. Talukdar, H. Gupta, R. Borpujari

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed by the Petitioner challenging the acquisition of the land of the Petitioner in L.A. Case No.4/1979-80, whereby the land of the Petitioner was acquired.

2. The brief facts of the instant case is that the father of the Petitioner was the owner of a plot of land measuring 3 Bighas 3 Kathas 2 Lechas under Dag No. 210 covered by Periodic Patta No.53 under Mouza – Maha Bhairabpad of Village No.1 Dulabari. An acquisition proceeding was initiated under the provisions of the Land Acquisition Act, 1894 (for short "Act of 1894") which was registered and numbered as L.A. Case No.4/1979-80. Out of the said land of the petitioner, a plot of land measuring 2 Bighas 17 Lechas was acquired and thereupon the revenue records were corrected in favour of N.F. Railway. It is relevant to take note of that though the land was acquired from the Petitioner neither the possession of the land was not taken nor the Petitioner or her predecessor-in-interest was paid compensation.

3. This Court further made a specific query upon Mr. B.J. Talukdar, learned Counsel appearing on behalf of the Revenue Department as to whether there is

any document to show that any amount of compensation was deposited in the Court for acquiring the land of the petitioner. Mr. B.J. Talukdar submits that as per his instructions, no amount of compensation was also deposited in the Court for onward disbursement to the petitioner.

4. This Court further finds it relevant to take note of an affidavit-in-opposition filed by the Railway Authorities, wherein it has been mentioned at paragraph no.4 that it came to the knowledge of the Railway Authorities that after completion of the work, the land acquired on behalf of NEC was handed over to NERIWLM (North East Regional Institute of Water and Land Management), Tezpur, Assam. It was mentioned that if the land of Dag No. 210 of Periodic Patta No.53 of Village No.1 Dulabari under Bhairabpad Mouza is claimed by the Petitioner to be in her possession and if it is not under the occupation of the NERIWLM, then the land of Dag No. 210 under Periodic Patta No.53 of Village No.1 Dulabari by the Railway on behalf of NEC be corrected in favour of the Petitioner after due verification by the Revenue Authorities.

5. This Court further finds it relevant to take into consideration the affidavit-in-opposition filed by the Assistant Commissioner, Tezpur, wherein at paragraph no.6 it was admitted that the entire land measuring 3 Bighas 3 Kathas 2 Lechas was possessed by the Petitioner as reflected in the Field Report submitted by the Lot Mondal. However, the name of the Petitioner was not mutated in respect to the said plot of land.

6. Taking into account the above, this Court have also heard the learned counsel for the parties as to whether the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013") would be applicable to the instant case as regards the land of the Petitioner.

7. Sub-Section (2) of Section 24 of the said Act being relevant is quoted hereinbelow :

"(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

8. A perusal of the above section shows that notwithstanding anything contained in Sub-Section (1) of Section 24 of the Act of 2013, in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 where an Award under Sub-Section 11 has been made five years or more prior to the Act of 2013 but the physical possession of the land had not been taken or the compensation paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act of 2013.

9. In the instant case, the Award in L.A. Case no.4/1979-80 was passed around 1983. However, neither any compensation was paid to the Petitioner nor the possession of the petitioner's land was taken, as it is the admitted case of the Respondent Authorities. Under such circumstances, this Court is of the opinion that the acquisition so made under the Act of 1894 in L.A. Case No.4/1979-80 in so far as the land of the Petitioner measuring 2 Bighas 17 Lechas contained in Dag No. 210 of Periodic Patta No.53 in Village No.1 Dulabari under Maha-Bhairabpad Mouza in the District of Sonitpur, Assam have lapsed. The consequence of the lapse of the acquisition in so far as the land above stated is that the land stands reverted back to the petitioner. Accordingly, this Court disposes of the instant writ petition with the following observations and directions:

(i) The land measuring 2 Bighas 0 Kathas 17 Lechas covered by Dag No. 210, Periodic Patta No.53 under Mouza – Maha Bhairabpad of Village No.1 Dulabari, District-Sonitpur stands reverted back to the Petitioner and the Petitioner would be the owner of the said land.

(ii) This Court further directs the Revenue Officials and more particularly the Deputy Commissioner, Sonitpur to make necessary corrections in the record of rights on the basis this order so passed within 4 (four) weeks from the date of receipt of a certified copy of this order.

The writ petition stands disposed off.