

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

1. WP(C)281(AP)2019

Shri Akuli Mipi & 3 Ors.

...Petitioners

-Versus-

The State of Arunachal Pradesh & 5(five) Ors.

...Respondents

2. WP(C)274(AP)2019

Shri Ngasi Mena & 3(three) Ors.

...Petitioners

-Versus-

The Union of India & 8(eight) Ors.

...Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners	: Mr. R. Saikia, in WP(C)281(AP)2019. Mr. S. Mow, in WP(C)274(AP)2019.
For respondent No.1	: Ms. R. Basar, Govt. Advocate.
For respondent Nos. 2 to 6	: Mr. M. Kato, CGC.
Date of hearing	: 07.11.2019.
Date of Judgment & Order	: 07.11.2019.

JUDGMENT & ORDER(ORAL)

As the grievance expressed in these 2(two) writ petitions are common in nature, this Court proposes to dispose of both the writ petitions by this common judgment and order.

2. The writ petitioners are aggrieved by non-payment of the land compensation amount for the land belonging to them in the Dibang Valley District, which has been acquired for the respondent ITBP. It is the case of the petitioners that by following the provisions of the "*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" (hereinafter, the Act), the land in question has been acquired, pursuant to which the compensation was duly assessed and an Award was passed by the Deputy Commissioner, Anini, Dibang Valley on 06.09.2018. However, in spite of the same, till date the assessed amount has not been paid to the petitioners. It is also the case of the petitioners that the remedies prescribed in the Act of challenging such Award, have not been availed by the respondents and in terms of the Act, such Award has attained finality. Being aggrieved by the aforesaid non-payment of the aforesaid Awarded amount, the petitioners have filed the aforesaid 2(two) writ petitions.

3. I have heard Shri R. Saikia, learned counsel for the petitioners in WP(C)281(AP)2019. I have also heard Shri S. Mow, learned counsel for the petitioners in WP(C)274(AP)2019.

Ms. R. Basar, learned Jr. Govt. Advocate has represented the respondent No. 1, whereas, Shri M. Kato, learned CGC has represented the respondent Nos. 2 to 6 which includes the beneficiary, ITBP.

4. Shri R. Saikia, learned counsel, by referring to the Award published by the Deputy Commissioner on 06.09.2018 in the prescribed form has submitted that in the said Award, all the relevant factors have been taken into consideration and the compensation has been duly assessed by the Deputy Commissioner who is the competent authority under the Act. So far as the first

writ petition is concerned, the Award is of Rs. 2,25,51,244/-, so far as the other writ petition is concerned, the amounts are Rs. 5,48,30,534/-, Rs. 4,01,65,182/- and Rs. 5, 55, 96,392/-. The total assessed amount pertaining to file the writ petition is Rs. 12,93,00,519/- (Rupees Twelve Crore Ninety Three Lakh Five Hundred Nineteen) only. Referring to the communication dated 07.09.2018, whereby, the Deputy Commissioner has written to the Commandant of the 9th Battalion of the ITBP, it is submitted that the draft copy of the Award along with scheduled of land and abstract of compensation were duly forwarded. By notice dated 22.01.2019, formal possession was taken over by the Deputy Commissioner of the land in question. Since the compensation was not released, the petitioners had submitted a representation which has not been paid any heed to.

5. At this stage, it is submitted by the learned counsels for the petitioners that the land in question has been initially under the possession of the Assam Rifles and thereafter, the ITBP since more than 5(five) decades and it was in the year 2005 that the possession has been handed over to the ITBP, a fact which has not been disputed by the learned counsel for the respondents, Shri M. Kato.

6. Drawing the attention of this Court to the Act in question, Shri Saikia, learned counsel submits that publication of the preliminary notification was duly done as per Section 11 of the Act and the Award was prepared by the Collector/Deputy Commissioner by fulfilling the requirement as per Section 23 of the Act. As per Section 37 of the Act, the Award of the Collector would be final in nature and according to Section 41(6), in case the acquisition is made from members of the Scheduled Caste or Scheduled Tribe community, there is an additional requirement of payment of at least 1/3rd of the compensation amount initially as the first instalment, even before taking possession of the land.

7. For ready reference, the aforesaid provisions of the "*Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" are extracted herein below:

" 11. *Publication of preliminary notification and power of officers thereupon—*

(1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:— (a) in the Official Gazette; (b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language; (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil; (d) uploaded on the website of the appropriate Government; (e) in the affected areas, in such manner as may be prescribed.

(2) Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level, municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

(3) The notification issued under sub-section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under section 43.

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed: Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this subsection: Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.

(5) After issuance of notice under sub-section (1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months.

37. Awards of Collector when to be final.—

(1) The Awards shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether

they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his awards to such of the persons interested who are not present personally or through their representatives when the awards are made.

(3) The Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose.

41. *Special provisions for Scheduled Castes and Scheduled Tribes.—(1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.*

(6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land."

8. Shri Saikia, learned counsel submits that the statutory provisions pertaining to the payment of the Award have been grossly violated for which a case is made out for interference by this Court in exercise of powers under Article 226 of the Constitution of India.

9. Shir S. Mow, learned counsel for the petitioners appearing in WP(C)274(AP)2019 adopts the argument of Shri R. Saikia and further submits that apart from violation of the statutory requirements, the respondents had been most unreasonable in the entire exercise of acquiring the land of the petitioners, who belongs to the Scheduled Tribe community in the State of Arunachal Pradesh.

10. Shri M. Kato, learned CGC, on the other hand submits that there are certain lacunae in preparing the Award. By referring to the affidavit-in-opposition dated 02.11.2019, the learned counsel has submitted that the rate itself was disputed for which the Deputy Commissioner was approached. He further submits that the ownership of the land was itself in doubt as to whether it was Community land or Government Land and therefore, there is no necessity to pay the Awarded amount unless factual aspects are clarified.

11. Ms. R. Basar, learned Jr. Govt. Advocate adopts the arguments of Shri M. Kato, the learned CGC.

12. Re-joining their submissions the learned counsel for the petitioners on the other hand, by referring to the communication dated 02.11.2018 issued by the ITBP and the reply dated 09.11.2018 of the Deputy Commissioner (Page 25 & 26 of the writ petition) submits that the alleged anomaly in the rate was put to rest by the Deputy Commissioner and therefore, that submission would not be available to the respondents. As regards ownership, it has been submitted that earlier 4(four) numbers of writ petition, namely, WP(C)74(AP)2017, WP(C)77(AP)2017, WP(C)79(AP)2017 and WP(C)80(AP)2017 were filed on the issue and this Court vide order dated 14.03.2017, had held that the land belongs to the community. Even otherwise, the question of acquiring Government land would not arise at all.

13. The rival contentions of the learned counsels for the respective parties have been duly considered.

14. The Act in question lays down the provision of making the Award under Section 23 of the Act by the Collector. The said provision lays down the factors which are to be taken into consideration. This Court has also noticed that under Section 37, such Award is final in nature. Though in exceptional circumstance a writ petition may be maintainable against such an Award, the same has to be restricted only on grounds of fraud in making the Award and not as a routine manner, more so when there is provision for reference under Section 64 of the Act.

15. In the instant case, in view of the fact that no efforts have been made to challenge the legality and validity of the Award and no steps been taken to make reference by the Collector, it would not be within the ambit and scope of the learned CGC to point out lacunae in the Award. It is an established principle of law that when a statute recognises a particular mode to do a particular thing, that thing must be done in the prescribed manner only and not by any other modes.

16. In this connection the decision of the Hon'ble Privy Council in the Case of ***Nazir Ahmad vs Emperor(No.2)*** reported in ***(1936) 38 BOMLR 987*** may be gainfully referred to. The relevant part of which is extracted herein below:

"...The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden..."

17. In view of the aforesaid facts and circumstances and the decisions made, this Court is of the opinion that a case for interference is made out by the petitioners by this Court in exercise of powers under Article 226 of the Constitution of India.

18. Accordingly, the writ petitions are allowed, directing the respondent authorities to immediately deposit the Awarded amount in the Office of the Deputy Commissioner, Anini, Dibang Valley and in any case, within an outer limit of 3(three) months from today. On such deposit, the Deputy Commissioner would take all necessary steps to release the same to the petitioners in accordance with law and after proper identification.

19. Though Shri Saikia, learned counsel by referring to the provisions of Section 80 of the Act has made a claim for interest, such claim may be made before the Deputy Commissioner at the time of release of the amount, which would be duly considered as the same is a statutory right.

20. Writ petitions are accordingly, **allowed**.

JUDGE

Victoria