

GAHC010013792017



2026:GAU-AS:2466

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

Case No. : WP(C)/1068/2017

GHANASHYAM CHETRY
S/O LT. TIKA RAM CHETRY, R/O LANKA TOWN, W/O NO.8, MOUZA, P.O. and
P.S. LANKA, DIST- HOJAI, ASSAM, PIN-782446

VERSUS

NATIONAL HIGHWAY AUTHORITY OF INDIA and 4 ORS.
REP. BY THE CHAIRMAN, G 5and6, SECTOR 10, DWARKA, NEW DELHI-75

2:THE COMMISSIONER
NORTH ASSAM DIVISION
TEZPUR AND ARBITRATOR
N.H. -4 LANE OF NAGAON AND MORIGAON DISTRICT
TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001

3:THE COLLECTOR CUM DY. COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM
PIN-782001

4:THE ADDL. DY. COMMISSIONER L.A.
NAGAON
DIST- NAGAON
ASSAM
PIN-782001

5:THE DY. COMMISSIONER
HOJAI
DIST- HOJAI

ASSAM
PIN-78243

BEFORE
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocate for the petitioner(s): Mr R P Sarmah, Sr.Adv
Ms M Borah

Advocate for the respondent(s): Ms R Borah, SC, NHA
Mr N Das, R-2 to 5.

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : 18.02.2026

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been : **Yes**
pronounced?

JUDGMENT AND ORDER (ORAL)

Heard Mr R P Sarmah, learned Senior Counsel, assisted by Ms M Borah, learned counsel appearing for the petitioner. Also heard Ms R Borah, learned Standing Counsel for the NHA and Mr N Das, learned counsel appearing for the respondent Nos. 2, 3, 4 and 5.

2. The bone of contention in this writ petition is non-payment of a residual part of an arbitral award passed by the Commissioner, North Assam Division, Tezpur, an Arbitrator, NH-4 Lane of Nagaon and Morigaon District on the appeal petition filed by certain persons whose land has been acquired for construction of NH-4-Lane by the National Highway Authorities of India.

3. By the award dated 25.09.2008, in Case No. 4/2008, the learned Arbitrator has recorded as follows:-

“On the other hand, the construction of National Highway is being delayed. The appellants have applied for passing an order for interim award at fifty percent of the present market value. Considering the probable value of land per bigha @ 15 lakhs, fifty percent as interim award is hereby passed for payment. The total area of land being acquisitioned is 6 bighas, 1 katha and 18 lessas. Previously, the total area of land to be acquisitioned was shown as 5B-0K-18 lessas. But during the fresh assessment the Circle Officer, Lanka Revenue Circle, found out that as per the and record, the actual total area of land to be acquisitioned is 6B-1K-18 lessas. This is as a result of inclusion of the land of Shri Ghana Shyam Chetri under P.P. No. 132 Dag No. 666. This was over-looked earlier. Therefore, the total amount of compensation on the land alone, without houses and Jerath will be Rs. 95,70,000.00 being commercial land. Fifty percent of interim award will come to Rs. 47,85,000.00. The NHAI shall deposit the amount of interim award to the Competent Authority and Deputy Commissioner, Nagaon. He will pay the amount to the appellants before 28/10/2008. This is to enable the appellants to built their houses outside the NH-4 land.

This order will not affect the final arbitration judgment in anyway.

This is done as per powers invested upon the Arbitration under Section 2 (1) (C) read with Section 31 of the Arbitration and Conciliation Act, 1996.”

3. The National Highway Authority of India, thereafter, preferred a Misc Case (J) No. 116 of 2009, in the Court of the learned District Judge, Assam, under the provisions of Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside the arbitral award dated 25.09.2008, passed by the learned Arbitrator, as aforesaid. In the aforesaid Misc Case (J), the learned District Judge had come to the following conclusion:-

“Hence, the impugned order of the learned Arbitrator, the Commissioner, NAD, is modified to the extent that the OP Nos. 2 to 5 shall get the value of their land acquisitioned for construction of 4 land Highway of NH 54 at the value of Rs. 5 lakhs per bigha. The concerned authorities are directed to pay the value of the land as fixed above to the land owners as early as possible. The case, thus, stands disposed of. Send back the record of Case No. 4/08.”

4. The other land holders governed by the Arbitral Award had been paid a sum of Rs. 5 lacs per Bigha as compensation as directed by the order dated 19.04.2012, passed by the learned District Judge, Nagaon, Assam. The petitioner had also been paid the amount of compensation @ Rs. 5 lacs per Bigha, in accordance with the orders passed by the learned District Judge, Nagaon.

5. Mr R P Sarmah, learned Senior Counsel for the petitioner has submitted that the Award, which was passed by the learned Arbitrator had determined the quantum of compensation at Rs. 15 lacs per bigha, however, the respondents have not paid the amount of Rs. 14 lacs (approx) to the petitioner although they had made a payment to the petitioner @ Rs. 5 lacs per bigha.

6. The learned Senior Counsel has submitted that the compensation for the land of the petitioner which was acquired, would arrive at almost Rs. 18 lacs @ 15 lacs per bigha, while he was paid only an amount of Rs. 3, 61,832/- by the respondent authorities as compensation for the land acquired.

7. The learned Senior Counsel for the petitioner has submitted that the order dated 19.04.2012, passed by the learned District Judge, Nagaon, would not affect the case of the petitioner for being compensated @ Rs. 15 lacs per bigha, since the respondents did not include the petitioner in the appeal proceedings,

and, therefore, the said appeal, according to the learned Senior Counsel, would not be made applicable to the petitioner, herein.

8. The learned Senior Counsel further submits that in terms of the Judgment of the Apex Court passed in ***National Highway Authority of India -Vs- N Hakim***; reported in **AIR 2021 Supreme Court 3471**, an Arbitral Award of the present nature could not have been nullified by the learned District Judge at Nagaon in the manner, it has been done by the order dated 12.09.2012. The learned Senior Counsel, therefore, submits that since there has been no direct challenge to the compensation required to be paid to the petitioner as per the Arbitral Award dated 25.09.2008, in so far as the petitioner is concerned, the respondents would remain liable to pay the compensation granted by the aforesaid Award.

9. Controverting the aforesaid submissions, Ms Bora, learned counsel appearing for the NHAI has submitted that it is not in dispute that an appeal had been filed and that the petitioner had not participated in the said appeal, since on the date of filing of the appeal, the petitioner's name has not been yet been recorded in the revenue records, and, therefore, the NHAI was not in a position to make him a party respondent in the appeal filed before the learned District Judge, Nagaon.

10. The learned Standing Counsel for the NHAI has further submitted that the fact remains that all the other land holders covered by the said Arbitral Award, had been paid compensation @ Rs. 5 lacs per bigha and none of them had raised any objection. The orders passed by the learned District Judge in the proceedings initiated by the NHAI had attained finality and does not require interference at this stage. It is, therefore, the submission of the learned

Standing Counsel for the NHA I that the amount of compensation granted to the petitioner has satisfied the Award as modified by the learned District Judge, and, therefore, this writ petition being devoid of merit be dismissed.

11. Mr N Das, learned counsel appearing for the State Government has submitted in similar lines with Ms Borah and has submitted that there can be no dispute that the petitioner and other similarly situated land holders were found to be entitled to an amount of Rs. 5 lacs per bigha for the land being acquired by the respondent authorities and there being no challenge made by the petitioner to the order dated 19.04.2012, there is no question of awarding him any compensation as per the earlier Arbitral Award dated 25.09.2008. He submits that the writ petition does not require any further consideration and deserves to be dismissed.

12. This writ petition is of the year 2017, and has been pending. It is seen from the records that the Award dated 25.09.2008, had specifically recorded that the land of the petitioner herein under PP No. 132, Dag No. 666 was a part of the land being acquired by the respondents, and was included in the acquisition proceedings. The observations of the learned Arbitrator has already been reflected in the paragraphs hereinabove. It remains an admitted fact that no appeal was preferred with regard to the land acquired from the petitioner and it is also not in dispute that the land which was in the possession of the petitioner and in respect of which his name stood mutated in the land records, has also been acquired by the respondent authorities and he has been paid compensation @ Rs. 5 lacs per bigha as per the compensation determined by the learned District Judge, Nagaon, Assam. Therefore, this Court is of the opinion that it will not now lie in the mouth of the respondent authorities that

the petitioner would not be entitled to compensation of any sort, when already compensation in accordance with the Award, as notified by the learned District Judge, has been disbursed to him. What remains for this Court to see is whether in the face of the modification of the Arbitral Award, in the absence of participation by the writ petitioner herein, and also in the light of the Judgment of the Apex Court in ***National Highway Authority of India (supra)***, the petitioner can be denied the compensation @ Rs. 15 lacs per bigha, as had been determined by the learned Arbitrator.

13. This Court finds that though the respondents had the knowledge of inclusion of the land over which the petitioner had exercised ownership rights was included in the acquisition process which was reflected in the Arbitral Award itself, and further, when the land records have been corrected even before the learned District Judge has interfered with the Award given by the learned Arbitrator, it has to be deemed that the respondent authorities, more specifically, the NHAI was not aggrieved by the compensation having been quantified by the learned Arbitrator, with regard to the petitioner. Further, this Court is of the opinion that since the Arbitral Award could not have been modified by the learned District Judge by exercising powers under Section 34 of the Arbitration and Conciliation Act, the said Judgment cannot be made operative against the petitioner herein, who was not made a party before the learned District Judge, and he could never have his say before the learned District Judge.

14. In any case, as per the prevalence of the law, the modifications made by the learned District Judge, Nagaon, cannot be sustained in law, and this Court would be loath to enforce such a modification when the same is not permissible

in law.

15. In view of the above, this Court is of the opinion that the prayers made in the writ petition to the extent that the petitioner should be compensated for the land acquired from his ownership by the NHAI @ Rs. 15 lacs per bigha, deserves a positive consideration and, therefore, the said prayers are allowed. The respondent Nos. 2, 3, 4 and 5 now would calculate the amount, which would be required to be paid to the petitioner on the basis of compensation being calculated as per the Arbitral Award dated 25.09.2008, and forward the same to the respondent No. 1. The respondent No. 1, after verifying the particulars given by the State authorities, would ensure that the amount entitled to the petitioner is deposited to the disbursing authority, namely, the respondent No. 4, who shall, thereafter, disburse the same to the petitioner concerned.

16. In the peculiar facts and circumstances of the case, this Court is of the opinion that orders regarding interest etc. are not called for. The respondent Nos. 2, 3, 4 and 5, shall complete the assessment of the compensation to be paid to the petitioner, within a period of 6 (six) weeks from the date of receipt of a certified copy of the order, and forward the same to the respondent No. 1, within 2 (two) weeks, thereafter. The respondent No. 1 shall be entitled to make the verifications within a period of 6 (six) weeks, thereafter, and shall ensure deposit of the compensation amount to the disbursing authority within a period of 4 (four) weeks thereafter. The disbursing authority, thereafter, on proper identification, shall disburse the money to the petitioner concerned, within a period of 4 (four) weeks, thereafter. The petitioner shall supply a certified copy of this order along with a copy of this writ petition to the offices of the respondent Nos. 2, 3, 4 and 5, within a period of 7 (seven) days from the date

of receipt of a certified copy of this order and shall furnish a copy of the certified copy of this order along with a copy of this writ petition to the respondent No. 1, through the office of the Project Director, PIU, Guwahati, NHAI with proper receipt. The aforesaid authority, on proper receipt of the certified copies shall, thereafter, communicate to the concerned Officers, including the respondent No. 1, for further action as required by this order. In the event of practical difficulties in calculating or disbursing the amount to the petitioner, as directed by this order, the respondents would be at liberty to approach this Court to pray for grant of extension of time on proper causes being shown.

17. Writ petition is allowed to the extent indicated above.

18. No costs.

JUDGE

Comparing Assistant