

GAHC010157442022



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

Case No. : WP(C)/5189/2022

PRATAP BORTHAKUR AND 17 ORS.
SON OF PRAFULLA BORTHAKUR,
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON, HEZARI MOUZA,
P.S. AND DISTRICT- JORHAT, ASSAM.

2: PABITRA BORTHAKUR
SON OF PRAFULLA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

3: SMT. KAMALA BORTHAKUR
DAUGHTER OF PRAFULLA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

4: SMT. MALA BORTHAKUR
DAUGHTER OF PRAFULLA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

5: SMT. RUMI BORTHAKUR
DAUGHTER OF KHAGEN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

6: SMT. ROONEE BORTHAKUR

DAUGHTER OF LATE KHAGEN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

7: SMT. JHUMA BORTHAKUR
DAUGHTER OF LATE KHAGEN BORTHAKUR
REPRESENTED BY HER POWER OF ATTORNEY HOLDER
SMTI ROONEE BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

8: SMT. MAYA BORTHAKUR
WIFE OF LATE BIREN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

9: DEVAJYOTI BORTHAKUR
SON OF LATE BIREN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

10: DEVASISH BORTHAKUR
SON OF LATE BIREN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

11: SMT. RUNJUN BORTHAKUR @ PHUKON
DAUGHTER OF LATE BIREN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

12: SMT. SANGEETA BORTHAKUR
DAUGHTER OF LATE BIREN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT

ASSAM.

13: SMT. ANJU BORTHAKUR
WIFE OF LATE MAKHAN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

14: AMBARISH BORTHAKUR
SON OF LATE MAKHAN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

15: SMT. AMBALIKA BORTHAKUR
DAUGHTER OF LATE MAKHAN BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

16: JUNU BORTHAKUR
WIFE OF LATE AMULYA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

17: SMT. LEEMA BORTHAKUR
DAUGHTER OF LATE AMULYA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM.

18: SMT. SIMA BORTHAKUR @ MILEE BORTHAKUR
DAUGHTER OF LATE AMULYA BORTHAKUR
RESIDENT OF SARBAIBONDHA NAKARI BAMUNGAON
HEZARI MOUZA
P.S. AND DISTRICT- JORHAT
ASSAM

VERSUS

THE STATE OF ASSAM AND 16 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE

GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
JORHAT
DISTRICT- JORHAT
ASSAM.

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
JORHAT
- CUM- COMPETENT AUTHORITY
UNDER THE NATIONAL HIGHWAY ACT
1956
OFFICE OF THE DEPUTY COMMISSIONER
JORHAT.

4:DIPEN DUTTA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

5:DRUNA DUTTA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

6:NRIPEN DUTTA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

7:RATUL DUTTA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

8:DILIP SAIKIA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD

SARUCHARAI MOUZA
JORHAT- 785001.

9:DHRUBOJYOTI SAIKIA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

10:BAPORAM KALITA
SON OF KESHRAM KALITA

RESIDENT OF CHAKIHAT
RAJAMAIDAN
P.O.
P.S. AND DIST.- JORHAT

11:SMT. SARUMAIN KALITA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

12:NABAKANTA KALITA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

13:DEBO KALITA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

14:ABHIJIT KALITA
RESIDENT OF CHAKIHAT
SARBAIBONDHA GAON
J.B. ROAD
SARUCHARAI MOUZA
JORHAT- 785001.

15:BHOLARAM KALITA
SON OF LATE KESHRAM KALITA

RESIDENT OF CHAKIHAT
RAJAMAIDAN
P.O.
P.S. AND DIST.- JORHAT.
16:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN
1 PARLIAMENT STREET
NEW DELHI- 110001.
17:NATIONAL HIGHWAYS AUTHORITY OF INDIA
REGIONAL OFFICE GUWAHATI
NEDFI HOUSE
4TH FLOOR
G.S. ROAD
DISPUR
GUWAHATI- 781006.
ASSAM

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. P. S. Deka, Sr. Advocate
Mr. P. Bhattacharya, Advocate

For the Respondent(s) : Mr. B. J. Talukdar, Sr. Advocate
Mr. P. K. Medhi, Advocate
Mr. J. I. Borbhuiya, Advocate
Mr. C. Baruah, Advocate

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 24.02.2026

Whether the pronouncement is of the
Operative part of the judgment? : NA

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. S. Deka, the learned Senior Counsel assisted by Mr. P. Bhattacharya, the learned counsel for the petitioners. Mr. B. J. Talukdar, the learned Senior Counsel assisted by Mr. P. K. Medhi, the learned counsel appears on behalf of the respondent Nos. 2 & 3; Mr. J. I. Borbhuiya, the learned counsel appears on behalf of the respondent Nos.10 to 15 and Mr. C. Baruah, the learned counsel appears on behalf of the respondent Nos.16 & 17.

2. The present writ petition has been filed challenging the order dated 30.06.2022 passed by the learned District Judge, Jorhat in LA Case No.01/2018 whereby while adjudicating a proceedings under Section 3H(4) of the National Highways Act 1956 (for short, "the Act of 1956"), the compensation has been apportioned amongst the three groups and the petitioners have only been held entitled to 25% of the compensation.

3. The materials on record show that a plot of land admeasuring 2 bighas 2 kathas 19 lechas covered by Dag No. 3, 33, 24/313, 25/313 under PP No.3 of Hazari Mouza, Nokari Bamun Gaon in the District of Jorhat was acquired by the National Highway Authority under the Act of 1956. The compensation was accordingly determined by the Competent

Authority in terms with Section 3G(1) of the Act of 1956. Three sets of claimants laid claim to the compensation. As there was a dispute as regards the entitlement of the compensation, the competent authority referred the matter to the learned District Judge, Jorhat for adjudication in terms with Section 3H(4) of the Act of 1956.

4. In the backdrop of the above, it is now pertinent to take note of the respective claims as set out by the three sets of claimants.

5. The first group of the claimants was the petitioners who admittedly were the owners of the plots of land. The second group of claimants was those occupancy tenants, whose names were not recorded in the record of rights. The third group of claimants were statutory tenants under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (for short, 'the Act of 1971') and by dint of their possession were entitled to claim ownership in terms with Section 23 of the Act of 1971.

6. It is relevant to take note of at this stage that in respect to the acquisition of the land in question, the Notification under Section 3D of the Act of 1956 was published in the Gazette of India, Extraordinary on 22.07.2011. The significance of the said Gazette Notification is that the land on the date of publication of

such Notification vests absolutely in the Central Government free from all encumbrances.

7. At this stage, it is also pertinent to take note of that while the land has already vested upon the Central Government by virtue of the Notification issued under Section 3D(1) of the Act of 1956 on 22.07.2011, the Deputy Commissioner vide an order dated 23.05.2016 passed in TSA No.17/2013 granted ownership rights under Section 23 of the Act of 1971 to the third group of the claimants. An Appeal thereagainst was filed by the first group of the claimants, i.e. the petitioners before the Appellate Forum, i.e. the Assam Board of Revenue, but the said Appeal was dismissed thereby upholding the order of the Deputy Commissioner, Jorhat, in TSA No.17/2013.

8. Be that as it may, the learned District Judge by the impugned order dated 30.06.2022 passed in LA Case No.01/2018 apportioned the compensation thereby granting 25% in favour of the first group of claimants, i.e. the petitioners; 10% to the second group of claimants, i.e. the respondent Nos.4 to 9 and 65% to the third group of claimants, i.e. the respondent Nos.10 to 15. It is under such circumstances, the present writ petition has been filed.

9. Before proceeding to adjudicate the dispute, it is pertinent

to take note of that the Act of 1956 though provides that the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated would be the competent Court to decide a proceedings under Section 3H(4) of the Act of 1956, but there is no appellate provision against such orders passed in exercise of the powers under Section 3H(4) of the Act of 1956, and as such, the petitioners herein have approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution.

10. This Court finds it relevant at this stage to take note of that the jurisdiction exercised by the learned District Judge, Jorhat is as the Principal Civil Court and any order passed in exercise of such jurisdiction is in effect an order passed by a Civil Court. It is no longer *res integra* that no proceedings under Article 226 of the Constitution is maintainable against orders passed by the Civil Court. Under such circumstances, the exercise of jurisdiction under Article 226 of the Constitution is not permissible. Be that as it may as this Court also exercises supervisory jurisdiction under Article 227 of the Constitution. Under such circumstances, this Court is not inclined to non suit the petitioners on the ground of preferring the present application under Article 226 of the Constitution. Accordingly, this Court converts the present proceedings to a proceedings under Article 227 of the

Constitution and proceeds to analyze the legality and validity of the impugned order within the permissible scope under Article 227 of the Constitution.

SUBMISSIONS ON BEHALF OF THE PARTIES

11. Mr. P. S. Deka, the learned Senior Counsel appearing on behalf of the petitioners submitted that upon issuance of the Notification under Section 3D (1) of the Act of 1956, the land vests upon the Central Government in terms with Section 3D(2) of the Act of 1956, and under such circumstances, there could not have been a conferment of ownership upon the respondent Nos.10 to 15 by the learned Deputy Commissioner vide the order dated 23.05.2016 in as much as the land by virtue of Section 3D(2) of the Act of 1956 already stood vested by operation of law on 22.07.2011. The learned Senior Counsel for the petitioners submitted that this aspect was not taken into consideration in the proper perspective by the learned Court Below and thereby granted a higher compensation to the Respondent Nos.10 to 15 though admittedly, the petitioners herein who were the owners of the land as on the date on which the land vested upon the Central Government. The learned Senior Counsel submitted that under such circumstances, the petitioners ought to have got the larger share of the compensation.

12. The learned Senior Counsel for the petitioners further referring to Section 3G (2) of the Act of 1956 submitted that the right of the respondent Nos.4 to 15 could at best be said to be a right of user and/or a right of easement, and under such circumstances, they could not have been entitled to a compensation more than 10% which the learned District Judge, Jorhat failed to take into consideration.

13. Mr. B. J. Talukdar, the learned Senior Counsel appearing on behalf of the District Administration submitted that the submission made by the learned Senior Counsel appearing on behalf of the petitioners pertaining to the effect of the Notification under section 3D(2) of the Act of 1956 is misconceived in the facts of the instant case taking into account that the learned District Judge, Jorhat, while passing the impugned order had not granted the compensation on the basis of the ownership granted to the Respondent Nos.10 to 15, but had passed the impugned order considering the Respondent Nos.10 to 15 as a khatiyani holders.

14. Mr. J. I. Borbhuiya, the learned counsel appearing on behalf of the private respondents submitted that the judgment so passed by the learned District Judge, Jorhat duly takes into consideration all the relevant factors necessary for adjudication of a proceedings under Section 3H(4) of the Act of 1956 and as

the power of superintendence being very limited, this Court would not exercise its jurisdiction unless a case of total perversity is shown by the petitioners. The learned counsel for the private respondents further submitted that no perversity arises in the impugned order, and as such, the question of interference by this Court under Article 227 of the Constitution do not arise.

ANALYSIS AND DETERMINATION

15. This Court has also perused the records pertaining to the proceedings before the learned District Judge, Jorhat which were called for by this Court. A perusal the records of learned the Court of the District Judge, Jorhat clearly shows that there were three categories of claimants. The petitioners herein were the first group of claimants who claimed compensation on the basis of their ownership. The second group of claimants, who were the respondent Nos.4 to 9 claimed themselves to be occupancy tenants under the pattadars, but their names were neither entered in the record of rights nor any khatian was issued to them. The third group of claimants who were the respondent Nos.10 to 15 were statutory tenants under the provisions of the Act of 1971.

16. The materials on record also show that the petitioners

herein were not in possession of the lands in question. The possession of the lands were with the private respondents. At this stage, this Court finds it very pertinent to take note of the judgment of the Supreme Court in the case of ***National Highways Authority of India vs. P. Nagaraju alias Cheluvaiah and Another***, reported in ***(2022) 15 SCC 1***, wherein the Supreme Court observed that while determining the compensation under Section 3G of the Act 1956, the provisions of Sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is required to be applied. Taking into account that the acquisition in the instant proceedings were initiated and stood culminated prior to 01.04.2014, it is the opinion of this Court that the provision of Section 23 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') has to be read into Section 3G of the Act of 1956. Under such circumstances, the compensation is to be determined by taking into account Section 23 of the Act of 1894. Section 23 of the Act of 1894 postulates six parameters by which the compensation is to be determined. They are as follows:-

- (i) The market value of the land at the date of publication of the notification under Section 4(1) of the L.A. Act.
- (ii) The damage sustained by a person interested by reason of taking of standing crops or trees which may be on the

land at the time of Collector's taking possession thereof.

(iii) The damage, if any sustained by the person interested at the time of Collector's taking possession of the land by reason of severing of such land from his other land.

(iv) The damage, if any, sustained by the person interested at the time of Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings.

(v) If in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, and

(vi) The damage, if any, bona fide resulting from diminution of the profits of land between the time of the publication of the declaration under Section 6 and the time of Collector's taking possession of the land.

17. It is made pertinent to take note of that the petitioners are not in possession of the land and therefore they cannot be held to be entitled to the parameters mentioned in Clauses (ii) to (vi) herein above. What the petitioners can be at best can be said to be entitled to is a part of the consideration which arises out of

Clause (i) herein above, i.e. the value of the land as on the date of Notification under Section 4 of the Act of 1894 which would be pari-materia to the value of the land as on the date of issuance of Notification under Section 3A of the Act of 1956.

18. It is pertinent to take note of that the petitioners herein would not be entitled to any solatium or any interest on delayed payment taking into account that the petitioners were not in possession of the land. This is so because solatium is a form of compensation paid for mental anguish, inconvenience and distress caused as the person has to part with the possession of the land due to compulsory acquisition. In this regard ,this Court finds it pertinent to take note of the observations of the Supreme Court in the case of **Col. Sir Harinder Singh Brar Bans Bahadur vs. Bihari Lal and Others**, reported in **(1994) 4 SCC 523**. Paragraph Nos.12 & 13 of the said judgment being relevant is reproduced here in under:-

“12. Since we are concerned with the compensation awardable for a land acquired under the L.A. Act before its amendment by Central Act 68 of 1984, compensation awardable for land acquired under the unamended L.A. Act, could be said to comprise of the following components:

(i) The market value of the land at the date of publication of the notification under Section 4(1) of the L.A. Act.

(ii) The damage sustained by a person interested by reason of taking of standing crops or trees which may be on the land at the time of

Collector's taking possession thereof.

(iii) The damage, if any sustained by the person interested at the time of Collector's taking possession of the land by reason of severing of such land from his other land.

(iv) The damage, if any, sustained by the person interested at the time of Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings.

(v) If in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, and

(vi) The damage, if any, bona fide resulting from diminution of the profits of land between the time of the publication of the declaration under Section 6 and the time of Collector's taking possession of the land.

13. We could add to the component of the market value of the land in item (i) above, 15% being the consideration payable for the compulsory nature of acquisition, that is, solatium. Since interest becomes payable for delayed payment of compensation after the Collector takes possession of the acquired land such interest, if accrued, has to be added to each component of compensation. The compensation awardable since comprises of the said components every person entitled to obtain any or all the components of the compensation, becomes entitled to make a claim as regards his interest in the land and the component of compensation awardable thereto. There cannot be any doubt nor was it disputed that the landowner possesses certain interest in the acquired tenanted land, if it is acquired under the L.A. Act and vested in the State

before its tenant becomes its deemed owner under sub-section (4) of Section 18 of the Tenures Act. Landowner could claim the component of compensation or any portion thereof according to the nature of interest possessed by him prior to the acquisition and vesting of the land under the L.A. Act. The composition of each of the components of compensation adverted to by us are seen, the landowner can make no claim for the components of compensation under items (ii) to (vi), in that, those components of compensation could become payable only to a tenant who would have suffered damages awardable thereunder. However, if regard is had to the nature of interest of landowner comprised in the tenancy of a tenant, a claim could be made by him for the component of compensation of market value in item (i) and solatium and interest payable thereon. The question which, then, needs our consideration is, whether the landowner who, as owner of the tenanted land before its acquisition and vesting under the L.A. Act, could claim the whole component of compensation in item (i) and solatium and interest awardable thereon. Here, comes the nature of interest which the landowner possessed in the tenanted land at the time of its acquisition and its vesting in the State under the L.A. Act. It cannot be gainsaid, that a landowner of tenanted land, to the purchase of which a tenant had become entitled under Section 18 of the Tenures Act, could be anything other than the purchase price payable for purchase of it under the Act, particularly, when a tenant had made an application for such purchase availing the right conferred upon him in that regard under Section 18 of the Tenures Act. If at the time of acquisition and vesting of the tenanted land under the L.A. Act, the landowner's entitlement from the tenant was such land's purchase price, his interest, having regard to its nature, could only be in the component of compensation consisting of market value of

the land adverted to in item (i) and solatium and interest payable thereon and nothing beyond it. Therefore, such a landowner could only lay his claim for the amount of the purchase price out of the component of such compensation and limited to the amount of purchase price. However, it was contended on behalf of the appellant that the landowner would become entitled to three-fourths of the amount of compensation awardable for the land acquired even though the tenant was entitled to its purchase under the Tenures Act. In support of the submission, reliance was placed on the observations made by a learned Single Judge of the High Court in his judgment — the subject-matter of one of the present appeals, which read, thus:

“I think the Punjab Security of Land Tenures Act itself appears to afford some guidance in the matter. Section 18(3) prescribes the purchase price to be paid by the tenant at three-fourths of the value of the land as determined by Section 18(2). It means that the interest of the landowner is assessed at three-fourths and the interest of the tenant is assessed at one-fourth. The value of the land as determined under Section 18(2) may be more or less than the value of the land on the date of the notification of acquisition. But that makes no difference. What is important is that the interests of the landowner and the tenant are fixed at three-fourths and one-fourth of the value of the land. On that basis, I direct the apportionment of the compensation between the appellant and the first respondent in the ratio of 1 : 3.”

The said observation of the learned Single Judge, it must be said, with great respect to him, is based on misconstruction of the provisions of sub-sections (2) and (3) of Section 18 of the Tenures Act. The value of the land envisaged under sub-section (2) is not the market value of the

land but the value of the land which should be the average price of land in the neighbourhood during 10 years preceding the date of making of the application by the tenant for purchase of land. What sub-section (3) says, is that the purchase price of the tenanted land must be three-fourths of the value of the land determined under sub-section (2), which means that the value of the tenanted land could only be three-fourths of the average value of the neighbouring land during ten years preceding the date of making of the application by the tenant for purchase. Here is a statutory measure required to be adopted to find out the purchase price of tenanted land and not the supposed market value of that land as on the date of making of the application for purchase. If that be so, we are unable to understand how the market value of the land which will be far different from the statutory value of the land could be regarded as the same, as has been done by the learned Single Judge. Hence, the contention raised on behalf of the appellant that the landowner would be entitled to three-fourths of the market value of the land, becomes unsustainable. If we have regard to the provisions under sub-sections (2) and (3) of Section 18 of the Tenures Act, rightly adverted to by the learned Single Judge, the amount of compensation to which a landowner becomes entitled can only be the purchase price which he would be entitled under the said provisions for his land, which the tenant had a right to purchase thereunder. If the purchase in favour of the tenant was over, as indicated in sub-section (5) (sic) of Section 18, the purchase price, it must be kept in mind, could have been recovered by the landowner as arrears of revenue. Therefore, in our view, the tenant could have been entitled to get out of the component of compensation awardable as market value in item (i) referred to above and the solatium and interest payable thereon, only that amount of compensation which

could be equivalent to the purchase price liable to be paid by the tenant to the landowner under Section 18 of the Tenures Act and nothing more or less. Hence, our answer to the question under consideration is, that if a tenanted land which its tenant was entitled to purchase under Section 18 of the Tenures Act did vest in the State by reason of its acquisition under the L.A. Act before he became its deemed owner as envisaged under sub-section (4) of Section 18 of the Tenures Act, the landowner of that tenanted land could have made a claim for compensation awardable therefor under the L.A. Act and his entitlement out of the said compensation could only be that falling in the component of compensation in item (i), the market value of that land together with solatium and interest, however, limited to the amount of purchase price which he was entitled to get for the land under Section 18 of the Tenures Act and nothing more or less."

(emphasis supplied on the underlined portions)

19. This Court also finds it is pertinent to take note of another recent judgment of the Supreme Court in the case of **Vinod Kumar and Others vs. District Magistrate, Mau and Others**, reported in **(2023) 19 SCC 126**, wherein the Supreme Court observed as to how the question of apportionment of the compensation is to be decided by the competent Court in terms with Section 3H(4) of the Act of 1956. Paragraph Nos.28 to 30 of the said judgment being relevant is reproduced herein under:-

"28. There is a fine distinction between determining the amount to be paid towards compensation and the apportionment of the amount. The legislature has thought fit to confer powers upon the Principal Civil Court

of Original Jurisdiction to determine the dispute arising as to the apportionment of the amount. There is a reason, why the legislature has thought fit to confer such power to the Principal Civil Court of Original Jurisdiction within the limits of whose jurisdiction is land is situated. We shall try to explain hereinafter.

29. The question of apportionment of compensation is not free from difficulties. In apportioning the compensation, the court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated, the proposition may appear simple, but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests, rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and the court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded. But in the valuation of competing interests, which from its very nature is dependent upon indefinite factors and uncertain data, considerable difficulty is encountered. Indisputably, in apportioning compensation the court cannot proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which are lost. The court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto.

30. Thus, the only general principle one could state is that apportionment

under sub-section (4) of Section 3-H of the 1956 Act is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests. In ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land."

20. In the backdrop of the above, this Court also finds it apposite to consider the provisions of the Act of 1971 and the rights so conferred upon the occupancy tenants as mentioned in Chapter III of the Act of 1971. A perusal of Chapter III of the Act of 1971 stipulates that the occupancy tenants have been conferred various rights for use and occupation of land. Chapter VI of the Act of 1971 confers rights upon occupancy tenants for acquisition ownership rights. This Court also takes note of Section 24 of the Act of 1971 which stipulates that the compensation which is required to be payable for acquisition of ownership rights is an amount equal to 50 times the full rate of annual land revenue payable for such land. This compensation can be said to be the purchase price.

21. In the backdrop of the above, the materials on record show

that the respondent Nos.10 to 15 being occupancy tenants, they were protected class by the Act of 1971. They could not be evicted except as provided under Chapter IX of the Act of 1971. It is also seen that there were no steps taken by the petitioners to take any steps for ejectment of the respondent Nos. 10 to 15 at any point of time. Further to that the Respondent Nos.10 to 15, rights have matured to seek ownership of the land by paying the compensation as mandated in Section 24 of the Act of 1971.

22. In the backdrop of the above, if this Court now takes note of the impugned order dated 30.06.2022 passed in LA Case No.01/2018 by the learned District Judge, Jorhat, it appears that the learned District Judge, Jorhat had given detailed reasons as to why the entitlement of the petitioners has kept only at 25%, whereas the entitlement of the respondent Nos.4 to 9 had been kept at 10% and the respondent Nos.10 to 15 at 65%. In the opinion of this Court, the learned District Judge, Jorhat had granted the petitioner compensation more than what the amount they would have been entitled to if the law laid down in **Col. Sir Harinder Singh Brar Bans Bahadur** (supra) was properly applied.

23. It is also pertinent to take note that this Court is not sitting on appeal against the impugned order and hence, sans any perversity being shown or a case of patent illegality, it would not be proper on the part of this Court to exercise its supervisory

jurisdiction to interfere with the impugned order 30.06.2022 passed in LA Case No.01/2018.

24. Accordingly, this Court does not find merit in the instant petition for which the petition stands dismissed.

25. The interim order passed earlier stands vacated.

26. The Registry shall forthwith return the records to the learned Court of the District Judge, Jorhat.

JUDGE

Pradip Kumar Kalita

 Digitally signed by Pradip Kumar Kalita
Date: 2026.03.02 19:17:58 +05'30'

Comparing Assistant