

GAHC010180632024



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

Case No. : WP(C)/5699/2024

SAIDUL ISLAM @ SAIDUR ISLAM
S/O- LATE AMIRUDDIN,
VILLAGE- BARBHITA, P.O.- CHANDMAMA,
P.S.-KALGACHIA, DISTRICT- BARPETA
(ASSAM), PIN- 781321.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT OF ASSAM,
REVENUE AND D.M. (L.R.) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DISTRICT COMMISSIONER
BARPETA
P.O. AND P.S.- BARPETA
DISTRICT- BARPETA
ASSAM
PIN- 783101.

3:THE DISTRICT COMMISSIONER
BONGAIGAON
P.O. AND P.S.- BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM
PIN- 783380.

4:AZIMUDDIN AHMED
ON HIS DEATH HIS HEIRS-

4.1:HASNA KHATUN
DAUGHTER OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA

P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.2:SAJIDA KHATUN
DAUGHTER OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.3:OMAR ALI
SON OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.4:RAHIKUZZAMAN AHMED
SON OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.5:REJAKUL ALOM AHMED
SON OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.6:BADRUL ALOM
SON OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

4.7:RASHIDUL ALOM
SON OF LATE AZIMUDDIN AHMED
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA

P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321.

5:ATOWAR RAHMAN
S/O- LT. ABUL HUSSEN SARKAR
RESIDENT OF VILLAGE- KANDULIA
P.S.- KALGACHIA
P.O.- CHANDMAMA
DISTRICT- BARPETA (ASSAM)
PIN-781321

Advocate for the Petitioner : MR. M A SHEIKH, MS. A BEGUM,MR M H CHOUDHURY

Advocate for the Respondent : SC, REVENUE, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 08-11-2024

Heard Mr. M.A. Sheikh, learned counsel for the petitioner; G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioner has stated that his father, Amiruddin [since deceased] possessed a parcel of land measuring 3 Kathas 15 Lessas, in total, with his two brothers, [i] Azimuddin Ahmed [since deceased]; and [ii] Atowar Rahman, who has been impleaded as party-respondent no. 5 in this writ petition. The legal representatives of Azimuddin Ahmed [since deceased] are impleaded in this writ petition as party-respondent nos. 4[a] to 4[g].

3. The petitioner has stated that Amiruddin died leaving the following legal heirs :-

Sl. no.	Name	Relation
1	Saidur Islam [Petitioner]	Son
2	Wajedul Islam	Daughter

3	Aklima Khatun	Daughter
4	Rahela Khatun	Daughter
5	Shukiton Nessa	Daughter
6	Morlika Khatun	Daughter
7	Mofida Khatun	Daughter

4. It has been stated after death of Amiruddin, the names of his legal heirs stood recorded in the revenue records pertaining to the parcel of land measuring 3 Kathas 15 Lessas, covered by Dag no. 876 and Annual Patta no. 64, situate at Village – Kandulia, Mouza – Titapani, Kalgachia Revenue Circle, District – Bongaigaon [earlier, District – Barpeta] [‘the subject-plot’, for short]. It is the further case of the petitioner that out of the subject-plot, an area of land measuring 1 Katha 5 Lessas [‘the subject-plot – ‘A’, for short] is under possession of the petitioner and his siblings.

5. The Government of Assam initiated a process of acquisition of land vide L.A. Case no. 9/2011-2012 for improvement and strengthening of State Highway no. 2 for acquiring different parcels of land measuring, in total, more or less 16 Bighas 1 Lessas in Village – Kandulia. The improvement and strengthening of State Highway no. 2 included double lining of existing carriageway under the Assam State Road Project [ASRP] – portion from Langla to Barpeta Town. In the said process of acquisition, the area of land falling under the subject-plot – ‘A’ got included.

6. The State respondents prepared a list of beneficiaries for the purpose of payment of compensation for the lands so acquired vide the proceedings in L.A. Case no. 9/2011-2012 including the subject-plot – ‘A’. In the said list of beneficiaries, the name of the petitioner and other legal heirs of Late Amiruddin were not incorporated as persons interested. But, in the said list of beneficiaries for receiving compensations in connection with the land falling under the subject-plot – ‘A’, the names of Azimuddin [since deceased] and Atowar Rahman were included as beneficiaries. After inclusion of their names, the amount of compensation amount assessed in connection with the area of land under the subject-plot – ‘A’ has already been disbursed to the said two respondents.

7. Mr. Sheikh, learned counsel for the petitioner has submitted that the petitioner's land has been taken away by way of the acquisition process in L.A. Case no. 9/2011-2012, but no share from the compensation amount has been paid to the petitioner. He has submitted that the roles of the District Commissioner and the other official respondents in the process of acquisition and disbursement of the compensation are questionable. The petitioner had requested the official respondents to furnish him a copy of the list of beneficiaries but the same was not provided to him deliberately. The petitioner also submitted a representation before the respondent no. 2 on 07.11.2022 to verify the impugned list of beneficiaries for inclusion of the name of the petitioner and other legal heirs of Late Amiruddin.

8. This writ petition is preferred seeking the following relief, *firstly*, to modify the impugned list of beneficiaries in respect of subject-plot – 'A' by inserting the name of the petitioner and his siblings; *secondly*, to direct the respondent no. 4[a] to respondent no. 4[g], who are the legal representatives of Azimuddin Ahmed [since deceased] and the respondent no. 5 to return the share of compensation already received by them in connection with the acquisition of the area of land under subject-plot – 'A'; and *thirdly*, to direct the respondent no. 2 to pay the said compensation to the petitioner and his siblings after recovering it from the respondent nos. 4[a] to 4[g] and the respondent no. 5.

9. From the case-papers, it transpires that the land acquisition process was initiated vide L.A. Case no. 9/2011-2012 and the Notification under Section 4 of the Land Acquisition Act, 1894 [since repealed] was published vide Notification no. RLA.76/2012/65 dated 25.07.2012. Subsequent thereto, the Declaration under Section 6 of the Land Acquisition Act was published vide a Notification no. RLA.76/2012/66 dated 30.05.2013. In both the Notifications published under Section 4 and Section 6, the details of the parcels of land which were acquired, later on, were described. From the Letter no. RLA.76/2012/131 dated 14.12.2020, one Supplementary Award amounting to Rs. 94,71,237/- was approved by the Government of Assam in the Revenue & Disaster Management [LR] Department in 2020, meant for one Nur Hussain, unrelated to the case of the petitioner. Thus, it is evident that the Award in that connection was passed earlier to the Supplementary Award. It is an admitted position that

neither the name of the petitioner nor the name of the petitioner's siblings as legal representative[s] of Late Amiruddin was included in the list of beneficiaries dated 05.09.2020. If the petitioner was a person interested in respect of subject-plot – 'A' land, he could have preferred an objection at the appropriate time when the Notification under Section 4 and under Section 6 were published, which were published as far back as in the year 2012 and 2013 respectively. The petitioner is silent as to when the Award was passed though it is mentioned in the petition that the Supplementary Award, mentioned above, was approved by the Government of Assam in the Revenue & Disaster Management Department in the year 2020.

10. It has also emerged that the entire compensation amount assessed against subject-plot – 'A' has already disbursed in favour of the respondent no. 4[a] to respondent no. 4[g].

11. The aforesaid facts and circumstances would give rise to a number of disputed questions of facts. It is for the petitioner to first establish that he is a person interested in respect of the subject-plot – 'A' land. After establishing such claim, he could stake a claim for consideration of his case as a beneficiary to receive compensation in connection with the subject-plot – 'A' land. In the process of disbursement of compensation, the acquiring authority disburses the compensation amount after receipt of necessary documents including indemnity bonds from the recipients of the compensation amount[s]. If the petitioner would be able to establish his bonafide claim in respect of the subject-plot – 'A' land, then only the acquiring authority can proceed against the recipient[s] of the compensation amount[s] in favour of whom the compensation amount[s] has/have already been disbursed on the strength of the indemnity bond, etc. submitted by those recipients. In such view of the matter, a writ proceeding under Article 226 of the Constitution of India is not an appropriate proceeding for the writ petitioner to pursue and the petitioner should approach the competent court of law for adjudication of the disputed questions of facts involved. In such view of the matter, the instant writ petition is not entertained.

12. At this stage, Mr. Sheikh, learned counsel for the petitioner has submitted that the petitioner be granted an opportunity to prefer a fresh Representation along with the

supporting documents as regards his claim as a person interested in respect of the subject-land – 'A' land before the jurisdictional District Commissioner, that is, the District Commissioner, Barpeta. Taking note of such prayer, it is observed that there is no bar for the petitioner to prefer a representation before the jurisdictional District Commissioner, that is, the District Commissioner, Barpeta highlighting his grievances about non-inclusion of his and his siblings' names in the list of beneficiaries in connection with the subject-plot – 'A' land.

JUDGE

Comparing Assistant