

Assam Schedule VII, Form No.133.
Form No.(J) 3

HEADING OF JUDGMENT IN MISC (Ref) CASE

District: Barpeta.

IN THE COURT OF ADDL. DISTRICT JUDGE; BARPETA, ASSAM.

Present: **Sri Chatra Bhukhan Gogoi, A.J.S.**
Addl. District Judge, Barpeta.

Wednesday, the 5th day of February, 2020.

Misc (Ref) Case No.1/2016

Badir Ali
S/O- Late Samsul Hoque
R/O- Vill-Meda, Mouza Damka Chakabousi, Dist.
Barpeta, Assam.

.....Petitioner

Versus

1. **Union of India**
Represented by the Secy. to the Union of India,
Ministry Power, New Delhi
2. **The power Grid Corporation of India Ltd.**
Regd. Office at B-9 Qutub Institutional Area Katwaria
Sarai, New Delhi-16
3. **The State of Assam, Represented by the Principal Sec.,**
to the State of Assam, Revenue and Disaster
Management Deptt., Relief and Rehabilitation Branch,
Assam, Dispur, Ghy-6.
4. **The Deputy Commissioner Barpeta, P.O. & Dist-**
Barpeta, Assam.
5. **The Dy. Engineer,**
Unit office of the Power Grid Corporation of India Ltd.
Howly, MP Building, Lachit Path, P.O. Howly, P.S.
Howly and Dist-Barpeta, Assam.
6. **The Circle Office, Barnagar Revenue Circle, Sarbhog,**
Dist-Barpeta, Assam. Pin-781317.
7. **The Executive Engineer, PWD Building Division,**
Nalbari, District Nalbari, Assam.

.....Opposite Parties

This Misc (Ref) case coming on for final hearing on 21.12.2019 in the presence of-

Mr. Sayad Khairul Islam

Mr. Bismoi Das.....Advocate/pleader for Petitioner.

Mr. A.K. DasAdvocate/pleaders for Opposite parties.

And having stood for consideration to this 5th day, the Court delivered the following judgment:

J U D G M E N T

1. This is an application filed u/s 16 (3) of the Indian Telegraph Act, 1885 for proper determination of the value of land, tree and house building standing on the land of the petitioner so removed, by applying all resources available to calculate the said compensation and damages in the light of the Right to Fair Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act, 2013.
2. The brief fact, of the case, is that the petitioner is a permanent resident of village Meda in the district of Barpeta. But he is an uneducated person, living with his family members by doing cultivation. He owned and possessed a plot of land measuring 1Bigha-1Katha-3Lessas covered by Dag No.1170/700 of Patta No.85 of village Meda under Domka Chakabousi Mouza in the district of Barpeta, Assam.
3. It is contended that with his little earning petitioner somehow constructed his dwelling houses consisting with bathroom, latrine etc over the said plot of land. He also constructed a cow shed besides his dwelling house to keep his domesticated cows and bulls nurtured by him for the purpose of ploughing and producing milk.
4. On the remaining part of the land petitioner planted number of trees producing fruits like beetle nut fruit, mango and other valuable trees. The petitioner also regularly paying the land revenue to the Govt. of Assam.
5. It is stated that the Power Grid Corporation of India Ltd. as entrusted by Union of India through its officials constructed and erected high tension Electric line throughout India and accordingly, Op. No.2 and 5 also constructed 400 KV D/C (QUAD), Balipara, Bongaigaon Power Transmission Line associated by Kameng Hydro Electric Project and 750 MW BTPS Salakati Thermo Project over the land of the petitioner covered by Dag No.1170/700 of Patta No.85.
6. On 09.10.2014 some officials of public work department measured the cow shed of the petitioner in presence of respondent No.5 and assured the petitioner that he will get adequate compensation but petitioner was not informed about the amount of compensation. On 20.10.2014 the concerned Lat mandal along with some other persons also visited the plot of land of the petitioner and measured/counted the various trees standing over the land of the petitioner which are to be damaged/cut during the construction of towers. Then also petitioner was not informed about the

exact value of zirat but asked the petitioner to collect the final amount of zirat from the office of respondent No.6 after a month. Accordingly, on 28.10.2014 petitioner was asked by the respondent No.6 to collect the cheque for compensation and accordingly the authority had given him two cheques amounting to Rs.56,400/- and Rs 4,67,863 towards the compensation of cow shed and zirat as calculated by respondent No.6 and 7. The petitioner however accepted the said cheque under protest as he feels the compensation given to him was not adequate. It is contended that subsequent to construction/erection of the said tower and on trial of transmission of electric current, the nearby dwelling houses of the petitioner has been shocked by electric current at the roof sheet so there is serious apprehension of electrocution forcing the petitioner to shift his residential house from there. In this regard, petitioner submitted a representation before respondent No.4 praying to award adequate compensation for his dwelling house.

8. In the mean time, petitioner made an RTI application dated 08.06.2015 asking compensation sheet from the office of the respondent No.7 and 5 and accordingly, respondent No.5 and 7 provided the photocopies of valuation sheets of cowshed and calculation of zirat to the petitioner.

9. After going through the said compensation sheet, petitioner found so many irregularities/illegalities regarding manner of calculation and awarding of compensation. So, the petitioner submitted a representation dated 12.11.2015 before respondent No.4 to enhance the compensation and initiation of enquiry against the Power Grid Corporation but the authority is sitting over his said representation.

10. It is contended that the administrative authorities are bound to act fairly, but in the present case, the official respondents have acted most illegally and arbitrarily in determining the compensation payable to the affected person. In this regard, petitioner approached the Hon'ble High Court but the Hon'ble High Court in W.P. (C) No.1117/2016 vide order dated 22.03.2016 directed the petitioner to approach the Jurisdictional District Judge agitating the grievances as per provision of Indian Telegraph Act, 1885.

11. Therefore, the petitioner approached this court seeking a direction to revenue authority to assess the value of the land and value of paddy during erection of the tower directing PWD (Building) Division to assess the value of dwelling house and the cowshed so removed from the petitioner's land and also a directing to Forest Department to assess the value of trees or zirat stood upon the land of the petitioner and then award fair and adequate compensation as per the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act., 2013.

12. Acting on the petition, notices were issued to the respondent and the O.P's entered their appearance through their learned counsel and filed written objection by respondent No.1, 3, 4, 6 and 7 jointly and respondent No.2 and 5 separately.

13. In the written objection filed by respondent No.1,3,4,6 and 7 it is contended

that they do not have any comment against the statement made in paragraph 1, 2, 3, 6, 8, 10, 11, 12 and 20 of the petition and denied the allegation made in paragraph 7, 13 and 14 of the petition. Against statement made in paragraph 9 the answering respondent stated that on being assessed the value of zirat and compensation thereof, caused on the land covered by Dag No.1170 and Patta No.85 of village Meda the circle officer, Barnagar Circle calculated the value at Rs.4,67,863/- which had been duly forwarded by respondent No.4 to respondent No.2 for sanction/release of compensation to the petitioner vide letter No.BMJ-18/2012/162, dated 24.10.2014. It is further stated that as per joint survey dated 09.10.2014 the damage cowshed was calculated as per norms at Rs.56,400/- as submitted by Executive Engineer, Nalbari (Building) Division vide letter No.T/BL/NH-31/Pt-I/605/06-07/3885, dated 16.10.2014 which has been forwarded by the Deputy Commissioner, Barpeta to the concerned paying authority respondent No.2 but no communication has been received in this regard. It is however, contended that the petition is not maintainable and liable to be quashed.

14. The respondent No.2 and 5 also submitted their written statement contending that there is no cause of action for the suit/petition, it is not maintainable, they have no comment against the statement made in paragraph 1 of the petition. It is also contended that the statement made in paragraph 2 and statement made in paragraph 5 of the petition are matters of revenue record and statement made in paragraph 4,5 and 6 of the petition are matters of record. But as regard statement made in paragraph 6 it is contended that it is only after construction/erection of the tower of the transmission line the petitioner constructed a residence near the said plot of land with absolute malafide intention solely to extract money. As regards, statement made in paragraph 8 the O.P. No.2 and 5 specifically denied the same as adequate compensation was paid to the petitioner following due process of law and the petitioner had received two cheques amounting to Rs.56,400/- and Rs.4,67,863/- as calculated by the circle officer, Barnagar Revenue Circle and Executive Engineer, PWD (Building) Division Nalbari and petitioner subsequently collected the said amount of money. As against the statement made in paragraph 9 of the petition the O.P. is not liable to pay any compensation for the land as per the Indian Electricity Act as well as Indian Telegraph Act. Against the statement made in paragraph 10 of the petition it is contended that there was no residence over the plot of land over which the said tower line passes at the time of construction and erection of towers. It is only after constructing/erecting the foundation of towers of the said transmission line the petitioner constructed a house near the said plot with oblique motive of extracting money. As such, the authority is not liable to pay any compensation as claimed by the petitioner. It is reiterated that adequate compensation was paid to the petitioner by following due process of law. Therefore, it is contended that the petition is liable to be dismissed.

15. **Point for determination:**

1. Whether the respondents setup/ erected the high tension electric line over the land of the petitioner covered by Dag No.1170/700 of Patta No.85 of village Meda, Mouza Domka Chakabousi, district Barpeta, Assam by following due

process of law as alleged ?

2. Whether the respondent No.2 and 5 paid adequate compensation to the petitioner for using his land and cutting growing trees over the land and removing cow shed and his residence to other place as a result of setting up the high tension electric line over the land of the petitioner as alleged ?

16. **DISCUSSION DECISION AND REASONS FOR DECISION:**

During the course of argument, the learned counsel Sri Bismoy Das appearing for the petitioner arduously contended that the respondent authorities while setting up the high tension electric line over the land of the petitioner did not pay adequate compensation as provided in the Indian Telegraph Act., 1885 and also the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act., 2013. It is contended that the respondent authority had whimsically given two cheques to the petitioner amounting to Rs.56,400/- and Rs.4,67,863/- towards the compensation of cow shed and zirat as calculated by respondent No.6 and 7. But the said compensation was accepted by the petitioner under protest because according to him the compensation awarded was not adequate to the extent of damage or lost suffered by him. As a result of setting up the high tension electric line over the land of the petitioner he had to shifted his residential house from his land and he had to live sleepless night as his dwelling house has been shocked by electric current at the roof sheet causing serious apprehension of electrocution. According to learned counsel the calculation of zirat and valuation was inflicted with so many irregularities and illegalities. Therefore, the petitioner submitted a representation before respondent No.4 for enhancement of compensation and enquiry against Power Grid Corporation of India respondent No.2 but nothing was done forcing the petitioner to approach this court seeking adequate compensation.

17. On the other hand, the learned counsel appearing for respondent No.2 and 5 highly disputed the submission of the learned counsel appearing for the petitioner and contended that the entire allegations of the petitioner is baseless and unfounded allegation because the authority had before awarding compensation make proper calculation and appreciation of the lost suffered by the petitioner and accordingly calculated just compensation and awarded two cheques to the petitioner amounting to Rs.56,400/- and Rs.4,67,863/- as per provision of law. There is no illegality or irregularity in the manner of calculation of compensation in respect of the land of the petitioner which was calculated by following due process of law. The petitioner failed to show in court how and which manner he suffered lost with detailed fact and figure. Mere allegation of not awarding compensation is not sufficient unless petitioner can show actual loss or damage suffered by him.

18. It is vehemently argued by the learned counsel for the respondent No.2 and 5 that the so called dwelling house was constructed by the petitioner under the high tension electric line after setting up of the tower so as to extract money from the authority. Therefore, it is contended that whatever compensation has been awarded to the petitioner was fair and adequate compensation

and the petitioner is not entitled to anything more. Hence the learned counsel for respondent No.2 and 5 contended that the petition is liable to be dismissed.

19. Having heard the vociferous argument of the learned lawyers appearing for both sides, this court is forced to examine the relevant provisions of law on the subject and the pleadings, evidence and documents produce and proved by the parties for arriving at a just decision in the case.

20. In this regard, it is useful to refer to section 10 of Indian Telegraph Act., 1885 which provides as under :

"10 Power of telegraph authority to place and maintain telegraph lines and posts.- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that--

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purpose of a telegraph established or maintained by the 'Central Government', or to be so established or maintained;

(b) the 'Central Government' shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

21. Now, on perusal of section 10 (b) it is seen that the Central Government shall not acquire any right other than that of user only in the property and Sub-Section

10(c) provides that the telegraph authority shall do so with the permission of local authority only and Sub-Section 10(d) provides that the telegraph authority shall do as little damage as possible, in respect of the property and shall pay compensation to persons interested for any damage sustained by them.

22. Now, coming back to the facts of the present case, it appears that the respondent No.2 and 5 assessed the value of the property of the petitioner and calculated the zirat with the help of local authority i.e. the respondent No.4, 6 and 7 and accordingly, awarded compensation as calculated by respondent No.6 and 7. Though the petitioner alleges illegalities and irregularities in assessing the compensation but the petitioner infact, failed to show in court how and which manner the authority committed irregularity. In the course of evidence, DW-1 Sushil Kakati the

Chief Manager of TLC Salakati power grid corporation limited NER categorically stated that the compensation has been given to the petitioner as calculated by the local authority by following due process of law and the said compensation was adequate and fair compensation. To substantiate his stand, the DW-1 has produced and proved in this regard the documents marked as Ext.A, B, B(1), B(2), B(3). Ext.C, C(1), C(2). Ext.D and Ext.E, E(1) which shows that compensation has been calculated by following due process and awarded the same to the petitioner. There was no such anomaly in doing so by the petitioner. Contrary to the evidence adduced by the Dws the petitioner in his evidence failed to establish in court in which manner the authority had committed irregularity or illegality. In the written objection and evidence the respondents clearly stated that the petitioner has constructed the residential house under the high tension electric line after the H.T. line was erected/constructed. Ext.C(2) shows that the compensation has been awarded to the petitioner for his cow shed amounting to Rs.56,400/-. Ext.B, B(1) and B(2) shows the manner in which the compensation for each trees have been assessed by the authority and paid to the petitioner as zirat. As against the evidence of the Dw's petitioner has failed to show in specific manner how the respondent did not assess proper value of the property lost by him. Mere allegation is not sufficient unless the claim of the petitioner is substantiated with credible and trustworthy evidence on record.

23. Under Section 16(3) of the Indian Telegraph Act, 1885 provides an opportunity to the aggrieved party to make an application if any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d) to the District Judge, within whose jurisdiction the property is situate.

24. Therefore, in order to get the relief sought by the petitioner, he is required to establish the damage sustained by him by reason of exercise of power by the authority concerned. In his evidence petitioner also failed to establish in court that he is entitled to get more compensation than what was given to him under the provision of the right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act., 2013.

26. There is absolutely nothing in the form of pleadings and evidence with credible facts and figures to show that the authority has failed to award adequate compensation to the petitioner in terms of right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act., 2013 or violation of any provision of the said Act.

27. In view of the foregoing discussion and reasons this court constrained to hold that the petition has no merit. In the result, petition stands dismissed.

28. Given under my hand and seal of this court on this 5th day of February, 2020 .

Dictated & Corrected by me

Sd/-
(Sri C.B. gogoi)
Addl. District Judge, Barpeta.

Sd/-
(Sri C.B. Gogoi)
Addl. District Judge, Barpeta.