

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 457 of 2003

1. **Sri Babul Mia**
S/O Late Rayet Mia
2. **Sri Para Mia**
S/O Sri Keramat Ali

**Both residing at Rahimpur,
P.O. & Vill-Putia,
P.S. Kalamchoura, Sonamura
District-West Tripura.**

Petitioners

- Vs -

1. **Oil & Natural Gas Corporation Ltd.,
Tripura Project, Agartala,
Represented by its General Manager
at Badharghat, P.S. Amtali,
District-West Tripura.**
2. **The General Manager,
Oil & Natural Gas Corporation Ltd.,
Tripura Project, Badharghat,
P.S. Amtali, Agartala,
District-West Tripura.**
3. **The Supdt. Of Engineer (Civil)-II
Oil & Natural Gas Corporation Ltd.,
Tripura Project, Agartala,
Badharghat, P.S. Amtali,
District-West Tripura.**
4. **The Land Acquisition Collector,
West Tripura, Agartala.**

.....

Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioners : Mr. PK Dhar, Advocate.

For the respondents : Mr. S Deb, Sr. Advocate.
Mr. R Dasgupta, Advocate.

Date of hearing and
delivery of judgment
& Order : **16.04.2013.**

JUDGMENT & ORDER (ORAL)

The instant writ petition is filed by the petitioner for directing the respondents-ONGC to release and re-deliver the land as mentioned in notice dated 06.08.1990 which was taken

into temporary occupation/possession under sub-section (1) of Section 35 of the Land Acquisition Act, 1894 (**for short, "LA Act"**) for a period of three years and also for a direction to the respondents to acquire the land in question after observing necessary formalities and pay adequate compensation after proper assessment in lieu of releasing the land in question in favour of the petitioners.

2. Heard Mr. PK Dhar, learned counsel for the petitioners as well as Mr. S Deb, learned senior counsel assisted by Mr. R Dasgupta, learned counsel for the respondent-ONGC.

3. Brief facts needed to be discussed are as follows:-

The petitioners are admittedly the owners of the land measuring 1.01 acres at Tehsil Valuarchar, Mouja Rahimpur pertaining to Khatian No. 427, Sabek Dag No. 3309 and 3310, presently Dag Nos. 3034 and 3037 and the said land was taken up for temporary occupation vide order dated 01.08.1990 for a period of three years for Rokhia-o(New) under Clause-1 of Section 35 of the LA Act and the said fact was also communicated vide notice dated 06.08.1990 (Annexure-1 to the writ petition) wherein the petitioners were requested to appear personally or by their agent on 10.08.1990 in the office of the Land Acquisition Collector (respondent No. 4 herein). Thereafter, on 17.03.1990 (Annexure-2 to the writ petition) the Additional Director (P&A) of the respondent No. 1 informed the LA Collector (respondent No. 4) that they have obtained working permission from the possessors of the land in their acquisition

proposal. Thereafter, the present petitioners on 19.05.2003 made an application to the Group General Manager of respondent No. 1, Tripura Project for compensation of their Jote land which has been in temporary occupation of the respondents from 05.02.1990 to 05.02.1993 for construction of drill site as the said land was not released even after completion of three years.

4. The respondent-ONGC by way of filing counter affidavit denied the allegations of the petitioners stating, inter alia, that "**indisputably, the land in question was temporarily acquired under the Land Acquisition Act, 1894 by issuing a Notice dated 06.08.1990 (Annexure-1 to the writ petition) and the petitioners were asked to appear personally or by agent on 10.08.1990 at 11-00 am before the respondent No.4 to claim/establish their claims, if any in the land and the petitioners have admitted in the legal Notice of demand (Anenxure-4 to the writ petition) that the compensation for temporary occupation for the lands measuring 1.01 acres of lands were offered which the petitioners received. It has been clarified by the communication dated 30.07.2003 (Annexures-5 to the writ petition) that on the completion of three years of the temporary occupation, the lands measuring 1.01 acres appertaining to survey plot Nos. 3034 and 3037 were released. Subsequently, a Notification under No. F.9(2)-Rev/Acq/VIII/96 dated 24th February, 1996 was issued for land measuring 0.45 acre. No lands other than the lands under Notification were acquired by and on behalf of the respondent No. 1. The said Notification dated 24.02.1996 was issued by the State of Tripura on a request**

made by the respondent No. 1 on 30.09.1994. All the compensation under Section 35 of the Act of 1894 has been paid for the lands referred in the Notice dated 06.08.1990. The lands under Notification dated 24.02.1996 are absolutely different from those involved in the Notice dated 06.08.1990. Survey plot Nos. 3034 and 3037 have no relevance to the lands under Notification dated 24.02.1996.

The present petition relates to the lands under Notice dated 06.08.1990 and the possession over the said lands have been redelivered on the expiry of three years as stipulated under the Notice dated 06.08.1990 and the lands under the said Notice dated 06.08.1990 have no nexus with the lands under Notification dated 24.02.1996. The petition of the petitioners is misconceived."

5. Mr. Dhar while urging for the relief sought for would contend that admittedly the respondents have taken up the temporary occupation of the land for a period of three years and the petitioners have also received the compensation under Section 35 of the LA Act but fact remain that even after expiry of three years the land in occupation of the respondent – ONGC has neither been re-delivered to the petitioners nor acquired under the provisions of LA Act. Hence, there was no other alternative before the petitioners except to file the instant writ petition.

6. Mr. Deb while countering the submission of Mr. Dhar submits that the land was taken up for a particular period as

mentioned in Annexure-1 to the writ petition wherein it has been specifically stated that the land will be in occupation for three years only and more so, the compensation under Section 35 of the LA Act, has also been paid to the petitioners for the said land. Not only that, the land has also been re-delivered on expiry of three years. He further submits that the land involved in notification dated 24.02.1996 has no connection with the land involved in the notification dated 06.08.1990. Thus, question of further acquisition of land of the petitioners, as sought for, does not arise and the petitioners are also not entitled to any compensation except the compensation received by them.

7. He further submits that against the contention of the respondents the petitioners did not file any rejoinder affidavit. Thus, the contentions of the respondents are deemed to have been admitted. He further submits that the contention of the petitioners that even after completion of three years, the ONGC started construction and thereby caused further damage to the land in question and even after completion of three years the respondents kept their occupation on the land in question unauthorisedly, illegally and wrongly have already been denied by the respondents in paragraph 8 of the counter affidavit. Thus, the said facts are disputed facts which cannot be decided by a writ court.

8. He finally contended that there is no such document annexed by the petitioners in support of their contention that subsequent to the period of three years, the

land was again either acquired or possessed by the respondents by agreement for temporary occupation.

9. Before dealing with the submission of the learned counsel for the parties, it would be proper to examine the provisions of Section 35 of the LA Act, which is as follows:-

"35. Temporary occupation of waste or arable land, procedure when difference as to compensation exists.-- (1) Subject to the provisions of Part VII of this Act, whenever it appears to the [appropriate Government] that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from commencement of such occupation."

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof, for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or appointment thereof, the Collector shall refer such difference to the decision of the Court."

10. Upon proper survey of the provisions of LA Act, it appears that Sections 4 to 17 exist in part-II of the said Act and Sections 35 and 36 fall in part-VI of the Act. Section 35 is a self-contained provision applicable to cases of temporary occupation. A closer analysis of Section 35 would show that

publication of notification under Section 4 and 6 is not at all required in a case of temporary occupation under the aforesaid Section 35 whereas sub-section (2) of Section 35 itself provides for the procedure of issuing notice in writing to the persons interested in such land and to pay them compensation as may be accrued upon in writing. Sub section (3) speaks that in case of dis-agreement over the quantum of such compensation or the apportionment thereof, the Collector shall refer such difference to the decision of the court when admittedly in the instant case Section 4 and 6 are not attracted being the land in question was taken for temporary occupation. Thus, the land owner-petitioners have no right to ask for a relief like permanent acquisition of the land in question, as sought for. However, if the respondents are of the opinion that the land in question is still required for public purposes then obviously they can take the assistance of sub-section (1) of Section 4.

11. It further appears from the aforesaid provision that the Collector can procure the occupation of the land for using the same for a period not exceeding three years from the commencement of such occupation. Thus, it can be said that if any authority wants to use a land in occupation for a further period then he has to enter into an agreement with the owner of the land or they can take aid of the provisions of LA Act, 1894. In the instant case, on scrutiny of the documents, it appears that the present petitioners at no point of time had taken up the matter with the LA Collector for acquisition of their land, in

accordance with law, except the demand notice (Annexure-4 to the writ petition).

12. More so, it appears from the record that on 30.07.2003 the Chief Engineer (Civil) of the respondent No. 1 has informed the learned counsel of the petitioners that the land in question which was taken for temporary occupation for three years was released after expiry of three years. Not only that, even in their counter affidavit, the respondents-ONGC have also specifically stated that the compensation under Section 35 of the LA Act has been paid for the land referred to in the notice dated 06.08.1990 and the possession over the said land in question has been re-delivered on expiry of three years. Thus, the petitioners failed to prove that the land in question is still in possession of the respondent-ONGC. In the instant case, the petitioners nowhere contended in the petition that at the time of temporary occupation of the land in question their land was damaged in any way. In case of damage the owner of the land is entitled to take the benefit of Section 37 of the LA Act.

13. This court is of the further opinion that even if the land in question is still in possession of the respondent-ONGC, as alleged, then the petitioners ought to have taken up the matter with the LA Collector who has issued the notice dated 06.08.1990 but admittedly the petitioners did not take up the matter with the LA Collector except the demand notice, as stated supra.

14. Whether the land relating to notice dated 06.08.1990 is in possession of the respondent – ONGC or after release the same is in possession of the petitioners is a disputed question of fact which cannot be decided by a writ court as in the writ court mainly an issue is decided on the basis of the contention made by the parties in their respective affidavits and not on the basis of oral evidence. However, if the possession of the acquired land in any way remains with the respondent-ONGC, as alleged, after expiry of three years, i.e. the period for which the land in question was acquired for temporary occupation, the petitioners have the liberty to approach the Collector-respondent No. 4 herein, in accordance with law, and if any representation is filed the respondent No. 4 shall dispose of the same after providing opportunity to the respondent-ONGC.

15. In view of the above, the instant writ petition is disposed of. No order as to costs.

JUDGE