

GAHC010168202026



2026:GAU-AS:12042

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

Case No. : WP(C)/4268/2026

MOUCHAK AGRO LLP,
A LIMITED LIABILITY PARTNERSHIP (EARLIER KNOWN AS M/S.
MOUCHAK AGRO PVT. LTD.) HAVING ITS RAJABARI TEA ESTATE AT
MARONGI, POST OFFICE- LETEKUJAN, POST OFFICE- NUMALIGARH
RURAL, DISTRICT- GOLAGHAT, ASSAM, REGISTERED OFFICE AT
MANIDUIP BUILDING, J.P.R. ROAD, POST OFFICE- JORHAT, POLICE
STATION- JORHAT, DISTRICT- JORHAT, ASSAM, AND IS REPRESENTED BY
ITS DESIGNATED PARTNER SHRI SANJAY KUMAR BHOOPAL, SON OF SRI
SANT KUMAR BHOOPAL, RESIDENT OF MANIDUIP BUILDING, J.P.R.
ROAD, P.O., P.S. AND DIST. JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
DULY REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, JANATA BHAWAN, ASSAM SECRETARIAT COMPLEX,
DISPUR, GUWAHATI, KAMRUP M, ASSAM -781006.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
JANATA BHAWAN
ASSAM SECRETARIAT COMPLEX
DISPUR
GUWAHATI
KAMRUP M
ASSAM -781006.

3:THE DIRECTOR
DIRECTORATE OF LAND REQUISITION
ACQUISITION REFORMS
ASSAM
RAJAH BHAWAN
2ND FLOOR

ROOPNAGAR
GUWAHATI
KAMRUP M
ASSAM- 781032.

4:THE DISTRICT COMMISSIONER
OFFICE OF THE DISTRICT COMMISSIONER (LAND ACQUISITION
BRANCH)
GOLAGHAT
ASSAM- 785621.

5:THE ADDITIONAL DISTRICT COMMISSIONER
OFFICE OF THE DISTRICT COMMISSIONER (LAND ACQUISITION
BRANCH)
GOLAGHAT
ASSAM- 785621.

6:THE CIRCLE OFFICER
OFFICE OF THE CIRCLE OFFICER
MORANGI REVENUE CIRCLE
NH- 129
MORANGI
GOLAGHAT
ASSAM- 785621

Advocate for the Petitioner : MR D SENAPATI, MR H K SARMA,MS K SARMA

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

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 20.08.2026

Heard Mr. D. Senapati, learned counsel for the petitioner; Mr. A. Bhattacharyya, learned Standing Counsel, Revenue & Disaster Management Department, Government of Assam for the respondent nos. 1 – 3; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 4 – 6.

2. The petitioner has approached this Court aggrieved by an Order dated 28.07.2026 issued in Form C under Section 4[1] of the Assam Land [Requisition and Acquisition] Act,

1964 [‘the 1964 Act’, for short] read with Rule 5 of the Assam Land [Requisition and Acquisition] Rules, 1964 [‘the 1964 Rules’, for short] passed by the respondent no. 4 in connection with a parcel of land measuring 211 Bighas 1 Katha 19 Lessas at Village – Rajabali Bagan, Morangi Revenue Circle, District – Golaghat, Assam. By the Order dated 28.07.2026, the petitioner being the owner in occupation of the said parcel of land, has been directed to surrender or deliver possession to the respondent no. 6 being the authority authorized by the respondent no. 4, within ten days’ from the date of service of the Order for setting up Industrial Estate of Numuligarh Refinery Limited.

3. The impugned Order dated 28.07.2026 was preceded by an Order dated 06.05.2026 in Form B under Section 3[1] of the 1964 Act read with Rule 4 of the 1964 Rules. By the said Order, the respondent no. 4 had requisitioned the parcel of land with effect from the date of the Order for the purpose of ‘acquisition’ of land for setting up of Industrial Estate of Numuligarh Refinery Limited.

4. It is the case of the petitioner that against the Order dated 06.05.2026, the petitioner has preferred an appeal before the State Government on 29.05.2026 under Section 3[3] of the 1964 Act contending that the conditions required for passing an Order under Section 3[1] of the 1964 Act for requisitioning the parcel of land are not present for the respondent no. 4 as the person authorised by the State Government. It is the contention of the learned counsel for the petitioner that without the final decision of the State Government in the appeal, the respondent no. 4 as the Authorised Person could not have issued the impugned Order dated 28.07.2026. As the appeal preferred by the petitioner before the State Government on 29.05.2026 has not yet been disposed to till date, the impugned Order is without authority and jurisdiction.

5. When the writ petition was listed on 11.08.2026, the learned Standing Counsel, Revenue & Disaster Management Department, Government of Assam had sought time to obtain instructions as regards the status of the appeal, stated to have been filed by the petitioner before the State Government on 29.05.2026. Today, Mr. Bhattacharyya, learned Standing Counsel, Revenue & Disaster Management Department, Government of Assam has

submitted, on the basis of the instructions received from the State Government in the Revenue & Disaster Management Department, that the appeal filed by the petitioner under Section 3[3] of the 1964 Act on 29.05.2026 is presently pending and is yet to be disposed of.

7. The Assam Land [Requisition and Acquisition] Act, 1964 was enacted to amend and consolidate the law for requisition and speedy of premises and land for certain public purposes. Section 3 and Section 4 of the 1964 Act have provided as under :-

3. Power to requisition.-

[1] If in the opinion of the State Government or any person authorised in this behalf by the State Government it is necessary so to do, for maintaining supplies and service essential to the life of the community or for providing proper facilities for accommodation, transport, communication, irrigation, flood control and anti-erosion measures including embankment and drainage or for providing land individually or in groups to landless, flood affected or displaced persons, or to a society registered under the Assam Co-operative Societies Act, 1949 [Assam Act I of 1950], or a company incorporated under Companies Act, 1956 [Act I of 1956], formed for benefit and rehabilitation of landless, flood affected or displaced persons [or to provide land for the purpose of construction of border fencing and allied works, including border roads and check posts connected therewith, along Bangladesh border] the State Government or the person so authorised, as the case may be, may by order in writing, requisition any land and may make such further orders as appear to it or to him to be necessary or expedient in connection with the requisitioning.

[2] An order under sub-section [1] shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of a tenant, also on such tenant.

[3] When the order for requisition is made by any authority other than the State

Government, any person interested in the land, within 30 days from the date of service of the order, may appeal to the State Government and the decision of the State Government in such appeal shall be final.

4. Power to take possession of requisitioned land.-

[1] Where any land has been requisitioned under Section 3, the State Government or the person authorized in this behalf by the State Government may, by order in writing, direct the owner, the tenant, or any other person who be in possession of the land whether at the time of requisition or at any time thereafter before the land whether at the time of requisition or at any time thereafter before the land is released from requisition or under Section 8 to surrender or deliver possession thereof to the Collector or any other person duly authorized by him in this behalf within such days of the service of the order as may be specified therein.

[2] If any person refuses or fails to comply with an order made under sub-section [1] the State Government or the person authorized in this behalf, in addition to any other provisions in this Act, may take possession of the land and may, for that purpose, use such force as may be necessary.

[3] An order under sub-section [1] shall be served in the prescribed manner on the owner of the land and whether the order relates to land in occupation of a tenant or any other person also on such tenant or occupant.

8. As per the Assam Land [Requisition and Acquisition] Rules 1964, an Order of requisition under Section 3[1] shall be in Form 'B' as far as may be with such modification, if any, as may be necessary. On the other hand, an Order under Section 4[1] of the 1964 Act shall be in Form 'C', where the surrender or delivery of position is to be made by any person other than the Collector. Rule 11 has inter alia prescribed the manner of service of Orders passed under Section 3[1] and Section 4[1] of the 1964 Act.

9. As mentioned above, in the Order passed under Section 3[1] and the Order passed under Section 4[1] of the 1964 Act, a parcel of land measuring 211 Bighas 1 Katha 19 Lessas is involved.

10. As per Section 2[d] of the 1964 Act, 'Owner' means proprietor or patta holder and his co-sharer. It is the contention of the petitioner that it is the owner of the said parcel of land measuring 211 Bighas 1 Katha 19 Lessas. When the Order under Section 3[1] of the 1964 Act is not passed by the State Government and is passed by any person authorised in that behalf by the State Government, the person affected by such an order has a right to prefer an appeal before the State Government under Section 3[3] of the 1964 Act.

11. The statute has given a right to the person including an owner, whose rights are affected by the Order under Section 3[1] a remedy to prefer an appeal to the State Government and the State Government has to decide the matter and pass order affecting the right of the appellant. If a statute provides such a right to appeal, such right to appeal is not to be illusory. A right to appeal under Section 3[3] is a substantive right afforded to a landowner or a person interested in the land sought to be requisitioned.

12. It is settled that requisition and acquisition are two different and distinct concepts. In case of acquisition, the title passes to the acquiring authority along with the possession. On the other hand, in case of requisition, the title remains with the owner but the possession goes to the requisitioning authority. One is taking over the title and possession, and the other is taking over of the possession, but not the title. Whereas acquisition involves an element of permanency and finality involving a transfer of title; the concept of requisition is merely to take over the domain or control over the property without acquiring the rights of ownership and it is ordinarily understood that requisition by its very nature is of temporary duration. The said decision is also clear from Section 8. Section 8 has provided that where any land requisitioned under Section 3 is not acquired and is to be released from requisition, it reverts back to the owner in as good a condition as the land was when possession thereof was taken subject only to the changes caused by a reasonable wear and tear and irresistible force.

13. In a Full-Bench decision of this Court in **Prabhat Chandra Deka vs. K.C. Baruah, AIR 1960 Assam 1**, in a concurring judgment, discussing Section 3[3] of the Assam Land [Requisition and Acquisition] Act, 1948, which Section was similarly worded like Section 3[3] of the 1964 Act, it has been held that when an order for requisition is passed, the authority has to form an opinion as to the necessity of requisition and also as to the existence of the required purposes. Till the stage of passing of the order by the authority, there is no proposal or opposition and there is no lis. But when a right of appeal has been given to a person interested and he objects to the order of requisition, the State Government in appeal has to decide the controversy between the Officer who claims a right to deprive the objector of his property and the objector and any order passed by the State Government affects the rights of the parties. It has to decide the matter, examine the order and though no rules of procedure as observed by the Court are to be observed by the State Government, still from the very nature of the question to be determined it is incumbent upon the Government to act judicially and the power granted to the State Government under Section 3[3] cannot be regarded as mere subjective discretion conferred on it.

14. It is seen that in the appeal filed before the State Government by the petitioner on 29.05.2026, the main ground urged is that the purpose for which the Order under Section 3[1] has been passed by the District Commissioner, Golaghat as a person authorised in that behalf by the State Government, does not fall within the scope and ambit of Section 3[1] of the 1964 Act.

15. Admittedly, the appeal under Section 3[3] is yet to be disposed of by the State Government, whose decision is going to be final, this Court is of the considered view that since the appeal is pending, it is not be proper to continue with the present writ proceedings in a parallel manner.

16. The Court is the considered view that if the Authorised Officer on the basis of the Order passed under Section 4[1] of the 1964 Act takes over possession under Section 4[1] of the 1964 Act before the appeal is decided and changes the nature and character of the parcel

of land then the right of the petitioner is going to be impacted, even if the Order to be passed by the State Government in the appeal comes subsequently in favour of the appellant.

17. In the above obtaining fact situation, this Court is of the considered view that to balance the equities, the Order dated 28.07.2026 passed under Section 4[1] in Form B is to be kept in abeyance till the decision of the State Government in the appeal, which is presently pending before it. Therefore, the writ petition is disposed of with a direction to the State Government to dispose of the appeal filed by the petitioner on 29.05.2026 as expeditiously as possible, by affording an opportunity of hearing to the appellant, and the Order passed in the appeal shall be communicated to the petitioner immediately thereafter. The Order dated 28.07.2026 passed under Section 4[1] will abide by the decision taken by the State Government in the appeal and the Order under Section 4[1] shall remain in abeyance till that time. The parties are to maintain status quo existing as on today as regards the parcel of land measuring 211 Bighas 1 Katha 19 Lessas till the decision made in the appeal, as mentioned hereinabove.

18. With the observations made and directions given above, the writ petition is disposed of. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant