

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 246 of 2019

Date of Decision: 02.05.2023

Smti. Surmamon Nongbri & Ors. Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. P.K. Shati, Adv.

For the Respondent(s) : Mr. A.H. Hazarika, GA with
Mr. K.P. Bhattacharjee, GA.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. The present writ petition by the instant petitioners is a second round of litigation which had earlier culminated in a writ appeal being Writ Appeal No. 54 of 2017, which was disposed of on 26.09.2017, by allowing the petitioners to make a representation

before the Chief Secretary for an expeditious decision on their prayers.

2. The brief facts of the case are that the writ petitioners are stated to be owners of land situated at Village Nongkrem, Laitlyngkot (Nongkynrih), East Khasi Hills District, where the construction of the 'Wahtyngngai Combined Water Supply Scheme' (RCC Dam) under the National Rural Development Water Project Scheme (NRDWP), for supplying water to over 30 villages situated in the neighbouring areas, was undertaken by the PHE Department, in the year 2006-07. The grievance of the writ petitioners is that, portions of their land had been inundated after the construction of the RCC Dam, and that though some steps had been taken by the concerned Department for calculating the estimate of the probable cost of land compensation, the same did not culminate into any acquisition proceedings as per laid down procedure, which has deprived them of their property, without the due process of law being followed, or they being paid adequate and fair compensation under the relevant Land Acquisition Act.

3. Pursuant to the order of the Division Bench in the earlier round of litigation, the writ petitioners had submitted representations on 06.10.2017, and though steps were then taken by the respondents

to address the issue, due to the uncertainty and lack of clarity as to which Land Acquisition Act would be applicable i.e., the Land Acquisition Act, 1894 or the new Act, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the matter stood unresolved. Further the stand of the respondents changed, as by the counter affidavit filed in the present proceedings, the respondents have made a categorical statement that none of the petitioners' land had been affected and the inundation that has been alleged has not occurred after 2011, and as such there is no question of compensation.

4. In the course of the instant proceedings before this Court, to ascertain the claims of the writ petitioners as many disputed facts had arisen, this Court by order dated 21.06.2022, apart from other directions given therein, ordered for a spot inspection of the site in question. The learned Additional District & Sessions Judge, Shillong with the assistance of an Officer in the rank of Additional Deputy Commissioner, was directed to file a report, as to whether any portion of the land of the petitioners had been taken over, in connection with, and for the use of the said 'Wahtyngngai Combined Water Supply Scheme' (RCC Dam). A report was then submitted on 05.08.2022 before this Court but however, apart from observing that there was

nothing to indicate that the land situated on the banks of the said Scheme had been acquired, it was also reported that no process of land acquisition had been initiated. The report therefore, being vague and inconclusive, as neither any definite plots have been identified which were said to have been inundated, or having arrived at any other conclusive findings, this Court therefore cannot place any reliance on the same for effective adjudication of the matter.

5. In this backdrop, Mr. H.L. Shangreiso, learned Senior counsel assisted by Mr. P.K. Shati, learned counsel on behalf the writ petitioners submits that it is a fact, that portions of the lands of the writ petitioners after construction of the RCC Dam in 2011, were inundated and that proceedings and estimate for land compensation had been initiated. He submits that, the respondent No. 11 (Executive Engineer, PHE), pursuant to a communication from the Deputy Commissioner, Revenue, as to whether the PHE still intended to proceed with the land acquisition under the Act, of 1894, in view of the coming into force of the new Act of 2013, had communicated on 18.07.2018, that compensation, had been assessed at Rs. 6,64,51,580/- (Rupees Six Crores Sixty-Four Lakhs Fifty-One Thousand Five Hundred and Eighty only), of which Rs. 5 Crores, had been placed at the disposal of the Deputy Commissioner. The learned Senior counsel

then submits that, as it was felt that the new Act of 2013 would be applicable, re-evaluation was done by the PHE, and submitted to the Deputy Commissioner for an amount of Rs.78,87,43,573/- (Rupees Seventy-Eight Crores Eighty-Seven Lakhs Forty-Three Thousand Five Hundred and Seventy-Three only), and the same was communicated to the Joint Secretary, Revenue and Disaster Management, Government of Meghalaya. He submits that thereafter from 07.12.2018, after the said communication, and even in spite of issuance of a legal notice on 07.02.2019, addressed to the Chief Secretary for settlement of the matter, no relief was forthcoming and in fact due to inordinate delay the petitioners have been deprived of rightful compensation.

6. The learned Senior counsel submits that the respondent State has taken over the agricultural land of the writ petitioners without the due process of law, or by invoking the relevant statute, and though it may appear that disputed of facts have arisen, the matter being purely of compensation, this Court under Article 226 can issue directions to award such compensation to the writ petitioners. The learned counsel then submits, the change in the stance of the respondents in the affidavit, whereby averments have been made that the land is not required, or that no compensation is payable is a

complete turnaround of the earlier position, inasmuch as, valuation had even been done with regard to the amount of compensation that the petitioners were entitled to.

The learned Senior counsel in support of his case, has relied on the following decisions: -

On the question of disputed facts:

- i) ***M.C. Mehta vs. Union of India & Ors. (2003) 5 SCC 376 (Para 20)***
- ii) ***Century Spinning and Manufacturing Company Ltd. & Anr. vs. The Ulhasnagar Municipal Council & Anr. (1970) 1 SCC 528 (Para 13)***
- iii) ***ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd & Ors. (2004) 3 SCC 553 (Para 16 and 51)***
- iv) ***National Thermal Power Corporation Limited vs. Mahesh Dutta & Ors. (2009) 8 SCC 339 (Para 38 & 39)***
- v) ***C.A. No. 5577 of 1998, order dated 27.04.2004 in the case of H.S.E.B. vs. Ram Nath.***

Reliance has also been placed on the following decisions with regard to deprivation of property and violation of Article 300A of the Constitution of India and on the change of stance of the respondents.

- i) ***Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors. (2013) 1 SCC 353 (Para 9,10,11,12,17 and 22)***

- ii) ***Mahanadi Coal Fields Ltd & Anr. vs. Mathias Oram & Ors. (2010) 11 SCC 269 (Para 10,11,12,14,19 and 21)***
- iii) ***Bhimandas Ambwani (Dead) Through LRS. Vs. Delhi Power Company Ltd. (2013) 14 SCC 195 (Para 14)***
- iv) ***Vinod Kumar vs. Surjit Kaur AIR (1987) SC 2179 (Para 11)***
- v) ***Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Co. Ltd. (2011) 10 SCC 420 (Para 34 and 35)***
- vi) ***Bibhudatta Mohanty vs. Union of India & Ors. (2002) 4 SCC 16 (Para 11)***

7. The learned Senior counsel has also referred to the affidavits filed by the respondents and submits that, the Agreement Deed dated 05.05.2007, signed by the petitioner and others and annexed to the affidavit of the respondents PHE, wherein the petitioner had agreed to donate the land situated at Dkong Nongkynrih for the construction of the Water Supply Scheme, was never acted upon and cannot be considered to be a bar for the petitioners to claim compensation. He submits that, the very fact that, land compensation was assessed by the respondents, points to the fact that the agreement was a non-starter. On the other ground taken by the respondents that the acquisition process was not necessary, and that the money already deposited with the Deputy Commissioner, was for payment of compensation to the affected persons whose standing

crops were damaged due to the overflow of Wahtyngngai Scheme, which had happened in 2011 and not thereafter, the learned Senior counsel contends that the same is untenable, as at the relevant point of time, there was no mention of compensation for any damage. He finally submits that, the statement that, no land of the petitioners was taken over for the said project and as such, no compensation is payable, is farfetched and made without any basis whatsoever, inasmuch as, there was a conscious decision by the respondents at the time of the project to acquire portions of the land of the petitioners.

8. Mr. A.H. Hazarika, learned GA for the State respondents in his reply submits that, the prayer as set out in the writ petition is not tenable, as a mandamus has been sought to direct the respondents to pay suitable compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for land allegedly taken over or submerged, where in fact, no proceedings had ever been initiated for the same. The learned GA submits that the provisions of the Act of 2013, have to be gone into for acquisition and has drawn the attention of this Court to Section 11 which stipulates that, when land is required or likely to be required for any public purpose, a preliminary notification to that effect along with details of the land is to be

published in the manner provided therein. He contends that, no such procedure having ever been adopted by the respondents, there is no question of payment of any land compensation, especially when there is no requirement for the same. The learned GA, has not advanced any further arguments, but submits that, on other grounds reliance is placed on the affidavits filed by the State respondents.

9. I have heard learned counsels for the parties. This Court notes that, even on a cursory examination of the matter, it is faced with a bewildering chain of events, which smack of attempts at circumventing due process by interested parties in the PHE Department, at that point of time, all at the expense of the poor land owners who were caught in the middle of this controversy and left to pursue this litigation with no relief in immediate sight. This observation is made in view of the facts and events that unfolded in the matter since the inception of the project i.e., 'Wahtyngngai Combined Water Supply Scheme' (RCC Dam), which are laid out below.

- i) From the affidavit of the respondent No. 7 (Additional Chief Engineer, PHE Engineer), it is seen that, prior to the implementation of the water supply scheme for construction of the RCC Dam, an agreement was entered on 05.05.2007,

between *the Synjuk ki saw Rangbah Shnong, Nongkynrih, Khyrim Syiemship* in which the petitioner *Smti. Surmamon Lyngdoh* and along with other land owners signed and submitted to the respondent PHE department, which included a map of the said area. In the said agreement, the petitioner agreed to donate the land situated in Dkong Nongkynrih, free of cost without compensation and free of charges ad taxes, whatsoever and the land would be vested with the Durbar free from all encumbrances.

- ii) In 2006-07, the construction of RCC Dam under the National Rural Development Water Project (herein mentioned as NRDP) at River Umiew under Nongkynrih Village, East Khasi Hills District, commenced and was completed in 2011, the year where allegedly, the lands of the petitioners was inundated due to high water levels. The Government through respondent No. 13, Collector, East Khasi Hills, then made an estimation to acquire the said lands affected by construction of dam which was assessed at Rs.6,64,51,580.00/- (Rupees Six Crores Sixty-Four Lakhs

Fifty-One Thousand Five Hundred and Eighty only) to be paid under the Land Acquisition Act, 1894 and subject to government's approval. It is noted that, no proper acquisition proceedings under the Land Acquisition Act, 1894 were initiated by the respondents at that stage.

- iii) The petitioners apparently being unaware as to the situation of the proceedings, filed an application under the Right to Information Act, 2005 on 29.02.2016, seeking information as to whether the provisions of the Land Acquisition Act, 1894 had been applied in connection with the acquisition, which on 14.03.2016, was replied to the effect that, the state was yet to invoke the provisions of the Act. Being aggrieved thereby on 04.04.2016, the writ petitioners filed the first writ petition registered as WP (C) No. 117 of 2016 before the High Court.
- iv) By order dated 08.09.2016, the matter was disposed of, by the Learned Single Judge, directing the writ petitioners to make a representation before the respondent Collector, which was appealed therefrom, before the Division Bench.

The Division Bench of this Court, then by order dated 26.09.2017, modified the impugned order of the Single Bench, and directed the Chief Secretary of the Government to take appropriate decision and expeditiously settle the matter within 90 days on receiving the representation from the writ petitioners.

- v) On 14.03.2018, as per the order passed by the Learned Division bench, the Chief Secretary informed the writ petitioners that on their representation, to acquire their land, the respondent PHE has taken necessary steps in pursuing the matter, and the matter relating to land compensation was being taken up for consideration with concerned Departments.

- vi) A letter No. L14/5(2)2012/11 dated 15.02.2016, then surfaces wherein, it is seen, the Deputy Commissioner Revenue, had queried the PHE Department, with regard to the status on the land acquisition, for which the documents had been submitted on 16.07.2012, but no information received thereafter. It was also noted in the letter that, the

earlier estimated compensation of Rs.6,64,51,580.00/- (Rupees Six Crores Sixty-Four Lakhs Fifty-One Thousand Five Hundred and Eighty only) was no longer relevant as the new Land Acquisition Act of 2013 would be applicable for acquiring the land of the petitioners.

- vii) The respondent PHE then vide letter dated 18.07.2018, requested the Collector to exempt the application of the new Act of 2013 and to proceed under the old Land Acquisition Act, with the earlier estimated amount of Rs.6,64,51,580.00/- (Rupees Six Crores Sixty-Four Lakhs Fifty-One Thousand Five Hundred and Eighty only), of which Rs. 5 crores has been sanctioned and the remaining amount subject to sanction of the government. However, on 29.08.2018, the PHE requested the Collector to re-evaluate the amount of compensation as per the new act of 2013, and not the old Act. In pursuance thereof, the Collector re-evaluated the compensation amount under the new Act of 2013, and a new amount for compensation of Rs. 78,87,43,573/- (Rupees Seventy Eight Crores Eighty-Seven

Lakhs Four Three Thousand and Five Hundred and Seventy-Three only) for acquiring the lands of the petitioners, was arrived at.

viii) Communications thereafter on 07.12.2018- intra departmentally were made, from the Collector to the Joint Secretary to the Government of Meghalaya, Revenue & Disaster Management Department for information and approval. On 25.01.2019, the PHE requested the Collector to furnish the newly estimated amount under the new Act of 2013, for submission of the same to the government for sanction. On 01.02.2019, the respondent Collector forwarded the copy of the estimated amount to the PHE, for approval of the state indicating it is an “urgent matter” and that inordinate delay was caused by the PHE.

ix) On 07.02.2019, the petitioners issued a legal notice to the Chief Secretary, and urged him to expedite the payment to the petitioners, as the estimated amount of compensation has already been forwarded by the Collector, whereafter on 14.02.2019, the Executive Engineer PHE, then submitted

the estimate to the Superintending Engineer, PHE for necessary action. On 07.03.2018 another legal notice was issued to the Chief Secretary and Principal Secretary, PHE for payment of suitable compensation.

x) A meeting was then held on 29.05.2019, chaired by the Chief Secretary, which took the following decisions:

- i. The Deputy Commissioner, East Khasi Hills shall verify the matter in detail and submit the information to the Principal Secretary, to the Government of Meghalaya, PHE Department as to how the new assessment has been made.
- ii. Re-assess the whole process of acquiring of land only if the land is required for keeping the scheme functional.

xi) Thereafter, the Deputy Commissioner, then made an assessment of the old probable cost of Rs. 6,64,51,580/- (Rupees Six Crores Sixty-Four Lakhs Fifty-One Thousand Five Hundred and Eighty only), as compared to the new estimated probable cost of Rs. 78,87,43,573 (Rupees Seventy-Eight Crores Eighty-Seven Lakhs Forty-Three

Thousand Five Hundred and Seventy-Three only), and forwarded the same to the PHE.

- xii) However, it appears the Government thereafter decided not to initiate land acquisition proceedings for the aforesaid project, and took the stand, that the amount that was assessed earlier, and 5 crores deposited with the Collector, was for payment of compensation to the affected persons, whose standing crops was damaged only in the year 2011 and not thereafter. The present stand by the State is that, no land of the petitioners was ever taken over for the said project, and therefore, question of payment of land compensation does not arise. In this context, it is noteworthy to refer to a report under a covering letter dated 25.2.2020 issued by the Chief Engineer, PHE, wherein it has been observed as follows.

Report on Providing Compensation to Land Owners upstream of the RCC Dam of Wahtyngngai Combined Water Supply Scheme

1. *Wahtyngngai Combined Water Supply Scheme intended to provide water supply to villages under Raid Nongkynrih and*

under Laitlyngkot Sirdarship was accorded sanction vide Administrative Approval No. PHE.341/2006/80 under NRDWP on March 2007 for an amount of ₹10,90,08,500.00 (Rupees Ten Crore Ninety Lakh Eight Thousand Five Hundred) only.

- 2. The scheme envisages pumping of water from river Umiew at Dkong to the Main Reservoir located at Lumthanding, the highest point among the Villages, whereby water shall then be distributed to different villages in the Scheme.*
- 3. One of the major components in the scheme involves construction of RCC Dam across the river Umiew at Dkong near Nongkynrih village for creating necessary head for the water to flow to Slow Sand Filtration Plant located downstream of the Dam.*
- 4. Construction of the Dam across river Umiew, at Dkong under the jurisdiction of Raid Nongkynrih, was taken up following the permission accorded by the Nongkynrih Village Durbar. The Dam, initially meant to be of 5.00m in height, was constructed at a height of 3.75m above bed level approximately just sufficient enough to create necessary head for water to gravitate to the Filtration Plant. The height was reduced in order to avoid inundation of cultivable land.*
- 5. The villages upstream of the Dam raised their concern during the rainy season of 2011 on flooding of cultivable land. Though the construction of the Dam across river Umiew at Dkong was taken up at the sloping portion of the river for possible avoidance of inundation of areas upstream of the Dam but on account of heavy rain there was backflash of water impounded*

against the Dam. However, there has not been any report of inundation of cultivable land after 2011.

***Executive Engineer (PHE)
Electrical Division
Mawphlang***

10. The entire saga as noted hereinabove, are akin to the shifting sands of the desert, on account of the shifting stands of the petitioners and the respondents, and where the proceedings are not based on any foundation, and in fact, have been visited with events and circumstances, which has effectively frustrated any meaningful outcome. This observation is being made on account of the fact that, from the inception of the project itself, the respondents never made any effort to gauge the effect or impact the project would have on the petitioners' land, nor any exercise as per law conducted, to assess the requirement of land. Added to this quagmire, is the existence of an agreement dated 05.05.2007, donating the land in the vicinity of the project by the petitioner to the respondents, and the subsequent purported rescinded compromise agreement for acceptance of compensation at the earlier assessment of over 6 Crores. What followed was the sham of assessment and fixation of the value of the land, that was supposed to be acquired, at a cost of over 78 Crores,

which is approximately 13 times, the earlier assessment, on a project worth about 10 Crores, which certainly raises serious doubts about the object of the entire exercise. What is remarkable, is that without any due process being adopted under the relevant Land Acquisition statute, a huge amount of public money was sought to be obtained and disbursed in a shortcut manner.

11. It is observed that, it is only after the meeting dated 29.05.2019, that the matter assumed some direction, which culminated in the decision of the respondents, as given in the affidavit, that no land of the petitioners had been taken over and that the petitioners were not entitled to claim any compensation. It is undeniable that, due process such as, notifications under the Land Acquisition Act of 1894, which was the prevailing act then, were never issued identifying the land required or its owners. No material exists to show that, the Collector had ever issued any notification. What is present however, is the overreaching activity of the PHE Department in rushing to deposit Rs. 5 Crores before the Collector at that point of time, even though, no proceedings under law existed, to warrant assessment in the absence of appropriate notifications.

12. It is not known, or has it been discerned as to the extent of, or whether any land was acquired at all, or submerged as alleged by the petitioners which is now disputed by the respondents. The only point or fact that seems to make any sense, as to the rival arguments is that, as per the report which has been quoted earlier, some lands had been submerged in 2011, which had affected the cultivation and crops of the petitioners, which has somehow morphed into the present dispute. Even the spot inquiry conducted on 22.07.2022, by the Additional District and Sessions Judge, Shillong, under orders of this Court, failed to arrive at any definite finding and does not reveal any reliable evidence as to the exact physical situation, as to whether any land has been submerged. Even the individual plots said to be affected, and its owners were not identified in the said report, which in effect only reiterated the known position that, no acquisition proceedings, were ever adopted in the course of the execution of the project.

13. Looking into the Land Acquisition Act, 1894, which was the relevant Act, at that point of time, sections 1 to 3 give the short title, object and reasons and the important definitions. Sections 4 to

17 deals with the process of acquisition. Then comes sections 18 to 28 which describes the reference to court and procedure thereupon, in the off chance of a conflict with respect to compensation. Sections 29 and 30 deal with apportionment in case of more than one individual interested, and section 3 to 34 lay down the payment of compensation. The mandatory provisions of the Land Acquisition Act, are therefore to be compulsorily followed, in such projects, which involves the occupation or acquisition of private lands. The Collector in any process of land acquisition, holds a very crucial position and exercises power under the Act, to arrive at an award, after all the stages as stipulated by the Act, have been complied with, such as, the issuance of appropriate notifications under Section 4, 5A and so on. The award should also contain the following.

- i) Correct area of land.
- ii) Amount of compensation he thinks should be given
- iii) Apportionment of compensation.

14. In the instant case, there is no semblance of any procedure under the old Act, nor any procedure initiated under the new Act, namely the Right to Fair Compensation and Transparency in Land Acquisition Act, etc., 2013, apart from fixation of the probable compensation on an unknown basis, at an amount of over 78 Crores

87 Lakhs for land compensation. It is also pertinent to note that, the initial assessment of over 6 Crores has later been termed by the respondents, not to be on account of award for land compensation, but for the damages that the petitioners incurred, due to the destruction of crops in the year 2011, when some lands were inundated and damaged, but which has not occurred since.

15. In this backdrop of events and circumstances, where nothing is clear to facilitate conclusive adjudication, this Court in the absence of any due process being adopted by the respondents, and looking into the plight of the land owners, who may, or may not have been affected after 2011, but however, have been pursuing this litigation, deems it fit, inspite of the presence of disputed facts, to direct as follows:-

- i) the respondent in the PHE department shall from available records, such as, the details contained in the affidavit filed by the State respondents in WP(C) No. 117 of 2016, which is annexed to the writ petition, as well as, by fresh survey identify and establish as to whether lands of the petitioners remain submerged after 2011, till date.

- ii) if the same after survey and examination is found to be true as alleged by the petitioners, the respondents shall initiate the process for acquisition of the said portions of land that have remained submerged till date.
- iii) if it is found otherwise, that after only one instance in 2011, portions of land had been submerged, which has not occurred since, after due identification of the owners and the plots that were affected in 2011, the Collector shall from the amount of Rs.6,64,51,581.00/- (Rupees Six Crores Sixty Four Lakhs Fifty One Thousand Five Hundred and Eighty-One) only deposited by the PHE, since 20.09.2018, apportion the said amount as compensation to the land owners, after due assessment and examination of their respective plots.

16. The above noted directions have been passed considering the nature of the case, especially the stand of the respondents that, no land of the petitioners is required nor there is any proposal for

acquisition. Coupled with this fact, is the impact on the exchequer, such an acquisition will have, if entered into at this stage, especially taking into account the project cost which is only of about 10 Crores. Further, it is also not deemed practicable or reasonable, to direct the writ petitioners to seek alternate remedy or to relegate them to the Civil Courts, and subject them to endless litigation.

17. Accordingly, as ordered and directed above, this writ petition stands closed and is disposed of.

18. No order as to costs.



Judge

Meghalaya
02.05.2023
"D.Thabab-PS"