



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

Case No. : WA 1/2023

1: THE STATE OF AP and 3 Ors.

Represented by the Chief Secretary, Govt. of Arunachal Pradesh, AP Civil Secretariat,
Itanagar, PO Itanagar.

2: The Secretary (Housing)

Govt. of Arunachal Pradesh
Itanagar.

3: The Director

Department of Urban and Housing
Govt. of Arunachal Pradesh
Itanagar.

4: The Executive Engineer

Public Works Department
Govt. of Arunachal Pradesh
Itanagar

VERSUS

1: Phassang Yachang and 16 Ors.

W/o Shri Tarh Taigh,

R/o Papu Hill, PO Naharlagun, PO Naharlagun, PS Papu Hill, District Papumpare, AP

2: Punyo Tani

S/o Punyo Tapu

R/o Papu Hill

PO Naharlagun

PS Pappu Hill

District Papumpare

AP

3:Anup Kr. Sharma
S/o Shri Hari Nath Sharma

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

4:Yakek Dabi
W/o Shri Yumge Yomgam

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

5:Devendar Yadav
S/o Lt. Ghina Yadav

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

6:Devendar Yadav
S/o Lt. Ghina Yadav

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

7:Pokpi Yomgam
W/o Shri Kotu Yomgam

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

8:Techi Kayai
D/o Late Tech Kuli

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

9:BoI Bahardur Rai
S/o Late Bahardur Rai

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

10:Mesap Sonam
W/o Late Mechi Lapung

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

11:Bengia Talo
S/o Shri Bengia Takia

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

12:Charu Taba
S/o Late Charu Tada

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

13:Akash Bagang
S/o Tamang Bagang

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

14:Kipa Tayum
S/o Late Kipa Tai

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

15:Tadu Rimung
W/o Tage Takar

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

16:S. Mohan
S/o Shri Sreedharan

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
AP

17:S. Chandran
S/o Shri Sreedharan

R/o Pappu Hill
PO Naharlagun
PS Pappu Hill
District Papumpare
A

Advocate for the Petitioner : Subu Tapin

Advocate for the Respondent : Dugmar Kamduk

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT&ORDER(CAV)

Date : 09-06-2023

(Kardak Ete, J)

Heard Mr. S. Tapin, learned Senior Government Advocate for the appellants and Mr. D. Kamduk, learned counsel for the respondents.

2. This intra-Court Appeal has been preferred by the State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh against the order dated 29.07.2022 passed by the learned Single Judge in WP(C)/254/2022.

3. The facts leading to the filing of the present appeal is that the respondents/ petitioners (17 in numbers) who are Government Employees have been allotted Government quarters at Papu Hill, Naharlagun and they have been staying in their respective quarters with their family. In the meantime, the State Government in the Department of Housing has issued an order dated 30.06.2022, wherein the PWD, Naharlagun Division had proposed to construct multi-storeyed flats in place of the old quarters at Papu Hill, Naharlagun. In order to pave way for the said proposed

construction, an alternate accommodation has been provided to the respondents/petitioners, whose quarters are proposed for demolition for reconstruction. The respondents/ petitioners being the occupants of the government quarters which are sought to be demolished and on proposal of alternate accommodation, visited the building allotted to them, but found out that the same was in a highly dilapidated condition and not fit for human dwelling. On 22.07.2022, the Executive Engineer, PWD, Naharlagun Division issued a notice stating that in order to clear the site for construction of multi-storeyed residential building in place of the out-lived quarters at Papu Hill, Naharlagun, the alternate accommodation are being provided to the occupants whose quarters are proposed for demolition and requested the respondents/petitioners to shift/ vacate the quarters under occupation, by submission of vacation report within 15 days. On receipt of such notice, the respondents/ petitioners submitted a representation before the Executive Engineer, PWD, Naharlagun Division. Vide another notice dated 26.07.2022, the Executive Engineer, PWD, Naharlagun Division in continuation to the notice dated 22.07.2022, stating that the semi permanent type quarters occupied by the respondents/petitioners are at risk and danger, and alternate accommodation has been provided to the occupants whose quarters are proposed for demolition and were requested to shift/vacate the quarter by submitting vacation report within 15 days.

4. On being not considered the grievances by the authority, the respondents/petitioners approached this Court by filing the writ petition(Supra) on the ground that the alternative accommodation allotted to them lacks basic amenities and is in a dilapidated condition and is not fit for human dwelling. The respondents/petitioners also submitted that the other difficulties faced by the petitioners is that their children are attending schools in the nearby areas and they are in the mid-session. Besides, some of them are undergoing medical treatment, which would be disrupted if they were asked to shift out from the place. Therefore, they have prayed for a direction to the respondent authorities to provide alternative accommodation which is suitable for human habitation and for setting aside the order dated 30.06.2022 and the notices dated 22.07.2022 and 26.07.2022.

5. The learned Single Judge of this Court, after considering the grievances of the respondents/petitioners, disposed of the writ petition(supra) at the motion stage with a direction to the Secretary (Housing), Government of Arunachal Pradesh, Itanagar and the Director, Urban & Housing, Government of Arunachal Pradesh, to consider the grievances projected by the petitioners in their representation and locate an alternative and suitable place where the respondents/petitioners can be

accommodated within a period of two weeks from the date of receipt of the certified copy and until such decision is taken, the order dated 30.06.2022, and the notices dated 22.07.2022 and 26.07.2022 shall not be given effect to.

6. Being aggrieved by the said direction passed by the learned Single Judge in the writ petition(supra) dated 29.07.2022, this present appeal has been preferred by the State of Arunachal Pradesh.

7. Mr. S. Tapin, learned Senior Government Advocate for the appellants submits that the State government has decided to dismantle the government quarters being occupied by the respondents/petitioners at Papu Hill, Naharlagun as the said quarters are in an extremely dilapidated condition due to expiry of life span of the said quarters, which is likely to collapse any time endangering the occupants of the said quarters and to construct the multi storeyed flats over the said premise, which would be re-allotted to the respondents/petitioners after its completion.

8. Accordingly, the authority approached the occupants, i.e., the respondents/petitioners, of the said government quarters and held a meeting on 04.06.2022 and after thorough discussion the authority and the respondents/petitioners have unanimously decided to shift from their

respective quarters and the government shall provide an alternate accommodation. In order to accommodate the respondents/petitioners, an alternate accommodation has been provided at Lekhi Village, Naharlagun which was constructed by the Government under the scheme called Basic Service to Urban Poor (BSUP). Though the building was constructed under the scheme of Basic Service to Urban Poor (BSUP) for the targeted beneficiaries but the same was not yet allotted to any entitled person, therefore, considering the urgency it was proposed to shift the respondents/petitioners to the said building. Accordingly, the respondents/petitioners were requested to shift to the proposed new accommodation at Lekhi Village, Naharlagun, but the respondents/petitioners objected to the said alternative accommodation on the ground that the same is not suitable for human habitation. The learned Senior Government Advocate submits that since the writ petition was disposed of at the motion stage, the State was not given any opportunity of hearing and had precluded it from placing the facts before the learned Single Judge, the fact that the petitioners are residing in extremely dilapidated condition which is at risk to the occupants. The proposed construction of the multi storied building has already been sanctioned by the Government and the NIT has been issued. Pursuant to the NIT, the work has already been awarded vide order dated 03.05.2022. The

construction of the said multi-storied building are funded under Chief Minister Building Infrastructure Development Plan (CMBIDP-2019-24), which is a time bound scheme and if the said fund is not utilized within time, the same will lapse. The learned Senior Government Advocate submits that the regular Government employees are entitled to rent free government accommodation but same is subject to availability of such residential quarters/accommodation. The government employees cannot insist for government accommodation unless the same is available under the disposal of the State government. In the instant case, there is no government quarter/building available to accommodate the respondents/petitioners except the proposed accommodation at Lekhi Village, Naharlagun.

9. The learned Senior Government Advocate submits that in view of the submission made above, the impugned order dated 29.07.2022, passed by the learned Single Judge is not sustainable as the same has been passed without hearing the State respondents and also the learned Single Judge has directed in one way to consider the representation and in another way to provide the accommodation to the respondents/petitioners, for which the said direction cannot harmoniously dwell together. Therefore, the impugned order dated 29.07.2022, passed by the learned Single Judge deserves

interference.

10. In support of his submission, the learned Senior Government Advocate placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Director, Central Plantation Crops Research Institute, Kesaragod and Ors V. M. Purushothaman and Ors*** reported in (1994) Supp(3) SCC 282.

11. Mr. D. Kamduk, learned counsel for the respondents/petitioners submits that the alternate accommodation allotted to the petitioners/respondents at Lekhi Village, Naharlagun is in a dilapidated condition and not fit for human dwelling and the petitioners are staying in the present allotted quarters at Papu Hill, Naharlagun with their family and their children are attending school in nearby area and some of them are undergoing treatment, and they are entitled to a better accommodation at least with basic amenities which is totally lacking in the present allotted alternate accommodation at Lekhi Village, Naharlagun.

12. Mr. D. Kamduk, learned counsel for the respondents/petitioners, by placing reliance of the judgment of the Supreme Court in the case of ***Ms Shantistar Builders V. Narayan Khimalal Totame and Ors*** reported in (1990) 1 SCC 520 and in the case of ***Chameli Singh and Ors V. State of***

U.P. and Anr reported in (1996) 2 SCC 549, submits that the right to life includes the right to shelter which is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc, so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. However, violating the respondents/petitioners fundamental right to shelter, the authorities forcibly directed the respondents/petitioners to shift in the present alternative accommodation having no electricity or water connection which is not fit for human habitation. Therefore, the authorities is duty bound to accommodate and place the respondents/petitioners in suitable building fit for human dwelling with basic amenities and if the authorities cannot provide them with basic amenities, they should not be asked to shift out from the present government quarters at Papu Hill, Naharlagun. He further submits that the present appeal lacks merit in view of the fact that the direction passed by the learned Single Judge is to consider the grievances of the respondents/petitioners as the grievances involved the fundamental

right of the respondents/petitioners to have a shelter with basic amenities and as such the present writ appeal is liable to be dismissed.

13. We have considered the rival submissions of the learned counsel for the parties and also perused the materials available on record.

14. It transpires that the present residential government quarters at Papu Hill, Naharlagun as per the Expert survey report, were constructed during the year 1974-75, about 45 years ago, which outlived its normal life and at present the building is reported to be in a deteriorated condition and are beyond repair economically and not in the interest of the Government. Accordingly, on the basis of the Expert report, the government has decided to reconstruct the multi-storied flats for accommodation of the Government employees. For construction of the said multi-storied building in place of the old quarters at Papu Hill, Naharlagun, NIT is said to have been issued and work has already been awarded. It is seen that the alternate accommodation at Lekhi Village, Naharlagun, has been allotted to the respondents/petitioners and accordingly directed them to shift to the said place in order to pave the way for construction. However, the respondents/petitioners claims that the alternate accommodation at Lekhi Village, Naharlagun is not fit for human dwelling as there is no basic amenities in the said building. According to the respondents/petitioners

there is no electricity or water connection, which two amongst other are part of basic amenities. Therefore, in our considered opinion, the direction passed by the learned Single Judge on 29.07.2022, cannot be faulted as the direction is to consider the grievances as projected by the respondents/petitioners.

15. We have taken note of the stand of the Government that there is no alternative accommodation where the respondents/petitioners would be accommodated other than the present alternative accommodation at Lekhi Village, Naharlagun and at the same time, the present government quarters where the respondents/petitioners are residing has out-lived its normal life which would pose risk/danger to the occupants. We also take note that there is a provision of house rent allowance for the regular Government employees which is in force in the State of Arunachal Pradesh.

16. We may usefully refer to the cases relied on by the learned counsels for the parties. The Hon'ble Supreme Court in the case of ***Director, Central Plantation Crops Research Institute, Kesaragod and Ors V. M. Purushothaman and Ors*** reported in *1994 Supp(3) SCC 282* the Hon'ble Supreme Court held that it must be remembered that the Government or the organisation spends huge public funds for constructing quarters for their employees both for the convenience of the management

as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, i.e., to construct and maintain the quarters as well as to pay the HRA.

17. In the case of ***Ms Shantistar Builders V. Narayan Khimalal Totame and Ors*** reported in (1990) 1 SCC 520, the Hon'ble Supreme court has held which is reproduced herein below:

"9. Basic needs of man have traditionally been accepted to be three- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly

for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.”

18. In the case of ***Chameli Singh and Ors V. State of U.P. and Anr*** reported in (1996) 2 SCC 549, the Hon’ble Supreme Court held as under:

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human

being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights."

19. There is no doubt that the right to life includes the right to shelter as observed by the Hon'ble Supreme Court, it is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy

access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Of course, these are all subject to economic budgeting of the State.

20. In the present case, the Government has already taken the decision to re-construct the multi-storied flats in place of the dilapidated and out-lived government quarters where the respondents/petitioners are presently staying and as per the Expert report it poses a great risk and danger to the occupants because of its deteriorated condition. Accordingly the respondents/petitioners have been requested to shift to the alternative accommodation situated at Lekhi Village, Naharlagun. However, the respondents/petitioners objected to the same on the ground that the same is not fit for human dwelling as there is no electricity and water connection in the said building.

21. As noted above, there exists a policy for house rent allowance for those government employees who are eligible for rent free government accommodation but have not been provided with any rent free government accommodation. Therefore, the government employees perhaps may not have the right to insist on government accommodation if there is no government accommodation. It is not the case that the

respondents/petitioners have been rendered homeless. Only the alternative accommodation at Lekhi Village, Naharlagun does not have electricity and water connection which are part of basic amenities.

22. In view of the discussion herein above, we do not find any reason to interfere with the direction for consideration of the grievances of the petitioners passed by the learned Single Judge vide impugned order dated 29.07.2022. However, we modify the order dated 29.07.2022, by directing the respondent authorities to consider to provide the basic amenities i.e., electricity & water in the alternative accommodation at Lekhi Village, Naharlagun within a period of two weeks from the date of receipt of certified copy or to provide house rent allowance as admissible to the respondents/petitioners and thereafter the respondents/petitioners are directed to shift to the alternate accommodation at Lekhi Village, Naharlagun within 7 days so as to pave the way for construction of the multi-storied flats for the Government employees.

23. Accordingly, this writ appeal is disposed of in terms of the above directions.

JUDGE

JUDGE