



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

Case No. : WP(C) 55/2023

1:Kampu Dolo alias Kompu Dolo
Son of Lt. Tagung Dolo,
Permanent Resident of Village Rebe, PO/PS Chayangtajo, East Kameng District,
Arunachal Pradesh, Itanagar.

VERSUS

1:THE STATE OF AP and 4 Ors.
Represented by the Secretary, Land Management, Govt. of Arunachal Pradesh,
Itanagar.

2:The Director
Land Management
Govt. of Arunachal Pradesh
Itanagar.

3:The Deputy Commissioner
East Kameng District
Seppa
Arunachal Pradesh.

4:The Union of India
Represented by the Commandant
54th BN ITB Force
Bhalukpong
West Kameng District
Arunachal Pradesh.

5:Audesh Kumar Singh
the Director
Land Management
Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : Pritam Taffo

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT**

13.06.2023

Heard Mr. P. Taffo, learned counsel for the petitioner; Mr. S. Tapin, learned Senior Government Advocate, Arunachal Pradesh for the respondent Nos. 1 and 3; Mr. D. Kamduk, learned counsel for the respondent No. 2; and Mr. M. Kato, learned Deputy Solicitor General of India for the respondent No. 4.

2. In this petition under Article 226 of the Constitution of India, the petitioner Shri Kampu Dolo @ Kompu Dolohas prayed for issuing the direction to the respondent authorities to disburse the land compensation amount to Rs. 1,54,94,094/-.

3. The background facts leading to filing of the present petition is adumbrated herein below :-

“A plot of land situated at Chayangtajo, of East Kameng District, belonging to the petitioner was identified and acquired under section 10 of the Balipara/Tirap/Sadiya Frontier Tract Jhum Lang Regulation, 1947 [herein after Regulation, 1947]. The petitioner though filed a representation for acquiring the said land under Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 [herein after Act of 2013]. Yet, the respondent authorities have not entertained the same. Thereafter, a Board, constituted and headed by respondent No. 1, has examined and assessed the value of the land and property of the petitioner falling in the earmarked site and after threadbare discussion, in its meeting held on 03.12.2021, calculated the land compensation amount at Rs. 1,73,76,091/- and thereafter, sent the same to the respondent No. 4 for approval. However, the respondent No. 4 having found the rate in higher side asked the respondent No. 3 for further negotiation. Thereafter, in a meeting held on 21.01.2022, settlement was arrived at Rs. 1,54,94,094/- and incorporating the

contingency charge, the amount came to be at Rs. 1,59,53,731.92/- [One Crore Fifty-Nine Lakh Fifty-Three Thousand Seven Hundred Thirty-One Point Ninety-Two]. Thereafter, the respondent No. 4 had deposited the said amount, by way of Demand Draft No. 801580 dated 01.07.2022, for the aforesaid amount with the respondent No. 3, for disbursement. However, objection has been raised by respondent No. 2, the Director of Land Management, Government of Arunachal Pradesh, Itanagar. Thereafter, the petitioner personally approached the respondent No. 3 to know about the ground of objection wherein the respondent No. 3 stated to him that no file in the department gets approved for free, more particularly in cases of land compensation and thereby indicated clearly that the file will not be cleared without payment. Thereafter, the petitioner lodged a complaint before the Chief Secretary against the respondent No. 2 on 07.12.2022. Thus, the right the petitioner under Article 300[A] of Constitution of India, stands violated. Therefore, he approached this court for issuing the direction to the respondent authorities to release the aforesaid compensation amount by filing a writ petition being WP(C) No. 55/2023. In the present petition he prayed for directing the respondent authorities to pay 100% solatium and 12% interest upon the aforesaid compensation amount."

4. The respondent No. 4 had entered and appearance and filed written affidavit in opposing statement wherein it had been stated that the amount of land compensation has already been deposited by a demand draft in favor of the respondent No. 3, Deputy Commissioner, East Kameng district Seppa.

5. The respondent No. 2 in its affidavit in opposition dated 23.05.2023, has stated that the land compensation amount has not been deposited in the account of the Deputy Commissioner, East Kameng district Seppa and that no confirmation of transfer of land from ITBP was received by his office.

6. Mr. Taffo, learned counsel for the petitioner submits that in order to establish a Border Outpost by the ITBP at Chayangtajo the land of the petitioner was acquired by the State respondent Nos. 1, 2 and 3 under section 10 of the Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation Act, 1947. After negotiation, the amount of compensation was fixed at Rs. 1,54,94,094/- and after addition of contingency charges the amount came to be at Rs. 1,59,73,731.92/- and this amount is rounded at Rs. 1,59,53,732/-. Mr. Taffo further submits that thereafter the respondent No. 4, i.e. the Union of India has deposited the aforesaid

amount vide Demand Draft, bearing No. 801580 dated 01.07.2022. But, the respondent authorities have not released the amount to the petitioner for the reason best known to them. Though the petitioner has approached the respondent authorities to release the amount and also personally met the Director of Land Management namely, Shri Audesh Kumar Singh, but, strangely the Mr. Singh indicated that no file will be cleared without payment for which the petitioner had lodged a complaint before the Chief Secretary. Mr. Taffo further submits that the user agency i.e. the ITBP, through Union of India has deposited the amount which was fixed after negotiation between the parties and there is no scope for objection by the respondent No. 2 and that the ITBP required the land for establishing one Border Out Post, who has the responsibility of looking after the International Border between India and China, and that the State respondents have underestimated the importance of such an important project. Therefore, Mr. Taffo contended to allow this petition by directing the respondent authorities to release the aforesaid amount.

7. On the other hand, Mr. D. Kamduk, learned counsel representing the respondent No. 2 submits that the State Government vide letter No. LM-93/2009/2456, dated 24.02.2015, has fixed the land value for different districts, whereas the present value of the acquired land so fixed by the Board is in higher side than the rate fixed in the letter dated 24.02.2015 and therefore, the respondent No. 2 has objected in releasing the aforesaid amount. It is to be noted here that the respondent No. 2 has not filed any affidavit-in-opposition to counter the plea taken by the petitioner.

8. In replying to the submission of the Mr. Kamduk and the letter produced by him before this court Mr. Taffo has produced one Memorandum No. LM-134/2011(Pt-III), dated 02.06.2021, issued by the Chief Secretary of Land Management, Government of Arunachal Pradesh, Itanagar before this court and submits that in view of the Office Memorandum, the respondent No. 2 has no scope for opposing the fixation of the value of land acquired from the petitioner. The Office Memorandum prevails over the letter produced by Mr. Kamduk and the said letter has no relevance now, as under section 10 of the Regulation, 1947, it is the stake holders who have to fix the rate after negotiation and the reasonableness of the compensation and the letter of the Director of Land Management cannot override the statutory provision.

9. This court during the course of hearing also sought assistance of Mr. R.H. Nabam, learned Senior Additional Advocate General, Arunachal Pradesh in respect of the

letter of the respondent No. 2, dated 24.02.2015 and in respect of the Office Memorandum dated 02.06.2021, issued by the Secretary of Land Management, Government of Arunachal Pradesh. Mr. Nabam submits that under section 10 of the Regulation, 1947 the compensation is fixed by conducting summary proceeding and reasonableness of compensation, after hearing the individuals or community and the requiring agency, as the case may be and has to determine the compensation and in view of the subsequent Office Memorandum dated 02.06.2021, the letter dated 24.02.2015, has no relevance now.

10. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the Annexure – 1, by which acquisition of 14,910.74 square meter of land of the petitioner was acquired under section 10 of the Regulation, 1947. Also I have carefully gone through the sketch map exhibit – 19 annexed with the Annexure – 1 and the letter of the petitioner asking for compensation under the Act of 2013 and the board proceeding dated 03.09.2021 and the subsequent proceeding dated 21.01.2022, fixing the quantum of compensation at Rs. 1,54,94,094/- and fixed the compensation at Rs. 1,59,53,731.90/- after addition of contingency charge of Rs. 4,59,637.92/-. I have also perused the Annexure – 6, by which the Deputy Commissioner, East Kameng District, Seppa has forwarded the land compensation estimate to the Commandant, 54th BN ITBP Force, Bhalukpong, West Kameng District, Arunachal Pradesh and the Annexure – 7, by which the ITBP has deposited the aforesaid amount vide Demand Draft No. 801580, dated 01.07.2022, for the aforesaid amount. I have also gone through the Annexure – 8, by which the Director of Land Management has questioned as to how the sum of Rs. 1,54,94,094/- was increased to Rs. 1,59,53,731.92/- vide his letter, dated 01.09.2022 and the justification sent by respondent No. 3 vide his letter, dated 25.11.2022, which is annexed with the petition as Annexure – 10 and also the letter of the respondent No. 2, dated 07.12.2022, written to the respondent No. 3 stating that the land rate so fixed by the Board is beyond the scope of appropriate rate and asked him to fix the rate as per the notified manual, 2022. It is to be noted here that the aforementioned facts have not been disputed by the respondent authorities.

11. It is not in dispute that the respondent No. 4 has also deposited the amount with the respondent No. 3. Though the respondent No. 3, in his affidavit stated that he has not received the amount the same appears to be not correct position, in view of the letter, dated 05.07.2022, of the Commandant, 54th BN ITBP Force, Bhalukpong, West Kameng

District, Arunachal Pradesh by which a sum of Rs. 1,59,53,732 /- was deposited vide Demand Draft no. 801580. It has already indicated herein above that the respondent No. 2 has not filed its counter affidavit disputing the contentions of the petitioners. Though Mr. Kamduk, the learned counsel for the respondent No. 2 has taken a stand on the basis of the letter dated 24.02.2015, that the rate fixed for the land of East Kameng district, Seppais in higher side yet, in view of the subsequent Office Memorandum issued by the Secretary of Land Management, Government of Arunachal Pradesh on 02.06.2021, seems to have no relevance. The learned Additional Advocate General, Mr. R.H. Nabam has clearly indicated the same in his submission before this court. Though, the respondent No. 2, in his letter dated 07.12.2022, has directed the Deputy Commissioner, East Kameng District, Seppa to draw proceeding by taking into the rate notified in the Manual, 2022 and further indicated that deviation from the notified in the Manual, 2022 shall not be accepted, the same appears to be not consistent with the Office Memorandum dated 02.06.2022, wherein it is clearly indicated that when land is acquired under section 10 of the Regulation, 1947, the respondent No. 3 has to ensure reasonable compensation to be paid for the Jhum Land acquired for public purpose. The respondent No. 3 has to conduct summary proceeding to determine reasonableness of compensation, wherein the parties to the proceeding will be the requiring agency and the individual or community as the case may be having right of the land being acquired.

12. In the case in hand also the minutes of the meeting of the Board enclosed with the petitioner as Annexure – 4 and 5 has clearly indicated that the requirement of the section 10 of the Regulation, 1947 has duly been complied with and the Office Memorandum dated 02.06.2021, has also been followed. Though it has been mentioned about the existence of a Manual, 2022 fixing the rate, no such Manual is produced by the learned counsel for the respondent No. 2 before this court.

13. Under the aforesaid facts and circumstances issue raised by the respondent No. 2 in his letter dated 07.12.2022, seems to be devoid of any substance and logic. As submitted by Mr. Taffo the land is acquired for establishing Border Outpost of ITBP who is in-charge of guarding the International Border between India and China. While such a project is being taken up, it is expected that all the stake holders acted in tandem to achieve the goal as from the security point of view, immediate establishment of the Border Out Post is very much necessary. In the instant case, the way the respondent No. 2 has raised objection is indeed

uncalled for. The allegation leveled against him by the petitioner is indisputably serious in nature.

14. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this court the respondent Nos. 1, 2 and 3 are directed to release the compensation amount to the petitioner within a period of 1 [one] month from the date of receipt a certified copy of this order.

15. The parties have to bear their own costs.

JUDGE

Comparing Assistant