



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

Case No. : WP(C) 56/2023

1:Kampu Dolo alias Kompu Dolo
S/o 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 Secretary Home Affairs
NDCC II Building
Jai Singh Road
Near Jantar Mantar
New Delhi 110001

5:The Commandant
54th BN ITB Force
Bhalukpong
West Kameng District
Arunachal Pradesh

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 directing the respondent authorities to pay 100% solatium and 12% interest upon the compensation amount of Rs. 1,54,94,094/- [One Crore Fifty-Four Lakh Ninety-Four Thousand Ninety-Four] for the land acquire by the respondent authorities from him under section 10 of the Balipara/Tirap/Sadiya Frontier Tract Jhum Lang Regulation, 1947.

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 Regulation, 1947. After negotiation the amount of compensation was fixed at Rs. 1,54,94,094/- and adding contingency charges

the amount came to be Rs. 1,59,73,731.92/- and this rounded at Rs. 1,59,53,732/-. Mr. Taffo further submits that thereafter, the respondent No. 4, 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 him for the reason based known to them. Though the petitioner had 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 that is 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 the Border Out Post, who has the responsibility of looking after the International Border between India and China, and the State respondents have underestimated the importance of such a project. Mr. Taffo further submits that the petitioner is entitled to 100% solatium and interest upon the aforementioned amount under the Act of 2013, but, the same is denied to him by refusing to assess the compensation under the said Act. Mr. Taffo further submits that the present case is squarely covered by a decision of this court in W.P. (C) No. 280(AP)/2020 [Mihin Lanling vs. Arunachal Pradesh and 7 Others] and two other connected writ petitions, dated 25.04.2022. Mr. Taffo also submits that the said judgment is upheld by a Division Bench of this court in the Writ Appeal No. 15/2022 dated 12.09.2022, and therefore, Mr. Taffo contended to allow this petition.

7. Per-contra, Mr. D. Kamduk, learned counsel representing the respondent No. 2 submits that though the judgment laid down by this court in **MihimLaling vs. State of Arunachal Pradesh and 7 Others** is upheld by a Division Bench of this court, the appellant of the said writ appeal preferred one Special Leave Petition [SLP] before the Hon'ble Supreme Court and in the said SLP Hon'ble Supreme Court has stayed the judgment delivered by the Division Bench of this court. However, Mr. Kamduk submits that in another case **Geeta Mehu vs. Union of India and others** in petitions for special leave to Appeal (C) No. 7729/2022 have directed the respondent authorities to pay solatium.

8. In view of the submission of learned counsel for both the parties, the question that comes for consideration before this court is whether the petitioner is entitled to solatium upon the compensation fixed for acquiring his land by the respondent authorities for

establishing ITBP Outpost.

9. I have carefully gone through the petition and the documents placed on record and also the affidavit-in-opposition filed by the respondent authorities as well as the judgment of this court in W.P. (C) 280[AP]/2020 and the judgment of this court in writ appeal No. 15/2022.

10. It appears that acquiring the land of the petitioner for establishing Border Outpost of ITBP and determining the compensation at Rs. 1,54,94,094/- is not disputed by the respondent authorities. Further, it appears that the petitioner before determining the quantum of compensation had filed a representation to the respondent authorities on 16.11.2021, which is annexed with the petition as Annexure – 2, for assessing the compensation under the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, as the said act is applicable in Arunachal Pradesh. But, the respondent authorities refused to entertain the same stating that a notification under section 10 of the Jhum Land Regulation, 1947 has already been issued.

11. It is to be noted here that in the case of **MihinLaling[Supra]**, this court vide judgment and order dated 25.04.2022, has recorded the finding I para 55 and 56 as under :-

“55. Thus, from the aforesaid discussion, the finding of this court is summarized as under :-

[i] The Regulation of 1947, and the RFCT & LARR Act, 2013 are enacted on the same subject, i.e. land, which is a subject of concurrent list. There is no provision for payment of solatium and interest in the Regulation of 1947, whereas the same is available in the RFCT & LARR Act. The object sought to be achieved by the Regulation 1947 and the RFCT & LARR Act are almost the same. And as such Regulation 1947 is inconsistent with the RFCT & LARR Act, 2013 and Regulation of 1947 failed to withstand the test of Article 254 of the Constitution of India.

[ii] The land of the petitioners acquired for the construction of Trans Arunachal Highway and for construction of 33/11 KV Sub-Station and Bomdila Bye-Pass, all are acquired for the ‘public purpose’ and no classification for ‘public purpose’ is permissible.

[iii] Regulation of 1947, and the RFCTLARR Act, 2013, enables the State to give the petitioners different treatment from another, equally situated owners. And as such the petitioners, who are discriminated against, are

entitled to protection of Article 14 and 16 of the Constitution. Though a classification is sought to be made by the learned In-Charge Advocate General, yet the same is not based upon intelligible differentia, as they cannot be treated differently from the land owners whose lands were acquired for construction of 33/11 KV Sub-Station and Bomdila Bye-Pass, as in all the cases the lands are acquired for only one purpose, i.e. 'public purpose'.

[iv] The petitioners are entitled to compensation and solatium and interest in view of the RFCTLARR Act, 2013, as the State cannot make any law in derogation of any provision of the said Act.

56. Under the above facts and circumstances, I find sufficient merit in these petitions and, accordingly, the same are allowed. Admittedly, the State respondents have already paid compensation to the petitioners herein, under the Regulation 1947. In addition to the said compensation amount, the petitioners are entitled to solatium and interest. By a mandamus of this court, the State respondents are directed to work out and make payment of solatium and interest to the petitioners, as provided in the RFCT & LARR Act, 2013, and under the Notifications, presently holding the field. The petitioners shall obtain a certified copy of this judgment and order and place the same before the respondent authorities. On receipt of the certified copy the respondent authorities shall carry out above exercise within a period of two months from the date of receipt of the certified copy.”

12. As the issue of entitlement of solatium and interest has already been settled in the case of **Mihin Laling [Supra]**, as discussed above, this court is of the considered opinion that the case of the present petitioner is also covered by the decision of **Mihin Laling [Supra]**, and he is entitled to the same relief granted in the aforesaid writ petition. Accordingly, in terms of relief granted by this court in the order dated 25.04.2022, in W.P. (C) No. 280[AP]/2020, this writ petition stands allowed. It is to be mentioned here that the impugned judgment and order of the Division Bench, passed in W.A. No. 15/2022 and other connected writ appeals i.e., W.A. No. 16/2022; W.A. No. 17/2022; W.A. No. 20/2022; W.A. No. 21/2022; W.A. No. 22/2022; and W.A. No. 23/2022, was challenged before the Hon'ble Supreme Court by the National Highways and Infrastructure Development Corporation Limited [NHIDCL] and vide order dated 07.02.2023, the Hon'ble Supreme Court has dismissed the same, in the petition[s] for Special Leave to Appeal [C] No[s]. 22776-22777/2022.

13. The respondent authorities, especially respondent No. 3 is directed by a

mandamus of this court to grant solatium and interest upon the compensation which has already been fixed to be paid to the petitioner for acquiring his land for establishing Border Outpost of ITBP in the land of the petitioner. In terms of above this petition stands disposed of.

14. The parties have to bear their own costs.

JUDGE

Comparing Assistant