

GAHC040001602017



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

Case No. : WP(C)/674/2017

- 1: SHRI TENKEN NADA RESIDENT OF DEBE VILLAGE, PO/PS GENSI, DISTRICT WEST SIANG AP.
- 2: SHRI KARKEK NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 3: SHRI BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 4: SHRI KARDER NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 5: SHRI KARBIK NADA S/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 6: SMT YATE NADA. W/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 7: SHRI KARPE NADA S/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 8: SHRI KARKAP NADA S/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 9: SHRI KAPJI NADA S/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 10: SHRI DEMU NADA S/O KARDER NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.
- 11: SMTI PEBOM NADA S/O KARKAP NADA S/O BOMKAR NADA

RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

12: SMTI POPNU NADA W/O KAPJI NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

13: MISS KAPJAL NADA D/O KARKAP NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

14: SMT JAKI NADA W/O KARKEK NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

15: SMT JAMA NADA W/O KARKEK NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

16: SHRI TENJI NADA S/O LT. BOMTEN NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

17: SHRI TENGI NADA S/OLT. BOMTEN NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

18: SHRI TENPER NADA S/O LT. BOMTEN NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

19: SMTI DOGE NADA W/O LT. BOMTEN NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

20: SMTI. PEBI NADA W/O TENGI NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

21: MISS KARDE NADA D/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

22: SHRI KARJUM NADA S/O BOMKAR NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

23: MISS TENKEN NADA D/O LT. BOMTEN NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

24: SMTI YANAM NADA W/O KARJUM NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

25: KIYUM NADA S/O LT. KIYUM NADA S/O BOMKAR NADA RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

26: SHRI YUMDAK NADA S/O KIYTUM NADA S/O BOMKAR NADA

RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

27: SHRI YUMKAR NADA S/O KIYUM NADA S/O BOMKAR NADA
RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

28: SMTI DAPI NADA W/O KIYUM NADA S/O BOMKAR NADA RESIDENT
OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

29: MISS YUMPE NADA D/O KIYUM NADA S/O BOMKAR NADA RESIDENT
OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

30: SHRI KOYAL NADA S/O KARKO NADA S/O BOMKAR NADA RESIDENT
OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

31: SMTI YAPI NADA W/O TABOM NADA S/O BOMKAR NADA RESIDENT
OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP.

32: SHRI YUMNI NADA S/O LT. MIYUM NADA S/O BOMKAR NADA
RESIDENT OF DEBE VILLAGE PO/PS GENSI DISTRICT WEST SIANG AP

VERSUS

1:THE UNION OF INDIA REP. BY THE SECRETARY TO GOVT. OF INDIA,
MINISTRY OF POWER, SHARAM SHAKTI BHAWAN, NEW DELHI

2:THE NATIONAL HYDRP POWER CORPORATIONNHPC GOVT. OF INDIA
UNDERTAKING REP. ITS CHAIRMAN CUM MANAGEING DIRECTOR NHPC
OFFICE COMPLEX SECT.33 FARIDABAD 1213003 HARYANA

3:THE GENERAL MANAGER NATIONAL HYDRO POWER CORPORATION
NHPC LOWER SUBANSIRI HYDRO ELECTRIC PROJECT GEGAMUKH PO/PS
DHEMAJI DISTRICT DHEMAJI ASSAM.

4:THE STATE OF A.P. THROUGH THE CHIEF SECRETARY GOVT. OF AP
ITANAGAR.

5:THE SECRETARY LAND MANAGEMENT GOVT. OF AP ITANAGAR.

6:THE DEPUTY COMMISSIONER WEST SIANG DISTRICT AALO AP.

7:THE NODAL OFFICER NHPCLTD. CUM EXTRA ASSISTANT
COMMISSIONER PO/PS GENSI WEST SIANG DIST. AP

Advocate for the Petitioners : Mr. S.K. Deori,

Mr. K. Dabi,
Ms. Somila,
Mr. B. Bui,
Mr. K. Dubey and
Mr. W. Sawin.

Advocate for the Respondents : Mr. M. Kato, ASG,

Mr. P.K. Tiwari, Sr. Advocate,
Mr. S. Goswami, Standing Counsel, NHPC,
Ms. G. Ete, Sr. Govt. Advocate.
Mr. D. Kamduk, Standing Counsel, Land Management,
Ms. S. Nag,
Ms. L. Lambi,
Mr. K. Saxena,

**BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN**

Date of hearing : 16.06.2023.
Date of judgment : 07.08.2023.

JUDGEMENT AND ORDER (CAV)

Heard Mr. D. Majumdar, the learned Senior Counsel, being assisted by Mr. S. K. Deori, learned counsel for the petitioners. Also heard Mr. M. Kato, learned Asstt. Solicitor General appearing for the respondent No.1- the Union of India, Mr. P.K. Tiwari, learned Sr. Counsel, being assisted by Mr. S. Goswami, learned Standing Counsel for the respondent

Nos.2 & 3, Ms. G. Ete, learned Sr. Govt. Advocate, Arunachal Pradesh for the respondent No.4 & 6 and Mr. D. Kamduk, learned standing counsel for the respondent No.5.

THE PRAYER OF THE PETITIONERS:-

2. This petition, under Article 226 of the Constitution of India, has been instituted by 32 petitioners, who are the project affected villagers of Dibe Village of Lower Subansiri Hydro Project, Gergamukh (in short 'the Subansiri Project') of the National Hydro Power Corporation Limited (NHPC), praying for following relief(s):-

(i) To set aside and quash the communication No. NH/SLP/Env.1/2014-113, dated 29.05.2014 of the NHPC;

(ii) To direct the respondent authorities, specially NHPC to pay compensation to the petitioners as per loss assessment report/bill, prepared by the Nodal Officer cum EAC, Gensi, constituted by the Deputy Commissioner, Aalo vide Loss Assessment report/bill vide Memo No.GNS/NHPC/2013-2014, dated 10.03.2014,

Or in alternative;

To constitute a joint re-survey of the petitioners land and assets by Nodal Officer, NHPC cum EAC, Gensi and NHPC, to verify as to whether the land and assets of the petitioners falls under the submerged area of the Subansiri Project;

Or

To refer the petitioners' grievances to the Ombudsmen as per Chapter 11 of State Rehabilitation and Resettlement Policy, 2008,

THE BACKGROUND FACTS:-

3. The petitioners are the project affected families of Dibe Village of West Siang District of Arunachal Pradesh. They are affected by the Lower Subansiri Hydroelectric Project, Gergamukh, situated in Lower Subansiri District of Arunachal Pradesh, where the NHPC has been constructing a 116 meters high concrete gravity dam, having 2000 Mega Watt surface power capacity. The project is also known as the Subansiri Project. For the said project, the NHPC Ltd. needs thousands of hectares of land from neighbouring Dhemaji District of Assam and West Siang District and Lower Subansiri District of Arunachal Pradesh. They have not been paid compensation by the respondent authorities, specially by the NHPC, for which they have approached the Deputy Commissioner, Aalo for payment of compensation.

3.1. It may be noted here that the land of the State of Arunachal Pradesh belongs to the people in private and community ownership, unless acquired by the authorities or have been declared as reserved forest land. Since the time immemorial, the people of the State earned their livelihood by means of wet cultivation, dry and Jhum cultivation. The customary rights of the tribal populations of the State is recognized under various provisions of law like Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation Act, 1994, the Arunachal Pradesh (Land Settlement and Records) Act, 2000, the Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and the State Rehabilitation & Resettlement Policy, 2008, etc.

3.2. It is also to be noted here that the petitioners village - Dibe is located in the left bank of Sigen River, which is one of the tributaries of Subansiri River and the petitioners are farmers by profession. Moreover, they have their own bamboo plantation, took patta plantation, dhuna trees, hingri, jutuli, poma and other plantation. That apart, the petitioners used to collect raw materials from jungles for construction of their dwelling house, fencing, cattle shed, etc. and they have individual or community ownership and title over the said land and forest area.

3.3. It is also to be noted here that to assess the compensation for immovable properties, falling under the submerge area of Subansiri Project, the Deputy Commissioner, Aalo had earlier constituted a Board. But, the Board never visited the land and properties of the petitioners at site, instead the representatives of the NHPC and the Nodal Officer, NHPC, without any physical verification and site visit, prepared the loss assessment report on their own whims and fancies, sitting at office of Nodal Officer, NHPC, who was the EAC, Gensi (the Administrative Centre), whereas the actual affected location is situated at a distance of three days foot march from the Administrative Centre, Gensi.

3.4. The petitioners' further case is that the Board constituted by the State Government has recommended Rs.84,11,97,755/- as compensation. As per the Loss Assessment Report dated 01.02.2008, as total 1184.50 hectares of land falls under the submerge area, which were private and community land and do not fall under any reserve forest, anchal forest, proposed reserve forest and village reserve forest in terms of letter No.02-12/NHPC/LKFD/2986, dated 07.12.2007, issued by the Divisional Forest Officer, West Siang District, Arunachal Pradesh. Considering the height of the Dam, the petitioners submitted several representations to the Deputy Commissioner, West Siang District at Aalo for re-verification of their land.

3.5. Then the Deputy Commissioner, Aalo had constituted a Board to verify as to whether the land and assets of the petitioners falls under submerge areas of Subansiri Project. The Board, so constituted by the Deputy Commissioner had carried out the exercise and submitted its reports on 18.03.2013, and 02.04.2013, and found that the land and assets of the petitioners' Dibe Village falls under submerge zone. Accordingly, vide order dated 04.04.2023, the Deputy Commissioner directed the Nodal Officer, NHPC (respondent No.7 of this petition) to prepare the draft cost of compensation (loss assessment report), sketch map of entire affected area by showing each and every individual plot of lands with area

details and a Board was constituted on 08.04.2013, to assess the loss report/bill. However, the Board due to political reasons, had not carried out the exercise.

3.6. Thereafter, the petitioners had approached this Court by filing Writ Petition (C) No.299 (AP)/2013, which was disposed of vide order dated 06.08.2013, in the motion stage itself, directing the Nodal Officer, NHPC cum EAC to prepare the draft cost/loss assessment report and to submit the same to the NHPC through the Deputy Commissioner, Aalo on 10.03.2014. Thereafter, the Nodal Officer, NHPC cum EAC, Gensi had prepared Loss Assessment Report/Bills, amounting to Rs.79,87,44,640/- (Rupees seventy nine crore eighty seven lakh forty four thousand six hundred and forty) only, for around 375 Hectors of land and other properties of the petitioners located at Dibe Village area, under Gensi Administrative Circle of West Siang District, which comes under the submerge area of the ongoing Subansiri Project.

3.7. But, the said loss assessment report/bills, submitted by the Deputy Commissioner, Aalo was not considered by the NHPC and vide communication No. NH/SLP/Env.1/2014-113, dated 29.05.2014, the NHPC had returned the same, and the petitioners were also denied the compensation on the ground that the their lands and assets do not fall under the submerged zone. On the contrary, as per the Board constituted under the Chairmanship of Nodal Officer, NHPC cum EAC found that the petitioners' land and assets fall under submerged zone.

3.8. Being aggrieved, the petitioners have approached this court by filing the present petition praying for the relief(s) as aforesaid.

4. The respondent authorities, No.2 and 3 have filed their affidavit-in-oppositions and additional affidavit in opposition, wherein it is stated that the **Environmental Impact**

Assessment, and the Environment Management Plane of the 2000 MW Subansiri Lower Hydroelectric Project, was carried out by **Water & Power Consultant Services Limited (WAPCOS)**, a Government of India Undertaking, under the Union Ministry of Jal Shakti, having in-built capacity to provide multi-disciplinary project team, comprising of its own core group of professionals' and specialists' from various organization of the Government of India, that provides consultancy services in all facets of water resources, power and infrastructure sector in India, in the year 2001. Then having carried out the assessment, the WAPCOS has submitted its report under the heading "**Profile of Project Affected Villages**" which indicates that total area coming under submergence of the proposed Lower Subansiri Project is 3436 Ha, consisting of both the State of Arunachal Pradesh and Assam. Out of which, **1225 Ha falls under Gensi Circle, comprising of two villages, namely, Gengi and Siberite of Lower Siang**, erstwhile West Siang District. Out of the said area of 1225 Ha, **640 Ha of land is forest area having cultivation of WRC, TRC, and Jhum and rest 585 Ha is riverbank**, and total number of project affected families are identified to be **77 only of Gengi and Siberite villages**.

4.1. Thereafter, the Deputy Commissioner, Lower Siang had constituted a Board vide order dated 25.01.2008, for assessment of the loss to be incurred by the 77 families of the said two villages. However, the Board had gone beyond the scope of its work and included another group of 29 individuals, including the petitioner No.8 and 17 of the present Writ Petition, within the scope of assessment of presumptive loss. Thereafter, the Board has assessed the loss to be suffered by 77 project-affected families and submitted report in the month of February, 2008 and awarded compensation for a sum of Rs. 51.29 crores and the NHPC had released the same, being the full and final settlement, and taking affidavits from the families and from the District Administration that no claim from this group will be entertained in future. Then in respect of the second group of 29 individuals, including the petitioner No.8 and 17 and 9 villages, including Dibe village, the Board in its report of February 2008 awarded compensation of Rs. 32.82 crores.

4.2. However, the NHPC had rejected this assessment. But, as a good will gesture, made its own assessment, on the basis of Rights and Privileges under the 2008 Relief and Rehabilitation Policy of the State of Arunachal Pradesh, and awarded 17.46 crores to this group and 29 individuals have accepted the said amount and the respective communities of the villages including District Administration, being the same full and final payment and that no claim in future will be entertained and on filing of affidavits by the 29 individuals. The release of said compensation was preceded by transfer of 1225 Ha of land to the NHPC. Thereafter, remaining silent for three years, the present batch of petitioners of Dibe village, started filing representation in December, 2012 for re-verification of their land in Dibe Village. Thereafter, the District Administration, in collusion with the petitioners vide order dated 04.04.2013, constituted a 5 members team to assess details of land and other assets of the petitioners, presumed to be submerged on account of the project. But, the District Administration has constituted the said team without involving the NHPC. The Land Revenue Department of the State also supported the petitioners and submitted a manufactured site report.

4.3. Thereafter, realizing the difficulties to move further, in view of order dated 04.04.2013, the petitioners have instituted a Writ Proceeding, being WP(C) No.299(AP)/2013 without making NHPC a party and this Court, vide order dated 06.08.2013, even without issuing Notice, disposed of the petition at the motion stage itself, directing the State Authorities to prepare draft cost of compensation on or before 06.09.2013. Thereafter, the team had carried out the exercise and submitted Loss Assessment Report, quantifying the presumptive loss of the petitioners to the tune of Rs.79,87,44,640/, which was a manufactured report without any evidence and basis. The said report was based upon pure speculation and conjecture and the present Writ Petition is being preferred for enforcement of the said report, primarily with the intention of making unlawful gain. It is also stated that after receiving compensation of Rs.17.46

crores, the group of 29 individuals and 10 villages/communities, which includes Dibe village, and also petitioner No.8 and 17 of WP(C) 674(AP)/2017, along with few other members of Nada Clan of Dibe village initiated litigation seeking payment of the balance amount of Rs. 32.82 Crore as awarded in the Loss Assessment Report dated 06.02.2008 to the said group.

4.4. But, the said Writ Petition, being WP(C) No. 483 (AP)/2011, filed by the aforesaid group came to be dismissed, and thereafter, they preferred one Writ Appeal No. 7/ 2018 which was referred to the Ombudsman, leading to the order dated 02.05.2018 of the Deputy Commissioner, Lower Siang awarding compensation of Rs.75,76,07,336/ to the said group. Said order of Deputy Commissioner is under challenge by the NHPC in WP(C) No. 308/2018 which is pending before this court. It is also stated that the subject matter of the said Writ Petition and the present Writ Petition are same. The respondent No.2 & 3 have, however, denied the assertions made by the present petitioners in the writ petition and therefore, it is contended to dismiss the petition.

4.5. In their additional affidavit, respondent No.2 and 3 stated that the Writ Appeal No. 7/2018, was allowed by this court vide judgment and order dated 19.02.2020, and thereafter, the NHPC had preferred one Special Leave Petition, No. 6856/2020, before the Hon'ble Supreme Court and the same came to be dismissed on 31.03.2020. It is also stated that the Loss Assessment Report, dated 10.03.2014, is void ab-initio and not enforceable and the order dated 06.08.2013 passed in WP(C) No. 299(AP)/2013, did not give any carte-blanche to the functionaries of the State of A.P. to deviate from the established legal procedure and unilaterally add more forest area into the forest land diverted by the Government of India for the project and bring the same under assessment for compensation, and the NHPC, having made final payments of compensation in terms of February 2008 Loss Assessment Report, now the State Government Officials cannot unilaterally initiate a process to increase the area of forest land, affected by the project,

and thereafter, assess the compensation, to be paid by the NHPC.

5. The respondent No.6, in its affidavit in opposition, had denied the assertions made in the petition. It is stated that Loss Assessment Report, along with compensation assessment estimate prepared by the Nodal Officer, NHPC cum EAC Gensi was forwarded to the NHPC for consideration and there is no ground to doubt the assessment report. It is also stated that the NHPC and the Nodal Officer cum EAC Gensi never attended spot verification and identification of land of Dibe village. It is also stated that in compliance with the direction of this court in WP(C) No. 299 (AP), the Board constituted under the Nodal Officer NHPC cum EAC, Gensi recommended a compensation estimate of Rs. 79,87,44,640/- which was submitted to the Executive Director NHPC on 12.05.2014, which came to be rejected and under such circumstances the state authorities cannot take any initiative and the present petition is devoid of merit and therefore liable to be dismissed, and therefore, it is contended to dismiss the petition.

THE ISSUES INVOLVED-

6. In view of the pleadings of the parties, and also in view of the points raised during arguments by the respective counsels of the parties, the issues, to be adjudicated by this court are formulated as under:-

- (i) Whether the WAPCOS report is exhaustive and final in respect of the total areas of land, that are coming under submergence ?
- (ii) Whether in view of payment of compensation of Rs. 51.29 Crores, to the 77 project affected families of Gengi and Siberite village and payment of 17.46 Crores to 29 individuals, including four persons of Dibe village and 10 villages &

Clan/Communities, as recommended in the Loss Assessment Report of February, 2008 and subsequent payment of Rs. 15.36 Crores with interest thereon, there is any scope for re-assessment of the land of Dibe village as ordered by the Deputy Commissioner Aalo, Lower Siang, erstwhile West Siang District dated 04.04.2013 ?

(iii) Whether the claim made by the petitioner No.8 and 17, being the beneficiary of the Loss Assessment Report of 2008 and accepting the compensation on undertaking of making no such claim in future, is hit by the Doctrine of election ?

(iv) Whether Loss Assessment Report, dated 10.03.2014, so prepared by the EAC cum Nodal Officer for NHPC, identifying 615 Ha of land of Dibe Village and recommending payment of Rs. 79,87,44,640/, being the compensation, was prepared by persons with required expertise in that line so as to make the same acceptable in the eye of law and whether it creates any legal right in favour of the petitioners and to get the same enforced against NHPC ?

THE WAPCOS REPORT:-

7. It appears from the Annexure R-2 of the affidavit in opposition that **Water & Power Consultant Services Limited (WAPCOS)**, is a Government of India Undertaking, under the Union Ministry of Jal Shakti, having in-built capacity to provide multi-disciplinary project teams comprising of its own core group of professionals and specialist from various organization of Government of India, which provides consultancy services in all facets of water resources, power and infrastructure sector in India. It is a "Mini Ratna" and "ISO-9001:2015" accredited Public Enterprise. The Environmental Impact Assessment and the Environment Management Plane of 2000 MW Subansiri Lower Hydroelectric Project was entrusted to WAPCOS in the year 2000, and accordingly it had carried out the exercise and

submitted its report.

8. The WAPCOS report indicates that total 3187.8 Ha of land are falling in the State of Arunachal Pradesh and spread over three districts, namely **Lower Subansiri, Upper Subansiri** and **West/Lower Siang District**. Out of the above 3187.8 Ha of land, 1225 Ha is forestland, which falls under West/Lower Siang District. Out of 1225 Ha of land 639.50 Ha(Approx-640 Ha) comprises of PRF(Proposed Reserve Forest), USF (Un-classed State Forest) and wet rice and jhum cultivations of Gengi and Siberite village and the remaining 585 Ha is river bed ($639.50 + 585 = 1224.50$ Ha). As 40 Ha of land is developed and handed over for rehabilitation of 77 PFA of Siberite and Gengi villages approximately **1185 Ha** of land ($1224.50 - 40 = 1184.50$) in West/Lower Siang district is the subject matter of the present proceeding.

9. A careful perusal of the report, under the heading Land Requirement for the Project, reveals that details of forestland requirement is shown in Table -4.4. In the said Table, at serial No. IV the reservoir submerged area under Forest Range, Middle Siang, Arunachal Pradesh is shown as under:-

Sl. No.	Description	Area (Ha)	Status
IV. FOREST LAND UNDER FOREST RANGE MIDDLE SIANG, ARUNACHAL PRADESH			
	Reservoir Submergence area		
	(i) Forest Area	640	P
	(ii) River Bed	585	P
	Sub-Total (IV)	1225	

It is also stated that in the proposed project, two villages, i.e. Siberite and Gengi are losing their lands. And mainly Jhum cultivation is practiced in the said two villages and as per the ownership status, the entire land under Jhum cultivation belongs to the Forest Department.

PROFILE OF PROJECT AFFECTED VILLAGES (as per WAPCOS Report)

10. The report, so prepared by the WAPCOS, under the heading – ‘PROFILE OF PROJECT AFFECTED VILLAGES’- at 5.8, it is stated that:-

“The submergence area of the proposed Subansiri Lower Project is 3436 Ha. The cultivable land of two villages, namely- Gengi and Siberite, of Gensi Circle, lower Subansiri District is being affected. The steep slopes and rugged topography have restricted settlements near the river. The river banks are almost vertical, which does not encourage settlements in its vicinity. These villages are located about 80 km from the nearest main road. It took the survey team about 2 days on foot to reach these villages. Further, in north, the nearest villages are Pajmore and Nuk, under Dumporijo Circle of Upper Subansiri. Cultivable land of villages Siberite and Gengi fall within the submergence area, while the other villages are located away from the river and located at higher elevation. About 38 families living in about 32 homesteads inhabit Siberite and Gengi. The number of Homesteads being lower is clearly indicative of the prevalence of joint family system in these villages. There are about 38 granaries; as such each family has its own individual granary.”

11. Mr. P.K. Tiwari, the learned senior counsel appearing for the NHPC submits that after making detailed study and research, the WAPCOS has submitted its report, which is exhaustive and it covers every aspect of the project, including rehabilitation of the PAF. Mr. Tiwari further submits that the WAPCOS report was prepared by a core group of

professionals and specialist from various organization of Government of India. The report, so prepared by the WAPCOS, according to Mr. Tiwari, is more acceptable, being the same conducted by persons with expertise in that line, and the study was conducted in a scientific manner and as per the said report no other villages, except Gengi and Siberite comes under submergence, and the claim, being made by the petitioners are false.

12. It is to be noted here that the petitioners have not disputed the acceptability and authenticity of the WAPCOS report, and as such correctness and accuracy of the same remained unchallenged. Having not been disputed by the petitioners, this court finds no ground to take a contrary view in the given facts and circumstances on the record. It is to be mentioned here that the WAPCOS report indicates that total area, which are coming under submergence under Gengi Circle, comprises of two villages, namely, Gengi and Siberite of Lower Sinag, of erstwhile West Siang District, **is 1225 Ha**, out of which **640 Ha** is Forest Area and **585 Ha** is river bed.

Thus Issue No.(i), so formulated herein above, stands answered in affirmative.

POST WAPCOS DEVELOPMENT & LOSS ASSESSMENT REPORT 2008:-

13. It appears that the post WAPCOS period is more eventful. A joint inspection, involving local villagers, District Administration and NHPC was conducted. A public hearing at Aalo was also conducted by State Pollution Control Board on 22.08.2001, after publishing notice of the same in the News Papers. It is to be noted here that no claim whatsoever was received regarding coming of land of any persons under submergence, except however the Gengi and Siberite villagers, whose cultivable land only comes under submergence. After allotment of 40 Ha of land for settlement of the PFA, on 05.09.2001, the Rehabilitation & Resettlement Agreement was signed between NHPC and the respective Village Headman

of aforementioned two villages.

14. Further, it appears that few people from adjoining areas of Gengi and Siberite villages also started claiming that their lands are also comes under submergence. Thereafter, in order to ascertain their claim, a public notice for surveying the submergence areas was issued in News Papers on 04.04.2002, inviting claims of local people. Thereafter, on 09.10.2002, a joint aerial survey, by Helicopter, was conducted by the team of Deputy Commissioner, Assistant Conservator of Forest (ACF), Aalo Division and senior representative from NHPC. Thereafter, ACF Aalo had submitted his report indicating that except some portion of the cultivable land of Gengi and Siberite villages, no harm or damage will be caused to any other human habitation and forest wealth. This fact is duly reflected in **Annexure- R/5**, a letter dated 21.11.2002, written by Deputy Commissioner, West Siang District Aalo to Commissioner (Power) Arunachal Pradesh. It also appears that- thereafter on 12.10.2004, vide **Annexure-R/1B**, the Ministry of Environment & Forest, Government of India had accepted the proposal for diversion of 3183.00 Ha of Forest Land for Subansiri Lower Hydro Electric Project and conveyed the approval under Section 2 of the Forest Conservation Act.

15. Thereafter, the matter remained static until 2007. In the intervening period, some local people started moving to Gengi and Siberite Village and started settling there. And gradually, the demand for re survey and re-verification and review of the exact numbers of project affected families of the said villages gained momentum, which lead to convening of a co-ordination meeting on 03.09.2007 at Aalo and after public hearing, it was resolved to constitute a Board to finalize the list of PFA of the said two villages. The Board, so constituted conducted survey and public hearing and submitted its report - **Annexure R/9A**. Perusal of the said report reveals that while conducting survey/assessment, in addition to above, 29 persons and some communities/clan from adjoining villages have either WRC or Jhum cultivation and 7 other villages, namely Tango, Ditten, Sibe,

Ossumpuri, Lutak, Dibe and Durpai villages have community private land within submergence area of 1225 Ha. The Survey Report also indicates that total area assessed for compensation is found to be 1229.50 Ha, as 4.50 Ha excess area was found against 1225 Ha by WAPCOS. And though during joint survey the submergence areas was worked out at 1229.50 Ha, the actual area considered for assessment is 1225 Ha in accordance with report of WAPCOS.

16. Thereafter, the Deputy Commissioner, West Siang (now Lower Siang) vide order dated 23.10.2007, vide one WT Message, had directed for loss assessment in respect of the PAF of the said two villages. And accordingly, vide order dated 25.01.2008, with approval of the Deputy Commissioner, a Board was constituted to assess the value of the immoveable properties and accordingly a survey/assessment of immoveable properties like land, trees, tokopatta trees, bamboo etc. was carried out by a team, comprising of Land Management branch of District Administration, under the supervision of Circle Officer, Gensi cum Nodal Officer, State Forest Department, representative of PAFs and NHPC Ltd. with effect from 05.11.2007 to 04.12.2007, in the area to be submerged. And during survey it has been found that total number of PAF are 77, out of which 38 are from Gengi and 39 are from Siberite village. This survey was carried out in terms of Clause No.8 of the Agreement and Clause No. 5.12.7 of Socio Economic Aspect under Chapter 5 of the EIA & EMP, where in both the PAF and NHPC have agreed for payment of compensation for land, trees, and other immoveable properties, coming under submergence, shall be paid by NHPC after due verification and assessment by the District Authority.

17. The Board, so constituted, having carried out the assessment/survey had recommended for releasing a sum of **Rs. 84,11,97,755.00 (Rupees Eighty Four Crores Eleven Lakhs Ninety Seven Thousand Seven Hundred Fifty Five)** only being the value of the immoveable properties coming under submergence. Out of the aforesaid amount a sum of Rs. 51.29 Crore to the 77 PAF of Gengi and Siberite Villages

against their cultivation on 484.85 Ha. The Board also recommended a sum of Rs. 32.82 Crores to 29 individuals and 10 villages/communities, including Dibe Village for their community rights over 699.65 Ha of land. The report of such assessment was forwarded by the Circle Officer, Gengi vide his letter dated 06.02.2014. The said Board has found only 5 Ha of land of Dibe village for compensation and out of the 5 Ha of land, petitioner No.8- Shri Karkap Nada has 0.05 Ha, petitioner No. 17- Shri Tengi Nada has 0.05 Ha and one Dapu Nada has 0.50 Ha and Nayado Nada has 2 Ha and Dibe Clan has 1.50 Ha of land and the community of Dibe village have been paid compensation amounting Rs.23,73,066/ and Rs.7,91,022/, each, were paid to Karkap Nada, Tengi Nada and Dapo Nada and Rs. 31,64088/ was paid to Nyado Nada. Mention to be made here that the Environmental Impact Assessment And Environmental Management Plan For Subansiri Lower Project Report and also the Map prepared by the Board, was the basis for the Loss Assessment Report 2008.

18. Indisputably, the NHPC has paid a sum of Rs. 51.29 crores to the 77 PAF of Gengi and Siberite village covered by 484 Ha of forestland. However, it has contested the other part of the Report. But, later on, obtaining clarification from Principal Chief Conservator of Forest about the legal status of 1225 Ha of forest land, it has agreed to and paid a sum of Rs.17.46 crores under the head "Right & Privileges" for communities of the adjoining areas covered by 699.65 Ha of forestland. The payment was accepted as full and final settlement and on condition that no further claim in respect of compensation from both the aforesaid group will be entertained. Two separate undertakings were executed by the Deputy Commissioner, West Siang to that effect. Thereafter 1225 Ha of land was handed over to the NHPC.

POST LOSS ASSESSMENT REPORT- 2008, DEVELOPMENTS

19. The additional affidavits of respondent No.2 and 3, reveals that the second group of

29 individuals and 10 villages and communities have filed a Writ petition, being WP(C) No. 483 (AP)/2011, before this court for payment of the balance of Rs. 32.82 Crores, as awarded in the February, 2008 Loss Assessment Report and the same was came to be dismissed. Thereafter, they have preferred Writ Appeal, being WA No. 7(AP)/2014 in which a Division bench of this court has directed the NHPC to release the said amount i.e. Rs. 15.36 Crores, in full compliance of the February 2008 Report. Thereafter the NHPC has preferred one Special Leave petition, being SLP(C) No. 6856/2020, before the Hon'ble Supreme Court and the same also came to be dismissed. Thereafter, the NHPC had paid the said amount, including the interest upon Rs. 15.36 Crores.

20. It also appears from the affidavit of respondent No.2 and 3 that on 23.12.2010, the petitioner No. 8 and 17 of Dibe village, who were also the beneficiaries in the Loss Assessment Report of 2008, along with two other individuals of Dibe village, have submitted one representation (Annexure-3 of the writ petition) before the Deputy Commissioner, West Siang District for assessment of the loss due to likely submergence of the additional land of Dibe village. Thereafter, again on 28.01.2012, the petitioner No.8 along with one Babom Nada on behalf of Ringi-Dibe project affected people filed another representation seeking re-survey of Ringe-Dibe land coming under submergence. Thereafter, on 07.12.2012, EAC cum Nodal Officer for NHPC submitted a report after physical verification, that site report reveals that certain portion of land of Dibe villages falls under submergence area and he recommended joint survey to ascertain actual submergence area.

21. It is, however, not clear from the record as to who prepared the site report and what was the basis of such report. Thus, serious doubt arises about the bona-fides of the entire exercise, being carried out by the state instrumentalities. Instead, it appears to be tainted with malafides and arbitrariness. Thereafter, on 25.02.2013, EAC cum Nodal officer NHPC, had issued one order asking the Board constituted by the Deputy Commissioner, West

Siang to re-verify/re-assess Dibe area for assessment of compensation. The NHPC has objected to this exercise and therefore, it had not sent any representative despite request of Deputy Commissioner.

22. Further, it appears that after re-assessment, the EAC cum-Nodal Officer, NHPC has sent a letter to the Deputy Commissioner, West Siang to the effect that apart from 5 Ha of land of Dibe village another 620 Ha of land of Dibe village is falling under submergence and 617 Ha of land has not been covered under compensation. Thereafter, on 04.04.2013 the Deputy Commissioner, West Siang had constituted a team, headed by EAC-cum-Nodal Officer of NHPC, to make assessment of the assets affected by the submergence of the area of Dibe village. Thereafter, the EAC-cum-Nodal Officer of NHPC had issued an order constituting a Board consisting of himself as Chairmen, Agriculture Development Officer, Horticulture Development Officer and Forest Range Officer along with two other members for loss assessment of the affected area of Dibe village.

WRIT PETITION NO. 299(AP)/2013 & LOSS ASSESSMENT REPORT DATED 04.04.2013.

23. Thereafter, on 06.08.2013, petitioner No.8, along with two others, had filed Writ Petition, being WP(C) 299(AP)/2013, before this court for a direction to NHPC Nodal Officer to carry out assessment of loss of assets of the land of Dibe village. Accordingly, this court, vide order dated 06.08.2013, had issued direction to the EAC-cum-Nodal Officer of NHPC to comply with the order dated 04.04.2013 and to submit his report to the Deputy Commissioner West Siang District, on or before 06.09.2013. It is to be noted here that in the said Writ Petition, NHPC was not made a party and the said petitioner was disposed of at the motion stage itself, even without issuing notice to the respondents.

24. Thereafter, the EAC- cum-Nodal Officer of NHPC, having carrying out the exercise, forwarded the Loss Assessment Report, dated 10.03.2014, of 615 Ha of land of Dibe village recommending a sum of Rs. 79,87,44,640/, to the Deputy Commissioner, West Siang District. Then the Deputy Commissioner, West Siang District had forwarded the same to the NHPC. However, the NHPC has refused to comply with the said recommendation and vide communication No. NH/SLP/Env.1/2014-113, dated 29.05.2014 returned the same to the Deputy Commissioner, reiterating its earlier stand that no other land beyond 1225 Ha will come under submergence at all.

25. In view of the categorical stand so taken by the NHPC, what left to be seen is how this 615 Ha of land of Dibe Village comes into existence, if the report of the WAPCOS and the Loss Assessment Report 2008 are exhaustive and if the same attained finality having not been disputed by any of the party.

26. Mr. Tiwari, the learned Senior Counsel submits that though the Board, in the first Loss Assessment Report, had found 39 more PAF at the village Gengi and Siberites, totaling 77 PAF and recommended a sum of Rs. 51.29 Crores to those 77 families, and the same is accepted by NHPC, but, the recommendation for payment of Rs. 32.82 Crores to 29 individuals and 10 villages/communities, including Dibe Village for their community rights over 699.65 Ha, was not acceptable to the NHPC. Mr. Tiwari further submits that despite the NHPC had paid a sum of Rs.17.46 crores under the head "Right & Privileges" to 29 persons as some communities/clan from adjoining villages have either WRC or Jhum and 7 other villages namely Tango, Ditten, Sibe, Osumpuri, Lutak, Dibe and Durpai villages have community private land within submergence area of 1225 Ha. Thereafter, as per order of this court in Writ Appeal No. 07(AP)/2014, payment of Rs.15.36 Crores was made and thereby fully complied with the Loss Assessment Report of February 2008.

27. It is the further submission of Mr. Tiwari that having accepted the payment as full and

final settlement and on condition that no further claim in respect of compensation from both the aforesaid group will be entertained, the petitioner No.8 and 17, the beneficiaries of the February 2008 Loss Assessment Report cannot maintain a claim for re-assessment. Mr. Tiwari further submits that in view of two separate undertakings, having been executed by the Deputy Commissioner, West Siang to that effect, he ought not to have turn around and constitute a team headed by EAC-cum-Nodal Officer of NHPC to make assessment of the assets affected by the submergence of the area of Dibe village, vide order dated 04.04.2013. Mr. Tewari further submits that the Deputy Commissioner and the petitioner No. 8 and 17, cannot approbate and reprobate at the same time because of the Doctrine of Election.

28. In the back drop of given facts and circumstances on the record and discussed herein above, I find substance in the submission of Mr. Tiwari, the learned Senior Counsel for the NHPC. If the WAPCOS is report is final and exhaustive and well prepared by well known experts in the field, then there is no point for ordering reassessment of the areas of Dibe village, on the basis of the representation submitted by Petitioner No.8 and 17, who are the beneficiaries of the February 2008 Loss Assessment Report. In view of the undertakings given by the Deputy Commissioner for not entertaining any claim for re-assessment and in view of the affidavit filed by the petitioner No.8 and 17 while accepting the compensation, they could not have maintain a representation for re-assessment and the Deputy Commissioner could not have entertained such representation because of the Doctrine of Election. Mr. Tiwari, the learned Senior Counsel, thus rightly pointed this out during argument. It is worth mentioning here in this context that the submission of Mr. Tiwari is not controverted by the learned counsel for the petitioners.

29. It is to be mentioned here that the 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had.

The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but of not both. Although there are certain exceptions to the same rule, but the said exception has no application in the instant case.

30. In the case of Nagubai Ammal and Others v. B. Shama Rao and Others reported in **AIR 1956 SC 593**, Hon'ble Supreme Court has stated as under:

"It is clear from the above observations that the maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto."

31. Again in **C. Beepathuma and others vs. Velasari Shankaranarayana vs. Kadambolithaya and others** reported in **AIR 1965 SC 241**, it was stated:

"The doctrine of election which has been applied in this case is well-settled and may be stated in the classic words of Maitland "That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it."

32. Thereafter in **P.R. Deshpande v. Maruti Balaram Haibatti** reported in **(1998) 6 SCC 507**, Hon'ble Supreme Court has stated the law, thus:

"The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

33. Thus, having considered the facts and circumstances on the record and also relied upon the principles laid down in the case laws discussed herein above and I find force in the submission of Mr. Tiwari, the learned counsel for the NHPH, that the Deputy Commissioner, West Siang District ought not to have entertained the representation for re-

assessment.

Thus, the issue No. (ii) formulated as above, stands answered accordingly.

WAPCOS REPORT & LOSS ASSESSMENT REPORT 2008, VIS-A VIS- LOSS ASSESSMENT REPORT- 2014:-

34. Now, coming to the Loss Assessment Report 10.03.2014, (**Annexure-14**) of the writ petition, it appears from the record that it was prepared by the Board, comprising of EAC cum Nodal Officer for NHPC, as per direction the Deputy Commissioner, West Siang District dated 04.04.2013, and also pursuant to the order of this court in WP(C) No. 299(AP)/2013. It is also to be noted here that in the said Loss Assessment Report, the Board has identified 615 Ha of land of Dibe Village and recommended a sum of Rs. 79,87,44,640/ being the compensation. This loss assessment was carried out by the Board pursuant to re-verification of the areas of Dibe village, which was ordered by the EAC cum Nodal Officer, NHPC. It is to be noted here that the NHPC has not participated in the entire process and the NHPC was also not made a party in the in WP(C) No. 299(AP)/2013. All these exercises were made behind the back of NHPC.

35. Mr. Tiwari, the learned counsel for the NHPC submits that the whole process of re-assessment of the Dibe village area, that are likely to be come under submergence, is void ab-initio and that the persons involved in the said process are of dubious antecedent and also they lack required expertise and the report is nothing but a multiple fraud. Further Mr. Tiwari submits that the order of this court in WP(C) No. 299(AP)/2013, did not give any carte blanche to the state functionaries to deviate from the established principle and add unilaterally more forest areas into the forest land diverted by the Government of India for the project and to bring the same under assessment for compensation. Mr. Tiwari further

submits that only 5 Ha of land of Dibe village is within 1225 Ha of forest land falling under Gensi Circle, West Siang District, out of total 3183.00 Ha of forest, with approval from the Government of India under section 2 of the Forest (Conservation) Act 1980, and diversion of the same was done on the basis of WAPCOS report. And additional forest land cannot be converted without approval of the Government of India. And as such, Mr. Tiwari submits that incorporation of another 615 Ha of forest land is not at all permissible and it is the arbitrary action on the part of the state instrumentalities and on such count it is unenforceable against the respondent NHPC. In support of his submission Mr. Tiwari has referred to a decision of Hon'ble Supreme Court in **State of Orissa v. Mamata Mohanty**, reported in **(2011) 3 SCC 436**.

36. Mr. Tiwari has also submits that the Board, so formed by Deputy Commissioner West Siang District, Aalo and by the Nodal Officer NHPC cum Circle Officer, Gensi, lacks technical expertise to carry out the exercise of determining as to whether the land of Dibe Village comes under submergence, and Board, so constituted, comprises of mischievous person and they have prepared a manipulated report at the instance of their political boss and therefore, the same cannot be enforced against the respondent NHPC. Mr. Tiwari also submits that the order of this court, dated 06.08.2013, in Writ Petition, No. WP(C) 299(AP)/2013, also cannot be enforced against NHPC, being the NHPC was not a party in the writ proceeding.

37. Whereas, Mr. D. Majumdar, the learned senior counsel for the petitioners, submits that the Dibe village falls in the submergence area. And this fact is apparent from the Report at Annexure-R/9A, and even, the 1st Loss Assessment Report, so relied upon by the NHPC, also reveals that Dibe village comes under submergence area, and that the NHPC had already made payment to some of the villagers of Dibe village. And on such count, Mr. Mazumdar submits that the stand so taken by the NHPC, for refusal to accept the Loss Assessment Report, **Annexure No.14** of the writ petition, is not only self contradictory,

but also not tenable for the simple reason that NHPC has already paid compensation to the PAF of other villages, besides the PFA of Siberite and Gengi village. Mr. Majumdar therefore, contended to allow the petition.

38. As discussed in the para No.21, that 07.12.2012, the EAC cum Nodal Officer for NHPC submitted a report after physical verification, that site report reveals that certain portion of land of Dibe village falls under submergence. Accordingly, he had recommended joint survey to ascertain actual submergence area. The background facts, leading to the order of the EAC-cum-Nodal Officer, NHPC dated 25.02.2013, and the order dated 04.04.2013, and of the Deputy Commissioner, West Siang District has also been discussed in the forgoing para. Now, let it be seen who are the persons who have made reassessment of the areas that are likely to come under submergence, and whether they have sufficient expertise in that line so as to give any authenticity to the report.

39. It appears from the order dated 25.02.2013 of the EAC-cum-Nodal Officer, Gensi **(Annexure-7 of the writ petition)** at page 46 of the petition, that it has constituted a Board comprising of following Board members, namely:-

- (i) EAC Gensi;
- (ii) AOD, Gensi,
- (iii) HDO Gensi,
- (iv) FRO, Gensi, C/O DFO, Likabali;
- (v) Shri Y. Lombi, R.K.;
- (vi) One representative of NHPC;

By the said order, the EAC cum Nodal Officer NHPC, Gensi has requested the Board members, as constituted by the D.C., to re verify/assess Dibe area regarding the submergence due to construction of Subansiri Lower Hydro-Electric , Project at Gerukamukh.

40. Again, from the order dated 04.04.2013 (**Annexure-10 of the writ petition**) reveals that the Deputy Commissioner, West Siang District had constituted following team headed by EAC-cum-Nodal Officer, Gensi to assess the details of land and other assets, to be affected under submergence area of Dibe village, due to Subansiri Lower Hydro-Electric Project:-

- (i) EAC, Gensi,
- (ii) AOD, Gensi,
- (iii) HDO Gensi,
- (iv) FRO, Gensi, C/O DFO, Likabali;
- (v) Shri Y. Lombi, R.K.;

The team was directed to prepare draft cost of compensation within a month and submit draft cost report to his office for further necessary action. The team was also directed to prepare sketch map of entire affected area by showing each and every individual plot of land along with land area details with the help of available survey staff. Thereafter, the EAC cum Nodal Officer, Gensi, West Siang District, pursuant to the order dated 04.04.2013, of the Deputy Commissioner, West Siang District, constituted another Board comprising of following members:-

- (i) Extra Assistant Commissioner, Gensi,
- (ii) Shri Sengo Dini, AOD, Gensi,
- (iii) Shri Ram Singh, HDO Likabali,
- (iv) Shri Kebin Mara, FRO, Gensi,
- (v) Shri Y. Lombi, R.K. R.K. Basar;

41. After the survey and re-assessment, the said members of the Board, had submitted

its report **(Annexure-14)** of the petition, at page 61. The recommendation, so made by the Board, has already been discussed in the foregoing para. It appears from the report that while arriving at the finding that Dibe area comes under submergence, the Board has relied upon a report submitted by Shri Y. Lombi (R.K.), who had, after verification and re-verification, submitted two reports, stating therein that the area comes under submergence. The Board had also relied upon a report submitted by Forest Range Officer, Gensi - Shri Tabin Mera, who also submitted the report that the area comes under submergence. Thereafter, the Board had relied upon another report submitted by Shri T. Mera, FRO, Gensi and Shri Jomdam Kena, UDC, EAC Office, Gensi, after re-verification over those areas. Further it appears that Shri Y. Lombi, R.K. had taken GPS reading of the area. Thereafter, the Board found that total areas that comes under submergence is 620 Ha, out of the said area **(i) Plain Land is -203 Ha, (ii) Plain Gentle is – 190 Ha, (iii) Gentle Slop is 133 Ha and (iv) Steep Slop is – 94 Ha.** The report also reveals that out of 620 Ha compensation had been to 5 Ha and now there remains 615 Ha of land. It is also reveals that sketch map of the submergence area was prepared by Y. Lombi, R.K. on 26.11.2012. Thereafter, the Board had made recommendation. Indisputably, none of representative from the NHPC had participated in the aforesaid assessment process.

42. During the course of hearing this court is made to understand that whether a particular area will come under submergence or not due to the Lower Subansiri Project, is a complex process and such determination requires lots of scientific/technical expertise. Earlier this work was entrusted to WAPCOS, a “Mini Ratna” of the Govt. of India Undertaking, who had such expertise and skilled persons. According to Mr. Tiwari, the learned senior counsel for the NHPC, the Loss Assessment Report is void ab-initio and it is ‘arbitrary’ and it cannot be enforced against the NHPC, as it was prepared behind the back of NHPC. I find substance in such submissions and the ratio, so laid down in the case of **Mamata Mohanti** (supra), referred by him, also strengthened his submission.

43. It is to be mentioned here that in the case of **Mamata Mohanti** (supra), while dealing with arbitrariness, held in paragraph No. 59 as under:-

“59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad.”

44. In the same vein, the Supreme Court in **A.P. Dairy Development Corporation vs. B. Narasimha Reddy**, reported in **(2011) 9 SCC 286**, reiterated the legal proposition as follows:

“29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone.”

45. In the instant case, having gone through the designation of the members of the Board, referred in the foregoing para, this court is unable to derive satisfaction that they (the members) have such technical expertise in that line, so as to give an opinion that the Dibe village will come under submergence. Mostly, the Board had relied upon the reports

submitted by R.K.- Shri Y. Lombi and also the report submitted by the FRO, Gensi and the UDC of EAC Office, Gensi, that the Dibe area comes under submergence. It has also not been placed on record as to how the survey was conducted what are the data they have collected and how they have analyzed the data to arrive at such a finding. The learned counsel for the petitioner, from the documents placed on record, has failed to satisfy this court that the R.K.- Shri Y. Lombi and also the FRO, Gensi and the UDC of EAC Office, did possess requisite technical expertise to give such an opinion. Thus, the primary requirement, having not been satisfied, the recommendation in respect of loss to be suffered by the Dibe villagers, so made by the Board members, to the considered opinion of this court is not at all acceptable, and this court is unable to grant imprimatur to such a process, which at best can be termed as the game of hide and seek.

46. As discussed herein above, the petitioners herein have failed to satisfy that the action of the state instrumentalities in determining that Dibe village will come under submergence, was reasonable and not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment. Since determination of the issue of Dibe village, coming under submergence, itself appears to be not done in a reasonable and proper manner without following adequate determining principle, rational and has been done in a capricious manner without involvement of the NHPC, the Los Assessment Report cannot be enforced against it.

47. The respondent NHPC is also not bound by the order of this court dated 06.08.2013, in WP(C) No. 299(AP)/2013, since NHPC was not made a party to it. Mr. Tiwari, the learned senior counsel for the petitioner has rightly pointed this out during argument, and I find sufficient force in the same and accordingly, I record concurrence to the same. In arriving at such a finding, this court gain sustenance from a decisions of Hon'ble Supreme Court in **J.S. Yadav Vs State of U.P. & Anr.**, reported in **(2011) 6 SCC 570**, wherein,

in Paragraph 31, Hon'ble Supreme Court has held as under:-

“No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail.”

48. Again in the case of **Canara Bank v. Debasis Das**, reported in **(2003) 4 SCC 557**, Hon'ble Supreme Court has held that -

“21. Over the years by a process of judicial interpretation, two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice, which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “*nemo judex in causa sua*” or “*nemo debet esse judex in propria causa sua*” as stated in Earl of Derby's case [(1605) 12 Co Rep 114 : 77 ER 1390] that is, “*no man shall be a judge in his own cause*”. Coke used the form “*aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*” (Co. Litt. 1418), that is, “*no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party*”. The form “*nemo potest esse simul actor et judex*”, that is, “*no one can be at once suitor and judge*” is also at times used. The second rule is “*audi alteram partem*”, that is, “*hear the other side*”. At times and particularly in continental countries, the form “*audietur et altera pars*” is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely “*qui aliquid statuerit, parte inaudita altera*”

acquum licet dixerit, haud acquum fecerit that is, ***"he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right"*** [see Boswel's case [(1605) 6 Co Rep 48b : 77 ER 326] (Co Rep at p. 52-a)] or in other words, as it is now expressed, ***"justice should not only be done but should manifestly be seen to be done"***. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

49. In the given facts and circumstances on the record, this court is left unimpressed by the submission of Mr. Dilip Majumdar, the learned Senior Counsel for the petitioners that the NHPC was not justified in rejecting the Loss Assessment Report. It has already been held by this court that WAPCOS report is an exhaustive expert technical report, which clearly negates the claim of the petitioner. Thereafter also another survey, joint inspection, involving local villagers, District Administration and NHPC was conducted after publishing notice in the News Papers on 04.04.2002, a public hearing at Aalo was also conducted by State Pollution Control Board on 22.08.2001. And no claim whatsoever, was received regarding coming of land of any persons under submergence, except however the Gengi and Siberite villagers. Thereafter, on 09.10.2002, a joint aerial survey, by Helicopter, was conducted by the team of Deputy Commissioner, Assistant Conservator of Forest (ACF), Aalo Division and senior representative from NHPC. Thereafter, ACF Aalo had submitted his report indicating that except some portion of the cultivable land of Gengi and Siberite villages, no harm or damage will be caused to any other human habitation and forest wealth, the factum of which finds reflection in the letter of the Deputy Commissioner, West Siang District, Aalo, dated 21.11.2002, addressed to the Commissioner (Power) Arunachal Pradesh. Only, thereafter the 1st Loss Assessment Report, 2008 was prepared. And this aspect has been already been discussed in details in para No. 14.

50. It is to be mentioned here that the WAPCOS Report and the Loss Assessment Report 2008 has not been challenged by the petitioners. Having not been disputed and challenged about its correctness, the contentions made by the petitioners and subsequent survey, leading to another Loss Assessment Report 2014, seems to be bereft of any logic. It appears to be prepared on speculation and conjecture by such persons having no technical expertise in that line. And on this ground and also on the ground of being prepared, without involving the NHPC, who is the requiring authority and who has to make payment of the sum, so awarded, and who is a necessary party to the entire process of survey and loss assessment and also in the Writ Proceeding being WP(C) No. 299(AP)/2013, the 4th Loss Assessment Report, dated 10.03.2014, which recommended for payment of compensation of a sum of Rs. 79,87,44,640/, and being arbitrary, irrational and prepared in violation of the principle of natural justice, cannot be enforced against NHPC. That being so, the Loss Assessment Report, dated 10.03.2014, thus, creates no legal right in favour of the petitioner so as to enforced the same in the court of law. In arriving at such a conclusion, I derived authority from the case laws discussed herein above.

Thus, the issue No. (iii) and (iv) have to be answered in negative, and accordingly, the stands answered.

RE-CAPITULATION OF THE FINDINGS:-

51. The finding of the court as recorded herein above, are recapitulated as under:-

- (i) The WAPCOS report is exhaustive and final in respect of the total areas of land, that are coming under submergence due to Lower Subansiri Project.
- (ii) In view of receipt of compensation, amounting to Rs. 51.29 Crores, made to the 77 project affected families of Gengi and Siberite village and payment of 17.46 Crores to 29 individuals, including four persons of Dibe village and 10

villages & Clan/Communities, as recommended in the Loss Assessment Report of February, 2008 and subsequent payment of Rs. 15.36 Crores with interest thereon, there is any scope for re-assessment of the land of Dibe village that are coming under submergence.

(iii) The petitioner No.8 and 17, being the beneficiary of the Loss Assessment Report of 2008 and having accepted the compensation on undertaking of making no such claim in future, cannot again made prayer for compensation and their subsequent claim is hit by the Doctrine of election.

(iv) The Loss Assessment Report, dated 10.03.2014, so prepared by the team/board consisting of the EAC cum Nodal Officer for NHPC, identifying 615 Ha of land of Dibe Village and recommending a sum of Rs. 79,87,44,640/, as the compensation, lacks technical expertise in that line. And on such count and also being arbitrary, irrational and prepared in violation of the principle of natural justice, is not acceptable in the eye of law. And as such, it creates no legal right in favour of the petitioners, so as to get the same enforced against NHPC.

52. In the result, I find no merit in this petition, and accordingly, the same stands dismissed, leaving the parties to bear their own costs. However, dismissal of this petition would not be a bar for the authorities to carry out a fresh exercise, by persons having expertise in the field and taking all the stakeholders together. The authority may also consider taking recourse to modern scientific method such as **Remote Sensing and Satellite Imagery Analysis**, if any such venture is made in future.

JUDGE

Comparing Assistant