

GAHC040010982021



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

Case No. : WP(C) 381/2021

1: Anjoy Ama and 3 Ors.
S/o Late Mumpso Ama, permanent resident of Village Naraliang, P.O/P.S Hayuliang,
District Anjaw, Arunachal Pradesh

2: Sorag Tayang
S/o Late Khobru Tayang
Resident of Village Paya
P.O Hayuliang/P.S Khupa
District Anjaw
Arunachal Pradesh.

3: Kejen Tayang
S/o Shri Khujem Tayang
Permanent resident of Village Chailiang/Mompani
P.O. Hayuliang/ P.S Khupa
District Anjaw
Arunachal Pradesh

4: Choyeng Tayang
S/o Shri Kuwemso Tayang
Resident of Village Paya
P.O Hayuliang
/P.S. Khupa
District Anjaw
Arunachal Pradesh

VERSUS

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

2:The Deputy Commissioner
Hawai
P.O/P.S Hawai
District Anjaw
Arunachal Pradesh
792104

3:The Union of India
Represented by the Secretary
Ministry of Road Transport and Highways
Govt. of India
Transport Bhawan
Bo.1
Parliament Street
New Delhi 11001

4:The National Highways and Infrastructure Development Corporation Limited
Represented by the General Manager (P)
NHIDCL
BO Namsai
P.O/P.S Namsai
District Namsai
Arunachal Pradesh.

5:M/s M.P Aggarwal
A
T
Road
Bokakhat Town
P.O/P.S Bokakhat
District Golaghat
Assam 78561

Advocate for the Petitioner : Rintu Saikia

Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 51/2021

1: Sorag Tayang and 3 Ors.
S/O TAYANG
S/O LT. KHOBRU TAYANG
RESIDENT OF VILLAGE PAYA
PO HAYULIANG
PS KHUPA
DIST. ANJAW
AP.

2: KEJEN TAYANG
S/O SHRI KHUJEN TAYANG
PERAMENT RESIDENT OF VILLAGE CHAILIANG/MOMPANI
PO HAYULIANG
PS KHUPA
DIST. ANJAW
AP.

3: CHOYENG TAYANG
S/O SHRI KHUWEMSO TAYANG
RESIDENT OF VILLAGE PAYA
PO HAYULIANG
PS KHUPA DIST. ANJAW
AP.

4: AJOY AMA
S/O LT. MUMPSO AMA
PERMANENT RESIDENT OF VILLAGE NARALIANG
PO/PS HAYULIANG
DIST. ANJAW
AP.
VERSUS

1: The State of AP and 4 Others
REPRESENTED BY THE SECRETARY
DEPARTMENT OF LAND MANAGEMENT
GOVT. OF AP
ITANAGAR.

2: THE DEPUTY COMMISSIONER
HAWAI
PO/PS HAWAI
DISTRICT ANJAW
AP.

3: THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. INDIA

TRANSPORT BHAWAN
BO.1
PARLIAMENT STREET
NEW DELHI.

4:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED
REPRESENTED BY THE GENERAL MANAGER (P)
NHIDCL
BO-NAMSAI
PO/PS NAMSAI
DIST. NAMSAI
AP.

5:M/S M.P AGGARWAL
A.T.ROAD
BOKAKHAT TOWN
PO/PS BOKAKHAT
DISTRICT GOLAGHAT
ASSAM.

Advocate for the Petitioner : Rintu Saikia
Advocate for the Respondent : Ninnong Ratan

**BEFORE
HONBLE MR. JUSTICE S.K.MEDHI**

ORDER

Date : 17-05-2023

Heard Shri R. Saikia, the learned counsel for the petitioners.
Also heard Shri D. Kamduk, the learned Standing Counsel for the
Land Management Department, Ms P. Pangu, the learned State
Counsel for the respondent No.2, the Deputy Commissioner, Shri M.
Kato, the learned ASGI for respondent No.3 and Shri T. Kamchi, the
learned counsel appearing on instruction of Shri T. T. Tara, the
learned counsel for the respondent No.4, the National Highways &
Infrastructure Limited.

2. Considering the subject and also the facts that pleadings by the contesting respondents have been filed coupled with the situation that a similar case has been disposed of by this Court, the present case is also taken up for disposal at the admission stage.

3. The petitioners are project affected land owners connected with the construction of two lanning of NH 113 from 0.00 Km to 24.00 Km (Arowa-Tiding-Swami Camp) for length of 24.150 Km. To facilitate the aforesaid project, the Deputy Commissioner have issued a notification dated 03.07.2019 under Section 10 of the Jhum Land Regulation, 1947. A joint survey committee was constituted which had conducted a survey and report was prepared on 14.12.2018. However, the report was not adhered to and no payments made and said NHIDCL had gone ahead with the construction activities.

4. The petitioners had earlier approached this Court by filing WP(C) 51 (AP)/2021 against the NHIDCL in particular as the works were proceeded with without releasing the compensation. It is the case of the petitioner that while aforesaid WP(C) No.51 (AP)/2021 was pending, a reverification was done and revised estimate of Rs.11,42,17,111.00 (Rupees Eleven Crore Forty Two Lakhs Seventeen Thousand One Hundred Eleven) Only was prepared.

5. Shri Saikia, the learned counsel for the petitioners submits that the revised estimate is wholly inadequate and therefore, has

challenged the same. He further submits that revised estimate was done without taking into the confidence of the stakeholders and in their absence and therefore, the said calculation cannot be relied upon.

6. It is the further case of the petitioners that there is no mention about solatium and interest which is provided under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act of 2013.

7. Shri Saikia, the learned counsel for the petitioners, however, has fairly submitted that so far as the assessment is concerned, the aggrieved parties may be given a liberty to make application for a Reference. He further submits that since this writ petition was pending, the issue of limitation may also be taken care of by this Court as apparently the time prescribed for making an application for reference has already lapsed. Shri Saikia has placed before this Court that order dated 02.05.2022 passed by a learned single Judge in the similar case which has been referred with above in the writ petition filed in 2021.

8. Shri D. Kamduk, the learned Standing Counsel for the Land Management Department and Ms P. Pangu, the learned State counsel submits that since the issue has already been decided by this Court in the earlier round of litigation, they would not object to passing a similar direction. Shri D. Kamduk, the learned Standing Counsel, Land Management Department, however, submits that the

acquisition was done under the Act of 1947 which however, does not provide for an interest and 100% solatium as prayed for. Ms P. Pangu, the learned State Counsel as well as Shri T. Kamchi endorse the submission of Shri D. Kamduk, the learned Standing Counsel, Land Management Department.

9. Shri M. Kato, the learned ASGI for respondent No.3 submits that the affected party i.e. NHIDCL is already represented and therefore, the Ministry may not have an effective role in this case.

10. After hearing the parties and on perusal of the materials on record including the Judgement dated 02.05.2022 of this Court in WP(C) 05(AP)/2021, this Court is of opinion that the issue as such has already been settled which may not need any further adjudication. This Court has already been informed that the authorities were unsuccessful in preferring appeal against the aforesaid judgement dated 02.05.2022 and therefore, the same has attained finality. The NHIDCL had also filed SLP No.22776 and 22777 of 2022 which was dismissed on 07.02.2023.

11. This Court has also notice that in the order dated 02.05.2022, an earlier judgement and order dated 25.04.2022 passed in WP(C) 280 (AP)/2020 (Mihin Laling Vs. State of Arunachal Pradesh and Others) was also taken into consideration. In fact, the relevant part of the judgement was extracted which is also done in the present case for the sake of clarity.

“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 & LAAR Act are almost the same. And as such Regulation 1947 is inconsistent with the RFCTLARR 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. This Court has considered that in these cases so far the assessment is concerned a liberty has been sought for to agitate the same before the appropriate authority by way of Reference. Liberty is accordingly, granted.

13. This Court is also of the view that since these writ petitions were pending, the time prescribed for making a Reference is required to be extended by a time period of 2(two) months from today, by which time necessary application is required to be made before the competent authority to make the Reference.

14. It is expected that once the Reference is made, the Reference Court would adjudicate the matter strictly in accordance with law.

15. As regards solatium and interest, the Act of 2013 makes it clear that since it is a beneficial piece of a legislation, the same would apply to all Acts connected to acquisition and therefore, the

Reference Court, while adjudicating the matter would also take into account the requirement of the grant of solatium which is prescribed at 100% and interest on the amount as per the Act of 2013.

The writ petition accordingly, stands disposed of.

JUDGE

Comparing Assistant