

GAHC040009672022



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

Case No. : IA(C)/165/2022

M/s Hotel Benjamin
Represented through proprietor Shri Tarh Takar, resident of Papu Nallah, PO
Naharlagun, District Papum Pare, Arunachal Pradesh.

VERSUS

The Secretary and 3 Ors. Land Management, Govt. of Arunachal Pradesh, Secretariat
Office Itanagar, PO Itanagar.

2:The Secretary Age: 0 Occupation : Public Work Division (High Way) Govt. of
Arunachal Pradesh Secretariat Office Itanagar PO Itanagar.

3:The Deputy Commissioner Age: 0 Occupation : Itanagar Capital Complex PO R.K
Mission Itanagar Arunachal Pradesh.

4:The Chief Engineer Age: 0 Occupation : Public Work Department (High Way)
Itanagar P.O. Itanagar Arunachal Pradesh

Advocate for the Petitioner : T Torum

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 21-12-2023

Heard Mr. P. Taffo, learned counsel for the applicant; Mr. N. Lowang

learned Senior Government Advocate, Arunachal Pradesh for the respondent No.3, Mr. R. Saikia for respondent No. 2 & 4. None appears for the respondent Nos. 1.

2. This interlocutory application is preferred by applicant, namely, M/s Hotel Benjamin, represented by its proprietor Shri Tarh Takar for directing the respondent No.3 to release High Way compensation amount as per negotiated value duly approved from the Govt. of A.P. vide file No. DC-CC-01-2022. Be it mentioned here that the negotiated compensation amount was fixed at Rs. 1,13,70,996/ (Rupees one crore thirteen lakhs seventy thousand nine hundred ninety six only) for self-demolition of a portion of the applicant's Hotel Building (3 meters approximately) which falls in construction corridor of 4 lane high way.

3. Mr. Taffo, learned counsel, appearing for the applicant, submits that the applicant has filed reply affidavit to the affidavit filed by the respondent No.3. Mr. Taffo further submits that the applicant has demolished the entire portion of his Hotel Building which falls in the right of way and as such the respondent authority has to release the compensation amount, but the same has not been released till date. Mr. Taffo further submits that if the respondent No.3 has any doubt about the demolition of the portion of the building, then an independent authority may be asked to verify the demolition part and thereafter having ascertained about carrying out the demolition by the applicant, the amount of compensation may be released.

4. Whereas, Mr. Lowang, the learned Senior Govt. Advocate for the respondent No. 3, submits that the applicant has not carried out the

demolition of the entire portion of the building, which falls in the right of way and as such the amount cannot be released. Therefore, Mr. Lowang has contended to dismiss this IA.

5. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the application as well as the documents placed on record and also perused the affidavit of the respondent No.3 and the affidavit filed by the applicant.

6. It appears from the affidavit of respondent No.3 that a sum of Rs. 24,66,288/ has been already paid to the applicant, to facilitate the speedy demolition of the structure, which falls within 15 meters of the right of way and that the applicant has to carry out demolition work and to submit photographs before and after self-demolition of the structure to the respondent No.3 for payment of compensation. But, the applicant has not complied with the order, as agreed upon.

7. It also appears from the affidavit filed by the applicant, especially from paragraph No. 4 and 6 that the demolition work, as agreed upon, has not been carried out. Some portion of the pillars have not been demolished on the pretext that demolition pillars will have cascading effect and the entire building will collapse.

8. In view of the admitted position, this court is unable to agree with the submission of Mr. Tafoo the learned counsel for the applicant. It appears that the applicant has not approached the court with clean hand. Without carrying out the demolition work as agreed upon, and as per order, dated 5th July 2017, vide No. DC/IC/NH/01/2016 (Pt), he has been delaying the project. Mr. Saikia, the learned Counsel appearing for

the respondent 2 and 4 has submitted that the project has been considerably delayed because of the non-demolition of the structure, which falls in the right of way, by the applicant.

9. Under the aforementioned facts and circumstances and also in view of the rival submissions of learned Advocates of both sides, it is provided that the applicant, as agreed upon and as per order dated 5th July 2017, vide No. DC/IC/NH/01/2016 (Pt), has to carry out the demolition of the part of the structure that falls in the right of way and thereafter, shall furnish photographs before and after demolition, to the respondent No.3, with in a period of one month from today. Thereafter, the respondent No.3 has to make physical verification of the same and if the work is carried out as agreed and as per order, he shall release the compensation amount to the applicant.

10. In terms of above this I.A. stands disposed of.

JUDGE

Comparing Assistant