



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

Case No. : WA 24/2022

1: THE STATE OF AP and 2 Ors.

Represented through the Chief Secretary, Govt. of Arunachal Pradesh, Civil Secretariat, AP. PIN 791111, Itanagar.

2: The Secretary

Land Management

Govt. of AP. Itanagar Civil Secretariat

AP.

3: The Deputy Commissioner

PO and PS Hayuliang

Anjaw District

A

VERSUS

1: Manakso Taflap and 47 Ors.

S/o Khamaya Taflap,

Resident of Hayuliang, PO and PS Hayuliang, Anjaw District, AP, Mob. No.

2: Mopen Taflap

S/o B. Taflap

Resident of Village Taflagam

PO and PS Hayuliang

Anjaw District

AP

3: Topenso Tega

S/o Mishe Tega

Resident of Village Abohaggam

PO and PS Anjaw

Anjaw District

AP

4:Greche Mai
S/o Sokhi Mai

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

5:Maisngsai Mai
S/o Greeche Mai

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

6:Cheelum Flakam
S/o Late J. Flakam

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

7:Sokhi Mai
S/o Late L. Mai

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

8:Sajinlu Flakam
S/o Late L. Mai

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

9:Tiflolum Mai
S/o Shri Chekansia

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

10:Banimplum Taflap
S/o Late T. Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

11:Hirorai Tega
W/o Hanyalum Tega

Resident of Village Tagamm
PO and PS Chaglagam
Anjaw District
AP

12:Eshanlu Tega
W/o Hanyalum Tega

Resident of village Taflagam
PO and Tagamm
Anjaw District
AP

13:Bilusai Tega
D/o Late K. Tega

Resident of Village Tagamm
PO and PS Chaglagam
Anjaw District
AP

14:Disamlu Tayang
D/o Topinso Tega

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

15:Nikhilum Tega
S/o Yatong Tega

Resident of Village Tagamma
PO and PS Chaglagam
Anjaw District
AP

16:Tinkha Tega
S/o B. Tega

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

17:Niram Tega
S/o B. Tega

Resident of Village Tegamma
PO and PS Chaglagam
Anjaw District
AP

18:Jinrusu Tega
S/o Tinka Tega

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

19:Palisal Tega
W/o Badyo Tega

Resident of Village Tagamma
PO and PS Chaglagam
Anjaw District
AP

20:Johanlum Tega
S/o Late K. Tega

Resident of Village Tegamma
PO and PS Chaglagam
Anjaw District
AP

21:Babrum Tega
S/o Dominso Tega

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

22:Dimonso Tega
S/o Late Aphanlum Tega

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

23:Jovinlu Tega
D/o Late M. Tega
Resident of Village Abohagam
PO and PS Anjaw
Anjaw District
AP

24:Bapanag Mai
S/o Late T. Mai

Resident of Village Taflagam
PO and PS Anjaw
Anjaw District
AP

25:Tikolum Marow
S/o Bokuo Marow

Resident of Village Kromna
PO and PS Anjaw
Anjaw District
AP

26:Melan Bellai
S/o Titusa Bellai

Resident of Village Taflagam
PO and PS Anjaw
Anjaw District
AP

27:Sanju Tega
S/o Late G. Tega

Resident of Village Nilang
PO and PS Anjaw
Anjaw District
AP

28:Damchasai Tega
W/o Yomte Tega

Resident of Village Tegamma
PO and PS Anjaw
Anjaw District
AP

29:Bruchalum Tega
S/o Late M. Tega

Resident of Village Tegamma
PO and PS Chaglagam
Anjaw District
AP

30:Laliang Tega
Resident of Village Tegamma

PO and PS Chaglagam
Anjaw District
AP

31:Basnrai Tega
W/o Johanlum Tega

Resident of Village Tegamma
PO and PS Chaglagam
Anjaw District

AP

32:Maliko Taflapp
D/o Khayakma Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

33:Changlasai Taflap
W/o Krekama Miss Dayamsai Tega

Resident of Village Tegamma
PO and PS Chaglagam
Anjaw District
AP

34:Tabaso Bellai
S/o Late M. Bellai

Resident of Village Abohagam
PO and PS Anjaw
Anjaw District
AP

35:Tikorai Mayi
W/o Chekamsia Mayi

Resident of Village Taflagam
PO and PS Anjaw
Anjaw District
AP

36:Chekamsia Mayi
S/o S. Mayi

Resident of Village Taflagam
PO and PS Anjaw
Anjaw District
AP

37:Balesai Tabronyu
D/o G. Tabronyu

Resident of Village Abhogam
PO and PS Anjaw
Anjaw District
AP

38:Maklan Mayi
S/o B. Mayi

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

39:Chokhi Taflap
S/o Late T. Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

40:Balesai Tabronyu
D/o G. Tabronyu

Resident of Village Abohagam
PO and PS Chaglagam
Anjaw District
AP

41:Hageso Taflap
S/o Khayakma Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

42:Ramolu Korah
W/o Kumba Korah

Resident of Village Kromna
PO and PS Chaglagam
Anjaw District
AP

43:Shakholum Taflap
S/o Late B. Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

44:Klekma Taflap
S/o Late T. Taflap

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

45:Uju Mai
W/o Chokhi Taflpa

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

46:Ganga Tega
S/o Jingling Tega

Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

47:Tepasai Taflap
S/o Khayama Taflap Mai
Resident of Village Taflagam
PO and PS Chaglagam
Anjaw District
AP

48:The Commanding Officer
116 RCC (GREF 116 Road Construction Coy (GREF)
PIN 930116. C/o 99 AP

Advocate for the Petitioner : Subu Tapin

Advocate for the Respondent : Marto Kato

::BEFORE ::

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

For the appellants : Mr. S. Tapin, Senior Government Advocate.
: Mr. D. Kamduk, Standing Counsel,
: Land Management Department.

For the respondent
nos. 1 to 47 : Mr. D. Das, Senior Advocate,
: Mr. R.B. Phukan, Mr. S. Mow, Advocates.

For proforma
respondent no. 48 : Mr. Marto Kato, D.S.G.I.
Date of hearing : 30.11.2022.
Date of judgment : 04.01.2023.

JUDGMENT & ORDER

(C.A.V.)

(Mrs. Mitali Thakuria, J)

Heard Mr. S. Tapin, learned Senior Govt. Advocate appearing for the appellants, along with Mr. D. Kamduk, learned standing counsel for Land Management Department. Also heard Mr. D. Das, learned senior counsel, assisted by Mr. R.B. Phukan and Mr. S. Mow, learned counsel for the respondent nos. 1 to 47 and Mr. M. Kato, learned D.S.G.I., appearing for the proforma respondent no. 48.

2. By this intra-court appeal, the State has assailed the impugned judgment and order dated 13.06.2022, passed by the learned Single Judge in W.P.(C) No. 175(AP)/2022 – *Manakso Taflap & 47 others v. The State of Arunachal Pradesh & Ors.* The connected interlocutory application has been filed

with a prayer to stay the operation of the said judgment and order.

Case of the petitioners in the writ petition:

3. The land of the respondent nos. 1 to 47 was acquired for construction of defence road from Chaglagam to Rocham (0.00 km to 6.5 km) in Anjaw District. Pursuant to order dated 09.10.2017, the Board formed by the Addl. Deputy Commissioner, Hayuliang, Anjaw District had carried out Joint survey and property assessment from 0.00 km to 6.5 km of the then PMGSY road between Chaglagam (also spelt as Chaglongam) to Taflagam was carried out on 30.12.2017 and 31.12.2017 in the presence of the owners of land and property. On account of the five items as mentioned in the Joint survey and property assessment report dated 25.09.2019, being (1) Civil construction, buildings, structure, etc.; (2) Horticulture and agriculture related claims; (3) Land management related claims; (4) Land (muck disposal); and (5) Horticulture (muck disposal), assessment of compensation was made at Rs.27,81,61,725/- (Rupees Twenty seven crore eighty one lakh sixty one thousand seven hundred and twenty five only). In the meanwhile, vide letter dated 29.10.2020, the 48 BRTF had informed the Deputy Commissioner, Anjaw District about deposit of said compensation money in their bank account.

4. As there was delay in payment of compensation, the respondent nos. 1 to 47 as writ petitioners, filed W.P.(C) 21(AP)/2021, and this Court by order dated 28.01.2021, directed the Deputy Commissioner, Anjaw, Hayuliang (respondent no. 3) to dispose of the representation of the petitioners within a period of 3 (three) months from the date of receipt of the order, with liberty to the respondent nos. 1 to 47 to approach the Court again if they are dissatisfied. Alleging non compliance of the said order, the respondent nos. 1 to 47 filed a contempt petition, which was registered as Cont. Case (C) 17/2021.

5. Thereafter, the proposal for the award was sent to the Land Management Department, who raised objection towards rates assessed for certain items vide order dated 24.06.2021. Accordingly, the Deputy Commissioner, Anjaw informed the respondent nos. 1 to 47 that the compensation could not be released because of objection to rates of certain items of compensation and reference was made to OM No. LM-134/2011 (Pt-III) dated 02.05.2021. Thus, the said order dated 24.06.2021 was challenged before this Court by filing W.P.(C) No. 240(AP)/2021. The said writ petition was allowed by order dated 04.04.2022. The operative part of the said order is quoted below:-

"4. The entire stand of the Deputy Commissioner, Anjaw District is unacceptable inasmuch as the land of the petitioners had already been taken possession by the acquiring department. The acquiring department had deposited whatever amount is required to be deposited. There further remain any issues with the Deputy Commissioner not to disburse the amount to the actual land owners by merely raising issues, one sending it down to the Additional Deputy Commissioner for doing needful and then again blaming the Government for not making approval. If there is any requirement of law to act in such manner the same should be done at the earliest and the respondents by not doing their needful cannot make it to be a basis not to make the payments. The entire act of the Deputy Commissioner and the others appears to be arbitrary and unacceptable in law. The order dated 24.06.2021 is accordingly set aside.

5. The matter is remanded back to the Deputy Commissioner to do the needful for making the disbursement at the earliest as per the entitlement of the petitioners without getting into non-existent technicalities and merely making issue out of it. If actually under the law any approval is required to the Government, the same be done forthwith or else the respondents to return back the land to the land owners.

6. If the rate of any of the item in the acquisition is required to be determined, let the Additional Deputy Commissioner, Anjaw do it and complete the same within 15 (fifteen) days from the receipt of the certified copy and thereafter the matter be placed before the Government for its approval. If the land owners are ascertained and the amount of compensation to be paid is determined, there cannot remain any further issue for the Government not to give the approval and the Government cannot hold back the grant of approval without any valid and acceptable reason.

7. The requirement to bring the matter to its logical end be done within a period of 1 (one) month from the date of receipt of certified copy of this order. Any further delay shall invite interest be paid by the authorities in the Government of Arunachal Pradesh to the land owners.

8. In the meantime, the construction of the work should not be obstructed either by the petitioners or by the authorities in the Government of Arunachal Pradesh.

9. Writ petition stands disposed of.

6. After the said order dated 04.04.2022 passed by the learned Single Judge in W.P.(C) No. 240(AP)/2021, the Deputy Commissioner, Anjaw vide order dated 01.05.2022, based on OM dated 02.05.2021, recalculated the award and the compensation was scaled down from Rs.27,81,59,193/- to Rs.14,30,95,569/-. Thus, the respondent nos. 1 to 47 once again had to approach this Court.

Stand of the respondent no. 3 in the writ proceeding:

7. The respondent no. 3, by filing affidavit-in-opposition had taken a stand that the land was acquired under the Balipara/ Tirap/Sadiya Frontier Track Jhum Land Regulation, 1947 ("1947 Regulation" for short) and not under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act" for short). It was further stated that by exercising power under Section 10 of the 1947 Regulation, the competent authority had notified the rates of several items. Therefore, the Director, Land Management, Govt. of Arunachal Pradesh, vide letter dated 19.04.2022, had raised objection on rates of some items of the estimate, viz., (1) rate of cardamom fruit bearing plant; (2) rate of cardamom non-fruit bearing plant; and (3) CC drain, as they were in excess of the notified rates. It was also stated that pursuant to the order dated 04.04.2022 passed by this Court in W.P. (C) No. 240(AP)/2021, the Deputy Commissioner, Anjaw had constituted a board under the Chairmanship of ADC, Hayuliang, and the said Board had determined

the rates of items which were in variation from the Government notification dated 26.11.2011. The Board proceeding was submitted on 20.04.2022, which was forwarded to the Director, Land Management, Govt. of Arunachal Pradesh, vide letter dated 21.04.2022. However, the authorities had verbally rejected the proposal and directed the Deputy Commissioner, Anjaw to determine reasonableness of compensation in terms of OM dated 02.05.2021 and as per their format. It was further stated that vide Circular dated 04.05.2017, a direction had been issued that all compensation disbursement was to be done only after obtaining due approval from the Government. Accordingly, it was stated that as approval of the Government had not been received, the compensation could not be disbursed.

Decision of the learned Single Judge:

8. The learned Single Judge, vide order dated 13.06.2022, allowed the writ petition, i.e. W.P.(C) No. 175/2022, *inter alia*, on the ground that there was no scope for making further verification. One of the consideration was that in a similar writ petition, being W.P.(C) No. 240(AP)/2021, the learned Single Judge had passed an order dated 04.04.2022, holding that there was no scope for any further re-verification or re-assessment. The operative paragraphs 9 to 11 of the order dated 13.06.2022, passed in W.P.(C) No. 175/2022, which is impugned in this appeal are quoted below:-

"9. After hearing the parties and on perusal of the materials placed before this Court, this Court is of the opinion that the issue being adjudicated and set to rest vide the order dated 04.04.2022, in the earlier writ petition, being WP(C)/240(AP)/2021, after hearing all the parties and the said order not being the subject matter of any further appeal, there is hardly any scope to take any other view as the same would amount to sitting over the judgment of this Court, which is not legally permissible. Apart from the same, in the order dated 04.04.2022, which was passed after hearing parties, elaborate discussions were done and the determination of rate has to be understood only for that part, wherein the same was not fixed. Further, it has been categorically observed that if the land owners are ascertained and the amount of compensation to be paid is determined, there

cannot remain any further issue for the Government not to give the approval and the Government cannot hold back the grant of approval without any valid and acceptable reason. This Court also finds force in the argument made on behalf of the petitioner that the same authority in order dated 09.05.2022, by referring to the earlier order dated 04.04.2022, passed in WP(C)/240(AP)/2021 has clearly observed that there is no scope for any reverification or reassessment except for verification to include the left out properties as the same would amount to serious violation of the order of this Court.

10. *This Court is of the opinion that if that be the understanding of the concerned authorities, there was absolutely no scope to come to a decision for making a further assessment as sought to be done by the impugned communication, dated 01.05.2022. The exercise for doing the assessment having been completed and the same being accepted and the amount assessed being paid to the authority, the communication, dated 01.05.2022, could not have been issued as the same is also in violation of the directions of this Court in its order dated 04.04.2022 and accordingly, the said communication, dated 01.05.2022, is set aside. Consequently, the respondent authorities, more particularly, the respondent Nos. 1, 2 & 3, are directed to take immediate steps to pay the compensation amount to the petitioners after the appropriate identification in terms with the direction given by this Court in its earlier order dated 04.04.2022, passed in WP(C)/ 240(AP) /2021. Such disbursement be completed as expeditiously as possible and in any case, within a period of 45 (forty five) days from the date of this order.*

11. *The writ petition, accordingly, stands allowed. No order as to costs."*

Submissions of the learned Senior Government Advocate:

9. The learned Senior Government Advocate had made strenuous effort to bring home the point that the calculation of compensation, which was beyond the rates notified would have caused loss to the public exchequer, even if it is the money placed before the Deputy Commissioner, Anjaw by the Central Government. It was submitted that the notification dated 26.11.2011, issued by the Government of Arunachal Pradesh, Land Management Department, in respect of the Highway projects, having been published in the State Gazette (Extraordinary) published on 09.01.2012, was binding on all authorities. It was submitted that the said notification dated 26.11.2021 is in full force and effect and therefore, the award for Rs.27,81,59,193/- was found excessive, which

upon recalculation came down to Rs.14,30,95,569/-. Thus, it was submitted that in ignorance of notification dated 26.11.2011, a loss of more than Rs.13.50 Crore would have been caused to the public exchequer. Hence, it was submitted that this was a fit case to interfere with the impugned judgment.

Submissions made by the learned senior counsel for the respondent nos. 1 to 47:

10. The learned senior counsel for the respondent nos. 1 to 47 had made his elaborate submissions in support of the impugned judgment and had reiterated the stand taken in the writ petition.

REASONS AND DECISION:

11. It is noted that this Court by judgment and order dated 04.04.2022 in W.P.(C) No. 240/2022 had taken notice of the notification dated 26.11.2011, whereby the Government of Arunachal Pradesh had fixed the rates of compensation for several items enumerated therein. However, as the compensation was already determined and the Central Government had deposited the compensation of Rs.27,81,59,193/- as assessed, the learned Single Judge had set aside the order dated 24.06.2021 issued by the Deputy Commissioner, Anjaw District, Hawaii as unacceptable and directed the Deputy Commissioner either to pay compensation or to return the land to the land-owners. However, it was observed that if the rate of any of the item in the acquisition is required to be determined, the Additional Deputy Commissioner, Anjaw was permitted to do it within 15 days and place the matter before the Government for its approval and it was provided that the Government cannot hold back grant of approval without any valid reasons. Direction was also issued to bring the matter to its logical conclusion within one month.

12. Admittedly, till the passing of the judgment and order dated

13.06.2022, in W.P.(C) No. 175/2022, neither the State of Arunachal Pradesh nor the Union of India had preferred any appeal against the judgment and order dated 04.04.2022 in W.P.(C) No. 240 (AP)/2022. However, the authorities had conducted a fresh assessment and issued the communication dated 01.05.2022, which has been impugned in W.P.(C) 175(AP)/2022. Therefore, as no appeal had been preferred against the said order dated 04.04.2022, passed in W.P.(C) 240(AP)/2022, the learned Single Judge had rightly passed the judgment and order dated 13.06.2022, passed in W.P.(C) 175(AP)/2022, which is impugned in the present appeal. Moreover, the learned Single Judge had also directed that the disbursement of compensation be made within 45 (forty five) days.

13. Till the date of hearing of this interlocutory application, the position remains the same, i.e. no appeal was filed by either the State of Arunachal Pradesh or by the Union of India against the judgment and order dated 04.04.2022 passed by the learned Single Judge in W.P.(C) No. 240 (AP)/2022, wherein the learned Single Judge had taken note of the notification dated 26.11.2011, by which rates of certain items were fixed for the purpose of determining land acquisition compensation. Therefore, in the considered opinion of the Court this appeal deserves to be dismissed, on the said ground alone.

14. Accordingly, this Court is inclined to pass the following:

ORDER

15. In light of the discussions above, this appeal stands dismissed. However, under the circumstances, there shall be no order as to cost.

16. Before parting with the records, for ends of justice, we are inclined to provide further 30 (thirty) days time from today i.e. till 01.02.2023 to

the appellants, jointly and severally, to disburse the land acquisition compensation to the respondents.

JUDGE

JUDGE.

Comparing Assistant