



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

Case No. : WP(C) 446/2022

1: Tajom Jempen and 29 Ors.
Son of Shri Tateng Jempen,
Resident of Village Namasibo, PO/PS Monigong, Shi Yomi District, (AP)
9402212388

2: Tateng Jempen
Son of Lt. Tapir Jempen
Resident of Namasibo
PO/PS Monigong
Shi Yomi District
(AP)
9436640870

3: Takar Jempen
Son of Shri Tateng Jempen
Namasibo
PO/PS Monigong
Shi Yomi District
(AP)
9362294722

4: Tachi Jempen
Son of Lt. Tanyang Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
9402952719

5: Tatet Jempen
Son of Shri Techhi Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
9402452719

6: Tasing Jempen
Son of Shri Tatam Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
8415821790

7: Tagu Jempen
Son of Lt. Taba Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
9785928652

8: Tabyak Jempen
Son of Shri Tatam Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
6033918102

9: Tapu Jempen
Son of Shri Tago Jempen
Resident of Monigong
PO/PS Monigong
Shi Yomi District
(AP)
9485296477

10: Tachuk Jempen
Son of Lt. Tanyang Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
9402955880

11: Tatam Jempen
Son of Lt. Tapor Jempen
Village Chengo
PO/PS Monigong
9402934509

12: Takeng Jempen
Son of Lt. Tachuk Jempen
Village Chengo

PO/PS Monigong
Shi Yomi District
(AP) 9402478113

13: Tanam Jempen
Son of Shri Tachi Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District (AP)
9402602526

14: Tanyo Jempen
Son of Lt. Tapor Jempen
Resident of Village Korle
PO/PS Monigong
Shi Yomi District
(AP) 9436845636

15: Tanyong Jempen
Son of Lt. Tapor Jempen
Resident of Village Korle
PO/PS Monigong
Shi Yomi District
(AP) 9436845656

16: Tayor Jempen
Son of Shri Tachi Jempen
Resident of Monigong
PO/PS Monigong
Shi Yomi District
(AP)

17: Talok Jempen
Son of Tatam Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)

18: Raju Jempen
Son of Tateng Jempen
Resident of Village Namasibo
PO/PS Monigong
Shi Yomi District
(AP) 9436405889

19: Tachung Jempen
Son of Lt. Tajen Jempen
Resident of Village Korle
PO/PS Monigong

Shi Yomi District
(AP)

20: Tabyang Jempen
Son of Lt. Tachuk Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP) 9402955880

21: Tabok Jempen
Son of Shri Tachi Jempen
Resident of Village Namasibo
PO/PS Monigong
Shi Yomi District
(AP) 8731981301

22: Taje Jempen
Son of Shri Tago Jempen
Resident of Monigong
Shi Yomi District
(AP) 8414988833

23: Tago Jempen
Son of Lt. Tanyang Jempen
Resident of Monigong
PO/PS Monigong
Shi Yomi District
(AP) 9436096996

24: Tabum Jempen
Son of Shri Tachi Jempen
Resident of Chengo
PO/PS Monigong
Shi Yomi District (AP)
9402952719

25: Tami Jempen
Son of Shri Tanyong Jempen
Resident of Monigong
PO/PS Monigong
Shi Yomi District
(AP) 9402823702

26: Bojum Jempen
Son of Lt. Tajen Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP) 9774676431

27: Arun Jempen
Son of Shri Tayor Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP)
9436217227

28: Boken Jempen
Son of Shri Tayor Jempen
Resident of Village Chengo
PO/PS Monigong
Shi Yomi District
(AP) 9774794317

29: Linga Jempen
S/o Tasing Jampen
R/o Village Chengo
PO and PS Monigong
District Shi Yomi District (AP)
6633918102

30: Tado Jempen
S/o Lt. Tajen Jempen
Resident of Village Chengo Monigong
District Shi Yomi District (AP) 603397273

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Secretary Land Management, Govt. of Arunachal Pradesh,
Itanagar.

2:The Deputy Commissioner
Shi Yomi District
Tato
Arunachal Pradesh.

3:The Union of India
Represented by Secretary
Ministry of Road Transport and Highways
Govt. of India
Transport Bhavan 1
Parliament Street
New Delhi 110001

4:The General Manager (P)
National Highways Infrastructure Development Corporation Ltd. Ministry of
Transport and Highways

Govt. of India. TD Building
Opposite BSNL (SDO) Office
PO/PS Hapoli
Lower Subansiri District
Ziro Arunachal Pradesh

Advocate for the Petitioner : Pritam Taffo

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 13-06-2023

Heard Mr. P. Taffo, learned counsel for the petitioners. Also heard Mr. D. Kamduk, learned standing counsel for the Land Management Department, being the respondent No.1, Mr. I. Riram, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing for the respondent No.2 and Mr. M. Kato, learned DSGI appearing for the respondent Nos.3 & 4.

2. As many as 30 petitioners of Jempen Sub-Clan of the Saji Clan, have approached this Court by filing the present petition, under Article 226 of the Constitution of India, for issuing direction to the respondent authorities, more particularly, the Secretary, Land Management, Govt. of Arunachal Pradesh and the Secretary, Ministry of Road Transport and Highway, Govt. of India, to pay the petitioners the land compensation, amounting Rs.12,43,32,225/- (Rupees twelve crore forty three lakh thirty two thousands two hundred and twenty five) only, along with solatium and interest thereon.

3. The background facts, leading to filing of the present petition is adumbrated here-in-below:-

“By a Notification, No.LM/ACO/199/2020, dated 09.02.2021, the land belonging to the Saji Clan was acquired by the respondent authorities under Section 10 of the

Balipara/Tirap/ Sadiya Frontier Tract Jhum Land Regulation Act, 1947 (here-in-after referred as 'Regulation of 1947'), for construction of road from Tadadege to Henkar of Shi-Yomi District, Arunachal Pradesh. Thereafter, the compensation, amounting to Rs.24,86,64,450/- (Rupees twenty four crore eighty six lakh sixty four thousands four hundred and fifty) only, were assessed, excluding the exigency charge, to acquire the aforesaid land and the same was deposited in the joint account of the Deputy Commissioner and the DLRSO, Shi Yomi Tato.

It is the pleaded case of the petitioners that the land so acquired, belongs to Saji Clan and it is divided by to Sub-Clans i.e. Jendu and Jempen and thereafter, aforesaid Sub-Clans arrived at an agreement to share the compensation @50:50 basis. The petitioners herein are belonging to Jempen Clan and there share of compensation is quantified at Rs.12,43,32,225/- only, and the amount has not paid to them.

Further case of the petitioners are that upon the aforesaid amount of compensation, they are also entitled to 100% solatium, amounting to Rs.24,86,64,450/-, including the interest thereon."

4. The respondent No.2 has submitted an affidavit-in-opposition stating that the compensation has already been disbursed to the Jempen Sub-Clan, on the basis of a Power of Attorney, submitted to the Deputy Commissioner, Shi Yomi District by one Sri Tagam Jempen and Sri Tashi Pujen, on behalf of their respective Sub-Clan and at present no such compensation is pending, to be paid to the petitioners and others. But, unfortunately the affidavit of the respondent No.2 is silent about the claim of solatium and interest, which are being prayed for in this petition.

5. The other respondents have not submitted their affidavit-in-opposition.

6. Mr. P. Taffo, learned counsel for the petitioners submits that though an issue of releasing the compensation amount of Rs.12,43,32,225/- has been raised, yet, the primary prayer of the petitioners in this petition is to issue direction to the respondent authorities to pay 100% solatium, with interest thereon. Mr. Taffo further submits that the issue of payment of solatium has been settled by this Court in the WP(C) No.280/2020 (Sri Mihin Laling vs. State of Arunachal Pradesh and others) and to other connected Writ Petitions, wherein direction has been issued at paragraph 55 and 56, to pay solatium and interest to the petitioners of the said case and the said judgment is upheld by a Division Bench of this Court in Writ Appeal No.15/2022, and as the matter has already been settled, the case of the present petitioners are squarely covered by the aforesaid proposition of law and therefore, Mr. Taffo contended to allow the petition.

7. On the other hand, Mr. D. Kamduk, learned standing counsel for the Land Management Department, appearing for the respondent No.1 submits that though the proposition of law, relating to entitlement of solatium by the land owners have been settled by this Court and upheld by a Division Bench of this Court, one Special Leave Petition (SLP) is pending before the Hon'ble Supreme Court, where the judgment of the Division Bench is being stayed. However, Mr. Kamduk submits that in one petition(s) to Special Leave to Appeal (C) No.7729/2022 (**Geeta Meho vs. State of Arunachal Pradesh and others**), Hon'ble Supreme Court vide order dated 25.04.2023 has granted solatium to the petitioners of said case. Mr. Kamduk further submits that the compensation amount has already been paid to the Jempen Sub-Clan, on being production of Power of Attorney by two representatives of the said Sub-Clan and the said two persons have not been impleaded here-in-this case a parties and as such, this petition is not maintainable due to non-joinder of necessary parties.

8. Mr. I. Riram, learned counsel for the respondent No.2 and Mr. M. Kato, learned counsel

for the respondent Nos.3 & 4 have adopted the argument advanced by Mr. Kamduk.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record and also perused the judgments of this Court passed in WP(C) No.280/2020 and in Writ Appeal No.15/2022.

10. It is not in dispute that the land of the Saji Clan was acquired by the respondent authorities for construction of a road from Tadadege to Henkar of Shi-Yomi District, vide Notification No.LM/ACO/199/2020, dated 09.02.2021. It is also not in dispute that for acquiring the aforesaid land, compensation, amounting to Rs.24,86,64,450/-, has been assessed. It is also not in dispute that the Saji Clan is divided into two Sub-Clans i.e. Jendu and Jempen and the compensation amount has been apportioned @50:50 basis and the petitioners belong to Jempen Sub-Clan and their share of compensation is Rs.12,43,32,225/- (Rupees twelve crore forty three lakh thirty two thousands two hundred and twenty five) only.

11. Though an issue of non-payment of the aforesaid amount to the Jempen Sub-Clan was pleaded in the petition, yet the primary prayer of the petitioners in this petition is for granting solatium upon the aforesaid amount of compensation with interest. However, the affidavit-in-opposition of the respondent No.2 reveals that the said amount of compensation of Jempen Sub-Clan has already paid to one Sri Tagam Jempen and Sri Tashi Pujen, on production of Power of Attorney given by the members of the Jempen Sub-Clan and as such no compensation is pending with the respondent authorities, and no affidavit-in-reply is filed to counter the said stand.

12. Since the issue of payment of compensation is not the primary issue here in this petition, as such, the issue of non-payment requires no adjudication by this Court. The primary prayer of the petitioners are for granting of solatium upon the compensation

amounting to Rs.12,43,32,225/-. A perusal of the judgment and order in the WP(C) No.280/2020 (Sri Mihin Laling vs. State of Arunachal Pradesh and others), specially paragraphs 55 & 56, reveals that while dealing with the issue of entitlement of compensation, this Court has held that the petitioners in the said case are entitled to solatium and interest upon the compensation, assessed in the aforesaid petition.

13. For a ready reference, paragraphs 55 and 56 of the judgment in WP(C) No.280/2020, are quoted here-in-below:

“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.”.

14. The said judgment is upheld by a Division Bench of this Court in WA No.15/2022 and other connected Writ Appeals i.e. WA No.16/2022, WA No.17/2022, WA No.22/2022, WA No.23/2022, WA No.20/2022 and WA No.21/2022. Since the aforesaid proposition of law, in respect of solatium and interest is well settled in the WP(C) No.280/2020, this Court is of the considered view that the case of the present petitioners' is also squarely covered by the aforesaid proposition of law. It is to be mentioned here that the impugned judgment and order of the Division Bench, passed in Writ Appeal No.15/2022 and other connected Writ Appeals, mentioned here-in-above was challenged before the Hon'ble Supreme Court by the National Highways and Infrastructure Development Corporation Limited (NHIDCL) and vide order dated 07.02.2023, the Hon'ble Supreme Court has dismissed the same, in the petition(s) for Special Leave to Appeal (C) No(s).22776—22777/2022.

15. And therefore, this Court is inclined to dispose of this petition by directing the respondent Nos.1 and 2, to award 100% solatium and also interest upon the compensation amount of Rs.12,43,32,225/- (Rupees twelve crore forty three lakh thirty two thousands two hundred and twenty five) only, within a period of three months from today.

16. In terms of above, this writ petition stands disposed of.

17. The parties to bear their own costs.

JUDGE

Comparing Assistant