

GAHC030002202021



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

Case No. : WP(C)/62/2021

Gulsogi Chakma and 4 Ors.
Nagdorasora, Lawngtlai

2: Akin Chakma

3: Manik Chand Chakma

4: Baje Sawr Chakma

5: Bigan Chakm

VERSUS

Union of India and 4 Ors.
Shastri Bhavan, New Delhi

2: The State of Mizoram through its Secretary
Ministry of Rural Department

3: Deputy Commissioner

4: Block Development Officer
Chawngt

Advocate for the Petitioner : Mr. Supreme Raj Chakma

Advocate for the Respondent : Ms Zairemsangpuui, CGC for R1

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER**

Date : 09-03-2023

Heard Mr. Supreme Raj Chakma, learned counsel for the petitioners along with Ms. Zairemsangpuii, learned CGC appearing for respondent No. 1 and Mrs. H. Lalmalsawmi, learned Government Advocate appearing for respondent Nos. 2 to 4.

2. This is a petition filed under Article 226 of the Constitution of India for issuance of the appropriate writ against the respondents.

3. The petitioners' case is that the petitioners are resident of Nagdorasora village, Chakma Autonomous District Council, Mizoram and the petitioners are owners of the acquired land in question by the State respondents. The State respondents had constructed a road linking Nagdorasora village to Udalthana under the Border Area Development Program (hereinafter referred as BADP) in the year 2020, without acquiring the land of the petitioners or taking permission of the petitioners. Feeling aggrieved with the building of the road over their land, the petitioners had submitted an application on 12.01.2021 before the Deputy Commissioner, Lawngtlai, Mizoram under Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as 2013 Act). However, since no steps nor any response was received, the instant petitioners has approached this Court for a direction that the respondent Nos. 2 to 4 to pay compensation in terms of the 2013 Act.

4 . Mr. Supreme Raj Chakma, learned counsel for the petitioners submits that the petitioners are owners of the land covered by a Temporary Pass No. 62/2014 dated 17.07.2014, Temporary Pass No. 134/2003 dated 17.07.2003, Temporary Pass No. 208/2014 dated 09.10.2014 and Temporary Pass No. 22/2002 dated 23.01.2002 and

they have been regularly paying their revenue tax. The construction of the road has affected their means of earning livelihood since on the construction of the road, a substantial vegetation has been destroyed which is the sole means of livelihood for the petitioners who earn their livelihood by agriculture in their said lands. The learned counsel further submits that as per the guidelines of BADP issued by the Government of India, it is clear that, in respect of North Eastern States, land of the individual can be acquired only through purchase or gift deeds. That in order to acquire the land of the petitioners for any Central Estate Project, the State Government should either purchase the land or create a gift deed in their favour, which the State Government in the instant case has failed to do so.

5. Ms. Zairemsangpuui, learned CGC appearing for the respondent No. 1 submits that as per the Border Area Development Program, the Second-in-Command (BADP), Ministry of Home Affairs, Department of Border Management in their letter dated 10.06.2022, addressed to the CGC and as per letter dated 29.12.2021 issued by the same authority to the Secretary, Rural Development Department, Government of Mizoram, mentions that for projects proposed under the BADP, 100% land should be available with the State/UT Government and no part of funds allocated under the BADP is to be used for land acquisition under any circumstances. The learned CGC therefore submits that the Union of India is not to give any compensation or acquire the lands of the said petitioners under the BADP project.

6. Mrs. H. Lalmalsawmi, learned Government Advocate appearing for respondent Nos. 2 to 4 submits that there was already existing narrow lane road wherein the impugned road was built. Further, the Village Council of Nagdorasora and Udalthana-II had in fact approached the respondent No. 4 for extension of the road which was already in existence, and this road would shorten the already existing route by approximately 50 Kms. She further submits that this road had been constructed on the

basis of the verbal assurance given by the Village Councils that no compensation would be claimed by any villager.

7. On hearing both the parties, it is seen that this Court in its Order dated 12.10.2022 had stated that due to the stand taken by the State respondents "the Deputy Commissioner, Lawngtlai or his representative and the Block Development Officer, Chawngte, Lawngtlai District is to conduct a spot verification along with the petitioners or their representatives and the concerned Village Councils. The verification team should specifically state as to whether the road constructed over the lands of the petitioners was made over an already existing narrow lane or road or whether it was a fresh construction".

8. In response to the Order dated 12.10.2022 of this Court, a verification report was submitted on 1st February, 2023 by Dr. Manesia Khaimeichho, Block Development Officer, Chawngte RD Block, Chawngte which gives the details of the land belonging to the 5 (five) petitioners as follows:-

"PETITIONERS' DETAILS"

1. Akin Chakma s/o Santi Kmar Chakma of Nakdarasora bearing Epic No. IMS0162768 and Aadhaar Card No. 640255855472, Date of Birth 01/03/2000.

- Temporary Pass No. 134/2003 of 17/7/2003*
- Nature of Pass: Gardensite.*
- Area of Pass: 20,000 Sqr. Mtrs.*
- Location of the Pass: Nakdarasora.*
- The road was constructed at the middle point of the land/pass. Amount claimed as per valuation of Government rates.*
- Tax paid up to 2020 as indicated in Receipt No. 767 of Book No. 16 of Dt. 9/8/2020.*

2. Gulsogi Chakma w/o Alim Bihari Chakma of Nakdarasora bearing Epic No. JCF0037879 and Aadhaar Card No. 783427530680, Date of Birth 06/03/1983.

- Temporary Pass No. 62/2014 of 17/7/2014*
- Nature of Pass: Gardensite.*
- Area of Pass: 20,000 Sqr. Mtrs.*
- Location of the Pass: Nakdarasora.*
- The road was constructed at the middle point of the land/pass.*

- Amount claimed as per valuation of Government rates.
 - Tax paid up to 2020 as indicated in Receipt No. 789 of Book No. 16 of Dt. 9/5/2020.
3. *Manik Chand Chakma s/o Noneya Mohan Chakma of Nakdarasora bearing Epic No. JCF0259754 and Aadhaar Card No.650648071474, Date of Birth 15/07/1981.*
- Temporary Pass No.208/2014 of 09/10/2014
 - Nature of Pass: Gardensite.
 - Area of Pass: 20,000 Sqr. Mtrs.
 - Location of the Pass: Nakdarasora.
 - The road was constructed at the middle point of the land/pass.
 - Amount claimed as per valuation of Government rates.
 - Tax paid up to 2021 as indicated in Receipt No. 4309 of Book No. 87 of Dt. 20/02/2021.

4. *Baji Shawr Chakma s/o Ajala Chakma of Nakdarasora bearing Epic No. JCF0038422 and Aadhaar Card No.828475182785, Date of Birth 22/03/1960.*

- Temporary Pass No.68/1997 of 11/08/1997
- Nature of Pass: Gardensite.
- Area of Pass: 10,000 Sqr. Mtrs.
- Location of the Pass: Nakdarasora.
- The road was constructed at the middle point of the land/pass.
- Amount claimed as per valuation of Government rates.
- Tax paid up to 2021 as indicated in Receipt No. 4316 of Book No. 87 of Dt. 20/02/2021.

5. *Bigan Chakma s/o Singhamon Chakma of Gerakuluksora bearing Epic No. JCF0063009 and Aadhaar Card No.719065991588, Date of Birth 01/01/1976.*

- Temporary Pass No. 22/2002 of 23/02/2002
- Nature of Pass: Gardensite.
- Area of Pass: 10,000 Sqr. Mtrs.
- Location of the Pass: Gerakuluksora.
- The road was constructed at the middle point of the land/pass.
- Amount claimed as per valuation of Government rates.
- Tax paid up to 2021 as indicated in Receipt No. 4290 of Book No. 86 of Dt. 20/02/2021."

9. Verification of matters pertaining to BADP Court case [WP(C) No. 62/2021] was conducted under the guidance of the undersigned which is Block Development Officer, Chawngte RD Block on 31st January, 2023 with participation of the following persons:-

1. *Vanlalkima, LDC, SDO office, Chawngte*
2. *Lalchhanhimi, LDC, BDO office, Chawngte*
3. *Akin Chakma, petitioner*

4. *Gulsogi Chakma, petitioner.*
5. *Manik Chand Chakma, petitioner*
6. *Bajeshwar Chakma, petitioner.*
7. *Bigan Chakma, petitioner.*
8. *Anand Chakma, VCP, Nakdarasora.*

Findings:

1. *The area in question had been secluded from society until road construction commenced in 2018, which then allows an easier level of human interaction.*
2. *The existing road has occurred only up to a region locally known as Bormon. The road constructed on the land of the petitioners was not made over an already existing path/lane.*
3. *Previously, people residing in this section had to go down to the stream which is at the bottom of the valley and cross the said stream in order to get to the other side.*
4. *It is also learnt that several petitioners had a small backyard garden that spread across almost the entire length of their land. Those gardens were completely demolished when excavation was done.*

Sd/-
(Dr. MANESH KHAIMEICHHO)
Block Development Officer
Chawngte RD Block: Chawngte"

10. In view of the above verification report, this Court finds that the road was constructed on the land of the petitioners and was not made over any already existing

part/land. The report also clarified that the petitioners had a small backyard garden that spread almost across the entire length of their land and those gardens were completely demolished when excavation was done.

11. It is true that the right to property is no longer a Fundamental Right, but it is a Constitutional Right under Article 300 A of the Constitution and therefore, the respondents cannot deprive the petitioners of their land by construction of the road without acquiring the same as per law if their ownership of the land is proved and found correct.

12. For the above reasons, this Court is of the considered view that the State Government, respondent Nos. 2 to 4 are liable to acquire the lands of the petitioners or apportionment for which the road linking Nagdorasora village to Udalthana under the Border Area Development Program was built under the acquisition law applicable in the State.

13. The entire exercise for completing the process of acquisition of the land or apportionment and the payment of compensation thereof shall be completed within 8 (eight) months by the State respondent Nos. 2 to 4.

14. Accordingly, WP(C) No. 62/2022 stands disposed as above.

JUDGE

Comparing Assistant