

GAHC020002312020



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

Case No. : WP(C)/83/2020

ER. TESINLO SEMY
S/O SOROPFU SEMY, PRESENTLY RESIDING AT H/NO.93,
KACHARIGAON, DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE DEPUTY COMMISSIONER,
KOHIMA, NAGALAND

2:THE ADDITIONAL DEPUTY COMMISSIONER
TSEMINYU, KOHIMA, NAGALAND

3:THE EXECUTIVE ENGINEER
PWD(NH) DIVISION-1, KOHIMA, NAGALAND

4:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND.

5:THE COMMISSIONER NAGALAND
NAGALAND, KOHIMA.

Advocate for the Petitioner : HISINLO

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 30-03-2023

Heard Mr. Hisinlo, learned counsel for the petitioner and Ms. A. Ayemi, learned State counsel appearing for the respondents.

2. By filing this writ petition the petitioner has challenged the order dated 05.07.2016 (Annexure-C) by which he has been directed to stop further construction over his plot of land which falls alongside NH-61 in Tseminyu district, Kms. 40/000. The petitioner has also challenged the final order dated 24.06.2020 (Annexure-F) by which the Deputy Commissioner, Kohima, Nagaland, has directed that all standing structures and newly constructed structures within the demarcated ROW are to be removed within 15 (fifteen) days from the date of issuance of the order.

3. It is the case of the petitioner that he purchased a certain plot of land from one Shri P. Shalo Rengma, on 11.02.2012, measuring 65x65=4225 Sq.ft. in Tseminyu New Town. Pursuant to the purchase of the land, the Head GB, on 11.02.2010 had also issued Land Possession Certificate to the petitioner for the plot of land. However, according to the petitioner the Ward number was wrongly indicated as Ward No. 8 and it should be Ward No. 7 along NH-61, Tseminyu Town. While the petitioner was constructing his house over the said plot of land, on the basis of certain complaint submitted by the Executive Engineer, PWD (NH), Division-1, Kohima, he was given the impugned order dated 05.07.2016 by the Additional Deputy Commissioner, Tseminyu, Kohima district, Nagaland, directing him to stop

further construction over his land. Against the said order the petitioner submitted his representation before the Additional Deputy Commissioner on 18.08.2016 and 07.07.2017 stating that he was constructing his house over his own plot of land and that he had not received any compensation under the proposed construction of the two-lane National Highway at Tseminyu Town. The Deputy Commissioner, Kohima, Nagaland, thereafter issued the final order dated 24.06.2020, directing the standing structures and newly constructed structures within the demarcated ROW of the two-lane Tseminyu-Kohima, Km. 40/000 to Km. 72/400 (erstwhile NH-61), to be removed within 15 (fifteen) days from the date of the order. Aggrieved, the petitioner is before this Court.

4. Mr. Hisinlo, learned counsel submits that there is no dispute regarding the ownership of the land of the petitioner and the fact that he has purchased it from one Shri P. Shalo Rengma, on 11.02.2010. Moreover the Head GB of Tseminyu New Town had issued Land Possession Certificate clearly indicating the area and location of the land. On account of certain mistake the certificate indicated that the land was at Ward No. 8 of NH-61. However, the same has been clarified by the Head GB by issuing another certificate on 28.03.2022 indicating that the land is located at Ward No. 7 of Tseminyu Town. The learned counsel further submits that no compensation was paid to the petitioner in the construction/widening of the NH-61 running through Tseminyu Town. He, therefore, submits that the impugned order dated 05.07.2016 and the final order dated 24.06.2020 should be set

aside.

5. Ms. A. Ayemi, learned State counsel, on the other hand, by referring to the affidavit-in-opposition for the respondents on 11.03.2022 submits that the Village Council of Tseminyu through its Chairman had given an undertaking to the effect that the Village Council agreed to donate the land free of cost for the two-lane of NH-61 in undeveloped areas. They also agreed to settle any disagreement or differences that may arise regarding the land and compensation within the village jurisdiction during the course of construction in the interest of public and road users. She submits that in fact a meeting under the Chairmanship of Additional Deputy Commissioner, Tseminyu, attended by all affected Village Council Chairman, President and General Secretary, Rengma Hoho and Officers from the PWD (NH), Kohima, was held on 26.06.2014 and it is pursuant to the said meeting that the undertaking was made by the concerned Village Councils including the Tseminyu Village Council. The learned counsel further submits that the Sale Deed claimed to have been executed by the petitioner and the previous owner of the land is also not registered, and therefore, it cannot be accepted as a legal document. She submits that the widening of the highway was initiated after a survey and verification was done in the year 2014. During the survey and verification the petitioner had not yet constructed his building. She submits that the impugned order dated 05.07.2016 was issued not only to restrain the petitioner and the other person from further construction but also to notify all concerned citizens of the town to refrain from any construction along the

National Highway that will affect the minimum road width of 14 meters. She, therefore, submits that the impugned orders were rightly passed by the Additional Deputy Commissioner and the Deputy Commissioner and the same may not be interfered with by this Court.

6. I have heard the submissions made by the learned counsel for the rival parties and perused the materials available on record.

7. Although the State respondents in their counter affidavit has disputed the fact that the petitioner is the owner of the land in question and that the Sale Deed not being registered has no legal value but the fact remains that there are no other materials on record to show that any other person apart from the petitioner has claimed ownership over the said plot of land. Moreover the Head GB of Tseminyu New Town had issued the Land Possession Certificate and subsequently, had also certified that the land of the petitioner falls under Ward No. 7 of Tseminyu Town. It is also seen that apart from the initial order dated 05.07.2016, the final order issued on 24.06.2020 is general in nature. It also refers to order No. REV/NH-I/98 dated 17.11.2017.

8. This Court, vide order dated 21.03.2023 had asked the learned Government Advocate to produce the said order. The order dated 17.11.2017 is produced today by the learned Government Advocate. On perusing the same, it is seen that the individuals whose land have been compensated for building/structures under two-lane Tseminyu (40/000 Kms. to 72/400 Kms. along the NH-61) under Tseminyu, Kohima district

have been asked to remove the standing structure within the area demarcated for two-lane within 30 (thirty) days from the date of issue of the order. As for the petitioner and according to him, he has not received any compensation for the land or for the building/structures. It is also not the case of the respondents that the petitioner was compensated. Therefore, without being compensated for his land or for a certain portion of his land, the respondent authority concerned could not have directed the petitioner to refrain from constructing his house or to demolish any standing structure. It is also seen from the final order dated 24.06.2020 that it is an order passed in general. No specific names have been indicated in the said order. It is true that Right to Property is no longer a Fundamental Right but Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. The same is therefore a Constitutional right and the State respondents cannot violate the same without acquiring the petitioner's land as per the relevant acquisition laws.

9. Thus, upon due consideration, I find that impugned orders dated 05.07.2016 and 24.06.2020, in so far as the petitioner is concerned is not sustainable and accordingly, they are set aside. The interim order passed earlier on 15.07.2020 is hereby made absolute.

10. Writ petition is accordingly disposed of as allowed. No cost.

Sd/-
JUDGE

Comparing Assistant