

GAHC020004772020



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

Case No. : WP(C)/165/2020

SHIKANI
PERMANENT R/O YANGZITONG 'B' VILLAGE, KIPHIRE, NAGALAND

VERSUS

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

2:THE DEPUTY COMMISSIONER,
DISTRICT-KIPHIRE, NAGALAND

3:THE ADDITIONAL DEPUTY COMMISSIONER
SEYOCHUNG TOWN, KIPHIRE, NAGALAND

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT

Date : 12-09-2023

Heard Mr. Joshua Sheqi, learned counsel for the petitioner and Ms. A. Ayemi, learned Government Advocate for the State respondents.

2. The present writ petition has been filed seeking for a direction to the State respondents to consider the appointment of the petitioner to a Grade-IV post by enforcing the agreement dated 01/03/2011 executed between the landowner and the Additional Deputy Commissioner, Seyochung Town, in the district of Kiphire, Nagaland.

3. The case in brief is that, the petitioner is the daughter-in-law of Shri. Avito Kinimi, the owner of the plot of land at Seyochung town, which has been acquired by the respondents for construction of the Administration Rest House (hereinafter referred as, ARH).

4. That an agreement dated 01/03/2011 was executed between Shri Avito Kinimi, the landowner, and the Additional Deputy Commissioner, Seyochung town, the respondent No. 3, by which it was agreed that the landowner shall donate his land measuring 40/60 sq. ft. to the respondent No. 3 for construction of the ARH at Seyochung town and the respondent No.3 had agreed to give the first preference of appointment to the landowner, in the event the Grade-IV post is created against the office of the respondent No.3, to compensate for the land donated.

6. That the petitioner on 11/03/2014 submitted the application to the Deputy Commissioner, Kiphire, Nagaland, the respondent No.2, requesting for appointment to the post of Sweeper at ARH, Seyochung. The application was routed through the respondent No.3 with a recommendation to consider the appointment of the petitioner to the post of Sweeper on landowner basis. The said application was thereafter forwarded by the respondent No. 2 to the respondent No.1 i.e. Commissioner Nagaland. The office of the respondent No.1 however by the letter dated 14/07/2014 informed the respondent No.2 to assign one of the three Sweepers appointed against the office of the respondent No.3 to look after the ARH, Seyochung. The respondent No.3 thereafter again wrote the letter dated 31/07/2014 to the respondent No.2 to consider the appointment of the petitioner on contingency basis, to be regularized, as and when the post is created. The landowner certificate issued by the concerned village council was also enclosed in the letter of the respondent No.3. Mr. Avito Sumi, the landowner, also wrote the letter dated 27/10/2014 to the respondent No.1 to appoint the landowner as Sweeper at ARH, Seyochung, stating that the landowner has

not avail any compensation either financial or employment for the land donated. The respondent No.1 was also informed that unless the matter is amicably settled, the respondents will not be allowed to utilize the ARH. The Sub-Divisional Officer, Kiphire, Nagaland, by letter dated 29/03/2017, also forwarded the application submitted by the petitioner to the respondent No.1 for appointment to the post of Sweeper at ARH, Seyochung. The office of the respondent No.1 thereafter by the letter dated 03/07/2017 informed the respondent No.2 to examine and take necessary action on the application submitted by the petitioner. The petitioner also address the representation dated Nil to the respondent No.1 to appoint the petitioner to Grade-IV post considering that the petitioner has not avail any compensation, financial or appointment in service. So also by the letter dated Nil/05/2018, the landowner reminded the respondent No.1 to honour the agreement failing which it was conveyed that the ARH would be shutdown. The Minister, Soil & Water Conversation & Geology & Mining, Nagaland, Kohima, also by the letter dated 16/05/2018 requested the respondent No.1 to consider the appointment of the petitioner as a Sweeper against the ARH or to any Grade-IV post on priority basis.

7. That the Government of Nagaland, in the Land Revenue Department thereafter, wrote the letter dated 12/11/2018 to the respondent No.1 enclosing the view and comments of Justice & Law department and the P & AR department (O.M) Branch on the issue of appointment to the post of Sweeper in the office of the respondent No.3 on landowner basis. The Land Revenue Department also wrote the letter dated 09/05/2019 to the respondent No.1 to direct the respondent No.2 to furnish the detail status/information as to how the land was acquired and whether any compensation had been paid for the land with further details for necessary action. In the meantime, the landowner also wrote the letter dated Nil/09/2019 to the respondent No.3 conveying that as the department has failed to honour the agreement, the landowner is reclaiming the land and the respondent No.3 was accordingly asked to relocate the ARH within 1(one) month's time. The office of the respondent No.1 also referring to the letter dated 09/05/2019 of the Land Revenue Department, wrote the letter dated 30/05/2019 to the respondent No.2 to furnish the detail information sought for by the

Land Revenue Department in regard to the proposal for appointment of Sweeper on landowner basis in the office of the respondent No.3. Subsequently, the office of the respondent No.1 communicated the letter dated 30/11/2019 to the Land Revenue Department stating therein that there is no record available in the respective establishment with regard to the payment of land compensation on which the ARH has been constructed. Finally, the Land Revenue Department wrote the letter dated 06/02/2020 to the respondent No.1, conveying therein that, appointment to Government service or awarding contractual work or extending any other facilities on landownership basis is totally banned by the Government and therefore, requested the respondent No.1 to acquire the land by payment of compensation.

8. Mr. Joshua Sheqi, the learned counsel for the petitioner, relying on the agreement dated 01/03/2011, submits that in terms of the agreement the petitioner has a right to be considered for appointment to a Grade-IV post in the office of the respondent No.3 on landownership basis, however the respondents instead of honouring the agreement, has been dragging the matter for years together by indulging in making unnecessary communications/correspondences solely with the intent of denying the appointment to the petitioner.

9. The learned counsel for the petitioner has also relied on Clause-3(a) of the notification dated 05/03/2018, issued by the Government of Nagaland, Land Revenue Department, which provides that *"In other cases prior to 26/07/2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land, where a specific written agreement exist providing for employment to the landowner, the claim of landowner for employment shall be settled in terms of such agreement"*. The learned counsel accordingly submits that the said clause does not bar landowners to be considered for appointment even after 26/07/2005 if there is a valid agreement executed between the landowner and the department. The learned counsel therefore submits that the petitioner's appointment has to be considered by giving proper effect to Clause-3(a) of the notification dated 05/03/2018 in the light of the agreement dated 01/03/2011 executed between the landowner and the respondent No.3. It is further submitted that if the State respondents fails to honour the agreement, the petitioner is

left with no other option but to reclaim the land.

10. Ms. A. Ayemi, the learned Government Advocate on the other hand submits that, the agreement dated 01/03/2011, executed between the landowner and the respondent No.3 is in total violation of Clause-1(a) of the notification dated 05/03/2018 which inter-alia provides that all the lands acquired by the Government shall be against payment of full compensation as determined by law and no condition for employment in service or contractual works shall be entertained and any department entering into agreement with the landowners in deviation of the laid down policy on or after 26/07/2005 shall be treated as null and void. The learned Government Advocate has also referred to the notification dated 26/05/2005 (Annexure-3 to the affidavit-in-opposition) issued by the Land Revenue Department, notifying the policies of the Government on acquisition and management of land for various developmental activities having public interest where inter-alia, it has been provided that, no land shall be acquired free of cost but only against payment of full compensation as determined by law and no further condition for employment in service or contractual works shall be entertained. Ms. A. Ayemi has taken this Court to the letter dated 14/02/2020, (Annexure-1 to the affidavit-in-opposition) where the office of the respondent No.1 has directed the respondent No.2 to initiate acquisition proceedings to compensate for the land acquired from the petitioner. The learned Government Advocate has further taken this Court to the letter dated 17/11/2021 (Annexure-2 to the affidavit-in-opposition) written by the office of the respondent No.1 to the respondent No.2 to show that the respondent No.2 has been requested to initiate necessary action for cancellation of the agreement dated 01/03/2011 and take steps to acquire the land by payment of compensation as per the direction of the Government. In sum and substance, the case of the respondent is that since the agreement dated 01/03/2011 violates the policy of the Government brought out by the notification dated 26/07/2005 and the notification dated 05/03/2018, the Government should be allowed to acquire the land by paying compensation in accordance with law.

11. In the affidavit-in-reply, the petitioner while reiterating the averments made in the writ petition has stated that the land was conveyed by executing the agreement

dated 01/03/2011 with the legitimate expectation of availing employment opportunities.

12. Heard the learned counsel for the parties. Before discussing the submissions made by the learned counsel for the parties, this Court deems it appropriate to reproduce the notification dated 26/07/2005 and the notification dated 05/03/2018, both issued by the Government of Nagaland, Land Revenue Department;

**“GOVERNMENT OF NAGALAND
LAND REVENUE DEPARTMENT**

NOTIFICATION

Dated Kohima the 26th July, 2005.

No. LR/4-3/KOH/2003:: On the recommendation of the Committee on encroachment of Government Land and on the approval of the State Cabinet, the Governor of Nagaland is pleased to order and notify the following policies on Acquisition and Management of land for various development activities purpose having public interest as under with immediate effect.

1. *Any purchase of land for Government purpose, shall be made as per provisions of the Nagaland Land Requisition and Acquisition Act, 1964 only. To operationalize this process into regular system, permanent Standing Committee is hereby constituted consisting of the following members;-*

1. *Deputy Commissioner of the District - Chairman*
2. *Sub-Divisional Officer (Civil) -Member Secretary
of the concerned district*
3. *Land Records & Survey Officer -Member
of the concerned district*
4. *Chairman the Municipal Council -Member
or Town Council of the concerned Town*

The Committee shall meet quarterly to consider all Land Acquisition matters within their respective Jurisdiction/District regularly.

2. *Fixation of the rate of land compensation shall be determined as per prescribed formula under section 11 of the Nagaland Land*

Requisition & Acquisition Act, 1964 and subsequent amendment thereof or any negotiated lumpsum which should not be more than the rate of compensation assessed as per the provision of the Act.

3. *No Land shall be acquired free of cost and all land shall be acquired on payment of full compensation as determined by law. No further condition for employment in service or contractual works should be entertained.*
4. *At the time of acquisition, the boundary of the acquired land area shall be marked on the surface of the land as well as on Maps with the help of G.P.S machine for a permanent record. A copy each of the newly acquired land Map along with the list(s) of land owners and area of individual land shall be send to the (1) Secretary (LR) (2) Commissioner, Nagaland (3) Directorate of Land Records & Survey, Nagaland (4) Directorate of Art and Culture, Achieve Cell, Nagaland, Kohima for future reference and records.*
5. *Henceforth, any land/site allotment to private individuals from within Government owned land or acquired land or land inherited from the British India or declared Town area shall be made on payment of premium and with the specific prior approval of the Government only as per Land & Revenue Regulation Law.*

Sd/- (M. Yanthan) IAS

Secretary to the Govt. of Nagaland."

**“GOVERNMENT OF NAGALAND
LAND REVENUE DEPARTMENT**

NOTIFICATION

Dated Kohima, the 5th March, 2018

NO. LR/6-181/LIT/2015 :: In pursuance of approval of the Cabinet vide O.M No. CAB-2/2013 Dt. 13.12.17. the Governor of Nagaland is pleased to notify the following policy with regard to appointments to Grade-IV posts under the Government of Nagaland on landownership basis.

1(a). *It has been laid down vide Notification No. LR/4-3/KOH/2003 dated 26.07.2005 that no land shall be acquired free of cost and all land shall be acquired on payment of full compensation as determined by law. No further condition for employment in service or contractual works should be entertained. Therefore, in case any Department has entered into any agreement with the landowners in deviation of the laid down policy on or after 26.07.2005, such agreement shall be treated as null and void. The Department concerned shall take necessary action accordingly to nullify such agreement.*

1(b). *In case the Department concerned is of the view the agreement should not be declared null and void it shall refer it with relevant details giving justification to the Department of Land Revenue for examination and advice in consultation with P&AR and Justice & Law Departments and thereafter submit the matter for consideration and decision of the Cabinet,*

2. *Old cases where Administrative headquarters and Block headquarters were set up in various parts at the State on lands donated freely by individuals, villages or people of that area should not be re-opened for compensation or for employment in consonance with the policy brought out vide Memorandum No, LR/2-135/76 dated 20.6 1977.*

3(a). *In other cases prior to 26.07.2005 and subsequent to setting up of Administrative and Block headquarters on freely donated land, where a specific written agreement exists providing for employment to the landowner, the claim of landowner for employment should be settled in terms of such agreement.*

3(b). *if there is any claim for providing employment as a result of oral agreement, the Department concerned shall refer the matter to the Deputy Commissioner of the District concerned who shall examine such claim carefully including whether any employment or any other facility including contract or supply order has been given in the past, Written statements from the witnesses, that is Government officials of the concerned department and the District Administration and village functionaries present at the time of such oral agreement should be taken by the Deputy Commissioner. The recommendation of the Deputy Commissioner should be referred with relevant documents to the Department of Land Revenue for advice in such cases by the Department concerned.*

3(c). It is also clarified that it is not the policy of the Government to provide employment to the landowner in perpetuity. The employment of landowner, if permitted by a verifiable and valid agreement, is limited to the person first appointed as landowner in Government service and does not entitle his descendants for further employment on his retirement from service. After the appointed landowner retires or vacates the post, the vacancy will be filled up through open advertisement in consonance with the existing policy giving equal opportunity to all applicants.

Sd/-
(PANKAJ KUMAR) IAS
Chief Secretary”

13. Both the notifications referred to above contains the policy decision of the Government of Nagaland. The notification dated 26/07/2005 is a policy on Acquisition and Management of Land for various developmental activities having public interest and inter-alia provides that any purchase of land for Government purpose shall be made only as per the provisions of the Nagaland Land Requisition & Acquisition Act, 1964 by a Standing Committee with the Deputy Commissioner of the District as the Chairman. The notification also provides that no land shall be acquired free of cost and all acquisition of land shall be made against full payment of compensation in accordance with law and there shall be no condition for employment in service or for contractual works against acquisition of the land. While the Notification dated 05/03/2028 is a policy for appointment to Grade-IV post on landownership basis. This notification refers to the notification dated 26/07/2005 and inter-alia provides that all lands shall be acquired by the Government on payment of full compensation as determined by law and there shall be no conditions for employment in service or for awarding contractual works and in cases where the department has entered into any agreement with the landowners in deviation of the laid down policy on or after 26/07/2005 such agreement shall be treated as null and void and the department concerned shall take necessary action to nullify such agreement.

14. A perusal of the two notifications issued by the Government will clearly demonstrate that the agreement dated 01/03/2011 executed between the landowner and the respondent No.3 is in clear violation of the policy laid down by the

Government which mandates that land shall be acquired on behalf of the Government only against payment of compensation in accordance with law and there shall be no conditions to provide employment or for awarding contractual works for the land acquired by the Government. This being the policy decision of the Government, the petitioner, in the considered opinion of this Court can have no right in law to claim for appointment on the basis of the agreement dated 01/03/2011 but will only have a right to receive compensation, for the land acquired by the Government, in accordance with law.

15. Moreover, in the letter dated 27/10/2014 as well as the representation dated Nil (Annexure-J to the writ petition) submitted by the petitioner to the respondent No.1, it has been stated that the landowner/petitioner has not availed any compensation either financial or employment for the land donated to the Government which would mean that the petitioner is not adverse to receive monetary compensation for the land in question. So also by the letter dated 14/02/2020 and 17/11/2021, the office of the respondent No.1 has instructed the respondent No.2 to cancel the agreement dated 01/03/2011 and to initiate process for acquiring the land against payment of land compensation. Considering the stand taken by the Government, this Court is of the view that, the dispute between the petitioner and the State respondents can be resolved by directing the State respondents to pay the required compensation to the petitioner as provided under the law and in the light of the policies formulated by the State.

16. With regard to the contention, that the petitioner's right to be considered for appointment is covered by Clause-3(a) of the notification dated 05/03/2018, in view of the agreement dated 01/03/2011, the said Clause-3(a), in the considered opinion of this Court, only provides that, in respect of the land, which has been acquired prior to 26/07/2005 and on which Administrative and Block headquarters has been subsequently set up, if a specific written agreement exists providing for employment to the landowners such claim for employment shall be settled in terms of such agreement. This finding can be inferred from a conjoint reading of Clause-1(a) and Clause-3(a) of the notification dated 05/03/2018 which unequivocally states that the agreement entered between the department and the landowner on or after

26/07/2005 in deviation of the laid down policy of the Government shall be treated as null and void and only in cases where a specific written agreement has been executed prior to 26/07/2005 to provide employment to landowners, such claim for employment shall be settled in terms of such agreement. It appears that the learned counsel for the petitioner has clearly misunderstood the intent of Clause-3(a) of the notification dated 05/03/2018 to claim appointment on the basis of the agreement dated 01/03/2021 which was executed subsequent to 26/07/2005. The contention of the petitioner that he has the right to be considered for appointment under Clause-3(a) of the notification dated 05/03/2018 is accordingly rejected.

17. It is also apposite to refer to the relevant provisions of the 'Rules of Executive Business of the Government of Nagaland, 2020', brought out by the Government of Nagaland by Notification No. AR-6/4/78(Vol-I) dated July, 2020.

Rule 2(l)- "Secretary" means a Secretary to the Government of the State of Nagaland and includes Chief Secretary, Additional Chief Secretary, Principal Secretary, Commissioner & Secretary, Special Secretary, Secretary, Additional Secretary, Joint Secretary, Deputy Secretary and Under Secretary.

Rule 11. All orders or instruments made or executed by or on behalf of the Government of Nagaland shall be expressed to be made or executed in the name of the Governor of Nagaland.

Rule 12. Orders or instruments of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed either by an officer mentioned in Rule 2(l) or such other officer as may be authorized by the Government, and such signature shall be deemed to be proper authorization of such order or instrument.

18. A reading of the above rules will demonstrate that the agreement dated 01/03/2011 was not executed by or on behalf of the Government and expressed or executed in the name of the Governor of Nagaland. Moreover, the respondent No.3 is not an officer who is competent or authorized by the Government to sign the agreement dated 01/03/2011 under the rules. That being so, no legal sanctity can be given to the agreement dated 01/03/2011 for allowing the petitioner to claim

appointment by enforcing the said agreement. The Hon'ble Division Bench of this Court in a similar case in Shri. C. Alem Sangtam -versus- Shri. N. Atovi Sema & 3 Others in W.A No. 18(K)/2013 and linked case No. W.A No. 19(K)/2013 by the judgment & order dated 26/06/2018 has held that;

“16. Rule 11 and 12 of the Rules of Executive Business of the Government of Nagaland has also been considered and on consideration of the same, we are of the opinion that the document dated 07/02/2009 which is referred to by the respondent No.1 as an agreement cannot be considered as an order or instrument of the Government of Nagaland and therefore, the said document dated 07/02/2009 has no legal validity in the eye of law.”

19. On the submission made by the learned counsel for the petitioner that the agreement dated 01/03/2011 was executed with the legitimate expectation of availing employment opportunities, this Court is of the view that the plea of legitimate expectation cannot be availed against the law. The Hon'ble Supreme Court in the case of **Union of India & Others -versus- Hindustan Development Corporation & Others**, reported in **(1993) 3 SCC 499**, has held that;

“28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”

The agreement dated 01/03/2011 being in violation of the policy laid down by

the Government and the rules framed by the Government, no enforceable right accrues to the petitioner to claim appointment on the basis of such agreement and accordingly, the petitioner can have no legitimate expectation for appointment.

20. In the light of the discussion made above, this Court arrives at the following findings;

a). The claim of the petitioner to be considered for appointment to a Grade-IV post, in the office of the respondent No.3, in the light of the agreement dated 01/03/2011, is rejected.

b). The State respondents shall take steps to pay the necessary compensation to the petitioner, for the land acquired, in accordance with law. Such exercise for payment of compensation shall be completed within a period of 90(ninety) days from the date of this order.

c). Since the land of the petitioner has already been acquired by the State for public purpose, the petitioner shall not reclaim the land.

21. Writ petition accordingly stands disposed.

Sd/-
JUDGE

Comparing Assistant