



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

Case No. : PIL 9/2019

1: CHAKHESANG PUBLIC ORGANISATION AND 3 ORS
REPRESENTED BY ITS PRESIDENT
AND HAVING ITS HEADQUARTER AT PHEK, P.O/P.S, PHEK, NAGALAND

2: VAPRUMU DEMO

(CONVENOR
CPO COMMITTEE ON 2 LANE ROAD) S/O LT. VEINU DEMO
PERMANENT R/O CHOZUBA TOWN
PHEK DISTRICT AND PRESENTLY RESIDING AT UPPER AGRI COLONY
KOHIMA

3: BESUPRA SWURO

(MEMBER CPO COMMITTEE ON 2 LANE ROAD)
S/O VESURA
PERMANENT R/O RUZAZHO VILLAGE
CHOZUBA PHEK DISTRICT AND PRESENTLY RESIDING
AT UPPER AGRI COLONY
KOHIMA

4: ZHOVEHU LOHE

(MEMBER SECRETARY CPO COMMITTEE ON 2 LANE ROAD)
S/O LT. ZANIEYI LOHE
PERMANENT R/O SAKRABA VILLAGE
PHEK DISTRICT
NAGALAN

VERSUS

1:THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS, PARIVAHAN BHAVAN, 1, PARLIAMENT STREET, NEW DELHI

2:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY
NAGALAND CIVIL SECRETARIAT
KOHIMA
NAGALAND

3:THE REGIONAL OFFICER
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
HOUSE NO.5
RAJGARH ROAD
CHANDMARI
GUWAHATI
ASSAM

4:THE CHIEF ENGINEER(NER)
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
PARIVAHAN BHAWAN
1
PARLIAMENT STREET
NEW DELHI

5:THE COMMISSIONER AND SECRETARY
GOVT. OF NAGALAND
WORKS AND HOUSING DEPT.
NAGALAND
KOHIMA

6:THE CHIEF ENGINEER(NH)
PUBLIC WORKS DEPT.
NAGALAND
NAGALAND
KOHIMA
NAGALAND

7:THE MANAGING DIRECTOR
NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED(NHIDCL)
3RD FLOOR
PTI BUILDING
4 PARLIAMENT STREET

NEW DELHI

8:THE EXTRA ASSISTANT COMMISSIONER
SAKRABA
PHEK
NAGALAND

9:DEPUTY COMMISSIONER
PHEK NAGALAND
PHEK
NAGALAND

10:MAYTAS GAYATRI JOINT VENTURE
C/O IL AND FS ENGG. AND CONSTN. CO. LTD.
DOOR NO. 8-2-120/113/3/4F

SONALI INFO PARK
CYBER TOWERS
ROAD NO. 2
BANJARA HILLS

HYDERABAD - 500033

Advocate for the Petitioner : ANGSHUMAN SARMA

Advocate for the Respondent : YANGER WATI (R 1,3 & 4)

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (CAV)

Date : 30-01-2023

(S. Serto, J)

This is a PIL filed by Chakhesang Public Organization, through its functionaries on behalf of persons whose lands/properties including crops, irrigation and fields, drainage etc. were damaged due to the

construction of 2-lane road within Phek District under the 2-lane Project: Longleng- Changtongya – Mon - Tamlu – Merangkong, Phek – Pfutsero and Zunheboto – Chakhabama, SARDP (Special Accelerated Road Development Programme) - NE, praying for issuance of appropriate writ/order/direction directing the respondents to pay compensation for the damages caused.

2. Heard Mr. Angshuman Sarma, learned counsel appearing for the petitioners, Mr. L.T. Sangtam, learned Additional AG appearing for the State respondents, Mr. Yangerwati, learned CGC appearing on behalf of the Union of India (respondent No. 1), and Mr. L. Iralu, learned counsel appearing for respondent No. 10.

3. The facts and circumstances leading to the filing of this PIL briefly stated are as follows: In order to improve the pathetic conditions of the roads in the State of Nagaland, the Ministry of Road Transport & Highways under the scheme known as Special Accelerated Road Development Programme – NE allotted a sum of Rs. 1,296/- crores for construction of 2-lane road from Longleng - Changtongya – Mon - Tamlu – Merangkong, Phek – Pfutsero and Zunheboto – Chakhabama. Ministry of Road Transport & Highways and the Public works Department, Nagaland were notified to be the funding and executing agency; and the implementing agency respectively. After the tender process the Contractor, namely M/s Maytas Gayatri (joint – venture) was issued the work order and the Contractor started executing the work in the year 2011 under the supervision of the State PWD. During the process of the execution of the work, a lot of cut-earths, stones, trees etc., were piled up along the roads under

construction instead of dumping the same at the identified dumping sites. Therefore, when the rainy season came they slid down on the lands and properties of the villagers who are settled along the road causing severe damage to their lands and properties. Since the land owners are poor farmers and ignorant about their rights and the ways and means to redress their grievances, the petitioner/Organisation took upon itself to help them in approaching the right authorities and forums through legal means so that their grievances are addressed or redressed as per law. So after several meetings were held the petitioner submitted two representations dated 18.10.2019 and 20.10.2019 to the Chief Engineer, PWD (National Highway), Nagaland and to the Deputy Commissioner, Phek respectively, requesting for compensation for the damages caused to the properties of the land owners whose lands and properties have been affected during the construction of the road specifically for the land owners along the stretch of the road viz. Phek - Pfutsero and Zunheboto - Chakhabama under the administrative jurisdiction of EAC, Sakraba, Phek District. Though the representations did not receive immediate response as desired, the office of the PWD (National Highway), Nagaland conducted a joint-survey of the lands and properties damaged/destroyed, for the purpose of ascertaining the extent of the damage caused to each individual's land and properties and for the purpose of quantifying the compensation to be paid. The same was carried out under the aegis of the Deputy Commissioner under whose jurisdiction the properties are situated. The joint verification was conducted by the officers of the State, aggrieved persons, and

members of local administrative bodies after issuance of proper notification by the Deputy Commissioner concerned. As per the joint survey, the compensation amount worked out for the land owners between Phek – Pfutsero road was Rs. 5,81,69,989.70/- and for the land owners between Zunheboto and Chakhabama road it was Rs. 55,12,66,695.34/-. However, the State Government of Nagaland did not disburse the amount to the land owners on the ground that the State PWD was only the implementing agency and the Project is fully funded by the Central Government, more particularly, Ministry of Road Transport & Highways. Therefore, unless the fund is released by the Ministry concerned the State Government will not be in a position to pay the same.

In the meanwhile, the Contractor asked for escalation of the contract amount; however, the same was refused by the employer. Due to the tussle between the employer and the Contractor the execution of the work stopped and the parties went for arbitration for settlement of their dispute. While this was going on, the petitioners filed the present writ petition praying for issuance of appropriate writ/order/direction directing the respondents, more particularly the Ministry of Road Transport & Highways to pay the compensation as worked out by the State Government after the joint survey was conducted.

4. There is no denial as to the claim of the petitioners that damages were caused to the land and properties of the land owners whose

lands are situated within the administrative jurisdiction of the EAC, Sakraba, Phek District and no question has also been raised on the quantum of compensation worked out by the State Government following the joint survey. The only plea taken by the State Government is that it is a project funded by the Ministry of Road Transport & Highways and the State is only an implementing agency; therefore, the compensation ought to be paid by the said Ministry. On the other hand, the Union's stand as submitted by the learned CGC is that the compensation should be either paid first by the State and make their claim from the Ministry, or claim the same in the arbitration proceeding which is still pending.

5. Since there is no dispute from the side of the respondents on the claim of the petitioners that lands and properties of persons whose lands are situated below the road in question and which are within the administrative circle of the EAC, Sakraba, Phek District were damaged or destroyed, the need for a discussion on the claim does not arise. Record shows that the Project for construction of 2-lane from Pfutsero – Longleng within which the lands and properties of the farmers or villagers for whom the writ petition has been filed was initiated and fully funded by the Central Government and the State Government is only the implementing agency. Further record shows that compensations have been paid to the owners of the lands situated above the road which were affected by the construction of the road. Therefore, it appears that the problem of paying compensation to the owners of the lands situated below the road for the damage or

destruction caused to their lands and properties has arisen either due to lack of knowledge about the terrain along which the road was to be constructed, or ground realities, or failure to envision the most probable consequences that may follow during the construction. Had the planners been made aware about all these, while conceptualising and preparing the final Detailed Project Report they would have taken the same into account. And the poor land owners would not have had to go through all these ordeal of running from pillar to post for compensation of the loss suffered by them, and no hindrance on the construction of the road would have been caused at the same time. When compensation has been paid to owners of the lands whose lands lie above the road there is no reason why owners of the lands and properties whose lands lie below the road and are also affected by construction of the same road should not be entitled to receive the same. It is true, Right to Property is no longer a fundamental right but when property of a person is affected or damaged while undertaking a public related project, and if such person is not compensated adequately, the consequence is his livelihood is affected and that would lead to violation of his right to life protected under Article 21. Therefore, in this case also though the private land owners whose lands lie below the road constructed have no right to say 'no' to the construction of the road and acquisition of their lands, they have a right to be compensated adequately for their lands, properties, standing crops and trees etc. affected by the construction of the road. For to not do so will violate their rights protected under the said Article. In fact, the land owners being tribals and marginal land

owners, the authorities; be it from the Central Government or the State Government or both, should have been a little more sensitive and considerate, if need be, while undertaking the project so that they need not have gone through such loss and suffering. The project started in the year 2011; therefore it has been more than 10 (ten) years since the owners of the lands have suffered the loss of their lands, crops and properties. A welfare State, certainly, is not expected to be so apathetic about the genuine grievances of its own citizens. It does not behove for a welfare state to deny or defer benefit of such right by giving such excuse as that, the land owners may make such claim in the pending arbitration process, especially when the lands owners are not a party in the proceeding. Therefore, to prevent any further suffering of these people, both the Central Government and the State Government should act in tandem expeditiously.

Admittedly, the damage caused to the lands and properties have been already assessed by conducting a joint survey and even the quantum of the compensation amount to be paid has also been determined under the leadership and supervision of the Deputy Commissioner concerned. As such, the State Government shall make the first move by submitting a proposal along with the assessment made to the Central Government/the Ministry concerned, and on receipt of the same the latter shall initiate the process for allocation of fund and release of the same to the State Government who then shall disburse the same through the Deputy Commissioner of the District concerned, to the genuine land owners whose lands, properties,

standing crops and trees etc., have been damaged or destroyed during the construction of the road. The whole exercise should be completed within a reasonable time but not beyond 6 (six) months from the date of this judgment and order.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant