

GAHC040000842023



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

Case No. : WP(C)/18/2023

- 1:Jalamso Malo and 62 Ors. S/o Mejenglum Malo, Permanent Resident of Hoiliang, PO/PS Hayuliang, Anjaw District, AP
- 2: Walianso Malo S/o Lt. K. Malo R/o Hoiliang Village Anjaw District A.P
- 3: Hilingum Malo S/o Lt. M. Malo R/o Hoiliang Village Anjaw District A.P
- 4: Bengliang Malo W/o Bachelum Malo R/o Hoiliang Village Anjaw District A.P
- 5: Dekhalu Malo W/o Medulum Malo R/o Hoiliang Village Anjaw District A.P
- 6: Mendulum Malo S/o Baru Malo R/o Hoiliang Village Anjaw District A.P
- 7: Shalemso Malo S/o Shri S. Malo R/o Hoiliang Village Anjaw District A.P
- 8: Baso Malo S/o Shri Baselum Malo R/o Hoiliang Village Anjaw District A.P
- 9: Langemso Malo S/o Shri Medulum Malo R/o Hoiliang Village Anjaw District A.P
- 10: Epailiang Malo D/o Katulum Malo R/o Hoiliang Village Anjaw District A.P
- 11: Esenso Malo S/o Katulum Malo R/o Hoiliang Village Anjaw District A.P
- 12: Wetemso Malo S/o Katulum Malo R/o Hoiliang Village Anjaw District A.P
- 13: Talaiso Malo S/o Shri Hililum Malo R/o Hoiliang Village Anjaw District A.P
- 14: Katulum Malo S/o Lt. Dulum Malo R/o Hoiliang Village Anjaw District A.P
- 15: Alamai Malo W/o Lt. Mesolum Malo R/o Hoiliang Village Anjaw District A.P
- 16: Tindyamsai Malo W/o Nemso Malo R/o Hoiliang Village Anjaw District A.P

- 17: Mitali Malo D/o Shri Bachelum Malo R/o Hoiliang Village Anjaw District A.P
- 18: Kenbaliang Malo W/o Abenso Malo R/o Hoiliang Village Anjaw District A.P
- 19: Diranso Malo S/o Tarolum Malo R/o Hoiliang Village Anjaw District A.P
- 20: Gemi Malo S/o Lt. Begelum Malo R/o Hoiliang Village Anjaw District A.P
- 21: Bailu Malo W/o Jalamso Malo R/o Hoiliang Village Anjaw District A.P
- 22: Bachelum Malo S/o Mejinglum Malo R/o Hoiliang Village Anjaw District A.P
- 23: Yirangso Malo S/o Katulum Malo R/o Hoiliang Village Anjaw District A.P
- 24: Balelum Malo S/o M. Malo R/o Hoiliang Village Anjaw District A.P
- 25: Oroso Malo S/o Mejenlum Malo R/o Hoiliang Village Anjaw District A.P
- 26: Baselum Malo S/o Lt. Jumba Malo R/o Hoiliang Village Anjaw District A.P
- 27: Umanso Malo S/o Lt. K. Malo R/o Hoiliang Village Anjaw District A.P
- 28: Bomkaisai Malo W/o Yirangso Malo R/o Hoiliang Village Anjaw District A.P
- 29: Atingliang Malo D/o Katulum Malo R/o Hoiliang Village Anjaw District A.P
- 30: Bomemso Malo S/o Mindulum Malo R/o Hoiliang Village Anjaw District A.P
- 31: Sanemsai Malo D/o Balaylum Malo R/o Hoiliang Village Anjaw District A.P
- 32: Baingso Malo S/o Balaylum Malo R/o Hoiliang Village Anjaw District A.P
- 33: Bahaiso Malo S/o Balaylum Malo R/o Hoiliang Village Anjaw District A.P
- 34: Bichenso Malo S/o Lt. Mesolum Malo R/o Hoiliang Village Anjaw District A.P
- 35: Sohisio Malo S/o T. Malo R/o Hoiliang Village Anjaw District A.P
- 36: Gujitliang Malo D/o Lt. Nemso Malo R/o Hoiliang Village Anjaw District A.P
- 37: Aosanglum Malo S/o Shri Mejenlum Malo R/o Hoiliang Village Anjaw District A.P
- 38: Chodemso Malo S/o Baselum Malo R/o Hoiliang Village Anjaw District A.P
- 39: Bomso Malo S/o Mejenlum Malo R/o Hoiliang Village Anjaw District A.P
- 40: Khasa Gam S/o Lt. Tablum Gam R/o Tafraliang Village Anjaw District AP

- 41: Bafinglum Gam S/o Lt. R. Gam R/o Hoiliang Village Anjaw District A.P
- 42: Sonemso Gam S/o B. Gam R/o Hoiliang Village Anjaw District A.P
- 43: Basinglum Gam S/o Lt. M. Gam R/o Hoiliang Village Anjaw District A.P
- 44: Bihemso Gam S/o Lt. B. Gam R/o Village Tafraliang Anjaw District AP
- 45: Bagemso Gam S/o Lt. S. Gam R/o Village Matiliang Anjaw District AP
- 46: Somi Gam S/o Lt. S. Gam R/o Village Matiliang Anjaw District AP
- 47: Jademso Gam S/o Lt. C. Gam Page No.# 8 /11 R/o Village Matiliang Anjaw District AP
- 48: Abrodo Gam S/o Lt. G. Gam R/o Village Matiliang Anjaw District AP
- 49: Misinglum Gam S/o Lt. T. Gam R/o Village Hoiliang Anjaw District AP
- 50: Soheso Gam S/o C. Gam R/o Village Hoiliang Anjaw District AP 5
- 1: Sosemso Gam S/o Jademso Gam R/o Hoiliang Village Anjaw District AP
- 52: Lakungliam Gam W/o Lt. G. Gam R/o Matiliang Village Anjaw District AP
- 53: Karendia Gam W/o Bapinglum Gam R/o Holiang Village Anjaw District AP
- 54: Bapinglum Gam S/o Lt. M. Gam R/o Hoiliang Village Anjaw District AP
- 55: Sohenso Gam S/o Bapinglum Gam R/o Hoiliang Village Anjaw District AP
- 56: Tamlu Gam D/o Bapinglum Gam R/o Village Hoiliang Anjaw District AP
- 57: Sajenlu Gam W/o Chojen Kathak R/o Village Hoiliang Anjaw District AP
- 58: Beauti Ekai Gam W/o Bagemso Gam R/o Matiliang Village Anjaw District AP
- 59: Balasi Gam W/o Lt. Balinso Gam R/o Village Khupa Anjaw District AP
- 60: Pekoliang Gam W/o Khasa Gam. R/o Village Tafraliang Anjaw District AP
- 61: Ahulia Gam W/o S. Gam R/o Village Matiliang Anjaw District AP
- 62: Adorai Ritti W/o Lt. T. Ritti R/o Village Khupa District Anjaw AP
- 63: Diyelum Malo S/o Lt. Nemso Malo R/o Hoiliang Village Anjaw District A.P

VERSUS

1:THE UNION OF INDIA and 6 Ors. Represented by the Secretary, Ministry of Road Transport and Highways, Bhawan 1, Parliament Street, New Delhi 110001

2:The Secretary Ministry of Road Transport and Highways Bhawan 1 Parliament Street New Delhi 110001

3:The Secretary Land Management Govt. of Arunachal Pradesh Civil Secretariat Itanagar AP Pin No. 791111

4:The Director Land Management Govt. of AP ESS Sector Itanagar A.P. Pin No. 791111

5:The Deputy Commissioner Anjaw District Hawaii Arunachal Pradesh. Pin No. 792104

6:The Addl. Deputy Commissioner. Hayuliang Anjaw District AP Pin No. 792104

7:The Commanding Officer 116 RCC (GREF) Hayuliang C/o 99 APO. Anjaw District A.P Pin No. 79210

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE S.K.MEDHI**

Date : 30-01-2024

JUDGMENT & ORDER(ORAL)

Heard Shri S. R. Rabha, the learned counsel for the petitioners. Also heard Mr. M. Kato, the learned DSGI, Shri N. Ratan, the learned Additional Advocate General of the State and Shri D. Kamduk, the learned Standing Counsel, Land Management Department.

2. Considering the subject matter, the pleadings which has been exchanged and as agreed by the parties, the instant writ petition is

taken up for the disposal at the admission stage.

3. The petitioners, who are 63 in numbers have joined together with a claim for payment of the compensation in connection with a land acquisition proceeding initiated vide a Notification dated 13.11.2015 under Section 10 of the Jhum Land Regulation Act 1947 for consideration of 0-15 Km (from 143 Km-158 Km), Hunli-Metiliang-Hayuliang(HMH) defence road. It is the case of the petitioners that after the acquisition of land, while the compensation was assessed, the compensation pertaining to the trees, crops and *Zirat* was not assessed. It is submitted on behalf of the petitioners that while an amount of Rs. 1,32,30,000/-(Rupees One Crore Thirty Two Lakhs Thirty Thousand)only was paid to the petitioners with regard to the land which was acquired, the amount pertaining to the *Zirat* has not been paid. The unpaid amount has been quantified as Rs.14,96,98,469/-(Rupees Fourteen Crore Ninety Six Lakhs Ninety Eight Thousand Four Hundred and Sixty Nine)only.

4. Shri Rabha, the learned counsel has referred to a Minutes of meeting dated 29.03.2016, which amongst others, was also attended by the representative of the 116 RCC (GREF), Hayuliang. It is submitted that in the said meeting, the aspect of compensation for standing crops and properties on the ROW was also approved. By referring to the order dated 23.05.2016, Shri Rabha, the learned counsel has submitted that a Board was constituted for re-verification and assessment of agriculture/horticulture crops damaged due to construction of HMH defence road and the said

Board, amongst others also had representative of OC, 116 RCC(GREF). It is also submitted that as a sequel to the said order, another order was issued on 19.01.2017, with regard to the survey which was required to be done for the necessary re-verification and assessment. Ultimately, an assessment was done and a communication was issued by the Additional Deputy Commissioner, Anjaw District dated 13.10.2017 to the Commanding Officer, 116 RCC (GREF). By the said communication, the bill for compensation, as assessed by the Board was enclosed. It may be mentioned that the requiring authority of the acquisition proceeding was 116 RCC (GREF).

5. It is the inaction of the respondent authorities more particularly the RCC (GREF) in not releasing the payment for which instant petition has been filed.

6. Shri Rabha, the learned counsel for the petitioners has submitted that to verify the *bonafide* and authenticity of the claims, a Board was constituted which included representative of the requiring authority and the assessment was done by the said Board leading to an issuance of the communication dated 13.10.2017 and therefore, there cannot be any reasons to hold back the said amount. It is submitted that the petitioners have a legal right to receive the compensation which has been duly assessed. It is also submitted that the verification exercised is not the subject matter of any challenge in any forum and therefore, the findings of the Board are required to be implemented.

7. Shri N. Ratan, the learned Additional Advocate General has submitted that both the Deputy Commissioner and the Additional Deputy Commissioner of the concerned district have filed separate affidavit-in-opposition. By referring to the affidavit-in-opposition dated 10.07.2023, filed by the respondent No.6, the learned State counsel submits that the State is not rising any objection on the claims as the assessment was done duly by constituted board consisting of representative of all the stakeholders including the requiring authority.

8. Mr. D. Kamduk, the learned Standing Counsel, Land Management Department submits that he endorses the stand of the State Government and no separate affidavit has been filed.

9. Shri M. Kato, the learned DSGI, however, submits that all the assessed amount was duly paid to the Government for disbursement. He however, submits that with regard to the present amount in question adequate explanation has been given in the affidavit-in-opposition filed by his client.

10. By referring to the affidavit-in-opposition filed by the respondents No.1, 2 and 7 dated 29.01.2024, the learned counsel for the Central Government has submitted that in paragraph-11 of the said affidavit, it has been categorically stated that vide an earlier communication dated 28.05.2015, it was informed that no further claims would be entertained. It is also submitted that the revised estimate is not acceptable after six year. For ready reference,

paragraph-11 of the said affidavit is extracted herein below.

*“11. That with regards to statement made in paragraph No.10 of the writ petition, the answering deponent submits that No objection Certificate has also been obtained from Addl Deputy Commissioner, Anjaw vide their letter No. HLGIA-01/10-11/405-06, dated 28 May 2015 (**Appendix-'G'**), duly stating that the 132.30 Lacs is the final compensation for Land and private property/assets. Relevant extract reads as under:-*

“No further claim will come up during course of construction on account of any type of compensation for land/pt property from any individual land owners or State Govt. departments like Dept. of Agri/Horti, Dept. of Power, Dept. of PHE & Water Supply, PWD & RWD Depts. Etc. In view of the above, there is no objection from this office for undertaking construction of above subject road to NHDL specification with immediate effect.”

Hence submission of revised estimate after six year was not acceptable.”

11. The rival contentions made on behalf of the parties has been duly considered.

12. The present claims of the petitioners relate to a compensation for agriculture and horticulture crops and also ROW. The Minutes of meeting held on 29.03.2016, has clearly recommended payment of such compensation for standing crops and properties on ROW and in the said meeting, amongst others, was also attended by the CO, 116 RCC, as noted above. The Board constituted for re-verification and assessment in the said aspect also included members of the requiring authority, namely, the CO 116 RCC (GREF) and the said

Board was constituted in May,2016 itself and vide subsequent notification dated 19.01.2017, the survey was also notified. The recommendation of Committee after assessment was duly communicated on 13.10.2017 itself by the Additional Deputy Commissioner to the OC, 116 RCC (GREF) along with the enclosure containing all the details. A perusal of the enclosure which shows that the following details were given;

1. Name of the Victim
2. Village
3. Distance
4. Location from Road/Alignment
5. Name of Crops
6. Nos./per clump
7. Name of plants
8. Rate
9. Value

All the assessment sheets were duly signed by the concerned officials.

13. This Court have also noticed that in both the affidavits filed by the Deputy Commissioner and Additional Deputy Commissioner, the claim of the petitioners has not been refuted and rather recommendation has been made for such release.

14. The only objection which is seen from the affidavit of the requiring authority is that there was a communication dated 28.05.2015, regarding final compensation and no further claims was

to be entertained. This Court has however, noticed that admittedly the amount of Rs.132.30 Lacs was the final compensation for the land and was not pertaining to the *Zirat*, crops and ROW. Therefore, the present claim is not in connection with the land in question but for the *Zirat* which has been specified. This Court is also unable to accept the stand taken in the said paragraph-11 that after 6 years the revised estimate cannot be accepted. The acceptance of same cannot be reckoned from the date of filing of the writ petition or the affidavit but from the date on which the assessment was notified and communicated to the requiring authority which was done on 13.10.2017 itself. Therefore, the delay, if any is on the part of the requiring authority for which the petitioners cannot be found fault with.

15. In view of the above aforesaid discussion and the materials which shows that the assessment was arrived at by following a due process of law and in transparent manner, this Court is of the view that the petitioners have been able to make out a case for interference.

16. In view of the above, it is directed that the assessed amount for the standing crops and properties and ROW as communicated vide letter dated 13.10.2017, amounting to Rs.14,96,98,469/- (Rupees Fourteen Crore Ninety Six Lakhs Ninety Eight Thousand Four Hundred and Sixty Nine)only be released to the petitioners expeditiously and in any case, within a period of 2(two) months from the date of receipt of a certified copy of this Order. Since, the

amount was entitled to by the petitioners, the same would also carry interest from the date of issuance of the communication dated 13.10.2017 at the rate of 6% per annum.

The writ petition accordingly, stands disposed of.

JUDGE

Comparing Assistant