

GAHC040001402016



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

Case No. : WP(C)/294/2016

SHRI ANGIJO PULU AND 20 ORS.
AGED AROUND 29 YEARS, S/O SHRI PACHU PULU, R/O VILLAGE
BHISMAKNAGAR, PO/PS ROING, LOHIT DISTRICT AP. CONTACT NO.
897436766 2: SRI GETOM MINNO

Age:

Occupation :

3: SRI KAMIN DEGU

Age:

Occupation :

4: SRI ANIYANG PERTIN

Age:

Occupation :

5: SRI PAKONG SARING

Age:

Occupation :

6: SHRI OMEM LEGO

Age:

Occupation :

7: SRI DUKAN PERTIN

Age:

Occupation :

8: SRI RAJE MENJO

Age:

Occupation :

9: SRI Tawe MENJO

Age:

Occupation :

10: SRI CHAKE MEGA

Age:

Occupation :

11: SRI SETE KECHE

Age:

Occupation :

12: SRI APIB PULU

Age:

Occupation :

13: SRI PASI MISO

Age:

Occupation :

14: SRI MATI LINGGI

Age:

Occupation :

15: SRI PINJIRI MEGA

Age:

Occupation :

16: SHRI PACHU PULU

Age:

Occupation :

17: SHRI CHOWANI MIMI

Age:

Occupation :

18: SHRI AKETO LINGGI

Age:

Occupation :

19: SHRI ARJUN UMPE

Age:

Occupation :

20: SONY APRAWAWE

Age:

Occupation :

21: GOKHE MEKOLA

Age:

Occupation

VERSUS

THE STATE OF A.P. AND 2 ORS.

REP. BY THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR

2:The

Secretary

Age: 0

Occupation :

3:The Director

Age: 0

Occupation

Advocate for the Petitioner : MR.M Pertin, Sr. Advocate

Advocate for the Respondent :

Linked Case : WP(C)/129/2016

SHRI ANGIJO PULU AND 20 ORS.

Age: 45

Occupation :

Address:AGED AROUND 29 YEARS

S/O SHRI PACHU PULU

R/O VILLAGE BHISMAKNAGAR

PO/PS ROING

LOHIT DIST. AP

BY OCCUPATION FARMER

MOBILE NO. 8974936766

2: SRI GETOM MINNO

Age: 0

Occupation :

Address:AGE A 45 YEARS

S/O LT. YASOM MINNO

R/O VILLAGE MEKA

PO/PS ROING

DIST. DIBANG VALLEY DIST. AP

3: SHRI KAMIN DEGU

Age: 0

Occupation :

Address:AGE 36 YEARS

S/O LT. TAMU DEGU

OCCUPATION FARMER

ADD. VILLAGE MEKA

PO/PS ROING

LOWER DIBANG VALLERY DIST. AP

4: SHRI ANIYANG PERTIN

Age: 0

Occupation :

Address:AGE 36 YEARS

S/O LT. BOKO PERTIN

OCCUPTATION FARMER

ADDRRESS VILLAGE MEKA

PO/PS ROING

LOWER DIBANG VALLEY DIST. AP

5: SHRI PAKONG SARING

Age: 0

Occupation :

Address:AGE 42 YEARS

S/O IGENG SARING
OCCUPATION SERVICE
ADDRESS VILLAGE MIDLANG
PO/PS ROING
DIST. LOWER DIBANG VALLEY
A P

6: SHRI OMEM LEGO

Age: 0
Occupation :
Address:AGE 37 YEARS
S/O PAKJIR LEGO
VILLAGE RAYANG
PO/PS ROING
DIST. LOWER DIBANG VALLEY
A P

7: SHRI DUKAN PERTIN

Age: 0
Occupation :
Address:AGE ABOUT 71 YEARS
S/O LT. OGON PERTIN
OCCUPATION
ADDRESS VILLAGE BALEK
PO/PS ROING
DIST. LOWER DIBANG VALLEY
A P

8: S/O SHRI RAJE MENJO

Age: 0
Occupation :
Address:AGE ABOUT 52 YEARS
S/O LT. LEHO MENJO
OCCUPATION FARMER
ADDRESS VILLAGE SIMARI -2
DIST. LOWER DIBANG VALLEY
A P

9: SRI Tawe MENJO

Age: 0
Occupation :
Address:AGE ABOUT 30 YEARS
S/O TANTINE MENJO
OCCUPATION FARMER ADDRESS SIMARI-2

LOWER DIBANG VALLEY DIST. AP

10: SHRI CHAKE MEGA

Age: 0

Occupation :

Address:AGE ABOUT 48 YEARS

H/O ANNE LINGGI

OCCUPATION FARMER

ADDRESS KORONU VILLAGE

PO/PS ROING

DIST. LOWER DIBANG VALLEY

A P

11: SRI SETE KECHE

Age: 0

Occupation :

Address:AGE ABOUT 26 YEARS

S/O LT. SOSIYA MENA

OCCUPATION FARMER

ADDRESS KORONU VILLAGE

PO/PS ROING

DIST. LOWER DIBANG VALLEY

A P

12: SRI APIBU PULU

Age: 0

Occupation :

Address:AGE ABOUT 52 YEARS

S/O LT. B.PULU

OCCUPATION FARMER

ADDRESS KORONU

LOWER DIBANG VALLEY DIST. ROING

AP

13: SHRI PASI MISO

Age: 0

Occupation :

Address:AGE ABOUT 65 YEARS

S/O LT. J. MISO

OCCUPATION FARMER

ADDRESS VILLAGE INJONU

PO/PS ROING

DIST. LOWER DIBANG VALLEY

A P

14: SRI MATI LINGGI

Age: 0

Occupation :

Address:AGE ABOUT 66 YEARS

S/O LT. AGOME LINGGI

ADDRERSS INJONU VILLAGE

PO/PS ROING

DIST. LOWER DIBANG VALLEY

A P

15: SRI PINJIRI MEGA

Age: 0

Occupation :

Address:AGE ABOUT 23 YEARS

S/O KADELO MEGA

OCCUPATION FARMER

ADDRESS KORONU VILLAGE

PO/PS ROING

LOWER DIBANG VALLEY DIST. AP

16: SHRI PACHU PULU

Age: 0

Occupation :

Address:AGE 62 YEARS

S/O LT. KOMDRO PULU

R/O VILLAGE BHISMAKNAGAR

PO/PS ROING

LOWER DIBANG VALLEY DIST. AP

OCCUPATION FARMER

17: SHRI CHOWANI MIMI

Age: 0

Occupation :

Address:AGE ABOUT 54 YEARS

S/O LT. RONDO MIMI

R/O VILLAGE BHISMAKNAGAR

PO/PS ROING

DIST. LOWER DIBANG VALLEY

A P

OCCUPATION FARMER

18: SHRI AKETO LINGGI

Age: 0

Occupation :

Address:AGE ABOUT 35 YEARS
S/O SHRI NAMUNE LINGGI
R/O BHISMAKNAGAR
PO/PS ROING
DIST. LOWER DIBANG VALLEY
A P

19: SHRI ARJUN UMPE

Age: 0
Occupation :
Address:AGE ABOUT 30 YEARS
S/O SHRI IHOSI UMPE
OCCUPATION FARMER
ADDRESS INJONU VILLAGE
PO/PS ROING LOWER DIBANG VALLEY
A P

20: SONY APRAWE

Age: 0
Occupation :
Address:AGER ABOUT 27 YEARS
S/O NOTIGE APRAWE
OCCUPATION FARMER
ADDRESS ABANGO VILLAGE
PO/PS ROING
LOWER DIBANG VALLEY DIST. AP

21: GOKHE MEKOLA

Age: 0
Occupation :
Address:AGE ABOUT 44 YEARS
S/O LT. OM MEKOLO
OCCUPATION SERVICE
ADDRRESS ABANGO VILLAGE
PO/PS ROING
LOWER DIBANG VALLEY DIST. AP
VERSUS

THE STATE OF A.P.AND 4 ORS.

Age: 0
Occupation :
Address:REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF AP
ITANAGAR
2:THE SECRETARY

Age: 0
Occupation :
Address:LAND MANAGEMENT
GOVT. OF AP
ITANAGAR

3:THE DIRECTOR

Age: 0
Occupation :
Address:DEPTT. OF LAND MANAGEMENT
GOVT. OF AP
ITANAGAR

4:THE DEPUTY COMMISSIONER

Age: 0
Occupation :
Address:LOWER DIBANG VALLEY DIST. ROING
AP

5:SHRI RAKESH TACHO

Age: 0
Occupation :
Address:CIRCLE OFFICER CUM I/C LRSO LOWER DIBANG VALLEY DIST.
ROING
AP

6:THE DEPUTY COMMISSIONER

Age: 0
Occupation :
Address:EAST SIANG DIST. PASIGHAT
AP

7:THE ADDITIONAL DEUTY COMMISSIONER-CUM-ESTATE OFFICER

Age: 0
Occupation :
Address:EAST SIANG DIST. PASIGHAT
AP

Advocate for : K Dubey
Advocate for : MrD Kamduk appearing for THE STATE OF A.P.AND 4 ORS.:
Advocate ,

,
,
,
,
, appearing for 2,
3,
4,
5,
6,
7, respectively.

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 18.07.2024

Heard Mr. Muk Pertin, learned Senior Counsel assisted by Mr. Mukbom Pertin, learned counsel appearing for the petitioners in both the writ petitions. Also heard Mr. R. H. Nabam, learned Addl. Advocate General assisted by Ms. P. Pangu, learned Government Advocate representing the State respondents in both the writ petitions.

2. The above noted writ petitions have been instituted by the same set of petitioners and the issue involved in the said writ petitions being same, both the writ petitions are taken up together for final consideration and disposal vide the present order.

3. The petitioners by way of instituting the above noted writ petitions have raised a grievance pertaining to the manner in which the compensation as due to them on account of acquisition of their respective lands have been computed by the State respondents in the matter. The petitioners in the above noted writ petitions have presented a challenge to a note dated 21.09.2009, issued by the Chief Secretary, requiring the acquisition of land to be so made under the provisions of Section 10 of the **Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947** (in short Regulations of 1947). The petitioners have also presented a challenge to a notification dated 26.11.2011, by which the respondent authorities had notified the rates for various categories of lands and assets for the purpose of payment of compensation for land acquisition for highway projects in the State of Arunachal Pradesh.

4. The petitioners by way of instituting WP(C)/294(AP)/2016 have presented a challenge to a notification dated 16.04.2016, by which the respondent authorities in pursuance to a Cabinet decision dated 20.03.2016, have reiterated that the rates as notified vide the notification dated 26.11.2011, shall be the basis for fixing rates of compensation for acquisition of lands for the entire stretch of Trans Arunachal Highway throughout the State.

5. The brief facts requisite for adjudication of the issues arising in the present proceeding is noticed as under:-

I. The petitioners have projected themselves to be residents along the Meka-Koronu-Balisan rural hamlets in Lower Dibang Valley district, whose lands had been acquired for construction of the National Highway No. 52.

A project having been conceptualized for widening of the existing road, under the possession of BRTF, referenced as National Highway No. 52, proposals came to be submitted by the BRTF officers for widening and re-alignment in certain stretches in the area and accordingly, a notification, under Section 10 of the said Regulations of 1947 was issued by the Government in the month of November 2014. The said widening of the road having mandated acquisition of lands for Right of Way, the Government had notified acquisition of the required lands under the provisions of the Regulation 10 under the said Regulations of 1947.

II. On the said notification being so issued, the respondent authorities, more particularly, the Deputy Commissioner of the district proceeded to compute the compensation as would now be required to be paid to the persons, whose lands have been so acquired, including the petitioner herein. Such computation was made in terms of the notification dated 26.11.2011, issued by the Department of Land Management, notifying the rates of various categories of lands and assets for the purpose of payment of compensation for land acquired for Highway projects in the State of Arunachal Pradesh.

III. The petitioners, whose lands were so acquired being aggrieved by the fact that the compensation due to them having been so computed in terms of the notification dated 26.11.2011 and not in terms of the provisions of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (in short Act of 2013), had approached this Court by way of instituting WP(C)/129(AP)/2016.

IV. During the pendency of the proceeding in WP(C)/129(AP)/2016, the

Secretary, Land Management Department, Government of Arunachal Pradesh, issued a notification dated 16.04.2016 and therein, in terms of the Cabinet decision dated 20.03.2016, proceeded to notify that the rates as notified vide the notification dated 26.11.2011, shall be the basis for fixing rates of compensation for acquisition of lands for the entire stretch of Trans Arunachal Highway and other public purposes. It was further provided that all other government orders fixing different rates for different districts stood rescinded. Being aggrieved by the issuance of the said notification dated 16.04.2016, the petitioners in WP(C)/129(AP)2016 have again approached this Court by way of instituting WP(C)/294(AP)2016, assailing the said notification dated 16.04.2016.

6. Mr. M. Pertin, learned Senior Counsel appearing for the petitioners has submitted that the manner in which the compensation for the lands acquired of the petitioners have been so computed is in clear violation of the provisions of the said Act of 2013 and the compensation so computed in respect of the lands acquired of the petitioners were so done by leaving aside major components like solatium, interest and also the multiplier factor applicable. It was contended that the petitioners on account of the fact that the respondents have computed the rates of the compensation only in accordance with the said notification dated 26.11.2011, they have received a much lower amount of compensation in lieu of what they ought to have been so authorized, had the provisions of the said Act of 2013 been reckoned. In view of the above contentions, Mr. M. Pertin, learned Senior Counsel has submitted that this Court, would be pleased to interfere with the notification dated 26.11.2011; as well as the notification

dated 16.04.2016 and direct the respondent authorities to release to the petitioners, revised and enhanced compensation, so computed by reckoning the provisions of the said Act of 2013.

7. Per contra, Mr. R. H. Nabam, learned Addl. Advocate General appearing for the respondents has at the outset submitted that the Border Roads Organization, the acquiring authority not been arrayed as party respondent and the petitioners herein, having also not arrayed in the present proceeding the Union of India in the concerned ministry as respondent, this Court would not be in a position to issue an effective order in the present proceeding and accordingly, on account of non-joinder of necessary party, the above noted writ petitions are required to be dismissed as being not maintainable.

8. Mr. R. H. Nabam, learned Addl. Advocate General on merits has contended that the lands of the petitioner having been so acquired under the provisions of Regulation 10 of the said Regulations of 1947, reasonable compensation being so mandated to be paid in the matter, the State having decided that such compensation would be so calculated basing on the rates fixed vide the notification dated 26.11.2011, for the entire State of Arunachal Pradesh, so as to maintain uniformity in the matter, the compensation as computed by the respondent authorities would not call for any interference by the Court.

9. Mr. Nabam, learned Addl. Advocate General has further contended that the said Regulations of 1947 being a complete code in itself, the compensation as due to the petitioners would not be required to be so computed under the Act of 2013, and accordingly, it is submitted that

contentions as made by the petitioners for computing the compensation due by reckoning the provisions of the said Act of 2013 is required to be rejected.

10. In the above premises, Mr. Nabam, learned Addl. Advocate General submits that there being no error on the part of the State respondents in computing the required compensation authorized to the petitioners herein for acquisition of their lands for the purpose of construction of the Trans Arunachal Highway, the writ petition is devoid of any merit and is required to be dismissed.

11. I have heard the learned counsel appearing for the parties and also perused the materials brought on record.

12. At the outset, it is required to be noticed that the Act of 2013 was brought into force by the Government of India, w.e.f. 01.01.2014, vide a notification dated 19.12.2013, published in the Gazette of India, in its issue dated 19.12.2013.

13. The Secretary-cum-Revenue Commissioner to the Government of Arunachal Pradesh, Land Management Department, vide a notification no. LM-20/2005(Pt)/1546 dated 20.03.2014, proceeded to extend the provisions of the said Act of 2013 in the State of Arunachal Pradesh and the same was so made applicable to the State w.e.f., 01.01.2014.

14. The issues arising in the present proceeding had also arisen in the proceedings of WP(C)/280(AP)/2020 (Mihin Laling & Ors. Vs Union of India & Ors.) and a Co-ordinate Bench of this Court, on consideration of the issues arising in the case of Mihin Laling (supra) vide Judgment & Order,

dated 25.04.2022, passed the following directions:-

"(i) The Regulation of 1947, and the RFCT & LARR Act, 2013, are enacted on the same subject, i.e. land, which is a subject of Concurrent List. There is no provision for payment of solatium and interest in the Regulation of 1947, whereas the same is available in the RFCT & LARR Act. The object sought to be achieved by the Regulation Act 1947 and the RFCT & LARR Act are almost the same. And as such Regulation 1947 is inconsistent with the RFCT & LARR Act, 2013 and Regulation of 1947 failed to withstand the test of Article 254 of the Constitution of India.

(ii) The land of the petitioners acquired for the construction of TAH and for construction of 33/11 Sub-Station and Bomdila Bye-Pass, all are required for the 'public purpose' and no classification for 'public purpose' is permissible.

(iii) Regulation of 1947, and the RFCT & LARR Act, 2013, enables the State to give the petitioners different treatment from another, equally situated owners. And as such the petitioners, who are discriminated against, are entitled to protection of Article 14 and 16 of the Constitution. Though a classification is sought to be made by the learned In-Charge Advocate General, yet the same is not based upon intelligible differentia, as they cannot be treated differently from the land owners whose lands were acquired for construction of 33/11 KV Sub-Station and Bomdila Bye-Pass, as in all the cases the lands are acquired for only one purpose, i.e. 'public purpose'!

(iv) The petitioners are entitled to compensation and solatium and

interest in view of the RFCT & LARR Act, 2013, as the State cannot make any law in derogation of any provision of the said Act."

15. The State respondents being aggrieved by the directions so passed by the Co-ordinate Bench of this Court, in the case of Mihin Laling (supra) proceeded to assail the same by way of instituting a writ appeal being WA No. 15/2022 (The State of AP & 2 Ors. Vs Mihin Laling & Anr.)

16. The Division Bench of this Court, on consideration of the issues as arising in WA/15/2022 and other analogous writ appeals, proceeded to consider and dispose of the same vide the Judgment & Order, dated 12.09.2022. The Division Bench of this Court, in the said Judgment & Order, dated 12.09.2022, framed the following issues for determination:-

“(i) Whether the Regulations of 1947 would be repugnant to the Act of 2013.

(ii) Whether the provisions of Act of 2013 are applicable in the State of Arunachal Pradesh.

(iii) Whether Section 10 of the Regulations of 1947 provides for a different procedure for acquisition of land in the State of Arunachal Pradesh at a variation from the other established procedures.

(iv) Whether the petitioners are entitled to payment of solatium and interest in respect of the compensation paid to them.”

17. The Division Bench of this Court, for the determination of the above

issues framed a further issue to the effect as to whether Section 10 of the said Regulations of 1947 is a substantive provision for acquisition of land in the State of Arunachal Pradesh or, it is merely an enabling provision to acquire the Jhum lands, for which, otherwise there is a restriction for alienation.

18. As regards the first issue framed by the Division Bench of this Court, "Whether the Regulations of 1947 would be repugnant to the Act of 2013", the Division Bench, on consideration of the various aspects involved in the matter, proceeded to draw the following conclusions:-

"28. The long title and Section 5 of the Regulations of 1947 are as extracted:-

"Whereas it is expedient to frame a Regulation in order to safeguard and regulate the rights of the tribes Indigenous to the Balipara/Tirap/Sadiya Frontier Tracts to Jhum land in the Balipara/Tirap/Sadiya Frontier Tract.

Section 5 of the Regulations of 1947 is extracted as below:-

(1) Jhum land to which a community has a customary right may not be transferred to another community or to any individual except with the permission of the land Conservator.

(2) Jhum land to which an individual belonging to a village or community has a customary right may be community or to that village or community as a whole. It shall not be transferred to

another village or community or to a member of another village or community except with the previous permission of the Land Conservator.

(3) Nothing in this Section shall affect a transferred which is valid under any other provision of this Regulation."

29. A reading of the long title to the Regulations of 1947 makes it discernible that the Regulations of 1947 was enacted to safeguard and regulate the rights of the tribes indigenous over the Jhum land in Balipara/Tirap/Sadiya Frontier Tracts and Section 5 thereof makes it discernible that there is a restriction of alienation of the Jhum lands in the Balipara/Tirap/Sadiya Frontier Tracts from being transferred to any other community or any other individual as well as to another village or community without the previous permission of the Land Conservator, which expression also includes the Deputy Commissioner. Sections 6, 7 and 8 also provides for certain other restrictions in the alienation of the Jhum lands. Section 5(3) provides that the restrictions shall not affect a transfer which otherwise would be valid under any other provision of the Regulations.

30. The aforesaid provisions in the Regulations of 1947 leads to a conclusion that the dominant purpose and the subject matter for which the Regulations were enacted was for regulating, safeguarding and protecting the interest of the tribes indigenous over the Jhum lands, which now has to be read to be in the State of Arunachal Pradesh.

31. Section 10 of the Regulations of 1947 provides that the Government may acquire any Jhum land for a public purpose for which no formal acquisition shall be necessary but an opportunity shall be given to those having rights over the land to show cause against such acquisitions and reasonable compensation shall be paid for all such land required under the Section.

Section 10 of the Regulations of 1947 is extracted as below:-

"The Government may acquire any Jhum land required for a public purpose. No formal acquisition proceedings shall be necessary but an opportunity shall be given to those having rights in the land to show cause against such acquisition and reasonable compensation shall be paid for all land required under this section.

Land so acquired shall, if relinquished by the Government at any time, be returned to the village, community or individual from whom it was acquired on refund, if any, of such compensation to the Government as the latter may decide."

32. Section 10 of the Regulations of 1947 provides that the Government may acquire any Jhum lands required for public purpose and that reasonable compensation shall be paid for all such lands 'required under the Section, in contradistinction to the expression acquired. As already provided the dominant purpose and the subject matter of the Regulations of 1947 is to regulate, safeguard and protect the tribes indigenous over the Jhum lands in the State of Arunachal Pradesh with restrictions on alienation of the

Jhum lands. From such point of view, the provisions of Section 10 carves out an exception from such regulation, safeguarding and protection as well as restrictions on alienation by providing an enablement to the Government to acquire even any Jhum lands for public purpose.

33 Consequently, the provisions of Section 10 of the Regulations of 1947 would have to be interpreted to be an enabling provision to carve out an exception to facilitate an acquisition by providing that reasonable compensation be paid for the required land. The expression 'required land appearing in the Section in contradistinction to the expression acquired land also leads to an understanding that the provisions of Section 10 is not a substantive provision for acquisition, whereas it is an enabling provision to facilitate an acquisition even in respect of Jhum lands in the State of Arunachal Pradesh.

34. On the other hand, the Act of 2013 had been enacted for a transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and to provide for just and fair compensation to the affected families whose lands have been acquired or proposed to be acquired and make provisions for their rehabilitation and settlement etc. A reading of the long title of the Act of 2013 makes it abundantly clear that the dominant purpose of the Act is for land acquisition alone and for matters incidental thereto. The statement of objects and reasons of the Act of 2013 also shows that the said Act was for a more enhanced protection and benefits to the land

owners upon their land being acquired.

35. It is also worthy to note that the statement of objects and reasons of the Act of 2013, as well as Section 103 thereof, provides that the Act is in addition to and not in derogation of any other law for the time being in force. The statement of objects and reasons and Section 103 of the Act of 2013 also gives an indication that even if the Regulations of 1947 is construed also to provide for land acquisition, still the Act of 2013 would be in addition to the Regulations of 1947 and not in derogation thereof. From such point of view also the question of the Regulations of 1947 being repugnant to the Act of 2013 can be answered.

36. In this respect, it is also noticed that the Regulations of 1947 have been enacted in exercise of the powers under Section 92(2) of the Government of India Act, 1935 (for short 'the Act of 1935'). Section 92(2) of the Act of 1935 is extracted as below:-

"The Governor may make regulations for the peace and good governance of any area in the province which is for the time being an excluded are, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of

this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him."

37. A reading of the provision of Section 92(2) of the Act of 1935 makes it discernible that the Governor is empowered to make Regulations in respect of the excluded or partially excluded areas for good governance. The power of the Governor under Section 92(2) of the Act of 1935 is a limited and restricted power to make a Regulation in an excluded or partially excluded area for good governance. When the provisions of the Regulations of 1947 is looked into, it is explicit that the said Regulations is to regulate, safeguard and protect the tribes indigenous over the Jhum lands in the State of Arunachal Pradesh with restrictions on alienation of the Jhum lands, which can be safely termed to be for the purpose of good governance as the Jhum lands of the tribes indigenous in the State of Arunachal Pradesh is sought to be protected. It is also an accepted position that prior to the creation of the State of Arunachal Pradesh, in its earlier forms, it was also known as Balipara/ Tirap/Sadiya Frontier Tract which were a part of excluded or partially excluded areas in the year 1947, when the Regulations of 1947 were framed in exercise of the powers under Section 92(2) of the Act of 1935.

Although Section 92(2) of the Act of 1935 empowers the Governor to frame Regulations for good governance, the empowerment under the Act of 1935 to frame laws as regards to land acquisition was Section 100. As the Regulations of 1947 had been framed under

Section 92(2) of the Act of 1935 and not Section 100, from such point of view also it has to be accepted that the Regulations of 1947 is not a law framed for the purpose of land acquisition simpliciter but for the purpose of good governance.

38. The very aspect that the Regulations of 1947 were framed in exercise of the powers under Section 92(2) of the Act of 1935, which is a power to frame Regulations for good governance, from such point of view also it has to be understood that the Regulations of 1947 are for the dominant purpose of good governance and not land acquisition.

39. As it is an irresistible conclusion that the dominant purpose and subject matter of the Regulations of 1947 are to regulate, safeguard and protect the tribes indigenous over the Jhum lands in the State of Arunachal Pradesh with restrictions on alienation of the Jhum lands, which again is for the purpose for good governance and the dominant purpose and subject matter of the Act of 2013 is for land acquisition alone and for matters incidental, therefore, it has to be accepted that the Regulations of 1947 and the Act of 2013 are for two different purposes and subject matters, although incidentally Section 10 of the Regulations of 1947 also provides for an enablement for land acquisition. As the subject matters of the Regulations of 1947 and the Act of 2013 are different, we have to understand that under the provisions of Article 254(1) of the Constitution of India, there can be no repugnancy between the two laws.”

19. Having recorded the said conclusions with regard to the issue no. (i),

the Division Bench of this Court, proceeded to consider the issue no. (ii) to the effect as to "Whether the provisions of Act of 2013 are applicable in the State of Arunachal Pradesh."

20. This Court, upon noticing the contentions as contained in the notification dated 20.03.2024, proceeded to hold that the said Act of 2013 is applicable in the State of Arunachal Pradesh. Thereafter, the Division Bench of this Court, proceeded to consider the issue no. (iii), as to "Whether Section 10 of the Regulations of 1947 provides for a different procedure for acquisition of land in the State of Arunachal Pradesh at a variation from the other established procedures."

21. On appreciation of the materials coming on record and also considering the submissions so advanced by the learned counsels appearing for the parties, this Court, proceeded to record the following conclusions on the said issue:-

"54. Accordingly, it has to be understood that Section 10 is an enabling provision to carve out an exception that even Jhum lands can also be acquired in spite of the Regulation, safeguarding and protecting of the rights of the tribes indigenous to Jhum lands and the restrictions provided therein against alienation of Jhum lands. In exercise of the enabling provision to acquire the Jhum lands, Section 10 provides for an opportunity to the Jhum lands owners to raise an objection to the proposed acquisition and therefore, till such stage, there is no formal acquisition proceeding. But, after the stage of the objection, the land is referred as 'required lands' meaning thereby that if the authorities pursue with the proposed acquisitions, the compensation to be paid for the 'required lands' would be governed

by the provisions of the relevant law of acquisition that may be/have been in force.

55. Although for interpreting Section 10 of the Regulations of 1947 we have held that after the stage of objection the land is referred as 'required lands, meaning thereby that if the authorities pursue with the proposed acquisitions, formal acquisitions proceeding under the relevant law in force would have to be initiated and the procedure thereof be followed, but we further provide that in respect of all such acquisitions which had been completed, where the compensation has been assessed and paid, although done purportedly under Section 10 of the Regulations of 1947, such proceedings shall be deemed to have been pursuant to acquisition proceedings under the relevant laws in force at that relevant point of time. But at the same time, in respect of all such pending and future acquisition proceedings that may be initiated, the applicability of Section 10 of the Regulations of 1947 be done by carrying out the computation of compensation as provided in the Act of 2013.

56. Section 10 of the Regulations of 1947 being an enabling provisions enables the State authorities to also acquire Jhum Lands by giving an opportunity to the Jhum lands owners to raise an objection against the proposed acquisitions in spite of the restrictions of alienation of Jhum lands provided under the said Regulations and for the purpose of giving such opportunity to raise objection no formal acquisition proceeding is necessary. Even after the stage of providing the opportunity to raise objection is over, for the purpose of payment of compensation the land is still referred as 'required lands which gives the indication that from that stage

onwards the acquisition proceedings would be initiated for the purpose of payment of reasonable compensation.

57. Section 10 of the Regulations of 1947 is special law to enable the State authorities to even acquire Jhum lands by carving out an exception to the restrictions on alienation of Jhum lands provided in the said Regulations. But, the provisions of the special law being limited to the requirement of giving an opportunity to the Jhum lands owners to raise an objection against the proposed acquisitions and there being no further provisions providing for the procedure as to how the reasonable compensation is to be computed, and the provisions itself providing for a requirement to pay a reasonable compensation, we are of the view that for the purpose of computing the reasonable compensation and the procedure and requirements to be adopted, the general law in force on the same subject i.e., of computing the reasonable compensation would be applicable and have to be followed. The said view would also be in conformity with the legal principle that if the provisions of the special law are inadequate to provide for the required principles and procedures to be adopted, in respect of the residual part thereof the principles and procedures provided under the general law for the same purpose is to be followed.

58. Accordingly, it is held that Section 10 of the Regulations of 1947 do not provide for a procedure which would be at a variance with any other established procedure, which in the present case would be the law relating to land acquisitions prevailing at the relevant point of time.”

22. Having recorded the above noted conclusions with regard to the issue no. (i), (ii) and (iii), this Court, proceeded to consider the issue no. (iv), to the effect as to “Whether the petitioners are entitled to payment of solatium and interest in respect of the compensation paid to them.

23. This Court, upon noticing the decision of the Hon’ble Supreme Court, applicable in the matter, proceeded to conclude as follows:-

“64. Accordingly, it is declared that the writ petitioners are entitled to the payment of solatium as well as the interest as provided in the Act of 2013 or any other relevant law of acquisition that may have been in force when the acquisitions have taken place and the stand of the authorities that solatium and payment of interest are not required as the acquisitions are made under Section 10 of the Regulations of 1947 to be unsustainable.”

24. Upon recording the aforesaid conclusions with regard to the issues as framed in the matter, the Division Bench of this Court; vide Judgment & Order, dated 12.09.2022, proceeded to hold that the petitioners in the connected writ petitions, would be entitled to the payment of solatium and interest in respect of the land acquired as per the provisions of the said Act of 2013 and accordingly, directed the respondent authorities to do the needful to pay the solatium and interest on the compensation paid to the writ petitioners with regard to the their lands acquired by the respondent authorities.

25. Having noticed the decisions of the Division Bench of this Court in

WA/15/2022, it is found that the issues arising in the present writ petitions are squarely covered by the said decision of the Division Bench.

26. As held by the Division Bench of this Court, the provisions of Section 10 of the said Regulations of 1947 would have to be interpreted to be an enabling provision to carve out an exception to facilitate an acquisition of Jhum land by providing that reasonable compensation be paid for the required land.

27. Section 10 of the said Regulations of 1947 provides that the Government may acquire any Jhum land for a public purpose and for the purpose, no formal acquisition proceeding shall be necessary, but, an opportunity shall be given to those having rights over the Jhum land to show cause against such acquisition, but, reasonable compensation is mandated to be paid for all the lands required under the said Section. The expression "required lands" for the purpose of payment of reasonable compensation in contradistinction with the expression "acquired lands" makes it discernible that up to the stage of giving the opportunity to the Jhum land owners to object to the proposed acquisition, no acquisition of any lands takes place and therefore, for the purpose of payment of reasonable compensation in Section 10, the expression "required lands" is used. It has to be therefore, understood in the above context that Section 10 is an enabling provision. Accordingly, after the stage of objection, the land is referred as "required lands" meaning thereby that if the authorities pursue with the proposed acquisitions, formal acquisitions proceeding under the relevant law in force would have to be initiated and the procedure thereof be followed. Accordingly, in respect of lands acquired

under the provisions of Section 10 of the said Regulations of 1947, the general law in force on the subject for computing reasonable rates for compensation would be applicable and have to be followed.

28. In view of the above conclusions recorded by the Division Bench of this Court, it is clear that for the lands as acquired of the petitioners under the provisions of Regulation 10 of the said Regulations of 1947, the compensation as would be due on account of such acquisition would be one as contemplated under the provisions of the Act of 2013. Admittedly, the compensation as computed in the matter by the respondent authorities with regard to the lands so acquired of the petitioners herein, was not so computed by reckoning the provisions of the said Act of 2013 and the same was so done, basing solely on the rates as notified by the Government vide the notification dated 26.11.2011. Accordingly, this Court is of the considered view that the compensation as computed in respect of the lands acquired of the petitioners is not the fair compensation due to the petitioners in lieu of their lands acquired by the respondent authorities for construction of the Trans Arunachal Highway.

29. In view of the above conclusion, this Court, is of the considered view that the compensation as computed in respect of the lands acquired of the petitioners herein would now be required to be re-done by the respondent authorities by strictly applying the provisions of the said Act of 2013 along with the clarifications issued thereon by the Government of India.

30. Accordingly, the respondent authorities are directed to compute the compensation that would be required to be authorized to the petitioner in lieu of acquisition of their respective land for the purpose of construction

of Trans Arunachal Highway by reckoning the rates as notified for the area, wherein, the land of the petitioners are situated proximate to the period during which the notification under Regulation 10 of the said Regulations of 1947 was so issued, and thereafter, release to the petitioners the revised compensation after providing therein for solatium and interest in terms of the provisions of the said Act of 2013.

31. At the stage, this Court would like to examine the contentions of the respondents that the present writ petitions are not maintainable, inasmuch as, the acquiring authorities i.e., the BRO and/or the Union of India in the concerned ministry were not impleaded as party respondents in the present proceedings and accordingly, the writ petition would require to be dismissed on the ground of non-joinder of necessary party.

32. This Court has considered the said contention of the respondents, however, on account of the nature of relief sought for in the present proceedings, as well as the decision of the Division Bench of this Court in the case of Mihin Laling & Ors. (supra), this Court, in the present order having only declared the manner in which the compensation would be required to be computed by the respondent authorities in respect of the lands acquired of the petitioners for the construction of Trans Arunachal Highway, the said objection as raised by the State respondents is not being considered in the present proceeding.

33. The petitioners are at liberty to institute such proceeding as may be so called for in the event, the revised compensation on being so computed by the State respondents in terms of the directions as passed herein above, is not released to the petitioners by the acquiring authorities.

34. The exercise now required to be carried out by the State respondents be initiated and concluded within a period of 4(four) months from the date of receipt of a certified copy of this order.

35. With the above observations and directions, the writ petitions stands disposed of.

JUDGE

Comparing Assistant