

GAHC040001642017



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

Case No. : WP(C)/271/2017

SOTOS WELFARE and AGORO FORESTRY SOCIETY AND 2 ORS.
HEAD OFFICE AT WAKRO, PO/PS WAKRO , LOHIT DISTRICT, REP. BY ITS
CHAIRMAN, SHRI SOTO THALAI, S/O LT. GONGLUM THALAI, RESIDENT
OF WAKRO VILLAGE, PO/PS WAKRO LOHIT DISTT. AP. 2: KANDEY
VILLAGE FOREST MANAGEMENT COMMITTEE

Age:

Occupation :

3: SHRI SOTO THALAI

Age:

Occupation

VERSUS

THE PRINCIPAL SECRETARY 6 ORS.
DEPTT. OF ENVIRONMENT AND FORESTS, GOVT. OF AP. 2: THE
PRINCIPAL CHIEF CONSERVATOR OF FOREST

Age: 0

Occupation :

3: THE CHIEF CONSERVATOR OF FOREST

Age: 0

Occupation :

4: THE DIVISIONAL FOREST OFFICER

Age: 0

Occupation :

5: THE RANGE FOREST OFFICE

Age: 0
Occupation :

6:THE SECRETARY

Age: 0
Occupation :

7:THE DIRECTOR GENERAL OF FOREST

Age: 0
Occupation

Advocate for the Petitioner : Somila

Advocate for the Respondent :

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

ORDER

23.01.2024

Heard Shri SK Deori, learned counsel for the petitioners. Also heard Shri RH Nabam, learned Addl. Advocate General (AG), AP.

2. While the petitioner no. 1 is a Society, the petitioner no. 2 is a Committee and the petitioner no. 3 is the Chairman of the petitioner nos. 1 and 2.

3. It is the projected case of the petitioners that they possessed a community forest land measuring 310.47 hectares and had formed a Joint Venture Forest Management Committee (Committee) with the aid of the Forest Department for preservation and conservation of trees. As per the petitioners, out of the revenue generated, 25% would be the share of the Committee. Pursuant to a notification dated 19.11.2010 issued by the Deputy Commissioner, the land in

question was acquired for construction of a Hydro Power Project and the concerned company, namely, M/S Athena Demwe Power Limited deposited an amount of Rs.22,73,58,458.50 as compensation by the User Company. According to the petitioners, such amount would also cover the extraction cost of the trees, revenue earned from the extracted trees and net present value of the affected trees. The petitioners have accordingly served notice to the authorities for release of their share which was refused and accordingly, the present writ petition has been filed.

4. Shri Deori, learned counsel for the petitioners has submitted that there are materials on record to show that the petitioners' claim is legally maintainable as per the arrangement by which, 25% of the proceeds were to be given to the petitioners. It is submitted that apart from the photographs of the existing trees which are affected, the inter-office-communications would also suggest that in the process of construction of Hydro Power Project, there were many trees which were uprooted and otherwise affected which were planted by the petitioners. The learned counsel, however, fairly submits that the present claim is limited to the value of the trees and otherwise, the compensation of the land in question has already been given.

5. Shri Nabam, learned Addl. AG, however, submits that the claim is both legally and factually untenable. He submits that the area of the forest in question constitutes unclassified forest. By referring to Annexure-10 which is a communication dated 11.02.2016 issued by the Chief Conservator of Forests, Eastern Arunachal Circle to the Principal Chief Conservator of Forests, AP, the learned State Counsel has emphasized that the said communication would make

it clear that as on the date, there was no plantation/re-generation under FDA which was taken up in the Kandy Community Forest. He submits that the said communication had emanated from a representation dated 16.09.2014 submitted by the petitioners themselves and therefore, their claim does not appear to be sustainable. The learned State Counsel has also raised the issue of maintainability of the writ petition itself as it involves factual disputes.

6. After hearing the parties and on consideration of the rival submissions, this Court is of the opinion that though a writ court does not have the expertise to enter into the factual disputes, at the stage of hearing of this writ petition which was filed in the year 2017, dismissal on the ground of maintainability may not be proper and justified. At the same time, the existence of disputes which are factual in nature cannot be totally overlooked by this Court.

7. This Court has noticed that the communication dated 11.02.2016 is upon a representation dated 16.09.2014. The petitioners have also referred to another representation dated 13.03.2014 which has been annexed as Annexure-11 to the writ petition.

8. Under those circumstances, this Court is of the opinion that interest of justice would be served if a detailed consideration is given to the aforesaid representations and the same are disposed by a speaking order. The aspect which has been highlighted on behalf of the respondents is also required to be taken into account while considering the representations by the appropriate authority. The said consideration be made by the Principal Chief Conservator of Forests, Government of Arunachal Pradesh. To facilitate such consideration, the

petitioners are directed to furnish fresh copies of the representations along with other relevant documents in support of their prayer within a period of 3 weeks from today.

9. The consideration, as directed above, is to be done thereafter and a speaking order be passed within a period of 2 months from the date of receipt of receipt of a certified copy of this order along with the duplicate copies of the aforesaid representations.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant