

GAHC040007542024



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

Case No. : WP(C)/234/2024

Pandan Tsering and 21 Ors
Son of Late Thutan Dorjee, Sakyur Village, PO and PS Lumla, District Tawang,
Arunachal Pradesh 2: Tsewang Tenzin
Age:
Occupation :

3: Tsering Wanchu
Age:
Occupation :

4: Lham Gyatsok
Age:
Occupation :

5: Norbu Rapgey
Age:
Occupation :

6: Tenzin /Wangchak
Age:
Occupation :

7: Choebay Raptan
Age:
Occupation :

8: Sonam Jekme

Age:
Occupation :

9: Jambey Tashi

Age:
Occupation :

10: Smti Thinley Zangmu

Age:
Occupation :

11: Smti Dorjee Drema

Age:
Occupation :

12: Sonam Dorgey

Age:
Occupation :

13: Pema Khandu

Age:
Occupation :

14: Phurpa Rinchen

Age:
Occupation :

15: Smti Tashi Pema

Age:
Occupation :

16: Smti Rinchen Tsomu

Age:
Occupation :

17: Tsering Norbu

Age:
Occupation :

18: Smti Ganden Chitten

Age:

Occupation :

19: Smti Kuncho Tsomu

Age:

Occupation :

20: Leki Khandu

Age:

Occupation :

21: Smti Ngudup Lhamu

Age:

Occupation :

22: Lobsang Yeshi

Age:

Occupation

VERSUS

The State of AP and 5 Ors

represented by the Secretary (Land Management) Govt of Arunachal Pradesh,
Itanagar 2:The Director

Age: 0

Occupation :

3:The Deputy Commissioner

Age: 0

Occupation :

4:The Additional Deputy Commissioner

Age: 0

Occupation :

5:The Vivekananda Kendra Vidyalaya

Age: 0

Occupation :

6:The Executive Engineer
Age: 0
Occupation

Advocate for the Petitioner : Gimi Tarak

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

24.06.2024

- 1)** Heard Mr. T. Garam, learned counsel for the petitioners and Ms. G Ete, learned Government Advocate, Arunachal Pradesh for the respondent Nos. 3, 4 & 6.
- 2)** In view of the order passed today in I.A. (Civil) 101 (AP) 2024, M/S. Royal Global Construction/Caveator has been made party respondent No. 7 in the present proceeding. Heard Mr. H K Jamoh, learned counsel for the newly impleaded respondent No. 7.
- 3)** Petitioners are the joint owners of community land of Ding-Sum at Villages- Thrillam, Buikyong and Sakyur under Lumla Sub-Division, District-Tawang, Arunachal Pradesh and along with them the residents of those three villages are also joint owners of the said community land.
- 4)** For establishment of Vivekananda Kendra Vidyalaya Residential School (VKV, in short) at Soula Tse, Lumla, 35 Acres of community land of Ding-Sum sought to be donated to the State authorities.
- 5)** Though the petitioners have all along been objecting against such donation of their said community land for the said purpose, but the Gaon Burahs of those three villages proceeded to donate the said land.

6) Petitioners stated that the residents of the said three villages belong to Monpa Customary Law and as per their practice, they cannot alienate or donate said community land without the consent of the villagers of the said three villages.

7) For construction of said VKV in their said community land, a meeting was held in the Conference Hall of the Additional Deputy Commissioner, Lumla on 14.09.2021, wherein the Gaon Burahs of those three villages were present. In the said meeting, it was decided that land would be donated to the Government on the consensus of all the villagers by furnishing 'No Objection Certificates', the villagers of the three villages shall be given priority during recruitment of staff and construction of the school and the Gaon Burahs of the concerned villages shall conduct Gram Sabhas in their respective villages for obtaining 'No Objection Certificates' from the villagers.

8) It is alleged by the petitioners that without holding any Gram Sabhas, signatures of the villagers of those three villages were obtained relating to 'No Objection Certificates' by misrepresentation of facts and the Gaon Burahs of those three villages submitted those fraudulently obtained 'No Objection Certificates' (NOC, in short) before the Additional Deputy Commissioner, Lumla on 22.09.2021 and the Deed of Agreement was also executed between the Gaon Burahs and the ADC, Lumla on 08.12.2021 relating to said 35 Acres of community land belonging to the villagers of Ding-Sum donating the said land to the District Administration for construction of said VKV Residential School at Soula Tse.

9) As NOCs for said land have been issued, the Executive Engineer, PWD, Lumla Division on 19.09.2022 issued a Notice Inviting Tender (NIT) inviting Bids for construction of said VKV Residential School at Lumla, pursuant to which, construction of the said school was awarded to the respondent No. 7, M/S Global Royal Construction vide Letter of Acceptance dated 18.10.2022.

10) On coming to know about such fraud being committed in allotting their community land for construction of VKV at Lumla, the petitioners on 05.12.2022 submitted a Memorandum of Appeal before the Additional Deputy Commissioner, Lumla with a Reminder on 29.03.2023.

11) After executing the Agreement, the ADC, Lumla took up the Memo of Appeal of the petitioners and by communication dated 19.05.2023 the said authority directed the petitioners to approach their respective Gaon Burahs relating to withdrawal of their consent regarding donation of their community land for establishment of VKV at Lumla.

12) Accordingly, on 30.05.2023, the petitioners submitted their representations before the Gaon Burahs of the three villages for withdrawal of their consent to donate the community land of the three villages for construction of VKV at Lumla and also requested to stop the construction work on the said community land.

13) Since, the Gaon Burahs did not take any action on their representation dated 30.05.2023, as such, they preferred a writ petition, being WP(C) No. 269 (AP) 2023. When the matter was taken up for consideration by the Court on 29.01.2024, it was placed before the Court that the issue of the petitioners relating to withdrawal of consent to donate the community land for establishment of the VKV at Lumla is under active consideration of the Gaon Burahs and considering the same, the Court by order dated 29.01.2024 disposed of said WP(C) No. 269 (AP) 2023 preferred by the petitioners, observing that for such development the said writ petition need not be kept pending any further, directing the Gaon Burahs to consider the representation of the petitioners and pass appropriate orders strictly in accordance with law and that such disposal be made expeditiously.

14) While disposing of said WP(C) No. 269 (AP) 2023 of the petitioners, the Court by order dated 29.01.2024 granted liberty to the petitioners to agitate the outcome

of such consideration, if so advised, and vacated the order of status-quo dated 26.06.2023 that was passed earlier in the said WP(C) No. 269 (AP)/2023.

15) After disposal of said WP(C) No. 269 (AP) 2023 on 29.01.2024, to comply with the said order, the ADC, Lumla Sub-Division, Lumla on 31.01.2024 issued a Meeting Notice convening a meeting on 02.02.2024 at 11:00 hours in its Conference Hall, requesting the petitioners, i.e., the Signatories to the Memorandum dated 05.12.2022 and other villagers of those three villages, the respective Gaon Burahs and Gram Chairpersons as well as the Gram Panchayat Members of those three villages to remain present in the said meeting.

16) The meeting was accordingly attended by all on 02.02.2024 as called for by the ADC, Lumla Sub-Division, Lumla by its Notice dated 31.01.2024. To comply with the order of the Court dated 29.01.2024 passed in WP(C) No. 269 (AP) 2023, in the said meeting dated 02.02.2024 it was resolved that the Gaon Burahs of Ding-Sum, i.e., the three villages shall conduct a combined Gram Sabha to consider the representation of the petitioners and shall pass an appropriate order in accordance with law and shall submit the report to the ADC, Lungla where the date of the said Gram Shabha shall be finalized by the Gaon Burahs of the three villages, who shall intimate the said date to the villagers of those three villages as well as the ADC, Lungla.

17) Accordingly, the Gram Sabha meeting was convened at Thriliam Village on 21.02.2024 at 09:30 hours under Chairmanship of the Gaon Burahs of the three villages, namely, Thriliam, Sakyur and Buikyong Villages relating to the acquisition of their community land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 for establishment of said VKV.

18) In the said combined Gram Sabha on 21.02.2024 with regard to the issue

raised by the petitioners – “not to donate their community land for establishment of the VKV at Soula Tse, Lumla and for the said purpose their community land should be acquired under the provisions of said 2013 Act”, noted above, after a thorough discussion amongst the villagers of the three villages, in presence of the petitioners, those villagers, resolved for a referendum in which out of 117 villagers including the petitioners, 96 Members voted in favour of donation of their community land for establishment of the said VKV Residential School at Soula Tse, Lumla and the remaining 21 voted against.

19) As such, the House in the said common Gram Sabha on 21.02.2024 in more than 2/3rd majority voted in favour of donating their community land for establishment of the said school and the Gaon Burahs concluded the said common Gram Sabha with closing remarks. The Minutes of the said meeting dated 21.02.2024 along with the attendance sheets of the members present in said common Gram Sabha was forwarded to the Additional Deputy Commissioner, Lungla and the ADC, Lungla on 01.03.2024 accordingly, informed the Executive Engineer, PWD, Lungla Division that the majority villagers of the three villages in their combined Gram Sabha held on 21.02.2024 voted in favour of donating their community land for establishment of the VKV Residential School at Soula Tse, Lumla, informing that the said Department (i.e., the PWD, Lungla Division) may go ahead with the necessary works for establishment of the said school.

20) Aggrieved with the said decision of the combined Gram Sabha dated 21.02.2024 regarding donation of their community land for establishment of said VKV Residential school, whose are against such donation of their community land for establishment of the said school, have now filed this writ petition on 15.06.2024, stating that such actions of the respondents in taking over their community land for the purpose of establishing the VKV residential school by way of donation is wholly illegal and in violation of the rights of the petitioners

guaranteed under Articles 14, 21 & 300A of the Constitution.

21) Petitioners contended that the decisions of the villagers taken in the combined Gram Sabha held on 21.02.2024 and the entire decision-making process in the said meeting was not in accordance with the directions issued by the Court on 29.01.2024 passed in WP(C) No. 269 (AP)2023.

22) It is also contended by the petitioners that impugned action of the villagers in donating their community land is also in violation of the ownership rights of the petitioners over the said land which is a flagrant violation of their right to property.

23) Hence this writ petition by the petitioners, praying amongst others, to set aside and quash the minutes of the combined Gram Sabha held on 21.02.2024 wherein the villagers by 2/3rd majority decided to donate their community land for establishment of the VKV Residential School at Soula Tse, Lumla and to set aside and quash the communication dated 01.03.2024 of the ADC, Lungla allowing the Executive Engineer, PWD, Lungla to go ahead with the construction of the VKV Residential School at Soula Tse, Lumla and further, to direct the respondent authorities to stop the construction of said VKV residential school at Soula Tse, Lumla and to return the community land to the villagers of said three villages.

24) It is not in dispute that the land in which the Vivekananda Kendra Vidyalaya Residential School at Soula Tse, Lumla is going to be established is on the community land of the Ding-Sum, i.e., the three villages, Thriliam, Sakyur and Buikyong.

25) It is the petitioners who raised the dispute that the Gaon Burahs of the three villages representing the villagers of their respective villages gave consent of donating their said community land for establishment of said VKV residential school at Soula Tse, Lumla.

26) The petitioners contention is that the representation/ memorandum submitted

by them before the ADC, Lungla where the authority tried to resolve the matter allowing the petitioners to approach their respective Gaon Burahs for redressal of their grievances relating to their demand for withdrawal of consent of the Gaon Burahs in donating their community land for establishment of said VKV Residential School.

27) After the order of the Court dated 29.01.2024 passed in WP(C) No. 269 (AP) 2023, the ADC, Lungla in the meeting held on 02.02.2024 with the petitioners and other villagers of the three villages, their Gaon Burahs, their Gram Panchayat Members, Gram Chairpersons all resolved to have a combined Gram Sabha meeting of the villagers of the three villages that was to be conducted by the Gaon Burahs of those three villages so as to consider the representation/demand of the petitioners relating to their demand that the community land of those three villages should not be donated for establishment of the said VKV residential school.

28) The three Gaon Burahs of Ding-Sum, i.e., the three villages convened the meeting on 21.02.2024 in which all participated including the petitioners, as noted above, wherein the villagers resolved for a referendum to decide the dispute raised by the petitioners, noted above and in the said referendum held in the combined Gram Sabha on 21.02.2024 more than 2/3rd villagers of those three villages gave their consent to donate their community land at Soula Tse, Lumla for establishment of said VKV residential school and a very few, i.e., only 21 Members opted not to donate their community land for the said purpose, which according them should be acquired under the 2013 Act by paying land compensation.

29) To donate their own community land for establishment of said VKV residential school at Soula Tse, Lumla or not has been decided by majority of the villagers of those three villages, whereas, only few villagers of those three villages decided against such donation of their community land. The villagers of those three villages

resolved amongst themselves by way of referendum to donate their own community land by majority Members.

30) The said process of resolving the issues relating to donation of their own community land for the purpose of establishment of VKV residential school at Soula Tse, Lumla, has been challenged by a few villagers of those three villages being in minority, the Court is of the view that such decision of the majority villagers cannot be interfered in a proceeding under the Writ Jurisdiction, when, the majority villagers opted to donate their own community land for the greater interest of their society for better education of the children in their villages.

31) Moreover, such disputed facts cannot be considered in a writ proceeding.

32) Accordingly, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant