

GAHC040008892023



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

Case No. : WP(C)/312/2023

Dorjee Tsering and 9 Ors.
S/o Lt. Kersang Tsering,
Permanent Resident of Village Bumteng, PO Lemberdung, PS Tawang, District
Tawang, Arunachal Pradesh.

2: Lham Goley
Age:
Occupation :
S/o Lt. Leki Wangchu

Permanent Resident of Village Khartoth
PO/PS Tawang
District Tawang
Arunachal Pradesh.

3: Sang Tashi
Age:
Occupation :
S/o Lt. Sonam Tsering

Permanent Resident of Village Yubu
PO Bomdir Supply
PS Tawang
District Tawang
Arunachal Pradesh.

4: Dorjee Tsering
Age:
Occupation :
S/o Lt. Sangey Wangchu

Permanent Resident of Village Audung
PO Kitpi PS Tawang
District Tawang
Arunachal Pradesh.

5: Genden Dorjee
Age:
Occupation :
S/o Lt. Jambey Yeshi

Permanent Resident of Village Baikhar
PO Kitpi
PS Tawang
District Tawang
Arunachal Pradesh.

6: Lobsang Norbu
Age:
Occupation :
S/o Lt. Sang Dakpa

Permanent Resident of Village Jamkhar
PO Kitpi
PS Tawang
District Tawang
Arunachal Pradesh.

7: Yeshi Tsering
Age:
Occupation :
S/o Lt. Lama Na

Permanent Resident of Village Shernup
PO Kitpi
PS Tawang
District Tawang
Arunachal Pradesh.

8: Sangey Lungten
Age:
Occupation :
S/o Lt. Sang Tsewang

Permanent Resident of Village Khardung

PO Kitpi
PS Tawang
District Tawang
Arunachal Pradesh.

9: Koncho Dorjee
Age:
Occupation :
S/o Lt. Khandu Tsering

Permanent Resident of Village Khartoth
PO/PS Tawang
District Tawang
Arunachal Pradesh.

10: Rinchin Tsering
Age:
Occupation :
S/o Sang Phuntso

Permanent Resident of Village Shernup
PO Kitpi
PS Tawang
District Tawang
Arunachal Pradesh

VERSUS

the Union of India and 8 Ors.
Represented by the Secretary, Ministry of Defence, Sena Bhavan, Govt. of India, New
Delhi 110011

2:the Secretary
Age: 0
Occupation :
Ministry of Home Affairs
Govt. of India
North Block
Cabinet Secretariat
Raisina Hill
New Delhi 110001

3:the Directorate General
Age: 0
Occupation :

Defence Estates
Raksha Sampada Bhawan
Ulaanbaatar Marg
Delhi Cantt 110010

4:the Director
Age: 0
Occupation :
Intelligence Bureau
35 Sadar Patel Marg
New Delhi 110021

5:the Defence Estate Officer
Age: 0
Occupation :
Cole Park Road
Tezpur
PO/PS Tezpur
District Sonitpur
Assam 784001

6:the Assistant Director
Age: 0
Occupation :
Subsidiary Intelligence Bureau (SIB)
Ministry of Home Affairs
Station Tawang
PO/PS Tawang
Arunachal Pradesh 790104

7:THE STATE OF AP
Age: 0
Occupation :
Represented by the Commissioner/Secretary
Land Management
Govt. of Arunachal Pradesh
Office at Civil Secretariat
District Papum Pare
Arunachal Pradesh
Itanagar 791111

8:the Director
Age: 0
Occupation :
Land Management

Govt. of Arunachal Pradesh
District Papum Pare
Arunachal Pradesh
Itanagar 791111

9:the Deputy Commissioner
Age: 0
Occupation :
Tawang
District Tawang
PO Tawang
Arunachal Pradesh
790104

10:The General Officer in Commandn
Age: 0
Occupation :
5 Mountain Brigade Division
Indian Army
C/o 99 APO
Station Headquarter Tenga
PO and PS Tenga
West Kameng District
Arunachal Pradesh 790001

11:The Commander
Age: 0
Occupation :
190 Mountain Brigade
Indian Army
C/o 99 APO
Station Headquarter Tawang
PO
PS and District Tawang
Arunachal Pradesh 790104

12:The Administrative Commander
Age: 0
Occupation :
190 Mountain Brigade
Indian Army
C/o 99 APO
Station Headquarter Tawang
PO
PS and District Tawang

Arunachal Pradesh 79010

Advocate for the Petitioner : Binter Picha, Jungam Jini, Tao Tarin, L Tsering

Advocate for the Respondent : GA (AP), Dugmar Kamduk, SC (Land Management), Elina Perme, Marto Kato, DSGI

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 06.11.2024

Heard Mr. B. Picha, learned counsel for the petitioners. Also heard Mr. M. Kato, learned DSGI for the Union of India; Mr. D. Kamduk, learned Standing Counsel, Land Management Department representing the respondent Nos. 7 & 8 and Mr. Y. Riram, learned Government Advocate representing the State respondents.

2. This is an application under Article 226 of the Constitution of India for issuance of a writ of Mandamus or any other appropriate writ, order of direction of the like nature for the protection and enforcement of petitioner's legal and Constitutional right.

3. In brief the case of the petitioners is that since 1960s and 1980s, the Indian Army and SBI is in occupation of common land of Shar Tso

Community measuring 1,370 (one thousand three hundred seventy) hectares (approx.) at Nagulla, Y-Junction, Klemta, Khamakher, Assam Hill, Bakri Top and Bumla area of Tawang District. As major portion of land of the petitioners have been occupied by the Indian Army, the petitioners have been deprived of their livelihood and other activities of yak grazing and visiting holy sites etc. Being aggrieved, the petitioners have approached the authorities to resolve the long pending issues between the Indian Army and the villagers. Accordingly, a meeting was held on 21.09.2021, wherein, the Defence Estate Officer, Tezpur, assured to survey all Army assets in Tawang District. Despite of full assurance, no survey for above lands of the petitioners was conducted, however, in some of the areas, the Indian Army acquired the land and the acquisition process was initiated. Thereafter, the petitioners have filed several representations before the authority concerned but till date there is no effective order from the department concerned for formal initiation of acquisition process of the land of the petitioners. Initially on 20.04.2023, the petitioners filed their representation requesting for adequate compensation for occupation of land of the petitioners but in spite of the representation made by the petitioners, the concerned department has not taken any initiative to pay compensation to the petitioners or to finalize the formal acquisition of the land of the petitioners.

4. Mr. Picha, counsel for the petitioners, submitted that the Indian Army, occupying the land, is willing to formally acquire it, as stated in their affidavit-in-opposition. Accordingly, Mr. Picha, learned counsel for the

petitioners seeks direction to the Deputy Commissioner to initiate process of formal acquisition and to issue necessary directions.

5. Mr. M. Kato, learned DSGI for Union of India submitted in that regard that In-Principle-Approval of Ministry of Defence is to be obtained first to know the necessity of land to be acquired for the Indian Army, Indian Navy and Indian Air Force etc. Once the necessity of the land is approved i.e., In-Principle-Approval by the Ministry of Defence, the case may be processed for obtaining formal sanction of Govt. of India or from the Ministry of Defence for acquisition of the land for that purpose.

6. Mr. Kato, learned DSGI, further submitted that the Deputy Commissioner may be directed to initiate the acquisition process only after obtaining the In-Principle-Approval from the Ministry of Defence and completing all necessary formalities. Accordingly, he raises no objection, if the land is acquired by the Indian Army by observing necessary formalities.

7. Mr. D. Kamduk, learned Standing Counsel, Land Management representing the respondent Nos. 7 & 8 submitted in this regard that the land management department has no objection if the land is acquired by observing all the formalities by the department concerned and the direction may be given to the Army authority to send requisition letter after receiving In-Principle-Approval from the Ministry of Defence.

8. Mr. Y. Riram, learned Government Advocate representing the State

respondents also raised no objection in acquiring the land of the petitioners by the Indian Army subject to In-Principle-Approval from the Ministry of Defence.

9. Hearing the submissions made by the learned counsel for both sides and after perusal of the case record and affidavit(s) etc., filed by the respondent's side, it is found that, admittedly the Indian Army had acquired the land of the petitioners, though till date there is no formal acquisition of the land and the petitioners also not provided with any compensation for the acquisition of land by the Indian Army. At the same time, it is also admitted by the Indian Army i.e., respondent Nos. 10, 11 & 12 that they are ready and willing to acquire the land of the petitioners which are in occupation of the Indian Army.

10. Considering all the aspects of the case and the submissions made by the learned counsel for both sides, the present writ petition is disposed of in the admission stage with a direction to the Deputy Commissioner, Tawang District, to initiate the formal process of acquisition of land subject to receiving In-Principle-Approval of the Ministry of Defence and in that regard the Estate Defence Officer/Indian Army Authority will also send the requisition letter for obtaining In-Principle-Approval from Ministry of Defence.

11. After observing all necessary formalities, the Deputy Commissioner may take the initiative for acquisition of land of the petitioners formally and to provide the adequate compensation as per The Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. With the above observation, the writ petition stands allowed and is disposed of.

JUDGE

Comparing Assistant