

GAHC040016962018



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

ITANAGAR PERMANENT BENCH: YUPIA

WP(c)472(AP)2018

1. Sri Nabam Rana, aged about 45 yrs S/o Lt Nabam Bado R/o Nirjuli
P.O & P.S-Naharlagun, District- Papumpare Arunachal Pradesh.Pin-791111.
Mob.No: 9436637731

2. Smti Yumlam Minu, Aged about 30 yrs W/o Sri Achung Yumlam R/o ESS
Sector, Itanagar, District- Papumpare Arunachal Pradesh Pin-791111.

..... Petitioners

-Versus-

1. The State of Arunachal Pradesh, Represented by the Chief Secretary The
Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.Pin-791111.

2. The Principal Secretary P.W.D Government of Arunachal Pradesh,
Itanagar.

3. The Commissioner (Land Management), Government of Arunachal
Pradesh, Itanagar.

4. The Secretary, Department of Education, Government of Arunachal
Pradesh, Itanagar Pin-791111.

5. The Director, Higher and Technical Education, Government of Arunachal
Pradesh, Itanagar Pin-791111.

6. The Chief Engineer, Western Zone PWD Government of Arunachal
Pradesh, Itanagar.

7. The Deputy Commissioner, Papumpare District, Yupia Government of
Arunachal Pradesh.

..... Respondents

By Advocates:

For the petitioners: Mr. S. K. Deori
Mr. J. Likha
Ms. Somila
Mr. B. Deori

For the respondents: Mr. Tagum Jamoh, SC(Education)
Ms. G. Ete, Addl. Sr. Govt. Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 29.05.2024
Date of Judgment & order: 29.05.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Sandi. K. Deori, learned counsel appearing on behalf of the petitioners. Also heard Ms. Goter Ete, learned Additional Senior Government Advocate, appearing on behalf of respondents No. 1, 2, 3 & 7; and Mr. Tagum Jamoh, learned standing counsel, Education Department, for respondents No. 4, 5 & 6.

2. The petitioners in the present proceeding, are aggrieved by the action on the part of the respondent authorities in not authorizing to them, fair and adequate compensation for the plots of their land acquired by the respondent authorities for the purpose of establishing a Law College at Jote, Itanagar.

3. As projected in the writ petition, the petitioners possessed plots of land at Jote village and the Government on having arrived at a decision to establish a Law College at Jote, Itanagar, with the funds provided for the purpose by the National Hydro Power

Corporation Ltd., under its Corporate Social Responsibility(CSR) scheme during the year 2009-2010; the petitioners voluntarily expressed their willingness to donate their respective plots of land for establishment of the Law College at Jote, Itanagar. It is, however, contended by the petitioners that they had required that the authorities in lieu of the donation so made, shall extend to them, contract works in connection with the construction activities involved in establishing the Law College at Jote, Itanagar as well as jobs, therein.

4. It is also contended by the petitioners that the Government for the purpose, sanctioned an amount of Rs. 17,00,00,000/- (Rupees Seventeen Crores) vide communication, dated 03.12.2010, and therein, required the concerned Department to enter into an agreement with the land owners for procuring the land, in question, free-of-cost.

5. It is seen that after expressing their willingness; the petitioners had raised objection with regard to the donation of land as made by them, in view of the fact that they were not provided with requisite contract works. The said representations were forwarded to the competent authorities and the same remained pending. Poised thus, vide Notification, dated 24.03.2011, the Land Management Department, Government of Arunachal Pradesh, proceeded to direct the Deputy Commissioner, Papum Pare District, Yupia, to take-over the possession of the

land so donated by the land owners including the petitioners, herein, upon execution of proper deed of donation and other formalities as may be called for. It was also provided that any person having any grievance in the matter, would be at liberty to file an objection to the Deputy Commissioner, Papum Pare District, Yupia, within a period of 30 days from the date of publication of the said Notification. Thereafter, vide a provisional land allotment order, dated 11.04.2011, the land so acquired on donation from the land owners, were allotted to the Director, Higher and Technical Education, Arunachal Pradesh, for establishment of the Law College at Jote, Itanagar.

6. It is seen that the petitioners, herein, on coming to learn that the construction works shall be done through open tender process, had approached the authorities again and had requested for extending to them, due compensation in the matter. The said representation was forwarded by the Director, Higher and Technical Education, Arunachal Pradesh, to the Chief Engineer, Arunachal Pradesh Public Works Department, and therein, had highlighted that the petitioners, herein, had decided to withdraw their donated land and requested to stop the construction activities on their plots of land due to non-payment of compensation. Accordingly, it was requested that the compensation amount shall be worked-out out of the fund allotted by the National Hydro Power Corporation Ltd. to the Arunachal Pradesh Public Works Department. However, it was seen that

there was negotiations between the parties in the matter and on conclusion of the same and on being satisfied that their grievances were redressed; the petitioners executed an affidavit on 03.10.2011 and therein, had stated that the matter has been amicably settled between the parties for which they were voluntarily withdrawing their complaint, dated 09.09.2011, as submitted in the matter for stoppage of the works and further assured the implementation agency that they shall not disturb the smooth execution of the works involved. Thereafter, till 2017; the petitioners had not moved before the authorities and on 13.03.2017, by way of a representation, the petitioners again approached the Deputy Commissioner, Yupia, contending that they being not extended with the due compensation for the land acquired; they would now reconsider their decision to donate the said plot of land to the Government and accordingly, requested for entering into a formal agreement indicating the terms and conditions for taking-over their land.

7. In response to the said representation, the competent authority proceeded to issue the land donor certificates to the petitioners on 03.05.2017. Thereafter, the petitioners vide a representation, dated 23.04.2018, again required the Director, Higher and Technical Education, Arunachal Pradesh, to provide to them, appointments against the Group 'C' and 'D' jobs to their family members along with a provision for contract works in the Law College at Jote, Itanagar, and also to make provisions for

other benefits as would now extend to them on account of their land being so acquired by the Government.

8. The competent authority not having responded to the grievances raised by the petitioners in the matter; the petitioners had instituted the present proceeding.

9. Mr. Deori, learned counsel for the petitioners, submits that the lands as donated by the petitioners for establishment of the Law College at Jote, Itanagar, was with certain pre-conditions and the said conditions not having been met by the respondent authorities; the action on the part of the respondents in directing the Deputy Commissioner, Papum Pare District, Yupia, to take-over the land, in question, vide Notification, dated 24.03.2011, as well as the provisional land allotment order made in the matter in favour of the Director, Higher and Technical Education, Arunachal Pradesh, vide order, dated 11.04.2011; cannot be sustained and the same requires to be interfered with.

10. Mr. Deori, learned counsel, by referring to the contentions as made in paragraph No. 18 of the writ petition; has further submitted that although on one occasion, the petitioners, herein, were offered sub-contract works for construction of the boundary wall but the same was so executed by the principal contractor. It is stated that the affidavit as sworn by the petitioners on 03.10.2011, was so sworn on an assurance being extended to

them that they would be favoured with the contract works in the matter and their other demands would also be given a due consideration. It is contended that the respondent authorities having rescinded from the said position; the contentions made in the said affidavit, cannot now be projected by the respondent authorities to deny to the petitioners the due compensation in the matter.

11. By referring to the contentions made by the respondent authorities in their respective affidavits; Mr. Deori, learned counsel for the petitioner, has submitted that the works as allotted to the petitioners in connection with the construction activities for establishment of the said Law College at Jote, Itanagar, were so granted to the petitioners on selection of their bids in pursuance of a tender process undertaken by the authorities in the matter.

12. It is contended that no compensation was either directly or indirectly paid by the respondent authorities against the plots of land donated by the petitioners for construction of the said Law College at Jote, Itanagar. It was reiterated that the works awarded to the petitioners herein, pursuant to the NIT, has got no nexus with their claim for being compensated for the lands so acquired by the Government in the matter in-as-much as, the same was projected to be awarded to the petitioners as bidders.

13. In view of the above, Mr. Deori, learned counsel for the petitioners, has submitted that this Court would be pleased to interfere with the provisional land allotment order, dated 15.04.2011, with regard to the land, in question, and/or alternatively, to direct the respondent authorities to compensate the petitioners adequately for the land so acquired from them.

14. Mr. Jamoh, learned standing counsel, Education Department, by referring to the affidavit-in-opposition filed in the matter on behalf of the said authority; has contended that in the State of Arunachal Pradesh, for the purpose of establishment of educational institutions, the land is not acquired. However, the same is voluntarily donated by the villagers for the purpose of development of the area.

15. Likewise, it is submitted by Mr. Jamoh, learned standing counsel, that the land, in question, was donated by the petitioners voluntarily. However, keeping in view the demands as made by the petitioners in the matter for being provided with the contract works; it is contended that the executing agency i.e. Arunachal Pradesh Public Works Department through its contractor who was awarded the contract in the matter, provided sub-contracts to the petitioners and the sub-contracts so provided, were for substantial amounts. It is also contended that although the petitioners after making the donation of the land, in question, had taken a stand that they would withdraw the donation so made; it is submitted

that the matter was amicably resolved between the parties and the same is evident from the joint affidavit as sworn by the petitioners, herein, on 03.10.2011, wherein, also, they had recorded that their grievance with regard to the land donated by them, was amicably settled between the parties.

16. Mr. Jamoh, learned standing counsel, Education Department, has submitted that in view of the said affidavit, dated 03.10.2011, and also the sub-contract works as now granted to the petitioners, herein; the grievances of the petitioners were duly addressed by the respondent authorities and the present proceeding is nothing but a mode adopted by the petitioners for being illegally enriched.

17. Ms. Ete, learned Addl. Senior Government Advocate, by referring to the affidavit as filed in the matter on behalf of the respondents Arunachal Pradesh Public Works Department (APPWD), has submitted that perusal of the affidavit would reveal that the petitioners as sub-contractors, had executed works to the tune of Rs. 3,38,28,855/- and Rs. 2,90,98,685/-, respectively. The learned Addl. Senior Government Advocate, also refers to the affidavit as sworn in the matter by the petitioners on 03.10.2011, and by correlating the same with the disclosure as made with regard to the works as allotted to the petitioners in the writ petition, has submitted that the petitioners in the said affidavit of the APPWD authorities, have not disclosed the fact that they were

extended with sub-contracts in the matter for substantial amounts.

18. Ms. Ete, learned Addl. Senior Government Advocate, has further contended that the plea as taken by the petitioners with regard to the contract works as awarded to them, were so awarded after their participation in a tender process, is clearly misplaced in-as-much as, the work in question, were so awarded to M/s. J. T. Hardware & Co., Sagalee, and the petitioners, herein, had, thereafter, executed works involved as sub-contractors of the said contractor.

19. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

20. It is an admitted position that the petitioners, herein, had voluntarily donated the plot of land in their possession to the Government for establishment of Law College at Jote, Itanagar. The land, in question, inspite of being transferred by way of donation, the petitioners had attached certain demands for the purpose of effecting the said donation. One of the conditions as put-forward by the petitioners in the matter were for being awarded with the contract works in connection with the establishment of the Law College at Jote, Itanagar. The contract works as involved, as per the policy of the Government being required, to be so awarded only in pursuance to a process of

tender and NITs being issued in the matter; the petitioners raised objections and on the same not being so considered; proceeded to take a stand that they would withdraw the donation of the land as made by them in this connection. The petitioners have also raised a grievance that no formal agreement was entered into with them in the matter and the terms and conditions of the donation was also not finalized. However, it is seen that there was a negotiation undertaken in the matter between the petitioners and the departmental authorities, more particularly, the executing agency i.e. Arunachal Pradesh Public Works Department and thereafter, on arriving at an amicable settlement therein; the petitioners had by swearing an affidavit on 03.10.2011, by highlighting the amicable settlement arrived at in the matter, undertaken that they have withdrawn all complaints as made by them in the matter and would facilitate the executing agency to proceed with the execution of the construction works involved in the matter for setting-up of the Law College at Jote, Itanagar. It is seen that the said Law College at Jote, Itanagar, after completion of the construction activities involved, was handed-over by the executing agency to the Director, Higher and Technical Education, on 28.03.2017, and the academic activities in the said Law College at Jote, Itanagar, has since been started from the Session 2018-2019 after obtaining the affiliation from Rajiv Gandhi University, Doimukh, Arunachal Pradesh.

21. The petitioners' stand before this Court is that, neither, they were provided with adequate compensation, nor, were they awarded with contract works and further, they were also not offered jobs in the said Law College at Jote, Itanagar.

22. The petitioners by way of filing a rejoinder to the affidavit-in-opposition filed by the respondents No. 4 & 5 in the matter; had taken a specific stand that they were awarded certain works in connection with the construction of Law College at Jote, Itanagar. However, such works were so awarded to them in pursuance of the bids presented by them in response to the NIT issued in the matter.

23. To justify the said aspect of the matter; the petitioners had brought on record a communication accepting the bids of the contractor, dated 29.03.2012, wherein, the bid of one M/s. J. T. Hardware & Co., Sagalee, was accepted and further, requisite action was taken. It is contended by the petitioners in the said rejoinder affidavit that the said letter of acceptance was being issued to the petitioner No.2 on being the lowest bidder and accordingly, it was contended that the contract works as provided to the petitioners herein, were not in lieu of the land donated by them but were so obtained by them on their own merits by submitting their respective bids in the matter. The said contention of the petitioners is now being examined by this Court.

24. The executing agency i.e. Arunachal Pradesh Public Works Department had filed a detailed affidavit in the matter and therein, had contended that the petitioners were awarded works as sub-contractors in pursuance to an agreement entered into by the tenderer selected for execution of the works i.e. M/s. J. T. Hardware & Co., Sagalee, and the petitioners, herein. It is projected that the petitioner No. 1 had executed the works as a sub-contractor through his proprietorial Firm M/s. N. C. Agency while the petitioner No. 2 had executed the work as a sub-contractor through her proprietorial Firm i.e. JAAMC Associates. The said affidavit also brings on record, the general power-of-attorney as awarded by the proprietor of M/s. J. T. Hardware & Co., Sagalee, to the petitioner No. 2, herein, as the Proprietor of JAAMC Associates, for carrying out the works related to construction of residential building Type I and III in connection with the establishment of the said Law College at Jote, Itanagar. On execution of the said power-of-attorney in favour of the petitioner No. 2; the petitioner No. 2 vide her communication, dated 08.08.2012, had placed the same before the Executive Engineer, Arunachal Pradesh Public Works Department, Itanagar, and had required the latter to make all official correspondences, bills preparation and payments in connection with her, pertaining to the works now allotted to her by the main contractor. The said aspect of the matter clearly brings on record the falsehood resorted to by the petitioners in the writ petition as well as in the rejoinder so filed wherein, they had contended on the one hand

of not having been allotted any works as sub-contractors and also the contention that the works so allotted to them, was so done after the bids as submitted by them, were found to be the lowest in the bidding process.

25. The respondent authorities, more particularly, the authorities in the Public Works Department, in the affidavit so filed by it in the matter, have made categorical statements in this connection. The same being relevant, are extracted hereinbelow:

“However, in contradicting to their averment made in their representations and others Para of this writ petitions both the land donors seems to have been awarded the contract works in departmentally works execution through Work Order as well as in the Tender Portions as a Sub-Contractor which could be confirmed & witnessed from the annexed WORK ORDERS and POWER OF ATTORNEY (as a Sub-Contractors) being executed in front of Judicial Magistrate First Class, Itanagar Capital Complex, (A.P) on dated 7th June'2012 in between M/s J.T Hardware & Co. (TENDER WINNER) and the SMTI YUMLAM MINU, Proprietor, M/s JAAMC ASSOCIATES and SHRI NABAM RANA, Proprietor, M/S N.C AGENCY having a total work values being summarize in below tabulation.

SI. No.	Agency	Work Order / Tender Sub-contractor	Works	Amount	Remarks
1	M/S N.C. Agency	As Tender Sub-Contractor vide Agreement date: 07/06/2012	Residence Type-II (6 nos., G+2)	Rs. 79,16,411/-	Land-Donor 1
			Residence Type-IV(6nos, G+2)	Rs. 1,14,16,971/-	
			Principal House Type-V	Rs. 43,64,657/-	
			(a).....	Rs. 2,36,98,039/-	
1a	M/S N.C. Agency	W/o no. SECC/Con-2(B)/2011-12/246, Dtd. 24/11/2011	Site Development Boundary wall	Rs. 11,92,549/-	
		W/o no. SECC/Con-2(B)/2011-12/247, Dtd. 24/11/2011		Rs. 4,31,114/-	
			(b).....	Rs. 16,23,663/-	
1b	Nabam Rana	W/o no. SECC/Con-2(B)/2011-12/207, Dtd. 30/09/2011	Site Development Levelling	Rs. 10,78,142/-	
		W/o no. SECC/Con-2(B)/2011-12/208, Dtd. 30/09/2011		Rs. 10,78,142/-	
		W/o no. SECC/Con-2(B)/2011-12/209, Dtd. 30/09/2011		Rs. 10,78,142/-	

		W/o no. SECC/Con-2(B)/2011-12/210, Dtd. 30/09/2011		Rs. 5,98,969/-	
		W/o no. SECC/Con-2(B)/2011-12/211, Dtd. 30/09/2011		Rs. 10,78,142/-	
		W/o no. SECC/Con-2(B)/2011-12/212, Dtd. 30/09/2011		Rs. 10,78,142/-	
		(c).....		Rs. 59,89,679/-	
1c	M/S N.C. Agency	W/o no. CDB/WO/ 15-16/29, Dtd. 06/07/2015	Site Development Internal Road	Rs. 3,18,560/-	
		W/o no. CDB/WO/ 15-16/30, Dtd. 06/07/2015		Rs. 4,99,947/-	
		W/o no. CDB/WO/ 15-16/28, Dtd. 06/07/2015		Rs. 4,86,745/-	
		W/o no. CDB/WO/ 15-16/27, Dtd. 06/07/2015		Rs. 3,13,057/-	
		W/o no. CDB/WO/ 15-16/26, Dtd. 06/07/2015		Rs. 4,92,754/-	
		W/o no. CDB/WO/ 15-16/25, Dtd. 06/07/2015		Rs. 4,06,411/-	
		(d).....		Rs. 25,17,474/-	
		Total value of work executed by <u>Nabam Rana</u> =((a)+(b)+(c)+(d))		Rs. 3,38,28,855/- (Rupees Three Crore Thirty Eight Lakhs Twenty Eight Thousand Eight Hundred Fifty Five) only	
2	M/s JAAMC Associates	As Tender Sub-Contractor vide Agreement date: 08/08/2012	Residence Type-I (12 nos., G+2) 2-Block	Rs. 1,25,95,275/-	Land-Donor 2
			Residence Type-III(6nos, G+2)	Rs. 97,91,688/-	
			(i).....	Rs. 2,23,86,963/-	
2a	Yumlam Minu	W/o no. SECC/Con-2(B)/2011-12/205, Dtd. 30/09/2011	Site Development Levelling	Rs. 11,94,408/-	
		W/o no. SECC/Con-2(B)/2011-12/206, Dtd. 30/09/2011		Rs. 6,02,500/-	
			(ii).....	Rs. 17,96,908/-	
		External Electrification executed through Naharlagun Electrical Division, Deptt. of Power, Yupia, as below:			
2b	M/s JAAMC Associates	W/o no. NED/DB/BESD/WO/EE/2016-17/10, Dtd. 18/03/2017	External Electrification	Rs. 2,81,450/-	
		W/o no. NED/DB/BESD/WO/EE/2016-17/11, Dtd. 18/03/2017		Rs. 2,60,209/-	
		W/o no. NED/DB/BESD/WO/EE/2016-17/12, Dtd. 18/03/2017		Rs. 4,96,965/-	
		W/o no. NED/DB/BESD/WO/EE/2016-17/13, Dtd. 18/03/2017		Rs. 2,60,209/-	
		W/o no. NED/DB/BESD/WO/EE/2016-17/14, Dtd. 18/03/2017		Rs. 2,60,209/-	
		W/o no. NED/DB/BESD/WO/EE/2016-17/15, Dtd. 18/03/2017		Rs. 2,60,209/-	

	W/o no. NED/DB/BESD/WO/ EE/2016-17/16, Dtd. 18/03/2017	Rs. 2,60,209/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/17, Dtd. 18/03/2017	Rs. 4,99,725/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/18, Dtd. 18/03/2017	Rs. 4,98,638/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/19, Dtd. 18/03/2017	Rs. 3,05,687/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/20, Dtd. 18/03/2017	Rs. 4,94,807/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/21, Dtd. 18/03/2017	Rs. 4,86,613/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/22, Dtd. 18/03/2017	Rs. 3,71,172/-	
	W/o no. NED/DB/BESD/WO/ EE/2016-17/23, Dtd. 18/03/2017	Rs. 1,78,712/-	
	(iii).....	Rs. 49,14,814/-	
	Total value of work executed by <u>Yumlam Minu</u> =(i)+ii)+(iii)).....	Rs. 2,90,98,685/- (Rupees Two Crore Ninety Lakhs Ninety Eight Thousand Six Hundred Eighty Five) only	

26. The said averments and particulars as disclosed by the respondents in the affidavit, has not been denied by the petitioners in the present proceeding. The materials as coming on record clearly indicate that the contract for execution of the works, in question, pertaining to the construction of the college building and/or residential buildings were so awarded to one M/s. J. T. Hardware & Co., Sagalee. The said contractor had sub-contracted the works to the petitioners, herein, and the petitioners had without any objection, executed the works so involved. It is contended by the respondent authorities that the same was so done so as to meet the demands of the petitioners for donation of the land, in question. The said position also when

viewed along with the affidavit, dated 03.10.2011, executed by the petitioners in the matter, wherein, they had clearly stated that their grievances were, on discussion, amicably settled between the parties and accordingly, the complaint so lodged by the petitioners, was so withdrawn. The affidavit also indicates that any lacunae that may have existed in the donation process of the land, in question, by the petitioners were also waived by the petitioners, herein.

27. It is not understood as to why the petitioners inspite of being awarded with works by engaging them as sub-contractors has not disclosed such aspect of the matter in the writ petition but have resorted to misrepresentation by stating, firstly, in the writ petition that no works were allotted to them even as sub-contractors and thereafter, on the affidavits coming on record, in the rejoinder filed by the petitioners to the affidavit filed by the Education Department, has contended that the works as awarded to the petitioners were in pursuance to the bids submitted by them in the matter and the same has got no nexus to the donation of land so made by them. It was further stated that the contract works pertaining to the construction of the residential buildings were issued to the petitioner No. 2 on she being found to be the lowest bidder. However, the affidavit as brought on record by the executing agency i.e. the Arunachal Pradesh Public Works Department clearly brings on record that the petitioner No. 2 had executed the works as the power-of-attorney holder of the contractor to whom the work, in question, was so awarded.

28. In view of the above position; and admittedly the land being donated by the petitioners, herein, and such donation not being permissible to be so made with conditions, when considered in the light of the affidavit filed by the petitioners on 03.10.2011 before the authorities withdrawing their complaints in the matter in view of the amicable settlement being arrived at between the parties, herein; it is seen that the petitioners had not approached this Court with clean hands and accordingly, they are not entitled to be extended with any relief by exercise of the extra-ordinary powers vested in this Court under Article 226 of the Constitution of India.

29. In view of the above conclusions, this writ petition is held to be bereft of any merit and the same accordingly stands dismissed.

30. However, this Court is not proceeding to impose any cost in the matter on the petitioners in-as-much as the land, in question, was donated by the petitioners in the interest of public at large and on the land, now a Law College having been so established and the same having benefitted the people in the area; this Court in spite of the conclusions reached hereinabove, refrains from imposing any cost on the petitioners for the misrepresentation as committed by them in the present proceeding.

JUDGE

Bhush