

GAHC020000272023



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

Case No. : PIL/1/2023

MR. VIZADEL YONGO AND 2 ORS
S/O LATE KETOHO YONGO, AGED ABOUT 41 YEARS,
R/O UPPER PR HILL, KOHIMA,
BELOW POLICE HEADQUARTER OFFICE, KOHIMA,
NAGALAND

2: MR. VIYOL THUPHRE

S/O MEHRA RHUPHRE
AGED ABOUT 44 YEARS
R/O BASA KHEL
SAKHABAMA VILLAGE
DISTRICT - KOHIMA
NEAR JUST BELOW GOVERNMENT HIGH SCHOOL
SAKHABAMA VILLAGE
NAGALAND

3: MR. THEJANGULIE YONGO

AGED ABOUT 30 YEARS
R/O UPPER BAYAVU HILL
KOHIMA
PIN - 797001
NEAR BELOW VINYUZO SCHOOL
UPPER BAYAVU HILL
KOHIMA
NAGALAN

VERSUS

THE UNION OF INDIA AND 10 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS, PARIVAHAN BHAVAN, 1 PARLIAMENT STREET, NEW DELHI -
110001

2:THE STATE OF NAGALAND

REPRESENTED BY THE CHIEF SECRETARY

NAGALAND CIVIL SECRETARIAT
KOHIMA - 797004
NAGALAND

3:THE REGIONAL OFFICER

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

H/NO.5
RAJGARH ROAD
CHANDMARI
GUWAHATI
ASSAM - 781003

4:THE CHIEF ENGINEER(NER)

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
PARIVAHAN BHAVAN
1 PARLIAMENT STREET
NEW DELHI - 110001

5:THE COMMISSIONER AND SECRETARY

GOVERNMENT OF NAGALAND
WORKS AND HOUSING
NAGALAND
KOHIMA
NAGALAND

6:THE CHIEF ENGINEER(NH)

PUBLIC WORKS DEPARTMENT
NAGALAND
KOHIMA
NAGALAND

7:THE MANAGING DIRECTOR

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED(NHIDCL)
3RD FLOOR
PTI BUILDING
4 PARLIAMENT STREET

NEW DELHI - 110001

8:THE DEPUTY COMMISSIONER

KOHIMA DISTRICT
NAGALAND

9:THE EXTRA ASSISTANT COMMISSIONER

O/O THE DEPUTY COMMISSIONER
KOHIMA

10:THE SUB-DIVISIONAL OFFICER(C)

DEV I/C
KEZOCHA CIRCLE
KOHIMA

11:M/S MAYTAS - GAYATRI

(JOINT VENTURE)
C/OO - II AND FS ENGG. AND CONST.CO. LTD.
DOOR NO.8-2-120/113/4F
SANALI INFO PARK
CYBER TOWERS
ROAD NO.2
BANJARA HILLS
HYDERABAD - 50003

Advocate for the Petitioner : ANGSHUMAN SARMA

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

07.02.2024
(Nelson Sailo, J)

Heard Mr. Angshuman Sarma, learned counsel for the petitioners,
Mr. L.T. Sangtam, learned Additional A.G., Nagaland along with Mr. Veto V.
Zhimomi, learned Government Advocate for the State of Nagaland

(respondent Nos. 2, 5, 6, 8, 9 & 10), Mr. Yangerwati, learned CGC appearing for respondent Nos. 1, 3 & 4, and Mr. Moa Jamir, learned counsel for respondent No. 7.

None appears for respondent No. 11.

2. Having regard to the nature of the case projected by the petitioners the PIL is taken up for disposal at the Admission stage.

3. By filing this PIL, the petitioners, who claim to be responsible citizens of the State have sought to espouse the case of the land owners affected by the construction of Zunheboto-Chakabama road undertaken under the Special Accelerated Road Development Programme for North East (SARDP-NE) (Phase-A). The affected persons, who are residents of the area concerned and having their respective lands claim that the construction of the said road has damaged their properties. According to the petitioners an assessment was made by the District Collector concerned along with the authorities under the State Public Works Department (PWD). The Chief Engineer, PWD (NH), Government of Nagaland, vide Communication dated 05.09.2017 informed the respondent No. 11 regarding the assessment made for the damages caused due to the execution of work which also included the stretch of road referred to in the instant PIL, i.e. Zunheboto-Chakabama road in respect of Kohima district. The assessment has come to the tune of Rs. 4,70,09,719.74/-. Despite the said assessment since the amount of compensation was not paid to the land owners, the instant PIL has been filed.

4. Mr. Angshuman Sarma, learned counsel for the petitioners submits that a number of writ petitions and also a PIL were filed by the affected persons and the writ petitions have since been disposed of by directing that the assessed amount be paid to the land owners concerned. In this connection the learned counsel refers to a common Order dated 21.11.2023, passed by the Single Bench of this Court wherein WP(C)/146/2021 was one of the case. The learned Single Judge, by taking into consideration the fact that the assessment has already been made by the competent authority for the various construction works done under the said project and also importantly taking note of the Order dated

30.01.2023, passed by a Co-ordinate Bench of this Court in PIL/9/2019, disposed the writ petitions by directing the respondent authorities in the Ministry of Road Transport & Highways (MoRTH), Government of India, and the respondent authorities in the State Government to initiate the process of allocation of fund in consultation with each other in terms of the abstracts given in the said Order, and thereafter to allocate the requisite fund to the jurisdictional Deputy Commissioner, who shall in turn disburse the same to the genuine land owners whose land/properties, standing crops, trees, etc. have been found to be damaged/destroyed during the execution of the work concerned.

5. It may be mentioned herein that in view of the arbitration clause in the agreement signed between the Contractor and the State, the claim made by the Contractor and the counter claim made by the State Government was taken up for arbitration. The arbitration was allowed in favour of the Contractor while the counter claim of the State was dismissed. Against such decision the State has filed an appeal under Section 34 of the Arbitration Act before the Delhi High Court which is said to be pending as on date. However, since the same is an issue between the parties concerned, the same did not deter the learned Single Judge of this Court in disposing of the writ petition vide its Order dated 21.11.2023.

6. The Order dated 30.01.2023, passed by the Co-ordinate Bench of this Court in PIL/9/2019, which was in fact relied upon in the Order dated 21.11.2023, by the learned Single Judge on being produced by Mr. Angshuman Sarma, learned counsel for the petitioners, has also been perused by us. In the said Judgment, this Court, upon considering the fact that an assessment has already been made by the competent authority, directed the State Government to submit a proposal along with the assessment to the MoRTH and the latter upon receipt of the same should initiate the process of allocation of fund and release the same to the State Government who shall then disburse the amount through the Deputy Commissioner concerned to the genuine land owners whose land and properties, standing crops, trees, etc. has been damaged during the construction of the road within a time frame of six (6) months from the

date of Judgment and Order. The learned counsel for the petitioners submits that the instant PIL is squarely covered by the two (2) directions referred to herein above and the same can be disposed of in similar lines. The learned counsel further submits that pursuant to the direction the MoRTH has already made a sanction for the required fund for payment to the land owners concerned in terms of the assessment made and has communicated the same to the Commissioner & Secretary to the Government of Nagaland, Department of Works & Housing, vide Letter dated 27.10.2023. The learned counsel submits that the said sanction has been made in respect of the amount covered by the PIL/9/2019, and therefore, a similar direction may be issued in the instant case. The learned counsel also submits that the learned Single Judge in its Order dated 21.11.2023, in fact, had also made reference to the amount of compensation assessed for those affected in the construction of Zunheboto-Chakabama road for the district of Kohima in paragraph No. 21. Therefore, it is clear that the present case is squarely covered by the directions already passed in the bunch of writ petitions disposed of by Order dated 21.11.2023, and also the PIL/9/2019 and therefore, a similar direction may be given to the respondent authorities concerned.

7. Mr. Yangerwati, learned CGC appearing for the respondent Nos. 1, 3 & 4 submits that pursuant to the decision taken by the arbitrator, the State as well as the MoRTH have preferred an appeal under Section 34 of the Arbitration Act before the Delhi High Court and the outcome of the same is still awaited. As such, the present PIL may be kept in abeyance pending the outcome of the said appeals.

8. Mr. L.T. Sangtam, learned Additional A.G., Nagaland, for the State respondents submits that against the dismissal of the counter claim made by the State before the arbitrator, the State has also preferred an appeal before the Delhi High Court and the outcome is still awaited. He further submits that although the MoRTH in connection with PIL/9/2019 has accorded sanction for the assessed amount but the same is made with a condition that the amount shall be recovered from the Agency charges of State Public Works Department of Nagaland. The learned Additional A.G.

submits that the State Government is only a Supervisory Agent and cannot be fastened with a liability to compensate the land owners for the damages caused by the Contractor who executed the work. He, therefore, submits that no liability can be fastened upon the State Government for recovery of the amount disbursed to the affected persons.

9. Upon hearing the learned counsel for the rival parties and upon perusal of the materials available on record, we are of the view that there cannot be any impediment in disposing of the instant PIL as there is no dispute with regard to the amount so computed towards compensation. Moreover, the amount which has been computed in respect of the other areas/districts where road was constructed and damages have occurred have also been quantified and sanction for the same has already been made. In fact, the amount covered by PIL/9/2019, as already mentioned herein above, has received sanction from MoRTH and therefore, a similar order can be passed in the present case. It is no doubt true that there may be an arbitration appeal pending for adjudication but the same can only be between the signatories to the agreement concerned and therefore, the affected land owners due to the construction of the road cannot be made to wait for the outcome of such proceeding. This Court has also been informed that the State Government, pursuant to the sanction made by the MoRTH with a condition that the amount so sanctioned should be recovered from the Agency charges of the State Public Works Department has written back to the MoRTH, i.e. Letter dated 23.11.2023, by the Commissioner & Secretary to the Government of Nagaland to the Secretary, MoRTH, Letter dated 21.12.2023 by the Chief Engineer to the Government of Nagaland to the Secretary to the Government of India, MoRTH, and a DO Letter dated 12.01.2024 by the Deputy Chief Minister, Nagaland to the Union Minister, MoRTH, New Delhi. The learned Additional AG submits that nothing was reflected in the Judgment and Order of this Court in PIL/9/2019, and therefore, MoRTH cannot impose such a condition in the Sanction Order.

10. Be it stated herein that the question of recovery is between the State Government and MoRTH and the same cannot be an impediment for

disbursement of the assessed compensation amount to the land owners concerned, therefore, the respondent authorities, both the State Government as well as MoRTH shall process the matter of according sanction and payment of the same to the land owners concerned without any delay and without waiting for resolving their differences on the recovery of the sanctioned amount.

11. In the result, the PIL is disposed of with a direction to the State Government to submit a proposal along with the assessment made to MoRTH within a period of one month from the date of receipt of certified copy of this Order and the MoRTH, upon receipt of the proposal shall within a period of three (3) months accord sanction and make the required fund available to the State for disbursement to the affected land owners through the Deputy Commissioner/District Collector concerned. The Deputy Commissioner/District Collector upon receiving the deposit shall disburse the compensation amount to the affected land owner immediately by observing formalities as may be required. The PIL, accordingly, stands disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant