

GAHC030006872024



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

Case No. : WP(C)/118/2024

Sh. H. Thansanga and 2 Ors.
S/o H. Chinzapau,
R/o Bawngkawn, Aizawl, Mizoram. 2: Smt. Dimngaihvungi

3: Smt. Rosiam

VERSUS

The Union of India r/b the Secretary, Ministry of Railways (Railway Board) and 4
Ors.
Govt. of Inida, 256-A Rail Bhavan, Raisina Road, New Delhi - 110001. 2:The State
of Mizoram r/b the Chief Secretary to the Govt. of Mizoram

3:The Secretary
Land Revenue and Settlement Dept.
Govt. of Mizoram

4:The District Collector/Deputy Commissioner
Aizawl District

5:The Northeast Frontier Railway r/b Deputy Chief Engineer (Construction)
N.F. Railwa

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Ms Zairemsangpuui, CGC for R1 & 5

B E F O R E
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

06.02.2026.

1) Heard Mr. A. R. Malhotra, learned counsel for the petitioners. Also heard Ms. Lalnunhlui, learned Government Advocate, appearing for respondent Nos. 2 and 4, as well as Ms. Zairemsangpuii, learned CGC, appearing for respondentNos. 1 and 5.

2) This writ petition under Article 226 of the Constitution of India has been filed by the petitioners, namely, **(1) Sh. H.Thansanga, (2)Smt. Dimngaihvungi, (3) Smt. Rosiami**, praying for issuance of writ in the nature of mandamus or any other writ of the like nature or directions against the respondents authorities. They are aggrieved by the illegal utilization of their land covered by House Pass Nos. 335 of 2015, 336 of 2015, and 338 of 2015 for the purpose of execution, maintenance, management, and operation of the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project (51.38 km), without acquiring their lands, covered under aforementioned House Passes, for the said purpose, and without paying any compensation in accordance with the relevant provisions of law.

3) The facts relevant for consideration of the instant writ petition, in brief, are that the petitioners are the citizens of India, belonging to the Scheduled Tribe community of Mizo, and are resident of Bawngkawn, Aizawl, Mizoram.

4) The petitioner No.1 is the owner of House Pass No. 335 of 2015, located at Sairang, Aizawl District, covering an area of 455.78 square meters. The petitioner No. 2 is the owner of House Pass No. 336 of 2015, located at Sairang, Aizawl, covering an area of 816.46 square meters whereas petitioner No. 3 is the owner of House Pass No. 338 of 2015, located at Sairang, Aizawl District, covering an area of 624.95 square meters. The said house passes were issued to the petitioners under relevant provisions of Mizoram (Land Revenue Act), 2013 and rules made thereunder, and are valid up to the year 2025. The petitioners have been regularly paying revenue tax to the State Respondent Nos.2, 3 and 4. It is stated in the writ petition that respondent Nos. 1 and 5, in exercise of powers conferred under section 20A(1) of the Railways Act, 1989, had by issuing Notification No.S.O.5401(E), dated 11.10.2018, declared intention to acquire lands mentioned in the Schedule thereto for the purpose of execution, maintenance, management, and operation of the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project (51.38 km).

5) Thereafter, in accordance with the provisions contained in Section 20E (1) of the Railways Act, 1989, the respondent No. 1 published Notification No.S.O.936(E), dated 15.02.2019, and declared that the land specified in the Schedule shall be acquired for the purpose of execution, maintenance, management, and operation of the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project (51.38 km). The respondent No. 1 also declared under Section 20 E (2) of the Railways Act, 1989 that on publication and declaration in the Official Gazette, the land specified in the said Schedule shall vest absolutely in the Central Government, free from all encumbrances.

6) Thereafter, the respondent No. 4 had prepared and passed the Draft Award No. 3 of 2019 under Section 20-F of the Railways Act, 1989 on 04.06.2019, where all types of pass holders including holders of House Pass were awarded market value of their lands. The respondent Nos. 1 and 5 have already paid compensation to the land owners whose names were included in the Draft Award No. 3 of 2019.

7) Mr. A.R. Malhotra, the learned counsel for the petitioners has submitted that in both the aforementioned Notification dated 11.10.2018, as well as 15.02.2019, none of the lands belonging to the present petitioners were

acquired by the respondent Nos. 1 and 5, however, in spite of that, the respondent Nos. 1 and 5 have illegally encroached upon the lands belonging to the petitioners by utilizing the said land for the purpose of execution, maintenance, management, and operation of the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project (51.38 km), since June, 2019 and have caused extensive damage to their fruit bearing trees and crops on the land. The learned counsel for the petitioner has also submitted that when the lands of the petitioners were encroached by respondent Nos. 1 and 5, petitioner No. 2, on behalf of the other two petitioners as well as for herself, had submitted a complaint to respondent No. 4, alleging therein that their lands covered by House Pass Nos. 335 of 2015, 336 of 2015 and 338 of 2015, were illegally encroached upon by respondent Nos. 1 and 5 in connection with the construction of the new BG Railway line from Bairabi–Sairang. The petitioners requested respondent No. 4 to verify the extent of damage caused to the lands of the petitioners by the respondent Nos. 1 and 5.

8) Accordingly, the respondent No. 4 issued a Detailment Order bearing Memo No. 14011/409/2023-DC(A)/L&B/89-90 dated 24.07.2023, detailing some officials/surveyors, including the representative of respondent No. 5, to

conduct spot verification including the representative on 31.07.2023, at about 11:00 a.m., to verify the complaints received from the landowners, including the present petitioners.

9) The learned counsel for the petitioners submits that accordingly, on 31.07.2023, a spot verification was conducted and a verification report was submitted by SDC, Aizawl to the Deputy Commissioner, Aizawl, wherein it was reported that changes and action taken on land not previously acquired by NF Railways was found and it was suggested that re-assessment by Buannel Solutions and Surveyor may be necessary for mutation of the acquired land from non-acquired area for determining the extent of encroachment. The learned counsel for the petitioners has submitted that, in pursuance of the aforesaid verification report, the respondent No. 4, by Detailment Order bearing Memo No.F.14011/409/2023-DC(A)/L&B/182, detailed certain officials alongwiththe respondent No. 5, including the petitioner No. 2, to conduct assessment survey and measurement of the encroachment land in connection with the construction of Railway Line within Aizawl district on 07.03.2024.

10) Accordingly, on 07.03.2024, the verification was conducted. Thereafter, the SDC, Aizawl submitted her verification report dated 13.03.2024 to the

respondent No.4 with the following remarks.

“During verification, a copy of the Land Plan (copy attached and listed as Annexure - II) was produced by the representatives from NF Railways. In light of the document produced, it appears that the site described by the landowner as their land was demarcated under ROW and acquired by NF Railways. The landowner, however, stated that no compensation was paid to them. Copy of the land pass, it was stated, was already submitted to the DC Office.

Suggestion: *The Office of the Deputy Commissioner, Aizawl may seek information on the ownership of land from the area claimed from LR&S Department, Aizawl”.*

11) Thereafter, when the petitioners were expecting a favorable action from the respondent authorities, they received a Notice dated 13.09.2024, issued by respondent No.4 requesting them to attend a meeting on 25.09.2024. Accordingly, in the meeting held on 25.09.2024, the son of the petitioner No. 2 had attended the same on their behalf, and it was advised to the aggrieved land owners in the said meeting, to approach the appropriate Court for redressal of their grievances. Accordingly, the petitioners were left with no other option but to approach this Court.

12) Mr. A.R. Malhotra, learned counsel for the petitioners, has submitted

that the verification report of the SDC, Aizawl District clearly shows that the land of the petitioners was found to be affected due to the work connected with the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project. The learned counsel for the petitioners submits that, though, other land owners whose land were acquired by the Railways, have been granted due compensation, however, the present petitioners were deprived of their due compensation, in spite of the fact that their land has been utilized by the railway, in connection with the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project.

13) The learned counsel for the petitioners submits that the petitioners were dispossessed of their land without following due process of law, and same is in violation of human rights of the petitioners, as well as the Constitutional Right guaranteed to them under Article 300A of the Constitution of India. He submits that even the State respondents, in their affidavit-in-opposition, filed in the instant case, have categorically stated in Paragraph No.5 therein that the land of the three petitioners, covered by House Pass Nos. 335 of 2015, 336 of 2015, and 338 of 2015, falls within the railway Right of Way (ROW) in connection with the Special Railway Project, namely Bairabi–Sairang New BG Railway Line Project. He submits that under such circumstances, the land of

the petitioners is required to be acquired by the Railways, as same has already been utilized, and therefore, proper compensation may be awarded to them. He also submits that the respondent Nos. 1 to 5 may be directed to treat the petitioners land as deemed required and properly disbursed compensation to them in terms of the award which has already been passed by the respondent Nos. 1 and 5 in respect of other landowners whose lands were acquired in connection with the aforesaid Special Railway Project. In support of his submissions, the learned counsel for the petitioners had cited the following rulings:

(1) Vidya Devi Vs. State of Himachal Pradesh & Ors, reported in (2020)2 SCC 569.

(2) Sukhdatra Vs. State of Himachal Pradesh &Anr., reported in (2022) 7 SCC 508.

14) Ms. Lalnunhlui, learned Govt. Advocate for respondent Nos. 2, 3, and 4, has submitted that though the petitioners' land was not originally acquired for the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project, however, during a spot verification conducted on 31.08.2023 and 07.03.2024, it was found that the lands of the petitioners have been completely damaged due to excavation work undertaken for the railway

station in the peripheral of the railway line. She further submits that as per the aligning details and right of way may be prepared by Buannel Solutions were engaged for preparation of railway maps and corroborated by surveyor's report, it has been verified that the location of petitioners' House Passes are all adjacent and connected with the House Pass of Pu. H. Chinzapauva and fall within the railway Right of Way.

15) On the other hand, Ms. Zairemsangpuii, learned CGC has opposed the contention of the learned counsel for the petitioners and has stated that the railway is executing the Special Railway Project within its Right of Way (ROW), and has already made payment of compensation to the landowners in pursuant to the Draft Award submitted by the State authority. She submits that as per the Draft Award submitted by the State authority on 04.07.2019, the railways have, on 30.03.2020, made all the payments to those owners whose details are provided by the competent authority, and it is only after making such payment that the land was handed over to the railways on 05.02.2021. As such, she submits that there is no question of illegal encroachment of the land of the petitioners by the Railways. She further submits that the questions raised by the petitioners in this writ petition are disputed questions of fact, which may only be resolved by a Civil Court of

competent jurisdiction and therefore, she submits that the instant writ petition filed by the petitioners may be dismissed, and they may be relegated to a Civil Court of competent jurisdiction.

16) I have considered the submissions made by the learned counsel for both sides, and have gone through the materials available on record. I have also gone through the rulings cited by learned counsel for the parties in the instant case.

17) On perusal of the verification report dated 13.03.2024, which was submitted after conduct of verification in pursuant to Detailment Order No. F.14011/409/2023-DC(A)/L&B/182, it appears that the land of the present petitioners in respect of the House Pass Nos. 335 of 2015, 336 of 2015, and 338 of 2015 possessed by them was demarcated under ROW, acquired by the NF Railways; however, no compensation was paid to them in respect of their lands. The Apex Court has observed in the case of *Vidya Devi Vs. State of Himachal Pradesh &Ors*, (supra).

“12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai wherein this Court

held that:

"6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDC wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution."

18) In the instant case, when the materials available on the record, including the verification report conducted by the State respondent, wherein the representatives of respondent Nos. 1 and 5 also took part, clearly shows that the land of the petitioners also got affected in the execution of Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project, the said respondent cannot deny the petitioners of their due compensation for

deprivation of their land in connection with the Special Railway Project.

19) The railways, after having utilized the property of the petitioners for execution of its Special Railway Project cannot take plea relegating the petitioners to the Civil Court, where they may be subjected to protracted litigation, whereas their counterpart, whose lands were also acquired by the railways for the same project, have already been paid compensation. Since the petitioners land have been found to be utilized in connection with the Special Railway Project, namely, Bairabi–Sairang New BG Railway Line Project, and since it has also come to light that they have not been paid any compensation to which they are entitled to, respondent Nos. 1, 4 and 5 are hereby directed to initiate the process of formal acquisition of land of the petitioners covered under House Pass Nos. 335 of 2015, 336 of 2015, and 338 of 2015 located at Sairang and thereafter, pay due compensation to the petitioners for acquisition of their land in terms of provisions contained in the Railway Act, 1989.

20) Though, this is a fit case where immediate grant of compensation to the petitioners was required, however, the prayer of the learned counsel for the petitioners to treat the petitioners' land as deemed acquired, is not considered by this Court as in the case cited by the Apex Court, i.e., the case of

Sukhdatra Vs. State of Himachal Pradesh &Anr.(Supra). The Apex Court issued such directions of deemed acquisition only in exercise of its powers under Article 136 and 142 of the Constitution of India, however, this Court is of considered opinion that in view of the directions passed by this Court in paragraph No. 19 of this Judgment, herein above, same would meet the ends of justice.

21) The respondent Nos. 1, 4 and 5 are directed to comply with this Court's order of paying due compensation to the petitioners after following necessary procedural requirements as indicated here in above within a period of three months from the date of this order.

22) This Writ Petition is accordingly disposed of.

JUDGE

Comparing Assistant