

GAHC010009982024



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

Case No. : WP(C)/351/2024

KOSMIKA SENGYUNG AND 2 ORS
D/O- SHRI KALIJOY SENGYUNG,
RESIDENT OF VILLAGE- DIGRIK,
P.O./ P.S.- HAFLONG, PIN- 788819,
DIMA HASAO DISTRICT, ASSAM.

2: SAKUNTALA SENGYUNG
W/O- SHRI KALIJOY SENGYUNG

RESIDENT OF VILLAGE- DIGRIK

P.O./ P.S.- HAFLONG
PIN- 788819

DIMA HASAO DISTRICT
ASSAM.

3: SRINGDAO SENGYUNG
S/O- SHRI KALIJOY SENGYUNG

RESIDENT OF VILLAGE- DIGRIK

P.O./ P.S.- HAFLONG
PIN- 788819

DIMA HASAO DISTRICT
ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY,
TO THE GOVT. OF ASSAM,
POWER DEPARTMENT, DISPUR,

GUWAHATI-781006.

2:THE NORTH CACHAR HILLS AUTONOMOUS COUNCIL
REPRESENTED BY PRINCIPAL SECRETARY (H)

HAFLONG
DIMA HASAO
ASSAM- 788819.

3:THE DEPUTY COMMISSIONER
HAFLONG
DIMA HASAO
ASSAM- 788819.

4:THE MANAGING DIRECTOR
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEE BHAWAN
PALTAN BAZAR

GUWAHATI- 781001.

5:THE CHIEF GENERAL MANAGER (HYDRO)
ASSAM POWER GENERATION CORPORATION LIMITED
BIJULEE BHAWAN
PALTAN BAZAR

GUWAHATI- 781001.

6:THE SECRETARY
REVENUE
NORTH CACHAR HILLS AUTONOMOUS COUNCIL
DIMA HASAO
HAFLONG
PIN- 788819.

7:THE SETTLEMENT OFFICER
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM- 788819.

8:THE ASSISTANT REVENUE OFFICER
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM- 788819.

9:THE REVENUE OFFICER (W)

N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM- 788819.

10:THE REVENUE OFFICER (E)
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIMA HASAO
ASSAM
PIN- 788819

Advocate for the Petitioner : MR B D DAS, MR. D THAOSEN,MR H K SARMA

Advocate for the Respondent : GA, ASSAM, SC, DIMA HASAO,SC, APGC

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.11.2024

Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. D. Thaosen, learned counsel for the petitioners. Also heard Mr. C. Sharma, learned Sanding Counsel, Dima Hasao Autonomous Council, Dima Hasao appearing for the respondent nos. 2, 6, 7, 8, 9 and 10, Mr. B.J. Talukdar, learned Senior Counsel assisted by Mr. D.K. Medhi, learned counsel for the respondent nos. 1 & 3 and Mr. D. Nath, learned Senior Government Advocate, appearing for Assam Power General Corporation Limited (APGCL) i.e. the respondent nos. 4 & 5.

2. This petition is filed by the 3 (three) petitioners praying for compensation of a land measuring 25 Bighas of a contiguous plot covered by A.K. Patta no.99 at Boro Longku village under Amri Mouza in the district of Dima Hasao, Assam

belonging to the petitioners, which the petitioners claim had been acquired by the APGCL for 150 MW Lower Kopili Hydro Electric Project. The case before the Court is that only compensation for 11 Bighas out of 25 Bighas of land has been paid to the petitioner no.1. However, the balance amount for 14 Bighas of land has not been paid. On making enquiry, it is informed that the said 14 Bighas of land was not acquired and required for the purposes of the project and accordingly, no compensation is called for. This is reflected in the affidavit filed by the Dima Hasao as well as by the Assam Power General Corporation Limited.

3] Learned Senior Counsel for the petitioners submits that while the respondents denied acquiring a complete plot of 25 Bighas of land belonging to the petitioners and that only 11 Bighas of land thereof had been acquired for the purpose and a compensation therefore has already been paid to the petitioner no.1, the fact remains that the petitioners are unable to identify or have ingress and egress to the balanced plot of land, which the respondents state is not required for the purpose of the said project. It is submitted that the said land is within the *demarcated* project area. Learned Senior Counsel for the petitioners therefore disputes the contentions of the respondents that the said plot of 25 Bighas of land was not acquired for the said project and only 11 Bighas of land had been acquired. It is submitted that as the entire plot of land is within the demarcated area of the project, there is no question of the

respondents stating that the balance 14 Bighas of land is not required for the purposes of the project. If that be so, then the said area not required for the project should be demarcated and released from acquisition and handed over to the petitioners for their use. He further submits that in this context a representation dated 04.01.2024 was submitted to the Secretary Revenue, NC Autonomous Council which has not yet been disposed of. The said representation was received by the concerned authority on 05.01.2024.

4] The affidavits filed by the respondents do not reflect that any order has been passed on the same representation. The consistent stand maintained by the respondents is that out of 25 Bighas of land only 11 Bighas of land had been acquired for the said project and for which compensation has been released. The balance 14 Bighas of land was not required for the purposes of the project.

5] Having heard learned counsel for the parties, and upon perusal of the pleadings on record, it is seen that the writ petition contains the bills raised in respect of three plots of land, namely, 11 Bighas of land wherein petitioner No.1 is shown to be the owner, 9 Bighas of land to which the petitioner No.2 is shown to be the owner and 5 Bighas of land in which petitioner no.3 is shown to be the owner. The remarks column in all these bills reflect that these bills were prepared as per Joint Spot Verification report submitted by the Assistant

Revenue Officer and the SDO (C), Lower Kapili Inv. Sub-Division, APGCL, Lanka, Nagaon vide assessment sheet No.37,66 and 67 respectively and as per the schedule of rates of compensation of NC Hills Autonomous Council, Halflong. Insofar as the bill raised in respect of petitioner no.1 is concerned, an amount of Rs.4,95,000/- is shown to be the compensation and which has been admitted to be received by the petitioner no.1. So far as the petitioner no.2 and the petitioner no.3 are concerned, the bills reflect a compensation amount of Rs.4,04.070/- in respect of the petitioner no.2 and Rs.2,90.050/- in respect of the petitioner no.3.

6] There is a categorical averment in the writ petition that only compensation in respect of petitioner no.1 has been released and received. The compensation in respect of petitioner nos. 2 and 3 has not been released. The averments made in the affidavit reflect that only 11 Bighas were acquired and therefore, compensation to that effect has been released. The balance 14 Bighas were not used for the project and consequently, no compensation has been released. However, the averments made in the affidavit, more particularly, the affidavit of the N.C. Hills Autonomous Council do not reflect a clear position as to whether the said 25 Bighas plot of land had been acquired for the purposes of this project and out of which 11 Bighas had been used. The affidavit states that out of 25 Bighas of land belonging to the petitioners under A.K. Patta no.99 at Boro

Longku area only 11 Bighas had been affected due to construction on the 150 MW Lower Kopili Hydro Electric Project and for which damages, compensations have already been paid to the landholder, namely, the petitioner no.1. The remaining 14 Bighas is not affected as it is beyond the project area. As such, from these affidavits filed, it is not clear as to whether steps were taken to acquire the land and if so, in view of the averment made that this land is not required for the project purposes, whether the land has been released from acquisition by the concerned Authorities.

7] The fact remains that a plot of 25 Bighas of land was acquired by the APGCL, which is supported by the bills which are prepared by the Revenue authorities enclosed as Annexure-5 series and the averments made in the affidavit do not dispute the said existence in respect of the bills prepared by the Department.

8] Under such circumstances, it is not clear as to whether the earlier land was acquired in the first instance by the NC Hills authorities and is still under their acquisition and/or whether only 11 Bighas of land was acquired and 14 Bighas of land was never required and therefore, compensation for the same was not assessed.

9] All these questions are required to be answered by the Department and

which questions have remained unanswered in view of the very vague and sketchy affidavit filed on behalf of the North Cachar Hills Autonomous Council, Dima Hasao. The learned Standing Counsel appearing on behalf of the NC Hills also is not posted with the precise instructions. The learned Senior Government Advocate representing the APGCL, however, has maintained a stand that only 11 Bighas of land had been used in the project and the list of beneficiaries for which compensation has been paid is enclosed to their affidavit. The records of the APGCL do not reflect the use of 14 Bighas of land claimed to be belonging to the petitioner nos. 2 & 3.

10] There is also no averment in the affidavit filed by the respondents NC Hill Autonomous Council that the representation filed by the petitioner dated 04.01.2024 has been considered and effective orders have been passed.

11] Under such circumstances, this Court is of the considered view that since the specific averment made by the petitioners in respect of the acquisition of land belonging to the petitioner nos. 2 & 3 is not denied by the respondents, although they maintain a stand that the same has not been utilized for the purposes of the project, this Court is of the view that this writ petition can be disposed of with a direction the respondents, more particularly, the respondent no.6, the Secretary, Revenue, North Cachar Hills Autonomous Council is directed

to pass appropriate orders on the representation dated 04.01.2024 filed by the writ petitioner no.1 and if the balance 14 Bighas of land belonging to petitioner nos. 2 & 3 are not found to be utilized for the project or any other alternative project or even acquired, then the petitioner nos. 2 & 3 should be permitted full right of use and cultivation over the said land as landholders. However, if the land is found to be utilized either by the North Cachar Hills Autonomous Council or for any other APGCL Project then adequate compensation as is found appropriate should be released to the petitioners nos. 2 & 3 without any further delay. If any joint verification is necessary, the same shall be conducted by the respondent no.6, the petitioners and the APGCL Authority jointly and effective orders should be passed within a period of 30 (thirty) days from the date of receipt of a certified copy of this order to be furnished by the writ petitioners before the respondent no.6.

12] The writ petition stands disposed of.

13] Interim order, if any, stands merged.

JUDGE

Comparing Assistant