

HIGH COURT OF SIKKIM

Record of Proceedings**WP(C) No.54 of 2016**

BENUP DHAKAL AND OTHERS

PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

RESPONDENTS

Date: 09.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Petitioners

Ms. Laxmi Chakraborty, Advocate.

For Respondents

R-1

Mr. Karma Thinlay, Central Government Counsel.

R-2 & R-10

Mr. Bhupendra Giri, Advocate.

R-3 to R-9

Ms. Pema Bhutia, Assistant Government Advocate.

R-11

Mr. Sudhir Prasad, Advocate.

ORDER (ORAL)

Learned Assistant Government Advocate representing the State-Respondent Nos.3 to 9 has filed a status report on behalf of Respondent No.6, the *Secretary, Tourism and Civil Aviation Department*, wherein it is *inter alia* averred as follows;

"....."

3. It is submitted that during the year 2014 Central Building Research Institute had assessed 164 houses for damage compensation to which Rs.64.64 Crores was given by the Airport Authority of India. The said amount that was received from A.A.I. was already disbursed to 164 houses prior to the filing of the instant case.
4. Thereafter, a land compensation amounting to Rs.50,15,81,280/-(Fifty Crores, Fifteen Lakhs eighty one thousand and two hundred and eighty) only was assessed by land revenue Pakyong where the land of 34 petitioners out of the 66 petitioners from the instant case is listed for payment of land compensation. The said amount of Rs.50,15,81,280/-(Fifty Crores, fifteen Lakhs eighty one thousand two hundred and eighty) so assessed for land compensation is being paid by Government of Sikkim from the state budget.
5. It is submitted that Rs.20,09,73,587/-(Rupees twenty crores nine lakhs seventy three thousand and five hundred and eighty seven) only is an outstanding amount to be paid to the 34 petitioners and to one Joksan Tamang.
6. It is further submitted that the remaining 32 petitioner land was not considered for compensation as those petitioners land was located in isolation and was not contiguous to the proposed acquisition.

"....."

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Learned Counsel for the Petitioners submits that pursuant to the Order of this Court dated 12-07-2017, wherein the Sub-Divisional Magistrate, Respondent No.9, was directed to assess the entire area irrespective of the fact whether the concerned owner was before the Court or not and submit a Report, a Compliance Report dated 10-06-2017 was filed before this Court by Respondent No.9. That, the said Compliance Report (Page 328 of the Paper-Book) reveals the names of 66 Petitioners and the document reads as follows;

"THE STATEMENT OF LAND AND STANDING PROPERTIES AT DICKLING AND KARTOK BLOCK UNDER PAKYONG SUB-DIVISION TOTALLY DAMAGED BY THE CONSTRUCTION OF GREEN FIELD AIRPORT PAKYONG AND CALCULATED AS PER NEW ACT (RFCTLARR 2013) BASED ON MARKET RATE AS ON 31-05-2017."

That, in view of this document, it is evident that the properties of persons assessed therein are entitled to the amount shown against their respective names in the document. That, the Compliance Report of the Respondent No.9 dated 10-06-2017, indicates assessment of the properties of 42 Petitioners, and the Compliance Report of the Respondent No.9 dated 20-09-2017 indicates assessment of the remaining 24 Petitioners, which adds up to 66 Petitioners (Page 376 of the Paper-Book). Hence, in view of the Reports *supra* the remaining 32 Petitioners ought to be paid the compensation and not only 34 Petitioners as averred in the Report of Respondent No.6 filed today. It is conceded that the Compliance Report pertains to assessment and are not Awards.

Learned Assistant Government Advocate for the Respondent No.6 reiterates the stand taken in the averments made in the Report filed today.

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Having considered the submissions of Learned Counsel for the Respondent No.6 and the Petitioners, it is apparent that both the Reports of the Respondent No.9 referred to *supra* reveal that "assessment" was made of the damages to the properties caused by the construction of the Green Field Airport Pakyong. Admittedly, the assessments are not "Awards". The properties of the remaining 32 Petitioners were not required for construction of the Airport nor were the said lands ever made over to any Authority for the said purpose at any point in time. In sum and substance, it emanates that there has been no acquisition of the lands of the 32 Petitioners neither were Awards prepared and the lands assessed remain in their possession. It is the specific plea of the Respondent No.6 that the lands of the 32 Petitioners are located in isolation and not contiguous to the proposed acquisition, it goes without saying that no Mandamus can be issued for acquisition of lands of the 32 Petitioners.

Learned Counsel for the other parties have no submissions to put forth.

In light of the foregoing discussions and the Status Report dated 09-11-2022 filed on behalf of the Respondent No.6, nothing further remains for adjudication in the matter.

The Respondent Nos.4 and 6 shall expedite necessary steps for making over the remaining compensation amount to the 34 Petitioners and one Joksan Tamang.

WP(C) No.54 of 2016 accordingly stands disposed of.

Pending Applications, if any, also stand disposed of.