

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 30th September, 2022

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

WP(C) No.65 of 2017

Petitioner : Janga Bahadur Chettri

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Advocate for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Yadev Sharma, Additional Government Advocate and Ms. Pema Bhutia, Assistant Government Advocate, for the Respondents No.1, 2 and 4.

Mr. Jorgay Namka, Advocate for the Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1(i) The prayers that are being pressed *inter alia* in the instant Writ Petition are as follows;

(i) *a Writ or Order or direction or declaration directing the Respondent No.3 (National Hydro-electric Power Corporation Limited) to make payment of compensation amounting to Rs.10,82,01,083/- (Rupees ten crores, eighty two lakhs, one thousand and eighty three) only; and*

(ii) *a Writ or Order or direction or declaration directing the Respondent No.3 to make payment of interest @ 12% per annum on the total compensation amount until final payment of the entire sum of money.*

(ii) The Petitioner herein is aggrieved by non-payment of compensation for acquisition of his property at Singbel Block, Makha, East Sikkim, the Award of which was calculated at

Rs.8,18,39,019/- (Rupees eight crores, eighteen lakhs, thirty nine thousand and nineteen) only, and upon inclusion of 4% establishment charge and 40 times capitalized value of land rent, computed to a total of Rs.11,56,49,615/- (Rupees eleven crores, fifty six lakhs, forty nine thousand, six hundred and fifteen) only.

(iii) The Petitioner's case in a nutshell, is that, he is the owner of landed property bearing Plot Nos.647, 649 and 651, measuring an area of 2.0590 hectares, situated at Singbel Block, East Sikkim, allegedly his only landed property. Four houses are located on the same land. In 2011, acquisition proceedings commenced for the said landed property along with the existing four houses and Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, "L. A. Act, 1894"), was published in the Government Gazette, being Notification No.84/902/LR&DMD(S), dated 19-10-2011. A declaration under Section 6 of the L. A. Act, 1894, followed which was published in the Government Gazette on 05-03-2013 and Government approval under Section 7 of the L. A. Act, 1894, obtained on 28-05-2013. Notice under Section 9 of the L. A. Act, 1894, was issued seeking objections, if any, from interested persons. That, no Award under Section 11 of the L. A. Act, 1894, was passed due to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, "LARR Act, 2013") which came to be enforced from 01-01-2014, hence, the proceedings under the L.A. Act, 1894, lapsed. In the meanwhile, on 25-06-2014, the Respondents assessed compensation for acquisition of the said property at Rs.73,42,232/- (Rupees seventy three lakhs, forty two thousand, two hundred and

thirty two) only, and paid 80% thereof to the Petitioner amounting to Rs.58,73,786/- (Rupees fifty eight lakhs, seventy three thousand, seven hundred and eighty six) only, while retaining the remaining 20% compensation with them. On learning of the enforcement of the LARR Act, 2013, in Sikkim in 2014, the Petitioner applied to the State-Respondents for higher compensation for his land and for rehabilitation, but to no avail. He thus made a representation dated 06-01-2016 to the Hon'ble Prime Minister of India requesting for higher compensation and consequential benefits. The said Office forwarded the letter to the Respondent No.1 for appropriate action. The Respondent No.2 then passed the Award under Section 23 of the LARR Act, 2013, for acquisition of the Petitioner's land as detailed above. That, the Petitioner has received a sum of Rs.58,73,786/- (Rupees fifty eight lakhs, seventy three thousand, seven hundred and eighty six) only, but he is yet to receive the remaining amount of Rs.10,82,01,083/- (Rupees ten crores, eighty two lakhs, one thousand and eighty three) only, with interest @ 12% per annum. Hence, the prayers in the Petition.

2. In the Counter-Affidavit of the Respondent No.2 (The District Collector) and Respondent No.4 (The Secretary, Land Revenue and Disaster Management Department), it is admitted that acquisition of the Petitioner's land was initiated as per the L. A. Act, 1894. However, Award under Section 11 of the said Act was not completed due to the enforcement of the LARR Act, 2013, and all matters under the L. A. Act, 1894, were kept in abeyance. That, admittedly, declaration of Award under Section 23 of the LARR Act, 2013, was published on 30-07-2016, computing the net

compensation payable by Respondent No.3 to the Petitioner as Rs.11,40,74,869/- (Rupees eleven crores, forty lakhs, seventy four thousand, eight hundred and sixty nine) only.

3. The Respondent No.3, for whom the land was being acquired, disputed the averments of the Petitioner and the Respondent Nos.2 and 4, and contended that a total amount of Rs.73,42,232/- (Rupees seventy three lakhs, forty two thousand, two hundred and thirty two) only, was computed as Award for acquisition of the properties of the Petitioner under Singbel Block. That, the Respondent No.4 communicated to the Respondent No.3 to deposit a total amount of Rs.1,81,86,160/- (Rupees one crore, eighty one lakhs, eighty six thousand, one hundred and sixty) only, which included compensation for acquisition of the Petitioner's land with that of others under Singbel and Khamdong Blocks. The Respondent No.3, vide letter dated 21-02-2014, sought clarification from the District Collector, East Sikkim, regarding the ownership and extent of its liabilities in respect of the compensation assessed, to which, the Respondent No.2 clarified by communication dated 19-03-2014 that the acquired property would be transferred to the Respondent No.3 with no remaining liabilities. That, the Respondent Nos.2 and 4 admitted that an amount of Rs.58,73,736/- (Rupees fifty eight lakhs, seventy three thousand, seven hundred and thirty six) only, being 80% of the compensation fixed was received by the Petitioner, but the Petitioner declined to receive the remaining 20% and possession of the properties were not handed over to the Respondent No.3 despite several requests made to the Respondent No.2 on this aspect. That, the LARR Act, 2013, was enforced in the State of Sikkim with effect from 16-10-

2015 after the Rules were framed and till then the L.A. Act, 1894, was applicable. Hence, the Writ Petition be dismissed.

4. Learned Senior Counsel for the Petitioner while reiterating the facts of the Petitioner's case contended that no Award was prepared under Section 11 of the L.A. Act, 1894, and only compensation was assessed of which 80% was paid, which is evident from the Note Sheet of the Office of the Respondent Nos.2 and 4 (Annexure R2), wherein it is clearly specified that acquisition process up to Section 9 of the L. A. Act, 1894, was completed but the Award was yet to be assessed. That, Annexure P10, communication from the Respondent No.2 to the Respondent No.4, dated 10-11-2016, indicates that the total compensation calculated for acquisition of the Petitioner's land was Rs.11,40,74,869/- (Rupees eleven crores, forty lakhs, seventy four thousand, eight hundred and sixty nine) only, with 4% establishment charges and 40 times capitalized value. That, the Revenue Officer of the Respondent No.4 Department had intimated the General Manager of the Respondent No.3 Company, vide Annexure P11 dated 22-11-2016, of the statement of compensation of the Petitioner as per the LARR Act, 2013. The communication was duly received by the Respondent No.3 on 23-11-2016 and the Award remained unassailed by the Respondent No.3 in any Forum. That, on 14-07-2017, the Petitioner again reminded the Respondent No.2 that the Award of Rs.11,40,74,869/- (Rupees eleven crores, forty lakhs, seventy four thousand, eight hundred and sixty nine) only, had been prepared but the resettlement and employment to one of the family members of the Petitioner's family as also the interest on the Award had not been addressed. That, on 03-08-2017, the

Revenue Officer of the Respondent No.4 Department informed the Petitioner that since the acquisition of land was still pending, the employment for one family member in the Respondent No.3 Company may be taken up after completion of acquisition proceedings. That, now the Petitioner does not press the prayer for rehabilitation and employment of a family member, but the Award calculated on 30-07-2016 (Annexure P7) be made over to him.

5. Learned Additional Advocate General appearing for Respondent Nos.1, 2 and 4 while endorsing the submissions of Learned Counsel for the Petitioner drew the attention of this Court to Annexure P11 letter dated 22-11-2016 (*supra*) and contended that the Respondent No.3 did not assail this communication neither did the Respondent No.3 ventilate any grievance against the alleged enhancement. Relying on the ratio of ***Indore Development Authority vs. Manoharlal and Others***¹ it was submitted that the Respondent No.3 is liable to pay the computed compensation.

6. Learned Counsel for the Respondent No.3 for his part advanced the contention that the Petitioner cannot invoke the writ jurisdiction as an alternative forum is provided under Section 64 of the LARR Act, 2013, which must be exhausted. Strength on this count was garnered from the decision of this Court in ***Linkwell Telesystems Pvt. Ltd. vs. State of Sikkim and Others***² which was upheld by the Division Bench of this Court in ***Linkwell Telesystems Pvt. Ltd. vs. State of Sikkim and Others***³. That, the date of 20-06-2011 reflected on Annexure R/3-2 is not the date of deemed

¹ (2020) 8 SCC 129

² 2021 SCC OnLine Sikk 69

³ 2021 SCC OnLine Sikk 189

Award, but only an acquisition code maintained by the Government when the process of acquisition starts, indicating that the acquisition proceedings had commenced in 2011 much before the LARR Act, 2013, came into being. In fact, the acquisition proceedings were initiated based on the communication dated 22-09-2010 addressed to the Hon'ble Chief Minister by the Petitioner, pursuant to which, the proceedings under Sections 4, 6, 7, 9 of the L. A. Act, 1894, took place culminating in the Award under Section 11 of the L.A. Act, 1894, calculated at Rs.73,42,232/- (Rupees seventy three lakhs, forty two thousand, two hundred and thirty two) only, and not Rs.11,40,74,869/- (Rupees eleven crores, forty lakhs, seventy four thousand, eight hundred and sixty nine) only, as claimed. Such demand for compensation was made by the Revenue Officer to the Respondent No.3 vide communication dated 07-03-2013 (Annexure R/3-3) and compensation was duly made over to the Respondent Nos.2 and 4. That, in fact, the Respondent No.3 had acted responsibly by issuing letter dated 21-02-2014 (Annexure R-3/4 collectively) addressed to the Respondent No.2 enquiring about any liabilities but the Respondent No.2 vide its letter dated 19-03-2014 informed the Respondent No.3 that the acquired property would be transferred to the Respondent No.3 with no liabilities once the compensation is paid to the affected land owners/house owners. That, communication dated 10-06-2014 reveals that 14 (fourteen) cheques dated 09-06-2014, amounting to Rs.6,35,93,555/- (Rupees six crores, thirty five thousand, ninety three thousand, five hundred and fifty five) only, which included compensation for the Petitioner, had been made over to the Respondent No.2 with a request to the Respondent

No.2 to complete transfer of the properties in the name of the Respondent No.3 immediately after disbursement of the entire compensation, which was not complied with. That, as the Award had already been computed under the L. A. Act, 1894, of which 80% was paid to the Petitioner and he had declined to receive 20%, the proceedings had already truncated. That, even if the Award was not passed under Section 11 of the L.A. Act, 1894, whether the Award granted under Section 23 of the LARR Act, 2013, was correct considering that the compensation was increased from Rs.8,00,00,000/- (Rupees eight crores) only, to Rs.11,00,00,000/- (Rupees eleven crores) only, within one year, i.e., 2016. That, the word "revised" employed in Annexure P8, dated 30-07-2016, is revelatory of the fact that previously compensation had already been computed. It was urged that presuming that the Award was not passed, the Hon'ble Supreme Court has laid down that compensation may be under the LARR Act, 2013 but the Award should be under Section 11 of the L.A. Act, 1894, for which reliance was placed on Paragraph 366.1 of the **Indore Development Authority** (*supra*).

7. In rebuttal, Learned Senior Counsel for the Petitioner submitted that invocation of Section 64 of the LARR Act, 2013, by the Respondent No.3 is erroneous as the provision is self-explanatory.

8. Having considered the pleadings and the arguments advanced by Learned Counsel for the parties, the moot question herein is; Whether an Award had been computed under Section 11 of the L.A. Act, 1894 or Whether the compensation was determined in terms of the LARR Act, 2013 and Whether the Petitioner would

be entitled to the compensation in terms of Annexure P11 of the Writ Petition?

9(i) It is the specific admission of the Respondent Nos.2 and 4, the authority concerned, that the proceedings under the L. A. Act, 1894, had commenced up to the stage of issuance of Notice under Section 9. This is also apparent from the office notes of the Respondent No.2, Annexure R2, wherein it is specified as follows;

"Reference above.

This is a 100% payment of land and houses (sic). Land compensation of Rs.1,74,84,576/- and 17 persons house compensation 4,36,60,958/-. Acquisition process completed upto u/s 9 and Award is to be completed. One person land compensation of Singbel is to back to N.H.P.C. (sic) Due to de-acquisition.

*Sd/-
18/6/14*

We may deposit the cheque pl.

*Sd/-
18/6/14"*

(ii) The Respondent No.3 despite submitting that the Award under Section 11 of the L. A. Act, 1894, had already been computed has failed to buttress his argument with any documentary evidence in the teeth of the Office notings *supra* and his own submission that the date reflected on Annexure R/3-2 viz.; 20-06-2011 was only the "acquisition code" maintained by the Government when the proceedings for acquisition commence. In light of the documentary evidence before this Court, it cannot be concluded that Annexure R/3-2 is an Award which thereby answers the first facet of the questions raised above.

(iii) Annexure P7 is a declaration of Award under Section 23 of the LARR Act, 2013, prepared by the Office of the Respondent No.2 and reveals the Schedule of the properties and the steps taken towards such acquisition and the compensation computed for

a total of Rs.8,18,39,019/- (Rupees eight crores, eighteen lakhs, thirty nine thousand and nineteen) only. It is apparent that the Respondent No.2 vide communication dated 30-07-2016 (Annexure P8) informed the Respondent No.4 that the Award under Section 23 as per the LARR Act, 2013, in connection with the land belonging to the Petitioner which was acquired by the Respondent No.3 was being forwarded. That, the compensation statement at revised rate and house compensation was also enclosed for reference and a request was made to the Respondent No.4 to claim the remaining amount of compensation for payment to the land owners. Annexure P9 (office note) reveals that the "Net Compensation to be claimed: Rs.11,40,74,869/-". On 10-11-2016, the said information was resubmitted to the Respondent No.4 by the Respondent No.2 (Annexure P10) with the request that the compensation as assessed from the acquiring department be realized for payment to the affected land owner. The Respondent No.4 was also informed that the land owner had requested for resettlement and employment of one person of the family. Needless to add here that the request for resettlement and employment of one person of the family is not being pressed by the Petitioner before this Court and therefore no further discussions need ensue on this point. Vide letter dated 22-11-2016 (Annexure P11) the Respondent No.3 was informed by the Revenue Officer of the Respondent No.4 department of the "Statement of compensation bill as per RFCTLARR Act, 2013 in connection with the land acquired by NHPC Ltd. under Singbel block, East Sikkim" *inter alia* as follows;

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“.....”

1.	Total Compensation	Rs.	11,12,00.426/-
2.	4% Contg./Estb. Charges	Rs.	44,48,017/-
3.	40 times capitalized value of land rent	Rs.	1,172/-
	Grand Total	Rs.	11,56,49,615/-
	Assessment made earlier by D.C, East & amount deducted	Rs.	73,42,232/-
	Net payable	Rs.	10,83,07,383/-
4.	Total house compensation	Rs.	55,45,660/-
5.	4% Contingency Charge	Rs.	2,21,486/-
	Total	Rs.	57,67,486/-

(Grand total Rs.108307383 + Rs.5767486 = **Rs.11,40,74,869**)
Rupees Eleven Crore Forty Lakhs Seventy Four Thousand Eight Hundred Sixty Nine) only.

I am, therefore, directed to request you to release the payment amounting to **Rs.11,40,74,869/-** only at the disposal of the Secretary, Land revenue & Disaster Management Department for making payment to the land owners, please.

.....”

(iv) The above document bears the official stamp of Respondent No.3 with acknowledgement of receipt of the letter on 23-11-2016. Following this communication, from the records before this Court it transpires that, on 07-02-2017 the Respondent No.3 sent a communication to the Respondent No.2, the subject being “*Handing over vacant possession of properties and land damaged at Dipudara, East Sikkim and transfer of ownership to NHPC –Reg.*”. It is an admitted position that the vacant possession of the properties have not been made over to the Respondent No.3. No reference has been made to the compensation computed as reflected in Annexure P11 by the Respondent No.3 nor was any objection raised in that context before any authority including Respondent Nos.2 and 4. Communication dated 14-06-2017 addressed to the Respondent No.2 by the Respondent No.3 again raises no objection with regard to the compensation. These are followed by the communications dated 7/9-10-2017, 19-12-2017,

02-02-2018 where also no reference is made to the alleged enhanced compensation.

10. Reliance on Section 64 of the LARR Act, 2013, by the Respondent No.3 is misplaced for the reason that it is not the Petitioner's case that he has not accepted the Award nor has he made a written application to the Respondent No.2 requiring that the matter be referred by the Respondent No.2 for the determination of the authority, on his objection to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of rehabilitation and resettlement under Chapters 5 and 6 or the apportionment of the compensation amongst the persons interested. Further, the arguments of Learned Counsel for the Respondent No.3 involving the ratio in **Indore Development Authority** (*supra*) is of no assistance to his case as the proceedings by the Respondent No.2 and Respondent No.4 had admittedly not reached the stage of Section 11 of the L.A. Act, 1894, as discussed *supra*.

11. In light of the above position, it is evident that the Respondent No.3 had no objection to the compensation computed by the Respondent No.2 vide Annexure P9 (office notes) and Annexure P11, duly communicated to the Respondent No.3 vide letter dated 22-11-2016 (Annexure P11). The argument of Learned Counsel for the Respondent No.3 that the compensation calculated allegedly under Section 23 of the LARR Act, 2013, is doubtful due to the enormous increase within the year is unsustainable as Annexure P11 details the reasons for the increase.

12. In view of the foregoing discussions, the Respondent No.3 is directed to pay the compensation to the Petitioner

computed in terms of Annexure P11 to the Writ Petition, duly deducting the amount received by the Petitioner earlier. In view of the circumstances of the case and the relevant provision of the Statute, i.e., Section 80 of the LARR, Act, 2013, the Petitioner is not entitled to interest.

13. The Writ Petition stands disposed of accordingly.

14. No order as to costs.

(Meenakshi Madan Rai)

Judge

30-09-2022

Approved for reporting : **Yes**