

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA
MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH
NAHARLAGUN

Appeal from
Writ Petition (Civil)

W.P. No. 487 (AP) 2010

Shri Tsering Wangchuk & Hons

Appellant
Petitioner

-Versus-

State of Ar & 15 ors

Respondent
Opposite Party

Counsel for the Appellant
Petitioner

D. Boje
T. Rajom

Counsel for the Respondent
Opposite Party

GA (AP)

Noting by Officer or Advocate	Serial No.	Date	Office,note,reports,orders or Proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

1. Shri Tsering Wangchu S/o Late Sangledrak Merakpa village Thembang, P.O. & P.S. Dirang, District West Kameng, Arunachal Pradesh.
2. Shri Grongthang, S/o Late Sangledrak Merakpa, Village Thembang, P.O. & P.S. Dirang, District West Kameng, Arunachal Pradesh.
3. Shri Tsering Dorjee S/o Shri Tsering Merakpa, village Thembang, P.O. & P.S. Dirang,

District West Kameng, Arunachal Pradesh.

4. Shri Lha Tsering, S/o Late Zung Drakpa, village Cherong, P.O. & P.S. Dirang, West Kameng District, Arunachal Pradesh.

5. Shri Tsering Merakpa, S/o Late Adon Merakpa, Village Thembang, P.O.&P.S. Dirang, Arunachal Pradesh.

(All common cause of action)

.....Petitioners.

-VERSUS-

1. The State of Arunachal Pradesh represented by Commissioner (Land Management), Govt. of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, Department of Hydro Power Development, Itanagar.
3. The Chairman-cum-Superintending Engineer(C) Bomdila Civil

Circle, Department of HPD
Bomdila (A.P).

4. The Deputy Commissioner, West Kameng District, Bomdila, Arunachal Pradesh.
5. The Additional Deputy Commissioner, Dirang, District West Kameng, Arunachal Pradesh.
6. The Project Manager, M/s Patel Engineer, Pvt. Ltd. Bichom, District West Kameng, Bomdila, Arunachal Pradesh.
7. Shri Phurpa Sharchokpa, S/o Late Lobsang Village Thembang, P.O./P.S. Dirang, District West Kameng, Arunachal Pradesh.
8. Shri Tseten Jurme, S/o Late Ngoichung, permanent resident of Thembang village, P.O./P.S. Dirang, District West Kameng, Arunachal Pradesh.
9. Shri Tsering Gambu, S/o Late Lobsang, Permanent resident of

Thembang Village, P.O./P.S.
Dirang, District West Kameng,
Arunachal Pradesh.

10. Shri Thinly S/o Late Junuru,
permanent resident of Thembang
village, P.O./P.S. Dirang, District
West Kameng, Arunachal
Pradesh.

11. Shri Namgyal Tsering, S/o Late
Ngoichung, permanent resident
of Thembang village, P.O./P.S.
Dirang, District West Kameng,
Arunachal Pradesh.

12. Shri Tenzing Chaigyel S/o Late
Passang, permanent resident of
Thembang village, P.O./P.S.
Dirang, District West Kameng,
Arunachal Pradesh.

13. Shri Pema Wange, S/o Shri
Tseten Jurme, permanent resident
of Thembang village, P.O./P.S.
Dirang, District West Kameng,
Arunachal Pradesh.

14. Shri Lobsang Tsering Sharchok-
pa, S/o Shri Tsering Gambu,

permanent resident of Thembang
Village, P.O./P.S. Dirang,
District West Kameng, Arunachal
Pradesh.

15. Shri Sonam Tsering Sharchokpa,
S/o Shri Tsering Gambu
permanent resident of Thembang
village, P.O./P.S. Dirang, District
West Kameng, Arunachal
Pradesh.

16. Shri Lama Sharchokpa, S/o Late
Ngawang, permanent resident of
Thembang village, P.O./P.S.
Dirang, District West Kameng,
Arunachal Pradesh.

.....*Respondents.*

**BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

20.1.2011

Heard Mr. D. Boje, learned Counsel appearing for the petitioners in WP(C) 487/2010 and WP(C) 388/2010. Also heard Mr. R.H. Nabam, learned Senior Government Advocate representing the official respondents. The respondent No.6 is represented by Dr. A.K. Saraf, learned Senior Counsel assisted by Mr. A. Goyal. The private respondents 7 to 16 (Members of the *Sharchokpa Clan*) are represented by Mr. T. Pertin, learned Counsel.

2. The petitioners in WP(C) 388/2010 belong to the *Kochilu Clan* and petitioners in WP(C) 487/2010 are Members of the *Merakpa Clan*. The private respondents represent the *Sharchokpa Clan*. All the 3 *Clans* are residing in the *Thembang Village* area and are claiming ownership right over the *Thembang Village* lands, which has been acquired by the Government, for installation of the Gongri Hydro Electric Project, being executed by the respondent No.6.

3. It is contended by Mr. D. Boje, the learned Counsel for the *Kochilu* and *Merakpa Clan* members that the ownership of the acquired land does not vest exclusively on the *Sharchokpa Clan* and the writ petitioners too have a right to get a share of the compensation amount payable for the said acquisition. Mr. D. Boje, submits that the *Merakpa Clan* members were not afforded any opportunity during the acquisition proceeding, to stake their claim for compensation.

4. Mr. R.H. Nabam, submits on behalf of the Government that the acquisition process was initiated through public notice by the Revenue Authorities with preliminary Notification issued on 7th July 2008 and the final



Notification was subsequently published on 9.3.2009 under *Section 6* of the *Land Acquisition Act*. Mr. Nabam further submits that during the entire process of acquisition, the Members of the *Kochilu* and *Merakpa Clans* never objected to the acquisition proceeding nor they made any claim for a share of land acquisition compensation.

5. Appearing for the *Sharchokpa Clan*, Mr. T. Pertin submits that *Sharchokpa* is one of the four major *Clans* of the Monpa tribe who reside in the area of *Thembang Village* and the forefathers of these 4 *Clans* had distributed the ancestral land amongst the 4 *Clans* and since the acquired lands have fallen into the share of *Sharchokpa Clan*, the compensation was rightly ordered in favour of the affected land owners of *Sharchokpa Clan*.

6. The *Kochilu Clan* claiming a share of compensation had filed WP(C) 388 (AP)/2010, challenging the award of compensation granted exclusively to the *Sharchokpa Clan* by the Acquisition Authorities. A similar petition i.e. WP(C) 487 (AP)/2010 has been filed by the Members of the *Merakpa Clan*, by contending that the *Kochilu Clan* who are their masters, had gifted certain areas to the *Merakpa Clan* and since the area possessed through Gift from the *Kochilu Clan*, have also been acquired, the affected Members of the *Merakpa Clan* are entitled to receive a share of the compensation.

7.1 Representing the respondent No.6 who are to execute the Hydro Power Project, Dr. A.K. Saraf, learned Senior Counsel submits that the compensation payable for acquisition of land for the Hydro Power Project, has already been deposited by the Company with the Revenue Authorities of West Kameng district and the Company has nothing to say on the right of any of the parties to a share of compensation. However the learned counsel has produced a copy of the Court's order dated 1st December, 2010 in WP(C) 438 (AP)/2010. This writ petition was filed by the *Sharchokpa Clan* to challenge the instruction given to the State Bank of India (SBI) Authorities of Dirang

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Branch by the Deputy Commissioner, whereby stop payment was ordered in respect of the compensation amount, deposited in the Account of the *Sharchokpa Clan* maintained in the Dirang Branch of the S.B.I.

7.2 This Court after considering the submissions made by Mr. T. Pertin, learned Counsel for the petitioners and Mr. D. Boje, learned Counsel appearing for the private respondents 5 to 18 (*Kochilu Clan*) in that case had ordered the Deputy Commissioner of Bomdila to consider as to who between the 2 Clans (*Sharchokpa* and *Kochilu*) is entitled to get payment of land compensation in respect of the land belonging to the *Sharchokpa Clan*. The High Court also ordered the Deputy Commissioner to take an appropriate decision after giving an opportunity of hearing of both the contesting parties. Of course since the Members of the *Merakpa Clan* were not parties in WP(C) 438 (AP)/2010, no direction to afford an hearing to the Members of the *Merakpa Clan* was given by the Court, when it passed orders on 1.12.2010 disposing of WP(C) 438 (AP)/2010.

8.1 Considering the nature of the rival claim, it would hardly be appropriate for a Writ Court to examine the issue of title of land claimed in these proceedings.

8.2 However, having regard to the fact that the Deputy Commissioner, Bomdila is already in seisin of the matter to decide on the rival claims of the *Kochilu* and *Sharchokpa Clans*, in pursuant to the earlier Court's order in WP(C) 438 (AP)/2010, I am of the considered view that the consideration by the Deputy Commissioner, should not exclude the claim if put forward, by the Members of the *Merakpa Clan*. This Court had earlier directed disposal of the dispute within 2 months from the date of receipt of a copy of the Court's order dated 1.12.2010 but it is informed by the learned Counsels that the matter is pending still before the Deputy Commissioner.

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9. For the foregoing discussions, I hold that it would not be appropriate for the Writ Court to adjudicate the claims in these 2 writ petitions as determination of title involves evidence and the Writ Court should not enter into that arena.

10. However considering that the Deputy Commissioner is already in seisin of the matter on the claim of the *Sharchokpa* and the *Kochilu Clans*, the Members of the *Merakpa Clan* are also permitted to file their claim before the Deputy Commissioner. Considering that the Deputy Commissioner is required to pass a time bound order, claim if any, should positively be filed by the Members of the *Merakpa Clan* on or before 31st January 2011. If their claim is filed by 31.1.2011 the Deputy Commissioner should examine this claim as well, while deciding the claim of the Members of *Sharchokpa* and *Kochilu Clans*. Considering the additional burden placed on the Deputy Commissioner, the dispute may be decided preferably on or before 14.3.2011. He may requisition the available records and reports from the office of the Addl. Deputy Commissioner, Dirang and Circle Officer, Thembang. Reasonable opportunities of hearing must also be afforded to all the parties. It is ordered accordingly.

11. With the above order, both the writ petitions are disposed of.


JUDGE

Datta

