

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM & ARUNACHAL PRADESH)

WA 09 (AP) of 2016

1. **The State of Arunachal Pradesh,
represented by the Chief Secretary,
Government of Arunachal Pradesh,
Itanagar.**
2. The Secretary,
Department of Water Resources Development,
Government of Arunachal Pradesh,
Itanagar.
3. The Executive Engineer,
Department of Water Resources Development,
West Siang District, Basar,
Arunachal Pradesh.
4. The Assistant Engineer,
Department of Water Resources Development,
Aalo Division, West Siang District, Aalo,
Arunachal Pradesh.

..... Appellants-State of Arunachal Pradesh.

Advocates for the appellants:

Mr. S. Tapin, Sr. Govt. Advocate.

-VERSUS-

1. **Shri Dagmo Loya,**
S/o Shri Tindak Loya, a permanent resident
Of Kabu village, PO/PS – Aalo,
West Siang District, Arunachal Pradesh.
2. Shri Pagli Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
3. Shri Gekir Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
4. Shri Hogmor Loyi,

- Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
5. Shri Tojum Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 6. Shri Kirdo Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 7. Shri Duter Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 8. Shri Dojiv Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 9. Shri Dugmo Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 10. Shri Reter Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 11. Shri Migdo Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 12. Shri Nyamo Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 13. Shri Liyor Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 14. Shri Kimek Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 15. Shri Lidam Lomi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.
 16. Shri Hoggam Loyi,

Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.

17. Shri Gedo Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.

18. Shri Hijum Loya,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.

19. Shri Gumba Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.

20. Shri Jili Loyi,
Permanent resident of Kabu village,
PO/PS – Aalo, West Siang District,
Arunachal Pradesh.

.....Respondents

21. The Deputy Commissioner,
West Siang District, Aalo,
Arunachal Pradesh.

.....Proforma Respondents

Advocates for the respondents:

Mr. K. Jini,
Mr. D. Loyi,
Mr. G. Bam,
Mr. J. Jini,
Mr. R. Rime,
Mr. G. Ngomdir,
Ms. S. Ketan,
Mr. B. Picha,
Mr. S. Mibang,

:::BEFORE:::

**HON'BLE MR JUSTICE A M BUJOR BARUA
HON'BLE MR. JUSTICE MIR ALFAZ ALI**

Date of hearing - **20.09.2017.**

Date of judgment - **20.09.2017.**

JUDGMENT & ORDER (ORAL)

(Bujor Barua, J)

Heard Mr. D. Soki, learned Addl. Sr. Govt. Advocate for the appellant-State and Mr. K. Jini, learned counsel for the respondent/writ petitioners.

2]. The respondent/ writ petitioners, herein, had preferred a writ petition being WP (C) 387 (AP) 2014 on the grievance that as because of the Lubuk Nallah, from which, they used to draw water to their agricultural field have been destroyed during the construction of 4 (four) lane Highway, they had suffered loss in their agricultural filed inasmuch as, they could not do the cultivation for the 2 (two) intervening years. It is stated that the said Lubuk Nallah was the only source of water for cultivating their agricultural field and cultivation is only their occupation other than the petitioner Nos. 2, 6 & 7.

3]. Consequently, the writ petition had been preferred for a direction to the respondent authorities to complete the construction of the water canal and also for payment of certain compensation for the loss cause during construction of the Highway. The petitioners also referred to a survey and assessment report conducted by the concerned officer of the agricultural department, wherein, they have assessed that the total loss suffered by them amounts to Rs.13,54,320/-.

4]. The State authorities, on the other hand, had brought on record before this Court that the Highway which was being constructed by the BRTF had deposited an amount of Rs.12,87,602/- that the District Administration of West Siang District for undertaking

the necessary repair in the water canal. Upon payment of the said amount, it was the responsibility of the Water Resources Department to do the necessary rectification of the canal. In the affidavit-in-opposition, the respondent No. 4 from the WRD had taken a stand that, although, the canal was duly restored, the petitioners deliberately did not cultivate the land in order to get the benefit of compensation. Such time on the part of the WRD was neither substantiated nor indicated on the basis of any material on record.

5]. In the aforesaid premises, the learned Single Judge by its judgment and order dated 16.10.2015 had directed the Water Resource Department to pay the compensation amount of Rs.13,54,320/- as assessed by the Agriculture Department for being paid to the petitioners who are 20 in numbers. Against the said judgment and order dated 16.10.2015, the present appeal have been preferred by the WRD. In the appeal, it is noticed that the other Department of Govt. of Arunachal Pradesh, namely, the District Administration as well as the Agriculture Department are being impleaded as respondents in the appeal. Such array of the parties indicates it is only the WRD who is aggrieved by the direction of the learned Single Judge. It is also noticed that the District Administration as well as the Agriculture Department have already given their view in favour of the writ petitioners for payment of the compensation.

6]. In the writ appeal, the only stand taken by the appellant is that the delay was not caused and the laches was not on the part of the WRD but BRTF authorities did not construct the road in time, therefore, the water canal could not be restored by the WRD.

7]. Mr. Soki, learned Addl. Sr. Govt. Advocate for the appellant-WRD also states that one further ground is that the writ petitioners-farmer were disturbing the authorities of WRD in undertaking the restoration work and therefore, there was further delay. Apart from taking that the stand, nothing further has been forwarded to substantiate such allegation as correct but of some factual premises.

8]. Be that as it may, this Court is of the view that the grounds taken by the WRD, all pertain to factual dispute as to what was the cause of delay of WRD to restore the canal. It is also noticed that in the writ petition, 3 (three) facts are admitted and there is no dispute to it viz-a-viz, namely,

- (1) Their had been damage to the water canal, as a result of which, the farmers did not water,
- (2) There is an assessment by the Agricultural Department is to the loss suffered by the farmers, as a result of such non-availability of water which amounts to 13,54,320 and further,
- (3) That the Deputy Commissioner, on different occasions, had directed the WRD to expedite the restoration of the canal. Therefore, to the aforesaid fact, there is no element of any disputed question of fact.

9]. The disputed question of fact only pertains to the issue raised by the appellant in the present appeal that the delay was not caused by the WRD whereas it was caused by certain in-action on the part of the BRTF authorities. By referring to a communication dated 26.05.2014, a further ground is sought to be taken that during the construction period, an organization called Water Users Association (WUA, in short) had caused certain hindrances in completing the work but nothing had been stated that for how long hindrances was caused or during which period it was caused and were total delay in completing the project. In the absence of such material, the allegation of hindrances could not be quantified and taken into account for proportionately deducting the compensation that the appellant-WRD are liable to pay. Further, the said reason was not taken as a ground by the WRD before the learned Single Judge.

10]. In such view of the matter, this Court does not find any infirmity in the judgment and order dated 16.10.2015 and accordingly, declines to interfere with the same. But, however, if the

appellant are of the view that the delay was caused due to certain in-action on the part of the BRTF authorities and as because such in-action, the compensation is required to be paid, the WRD would be at liberty to file appropriate application before the Competent authority against the BRTF authorities.

It is clarified that the liberty given to the WRD to proceed against the BRTF shall not stand in a way to comply and the said compliance be made within a period of 3 months from the date of receipt of a certified copy of this order.

In terms of the above, this writ appeal stands disposed of.

JUDGE

JUDGE