

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

ITANAGAR PERMANENT BENCH

(1) WP (C) 252 (AP) 2014

1. Sri Dimkio Dubi,

Son of Late Midin Dubi,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

2. Sri Tama Dubi,

Son of Late Roda Dubi,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

3. Sri Larke Pisa,

Son of Late Kelar Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

4. Sri Paknam Pisa,

Son of Late Tapak Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

5. Sri Tagin Pisa,

Son of Sri Torum Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

6. Sri Damar Pisa,

Son of Late Roda Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

7. Sri Taniya Pisa,

Son of Late Tasar Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

8. Sri Torum Pisa,

Son of Late Putu Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

9. Sri Loja Pisa,

Son of Late Talo Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

10. Sri Taklin Pisa,

Son of Late Niatak Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

11. Sri Tania Pisa,

Son of Late Kelar Pisa,
Permanent R/o village Pisa,
PO/PS Daporijo, District Upper Subansiri,
Arunachal Pradesh.

.....petitioners

-VERSUS-

1. The State of Arunachal Pradesh,

Through the Chief Secretary, Government of
Arunachal Pradesh, Itanagar.

2. The Commissioner,

Land Management, Government of Arunachal
Pradesh, Itanagar.

3. The Director,

Land Management, Government of Arunachal
Pradesh, Itanagar.

4. The Secretary,

Power, Government of Arunachal Pradesh,
Itanagar.

5. The Chief Engineer,

Hydro Power Development, Government of
Arunachal Pradesh, Itanagar.

6. The Deputy Commissioner,

Upper Subansiri District, Daporijo,
Arunachal Pradesh.

7. The Land Revenue & Settlement Officer,

Upper Subansiri District, Daporijo,
Arunachal Pradesh.

8. The National Hydro Power Corporation (NHPC)

Government of India Undertaking represented by its Chairman cum Managing Director, N.H.P.C. Office Complex, Sector-33, Faridabad-121003, Haryana.

9.The General Manager,

National Hydroelectric Power Corporation Limited (NHPC), Subansiri Hydro Electric Project, Gerakamukh, P.O. & P.S. Dhemaji, District Dhemaji, Assam.

10. The Senior Manager (Civil),Upper Subansiri basin Project, National Hydroelectric Power Corporation Limited (NHPC), Daporijo, District Upper Subansiri, P.O. & P.S. Daporijo, Arunachal Pradesh.

11. The KSK Energy Ventures Limited, Road No. 22, Jubilee Hills, Hyderabad-500033, India.

.....respondents.

By Advocates:

For the **petitioners:**

L. Tenzin
L. Tsering
I. Lollen
K. Eshi
D. Panging
V. Jamoh
D. Tamuk
E. Perme
M. Doji
M. Tamut
M. Gibi
H. Kadu
J. Kamsi

For the **respondents:**

GA (AP)
Ms. S. G. Sarmah S/C (NHPC)
Mrs. S. Nag (for respondents No. 8 to 10)
Mr. K. Jini S/C (LM)
Mr. P. D. Nair (for respondent No.11)
Mr. G. Alam (for respondent No.11)

Mr. R. Sonar (for respondent No.11)
Mr. K. Bui (for respondent No.11)
Mr. H. Rahman (for respondent No.11)
Mr. S. Keyang (for respondent No.11)

(2) WP(C)396(AP)2014

1. Shri Largam Pisa,

S/o Late Talar Pisa, aged about 45 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

2. Shri Pakbu Pisa, S/o late Minji Pisa, aged about 47 years, Permanent resident of Pisa permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

3. Shri Satak Pisa, S/o late Kesa Pisa, aged about 39 years, permanent resident of Pisa village, PO/PS Daporijo, Upper Subansiri District, A.P.

4. Shri Sabu Pisa, S/o late Kesa Pisag, aged about 45 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

5. Shri Taku Patum, S/o late Same Patum, aged about 39 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

6. Smti Yake Soki, w/o Late Tasar Soki, aged about 52 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

7. Shri Bogi Pisa, S/o late Riakbu Pisa, aged about 67 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

8. Shri Taw Pisa, S/o of Late Takam Pisa, aged about 49 years, permanent resident of Pisa village, P.O/P.S Daporijo, Upper Subansiri District, A.P.

.....petitioners

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1. The State of Arunachal Pradesh, Through the Chief Secretary, Government of Arunachal Pradesh, Itanagar.

2. The Commissioner,

Land Management, Government of Arunachal Pradesh, Itanagar.

3. The Director,

Land Management, Government of Arunachal Pradesh, Itanagar.

4.The Secretary,

Power, Government of Arunachal Pradesh, Itanagar.

5. The Chief Engineer,

Hydro Power Development, Government of Arunachal Pradesh, Itanagar.

6. The Deputy Commissioner,

Upper Subansiri District, Daporijo, Arunachal Pradesh.

7. The Land Revenue & Settlement Officer,

Upper Subansiri District, Daporijo, Arunachal Pradesh.

8. The National Hydro Power Corporation (NHPC)

Government of India Undertaking represented by its Chairman cum Managing Director, N.H.P.C. Office Complex, Sector-33, Faridabad-121003, Haryana.

9. The General Manager,

National Hydroelectric Power Corporation Limited (NHPC), Subansiri Hydro Electric Project, Gerakamukh, P.O.&P.S. Dhemaji, District Dhemaji, Assam.

10. The Senior Manager (Civil), Upper Subansiri basin Project, National Hydroelectric Power Corporation Limited (NHPC), Daporijo, District Upper Subansiri, P.O. & P.S. Daporijo, Arunachal Pradesh.

11. The KSK Energy Ventures Limited, Road No. 22, Jubilee Hills, Hyderabad-500033, India.

.....respondents.

By Advocates:

For the **petitioners:**

Mr. H. Chada

Mr. R. Buda

Mr. T. Sorum

Ms. N. Danggen

Mr. O. dugong

Mr. T. Tatak

Ms. O. Perme
Ms. A. Panor
Mr. D. Taggu

For the **respondents:**

GA (AP)
Mr. K. Jini S/C (LM)
Mrs. S. Nag (respondents No.8 to 10)
Mrs. S.G Sharma (respondents No.8 to 10)
Mr. P. D. Nair
Mr. G. Alam
Mr. R. Sonar
Mr. K. Bui
Mr. H. Rahman
Mr. S. Keyang

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **07.02.2018.**

Date of Judgment : **16.03.2018.**

JUDGMENT & ORDER (ORAL)

By preferring the above two writ petitions under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of acquisition of 12.62 hectares of their land for construction of 2000 MW, Upper Subansiri Hydro-Electric Project at Menga, Upper Subansiri District, Arunachal Pradesh, without adhering to the provisions of law governing acquisition of land.

2. The petitioners' case, in a nutshell, is that the National Hydro Power Corporation Ltd. (for short 'NHPC Ltd.') initiated a Hydro-Electric Project, known as Upper Subansiri Basin Project in the Upper Subansiri District of Arunachal Pradesh for generating 2000 MW electricity power. With the said object, the respondent No. 10, the Senior Manager (Civil), NHPC Ltd., Daporijo, Upper Subansiri District, Arunachal Pradesh, by a letter, dated 12.07.2000, requested the respondent No. 6/Deputy Commissioner, Upper Subansiri District, to allot about 50 (fifty) hectares of land for construction of temporary residential and non-residential buildings near Daporijo/Sippi or Menga. Accordingly, the respondent No. 6/Deputy Commissioner, Upper Subansiri District, issued Circular No. LR/DRJ-121/2000, dated 11.08.2000, calling for a meeting of all HGBs/GBs,

prominent public leaders and Ex-Panchayat members of various villages including the petitioners, that is, Pisa villagers and the NHPC Ltd., on 19.08.2000, at the general ground, Sippi, in connection with land acquisition for the said proposed project. In the said meeting, the petitioners agreed to allow the district administration to survey their land for temporary settlement by the NHPC Ltd., subject to negotiation with the NHPC Ltd. for the welfare of the land owners and in regard to the terms and conditions thereof.

3. The petitioners have contended that thereafter, the respondent No. 6/Deputy Commissioner, Upper Subansiri District by an order, dated 05.02.2001, deputed land management staff for survey of land at Pisa village jointly with the NHPC Ltd. officials and by another order, dated 19.01.2001, constituted a four Member Board headed by an EAC (Judl.) as Chairman for determining the rates of the land to be acquired within 3 (three) days. The Board recommended the rates of the land, which was approved by the respondent No. 6/Deputy Commissioner, Upper Subansiri District. Thereafter, the respondent No. 6/Deputy Commissioner, Upper Subansiri District assessed the cost of 12.62 hectares of land at Rupees 36,00,453/- (Thirty Six Lakh Four Hundred Fifty Three only), without giving any opportunity of hearing to the land owners, that is, the petitioners and forwarded the estimate to the NHPC Ltd. for payment. The NHPC Ltd. vide letter, dated 27.03.2003, submitted a cheque bearing No. 822825 amounting to Rs. 36,00,453/- (Thirty Six Lakh Four Hundred Fifty Three only) as cost of land including buildings and crops thereon at Pisa village. Prior to it, the respondent No. 6/Deputy Commissioner, Upper Subansiri District had constituted the Pisa Village Committee by an order, dated 20.06.2001, *inter-alia*, for the purpose of assisting the local administration and the NHPC Ltd., in the matter of acquisition of land for the NHPC Ltd., Subansiri Basin Project. A notice was also issued, on 28.05.2003, to the land owners of Pisa village to raise objection, if any, against the acquisition of their land before the Pisa Village Committee and in response thereto, the Committee submitted a memorandum on 28.05.2003, to the respondent No. 6/Deputy Commissioner, Upper Subansiri District, to invite the NHPC Ltd. and the Pisa villagers for settlement of land acquisition proceeding laying down certain conditions, which was forwarded to the Chief Engineer, NHPC Ltd., Upper Subansiri Project, Daporijo, on 10.06.2003, requesting him to arrange for negotiation with the land owners. However, without taking any initiative for negotiation, the NHPC Ltd. and the respondent No. 6/Deputy

Commissioner, Upper Subansiri District, making false promise of fulfilling the demands of the petitioners and taking advantage of the illiteracy obtained their signatures/thumb impressions on the Sale Deeds, dated 31.07.2003, in favour of the NHPC Ltd.

4. According to the petitioners, although as per Regulation 7 of the Bengal Eastern Frontier Regulation, 1873, neither the NHPC Ltd. nor any non-native/non-indigenous person can buy land in Arunachal Pradesh, the said Sale Deeds are void *ab initio*. While the petitioners were waiting for the NHPC Ltd. and the district administration to finalize their land acquisition proceeding, the respondent No. 6/Deputy Commissioner, Upper Subansiri District, allotted the land of the petitioners to the Indian Army (INFBDE), against which they submitted two representations, dated 03.07.2012 and 02.08.2012, raising their objection, but not responded. Therefore, the petitioners approached this Court filing a writ petition being WP(C)No.272(AP)2012(Pisa Welfare Society Vs. State of Arunachal Pradesh and Ors.) against settlement of Indian Army over their land without following the provisions of the Land Acquisition Act, 1894. During the pendency of the said writ petition, the petitioners came to know that the respondent No. 6/Deputy Commissioner, Upper Subansiri District, cancelled the land allotment order issued in favour of the Indian Army, whereupon, the petitioners withdrew the said writ petition with liberty to file a fresh petition.

5. It has been further contended that through an RTI application, dated 10.06.2014, the petitioners came to know from the Hydro Power Department, Govt. of Arunachal Pradesh that the NHPC Ltd. had left the Upper Subansiri Project and M/S KSK Energy Ventures Ltd. took over the task of execution of the 2000 MW, Upper Subansiri Project from the NHPC Ltd. Again the Govt. of Arunachal Pradesh entered into an agreement in 2010, *inter alia*, to acquire the land of the petitioners under Land Acquisition Act, 1894 and as per Article 6 of the Memorandum of Agreement, dated 18.03.2010, provided that M/S KSK Energy Ventures Ltd. shall reimburse the cost of 12.62 hectares of land of the petitioners to the NHPC Ltd., meaning thereby, that the NHPC Ltd. had sold 12.62 hectares of land of the petitioners to the said Company, without adequately compensating the petitioners and thus, the terms and conditions of the Memorandum, dated 28.05.2003, remained unfulfilled.

6. The petitioners have further contended that with intent to refund the cost of the land to the NHPC Ltd., the petitioners submitted representations on

02.08.2011, 11.03.2012 and 26.07.2013, to the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, Arunachal Pradesh, but there was no response. However, the petitioners are still willing to take back their land by refunding the cost of the land etc. paid to them by the NHPC Ltd. It is the contention of the petitioners that when the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, Arunachal Pradesh did not exercise the power of a Collector, under the Land Acquisition Act, 1894, that too, without approval of the Govt., he had no authority to direct or initiate the land acquisition process, in respect of the land of the petitioners, the question of selling of the private land by executing the Sale Deeds, dated 31.07.2003, in favour of the NHPC Ltd. was illegal, when the Land Acquisition Act, 1894, was applicable in the state of Arunachal Pradesh.

7. The petitioners in WP(C) No.252 (AP) 2014, have, therefore, prayed for declaring the acquisition of 12.62 hectares of private land of the petitioners at Pisa village acquired for the Upper Subansiri Basin project (2000 MW) as illegal for not following the provisions of the Land Acquisition Act, 1894 and that execution of the Sale Deeds, dated 31.07.2003, was illegal in terms of the Bengal Eastern Frontier Regulation, 1873, which prohibits selling of private lands in Arunachal Pradesh to non-resident or non-indigenous person/company and further, to direct the State respondents to initiate a fresh land acquisition proceeding for acquiring the land of the petitioners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or alternatively to return back the land to them after receiving the cost of the land etc. paid to them.

8. In WP(C) No.396(AP)2014, the petitioners, in addition to the above prayers made by the petitioners in WP(C)No.252(AP)2014 have prayed for quashing and setting aside the Memorandum, dated 18.03.2010, signed between the Govt. of Arunachal Pradesh and M/S KSK Energy Ventures Ltd.

9. The respondent No. 4, the Secretary, Power, Government of Arunachal Pradesh, Itanagar and the respondent No. 5, the Chief Engineer, Hydro Power Development, Government of Arunachal Pradesh, Itanagar, in their joint affidavit –in-opposition, denied initiation of any process for acquisition of any land for the purpose of Hydro-Electric Project in Upper Subansiri District. According to them, the NHPC Ltd. had undertaken only survey and investigation works of Upper Subansiri Hydro-Electric Project near Menga village, which is clear from their

letter No. SBP/Land/2000/194, dated 12.07.2000, addressed to the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo. It has been averred that KSK Electricity Financing India Pvt. Ltd., under Memo. No. AP/SK/1060101/87, dated 27.01.2010, submitted Expression of Interest for implementation of the said project in Joint Venture with the Govt. of Arunachal Pradesh and accordingly, the proposal was approved by the Cabinet, on 12.03.2010, and further, a Memorandum of Agreement (MOA), was signed, on 18.03.2010, between the Govt. of Arunachal Pradesh and KSK Electricity Financing India Pvt. Ltd. Therefore, no implementation of the project has so far been initiated, although the same was supposed to commence from January, 2015 and as such, acquisition of land for the project has not taken place. It has been further averred that for construction of temporary residential and non-residential buildings, 50(fifty) hectares of land, out of total land area requirement of 3155 hectares, was required at Pisa village and earmarked for acquisition, which has not been done. Out of the aforesaid 3155 hectares of land, 2170 hectares of land is forest land and 985 hectares is private land, and therefore, an area of land measuring 12.62 hectares of land cannot accommodate the construction operation and maintenance of the project as intended in Clause 3.1 of MOA, dated 18.03.2010. It is also averred that till date no re-imburement as per Article 6 of MOA, dated 18.03.2010, has taken place between the NHPC Ltd. and KSK Energy Ventures Ltd. It is denied that the NHPC Ltd. has sold 12.62 hectares of private land of the petitioners to M/S KSK Energy Ventures Ltd. Therefore, it is prayed to dismiss the petition.

10. The respondent No.6/Deputy Commissioner, Daporijo, Upper Subansiri District, in his affidavit-in-opposition denied that the District administration and NHPC Ltd. had requested the land owners of Pisa village to put their signatures/thumb impressions on the APR papers to receive the earnest money as upfront payment as the land in question had already been handed over to the NHPC Ltd., after receiving the compensation amounts from the NHPC Ltd. and vacated the land as per compensation paid against the land, measuring 12.62 hectares along with other standing properties thereon, and accordingly, NHPC Ltd. has erected barbed wire fencing in and around the acquired land area. It has been averred that as part of the proposed project works during the period 2003-04-05, survey/investigation works were undertaken but, no final project execution work was carried out and the NHPC Ltd. staff also deserted the place

suspending the project work due to some unavoidable circumstances. It has been further contended that the temporary order issued in favour of 22 INF BDE (Indian Army) was based on national security point of view, however, it was revoked and withdrawn the Army from the said Pisa village, on receipt of complaints and objections from the villagers. It is also averred that while acquiring the land for NHPC Ltd. at Pisa village, none of the villagers raised any objection against acquisition of land and as such, the question of payment of compensation, without consent of the land owners, does not arise. It has been further averred that handing and taking over of the land by the NHPC Ltd. is already ten years old. It is also contended that the impugned orders, dated 20.04.2012 and 07.08.2012, issued by the respondent No.6, has been revoked on receipt of complaint from the Pisa villagers. Hence, prayed to dismiss the writ petitions.

11. The respondents No. 8, 9 and 10, the National Hydro Power Corporation Limited (NHPC Ltd.), the General Manager, and the Senior Manager (Civil), NHPC Ltd., respectively in their joint affidavit-in-opposition, contended that the writ petitions are not maintainable on the ground of inordinate delay inasmuch as the private land of the petitioners, measuring 12.62 hectares was acquired ten years ago by the NHPC Ltd., through the District administration of Upper Subansiri District, executing Sale Deeds with all the 37 individual land owners, on 31.07.2003, in favour of the NHPC Ltd., duly signed by the parties before a Judicial Magistrate, Upper Subansiri District, on acknowledging receipt of payment of land value and compensation on the assets thereon. It has been averred that the prayer of the petitioners for cancellation/setting aside of the Sale Deeds, dated 31.07.2003, is barred under Article 59 of the Limitation Act, 1963 and that the proper forum for redressal of the petitioners' grievances lie in institution of a Civil Suit in a competent Court within a period of 3 years from the date of execution of the Sale Deeds. It has also been averred that the land was acquired for the NHPC Ltd. by the respondent No.6 from 37 individual land owners and accordingly, total Rupees 36,00,453/- only was paid to the respondent No. 6, as cost of land for disbursement to the land owners. It has also been contended that after the cost of the land was paid on the basis of cost assessment and recommendation made by the respondent No.6, the individual land owners executed Sale Deeds, on 31.07.2003, in favour of the NHPC Ltd. before a Judicial Magistrate, Upper Subansiri District and acknowledging receipt

of the compensation on 08.08.2003. The petitioners had no grievance till 2012, as regards the acquisition of their land by the NHPC Ltd. until WP(C)No.272(AP)/2012(Pisa Welfare Society Vs. State of Arunachal Pradesh & Ors.) was filed before this Court, after temporary allotment of land was made in favour of 22 INF BDE of the Indian Army by the respondent No.6, in the interest of national security, however, the allotment was withdrawn and cancelled subsequently and thereupon, the writ petition was withdrawn. Therefore, it is prayed to dismiss the writ petitions.

12. The respondent No.11, KSK Energy Ventures Limited, in its affidavit-in-opposition, averred that the Govt. of Arunachal Pradesh had approved its engagement to establish and execute the 2000 MW, Subansiri Upper Hydro-Electric Power Project and to that effect a Memorandum of Agreement (MOA), dated 18.03.2010, was signed. As per Article 3.1 of the MOA, it is the responsibility of the State Govt. to acquire land for the project, but nothing has been done so far to acquire necessary private land. It has been denied that no land got transferred to them nor they purchased any land from the respondent No.8, NHPC Ltd. and as such, there was no transaction in any manner either with the petitioners or NHPC Ltd., pertaining to acquisition of the land for the project from the petitioners. It has been further averred that the relief sought for by the petitioners being declaratory one and to cancel or set aside an instrument of sale, which is beyond the jurisdiction of the Writ Court and the same being not within the ambit of a petition under Article 226 of the Constitution of India. Hence, it is prayed to dismiss the writ petitions.

13. Mr. D. Panging, learned counsel appearing for the petitioners in WP(C)252(AP)2014, submitted that the Land Acquisition Act, 1894, was applicable to the state of Arunachal Pradesh, which has now been replaced by the new Act titled, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which has come into force w.e.f 01.01.2014, during the period of initiating the acquisition proceeding in respect of the land of the petitioners in the year 2000, the old Act of 1894 was in force in the state of Arunachal Pradesh, but the respondent No. 6/Deputy Commissioner, Upper Subansiri District, Daporijo, without obtaining any approval from the state Government and without causing publication of notification under Section 4 of the Act of 1894, directed for survey of the land acquired for the NHPC Ltd. Mr. Panging, further submitted that without completing the process of

the acquisition, got the land surveyed and assessed at the so called market price of the land hurriedly, through a committee and recommended to the NHPC Ltd. for disbursement of the amount to the land owners of Pisa village. According to Mr. Panging, at the instance of the respondent No. 6, a number of Sale Deeds were executed between the land owners and the NHPC Ltd. violating the Regulation 7 of the Bengal Eastern Frontier Regulation, 1873, and after persuading the illiterate villagers obtained their thumb impressions/signatures, without their knowledge that the transaction was void under the provisions of the Regulation, 1873 and that too, without prior approval of the State Government. Therefore, the entire sale transaction/so called acquisition process was illegal being against public policy and statute.

14. Mr. Panging further submitted that the illegal act was recurred by the NHPC Ltd. by way of transferring the purchased land to the respondent No. 11, KSK Energy Ventures Ltd., undermining the various representations of the Pisa village Committee. Therefore, Mr. Panging submitted that the Sale Deeds were illegal and not enforceable in law. In this regard, learned counsel relied upon the decisions delivered in *Nutan Kumar and Ors Vs. IInd Additional District Judge, Banda & Ors., reported in AIR 1994 ALL. 298*, wherein, the Supreme Court held that an agreement offending statute/public policy/forbidden by law is void from nativity and it cannot become valid even if the parties thereto agree to it.

15. Ms. N. Danggen, learned counsel for the petitioners in WP(C)396 (AP)2014, submitted acceding to the submission made by the learned counsel for the petitioners in WP(C)252(AP)2014, and added further, that the Arunachal Pradesh is a protected State, where sell of land in contravention of Regulation 7 of the Bengal Eastern Frontier Regulation, 1873, is illegal and more so, when sell is effected by way of influencing the poor and illiterate villagers and in furtherance thereof, obtained their thumb impressions/signatures on the Sale Deeds. In this context, the learned counsel has drawn attention to the decision of the Supreme Court rendered in *Dhirendra Nath Gorai and Ors. Vs. Sudhir Chandra Ghosh and Ors., reported in AIR 1964, SC 1300*, where the apex Court held that a mandatory provision can only be waived if it is not conceived in the public interest, but in the interest of the party that waives it. Learned counsel referred to the decision rendered by the Supreme Court in *Krishna Bahadur Vs. Purna Theatre and Ors., reported in (2004) 8 SSC 229*, wherein, it was held that a right can be waived by the party for whose benefit certain

requirements/conditions had been provided for by a statute, subject to the condition that no public interest is involved therein. Ms. Danggen, learned counsel, relying upon the decision of the Supreme Court rendered in *Dr. Smti. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya and Ors.*, reported in AIR 1987 SC 2186, submitted that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted without jurisdiction, the High Court cannot refuse to exercise its jurisdiction under Article 226 of the Constitution of India. Therefore, Ms. Danggen, the learned counsel submitted that the transaction of sell that had taken place between the petitioners and NHPC Ltd. being a nullity, the High Court may set aside the Sale Deeds in question.

16. Mr. R.H. Nabam, learned Addl. Advocate General appearing for the State respondents, submitted that the moot question that calls for consideration of this court is the question of alleged irregularity committed in acquisition of land of the petitioners for the Upper Subansiri Hydro-Electric Power Project in Pisa village, under the provisions of the Land Acquisition Act, 1894, more particularly of non-compliance of Section 4, which required publication of a notification. Mr. Nabam, however, submitted that the very purpose of Notification under Section 4 of the Act, 1894 was fulfilled by the transactions made between the respondent No.6/Deputy Commissioner, Daporijo, Upper Subansiri District, who was the land acquisition authority and the land owners, that is, the petitioners and when the physical possession of the land was handed over to the NHPC Ltd., after petitioners vacated the same, on receipt of its cost 12(twelve) years ago. It has been further submitted that the said land in Pisa village is not required by the State and as such, the respondent No. 6, being not a necessary party, his impleadment may be struck off and so also the respondent No.11.

17. Ms. S. Nag, learned Counsel appearing for the NHPC Ltd. submitted that the petitioners submitted their writ petitions belatedly in the year 2014, that is, after about 11(eleven) years from the date, the petitioners executed the Sale Deeds, on 31.07.2003 and after efflux of more than 3(three) years of signing of the MOA, on 18.03.2010, between the Department of Power, Govt. of Arunachal Pradesh and M/S KSK Energy Ventures Ltd., for which reasons both the writ petitions are bad for delay and laches and further, the nature of the subject matter in dispute involves remedy in Civil proceeding only. According to Ms. Nag, the learned counsel, both the writ petitions are barred by Law of Limitation. In

this context, Ms. Nag has relied upon the decisions, rendered by the Apex Court in (a) *the State of Madhya Pradesh Vs. Bhailal Bai*, reported in AIR 1964 SC 1006, (b) *Printers (Mysore) Ltd. Vs. M.A. Rasheed and Ors.*, reported in 2004 SCC(4) 460, (c) *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.*, reported in 2009 SCC(1) 168, (d) *Pradeep Kumar Sharma Vs. Uttar Pradesh Finance Corporation, Rajput Road, Dehradun and Ors.*, reported in 2012(10) SCC 429 and (e) *Banda Development Authority, Bandra Vs. Moti Lal Agarwal and Ors.*, reported in 2011(5)SCC 394.

18. Mr. P.D. Nair, learned counsel for the respondent No.11, submitted in tune with the learned counsel for the NHPC Ltd. According to Mr. Nair, they have not undertaken any project on the land of the petitioners, for which reason they are not in need of the petitioners' land. Learned counsel has, of course, relied on the decision rendered by the Supreme Court in *Jayamma and Ors. Vs. Deputy Commissioner, Hassan District and Ors.*, reported in (2013)7 SCC 554.

19. There is no dispute that based on requisition for land, measuring 50 hectares at Pisa village, made by the respondent, the NHPC Ltd, vide letter, dated, 12.07.2000, the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, initiated the land acquisition process for construction of temporary residential and non-residential buildings to undertake necessary survey and investigation works of Upper Subansiri Hydro-Electric Project near Menga. During the aforesaid period of processing, the old Land Acquisition Act, 1894, (for short 'the Act of 1894'), which was repealed by the new Act namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,(for short 'the Act of 2013'), was in force in the State of Arunachal Pradesh. The Act of 1894 prescribed the procedure for acquisition of land by the Government for public purposes. Section 4 of the said Act of 1894 provided for publication of a preliminary notification giving details of land proposed to be so acquired in the official Gazette and in two daily news papers widely circulating in that locality and the collector is required to issue public notice to that effect inviting objections, if any, from the persons interested in the proposed land for acquisition and the collector shall give the objectors an opportunity of being heard as required under Section 5A. Thereafter, the collector is required to submit his report, in respect of the land to the appropriate Government, containing his recommendations on the objections with relevant record for decision of the Government. All these modes of publication of the

notification under Section 4 (1) is mandatory. Even after the earlier proposal is dropped, the Government can initiate a fresh proceeding for acquisition for the same land. Thereafter, when the appropriate Government is satisfied, after considering the report submitted a declaration shall be made in respect of the land to that effect. Therefore, there can be no valid acquisition under the Act unless the Government is satisfied that the land to be acquired is needed for a public purpose. Such a declaration made under Section 6, without compliance with the mandatory provision of hearing under Section 5A is invalid. Only after a declaration, so made under Section 6, the Collector receives authority from the Government to take steps for the acquisition of the land and then proceeds to measure the land, prepare a plan and publishes notice inviting the people interested in the property to put in claims for compensation, besides serving with similar notices to the owner and occupier of the land as per requirements of Sections 8 and 9 of the said Act, 1894. Then the collector proceeds to hear objections, if any. This is followed by the Collector's award of compensation at the rate of market value of the acquisitioned land under Section 11. The Proviso to Section 11 (1) prohibits the collector from making an award without the previous approval of the appropriate Government unless specifically directed authorizing him to make such award without approval in such class of cases on its behalf.

20. In the instant case, there is no denial of the claim of the petitioners that the respondent No. 6/Deputy Commissioner, Upper Subansiri District, Daporijo, having received requisition from the respondent, NHPC Ltd. for land vide their letter, dated 12.07.2000 (Annexure-1), issued a circular inviting general meeting of the HGBs/GBs, all head of the departments etc. on 19.08.2000, in connection with land acquisition for Subansiri Hydro-Electric Project vide Circular, dated 11.08.2000 (Annexure-2). None of the parties to this proceeding has furnished any copy of the resolution adopted in the aforesaid meeting. However, the petitioners have produced a copy of the letter, dated 19.08.2000, addressed to the respondent No.6, vide Annexure-3, wherein it was mentioned that the land owners of villages namely, Pisa, Karda and Sippi agreed to contribute the land required for the proposed Project by the NHPC Ltd., subject to conditions that after approval of the land, the terms and conditions will be negotiated at a later stage for welfare of the land owners. As it appears from the document, dated 05.02.2001, vide Annexure-4, that the respondent No.6/Deputy Commissioner,

Upper Subansiri District, Daporijo deputed his revenue staff for survey of the said proposed land for acquisition and then constituted a 4(four) Member Committee to determine and recommend price rates of land by an order, dated 19.03.2001 vide Annexure-6, within a period of 3(three) days, that is , by 23.04.2001. Accordingly, the Committee recommended the land valuation rates, on 23.03.2001 vide Annexure-7 and thereafter, admittedly, the respondent, NHPC Ltd. deposited 2(two) cheques, dated 27.03.2003, amounting to Rs. 36,00,453/- only as cost of land including buildings and crops thereon at Pisa village vide Annexure-8. Following deposit of the land compensation by the respondent, NHPC Ltd., the respondent No.6 constituted a village committee at Pisa, along with one representative of the respondent, NHPC Ltd. on 20.06.2001, to assist the local administration and NHPC Ltd. in effecting acquisition of land for the proposed Project by way of settlement of disputes, survey of land, identification of the land owners and rehabilitation etc. vide Annexure-9. Before constituting the said Pisa village committee, the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, issued notice, dated 28.05.2003, vide Annexure-10 identifying 12.62 hectares of land at Pisa village, instead of 50 hectares, initially requisitioned by the respondent, NHPC Ltd. vide Annexure-1, for payment of compensation to the land owners at agreed terms, subject, of course, to fulfilment of (1) completion of deed of transfer of ownership and (2) possession of the land, by the respondent, NHPC Ltd, by way of physical handing over of the so acquisitioned land.

21. It is noticed that by a Memorandum, dated 28.05.2007, the Chairman of Village Committee, Pisa submitted to the respondent No.6/Deputy Commissioner, Daporijo, requested him to invite the NHPC Ltd. and the villagers of Pisa to negotiate for finalization of the matter of land acquisition, failing which decided not to abide by the deed of Memorandum of Understanding (MOU) and further, stipulating conditions of reliefs and rehabilitation vide Annexure-11, which the respondent No.6 forwarded to the Chief Engineer, NHPC Ltd. with recommendation for negotiating with the land owners, vide Annexure-12, dated 10.06.2003, indicating thereby that the land acquisition process was not complete till then. However, there is no indication in pleadings that the aforesaid Memorandum, dated 28.05.2007, was ever attended and instead thereof, the respondent, NHPC Ltd. and the respondent No. 6/Deputy Commissioner, Upper Subansiri District, Daporijo, Arunachal Pradesh caused the land owners to

execute the Sale Deeds, dated 31.07.2003, one of which such Sale Deeds is Annexure-3, before the Court of learned Judicial Magistrate, Second Class, Upper Subansiri District, Daporijo, obtaining their thumb impressions/signatures. It is nowhere denied that the land owners are illiterate villager.

22. Pursuant thereto, as the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, averred and Mr. D. Soki, learned Addl. Sr. Govt. Advocate contended that the aforesaid land of Pisa village was handed over to the respondent, NHPC Ltd., after the respective land owners received the compensation amounts from the latter and after the land owners vacated their respective plots of land, total measuring 12.62 hectares, along with other properties standing thereon and accordingly, the NHPC Ltd. had erected barbed wire fencing around the land. The respondents No. 8, 9 and 10, the NHPC Ltd. in their affidavit-in-opposition and Ms. S. Nag, learned counsel appearing on their behalf, have admitted execution of the Sale Deeds with 37 land owners and further contended that an undertaking was signed by all 37 land owners, on 08.08.2003, stating that payment of land value and compensation on the assets has been received, but remained silent without commenting specifically, whether subsequent thereto, the possession of the land so acquired was handed over to them. Therefore, based on the averments made by the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, that vacant possession of the acquired land was handed over to the respondent, NHPC Ltd. is to be accepted.

23. The crucial question that arises in the above process of so called acquisition of land of the petitioners and others is whether the process undertaken by the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo was correct in Law. what it appears is that the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, as Collector of the district did not submit any proposal to the Government of Arunachal Pradesh, through the department of Land Management , Govt. of Arunachal Pradesh, for publication of a preliminary notification under Section 4 of the Act, 1894, which was mandatory. Therefore, without receiving approval from the Govt. of Arunachal Pradesh for initiating the land acquisition process and without publication of the mandatory notification, under Section 4 of the Act, 1894 was illegal, null and void *ab initio*.

24. Further, Regulation 7 of the Bengal Eastern Frontier Regulation, 1973 expressly prohibits acquisition of interest in land or the product of land by other

than the natives of Arunachal Pradesh, without the sanction of the State Govt. Therefore, the Sale Agreements, dated 31.07.2003, in respect of the land in favour of the NHPC Ltd. by the land owners at the initiative of the respondent No. 6/Deputy Commissioner, Upper Subansiri District, Daporijo was apparently null and void for want of necessary sanction of the Govt. of Arunachal Pradesh and also failure to follow the prescribed mode of acquisition of land under the Act, 1894, as discussed above. There is no indication on the face of the documents filed by the parties that the Govt. of Arunachal Pradesh was actually aware of the acquisition process undertaken by the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo in respect of the land in question for construction of the 2000 MW, Upper Subansiri Hydro-Electric Project by the NHPC Ltd. Resultantly, the entire process of acquisition of land by way of resorting to the mode of selling and buying of the land in question between the land owners and the respondent, NHPC Ltd. was illegal being contrary to the provisions of the Act, 1894, which was in force during the period of the aforesaid transactions between the parties and in such a fact situation pertaining to sale of land against the public policy of the State, what it appears is that the illiterate petitioners sold their land to the respondent, NHPC Ltd., which is a Govt. of India undertaking, by mistake, which they did not know or had any reason to believe that the mistake had been made, and as such, the limitation did not run until the mistake was discovered. Section 17 of the Limitation Act, 1963 treats mistake as part of fraud, which is herein the act of the respondent No. 6/Deputy Commissioner, Upper Subansiri District, Daporijo, who facilitated the sale transaction between the petitioners, who are land owners and the respondent, NHPC Ltd. Consequently, Article 59 of the Limitation Act does not apply to cancel or set aside the said Sale Agreements within the wide scope of a proceeding under Article 226 of the Constitution inasmuch as it is well settled that the alternative remedy is not an absolute bar.

25. Again the respondent, NHPC Ltd. committed another illegality in the similar fashion by handing over the land of the petitioners, without their knowledge, to the respondent No.11, KSK Energy Ventures Ltd. after the Memorandum of Agreement, dated 18.03.2010, was signed between the Govt. of Arunachal Pradesh and the said respondent No.11. When the land acquisition process was not complete, adhering the prescribed procedure established by law

and also when the ownership of the land did not stand transferred to the respondent, NHPC Ltd. by reason of execution of illegal Sale Deeds.

26. In the instant proceeding, it is the admitted position that the land in question was acquired by the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo, belonged to the petitioners for the purpose of construction of 2000 MW, Upper Subansiri Basin Hydro-Electric Project at Pisa village by sell and purchase mode and after the cost of the land was paid by the respondent, NHPC Ltd., the land was handed over to them. It is also nowhere specifically denied that while the land of the petitioners was so acquired, the procedure prescribed in the Land Acquisition Act, 1894, was not followed and no prior approval of the Govt. of Arunachal Pradesh was obtained and the respondent No.6, facilitated in purchasing the land by the NHPC Ltd. by executing Sale Deeds, dated 31.07.2013. Therefore, it is crystal clear that the entire mode of process of acquisition of the land suffered non-compliance of the provisions of the statutes namely, the Land Acquisition Act, 1894 and the Bengal Eastern Frontier Regulation, 1873 and therefore, the aforesaid transaction was illegal. It is also noticed that later on the same land was subjected to a MOA, dated 18.03.2010, entered into between the Govt. of Arunachal Pradesh and M/S KSK Energy Ventures Ltd. a company for construction of the same Hydro-electric Project.

27. Undoubtedly, it is a case, where the authorities acted wholly without jurisdiction. The petitioners, who are illiterate as it manifests from the sample Sale Deed itself, on which they put their thumb impressions, have been constantly pursuing the Government authorities, over the years for enforcement of their rights, occasioned by execution of un-authorized and illegal Sale Deeds, being forbidden by statute in the state of Arunachal Pradesh, rendering the same not enforceable in law for having not come into being any legal relations between the parties thereby. The law provides special protection, as discussed above, to the natives of Arunachal Pradesh. In such a backdrop of facts, this Court is of the view that exercise of the writ jurisdiction under Article 226 of the Constitution cannot be refused on the ground of existence of alternative remedy in ordinary Civil Laws and when no limitation is prescribed for preferring a petition under the aforesaid jurisdiction to protect the expressed rights of the petitioners.

28. It is to be noted, that in the instant petition, the respondent, NHPC Ltd. has resisted the case of the petitioners primarily on the ground of limitation, computed from the date of execution of the Sale Deeds, dated 31.07.2013 and availability of alternative remedy, without any foundation to hold as discussed above.

29. Resultantly, both the writ petitions are partly allowed, directing the state respondents, more particularly, the respondent No.6/Deputy Commissioner, Upper Subansiri District, Daporijo to initiate a Land Acquisition proceeding under the new Act, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), if the land is still required for the said project and to pay adequate compensation to the eligible owners of the land for its acquisition, deducting the amount already paid towards its cost as expeditiously as possible or alternatively to return back the land to the petitioners after receiving back the cost of the land etc. from the petitioners.

30. With the above directions, both the Writ petitions are **disposed of**.

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JUDGE