

IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

1. WP(C) No. 426(AP) of 2016

Smti.TipakTayeng,
 Wife of Shri.LomboTayeng, Motum Village,
 P.O. Mebo-791104, in the District of East Siang, Arunachal Pradesh,
 Represented by her power of Attorney Agent, Shri.LomboTayeng.

.....**Petitioner**

-Versus-

1. The State of Arunachal Pradesh,
 represented through by Secretary, Land Management Department, Government
 of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
2. The Chief Secretary,
 Government of Arunachal Pradesh.
 Itanagar, Arunachal Pradesh
3. The Director,
 Land Management, Government of Arunachal Pradesh, Itanagar, Arunachal
 Pradesh.

.....**Respondents**

For the Petitioner : Mr. D. Baruah,
 Mr. N.B.P.Singha, Advs.

For the State respondents : Mr. K. Ete, Sr. Addl. Advocate General, AP
 Ms. K.Basar, Govt. Adv.

For the respondent No. 3 : Mr. K. Jini, SC, LM

2. Cont.Case(C) No. 24 (AP) of 2016

Smti.TipakTayeng,
Wife of Shri.LomboTayeng, MotumVillage,
P.O. Mebo-791104, in the District of East Siang, Arunachal Pradesh,
Represented by her power of Attorney Agent, Shri.LomboTayeng.

.....**Petitioner**

-Versus-

1. Ms. SokuntalaD.Gamlin,
Chief Secretary, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh
2. Shri. T.T. Gamdik
The Commissioner and Secretary, Department of Land Management,
Government of Arunachal Pradesh, Itanagar.
3. Shri. EnyoNangkar,
The Director, Land Management, Government of Arunachal Pradesh, Itanagar,
Arunachal Pradesh.

.....**Respondents**

**- BEFORE-
THE HON'BLE MR.JUSTICE S.SERTO**

For the Petitioner	: Mr. D. Baruah, Mr. N.B.P.Singha, Mr. D.Loyi Mr. G.Bam, Mr. S.ketan, Mr. G. Kato, Advs.
For the respondent No.1	: Ms. G.Deka, Sr. Govt. Adv.
For the respondent No. 2 &3	: Mr. K. Jini, SC, LM
Date of hearing	: 23.05.2018
Date of judgment	: 05.07.2018

JUDGMENT & ORDER (CAV)

Heard Mr. D. Baruah, learned counsel appearing for the petitioner in both the W.P.(C) No. 426(AP) of 2016 and Cont.Case(C) No. 24(AP) of 2016. Also heard Mr. K. Ete, learned Sr. Addl. Advocate General assisted by Ms. R. Basar, learned Jr. Govt. Advocate appearing for the State respondents.

2. The facts and circumstance leading to the filing of this writ petition and the contempt case are briefly stated as follows;

By a notification under Section-4 of the Land Acquisition Act, 1984, the appropriate Government issued a notification dated 16.12.2013, notifying certain areas of land situated at East Siang District belonging to the petitioner that the same is likely to be acquired for the purpose of creating infrastructure and training area for the Combat Supporting Units of Non-Accretional Forces. Following the issuance of the said notification on 24.12.2013, the declaration under Section-6 of the Act of 1894 was made and the same was duly published in the Arunachal Gazette by the Secretary Land Management. After everything was said and done award for the land of the petitioner which was to be acquired as per the mandate in the notification issued under Section-4 of the 1894 Act was notified on 12.02.2014. The relevant portion of the award is reproduced here below;

“NOW THEREFORE, in accordance with Government approval Vide No. LM-124/2013/1317 dated 29.01.2014 and after a careful examination and consideration of various aspects of the matter, the following award is hereby drawn by the undersigned in accordance with the provisions of L.A. Act, 1894.

1. *That, the total area of the land situated at Sigar area is 562.47 acres.*
2. *That, the rate of compensation of the land value as per the sanctioned letter of Government of India, Ministry of Defence is Rs. 2, 18,30986p per acre inclusive of all aspects.*
3. *That, the rate of compensation of land @ Rs. 2, 18,309.86p per acre i.e. 562.47 x 2, 18,309.86p = Rs. 12,27,94,930.05p+30% solatium under Section 23(2) of Rs. 3,68,38,479.02p+12% additional interest on above amount for one year under Section – 23(1-A) of Rs. 1,47,35,391,61p stands at Rs. 17,43,68,800.68p.*
4. *That, Rs. 98,23,594,40p is the 8% establishment charges of the actual market value of the proposed land to be deposited into the head of account 0029-LR (as land revenue) and further Rs. 24,55,898,60p is the 2% of the total value involved*

in the acquisition of 562.47 acres of private land which is payable to the Deputy Commissioner, East Siang District, Pasighat.

5. *That, the details of the interested person as available in the LRSO's Office in the notified land is annexed as Annexure-"A" of this Award.*
6. *The total compensation award is Rs. 18,66,48,292.68p in respect of the land notified under Section of L.A. Act and the Army authority for whose interest and purpose the land is acquired are hereby required to deposit the said amount to the office of the Deputy Commissioner-cum-Collector for further payment to the interested and affected person.*

Thus, the award is hereby finalized and filed in the office of the Deputy Commissioner, East Siang District, Pasighat.

*Sd/-
(OpakGao)
Deputy Commissioner
East Siang DistrictPasighat"*

3. Thereafter possession of the land was taken by the Collector of the District East Siang on 17.02.2014. After taking possession of the land the Deputy Commissioner, East Siang District issued a possession certificate dated 17.02.2014. In the meanwhile, the new Act namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, was enacted by the parliament and the same came into force on 01.01.2014. Therefore, the State Government as per the provisions of Sub Section Clause-1 and Clause-2 of Section-26 read with first scheduled of the Act issued a notification dated 29.09.2014, wherein the multiplying factor was determined at 2. The contents of the notification are reproduced here below;

***"THE ARUNACHAL PRADESH GAZETTE
EXTRAORDINARY***

PUBLISHED BY AUTHORITY

No. 183 Vol XXI, Naharlagun, Monday, September 29, 2014, Asvian 7, 1936(Saka)

***GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENNT OF LAND MANAGEMENT
ITANAGAR***

NOTIFICATION

The 29th September, 2014

(Issued under Sub-Section (1) and (2) of Section 26 read with First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013).

(Against the Land Acquisition Case at Sigar Village under Mebo Sub-Division of East Siang District, Arunachal Pradesh).

No.LM-124/2013—Whereas, under Sub-Section (1) of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the said Act"), the Collector has to determine the market value of the land to be acquired; and

Whereas, as per Sub-Section (2) of Section 26 of the said Act, the market value calculated as per Sub-Section(1) shall be multiplied by a factor as specified in the First Schedule of the said Act; and

Whereas, as per First Schedule of the said Act, the manner of determination of value of land in case of rural areas in 1.00 (one) to 2.00 (two), which is based on distance of the project from the urban area and which is to be notified by the State Government; and

Whereas, the locality of Sigar is a rural area under Mebo Sub-Division in the District of East Siang, Arunachal Pradesh and is above 20 kms from Pasighat Township.

Now therefore, in exercise of powers conferred under Sub-Section (1) and (2) of Section 26 read with the First Schedule of the said Act and all other powers enabling it in this behalf, the Governor of Arunachal Pradesh hereby notifies that for acquisition of land at Sigar, District East Siang Arunachal Pradesh, the market value of the said Land shall be multiplied by the factor of 2.00(two).

This has the approval of the Competent Authority and has been duly vetted by the Law Department.

Sd/-
BelateePertin, IAS
Commissioner (Land Management)".

4. However, after a few months before the compensation could be paid to the petitioner another notification dated 09.01.2015, was issued by the Chief Secretary, Govt. of Arunachal Pradesh, wherein, the multiplication factor which was earlier determined at 2 was replaced by 1. The contents of the notification dated 09.01.2015, are given below;

**"Government of Arunachal Pradesh
Land Management Department
Itanagar**

No.LM-20/2005(Pt)/2232

Dated Itanagar, the 9th January, 2015.

NOTIFICATION

Governor of Arunachal Pradesh is pleased to determine the base rate of Multiplication Factor of the market value under the First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for the purpose of determination of compensation for acquisition of land in respect of rural and urban areas as under:

1. Factor by which the market value is to be multiplied in case of Urban Areas-1(one).
2. Factor by which market value is to be multiplied in case of Rural Areas (except defence related projects):-

Radial Distance from Urban area	Multiplication Factor(in Kms)				
00-10					1.0
11-20					1.2
21-30					1.4
31-40					1.8
Above 40					2.0

3. In respect of all Defence Related Projects uniform Multiplication Factor of 1 (one) shall be applicable.

Ramesh Negi
Sd/-
Chief Secretary
Govt. of Arunachal PradeshItanagar".

5. Being aggrieved by the change of the multiplication factor by the above stated notification the petitioner challenged the same by filing WP(C) No. 252(AP) of 2015. The writ petition was disposed of by a judgment and order dated 23.12.2015. In that judgment the notification dated 09.06.2015, issued by the Chief Secretary Govt. of Arunachal Pradesh was quashed and set aside and the Government was directed to fix the multiplication factor as per the Act.

6. After the said judgment & order was passed by this Court another notification dated 05.07.2016, was issued by the Chief Secretary, wherein the

earlier notification dated 09.01.2015, was substantially modified. The contents of the notification are given herein below;

**"Government of Arunachal Pradesh
Department of Land Management
Itanagar**

No.LM-20/2005(PT)

Dated Itanagar, the 5th July, 2016.

NOTIFICATION

Governor of Arunachal Pradesh is pleased to determine the base rate of Multiplication Factor of the market value under the First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for the purpose of determination of compensation for acquisition of land in respect of rural and urban areas as under:

1. *Factor by which the market value is to be multiplied in case of Urban Areas- 1(one).*
2. *Factor by which market value is to be multiplied in case of Rural Areas:-*

<i>Radial Distance from Urban area</i>	<i>Multiplication Factor(in Kms)</i>					
<i>00-10</i>						<i>1.0</i>
<i>11-20</i>						<i>1.2</i>
<i>21-30</i>						<i>1.4</i>
<i>31-40</i>						<i>1.8</i>
<i>Above 40</i>						<i>2.0</i>

3. *In case after considering the radial distance, the land is situated within the vicinity of another urban area, the multiplication factor will take into the account this fact and the lower multiplication factor will apply.*

This is issued in suppression of all previous orders on Multiplication Factors.

*Sd/-
(Shakuntala D Gamlin)
Chief Secretary*

Govt. of Arunachal Pradesh, Itanagar".

7. Since the respondents did not take any action in accordance with the direction of this Court given in the said judgment and order, the petitioner filed Cont.Case(C) No. 24(AP) of 2016 on 06.06.2016. Soon thereafter, the Chief

Secretary to the Govt. of Arunachal Pradesh, issued another notification dated 05.07.2016, wherein, the earlier notification dated 09.01.2015, was slightly modified to the extent that para-3 of that notification was replaced as follows;

“The contents of the para-3 of notification dated 09.01.2015.

3. In respect of all Defence Related Projects uniform Multiplication Factor of 1 (one) shall be applicable”.

“The contents of the para-3 of notification dated 05.07.2016.

3. In case after considering the radial distance, the land is situated within the vicinity of another urban area, the multiplication factor will take into the account this fact and the lower multiplication factor will apply”.

However, the petitioner not being satisfied with the new notification has once again approached this Court by filing this instant writ petition assailing the notification as farce and not as per the provisions of Section-26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the schedule thereof and also not in accordance with the direction given in the judgment passed in W.P.(C) No. 252(AP) of 2015.

8. It is submitted by Mr. D.Baruah, learned counsel appearing for the petitioner that the State respondents have failed to address the grievance of the petitioner in spite of the clear direction of this Court given in the judgment and order dated 23.12.2015, passed in W.P.(C) No. 252(AP) of 2015, therefore, they may be directed to come out with a multiplicand which would lead to determination of just and fair compensation for the petitioner for his land acquired.

The learned counsel drew my attention to the para-25 & 26, 28 & 29 of the judgment and order dated 23.12.2015. The same are reproduced here below;

“25. The Act of 2013 has conferred various duties on appropriate Government while taking steps for acquiring a particular land viz, preparation of social impact assessment study (Section-4), public hearing for social impact assessment study (Section-6) appraisal of Social impact assessment report (Section-7) examination of the proposal for land acquisition and the social impact assessment report (Section-8), publication of preliminary Notification (Section-11)

Publication of the declaration (Section-19) etc. Thus, it transpires that the appropriate government taking into consideration all social impact has to notify the multiplication factor in respect of rural areas by taking into consideration the distance of the respective project from the urban area. The appropriate government has to take such steps for each and every acquisition separately. The Act does not conceive of having universal multiplication factor.

26. Here in this case, the respondent authorities have picked and choose one of the many models adopted by the other State in India without taking into consideration the distance of projects form the urban area. The Government by the impugned notification has just adopted the Orissa Model and then has universally fixed a particular factor. The mandate of the act requires that the appropriate Government before fixing the multiplication factor in respect of each acquisition proceeding should take into consideration the distance of the respective project from the urban areas so that people affected by such acquisition in rural areas are not given lesser price than the people paid in urban areas.

28. By a fixed multiplier for all land in rural area acquired for defence is total non-application of mind while exercising the discretion provided in First Schedule the Act of 2013. Policy guideline to exercise discretion for fixing multiplier as provided by the First Schedule is the distance of land under acquisition located in rural area from the urban area. Therefore, the appropriate Government ought to have undertaken the exercise of calculating the distance of farthest rural area from urban area and thereafter, exercise of fixing of appropriate multiplier ranging from maximum 2 for the lands situated at remotest rural areas should have been undertaken. The respondent authorities have not examined at all the distance of land situated in the rural area as well as its remoteness from urban area.

29. In view of aforesaid discussion the impugned Notification dated 09.01.2015 is set aside. The respondent authorities shall determine the multiplier factor of the land on the distance of the project from the urban area.”

9. Mr. K. Ete, learned Sr. Addl. Advocate General submitted that after the said judgment was passed by this High Court respondents have tried their best and came up with the notification dated 05.07.2016. Therefore, there was no intension on their part to disobey this High Courts direction. The learned Sr. Addl. Advocate General also submitted that the notification was issued after taking into consideration all the relevant factors and the notifications of others states, therefore, the respondents are of the view that it would lead to determination of a just and fair compensation for the petitioner.

10. On perusal of the judgment & order dated 23.12.2015, passed in W.P.(C) No. 252(AP) of 2015, a portion of which is reproduced herein above it is crystal clear that the direction of this Court was to notify the multiplicand in respect of the land of the petitioner separately taking into consideration all the relevant factors so as to determine a fair and just compensation for the land acquired from him. However, the notification dated 05.07.2016, contents of which has been reproduced at para-6 of this judgment shows that the Government of Arunachal Pradesh, had notified universal multiplicand distance wise. Reading together of the judgment & order stated above and the notification dated 05.07.2016, shows that the notification is not as directed by this Court. Therefore the notification is quashed and set aside.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, was passed by the Parliament with the manifest intend and object of ensuring fair and just compensation to those whose lands are acquired. The intend, objective and purpose of the Act is made quite clear by the Preamble of the Act itself. The same is extracted here below for easy reference;

“An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto”.

In view of the intent, objective and purport of the Act it should be ensured by everyone concerned that completely fair and just compensation is always given to persons whose lands are acquired.

11. This Court in the writ petition W.P.(C) No. 252(AP) of 2015 after having considered all the relevant provisions of the Act and also after having discussed them quite elaborately had arrived at the conclusion given therein. Therefore, there is no need of any more discussion. As such, this writ petition is disposed of with a direction to the State respondents to go through the said judgment & order dated 23.12.2015, carefully and come out with a notification of the multiplicand to be applied in the case of the petitioner's land which would lead to determination of the right quantum of compensation that is completely just and fair for the petitioner. Needless to mention but since the matter has been pending for a long time they should do so within a period of 2(two) months from the date of receipt of a copy of this order.

With this, the writ petition along with the contempt petition stands disposed of.

JUDGE

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