

WP(C) No. 55/2018

KARMA TENZING AND ORS.

PETITIONER (S)

VERSUS

THE CHIEF OF THE ARMY STAFF AND ORS.

RESPONDENT (S)

For petitioners : Mr. Jorgay Namka, Advocate.

For respondents no.
R-1, R-2 and R-6 : Mr. Karma Thinlay, Central Govt. Counsel.

For respondents no.
R-3 and R-4 : Dr. Doma T. Bhutia, Addl. Advocate General.
Mr. Hissey Gyaltzen, Asst. Govt. Advocate.

Ms. Karma Yangchen Bhutia, Legal Officer, Land
Revenue and Disaster Management Department.

Date: 19/03/2021

CORAM :

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.

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Invoking the jurisdiction under Article 226 of the Constitution of India,
the Petitioners have filed this petition seeking following reliefs:-

"Under the above facts and circumstance, it is therefore, prayed that this Hon'ble Court may be pleased to admit this petition, call for records and issue rule calling upon the Respondents to show cause as to why a Writ of Certiorari and/or appropriate Writ/Order or Direction should not be issued directing Respondent No. 3 and 4 to complete the process of acquisition of the Petitioners land and/or pass any other order/s /directions as your Lordships deem fit and proper for the ends of Justice.

In the alternative direct the Respondents to compensate the Petitioners."

2. On perusal, it is found some facts are not in-disputed in the case. The Notification for compulsory acquisition of the lands belonging to the Petitioners was issued under Section 4 of the Land Acquisition Act, 1894 (in short, Old Act) on 05.10.2013. On account of commencement of the Right to Fair Compensation to Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (hereinafter referred as New Act) w.e.f. 01.01.2014, the old Notification of Section 4 of the old Act was came to be lapsed in view of Section 24 of the New Act.

3. It is also not in dispute that after commencement of the New Act a fresh Notification for compulsory acquisition of petitioners' land was issued on 25.11.2016 under Section 11 of the New Act. The acquisition of the said land was for the purpose of "Creation of Logistic Infrastructure for Troops". Later correspondence reflects that vide letter No. 7379/Rab/123/AC/QM dated 04.01.2017, a request was made by Lt. Col., OIC, ASW for CO, 17th Mtn. Div. Ord Unit, Pin-909417, C/o 99 APO to the Deputy Secretary/Acquisition, Land and Revenue Disaster Management Department, Government of Sikkim for de-acquisition of the land. As per Annexure R-7 dated 04.05.2019, the Deputy Secretary, Land and Revenue Department informed Lt. Colonel SA Kalam, OIC ASW for CO, 17th Mtn Div Ord Unit, C/O 99 APO, Pin-909417 that the procedure of de-acquisition is under process and the District Collector, South is in the process of assessment of the damage by way of compensation payable to the land owners as per Section 93 of the New Act and same shall be conveyed on finalization. Thereafter, vide letter dated 01.11.2017, the amount of compensation has been calculated to the tune of Rs. 1,89,09,777/- and informed to the respondents no. 1 and 2. It is not in dispute that the said amount has not been paid by them, in lieu of responding the letter of the Collector dated 24.05.2017 vide reply letter dated 27.06.2017.

4. It is also a fact that the Order of determination of the compensation as passed by the Government of Sikkim through the Land Revenue and Disaster Management Department dated 01.11.2017 has not been represented or assailed by the respondents no. 1 and 2 taking recourse of

law, therefore, it has become final. In the said context, it is clear that the relief No. 1 as prayed in the Writ Petition seeking direction against respondents no. 3 and 4 to complete the process of acquisition has outlived its utility on account of the letter referred by respondents no. 1 and 2 dated 22.04.2017 for de-acquisition and due to further correspondence made on 24.05.2017 and 01.11.2017 of the State Authorities, therefore, the first relief as prayed for in the Writ Petition has now rendered infructuous.

5. So far as the second relief prayed in alternative to first relief directing respondents to compensate the petitioners in the opinion of the Court is surviving because after initiating the proceedings under Section 11 of the New Act, it was not completed and the process of de-acquisition has been initiated on the request of respondents no. 1 and 2. In regard to applicability of Section 93 of the New Act, the person whose land was required to be acquisitioned, a preliminary Notification taking recourse of Section 11 of the New Act ought to be issued and the possession thereof should not be taken over, then only the compensation may be determined and paid.

6. In the said context, Section 93 is relevant which is reproduced as thus.

"93. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-(1) *The appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.*

(2) *Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land."*

7. On perusal of the aforesaid, the Legislative intent is clear that completion of compulsory acquisition by the appropriate Government is not necessary, they may have liberty to withdraw the said acquisition of which the possession of land has not been taken over after initiating the process of acquisition. In the present case also after issuance of the Notification under Section 4 of the Old Act and on to commencement of the New Act, the preliminary Notification under Section 11 was issued but the possession of land was not taken from the petitioners. As per Sub-Section 2 above, it is clear that when appropriate Government wants to withdraw any such acquisitions, prior to its completion, the Collector is duty bound to determine the amount of compensation due for the damages suffered by the owner in consequence of the Notice or of any proceedings thereunder and such amount shall be paid to the persons interested together with the cost reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

8. Learned Counsel appearing on behalf of respondents no. 1 and 2 has made an attempt to satisfy this Court that as per letter dated 01.11.2017 the compensation which was determined by the Collector is of the damages of crops yield involved in the process of acquisition of the land. The Sub-Section 2 of Section 93 of the New Act do not confer any power to the Collector to determine the damages of the crops yield involved, therefore, the respondents no. 1 and 2 is not liable to pay the amount of compensation as determined by the Collector under the provisions of Section 93 (2) of the New Act. It is contended that in response to the previous letter dated 24.05.2017, the objections have already been submitted by the respondents no. 1 and 2 on 27.06.2017 which has not been duly considered by the Collector while issuing the letter dated 01.11.2017, therefore, the amount of

compensation is not required to be paid by them and the present petition may be dismissed.

9. On the other hand, the learned Counsel appearing on behalf of the petitioners as well learned Additional Advocate General representing respondents no. 3 and 4 contends that after issuance of preliminary Notification under Section 11, as per Section 93(2) of the New Act, in case the acquisition is not completed and possession of the land has not been taken, the Government can withdraw the said acquisition proceedings. In the said contingencies, the Collector is require to determine the amount of compensation for the damages suffered by the owner in consequence of the Notice or any of the proceedings thereunder. The said amount is liable to be paid by the person to whom the land is being compulsorily acquisitioned, therefore, the arguments as advanced by the Counsel for the respondents no. 1 and 2 is contrary to the spirit of Section 93 of the New Act.

10. After having heard learned Counsel appearing on behalf of both the parties and to advert the arguments as advanced by the parties, the intention of the Legislature while enacting Section 93 has to be seen. On perusal thereto and as discussed above, sub-Section (1) confers a power to the State Government for withdrawal of the compulsory acquisition of any land in case it is not completed and the possession of the said land has not been taken. Sub-Section (2) comes into play when the appropriate Government withdraws the acquisition, at that stage, it is the duty of the Collector to determine the amount of compensation due "for damages suffered by the owner in consequence of a Notice or any Proceedings and any cost incurred". Thus, under the New Act special provisions have enacted by which even at any stage the Government may have liberty or can decide to withdraw from the said acquisition if not completed subject to payment of

compensation for the damages suffered by the owner on account of notice and other proceedings brought against him.

11. The Legislative intent is clear that the determination of the amount of compensation shall be based upon or for the damages suffered by the owner in consequence of the Notice or any proceedings alongwith the cost as specified. However, the determination of the compensation made by the Collector vide letter dated 01.11.2017 *inter alia* stating that the said compensation is for damages of crops yield involved due to cancellation of acquisition after Notice of Section 11 of the New Act is squarely fall within the connotation "in consequence of the Notice". The arguments as advanced by the Counsel for respondents no. 1 and 2 is completely misplaced and contrary to the Legislative intent as discussed hereinabove, therefore, such arguments cannot be countenanced.

12. In view of the foregoing discussion, petitioner is entitled to, the alternative relief, prayed in this petition, and the direction of the said relief can be issued. It is to observe here that the Order dated 01.11.2017 passed by the District Collector determining the compensation conveyed to the Department has not been assailed by respondents No. 1 and 2 though the period of more than three and half year has already been elapsed, therefore, in consequence of the provision of Sub-Section (2) of Section 93 of the New Act, the direction for payment of compensation as determined by the District Collector can be issued against the respondents no. 1 and 2.

13. As per discussion made hereinabove, the first part of the relief is declared infructuous while for the second part of relief petitioners are entitled to the directions as sought against the respondents to compensate them. In the present case, after issuance of preliminary Notification for compulsory acquisition, it has been withdrawn prior to its completion by the

respondents no. 3 and 4 on the request of respondents no. 1 and 2. In consequence the respondents no. 3 and 4 has determined the amount of compensation as per Section 93(2) of the New Act and the said amount of compensation is payable by the respondents no. 1 and 2 to the petitioners.

14. Accordingly, this petition is allowed with a direction that the compensation determined by respondents no. 3 and 4 vide letter dated 01.11.2017 shall be deposited by respondents no. 1 and 2 within a period of three months from the date of communication of this Order. Failure to deposit the said amount within the time limit shall entail deposit with interest at the rate of 6 % per annum. It is further directed that on receipt of the said amount of compensation, the respondent nos.3 and 4 shall pay the same to the petitioners, as per law within a further period of one month or may keep in fixed deposit till its disbursement. On failure to pay by respondents No. 3 & 4 within the stipulated time, the interest as per the rates of fixed deposits prevalent on the date of deposit be payable to petitioners.

Chief Justice

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