

W. P. (PIL) No. 05/2016
In RE: DEBACLE IN UPPER DZONGU

BEFORE

MR. JUSTICE SATISH K. AGNIHOTRI, CJ &
MRS. JUSTICE MEENAKSHI MADAN RAI, J.

12. 01.05.17 Present: Mr. B. R. Pradhan, Senior Advocate (*Amicus Curiae*)
(Agnihotri, CJ) with Ms. Tshering Palmoo Bhutia, Advocate for the
Petitioner.

Mr. Karma Thinlay, Sr. Govt. Advocate with Mr. S.K. Chettri and Ms. Pollin Rai, Assistant Government Advocates for the State.

Mr. N. Rai, Sr. Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for the Applicants/Intervenors.

Mr. Rinzing Chewang Bhutia, Special Secretary, Land Revenue & Disaster Management Department, Government of Sikkim.

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As noted earlier that a natural dam was created at Upper Dzongu Sub-division on account of heavy landslip on 13.08.2016, several experts were consulted and it was advised that draining out is must to avoid further damages to the people living in and around the area also in the downstream. The State Government has filed an affidavit stating the present status as under:

"3. The status report on the action taken pursuant to order of the Hon'ble High Court dated 05/04/2017 are as under:

(a) Breaching of Artificial Lake:

The Task Force constituted vide Notification No. 1/Home/2017 dated 24.01.2017 started the work for draining the artificial lake on 10th April, 2017. Controlled blasting was carried out on 16th April, 2017 to break and remove boulders blocking the path of river Kanaka at the outlet of the lake. Second round of controlled blasting was done on 19th April, 2017, the third round was done on 25th April, 2017 and fourth round is scheduled on 2nd May 2017. The main purpose of

resorting to controlled blasting is to break and remove the bounders on the left bank of the river Kanaka near the outlet of the lake to increase the size of the outlet and discharge of water from the lake. It will ensure the flow of the river on the left bank and protect the road and other infrastructure lying on the right bank.

(b) Allotment of Houses:

As was stated in the earlier Status Report, the matter of 14 (fourteen) submerged houses was forwarded to Rural Management and Development Department for consideration under the Chief Minister’s Rural Housing Scheme (in short referred to as CMRHS). It has been informed that the beneficiaries were further scrutinized by Rural Management & Development Department for eligibility in order to ensure that the criteria for CMRHS were fulfilled. The Department has now approved 8 beneficiaries, as listed under for taking up under the Scheme under CMRHM Phase-1.

Sl. No.	Name	S/o / D/o
1.	Shri Sonam Tshering Lepcha	Lt. Chuggyal Lepcha
2.	Smt. Sonam Ongmu Lepcha	Lt. Neema Lepcha
3.	Shri Duching Lepcha	Lt. Phichi Lepcha
4.	Smt. Enjay Lhamu Lepcha	Lt. Chuggyal Lepcha
5.	Shri Sangay Leda Lepcha	Lt. Lopsang Lepcha
6.	Shri Nima Lepcha	Lt. Guruk Lepcha
7.	Shri Athup Lepcha	Lt. Patak Lepcha
8.	Shri Dup Tshering Lepcha	Lt. Bachung Lepcha

It has been informed that the remaining 6 (six) beneficiaries were not approved for consideration under the above Scheme as they did not fulfill the eligibility criteria due to one of the following reasons:-

- (i) Already a beneficiary of other Central or State Housing Scheme (REDRH/CMRHM/IAY);
- (ii) The beneficiary is a minor;
- (iii) Beneficiaries belonging to the same household;
- (iv) Beneficiary holds land in another district/ward.”

Mr. N. Rai, learned Senior Counsel appearing for the persons residing therein submits that there is a small outlet that may be sufficient, further for draining out the entire dam is unnecessary. The area has been settled. Explosion for draining the dam creates vibration and noise pollution, and as such the same may be again examined by an independent expert.

We have considered the submissions advanced by all the parties. We are of the considered view that no further expert inspection or advice is required. However, controlled blasting as stated by the learned Additional Advocate General be monitored properly and the people living in and around the area be advised and instructed much in advance to go into safer places.

Mr. Rai, learned Senior Counsel further submits that without construction of a bridge from Kayem to Sebem, the people living in the other side are inaccessible, thus, a direction be issued to construct the bridge connecting the road from Mantam to Kayem to make easy accessibility and also facilitate the people living therein to have decent life.

Learned Additional Advocate General seeks two weeks time to seek further instruction and file additional affidavit in response thereto.

Call on 24.05.2017.

Judge
01.05.2017

Chief Justice
01.05.2017

jk/ds **Index : Yes / No**
 Internet : Yes / No