

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.

09. 25.01.17 Present: Mr. B. R. Pradhan, Senior Advocate (*Amicus Curiae*)
(Agnihotri, CJ) with Ms. Tshering Palmoo Bhutia, Advocate for the
Petitioner.

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

...

In compliance of our directions issued time to time, the Committee constituted vide Notification dated 21.11.2016, had submitted its report *inter alia* as under: -

"9. RECOMMENDATIONS OF THE COMMITTEE: Considering all the available facts and the situation at the site and giving paramount importance to the need to ensure the protection of life and property and safety of the public, the Committee makes the following recommendations:

(i) Taking into consideration the past evidence in respect of such types of landslide dams and also the opinion of the technical experts and for ensuring the safety and security of the people living downstream, the Committee is of the view that the artificial lake may have to be slowly emptied, in stages, through controlled breaching of the dam.

(ii) The Committee, therefore, recommends that an Action Plan for carrying out controlled breaching of the dam along with associated activities and also the appropriate mitigation measures may be prepared for which a Task Force consisting of following members may be constituted:

- | | | |
|----|---|------------|
| 1. | Special Secretary, LR & DMD | - Chairman |
| 2. | District Collector, North | - Member |
| 3. | Director, Department of Mines & Geology | - Member |
| 4. | Shri B.D. Patni (Geo-Technical | |

	Expert)	- Member
5.	Representative of BRO	- Member
6.	Representative from NHPC	- Member
7.	S.E., Roads and Bridges Department	- Member
8.	Additional Director, SSDMA	- Member
		Secretary

The Task Force will also be responsible for execution of the Action Plan under its supervision. It will also finalise the time lines for full implementation of the Act Plan taking into account the need to complete the implementation well before the onset of the next monsoon. It will also ensure that during the period of implementation of the mitigation measures, all the necessary precautions and actionable points as suggested in the NDMA's report are strictly adhered to.

(iii) The District Administration, in close coordination with the Task Force and other implementing agencies, will ensure adequate stocking of essential commodities and other materials in the cut-off areas to sustain them during the implementation period.

(iv) The Roads and Bridges Department must remain in a state of readiness to restore/provide communication by launching a bailey bridge for which it needs to take advance action.

(v) The mitigation measures will have to be undertaken under the administrative control of the Land Revenue & Disaster Management Department and work executed on site by the Department of Mines, Minerals & Geology (DMMG) and Roads and Bridges Department under the technical support and supervision of Shri B.D. Patni (Geo-Technical Expert Consultant) whose services will have to be taken on consultancy basis.

(vi) The requisite funds for implementing the Action Plan will have to be provided by Land Revenue & Disaster Management Department from State Disaster Relief Fund (SDRF)."

In pursuance thereof we are informed that a Task Force has been constituted vide Notification No. 01/Home/2017 dated 24.01.2017, whereunder the Task Force will be responsible for preparation of an Action Plan for carrying out controlled breaching of the dam along with associated activities and also the appropriate mitigation measures and for the execution of the Action Plan under its

supervision, preferably well before the onset of the next monsoons.

On perusal of the report, it is noticed that the Committee has observed that no landslide dam could be retained for a long time in the fragile Himalayan region and thus controlled breaching of landslide dam is the most feasible and safe panacea for the safety of the upstream and downstream inhabitants and infrastructure. Accordingly, it is necessary to empty the artificial lake at the earliest. The Task Force is assigned with the task of ensuring emptying of the artificial lake at the earliest.

On the question of allotment of residential accommodation to persons who have lost their houses, the State Government, as per its status report, stated as under: -

"5. RECONSTRUCTION OF THE SUBMERGED HOUSES

- A. Out of a total of 14 houses submerged, there are eight cases where the claims are clear by virtue of the following parameters:
- a. The family has lost its house due to submergence;
 - b. The land records of the family have been duly verified and ownership of the land ascertained;
 - c. Site for new houses have been identified;
 - d. The family has not been provided any house in the past elsewhere under any Government Scheme.

The above cases are currently under process for allotment of new houses.

- B. The remaining six cases are cases where the claims are not clear on account of the following:
- a. Five of the claimants or their parents have been provided house in the past in alternate location under Government Housing Schemes;
 - b. One claimant does not originally belong to Dzongu as he is originally from West Sikkim which is evident from the fact that he possesses Certificate of Identification (COI) of West District. His case cannot be taken up for house construction in Dzongu due to restriction on acquiring landed property by persons not belonging to Dzongu.

The five families mentioned at 'a' above are residing at their ancestral houses at Songkolong Village. The one family mentioned at 'b' above is residing in a rented accommodation at Songkolong Village. Currently, these six cases are being examined for taking appropriate decision."

Thus, it is observed that some persons whose houses have been destroyed in the landslide have already been allotted houses while others have been provided with a house in the past in alternate location under Government Housing Schemes. One person belonging to West Sikkim is not entitled to house at North Sikkim. Be that as it may without going into their allotments, the Government is obliged to consider payment of compensation for loss of property if they are entitled under the prevailing rules.

In respect of the Government Primary School, which has been fully demolished, the Government has initiated the process to identify land for construction of the new

school building and the Government is accordingly directed to do the needful at the earliest so that new session of the academic year may start from the new building.

The road network and restoration of connectivity, it seems to have been in progress and will be completed by March 2017 as pointed out in the status report.

List it on 03.03.2017 to enable all the concerned parties to submit its status report.

Sd/-
Judge
25.01.2017

Sd/-
Chief Justice
25.01.2017

jk/bp **Index : ~~Yes~~ / No**
 Internet : Yes / ~~No~~