

High Court of Sikkim

Record of proceedings

WP(PIL) No.09 of 2016

In Re : Pipon and Gambos of Lachen Dzomsa

Date : 10-06-2019

**CORAM : THE HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

For Petitioner

Mr. Bhusan Nepal, Advocate as Amicus Curiae.

For Respondents

R-1

Mr. Thinlay Dorjee Bhutia, Government Advocate.
Mr. S. K. Chettri, Assistant Government Advocate.
Mrs. Pollin Rai, Assistant Government Advocate.

LR&DMD

Ms. Roshni Chhetri, Legal Retainer.

R-2, R-3 & R-4

Mr. Karma Thinlay, Central Government Counsel.

ORDER

1. In compliance with the Order dated 28-05-2019 the Respondent No.2 has filed a Report pertaining to the rate of hiring charges. Respondent No.1 has submitted a Report regarding the names of the land owners and details of area. It is submitted by Learned Central Government Advocate for Respondents No.2 to 4 that the process of Social Impact Assessment (SIA) has not commenced as yet. The Directorate of Economics, Statistics, Monitoring & Evaluation, Government of Sikkim (DESME), has completed its report on cost estimate and will forward it to the District Collector, North Sikkim, after which steps will be initiated for the SIA.

2. In this context, it is relevant to notice that this Court on 17-09-2014 in WP(PIL) No.17 of 2012 : *Public of Lachen vs. Chief Secretary, Government of Sikkim and Others*, passed the following directions;

“(i) The respondents-State will write a letter within a period of two weeks from today, to

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respondent Army to make the payment of remaining 50% of the hiring charges to the occupier of the land.

- (ii) The respondents-Army will consider and make the payment as per letter of the State Government to the occupier of the land, as early as possible, but not later than a period of three months from the date of receipt of the letter from the State Government.
- (iii) Respondents-State will specifically clarify that occupier of land will be entitled to 50% of hiring charges from the date of taking actual possession of their land, details of which have been furnished in this Court.
- (iv) So far as interest on delayed payment of amount and enhancement of hiring charge are concerned, it will be open for the individual petitioner to agitate the matter before appropriate forum, in accordance with law.
- (v) The respondents will take necessary steps in respect of acquisition of land in dispute, in accordance with law, as early as possible. It is needless to mention that soon after completion of acquisition proceedings, the compensation in respect of land will be paid to landowners in accordance with law."

3. As the directions given were not complied with the concerned authorities were afforded eight weeks' time to take necessary steps, as ordered on 23-05-2017 in the instant Petition.

4. On 25-07-2017, vide report dated 24-07-2017 it was submitted by the Defence Estate Officer, Siliguri Circle, that a Cheque towards payment of arrears of hiring charges, for the land hired by the Indian Army under Lachen, Lachung, Chungthang Revenue Blocks in North Sikkim, amounting to Rs.1,92,46,453/- (Rupees one crore, ninety two lakhs, forty six thousand, four hundred and fifty three) only, had been dispatched to the District Collector, North District, Mangan, as per the directions of the Court.

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5. The Respondents were granted time to submit status report pertaining to steps being initiated for acquisition of the land in terms of direction (v) of the Order dated 17-09-2014 passed in WP(PIL) No.17 of 2012 extracted *supra*.

6. On 24-04-2018, it was brought to our notice by the report of the Defence Estate Officer that 263.4381 hectares of land is proposed to be acquired for the purpose of settlement of Army Establishment.

7. On 18-06-2018 it was informed that 105.4545 hectares of land is found to be owned by private owners and land assessment was done by the District Collector, North Sikkim, in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, Act of 2013). The assessment so done was forwarded to the Ministry of Defence.

8. The report of the Defence Estate Officer, dated 23-11-2018, informed this Court that the Ministry of Defence vide its letter dated 31-10-2018 has sanctioned an amount of Rs.235,97,56,470/- (Rupees two hundred thirty five crores, ninety seven lakhs, fifty six thousand, four hundred and seventy) only, for acquisition of 105.4545 hectares of private land at Lachen, Lachung and Chunthang Revenue Blocks in North Sikkim, duly annexing a copy of the said sanction order. That, the Defence Estate Officer had intimated the District Collector, North District, of the approval and requested the District Collector to initiate the process of acquisition under the Act of 2013.

9. On 03-12-2018 in compliance with the Order of this Court a report was filed by the District Collector mentioning *inter alia* that the land is already under the occupation of the Army Authority for a

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long time, hence exemption of the SIA study required under Section 4 of the Act of 2013 and rehabilitation and resettlement as per Sections 16, 17, 18 and 19 of the Act of 2013 would be sought from the State Government as provided under Sections 9 and 40 of the same Act. The exemption in all likelihood would be granted by the State Government by 15-01-2019. After the said exemption the preliminary Notification under Section 11 of the Act of 2013 would be completed by 30-01-2019 and the entire exercise for survey of land and preparation of compensation of individual owners by Field Surveyors of his Office and the Defence Estate Office, Siliguri, would be completed by 15-03-2019. That, payment of compensation to the beneficiaries would be completed by 31-03-2019.

10. However, in his Report dated 03-04-2019, the District Collector, North Sikkim, submitted that he was informed by the Defence Estate Officer, Siliguri Circle, vide communication dated 28-11-2018 that the Board of Officers did not recommend invoking the urgency clause under Section 40 of the Act of 2013 as the land is already under the Army occupation and the Ministry of Defence had accorded sanction to acquire the land in a regular manner under the said Act. That, although a letter of the District Collector, dated 08-01-2019, had intimated the Defence Estate Officer that the SIA study for the said area had been exempted by the State Government, the Defence Estate Officer, vide its letter dated 09-01-2019, declined acquisition by invoking of the urgency clause.

11. Learned Government Advocate for the Respondent No.1 submits before this Court today that the procedure prescribed under Section 7 of the Act of 2013 shall be initiated subject to deposit of fees by the Ministry of Defence, in terms of the estimate arrived at

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by the DESME to conduct the said SIA, thereafter the Office of the District Collector, North Sikkim can take further steps. That, the District Collector North Sikkim has received Form A of the User Agency on 13-03-2019. The estimate for conducting the SIA received from the DESME will be made over to the User Agency by the District Collector today. That, the delay in the land acquisition is on account of the stand of the Ministry of Defence to acquire the land under the normal clause of the Act of 2013 instead of invoking the urgency clause.

12. We have considered the submissions of Learned Counsel for the parties. We have also perused the Report submitted by the State Government on 07-06-2019.

13. It is apposite to point out that the object of preparation of the SIA is to gauge the circumstances as given in Section 4 of the Act of 2013. The appraisal of the SIA report by an expert group in terms of Section 7 of the Act of 2013 is also for the reasons enumerated in the said provision. Section 40 of the Act of 2013 clothes the Collector with special powers in case of urgency to acquire land in certain cases, while Section 9 specifically provides that the Government may exempt undertaking the SIA, which in the instant case the Government has indeed exempted.

14. It may be remarked here that it is unfathomable as to why the Army Authorities do not seek to invoke Section 40 of the Act of 2013 as they are already in possession of the land of the poor people of North Sikkim for not less than 10 years and in some areas for 30 years. These people have been deprived of their means of livelihood by such occupation. They are peace loving people and have never approached the Courts with complaints against the Army, but this

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PIL was registered in view of the letter addressed to the Hon'ble Judge of the Supreme Court in October, 2016, complaining of non-payment of compensation despite occupation of the land by the Army. Had the land not been occupied by the Army Authorities and were it not required in the interest of the Nation in a sensitive border State, we would have had no qualms in requiring the occupiers to vacate the premises forthwith. Nevertheless, although it is for Army use we cannot lose sight of the fact that the land was providing livelihood to those people who owned it and has since been in Army occupation, sans acquisition. The Army Authorities have taken a stand which appears to us to be unjust and unreasonable despite directions for acquisition on 17-09-2014 which has not fructified till now. The payment to the original owners is being delayed despite the amount of compensation having already been sanctioned.

15. We are conscious and alive to the fact that the rates fixed by the State Government as hiring charges are indeed very low. It is but appropriate to order that in view of the delay in the acquisition process the Army Authorities pay twice the amount fixed as hiring charges by the State Government. The revised payment shall be made by them with effect from 01-06-2019 to the concerned persons, through the process that was adopted earlier.

16. List on 29-08-2019.

Judge

10-06-2019

Chief Justice

10-06-2019

Index : Yes/No

Internet : Yes/No

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