

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.3579-3580 OF 2020
(@ out of SLP (C) No.13036-13037/2020
(@ out of Diary No(s). 13623/2020)

NATIONAL HIGHWAY AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED

Appellant(s)

VERSUS

RAKESH KUMAR BHAGAT & ORS.

Respondent(s)

O R D E R

Leave granted.

These appeals challenge i) the order dated 18.02.2019 in W.P. No.3165(W) of 2019 and ii) the order dated 05.11.2019 in CAN 9728/2019 passed by the High Court of Judicature at Calcutta.

In said writ petition preferred by Rakesh Kumar Bhagat and others a Report was submitted by the District Magistrate, Kalimpong stating inter alia:

"2. Rangpo Viaduct is a 1000 m length project between KM 51.1 to Km.53.9 on Sevoke-Gangtok Road NH-10 (old NH31A) in the State of West Bengal and Sikkim.

3. For the purpose of recognition of forest rights and verification of claims the following measures were taken:-

* In compliance of the orders issued by Block Development Officer, Kalimpong-II dated:

02.07.2018, 19.07.2018, 31.07.2018, 10.09.2018, 05.10.2018, 05.02.2019 (copies enclosed as annexure- A,B,C,D,E,F), the Secretary, Sangsay Gram Panchayat issued notices to convene Gram Sabha meetings seven times on 06.07.2018, 24/26.7.2018, 06.08.2018, 15.09.2018, 12.10.2018, 12.02.2019 and 09.08.2019 vide notices dated 02.07.2018, 19.07.2018, 31.07.2018, 10.09.2018, 05.10.2018, 07.02.2019 and 02.08.2019 respectively (Copies enclosed as Annexure-I, II, III, IV, V, VI and VII).

*The members of the gram Sabha were informed about the dates of meetings by means of postering, miking and by informing the Forest Rights Committee members over the phone. (Declaration of the Executive Assistant, Sangsay Gram Panchayat in this regard is enclosed as Annexure-G).

*For the purpose of verification of claims submitted by the claimants who are also the members of the Gram Sabha, a verification team comprising of representatives from the Land and Land Reforms Department, Forest Department, Backward Classes Welfare Department and the Gram Panchayat was formed. (Sample claims forms verified by the verification team are enclosed as Annexure X&Y).

In a further report, the District Magistrate, Kalimpong submitted:

"That in compliance to the judgment of the Honourable Calcutta High Court dated 05.11.2019 (Re: CAN-9728 of 2019) directing the District Magistrate, Kalimpong to make an endeavour to complete the recognition and verification process, a communication was sent to the Block Development Officers, Kalimpong-II vide Memo No.461/Con. Dated 21.11.2019 (Copy enclosed as Annexure-A) for taking necessary action to convene a meeting of the Gram Sabha of the Rangpo Forest Village.

Thereafter, Secretary, Sangsay Gram Panchayat under Kalimpong-II Development Block issued a notice for the meeting of the Gram Sabha vide memo No.02/SGP/2020 dated 20.01.2020. The meeting was fixed on 27.01.2020 at rangpo Play ground at 11AM. In order to pass a resolution regarding granting of Forest Rights to the claimants.

Though, the Gram Sabbha meeting was held on

27.01.2020, the Sabha did not pass any Forest Rights Claims which is a very essential step for initiating the process of recognition and verification of their Forest Rights. However, it passed a resolution stating that they do not have any objection against development projects viz. Highways and Railways. Besides, they have demanded in the resolution that their Forest Village be converted into Revenue Village at the earliest and they be provided with Revenue Pattas. (Copy of Resolution enclosed as Annexure-B).

While, the petitioners, on one hand are demanding recognition of forest rights, on the other hand, they themselves are not processing and passing their claims in the Gram Sabha."

Objections were taken to the aforestated Reports on behalf of the writ petitioners and it was submitted:

"3. With reference to contentions made in Page 1 to 3 of the District Magistrate's Report dated 17th August, 2020, I say that it is denied and disputed that the Gram Sabha have not passed the claims yet as the respective Gram Sabhas have already submitted the claims in the year of 2011 and that till date no step has been taken further to process the recognition of the individual forest rights and Community Forest Rights as per the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 hereinafter referred to as FRA 2006.

It is further stated that the Respondent No.5 herein in its Affidavit in Reply dated 11th November, 2019, in Paragraph 5(vi) page 5 have inter alia stated that - "The Government of West Bengal has started the exercise of identification of the forest dwellers and issuance of Patta to the dwellers at the concerned locality. The process has started and it will take further time to complete such exercise. Such process for recognition and verification has been continuing and not yet been completed". That therefore, it is clearly evident from the affidavit in reply of the Respondent No.5 that the claims has already been sent by the Gram Sabha on the basis of which the Respondent No.5 have affirmed such statement and/or contention."

The High Court by its interim order dated 18.02.2019 directed:

"In such circumstances, till the recognition and verification procedure is complete, firstly the petitioners cannot be said not to be protected under the Act of 2006 and secondly they cannot be evicted from the locale.

In such circumstances, the authorities will not undertake the project or evict the petitioners in any manner whatsoever from the locale till the recognition and verification procedure is complete by the State. On completion of such recognition and verification procedure, the State will inform the petitioners giving them at least a fortnight's time about such decision."

It was thereafter urged on behalf of the appellant that the Project being of National importance, the interim direction issued by the High Court be suitably modified.

Since the order was not modified, the appellant approached this Court by filing the instant appeal. By order dated 20.07.2020, this Court requested the High Court to dispose of the application for modification as well as the writ petition preferred by the original writ petitioners as early as possible and preferably within three weeks.

Since the matter could not be taken up by the High Court, the matter was considered on merits by this Court and while issuing notice, an interim order was passed on 31.08.2020 permitting the present appellant to go ahead with the Project in question.

We have heard Mr. S.B. Upadhyay, learned Senior Advocate for the appellant and Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate for the original writ petitioners.

The initial report of the District Magistrate shows that the attempts were made at least on seven occasions to convene Gram Sabha Meetings and that the members of the Gram Sabha were accordingly informed so that the claims submitted by the claimants who are also members of the Gram Sabha could be verified by the Verification Team. Subsequent Report filed by the District Magistrate also shows that while the writ petitioners were demanding recognition of forest rights but the requisite claims were not being permitted to be verified.

In the circumstances, in our considered view, no interim order was called for. We, therefore, set aside the orders which are presently under appeal and direct that the appellant is at liberty to go on with the project in question and complete it.

This arrangement shall however, be subject to the result in the pending proceedings in the High Court with regard to the rights of the concerned persons in any process of verification or resultant compensation that such persons are entitled to.

The matter can certainly be gone into with regard to these issues but the Project shall go on and must be

allowed to be completed.

With the aforesaid observations, these appeals are allowed.

No costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(VINEET SARAN)

.....J.
(S. RAVINDRA BHAT)

New Delhi,
November 02, 2020.

Mr. Divyansh H. Rathi, Adv.
Mr. Raj Bahadur, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)