



# THE HIGH COURT OF SIKKIM AT GANGTOK

## J U D G M E N T

### D.B. W.P. (PIL) No. 16 of 2012

Public and Panchayats of  
North Sikkim.

.... **Petitioners.**

- versus -

1. The Chief Engineer,  
Project Swastik,  
Gangtok.
2. The Secretary,  
Ministry of Surface Transport,  
Department of Road Transport  
and Highways,  
Government of India,  
Transport Bhavan,  
1, Sansad Marg,  
New Delhi-110 001.
3. The Director General,  
Border Roads,  
Seema Sadak Bhawan,  
Ring Road, Naraina,  
Delhi Cantt.  
New Delhi-110 010.
4. Secretary,  
Ministry of Road Transport  
and Highways,



Government of India,  
Transport Bhavan,  
1, Parliament Street,  
New Delhi-110 001.

5. State of Sikkim,  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok, Sikkim.

6. Union of India through  
The Cabinet Secretary,  
Government of India,  
Cabinet Secretariat,  
Rashtrapathi Bhawan,  
New Delhi-1

.... **Respondents.**

**CORAM**

**HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE N. K. JAIN  
HON'BLE MR JUSTICE S.K. SINHA, JUDGE**

**Date of Judgment : 30.07.2014**

For Petitioner : Ms. (Dr.) Doma T. Bhutia,  
Advocate, as Addl. Amicus  
Curiae.

For Respondents No. 1 : M/s. Karma Thinlay, Central  
to 4 and 6. Government Advocate with  
Thinlay Dorjee Bhutia, Advocate.

Col. B.K. Sarkar, CDR, 758  
BRTF.



For Respondent No. 5 : M/s. S.K. Chettri and Pollin Rai,  
Asstt. Government Advocates.

**Jain, CJ ( Oral) .**

With consent of learned counsel for the parties,  
the case is heard and disposed off finally.

2. Initially, a letter petition was addressed to Sikkim State Legal Services Authority, Gangtok by Pipon, Lachen Dzumse, North Sikkim for improvement of road condition constructed by GREF from Rabom to Thangu. By another letter petition dated 19.04.2012 by Public and Panchayats of Lower Dzongu, North Sikkim, a prayer was made for providing necessary maintenance and restoration works under Dikchu to Sankalang Road, Lower Dzongu, North Sikkim.

3. A notice to show cause was given to respondents and in response thereto, they filed affidavits and progress reports from time to time. Thereafter, learned Amicus Curiae, appearing on behalf of petitioners, also filed report in counter to reports submitted by respondents.



4. The matter was listed on 13.03.2014, the progress report submitted by respondent No. 1 was taken into consideration and the following order was passed: -

“ Heard learned counsel for the parties.

Respondent No. 1 has filed its progress report, wherein it has been reported that a sum of Rs.66,528/- has been sanctioned for construction of temporary bridges, a sum of Rs.537.86 lakhs has been sanctioned for temporary diversion for 3 Nos. temporary bridges, Rs.18.94 lakhs has been sanctioned for land acquisition and muck dumping for construction of 4 Nos. of major permanent bridges, job has also been sanctioned on 07.03.2014 for bridge at KM 2.57 at Dett Khola. It has further been reported that approximate estimate has already been sent for bridge at KM 5.25 at Tarayong Chu, bridge at KM 10.400 at Maney Chu, bridge at KM 16.950 at Ring Chu.

Mr. Karma Thinlay, learned Central Govt. Counsel appearing on behalf of respondent No. 3 submitted that at least eight weeks time may be granted to sanction these amounts.

Since time was also granted earlier, therefore, we are of the view that eight weeks time is unreasonable. However, we allow six weeks more time to respondent No. 3 to sanction the aforesaid amounts.

Mr. J.B. Pradhan, learned Addl. Advocate General appearing for respondent No. 5 is directed to examine the progress report submitted by respondent No. 1 and do the needful.

Learned Amicus Curiae appearing on behalf of petitioner has also filed its report, which is also taken on record. Learned counsel for respondents are directed to examine the same and do the needful before next date.

List on 25.04.2014.”



5.           Thereafter, the matter was listed on 25.04.2014 and again on 19.05.2014 and on that day, learned Amicus Curiae raised an objection about non-payment of adequate compensation for temporary acquisition of lands of petitioners, as per Rules. After considering the submissions of learned counsel for the parties, it was directed that respondents shall reassess the compensation to be paid to the land holders for temporary acquisition of their land, along with necessary documents of the land. The order dated 19.05.2014 is also reproduced as under: -

“       Heard learned counsel for the parties.  
      Learned ‘Amicus Curiae’ has filed a report on behalf of petitioners, which is taken on record.

      Learned ‘Amicus Curiae’ submitted that respondents are not paying compensation for temporary acquisition of land of petitioners, as per Rules. She submitted that their assessment for compensation is contrary to Rule. She also submitted that respondents are in possession of more land whereas compensation has been assessed for less land. Therefore, they may be directed to re-assess the compensation of full land acquired by them.

      After considering submissions of learned counsel for the parties, it is directed that respondents shall re-assess the compensation to be paid to the land holders for temporary acquisition of their land, along with necessary documents of the land, which has been acquired on temporary basis and place the same on record before next date.

      Four weeks’ time as prayed is allowed to the respondents to do the needful.

      List on 17.06.2014.”



6. Mr. Karma Thinlay, learned Central Government Counsel, appearing on behalf of respondents No. 1 to 4 & 6, submitted that the reassessment proceedings are complete and the District Collector, North Sikkim has referred the matter to the Secretary, Land Revenue and Disaster Management Department, Government of Sikkim. He submitted that the entire proceeding regarding reassessment of compensation is likely to be completed within a period of four weeks. Therefore, he may be granted four weeks' time for completion of reassessment of compensation for temporary acquisition of land of the petitioners.

7. Learned counsel for petitioners submitted that the respondents be directed to supply a copy of reassessment order to petitioners. She further submitted that as per sub-section (3) of Section 81 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'), a liberty may be granted to the petitioner to agitate the matter about adequate amount of compensation, if the determination of amount of compensation is not in



accordance with law. Section 81 of the Act of 2013 is reproduced as under for ready reference: -

**“81. Temporary occupation of waste or arable land, procedure when difference as to compensation exists.-** (1) Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Authority.”

8. We have considered the submission of learned counsel for the parties. So far as widening of road and sanctioning of amount for construction and maintenance of road is concerned, a detail order was passed on 13.03.2014 and the writ petition may be treated as disposed off in the light of said order to that extent.



9. So far as temporary acquisition of land of petitioners is concerned, we grant four weeks' time to respondents to complete the reassessment proceedings and to supply a copy thereof to learned counsel for petitioners or to the petitioners themselves in person. Thereafter, it will be open for the petitioners to examine the reassessment order and in case, they are not satisfied with the determination of amount of compensation in reassessment proceedings, then they will be at liberty to approach the District Collector under sub-section (3) of Section 81 of the Act of 2013 and the District Collector will examine the representation/petition of the petitioners sympathetically in accordance with law.

10. With the aforesaid observations, liberty and directions, the writ petition stands disposed off.

**Judge**  
30.07.2014

**Chief Justice**  
30.07.2014

Approved for reporting: ~~Yes~~ / No  
Internet : Yes / ~~No~~

pm/ jk