

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
WP(C) No. 250 of 2019**

Shri Akoijam Sanatomba Singh, aged about 57 years, S/o Shri Akoijam/Koijam Heramot Singh of Thoubal Wangmataba, P.O. & P.S. Thoubal, Thoubal District, Manipur.

... Petitioner

-Versus-

1. The State of Manipur, through the Commissioner/ Secy. (MAHUD), Office at Old Secretariat – South Block, Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The District Collector/ Deputy Commissioner of Thoubal, Office at Thoubal Athokpam, P.O. & P.S. Thoubal, Thoubal District, Manipur-795138.
3. The Executive Officer, Thoubal Municipal Council, Office at Thoubal Wangmataba, P.O. & P.S. Thoubal, Thoubal District, Manipur, Pin – 795138.

... Respondents

**B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the petitioner	::	Shri Juno Rahman, Advocate
For the respondents	::	Shri Y. Rameshchandra, Advocate & Smt. L. Monomalal Devi, Govt. Advocate
Date of Hearing	::	17-09-2021
Date of Judgment & Order	::	28-09-2021

JUDGMENT AND ORDER

[1] Heard Shri Juno Rahman, learned Advocate appearing for the petitioner; Shri Y. Rameshchandra, learned Advocate appearing for the respondent No.3 and Smt. L. Monomala Devi, learned Government Advocate appearing for the respondent Nos.1 & 2.

[1] The validity and correctness of the order dated 25-07-2018 issued by the Secretary (MAHUD), Government of Manipur is under challenge in this writ petition.

[2] The subject matter in issue relates to the allotment of shops in place of the petitioner's original shop standing over his homestead land being dismantled for expansion of the NH-39 or for that matter, the payment of compensation in place thereof. According to the petitioner, this is the fourth round of litigation in respect of the said issue.

[3.1] According to the petitioner, his father, Shri K. Heramot Singh was the absolute owner in possession of the land bearing Patta No.1133(Old)/ 52 (New) covered by C.S Dag No. 217(Old)/ 2056 (New) of 0.0040 Hectares (or 0.01 Acre) of Village-28 Thoubal Achouba. The allotment order thereof was issued by the Deputy Commissioner, Thoubal on 20-04-1987. Out of the said land, the petitioner's father executed a gift deed dated 28-08-1996 by which a portion thereof measuring an area of 21.75 ft x 6 ft (=130.5 Sq. ft) was gifted to him, because of which the petitioner's name was entered into the land records as the co-pattadar.

[3.2] On 14-07-2008, the Principal Secretary (Revenue) Government of Manipur issued a Notification under Section 4 of the Land Acquisition Act, 1894 for the expansion of NH-39 by which the land of the petitioner's father measuring 0.0032 hectare was shown to have been affected and the land measuring 0.0008 hectare occupied by the petitioner was alleged to have been left out (hereinafter referred to as "**the petitioner's Land**"). The

petitioner's father submitted a representation dated 29-11-2008 to the District Collector/ Land Acquisition, Thoubal paying for maintaining the area of his land holding as 0.0040 hectares but the same was not considered by the concerned respondents.

[3.3] The Executive Officer, Thoubal Municipal Council issued a Notification dated 20-05-2009 informing that the Memorandum of Understanding (MOU) between the shop owners and the State Government represented by the Addl. Secretary (MAHUD) would be signed on 25-05-2009 and 26-05-2009. The said MOU was signed at the intervention of the then Hon'ble Chief Minister in a meeting held on 07-01-2009 in the presence of the Joint Secretary (MAHUD), the Chairperson and the Executive Officer, Thoubal Municipal Council. After the signing of the said MOU, the Deputy Commissioner, Thoubal with Thoubal Police initiated the eviction process on 28-12-2009 dismantling the shop "Hindu Hotel" of the petitioner thereby losing his means of livelihood and right to life. The petitioner, having lost everything in the mayhem, submitted a representation dated 10-01-2010, followed by the representation dated 09-03-2010 for allotment of a shop at the Thoubal Market, which was being newly constructed.

[3.4] Being aggrieved by the inaction on the part of the respondents, the petitioner and his father approached the Hon'ble High Court by way of two writ petitions being WP(C) No.81 of 2010 and WP(C) No.188 of 2010 which were disposed of on 14-09-2010 and 24-08-2010 respectively with

the direction to the MAHUD; the Deputy Commissioner, Thoubal and the Director of Settlement & Land Records, Manipur for disposal of their representations to be submitted afresh by them. Pursuant to the order dated 14-09-2010 passed by the High Court, the District Collector/ Land Acquisition, Thoubal addressed a letter dated 03-03-2012 to the Commissioner (Revenue), Government of Manipur stating that the area of the patta land was 0.0040 hectare, of which 0.0008 hectare was left out from the acquisition process, for which he was requested to issue a corrigendum to that effect so that the acquiring Department might be moved for payment of compensation in respect of the left out area. By that time, the construction of the new Thoubal market was almost complete but the petitioner's name did not figure in the list of names of the allotment of shops. In compliance with the order dated 24-08-2010 passed in WP(C) 188 of 2010, the DC/Collector, Land Acquisition, Thoubal issued an order dated 03-03-2012 stating that the rectification process would be taken up with the Commissioner (Revenue), Government of Manipur for issuing a Corrigendum and that the petitioner was advised to move the competent authority for allotment of shop, since the Collector, Land Acquisition was not concerned with it. Accordingly, the representation dated 09-03-2010 was disposed of. Thereafter, the Revenue Department issued a Corrigendum dated 24-03-2012 showing the original-land as 0.0040 hectare in the name of the petitioner's father. In the meantime, the Addl. Secretary (MAHUD) issued an order dated 17-01-2012 to the effect that the request made by the petitioner in its representation could not be

accepted and accordingly, the representation submitted by him stood disposed of.

[3.5] Being aggrieved by the order dated 17-01-2012 of the MAHUD Department, the petitioner filed a writ petition being WP(C) No.236 of 2013 praying for quashing it and to direct the respondents to allot a shop in the new Thoubal Market. The shops were required to be allotted depending upon the area of land acquired by the State Government, as had been done in the case of Th. Mema Devi and Yanglem Mangijao Singh. The petitioner was being discriminated by the authorities for the reason best known to them. The Hon'ble High Court, while disposing of the writ petition and vide its order dated 25-10-2016, directed the authorities to consider the representation, supported by the documents, in accordance with law. On account of the failure to comply with this Court's order by the respondents, the Contempt Case No.130 of 2017 came to be filed by the petitioner whereupon the MAHUD Department issued an order dated 25-07-2018 stating that the case of the petitioner was within the purview of the land acquisition proceedings and the allotment of shops which was not related to MAHUD Department.

[3.6] Being aggrieved by the said order dated 25-07-2018, the instant writ petition has been filed on the inter-alia grounds that it was a mischief on the part of the respondents to deny the petitioner a shop or plot corresponding to the size of his land of 0.0040 hectare. If the MAHUD Department was not involved in the allotment of shops, it should not have

said in its order dated 17-01-2012 that the petitioner's request/representation for shop allotment could not be acceded as this would amount to shifting of stance of the Government. The impugned order is untenable as the petitioner is requesting for allotment of a shop under the special deal with the Government. As the MAHUD Department has failed to keep its side of the obligation/ deal, the petitioner's land should be restituted to him. The MOU was signed by the Addl. Secretary (MAHUD), representing the Government of Manipur on 25-05-2009 and 26-05-2009 and that too, at the intervention of the Hon'ble Chief Minister in a meeting on 07-01-2009 in the presence of the Joint Secretary (MAHUD), the Chairperson and the Executive Officer, Thoubal Municipal Council assuring the affected pattadars that they would be allotted shops after the construction of new market.

[4] An affidavit-in-opposition on behalf of the respondent No.3 has been filed stating that the name of the petitioner was entered in the record of rights of the land in question as the co-pattadar only in the year 2010 vide Mutation Case No.40/AS&SO TB2 dated 11-01-2010 i.e., after the shop had been dismantled by the State Government in the year 2009. But the petitioner has concealed the said facts. No area of the land in question namely "the subject land" was acquired by the Government from the petitioner at any point of time. It is a fact that the left out 0.0008 hectare of land was occupied by his father and not by the petitioner. So, the Revenue Department issued the Corrigendum dated 24-03-2012 in the name of his father and not in the name of the petitioner. The last portion of the said

order reads as follows:

"Send a copy of this order to SDO/Thoubal for causing service to Ak. Heramot Singh, aged about 72 years, S/o (L) Ak. Chaoba Singh of Thoubal Achouba, P.O. & P.S. Thoubal, Thoubal District, Manipur"

The State Government had already acquired the whole area of 0.0040 hectares of the land from his father and the shop was dismantled by the State Government on 28-12-2009. However, due to unintentional/ bonafide mistake, the area of land acquired by the Government was mentioned as 0.0032 hectare. So, the compensation of the remaining area of 0.0008 hectare of the land was later on paid to his father by issuing the corrigendum dated 24-03-2012 issued by the Under Secretary (Revenue), Government of Manipur. It has further been stated that no area of the land in question namely, "the subject land" was acquired by the Government from the petitioner at any point of time. The State Government signed the MOU with all the shop owners including the father of the petitioner prior to the eviction of shop on 28-12-2019 but it never signed any agreement /MOU with the petitioner. It has also been reiterated that the name of the petitioner was entered in the record of rights of the land as thee co-pattadar only in the year 2010 vide Mutation Case No.40/AS&SO TB2 dated 11-01-2010 i.e., after the shop was dismantled by the State Government in the year 2009. Two shops had already been allotted to his father for being the affected land owners/ pattadars of the said land acquisition process. The present writ petition is ill conceived, vague and

not maintainable and as such, the Hon'ble High Court may be pleased to dismiss it with heavy cost. In fact, no cause of action has arisen for filing the present writ petition by the petitioner. No counter affidavit has been filed on behalf of the respondent No.1 & 2 but during the course of hearing, Smt. L. Monomala, learned Government Advocate submitted that the counter affidavit filed on behalf of the respondent No.3 would be adopted by them.

[5] From the pleadings as aforesaid, the short question that arises for consideration by this Court, is as to whether any land of the petitioner has been acquired by the State Government for the purpose of expansion of the NH-39 or not. If yes, what type of compensation that he will be entitled to and in other words, whether he will be entitled to allotment of shops in terms of the MOU dated 25-05-2009 and 26-05-2009 between the shop owners and the State Government.

[6] The case of the petitioner, in short, is that his father was the owner who was in possession of a land measuring an area of 0.0040 Hectares at Village-28 Thoubal Achouba, as it was allotted to him vide order 20-04-1987 issued by the Deputy Commissioner, Thoubal. His father gave him a portion thereof, measuring an area of 21.75 ft x 6 ft (=130.5 Sq. ft), by way of a gift deed dated 28-08-1996, because of which the petitioner's name was entered in the record of rights as the co-pattadar. When the lands were acquired by the Revenue Department under the provisions of the Land Acquisition Act, 1894 for the expansion of the NH-39, only the

land of his father measuring 0.0032 hectare was shown to have been affected and the land measuring 0.0008 hectare occupied by the petitioner was found to be left out. His father raised an objection to the said Notification by way of his representation dated 29-11-2008 which was not considered by the respondents. Pursuant to a Notification dated 20-05-2009, a Memorandum of Understanding (MOU) between the land owners/ shop owners and the State Government was inked on 25-05-2009 and 26-05-2009 whereby an assurance was given to them that they should be allotted the shop plots. After the signing of the said MOU, the Deputy Commissioner, Thoubal initiated the eviction process on 28-12-2009 dismantling the shop "Hindu Hotel" of the petitioner thereby losing his means of livelihood and right to life. The petitioner, having lost everything in the mayhem, submitted two representations dated 10-01-2010 and dated 09-03-2010 for allotment of shop at the Thoubal Market, which was being newly constructed. But he failed to get anything despite several rounds of litigations before the High Court.

[7] It is well settled that when the land of a person is acquired by the Government in accordance with, he is entitled to payment of compensation. In the present case, the basis on which the petitioner has claimed his ownership thereof, is the gift deed dated 28-08-1996 executed by his father, a copy of which is filed along with the writ petition. On perusal thereof, it is seen that the gift deed may have been signed on 28-08-1996 in the presence of the witness. But it is not clear as to when it was registered at the office of the Sub-Registrar, Thoubal because there is

no any specific averment made in that regard by the petitioner in his writ petition and from the copy of the said alleged gift deed which is on record, the same appears to have been registered only on 14-12-2009 and the Jamabandi was issued on 15-01-2010 pursuant to a mutation case registered in the year, 2010. If that be the case, the stand of the respondent No.3 as indicated in his affidavit, appears to be correct to the extent that the name of the petitioner was entered in the revenue records as the co-pattadar only in the year, 2010, after his father's shop having been dismantled by the Deputy Commissioner, Thoubal. It has further been stated in his affidavit that it is the petitioner's father who was the owner of the land measuring 0.0040 hectare, for which compensations including two shops have been given to him. According to him, the petitioner is neither the owner of the said land nor has any of his lands been acquired by the State Government. There is no any MOU being signed between the State Government and the petitioner. Since the land area of the petitioner's father being shown as 0.0032 in the Notification, it was later rectified and that too, in the name of the petitioner's father and he was paid compensation for the remaining area of 0.0008 hectare as well. The petitioner is nowhere in the picture at all, when his father's land was acquired by the State Government.

[8] In the rejoinder filed by the petitioner, the averments made in the writ petition were reiterated by him and the petitioner failed to produce any document to show that his land had been acquired by the State Government for the expansion of NH-39. All the documents produced by

the petitioners are in the name of or have something to do with his father. If any of his lands has not been acquired by the State Government, the question of payment of any compensation to him will not arise at all. All the averments made by the petitioners as regards the transfer of property by way of a gift deed being executed by his father, have been denied to the extent that it was alleged to have been executed, only after the land of his father was acquired by the State Government. A disputed question of facts has arisen as regards the date on which the gift deed was registered. Such a disputed questions of facts cannot be gone into by this Court in the exercise of its power and jurisdiction conferred under the provisions of Article 226 of the Constitution of India in view of the law laid down by the Hon'ble Supreme Court in a catena of decisions including the ones rendered in **State of Rajasthan Vs. Bhawani Singh & ors, 1993 Supp (1) SCC 306** and **Visakhapatnam Port Trust & anr. Vs. Ram Bahadu Thakur Pvt. LTd. & ors, (1997) 4 SCC 582** wherein the Hon'ble Supreme Court has held that the High Court shall not go into any question arising out of the disputed facts. Therefore, it is not proper for this Court to decide such a disputed question of facts in a summary proceeding as contemplated in Article 226 of the Constitution of India.

[9] One of the points which the learned counsel appearing for the petitioner has emphasised, is that this is the fourth round of litigation, as the petitioner failed to get any relief in the earlier rounds. It may be noted that in the earlier rounds of litigation, the High Court has not gone into the merits of the case, in the sense that no finding has been arrived at by the

High Court as regards the issue whether the petitioner's land has, in fact, been acquired by the State Government for the expansion of the NH-39. In other words, the claim of the petitioner that his land gifted by his father, has been acquired by the State Government, had not been considered by the High Court in the earlier rounds of litigations. Only the innocuous orders were issued by the High Court, in the sense that all that had been directed by the High Court, is that the petitioner should submit fresh representation, supported by documents, which should be considered by the concerned authorities in accordance with law. All his representations had been rejected by the concerned authorities.

[10] In support of his contention, the learned counsel appearing for the petitioner has relied upon the decisions rendered by the Hon'ble Supreme Court in **(2010) 10 SCC 165, Shyam Telelink Ltd. Vs. Union of India** and **(2019) 10 SCC 449, Union of India & ors. Vs. Lieutenant Colonel, Kuldeep Yadav** contending that the respondents cannot be permitted to both approbate and reprobate. There can be no any dispute as regards the law laid down by the Hon'ble Supreme Court in the said cases but the fact remains that the petitioner is unable to substantiate and prove prima facie his case, in the sense that he is unable to demonstrate that his land had been acquired by the State Government, for which he would be entitled to any compensation. Therefore, the said decisions will have no application to the facts and circumstances of the present case. The land that had been acquired by the State Government, is allegedly the land of his father. No material has been placed on record by the petitioner to show that the

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transfer of the land allegedly gifted to him by his father, was registered prior to the acquisition of his father's land. In other words, the copy of the gift deed produced by him does not show clearly that it was registered before the acquisition of his father's land. This is what has been submitted by the counsel appearing for the respondent No.3 which appears to be prima facie correct on perusal of the gift deed. Since the petitioner has no good case, his writ petition is liable to be dismissed. However, it is open to the petitioner to approach any appropriate forum for redressal of his grievance.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is devoid of any merit and is, accordingly, dismissed with no order as to costs.

JUDGE

FR / NFR

Devananda