

**SUPREME COURT OF INDIA**

Nuney Tayang

Vs.

Kodelum Tayang & Ors.

C.A.No.13939 of 2015

(Amitava Roy and V.Gopala Gowda, JJ.)

01.12.2015

**JUDGMENT**

**Amitava Roy.J.**

1. Leave granted.

2. A seemingly irresolvable discord amongst a section of the tribal populace of the State of Arunachal Pradesh, over the compensation for the acquisition of land for setting up of Key Location Points (KLP) of the Army in the District of Lohit, has propelled the parties before this Court seeking its remedial intervention.

3. We have heard Mr. J.P. Cama, learned senior counsel for the appellant, Mr. Manish Goswami and Mr. Anil Shrivastav, learned counsel for the respondent Nos. 1 to 16, 17 to 19 respectively.

4. A brief factual background is indispensable. The genesis of the lis is traceable to the proceedings initiated by the appellant herein registered as W.P. (C) No. 489(A.P) of 2009 before the High Court of Gauhati, Itanagar Bench questioning the notification dated 16.2.1973 proposing to constitute "Denning Reserve Forest" under Section 5 of the Assam Forest Regulation, 1891 (for short, hereinafter to be referred to as "the Regulation") and the subsequent notification dated 23.9.1077 issued under Section 17 thereof declaring approximately 25641 hectares of land as such forest encompassing, according to him, 275 hectares of their ancestral land. In challenge was also the validity of the Tripartite Memorandum of Understanding (MOU) dated 22.3.2005 by which the villagers of the Denning Forest Area were made to agree and part with their ancestral land in question. It was averred that the land spanned over two villages, Bodaru and Chittangam, inhabited by the members of Mishmi Tribe of Lohit District, who sustained themselves on the cultivation grown thereon. The representation submitted by the appellant for de-reservation of 275 hectares of ancestral land of villages Bodaru and Chittangam for exclusion from the limits of Denning Reserve Forest (hereafter referred to as "DRF") was rejected by the Deputy

Commissioner, Tezu ( for short, hereinafter to be referred to as "the Deputy Commissioner") on 27.1.2009 mentioning, inter alia, that an area of 248.60 hectares therefrom had been acquired by the Army for which it had already deposited an amount of Rs. 2,48,60,000/- as compensation.

5. Skipping over the avoidable details, suffice it to state that by judgment and order dated 29.3.2011, the writ petition was disposed of by upholding the impugment of the notifications dated 16.2.1973 and 23.9.1977, proposing and constituting the Denning Reserve Forest covering the area of villages Bodaru and Chittangam, to be in violation of provisions of the Regulation and other laws as mentioned therein. While recording the stand of the appellant and the other land owners that they were agreeable to waive their rights over their ancestral land, as the same, was sought to be utilized in the services of the nation, the High Court directed the respondent authority to make an effort to settle the dispute with the tribal villagers by way of amicable settlement, by making payment of adequate land compensation to the individual land owners or by relocating the tribal villages Bodaru and Chittangam to a suitable site to enable them to rehabilitate themselves. A time limit of four months was granted to complete the entire process as desired. It is a matter of record that this determination remained un-interfered, though appeals were preferred before the Division Bench of the High Court followed by a special leave petition before this Court.

6. As following this adjudication, the Deputy Commissioner by letter dated 10.6.2011 addressed to the Commander, 82 Mtn. Brigade, Lohitpur forwarded the names of only nine persons for payment of compensation, computed it at Rs. 18,69,47,200/- for 248.60 hectares of land involved by excluding the private respondents herein, they approached the High Court with Writ Petition (C) No. 263(AP) of 2011, assailing the same. They pleaded to be the members of the local Mishmi Tribe of Tafragam Village of the Lohit District who had shifted there, from the land in between the Chepo, Machishee and Ohikabom Nallah in the year 1970-71 and were the actual owners of the land 'Machishee' in between the land of 'Chitangam' and 'Bodaru' Villages since time immemorial. That they used to sustain themselves by growing cultivation over this ancestral land even after their migration to the Tafragam Village was underlined.

7. They referred to the W.P.(C) No. 489(AP) of 2009 filed by the appellant and also the decision dated 29.3.2011. According to them, being aggrieved by notification including 275 hectares of ancestral land of Bodaru and Chittangam Villages in the DRF without following the due process of law, the appellant herein representing 42 persons had approached the High Court with the writ petition. They claimed that the appellant herein was authorized by the villagers of Bodaru and Chittangam Villages to challenge the inclusion of their land in the DRF in violation of law. It is in this perspective that they impeached the validity of the letter dated 10.6.2011, whereby the names of only nine persons excluding them, were forwarded by the Deputy Commissioner for release of compensation deposited by the Army.

8. The pleaded averments seem to suggest that W.P. (C) No. 489(AP) of 2009 filed by the appellant was, as authorized by the villagers of Bodaru and Chittangam Villages, with the

impression that their claim and cause would be espoused thereby. They, therefore expressed strong resentment in the exclusion of their names from the list of persons entitled to compensation as forwarded by the Deputy Commissioner on 10.6.2011 and sought the annulment thereof.

9. The High Court on 20.1.2012, noticing that the petitioners therein (private respondents in this appeal) had submitted a representation ventilating their grievances as above which had remained unattended, disposed of the petition with a direction to the respondents authorities to make an enquiry with regard to their claim and pass appropriate orders in accordance with law within a period of three months.

10. The Deputy Commissioner, having regard to the afore-stated adjudication by the High Court in the two Writ Petitions, by order dated 1.6.2012 notified all the claimants/affected persons to lodge their claims and objections, if any, with respect to the land in question within a period of 15 days and, inter alia, also set-out the steps proposed to enquire into the matter including physical/spot verification of the land, indicating as well that on the completion of the process, a fresh demand would be submitted to the Army for necessary action. As the records would reveal, this order was published in the local dailies where after a Circular dated 15.6.2012 was also issued informing those, who had meanwhile submitted their claims, that the land measuring 248.60 hectares in Denning Reserve Forest would be physically verified and surveyed on 18.6.2012 at 10 A.M. Thereby, a Committee was constituted to supervise and conduct the survey and verification. The noticees were required to be present at the spot at the time of survey/notification.

11. On the very same date i.e. 18.6.2012, the respondents herein, in writing apprised the Deputy Commissioner that the appellant Nuney Tayang had, in the meantime, arranged a mediator to amicably settle the claim and that on his (mediator) advice, they would not attend the spot survey/identification, acting on the assurance that the matter would be resolved amiably. Thus, the private respondents herein did not attend the spot survey/identification. As the documents laid in the affidavit- in-opposition, before this Court would reveal, they followed up with a letter dated 19.6.2012 to the Deputy Commissioner conveying that in view of the assurance given by the mediator to settle the claim amongst themselves, they were withdrawing the representation to the said effect.

12. The Deputy Commissioner, by order dated 22.6.2012, while recording that a physical verification of land at Bodru and Chittangam was conducted on 18.6.2012, observed that there as was no land records pertaining to the said area, being a community land, constituted a Board to enquire into the claims and the apportionment of compensation. The concerned claimants, were, thereby notified to appear before the Board on 26.6.2012 so as to enable it to conduct the necessary enquiry and record a decision on their ownership of the land.

13. On the eve of the date of the enquiry as fixed hereinabove, on 25.6.2012, a group of claimants including the appellant herein, submitted a representation to the Deputy Commissioner claiming themselves to be the owners of the land involved. They stated in

clear terms, that as per the census record for the period 1961-71 as available, the land of villages Bodaru and Chittangam was community land where the members of the Tayang clan, Tailu Clan, Draï, Tindva clan and Chiba clan had been residing. They elaborated, that they were the land owners and were growing cultivation thereon and were totally dependent on agriculture for their livelihood. It was disclosed in the said representation, that the owners and the claimants were willing to apportion the land in question among themselves and that the decision to that effect would be conveyed to the Deputy Commissioner.

14. The respondents allege that thereafter on 6.7.2012, a meeting was unilaterally convened at the residence of the appellant, in which they were not called, for which they could not participate. In the same meeting, the respondents impute, that in a self-serving manner, the persons assembled under the chairmanship of the appellant, finalized a list of 83 persons identified to be the owners/claimants, among whom the amount of compensation was to be apportioned. In the said list, name of none of the respondents was included.

15. The respondents, having come to learn of this development and being under the impression that they had been deluded and misled by the offer of amicable settlement of their claims through the mediator, addressed a representation on 17.9.2012 to the Deputy Commissioner withdrawing the revocation of their claim for compensation as earlier communicated by their correspondence dated 19.6.2012. In the said representation, not only did they accuse the appellant and his group to be involved in a wrongful endeavour to deny them their legitimate dues vis-a-vis the land to which they were entitled as per the customary law, they also questioned the claim of the appellant alleging that he was not an owner of the land in question and in fact did hail from Malogam Village and was residing at Tezu. They reiterated, that the land at villages Bodaru and Chittangam is a community land, owned by Mishmi tribe and emphatically staked their share of compensation for the land acquired.

16. On the receipt of this representation, the Deputy Commissioner by order dated 22.10.2012, constituted a Board, as referred to therein, to re-examine the issue of apportionment of land. In deciding thus, the said authority not only did take note of the factum of the apportionment made in the meeting dated 6.7.2012 referred to hereinabove, but also recorded that many new claimants had also registered their claims in connection therewith, for which it was deemed necessary to re-enact the exercise.

17. Pursuant to this order, the Deputy Commissioner issued a notice on 10.12.2012, directing the appellant to appear before the Board on 14.12.2012. Situated thus, the appellant again approached the High Court with W.P (C) No. 419 (AP) of 2012 seeking annulment of this notice dated 10.12.2012 and a writ of mandamus to the Deputy Commissioner to act on the list of 83 beneficiaries, as finalized in the meeting dated 6.7.2012 and, to accordingly, release the amount of compensation.

18. The respondents as well, instituted W.P. (C) No. 63(AP) of 2013, with the cavil that the representation submitted by them on 17.9.2012 seeking the inclusion of their names in the list of beneficiaries had remained unattended. Whereas in W.P. (C) No. 419 (AP) of 2012 filed

by the appellant, the High Court by order dated 17.12.2012 stayed the process as contemplated by notice dated 10.12.2012, by order dated 2.3.2013 W.P. (C) No. 63(AP) of 2013 filed by the respondents was disposed of with a direction to the Deputy Commissioner to examine their representation dated 17.9.2012 and to dispose of the same on the basis of the facts on record and in accordance with the existing rules and procedure.

19. The Deputy Commissioner, however, in view of the interim restraint orders dated 17.12.2012 and 19.12.2012 passed in W.P.(C) No. 419(AP) of 2012 felt it inadvisable to undertake a fresh process of re-examining the issue of ascertainment of ownership and apportionment of the compensation and accordingly, disposed of the representation dated 17.9.2012 of the respondents-claimants by recording these observations.

20. It is in this backdrop that the W.P.C. No.419(AP) of 2011 fled by the appellant along with two other writ petitions were finally disposed of by the High Court on 31.7.2013 directing the Deputy Commissioner to disburse the amount of compensation of Rs. 20,78,49,600/- to the aforementioned 83 beneficiaries after proper identification and on obtaining due receipts. As the High Court did also note that 20 more persons were claiming compensation, it required the Deputy Commissioner to obtain an undertaking from the said 83 beneficiaries that they would refund the excess amount of compensation paid, in the event the claims of these persons (20) were found to be genuine.

21. Being aggrieved by this determination, the respondents preferred Writ Appeal No. 230 of 2013, which by the decision impugned herein, stood disposed of by the Itanagar Bench of the High Court, directing the State of Arunachal Pradesh to issue appropriate notification under the Land Acquisition Act, 1894 (for short, hereinafter to be referred to as "1894 Act") for acquiring the land in accordance therewith within one month from the date of the receipt of the order, if the land is needed for public purpose. It was mentioned as well, that if no such notification was issued, the parties would be at liberty to seek their remedy for return of the land. However, if a notification was issued, it directed the Collector to determine the claim of compensation in accordance with the provisions of 1894 Act and allowed any party aggrieved by the award, to seek remedy in accordance with law.

22. Mr. J.P. Cama, learned senior counsel for the appellant has emphatically asserted that the respondents- claimants are not the owners of and/or in possession of the land in the two villages involved i.e. Bodaru and Chittangam as is apparent from the averments made in their Writ Petition i.e. W.P.(C) No. 263(AP) of 2011 and thus their claim for compensation is wholly misplaced. According to him, the appellant and other 82 beneficiaries identified and short-listed and also approved by the State Government are only entitled to the compensation deposited by the Army for the acquisition of land measuring 248.60 hectares. The learned senior counsel maintained that these 83 beneficiaries, being the genuine owners in possession of the land involved, have been subjected to harassment and prejudice by the delay caused, as they have been deprived both of their lands and compensation, for no fault of theirs. Mr. Cama, insisted that no acquisition of land involved has been effected under the 1894 Act and if at this belated stage, the same is applied, it would further delay the completion of the

process to the irreparable loss and detriment of the 83 beneficiaries already identified. According to him, the respondents-claimants have no semblance of right in the land in question and that their claims ought to be rejected in limine.

23. Mr. Goswami, learned counsel for the respondents Nos. 1 to 16, per contra, has urged that it being overwhelmingly apparent on the face of the records, that the land in question is a community land and that the respondents-claimants are also the owners thereof along with the other members of Mismi Tribe inhabiting the same from the time immemorial, the 83 persons, arbitrarily short-listed, cannot be permitted to exclusively avail the amount of compensation deposited. Contending that the respondents-claimants, at the initial stage, had been misled to believe that their claim for compensation would be amicably settled, the learned counsel has insisted that as the developments subsequent thereto demonstrated that were sought to be unfairly sidelined and deprived of their right in law, the Deputy Commissioner was perfectly justified in initiating a fresh exercise to re-visit the issue of ownership of the land involved and the apportionment of the amount of compensation in connection therewith. As the purported exercise to short-list 83 beneficiaries had been undertaken to the exclusion of the respondents-claimants, and is patently sham in nature, the list forwarded to the Government is non est in law and, thus does not confer any right on these persons to claim compensation, he maintained.

24. Mr. Anil Shrivastav, learned counsel for the respondent Nos. 17 and 18, in essence, submitted that the Deputy Commissioner in order to resolve the controversy emerging from the contesting claims of the parties, did decide to undertake the process de novo to fairly and conclusively decide on the aspect of ownership of land and apportionment of compensation and, thereby constituted a Board for the purpose and notified all concerned to participate in the impending process. According to Mr. Shrivastav, had this exercise been allowed to be undertaken and concluded, the issue would have been, by now, finally resolved to the satisfaction of all concerned.

25. Mr. Cama, in his reply, without prejudice to the challenge laid, submitted on instructions that if in the attendant facts and circumstances, this Court feels inclined to require a fresh process to be undertaken to put a quietus to the protracted dissension, then a rigid time frame may be fixed for completion of the same without, however, insisting on the initiation thereof in terms of the provisions of the 1894 Act. He, however, persistently implored for a direction to release some amount of the compensation deposited, to the 83 beneficiaries, if necessary, after obtaining an undertaking from them to refund anything received by them in excess in the event the respondents-claimants and/or others are found to be entitled thereto.

26. The pleadings of the parties, the documents on record and the rival arguments have been duly noted. The parties have filed additional affidavits to the effect that in view of the delay that has occurred and the stage at which, the process lies, they do not insist on the initiation of a drill as contemplated by the 1894 Act and that a denovo enquiry from this stage to

ascertain the ownership of the land and to determine the apportionment of compensation, would meet the ends of justice to the satisfaction of all concerned.

27. To be specific, the appellant in his affidavit has on his behalf and for all the 82 short-listed claimants affirmed that they would not in future, raise any dispute regarding the applicability of the 1894 Act (old or new) qua the procedure to be carried out by the authorities concerned as would be directed by this Court.

28. Whereas by the affidavit sworn by Ms. Lalrinpuii Hrahsell, Defence Estate Officer, Ministry of Defence, Government of India, it has been averred that initiation of a proceeding under the 1894 Act would not be insisted upon, respondent Nos. 1 to 16 have in their affidavit pleaded, that initiation of such proceeding by issuing notifications under Sections 4 & 6 of the 1894 Act may not be necessary, as the land involved has already been acquired and handed over to the Army, for which it has deposited the compensation with the State Government. It has, however contended, that the exercise to be undertaken by the Reference Court, as contemplated, ought to be limited to enquire and ascertain the interested persons/rightful land owners of the acquired land and to apportion the compensation amount amongst them.

29. In their additional affidavit, the respondent Nos. 17 to 19, representing the State of Arunachal Pradesh, have stated that for the purposes of payment of compensation to the affected persons/claimants, initiation of proceeding under the 1894 Act would not be insisted upon and that the process for identification of the beneficiaries may be pursued from the stage of the order dated 22.12.2012 passed by the Deputy Commissioner. They, however, prayed for at least three months' time to complete the exercise.

30. In the overall conspectus of the facts narrated hereinabove, we are of the considered view that in order to ensure that the compensation amount deposited by the Army for the land acquired is defrayed to the rightful claimants, they are to be necessarily identified, so that the dispute is resolved for all times to come. Admittedly, no proceeding under the 1894 Act (as amended) had been initiated. Though Section 11 of the Regulation refers to a procedure of acquisition of land in the manner provided under the above mentioned statute in the eventualities, as set-out therein, it cannot be gainsaid that if such a pursuit is embarked upon at this stage, it would considerably delay the resolution of the already protracted controversy. We are, thus, not inclined to favour initiation of a process under the 1894 Act at this distant point of time.

31. Having regard to the totality of the circumstances and also the unambiguous stand taken by the parties before us, we construe it to be expedient and in the interest of justice to remit the process to the learned District Judge, Lohit District, Teju to proceed with the same from the stage of the notice/order dated 10.12.2012 issued by the Deputy Commissioner, as referred to hereinabove. Needless to say the learned District Judge, Lohit District would issue fresh notice to the parties and to all concerned with adequate circulation and proceed thereafter to identify the owners/ persons interested in the land acquired and the rightful

claimants of the compensation therefor and apportion the amount amongst them in accordance with law. To undertake this exercise, the learned District Judge would act as a Reference Court as under the 1894 Act and invoke the powers necessary to effectively and correctly ascertain the owners/persons interested the rightful claimants of compensation and apportion the same as per their entitlements in law. The process, as directed, should be completed within a period of three months from the date of this order by which the disbursement of the compensation amount ought to be made as well by complying with the necessary formalities qua identification of the recipients to avoid any demur in this regard in future.

32. The parties would cooperate with the process, so as to enable the learned District Judge to complete the same within the time frame fixed. We part with the belief and expectation that the long standing dispute would be settled without further precipitation. The Civil Appeal stands disposed in the above terms. No costs.