

(1993) 02 GAU CK 0018

In the Gauhati High Court

Case No : Civil Rule No. 1331/90/1/91 and Original Decree Nos 4(for the appellant), 5, 6 and 7 of 1984

Hundung Victims of Development Throuth Its Convenor,
Mr.David Mahung.

APPELLANT

Vs

North Eastern Council and Ors.

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1995) 1 GLJ 124

Hon'ble Judges : W.A.Shishak, J and H.K.Sema, J

Bench : Division Bench

Advocate : Shyam Kishore Singh, S.Risom, Nandita Kaksar, Advocates
appearing for Parties

Judgement

1. This petition in CR No. 1331/90/1/91 under Article 226 of the Constitution of India has been filed by the villagers of Hundung Village, Ukhrul District, Manipur, who have formed themselves as "Hundung Victims of Development" e and the members of this petitioner orgariisatieto consists of persons whose lives have been adversely affected by the industrial policy of respondents. The members of the petitioner orgainsation have come together to defend their rights to life and to participate fruitfully in the development of the area.

2. The petitioner village is one of the largest village and it has its boundaries with Ukhrul where the District Headquarter is located. The villagers of Hundung village are the Inhabitants of Ukhrul District belonging to the Tangkhul Naga community of Manipur. Ukhrul District is situated in the East of Imphal, the capital city of the State of Manipur. Ukhrul, the District Headquarters is at a distance of about 80 KMs from Imphal The inhabitants of this hill district of Manipur are educationally and economically backward.

3. The respondent No. 1 in CR No. 1331/90/1/91 is the North Eastern & Council which was constituted under the North Eastern Council Act, 1971. Under the

aforsaid Act, the Council has a statutory duty to secure a balanced development of the North Eastern Region. Respondent No. 3 (Deputy Commissioner) is the competent authority for the acquisition of land and for all such other related problems in the district.

4. The mainstay of the Tangkhul Nagas is agriculture, especially paddy cultivation, hence the importance of land. It may be stated that agricultural land is (he only properly owned by the Tangkhul Nagasol Ukhul District. The lives of the inhabitants of this area are entirely dependent upon the yield of the hind they possess.

5. The villagers of Hundung Village have filed this petition to focus attention of the Court on the great financial loss and ecological damage suffered by the villagers as a result of development works undertaken by the respondents 1 and 2 within the village land. The projects which have been located within the 1 hundung Village land are :

(1) Construction of Mini Cement factory with an approach Toad.

(2) Construction of the ImplialUkhul Road.

(3) Construction of the Nungshangkong Mini Hydro Electricity Power Project.

In view of the above projects undertaken by the respondents 1 and 2. The Hundung villagers have been deprived of their lands including wet paddy field, fishery ponds and that too without compensation. The construction of the factory road and Hydro Electricity Station have resulted in seriously disturbing the ecological balance and also have polluted the fields. The villagers have not been provided with any alternative means of livelihood and the so called development works have not benefited either the villagers of Hundung or the people of Ukhul District. No systematics assessment has been made of these extent of damage to the economy or the ecology or how many persons have been directly affected as a result of such projects undertaken by the respondents. The development works have seriously disturbed the village economy and it will lake many decades to rehabilitate the villagers even with much labour and efforts to conserve flora. Such ecological damage make the wet lands dry for cultivation and have adversely affected agricultural production. All these erosions and balance disturbance have caused disharmony and disunity among the village community, the localities of paddy fields both wet terrace cultivation and Jhum cultivation in several areas of village land.

7. The construction of the ImphalUkhul Road, especially from Shanshak to Ukhul was undertaken by the General Reserve Engineering Force (GREF) sometime in 1981. The construction of the said road is financed by respondent No. 1. The road passed through Hundung village land. In the process of construction, intensive destruction of forest cutting through 20 KMs to 30 KMs in the middle of the village has been caused. Once a thickly forest is now stripped naked. No compensation has been made to more than 100 families whose lands

have been affected. No steps whatsoever have been taken for payment of compensation in respect of the lands affected by the said construction of ImphalUkhrul Road.

8. The Hundung Cement Factory laid its foundation in the year 1981. It was Commissioned in the year 1989. The establishment of the factory has affected about 150 hectares of village land in terms of losing grazing grounds for cattle, forest, paddy fields and Jhum lands. Dust and smoke of the factory are causing much pollution and health hazard among the workers and inhabitants of this village. It was sometime in 1980 that the villagers were informed by (he Deputy Commissioner that the Govt. would acquire some land in the village for establishment of cement factory. The villagers were given promises of development in the village and also adequate compensation and employment of the villagers in the factory. On such assurances the villagers agreed to have the factory located in the village.

9. It may be stated that the cement factory is the first of its kind in the entire State of Manipur. The cost of the factory is said to be about Rs.3.40 crores of which the respondent No. 1 meets Rs. 2.06 crores.

10. In January, 1981, the respondent No.3 brought out the notification , stating that lands of 14 persons would be acquired for the above project. However, shockingly, rates of compensation were 0.06 paise per square loot for first grade land and 0.04 paise for second grade land. The people of this village felt cheated and the case was filed in the District Court in Imphal. Having failed to obtain relief, the villagers went on appeal to the High Court. Sometime in 1988, more lands were taken over by respondent No.3. This lime rale of c compensation was 0.25 paise per square foot for jungle land, 0.60 per square foot for paddy land plus 30 percent solatium. However, even for the second time 25 families whose lands have been taken by the Govt, no compensation was ever paid. On insistence of villagers some persons were later give jobs as casual workers but some time in 1990 the services of all of them were terminated.

11. Construction of Nungshangkhong Mini Hydro Electricity in the year 1984 has badly affected the fishcumpaddy agricultural system, fertility of paddy fields, intercropping of maize, rice, beans, soyabeen, yam etc. Production of intercropping in wet terraces is higher by 80 percent yield than land terraces. However, diversion of water towards the Mini Hydro Electricity and the cement factory has made the paddy fields become dry in the lean season thereby affecting the agricultural production. Deforestation of catchmes area has destroyed the paddy fields causing land slide, siltation etc. Scarcity of water for irrigation is due to diversion of water for the Mini Hydro Electricity Project. The technology used for the cement factory is out dated. The transformer used in the Mini Hydro Electricity Project has never functioned properly. No benefit has been derived out of the Hydro Electricity Project. On the contrary, the villagers are left landless, jobless and much poorer.

12. It is stated that the poor and backward tribal people of this village have approached the State Government on many occasions to come to their rescue and to save them from the present plight of their lives which have been affected as a result of the projects undertaken by the respondents, but such appeals have gone unheeded and the people of this village are still crying for justice.

13. During the pendency of this petition, the petitioner made another application on 22.11.91 to take immediate action to shut down cement factory and to install all pollution control measures on the grounds, inter alia, that there is serious health hazard as a result of pollution caused by the mini cement factory situated at the village. It was averred in the said petition that as a result of the pollution the workers are suffering from serious health problems and the entire environment has been polluted resulting in death of cattle and ruination of paddy field, that the majority of the workers at the factory have been suffering from chest pain, that those who are near the kiln are also exposed to carbon monoxide fumes and as a result several workers have fainted. In support of the averments made in the petition several affidavits were filed by workers of the factory as well as by villagers of Hundung. It was further averred in this petition that there is no medical facility at the work site and also there is no good drinking water. It is stated that there are no adequate safeguards for the workers, villagers and also environment around the factory site. After hearing learned counsel on both sides we directed the State Government to appoint a competent committee of experts consisting of 3 or 4 persons or as deemed fit by the Govt. of Manipur to assess the extent of pollution caused by the factory within the premises and also to the environment. The constitution of the expert committee was to be done within 10 days from 28.11.91. The committee so appointed was directed to submit report to the Magistrate within 10 days thereafter. We also directed the District Medical Officer, Ukhrul to depute a team of Doctors to examine the health of the workers and to give every possible medical treatment. The said medical team was directed to submit a report within 20 days from the date of order. As directed reports have been submitted and they have been placed on record. We shall deal with the report later.

14. Although, Rule was issued on 27.7.90, no progress was made in this case till end of 1991 as respondents had sought time on several occasions to file affidavit in opposition. Respondents 2 and 3 filed affidavit on 7.1.92. By order dated 10.1.92, the matter was finally set down for hearing.

15. In order to expedite the process of disposal of this writ petition, we also directed the respondent No.3, the Deputy Commissioner, Ukhrul by our order dated 28.11.91 to make all documents/materials/information available to this Court in regard to the assessments of the actual amount of financial loss suffered by the villagers of Hundutjg as a result of the construction of Impah Ukhrul Road, the Mini Cement factory, and the Mini Hydro Electricity Power Station. The respondent No.3 was directed to file the report within 15 days from the date of receipt of the order. It was directed that the respondent No. 3 should file

document/informations which are directly related to the issues raised in the writ petition. Necessary documents/materials of assessment of loss suffered by the villagers of Hundung village have been submitted by the Deputy Commissioner (respondent No.3) we shall advert to this also later.

16. The main averments made in the affidavit filed on behalf of respondents 2 and 3 are as follows:

(a) The writ application is not maintainable on the grounds that the petitioners rights has not been affected in the acquisition of land for the 3 projects, that all the affected, persons are not before this Court, that the petitioner is not competent to represent on behalf of the victims of the development undertaken by the Government, that there is alternative remedy in terms of section 18 of the Acquisition Act.

(b)The mistake in the notification that 1,44,975 acres was to be acquired was a mistake and it was duly corrected by a subsequent notification as 14,497 acres. This was for the approach road to cement factory.

(c) In respect of payment of compensation to some persons affected by the acquisition of land for the purpose of Mini Cement Factory, it is stated that they were paid compensation with 30 percent solatium. In is however stated that so far 26.44 acres of land have been acquired for the purpose of cement factory. The actual land required is 67.6327 acres of land are yet to be acquired. No step have been taken as required under the law for the acquisition of the remaining 31.1927 acres.

(d) 16.5761 acres of land is required for lime stone quarry and . 137 acres of land is required for magazine. It is stated in the affidavit that notification is yet to be issued for the purpose of acquisition of this land. This is however explained that this was in view of order passed by this Court on 13.9.90 directing the respondents not to proceed further with the acquisition matter.

(e) As far as the ImphalUkhrul Road is concerned, it is averred that the land on which the road is constructed is Government khas land. Therefore, it is averred that question of payment of compensation in respect of this land does not arise.

17. Arguments began on 22.1.92. During the course of hearing on 29.1.92 it was brought to the notice of this Court that 4 appeals preferred by some of the villagers of Hundung in respect of quantum of compensation paid to them by the Govt. of Manipur in respect of land acquired for the, purpose of Mini Cement Factory, were still pending before this Court since 1984. The said appeals are: FA4(a) of 1984, 5 of 1984, 6 of 1984 and 7 of 1984. This Court felt that it would be just and convenient to hear the above appeals with the present petition and as directed the said appeals have been placed before us for disposal along with the writ application as it is submitted on behalf of respondents 2 and 3 that any finding of this Court in regard to the amount of compensation in the writ petitions might prejudice the aforesaid appeals. Indeed, our fundings in this writ

petition shall govern these four appeals in regard to the rate of compensation, interest and payment of solatium.

18. Let us deal with the 3 development projects one by one. First, let us deal with the construction of a Mini Cement factory with an approach road. The Mini Cement factory at Hundung with install capacity of 50 metric tonnes along with approach road came up in or around 1981. The project is funded by the North Eastern Council (respondent No. 1) and a Member of the NEC sits in the Board of Directors. The cement factory is owned by the State of Manipur (respondent No.2) and it is registered with the Registrar of Companies as Manipur Cement Ltd.

19. The grievance of the petitioner is that the Govt. of Manipur has taken away land for this project without following the procedure laid down under the Land Acquisition Act. At the beginning the Govt. of Manipur had acquired the land of 14 persons under the notification dated February 28th, 1981. As stated earlier the Collector fixed rates Of compensation for two classes of land at Rs. 00.04 paise and Rs.00.06 paise per square foot with no solatium at all, although the villagers had claimed Rs. 17,427 to Rs.21,700, One of the 14 persons Mr. YL Needson was not given any compensation. It may however be stated that subsequently this man was also paid compensation although the rate was too little. The villagers were completely deprived of the solatium which is due under the provisions of law. All throughout the complaint of the petitioner is that even in these cases where compensation was paid the rate was extremely low. The fact that, only 0.04 paise and 0.06 paise were paid for the two grades of land respectively, is borne out by Annexure D/1 (Govt. notification filed by the respondent No. 2 in this case). The second notification was dated November 7th, 1987. In this notification, compensation was fixed at the rate of Rs.00.60 paise per square foot for paddy land and Rs.00.25 paise per square foot for jungle land with 30 percent solatium. This is borne out by Annexure D/2 at page 25 of the Govt. affidavit. The grievance of the villagers is that the amount of compensation is extremely low. Further grievance is that the said notification was published several years after the land was actually taken possession of by the respondents. The third notification for further acquisition of land for the cement factory was published on 22nd August 1990. stating that the Govt. was going to acquire more land which was likely to be used for construction of the cement factory. Although it was shown as 1,44.975 acres in this notification, by a subsequent notification published on 23rd November. 1991. the figure was corrected as 14 acres. The acquisition of the land measuring about 14 acres as stated above, affected 23 persons whose land had already been taken away for the construction of an approach road to the cement factory.

20. It is submitted on behalf of the petitioner that notification was published more than 10 years after the land had been taken away and the approach road had been completed. It is also submitted that it is unthinkable in a democratic society like ours that the people would have no right to file objection under section 5A of the Land Acquisition Act as is borne out by Govt notification. It has

been strenuously urged before us by the learned counsel for the petitioner that the villagers are illiterate and backward Naga tribals of Manipur. and there is none to speak for them and as such their rights have been trampled under the feet of the State Government. It is stated that Hundung villagers are voiceless and helpless people. For the subsequent acquisition of 14 acres for the purpose of cement factory no rate of compensation has been fixed.

21. It may be stated here that the Govt. of Manipur has been extracting huge quantities of Lime stone from the village quarries for this cement factory, although the land has not been acquired nor has any compensation been paid to the land owners. This contention of the petitioner is supported by Govt. affidavit at page 5. It may be stated that the respondent No.3 (Deputy Commissioner, Ukhrul) had fixed the rate of compensation for the limestone area vide his letter No. 10/90/DC/8/Rev dated 30th August, 1991. This fixation of amount of compensation was made 10 years after the respondent had taken possession of the quarries. It is contended that the Govt. of Manipur has been mining this area since 1981 at huge profits. It is stated that the Govt. is going to fix "Surface rent" for the land taken over for the lime quarry and also for magazine. Such proposal is not at all acceptable to the villagers. The rate of compensation fixed by the Deputy Commissioner, vide his letter dated 30th August, 1991 is acceptable to the petitioners but with the interest and solatium in accordance with the provisions of law. Our attention has been drawn to AIR 19X9 SC 1530 (para 15) and it is submitted that adjacent lime quarry being "mine" within the meaning of section 2 (h) (iv) and section 2 (h) (vi), payment of "surface rent" is unfair and unacceptable.

7 22. It is also submitted that rate of compensation fixed at Rs. per square foot 11 of Mr. Needson's land is absolutely low and the said fixation also has been made without interest. So also is the submission in respect of the land acquired for the 2 metric tonnes magazine at Rs. 2 per square foot, apart from the fact that the Mini Cement factory and the limestone quarry have been done without having regard to the ecological damage.

23. Let us now deal with the construction of ImphalUkhrul Road. The road construction in question was completed in or around 1981 but the entire land which has taken possession of as a result of the construction of the said road has never been acquired. Since the Govt. stand in this regard is that the land in question is Govt. khas land and therefore payment of compensation to any person does not arise, no assessment of loss suffered by the villager as a result of cutting down valuable lives, species of grasses, ornamental trees and many other valuable trees which were completely felled and destroyed has ever been made. The submission of the learned Govt. Advocate that ImphalUkhrul Road was constructed on Govt. khas land is not acceptable to us. The hill areas of the hills have never been assessed for the purpose of payment of land revenue. The Manipur Land Revenue and Land Reforms Act, 1960 also does not apply to the hill areas. In fact, the land of the entire district of Ukhrul is owned by the local Naga

inhabitants themselves. Unless otherwise acquired, the State of Manipur does not own any portion of land in the district of Ukhrul. No doubt, with the passage of time and in view of necessity of housing important, Govt. offices institutions and official residences, it would be necessary to acquire land in the District Headquarters or in such other places where such need arises. Exception such a situation, the land in the hills is owned by the inhabitants (the community). This has been so from time immemorial and it continued during the British regime. No land is ownerless in this area inasmuch as there is well defined boundaries between villages.

24. It may also be stated that except annual house tax of Rs.5 or so which every household pays to the Govt. no inhabitant of the district of Ukhrul pays land revenue for any land possessed and owned by him. In the words of British Officer named T.C. Hodson there was need distinction of various types of land in Naga villages even in 1910. We may extract, his own words. "Each village possess a well defined area of territory not only of cultivated and terraced land but of Jhum and waste land as well?. The fact that Ukhrul Subdivision (now district) was also classified as one of the hill areas having 244 villages also borne out by a statement found in book entitled A Study of the Land System of Manipur published by the Law Research Institute. Eastern Region. Gauhati High Court. The relevant portion is found at page 30 and is as follows :

"The State Government has since notified that the following are the hill areas namely,

1. Jiribam SubDivision (mainly plains). Hill areas only 24 Villages. (In the remaining 92 villages, the MLR & LR Act, 1960 was extended under Government Notification No. 142/18/60R dated 22.2.62, and these 92 villages are included in the plain portion of Imphal District).

2. Tehgnoupal SubDivision.190 villagesHill Areas.

3. Tamenglong SubDivision 196 villages Hill Areas.

4. Ukhrul SubDivision 244 villages Hill Areas.

5. Mao & Maram Subdivisipn 312 villages 7 Hill Areas.

6. Churachahdpur Subdivision 225 Villages Hill Areas,

(In the remaining 89 villages of Churachandpur, the Act was extended in 1962 vide Notification No. 142712/60M dated 22.2.62).

In the above named "hill areas" the MLR & LR Act 1960 does not apply.

25. We are here concerned with hill areas of Ukhrul Subdivision (now district) which are inhabited by the Tangkhul Nagasvwho belong to the Scheduled Tribes of Manipur, In AIR 1961 Manipur 31, Luitang Khullakpa & others vs. Deputy Commissioner of Manipur & others, the learned Judicial Commissioner held that there is no Government khas land in the hill areas of Ukhrul. The ownership of

land situated in hill villages at Manipur vests in the villagers. They do not hold the land under the pleasure of the Government. It was held that if land is to be acquired for public purpose from the villagers of hill village, provision of Acquisition Act must be followed. We have gone through the above judgment and we are of the view that the findings of the learned Judicial Commissioner are correct and the decision rendered in this case still holds the field and we are entirely in agreement with the findings in the aforesaid case. In view of what has been discussed above, we do not accept the submission of the learned Govt. Advocate in this regard.

26. The Deputy Commissioner has also submitted the list of land owners who have been affected by the construction of the ImphalUkhrul Road in response to the direction given by this Court on 28.11.91. The list shows that there are 22 persons whose paddy fields have been affected by the construction of the said road. It is also admitted by the respondent No.2 in the affidavit that the construction of the road has had "indirect effects". Admittedly land has been taken away from the owner and fields have been damaged as a result of construction of the ImphalUkhrul Road, but till today no steps have been taken for payment of compensation to the land owners.

27. We shall deal with the third project, namely, Nungshangkong Mini Hydro Electricity Power Project and its adverse effect on the paddy field of the villagers of Hundung. Admittedly no land belonging to Hundung was acquired for the purpose of this project. In other words, lands which were affected in the construction of this project belong to the other neighbouring villages. The main grievance of the petitioners is that the effect of diverting the water to the power project and to the Mini Cement factory has directly led to greater financial loss to the owners of the paddy fields which have gone dry. The diversion of water for the aforesaid project has resulted in the loss of yield of paddy fields. As a consequence, loss of income from pisciculture has also been occasioned. In this regard also the respondent No. 3 has assessed the financial loss from pisciculture and loss of yield of paddy.

28. At this stage we may state that the Nagas whose lives are entirely dependent upon the yield of the land in terms of paddy and other crops greatly value paddy fields especially, wet paddy fields. Therefore, we need hardly emphasise how important land is to the indigenous inhabitants of the hills. In 1896, Major General Sir James Johnstone in his book entitled "Mairipur and the Naga Hills" states: "the terrace land used to be greatly valued, and was often sold at prices equal to ? 22 to 25 per acre : " That was written one century ago. The importance of the land has since increased several folds.

29. Mr. L. Shyarnkishor Singh, learned Addl. Govt. Advocate submits that the petitioner being not an affected person cannot approach this Court in public interest litigation and he has no locus standi to do so. As against this, learned counsel for the petitioner has drawn our attention to serial No. 22 of the report of respondent No.3 where the name of the petitioner is shown as One of the affected

persons as result of the construction of Imphal Ukhul Road. The name of the petitioner also finds place at serial No.9 of the report of respondent No. 3 as affected persons for loss from pisciculture in respect, of construction on Mini Hydro Electricity and ImphalUkferul Road. The name of the petitioner found at serial No.1 as affected person in the construction of ImphalUkhrul Road inasmuch as his paddy field was damaged the said process. Also we find the name of the petitioner at serial No.11 as affected person in the construction of Hydro Electric Projects. Thus, it is abundantly Clear that the petitioner is one of the many affected persons of Hundung Village. In such a situation we are unable to accept the submission made by the learned Govt. Advocate and we hold that the petitioner who represents the Hundung Victims of Development himself is an affected person. At the same time in the background that the people of this village are illiterate, backward and poor, the petitioner has come out himself and has taken upon himself the responsibility of focusing the attention of this Court in regard to the various allegations made in the petition. We only take him as public spirited man who can only be termed as the voice of the voiceless. Mr. Shyamkishor Singh's another submission is that since the petitioner has remedy under section 18 of the Land Acquisition Act, this Court should not issue any writ as sought for in this petition. We have no doubt in our mind that in normal course, ordinary law of the land should be resorted to in order to vindicate the right of the petitioner. However, in the situation and circumstances as narrated above in this case, we are of the view that we must exercise our jurisdiction under Article 226 of the Constitution, because of the fact that although lands were taken possession as early as 1980/81, notification for acquisition of land was made only 10 years later that when payment was made to some of the villagers the rate fixed by the respondents was really too low, that in respect of land taken possession of by the respondents for the purpose of approach road to cement factory, no steps have been taken for payment of compensation, that this is the same situation in regard to the land further taken possession by the respondents for the purpose of 2 metric tonnes magazine, the most shockingly the State of Manipur has taken the plea that the land on which ImphalUkhrul Road was constructed is Govt. khas land and therefore no compensation could have been paid to the villagers of Hundung village.

30. It may also be further stated that even some of the persons who have been paid some amount of compensation and who were not satisfied with the amount paid to them have gone to the Court for enhance of rate of compensation but the appeals have been pending before the Court since 1984. In such a situation, the poor, illiterate and helpless villagers would not have got efficacious remedy by simply submitting appeals and memorandum to the State authority. In fact, in such a situation, we are of the view that this Court must step in to save the situation in exercise of jurisdiction under Article 226 of the Constitution. In this view of the matter, the submission made on behalf of the respondents cannot be accepted.

31. As stated earlier, an Expert Committee was constituted by the Govt. of

Manipur pursuant to the order of this Court dated 28.11.91 and the report was submitted on 23.1.92. The committee was to assess the extent of pollution caused by the Hundung Mini Cement Factory. The entire report from paragraph 1 is extracted as under:

"The mini cement factory at Hundung adopts semidry process. Hence, the omission of smoke and dust is very low and negligible as indicated by the main deposition of whitish particulars on the green foliage in (he immediate vicinity of the mini cement factory. The plant population do not exhibit any sign of necrosis, chlorosis and wilting since the plants still sprout.

The Just output is low, the conveyor passage is short and the spread area is about 50 metres radius depending upon wind direction. Thus most of the dust is accumulated on the surrounding vegetation within the premises of the factory. Further, the towering hill adjacent to the mini cement factory serves as an effective barrier for further spread of smoke and dust to the nearby human habitation.

2. That the emission of sulphur dioxidean obnoxious gas inhalation of which may cause bronchial infectious to the human population is negligible since the fuel used is solely coke breeze and its sulphur content is almost nil. Taking into consideration of the size and capacity of the mini cement factory and possible emission of pollutants from it, human settlements seem to he at quite a sale distance for any adverse cited to manifest of human health.

3. That as regards the apprehension about the possible emission of carbon monoxide another gas that may have a deleterious effect on human health, the process adopted in the plant suggest that any amount of carbon monoxide originally produced is ultimately oxidised to a great extent before having time to escape from the chimney, which is a normal phenomenon. Besides, the existing topographical conditions, entail that any amount of carbon monoxide if emitted, will be rapidly dispersed and diluted so as not pose health hazards to the nearby villagers. As die location of the mini cement factory is at high altitude, most of the gases will he dissipated in the higher regions.

4. Thai it was observed that the noise produced inside the factory was within the tolerable limit.

5. That the mini cement factory does not produce discharge of any kind containing waste products that may give rise to water pollution. A little quantity of coolant water from the factory is directed through a canal of 10 inches width toward the Nungshangkong (Thoubal) river about 1 KM away from the factory site. The deposits in the canal were found to be solely constituted of sand and slit with no traces of carbon.

6. Thai the Stale Public Health Engineering Department constructed a water supply scheme exclusively for the mini cement factory at I hindung having all necessary units for providing safe drinking water. The employees and workers of

the factory are depending for their daily consumption of water, on this water supply scheme. Under the circumstances, the chances of pollution of drinking water is quite remote.

The above observations indicate no significant signs evincing environmental pollution.

However, chemical and instrumental analysis of dust and smoke could not be undertaken for want of time.

After a due inspection of the Hundung Mini Cement factory, the team of experts is obliged to put forth the following suggestions for further improvement of the working condition of the plant :

1. That a long term/regular monitoring of environmental pollution be carried out with suitable gadgets at the site.

2. That in order to maintain a minimum standard of occupational safety and health of workers in the factory the advisable measures to be adopted are :

(a) Displaying information on safety.

(b) Instruct the factory workers, especially those newly recruited, of the dangers associated with their work and safety rules they should follow.

(c) Regular use of safety aids such as helmets masks, gloves, face shields and safety goggles provided by the Management as and when required.

(d) Availing of ear plugs or muffs to workers in areas within the factory premises where it is considered necessary.

(e) Over and above the existing vegetation, an extensive tree plantation be taken up as to further mitigate any possible air pollution.

3. That the existing pollution control devices already installed in the factory be maintained properly in order to achieve an optimum efficiency.

4. That the existing system of handling and bagging of cement be improved.

5. That the smoke chimney be fitted with antipollution devices when there is maximum production.

6. That efforts be made to improve the working conditions of raw mill and cement mill underground tunnels.

Sd/ (Dr. S. Chauba Singh) Sd/ (S. Lalit Singh)

Member, Secretary, Committee of Experts. Chairman, Committee of Experts."

Sd/ (Dr. S.C. Kundu) Sd./ (K. Sompath)

Member, Committee of Experts. Member, Committee of Experts.

It is unfortunate that the Expert Committee did not undertake chemical and

instrumental analysis on the ground that there was no time to do so. However suggestions made by the committee indicate that all is not well with the cement factory at Hundung.

32. We may also refer to the medical report submitted by the District Medical Officer, Ukhrul as directed by this Court on 2S.11.91. The medical team examined 20 employees of the factory. Their finding is in the last 4 paragraphs which we extract:

"Out of 24 examined. 12 had minor ailments like skin problem mild pharyngitis and 8 had moderate health problems of which 6 had been prescribed appropriate treatment and the remaining 2 had been advised further investigation pending diagnosis and treatment.

However, the diseases detected in the above mentioned workers cannot be correlated with their work in factory except possibly pharyngitis (one case).

The hazardous effects of dust are mainly in the lungs and that also depend upon a number of factors such as (a) chemical composition, (b) fineness, (c) concentration of dust in the air, (d) period of exposure and, (e) health status of the person exposed for example silicosis few month to 6 year exposure, anthracosis 12 years exposure asbestos 5 to 10 years exposure. In addition to this toxic effect of dust in the lungs tissue the super imposition of infections like tuberculosis also may influence the patterns of pneumoconiosis.

As the factory is hardly running 2 years it is too early for us to detect the above major occupational diseases.

Lastly development of a green belt by active planting of evergreen leafly trees will greatly reduce dust pollution in the surrounding villages.

Sd/Medical Officer I/C Sd/Medical Officer Sd/Medical Officer I/C

District Hospital District Hospital, District T.B. Centre,

Ukhrul, Manipur Ukhrul District. Ukhrul

The factory has running for the last about 2 years. According to the Medical team, it is too early to detect major occupational diseases.

33. On perusal of report of assessment made by respondent No. 3 we have no doubt in our mind that due to the diversion of water for the Mini Hydro Electricity Project and also for the mini cement factory, the yield of the paddy fields has decreased considerably thereby causing great loss to the field owners. It appears to us that the dry up of paddy fields during lean season is due to improper management of water of the Thoubal river. If properly managed, the paddy fields should have sufficient water through out the season. The generation of electricity and production of cement should not bring about deprivation of the means of livelihood of the poor villagers. We may refer to a desperate plea of Dr. BD Sharma, Commissioner for SC and ST in the 29th Report submitted to the

President of India on 28.5.90. Para 83 runs as under :

"And there is a need for national resolution as well as for creating a climate of goodwill, particularly in the tribal areas. A unilateral process of development should not be imposed on the voiceless people. Their life should not be put to stake in the name of national development and high ideals. Today the tribal people have nothing but the backlash of development in the name of development which has lead to disorganisation as a community and destitution as individuals.

Everywhere the tribal is pleading with folded hands "donot burn my hut".... save me, where I will go?... "Our maiya (Mother) will be left behind" or also bomb and finish us ?....But there is no one to listen to him. The moving words of his pathetic pleas will keep wandering filling these hills and forests they will continue to reverberate perhaps stemally, laden with the chilling message of the helplessness of man in the face of an inhuman system."

A portion of para 84 is also extracted :

"Instead of being concerned about moving ahead in a great hurry, the tribal people should be given, as the first step, the responsibility of managing their own social economic life on the one hand and should be made partners in the larger national development on the other. It is possible that the pace of change and development may have to be as lowed down to some extent. It is also possible that we may have to stop "for a while in some places. But this is necessary and also desirable. If this, caution is not exercised, the wheel of development itself may crumble in the face of bubling discontent and erupting revolts in the tribal areas."

34. On perusal of affidavits and documents of sale of lands filed by the petitioners and other villagers in regard to the value of land as it is prevalent, the rates so far fixed by the Government are far too low. It is stated at para 8 of parawise comment/reply given by the respondent No. 3 to the Govt. that even Government takes Rs. 3/ per squire foot as premium in case of allotment made to individuals. If that is so, it appears to us that it will not be fair to pay less amount of compensation when lands are acquired by the Government from individual land owners. It may be stated that premium charged by the Government is normally less than the market value. As we have stated above, the value and importance of land in this tribal area need hardly be emphasised.

35. We have carefully gone through the report of the Expert Committee. Apparently this committee did not have the necessary equipment to measure air and dust pollution. Respondent No. 2 admits this fact in the affidavit. At the same time it is stated in the report that the committee did not have sufficient time to carry out chemical and instrumental analysis of dust and smoke. The committee, perhaps, went to the factory site from Imphal and came back on the same day. In our view, it is a very serious matter. Therefore, an Expert Committee having adequate equipment should examine the aspect thoroughly.

Needless to say that every worker at the cement factory or villagers of Hundung village or for that matter, every citizen, has a right to fresh air and to live in pollutionfree environments.

36. In the result, the writ petition is allowed with cost which we quantify at Rs. 10,000/and the Rule is made absolute.

We give the following directions :

A. The respondent No. 3 (Deputy Commissioner, Ukhrul) shall take immediate steps to verify all the transactions of lands in terms of affidavits and sale deeds/ agreements etc. filed by the petitioners and fix reasonable rate of compensation in the light of our findings. As is mandated by section 15 of the Land Acquisition Act 1894, the respondent No. 3 shall be guided by the provisions of sections 23 and 24 of the said Act.

B. Compensation fixed for the land acquired for the purpose of lime stone quarry be paid as assessed by the respondent No. 3 vide his letter dated 30.8.91.

C. Compensation be paid to the 22 (twenty two) persons whose fields had been affected by the construction of ImphalUkhrul Road as per assessments made by the respondent No. 3.

D. Compensation for loss of pisciculture and also loss of yield of paddy as h a result of construction of ImphalUkhrul Road and construction of Mini Hydro Electricity Project at Nungshangkong be paid to the affected persons, as per list and assessment made by the respondent No. 3 (vide pages 391395).

E. Compensation shall he paid with interest al the rate of 15% on the amount not paid or deposited before taking possession of land as prescribed under the proviso to section 34 of the Land Acquisition Act. Solatium shall also he paid at the rate of 30%.

F. As staled in para 17. our findings in this petition shall govern the four appeals refers to in that para and the said appeals stand disposed of.

G. Payment for financial loss in terms of assessment made by the third respondent, and land compensation under the Land Acquisition Act. he made within a period of 3 months from today and copy of Award made in this regard he filed with this Registry.

H. Let the Eco System Research Centre. Department of Life Science. North Eastern Hill University, Shillong constitute a team of experts on air pollution to assess the extent of air pollution in the mini cement factory and in the environment within one month from today. The learn so constituted shall submit its report to this Registry within March. 1993. The expenses incurred by the expert team shall be borne by the North Eastern Council, respondent No. I.

I. The Indian Council of Agricultural Research (ICAR) shall constitute a team to even line the Nungshangkong MiniHydro Electricity Power Project and suggest/

recommend how sufficient water shall be made available for the paddy fields. The said team shall examine whether there is necessity to redesign the whole project. This shall be done within 3 (three) months from today. Report shall be submitted to this Registry.

The respondent No. 2 is directed to implement the recommendation made by the Committee of Experts for assessment of the extent of pollution, vide its report dated 23.1.92 and also the recommendation made by the Medical Team vide its report dated 21.12.91 within 3 (three) months from today.

37. We are not finally disposing of this writ petition at this stage. We keep it pending for the purpose of monitoring the above directions. It shall be listed after 3 months.

38. The copies of this order be sent to all the authorities mentioned in the above directions.