
(2012) 03 GAU CK 0100
In the Gauhati High Court
Case No : Writ Petition (C) No. 96 of 2009

Richungnunga and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2012 Guw 110

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : B. Lalramenga, J.C. Lalnunsanga, Reuben L. Toichong and Ms. Bobita Lalhmingmawii, for the Appellant; S.N. Meitei, CGC, A.K. Rokum, Addl, Advocate General, Vanlalnghaka, CGC, for the Respondent

Final Decision : Allowed

Judgement

S.R. Sen, J.—102 Nos. of petitioners approached this Court under Article 226 of the Constitution of India praying for issue of writ as they suffered loss at a tune of Rs. 31,34,658.00 (Rupees thirty one lakhs thirty four thousand six hundred fifty eight) only due to the damage caused to the trees, crops and houses due to the construction of a motorable road by BRTF/respondent No. 5. The Learned Counsel appeared for and on behalf of the petitioners submitted that, after the damage caused to the property of the petitioners, a joint survey was conducted by the Deputy Commissioner and BRTF together and assessed the damage at the tune of Rs. 31,34,658.00 and which is at Annexure-6. In spite of the assessment done by the Deputy Commissioner in the month of March, 2000 till date, the compensation for damage has not been paid to the petitioners, so, they compelled to approach this Court by way of writ under Article 226 of the Constitution of India. On the other hand, learned Addl. Advocate General appeared for and on behalf of the State Mr. A.K. Rokhum, submitted that State has nothing to do in this case after joined survey and preparation of compensation statement which is at Annexure-6. Learned Counsel for the NEC,

Mr. Vanlalnghaka, submitted that NEC has already paid the amount involved to the BRTF, so, it is the BRTF should make the payment not the NEC. On the other hand, the counsel for the BRTF Mr. Vanlalnghaka has submitted that it is NEC to give fund, so. BRTF can pay the compensation assessed by Deputy Commissioner and BRTF jointly. Learned Counsel, Mr. S.N. Meitei, also submitted that the instant writ petition is not maintainable on the ground that petitioners had an opportunity to approach the Civil Court and should not have come directly to the High Court under Article 226 of the Constitution of India. He also further submitted that petitioners very carefully bypass the Civil Court just to avoid the delay already been caused to file the Civil Suit.

2. After hearing the Learned Counsels for the petitioners and respondents. It is cleared and admitted facts that damage has been caused to the property of the petitioners and there is no denial about it as appeared from the submission forwarded by Learned Counsels at bar.

3. It is also fact on records that a survey, was conducted by the Deputy Commissioner to assess the damage which is reflect at Annexure-6 and there is no dispute or denial from either side.

4. In my considered view, when actual damage has been caused and the damage has already been assessed by an authority, petitioners is entitled for compensation for the damage caused to them. It is immaterial if the party approach either to Civil Court or Court of Writ. It is also settled principle that, if delay due to genuine cause or ignorance such delay to be condoned. Primary duty of the court is to render substantial justice and not to shut the door of justice on mere technicalities.

5. I agree petitioners could have approached the Civil Court in appropriate time" but they did not do so; and only for that reason, I am not inclined to turn down their petition before me when the fact remains that petitioners suffered loss due the damage of property during road construction by the respondent No. 5.

6. From the submission of the Learned Counsels at bar, it appears that, both NEC and BRTF are shifting their liabilities to each other which can not be accepted. Hence respondent Nos. 2, 5 & 8 are hereby directed to release the amount of compensation as assessed by the Deputy Commissioner, Kolasib District vide Annexure-6 within 2 (two) months from the date of this order, if the compensation amount of Rs. 31,34,658 is not paid within 2 (two) months respondent will be liable to pay 12% interest per annum. It is also ordered that, if at all part payment is made to the petitioners that has to be adjusted accordingly. And it is further directed that while making payment, the payment should be made to each and every individual petitioners through cheque as per their individual entitlement of loss. With this observation and direction, this writ petition is allowed and stands disposed of.