

GAHC040001822023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**(ITANAGAR BENCH)**

**Case No. : CRP 6/2023**

1: THE UNION OF INDIA and 3 Ors.  
Represented by the Defence Secretary, 101A South Block, New Delhi 110011

2: The Director General of Defence Estate (DGDE)  
Raksha Sampada Bhawan  
UlaanBaatar Marg  
Delhi Cantonment. PIN 110010

3: The Principal Director of Defence Estates (PDDE)  
AC 4  
4/1  
Belveder Road  
Alipore  
Kolkata  
West Bengal. PIN 700027

4: The Defence Estate Officer (DEO)  
Itanagar Circle  
Dist. Papum Pare  
Arunachal Pradesh  
PIN 79111

VERSUS

1: Thinley Sona and 4 Ors,  
S/o Lt. Lhakpa Sona,  
R/o Vill. Singbir,  
PO and PS Mechuka, Dist. Shi Yomi, Arunachal Pradesh. PIN 791003

2: Pema Namgey Chukla  
S/o Phinjo Chukla

R/o Vill. Shorandam  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

3: Tenjen Chukla  
S/o Singtung Chukla

R/o Vill. Yorni  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

4: Korma Mindu Goiba  
S/o Late Lera Goiba

R/o Vill Farge  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

5: The Collector cum Deputy Commissioner  
Shi Yomi District  
Tato  
Arunachal Pradesh  
PIN 79100

**Advocate for the Petitioner** : 1 Y Dolo

**Advocate for the Respondent** : GA (AP)

Linked Case : CRP 8/2023

1: THE UNION OF INDIA and 3 Ors.  
Ministry of Defence

Represented by the Defence Secretary  
101A South Block  
New Delhi-110010

2: The Director General of Defence Estate (DGDE)  
Raksha Sampada Bhawan  
Ulaan Baatar Marg  
Delhi Cantonment. PIN 110010.

3: The Principal Director of Defence Estates (PDDE)  
AC-4  
4/1  
Belveder Road  
Alipore  
Kolkata  
West Bengal. PIN 700027

4: The Defence Estate Officer (DEO)  
Itanagar Circle  
Dist. Papum Pare  
Arunachal Pradesh  
PIN 791110  
VERSUS

1:Libo Ragmuk and 4 Ors.  
S/o Taduk Ragmuk

R/o Vill. Talo  
PO and PS Tato  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791001

2:Eling Ragmuk  
S/o Late Tabin Ragmuk

R/o Vill. Talo  
PO and PS Tato  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791001

3:Raju Diru  
S/o Tachuk Diru

R/o Vill. Talo  
PO and PS Tato  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791001

4:Tajen Diru  
S/o Libu Diru

R/o Villl. Talo  
PO and PS Tato  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791001

5:The Collector cum Deputy Commissioner  
Shi Yomi District  
Tato  
Arunachal Pradesh. PIN 791001

Advocate for the Petitioner : 1 Y Doloi  
Advocate for the Respondent : GA (AP)

Linked Case : CRP 7/2023

1:The Union of India and 3 Ors.  
Ministry of Defence

Represented by the Defence Secretary  
101A South Block  
New Delhi 110011

2: The Director General of Defence Estate (DGDE)  
Raksha Sampada Bhawan  
Ulaan Baatar Marg  
Delhi Cantonment. PIN 110010

3: The Principal Director of Defence Estates (PDDE)  
AC-4  
4/1  
Belveder Road  
Alipore  
Kolkata  
West Bengal  
PIN 700027

4: The Defence Estate Officer (DEO)  
Itanagar Circle  
Dist. Papum Pare  
Arunachal Pradesh. PIN 791110  
VERSUS

1:Dorjee Khandu Chukla and 6 Ors.  
S/o Shri Pasang Tsering Chukla

R/o Vill. Chukla

Dorjeeling  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

2:Norbu Tsering Naksang  
S/o Lt. Taling Naksang

R/o Vill. Barangang  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh.. PIN 791003

3:Nyima Chanden Sharjo  
S/o Lt. Sange Dorjee Sharjo

R/o Vill. Mechuka  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

4:Dorjee Dindup Philley  
S/o Sanga Khandu Philley

Vill. Segong  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

5:Domdi Sona  
S/o Lt. Nim Chanden Sona

Vill. Yorni  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

6:Kumar Sona  
S/o Lt. Sange Sona

Vill. Yorni  
PO and PS Mechuka  
Dist. Shi Yomi  
Arunachal Pradesh. PIN 791003

7:The Collector cum Deputy Commissioner  
Shi Yomi District  
Tato

Arunachal Pradesh. PIN 791001

Advocate for the Petitioner : 1 Y Dolo

Advocate for the Respondent : GA (AP)

**BEFORE  
HONBLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 21-02-2023**

Heard Mr. Y. Dolo, learned Senior Penal counsel for the petitioners/ Union of India. Also heard Mr. B. Pathak, learned counsel for private respondent Nos. 1 to 6 and Mr. Y. Riram, learned Govt. Advocate representing respondent No. 7/ the Deputy Commissioner, Shi Yomi District, Tato, Arunachal Pradesh.

**2.** This is an application under Section 115 of the Code of Civil Procedure, 1908 read with Section Article 227 of the Constitution of India for quashing and setting aside the impugned order, dated 09.02.2023, whereby, Non-Bailable Warrant of Arrest has been issued by the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh against the present petitioners through Superintendent of Police, Aalo West Siang District, Arunachal Pradesh in connection with Money Execution Petition Nos. 02/2022, 03/2022 & 04/2022 in Reference Case No. 01/2021, 02/2021 & 03/2021.

**3.** It is stated by the learned Senior Penal counsel Mr. Y. Dolo that the name of the respondents as the land owners were reflected in both the preliminary and final notification, dated 10.03.2021 & 22.06.2021 published under Section 11 and 19 of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act, 2013). Accordingly, the respondents claimed compensation for the acquired land and they approached Hon'ble Gauhati High Court, Itanagar Permanent Bench by filing a writ petition being WP (C) 27 (AP) 2020 and vide order, dated 17.03.2020 & 19.03.2020, the Hon'ble High Court, Itanagar Permanent Bench directed the present appellant to pay the compensation.

**4.** In pursuance to the said order, a formal land acquisition was completed and compensation was given in 2 (two) instalments @ 80% and 20% respectively. The respondents had received the first instalment of 80% of the land compensation amount without any objection. However, the 20% compensation was received by the respondents and thereafter, they filed an application before the Deputy Commissioner, Shi Yomi District, Arunachal Pradesh with a prayer to make a reference to their grievances to the jurisdictional court i.e. before the District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh. Accordingly, Reference Case No. 01/2021 was instituted where the respondents had also filed their written statement of their claim petition.

**5.** The learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh passed a common judgment and order, dated 12.09.2022 in Reference Case Nos. 01/2021, 02/2021 & 03/2021 directing the Deputy Commissioner, Shi Yomi District, Arunachal Pradesh to take necessary steps to re-assess the value of the acquired land and accordingly, the Deputy Commissioner, Shi Yomi District, Arunachal Pradesh completed the re-assessment process within 30 days and considering the report of the Deputy Commissioner, Shi Yomi District,

Arunachal Pradesh, the rate of compensation was enhanced to 353/- per Sq. Mtr by the District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh without any proper assessment which was earlier assessed by the Deputy Commissioner, Aalo, West Siang District, Arunachal Pradesh @ Rs.125/- per Sq. Mtr.

**6.** Challenging the aforesaid common judgment and order, dated 12.09.2022 & 13.09.2023 passed by the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh in Reference Case Nos. 01/2021, 02/2021 & 03/2021 and Review Petition Nos. 01/2022, 02/2022 & 03/2022 respectively were preferred, the present petitioners have preferred Land Acquisition Appeal vide L.A. Appeal No.01/2022 before Hon'ble Gauhati High Court, Itanagar Permanent Bench, Naharlagun, which is pending for disposal. However, vide order, dated 20.12.2022, this Court was pleased to admit the appeal but in the meantime, the respondents had filed Execution Petition No. 02/2022 before the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh and on 04.01.2023, the learned counsel for the respondent had filed a petition under Order XXI Rule 37 and after hearing, without considering the submission of learned counsel appearing for the present petitioners, the Hon'ble Execution Court passed an order issuing notice to the present petitioners as to why the present petitioners shall not be arrested and put under the prison in execution for non-payment of the compensation amount and fix the matter on 03.02.2023 for further hearing.

**7.** Thereafter, on 03.02.2023, the Hon'ble Execution Court passed the order seeking the name and address of the present petitioners from the



counsel of the respondents so that arrest warrant can be issued against the present petitioners to put them under civil imprisonment instead of allowing the petition filed by the counsel of the present petitioners seeking time to file written statement/Written objection and the learned Court below fix the date on 09.02.2023 for order. On 09.02.2023, the impugned order has been passed by the learned Executing Court issuing the Non-Bailable Warrant of Arrest against the present petitioners with a further direction to execute the Warrant of Arrest through Superintendent of Police, Aalo, West Siang District, Arunachal Pradesh. The said impugned order, dated 09.02.2023 has been passed by the learned Court below in most arbitrary and illegally and for which the present petitioners had to institute the present Civil Revision Petition for setting aside and quashing the order passed by the learned Court below.

**8.** The learned Senior penal counsel Mr. Y. Doloi has further submitted that without any authority, the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh had enhanced the rate of compensation and moreso, without giving any opportunity of being heard to the present petitioners, the warrant of arrest has been issued instead of issuing any notice for attachment of the properties for realisation of the compensation amount, if any.

**9.** The learned Senior Penal counsel has relied on the decision of Hon'ble Supreme Court in the case of ***State of Bihar-vs-Gauri Shankar Mishra (D)***; reported in ***(2005) 11 SCC 500***, wherein, the Hon'ble Supreme Court had set aside the order of issuance of Warrant of Arrest by the learned Executing Court, though, it is observed that the Execution proceeding can be proceeded, if there is no stay order. Further, the

learned Senior Penal counsel had also relied on the decision of Hon'ble Gauhati High Court passed in the case of ***Nirmalendu Dhar-vs-Nani Gopal Ghosh***; reported in ***(2010) 93 AIC 797***, wherein, it has been held as under:-

*“Order 21, Rules 22-Constitution of India-Article 21-Execution of decree-Arrest and detention of judgment-debtor-judgment-debtor (appellant) was neither notified nor heard before passing of impugned order-Arrest warrant and attachment order was passed straightaway on the day on which application for execution of decree was passed without any notice to judgment-debtor - It caused graved justice to appellant-Power of Court executing a decree to order execution is not an unrestricted one-Neither in application nor in affidavit, grounds on which arrest was applied for were mentioned-Nothing in record to show as to why simultaneous execution against person and property of judgment-debtor was ordered by passing impugned order-Trial Judge proceeded mechanically in respect of application for execution by passing impugned orders for arrest and attachment of movable property of judgment-debtor straight away-To cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling-Impugned orders quashed”.*

**10.** Further, it is submitted by the learned counsel for the petitioners that the petitioners never refused to give the compensation and already huge amount of compensation has been awarded to the respondents but without giving any opportunity of being heard to the petitioners and without issuing notice for attachment of the property, the learned District and Sessions Judge, Aalo, West Siang District, Aalo had issued the

Warrant of Arrest to be executed through the Superintendent of Police, Aalo, West Siang District, Arunachal Pradesh, which has been passed arbitrarily, mechanically and without applying judicial mind and for which setting aside and quashing the same is very much essential and further, it is submitted that a separate appeal has been preferred by the present petitioners against the enhancement of the compensation passed by the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh.

**11.** In this context, the learned counsel appearing on behalf of the private respondents Mr. B. Pathak has submitted that as the matter was referred to the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh has every authority or jurisdiction to pass the order for enhancement of the compensation and no illegality has been committed by the learned Court below. However, it is submitted that the Land Acquisition Appeal has already been preferred by the present petitioners which is pending for disposal. Further, it is submitted that by preferring an appeal does not automatically operate the stay of the decree or order nor the proceeding in the learned Court below. A prayer for grant of stay of the proceeding or on the execution of the decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has the jurisdiction to grant an order of stay or to refuse the same. (*ATMA RAM PROPERTIES (P) LTD.-VS-FEDERAL MOTORS (P) LTD*; reported in (2005) 1 SCC 705).

**12.** In the instant case, there is no stay petition filed before the learned Court below for stay of the execution petition and hence, no illegality,

error has been committed by the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh in passing the execution order or in issuing the Warrant of Arrest against the present petitioners. However, the learned counsel appearing on behalf of the private respondents Mr. B. Pathak has submitted that he has no objection, if the execution of Warrant of Arrest or execution of order, dated 09.02.2023 is stayed / suspended.

**13.** On the other hand Mr. Y. Riram, the learned Govt. Advocate has also raised no objection in staying/suspending the operation of the impugned order, dated 09.02.2023 passed by the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh.

**14.** In view of the discussions made above in the foregoing paragraphs, it is seen that due to absence of any stay in the execution process, the learned District and Sessions Judge, Aalo, West Siang District, Arunachal Pradesh has not committed any illegality in proceeding the execution cases. However, it is seen that the order for Warrant of Arrest was issued to the present petitioners without issuance in earlier notice for attachment of the properties for realisation of the compensation amount, if any and at the same time, it is also an admitted fact that without any stay of the proceeding from the superior Court or any specific prayer in that regard, the executing Court committed no illegality in proceeding with the case.

**15.** Considering the entire circumstances of the case and also considering the fact that one Land Acquisition Appeal has already been preferred against the order of enhancement, dated 12.09.2022 & 13.09.2022, I find it justified to stay/suspend the impugned order, dated 09.02.2023 passed by the learned District and Sessions Judge, Aalo, West Siang District,

Arunachal Pradesh for execution of Warrant of Arrest against the present petitioners.

With the above observation, this Civil Revision Petitions stands disposed of.

**JUDGE**

**Comparing Assistant**