

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

AI ZAWL BENCH :: AI ZAWL

CRP No. 2 of 2011

Petitioner :

North Eastern Electric Power Corporation Ltd. A Government of India Undertaking, a company registered under the Companies Act, 1956 having its registered and head office at Lower New Colony, Brookland Compound, Shillong-793003, Represented by its Chairman & Managing Director.

By Advocate :

Mr. V.K. Jindal, Sr. Adv.

Respondents :

1. Shri Ngurthanmawia, S/o. Sanghrea, R/o. Khatla, Aizawl.
2. Shri Lalthankhumi, D/o. Lalchhuanliana, R/o. Zarkawt, Aizawl.
3. Shri R. Lalhmingliana, S/o. Lalduhthanga, R/o. N. Serzawl, Mizoram.
4. Shri R. Lunghnema, S/o. R. Lalhmingliana, R/o. N. Serzawl, Mizoram.
5. Shri R. Lalrisanga, S/o. R. Lalhningliana, R/o. N. Serzawl, Mizoram.
6. Shri R.M Chhuanmawia, S/o. R. Lalhmingliana, R/o. Bethlehem Veng, Aizawl.
7. Shri Lalmuankima, S/o. L.T. Liana, R/o. Melthum, Aizawl.

8. Shri R. Zachhinga, D/o. Duhthanga, R/o. N. Serzawl, Mizoram.
9. Shri Thangseia, S/o. Duhthanga, R/o. N. Serzawl, Mizoram.
10. Shri Zakhuma, S/o. Duhthanga, R/o. N. Serzawl, Mizoram.
11. Shri Nghaka, S/o. Kunga, R/o. Ratu, Mizoram.
12. Smt. Lalparvuli, D/o. R. Lallianzama, R/o. Melthum, Aizawl.
13. Smti Lalhmingangi, D/o. Ramdina, R/o. Republic Veng, Aizawl.
14. Smt. R.G.Huanmawii, D/o. Z. Kunga, R/o. Ramthar Veng, Aizawl.
15. Smt. Ramthianglimi, D/o. Buanga, R/o. Saron Veng, Aizawl.
16. Smti Biakhluni, D/o. Hmuchhuaka, R/o. Ramhlun Veng, Aizawl.
17. Shri Laltea, S/o. Zaulala, R/o. Maubawk, Aizawl.
18. Shri Lalrinliana, S/o. Parala, R/o. Electric Veng, Aizawl.
19. Shri L.T. Muana, S/o. Thanzauva, R/o. Chhinga Veng, Aizawl.
20. Smt. Lalvulliani, D/o. Neihluta, R/o. Bethlenem Veng, Aizawl.
21. Smt. Lalnunhlimi, D/o. R. Lalnunmawia, R/o. Chhinga Veng, Aizawl.
22. Shri B. Lalcharliana, S/o. Vanlalpara, R/o. Chaltlang, Aizawl.

23. Smt. Nukimi, D/o. Lianthangpuia, R/o. Chaltlang, Aizawl.
24. Smt. Lallawmi, D/o. Hrangchhunga, R/o. Khatla, Aizawl.
25. Shri Biakmawia, S/o. L.B Thara, R/o. Ratu, Mizoram.
26. Smt. Sangkimi, D/o. Kunga, R/o. Ratu, Mizoram.
27. Shri Lalbuatsaiha, S/o. Lalsanga, R/o. Zemabawk, Aizawl.
28. Shri Chhanhima, S/o. R. Thanga, R/o. Armed Veng, Aizawl.
29. Smt. Sangzuali, D/o. Rinsangi, R/o. Ramthar Veng, Aizawl.
30. Shri Zoramthanga, S/o. Lalliana, R/o. Mamit, Mizoram.
31. Shri Lalremruata, S/o. T. Hlimi, R/o. Saron Veng, Aizawl.
32. Smt. Rinchhani, D/o. Rinliani, R/o. Electric Veng, Aizawl.
33. Shri Rohminga, S/o. Lalthanga, R/o. Ratu, Mizoram.
34. Shri Ramenga, S/o. Rolura, R/o. Ratu, Mizoram.
35. State of Mizoram, Represented by the Chief Secretary to the Government of Mizoram, Aizawl.
36. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram.
37. The Deputy Commissioner/ Collector, Aizawl District, Aizawl.
38. The Secretary to the Govt. of Mizoram, Environment and Forest Department, Aizawl.

By Advocate :

Mr. A. K. Rokhum, Addl. A.G,  
Mr. Andrew Lalhrualtuanga, SC  
Environment and Forest Department.  
Mr. C. Lalramzauva, Sr. Adv.

**B E F O R E**  
THE HON'BLE MR. JUSTICE UJJAL BHUYAN

Date of hearing : 2<sup>nd</sup> July, 2012

Date of Judgment : 2<sup>nd</sup> July, 2012

**J U D G M E N T A N D O R D E R ( o r a l )**

This is an application under Article 227 of the Constitution of India challenging the legality and validity of the order dated 10-12-2010 passed by the learned Addl. District and Sessions Judge-1, Aizawl in Execution case No. 13 of 2010.

2. The facts of the case may be briefly noted.

3. The Government of India decided to set up a 60 MW Tuirial Hydro Electric Project at Aizawl district in the State of Mizoram through the North Eastern Electric Power Corporation Ltd. (NEEPCO), a Government of India undertaking, having its registered office at Shillong. For execution of the above project, a total area of 5380 hectares of land was required. The land was identified and after the process of survey, the Conservator of Forests, Research and Development Circle, Government of Mizoram informed the Power and Electricity Department, Government of Mizoram that the

whole area required for the project falls within Reverine Reserve Forest of Tuirial.

4. An agreement dated 29-05-1996 was entered into between the Government of Mizoram and NEEPCO for execution of the aforesaid project. Amongst various terms and conditions contained in the agreement, it was provided that 12% of the power generated by the above project would be given free to the State of Mizoram. As per Clause 8 of the agreement, the total land required for the project would be acquired by the State Government and handed over to NEEPCO on payment of necessary fee to the State Government as assessed by the State Government.

5. Thereafter, the Government of India in the Ministry of Environment and Forests approved the diversion of 5380 hectares of forest land for execution of the above project subject to certain conditions which included compensatory afforestation over equal area of non forest land.

6. An amount of Rs. 24.46 crores was provided in the project cost towards compensatory afforestation out of which a sum of Rs. 7.94 crores was paid by NEEPCO to the Forest Department, Government of Mizoram at the time of filing of the present petition. In the course of the hearing, Mr. V. K. Jindal, learned Sr. counsel appearing for the NEEPCO stated that the balance amount has since been paid by NEEPCO to the Forest Department, Mizoram.

7. In the meanwhile, the Government through the Collector started land acquisition proceeding.

8. Three writ petitions were filed before this Court by a group of petitioners, being W.P(c) Nos. 90, 91 and 92 of 2002 claiming that their lands were also covered in the area sought to be acquired for the project and, therefore, claimed compensation. In the three writ petitions, though NEEPCO was arrayed as a respondent, on the prayer of the petitioners that NEEPCO was not a necessary party, to which the State did not object, the name of NEEPCO was struck off from the list of respondents. By final order dated 1-8-2002 this Court disposed of the said writ petitions giving liberty to the petitioners to make applications before the Deputy Commissioner/Collector, Aizawl showing their interest in the land sought to be acquired. The Deputy Commissioner/Collector was directed to dispose of such applications in accordance with law.

9. It appears that the said petitioners, who are respondents 1 to 34 in the present petition, filed claims before the Collector. The Collector prepared draft award No. 6 of 2003 and assessed total compensation at Rs. 8,85,50,461/-. The following operative portion of the award is relevant and is extracted hereunder:

“With regards to payment of damage compensation, if NEEPCO Ltd. takes stand that they are not in a position to consider payment of compensation after they have paid substantial amount for compensatory afforestation to the Environment & Forest Department, Govt. of Mizoram, the question as to whether or not compensation will be paid to private land/garden owners needs to be

considered by the Council or Ministers,  
Government of Mizoram”

10. The present respondent Nos. 1 to 34 thereafter filed W.P(c) No. 82 of 2004 before this Court seeking a direction for payment of the compensation awarded in terms of the award No. 6 of 2003 and also for payment of interest. This Court having noticed that on an application filed under Section 18 of the Land Acquisition Act, 1894(Act), a reference was already made to the Land Acquisition Judge, declined to interfere in the matter and by order dated 07-06-2005 disposed of the said writ petition with the observation that the said writ petitioners may pursue the reference proceeding.

11. The reference proceeding as referred to above was registered as LA Case No. 1 of 2004. In the said proceeding, the present respondent Nos. 1 to 34 submitted that they were satisfied with the award made by the District Collector but only sought for payment of solatium with interest as per law. The learned Govt. Advocate, who represented the District Collector, did not object to the said prayer. Accordingly, the reference Court directed the District Collector to pay 30% of the awarded amount as solatium with interest at the rate of 12% per annum from the date of the first notification issued under the Act.

12. Following the above order of the reference Court, supplementary award was passed in respect of award No. 6 of 2003, pursuant to which the total awarded amount was quantified at Rs. 10,53,36,290/-.

13. Respondent Nos. 1 to 34 then filed W.P(c) No. 77 of 2006 before this Court seeking execution of the award. By the judgment and order dated 04-12-2007, this Court declined to interfere since the matter related to execution of the award, the remedy being to file necessary petition for execution and not by way of filing writ petition. The writ petition was closed with liberty to the said petitioners to initiate execution proceeding before the appropriate forum. However, while disposing the said writ petition, the Single Bench observed that NEEPCO in whose favour the acquisition was made would naturally be liable to deposit the awarded money, if not so done in the meantime.

14. NEEPCO filed writ appeal against the aforesaid observation made by the Single Bench, which was registered as W.A No. 426 of 2007. The Division Bench by the order dated 21-04-2010 took the view that the scope of the writ petition could not have been enlarged and that the Single Bench should not have made the above observations pertaining to NEEPCO. Accordingly, those observations of the Single Bench were set aside.

15. In the meanwhile, in an interesting development, a NGO filed a Public Interest Litigation, PIL No. 15 of 2008, before this Court contending that the land acquired for the project was forest land but certain persons had made fictitious claims for compensation when such persons did not have any right, title and interest in the land acquired. It was contended that there was collusion between the claimants and certain Govt. officials which

resulted in the award being made in favour of the claimants, which was subsequently enhanced on orders of the reference Court. Claiming that it was an attempt to siphon off public money, the PIL prayed for a high level inquiry into the matter. A Division Bench of this Court by order dated 21-04-2010 directed that the matter be investigated by the Central Bureau of Investigation (CBI). The CBI thereafter investigated the matter and filed FIR. In the course of the hearing, it has been submitted that the above case was registered as Imphal Case No. RC 6(A)/2010 and charge sheet has been submitted in the said case against 9 persons.

16. The respondent Nos. 1 to 34 filed Execution Case No.13 of 2010 in the Court of the learned Addl. District Judge, Aizawl for execution of Award No. 6 of 2003, including the supplementary award. The prayer for execution was made against the judgment debtor. The learned Addl. District and Sessions Judge-I, Aizawl by her order dated 10-12-2010 held that once the award/supplementary award has been made and approved by the appropriate Government, the private land owners cannot be made to suffer due to inaction on the part of the authorities concerned. The executing Court held that the Opposite Party has the legal obligation to make payment of the awarded amount of compensation with interest by procuring the same from NEEPCO. The Opposite Party was directed to deposit the aforesaid amount in the executing Court within three months.

17. Aggrieved by the aforesaid direction contained in the order dated 10-12-2010 whereby the Opposite party (District

Collector) was asked to deposit the compensation amount by procuring the same from the NEEPCO, the present revision petition has been filed.

18. This Court while admitting the revision petition, had stayed further proceedings in the execution case pursuant to the order dated 10-12-2010.

19. The respondents have filed their separate affidavits. From a perusal of the affidavits filed by the official respondents, an interesting fact has emerged inasmuch as there is clear divergence of views between respondents 35 to 37 (Revenue Authorities) on the one hand and respondent No. 38 (Forest Department) on the other hand. While respondent No. 38 in his affidavit dated 27-04-2012 has stated that the entire land acquired for the project was forest area because of which approval by the Central Government in the Ministry of Environment and Forests was granted on the condition that NEEPCO would pay for compensatory afforestation, which was quantified at Rs. 24.46 crores to the Forest Department (as indicated earlier, NEEPCO had paid Rs. 7.94 crores at the time of filing the petition and learned Sr. counsel for NEEPCO submitted that the balance amount of about Rs. 16.51 crores has also been paid to the Forest Department by the NEEPCO in the meanwhile). Respondent No. 38 has, therefore, contended that issuance of land passes to the claimants by the Revenue Authorities within the land acquired was in violation of the Forest (Conservation) Act, 1980. He further contends that such land passes would be void-ab-initio and

no claim for compensation can be maintained on the basis of such illegal passes.

20. The respondents 35 to 37 on the other hand in their affidavit dated 14-03-2012 contend that the entire acquired land did not fall within the Riverine Reserve Forest and during survey and subsequent verification, it was found that a number of persons had private land holdings falling within the acquired area. The said respondents, therefore, support the claim of respondent Nos. 1 to 34 and contends that since NEEPCO is the beneficiary of the land acquisition proceeding, the amount of compensation should be borne by it.

21. The respondents 1 to 34 in their affidavit dated 16-06-2011 has contended that 697.27 bighas of land were acquired from the land owners. While supporting the stand of respondent Nos. 35 to 37, they have sought for dismissal of the revision petition and for release of the awarded compensation to them.

22. Heard Mr. V. K. Jindal, learned Sr. counsel appearing for the petitioner. Also heard Mr. A. K. Rokhum, learned Addl. A.G, Mizoram for the respondent Nos. 35 to 37. Mr. Andrew Lalhruaitluanga, SC, Environment and Forest Department, Mizoram appears for respondent No. 38 while Mr. C. Lalramzauva, learned Sr. counsel appears for the respondent Nos. 1 to 34.

23. Mr. Jindal, learned Sr. counsel for the petitioner submits that the impugned order of the Executing Court to the extent of the direction that the award should be satisfied by the judgment debtor

by procuring the awarded amount from NEEPCO is wholly unwarranted, uncalled-for and beyond the award. He refers to a decision of the Punjab and Haryana High Court in Bharat Steel Tubes Manufacturing Ltd. Vrs State of Haryana; reported in (1998) 118 PLR 89 to contend that it is the State Government who has to satisfy the award. He contends that the execution proceeding was instituted for execution of the award as enhanced by the supplementary award against the judgment debtor, who is the District Collector, Aizawl, Therefore, the impugned direction of the learned Executing Court is beyond the award and should be set aside and quashed. Referring to the various orders passed by this Court and the investigation carried out by the CBI, learned Sr. counsel submits that grave doubts have arisen about the genuineness of the claim of respondent Nos. 1 to 34, particularly, in view of the stand taken by the Forest Department, Mizoram.

24. Learned Addl. Adv. Gen. on the other hand submits that since the award as enhanced by the supplementary award has attained finality, the same should be satisfied. Viewed from the above perspective, there is no infirmity in the impugned direction of the learned Executing Court, he submits. Similar is the submission made by Mr. C. Lalramzauva, learned Sr. counsel appearing for the claimants, who additionally submits that NEEPCO cannot raise doubt about the genuineness of the claim of the land owners.

25. The submissions made have been considered.

26. In the backdrop of the facts narrated above, the short question which arises for consideration in this petition is the legality and the correctness of the direction of the learned Executing Court that the judgment debtor should satisfy the award by procuring the awarded amount from NEEPCO.

27. It is the State which had acquired the land under provisions of the Act. The land owners are not concerned for whom the land was acquired or who would pay the compensation. In fact, when Mr. C. Lalramzauva, learned Sr. counsel for the land owners was asked by the Court as to whether they would insist on payment being made by the State Government or by the NEEPCO, he very fairly submitted that the land owners are concerned only with the payment of compensation for acquisition of their lands and they are not concerned as to who makes the payment, whether the State Government or NEEPCO. On a further query put by the Court, he admitted that the respondent Nos. 1 to 34 would in no way be prejudiced if the impugned direction is set aside.

28. Since it is the State Government which acquired the land, it is liable to pay compensation to the land owners. Whether the State Government should re-cover the amount from NEEPCO or whether NEEPCO should pay the said amount to the State Government is a matter to be decided by and between the said two authorities and no way concerns the land owners.

29. As the land was acquired by the State Government, it has to satisfy the award and, therefore, it has to deposit the

awarded amount of compensation with the Executing Court. This is also the view expressed by the Punjab and Haryana High Court in *Bharat Steel Tubes Manufacturing Ltd. (supra)*.

30. Part VII of the Act comprising of sections 38A to 44B deals with acquisition of land for companies. Section 41 provides for execution of agreement with the appropriate Government containing amongst others provision for payment to the appropriate Government of the cost of the acquisition. As already referred to above, in terms of the aforesaid provision, agreement dated 29-05-1996 was entered into between the Government of Mizoram and NEEPCO. Clause 8 of the said agreement provided that the land required for the project would be acquired by the State Government and handed over to NEEPCO on payment of necessary fee to the State Government as assessed by the State Government. According to NEEPCO, since the acquired land was forest land, the amount paid for compensatory afforestation was the necessary fee to be paid to the State Government, which has been paid. The relevant portion of the award as approved by the State Government, as already noticed, also makes interesting reading. It says that if NEEPCO takes the stand that they would not pay any compensation after they have paid the amount for compensatory afforestation to the Forest Department, Mizoram, the question as to whether or not compensation will be paid to private land/garden owners needs to be considered by the Council of Ministers, Government of Mizoram.

31. On a pointed query by the Court as to whether the Council of Ministers, Government of Mizoram has taken a decision in

view of the clear stand taken by NEEPCO, learned Addl. Advocate General frankly submitted that he has no instruction to this effect.

32. In view of the above discussion, this Court is of the view that the learned Executing Court could not have directed the District Collector, Aizawl, the judgment debtor, to procure the compensation amount from NEEPCO.

33. For the aforesaid reasons, the impugned direction of the learned Executing Court contained in the order dated 10-12-2010 passed in Execution Case No. 13 of 2010 to the following effect “by procuring the same from the NEEPCO” is set aside and the order dated 10-12-2010 would stand modified accordingly.

34. Before parting with the record, this Court would like to observe that in view of the CBI investigation as referred to above and the stand taken by Forest Department, Mizoram, the Chief Secretary to the Government of Mizoram may look into the matter and take a conscious decision keeping in view the public interest involved. However, it is not for the Court to suggest as to what course of action should be adopted. Beyond this, the Court refrains from saying any further.

35. Revision petition is accordingly allowed.

36. No cost.

JUDGE

d.de.