

GAHC020002552022

2026:GAU-NL:7



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

Case No. : WP(C)/94/2022

SHRI. THEJAO SEKHOSE
S/O LATE KEDUOKIETUO SEKHOSE
PERMAMEMNT ADDRESS- KENUOZOU COLONY, NORTH BLOCK,
WARD-3, T.KHEL , KOHIMA VILLAGE

PRESENT ADDRESS- TSURU COLONY, SECU ZUBZA, KOHIMA
NAGALAND

VERSUS

UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD,
TRANSPORT AND HIGHWAYS, NEW DELHI- 110001

2:THE MANAGING DIRECTOR
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED(NHIDCL)
3RD FLOOR
PTI BUILDING
4-PARLIAMENT STREET
NEW DELHI

3:THE GENERAL MANAGER
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LIMITED (NHIDCL) PROJECT MONITORING UNIT-
DIMAPUR
1ST FLOOR
H/NO-63 (A)
NST COLONY
BEHIND CITY TOWER
DIMAPUR NAGALAND

4:THE STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND
KOHIMA NAGALAND

5:THE DEPUTY COMMISSIONER
KOHIMA NAGALAND

6:THE SUB-DIVISIONAL OFFICER (CIVIL)
SECU ZUBZA
KOHIMA NAGALAN

Advocate for the Petitioner : ALEZO KIRE, ROVIMENO THOU,T. KHEZHIE,ZAKATO
CHISHI,BELINDA

Advocate for the Respondent : CGSC, CHUBA IMCHEN,KONLI
BUCHEM,SENTIYANGER,V ANNE THERIE (R/No-1,2,&3)

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. T. Khezhie, Advocate

For the Respondent : Mr. Sentianger, Advocate
(for respondent Nos. 1, 2 & 3)

: Mr. Imti Imsong, Addl. AG
(for respondent Nos. 4, 5& 6)

Date of Hearing : **18.08.2025**

Date of Judgment : **20.01.2026**

JUDGMENT & ORDER

1. Heard Mr. T. Khezhie, learned counsel for the petitioner. Also heard Mr. Sentianger, learned counsel for the respondent Nos. 1, 2 and 3 and

Mr. Imti Imsong, learned Additional Advocate General, Nagaland appearing for the respondent Nos. 4, 5 and 6.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, Sri *Thejao Sekhose* praying for issuance of writ in the nature of mandamus/certiorari against the respondents.

3. The writ petitioner is a permanent resident of Kenuozou Colony, North Block, Kohima village and presently residing at Tsuru Colony of Secu Zubzaunder Kohima district. The respondent Nos. 2 and 3 i.e., National Highways and Infrastructure Development Corporation Limited (hereinafter referred to as NHIDCL) had undertaken a project of construction of four-lane National Highway-29 Road from Dimapur to Kohima (hereinafter referred to as four-lane road).

4. For undertaking the four-lane road construction project, the previous existing road had to be realigned and for which a substantial stretch of earth cutting had to be carried out at the portion of land where petitioner's land is located. Accordingly, a stretch of land belonging to petitioner was acquired and due compensation for the same was also paid to him.

5. However, for the purpose of construction of four-lane road, the respondent Nos. 2 and 3 started using petitioner's private approach road which was not acquired and no permission for same was obtained from him. Later on, for the purpose of four-lane construction, earth was excavated and in order to dispose of the excavated earth, the private

approach road of the petitioner was used by the respondent Nos. 2 and 3. As such, the private approach road was totally cut off. The petitioner had lodged complaints regarding unauthorized use of his land by the respondent Nos. 2 and 3.

6. It is also stated by the petitioner in his writ petition that during the course of four-lane road construction, box-cutting (earth cutting) was done wherein the petitioner's land is situated on both the sides of the highway, which were severely affected due to extensive earth cutting. It is stated that due to extensive earth cutting, the landslide began to occur in the petitioner's land. It was reported to the Sub-Divisional Officer (Civil), Secu Zubza, Kohima, Nagaland who conducted a site verification on 15.04.2018 and submitted his report to the Deputy Commissioner, Kohima.

7. As per the verification report submitted by Sub-Divisional Officer (Civil), Secu Zubza, Kohima, the piggery, the RCC building, which is situated over the plot of petitioner's land and the terrace field were affected by earth cutting work during the construction of four-lane road. As the earth cutting in some portions left the side of the roads as high as 40 to 50 feet without providing any protection wall which caused landslides in the land of the petitioner, the verification report also incorporated suggestion for NHIDCL to construct braced wall in order to cover the entire height and whole stretch of excavated land so as to arrest further damage. As the petitioner's building over his land, piggery and terrace field were affected due to the construction of four-lane road without any protection wall after earth cutting. He submitted

representation seeking compensation for the damages sustained to his property.

8. After ascertaining the authenticity of the petitioner's case, the Deputy Commissioner Kohima (respondent No. 5) by letter No. REV/4 LANE/COMPLAINTS/2017 dated 31.10.2018 forwarded the representations seeking compensation to the General Manager NHIDCL, Dimapur, (respondent No. 3) for taking necessary action in this regard. As the private approach road of the petitioner over his land was completely blocked, the petitioner, by letter dated 05.03.2019 to the respondent No. 6, prayed for restoration of his private road connecting to the highway that was disconnected due to excavation of box cutting for four-lane road. The said letter was also forwarded to the respondent No. 2. However, no action was taken on the same.

9. The respondent No. 5 by circular No. REV/4 LANE/ COMPLAINTS/ 2017/ 753 dated 27.05.2019 informed all the affected landowners as well as stakeholders including the present respondents to remain present for a joint verification to assess the damage caused to the property of various individuals. It is further stated by the petitioner in his writ petition that by letter No. LSRO/K/TECH-37/2017-18/1301 dated 15.06.2020, the District Land Records and Survey Officer, Kohima submitted a survey report of land damage of paddy field, plantations, excess cutting and houses at the Dzuza village, Zubza and Peducha to the Deputy Commissioner, Kohima. The said survey report showed the details of paddy field and building of the petitioner damaged due to the construction of four-lane road. The area of paddy field damaged was stated to be 25,250 square meters and

area of damaged building was reflected as 306 square meters setting out the total area of damaged property of the petitioner as 25,556 square meters.

10. Thereafter by letter No.REV-7/ FOURLANE/2009/14/2022 dated 27.01.2022, the respondent No. 6 had forwarded a reminder letter to respondent No. 5 about the grievances faced by the petitioner for not restoring his approach road which was cut off due to excavation work carried out for four-lane road construction.

11. It is stated by the petitioner in his petition that due to massive earth cutting, without protection wall, undertaken for the construction of four lane road, landslides and soil erosion have occurred in the land of the petitioner causing damage to his RCC building, piggery and paddy field. Under the aforesaid circumstances the petitioner has claimed that he is entitled to get compensation for damage caused to his property and also entitled to get restoration of his approach road and as such he has prayed for making proper assessment of the damage caused to his property and payment of compensation as well as restoration of his private approach road.

12. It is pertinent to mention herein that during the pendency of the present writ petition, the Revenue Officer, Kohima had issued a circular bearing No. REV/Case-FOURLANE/2022/378 dated 06.07.2023 for verification of damages to the land/property of the petitioner and accordingly, a joint verification was conducted on 20.02.2024 in the presence of all the stakeholder including the representatives of NHIDCL. During the joint verification, assessment was done regarding the damages

caused to the property of the petitioner.

13. In terms of the assessment made during the joint verification done on the aforesaid date, the Revenue Officer, Kohima, on 13th May, 2024 forwarded a letter bearing No. REV/CASE-4 LANE/2022/1104, dated 13th May, 2024 to the General Manager, NHIDCL submitting the estimate for property damage in respect of the property of the petitioner under Four-Lane Road Project, which is beyond the ROW. The damage to the property of the petitioner was assessed at a total amount of Rs.1,16,47,063/- (Rupees One Crore Sixteen Lakh Forty Seven Thousand and Sixty Three).

14. Mr. T. Khezhie, the learned counsel for the petitioner has submitted that though the petitioner has received the compensation for the right of way in respect of his land in connection with the construction of Four-Lane Road and he has no grievance insofar as the compensation paid for against the right of way is concerned, however, he is aggrieved due to non-payment of compensation for damages and loss caused to his property, namely, the three story RCC building, the piggery and the terrace paddy field and blockage of his approach road, which was caused due to construction of Four-Lane Road on National Highway No. 29 due to massive earth cutting without taking any precautionary measures like erection of protection wall by the executing authorities. He submits that in the joint verification of the property of the petitioner, which took place on 20.02.2024, all the stakeholders including the representative of NHIDCL were present and all the representative of line departments were also present and an assessment of the damage and losses caused to his property was carried out in their presence, therefore, the respondent Nos.

1, 2 and 3 now cannot be allowed to absolve from their liability of paying compensation to the petitioner for the damages caused to his property beyond ROW during construction of four-lane road.

15. The learned counsel for the petitioner has submitted that on 31st October 2018, the Deputy Commissioner, Kohima had forwarded a list of complaints regarding compensation sought due to four-lane under Kohima district to the General Manager, NHIDCL. The nature of complaint was also mentioned in the said list and it was also stated that after field verification, the claim of the enlisted persons were found to be genuine. The name of the petitioner, Thejao Sekhose was mentioned in Serial No. 6 of the said list wherein the nature of complaint was shown to be damage caused to paddy field, RCC and piggery. It is stated by the petitioner that though other owners whose property was damaged beyond ROW were compensated, the petitioner was not given any compensation.

16. He submits that the respondent authorities have, however, given compensation to other landowners for the damages caused to their properties beyond ROW and by not paying the compensation to the present petitioner, the petitioner has been discriminated and his fundamental rights under Article 14 of the Constitution of India has been violated. He submits that the assessment of damage caused to the property of the petitioner beyond ROW has been done by the appropriate authorities, therefore, the objection raised by the NHIDCL against the said assessment is not tenable.

17. The learned counsel for the petitioner has submitted that as the assessment of damage caused to the property of the petitioner beyond

ROW was done by the appropriate authorities, therefore, the contention of the respondents that this case involves a disputed question of facts, therefore, same should not be entertained by a Writ Court, is not tenable. He submits that otherwise, it would lead to endless protracted litigation depriving the present petitioner of his due compensation, whereas, other similarly situated landowners have already been paid compensation for damages caused to their properties beyond ROW.

18. The learned counsel for the petitioner has also submitted that the contention that the EPC (Engineering, Procurement and Construction) contractor who executed the work had not been made party in this writ petition, therefore, this writ petition is bad for non-joinder, is also not tenable. He submits that the NHIDCL had earlier filed an application bearing I.A.(C) No. 119/2024, seeking permission to implead the EPC contractor M/s Gayatri Projects Limited in the instant writ petition as the actual work beyond ROW was done by the said contractor. However, this Court, by its order dated 22.08.2024 rejected the said prayer and observed that since the NHIDCL is the principal in the road construction work and had been participated in all verification conducted, hence, it is NHIDCL which should be made liable for any compensation. He submits that in view of the order dated 22.08.2024, the objection raised by the NHIDCL is not tenable. Moreover, he also submits that there might be an agreement between NHIDCL and EPC contractor, however, the petitioner is stranger to the said agreement and petitioner has dealing only with the NHIDCL which had acquired the land of the petitioner and also paid compensation for the said acquisition. He submits that in between NHIDCL and the EPC contractor, it is the NHIDCL who is the principal for

the construction of road and therefore, it should be made absolutely liable for wrongful act committed by the agent i.e., EPC contractor. In support of his submission, learned counsel for the petitioner has cited following rulings:-

(i) "**AP Electrical Equipment Corporation Vs. Tahsildar and Others**" reported in "**(2025) SCC OnLine SC 447**"

(ii) "**Dagmo Loya & Others v. State of Arunachal Pradesh & Others**" reported in "**2016 (2) GLT 154**"

(iii) "**Smt. Gunwant Kaur and Ors. Vs. Municipal Committee, Bhatinda and Ors.**" reported in "**(1969) 3 SCC 769**"

(iv) "**Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others**" reported in "**(2013) 1 SCC 353**"

19. On the other hand, Mr. Sentianger, the learned counsel for the respondent Nos. 1, 2 and 3 has opposed the prayer of the petitioner on many counts. He submitted that the dispute between the parties involves disputed questions of fact, which this Court by exercising its writ jurisdiction under Article 226 of the Constitution of India is ill-equipped to consider. He further submits that even if it is assumed that the respondents are liable to pay compensation, the amount of compensation to be paid has to be ascertained only on the basis of evidence adduced by the parties in a Civil Court. He further submits that when an efficacious alternative remedy is available for the petitioner, the exercise of writ jurisdiction is uncalled for. He submits that there has been consistent views of the Apex Court as well as High Courts that when there is an alternative remedy available, judicial prudence demand that Writ Court refrains from exercising its jurisdiction under constitutional provision. In support of his submission, he has cited a ruling of the Apex Court in the

case of "***State of Maharashtra and Ors. Vs. Great Ship (India) Limited***" reported in "***2022 SCC Online SC 1262***".

20. He submits that though the petitioner has claimed that damage to his building, piggery and terrace paddy field has been caused due to excessive earth cutting while construction of four-lane road. However, as the respondents have denied to the said facts, it would require leading of evidence and the examination and cross-examination of witnesses and, therefore, the issue between the parties is not amenable to be adjudicated under Article 226 of the Constitution of India. He submits that it is a settled legal proposition that where disputed questions of facts are involved, a petition under Article 226 of Constitution of India is not a proper remedy. In support of his submission, he has cited a ruling of the High Court of Orissa in the case of "***Anil Palai Vs. State of Odisha and Others***" reported in "***2021 SCC Online ORI 632***", wherein the judgment of the Apex Court in the case of "***Chairman Grid Corporation of Orissa Limited (GRIDCO) and Ors. Vs. Smt. Sukamani Das and Anr.***" reported in "***(1999) 7 SCC 298***" was referred to, where the Apex Court has referred to the aforesaid proposition of law.

21. The learned counsel for the respondent Nos. 1, 2 and 3 has also submitted that the construction work of four-lane road of Dimapur-Kohima National Highway No. 29 project was executed under the authority of NHIDCL through independent EPC contractors. He submits that the stretch of national highway, where the land of the petitioner is located, was constructed by EPC contractor, namely, M/s Gayatri Projects Limited. However, said EPC contractor has not been made a party in this writ

petition and, therefore, he submits that this writ petition is also bad for non-joinder of necessary parties.

22. The learned counsel for the respondent Nos. 1,2 & 3 has submitted that as per the EPC contract agreement between NHIDCL and M/s Gayatri Project Limited, the contractor bears full responsibility, liability and indemnity for care of the works and materials from appointed date until issuance of provisional certificate or completion certificate and therefore, if any damage has been caused to the petitioner's property outside the ROW, it would be the responsibility of EPC contractor to indemnify the same. He submits that as per the terms of the EPC contract agreement between NHIDCL and M/s Gayatri Project Limited, the EPC contractor is not an agent of the NHIDCL, but act as an independent contractor. It is submitted that the said EPC contractor was not under the order or control of NHIDCL while performing the work of construction of four-lane road between Dimapur to Kohima. He submits that the NHIDCL only controls what is to be done, and it is the independent EPC contractor who will decide as to how the same is to be done and, therefore, there is no employer and employee relationship between them.

23. The learned counsel for the respondent Nos. 1,2 & 3 has submitted that the principle of respondent superior is not applicable in this case and the respondent Nos. 1, 2 and 3 cannot be made vicariously liable for the wrong committed by EPC contractor while performing the contract work. He submits that Article 25 of the EPC contract requires contractor to indemnify NHIDCL and its officials against any third-party claim or damages arising out of contractor's action. He submits that as in the

instant case, M/s Gayatri Project Limited is not before this Court, it would not be appropriate to decide this issue in their absence and accordingly, this writ petition is liable to be dismissed. In support of his submission, the learned counsel for the respondent Nos. 1, 2 and 3 has cited a ruling of the Apex Court in the case of "***Sushilaben Indravadan Gandhi and Anr. Vs. The New India Assurance Company Limited***" reported in "***(2021)7 SCC 151***".

24. The learned counsel for respondent Nos. 1, 2 and 3 has also submitted that though, the letter dated 13.05.2024 of the Revenue Officer, Kohima written to General Manager, NHIDCL, show the total damage caused to the petitioner property to the extent of Rs.1,16,47,063/- (Rupees One Crore Sixteen Lakh Forty Seven Thousand and Sixty Three), however, it does not indicate as to the cause due to which the damage was caused to the property of the petitioner. He submits that in absence of specific finding regarding the cause of damages caused to the petitioner's property, there remains a room to speculate that it might also be caused due to act of God or due to other natural reasons. He further submits that as regards damage to the plantation in the land of the petitioner is concerned, though the earth-cutting work was executed in the year 2017, the Forest Department conducted the field verification for assessment of damage in the year 2024 and therefore, the assessment made by it is highly questionable.

25. He further submits that the assessment report does not give any specific demarcation of right to way by indicating as to where it ends and where it begins thereby making it difficult to comprehend as to whether

assessment has been made with regard to damages caused outside the purview of ROW or it also includes the land which falls within ROW. He submits that the damage caused to the building of the petitioner may be caused for due to other reasons and the petitioner has also failed to produce any material to show that he had taken all due cares and caution while constructing the building so as to insulate it from damages due to landslides. He submits that there is no specific material on record to show that the damages caused to building is only due to wrong methodology adopted by the EPC contractor while constructing the four-lane road.

26. The learned counsel for the respondent Nos. 1, 2 and 3 has also submitted that considering the fact that the construction work in the stretch of land of the petitioner was done by the independent EPC contractor, M/s Gayatri Projects Limited, the aforesaid respondents had filed an interlocutory application, bearing I.A.(Civil) No. 119/2024 for impleading M/s Gayatri Projects Limited in the instant petition, however, said prayer was objected to by the petitioner and ultimately rejected by a Co-ordinate Bench of this Court by its order dated 22.08.2024.

27. The learned counsel for respondent Nos. 1, 2 and 3 has also submitted that in the joint verification done on 20.02.2024, the representative of NHIDCL was only present during the said verification and he was not involved in the decision making process, while assessment of damage was done by the Revenue Officer and the Forest Department. Hence, the said assessment report is not binding on the NHIDCL. He submits that in earlier three verifications done to assess the damages caused to petitioner's property, the NHIDCL was not involved. He submits

that the NHIDCL, therefore, has the right to contradict the aforesaid assessment report dated 31.08.2024 by the Revenue Officer, Kohima wherein the quantum of the damage caused to petitioner's property has been shown as Rs.1,16,47,063/- (Rupees One Crore Sixteen Lakh Forty Seven Thousand and Sixty Three) only. In view of his aforesaid submissions, the learned counsel for respondent Nos. 1, 2 and 3 has prayed for dismissing the instant writ petition.

28. Mr. Imti Imsong, learned Additional Advocate General, Nagaland appearing for the respondent Nos. 4, 5 and 6 has submitted that the State Government in this case does not have much role and it is acting only as a facilitator in acquisition of land for construction of four-lane roads from Dimapur to Kohima. He submits that as regards the claim of the petitioner for compensation due to damage caused to his land, which is beyond the ROW in construction of four-lane roads, the General Manager, NHIDCL wrote two letters to the respondent Nos. 5 on 10.06.2022 and 15.09.2022 on the basis of which a joint verification was carried out to ascertain the damage and loss caused to the properties of the petitioner and accordingly, the joint verification report dated 13th May 2024 has been submitted by the respondent No. 5 in this writ petition. It is also submitted that the said joint verification report was also sent to the General Manager, NHIDCL, Branch Office, Dimapur for necessary action/consideration. He submits that prior to this also, all the complaints/representations of the petitioner seeking compensation in respect of damage caused to his property beyond ROW were forwarded to the NHIDCL, as the respondent No. 5 as stated earlier has been acting as a facilitator between landowners and the implementing authorities.

29. I have considered the submissions made by the learned counsel for both sides. I have also gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

30. The petitioner in this writ petition is praying for compensation for damages and loss caused to his property, namely, terrace paddy field, three-storied RCC building and piggery structures and restoration of his approach road, which was cut off due to construction of four-lane road on National Highway No. 29 outside the right of way in respect of his land. He has been very categorical in the averments made in his writ petition to the effect that he has been compensated in respect of the land acquired for right of way for construction of four-lane road. However, he has not been paid any compensation for damages caused to his property outside the right of way. The other land owners, who were situated similar to the petitioner whose land and property outside right of way were also affected by construction work of four-lane road, were duly compensated by the respondent Nos. 1, 2 and 3. The said fact has not been disputed by the respondent Nos. 1, 2 and 3.

31. It appears on perusal of letter dated 10.06.2022 bearing No. NHIDCL/ PMU-DIM/ NH-39 D-K/ VOL-XII/2022-23/710/13453 of the General Manager, NHIDCL, PMU, Dimapur to the Deputy Commissioner, Kohima, it appears that the NHIDCL had written a letter to the Deputy Commissioner, Kohima for notifying a convenient date for joint site verification to identify the damage and loss of property of the petitioner and for resolving the issue at the earliest. It also appears that the said

letter was followed by another letter bearing No. NHIDCL/ PMU-DIM/ NH-39 D-K/ VOL-XII/ 2022-23/ 726/ 3957 dated 15.09.2022 reminding the Deputy Commissioner, Kohima to fix a convenient date for joint site verification at the earliest. Accordingly, it appears that on 20.02.2024, joint site verification was conducted for assessing the damage of the properties belonging to the petitioner. In the joint site verification, the NHIDCL was represented by its Engineer, Saurabh Das. During joint site verification, the petitioner, the DLRSO Kohima, Junior Engineer and other representative of other line Departments including the Forest Department, were present.

32. On perusal of Annexure-5 (letter dated 11th March 2024 bearing No. EE/ CD/ TB/ Kohima – DMR- 4 Lane Complaint/2024) to the affidavit in reply filed by the petitioner on 20th November 2024 against the additional affidavit filed by respondent Nos. 1, 2 and 3, it appears that the estimate for assessment of building and structure of the petitioner for construction of four-lane road project in Kohima has been shown as amounting to Rs.99,69,936/- (Rupees Ninety Nine Lakh Sixty Nine Thousand Nine Hundred and Thirty Six).

33. It also appears on perusal of letter bearing No. KR/GEN/TF/01/57 dated 18th March 2024 of Deputy Conservator, Forest Range, Kohima Division that the assessment of current market value of the trees damaged and the private property of the petitioner was to the tune of Rs.13,93,052.5/-.

34. On perusal of the Survey Report submitted by Deputy Ranger, it

appears that the assessment was made on the basis of evidence like photographs and the testimony of the landowner, as the trees were already cut down during construction of four-lane road. On the basis of the oral evidence of the petitioner and the photographs, it was assessed that approximate eighty numbers of trees were cut down, out of which eighty percent trees were of hollock and twenty percent were oak and other local species. The amount of loss due to damage to trees was assessed to be Rs.13,93,052.5/- and the total damage caused to the property of the petitioner beyond the ROW was assessed at Rs.1,16,47,063/- only.

35. Thus, from the affidavit filed by respondent No. 5 wherein the joint verification report dated 13th May 2024 has been annexed as Annexure-3, it appears that the estimated damage to the property of the petitioner, which falls beyond the ROW under four-lane road project was assessed to be of one Rs.1,16,47,063/- only. Though, the respondent No. 1, 2 and 3 have raised objection to the said reports on certain grounds. However, the fact remains that the said assessment was done on the basis of joint verification of the property of the petitioner done wherein the representative of all the line departments as well as the representative of NHIDCL were also present.

36. Though, for seeking relief in a case which involves disputed question of facts, the appropriate forum would be a civil court, however, as observed by the Apex Court in the case of "**Smt. Gunwant Kaur and Ors. Vs. Municipal Committee, Bhatinda and Ors.**",(supra), the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of the

Constitution, merely because in considering the petitioner's right to relief, questions of fact may fall to be determined.

37. It has observed that in a petition under Article 226, the High Court has jurisdiction to try issues both of facts and law. The exercise of jurisdiction, it is true, is discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of complex nature, which may for their determination require oral evidence to be taken, and on that account, High Court is of view that the dispute may not be appropriately tried in a writ petition, the High Court may decline to try a petition. However, this Court is of considered opinion that if there are material on records, on the basis of which the Court may arrive at a logical conclusion, it may not be appropriate to relegate the petitioner to the Civil Court. More so, considering the fact that much time has been consumed during the instant proceeding before the High Court in this writ petition.

38. On perusal of the joint verification report dated 13th May, 2024 as well as the estimate for assessment of damage caused to the building and structure over the petitioner's property, it appears that as regards the damage assessment of the structure and properties during construction of Kohima-Dimapur road project over petitioner's property, the amount involved is estimated to be Rs.99,69,936/-. The said damage was assessed as per the Nagaland PWD Schedule of Rates (SOR) for 2016 by the Executive Engineer, PWD(H), Central Division, Kohima and Junior Engineer, Central Division No. 1, PWD(H), Kohima. The said officials may be regarded as expert in their field. The damage caused to the plantation

over the petitioner's property was also assessed during joint verification by the Divisional Forest Officer, Kohima Division, who may also be regarded an expert in his field.

39. The property of the petitioner affected by the construction work of four-lane road, which is beyond the ROW, namely, the three-story building, the piggery and the terrace field have become unusable due to the damage caused by the construction work. The deprivation of the petitioner of beneficial use of his immovable property is a clear violation of Article 21 of the Constitution of India as well as Article 300A of the Constitution of India. Moreover, the petitioner have been discriminated in as much as the other landowners whose property beyond ROW were affected due to construction work of four-lane road, have already been given compensation by the NHIDCL, whereas the petitioner has been deprived of the same.

40. Under such circumstances, it would be inappropriate to relegate the petitioner to a Civil Court after lapse of such a long period of time (more than seven years) after the damage to property of the petitioner was caused in construction work of four-lane road.

41. As regards the contention of the respondent Nos. 1, 2 and 3 that due to non-joinder of M/s Gayatri Project Limited, who was the EPC contractor, who executed the work of construction of four-lane road in the area where the land of the petitioner is located, has not been made a party and therefore, the writ petition is bad for non-joinder, this Court is constrained to observe that the said question has been decided by a Coordinate Bench of this Court while dealing with interlocutory application

i.e., I.A.(Civil) No. 119/2024 whereby the respondent Nos. 1, 2 and 3 had prayed for impleading the said EPC contractor as party to this writ petition. By its order dated 22.08.2024 passed in I.A.(Civil) No. 119/2024, the prayer for impleadment of M/s Gayatri Project Limited was rejected by a Co-ordinate Bench of this Court by observing that the impleadment of M/s Gayatri Project Limited may not be necessary in view of the fact that NHIDCL as the principal for the road construction work had all along participated in all verifications conducted so far. The said order has not been challenged by the respondent Nos. 1, 2 and 3, therefore, this Court, while considering the same issue may not come to a different finding on the same set of facts, as it would be against the principle of judicial propriety.

42. There is no dispute to the fact that the NHIDCL is the executing authority of the construction of four-lane road, i.e., National Highway No. 29 between Dimapur to Kohima. They have engaged M/s Gayatri Project Limited at the initial stage for execution of the construction work and thereafter, when the said contractor was not found to be up to the mark, the contract was terminated and another EPC contractor was engaged by the NHIDCL.

43. The question as to whether the principle of *respondent superior* would be applicable in this instant case or as to whether in absence of EPC contractor whom the learned counsel for the respondent Nos. 1, 2 and 3 has tried to project as an independent contractor is necessary or not, for arriving at a decision in the instant writ petition is not relevant. Moreso, due to the presence of an indemnity clause in the EPC contract

between the NHIDCL and the EPC contractor, M/s Gayatri Projects Limited.

44. The clause 25.3, 25.4, 25.5 and 25.6 which relate to indemnifying the NHIDCL by the EPC contractor in the event of a claim by a third party is reproduced herein below:-

“25.3 Notice and contest of claims

*In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.*

25.4 Defence of claims

25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 25, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice, provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action, or

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 25.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

25.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 25, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

25.6 Survival on Termination

The provisions of this Article 25 shall survive Termination."

45. On perusal of the aforesaid clauses, it appears that the third party may make a claim from either NHIDCL or the EPC contractor. In the event, a claim is made against NHIDCL by the third party, what is to be done has been described in clause 25.3 herein above. It is even provided that in the

event the indemnifying party (the EPC contractor) wishes to contest or dispute the claim or demand, it may conduct the proceeding in the name of indemnified party, i.e., NHIDCL, subject to indemnified party being secured against any cost involved so as to its reasonable satisfaction. The said clause itself indicates that even if a claim is made by the petitioner against the NHIDCL, the indemnifier, i.e., the EPC contractor could have contested the claim in the name of indemnified party. Hence, as per the contract, to which only the NHIDCL and the EPC contractor are privy, the NHIDCL may be indemnified by the EPC contractor.

46. As per the Black's Law Dictionary, the meaning of the word "indemnity" is shown as:- a duty to make good any loss from a damage or liability incurred by another. The second meaning is shown as the right of an injured party to claim reimbursement for its loss, damage, or liability from the person who has such a duty. The third meaning is the reimbursement or compensation for loss or common damage or liability in tort, especially the right of a party who is secondly liable to recover from the party who is primarily liable for reimbursement of expenditure paid to a third party for injuries resulting from violation of a common law duty.

47. Thus, merely because of the fact that a contract of indemnity exists between the NHIDCL and the EPC contractor, it is not mandatory for the petitioner to make the EPC contractor a party in this writ petition. More so, when the prayer for impleading EPC contractor as a party has been rejected by this Court by its earlier order and same has not been challenged by the respondent Nos. 1, 2 and 3. Therefore, this Court is of considered opinion that this writ petition is not bad for non-joinder of EPC

contractor.

48. The NHIDCL may very well under the provisions of the EPC contract executed between it and Gayatri Projects Limited, claim itself to be indemnified for the compensation paid to the petitioner for damages caused to his property in executing the construction work of four-lane road by the EPC contractor.

49. As regards the objection raised by the respondent Nos. 1, 2 and 3 that the joint verification assessment report nowhere indicates the cause of the damage is concerned. It is apparent that the joint verification process was conducted only on the application filed by the petitioner before the Deputy Commissioner regarding the damage caused to petitioner's property, which is situated over land beyond the ROW, during construction of four-lane road and such joint verification was also insisted upon by the NHIDCL. Hence, it is apparent that the report relates to damage and losses caused to the property of the present petitioner while construction of four-lane road by the NHIDCL.

50. Moreover, on perusal of the letter bearing No. REV/CASE-4LANE/2022-1104 dated 13th May 2024, addressed to the General Manager, NHIDCL by the Revenue Officer, Kohima, it is apparent that said estimate is in regard to the property of the petitioner damaged due to four-lane road project and same is beyond ROW. Hence, separate indication regarding where the ROW starts and where it ends in the said report is not necessary.

51. As regards assessment of damage caused to the plantation over the

land of petitioner, which has been affected beyond ROW due to construction of four-lane road, the objection that the assessment was made in the year 2024, whereas earth cutting was done in the year 2017, is also not tenable in as much as it is apparent that the trees/plantation over the land of the petitioner were cut in the year 2017. However, the joint verification was conducted in the year 2024, therefore, the assessment had to be made on the basis of some other evidence, like photographs and oral evidence, on which the assessment in the instant case has also been made.

52. The plea taken by NHIDCL that the petitioner has not established that he had taken all due care and caution while constructing his building so that it does not get affected by landslide is also not tenable in as much as such an objection has been raised only after quantification of the compensation to be paid by the NHIDCL has been estimated in the joint verification assessment report and the respondents Nos. 1, 2 and 3 have nowhere categorically pointed out as to what caution or the care the petitioner ought to have taken while constructing his building over his land, more so, when the earth cutting work for four-lane road construction near the land of the petitioner was carried out without raising any protection guard wall to prevent landslide.

53. The respondent No. 5 had, in the year 2018 itself, forwarded the representations regarding compensation claimed by the landowners for damages caused to their properties beyond the ROW, however, though other landowners were compensated, the petitioner was not given any compensation for the damage suffered by him, beyond the ROW, due to

such construction of four-lane road and he had to wait for the same for more than six years. Though, petitioner has been given compensation for the land acquired from him for construction of the four-lane road, however, the petitioner was deprived of beneficial enjoyment of his property, which is beyond the ROW. His livelihood was also affected by damaging his piggery as well as the terrace paddy field and thus his fundamental right guaranteed under Articles 21 and 14 of the Constitution of India has been violated. He is, therefore, entitled to the compensation for the damage caused to his property beyond ROW in construction of the four-lane road (National Highway No. 29).

54. Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. In the instant case, the petitioner was deprived of beneficial enjoyment of his property, which was beyond the ROW as same was damaged due to construction of four-lane road and earth cutting for the said construction without proper protection. The petitioner is, therefore, entitled to get compensation of the amount of money estimated by the joint verification and survey report as reflected in the letter No. REV/CASE-4LANE/2022/1104 dated 13th May, 2024 of the Revenue Officer, Kohima, Nagaland, addressed to the General Manager, NHIDCL.

55. The said amount of Rs.1,16,47,063/- only shall be paid by the respondent Nos. 1, 2 and 3 (NHIDCL) to the petitioner within three months from the date of this order. After making payment to the petitioner, the NHIDCL may invoke the indemnity clause of the EPC contract between itself and EPC contractor to get reimbursed by the EPC

Contractor, in respect of the compensation paid by it to the petitioner.

56. With the above observation, this writ petition is disposed of.

57. The Registry of the Principal Seat is directed to immediately send this case record to the Registry of the Permanent Bench of this High Court at Kohima.

JUDGE

Comparing Assistant