

GAHC030000092012



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

Case No. : RFA/15/2012

H Chalkhuma and 4 Ors
Venghnuai, Aizawl 2: RL Thanmawia

3: Lalnunmawia

4: C T Khuaia

5: R Lalrinawm

VERSUS

The Project Director, PIU,E-in-C, PWD, Aizawl and Anr
Aizawl

Advocate for the Petitioner : Mr L H Lianhrima Sr. Adv.

Advocate for the Respondent : Ms Dinary T Azyu

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT

Date : 16-10-2023

JUDGMENT & ORDER (CAV)

Heard Mr. L.H Lianhrima learned Sr. counsel for the appellant along with Mrs.

Dinari T. Azyu learned counsel for respondents No. 1 and 2.

2. This is a Regular First Appeal against the Judgment and Order dated 24.11.2011 passed by the learned Senior Civil Judge, Aizawl in Money Suit No. 25/2009, wherein the learned trial court had dismissed the Money suit.

3. The appellants case in brief is that the Appellants/Plaintiffs are the land owners who had been developing and maintaining their lands by planting various crops, several fruit bearing trees at Venghnuai, Aizawl. In the meantime, the defendant no 1 issued and displayed HRIATTIRNA (NOTIFICATION) dated 28.12.2005 to the effect that Aizawl–Thenzawl Lunglei road construction had been carried out and damages caused to the land owners would be jointly verified and assessment would be made and compensation would be paid at the earliest. That the Special Land Acquisition Officer (SPLO), PIU, PWD wrote to the Defendant no. 2 dated 24.04.2008, that some villagers' lands and crops had been damaged at down hill side of the project alignment along Aizawl Bypass due to dozing down of debris at many places at the time of excavating pilot road and requested him to instruct the defendant no 3 to provide Wall for prevention of rolling down of debris/earth spoils at any unauthorized disposal site along Aizawl Bypass and to be very careful to avoid or minimize damage beyond acquired area especially at down hill side of alignment. Failing which the cost of damage to properties would be borne by the Contractor. Accordingly, the Defendant No 2 wrote to the Defendant No 3 by enclosing the said letter and informing him that the cost of any damage to properties of the land owners

would be the responsibility of the defendant no 3, the Contractor. Thereafter, the SPLO re-directed complaint letters duly supported by Joint. Verification Records to the Defendant No 2 vide his letter No.MPWD-7/PIU/RAP/PH-11/08/37 dated 24th April, 2008 requesting him to do the needful for early settlement of the complaints made by the five affected persons and the SPLO was of the view that the Contractor is responsible for the damages caused to the land owners for amicable solution. As a result, the Defendant No 2 wrote to the Defendant No 3 reiterating that the defendant no 3, Contractor is responsible for all damages caused and requesting him to report back in writing that each case is resolved and attach details of the settlement documentation. However, no appropriate action has been taken by the defendants for making payment of compensation to the Plaintiffs even after several months had elapsed. Since the defendants failed to give compensation for damages caused to the crops and fruit bearings trees of the plaintiffs even after serving legal notice under section 80, CPC, the Plaintiffs filed the instant Money Suit No 25 of 2009 for recovery of adequate compensation of Rs.7,00,000/- for damages of plants and fruit bearing trees and also acquisition of the land of the plaintiffs.

4. The Defendant no.1/respondent no.1 in their Written statement held that the suit was bad for non- joinder of necessary parties since the State Government should have been made a party. That the HRIATTIRNA dated 28.12.2005 is for use/purchase of new land required to be acquired on need basis. That the letter written by

Defendant No.2 dated 17.12.2007 to Defendant No.3 was a letter of awareness to make a barricade or any other precaution to avoid debris from going into private land to avoid damage to the surrounding area other than the area designated for disposal site. That the property of the plaintiff was outside the acquired area and therefore the Special land Acquisition Officer SPLO had asked the contractor to look into the matter. That the manner in which the verification was done was defective since it was the standing crops which was entered in the verification records.

5. The Defendant No.3/respondent no.3, in their written statement stated that the Pilot road was constructed much before the letter dated 17.12.2007 was received and the plaintiff had never approached the defendant no.3 during the construction of the pilot road. That the scope of work as per the contract agreement dated 22.10.2003 do not include providing barricade wall to avoid rolling down of debris. That as per sub-clause 20.4(c) of their contact agreement it is the Employer's risk when the damages are not due to the design by the contractor. That the claim of the plaintiff for compensation of RS.7,00,000/- for damages is made without any basis.

6. From the pleadings of the parties the learned trial court framed the following issues on 08.03.2010.

- i. Whether the suit is maintainable in its present form and style*
- ii. Whether the suit is bad for non joinder of necessary parties or not.*
- iii. Whether the plaintiff has locus standi to file the instant suit or not.*

iv. Whether the plaintiff has cause of action against the defendants or not.

v. Whether the plaintiffs are entitled to the relief claimed or not. Is so, to what extend.

7. During trial, all the parties adduced evidence and gave their examination-in-chief and were duly cross examined by the opposite parties.

8. The learned trial court decided issue no.1 in favour of the plaintiff, finding that the requisite court fees have been paid. Issue no 2 was decided against the plaintiff. The court observed that the suit was bad for non-joinder of necessary parties since the defendants no.1 to 3 are the agents of the state of Mizoram and hat vicarious liability is at issue against the state of Mizoram. The trial court found that non impleadment of the state of Mizoram will cause obstacles in the proceedings for realization of compensation if the suit was decreed in favour of the plaintiff. Issue no.3 was decided against the plaintiff. The learned trial court on examination of the evidences of the plaintiffs found that no landed passes/ LSCs which can determine the legal right of the plaintiffs upon the suit properties was found and held that the plaintiff has no locus standi to file the instant suit. Likewise issue no.4 and issue and issue no,5 were decided against the plaintiffs finding that no damaged can be assessed by counting the standing trees and that the defendant no.3 had already finished the construction of the pilot road when he received the letter to build a

barricade wall to avoid rolling down of debris. The learned trial court thus dismissed the suit on merit and on non - maintainability of the suit. Aggrieved by this, the appellants/plaintiffs have approach this court by way of Regular First Appeal.

9. Mr. L.H. Lianhrima, learned senior counsel assisted by Ms. Ruth Lalruatfeli submits that the defendant no 1 has just tried to shift the liabilities to the defendant no 3 by stating inter alia that all the damaged area are beyond the acquired area at the down hill side of the alignment and the Contractor is responsible for the same. Even then, the Learned Court below passed the impugned Judgment and Order dated 24-11-2011 without taking into account the oral as well as documentary evidences adduced by the witnesses of the rival parties and that too without perusing the relevant materials available on record.

10. Mr. L.H. Lianhrima, learned senior counsel further submits that a joint verification on the land of the appellant No.1 was conducted on 25.04.2008, wherein the respondent No.2 who is the team leader of Sheladia Associates had written to the Contractor/Project Manager/respondent No.3 that he was to settle the complaints received from the appellants with regards to debris rolling into the private properties of the appellants. A Joint Verification record was also attached dated 02.04.2007 with regards to properties to be acquired for upgradation of Aizawl-Thenzawl-Lunglei road via Hmuifang a section of Aizawl Bypass and Buangpui to Lunglei (MSRP/Ph-II), the report contains a description of crops/trees and bamboo/land structure etc. and the

names and number of trees found within the land of appellant No.1., there is also a report dated 01.09.2008 where it states that number of crops damage were calculated from the remaining survive crops and the land pass is recorded as 104502/01/513, in the same way verification the land of appellant No.2 R.L. Thanmawia, appellant No.3 P.C. Lalnunmawia, appellant No.4 C.T. Khuaia and appellant No.5 R. Lalrinawma is enclosed with the number of trees, crops etc. said to be damaged.

11. The learned counsel has led this court to the notice dated 28.12.2005 which is with regards to construction of Aizawl-Thenzawl-Lunglei road financed by World Bank it states that compensation is also given to individual and associations whose land and properties are used in the process. Verification was to be performed by the land owners VCP, NGO consultant sub Profession Staff representative of contractor and representative of consultant. The learned counsel has also led this court to the letter dated 14.12.2007, wherein a letter was written to the team leader Sheladia Associates (respondent No.2) and INC, USA at Chaltlang, Aizawl by the Special Land Acquisition Officer which states that it has been noticed that some villagers lands and crops were damaged at down hill side of the project alignment along Aizawl Bypass due to dozing down of debris at many places at the time of excavating pilot road and therefore to make provision of wall along Aizawl Bypass for prevention of rolling down of debris at unauthorized disposal site. Thereafter, on 17.12.2007 a letter was written by the Team Leader Sheladai Associates/respondent No.2 to the Project Manager (North), RBM-Tantia Joint Venture/respondent No.3 to take steps for prevention of debris rolling

down into private properties at B.P-1.

12. The learned counsel also led this court to the letter dated 24.04.2008, wherein the Special Land Acquisition Officer had written to Sheladia Associate/respondent No.2 forwarding a claim of compensation of damaged of land and crops as a result of dozing down of earth spoils and debris at the time of excavation of pilot road of Aizawl Bypass. The letter also stated that joint verification exercise was also conducted and properly recorded at that time and the effected persons are the instant 5 (five) appellants wherein the name have been reflected. A letter dated 25.04.2008 shows that a letter written by respondent No.2 Sheladai Associates to the Project Manager, RBM-Tantia Joint Venture/respondent No.3, wherein the subject is with regards to the settlement of the complaints received from the effected persons concerning the debris rolling down into the private properties.

13. The learned counsel for the appellants submits that the appellants had given evidence before the trial court, wherein the appellants stated before the court how damaged was caused to the crops due to the debris rolling down into their lands during the construction of road Aizawl-Thenzawl-Lunglei road.

14. The learned counsel stated that the defendant witnesses both the defendant No. 3 has stated that the defendant No.3 is the contractor and is not is liable to make payment of any compensation for damages to any to the land owners. That the defendant No.3 is a Contractor working under defendant No.1 and Defendant No. 2 is

the Supervising Consultant and the Engineer appointed by defendant No.1. That the defendant No. 1 & 2 had at no point of time during the construction of the Pilot Road instructed the defendant No.3 to provide wall or barricading for prevention of rolling down of debris. That the Special Land Acquisition Officer vide letter No. 14.12.2007 had requested the Defendant No.2 to instruct defendant No.3 to provide wall for protection of rolling down of debris to minimize damages. The letter was issued in December, 2007 which is much after the spot verification was done in April, 2007. That, it is the Defendant Nos.1 & 2 who are vicariously liable for the acts of their agent, defendant No.3.

15. The learned counsel for the appellants has also let this court to the evidence recorded by Defendant No.1, wherein in cross-examination he has stated that the defendant No.3 is the Contractor engaged by Defendant No.1 for construction of road for upgradation of Aizawl-Thenzawl-Lunglei road and Defendant No.2 is the Supervising Consultant in connection with the said project. The Defendant witness No.2 for the Defendant No.1 Mr. Lalthanpuia has deposed that they had conducted the Joint Verification report where the instant plaintiffs alleged damaged to their crops, it is mentioned by this witness that the plaintiff No.1 cannot produce any Revenue pass in respect of the land claimed by him to be his land. That the damaged caused to any property in these surrounding areas have to be borne by respondent No.3 that the crops mentioned in the verification report are grown at places down below the road.

16. The learned counsel for the appellants also submits that the learned Trial court held that in the instant case, the area of land acquisition is clearly delineated by the release of debris and other earth spoils in others land, beyond the elaka acquired for the said road construction is a crux. And found that any liabilities on defendant No.3 as intend to insist on the basis of Exhibit P-3 and Exhibit P-4. The learned counsel for the appellants thus submits that the learned trial court has not properly appreciated the evidence and had erred in coming to a conclusion that the suit is liable to be dismissed.

17. Mrs. Dinari T. Azyu, the learned counsel for the respondent No.1 on the other submits that the instant appeal is liable to be dismissed on the law point that the appellant never produced any land pass before the trial court nor is it stated in the plaint that they were in possession of any land pass. She submits that even if any assessment was made after due verification with regards to the damages caused to the appellant, no land pass or land record was produced before the court or before the person who conduct the verification. In support of the submission, the learned trial court had cited a decision of a coordinate Bench of this court in **RFA No.19 of 2014 with CM Appln.142 of 2014 dated 25.06.2020** in **State of Mizoram and 12 Ors .Vs. Kapnghingi W/o Vantluanga and 6 Ors** wherein a coordinate Bench of this court held that the court finds no faults in the submission particular when the documents which the counsel is relying upon are unproven documents.

18. The learned counsel has also relied on the judgment of this court in **2011 9 SCC 126 para 13** in **Khatri Hotels Pvt. Ltd & Anr. Vs. Union of India & Anr.** where the court held that the plaintiff has failed to show their vide, title or interest over the land in dispute. In such circumstances, as the plaintiff has failed to show his legal right over land in dispute, therefore, the plaintiff is a mere encroacher upon the government land.

19. The learned counsel further submits that the appellants have approached this court in a single petition while the property of the appellants are not common, they have separate caused of action and they should have filed separated suit before the trial court, she further submits that there is a non-joinder of a necessary party since the State of Mizoram is a necessary party in the instant case. She further submits that section 80 of CPC has not been complied with since no notice was sent to the defendant in the trial court. In support of her submission, she has cited **2011 (2) GLT 12 para 33 in Commissioner-cum-Secretary & Ors Vs. T.C. Syndicate & Others.**

20. The learned counsel also submits that the respondent No.1 is not liable to pay any compensation, wherein the respondent No.1 on receiving complaint of spoils having rolled down to some private land during Pilot Road excavation had written defendant No.2 for necessary further instruction to defendant No.3 to avoid damage at the surrounding area other than areas designated for disposal site. This letter does

not imply damages claimed by the appellants. The Defendant No.2 proposed the type of barricade or to decide on what precautions they would take to avoid such problems. He had also reminded them that damage to properties of claimants, would be the responsibility of the Defendant No.3. That on receiving complaint from the Special Land Acquisition Officer, to conduct verification and claimed along with the verification report dated 04.04.2007, which was forwarded to the concerned Contractor/respondent No.1. That the plaintiffs property being outside right of way or outside the acquired area, the Special Land Acquisition Officer had turned to the Contractor for amicable settlement of the issues.

21. The learned counsel for the appellant thus submits that the learned trial court had rightly decided that the suit was bad or non-joinder of a necessary party stating that if liability may be imposed to defendant No.1 without direction to the State of Mizoram, the Defendant No.1 alone will not be able to carry out the Award & Decree, unless the State of Mizoram was a necessary party and the suit was rightly dismissed for non-joinder of a necessary party. The learned trial court had also rightly held that since no land pass or LSCs were produced, there was no evidence that the plaintiffs have a legal right over the suit properties.

22. The learned counsel further submits that the verification report itself is defective, that the report is with regards to the survive trees and crops and not be damaged trees and crops.

23. I have heard and considered the submissions made by both the rival parties and have also perused the documents on record. From the submissions made, the main points to be decided in this appeal are

i. whether the learned trial court had erred in deciding that appellants / plaintiffs have no locus standi to file the instant suit since the plaintiffs were found to have no landed passes/ LSCs, when the names of the affected parties have been clearly mentioned in the letter dated 24.04.2008, wherein the Special Land officer had written to defendant no.2 mentioning that the damage of land and crops was a result of dozing down of earth spoils and debris at the time of excavation of pilot road of Aizawl bypass. Wherein it was also opined that the Contractor is responsible for the damages and for amicable solution. The Joint verification exercise was also done and report enclosed with the letter.

ii. Whether the learned trial court erred in passing the order that the State Government was a necessary party and dismissed the Money Suit due the non- joinder of necessary party.

24. On perusal of the evidence on record, it is seen that the appellants have adduced evidence as Plaintiff witness nos.1, 2, 3, 4, and Plaintiff witness no.5. The contents of their depositions are similar. They have all stated in their examination-in-chief that they are the land owners of land located at Venghnuai. However, during their cross examination, they have all admitted that they have not produced any documents or annexed a copy of their LSC in their plaint.

25. That the Defendant no.1 on 28.12.2005 issued a HRIATTIRNA/Notice, that the damage caused due to the construction of Aizawl–Thenzawl- Lunglei road will be assessed and verified by a joint verification team. This court, on perusal of the HRIATTIRNA/Notice dated 28.12.2005, finds that the notice clearly states that, if new lands are to be acquired on need basis, Supervision Consultant and Contractor will perform the spot verification. Thus from the contents of the HRIATTIRNA/Notice, the nature of claim made by the appellant do not appear to be covered by the notice dated 28.12.2005

26. The defendant no.2 wrote letters dated 24.04.2005 and 25.04.2005 to the defendant no.3 placing the liability on defendant no.3 However, the respondents No.3 deposed as defendant No.3 and stated that as per sub-clause 20.4(c) of their contact agreement it is the Employer's risk when the damages are not due to the design by the contractor. That the claim of the plaintiff for compensation of RS.7,00,000/- for damages is made without any basis.

27. It is also found that though the Special Land Acquisition Officer in his letter dated 24.04.2008 to the respondent no.2/defendant no.2 had mentioned the names of the appellants, the letter only opined for an amicable solution with the contractor. A scrutiny of the verification report exhibited as Ext- 7 to Ext -14 also shows that the report is of the standing crops and trees and not of the damaged crops and trees. Thus this court is of the view that assessment of damaged crops cannot be made from

standing crop. This court also finds that the appellants have themselves admitted that they have not annexed the LSCs or passes of their land for which they are claiming compensation for damaged crops. The Apex Court in ***Khatri Hotels (P) Ltd. v. Union of India, (supra)*** upheld the findings of the trial court which held *that the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute, therefore, the plaintiff is mere encroacher upon the government land.* Thus this court finds that in the instant case too, the appellants/plaintiffs have failed to produce any documents to prove their right or tile over the land wherein they are claiming compensation for damages of their trees/crops. Thus no reason is found for interference with the findings of the trial court, which held that appellants/plaintiffs have no locus standi to file the instant suit since the plaintiffs were found to have no landed passes/LSCs which can determine the legal rights of the plaintiffs.

28. This court also finds that the Notice dated 28.12.2005 is a notice of the Government of Mizoram, through the Office of the Chief Engineer (Highways) PWD, Mizoram, Aizawl issued by the respondent no.1/defendant no.1 who is the S.E, Project Director. The respondent no.2/defendant no.2 is the Manager, Resettlement and Rehabilitation in the office of respondentno.1/ defendant no.1, whose duty is to look into matters relating to claims for compensation. Respondent no.3/defendant no.3 is the Tantia Company and the contractor engaged by the respondent no.1/ defendant no.1 to carry out the works for the construction of the pilot road from Aizawl–

Thenzawl-Lunglei road. It is thus apparent that the respondents no 1 and no.2 are acting on behalf of the State Government and not in their individual capacity. This court is thus of the considered view that the learned trial court had rightly passed the order that the State Government was a necessary party and dismissed the Money Suit due the non- joinder of necessary party.

29. In view of the above discussions and findings, this court finds that there are no grounds have been made out to interfere with the Judgment and Order dated 24.11.2011 passed by the learned Senior Civil Judge, Aizawl in Money Suit No. 25/2009.

30. Accordingly RFA No.15 of 2012 is dismissed and stands disposed of.

The parties shall bear their own costs.

LCR to be returned.

JUDGE

Comparing Assistant