

GAHC030003762020



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

Case No. : WP(C)/110/2020

Petitioners:

1. Sh. C. Zomuana
S/o Kaplianzuala (L)
R/o Ramhlun south,
Aizawl, 796001.

2. Sh. Liantluanga Colney
S/o Lalsawia (L)
R/o Ramhlun North
Aizawl, 796001.

3. Sh. K.Zasanga
S/o Paruala
R/o Ramhlun North
Aizawl, 796001.

4. Sh. J. Zokailiana C/o Lalzarliani
H/o Lalthanpuii
R/o Bawngkawn
Aizawl, 796001.

5. Smt. C. Rothangi C/o K. Zirliana
D/o Laldawna (L)
R/o Bawngkawn Lunglei Road
Aizawl, 796001.

6. Smt. Vanlalauvi C/o C. Chawnhmingliana
D/o P. Lalzara

R/o Thuampui
Aizawl, 796001.

7. Sh. R. Lalthanzama
S/o Kapliana (L)
R/o Khawruhlian, 796017

8. Sh. Zirsangzuala
R/o Ramhlun Venglai
Aizawl, 796001.

9. Sh. Mankunga
S/o Sena
R/o Kolasib Diakkawn, Kolasib
796082.

10. Sh. F. Lalzuithanga
S/o F. Liannghinga
R/o Chanmari
Aizawl, 796001.

11. Smt. Lalhmunliani
D/o F. Vawmphunga (L)
R/o Bawngkawn, Aizawl, 796001.

12. Sh. J.C. Lalnunsanga
S/o Lalarzoa
R/o Zotlang, Aizawl, 796001.

13. Smt. Zokhumi Colney
D/o Sawiluaia (L)
R/o Chanmari, Aizawl, 796001.

14. Smt. B. Lalremtluangi
W/o Dr. R. Vanlalzauva
R/o Bawngkawn, Aizawl, 796001.

15. Sh. C. Neihlala
S/o Daia (L)
R/o Bawngkawn, Aizawl, 796001.

By Advocates :

Mr. J.C. Lalnunsanga, petitioner in person

Ms. Baby Laldusangi
Mr. Lalrokunga Pautu.

– ***Versus*** –

Respondents:

1. State of Mizoram,
Represented by the Chief Secretary to the Govt. of Mizoram,
Mizoram New Capital Complex (MINECO), Khatla,
Aizawl, Mizoram Pin – 796001.

2. Secretary to the Govt. of Mizoram
Urban Development and Poverty Alleviation Dept.
Mizoram New Capital Complex (MINECO)
Khatla, Aizawl,
PIN - 796001.

3. Municipal Commissioner
Aizawl Municipal Corporation
Office - C Chhunga Bus Terminal Building
Thuampui
Pin - 796017.

4. Convener
Mizoram Chapter Indian National Trust for Art and Cultural Heritage (INTACH),
Mizoram Chapter, Chaltlang
Aizawl, Pin – 796001.

5. Deputy Commissioner
Aizawl District, Aizawl
Mizoram Pin-796001.

6. Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.
Aizawl, Mizoram.

By Advocates :

Mr. P.C. Lalthangmawia, GA for respondent Nos. 1, 2, 5 & 6.

Mr. Zoramchhana for respondent No. 3

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 20.11.2023

Date of Judgment : 23.11.2023

ORDER

Heard Mr. J.C. Lalnunsanga, learned counsel, one of the petitioner in person (petitioner No. 12). Also heard Mr. P.C. Lalthangmawia, learned Govt. Advocate appearing for the respondent Nos. 1, 2, 5 & 6 and Mr. Zoramchhana, learned Standing Counsel, Aizawl Municipal Corporation (AMC) appearing for the respondent No. 3. None appears for the respondent No. 4.

[2.] By filing this writ petition, the petitioners have challenged the Order dated 30.03.2016 (Annexure - 5), Notification dated 20.06.2016 (Annexure - 8) and for setting aside Clause 12.7 of Chapter 12 of the Master Plan for Aizawl Vision-2030. Apart from the above, the petitioners have sought for a direction to the respondent Nos. 2 & 3 to allow the petitioners construct buildings on their respective plots of land.

[3.] It is the case of the petitioners that they are owners of their respective land on the basis of Land Settlement Certificates issued by the competent authority and that their lands are located alongside the Bawngkawn to Durtlang Leitan Road in Aizawl. They are aggrieved with the impugned Order dated 30.03.2016 and

Notification dated 20.06.2016 issued by the AMC and the Urban Development & Poverty Alleviation Department (UD&PA) respectively by which, the area within 50 ft. (horizontal) and 20 ft. (vertical) from the edge of the road on both sides of Bawngkawn to Durtlang Leitan road measuring 200 meters in Sector 1 and 900 meters in Sector 2 have been demarcated as protected area as per the Master Plan for Aizawl Vision – 2030. It is the case of the petitioners that because of the restriction, they are unable to utilize their land by constructing buildings and that the restriction is on pick and choose basis. The petitioners contend that not all the area between Bawngkawn to Durtlang Leitan road have been declared as restricted area and it is only with regard to Sector 1 and Sector 2 where there is prohibition for making any development or construction. The same being in violation of their right to enjoy their respective properties, they have filed the instant writ petition.

[4.] The petitioners also contend that they have been approaching the various respondent authorities on several occasions since 06.05.2016 up to 31.01.2018 by submitting representations but their grievances have not been considered and mitigated. Mr. J.C. Lalnunsanga submits that after the petitioners filed a series of complaints/representations to the respondent authorities including the Hon'ble Minister, In-Charge, UD&PA, an inspection was conducted on 09.08.2019 by the AMC and the UD&PA on the spot wherein, it was resolved that the land owners be asked to submit their respective land documents along with Geotechnical

Assessment Report and that the same should be assessed by the AMC. In terms of the said decision, the petitioners submitted their respective documents before the AMC and the AMC after making a compilation of the same forwarded the compilation with all the related documents to the Director, UD&PA on 05.09.2019. However, despite the same, the UD&PA has not taken any action in the matter. Mr. J.C. Lalnunsanga submits that as per the Geotechnical Assessment Report prepared by the authorized Officer of the Geology & Mining Department, construction of RCC building as specified in the report was feasible with the supervision of a qualified Engineer to plan the foundation of the building to be constructed. Therefore, in view of such report in favor of the petitioners, the respondent authorities should be directed to allow the petitioners utilize their respective plots of land by constructing buildings as permissible under the building laws. Mr. J.C. Lalnunsanga submits that although the Master Plan for Aizawl Vision – 2030 has come up with a number of proposals to be implemented, the respondent authorities have only implemented Clause 12.7 selectively amongst others thereby, curtailing the rights of the petitioners to enjoy their respective land. As such, the impugned action of the respondents should be interfered with by this Court. In support of his submission, Mr. J.C. Lalnunsanga relies upon the following authorities:-

(1) Maganbhai Vanarshibhai Patel -Vs- State of Gujarat & Ors., 1975 SCC OnLine Guj 104.

(2) Hari Ram & Anr. -Vs- State of Haryana & Ors., (2010) 3 SCC 621.

(3) Radhya Shyam (Dead) Through Lrs. & Ors. -Vs- State of Uttar Pradesh & Ors., (2011) 5 SCC 553.

(4) Hari Krishna Mandir Trust -Vs- State of Maharashtra & Ors., (2020) 9 SCC 356.

[5.] Mr. Zoramchhana, learned counsel for the respondent No. 3 by referring to the affidavit-in-opposition filed by the said respondent on 07.10.2021 and 15.09.2023 submits that prior to issuance of the order dated 30.03.2016 which is impugned by the petitioners, the Land Revenue & Settlement Department had already imposed restriction for construction of building along the road side from Bawngkawn Brigade Field to Durtlang Leitan vide order No. REV 13/72/11 of 08/05/1972 and also vide Notification dated 05.07.2006. Therefore, the restrictions imposed are not merely to protect and preserve heritage but also for disaster mitigation purposes. The learned counsel submits that there is no question of the respondent indulging in pick and choose policy. In fact, a number of land owners had applied for construction of building alongside the Bawngkawn to Durtlang Leitan road and that permissions were granted to many of them and that the same was before the issuance of the order dated 30.03.2016 by which Sector 1 and

Sector 2 were declared to be protected areas. He submits that the entire Master Plan for Aizawl Vision – 2030 cannot be implemented as whole due to non-availability of fund and therefore, the allegation of the petitioners that Clause 12.7 of the Master Plan for Aizawl Vision – 2030 has been singled out is not correct. The learned counsel further submits that with the issuance of the impugned Notification dated 20.06.2016, the order dated 30.03.2016 issued by the AMC has been superseded and therefore, it is for the State Government in the UD&PA to decide. He submits that in fact, the AMC has taken all necessary steps in response to the representations submitted by the petitioners by having a spot verification and thereafter, submitting the compilation made which includes all the documents submitted by the land owners with Geotechnical Assessment Report. Therefore it is for the State respondents to address the issue. Lastly, the learned counsel submits that the petitioners have failed to challenge the entire Master Plan for Aizawl Vision - 2030 and therefore, they cannot challenge the impugned order dated 30.03.2016 and the Notification dated 20.06.2016, which are in fact only a consequential order issued in view of the scheme being notified. He therefore submits that the writ petition has no merit and the same should be dismissed.

[6.] Mr. P.C. Lalthangmawia, learned Govt. Advocate adopts the arguments and submissions made by Mr. Zoramchhana, learned counsel for the respondent No. 3. By referring to the affidavit-in-opposition filed by the respondent Nos. 1, 2 & 5 on

03.02.2022, he further submits that as per the Master Plan of Aizawl - 2002, the area from Bawngkawn Brigade Field to Durtlang Leitan was classified under Active Land Slide (Hazard) Prone Areas. As such, the Land Revenue & Settlement Department had also imposed restriction for construction of building along the road side from time to time including the order dated 08.05.1972 and Notification dated 05.07.2006. He submits that restriction has been made within the protected area on the basis of Master Plan for Aizawl Vision-2030 and the restriction is for specific areas and not directed against any individual land owners. Therefore, the allegation of pick and choose policy being adopted by the State respondents is not correct. He therefore submits that the writ petition has no merit and the same should be set dismissed.

[7.] I have heard the submissions made by the rival parties and I have perused the materials available on record. The respondent authorities through the impugned order dated 30.03.2016 and impugned Notification dated 20.06.2016 has declared certain stretch of land along the roadside from Bawngkawn to Durtlang Leitan as protected area by naming the stretch of land as Sector 1 and Sector 2. What precisely includes the area covered by Sector 1 or Sector 2 has not been defined in the impugned Order and Notification. The petitioners on their part have annexed a photograph of the area which according to them was obtained from Google Map. As per the affidavit filed by the respondent No. 3 on 15.09.2023,

Sector 1 is said to start from Bawngkawn Shalom junction to 200 meters towards Durtlang and Sector 2 starts from Durtlang Leitan to 900 meters towards Bawngkawn. The classification according to respondent No. 3 was made by actual measurement of the stretch taking into account the area lying vacant and built up areas. Therefore, the order dated 30.06.2016 impugned by the petitioners was issued by the AMC pursuant to Clause 12.7 of the Master Plan for Aizawl Vision - 2030 by identifying areas which are not yet built up along the said road.

[8.] The stand of the respondent authorities is also that restrictions for construction of buildings along the Bawngkawn to Durtlang Leitan road has been issued as far back as on 08.05.1972 and 05.07.2006 by the Revenue Department. However, when the learned Govt. Advocate was asked to produce the said orders, he could only produce the Order dated 05.07.2006. Despite such restrictions, the fact remains that the petitioners are in possession of their respective Land Settlement Certificates which appears to have been issued in the year 1986, 2004, 2005, 2007 etc., whereas, the impugned Order and Notification declaring the area marked as Sector 1 and Sector 2 along the Bawngkawn to Durtlang Leitan stretch of road as protected area was only issued in the year 2016. The question is as to whether the State respondents can deprive the petitioners from utilizing their respective plots of land without any process of law either by cancelling their plots of land and compensating them for the same or by acquiring their lands. As

pointed out by the parties during the course of hearing, pursuant to the various representations submitted by the petitioners to various authorities, a joint site inspection was conducted on 09.08.2019 wherein, it was decided that the land owners should submit their land documents along with Geotechnical Assessment Report and the same should be compiled by the AMC for further consideration. The said compilation was then forwarded to the Director, UD&PA by the Secretary, AMC on 05.09.2019 (Annexure - II to the counter affidavit filed by the respondent Nos. 1, 2 & 5). What has transpired thereafter is not discernible. Therefore, having regard to the site visit and other steps initiated, i.e., inspection report and other documents which was forwarded by the Secretary, AMC to the Director, UD&PA on 05.09.2019, this Court is of the view that the State respondents in the UD&PA as well as the Revenue Department should look into the matter and take a final decision. Such consideration should be done by the respondent authorities within a period of two (2) months from the date of receipt of a certified copy of this Order by passing a speaking and well reasoned order. If upon such consideration, the restriction imposed as per the impugned Order and Notification cannot be relaxed in favor of the petitioners, it will be open for the petitioners to avail for any such remedy as may be available to them in law.

[9.] In view of the above conclusion, it will not be necessary to dwell upon the authorities relied upon by the petitioners.

[10.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant