

GAHC030004792023



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

Case No. : WP(C)/113/2023

Smt. Tlanghmingthangi
W/o Laldingliana (L),
R/o Diakkawn, Kolasib, Mizoram

VERSUS

State of Mizoram R/b the Chief Secretary to the Govt. of Mizoram and 8 Ors.
Aizawl, Mizoram 2:The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.

3:The Director
Land Revenue and Settlement Dept.

4:The Secretary
Finance Dept.
Govt. of Mizoram

5:The Secretary
PWD
Govt. of Mizoram

6:The Engineer-in-Chief
PWD
Govt. of Mizoram

7:The Superintending Engineer
PWD
National Highway
Circle-I

8:The District Collector/Deputy Commissioner
Kolasib District

9:R. Vanlalhluna
Contractor Class-

Advocate for the Petitioner : Mr. Johny L Tochhawng

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 8

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

15.09.2023

Heard Mr. Johny L. Tochhawng, the learned counsel for the petitioner.

2. The petitioner's case is that she is the holder of Periodic Patta No. 501802/09/110 of 2006 in which, she has engaged herself in rubber plantation after being given a permit by the competent authority for such plantation. According to the petitioner, she has been harvesting rubber since the year 2010, but however due to upgradation of Meidum to Hortoki road (0.00 kmp to 9.1 kmp) Phase-I (9.100 Km) (F/C & Rigid Pavement), her rubber plantation has been destroyed due to the dumping of earth spoils. Besides the rubber plantation, the oil palm plantation of the petitioner is also in grave danger of being covered and destroyed by the earth spoils. The petitioner being aggrieved submitted a representation to the respondents on 12.10.2021. However, the respondents not having taken any positive steps to address the grievance of the petitioner, the petitioner filed WP(C) No. 25/2022, praying that a direction should be issued to the State respondents for disposal of her representation dated 12.10.2021.

3. This Court disposed of WP(C) No. 25/2022, vide Order dated 16.03.2022, by directing the petitioner to submit a fresh representation to the respondent No. 5, with copies to be given to the respondent Nos. 6 and 7.

4. In compliance with the Order passed in WP(C) No. 25/2022, the petitioner submitted a fresh representation dated 05.04.2022, praying for compensation for damage caused to her land and crops.

5. The Addl. Chief Secretary, PWD thereafter issued Order dated 27.05.2022 stating that a spot verification was made on the petitioner's land by officials from the PWD. They found the area covered by earth spoils and they found that some parts of the rubber plantation and oil palm were covered by the earth spoils. The Addl. Chief Secretary, PWD thereafter held that necessary compensation would have to be paid by the Contractor Mr. R. Vanlalhluna (respondent No. 9), to the petitioner in terms of Clause 12.1 of the Condition of Contract Agreement regarding damage to physical property, due to the contract work being undertaken by the Contractor.

6. The relevant portion of the Order dated 27.05.2022, issued by the Addl. Chief Secretary to the Government of Mizoram, Public Works Department states as follows:-

“AND WHEREAS, the complaint lodged by the petitioner Pi Tlanghmingthangi was verified on the spot by the officials from PWD and found that the area covered by earth spoil dumped on the said land belonging to the petitioner below the road is about 220 mts. Long and 56 mts. width along ground slope. 11 nos. of rubber plantation of average 16 inches were damaged and about 20 or more rubber plantation might be covered by the earth spoil. About 30 nos. of Oil Palm below the rubber plantation had been covered by the earth spoil at a depth of not more than 1 metre.

AND WHEREAS, it is found that as per clause 12.1 of condition of contract agreement "All risks of loss of or damage to Physical property and of personal injury and death which arise during and in consequence of the performance of the contract other than the expected risk are the responsibility of the contractor."

NOW, THEREFORE, in view of the above, it is hereby ordered that Pu R. Vanlalhluna,

Contractor will pay necessary compensation to Pi Tlanghmingthangi for damages caused by the said upgradation of road."

7. In the meantime, the respondent No. 9 submitted a representation dated 23.05.2022 to the Addl. Chief Secretary to the Government of Mizoram, PWD to direct the District Collector/Deputy Commissioner, Kolasib, to have a re-verification of the damage caused to the petitioner's land and to calculate the compensation payable, which had been claimed by the petitioner.

8. Thereafter, a re-verification of the petitioner's land was undertaken on 12.10.2022 by the (1) Sub-Divisional Commissioner, Bairabi, (2) Surveyor from the office of the Settlement Officer, Kolasib, (3) J.E., PWD, (4) Village Council President, Meidum Village Council, (5) Members of the Construction Company and (6) representative and Advocate of the petitioner. The conclusions drawn by the Re-verification Team has been spelt out in the spot Re-verification Report dated 25.02.2022, issued by the Sub-Divisional Commissioner, Bairabi, Kolasib and the conclusion of the said report states as follows:-

"Conclusion: Based on the findings and observations of the spot verification and also the documents available, the onus of compensating the aggrieved, Pi Tlanghmingthangi may not lie solely with the contractor as it seems that fresh/unacquired land has been excavated in the process of upgrading the Meidum to Hortoki Road Phase-I.

Further, it appears that a fully grown 500 rubber trees claimed by the petitioner cannot fit in the area. Given the amount of land area, 150 to 160 fully-grown trees is a good and reasonable estimation for compensation (supposing it was even planted at a density twice the recommended density). At the prevailing rate notified by the government, a mature or fully grown rubber is compensated at a rate of Rs. 10,000/- per tree. Meanwhile, the oil palm trees seem to be thriving although covered in earth spoil. Further, the petitioner will have to be compensated not only for the damage to her crops but also for her land as this will now become a public utility tomorrow.

In the interest of the public and considering the above facts, it is suggested that the

landowner Pi Tlanghmingthangi may approach the concerned department i.e. PWD with the contractor onboard for an Out of Court Settlement. Thereafter, the quantum of compensation payable may be decided accordingly and be paid to the aggrieved (minus the two lakh already paid) at the earliest.”

9. The petitioner thereafter submitted a representation dated 11.04.2022 to the District Collector/ Deputy Commissioner, Kolasib, requesting him to make an assessment of the compensation payable to the petitioner, on the basis of the re-verification report dated 25.10.2022 issued by the Sub-Divisional Commissioner, Bairabi.

10. The petitioner's counsel submits that no assessment has been made as prayed for in the representation submitted on 11.04.2022. He submits that the writ petition can be disposed of, if a direction is issued to the District Collector/Deputy Commissioner, Kolasib, to make an assessment of the compensation payable to the petitioner for damages caused to the rubber and oil palm plantation, as per applicable Government rates.

11. Mrs. H. Lalmalsawmi, learned Government Advocate appearing for the State respondents submits that she has got no objection to the prayer made by the petitioner's counsel.

12. I have heard the learned counsels for the parties.

13. It is seen that subsequent to the petitioner's representation dated 11.04.2022, requesting the respondent No. 8 to make an assessment of the compensation payable to the petitioner for damages caused to her land, the petitioner had filed WP(C) No. 94/2023. The same was dismissed as withdrawn, with liberty being given to file the same afresh, in terms of the Order dated 01.08.2023.

14. The averments made in this writ petition and the contents of the order dated 16.03.2023 passed by this Court in WP(C) No. 25/2023 clearly show that grievance of the petitioner is with regard to dumping of earth spoils on her land. There is nothing

to show that any construction, permanent or otherwise, has been made on the petitioner's land or that the State respondents are planning to use the petitioner's land. There is also nothing to show that the State respondents are in possession of the petitioner's land.

15. The documents on record shows that there is nothing indicative of the fact that the State respondents want to acquire the land of the petitioner. As such, no direction can be issued to the State respondents to acquire the land of the petitioner, if they are not going to use the petitioner's land and are not willing to acquire it. The damage caused to the petitioner's land and plantations can be compensated in terms of money and there is no ground for issuing a direction to acquire the petitioner's land.

16. The issue brought out by the petitioner in this petition only pertains to payment for damages and as such, the appropriate forum to decide the issue would be the Civil Court, as evidence would have to be led. It is noticed that the petitioner has not made any prayer for a direction to be issued to the respondents, to take away the earth spoils which had been dumped on her land. The petitioner does not seem to be interested in having her land cleared off the earth spoils that had been dumped on her land. It is also noticed that the petitioner has not clarified as to how many truck loads or volume of earth spoils has been dumped onto her land. The petitioner has not made any averments as to what would be the cost for lifting the earth spoils from her land. The spot Re-verification Report dated 25.02.2020 does not clarify the exact number of trees that have been damaged. Further, the petitioner's claim that 500 rubber trees were being grown by her is belied by the re-verification report. All the above issues being disputed questions of facts, the petitioner would have to approach the Civil Court for her claim for damages caused to her land. As there is an alternative efficacious remedy available to the petitioner, the petitioner is given the liberty to approach the Civil Court, with regard to her grievance for payment of damages caused to her land and crops.

17. The writ petition is accordingly dismissed with the above observation.

JUDGE

Comparing Assistant