



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 498 of 2019

Date of Decision: 07.06.2024

1. Shri. Kewingson Momin
S/o:(L) Joga Marak,
President, Dambo-Rongjeng
Land Owners Associations,
R/o: Rongjeng,
P.O & P.S: Rongjeng,
District: East Garo Hills,
Meghalaya.

2. Shri. Keneth Momin,
S/o (L) Renjang Sangma
Secretary, Dambo-Rongjeng
Land Owners Association,
R/o: Rongjeng,
P.O & P.S: Rongjeng,
District: East Garo Hills,
Meghalaya.

::::Petitioners

Vs. **1.** State of Meghalaya
Represented by the Chief Secretary
to the Government of Meghalaya,
Shillong.
2. The Principal Secretary, to the
Govt. of Meghalaya, Revenue and
Disaster Management Department,
Shillong.
3. The Deputy Commissioner
(Revenue)/District Collector,
East Garo Hills District,
Williamnagar.
4. The Chief Engineer PWD (Roads)
Meghalaya, Shillong.
5. The Executive Engineer PWD
(Roads), Williamnagar, In-Charge,
of Dambo-Rongjeng to Mangsang-
Adokgre Road, under, NLCPR,
Ministry of Doner, Government of
India, East Garo Hills, Meghalaya.
6. The Assistant Executive Engineer
(PWD Road), Rongjeng Sub-
Division, Rongjeng, East Garo Hills
District, Meghalaya.



7. Shri. Ojin Momin,
Nokma Amata/Watecha A'king Land,
R/o:- Watecha Village
P.O:- Mangsang, P.S:- Rongjeng
District: East Garo Hills, Meghalaya.

::::Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. A. H. Hazarika, Adv.
For the Respondent(s) : Mr. N. D. Chullai, AAG with
Mr. A. H. Kharwanlang, Addl. Sr. GA.(R:1-6)
None for (R: - 7)

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

By this writ petition, the petitioners claim for compensation for anticipated damages to their properties due to the proposed widening of the Rongjeng Mangsang A'dokgre Road and also for setting aside and quashing of the impugned order dated 08-03-2019 issued by the respondent No.3 by which the petitioners and others are found to have encroached the PWD roadside land situated along the said road.



1. The petitioner No.1 and the petitioner No.2 claim themselves to be the President and Secretary respectively of Dambo-Rongjeng Land Owners Association. The case of the petitioners is that the Government with the intention of widening the Rongjeng Mangsang A'dokgre Road issued a public notice (vide Annexure -1 to the writ petition) without formulating any scheme for compensating the settlers who would be affected by the said widening of the road. The existing Rongjeng Mangsang A'dokgre Road is a narrow and small road and on both side of the road there are many residential houses, shops, plantations and cultivations etc. on which the petitioners and many others are dependent for maintaining their livelihood. The proposed construction of widening of the road would damage and destroy the properties of the petitioners and others thereby affecting their survival and, hence the Government is duty bound to pay compensation to the petitioners and other affected persons for their properties to be damaged by such construction. The petitioners being aggrieved by such action of the Government, had preferred a representation dated 24-11-2017, raising their grievances and claiming compensation, however, the said representation went unheard. Having no other option, the petitioners approached this Court on an earlier occasion by way of WP(C) No. 24 of 2018 which was disposed of at the stage of motion by order dated 23-05-2018 with a direction to the respondent No.3 to accord consideration to the representation of the petitioner and for taking all necessary action required to ensure that the object of the representation is achieved. Consequent to the direction, an enquiry into the matter was held after taking into consideration all relevant aspects and reports and on the basis of the enquiry report, the respondent No.3 passed the impugned order dated 08-03-2019 holding the petitioners and others as encroachers to the PWD land and also held that their claim for compensation has no merit.



2. Mr. A. H. Hazarika, learned Counsel appearing for the petitioner submits that the petitioners and many others are residing by the side of Rongjeng Mangsang A'dokgre Road for many years and have undertaken several activities in the area for supporting their livelihood by setting up residential houses, shops and other structures and also have many plantations and cultivations in the area. He submits that although the Rongjeng Mangsang A'dokgre Road is in existence since the year 1970 and was constructed on the land donated by the land owners at that point of time, the petitioners continued to occupy the land lying by the side of the said road for sustaining their livelihood. He submits that the petitioners being aware of the fact that the land in question had been donated to the Government, are not making any claim for payment of compensation in respect of the stretches of land held by them and are only praying for payment of compensation for the damage to the structures erected on the land and other properties to be caused by the widening of the road. He admits that the land on which petitioners have taken up all their activities belong to the Government and they have no claim over the land. He further submits that the petitioners are mostly illiterate and poor persons and it becomes the duty of the Government to ensure that their livelihood is not affected by any action on the part of the authorities. He submits that the survey report on Rongjeng Mangsang A'dokgre Road prepared by the PWD department of the State (page 49 of the writ petition) makes it evident that many properties including houses, shops, plantation and cultivation would be destroyed in the event of widening of the road and prays for issuance of necessary directions to the respondents for consideration of payment of compensation to the petitioner and others.

3. Countering the submission made on behalf of the petitioner, Mr. N. D. Chullai, learned AAG appearing on behalf of the State-respondents, questions the maintainability of the writ petition on the ground that the Dambo-Rongjeng



Land Owners Association is not a registered association and there is no document on record showing the authorization of the petitioners being the President and the Secretary respectively of the said Association to file the present writ petition. He submits that there is also no compliance of the provisions of Order 1 Rule 8 CPC, which mandates taking of permission of the court for filing a case in representative capacity, by the writ petitioners. The learned AAG contends that the proposed construction of Rongjeng Mangsang A'dokgre Road is very much within the Government land as the construction would be confined to 35 feet from the centre of the existing road designated as Right of Way (ROW). He submits that the Government cannot be asked to pay compensation for making construction of road on its own land. Referring to the survey report (page 43 of the writ petition), the report dated 20-06-2018 of the Executive Engineer, PWD, Williamnagar and the Enquiry Report dated 21-12-2018 of the Additional Deputy Commissioner, Williamnagar, he submits that the petitioners and many others have been found to be encroachers on the stretches of the land located along the sides of the Rongjeng Mangsang A'dokgre Road and the encroachers cannot have any legal right to claim compensation. He contends that the Government cannot be asked to initiate acquisition proceedings to acquire its own land in order to make out a case for the petitioners. The Learned AAG further contends that the construction of the existing road is proposed on the basis of the fund provided by the Central Government and the scheme does not make any provision for payment of compensation. There is no intention on the part of the Government to acquire additional land and the petitioners are demanding compensation for the very act of encroachment and unauthorized activity on the PWD roadside land which is not permissible in law. He submits that there is no legality in the claim made in the writ petition and the same be dismissed forthwith.

4. None appeared for the respondent No.7.



5. From the submissions made by the rival parties and on perusal of the materials on record, it is clear that the Rongjeng Mangsang A'dokgre Road, which is a Government PWD Road, is in existence from the year 1970. The notification issued vide Annexure - 1 to the writ petition speaks of construction of intermediate lane on the aforesaid road for a total length of 38 kilometers covering from Rongjeng to A'dokgre under a project funded by the Government of India. There is no mention of requirement of any additional land for the purpose of the said construction in the notice. The notice appears to be issued for general public information and not under any specific law or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. The petitioners also have not taken any plea in the writ petition that the aforesaid proposed construction would require additional land other than the land which forms part and parcel of the existing road. Hence, it is clear that the Government does not intend to take any additional piece of land from any anyone for the proposed construction of the Rongjeng Mangsang A'dokgre Road.

6. The learned Counsel for the petitioner in his argument before this Court conceded that the properties, for which claim of compensation is made in the writ petition, are not located on the individual private land of the petitioners. The survey report (page – 49 of the writ petition) relied on by the learned Counsel for the petitioner contains a list of occupiers who have encroached the area located by the side of the Rongjeng Mangsang A'dokgre Road belonging to the PWD department of the State. The survey report also contains the description of the unauthorized properties in the encroached portion of the road against the name of each and every individual who are held to be in illegal occupation of the land. The petitioners have not brought anything into the record to establish that all the properties mentioned in the list were set up after obtaining due permission from the Government. There is also nothing on



record to indicate that there was a kind of implied approval of the Government in setting up of such properties on the encroached PWD land. There is nothing in law to show that encroachers are entitled to claim compensation for damages of properties set up without any authority. The survey report, as such, does not add any legality to the claim of compensation made by the petitioner in the writ petition.

7. Perusal of the order-sheets of the present case reveals that at the stage of motion of the writ petition, this Court was informed by the learned Counsel for the petitioners that the present writ petition has been filed for the benefits of 180 individuals. By order dated 15-11-2019, this Court directed the petitioners to place on record the list of all such persons along with pattas said to have been issued in their favour. Pursuant to the said direction, the petitioners vide an additional affidavit dated 02-12-2019 brought into records a list of 84 persons and the land documents/pattas issued by the Garo Hills Autonomous District Council (in short GHADC) concerning the said 84 persons. However, it is interesting to notice that the list of 84 persons does not include the names of any of the petitioners. The writ petition also does not contain any details as to how many members are there in the petitioners' association and what their names and other details are. Therefore, there exists a serious doubt about the claim raised by the petitioners in the writ petition. This is in view of the fact that admittedly petitioners' association is not a registered association and there is no compliance of Order 1 Rule 8 CPC by the petitioners before instituting this writ petition.

8. During the argument of the matter, the learned Counsel for the petitioner conceded that the land document pertains to the portions of land falling outside the land covered by the Rongjeng Mangsang A'dokgre Road. He also further conceded that the structures, plantations and cultivations which are likely to be destroyed or damaged by the proposed construction are situated by the side of



the said road forming part and parcel of the road. Hence, there remains no iota of doubt that the compensation claimed in the writ petition pertains to the unauthorized properties set up on the encroached lands of the said PWD road. There is no law which entitles an encroacher to claim compensation for unauthorized occupation of encroached land and for damages/destruction made to the properties set up illegally on the encroached land.

9. In addition to the above observation, it appears from the land documents/Periodic Lease Patta brought into records by the petitioners that there is a stipulation contained therein which states that in the event the State Government or the Local Authority desire to make road through patta land, the pattadar shall have to leave at least 35 feet of land for making road. The provisions of Rule 23 of the rules under the Assam Land and Revenue Regulation 1886 as adopted by the GHADC lays down as under: -

“23. Roadside land. (1) *Nothing in these rules shall entitle any person to obtain a lease in respect of land within 35 feet from the foot of the slope of a public road. Any person occupying or encroaching on such land shall be liable to ejectment under R.18 of these rules.*

Explanation The expression “public road” includes any road maintained by the State Government or by a local board, and any other road declared by the Deputy Commissioner to be a public road for the purpose of this rule.

(2) *Except under the general or special orders of the State Government, no new periodic lease shall be issued in respect of land within one chain (66 feet) of the 35 feet reservation alongside roads maintained by the State Government.*

Note. *This rule applies to existing and not to projected roads. It is, however, open to the Public Works Department to apply to the Deputy Commissioner to utilize his powers under R. 2 so as to reserve from settlement otherwise than on annual lease land lying within 126 feet from the centre line of a projected road.”*



From the above, it emerges that no one can maintain a legal claim of ownership or possessory right over the land and properties set up thereon falling within the 35 feet from the foot of the slope of a public road. Thus, the question of payment of compensation for any alleged damage or destruction of properties situated within such 35 feet does not arise.

10. In view of what has been discussed, there is no merit in this writ petition and the same stands dismissed.

11. No order as to costs.

JUDGE

Meghalaya
07.06.2024
"Biswarup-PS"

BISWARUP
BHATTACHARJEE

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