

GAHC030000042022



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

Case No. : RFA/1/2022

C. Laltanpuia
C/o Kapchia (L)
R/o Chanmari, Aizawl, Mizoram

VERSUS

P.C. Lalrinawma and 2 Ors.
S/o P.C. Khuangliana (L)
R/o Chanmari, Aizawl, Mizoram 2: District Magistrate/Deputy Commissioner
Aizawl District

3: The Settlement Officer
Land Revenue and Settlement
Aizawl District
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mr Lalfakawma for R1

B E F O R E

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (CAV)

Date : 12-11-2024

The appellant in this case is Shri C. Laltanpuia. Sh. P.C. Lalrinawma,

the District Magistrate/Deputy Commissioner, Aizawl district, Aizawl and the Settlement Officer, Land Revenue & Settlement, Aizawl district, Aizawl are arrayed as respondent Nos. 1, 2 and 3. The respondent No. 1/plaintiff has brought up a money suit registered as Money Suit No. 70/2011 for payment of compensation by the appellant/defendant No. 1 amounting to Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand Three Hundred) and interest @ 20% from the day of dismantlement of the plaintiff's house building till realization of the claimed compensation and payment of Rs.30,00,000/- (Rupees Thirty Lacs) for the landed property that was damaged due to the house site development of the appellant/defendant No. 1.

2. The genesis of the case was that the plaintiff had a plot of land under L.S.C. No. 2008/1987 located at Chanmari West, Aizawl which he had purchased in the year 1996 and constructed an Assam Type building between October, 2003 to April, 2004. He let out some rooms on rent to three tenants and was earning monthly rents of Rs. 1500/- + Rs. 1200/- + Rs.800/- respectively from the tenants.

3. It is averred that the appellant/defendant No. 1 had purchased the adjoining land area of land covered by LSC No. 2009/1987 in the year 2009. It is averred by the respondent No. 1 that the appellant repeatedly requested the respondent No. 1 to purchase his land but the respondent No. 1 refused. Meanwhile, the appellant started digging his land from the lower side of the Sairang road with the help of a JCB and without any precautionary measures. This led to the destruction of the land of respondent No. 1. Respondent No. 1's tenants were compelled to vacate the tenanted premises on 17.03.2011 as they were petrified. Respondent No. 1 then lodged a complaint to the respondent No.

2 on 23.03.2011 and the respondent No. 2, Deputy Commissioner-cum-District Magistrate vide order dated 24.03.2011 directed the appellant to stop his excavation procedure until further orders. A notice dated 25.03.2011 was issued to all concerned and in pursuance of the complaint of the respondent No. 1, the representatives of the Deputy Commissioner, Aizawl (DC for short) and Geology Minerals Resources Development visited the place of occurrence. On 24.03.2011, surveyors from the office of the DC (Revenue), Aizawl measured the land covered by LSC No. 2009/1987 belonging to the appellant. A team of Experts conducted spot verification on 23.03.2011, 24.03.2011 and 25.03.2011 and Geotechnical Assessment Report was submitted on 26.03.2011.

4. According to the report, the appellant had conducted house site development without any precautionary measures from the end of February, 2011 and cracks started appearing on the land of the respondent No. 1 on 23.03.2011 onwards.

5. It is further averred that in pursuance of the notice dated 25.03.2011, a joint inspection was conducted in connection with the landslide to assess the vulnerability of the site. A joint report was submitted on 28.03.2011, which depicts that the reasons of abandonment of the respondent No.1's house by his tenants was the result of digging of earth by the appellant. On receipt of Joint Inspection Report, an order was passed by the District Magistrate, Aizawl district on 31.03.2011 under Section 133 of Code of Criminal Procedure, 1973 (CrPC for short) that the respondent No. 1's house had to be dismantled immediately as the excavation work had caused a threat to his house which may cause greater disaster in and around the area and lives of the residents beyond NH-54. Further, another order was passed on receipt of the joint inspection report on

31.03.2011 directing the appellant to construct RCC Counterfort Retaining Wall of 2/3 stories at 60 degree angle before heavy rainfall occurs. The work should commence after consultation with Geologist and Structural Engineer.

6. It is further averred by the respondent No. 1 that on the requisition made by the respondent No. 2 vide letter dated 04.04.2011, valuation of the house building belonging to respondent No. 1 was prepared by the Estate Officer, PWD and the Executive Engineer, Aizawl Building Division before dismantling the house and the value of the building was assessed to be Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred). As per the house site Geotechnical Assessment Report dated 26.03.2011 submitted by the Geologists, Shri H. Biakkima and Sh. LiannguraPachau, the main cause for demolishing the building of respondent No. 1 was the house site development procedure carried by the appellant without any precautionary measures resulting in cracks on the floor of the respondent No. 1's house.

7. The respondent No. 1 therefore brought up the Money Suit No. 70/2011 with prayer for compensation of Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred) along with interest @ 20% and compensation of Rs.5,00,000/- (Rupees Five Lacs) on account of mental suffering, agony and loss suffered by the respondent No. 1, Rs.30,00,000/- (Rupees Thirty Lacs) as payment to acquire the landed property and Rs.5,00,000/- (Rupees Five Lacs) as compensation for loss of income of the tenanted premises.

8. The defendant No. 1/appellant duly contested the suit and filed written statement. The respondent No. 2 also filed written statement. The appellant through his written statement as defendant No. 1 has *inter-alia* averred that the respondent No. 1 has constructed his Assam Type building within the land

covered by LSC No. AZL 2008 of 1987. It is stated that the land under the above LSC purchased by the respondent No. 1 and the land under LSC No. AZL. 2010 of 1987, originally belonged to the same person Sh. A. Rangkhuma and at the time of making the LSCs, both the said plots of land were shown as being located in the same level on the upper side sharing a common starting gas boundary pillar No. 1, located just below the footpath with a depth of 21 mts as depicted from the boundary description and the sketch map in respects of both the LSCs.

9. It is averred that the respondent No. 1 had constructed his Assam Type building outside the area of his LSC. The appellant has not disputed the respondent No. 1's income through monthly rent collected from his tenants but the appellant has averred that the respondent No. 1's land was situated on a slide prone area and big cracks indicating that the land across the building could be affected by landslide was always a cause of worry to the respondent No. 1 and thus, the peaceful possession of the land belonging to the respondent No. 1 has been vehemently denied by the appellant. Rather, the respondent No. 1 was willing to sell his plot of land to the appellant. The respondent No. 1 stated before the appellant that if the appellant was willing to excavate his own land for the purpose of construction of his residence, the appellant ought to construct a retaining wall between his land and the land of the respondent No. 1, thus, denying the averment that the appellant repeatedly approached the respondent No. 1 through his Manager to purchase the property of the respondent No. 1. The appellant offered Rs.10,00,000/- (Rupees Ten Lacs) to purchase the land and building of respondent No. 1 even before starting excavation of his land as because, the appellant had already purchased a house site land located on the side of the National Highway in the year 2009 in the same locality for a sum of

Rs.7,00,000/- (Rupees Seven Lacs).

10. It has been falsely alleged by the respondent No. 1 that the appellant started digging his land from the lower side of the Sairang road by using JCB excavator etc. without any precautionary measures and thereby making the land vulnerable for collapsing.

11. On the contrary, before starting excavation/digging, the appellant had taken all precautionary measures so that no damage would befall to the land and building of respondent No. 1. The respondent No. 1 had also informed the appellant to start digging his side of land to construct a retaining wall to prevent any possible damage of his land and building. The appellant had also approached the authorities of the ADA and he was informed that the ADA will be concerned only relating to digging of earth for erecting pillars of the house proposed to be constructed. The appellant had also approached the authorities of Geology and Mining Department and was informed that the said location was outside the area which was declared to be a slide prone area. The respondent No. 1 persistently requested the appellant to start the work before the onset of monsoon and the appellant started digging his land with the help of an excavator in the beginning of February, 2021. Thereafter, the appellant completed digging his land and when he was about to construct a retaining wall as proposed earlier, some parts of the soil loosened and began to disintegrate on the evening of 17.03.2011. At this stage, though the house site land of respondent No. 1 was not affected, however, as a precautionary measure, his tenants shifted out. Thus, it is apparent that the respondent No. 1 had submitted the complaint against the appellant with some wild and unfounded allegations despite the fact that the appellant had taken all necessary

precautions before commencing on his excavation work.

12. The appellant has admitted that notice dated 25.03.2011 was issued by the Additional DC, Aizawl for conducting a joint inspection in connection with the landslide between the land of the appellant and the respondent No. 1 to assess the vulnerability of the site on the spot. It is submitted that the appellant was also present at the time of joint spot verification on 25.03.2011 and the Officers present were of the opinion that the landslide was caused not owing to negligence on the part of appellant but owing to the presence of clay in the sub soil which had resulted in the landslide and which would not have occurred under normal circumstances. It is thus submitted that the landslide was an act of God and not a result of negligent act of the appellant. The respondent No. 1 has falsely alleged that the appellant has excavated his land beyond the area of his LSC, while on the contrary, the respondent No. 1 had constructed his house beyond the area his LSC.

13. It is further contended that the appellant was not informed regarding the alleged verification conducted on 23rd & 24th March, 2011. It is further stated that as proposed, in the Joint Inspection Report dated 28.03.2008, the respondent No. 1 and the plaintiff were called by Sh. Lalthanzauva, member of Edenthlar Local Council for negotiation but the respondent No. 1 was not present and both the parties were again required to be present in the Office of the DC on 29.03.2011. On that day, the appellant offered an amount of Rs.10,00,000/- (Rupees Ten Lacs) for the land and building of respondent No. 1 while the respondent No. 1 demand Rs.20,00,000/- (Rupees Twenty Lacs) and the DC asked the appellant to increase his offer to Rs.15,00,000/- (Rupees Fifteen lacs). The matter could not be decided and was deferred for the following day, but the

respondent No. 1 failed to be present on the scheduled date for settlement or negotiation.

14. It was proposed that the appellant should construct an RCC Counterfort Retaining wall, after consultation with Geologist and Structural Engineer to prevent landslide of the respondent No. 1's land. The appellant then embarked on the construction of the aforementioned retaining wall but owing to the onset of monsoon, it had to be stopped with the permission of the District Magistrate vide order dated 26.05.2011. The appellant also proposed to cover the respondent No. 1's land with a silpouline so as prevent further erosion/landslide, but the respondent no. 1 did not allow him to cover the land with silpouline. It is submitted that no landslide had occurred within the area of respondent No. 1's land till date. It is alleged that the respondent No. 1 has been trying to take advantage of the situation with unjust claims and the appellant is not responsible for the cracks as the landslide was owing to the soil formation as the underlying soil is silty, shale based and partly saturated with water and very soft and slackly in nature.

15. It is further submitted that the order dated 31.03.2011 was not made under Section 133 of CrPC despite the fact that the order was made on proposal of the Joint Inspection Team. It is further averred that although the appellant was taking necessary steps for construction of the Counterfort Retaining Wall, the respondent No. 1 had vehemently obstructed the construction by preventing the labourers to remove the loose hanging stones for the construction of retaining wall. It has been vociferously averred that the assessment/valuation of the Assam Type building of respondent No. 1 by the Engineer was not based on facts but on information given by respondent No. 1. It is submitted that the

value of Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred) cannot be accepted as the Assam Type building of respondent No. 1 was in a dilapidated condition even before the incident. Before dismantling the building, the appellant had frequently visited the house and taken photographs of the house, which clearly reveals that the prevailing market rate of the house would not be even more than Rs.3,00,000/- (Rupees Three Lacs). The appellant with the help of an Engineer had thoroughly examined and evaluated the Assam Type House of respondent No. 1 and it was found that the total value of the building as on the year of construction i.e. 2004 was around Rs.2,70,110/- (Rupees Two Lacs Seventy Thousand One Hundred Ten) out of which depreciation for seven years i.e. Rs.92,140/- (Rupees Ninety Two Thousand One Hundred and Forty) if deducted, would result in the valuation of the house to be Rs.1,79,893/- (Rupees One Lac Seventy Nine Thousand Eight Hundred and Ninety Three). Thus, it can be deciphered that the building valuation prepared at the instance of respondent No. 1 was based on presumption and surmises.

16. It is submitted that the appellant had purchased the said land under LSC No. 2009/1987 in the year 2009 for a sum of Rs.7,00,000/- (Rupees Seven Lacs) for construction of a godown. The appellant has denied that Sh. Lalhruaitluanga was his Manager but it is admitted that he was the Accountant and the appellant never approached the respondent No. 1 through his Accountant, requesting the respondent No. 1 to sell his landed property. However, it is admitted that the appellant had personally approached respondent No. 1 to purchase the land and the building in question for a sum of Rs.10,00,000/- (Rupees Ten Lacs). It is also reiterated that the appellant started excavating his land in the first week of February, 2011 and not in the last week of February. It is further submitted that the landslide which had occurred unfortunately at the

time of excavation cannot be attributed to the appellant.

17. The appellant had no *malafide* to dislodge the foundation of the land and building of the respondent No. 1 so as to compel the respondent No. 1 to sell his land to him as alleged. Both the appellant as defendant No. 1 as well the respondent No. 2 have prayed to dismiss the suit with exemplary costs.

18. Heard learned counsel Mr. A.R. Malhotra for the appellant, learned counsel Mr. Lalfakawma for the respondent No. 1 and learned counsel Ms. H Lalmalsawmi for the respondent Nos. 2 and 3.

Argument for the Appellant :

19. It is argued on behalf of the appellant that seven issues were framed by the learned Trial Court. The pertinent issue is being issue No. 6 i.e.

6) Whether the Assam type of the plaintiff has been properly valued for the purpose of claiming damages against the defendant No. 1.

20. Learned counsel for the appellant has drawn the attention of this Court to Exhibit P-13 and the decision of the learned Trial Court on the issue No. 6. As the appellant has questioned the assessment/valuation of the Assam Type building of respondent No. 1 by the Engineer, Court Witnesses were called to substantiate the building valuation in favour of respondent No. 1. On the direction of this Court, Aizawl Bench in order dated 30.09.2019 passed in C.O. No. 2 of 2019 in RFA No. 5 of 2019, the authors of Exhibit P-13 were called as Court Witness No. 1 and 2.

21. It is argued that the Court Witness No. 1 Tlanghmingthangawas the Executive Engineer, PWD, Aizawl Building Division. He has deposed that while he

was posted at Aizawl from the year 2009, the building valuation in favour of respondent No. 1's building at Edenthlar Veng, Aizawl within LSC No. 2008/1987 was forwarded to him by his Subordinate Officer for approval. The building was evaluated as per relevant Government rates prevailing at that time. Learned counsel for the appellant has laid stress in his argument that it has surfaced from the cross-examination of CW-1 that the building was not evaluated by CW-1 but he affixed his signature on the valuation report. Thus, evidence of this witness clearly reveals that the building was not properly evaluated by him and he did not even visit the building, but he affixed his signature on the valuation report. On what basis could it be affirmed that the building was valued at Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred)?

22. Evidence of CW-2 Lalawmpuii, who was the Assistant Engineer at the time of evaluation of the building, clearly depicts that the valuation report was prepared by the draftsman. The witness had perused the assessment report prepared by the draftsman and thereafter, her signature was affixed and the valuation report was forwarded to her superior for approval. It has also surfaced through her cross-examination that CW-2 did not visit the building site for evaluation.

23. It has been vociferously argued by the learned counsel for the appellant that as the draftsman was not produced as a witness, the valuation report cannot be accepted as evidence. It is also clear that the building was evaluated on a much higher rate and the respondent No. 1 is not entitled to the compensation as decreed in his favour.

24. Moreover, learned counsel for the appellant emphasizes through his argument that Exhibit P-13 clearly reflects three floors and the valuation of all

the three floors, finally tantamounts to Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred). First and foremost, the valuation of plinth area was taken into consideration and thereafter first basement and second basement area were added. The ground of appeal is that a plainreading of the Joint Inspection Report which is at Exhibit P-10 shows that the total area of the Assam Type building of respondent No. 1 is 30 ft. x 21 ft. = 630 sq. ft., whereas as per the building valuation report at Exhibit P-13, the total area of three floors of the Assam Type building is 56.46 sq.m. + 44.48 sq.m. +26.10 sq.m. = 127.04 sq.m. Hence, it is clear that there is a vast difference in the total area of the Assam Type building between Exhibit P-10 and Exhibit P-13, which means that the assessment of the Assam Type building as per Exhibit P-13 is unreliable and cannot be accepted. It is therefore submitted that an exorbitant amount has been evaluated as there is a difference of around 1300 sq. ft. approximately relating to the area as per Exhibit P-13 *vis-à-vis* Exhibit P-10.

25. It is further submitted that Exhibit P-13 is unreliable as the report *vis-à-vis* the valuation is not clear if the said building is an Assam Type building or building with three stories.

26. The evidence of PW-3 Shri H. Lalbiakkima, who was serving as Geologist Junior at the relevant point of time, clearly depicts that the building was a two storied building belonging to respondent No. 1 which had to be dismantled due to the cracks appearing in the land and the building.

27. Learned counsel for the appellant has also laid stress in his argument that the learned Trial Court has erroneously passed an order for damages as a result of mental pain and agony. The compensation was awarded beyond the pleadings. No evidence was led in what manner the respondent No. 1 had to

suffer from mental pain and agony due to the conduct of appellant. Cracks had appeared in the construction site even prior to excavation procedure. All the tenants had vacated the building in March, 2011 whereas the suit was filed on July, 2011. It is further contended that the learned Trial Court in paragraph No. 82 of the impugned judgment and order dated 20.10.2021 erroneously directed the appellant to pay Rs.4,27,000/- (Rupees Four Lacs Twenty Seven Thousand) as loss of income only on the basis of assumption.

28. The evidence of DW-3 Hmingthansangi clearly depicts that she vacated the premises not because of the cracks appearing in the building but due to personal reasons she vacated the building. The tenants vacated the building much earlier i.e. in March, 2011 whereas, the suit was filed on July, 2011. It was presumed and thereafter, calculated on conjunctures and surmises that the respondent No. 1, whose tenants already vacated the land would be having permanent tenants continuously from the time of filing of the suit till the date of the order. DW-3 Hmingthansangi has stated in her evidence that she was a tenant and paying a monthly rent of Rs.800/- (Rupees Eight Hundred) per month continuously from the year 2008 till March, 2011. In the month of February, 2011, the appellant started developing the suit land, but there were no fresh cracks or new cracks on the floor occupied by her. She vacated the building due to personal reasons in the month of March, 2011 and immediately, thereafter, she got married and at present she is residing with her husband at Khatla, Aizawl.

29. Drawing the attention to the evidence of this witness, learned counsel for the appellant has submitted that it is not because of the conduct of appellant that cracks started appearing in the house of respondent No. 1, but cracks

started appearing in the building even prior to the excavation procedure undertaken by the appellant. The remaining part of the argument submitted by the learned counsel for the appellant will be discussed at the appropriate stage.

Argument for the Respondents:-

30. Learned counsel for the respondent No. 1 laid stress in his argument that this case boils down only to the quantum of compensation. It is apparent from the appeal memo as well as the argument submitted by the learned counsel for the appellant that the appellant is basically aggrieved by the quantum of compensation. The liability to pay the compensation has not been challenged by the appellant.

31. It is further submitted that owing to the excavation initiated in February, 2011, the upper portion of respondent No. 1's land became weak and unstable. On noticing the cracks, respondent No. 1 immediately approached the DC. Exhibit P-6 clearly reveals that the respondent No. 1 had informed the DC, Aizawl district on 20.03.2011 that all his tenants had left the building on 17.03.2011 as the appellant had excavated his house site using machines like JCB without any precautionary measures, which resulted in cracks on the floor of his building. The DC was also apprised through this letter that the appellant approached him (respondent No. 1) and offered Rs.10,00,000/- (Rupees Ten Lacs) to purchase his land but he had refused his offer. On 24.03.2011, the Deputy Commissioner/District Magistrate passed a stay order (Exhibit P-7) under Section 133 of CrPC staying further excavation or digging of the aforementioned land. A notice (Exhibit P-8) was issued on spot verification through a joint inspection to assess the vulnerability of the site on spot on 25.03.2011 by the Additional DC, Aizawl district, Aizawl. The Geotechnical Assessment Report

(Exhibit P-9) was submitted on 26.03.2011 after continuous inspection and survey commencing from 23.03.2011 and ending on 25.03.2011. Through the report, the inmates i.e. the tenants of respondent No. 1 were asked to vacate the house as the foundation of the house has been affected due to the excavation work.

32. Learned counsel for the respondent No. 1 laid stress in his argument that Exhibit P-10, an Inspection Report has been relied upon by the appellant but no witness, more particularly the engineer who prepared the report has been produced to prove his Inspection Report, which also reflects that the cracks caused by the house site development of appellant has made the Assam Type building, belonging to respondent No. 1 unfit for occupation. The house was mentioned to be an Assam Type building measuring 30 ft. x 21 ft. occupied by three families. It is further submitted on behalf of respondent No. 1 that Exhibit P-13 was never challenged by the appellant during the trial. It is not the case of appellant that Exhibit P-13 is a fabricated document or cannot be relied upon. The main grievance of the appellant is that the draftsman, who prepared the valuation of the land, was not produced as a witness. It has to be borne in mind that the evidence of this witness clearly depicts that the house was evaluated on the prevailing Government rate. The sole grievance of the appellant is that the decretal amount is an exorbitant amount based on presumption and surmises.

33. It is further contended by the respondent No. 1 that in his written statement the appellant as defendant No. 1 has stated that the amount of Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred) is an exorbitant amount and before dismantling the respondent No. 1's building,

he had frequently visited the house and even taken photographs of the same which clearly indicates that the prevailing market rate of respondent No. 1's building would not amount to even more than Rs.3,00,000/- (Rupees Three Lacs). Against this statement of the appellant/defendant No. 1, it is argued that the photographs claimed to have been taken by appellant were not even exhibited in the Court. Learned counsel for the respondent No. 1 has submitted that the appellant mentioned through his written statement that with the help of an Engineer, he thoroughly examined and evaluated the Assam Type House Building of respondent No. 1 and it was found that the total value of the building as on the year of construction i.e. 2004 has summed up to Rs.2,70,110/- (Rupees Two Lacs Seventy Thousand One Hundred and Ten) and if depreciation of seven years is considered, Rs.92,140/- (Rupees Ninety Two Thousand One Hundred and Forty) has to be deducted and the value of the building would come down to Rs.1,79,893/- (Rupees One Lac Seventy Nine Thousand Eight Hundred and Ninety Three).

34. Learned counsel for the respondent No. 1 has submitted that the appellant failed to produce the Engineer who had evaluated the value of his house amounting to Rs.1,79,893/- (Rupees One Lac Seventy Nine Thousand Eight Hundred and Ninety Three). This claim of the appellant has not been forwarded with proper evidence and can be safely brushed aside.

35. Learned counsel for the respondent No. 1 has assailed the argument on behalf of the appellant and has submitted that the appellant filed an application under Section XVI Rule 9 read with Section 151 of Code of Civil Procedure, 1973 (CPC for short) for issuing commission to conduct a local investigation of the suit land. This application was however rejected by the Court vide order dated 22.08.2013 observing that the verification or commission had been conducted

through the District Magistrate, Aizawl on 15.03.2011 and the findings had been annexed to the plaint and the Court believed and accepted the evaluation as officials, who conducted the commission/spot verification area authorized by the Government and there was no further requirement to issue fresh order for a commission/spot verification. This order has never been challenged by the appellant, which implies that the appellant has already accepted the verification conducted as per the order of District Magistrate and the appellant is thus estopped from challenging the verification at this juncture.

36. Learned counsel for the respondent No. 1 has vehemently criticized the ground of appeal that *a plain reading of joint inspection report, Exhibit P-10 shows that the total area of the Assam Type building of respondent No. 1 is 30 ft. x 21 ft. = 630 sq.ft., whereas as per the building valuation through Exhibit P-13, the total area of the three floors of the Assam Type building is 56.46 sq.mtr. + 44.48 sq.mtr. + 26.10 sq.mtr = 127.04 sq.m., showing a vast difference of the total area of the Assam Type building.* Against this ground of the appellant, learned counsel for the respondent No.1 has submitted that the appellant has summed up the area of all the three floors, whereas the value of the building was based on the carpet area as per Exhibit P-13, and which has also not been challenged.

37. Learned counsel for the respondents have also laid stress through their argument that a prayer is a part and parcel of pleadings. The appellant has misconstrued that no issues have been framed relating to mental pain and agony suffered by the respondent No. 1. The issue No. 6 squarely covers the respondent No. 1's entitlement to relief on the ground of mental agony.

38. Learned counsel for the respondents have prayed to dismiss this appeal as

the appeal is bereft of merits.

Discussions and Decision :

39. I have considered the submissions at the bar with circumspection. It cannot be assumed that the appellant is aggrieved by the decision of the learned Trial Court only relating to issue No. 6. The appellant has assailed that the decretal amount of Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred) with interest @ 6% per annum from 15.07.2011 till the complete payment of the decretal money. The appellant has also assailed the decision on damage, as there was no pleading or evidence to prove that damage suffered by respondent No. 1 was owing to mental suffering, agony and inconvenience caused to the respondent No. 1 by the conduct of appellant. It is further submitted that the loss of income has been conjectured to the tune of Rs.4,27,000/- (Rupees Four Lacs and Twenty Seven Thousand). The grievance of the appellant however narrows down to the aforementioned decretal amount. The decision relating to this appeal will thus be within the aforementioned parameters to avoid the prolixity.

40. Learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in *H. Siddique (Dead) by LRS vs. A. Ramalingam reported in (2011) 4 SCC 240*, wherein it has been held that :

“14. In our humble opinion, the trial court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have some probative value.”

41. The appellant has also relied on the decision of the Hon'ble Supreme

Court in *Life Insurance Corporation of India and Another vs. Ram Pal Singh Bisen* reported in (2010) 4 SCC 491 wherein it has been held and observed that :

“25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere making of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.”

“31. Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court.”

42. Relying on this decision, learned counsel for the appellant has submitted that Exhibit P-13 has not proved in accordance with law. The Court Witnesses CW-1 and CW-2 have admitted that they did not go to the building for verification. The draftsman had prepared the valuation report and they (CW-1 and CW-2) have affixed their signatures on the report.

43. On the contrary, learned counsel for the respondent No. 1 has submitted that Exhibit P-13 has been duly proved in accordance with law. The valuation was prepared as per Government rates which has been admitted by the Court Witnesses CW-1 and CW-2. They have affixed their signatures as the Estate Officer and the Executive Engineer, PWD, Aizawl Building Division on Exhibit P-

13. CW-1 has admitted in his evidence-in-chief that the valuation report was forwarded to him by his Subordinate Officer for approval relating to the value of respondent No. 1's building at Edentharr Veng, Aizawl within LSC No. 2008/1987. Although he has admitted that he did not go to inspect the building but he had affixed his signatures in his valuation report. He has also admitted that the valuation was assessed as per the prevailing Government rate. Likewise, the evidence of CW-2 also clearly depicts that she was posted as the Estate Officer and at the time the aforementioned building was evaluated, assessment was prepared by the draftsman and she has affixed her signature on the valuation report. The building was evaluated as per Government rates. It is also pertinent to note that the appellant ingeniously avoided to project the factum that skilled draftsman prepared the valuation report.

44. Learned counsel for the respondent No. 1 has further submitted that the document has been proved as per Section 61 and 62 of the Indian Evidence Act, 1872 (Evidence Act for short). Exhibit-P-13 is primary evidence and presumption under Section 114 (f), concerning the evaluation of the entire building, operates in favour of respondent No. 1. It is submitted that when the witnesses were cross-examined, the document Exhibit P-13 was not at all challenged by the appellant and now at this later stage, the appellant is debarred from challenging the validity of the document, *moreso*, when the document has been exhibited and proved in accordance with law and the officials who affixed their signatures have been examined as Court Witnesses.

45. It will be apt to reiterate that this Court vide order dated 30.09.2019 passed in CO No. 2/2019 in RFA No. 5/2019 re-endorsed the original case for trial and disposal from the stage of plaintiff's evidence. Thereafter, the evidence of CW-1 and CW-2 was recorded. It is apparent that the appellant did not

challenge the genuinity of the document while cross-examining CW-1 and CW-2.

46. I find substance in the argument of the learned counsel for the respondent No. 1. This document has been proved as per Section 61 and 62 of the Evidence Act. It has been correctly held by the learned Trial Court that *apart from the pleadings, the parties did not have much evidence to be relied upon, but the difference in submission is that the respondent No. 1 exhibited the assessment prepared by the Estate Officer and the Executive Engineer, PWD, Aizawl Building Division (CW-1 and CW-2) as Exhibit P-13 after comparing it with the original and as per direction of this Court. It was held that the authors of Exhibit P-13 were also summoned as witnesses and were cross-examined by the appellant, but the appellant did not exhibit or compare his assessment placed by him in his written statement (Exhibit-10). Further, on careful perusal, the assessment report itself reveals that the assessment report submitted by the respondent No. 1 was prepared through proper channel, or as per requisition made by the DC, Aizawl and the same was prepared after due spot verification and the building was evaluated as per the prevailing Government rate at the time of assessment.*

47. Learned counsel for the respondent No. 1 has also vociferously submitted that the assessment conducted by the appellant bringing down the valuation of the building to Rs.1,79,893/- (Rupees One Lac Seventy Nine Thousand Eight Hundred and Ninety Three) has not been exhibited by the appellant, nor the Engineer who evaluated the building, was produced as a witness. Thus, on the touchstone of preponderance of probability, it was held by the learned Trial Court that the building had already been dismantled and the respondent No. 1 had submitted an assessment report prepared by the Expert authority for assessing the valuation of building and land, thereby the learned Trial Court relying on

Exhibit P-13, decreed the suit in favour of respondent No. 1.

48. Respondent No. 1 has relied on the decision of this Court in *Cholamandalam Ms. General Insurance Company Ltd. vs. Kalpana Kumari Deka & Ors. reported in 2022 (1) GLT 734* wherein it was observed that :

“12. In the case of *R. Ve Venkatachala Gounder Vs. Arulmigu Fiswesarawani* reported in 2003 (8) SCC 752 Hon'ble Supreme Court was pleased to hold that ordinarily an objection to the admissibility of evidence should be taken when it is tendered. It was held that the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. It was held that this proposition is a rule of fair play and the crucial test is whether such objection would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. It was further observed that the omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof.

13. In the aforesaid case, it was further held that a prompt objection does not prejudice the party tendering the evidence as in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the

party leading the evidence. Such practice and procedure is fair to both the parties. Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.”

49. This Court has relied on the decision of the Hon’ble Supreme Court in Vepnkatachala Gounder’s case (supra). Learned counsel for the respondent No. 1 has submitted that when Exhibit P-13 was not challenged at the time when the evidence was led in the Trial Court, the document cannot be challenged at this stage, moreoso, when the document has been proved as primary evidence in accordance with law.

50. It is further submitted by the learned counsel for the respondent that Section 114 (f) of the Evidence Act also bolsters the validity of Exhibit P-13, which was signed by CW-1 and CW-2 during the common course of businesses followed in this particular case. Annexure-X, Exhibit P-11 is the order of the DC dated 31.03.2011 for demolition of the house. Exhibit P-13 was duly signed by the Estate Officer and the Executive Engineer (CW-1 and CW-2).

51. I find force in the argument of learned counsel for the respondent No. 1.

52. In the wake of the foregoing discussions, it is thereby held that Exhibit P-13 has been duly accepted as valid evidence by the learned Trial Court. It is true that the witnesses were not cross-examined relating to the validity of Exhibit P-13, except for the fact that suggestion was made to the Court Witnesses CW-1 and CW-2 that Exhibit P-13 was not made as per prevailing Government rates. It has to be borne in mind that under the order of the DC, Aizawl, a Joint Inspection Report was submitted. It is apparent from the evidence and pleadings that when the appellant started excavating his land, cracks started

appearing in the respondent No. 1's house.

53. The evidence of DW-3 Smt. Hmingthansangi failed to refute that the foundation of the building was not disturbed by the excavation conducted by the appellant. Her evidence that cracks were already present in her residence during the period of her occupation on the ground floor of the respondent No.1's building was not found to be credible as the Joint Inspection Report buttressed by evidence of the witnesses clearly reveals that the foundation of the building was weakened by the excavation procedure conducted by the appellant.

54. Learned counsel for the respondent No. 1 further laid stress in his argument that the decision of the Hon'ble Supreme Court relating to Ram Pal Singh Bisen's case (supra) is also relevant to his case as the contents of Exhibit P-13 has been proved by primary evidence and as it has been marked as Exhibit, the document has thus been proved.

55. The respondent No. 1 has relied on the decision of the Hon'ble Supreme Court in *Anil Rishi Vs. Gurbaksh Singh reported in (2006) 5 SCC 558* wherein it has been held that :

“There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is [Section 101](#) is inflexible. In terms of [Section 102](#) the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.”

56. Relying on this decision, learned counsel for the respondent has No. 1 has

submitted that the Court Witnesses CW-1 and CW-2 have proved Exhibit P-13. As discussed in the foregoing discussions, this Exhibit P-13 was not disputed as a fabricated document by the appellant. Although the appellant through his written statement has submitted that a glance over the photographs of the building would indicate that the prevailing market rate of the building was not more than Rs.3,00,000/- (Rupees Three Lacs) and an engineer helped the appellant thoroughly to evaluate the said Assam Type building of the respondent No. 1, and the engineer found the value to be Rs.1,79,893/- (Rupees One Lac Seventy Nine Thousand Eight Hundred Ninety Three), but this engineer was not produced as a witness and the photographs were not exhibited in the Court. Thus, the appellant as defendant No. 1 failed to discharge his burden as per Sections 101 and 102 of the Evidence Act.

57. I would like to reiterate that I find substance in the argument submitted by the learned counsel for the respondent No. 1. I also find force in the argument of the learned counsel for the respondent no. 1 that when the appellant's prayer for a commission or spot verification was rejected by the learned Trial Court, no appeal was preferred against the order for a separate commission or spot verification prayed for by the appellant.

58. Learned counsel for the respondent No. 1 tried to refute the argument of the learned counsel for the appellant that without any prayer for mental agony, respondent No. 1 was accorded a relief of Rs.4,27,000/- (Rupees Four Lacs Twenty Seven Thousand) as damages on account of mental agony, inconvenience and loss. Learned counsel for the respondent No. 1 has submitted that the relief for mental pain and agony has very much been prayed for by the respondent No. 1 through his plaint. The prayer clearly reflects that

the respondent No. 1 has prayed for relief on account of mental agony. The prayer in the plaint is part and parcel of the pleadings.

59. To this, learned counsel for the appellant has submitted that no evidence was led to prove that the respondent No. 1 had to run from pillar to post, owing to the damages caused by the excavation procedure undertaken by the appellant. On the basis of a single prayer made by the respondent No. 1, the DC took all the steps required for valuation and geological survey. Under the order of the DC, survey and evaluation was undertaken by the respective Departments. There is no evidence or instance that the respondent No. 1 had to run from pillar to post and had to suffer from mental pain and agony.

60. Learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in *Bondar Singh and others vs. Nihal Singh and Others reported in (2003) 4 SCC 161* wherein it has been held that :

“7. As regards the plea of sub-tenancy (shikmi) argued on behalf of the defendants by their learned counsel, first we may note that this plea was never taken in the written statement the way it has been put forth now. The written statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub tenancy (shikmi) the defendants cannot be allowed to build up a case of sub tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit. We have perused the issues framed in the suit. There is no issue on the point.”

61. It is further submitted by the learned counsel for the appellant that in the instant case, no evidence even was led to prove the facts that the respondent No. 1 had to suffer from mental pain and agony due to the excavation undertaken by the appellant.

62. In reply, learned counsel for the respondent No. 1 laid stress in his argument that it has surfaced through the evidence, how the respondent No. 1 suffered heavy loss and he is therefore entitled to the damages decreed in his favour. He had to dismantle his residential house and three tenants had to vacate, resulting in heavy loss of his income. He had to build his residential house elsewhere as the entire foundation of the house was affected by the excavation and construction of the appellant's house.

63. Learned counsel for the appellant has emphasized through his argument that the presumption of the learned Trial Court relating to loss of income is not justified. On fanciful imagination, the rate of inflation was calculated at Rs.2000/- (Rupees Two Thousand) per month and was included in the loss of income from the date of filing of the suit i.e. from 15.07.2011 till 17.09.2021 or for 122 months, without any justified ground.

64. Reverting back to this case, it is held that it is trite law that change of circumstances and income can be assessed after taking into consideration the increase of prices of the basic provisions and daily necessities due to the prevailing rate of inflation. Sound reasonings were recorded by the learned Trial Court while calculating the loss of income. It has surfaced from the evidence that two tenants, except one, had to vacate the building of respondent No. 1 immediately on the direction of the DC when the appellant started excavating the land to construct his house. Learned Trial Court has considered the prevailing rate of inflation and the rise of prices. The inflation and income through rent was assessed by considering the lowest rate and thus, it cannot be held that the decision of the learned Trial Court was unjustified. It was considered by the learned Trial Court that this case was pending for ten

years. Loss of income was calculated not from the date when the tenants had vacated the building of respondent No. 1, but from the date of filing of the plaint.

65. It was observed by the learned Trial Court that owing to the shortage of dwelling houses and demand for the same in the Aizawl city, the respondent No. 1's loss of income could be calculated @ Rs.3500/- (Rupees Three Thousand Five Hundred) per month. It is pertinent to mention at this juncture that the evidence of respondent No. 1 as PW-1, the evidence of other witness PW-4 and the appellant's witness DW-3 Hmingthansangi, reveals that all the three tenants were paying Rs. 1500 + Rs.1200/- + Rs.800/- =Rs.3500/- per month at the time when the building in which they were residing was ordered to be dismantled. Learned Trial Court considered the rate of inflation commencing from 2011 till the date of the judgment. Taking a rough estimate and multiplying the loss of income from 15.07.2011 till 17.09.2021 with the rate of inflation, an approximate loss of income was quantified at Rs.2,44,000/- (Rupees Two Lacs Forty Four Thousand). Thus, the argument of the learned counsel for the appellant that fanciful presumption of the learned Trial Court relating to loss of income was erroneous, does not hold water.

66. Learned counsel for the respondent No. 1 has relied on the decision of the Hon'ble Supreme Court in *K. Suresh Vs. New Indian Assurance Company limited and Another reported in (2012) 12 SCC 274* wherein it has been held that :

“7. While assessing the damages there is a command to exclude considerations which are in the realm of speculation or fancy though some guesswork or some conjecture to a limited extent is inevitable. That is what has been stated in *C.K. Subramania Iyer v. T. Kunhikuttan Nair*. Thus, some guesswork,

some hypothetical considerations and some sympathy come into play but, a significant one, the ultimate determination is to be viewed with some objective standards. To elaborate, neither the Tribunal nor a court can take a flight in fancy and award an exorbitant sum, for the concept of conventional sum, fall of money value and reasonableness are to be kept in view. Ergo, in conceptual eventuality "just compensation" plays a dominant role."

67. Reverting back to this case, it is held that some hypothetical considerations can be taken into account, and the ultimate determination is to be viewed with some objective standards. It cannot be held that the learned Civil Judge took a flight to fancy and awarded an exorbitant sum. The actual rate of inflation over the years in fact was not taken into consideration while awarding the compensation. The loss of income is not required to be interfered as the award does not appear to be fanciful and exorbitant.

68. In the wake of the foregoing discussions, it is held that the learned Trial Court has recorded sound reasonings while assessing an approximate loss of income.

69. The argument of the learned counsel for the appellant that it cannot be presumed that the respondent No. 1 would have a continuous income from the three tenants does not hold water. This case has been correctly decided on the touchstone of preponderance of probability. The prevailing rate of inflation was taken into consideration and the monthly income of respondent No. 1 @ Rs.3500/- per month from three tenants, has been proved through the evidence, substantiating the pleadings. It is indeed trite law that the rising prices, rate of inflation and the prevailing circumstances can be taken into consideration during the period of time while assessing loss of income.

70. The pleadings fortified by the evidence establishes that the appellant is responsible for respondent No. 1's woes. The argument of the learned counsel for the appellant that the learned Civil Judge has misconstrued that the respondent No. 1 would be having a regular income from the tenants, can be safely brushed aside. Loss of income has to be calculated based on prevailing facts and circumstances. The calculation on the loss of income was made on the basis of loss of minimum plausible income. At that time, he had three tenants occupying his building and had a regular income from his tenants.

71. It is further submitted by the learned counsel for appellant that the findings of the learned Trial Court relating to compensation due to mental pain and agony is a direct departure from the pleadings. No issue has been framed if the respondent No. 1 is entitled to damages owing to mental pain and agony.

72. Refuting the argument of the learned counsel for the appellant, learned counsel for the respondent No. 1 has submitted that the prayer portion of the plaint clearly reveals that the respondent No. 1 has prayed for compensation on account of mental pain and agony. It has surfaced in the evidence that the respondent No. 1 had to run from pillar and post and he had to shift his residence altogether, moving from his comfort zone to another place for his existence. The Court has jurisdiction to decide even if issues are not framed as a prayer is part and parcel of the pleadings. The angst of the respondent No. 1 has emerged through his pleadings and evidence.

73. In the instant case, the pleadings do not describe what led to respondent No. 1's mental agony. No evidence was led in this respect. There is not even an iota of doubt that the evidence clearly reflects that respondent No. 1 had to suffer loss owing to the excavation conducted by the appellant. It has been held

in my foregoing discussions that the respondent No. 1 has indeed suffered from loss and any person will definitely suffer from anxiety if his entire house has to be dismantled. The pleadings and prayer for loss of income indeed squarely covers the prayer for damages on account of mental anxiety.

74. Bifurcation of compensation into different heads or categories is not required. Compensation due to loss of income has been aptly considered by the learned Civil Judge, but at the same time, it cannot be ignored that no issues were framed and no evidence was led to substantiate the respondent No. 1's prayer for compensation on account of mental pain and agony. The decree for compensation due to loss of income also includes damages on account of anxiety and inconvenience. Therefore, the order and decree of the learned Civil judge, Senior Division, Aizawl directing the appellant to pay Rs.2,44,000/- (Rupees Two Lacs and Forty Four Thousand) as damages on account of mental suffering, agony, inconvenience and loss is hereby set aside. The remaining part of the judgment, order and decree is upheld.

75. The judgment, order and decree, directing the appellant to pay Rs.12,53,300/- (Rupees Twelve Lacs Fifty Three Thousand and Three Hundred) with interest @ 6% per annum from 15.07.2011 till the decretal amount is paid in full, is upheld as well as the order and decree directing the appellant to pay Rs.4,27,000/- (Rupees Four Lacs Twenty Seven Thousand) as loss of income and Rs.5000/- (Rupees Five Thousand) as cost, is also upheld.

76. In terms of above observation, this appeal is partly allowed. Decree to be merged.

77. Send back the Trial Court Records.

JUDGE

Comparing Assistant