

GAHC030000782023



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

Case No. : RFA/3/2023

Althaia
S/o H Ramtova, R/o Bungtlang South, Lawngtlai District

VERSUS

RDS Project Ltd. r/b its Chairman and 2 Ors.
C/o 429, Somdutt Chamber-II, 9, Bikajicama Place, New Delhi - 110066 2:RDS
Project Ltd. R/b Regional Manager

3:Deputy Commissioner/District Collector
Lawngtlai Distric

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Bhanu Kavar for R-1&R-2

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Dates of hearing : 03.09.2024, 05.09.2024 & 09.09.2024.

Date of judgment : 09.09.2024.

JUDGMENT & ORDER (ORAL)

- 1.** Heard Mr. B. Lalramenga, learned counsel for the plaintiff/appellant. Also heard Mr. Miller Biakrempuia Renthlei, learned counsel for the defendants/respondent Nos. 1 & 2 and Ms. Caroline K. Lungawipuii, learned Government Advocate for the respondent No. 3.
- 2.** The present Regular First Appeal is presented against the Judgment & Order dated 18.11.2022 passed by the learned Senior Civil Judge, Lawngtlai, Mizoram in Civil Suit No. 1/2021. By the aforesaid Judgment & Order dated 18.11.2022, the Civil Suit No. 1/2021 filed by the plaintiff/appellant was dismissed.
- 3.** The facts of the case is that the plaintiff/appellant filed the Civil Suit No. 1/2021, wherein he made a claim against the defendants/respondent Nos. 1 & 2 for payment of rental compensation @ Rs. 50,000/- per month from the date of filing of the suit and also for payment of the arrears of the rent amounting to Rs. 54,50,000/- with an interest @ 6% p.a. w.e.f. January, 2012 due to the illegal and forceful occupation of his land covered by LSC No. 20/2011 covering an area of 50,000 sq.m. located at Bungtlang South, Lawngtlai District, Mizoram.
- 4.** It is the further case of the plaintiff/appellant that the Trial Court initiated ex-parte proceedings against the defendants/respondents vide its Order dated 22.11.2021. However, despite the plaintiff/appellant having proved his case by adducing evidences, the Trial Court dismissed the suit. Situated thus, the present Regular First Appeal has been preferred by the plaintiff/appellant.
- 5.** Mr. B. Lalramenga, learned counsel for the plaintiff/appellant submits that the Judgment & Order of the Trial Court is manifestly and palpably erroneous,

inasmuch as, despite having come to the finding that the defendants/respondents are illegally occupying the land of the plaintiff/appellant, dismissed the suit and rejected the relief of rental compensation as claimed by the plaintiff/appellant in the said suit.

6. He further submits that the suit having proceeded ex-parte and there being no written statement filed on behalf of the defendants/respondents, the Trial Court ought to have pronounced the judgment on the basis of the facts contained in the plaint.

7. He further submits that despite the suit having proceeded ex-parte, the Trial Court called the plaintiff/appellant to adduce evidence to prove his case instead of pronouncing the judgment on the facts pleaded and hence, has committed manifest error by not following the procedure laid down in Order VIII Rule 10 of the Code of Civil Procedure.

8. Per contra, Mr. Miller Biakrempuia Renthlei, learned counsel for the defendants/respondent Nos. 1 & 2 submits that there is no infirmity or irregularity whatsoever in the judgment and order of the Trial Court and hence, the impugned judgment warrants no interference from the Appellate Court.

9. He further submits that the plaintiff/appellant has not adduced any evidence to show that the plaintiff is entitled for any compensation as claimed from the defendants/respondents.

10. Ms. Caroline K. Lungawipuii, learned Government Advocate for the respondent No. 3 submits that she has received no instructions to object to the instant appeal.

11. I have given my prudent consideration to the arguments advanced by the learned counsels appearing on behalf of the contesting parties and have

perused the materials available on record.

12. It appears that the land of the plaintiff/appellant (covered by LSC No. 20/2011) was occupied by the respondent Nos. 1 & 2 during the construction of a new 2-Lane Highway from NH-54 near Lawngtlai to Indo-Myanmar Border in Mizoram for the purpose of depositing and stocking unwanted soil, debris, stones, boulder, pellet and sand, thereby dispossessing the plaintiff/appellant from the subject land.

13. Paragraph Nos. 3 to 18 of the plaint is reproduced hereunder for ready reference:-

“3. That the plaintiff was allotted a plot of land by the Land Revenue & Settlement Department, LADC under Section.12 of the Lai Autonomous District Council (Land Holding & Settlement Act 2002) bearing No. LSC No. 20/2011 of 27.07.2011, covering an area of 50,000 Sq.mtrs at Bungtlang South, thereby providing all rights and interests arising out of the said landed property. To the effect, the plaintiff also duly paid revenue taxes to the concerned authority till date.

A copy of the plaintiff's LSC's and tax clearance certificates are hereto marked and annexed as Annexure-I & II respectively.

4. That on dated 20.08.2008, the Land Revenue & Settlement Department, Government of Mizoram issued notification for the acquisition of Private lands under section 4 of the Land Acquisition Act, 1894, vide Memo No.K.15011/102/05-REV/pt dtd 20.08.2008 for the construction of a New 2-Lane Highway from NH-54 near Lawngtlai to Indo-Myanmar Border in Mizoram to support Kaladan Multi Modal Transit Transport Project, Phase-A under SARDP-NE, and subsequently on dated 12.04.2010, a declaration was made under Section 6 of the said Act vide memo No. 15011/102/05-REV/pt Dated 12/04/2010 by the said concerned authority. Accordingly, on dated 20.04.2010, the Deputy Commissioner, Lawngtlai District, vide Memo No.R.12011/2/2009-DC (LTI) dated 20.04.2010 issued notice to persons interested under section 9 of Land Acquisition Act, 1894 stating the Government's intention to take

possession of the said land, and that claims to compensation for all interests in such land may be made to the concerned authority.

5. That for the execution of the above mentioned project, Mizoram State Government represented by the Public Work Department, Government of Mizoram issued notice inviting tender for the construction of the said project under SARDP-NE. To this effect, the defendant No.1 & 2 and the Government of Mizoram had signed a Contract Agreement (MOU) and as such the Government of Mizoram issued Work Order for the execution of the said work in favour of the defendant No.1 & 2.

6. That accordingly, the defendant No.1 & 2 had started the execution of the said work on dated 13.10.2010 by deploying machines, machinery tools as well as sufficient manpower. In the course of execution of the said work, the defendant No.1 & 2 started establishing camps and continued to settle within the plaintiff's land without taking prior permission and consent from the plaintiff w.e.f January, 2012 till date.

7. That the defendant No.1 & 2 forcefully and illegally occupied 1400 sqmtrs of the plaintiff's land bearing LSC No. 20/2011 of 27/7/2011 out of an area covering 50,000 Sq.mtrs and four (4) houses including one (1) reservoir were also constructed thereon by the defendant No.1 & 2 without prior permission and consent of the plaintiff's.

Photo copy of the defendant No.1-2 camp which has been established within the plaintiff No.1 land is hereto marked and annexed as Annexure-III-A, III-B, III-C, III-D, HII-E, & III-F respectively.

8. That it is also relevant to mention here that the defendant No.1 & 2 also used the land belonging to the plaintiff for the purpose of depositing and stocking unwanted soil, debris, stones, boulder, pellet and sand till date making it unsuitable for agricultural or residential purposes without prior permission and consent of the plaintiff's.

Photo copy of the defendants No.1-2 camp which has been established within the plaintiff No.2 land and their stocked of stones, boulder etc is hereto annexed and marked as Annexure-IV-

A, IV-B, IV-C and IV-D respectively.

9 That as a result of the illegal and forcible occupation of the plaintiff's land by the defendants No.1 & 2, the plaintiff could not utilize and develop his said land, which is his primary source of income and the plaintiff has been unreasonably and immensely suffering from the defendant No.1 & 2 actions till date.

10. That it is pertinent to mentioned here that the plaintiff personally requested and approached the defendant No.1 & 2 repeatedly and continuously to make a negotiation as well as to pay rental compensation in connection with his said lands but to no avail.

11. That on dated 11.9.2020, a Legal Notice was served to the Defendants No.1 & 2 through Advocate, Zirthantluangi, directing them to pay notice to pay rental compensation at a rate of Rs.50,000/- (Rupees Fifty thousand) only per month henceforth and also to pay the arrears amounting to Rs. 5,200,000/- (Rupees Fifty-two Lakhs) only with an interest at a rate of 6% p.a accruing the illegal and forceful occupancy of the Plaintiffs' land for a period of January 2012-August, 2020, within a period of 30 days from the date of the said Legal Notice, but to no avail.

Photo copy of Legal Notice dated; 11-9-2020 and Acknowledgement Letter are annexed hereto and marked as V, VI & VII respectively.

12. That due to the illegal and forcible occupation of the plaintiffs' land by the defendant No.1 & 2, the defendant No.1 & 2 deliberately deprives and violated his basic human rights of property provided under Article 300 A of the Indian Constitution and as such the defendant No.1 & 2 are liable to pay rental compensation to the plaintiff as per the relevant provisions of law along with interest @ 9% p.a without any further delay.

13. That the cause of action has arisen on January, 2012, when the defendants No.1 and No.2 illegally and forcefully occupied the Plaintiffs land; on dated, 11-9-2020, when a Legal Notice was served to the defendant No.1 & 2, but to no avail and also continue till date since the defendant No. 1 & 2 have been

occupying the said land continuously without vacating in between.

14. That this Hon'ble Court has both territorial and pecuniary jurisdiction to adjudicate upon the instant suit.

15. That the instant suit is valued at more than Rs. 5,450,000/- (Rupees Fifty-four Lakhs and fifty thousand) only and as such, the Plaintiff has to deposit a court fee of Rs. 5,000/- as per the Court fees (Mizoram Amendment) Act, 1996 since he is the house taxpaying native, resident of Mizoram and the said court fee of Rs.5,000/- is deposited herewith along with this Plaint.

16. That the instant suit is not barred by law of the limitation or by any other law.

17. That the precept suit is filed bona fide and for the interest of justice.

18. That the Plaintiff therefore, prays for the following reliefs:

a) to pass a decree in favour of the Plaintiff and against the Defendants.

b) to pass a decree declaring that the defendant No.1 & 2 illegally and forcefully occupied the Plaintiff's land.

c) to pass an order directing the defendant No.1 & 2 to to pay rental compensation at a rate of Rs.50,000/-(Rupees Fifty thousand) only per month henceforth and also to pay the arrears amounting to Rs. 5,450,000/- (Rupees Fifty-four Lakhs and fifty thousand) only with an interest at a rate of 6% p.a accruing from the illegal and forceful occupation of the Plaintiff's land.

d) to pass any other consequential relief(s) as this Hon'ble Court may deem fit and proper.

And for which act of kindness, the Plaintiff as in duty bound shall ever pray."

14. It appears that though notices were issued to the defendants/respondents on several occasions and were duly served upon them, the defendants/respondents did not appear in the Court nor were represented by

any counsels.

15. It further appears that thereafter the case proceeded exparte on 22.11.2021. It further appears that the plaintiff/appellant was called upon to adduce evidence in support of his claim and the plaintiff/appellant accordingly adduced the evidence of two witnesses including himself.

16. It further appears that the Trial Court framed the following issues in order to enable an order of declaration in favour of the plaintiff/appellant:-

- 1) The right of the plaintiff i.e that the plaintiff is entitled to any legal character or any right as to property.*
- 2) The infringement i.e that the defendant is denying, or is interested to deny the plaintiff's title to such legal character or right.*
- 3) The declaration i.e the declaration sought is that the plaintiff is entitled to such legal character or right.*
- 4) The consequential relief i.e where the plaintiff is able to seek further relief than mere injunction, he seeks such relief.*

17. Upon completion of arguments, it appears that the Trial Court has held that the plaintiff/appellant succeeded in establishing the first 3 issues, i.e., the right of the plaintiff/appellant to the subject land, the infringement by the respondent Nos. 1 & 2 in denying the plaintiff/appellant his title over the subject land and the declaration of the plaintiff/appellant to such legal character/right to the subject land. However, the Trial Court rejected the consequential relief i.e. the right to be compensated against such infringement by the defendants/respondents by holding that there is no documentary proof of any rental agreement or other deeds between the plaintiff/appellant and the

respondent Nos. 1 & 2.

18. In view of the above, the following points arises for determination in the instant appeal:-

(i) Whether the plaintiff/appellant is entitled for rental compensation from the respondent Nos. 1 & 2 for illegally and forcefully utilizing the subject land of the plaintiff/appellant.

(ii) Whether the averments in support of the rental compensation set up by the plaintiff/appellant in the plaint be accepted for determining the rental compensation in the absence of any denial on behalf of the respondents.

19. Pertinent at this juncture to refer to Order IX Rule 6 of Code of Civil Procedure, which provides as hereunder:-

“6. Procedure when only plaintiff appears.-(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then-

[(a) When summons duly served - If it is proved that the summons was duly served, the Court may make an order that the suit be heard ex parte;]

(b) When summons not duly served - If it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

When summons served but not in due time - If it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement."

20. Apparent that when the defendants/respondents does not appear despite the summons being duly served on the date for hearing, the Trial Court is entitled to make an order that the suit be heard ex-parte.

21. As stated above in this case, the suit proceeded ex-parte on 22.11.2021 for the non appearance of the defendants/respondents despite receipt of summons issued repeatedly.

22. Paragraph 2 of the impugned Judgment dated 18.11.2022 in Civil Suit No. 1/2021 is reproduced hereunder for ready reference:-

"2. Notices were sent to the defendants on several occasions and were duly served upon them. However, the defendants did not appeared in the Court nor are represented by any counsel. Hence, the case proceeded ex parte on 22.11.2021."

23. Order VIII Rule 10 of Code of Civil Procedure which provides the procedure when party fails to present written statement called for by Court is also reproduced hereunder for ready reference:-

"[10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under Rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or

make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.]”

24. Apparent that non filing of written statement, the Trial Court is entitled to pronounce judgment against the defendants/respondents or make such order in relation to the suit as it deems fit and on the pronouncement of such judgment, a decree shall be drawn up.

25. In the present case, the Trial Court had formulated 4 (four) issues to be satisfied and established by the plaintiff/appellant in order to be entitled for the declaration sought in the suit. It appears that the Trial Court has returned the finding in favour of the plaintiff/appellant as regards the first three issues so formulated as regards the plaintiff/appellant's right/title to the subject land, the infringement thereof by the defendants/respondent Nos. 1 and 2 in denying the plaintiff/appellant title to such land and the declaration that the plaintiff/appellant is entitled to such legal character or right in respect of the subject land.

26. Para 8 of the Trial Court Judgment is reproduced hereunder for ready reference:-

“8. The plaintiff had exhibited his land document and his witness has also stated that the plaintiff owned a particular land and that defendants No. 1 & 2 illegally occupied the land thereby infringing the rights of the plaintiff. The plaintiff is entitled to sought for his right. Thus, the plaintiff succeeded in establishing the first three conditions. However, the consequential relief prayed by the plaintiff is for rental compensation at the rate of Rs.50,000/-(Rupees Fifty thousand) only per month which shall be effective from January 2012 and also to pay the arrear amounting to Rs.54,50,000/-(Rupees Fifty four lakhs and fifty thousand) only with an interest at the rate of 6% p.a accruing from the illegal and forceful occupation of the plaintiff's land. The plaintiff did not

produced any documentary proof to reveal that there is rental agreement between the parties. There is no basis for computing the amount claimed by the plaintiff. There is no relationship of landlord and tenant between the parties for the plaintiff to claim for rental compensation. Thus, the plaintiff failed to fulfil the last condition to enable an order of declaration. As such, I am of the considered view that the plaintiff has not establish his case with any oral or documentary evidence. Therefore, the instant suit is dismissed."

27. Apparent from the above that the Trial Court has clearly declared the plaintiff/appellant's right to the subject land. It further appears that the Trial Court has also declared that the defendants/respondent Nos. 1 and 2 have infringed the said right of the plaintiff/appellant by forcefully occupying the subject land. It is further apparent from reading of the plaint especially paragraph IV, V, VI & VII of paragraph No. 3 that the defendants/respondent Nos. 1 and 2 is using the said land in relation of execution of the subject work. It further appears that the defendants/respondent Nos.1 and 2 have established camps in the land of the plaintiff/appellant and is also using the land of the plaintiff/appellant for the purpose of depositing and stocking unwanted soil, debris, stones, boulder, pellet and sand till date making it unsuitable for agricultural or residential purposes without prior permission and consent of the plaintiff's. Thus, the plaintiff/appellant is being deprived of utilizing, using and developing his own land which is pleaded to be his primary source of income. It is settled principle of law that no person can be deprived from his land without following any established procedure of law. Non filing of written statement, the said averments in the plaint stands admitted.

28. Pertinent that the Apex Court in the case of *Kolkata Municipal Corporation & Anr. Vs. Bimal Kumar Shah & Ors., in Civil Appeal No. 6466/2024 arising out*

of SLP(C) No. 4504/2021 has held that the right to property is not only a constitutional right but a basic human right. Paragraph Nos. 24, 25, 27, 28 & 29 of the aforesaid judgment is reproduced hereunder for ready reference:-

“24. The Right to property: A net of intersecting rights: There is yet another aspect of the matter. Under our constitutional scheme, compliance with a fair procedure of law before depriving any person of his immovable property is well entrenched. We are examining this issue in the context of Section 352 of the Act which is bereft of any procedure whatsoever before compulsorily acquiring private property. Again, assuming that Section 363 of the Act provides for compensation, compulsory acquisition will still be unconstitutional if proper procedure is not established or followed before depriving a person of their right to property. We find it compelling to clarify that a rather undue emphasis is laid on provisions of compensation to justify the power of compulsory acquisition, as if compensation by itself is the complete procedure for a valid acquisition.

25. While it is true that after the 44th Constitutional Amendment, the right to property drifted from Part III to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300A which declares that “no person shall be deprived of his property save by authority of law” has been characterised both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

27. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property – the right to notice, ii) the duty of the State to hear objections to the acquisition – the right to be heard, iii) the duty of the State to inform the person of its decision to acquire – the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose – the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate – the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition

efficiently and within prescribed timelines of the proceedings – the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading to vesting – the right of conclusion.

28. These seven rights are foundational components of a law that is tune with Article 300A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantations (supra) declares that the law envisaged under Article 300A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub-rights as 'procedural', a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, noncompliance of these will amount to violation of the right, being without the authority of law.

29. These sub-rights of procedure have been synchronously incorporated in laws concerning compulsory acquisition and are also recognised by our constitutional courts while reviewing administrative actions for compulsory acquisition of private property. The following will demonstrate how these seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our courts have evolved from time to time."

29. In paragraph No. 30.5, the Apex Court highlighted that there are 7 principles, which have to be followed while the State acquires a land and the same are:-

- (i) The right to notice.
- (ii) The right to be heard
- (iii) The right to a reasoned decision
- (iv) The duly to acquire only for public purpose.
- (v) The right of restitution or fair compensation
- (vi) The right to an efficient and expeditious process

(vii) The right of conclusion.

30. Thus, a person's right to hold and enjoy property is an integral part of the Constitutional right under Article 308 and depriving or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. The Apex Court has further held in the aforesaid decision that the compensation has always been considered to be an integral part of the process of acquisition.

31. Para 30.5 of the aforesaid judgment is also reproduced hereunder for ready reference:-

“30.5. The Right of restitution or fair compensation:

(i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporations of the right to restitute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the sine qua non for any acquisition process.”

32. In the instant case, it appears that the State Government had acquired land by Notification dated 20.08.2008 under Section 4 of the Land Acquisition

Act, 1894 for the construction of a new 2-Lane Highway from NH-54 near Lawngtlai to Indo-Myanmar Border in Mizoram to support Kaladan Multi Modal Transit Transport Project, Phase-A under SARDP-NE and subsequently declaration was made on 12.04.2010 under Section 6 of the said Act.

33. It further appears that thereafter on 20.04.2010, the Deputy Commissioner, Lawngtlai District issued notice to persons interested under Section 9 of the said Act, stating the Government intention to take possession of the said land and that claims for compensation by all interested on such land may be made to the concerned authority. Pertinent that the subject land of the plaintiff/appellant was not acquired by the State Government for the subject road construction project.

34. It further appears that pursuant to the State Government inviting tender, defendants/respondent Nos. 1 and 2 were appointed to execute the said work. It appears that though the subject land of the plaintiff/appellant were not acquired by the State Government, however, the defendants/respondent Nos. 1 and 2 forcefully and illegally occupied 1400 sq.m of the plaintiff's land bearing LSC No. 20/2011 of 27.07.2011 out of an area covering 50,000 sq.m and 4 houses including one reservoir were also constructed thereon by the defendants/respondent Nos. 1 and 2 without prior permission and consent of the plaintiff.

35. It appears that the Trial Court has clearly held that the plaintiff/appellant is entitled for the declaration of title in favour of the said land occupied by the defendants /respondent Nos. 1 and 2. Since there is no cross appeal against the aforesaid verdict of the Trial Court, the entitlement/title of the plaintiff/appellant

to the subject land, the infringement thereof by the defendants /respondent Nos. 1 and 2 and the declaration in favour of the plaintiff/appellant attains finality. Therefore, it is established that the plaintiff/appellant has been deprived from enjoying his own land without the same being acquired by the State Government in accordance with law.

36. It further appears that no compensation whatsoever has been given to the plaintiff/appellant either by the defendants/respondent Nos. 1 & 2/Contractors nor by the State Government for the defendant Nos. 1 & 2 for the said forceful occupation of the subject land of the plaintiff/appellant. The said occupation of the defendant Nos. 1 & 2/Contractors is absolutely illegal and amounts to total deprivation of the Constitutional and basic human right of the plaintiff/appellant. Thus, following by the ratio of the Apex Court in the decision of ***Kolkata Municipal Corporation (Supra)***, the plaintiff/appellant is entitled for compensation thereof.

37. The Trial Court's order to the extent that *the plaintiff/appellant did not produce any documentary proof to reveal that there is rental agreement between the parties and that there is no basis for computing the amount claimed by the plaintiff/appellant and that there is no relationship of landlord and tenants between the parties for the plaintiff/appellant to claim for rental compensation and therefore, the plaintiff/appellant failed to fulfill the last condition to enable an order of declaration and accordingly, has not established his case with the oral or documentary evidence and therefore, dismissed the suit*, thus, in the considered opinion of this Court is totally erroneous. The first point of determination is decided accordingly.

38. This takes me to the next point of determination as how the compensation has to be determined.

39. Pertinent to refer to Order 8 Rule 5 of Code of Civil Procedure, which is reproduced hereunder for ready reference:-

“5.[(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.”

40. Reading of the aforesaid appears that where the defendant has not filed written statement, it shall be lawful on the Court to pronounce judgment on the basis of the facts contained in the plaint, however, the Court may in its discretion, require any such fact to be proved.

41. In the present case, the plaintiff/appellant in paragraph Nos. 9, 11, 12 & 15 have clearly averred that due to the deprivation of the plaintiff/appellant to utilize, use and develop the subject land, which is his primary source of income, he has been unreasonably and immensely suffering till date.

42. It further appears that the plaintiff/appellant has pleaded in the plaint that the plaintiff/appellant is entitled to be compensated @Rs. 50,000/- only per month and the arrears amounting to Rs. 52 Lakhs only with an interest @ 6% p.a. accruing the illegal and forcefully occupancy of the plaintiff/appellant's land for a period from January, 2012 to August, 2020 within a period of 30 days from the date of issuance of a legal notice dated 11.09.2020. The said averments stands un rebutted and therefore, admitted. Thus, the basis for the compensation is available in the plaint. Further, the said basis for the

compensation having been not rebutted by the defendants/respondents, it was lawful for the Trial Court to pronounce the judgment against the defendants/respondents.

43. That apart, the plaintiff/appellant has deposed during his examination-in-chief as hereunder for ready reference:-

“I, Shri Althaia, S/o H.Ramtova R/o Bungtlang South, Lawngtlai District Mizoram, do hereby solemnly affirm and state as follows:

1. That I am the Plaintiff in the instant case.

2. That I was allotted a plot of land by the Land Revenue & Settlement Department, LADC under Section.12 of the Lai Autonomous District Council (Land Holding & Settlement Act 2002) bearing No. LSC No. 20/2011 of 27.07.2011, covering an area of 50,000 Sq.mtrs at Bungtlang South, thereby providing me all rights and interests arising out of the said landed property. To the effect, I duly paid revenue taxes to the concerned authority till date.

3. That on dated 20.08.2008, the Land Revenue & Settlement Department, Government of Mizoram issued notification for the acquisition of Private lands under section 4 of the Land Acquisition Act, 1894, vide Memo No.K.15011/102/05-REV/pt dtd 20.08.2008 for the construction of a New 2-Lane Highway from NH-54 near Lawngtlai to Indo-Myanmar Border in Mizoram to support Kaladan Multi Modal Transit Transport Project, Phase-A under SARDP-NE, and subsequently on dated 12.04.2010, a declaration was made under Section 6 of the said Act vide memo No. 15011/102/05-REV/pt Dated 12/04/2010 by the said concerned authority. Accordingly, on dated 20.04.2010, the Deputy Commissioner, Lawngtlai District, vide Memo No.R.12011/2/2009-DC (LTI) dated 20.04.2010 issued notice to persons interested under section 9 of Land Acquisition Act, 1894 stating the Government's intention to take possession of the said land, and that claims to compensation for all interests in such land may be made to the concerned authority. But my land was excluded from the beneficiaries of the said acquisition.

4. That for the execution of the above mentioned project, Mizoram State

Government represented by the Public Work Department, Government of Mizoram issued notice inviting tender for the construction of the said project under SARDP-NE. To this effect, the defendant No.1 & 2 and the Government of Mizoram had signed a Contract Agreement (MOU) and as such the Government of Mizoram issued Work Order for the execution of the said work in favour of the defendant No.1 & 2.

5. That accordingly, the defendant No.1 & 2 had started the execution of the said work on dated 13.10.2010 by deploying machines, machinery tools as well as sufficient manpower. In the course of execution of the said work, the defendant No.1 & 2 started establishing camps and continued to settle within my said land without taking prior permission and consent from me w.e.f January, 2012 till date.

6. That the defendant No.1 & 2 forcefully and illegally occupied 1400 sq.mtrs of my landed property bearing LSC No. 20/2011 of 27/7/2011 out of an area covering 50,000 Sq.mtrs and four (4) houses including one (1) reservoir were also constructed thereon by the defendant No.1 & 2 without prior permission and consent from me.

7. That the defendant No.1 & 2 also used my said land for the purpose of depositing and stocking unwanted soil, debris, stones, boulder, pellet and sand till date making it unsuitable for agricultural or residential purposes without prior permission and consent from me.

8. That as a result of the illegal and forcible occupation of my landed property by the defendants No.1 & 2, I could not utilize and develop my said land, which is my primary source of income and I had been unreasonably and immensely suffering from the actions of the defendant No.1 & 2 till date.

9. That I personally requested and approached the defendant No.1 & 2 repeatedly and continuously to make a negotiation as well as to pay rental compensation in connection with my said land but to no avail.

10. That I also served legal notice to the Defendants No.1 & 2 directing them to pay rental compensation for their illegal occupancy of my land but to no avail.

As a result, I have no other option except to approach this Hon'ble Court for efficacious remedy."

44. Thus, the plaintiff/appellant has proved and established his claim for compensation against the defendants/respondent Nos. 1 and 2 for their illegal occupation of his subject land. However, the Trial Court having not granted compensation to the plaintiff/appellant despite holding the right title over the subject land in favour of the plaintiff/appellant and declaring the plaintiff/appellant as the legal owner over the subject land and the infringement by the defendants/respondents thereof, committed manifest and palpable error and as such, the Judgment and Order dated 18.11.2022 to that extent warrants interference from this Court.

45. As such, the Judgment and Order dated 18.11.2022 is set aside. Accordingly, the finding of the Trial Court to the extent that the plaintiff/appellant is not entitled for compensation against such illegal forceful occupation of the defendants/respondents stands reversed.

46. Resultantly, it is directed that the defendants/respondent Nos. 1 and 2 to pay compensation @Rs. 50,000/- (Rupees fifty thousand) only per month henceforth and also to pay the arrears amounting to Rs. 54,50,000/- (Rupees Fifty four lakhs and fifty thousand) only with an interest @ 6% p.a. accruing from the date of the illegal and forceful occupation of the plaintiff/appellant's land.

The present appeal stands disposed of.

Let the decree accordingly be drawn up.

Send back the LCR.

JUDGE

Comparing Assistant