

GAHC030005942023



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

Case No. : RFA/42/2023

The North East Frontier Railways
Represented by Deputy Chief Engineer
Construction, Kawnpui, Mizoram

VERSUS

Sh. Kawlchhawnthanga and 3 Ors.
S/o Rohluma
R/o Tuikual South, Aizawl 2:Sh. Vanlalruata

3:Sh. Zomuana

4:The District Collecto

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi
Advocate for the Respondent : Addl. AG/GA, Mizoram for R4

Linked Case : I.A.(Civil)/135/2023

The North East Frontier Railways
Represented by the Deputy Chief Engineer
Construction
Kawnpui
Mizoram

VERSUS

Sh. Kawlchhawnthanga and 3 Ors.
S/o Rohluma
R/o Tuikual South

Aizawl

2:Sh. Vanlalruata
S/o Hmarkhuma
R/o Bethlehem Vengthlang
Aizawl
Mizoram

3:Sh. Zomuana
S/o Rinmawia
R/o Lower Zarkawt
Aizawl
Mizoram

4:The District Collector
Kolasib District
Kolasib

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi
Advocate for the Respondent : Addl. AG/GA
Mizoram for R4

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 02-06-2025

Heard Mr. S.K. Medhi, learned counsel for the appellant. Also heard Mr. R.K. Malsawmkima, learned counsel for respondent Nos. 1 to 3 and Mrs. Caroline K. Lungawipuii, learned Government Advocate for respondent No. 4.

2. This is an appeal filed against the Judgment & Decree dated 08.12.2022 passed by the learned Senior Civil Judge, Kolasib District, Mizoram in Damage Suit No. 4/2019, wherein the appellant was directed to pay compensation to the

private respondent Nos. 1 to 3 for the damage caused to their land and crops located at Khamrang due to the construction of Railway line from Sairang to Bairabi by the appellant.

3. Brief facts of the case is that the present respondent Nos. 1 to 3, namely, Sh. Kawlchhawnthanga, Sh. Vanlalruata and Sh. Zomuana are the owners of VC Pass No. 5/09/2009, VC Pass No. 9/2009 and VC Pass No. 12/2010 respectively. They had filed the Damage Suit No. 4/2019 against the appellants for the damage caused to their lands and crops located at Khamrang, Kolasib on the construction of Railway line from Bairabi to Sairang by the present appellants. The appellants in the year 2011 had initiated acquisition of land for construction of Railway line from Bairabi to Sairang and notification was also issued in this respect. The appellants had acquired the private lands of the persons the construction of the Railway line and accordingly had paid compensation for the acquired land vide Award No.1/12 (Khamrang). Thereafter, in 2019, the respondent Nos. 1 to 3 complained to the appellants, stating that in their process of construction of the Railway line a large portion of their land and crops were destroyed, however, since no steps was taken by the appellants, the Damage Suit No. 4/2019 was filed by the respondents/plaintiffs. The appellants/defendants had filed their written statement before the learned Trial

Court by submitting that the appellants had already paid the private respondents the compensation for acquisition of their landed properties and the private respondents at a belated stage, had filed compensation for damages of their land and crops when they had not filed any objection nor informed the Railway authority regarding the said damages at the relevant time. It was also the case of the appellants that the railway construction work is carried out by the private construction companies and not by the Railway authority and hence, the Damage Suit is defective and liable to be dismissed for not making the private construction companies a party.

4. The learned Trial Court heard both the parties on 03.03.2022 and observed that both the parties agreed that a joint spot verification should be done regarding the claim of the private respondents/plaintiffs. Accordingly, the learned Trial Court directed that a Joint Spot Verification/JSV be conducted by the Settlement Officer, Land Revenue & Settlement Department in the presence of both the parties, wherein the Settlement Officer, Kolasib was to clarify whether the defendant No. 2 (appellant/NF Railways) had caused damage to the lands of the 3 private respondents/plaintiffs within their respective LSCs. The Joint Spot Verification was conducted and the report was submitted on 02.05.2022, wherein it was found that the land and crops of the private

respondents were damaged during the construction of the railway line. The parties in order to expedite the process of trial waived to produce witnesses and sought to rely on the Joint Spot verification report. On 08.06.2022 hearing was conducted wherein the court held that damage was caused to the land and crops of the private respondents. The learned Trial Court then directed the District Collector to make assessment of the damaged land and crops as per the extant rules/norms in respect of the damage caused to the land and crops of the private respondents which was received on 10.07.2022

Thereafter, the learned Trial Court had framed the following issues:-

- i) Whether the suit is maintainable in the present form and style?
- ii) Whether the suit is barred by limitation?
- iii) Whether there is cause of action in favour of the Plaintiff against the Defendants?
- iv) Whether the Plaintiff have *locus standi* to file this instant suit?
- v) Whether the Defendant had allegedly occupied and caused damage to the Plaintiff land and crops?
- vi) Whether the Plaintiff are entitled to monetary compensation as a result of damages in the course of construction of Bairabi to Sairang Railway?
- vii) If so whether the Defendants are liable to pay monetary compensation in respect of the Plaintiff and if so, to what extent?

5. The learned Trial Court had observed that both sides considered it sufficient to adduce only the evidence of the Surveyor, who conducted the Joint Spot Verification/JSV. The concerned Surveyor, Land Revenue & Settlement Department, Kolasib was then examined by the learned Trial Court on 08.06.2022. The report of the surveyor was exhibited in the court as Exhibit C-3, Exhibit C-4 and Exhibit C-5. Thereafter, the learned Trial Court decided all the issues in favour of the private respondents by passing the impugned decree, wherein the present appellants were directed to pay compensation to Kawlchhunthanga (respondent No. 1) compensation amount of Rs. 19,57,000/-, respondent No. 2 Vanlalruata compensation amount of Rs. 48,70,000/-, respondent No. 3 Zomuana compensation amount of Rs. 6,73,000/-.

Aggrieved by the above Judgment & Decree, the instant appeal is filed by the appellants/NF Railways.

6. Mr. S.K. Medhi, learned counsel for the appellants submitted that the impugned Judgment dated 08.12.2022 is liable to be set aside and quashed, since the respondents did not prove before the learned Trial Court that the damage was caused due to railway construction road. He further submitted that the private respondent Nos. 1 to 3 found the damage caused to their property in

2019 and the joint verification was conducted in the year 2022, therefore, it is not possible to assess any damage caused to the land after the lapse of a period of more than 3 years. He also submitted that the alleged Joint Spot Verification is not a verification report but merely the opinion of the Surveyor.

7. The learned counsel for the appellants further submitted that the NF Railways were not liable to pay for any damages caused to the lands and crops of the private individuals which is not within the acquired land and that it was the private companies who constructed the railway lines, who are liable to pay for any damages caused beyond the land acquired by the NF Railways/appellants. The learned counsel led the court to Clause 5.1 of the General Condition of contract (GCC) which is as follows:-

“The Contractor shall not be permitted to enter on (other than for inspection purpose) or take possession of the site until instructed to do so by the Engineer in writing. The portion of the site to be occupied by the contractor shall be defined and/or shown in the site plan, or this shall be indicated by the Engineer, and the contractor shall not use or allow it to be used the site so allowed to him by the Railway for any purpose other than that of executing the work. The contractor shall make his own arrangement at his own cost for any additional land required by him for the purpose of execution of the work”.

8. The learned counsel submitted that the Railway had different Contractors

for the different works at different locations and as per the General Condition of Contract, NF Railways never allowed Contractors to execute the work beyond the acquired land. Further, if there is any damage of land or crops beyond the acquired lands the concerned Contractor is to make his own arrangement at the cost of any additional land acquired by him or damages for the purpose of execution of the work. The learned counsel submitted that this point was mentioned before the learned Trial Court which was also clearly stated by the NF Railways in their written statement however, the learned Trial Court while framing of issues had not included this pertinent point, wherein, the Contractor concerned should have all been made a party in the damage suit.

The learned counsel submitted that the impugned judgment & order dated 08.12.2022 in Damage Suit No. 4/2019 is therefore liable to be set aside and should be remanded back to the learned Trial Court for including the issues, whether the Contractor involved in the construction of a Railway between Bairabi to Sairang is a necessary party and also who would be liable to pay compensation for the alleged damage caused to the land and crops of the private respondents.

9. The learned counsel further submitted that the appellants were not given a

chance to cross examine the Surveyor, who had submitted the spot verification report. He thus reiterated that any damage as per the verification report shows that it was not the railway but the private company/Contractor who is responsible for the additional land acquired for the construction of the Railway lines.

10. Per contra, Mr. R.K. Malsawmkima, learned counsel for the private respondents submitted that the learned Trial Court, on the agreement of both the parties, had relied on the spot verification report of the Surveyor, wherein, the Surveyor had clearly reported that damages were caused to the land and crops of the private respondents and therefore, the private respondent Nos. 1 to 3 are entitled to be paid compensation as decreed by the learned Trial Court. The learned counsel further submitted that since the works were executed by the NF Railways, the NF Railways are liable to pay damages, being responsible for the construction of the railway line between Sairang to Bairabi.

11. The learned counsel for the private respondents further submitted that the joint verification was done to find out the actual damage caused to the respondents on 03.03.2019 as per the order of the learned Trial Court. Both the parties were present before the learned Trial Court, wherein they were made

aware of the contents of the Joint Spot Verification report. It is seen from the judgment and order of the learned Trial Court that it was only on the agreement of both the parties that they waived to produce their witnesses since both the parties found it sufficient if the report of the Joint Spot Verification was considered by the Court, and both the parties had agreed that the Court should rely on the findings of the Joint Spot Verification. Thus, the judgment and order was derived from the consent of both the parties to rely on the findings of the Joint Spot Verification report.

12. The learned counsel for the private respondents further submitted that even though the appellants had submitted that the Contractor was a necessary party, however, the name and address of the Contractor should have been fully supplied by the NF Railways since there were many Contractors who were working in the said stretch of land for setting up the railway lines. He further submitted that this point was never cross examined by the appellants though in the examination-in-chief, it was clearly mentioned that the NF Railways would be responsible. He submitted that what was not cross in the examination-in-chief cannot be raised at this belated stage and that the appellant during the trial of the case could have made an application to recall the witness for cross examination. That since he did not take the said steps, he is therefore barred by

the principle of waiver.

In support of his submission, the learned counsel has relied on the judgment of the Apex Court in ***Union of India v. Susaka (P) Ltd***, reported in ***(2018) 2 SCC 182*** wherein it was held that:-

“27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party.”

13. Mrs. Caroline K. Lungawipuii, learned Government Advocate submitted that the land of the private respondents was acquired under Award No. 1/2012 for the construction of Railway line from Bairabi to Sairang and executed the construction works since 2013. The private respondents had previously never filed any complaint regarding the acquired property for construction of the railway line. That they could have filed the complaint and should have initiated claims for compensation during the course of the construction period. The private respondents had approached the learned Trial Court at a belated stage which creates doubt regarding their claims, wherein even a spot verification cannot ascertain the actual damage caused after a lapse of almost a decade.

The learned Government Advocate also submits that the private respondents have already been paid for the acquisition of their land and during the payment, there was no complaint on the part of the respondents.

14. In rebuttal to the submissions made by the learned counsel for the private respondents, Mr. S.K Madhi, learned counsel for the appellants submitted that the learned Trial Court at para 11 of the judgment and order had noted that there was damage caused to the landed property of the respondents as per the spot verification report and had also noted that the construction was carried out by the NC Das Company and therefore, it is clear that the Contractor involved in the construction of the railways have also been mentioned, however, the learned Trial Court had failed to make the Contractor a party in the connected impugned Civil Suit. He further submitted that since the necessary party in the case has not been included, the case may be remanded back to the learned Trial Court by framing issues as per Section 107 of the CPC or under Order 41 Rule 25 of CPC.

15. I have considered the submissions made by the learned counsels for both the parties. It is noted that, it is not a disputed fact that the private respondents have already been compensated for the acquisition of their land for the

construction of the Railway line from Sairang to Bairabi and that the compensation claimed by the private respondents is not within the land acquired by the NF Railways but it is for the damages of the land and crops which occurred due to the construction of the railway lines not lying within the acquired land.

16. On perusal of the impugned judgment and order, this court finds that while deciding the issue '*whether the defendants had allegedly occupied and cause damage to the plaintiff lands and crops*' the learned trial court had observed that *the parties had on their own volition consented to a Joint Spot Verification and agreed to be bound by the outcome of the Joint Spot Verification and that all the parties submitted their consent in written to the court on 2.3.2022. Thereafter a JSV be conducted under the aegis of was conducted by a Surveyor Sh. LalrinsangaKhiangte vide order dated 07.04.2022 in the presence of representatives of all the parties namely Laithanga VCP Khamrang, Avinash Kumar SSE/WC, H. Lalchhuanawma, RK Malsawmkima and Kawlchhawnthanga. The Surveyor, LalrinsangaKhiangte was called as Court witness on 19.04.2022 and a report was submitted by him."*

A further perusal of the judgment also shows that the spot verification

report exhibited as Exhibit C-3, Exhibit C-4 and Exhibit C-5 are the description of the crops damaged due to the construction of the railways and also the damage of the land, since the land of the private respondents were also used as dumping ground. The learned Trial Court had observed that the evidence of the Surveyor which has not been rebutted by either of the parties shows that the appellant (defendant No. 2) caused damage to the land of the plaintiff (respondents) in so much as 30,865.17 sq.mtrs.(all together).

Thus, based on the Joint Spot Verification Report wherein it was held that there was damage caused to the land and crops of the private respondents and also based on the assessment, made by the office of the Deputy Commissioner, the learned trial court had passed the impugned Judgment and decree for the payment of compensation to the private respondents by the Appellant/NF Railways.

17. However, this Court has also noted that in the written statement of the defendant No. 2 (appellant), they have taken the stand that the railway construction work is carried out by private construction companies and not by the railway authority, who ought to have been made a necessary party in the case and that the entire plaint is defective and liable to be struck down and

dismissed on the grounds that the necessary parties were not included. It is also seen that the learned Trial Court had also observed the same at para 8 of its judgment by observing that "*the defendant No. 2 further stated that the construction work is carried by a private company and not by the railway authority and that the private company ought to be made necessary parties.*"

It is however, seen that the learned trial court has omitted to frame any issue on the plea of the defendant/NF Railways that the private company who constructed the railway lines liable to pay the compensation for the damages caused during the construction of the railway and thus, whether the private company who constructed the railway lines were necessary parties in the suit.

18. In view of the above, this Court finds that it would be appropriate at this stage, for this court, under [Section 107](#) of Civil Procedure Code 1908 (as amended from time to time), to frame the following issue : *whether the private company who constructed the railway lines are necessary parties in the suit, if so, whether the private company is liable to pay the awarded amount*, which this court finds is essential to decide the matter finally.

19. Thus, in the interest of justice and the matter is referred back to the learned Trial Court to take the additional evidence if required, on the above

issue so framed and to proceed to try the issue, with its findings thereon and the reasons thereof, preferably within 2(two) months from the date of this order. Accordingly, both the parties are to appear before the learned trial court on 13.06.2025 for further necessary steps, for disposal of the matter as per law.

20. Copy of this order to be duly furnished to the learned trial Court and TCR to be returned immediately.

RFA No. 42 of 2023 is thus disposed as above.

JUDGE

Comparing Assistant