Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 539 of 2018 Date of Decision: 16.12.2020

Shri. Creamson War Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T.T. Diengdoh, Sr. Adv. with
Mr. C.C.T. Sangma, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. Z.E. Nongkynrih, GA. (For R 2-4)
Ms. P. Bhattacharjee, Adv. (For R 5).

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HIGH COURT OF MEGHALAYA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes

1. This matter has been posted for final disposal. Heard the learned counsels for the parties. Without again alluding to the background facts of the instant case, it is worthwhile to note that this matter had been heard at length on the issue of the liability of the respondents especially respondent No. 5, and the same had culminated and discussed in the order dated 27.11.2019 passed by this Court.

2. By the above mentioned order, directions were issued for the constitution of a Committee which was to cause inspection to the land of the petitioner to

ascertain the damage and extent thereof, in the presence of all the parties concerned. For its relevance and convenience, the order dated 27.11.2019, is reproduced herein below:

"<u>27.11.2019</u>

1. The case of the petitioner in brief is that the respondent No. 5 in the course of construction of the Umsning by-pass, dumped a huge amount of earth and debris into the land of the petitioner, which resulted in the loss of two perennial water sources apart from making the land unfit for cultivation and has also destroyed the fishery ponds, poultry farm and piggery sheds situated on the land. Further case is that despite repeated complaints before the respondents No. 4 and 5 regarding their grievances, though some steps were taken by the respondent No. 5 to restore the two water sources, the same was wholly inadequate and the petitioner is facing mounting problems and inconvenience because of the dirt and debris that is still present in his land and has suffered great loss in this regard.

2. The petitioner apart from several complaints both verbal and written had addressed a legal notice to the respondents No. 4 and 5 and in the reply dated 24th July 2018, of the Deputy Commissioner, Ri Bhoi District (Annexure- 13) to the writ petition, it is seen that, the revenue officials from the Deputy Commissioners office along with officials of the respondent No. 5 and the land owner had inspected the site and found that the complaint was genuine.

3. Heard Mr. G.S. Massar, learned Sr. counsel assisted by Ms. L. Phawa, learned counsel for the petitioner. Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA for the respondent No. 2 to 4 and Capt. Pradip Kumar, learned counsel assisted by Capt. C.R. Deka, learned counsel for the respondent No. 5.

4. Mr. G.S. Massar, learned Sr. counsel submits that extensive damage had been caused to the petitioner's land, by the respondent No. 5 authority beyond the portion acquired for construction for the Umsning By-pass highway. He submits for the recklessness and negligence in undertaking the construction wherein severe collateral damage has been caused, the respondents are liable to compensate the petitioner adequately. Learned Sr. counsel has drawn the attention of the Court to the annexed photographs showing the extent of damage caused to

the petitioner's land. He further, submits that the respondent No. 4 having already come to a finding that the case of the petitioner is genuine, there is no impediment for this Court to direct the respondent No. 5 to make good the loss suffered by compensating for the same.

5. Capt. Pradip Kumar, learned counsel in his reply submits that the respondent No. 5 has taken adequate safeguards while constructing the by-pass which are sufficient as per site conditions, and the respondent No. 5 has not used the petitioner's un-acquired land for the construction of the highway. He contends that the project highway and road structures have been constructed as per approved land and profile within ROW (Right of Way) of NHAI and all the cross drainage structures, are planned as per the natural flow of the rain water passing through the fields, keeping in view the high flood levels and hydraulic data of the site. He further submits that as per request of the petitioner land owner and the Extra Assistant Commissioner Ri Bhoi District, the respondent No. 5 had constructed two deep tube wells on the land of the petitioner to offset the damage to the two water sources as alleged. He lastly submits that the petitioner has failed to make out any case for adjudication by this Court and no right of the petitioner has been violated to warrant any remedy under Article 226 of the Constitution of India.

6. I have heard learned counsels for the parties.

7. It is seen that the prayer of the petitioner for adequate compensation is squarely based on the negligence of the respondent No. 5 to exercise reasonable care, while constructing the by-pass. Negligence which comes in the realm of Tort Law, is the failure to use reasonable care that an ordinary person would have used in a similar situation resulting in injury or other loss. In its briefest form, the doctrine of negligence holds that if you are to blame, through your carelessness, for an injury to the person or property of another, you will be liable for the damage. [1] One of the requisites of negligence is 'Duty of Care' which means that every person owes a duty of care, to another person while performing an act. Although this duty exists in all acts, but in negligence, the duty is legal in nature and cannot be illegal or

[1] Eric E. Johnson, Cases and Context: Volume One, eLangdell Press, 1st Edition, December, 2015.

unlawful and also cannot be of moral, ethical or religious in nature.

8. Another aspect, that is the doctrine of strict liability, will also be applicable in the present case. In the celebrated case of *Rylands vs. Fletcher*, the concept of 'No fault liability' or strict liability was enunciated. This is contradictory to the general principle of negligence in Torts where a person can be held liable for commission of a Tort only when the plaintiff can proof negligence on his part and the defendant himself is unable to disapprove it. Onus of being negligent even if ignored, will not absolve a party from being liable for the consequences of damages caused to any person outside the boundary where the construction or any activity is being undertaken. In the instant case, the construction of the by-pass was on the acquired portion of land and even if there was no intention whatsoever to cause any damage to the petitioner's land, the Respondent No. 5 cannot be said to be absolved of the liability by application of the doctrine of strict liability. Further, as noted earlier, the fact that the petitioner has a genuine claim has been found to be true by the respondent No. 4. In the case of *Rylands* which involved the construction of a reservoir to improve water supply which however, inadvertently inundated the adjoining land, the Court though ruling out negligence on the defendant's part held in that under the rule of strict liability the defendant was liable.

9. In this context, the law as enunciated in *Rylands vs. Fletcher*, has been interpreted by the Hon'ble Supreme Court which has also introduced the concept of 'absolute liability' which made the rule applicable without any limitation or exception. This rule was evolved in the case of *M.C. Mehta vs. Union of India (AIR 1987 SC 1086)*. However, with regard to 'strict liability' as in the present case various High Courts in the country have dealt with the same which are briefly illustrated herein below:

In the judgment and order dated 18.11.2014 passed in LPA No. 1749 of 2014, in the case of *Bimla Devi & Ors. vs. The State of Haryana* it was observed by the Punjab and Haryana High Court as follows:

> ***"There is mark distinction between proceedings arising out of 'public law' and proceedings arising out of 'private law'. Infringement of indefeasible rights as***

guaranteed under Article 21 of the Constitution of India make award of compensation in a remedy available in public law. The deprivation of constitutionally guaranteed right of life and liberty is based on strict liability and such a claim is covered under public law for compensation. This remedy is in addition to the remedy available to the party under private law for damages for tortious acts of the State or its functionaries or public servants."

In the judgment and order dated 11.09.2013 passed in WP(C) 5812 of 2011, in the case of *Taskinuddin & Ors. vs. State (NCT of Delhi) & Anr., the Delhi High Court* while quoting extensively from various judgments had observed as under:

"43. As far as respondent No. 5's submission that no writ petition for money claim is maintainable is concerned, we are of the view that the same is untenable in law. In our opinion, the Constitution does not place any fetter on the exercise of extra ordinary jurisdiction of the Court and reliefs to be granted under such extra ordinary jurisdiction is left to the discretion of the Court in the light of facts and circumstances of each case. Moreover in the present case what has been sought is award of compensation and not payment of monetary claim. COMPENSATION CAN BE AWARDED IN ARTICLE 226 PROCEEDINGS.

44. It is further well settled that proceedings under Article 226 of the Constitution of India, enable the courts, to reach out to injustice, and make appropriate orders, including directions to pay damages or compensation."

The Madras High Court in the case of *Lily Stanislaus vs. The Chairman, (2008) 3 MLJ 160* while following the decision of the Hon'ble Supreme Court in *M.P Electricity Board vs. Shail Kumari & Ors. AIR 2002 SC 551* held in para 11 as follows:

"11. ……It was held by the Hon'ble Supreme Court in M.P. Electricity Board vs. Shail Kumari and Ors. that the liability of the Electricity Board under Law of Torts to compensate for the injuries suffered cannot be denied on the basis that the Electricity Board has taken all safety measures since the liability of the Department is strict liability, relying upon the renowned and celebrated case on the issue, viz., Rylands vs. Fletcher 1868 (3) HL 330: 1861-73 All ER Rep. 1. The Supreme Court has held as follows:

> ***8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness an the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the actions is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.***
>
> ***9. the doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands vs. Fletcher 1868 (3) HL***

330: 1861-73 All ER Rep. 1. Blackburn,J., the author of the said rule had observed thus in the said decision: All ER p. 7E-F.

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape."

10. In the present case, the said construction of the by-pass which resulted in huge amount of earth and debris being dumped into the land of the petitioner is alleged to have caused extensive damage to the same. The said fact being supported by photographs filed before this Court and also the findings as conveyed by letter dated 24th July 2018 of the respondent No. 4, the liability to compensate or make good the damage if attributable to the negligence of the respondent No. 5, cannot be escaped. However, it would be in the fitness of things to have a proper assessment of the damage as alleged before final orders are passed in this matter.

11. Accordingly, it is directed that a special committee to be chaired by the Deputy Commissioner of Ri Bhoi District be constituted to assess and to ascertain the damage caused if any and if found to be so, to quantify the same, for payment of compensation. The said committee so constituted apart from representation from the petitioner and the Respondent No.5 shall consist of the following:

(i) Chairperson: Deputy Commisisioner, Ri Bhoi District.
Members -
(ii) District Agricultural Officer, Ri Bhoi District, Nongpoh.
(iii) Executive Engineer Water Resource Dept., Ri Bhoi District, Nongpoh.
(iv) Executive Engineer PWD (Roads) Nongpoh Division, Nongpoh.
(v) Superintendent of Fisheries, Ri Bhoi District, Nongpoh.

12. The Committee shall cause inspection of the land of the petitioner to ascertain the damage and extent thereof in the presence of the Representatives of the petitioner and of the

respondent No. 5 and if damage as claimed has been seen to be caused by the spill over and dumping of soil and debris and manner of construction of drainage, culverts in the construction of the Umsning by-pass by the respondent No. 5, the same shall be quantified in monetary terms as per approved schedule of rates of the Govt. of Meghalaya and the report be submitted before this Court by *4th February 2020*.

13. Copy of this order be supplied to Mr. N.D. Chullai, learned AAG for communication to the respondent No. 4 for compliance and necessary action."

3. Pursuant to the order dated 27.11.2019, a Special Committee consisting of the Deputy Commissioner, Ri Bhoi District, Nongpoh, District Agriculture Officer, Ri Bhoi District, Nongpoh, Executive Engineer, PWD (Roads), Nongpoh Division, Executive Engineer PWD (Roads) Umsning Division, Executive Engineer Water Resources, Ri Bhoi District, Nongpoh, and Superintendent of Fisheries, Ri Bhoi District, Nongpoh, along with the petitioner and representatives of respondent No. 5, conducted site inspections on 10.01.2020 and 20.01.2020. Thereafter, a report along with the recommendations and quantification of damages at Rs.1, 41, 050/- (Rupees One Lakh Forty-One Thousand and Fifty Only) was submitted before this Court and copies of the same was made available to the parties for their perusal. By order dated 05.02.2020, this Court had then permitted the respondent No. 5 to file their objection to the said enquiry report. The entire enquiry report as submitted by the Special Committee is reproduced herein below:

REPORT OF THE SPECIAL COMMITTEE IN CONNECTION WITH ASCERTAINING THE ASSESSMENT OF DAMAGE AND PAYMENT OF COMPENSATION TO THE LAND OF SHRI. CREAMSON WAR, IN COMPLIANCE TO THE HON'BLE HIGH COURT ORDER, DATED

27TH NOVEMBER, 2019 IN WP(C) NO. 539 OF 2018- SHRI. CREAMSON WAR VRS. THE UNION OF INDIA & OTHERS.

In compliance to the above Hon'ble High Court Order and with reference to paras 11 and 12 of the said order, the Special Committee was constituted vide Notification Memo No. DCRB (LA)2/Rev/ 2019/64-A; dated Nongpoh, the 17th December, 2019 (copy of the Notification is enclosed as ***Annexure-A****) comprising the Deputy Commissioner, Ri Bhoi District, Nongpoh as Chairman and members from different Departments as specified under para 11 of the order, with representation from Respondent No. 5 i.e NHAI (to be represented by G.M (T) cum Project Director, National Highways Authority of India, PIU-Shillong) as well as the petitioner Shri. Creamson War.*

A Site Inspection was conducted on the 10th January, 2020 in the presence of all the members of the Special Committee along with the petitioner and Respondent No. 5. At the very outset, the petitioner was given an opportunity to air his grievances before the Committee before ascertaining damages, if any, as pleaded by the petitioner and accordingly to make assessments for payment of compensation. Shri. Creamson War requested the Committee to cause an inspection of all the damages as highlighted in Para 1 of the writ petition and based on the facts and circumstances that prevail on the ground and considering the damages and loss which he had faced since the start of the construction of the Umsning Bye Pass, the Committee may recommend adequate payment of Compensation as well as recommendations to provide long term solution to the existing problem, as deemed fit and proper in the interest of justice. The petitioner further pleaded before the Committee to examine the feasibility of diverting the water from the existing culvert, away from his land so that this perennial problem which occurs mainly during the monsoon season, can be nipped in the bud and that such recommendations may be placed before the Hon'ble High Court for examination and passing necessary orders (written copy of the petition along with photos and video footage submitted by the petitioner is enclosed as ***Annexure-B****). The Committee agreed to the suggestions, provided that the diversion should be made in such a way that it does not cause any obstruction or damage to somebody else's land and property. The representative of the Chairman of the Special Committee, Shri. B.J. Kharshandi, MCS, Additional Deputy Commissioner, Ri Bhoi District explained to the petitioner*

that the main purpose of the Committee is to assess and to ascertain the damage caused, if any, and if found to be so, to quantify the same for payment of compensation. If the damage as claimed has been seen to be caused by the spillover and dumping of soil and debris and manner of construction of drainage, culverts in the construction of the Umsning Bye Pass by the Respondent No. 5, i.e. NHAI, the same shall be quantified in monetary terms as per schedule of rates of the Government of Meghalaya. Furthermore, he explained the petitioner that based on the suggestion to divert the water from the existing culvert away from his land so as to bring about a long term solution to the problem, the same shall be examined, inspected and put in as a recommendation before the Hon'ble High Court for its perusal and necessary orders. The Committee started with the inspection of the two perennial water sources as claimed by the petitioner. These two water sources were no longer visible during the inspection but Shri. V. Venkat Rao, Highway Site Engineer, NHAI, stated that the two water sources were there when construction works began. The Committee also inspected the two damaged fishery ponds, as claimed by the petitioner. The Highway Site Engineer of NHAI ascertained that the two fish ponds were there during the start of construction of the Bye Pass. The poultry and piggery sheds as highlighted by the petitioner were not found at the site. The petitioner explained that the construction of both poultry and piggery sheds had earlier started but later on was stopped. Since no trace nor evidence of any poultry or piggery shed was found at that site, both the Committee members and the petitioner jointly agreed that in view of this, no assessment of damage of any poultry and piggery shed can be made whatsoever. After a thorough inspection, the Official on behalf of the Chairman of the Special Committee asked the members of the concerned Departments to carry out the assessment of damages as observed on the site and based on the submission given by the Highway Site Engineer of NHAI. It was further decided to again conduct another inspection on the 20th January, 2020 to examine the feasibility of finding a water channel through the culvert and drainage that can be diverted and to prevent future damage to the land of the petitioner (Copy of the Minutes of the Joint Site Inspection conducted on 10th January, 2020 is enclosed as ***Annexure-C****)*

Accordingly, another Site Inspection was conducted on the 20th January, 2020 where the members of the Committee along with the petitioner and representatives of respondent No. 5 inspected the proposed passage right from the start of the culvert in the main road upto an approximate distance of about 500 mtrs more or less, where water can be diverted to prevent any damage to the land of the petitioner. Based on the findings of the Committee, the same can be incorporated as recommendations to be placed before the Hon'ble High Court as part of the report of the Special Committee. This area is located towards the western side of the land of the petitioner. As per the findings of the team, it was seen that diversion of water from the existing culvert along the Bye Pass towards this area appears to be feasible. As per the technical report given by the Executive Engineer, Water Resources, Ri Bhoi District, he pointed out that there are two culverts constructed across the road and water flows down from the right side to the left side through these culverts towards the land of the petitioner with no alternative channel to divert the water. On account of this, water along with debris, small stones boulders, sand, silt etc flows directly to his land. To avoid all this, the report suggested that in order to augment the huge monsoon rainwater flowing out from these RCC culverts into the land of the petitioner, two numbers of RCC channels have to be constructed – one at the upper side of his land to cover the entire stretch of 120.0 Rm length below the retaining wall of size 1.20 m width by 1.50 m height and the other one of 550.00 Rm length of size 1.50m width and 2.00 m height to be connected from the ending point of the existing culvert to the tale end of his land. If possible, the channel may extend further downward till it meets the other stream coming from the other side of the hill. In this way, it will solve the issues raised by the other local landowner(s).

The Project Director, NHAI, PIU- Shillong submitted a list of points to be placed before the Committee for its consideration. As per the letter, the Project Director in point (g) pointed out that the stretch of the National Highway has a number of culverts wherein if such compensation is allowed, it may lead to similar demand for such compensation from persons who stay in the downstream side, irrespective of any damage. It was also stated in point (j) that there is no provision for providing any drain especially those passing outside the ROW and this may set an unwanted precedent for NHAI to provide drains for all such

culverts constructed throughout India. In point (k) the Project Director, NHAI stated that the District Authority will have to decide whether or not the said culvert remain or be closed and if closed, the District Authority will have to take responsibility. In reply to this particular point, this Special Committee brings it to the notice of this Hon'ble Court that the purpose of the inspection is not to open or close the culvert but to make an assessment of damages, if any, on the land of the petitioner and also to propose recommendations to divert the water away from flowing into the land of the petitioner so as to bring about a long term solution to the matter. (Copy of the letter submitted by the Project Director, NHAI, PIU- Shillong is enclosed herewith as ***Annexure-D****).*

As far as the assessment of damage to the land of the petitioner is concerned, the Special Committee carried out a spot inspection on the ground to verify damages which are seen to have been caused by the spillover and dumping of soil and debris and manner of construction of drainage, culverts in the construction of the Umsning Bye Pass by the Respondent No. 5 i.e. NHAI, the Committee made the following observations and assessments as per the following: -

1. *As far as the loss of two perennial water sources is concerned, the technical report given by the Executive Engineer, Water Resources, Ri Bhoi District pointed out that there is one small perennial water source drained out from the foothill, flowing downwards and joining together with the water drain that comes from the culvert. According to the report, there are no structures at the upper edge of the land of the petitioner to tap the drain water, except one small brick walling shallow well constructed by the landowner, diverting the drain water from that well through a small conduit to his house, through the corner of his land. This shallow well is now no more in use due to sand filling and other earthen materials. (copy of the report is enclosed as* ***Annexure-E****)*
2. *With regards to the issue of the land being unfit for cultivation, an assessment was done by the Office of the District Agriculture Officer, Ri Bhoi District, wherein it was observed that the area affected under paddy cultivation is around 1216 sq. mtrs and the*

*expected production will be approximately 630 kgs/hac/annum with a total cost of Rs. 22,050/- Rupees (Twenty-two thousand and fifty only) (copy of the report is enclosed as **Annexure-F**)*

3. *As far as fishery ponds are concerned, the assessment of damage was done by the Office of the Superintendent of Fisheries, Ri Bhoi District, wherein the following observations and assessment were made accordingly.*

ESTIMATED COST FOR CONSTRUCTION OF POND OF DR. CREAMSON WAR, PETITIONER

Sl. No.	**ITEM OF WORK**	**WATER AREA**	**RATE**	**AMOUNT**
1.	Earthwork for excavation	01.4 hectare (20mx 70m)	Rs. 7,00,000/- per Hectare	Rs. 98,000/-
2.	Input Cost	0.14 hectare (20m x 70m)	Rs. 1,50,000/- per hectare	Rs. 21,000
			Total	**Rs. 1,19, 000/-**

Rupees One Lakh Nineteen Thousand only.

*(copy of the report is enclosed as **Annexure-G**)*

4. *As far as poultry farms and piggery sheds are concerned, the poultry and piggery sheds as highlighted by the petitioner were not found at the site. The petitioner explained that the construction of both poultry and piggery sheds had earlier started but later on was stopped. Since no trace nor evidence of any poultry or piggery shed was found at the site, both the Committee members and the petitioner jointly agreed that in view of this, no assessment of damage of any poultry and piggery shed can be made whatsoever. This was pointed out in the proceedings of the Site Inspection which was conducted by the Committee on 10th January, 2020. (Copy of the Minutes of the Joint Site Inspection is enclosed as **Annexure-H**).*

Therefore, the assessment of damage made by the Committee, quantified in monetary terms as per the existing Schedule of Rates of the Government of Meghalaya comes to Rs.1,41,050/- Rupees (One Lakh Forty-One Thousand and Fifty only).

The above report is submitted before the Hon'ble High Court for its perusal and necessary orders.

Sl. No.	Designation of Members of the Special Committee	Signature
1.	Chairman, Special Committee, Deputy Commissioner, Ri Bhoi District, Nongpoh,	
2.	Member, District Agriculture Officer, Ri Bhoi District, Nongpoh	
3.	Member, Executive Engineer, PWD, Roads, Nongpoh Division, Nongpoh,	
4.	Member, Executive Engineer, PWD, Roads, Umsning Division, Umsning.	
5.	Member, Executive Engineer, Water Resource, Ri Bhoi District, Nongpoh.	
6.	Member, Superintendent of Fisheries, Ri Bhoi District, Nongpoh.	

Smti. R.M. Kurbah, IAS,
Chairman, Special Committee,
&
Deputy Commissioner,
Ri Bhoi District, Nongpoh.

4. Mr. T.T. Diengdoh, learned senior Advocate assisted by Mr. C.C.T. Sangma, learned counsel for the petitioner submits that the enquiry report, has to a large extent identified the cause of the damage to the land of the petitioner and if the recommendations as contained in the said report are implemented, the grievance of the petitioner would stand substantially redressed. He further adds that, though the compensation as quantified is on the lower side, the petitioner is willing to accept the same and bring the matter to a close.

5. Mr. N.D. Chullai, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA for the respondents No. 2-4 fairly submits that as the Committee has submitted the report which is based on the ground situation after assessing the damage, the same can be accepted.

6. Ms. P. Bhattacharjee, learned counsel who is present on behalf of the respondent No. 5 submits that though the respondent No. 5 (NHAI) has no objection to the compensation amount as fixed by the committee i.e., Rs.1, 41, 050/- (Rupees One Lakh Forty-One Thousand and Fifty Only), it is the contractor responsible for the execution of the project who should bear the cost for the same and not the respondent No. 5. She further submits that, the contractor for this purpose is a necessary party in the proceedings.

7. I have heard the learned counsels for the parties and perused the report and the objection on affidavit filed by the respondent No. 5. The report as has been reproduced above, has dealt with two aspects i.e., ascertaining the damage caused to the land and quantifying the compensation amount, and has also made recommendations to prevent further damage. The respondent No.5 on the point of payment of compensation to the petitioner, has on affidavit at para-11 undertaken to honour the same. As such, the submission of the counsel for the respondent No. 5, that the contractor be impleaded to pay the compensation is rejected. The relevant extract of para-11 as far as it concerns, the undertaking by the respondent No. 5 to pay the compensation is reproduced herein below:

> *"11. ……..The Answering Respondent agrees to pay the compensation amount of Rs.1,41,050/- (One Lakh Forty One Thousand*

and Fifty Only) as assessed by the said Committee to the Petitioner as a good gesture to maintain the healthy and cordial relation with the local public without creating any precedence."

On the other aspect i.e., on the recommendations to prevent further damage, the respondent No. 5 in its affidavit has stoutly objected to the same, on the reasoning that it may not be possible for undertaking works beyond the Right of Way (ROW) and if such provisions as recommended for the construction of drains by the committee are accepted it will set an unwanted precedent, wherein, the respondent No. 5 (NHAI) will have to provide such drains for all such culverts constructed on highways throughout the country. Further contention in the affidavit, is that there is no provision under the guidelines of the respondent (NHAI) for providing such drains especially outside the ROW.

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HIGH COURT OF MEGHALAYA

8. Having given my anxious consideration to all the relevant aspects of the matter at hand. Respondent No. 5 as observed in the order dated 27.11.2019, cannot therefore, escape from the liability to compensate the petitioner, inasmuch as, the damage caused to the land of the petitioner as per the Enquiry Report, is attributable to the respondent No. 5, upon whom, it was incumbent to exercise reasonable care in the construction of the Umsning Bye-Pass. The concept of *'strict liability'* is also a rule that is applicable in the present case, which makes respondent No. 5 liable for the damage caused, even if there was no intention, whatsoever, to cause any damage to the petitioner's land, and coupled with the fact that the petitioner has put forward a genuine claim. As far as, the prayer for repair and for construction of a proper drainage channel as prayed by the petitioner and recommended by the Committee, after

technical inputs were received, it is however left to the respondent No. 5, to do the necessary to correct the same, and to further mitigate the potential risks that may cause damage to the petitioner's land or other adjoining farm lands, fisheries, etc.

9. There is no bar for award of compensation under Article 226 proceedings, and as the respondent No. 5 has undertaken to pay the compensation amount of Rs.1,41,050/- (Rupees One Lakh Forty-One Thousand and Fifty Only), as assessed by the Committee, no further directions are necessary on this aspect, except that the payment should be made over to the petitioner within a period of 6 (six) weeks from the date of receipt of a certified copy of this order.

10. Before parting with the records, it may be observed that in the course of construction and execution of such projects, care should be taken by the Executing Agencies such as the respondent No. 5 (NHAI), to prevent any damage being caused to farmlands and crops, inasmuch as, it mostly effects voice less poor farmers, who are dependent for the survival from the yield of the land and where recourse to legal proceedings for them is an impossibility and in most cases, are left to bear the brunt of the flip side of development.

11. Accordingly, in the facts and circumstances of the case and for the reasons aforementioned, this writ petition is finally disposed of.

12. No order as to cost.

Judge

Meghalaya
16.12.2020
"D.Thabah-PS"