

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL
MIZORAM
Damage Suit No. 3/2008**

K. Lalrinliana,
S/o K. Saihnawla (L)
Chhingchhip, Mizoram.Plaintiff.

-Versus-

1. The State of Mizoram,
Represented by the Chief Secretary to the
Govt. of Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram,
PWD, Aizawl.
3. Engineer-in-Chief,
PWD, Mizoram.
4. The S.E.,
PWD Eastern Circle, Aizawl.
5. E.E., PWD
Mizoram,
Serchhip Division, Serchhip.
6. The Sub-Divisional Officer
PWD, Serchhip Sub-Division, Serchhip. Defendants.

BEFORE

R.VANALENA, Senior Civil Judge-2

For the Plaintiff : Shri L.H.Lianhrima, Advocate.
For the Defendants: Asst. Govt. Advocates.
Date of Hearing : 17.07.2012.
Date of Judgement: 30.07.2012.

JUDGEMENT AND DECREE

The facts of the case leading to the filing of the instant suit –
Damage Suit No.3 of 2008 as reflected in the plaint may be stated as follows
:

The Plaintiff is a citizen of India and is a house tax-paying native of Mizoram residing at Chhingchhip Village, Aizawl District, Mizoram and is a cultivator by occupation. His father Shri Saihnawla was the legal and lawful owner of Periodic Patta No.606101/09/68 of 2004 located at Tuikum luikam Chhingchhip which covered an area of 7.21 bighas. His father was died in the month of January 2004, after which the

present Plaintiff became the legal heir vide Heirship Certificate No.157 of 2008 in respect of Periodic Patta No.606101/09/68 of 2004. The Plaintiff with the help of his family members have been developing the paddy field covered by Periodic Patta No.606101/09/68 of 2004 for wet rice cultivation from the year 1960 till 2003 and used to harvest not less than 200 Tins every year. Besides this, the family planted 150 Hatkora, 120 Nimbu, 50 Oranges and various cash crops and fruits in the field and sold the harvest in the market and usually earned not less than Rs.80,000/- per year. Unfortunately, all the said fruit bearing trees had totally been damaged by earth spoils of the Defendants. In the year 2003, the Defendants constructed a road between Chhingchhip village to Hmuntha village under PMGSY scheme which resulted into damage to water canal to the paddy field of the Plaintiff. In fact the Plaintiff used to get water supply through the said canal which is about 600 metres long and about 400 metres long out of the said 600 metres long had been totally damaged by the said road construction works of the Defendants. As a result of this, the supply of water to the paddy field had entirely been stopped and the family of the Plaintiff could no longer continue with the paddy field. The Plaintiff, on being aggrieved repeatedly wrote to the Chief Minister of Mizoram and other concerned authorities, but to no avail. The Government did not pay any single amount of compensation for damage caused to the said paddy field and for loss of income to the Plaintiff due to the said road construction under PMGSY scheme. The Plaintiff had submitted applications but all in vain. The Plaintiff had spent Rs.7,51,300/- for clearance of jungle, maintenance of land, construction of canal, labour charges etc. The Plaintiff have suffered loss of an annual income of Rs.2,02,800/- due to damage caused to the paddy fields. The Plaintiff and his family entirely depend upon the product and income of the paddy field for their livelihood. The Plaintiff had been deprived of his paddy field and annual income from the said paddy field, and also suffered huge loss from destruction of canal and paddy field. He therefore approached the court for redressal of this grievances. This court has territorial and pecuniary jurisdiction as the parties are residents of Aizawl Judicial District. The Plaintiff obtained leave from the Court for filing the instant suit without serving Legal Notice u/s 80 (2) CPC 1908.

The suit is filed bonafide and for the ends of justice.

On the other hand, the Defendants submitted joint written statement in which they all contested that the instant suit is not maintainable in its present form and style. There is no cause of action in favour of the Plaintiff and against the answering Defendants. The Plaintiff has no locus standi to file the suit. It is barred by law of limitation, estoppels and acquiescence. The Defendants denied all the averments made by the Plaintiff except those specifically admitted. The Defendants stated that Chhingchhip – Hmuntha road was constructed under PMGSY to render road connectivity to the villagers of Hmuntha and Khawbel village as well. The formation cutting was started in the year 2003 and completed in the last part

of 2003. However, the Plaintiff had obtained his Periodic Patta only after the road had been constructed. The Defendants stated that the earth spoils from the road construction did not reach the paddy field of the Plaintiff as the paddy field is far below the road. Defendants added that the assessment of damage conducted by the President, Village Council (VCP) of Chhingchhip cannot be accepted as he is not an officially appointed competent authority to conduct such assessment who later on had withdrawn his assessment. The Defendants contended that at the time of formation cutting of the road in 2003, the Plaintiff has no objection nor complaint. All the complaints/objections made by the Plaintiff were received only after the road construction was completed. As such the Defendants had nothing did wrong. The Defendants stated that as the road construction had caused no damage/destruction to the Plaintiff's paddy field, there is no question of paying compensation to him and further submitted that as the damage assessment had been done as Annexure – IV in the plaint by incompetent authority, the Defendant could not consider the Plaintiff's claims. In the premises aforementioned, the Defendants prayed the court to dismiss the suit with costs.

On the basis of the pleadings of the parties, the court had framed the following issues on 12.03.2009:-

- 1) Whether the suit is maintainable in its present form and style ?
- 2) Whether the Plaintiff is entitled to the relief claimed ? If so, to what extent ?

The Plaintiff examined three witnesses including himself while the Defendants examined three witnesses.

Issue No.1: Whether the suit is maintainable or not ? The instant suit had been filed by the Plaintiff by presenting plaint with photo copy furnished to the Defendants. In his examination in chief, the Plaintiff exhibited the following documents :-

- 1) Ext-P-I is the copy of plaint and Ext.P-I(a) is his signature.
- 2) Ext-P-2 is the copy of Heirship certificate No.157 of 2008.
- 3) Ext-P-3 is the copy of Periodic Patta No.606101/09/68 of 2004.
- 4) Ext-P-4 is copy of history of Paddy Field.
- 5) Ext-P-5 is a copy of Hriatpuina duly prepared by the President, Village Council of Chhingchhip village.
- 6) Ext-P-6 is the copy of representation submitted to the Chief Minister of Mizoram.

- 7) Ext-P-7 is the copy of representation submitted to the Executive Engineer PWD Serchhip Division.
- 8) Ext-P-8 is the copy of application submitted to the Deputy Commissioner, Serchhip District, Serchhip.
- 9) Ext-P-9 is the copy of Hriatpuina dated 27.3.2008 made by the President, Village Council, Chhingchhip Village.
- 10) Ext-P-10 to P-13 are photographs of suit land whereby road construction was carried out thereby damaging the Paddy field of the Plaintiff.

Issue no.1 had been discussed by the court on 01.04.2009 and had been decided that the suit be maintained. Hence this issue does not need to be discussed at this stage as it had already been decided in favour of the Plaintiff.

Issue No. 2: Whether the Plaintiff is entitled to the relief claimed ? If so to what extent ? In his deposition before the court, the Plaintiff repeated the statement which he had stated in his plaint. He stated that his family had been developing the said paddy field covered by Periodic Patta No.606101/09/68 of 2004 for wet rice cultivation ever since the year 1960 till the year 2003 i.e. the year the road construction earth spoils had caused damaged to the paddy field. The family used to harvest 200 Tins of rice every year alongwith about Rs.80,000 from sale of various kinds of fruits like Hatkora, Nimbu, Oranges etc. The paddy field had a water canal connection of about 600 metres long for which the family had spent Rs.7,51,300/- for its construction cost. Out of the 600 metres long canal, about 400 metres long had been damaged by road construction under PMGSY scheme executed by the Defendants. Prior to the said damage, the Plaintiff's family used to earn an annual income of Rs.2,02,500/- approx. In his cross examination by the Ld.counsels for the Defendants, the Plaintiff stated that the paddy field presently covered by Periodic Patta No.606101/09/68 of 2004 which devolved to him was bought by his late father from one Taikhuma in the year 1960. He denied that the said road construction has not affected his paddy field and consequently his family economic condition. He also denied that before the survey for road constructions was done by Defendants, public notice was issued calling upon land owners likely to be affected in the Defendant's Office. He denied that his paddy field was full of scrubs and not commercial crops. He also denied that his paddy field was not cut by road construction of Defendants under PMGSY scheme and further denied that he can develop remaining portion of the paddy field and derived income as usual. He stated that PWD officers conducted spot verification to the affected areas in their presence. On the other hand DW 1 namely C.Lalfakzuala, JE deposed that while during the road Chhingchhip-Hmuntha was under construction, no complaints was received from the landowners. But after the construction was completed, some persons including the present Plaintiff on 22.06.2004 submitted

application for compensation through Shri R.Saikhuma, National Council Member Chhingchhip for compensation of crops which were caused by road construction. He added that he verified the spot and found that temporary water canal of about 120 metres long, 105 ft width and 1-1.5 ft deep was covered by the earth spoils. The said water canal was not made of cement concrete or semi concrete but was temporarily made. He submitted his verification report to his superior officers for further necessary action. As there was no provision for compensation under PMGSY, his superior officers decided to allot contract works like construction of culverts and retaining walls to those affected persons as a measure for redressal/compensation to their sufferings. Accordingly, the Plaintiff was allotted a contract work vide work order No.D.11021/21/01/EE (S)/8 dated 2.8.2005 for construction of culvert amounting to Rs.2,70,310/- (Rupees two lakhs, seventy thousand, three hundred and ten) for compensation to the Plaintiff for damage to his paddy field. He stated that as per his estimation, expenditure for rebuilding the water canal shall no cost more than Rs.10,000/-. The canal damaged by the earth-spoils was easily repairable and could not need huge expenditure. In cross examination, DW 1 stated that no spot verification report was submitted to his superior officers as he was not instructed to do so but denied that he did not verify the damage. He stated that there is no evidence on record to show that the work order vide No.D.11021/21/01-EE (S)/8 dated 2.8.2005 was allotted to the Plaintiff as a compensation for damage to his land. He denied that the damage caused to the water canal was under estimated. DW 2 namely P.C.David Lalrinliana, an Engineer posted at Chief Engineer Office(Bldg) Aizawl deposed that while the said road was under construction there was no complaint from the land owners. However, after the road construction was completed, the Plaintiff and other persons submitted complaints to the Department. The complaint of the Plaintiff was verified by DW 1 and found out that temporary water canal of about 120 metres long, 1-1.5 ft wide and 1½ ft deep was destroyed by the earth spoils which was neither cement concrete nor semi concrete structure. The paddy field was not affected by the earth spoil from the road construction. The Plaintiff was allotted a work order of Rs.2,70,000/- (Rupees two lakhs, seventy thousand) for construction of culvert as a compensation for damage caused to the water canal of the Plaintiff. In cross examination, DW 2 stated that he was posted as an SDO, (PWD) Serchhip Sub-Division from the month of October 2003 to May 2007 at Serchhip. He admitted that there was no mention in the said work order vide No.D.11021/21/01-EE(S)/8 dated 2.8.2005 that the said work order was allotted to the Plaintiff as a compensation for damage caused to his water canal. He denied that the cost of re-constructing the damaged water canal in his personal estimation would be more than Rs.10.000/-. In his re-examination, he stated that the said work order was given to the Plaintiff to repair the damaged water canal. In the process, the DW 2 exhibited the following documents :-

- 1) Ext-D-I is the attested photo copy of work order amounting to Rs.2,70,310/- given to the Plaintiff.
- 2) Ext-D-II is attested photo copy of witness withdraw-na. On the other hand PW 2 & PW 3 stated in their deposition that the Plaintiff is the owner of the paddy field covered by Periodic Patta No.606101/09/68 of 2004 at Tuikum river. The Plaintiff's family developed the field and cultivate rice every year and the harvest from the field is about 200 Tins of rice. Besides this, the family planted numbers of Hatkora, Nimbu, Oranges etc. However, the earth spoils from the road construction of Chhingchhip-Hmuntha under PMGSY caused damaged to the water canal which was the only system of irrigation to the paddy field. As a result of this, the Plaintiff could no longer continue cultivation of rice and thus caused huge loss to the family. On their cross examination, PW denied that the said road construction has not affected the economic condition of the Plaintiff and also denied that the Plaintiff is not entitled to any compensation. In his cross examination PW 3 admitted that the said road construction affected the upper portion of the Plaintiff's land but denied that the road construction did not affect the fruits/cash bearing crops planted in the field. He also denied that Ext-P-5 was signed on different dates. He further denied that the road construction did not affect the economy of the Plaintiff and also denied that the Plaintiff is not entitled to the relief claimed.

On careful perusal of the evidences on record, one thing very clear is that the Defendants constructed road by executing formation cutting from Chhingchhip-Hmuntha under PMGSY in the year 2003 and the earth spoils from this caused damage to the water canal of the Plaintiff. The said water canal was the only means for irrigation to feed the rice cultivation in the paddy field of the Plaintiff measuring an area of 7.21 bighas. The said water canal was neither a cement concrete made nor semi concrete but was an ordinary water canal. The evidence on record did not clearly reveal how much damage was caused directly to the paddy field and the approximate area of paddy field covered/inundated by earth spoils. It is also not revealed why the Plaintiff did not submit his complaint while the work was under construction. On the other side, the evidence on record revealed that the Plaintiff had suffered loss of income from the paddy field due to the said damage. He also suffered extra expenditure for rebuilding of the water canal. The assessment of damage was made by the member of the Chhingchhip Village Council but was not accepted by the Defendants to be relied upon for calculation of compensation as the said assessment report was not done by a competent authority. However, as the Plaintiff proved that the water canal for feeding his paddy field had been damaged/destroyed

by the road construction of the Defendants, which had resulted into stoppage of irrigation to the field thereby causing failure to continue rice cultivation, this court is of the considered view that the Plaintiff is entitled to the relief claimed. The Plaintiff claimed the following reliefs:-

- a) The Plaintiff is entitled to the compensation amounting to Rs.7,52,300/- for destruction of paddy field, canal, fruit bearing trees etc.
- b) The Plaintiff is entitled to receive Rs.50,00,000/- as loss of income for deprivation of their rights to use the land and Rs.1,00,000/- for mental sufferings, agony etc.
- c) The Plaintiff is entitled to receive compensation by applying multiplier 10 from the prices of cost of fruits bearing trees so damaged by the Defendants.
- d) Any other decree or order as this court may deem fit and proper for the ends of justice in favour of the Plaintiffs.

Although this court finds it a fit case to grant relief to the Plaintiff, yet how much of the relief would be granted is another thing. Therefore, the second part of the issue no.2 “to what extent” needs to be discussed in order to arrive at a balanced decision so that equitable justice would be delivered. From the depositions of both the PWs and DWs, it is evident that the said road construction of Chhingchhip-Hmuntha caused destruction to the water canal of the Plaintiff that feeds the paddy field, but was in a repairable condition. As the water canal had been destroyed by the earth spoils, the irrigation system suffered and no more rice cultivation could be continued due to failure of water supply. The result is that there was stoppage of regular annual income for livelihood. The evidence on record could not reveal the quantum of actual damage to the paddy field. Yet damage caused to the water canal caused loss of annual income. On careful examination of all the evidences on record, this court has come to a conclusion to grant relief. However, the relief granted would be confined only to serial no (d) of the prayer in the plaint. This issue is thus decided in favour of the Plaintiff.

Thus, the instant suit is finally decided and decreed as follows

:-

- 1) The Plaintiff is entitled to receive compensation from the Defendants for destruction of the water canal, fruit bearing trees and paddy field covered by Periodic Patta No.606101/09/68 of 2004 caused by earth spoils from the road construction of Chhingchhip-Hmuntha by the Defendants under PMGSY.
- 2) The Deputy Commissioner, Serchhip District, Serchhip is hereby directed to make assessment at market value of compensation payable to the Plaintiff as stipulated above (Sl.No.1) within a period of two months from the date of

this decree and to submit the same to the Department concerned (Defendants No.1-6) with a copy to the Plaintiff and –

- 3) The Defendants No.1-6 shall pay the amount so assessed to the Plaintiff within the period of two months from receipt of the said assessment.

The instant suit having been decreed as above is hereby disposed of accordingly.

Pronounced in open court in presence of the parties on this 30th July 2012.

R.VANALENA

Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the, 30th July, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. K.Lalrinliana, S/o K.Saihnawla (L) Chhingchhip, Mizoram through Shri L.H.Lianhrima, Advocate.
3. The State of Mizoram, Represented by the Chief Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
4. The Secretary to the Govt. of Mizoram, PWD, Aizawl through Asst. Govt. Advocates.
5. Engineer-in-Chief, PWD, Mizoram through Asst. Govt. Advocates.
6. The S.E., PWD Eastern Circle, Aizawl through Asst. Govt. Advocates.
7. E.E., PWD, Mizoram, Serchhip Division, Serchhip through Asst. Govt. Advocates.
8. The Sub-Divisional Officer, PWD, Serchhip Sub-Division, Serchhip through Asst. Govt. Advocates.
9. The Deputy Commissioner, Serchhip District, Serchhip, Mizoram for information and necessary action.
10. Registry Section.
11. Case record.

PESHKAR