IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL MIZORAM

Damage Suit No.2 of 2007

Lalmuankima,
S/o Vanlalvena,
R/o Bawngkawn Lunglei Road,
P.O: Ramhlun, Aizawl, Mizoram. .....Plaintiff.

-Versus-

1. The State Mizoram represented by the
   Chief Secretary to the Govt. of Mizoram, Aizawl.

2. The Secretary to the Govt. of Mizoram,
   Public Health Engineering Department, Aizawl.

3. Chief Engineer,
   Public Health Engineering Department,
   Mizoram, Aizawl.

4. Superintendent Engineer,
   Public Health Engineering Department,
   Mizoram, Aizawl.

5. Executive Engineer,
   Public Health Engineering Department,
   Division – II, Aizawl. Mizoram. .....Defendant.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff	:	Shri R.Thangkanglova, Advocate.
For the Defendants	:	Shri R.K.Malsawmkima and Shri Joseph Lalfakawma, Asst. Govt. Advocates.
Date of Hearing	:	4.9.2012
Date of Judgement	:	14.9.2012.

JUDGMENT AND DECREE

The facts of the case leading to the filing of the instant Damage Suit No.2 of 2007 may be briefly stated as belows.

The Plaintiff is a bonafide citizen of India belonging to Mizo community and as such he is entitled to the benefits of all the rights under the Constitution of India. The plaintiff has a land for WRC and Fish Pond under the Periodic Patta No 30/F of 1982. Previously the said Periodic Patta was numbered as Periodic Patta No.90/F of 1982. He cultivated the land and usually harvest about 140 Phur of paddy/rice from this land and 2000 Kgs of fish every year and the price of one Tin of paddy is Rs 50/-and one Kg of fish is Rs 60/-respectively. For construction of the fish pond, the plaintiff had used 6000 cubic stones and for drainage he had used 18 feet long and 18mm dia pipes numbering seven for the intake of water and for drainage 2 pipes and the thickness of the Pond is 10 feet. In the year 2000-2001 the Defendants completely destroyed the fish pond and rice cultivation of the plaintiff. Above this, the Defendant destroyed 910 fruits bearing trees of Sermam,12 Hatkora,120 Oranges when the Defendant constructed path leading to the land covered by WRC of the plaintiff with a view to making provision for water supply for the village of Ratu. According to the estimation of the plaintiff, damage caused to his properties amount to Rs 12,24,000/-(Rupees twelve lakhs, twenty four thousand). The plaintiff approached the Defendants for compensation but the Defendants did not pay and turned a deaf ear to the Plaintiff. In this case, the plaintiff served Notice u/s 80 CPC 1908 upon the Defendants.

The cause of action arose in the year 2000-2001 when the Defendants destroyed the properties aforementioned by constructing a road/path passing through the land of the plaintiff. There was delay in filing the present suit due to illness of the plaintiff and change of lawyer. However the plaintiff prays the court to Condon the delay and was condoned. The suit was filed bona fide and for the interests of justice.

The present suit had been finally decided by Senior Civil Judge on 01.03.2011 directing the defendants i.e. Public Health Engineering Department, Govt. of Mizoram to give compensation amounting to Rs 6,00,000. (Rupees six lakhs) to the Plaintiff Lalmuankima with 12% interest per annum from the date of Notice u/s 80 CPC i.e. 19th November 2001 and the State of Mizoram must also pay 30% solatium of the decreetal amount to the plaintiff. However the Judgment and Order passed by the Senior Civil Judge, Aizawl was challenged by the Government of Mizoram and filed an appeal before the Hon'ble Gauhati High Court,Aizawl Bench vide RFA No 20 of 2011 against the judgment and order passed by the

Senior Civil Judge, Aizawl in Damage Suit No 2 of 2007. The Hon'ble Gauhati High Court, Aizawl Bench by allowing the appeal set-aside and remanded back the case for fresh trial with a direction to the State Counsel as well as Respondent Counsel to cooperate with the Court of Senior Civil Judge to complete the whole process of trial within a period of four months and not to ask for adjournments so that the Court can dispose of the matter within that time allotted. In the meantime, the Deputy Commissioner, Aizawl District, Aizawl has been directed by the Hon'ble Gauhati High Court Aizawl Bench to conduct a survey to assess the actual loss caused to the respondent and to submit the report within one month from the date of the judgment to the Court of Senior Civil Judge Aizawl.

In compliance with the order of the Hon'ble Gauhati High Court,Aizawl Bench, Aizawl, the present Damage Suit No2 of 2007 is tried afresh. The following issues have been framed on the basis of pleadings of the parties.

1.Whether the present suit is maintainable in its present form and style?

2. Whether the assessment of damage report made by the Deputy Commissioner, Aizawl District, Aizawl is reasonable or not?

3. Whether the plaintiff is entitled to the relief claimed, if so, to what extent?

The plaintiff examined two witnesses while the defendants examined three witnesses.

Issue No 1:Whether the present suit is maintainable in its present form and style?. The present suit had been filed in the year 2007 by the plaintiff by presenting written plaint. The defendants had contested the suit and submitted written statement. The court had taken evidence from both parties. The case had been decided by the Court of Senior Civil Judge, Aizawl by making judgment and order dated 1 March 2011. By the said judgment and order, the defendants had been ordered to pay Rs 6,00,000/-to the plaintiff with 12% interest and the State of Mizoram was directed to pay 30% solatium to the plaintiff. However the defendants challenged this judgment and order and filed appeal against it before the Hon'ble Gauhati High Court, Aizawl Bench which directed the case to be remanded back to the trial court for fresh trial. As the present suit has been such that, this Court finds no reason to raise the issue of maintainability at this stage. Hence issue No 1 is decided in favour of the plaintiff.

Issue No 2: Whether the assessment of damage report made by the Deputy Commissioner, Aizawl District,Aizawl is reasonable or not. As per the assessment report, the area of Fish Pond was 29.00 M long= 319 sq.m, 1.00 M high=3432.44sq.ft and 11.00 M wide=0.24 bighas. The Plaintiff

spent Rs 8,500/-for embankment of the fish pond at a labour charges of Rs 170/-per labour and had engaged 50 labourers. He also spent Rs 10,710/-for digging of the fish pond by engaging 63 labourers at the rate of Rs 170/-per labour. The plaintiff spent Rs 6,999/-for earthwork in leveling or terracing including uprooting and removal of stones and stamps at the rate of Rs4,666/-per bigha. It is estimated that Rs12,000/-has been earned by the plaintiff from his rice cultivation and also earned Rs10,500/-from his fishpond every year at the rate of Rs150/-per Kilogram of fish. As per the report, the Area of the Paddy Field was 155.00m long and 11.00m wide=1705.00sq.m=18375.80sq.ft=1.27bighas. The report has made Grand Total of Rs 48,709.00. (Rupees forty eight thousand and seven hundred nine) only as total amount of damage caused to the plaintiff by the defendant. The Plaintiff in his cross-examination stated that in the year 1982, he migrated to Aizawl from Ratu village while his elder brother Lianhmingthanga and elder sister Lalzawmliani remained stayed at Ratu village. Thereafter, the Paddy field and the fishpond were looked after by his elder brother. Originally the P.Patta No 30/F of 1982 was in the name of his father Vanlalvena who died in the month of November 2000. Thereafter, the P.Patta No 30/Fof 1982 was mutated in the name of his brother Lalthanpuia who too died in the month of February 2011. Now the P Patta No 30/F of 1982 is in his name. The plaintiff also stated that he did not know how much money was spent for developing the fishpond. He also stated that in the year 1993 he married to the wife and soon after this he left the ancestor home and started living a separate family of his own, so he has a little knowledge about the construction of a path/road leading to the land covered by WRC/P.Patta No 30/F of 1982 constructed by the defendants with a view to making water supplies scheme for the village and also has a little knowledge about the compensation demanded etc as he did not directly concerned. He stated that his elder brother Lianhmingthanga was directly concerned with the matter as he is the person who is looking after the Paddy Field and the Fish Pond. Till today his elder brother is looking after the landed properties. The plaintiff further stated that the number of fruit bearing trees destroyed were counted by his elder brother and the BDO of the area, therefore he had no direct knowledge about the number of fruit bearing trees destroyed by the defendants. In his cross-examination he denied that the assessment made by the Deputy Commissioner, Aizawl is correct. The plaintiff stated that as far as this knowledge is concerned, the defendants had caused damage to the properties in the month of October 1999. He denied that he has no cause of action to file the present suit.PW2 namely Shri Lalnghenga s/o Thangzika (L) ex-MLA deposed before the Court that he knew that the plaintiff has fish pond and WRC at Ratu village under P Patta No 30/F of 1982. He also knew that the plaintiff used to harvest 2000 fish and 120 Tins of rice every year from the land- paddy field and fish pond. Besides this, there are 120 fruit bearing trees and many other fruits bearing trees but were destroyed by the Defendants. Though the value of properties

destroyed is more than Rs 10 lakhs but the plaintiff claimed only Rs 6,00,000/-(rupees six lakhs) as compensation from the defendants and the same was allowed by the Senior Civil Judge Aizawl vide the Judgment and Order dated 1st March 2011.PW2 stated that the assessment made by the Deputy Commissioner Aizawl is quite unreasonable and unacceptable as many other properties were left out unassessed. The item not included in the assessment report is masoned stones which form the embankment at the base of the fishpond and Stonewall was doubled for which more stones were used. A huge quantity of cement and sand were used. Skilled and unskilled laborers were employed for the work for a number of days. None of these are taken into account in the assessment report. As such the said assessment was partial and unacceptable. Another one more item not included in the assessment is the iron pipes used for taking water from the fishpond to the paddy field. The pipes are 80 MM large measuring 18 feet in length and 9 nos. of such pipes our used. An incomplete assessment is thus misleading and not acceptable. On the other hand DW No 1 stated that there could be no damage to the properties of the plaintiff due to the construction of a path inside the land of the plaintiff by the digging of pipeline as the pipeline had been digged 1 m deep and 1 m wide only. As the plaintiff did not develop and maintain his land, what the defendant had seen at the relevant time was only a barren land. There was no fruit bearing trees nor fishpond in the land claimed by the plaintiff.DW2 namely Lalzakhuma stated that he joined the PHE Department as Junior Engineer in the year 1984 and promoted to Asstt. Engineer in the month of January 1997. In the year 1998 he was posted as Sub Divisional Officer, PHE at Ratu village till the month of June 2007. The Department had conducted survey for making water supplies scheme for the said village for which sites for installation of pump house, quarters for operator and sites for reservoir had been surveyed by the Department. As the water was to be supplied by using iron pipes from a small stream of **Chhunga Lui** to the village , the pipes were to be placed underground for which pipelines measuring 1 m deep and 1 m wide had been dug. He stated that at the time of conducting a survey for construction of approach road to the water stream, the Department found no Paddy Field nor fishpond in the areas. The area was only empty and barren land. He stated that the SDO PHE never promised a government job to the plaintiff nor promised the plaintiff to be compensated with an amount of Rs 2,00,000/-. He further stated that the area about to be utilized for pipelines and approach road was sloppy, there was no suitable land for wet rice cultivation. He added that the Department did not construct the road passing through the land of the plaintiff. Even before and after the alleged destruction of properties, the plaintiff never approached the defendant for compensation. As the land was only barren and empty there is no question of damaging properties like fruit bearing trees. In his cross-examination, DW2 stated that the Department did not construct any road within the disputed land. He stated that in his opinion if the plaintiff continued looking after his land, the assessment made by the Deputy

Commissioner, Aizawl would be reasonable and reliable but if the plaintiff discontinued looking after his land, the assessment report may be unreliable and unreasonable. DW3 namely Lalbiakthara Zote stated that he is a permanent resident of Ratu village and he is a cultivator by profession. In the year 1994 he was the President of Ratu village Council Court and again in the 1998 he became the President. During that time, the defendants with a view to making water supply scheme for the village proposed construction of road for the purpose. All the land owners likely to be affected by the scheme were informed. Among these,Sh. Lianhmingthanga, brother of the plaintiff had signed an agreement that he would have no objection to the proposed scheme even if it affected his land. During that period of time, the land claimed by the plaintiff was only a barren land and there was no sign of human activity to show that the land was looked after by its owner. In his cross-examination, DW3 stated that on behalf of the defendants the Village Council did not obtain consent or permission from the plaintiff. He also stated that the earth spoils from the construction of road did not caused damage to the fishpond of the plaintiff as the earth spoils did not reach the fishpond. Before the Department made activity in the area, there was no sign of human activity to show that the land was looked after. On careful perusal of all the evidences on record it is revealed that the plaintiff is not directly looking after the claimed land and fishpond but was directly looking after by his elder brother Lianhmingthanga. The evidence on record also revealed that the plaintiff has a land for wet rice cultivation and fishpond but were not vast enough to feed the mouth of the families of the plaintiff. Signing of the agreement by elder brother of the plaintiff denoted that the land was likely to be affected by the development project of the defendants. The evidence on record also revealed that the fishpond and the paddy field are not properly looked after and maintained to earn livelihood. The evidence further revealed that the assessment made by the Deputy Commissioner, Aizawl was done after lapse of almost 12 years. If the assessment of damage was done soon after the alleged damage was caused, the report would appear different because after the lapse of almost 12 years, all the signs/trails of human activity could have disappeared naturally. Therefore, this court is of the considered view that the report made by the Deputy Commissioner, Aizawl is lesser in amount than the actual damage caused to the properties of the plaintiff. At the same time this court is of the considered view that even if the assessment of damage had been done soon after the alleged damage was caused, the assessment report could not become so high in relation to the amount as the land for paddy field and fishpond appeared to be not so vast enough and not properly maintained. Moreover it appeared that the plaintiff did not properly and meaningfully maintained his landed properties. Therefore this court is of the opinion that the plaintiff may be entitled to the amount higher than the amount assessed by the Deputy Commissioner, Aizawl. Hence this issue is decided in favour of the plaintiff.

Issue No 3. Whether the plaintiff is entitled to the relief claimed, if so, to what extent. The foregoing two issues have been decided in favour of the Plaintiff, it appeared that there would be no obstacle in deciding and granting this issue in favour of the plaintiff. As have been mentioned in isue No 2,the Plaintiff did not properly maintained and looked after his landed properties, therefore he may not be entitled much higher amount than the amount so assessed by the Deputy Commissioner,Aizawl.DW4 namely Sh G Tlanthanga who is a prominent citizen of Ratu village stated that when the Defendants were about to execute water supply scheme for Ratu village, all the villagers were happy and eagerly excited by the scheme. All the land owners who were likely to be affected by the scheme were met by the village authorities and enquired if they (land owners)were willing to surrender their lands for the scheme. All the land owners likely to be affected decided that as the said scheme was entirely for the benefit of all the villagers, they were ready to surrender their lands. The Plaintiff is one of the landowners who too agreed to surrender his land and thus signed the Agreement. In his cross-examination, DW4 stated that at the relevant time there was no water in the fishpond and no fruit bearing trees were there in the land claimed by the plaintiff. The said land was only barren land without no fruits bearing trees. The plaintiff on the other hand stated that he was also present at the time of verification conducted by the department. He denied that nothing was destroyed/damaged by the defendants in constructing the said road. He stated that all the complaints submitted to the Department had been made and submitted in the name of his father. He denied that he is deposing falsely in the court. On careful perusal of all the evidences and on careful consideration of the verbal submission of the parties, this court has come to conclusion to grant relief to the plaintiff partly on the basis of the damage assessment report made by the Deputy Commissioner, Aizawl and partly on the basis of the evidence on record. Hence issue No 3 is decided in favour of the plaintiff.

Having finally decided the present suit, it is **decreed** accordingly as below:

The Defendant (Public Health Engineering Department) is hereby directed to pay compensation amounting to Rs 1,20,000/-(Rupees One Lakh and Twenty thousand) to the Plaintiff with interest at the rate of 6% per annum with effect from this Order until full realization of the amount. The Defendant is further directed to deposit the amount into the court within a period of two months which will be disbursed to the Plaintiff.

The parties shall bear their own costs.

Having Decreed as above, the present suit is disposed of accordingly.

Pronounced in open Court in presence of the parties.

(R.VANLALENA)
Sr.Civil Judge,
Aizawl District,Aizawl.

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 11th September,2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram.
2. Lalmuankima, S/o Vanlalvena, R/o Bawngkawn Lunglei Road, P.O: Ramhlun, Aizawl, Mizoram through counsel Shri R.Thangkanglova.
3. The State Mizoram represented by the Chief Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
4. The Secretary to the Govt. of Mizoram, Public Health Engineering Department, Aizawl through Asst. Govt. Advocates.
5. Chief Engineer, Public Health Engineering Department, Mizoram, Aizawl through Asst. Govt. Advocates.
6. Superintendent Engineer, Public Health Engineering Department, Mizoram, Aizawl through Asst. Govt. Advocates.
7. Executive Engineer, Public Health Engineering Department, Division – II, Aizawl. Mizoram through Asst. Govt. Advocates.
3. Registry Section.
4. Case record.

PESHKAR