IN THE COURT OF SENIOR CIVIL JUDGE- 3
AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 50 OF 2008

Plaintiff:
Smt. Dawdaw
D/o Palua
Meisavaih, Saiha

By Advocates : 1. Mr. B. Lalramenga
2. Smt. Lily Parmawii Hmar
3. Reuben L. Tochhawng

Versus

Defendants:

1. The State of Mizoram
   Represented by the Chief Secretary
   to the Govt. of Mizoram
2. Engineer in Chief
   Public Works Department
   Govt. of Mizoram
3. Executive Engineer
   Public Works Department
   Saiha Division, Saiha
4. Sub- Divisional Engineer
   Public Works Department
   Saiha Sub- Division, Saiha
5. Junior Engineer
   Public Works Department
   Saiha Division, Saiha

By Advocate's : Mr. R. Lalremruata, AGA

Date of Argument : 22-02-2011
Date of Judgment & Order : 28-02-2011

BEFORE
Dr. H.T.C. LALRINCHHANA, Sr. CJ- 3

JUDGMENT & ORDER

BRIEF FACTUAL MATRIX

This is a suit for payment of compensation amounting to Rs. 87,14,436/- (Eighty seven lakhs, fourteen thousand, four hundred and thirty six rupees) to the plaintiff for alleged illegal construction of roads through her land covered under LSC No. CLS/G/195/05 and for damages

caused to the crops and trees within the land and other appurtenances to the said land as per norms presently followed under the Govt. of Mizoram for payment of compensation. The plaintiff in her plaint submitted that she is the holder of LSC No. CLS/G/195/05 for the purpose of gardening graded as IV (A) with an area of 6 hectares and the Revenue payable per annum is Rs. 640/-. During the year 2004, the defendants 2-5 excavated the said suit land for the purpose of construction work of Kawlchaw to Serkawr road without the prior permission of the plaintiff and without paying any compensation as per law. For the said road construction, it was illegally cut through a vast centre portion of the land of the plaintiff admeasuring around 896 meters in length and 8 meters in width. Moreover, the defendants 2- 5 had constructed a culvert and side drain within the plaintiff's land. Although the plaintiff approached the defendants for so many times by a written form, the defendants blenched to invoke the provisions of the Land Acquisition Act, for making assessment, compensation and award. The defendants are therefore liable to pay reasonable amount of compensation to the plaintiff in the following terms-

(1) Compensation of land admeasuring an area of 6 (six) hectares = Rs. 64,58,346/- (Rs. 10/- per Sq. ft.)
(2) Compensation for matured teak trees of 1500 numbers = Rs. 22,50,000/- (Rs. 1500/- per timber/tree)
(3) Compensation for 3 numbers of Mango trees = Rs. 1500/- (Rs. 500/- per tree)
(4) Compensation for 35 numbers of Bannana trees = Rs. 2450/- (Rs. 70/- per tree)
(5) Compensation for 35 numbers of pineapples = Rs. 150/- (Rs. 4/- per piece)
(6) Compensation for 5000 numbers of pineapple seeds = Rs. 10,000/- (Rs. 2/- per seeds)

Thus, the plaintiff prays compensation amount totaling Rs. 87,14,436/- (Eighty seven lakhs, fourteen thousand, four hundred and thirty six rupees) by declaring that the defendants illegally constructed a road within the land of the plaintiff. The plaintiff further prays pendent lite interest @ 6 % per annum till final payment of compensation amount and other relief which this court deems fit and proper.

The defendants in their written statements contended that the land covered under LSC No. CLS/G/195/05 is not situated under the jurisdiction of Village Council, Meisavaih, Saiha. The suit land is lying empty and not utilized till 1995 when jeepable road at 5m width was constructed in and around this land, only after completion of such road construction, some teak trees were planted within the said plot of land. However, construction of Kawlchaw-Serkawr road under PMGSY was started in 2003 and the proposed alignment merely followed the existing jeepable road which was initially constructed in 1995, it was therefore assumed that no damage would be caused to this land for merely widening of the existing jeepable road at 1 meters width only and no trees were found within 3 meters from the existing road. Furthermore, the excavated earth spoils from the said land were removed to the land of Pu K. Malsawma and

nothing left in the suit land. Meanwhile, it is fairly admitted that due to exceptional cases, some trees were felling down for the said road construction upto PMGSY standard, un-official agreement was thereby made with the father of the plaintiff namely- Mr. J. Sialua by paying Rs. 50,000/-. The said construction of road was made without any objection of the plaintiff. The land covered by LSC No. CLS/G/195/05 of 27.9.05 was claimed by Pu K. Malsawma. And as such, verification was done by officials and found that no damages of crops was found, the assessment of compensation etc. remains pending as yet to be assessed by the concerned Collector. However, it is admitted that after making assessment by the concerned Collector, compensation amount will be paid. It is therefore pray to dismiss the suit.

ISSUES

The following issues were framed on 31/7/2009-

(1) Whether the suit is maintainable or not
(2) Whether this court has a jurisdiction to entertain and dispose of the suit
(3) Whether the suit is bad for non-joinder of necessary parties
(4) Whether the suit is premature or not
(5) Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

(1) Smt. Dawdaw D/o Palua, Meisavaih- Saiha (hereinafter referred to her as PW- 1)
(2) Mr. J. Sialua S/o L. Lailei, Meisavaih- Saiha (hereinafter referred to him as PW- 2)
(3) Mr. John Hlychho S/o H.C. Thasa, Meisavaih- Saiha (hereinafter referred to him as PW- 3)
(4) Mr. N. Siatha S/o N. Beilua, Meisavaih- Saiha (hereinafter referred to him as PW- 4)
(5) Mr. Henry Chinzah S/o Kapkima, Tuikual, Aizawl (hereinafter referred to him as PW- 5)

Plaintiff Witness No. 1:

PW-1 in his examination in chief deposed that she is the holder of LSC No. CLS/G/195/05 for the purpose of gardening graded as IV (A) with an area of 6 hectares and the Revenue payable per annum is Rs. 640/-. During the year 2004, the defendants 2-5 excavated the said suit land for the purpose of construction work of Kawlchaw to Serkawr road without the prior permission of the plaintiff and without paying any compensation as per law. For the said road construction, it was illegally cut through a vast

centre portion of the land of the plaintiff admeasuring around 896 meters in length and 8 meters in width. Moreover, the defendants 2- 5 had constructed a culvert and side drain within the plaintiff's land. Although the plaintiff approached the defendants for so many times by a written form, the defendants blenched to invoke the provisions of the Land Acquisition Act, for making assessment, compensation and award.

Ext. P- 1 is a copy of LSC No. CLS/G/195/05

Ext. P- 2 is her letter Dt. 21/3/2005 submitted to the EE, PWD, Saiha Division

Ext. P- 3 is her letter Dt. 18/9/2008 submitted to the Deputy Commissioner, Saiha District

Ext. P- 4 is her letter for claiming compensation Dt. 15/4/2008 submitted to the Deputy Commissioner, Saiha District

Ext. P- 4 (a) is her true signature in her letter for claiming compensation Dt. 15/4/2008 submitted to the Deputy Commissioner, Saiha District

Ext. P - 5 is her letter for claiming compensation Dt. 22/4/2008 submitted to the Deputy Commissioner, Saiha District

Ext. P- 6 is her letter submitted to the EE, PWD, Saiha Division Dt. 9/7/2008

Ext. P- 6 (a) is her true signature in her letter submitted to the EE, PWD, Saiha Division Dt. 9/7/2008

Ext. P- 7 is her letter Dt. 28/8/2008 sent to Sr. Revenue Officer, MADC

Ext. P – 8 is her plaint

Ext. P- 9 is her true signature in Verification of the plaint.

In her cross examination, she deposed that the whole area of her plot of land under LSC No. CLS/G/195/05 was not destroyed by such road construction, the said road construction was completed towards the end of 2008 and while she filed the instant suit, the suit land is not within the jurisdiction of Meisavaih Village Council but within the jurisdiction of Village Council of Serkawr. No reply letter was received by her from the office of Deputy Commissioner, Saiha indicating that the government is not willing to pay compensation in the instant cause.

Plaintiff Witness No. 2:

The PW- 2 deposed that the plaintiff Smt. Dawdaw is his daughter and is the holder of LSC No. CLS/G/195/05 for the purpose of gardening graded as IV (A) with an area of 6 hectares and the Revenue payable per annum is Rs. 640/-. During the year 2004, the defendants 2-5 excavated the said suit land for the purpose of construction work of Kawlchaw to Serkawr road without the prior permission of the plaintiff and without paying any compensation as per law. For the said road construction, it was illegally cut through a vast centre portion of the land of the plaintiff admeasuring around 896 meters in length and 8 meters in width. Moreover, the defendants 2- 5 had constructed a culvert and side drain within the plaintiff's land. At least 1500 teak trees (at 12 years old), 3 mango trees, 35 bannana trees, 35 pineapple plants and 1000 seeds of pineapples were destroyed by the defendants belonging to the plaintiff for construction of roads. Although the plaintiff approached the defendants for so many times

by a written form or other ways seeking amicable settlement, the defendants blenched to invoke the provisions of the Land Acquisition Act, for making assessment, compensation and award.

In his cross examination, he further deposed that they had received Rs. 50,000/- from the PWD Govt. of Mizoram and he is not measured the exact area which is covered by such road construction.

Plaintiff Witness No. 3:

The PW- 3 deposed that the plaintiff is the holder of LSC No. CLS/G/195/05 for the purpose of gardening graded as IV (A) with an area of 6 hectares and the Revenue payable per annum is Rs. 640/-. During the year 2004, the defendants 2-5 excavated the said suit land for the purpose of construction work of Kawlchaw to Serkawr road without the prior permission of the plaintiff and without paying any compensation as per law. For the said road construction, it was illegally cut through a vast centre portion of the land of the plaintiff admeasuring around 896 meters in length and 8 meters in width. Moreover, the defendants 2- 5 had constructed a culvert and side drain within the plaintiff's land. Although the plaintiff approached the defendants for so many times by a written form, the defendants blenched to invoke the provisions of the Land Acquisition Act, for making assessment, compensation and award. At least 1500 teak trees (at 12 years old), 3 mango trees, 35 bannana trees, 35 pineapple plants and 1000 seeds of pineapples were destroyed by the defendants belonging to the plaintiff for construction of roads.

In his cross examination, he deposed that he is not ascertained the exact numbers of trees destroyed by such road construction and he did not count such crops.

In his re-examination, he adversely deposed that he knows the quantum of destroyed crops and plantations in the suit land.

Plaintiff Witness No. 4:

The PW- 4 deposed that the plaintiff is the holder of LSC No. CLS/G/195/05 for the purpose of gardening graded as IV (A) with an area of 6 hectares and the Revenue payable per annum is Rs. 640/-. During the year 2004, the defendants 2-5 excavated the said suit land for the purpose of construction work of Kawlchaw to Serkawr road without the prior permission of the plaintiff and without paying any compensation as per law. For the said road construction, it was illegally cut through a vast centre portion of the land of the plaintiff admeasuring around 896 meters in length and 8 meters in width. Moreover, the defendants 2- 5 had constructed a culvert and side drain within the plaintiff's land. Although the plaintiff approached the defendants for so many times by a written form, the defendants blenched to invoke the provisions of the Land Acquisition Act, for making assessment, compensation and award.

In his cross examination, he deposed that the said road construction did not affect the whole area of landed property under LSC No. CLS/G/195/05. He do not know the exact quantum of damaged crops and plantations in the suit land.

In re examination, he further deposed that he knows that a number of plantation crops were destroyed by the road construction within the suit land.

Plaintiff Witness No. 5:

The PW- 5 deposed that he continued the work for road construction of Kawlchaw-Serkawr under CLT Construction as a Sub- contract, while visiting the spot, he found that the PWD, Govt. of Mizoram had constructed a culvert and side drain within the suit land. Even while doing such work as construction, due to the grievances of the plaintiff, there was paucity of construction works. He is well acquainted with the plaintiff. He witnessed that a number of plantation crops were damaged for such construction, although the plaintiff humbly requested us not to continue construction, as per the instruction of PWD, Govt. of Mizoram, it was rather continuously carried on. Towards the end of 2008, we completed the said road construction within the suit land.

In his cross examination, he deposed that he is not ascertained the exact number of crops damaged by road construction within the suit land. Before 2008, he never knew the plaintiff.

In re-examination, he further deposed that due to knowingly the facts and circumstances of case, he is appearing as witness.

For the defendants:

The defendants had also produced the following witnesses:

(1) Mr. C. Lalengzauva, SDO, PWD, Quality Control Division, Zuangtui- Govt. of Mizoram (hereinafter referred to him as DW- 1)
(2) Mr. V. John, SDO, Saiha Building Division, PWD, Govt. of Mizoram (hereinafter referred to him as DW- 2)
(3) Mr. S. Pawkhai, JE, PWD, Govt. of Mizoram, Bualpui (NG) Sub-Division (hereinafter referred to him as DW- 3)
(4) Mr. N. Chhuakhai, Surveyor- III, MADC, Saiha (hereinafter referred to him as DW- 4)

Defendant's Witness No. 1:

The DW- 1 deposed that he was SDO, PWD, Tuipang Sub- Division at the time of construction of road in between Kawlchaw to N. Latawh under PMGSY started from March, 2008 and he was the pioneered for the said road construction. For construction of road in between Kawlchaw to N. Latawh under PMGSY, the land of the plaintiff was also encroached/cut through around 145 meters in the mere side totally 0.47 hectares. Neither

damaged crops nor left any excavated spoils in the suit land as removed such excavated spoils to the land of Mr. K. Malsawma. The land of the plaintiff at that time was very stiff and craggy, and is not arable land, road construction was also very uphill task, the valuation of the said land is rather to be increased by such road construction. As per the official survey conducted on 21.8.2008 and 5.5.2009, no damaged of crops was found. Before completion of such road construction, the plaintiff had filed the instant suit. Two culverts were also constructed in the suit land but not caused any damage and rather increased the value of the suit land.

In his cross examination, he further deposed that so far as his knowledge concerned, no compensation amount was awarded to the plaintiff although passes through the suit land by the said road construction. Some teak trees and other trees were found within the land of the plaintiff. It is a fact that two culverts were also constructed within the suit land.

Defendant's Witness No. 2:

The DW- 2 deposed that while constructing the road in between Kawlchaw – Serkawr during 2003 to 2006, he was posted as SDO, PWD, Tuipang Sub-Division and thereby manned the rival road construction. The previous jeepable road was 5 meters width within the suit land and it was merely made 1 meter more alignment of the existing road by such road construction. The main entrusted persons looking after the land of the plaintiff was Mr. J. Sialua who is the father of the plaintiff, with his clear permission, the road construction was carried on, few teak trees were necessary to cut down at the end of the road but no other much more teak trees were damaged as far away from the road. The felling down teak trees were also collected by the owner of the land, it is not possible to accommodate the claimed damaged crops within the area cutting through by the road, no excavated spoils were left in the land of the plaintiff. As per the guidelines in PMGSY, no compensation can be awarded, hence un-officially paid Rs. 50,000/- to the father of the plaintiff and cordially received the same. No other cash crops were also planted in the suit land.

In his cross examination, he admitted that the road construction passes the suit land. He also found some mango trees within the land of the plaintiff. Rs. 50,000/- was directly paid to the plaintiff through her father Mr. J. Sialua.

In his re-examination, he further deposed that some trees were felling down due to the said road construction but collected the same by the land owners.

Defendant's Witness No. 3:

The DW- 3 deposed that he is working as J.E PWD at Tuipang Sub-Division and he was also J.E PWD at Tuipang Sub- Division during construction of the road in between Kawlchaw to Serkawr during 2003-2006 under PMGSY, they just took/cut through 1 meter alignment of the

land of the plaintiff following the existing 5 meters road. During such work, the father of the plaintiff Mr. J. Sialua was also dwelled in that garden area, few teak trees were necessary to cut down at the end of the road but no other much more teak trees were damaged as far away from the road. The fell down teak trees were also collected by the owner of the land, it is not possible to accommodate the claimed damaged crops within the area cutting through by the road, no excavated spoils were left in the land of the plaintiff. As per the guidelines in PMGSY, no compensation can be awarded, hence un-officially paid Rs. 50,000/- to the father of the plaintiff and cordially received the same. No other cash crops were also planted in the suit land. It is not possible to accommodate the claimed damaged crops within the area cutting through by the road, no excavated spoils were left in the land of the plaintiff.

In his cross examination, he further deposed that only some teak trees were fell down due to such road construction. As per the guidelines of PMGSY, no provision is made for land acquisition and compensation. Teak trees, mango trees and banana trees were planted within the land of the plaintiff. It is a fact that Rs. 50,000/- is directly given to the plaintiff.

Defendant's Witness No. 4:

The DW- 4 deposed that they had visited the spot for verification of the land belonging to Smt. Dawdaw under LSC No. CLS/G/195/05 on 21/8/2008 and 5/5/2009, the eleka used for construction of road was craggy and is not arable land for cultivation of crops and plants.

Ext. D- 1 is the spot verification report
Ext. D- 1 (b) is his true signature in spot verification report

In his cross examination, he deposed that when conducting spot verification, he did not verify the whole area of the land of the plaintiff but only verified the affected area of such road construction and hence not knowing well of the planted trees and crops in the land of the plaintiff. He can only truly deposed his spot verification report as not much aware of the present case.

Defendant's Witness No. 5:

The DW- 5 deposed that they had visited the spot for verification of the land belonging to Smt. Dawdaw under LSC No. CLS/G/195/05 on 21/8/2008 and 5/5/2009, the eleka used for construction of road was craggy and is not arable land for cultivation of crops and plants.

Ext. D- 1 is the spot verification report
Ext. D- 1 (b) is the signature of A. Sachhua in spot verification report
Ext. D- 2 (b) is the signature of N. Chhuahai

In his cross examination, he deposed that he knows that there were around 2000 number of teak trees within the land of the plaintiff but not knows whether there was a crop or fruit bearing trees in the land of the

plaintiff or not. He knows nothing about the time for completion of the said road construction. He did not know anything except his spot verification report.

In re-examination, he deposed that while they conducted spot verification on 21/8/2008 and 5/5/2009, the road construction was still in progress.

In re-cross examination, he deposed that he did not conduct spot verification of the whole area of the plaintiff.

ARGUMENTS

Mr. B. Lalramenga, Ld. Counsel for the plaintiff argued that the plaintiff filed the Civil Suit No. 50/2008 against the State Government and the Public Works Department, Government of Mizoram whereby she claimed for payment of compensation amounting to Rs. 87,14,436/- (Rupees eighty seven lakh fourteen thousand thirty six) only for the damages caused to her land and to the crops and trees therein. The plaintiff claimed the said amount of Rs. 87,14,436/- as compensation against the defendants after calculating the amount which the defendants are liable to pay to her as per the Notification dt. 18.07.1991 issued by the Government of Mizoram, Revenue Department pertaining to the rates of compensation in respect of buildings, crops and plants etc. acquired or damaged. It is pertinent to mention here that although the said amount of compensation claimed by the plaintiff was assessed on the basis of the said Notification dt. 18.07.1991, the amount of compensation which the defendants are liable to pay to the plaintiff may be higher at present than the claimed amount of compensation made in the plaint.

Mr. B. Lalramenga further submitted that without paying any compensation amount and without invoking the provisions of Land Acquisition Act, the land of the plaintiff was acquired. As the state defendants fails to assess the damaged crops and landed property of the plaintiff although preferred and appeal to the concerned state officials, the suit is maintainable as no other remedy except to approach original civil court.

Mr. R. Lalremruat, Ld. AGA contended that only 145 meters i.e. 217 Sq. m or 0.2175 hectares of the land of the plaintiff was only touch with the road construction of Kawlchaw to N. Latawh and that area was a barren and steep land. No earth spoil was also left in the land of the plaintiff. Compensation for the Kawlchaw to N. Serkawr was already paid to the plaintiff and the compensation amount from Kawlchaw to N. Latawh will be paid after assessment made by the District Collector, Saiha.

FINDINGS

Issue No. 1
Maintainability of the suit

While the suit is valued at Rs. 87,14,436/- (Eighty seven lakhs, fourteen thousand, four hundred and thirty six rupees), the plaintiff had paid requisite court fees at Rs. 5000/- as per the Court Fees (Mizoram Amendment) Act, 1996, the plaint is accompanied by Verification and Affidavit and is in order of its sequence, I find no irregularities which vitiated the proceedings in the instant suit.

Issue No. 2
Jurisdiction of this court

The cause of action had arose at Saiha District but the state defendants are located at Aizawl. In this crux, by making reliance in the verdict of Hon'ble Gauhati High Court, Aizawl Bench in the case of **Shri. Lalbiakvela Vs. State of Mizoram & Ors.** in connection with RSA No. 10 of 2006 delivered on 17/11/2006 dealing Land Acquisition case saying that –

> "Thus, it would be apparent from the above proviso that the plaintiff is at liberty to institute a suit either in the court within the local limits of whose jurisdiction the property is situate or in the court within the local limits of whose jurisdiction, the defendant actually and voluntarily resides. On point of territorial jurisdiction, it is not necessary to advert to the question in details whether a suit can be filed against the State of Mizoram in any place within the state, the answer being always and under all circumstances in the affirmative only, for the state administration department resides and is present everywhere in the state"

It is therefore seen that this court has a territorial jurisdiction of the suit. Meanwhile, no queries on pecuniary jurisdictions as per the entity of the Mizoram Civil Courts Act, 2005 which empowered this court with unlimited pecuniary jurisdiction.

In respect of subject matter jurisdiction, it is a well settled law that the original civil court does not have any jurisdiction in respect of land acquisition case. Which is evident by the observation of Hon'ble Supreme Court in the case of **State of Mizoram Vs. Biakchhawna** decided on 07/10/1994 and reported in 1994 (4) Suppl. SCR 421, 1995 (1) SCC 156, 1994 (4) SCALE 948, 1994 (7) JT 472, it was observed that-

> "18. Making an application within limitation in writing is sine qua non for making a valid reference. The court is a special tribunal under the Act having special jurisdiction and has power and duty to see that the reference made under Section 18 is in compliance with the conditions laid down therein so as to give to court the jurisdiction to hear the reference. The court under Section 3(d) is not only the Principal Civil Court of original jurisdiction but also a special judicial officer specially appointed by the Government. A valid order of reference under Section 18 is sine qua non for a civil court of original jurisdiction or special judicial officer specially appointed to take cognizance of the objection. Though an application was made within six weeks as seen hereinbefore, no reference under Section 18 was made by the Collector. The Collector is enjoined, while making a reference, to make a statement "in writing under his hand" under Section 19 of the Act, with particulars enumerated therein. The Collector has to state, to the Court all the information on (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon; (b) the names of the persons whom he has reason to think interested in such land; (c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section

> 11; (cc) the amount paid or deposited under sub-section (3-A) of Section 17; and (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.
>
> He should append the schedule giving particulars in that behalf as enumerated in sub-section (2) of Section 19 of the Act. On receipt of such a valid reference with the statement, the Court shall under Section 20 'thereupon' cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:
>
> (a) the applicant;
>
> (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
>
> (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.
>
> 8. Thus, the scheme of the Act envisages that on making an application under Section 18, making a reference under Section 18 of the Act in the manner prescribed under Section 19 to the Court is mandatory and is sine qua non for the court to proceed 'thereupon' since it gets jurisdiction to issue a notice to the persons enumerated hereinbefore specifying the day to appear before it. The Court then is enjoined to determine compensation in the manner prescribed in Part III of the Act. On such determination, it shall pass a decree and the award under Section 26 and in the form and manner specified therein. The Award is a decree and the statement of grounds a judgment under sub-section (2) of Section 26 of the Act for the purpose of appeal under Section 54. Since this is a special procedure provided in the Act, by necessary implication, the Civil Court under Section 9 of the Civil Procedure Code 1908 has been prohibited to take cognizance of the objections arising under the Act for determination of the compensation for the land acquired under the Act.
>
> 9. Therefore, at the time of disposing of the award proceeding, the Land Acquisition Collector or the court on reference under Section 18 of the Act is required by statutory commendations to follow the substance of the provisions of the Land Acquisition Act as contained in para 3 of the notification issued by the Governor on 13-8-1987. It is seen that the procedure prescribed in para 3 of the notification is not in derogation of the mandatory compliance under Sections 18 to 20, and Civil Court does not get valid and legal jurisdiction to take cognizance of the objection for higher compensation unless the procedure prescribed in Sections 18, 19, 20 and 31 are complied with and adhered to.
>
> 10. The High Court and Civil Court committed a clear and manifest error of law in decreeing the suit. The impugned judgments and decrees are set aside as being a nullity.
>
> However the Collector is directed to make a reference to the Civil Court as the application with the requisite particulars was filed in writing with the objections raised by the respondent on 29-9-1988. The Civil Court shall dispose of the matter as expeditiously as possible. The appeal is allowed. No costs."

However, as clarified by Mr. B. Lalramenga, Ld. Counsel for the plaintiff at the time of oral arguments saying that as the state defendants including Collector concerned refused to assess or invoke the provisions of the Land Acquisition Act, 1894, no reference and other remedy will be found even by making reliance in the case of **Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. vs Union Of India And Others** decided on 13 November, 1980 and reported in 1981 AIR 344, 1981 SCR (2) 52, the Apex Court has observed that-

> "We have no doubt that in a competition between courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law court and wean him from the lawless street. In simple terms, *locus standi* must be liberalised to meet the challenges of the times. *Ubi just ibi remedium* must be enlarged to embrace all interests of public-minded citizens or organisations with

> serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets."

Thus, I find that this court is competent to adjudicate the instant suit like in the refusal to seek alternative remedy by the state defendants in the rival jurisdictional matter.

Issue No. 3
Non- joinder of necessary parties

This point is relevant in civil proceedings like in the instant case as held the Hon'ble Apex Court in **Sainath Mandir Trust vs Vijaya & Ors** decided on 13 December, 2010 in connection with Civil Appeal No. 3030 of 2004, Let us firstly deal the purpose of the scheme of Pradhan Mantri Gram Sadak Yojana (In short - PMGSY), Rural Road Connectivity is not only a key component of Rural Development by promoting access to economic and social services and thereby generating increased agricultural incomes and productive employment opportunities in India, it is also as a result, a key ingredient in ensuring sustainable poverty reduction. Notwithstanding the efforts made, over the years, at the State and Central levels, through different Programmes, about 40% of the Habitations in the country are still not connected by All-weather roads. It is well known that even where connectivity has been provided, the roads constructed are of such quality (due to poor construction or maintenance) that they cannot always be categorised as All-weather roads.

With a view to redressing the situation, Government have launched the Pradhan Mantri Gram Sadak Yojana (in short - PMGSY) on 25th December, 2000 to provide all-weather access to unconnected habitations. The Pradhan Mantri Gram Sadak Yojana (PMGSY) is a 100% Centrally Sponsored Scheme. 50% of the Cess on High Speed Diesel (HSD) is earmarked for this Programme.

Exclusion of District Collector of Saiha District and Village Council/Panchayati Raj concerned may be some lacunae but which may not vitiate the proceedings while the Operational Manual For Rural Roads, Feb., 2005 empowered the local bodies for the implementation of the scheme where lacking extension of the Constitution (73rd Amendment) Act, 1992 in the tribal areas in the North East.

Meanwhile, as the state PWD is an executing agency in the state of Mizoram, I find that such irregularities may not vitiate the proceedings making resorts in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, the Hon'ble Supreme Court has observed thus-

> "The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain

> Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

In a very nutshell, without impleadment of District Collector and Village Council concerned, the suit is expected to adjudicate finally and effectively.

Issue No. 4:
Whether the suit is premature or not

As per the provisions of the Land Acquisition Act, 1894, earmark of the affected area to be acquired for public purposes, making assessment and awarding compensation amount of such land acquisition should be done before starting the work. I find that the suit is not bad for premature. The crux is answered by Hon'ble Supreme Court in **Vithalbhai (P) Ltd. v. Union Bank of India**, reported in (2005) 4 SCC 315, the Supreme Court has held that-

> "22. We may now briefly sum up the correct position of law which is as follows:
>
> A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the court; the court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the court to grant decree or not. The court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to the plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly raised by the defendant and pressed for decision. It will equally be the responsibility of the court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the court shall not exercise its discretion in favour of decreeing a premature suit in the following cases : (i) when there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event; (ii) when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose; (iii) if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the court's jurisdiction; and (iv) where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency. (See Samar Singh v. Kedar Nath.) One more category of suits which may be added to the above, is: where leave of the court or some authority is mandatorily required to be obtained before the institution of the suit and was not so obtained. "

Issue No. 5
Entitlement of relief claimed and it's extend

It will not be appropriate to oblivious on the entity of PMGSY to adjudicate the main rival points. As per the guidelines, The primary objective of the PMGSY is to provide Connectivity, by way of an All-weather Road (with necessary culverts and cross-drainage structures, which is operable throughout the year), to the eligible unconnected Habitations in the rural areas, in such a way that all Unconnected Habitations with a population of 1000 persons and above are covered in three years (2000-2003) and all Unconnected Habitations with a population of 500 persons and above by the end of the Tenth Plan Period (2007). In respect of the Hill States (North-East, Sikkim, Himachal Pradesh, Jammu & Kashmir, Uttaranchal) and the Desert Areas (as identified in the Desert Development Programme) as well as the Tribal (Schedule V) areas, the objective would be to connect Habitations with a population of 250 persons and above.

The PMGSY will permit the Upgradation (to prescribed standards) of the existing roads in those Districts where all the eligible Habitations of the designated population size (refer Para 2.1 above) have been provided all-weather road connectivity. However, it must be noted that Upgradation is not central to the Programme and cannot exceed 20% of the State's allocation as long as eligible Unconnected Habitations in the State still exist. In Upgradation works, priority should be given to Through Routes of the Rural Core Network, which carry more traffic.

The spirit and the objective of the Pradhan Mantri Gram Sadak Yojana (PMGSY) is to provide good all-weather road connectivity to unconnected Habitations. A habitation which was earlier provided all-weather connectivity would not be eligible even if the present condition of the road is bad.

The unit for this Programme is a Habitation and not a Revenue village or a Panchayat. A **Habitation** is a cluster of population, living in an area, the location of which does not change over time. Desam, Dhanis, Tolas, Majras, Hamlets etc. are commonly used terminology to describe the Habitations.

An **Unconnected Habitation** is one with a population of designated size (refer to Para 2.1 above) located at a distance of at least 500 metres or more (1.5 km of path distance in case of Hills) from an All-weather road or a connected Habitation.

In the Mizoram context, a programme like PMGSY was an urgent need of the rural people of the State. Under the programme 789.74 kms of roads have been approved, which covers 82 habitations and for which Rs 97.34 Crore has been released. The State Rural development department is the nodal department for the programme and the State PWD is the executing agency.

However, the findings in appreciation of evidence weighting both evidences of the plaintiff and the defendants is that the state defendants under PMGSY scheme constructed rural roads during 2003 – 2006 in between Kawlchaw to Serkawr road, for that purpose and for making

widening of the then existing jeepable road, one meter alignment area of the land of the plaintiff was cut through and also fell down some teak trees at end portion of the road in the suit land while the plaintiff claimed compensation for the whole area of her land and crops/trees planted within the whole area of her landed property under LSC No. CLS/G/195/05 (Garden land). Meanwhile, the plaintiff through her father had received Rs. 50,000/- as compensation from the officials of state defendants. Two culverts were also constructed within the land of the plaintiff.

Needless to say is that even after deletion of Right to Property from the provisions of Fundamental Rights, It remains recognized as Constitutional rights in the case of **Anand Singh & Anr. vs State Of U.P. & Ors**. decided on 28 July, 2010 in connection with Civil Appeal No. 2523 of 2008, the Supreme Court has held that-

> "30. The power of eminent domain, being inherent in the government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though right to property is no longer fundamental right but Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law."

The plaintiff therefore obviously have a right over to the suit land which the state defendants also admittedly cut through for the implementation of PMGSY. Meanwhile, as it is a beneficial scheme for the needy who are rural poor peoples, huge amount of compensation will be inappropriate. Depositions of DWs. 2 and 3 elicited that no compensation can be awarded in the zeal of execution of PMGSY as per guidelines, but not specifically mentioned or produced such guidelines. Howsoever, I admitted that for the interest of the rural poor people who are vulnerable sections and to achieve the above mentioned objectives of PMGSY, the cause of action had arise requiring prudent horizon for the benefit of the needy. Meanwhile, as discussed above, the claimed of the plaintiff is exaggerate by claiming compensation amount for the whole area of her plot of land and crops/plants therein. More so, the plaintiff as deposed by DWs (but not denied by evidence of the plaintiff) collected all the felling teak trees in the affected area of road construction which mitigate the liability of the defendants.

On the other hand, for directing state defendants to make assessment at this juncture, all the alleged crops/plants were already annihilated. I therefore must lean upon the evidences adduced in the case with cautious on the benefit of the scheme lastly for the rural poor people.

ORDER

In view of facts and submissions discussed above and as the state defendants fails to reach amicable settlement with the plaintiff at the right time. In addition to already payment of Rs. 50,000/- (Rupees fifty thousand) to the plaintiff, the defendants are directed to compensate the plaintiff at another Rs. 50,000/- (Rupees fifty thousand) which should be paid in cash

with interest thereon at the rate of 12% (percent) per annum to be reckoned from this day till the date of realization of the said sum. And the defendants are further directed to pay costs of the suit to the plaintiff at Rs. 5000/- (Rupees five thousand) as court fees stamp plus Rs. 7000/- (Rupees seven thousand) for lawyers fee totally Rs. 12,000/- (Twelve thousand rupees) with interest thereon at the rate of 12% (percent) per annum to be reckoned from this day till the date of realization.

Before aborting with the case, the state defendants are reminds their failure at the time for inclination of the said road construction which is set forth by Hon'ble Supreme Court in **Bondu Ramaswamy vs Bangalore Development Authority** decided on 5 May, 2010 in connection with Civil Appeal No. 4097 of 2010 (Arising out of SLP (C) No. 4318 of 2006), Hon'ble Apex Court has strenuously and persistently commented that-

> "84. Frequent complaints and grievances in regard to the following five areas, with reference to the prevailing system of acquisitions governed by Land Acquisition Act,1894, requires the urgent attention of the state governments and development authorities:
> (i) absence of proper or adequate survey and planning before embarking upon acquisition;
> (ii) indiscriminate use of emergency provisions in section 17 of the LA Act;
> (iii) notification of areas far larger than what is actually required, for acquisition, and then making arbitrary deletions and withdrawals from the acquisitions;
> (iv) offer of very low amount as compensation by Land Acquisition Collectors, necessitating references to court in almost all cases; (v) inordinate delay in payment of compensation; and
> (vi) absence of any rehabilitatory measures. While the plight of project oustees and landlosers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the plight of farmers affected by frequent acquisitions for urban development.
>
> 85. There are several avenues for providing rehabilitation and economic security to landlosers. They can be by way of offering employment, allotment of alternative lands, providing housing or house plots, providing safe investment opportunities for the compensation amount to generate a stable income, or providing a permanent regular income by way of annuities. The nature of benefits to the landlosers can vary depending upon the nature of the acquisition. For this limited purpose, the acquisitions can be conveniently divided into three broad categories:
> (i) Acquisitions for the benefit of the general public or in national interest. This will include acquisitions for roads, bridges, water supply projects, power projects, defence establishments, residential colonies for rehabilitation of victims of natural calamities.
> (ii) Acquisitions for economic development and industrial growth. This will include acquisitions for Industrial Layouts/Zones, corporations owned or controlled by the State, expansion of existing industries, and setting up Special Economic Zones.
> (iii) Acquisitions for planned development of urban areas. This will include acquisitions for formation of residential layouts and construction of apartment Blocks, for allotment to urban middle class and urban poor, rural poor etc.
>
> 86. In acquisitions falling under the first category, the general public are the direct beneficiaries. In the second category, the beneficiaries are industrial or business houses, though ultimately, there will be indirect benefit to the public by way of generation of employment and overall economic development. In the third category, the beneficiaries are individual members of public who, on account of allotment of plots/flats, will be able to lead a better quality of life by having a shelter with comforts, apart from the fact that the planned development of cities and towns is itself in public interest. At present, irrespective of the purpose, in all cases of acquisition, the landloser gets only monetary compensation. Acquisitions of the first kind, does not normally create any

resistance or hostility. But in acquisitions of the second kind, where the beneficiaries of acquisition are industries, business houses or private sector companies and in acquisitions of the third kind where the beneficiaries are private individuals, there is a general feeling among the land-losers that their lands are taken away, to benefit other classes of people; that these amount to robbing Peter to pay Paul; that their lands are given to others for exploitation or enjoyment, while they are denied their land and their source of livelihood.

When this grievance and resentment remains unaddressed, it leads to unrest and agitations. The solution is to make the land-losers also the beneficiaries of acquisition so that the land-losers do not feel alienated but welcome the acquisition.

87. It is necessary to evolve tailor-made schemes to suit particular acquisitions, so that they will be smooth, speedy, litigation free and beneficial to all concerned. Proper planning, adequate counselling, and timely mediation with different groups of landlosers, should be resorted.

Let us consider the different types of benefits that will make acquisitions landloser-friendly.

87.1) In acquisitions of the first kind (for benefit of general public or in national interest) the question of providing any benefit other than what is presently provided in the Land Acquisition Act, 1894 may not be feasible. The State should however ensure that the landloser gets reasonable compensation promptly at the time of dispossession, so that he can make alternative arrangements for his rehabilitation and survival.

87.2) Where the acquisition is for industrial or business houses (for setting-up industries or special economic zones etc.), the Government should play not only the role of a land acquirer but also the role of the protector of the land-losers. As most of the agriculturists/small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests.

The Land Acquisition Collectors should also become Grievance Settlement Authorities. The various alternatives including providing employment, providing equity participation, providing annuity benefits ensuring a regular income for life, providing rehabilitation in the form of housing or new businesses, should be considered and whichever is found feasible or suitable, should be made an integral process of the scheme of such acquisitions. If the government or Development Authorities act merely as facilitators for industrial or business houses, mining companies and developers or colonisers, to acquire large extent of land ignoring the legitimate rights of land-owners, it leads to resistance, resentment and hostility towards acquisition process.

87.3) Where the acquisition is of the third kind, that is, for urban development (either by formation of housing colonies by Development Authorities or by making bulk allotment to colonisers, developers or housing societies), there is no scope for providing benefits like employment or a share in the equity. But the landlosers can be given a share in the development itself, by making available a reasonable portion of the developed land to the landloser so that he can either use it personally or dispose of a part and retain a part or put it to other beneficial use. We may give by way of an illustration a model scheme for large scale acquisitions for planned urban development by forming residential layouts: Out of the total acquired area, 30% of the land area can be earmarked for roads and footpaths; and 15% to 10% for parks, open spaces and civic amenities. Out of the remaining 55% to 60% area available for forming plots, the Development Authority can auction 10% area as plots, allot 15% area as plots to urban middle class and allot 15% area as plots to economically weaker sections (at cost or subsidised cost), and release the remaining 15% to 20% area in the form of plots to the land-losers whose lands have been acquired, in lieu of compensation. (The percentages mentioned above are merely illustrative and can vary from scheme to scheme depending upon the local conditions, relevant Byelaws/Rules, value of the acquired land, the estimated cost of development etc.). Such a model makes the land-loser a stake-holder and direct beneficiary of the acquisition leading to co-operation for the urban development scheme.

88. In the preceding para, we have touched upon matters that may be considered to be in the realm of government policy. We have referred to them as acquisition of lands affect the vital rights of farmers and give rise to considerable

litigations and agitations. Our suggestions and observations are intended to draw attention of the government and development Authorities to some probable solutions to the vexed problems associated with land acquisition, existence of which can neither be denied nor disputed, and to alleviate the hardships of the land owners. It may be possible for the government and development authorities to come up with better solutions. There is also a need for the Law Commission and the Parliament to revisit the Land Acquisition Act, 1894, which is more than a century old. There is also a need to remind Development Authorities that they exist to serve the people and not vice versa. We have come across Development Authorities which resort to `developmental activities' by acquiring lands and forming layouts, not with the goal of achieving planned development or provide plots at reasonable costs in well formed layouts, but to provide work to their employees and generate funds for payment of salaries. Any development scheme should be to benefit the society and improve the city, and not to benefit the development authority."

The case shall stand disposed of accordingly. Decree shall be drawn within fifteen days from the date of this order.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 3
Aizawl District: Aizawl

Memo No. CS/50/2008, Sr. CJ (A)/ Dated Aizawl, the 28th Feb., 2011

Copy to:

1. Smt. Dawdaw D/o Palua, Meisavaih, Saiha through Mr. B. Lalramenga, Advocate
2. The State of Mizoram Represented by the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. Engineer in Chief, Public Works Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
4. Executive Engineer, Public Works Department, Saiha Division, Saiha through Mr. R. Lalremruata, AGA
5. Sub- Divisional Engineer, Public Works Department, Saiha Sub-Division, Saiha through Mr. R. Lalremruata, AGA
6. Junior Engineer, Public Works Department, Saiha Division, Saiha through Mr. R. Lalremruata, AGA
7. P.A. to District & Sessions Judge, Aizawl Judicial District: Aizawl
8. Case record

PESKAR

IN THE COURT OF SENIOR CIVIL JUDGE- III
AIZAWL DISTRICT: AIZAWL

FORM NO. (J) 23

SIMPLE MONEY DECREE

[Section 34 of CPC]

CIVIL SUIT NO. 50 OF 2008

Smt. Dawdaw ... Plaintiff

Versus

State of Mizoram & Ors. ... Defendants

This suit coming on this 28th Feb., 2011 for final disposal before Dr. H.T.C. LALRINCHHANA, Sr. Civil Judge- 3 in the presence of Mr. B. Lalramenga & Ors., Advocates for the plaintiff and of Mr. R. Lalremruata, AGA for the defendants, it is ordered and decreed that the defendant do pay to the Plaintiff's the sum of Rs. 50,000/- (Rupees fifty thousand) with interest thereon at the rate of 12% (percent) per annum to be reckoned from this day till the date of realization of the said sum, and also pay Rs. 12,000/- (twelve thousand rupees) for the costs of this suit (Rs. 5000/- for court fees + Rs. 7000/- for lawyers fee), with interest thereon at the rate of 12% (percent) per annum from this date till the date of realization.

Given under my hand and seal of the Court, this 28th day of February, 2011

Seal of the court Judge

COSTS OF SUIT

Plaintiff				**Defendant**			
		Rs.	P			Rs.	P.
1	Stamp for plaint			1	Stamp for plaint	5,000	00
2	Stamp for power			2	Stamp for petitions and affidavits		
3	Stamp for petitions and affidavits			3	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891		
4	Costs of exhibits including copies made under the Banker's Books' Evidence Act, 1891			4	Pleader's fee on Rs.	7,000	00
5	Pleader's fee on Rs.			5	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)		
6	Subsistence and travelling allowances of witnesses (including those of a party, if allowed by a judge)			6	Process fee		
7	Process fee			7	Commissioner's fee		
8	Commissioner's fee			8	Demi paper		
9	Demi paper			9	Cost of transmission of records		
10	Cost of transmission of records			10	Other costs allowed under the Code and Civil Rules and Orders		
11	Other costs allowed under the Code and Civil Rules and Orders			11	Adjournment costs not paid in cash (to be deducted or added as the case may be)		
12	Adjournment costs not paid in cash (to be added or deducted as the case may be)			12			
13	**Total**			13	**Total**	Rs. 12,000	00