

IN THE COURT OF SENIOR CIVIL JUDGE- 2 AIZAWL DISTRICT: AIZAWL, MIZORAM

CIVIL SUIT NO. 22 OF 2004

Plaintiff:

Mr. Sanglawma
S/o Laia
South Hlimen, Aizawl District

By Advocate's : Mr. Saihmingliana Sailo, Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Engineer in Chief
Public Works Department
Mizoram- Aizawl
2. The Chief Engineer (Road)
Public Works Department
Govt. of Mizoram
Mizoram- Aizawl
3. The Superintending Engineer
Public Works Department
Aizawl Road South Division
Aizawl- Mizoram
4. The Sub-Divisional Officer
Public Works Department
Aizawl Road South Division
Aizawl- Mizoram

Proforma defendant:

Deputy Commissioner
Aizawl District: Aizawl

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

Date of Arguments : 30-05-2011

Date of Judgment & Order : 02-06-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

JUDGMENT & ORDER

INTRODUCTORY

The suit is re-heard as directed by the Hon'ble Gauhati High Court, Aizawl Bench in the order passed Dt. 25.3.2011 in connection with RFA No. 12 of 2010. Wherein, after setting aside of the judgment & decree Dt. 17th March, 2010, the Hon'ble Gauhati High Court directed that "*The case is remitted to the learned Senior Civil Judge, Aizawl Judicial District, Aizawl for*

deciding the suit afresh, on the basis of the evidences adduced by the parties and by giving reasons for recording the findings on each issues. It would also be open to the learned trial court to grant permission to the parties to lead further evidence, if asked for....”

By framing preliminary issue on 18-4-2011 viz. “*Whether the suit is barred by law of limitation or not*”, the said preliminary issue is affirmative in favour of the plaintiff with a reasoned order Dt. 26/5/2011 on the grounds that (i) the cause of action had arose on 29/8/2001 when the state defendants had conducted spot verification which revealed the liabilities of state defendants (ii) the plaintiff had approached learned advocates since Feb., 2004. As such, Legal Notice was served on 4th March, 2004 which requires at least two months gap for filing of the suit u/s 80 of CPC (iii) the suit is thereby filed on 14/10/2004. By virtue of either Article 47 or Article 137 of the Schedule to the Limitation Act, 1963 stipulating three years for filing of the suit, the suit is maintained in the rigour of O. VII. R. 11 of the CPC.

FACTUAL SCENARIO

The plaintiff is the rightful owner of the land covered under LSC No. AZL. 3142 of 1986 located at S. Hlimen, Aizawl District and constructed RCC building and his family dwelled upon. In the year 1998, a heavy landslide occurred in that elaka and partially damaged the said building. The road connected Aizawl to Central Workshop was also totally damaged by the said heavy landslide. As requested to vacate the suit land by the defendants for revitalize of the said road with conditions, the plaintiff vacated the suit land for the public interest for construction of the said road. In the spot verification, conducted by Mr. Sangliana, SDO, PWD, I.W.T. Sub-Division, Aizawl submitted to the Executive Engineer, PWD, Aizawl Road South Division, Aizawl Dt. 29th August, 2001 as Ext. P-2, it reveals that the approximate cost of the building was about Rs. 7,03,265/-. The plaintiff therefore prays that (i) a decree declaring that the defendants had made an agreement with the plaintiff for payment of compensation to the plaintiff for demolition of RCC building and land under LSC No. AZL. – 3142 of 1986 (ii) to declare that the plaintiff is entitled to receive Rs. 7,03,265/- from the defendants due to demolition of his RCC building (iii) a decree directing the defendants to pay Rs. 7,03,265/- to the plaintiff with solatium of 30% per mensem on the said amount (iv) pendente lite interest at 18% per annum from Rs. 7,03,265/- (v) costs of the suit in favour of the plaintiff (vi) any other relief which this court deems fit and proper towards justice, equity and good conscience.

The defendants in their written statements contended and stated that although admitted that during 1998 landslide took place partially damaged the RCC building of the plaintiff and immediately cleared the road block of the link road between Aizawl and Central Workshop by engaging departmental machineries and manpower by the defendants, the house of the plaintiff was not dismantled by the defendants and no such request for dismantling was made to the plaintiff by the defendants. No agreement between the plaintiff and the defendants for making compensation was made. Furthermore, spot verification report Dt. 29-08-2001 was worked out on the plinth area on the basis of SOR 2000, PWD but having no value.

ISSUES

The issues were re-framed on 3/5/2011 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the plaintiff has cause of action against the defendants
2. Whether the RCC building of the plaintiff under LSC No. AZL. 3142 of 1986 was damaged caused by the defendants or not
3. Whether the plaintiff had vacated his land under LSC No. AZL. 3142 of 1986 due to need for public purposes for construction of public road
4. 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. Mr. Sanglawma S/o Laia, S. Hlimen (Hereinafter referred to him as PW-1)
2. Mr. Lalsangbers S/o Phirvunga (L), S. Hlimen (Hereinafter referred to him as PW-2)
3. Er. P. Lalchhunga S/o Hanga (L), Babutlang- Aizawl (Hereinafter referred to as PW-3)

The PW-1 in his examination in chief reiterated the contents of the plaint being the plaintiff himself. He further continued that-

Ext. P- 1 is a copy of LSC No. AZL. 3142 of 1986

Ext. P-2 is a Spot Verification report dt. 29th August, 2001 (but objected by Ld. Counsels for the defts due to non-availability of original copy)

Ext. P-3 is a letter issued by Er. P. Lalchhunga

Ext. P-4 is a copy of Legal Notice

During cross examination, he deposed that the cause of action had arisen sometimes in the month of October 1998 but served Legal Notice u/s 80 of CPC on 13.10.2004, he denied that the defendants never asked the plaintiff to vacate his land under LSC AZL. 3142 of 1986 and also denied that the plaintiff himself demolished the suit building. He admitted that while the building was demolished in 1998, spot verification was conducted on August 29, 2001 and also admitted that Er. P. Lalchhunga was already retired from service at the time of writing of Ext. P- 3 on 1.9.2002.

The PW-2 deposed in his examination in chief that he was the President of Village Council, S. Hlimen during 1998 when a heavy landslide occurred at S. Hlimen. At that time, the PWD, Govt. of Mizoram inclined to re-opened the link road from Aizawl to Central Workshop damaged by heavy landslide, being a VCP, he was invited in the meeting and on the resolution of the said meeting, he himself and some other Officers of the PWD requested the plaintiff to offer his land for re-opening of the said road. The officials of the state defendants also offered adequate compensation at Rs. 70,3265/- to the plaintiff. Being a VCP, he also made request to the plaintiff for so many times to accept the said request as the road is important for the general public. As per their requested, the plaintiff at the last allowed/accepted, his RCC building with three floors was totally damaged

and dismantled with the machines and labours engaged by the PWD. Being the VCP by using his official seal, he forwarded a letter to the Government for payment of compensation to the plaintiff. As promised the PWD/Government is liable to pay compensation to the plaintiff.

In his cross examination, he does not shaken his deposition in examination in chief and remains stood in his stand.

The PW- 3 in his examination in chief deposed that during 1998, a heavy landslide damaged the link road between Aizawl to Central Workshop, the RCC building of the plaintiff was also partially damaged on that account. As instructed by the Government to clear the said road, the PWD asked the plaintiff to offer his land by giving compensation. At that time, he was Superintending Engineer, PWD, Central Circle- Aizawl and he was an in charge of the said areas. They had formulated the amounts for compensation to the plaintiff. But as he was retired on 30th Nov., 2000, nothing had been known be him. Ext. P- 3 is a letter issued by him and Ext. P-3 (a) is his true signature.

During cross examination, he deposed that he issued Ext. P-3 after almost two years of his retirement from service as requested by the plaintiff. He admitted that no written agreement was made in between the plaintiff and the defendants.

For the defendants:

The defendants had produced only one witness namely- Mr. K. Lalbiakthanga, SDO, PWD Bairabi Sub- Division (Hereinafter referred to him as DW), he deposed in his examination in chief that at the time of heavy landslide at S. Hlimen during 1998, he was posted as SDO, PWD, Govt. of Mizoram by taking charge of road maintenance to clear up the roads from the said landslide. He knows the plaintiff and his RCC building partially damaged by the said landslide and the top floor at the ground/road level is Assam Type. So far as his knowledge concerned, dismantling the house of the plaintiff was not compulsory to re-open the said road. But as the building of the plaintiff was partially damaged and as advised, the plaintiff himself dismantled the said building with his own free will. He knows nothing about the spot verification report dt. 29.8.2001 on the building and land of the plaintiff.

During cross examination, he further deposed that on official capacity at that time, they made a proposals to the plaintiff to dismantle his building for re-opening of the road and the road was re-opened immediately as soon as dismantle of the building of the plaintiff. He admitted that at the time of occurrence, Er. P. Lalchhunga was the Superintending Engineer concerned of PWD. He admitted that verbally agreement can be made by the plaintiff with his superior officers. Since the plaintiff had dismantled his building for re-opening of the road between Aizawl-Central Workshop, he is entitled to get adequate compensation.

In his re-examination, he deposed that although he stated in his cross examination that as soon as dismantle of the building of the plaintiff as it could be made, it was not compulsory to dismantle the building of the plaintiff for re-opening of the said road.

FINDINGS

Issue No. 1

Whether the plaintiff has cause of action against the defendants

Evidences of the plaintiff are corroborate each other, deposition of PW-2 is very vital as the then VCP of S. Hlimen, deposition of DW also did not overshadowed his depositions about cause of action. Thus, the plaintiff certainly have a cause of action against the defendants.

Issue No. 2

Whether the RCC building of the plaintiff under LSC No. AZL. 3142 of 1986 was damaged caused by the defendants or not

Evidence of both parties revealed that the building of the plaintiff under LSC No. AZL. 3142 of 1986 was with three floors and the top floor at the main road level is Assam Type which was partially damaged by the said heavy landslide during 1998. Evidence of the defendants also elicited that because of dismantling of the building of the plaintiff, the road was re-opened. Evidences of the plaintiff clearly elucidated that at the request of the Government officials by employing the concerned President of Village Council, the building of the plaintiff in the suit land was dismantled for the purpose of reopening of the road between Aizawl to Central Workshop. No other findings can be had.

Issue No. 3

Whether the plaintiff had vacated his land under LSC No. AZL. 3142 of 1986 due to need for public purposes for construction of public road

As discussed under Issue No. 2, for the purpose of reopening of public road by the Government or PWD, Govt. of Mizoram, the building constructed under LSC No. AZL. 3142 of 1986 is also dismantled. Cogently, the plaintiff vacated the suit land for the purpose of construction of public road as requested by the defendants.

Issue No. 4

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

As discussed under Issue No. 3, the plaintiff had left his land and building under LSC No. AZL. 3142 of 1986 solely for public purposes. However, right to property under Article 300-A of the Constitution of India is attracted even in landed property as held 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 Hon'ble Supreme Court further went on in **Narmada Bachao Andolan vs State Of M.P. & Anr.** decided on 11 May, 2011 in connection with Civil Appeal No. 2082 of 2011, the Supreme Court has held that-

“26. This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide: Lachhman Dass v. Jagat Ram

& Ors., (2007) 10 SCC 448; and Amarjit Singh & Ors. v. State of Punjab & Ors. (2010) 10 SC 43)."

It is therefore clearly seen that without giving adequate compensation to the plaintiff by the defendants on dismantling of his RCC building with three floors and losing of his landed property under LSC No. AZL. – 3142 of 1986, it will be inimical to constitutional values by depriving the constitutional rights of the plaintiff.

At the time of final hearing, learned counsel for the plaintiff Mr. Saihmingliana Sailo prayed to direct the state defendants to make assessment of the damaged property as per the Land Acquisition Act, 1894 and to make compensation amount under the said Act. But, the well settled legal principle is that relief can not be made beyond pleadings as held in **Bachhaj Nahar vs. Nilima Mandal and Anr** (2008) 17 SCC 491 and in **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs. And Ors.** (2008) 4 SCC 594 and lastly in **State Of Orissa & Anr. vs Mamata Mohanty** decided on 9 February, 2011 in connection with Civil Appeal No. 1272 of 2011, their Lordships of Hon'ble Supreme Court has held that-

"35. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho, 30 (1898) 25 Ind. App. 195; M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar, AIR 1953 SC 235; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. Hindustan Construction Company Ltd., (2010) 4 SCC 518.)"

As per the findings of the above various issues, the plaintiff is entitled to the relief, his prayer in the plaint is reiterated as- i) a decree declaring that the defendants had made an agreement with the plaintiff for payment of compensation to the plaintiff for demolition of RCC building and land under LSC No. AZL. – 3142 of 1986 (ii) to declare that the plaintiff is entitled to receive Rs. 7,03,265/- from the defendants due to demolition of his RCC building (iii) a decree directing the defendants to pay Rs. 7,03,265/- to the plaintiff with solatium of 30% per mensem on the said amount (iv) pendente lite interest at 18% per annum from Rs. 7,03,265/- (v) costs of the suit in favour of the plaintiff (vi) any other relief which this court deems fit and proper towards justice, equity and good conscience. Meanwhile, as land acquisition process is not done, solatium is not fit to pay and pendente lite interest rate is also excessive in nature in view of the current rates of interest determined by the Reserve Bank of India.

DIRECTIVES

Thus, the defendants are therefore directed to pay relief to the plaintiff within one year from the date of this order in the following terms-

- (1) Rs. 7,03,265/- (Rupees seven lakhs three thousand, two hundred and sixty five) due to demolition of his RCC building and losing of landed property under LSC No. AZL. – 3142 of 1986 for the purpose of public road construction.
- (2) The defendants shall also pay interest rate at 12% per annum from 14/10/2004 to the plaintiff till realization.

(3) Cost of the suit at Rs. 12,000/- (Rs. 5000/- as court fees + Rs. 7000/- as Lawyers fee) with interest rate at 12% per annum from the date of this order shall be paid to the plaintiff by the defendants.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. CS/22/2004, Sr. CJ (A)/

Dated Aizawl, the 2nd June, 2011

Copy to:

1. Mr. Sanglawma S/o Laia, South Hlimen, Aizawl District through Mr. Saihmingliana Sailo, Advocate
2. The State of Mizoram Through the Engineer in Chief, Public Works Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
3. The Chief Engineer (Road), Public Works Department, Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. The Superintending Engineer, Public Works Department, Aizawl Road South Division, Aizawl- Mizoram through Mr. R. Lalremruata, AGA
5. The Sub-Divisional Officer, Public Works Department, Aizawl Road South Division, Aizawl- Mizoram through Mr. R. Lalremruata, AGA
6. District Collector, Aizawl District- Aizawl through Mr. R. Lalremruata, AGA
7. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR