IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT :: AIZAWL

MONEY SUIT NO. 25 OF 2009

Plaintiffs:

1. Mr. H. Chalkhuma
   S/o Thangzika (L)
   Venghnuai, Aizawl

2. Mr. R.L. Thanmawia
   S/o Vanthuama
   Venghnuai, Aizawl

3. Smt. Lalnunmawii
   D/o Thangphunga
   Venghnuai- Aizawl

4. Mr. C.T. Khuaia
   S/o Thanliana
   Venghnuai- Aizawl

5. Mr. R. Lalrinawma
   S/o Pachhunga (L)
   Venghnuai- Aizawl

By Advocate's : Mr. L.H. Lianhrima, Adv.

Versus

Defendants:

1. The Project Director
   Project Implementation Unit
   Office of the Engineer in Chief
   Public Works Department
   Tuikhuahtlang, Aizawl

2. The Team Leader
   Sheladia Associates Inc. USA
   A-1/39, Mual Veng
   Chaltlang, Aizawl

3. The Chief Project Manager
   RBM-TANTIA (JV)
   Falkland, Aizawl

By Advocates

For the defendant no. 1 : Mr. R. C. Thanga, Govt. Adv.
For the defendant no. 3 : Mr. Michael Zothankhuma, Sr. Adv.

Date of Arguments : 22-11-2011
Date of Judgment & Order : 24-11-2011

BEFORE
Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

JUDGMENT & ORDER

GENESIS OF THE CASE

By using the fund received from World Bank, the defendants had constructed Aizawl-Thenzawl-Lunglei road. While doing the work, the plaintiffs alleged that their crops and trees were damaged but located outside the corridor of impact, below the project alignment. The plaintiffs simply prayed to decree on the basis of the joint verification report as adequate amount.

The defendant no. 1 contended that if the allegation of the plaintiff is true and basis, the contractor as defendant no. 3 will be liable as already instructed them to make barricade or any other precautions to prevent debris from going onto private land as the claimed properties were located outside the corridor of impact, below the project alignment.

The defendant no. 3 stated in their written statement that being a working contractor, as per condition of contract (Part- I and II) of the contract agreement, the employer's risk are clearly mentioned in sub-clause 20.4 (c). Thus, it is beyond the liability of the defendant no. 3.

ISSUES

The issues were framed on 08-03-2010 and amended for arriving correct findings as follows-

1. Whether the suit is maintainable in its present form and style
2. Whether the suit is bad for non-joinder of necessary parties or not.
3. Whether the plaintiff has locus standi to file the instant suit or not.
4. Whether the plaintiffs has cause of action against the defendants or not.
5. Whether the plaintiffs are entitled to the relief claimed or not. If so, from whom and to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiffs:

The plaintiffs had produced the following witnesses namely-

1. Mr. H. Chalkhuma S/o Thangzika (L), Venghnuai, Aizawl (Hereinafter referred to as PW- 1)
2. Mr. R.L. Thanmawia S/o Vanthuama, Venghnuai, Aizawl (Hereinafter referred to as PW- 2)
3. Mr. C.T. Khuaia S/o Thanliana, Venghnuai- Aizawl (Hereinafter referred to as PW- 3)
4. Mr. R. Lalrinawma S/o Pachhunga (L), Venghnuai- Aizawl (Hereinafter referred to as PW- 4)
5. Smt. Lalnunmawii D/o Thangphunga, Venghnuai- Aizawl (Hereinafter referred to as PW- 5)

The **PW-1** in his examination in chief deposed that the plaintiffs are the land owners located at Venghnuai, Aizawl as per the Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1, damage to be caused due to the construction of Aizawl-Thenzawl-Lunglei road will be assessed and carried out by the Joint Verification Team. The Special Land Acquisition Officer, PIU, Chief Engineer (Highways) Office, PWD also wrote a letter to the defendant no. 2 to take cautious as some villagers' lands and crops had been damaged at down hill side of the project alignment along the bypass due to dozing down debris at many places at the time of excavating pilot road and further requested to instruct the defendant no. 3 to be careful to avoid or minimize damage beyond acquired area especially down hill side alignment. Failing on which, it will be the liabilities of the defendant no. 3. The defendant no. 2 thereby wrote a letter for the same to the defendant no. 3 on 24th April, 2008. The defendant no. 2 again wrote a letter to the defendant no. 3 on 25th April, 2008 embarking the liabilities of the defendant no. 3 on such damage. Although Joint Verification Team had already surveyed and prepared a report thereof. No compensation is yet given to the plaintiffs as assessed. He further deposed that-

Ext. P- 1 is plaint
Ext. P- 1 (a) and (b) are his signatures
Ext. P- 2 is a copy of Hriattirna Dt. 28.12.2005
Ext. P- 3 is a copy of letter Dt. 14th Dec., 2007
Ext. P- 4 is a copy of letter Dt. 17th Dec., 2007
Ext. P- 5 is a copy of letter Dt. 24th April, 2008
Ext. P- 6 is a copy of letter Dt. 25th April, 2008
Ext. P- 7-12 are a copies of Joint Verification Report
Ext. P- 13 is a copy of letter Dt. 12th May, 2009
Ext. P- 8 (a) is his signature.

During his cross examination, he deposed that the plaintiffs had served legal notice and also admitted that he fails to annex a copy of LSC in the plaint and also admitted that the Government instructed the contractor for taking precautions not to cause damage outside the acquired land. He

further admitted that the defendant no. 3 as a contractor fails to make any barricade to prevent debris.

When cross examination by learned counsel for the defendant no. 3, he also admitted that he fails to annex a copy of LSC in the plaint. The construction work carried out in the area of his land was completed in April, 2010 but he did not know who is liable to pay compensation.

The **PW-2** in his examination in chief deposed that the plaintiffs are the land owners located at Venghnuai, Aizawl as per the Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1, damage to be caused due to the construction of Aizawl-Thenzawl-Lunglei road will be assessed and carried out by the Joint Verification Team. The Special Land Acquisition Officer, PIU, Chief Engineer (Highways) Office, PWD also wrote a letter to the defendant no. 2 to take cautious as some villagers' lands and crops had been damaged at down hill side of the project alignment along the bypass due to dozing down debris at many places at the time of excavating pilot road and further requested to instruct the defendant no. 3 to be careful to avoid or minimize damage beyond acquired area especially down hill side alignment. Failing on which, it will be the liabilities of the defendant no. 3. The defendant no. 2 thereby wrote a letter for the same to the defendant no. 3 on 24th April, 2008. The defendant no. 2 again wrote a letter to the defendant no. 3 on 25th April, 2008 embarking the liabilities of the defendant no. 3 on such damage. Although Joint Verification Team had already surveyed and prepared a report thereof. No compensation is yet given to the plaintiffs as assessed. He further deposed that Ext. P- 1 (c) and (d) are his true signatures. Ext. P- 9 (a) is also his signature.

In his cross examination, he further deposed that his wife was present on the spot at the time of joint spot verification.

In his re-examination, he further deposed that although he was not present on the spot at the time of verification, as duly instructed, he subscribed his signature.

The **PW-3** deposed in his examination in chief that the plaintiffs are the land owners located at Venghnuai, Aizawl as per the Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1, damage to be caused due to the construction of Aizawl-Thenzawl-Lunglei road will be assessed and carried out by the Joint Verification Team. The Special Land Acquisition Officer, PIU, Chief Engineer (Highways) Office, PWD also wrote a letter to the defendant no. 2 to take cautious as some villagers' lands and crops had been damaged at down hill side of the project alignment along the bypass due to dozing down debris at many places at the time of excavating pilot road and further requested to instruct the defendant no. 3 to be careful to avoid or minimize damage beyond acquired area especially down hill side alignment. Failing on which, it will be the liabilities of the defendant no. 3. The defendant no. 2 thereby wrote a letter for the same to the defendant no. 3 on 24th April, 2008. The defendant no. 2 again wrote a letter to the defendant no. 3 on 25th April, 2008 embarking the liabilities of the defendant no. 3 on such damage. Although Joint Verification Team had

already surveyed and prepared a report thereof. No compensation is yet given to the plaintiffs as assessed. He further deposed that Ext. P- 1 (e) and (f) are his signatures. Ext. P- 11 (a) is also his signature.

During cross examination, he deposed that in his house site, he planted crops and trees. He admitted that he fails to produce his land pass in the instant proceedings.

The **PW- 4** in his examination in chief deposed that the plaintiffs are the land owners located at Venghnuai, Aizawl as per the Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1, damage to be caused due to the construction of Aizawl-Thenzawl-Lunglei road will be assessed and carried out by the Joint Verification Team. The Special Land Acquisition Officer, PIU, Chief Engineer (Highways) Office, PWD also wrote a letter to the defendant no. 2 to take cautious as some villagers' lands and crops had been damaged at down hill side of the project alignment along the bypass due to dozing down debris at many places at the time of excavating pilot road and further requested to instruct the defendant no. 3 to be careful to avoid or minimize damage beyond acquired area especially down hill side alignment. Failing on which, it will be the liabilities of the defendant no. 3. The defendant no. 2 thereby wrote a letter for the same to the defendant no. 3 on 24th April, 2008. The defendant no. 2 again wrote a letter to the defendant no. 3 on 25th April, 2008 embarking the liabilities of the defendant no. 3 on such damage. Although Joint Verification Team had already surveyed and prepared a report thereof. No compensation is yet given to the plaintiffs as assessed. He further deposed that Ext. P- 12 (a) is his signature. Ext. P- 1 (g) and (h) are his signatures.

In his cross examination, he admitted that he fails to produce his land pass in the instant proceedings.

The **PW- 5** in her examination in chief deposed that the plaintiffs are the land owners located at Venghnuai, Aizawl as per the Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1, damage to be caused due to the construction of Aizawl-Thenzawl-Lunglei road will be assessed and carried out by the Joint Verification Team. The Special Land Acquisition Officer, PIU, Chief Engineer (Highways) Office, PWD also wrote a letter to the defendant no. 2 to take cautious as some villagers' lands and crops had been damaged at down hill side of the project alignment along the bypass due to dozing down debris at many places at the time of excavating pilot road and further requested to instruct the defendant no. 3 to be careful to avoid or minimize damage beyond acquired area especially down hill side alignment. Failing on which, it will be the liabilities of the defendant no. 3. The defendant no. 2 thereby wrote a letter for the same to the defendant no. 3 on 24th April, 2008. The defendant no. 2 again wrote a letter to the defendant no. 3 on 25th April, 2008 embarking the liabilities of the defendant no. 3 on such damage. Although Joint Verification Team had already surveyed and prepared a report thereof. No compensation is yet given to the plaintiffs as assessed. She further deposed that Ext. P- 1 (i) and (i) are her signatures. Ext. P- 10 (a) is her signature.

In his cross examination, he admitted that he fails to produce his land pass in the instant proceedings.

For the defendant No. 1:

On the otherhand, the defendant no. 1 had produced the following witnesses namely-

1. Mr. K. Lalsawmvela, S.E. Project Director (Hereinafter referred to as DW-1 for defendant no. 1)
2. Mr. H. Lalthanpuia S/o H. Valbuanga, Vaivakawn, Aizawl (Hereinafter referred to as DW-2 for defendant no. 1)

The **DW-1 for defendant no. 1** in his examination in chief deposed that Hriattirna Dt. 28th Dec., 2005 was issued after the land owners of the acquired areas were fully given compensation for the acquired areas. It indicates that if in case the road alignment if altered or in cases more lands over and above those already acquired are needed, assessment of the damage likely to be caused is to be made for payment of compensation as per the procedures prescribed therein. Within venghnuai, Aizawl area, there was no alignment alteration or any additional land taken by the defendant no. 1. The claims preferred by the plaintiff on that document basis is wrong. If the alleged damage be true, it cannot be attributed to the design of the works mentioned as the employer's risk in the contract agreement. The contractor as defendant no. 3 is instructed through defendant no. 2 to make any possible pre cautions to prevent debris from falling down the road and if fails, the contractor will be liable. The contractor are not the employees/servant of the defendant no. 1, they are just a party to the agreement executed for the construction of the road. The principles of vicarious will not be applicable in the instant case. Ext. D-1 is written statement of defendant no. 1 and Ext. D-1 (a) is his signature.

During his cross examination, he deposed that Ext. P-2 was issued by himself. Ext. P-13 was also issued by him. On receipt of legal notice dt. 2.3.2009, necessary action was taken by the defendant no. 1 by forwarding the same to the defendant no. 2 as Ext. P- 13. He did not have anything to comply with the joint verification report as he was not a party. He admitted that Ext. P- 7, 9, 10, 11 and 12 are joint verification reports in the instant suit matters. He also admitted that Ext. P-8 is also joint verification report of damage of crops pertaining to the land of the plaintiff no. 1. He admitted that the defendant no. 3 is a contractor engaged with them for the instant road construction.

The **DW-2 for defendant no. 1** in his examination in chief deposed that he was Manager, Resettlement and Rehabilitation in the office of the defendant no. 1 with having a duty as R.R. Manager to look into matters relating to the claims for compensation and other related matters. He was working with the Special Land Acquisition Officer posted in the Department. When conducting joint verification on 1.9.2008, he represented the defendant no. 1, all the concerned were present. Number of crops were calculated from the remaining survived crops. On that day, only the plaintiff

no. 1 was present but fails to present other plaintiffs. The plaintiff no. 1 also could not produce his LSC/pass on that day. The crops mentioned in Ext. P- 8 were grown at places far down below the road.

During his cross examination, he deposed that he present in the spot verification conducted in respect of the claim of the plaintiff no. 1 only. He denied that as the defendant no. 3 is engaged by the defendant no. 1, the defendant no. 1 will be liable in the instant case.

During cross examination by learned counsel for the defendant no. 3, he admitted that the defendant no.3 was the agent of the state government. He admitted that he was not present in the spot verification conducted on 2.4.2007 in respect of the plaintiffs 2-5. He also admitted that he have not seen the actual moment of damage being caused due to the construction of the road.

For the defendant no. 3:

The defendant no. 3 had produced only one witness namely- Mr. Mukesh Kumar Jha S/o Jai Narayan Jha (Hereinafter referred to as **DW for defendant no. 3**). In his examination in chief, he deposed that he is the Deputy Commercial Manager of Tantia Company and authorized to appear on behalf of the defendant no. 3. As per Hriattirna, the additional require land will be acquired by the defendant no. 1. Being merely a contractor, they are not liable in the instant case. The scope of work as per contract agreement dt. 22.10.2003 between the defendant no. 1 and 3, amongst others, cutting the hills, even where there is no roads, for construction of new road as per design and drawing provided by the employer and the engineer. Cutting and excavation is provided in the BOQ Vide Item No. 3.06 of bill No. 3. The defendants 1 and 2 at no point of time during construction of the pilot road instructed the defendant no. 3 to provide wall or barricading for preventing of rolling down of debris. Special Land Acquisition Officer's letter dt. 14.12.2007 requested the defendant no. 2 to instruct defendant no. 3 to provide wall for protection of rolling down of the debris to minimize damages. The said letter was issued in December, 2007, much after the spot verification was done in April, 2007. As per the contract agreement regarding employers risk, it was clearly mentioned in sub-clause 20.4 (c). Under the principles of vicarious liability, the defendant no. 1 will be liable in the case. Ext. D-1/3 is contract document dt. 11.10.2003

In his cross examination, he denied that he was present on the spot at the time of joint spot verifications. He did not know whether the company had received any legal notice or not. He did not know whether the damages as revealed by joint verification report was caused to the plaintiffs or not.

ARGUMENTS

Mr. L.H. Lianhrima after delving on evidences submitted that it is voluminously clear from the depositions of the witnesses that plants and fruit bearing trees have damaged and the number of damaged plants and

fruit bearing trees have properly been record in Ext. P-7 to 12. The defendants could not therefore deny their liabilities.

Mr. R.C. Thanga for the defendant no. 1 stated that the suit is bad for non-joinder of necessary parties by excluding state of Mizoram as defendant as held by the Hon'ble Gauhati High Court in the case of **Commissioner - cum-Secretary & Ors vs. T.C. Syndicate & Ors** reported in 2011 (2) GLT 12. Secondly, common question of fact cannot exist. A copy of Legal Notice is not served in the plaint. More so, there is no cause of action at all as the Hriattirna means only for additional requirement of land or only due to alteration/change of alignment. There is no proper verification of the properties alleged to have been damaged. Lastly, the defendant no. 1 is not liable in the instant case at all.

Mr. Michael Zothankhuma for the defendant no. 3 argued that in the light of the observations of Hon'ble Gauhati High Court, Aizawl Bench in Writ Petition (C) No. 21 of 2009 Dt. 24th Feb., 2010, the contractor as defendant no. 3 cannot be liable in the land acquisition process. Another reliance is also sought as held by the Supreme Court in **State Bank Of India vs Shyama Devi** decided on 5 May, 1978 reported in 1978 AIR 1263, 1978 SCR (3) 1009 wherein vicarious liability lies in the employer but not in the agent. Thus, prayed to exonerate the liabilities of the defendant no. 3.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

A requisite court fees at Rs. 5000/- is paid in full, the plaint is accompanied by verification and the affidavit sworn by the plaintiffs. Although a copy of Legal Notice is not filed with the plaint, as admitted by evidence of the defendant no. 1 as their DW-1, such irregularities will not defeat the proceedings. Thus, I find no laches which vitiate the proceedings. In the light of the observations in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS (OS) No.2528/2010, wherein, Hon'ble Justice Gita Mittal for Delhi High Court by relying in the pronouncements of H.L. Anand, J on 23rd May, 1973 in **Gopal Krishan Kapoor Vs. Ramesh Chander** and reported at 1973 RLR 542 termed that-

> "18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation."

More so, with regards to mis-joinder of plaintiffs as alleged by Mr. R.C. Thanga, as per the recent observations of Hon'ble Supreme Court in **A.C. Muthiah vs Bd. Of Control For Cricket In India and Anr.** decided on 28

April, 2011 in connection with Civil Appeal No. 3753 of 2011 (Arising out of SLP (C) No. 12181 of 2010), plaintiffs in the instant case are interested in one issue. Thus, this issue is therefore decided in favour of the plaintiff.

Issue No. 2
Whether the suit is bad for non-joinder of necessary parties or not.

In this task, I must look the well settled law as observed 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, their Lordship of Hon'ble Supreme Court went on that-

> "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 the case at hand, undisputedly, the defendants (1-3) are the agent of the state of Mizoram. While vicarious liability is at issue against the state of Mizoram. Non-impleadment of state of Mizoram as defendant will cause obstacles in the proceedings till realizations if it may be adjudicated in favour of the plaintiff. As submitted by Mr. R.C. Thanga, the law laid down by the Hon'ble Gauhati High Court in the case of **Commissioner -cum-Secretary & Ors vs. T.C. Syndicate & Ors** reported in 2011 (2) GLT 12 is relevant, wherein, it was held that-

> "A combined reading of the statutory provisions prescribed by sections 79 and Order 27 Rule 3 and 5A CPC makes it abundantly clear that in suits against State Government or its officers, for any official act or the "State" is required to be added as a party to the suit. Though section 80 CPC has provided that issuance of notice to "the Secretary to the Government" or "the Collector of the District" in case of claim relief against the Government is sufficient compliance, the provisions prescribed by Section 79 and Order 27 as aforesaid, make it **mandatory** that the concerned State should be added as a defendant," (para 35).
>
> "In the present case before us, the plaintiffs have not added "the State of Arunachal Pradesh" as a defendant. Though the Commissioner cum Secretary, Department of Power, Govt. of Arunachal Pradesh, Itanagar was added as defendant No. 1, there is nothing to find that he was added as a representative of the State Government. .. . Therefore, as the Government i.e. the State of Arunachal Pradesh has not been joined as a party, the suits are apparently hit by the statutory provisions of Section 79 and Order 79 Rule 3 & Rule 5A of CPC and as such the same are **not maintainable** in the eye of law," (para 36).

Also vide **Ranjeet Mal Vs. General Manager, Northern Railway, New Delhi & Anr**., AIR 1977 SC 1701: **Kali Prasad Agarwala (Dead by L.Rs.) & Ors. v. M/s. Bharat Coking Coal Limited & Ors.** AIR 1989 SC 1530: **Sangamesh Printing V. Chief Executive Officer, Taluk Development Board** reported in (1999) 6 SCC 44.

I therefore find that the suit is bad for non-joinder of necessary parties so as to effectuate the proceedings. In a nutshell, as the work is already completed far back presuming that the amount allotted will be exhausted. If liability may be imposed to the defendant no. 1, without direction to the state of Mizoram, the defendant no. 1 alone will not be able to carry out of the award/decree.

Issue No. 3
Whether the plaintiff has locus standi to file the instant suit or not.

Before dealing with the factum of the case, the principles already settled on locus standi requires to took as held In the case of **S.P. Gupta Vs. President Of India And Ors**. decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365, the Constitution Bench of Hon'ble Supreme Court has held that-

> "14. The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated and which marks the starting point of almost every discussion on *locus standi* is Ex parte Sidebotham (1980) 14 Ch D 458. There the Court was concerned with the question whether the appellant could be said to be a 'person aggrieved' so as to be entitled to maintain the appeal. The Court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a 'person aggrieved' by the decision of the lower Court. James, L. J. gave a definition of 'person aggrieved' which, though given in the context of the right to appeal against a decision of a lower Court, has been applied widely in determining the standing of a person to seek judicial redress, with the result that it has stultified the growth of the law in regard to judicial remedies. The learned Lord Justice said that a 'person aggrieved' must be a man "who has suffered a legal

> grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Thus definition was approved by Lord Esher M. R. in In Re Reed Bowen & Co. (1887) 19 QBD 174 and the learned Master of the Rolls made it clear that when James L. J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man who has been refused something which he had a right to demand. There have been numerous subsequent decisions of the English Courts where this definition has been applied for the purpose of determining whether the person seeking judicial redress had *locus standi* to maintain the action. It will be seen that, according to this rule, it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule in regard to *locus standi* thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years."

On meticulously examine the plaint and evidences adduced in the proceedings, no landed passes/LSCs which can determine the legal properties of the plaintiffs upon the suit properties is found as admitted by the PWs during cross examinations. Although joint verification report was exhibit during the trial, no documentary evidence which witnessed that the plaintiffs have a legal rights over the suit properties is found as also held by the Hon'ble Supreme Court in **Khatri Hotels P.Ltd.& Anr. vs Union Of India & Anr.** decided on 9 September, 2011 in connection with Civil Appeal No.7773 of 2011 (Arising out of Special Leave Petition (C) No.22126 of 2009).

In other words, as elicited by the plaint and evidence adduced during the proceedings, the cause of action in the instant case had arisen on the basis of the said Notification/ Hriatirna Dt. 28th Dec., 2005 issued by the defendant no. 1 i.e. Project Director, Project Implementation Unit, Office of the Engineer in Chief, Public Works Department. Whether he is competent to issue such Notification for constitution of Joint Verification Team for additional requirement of land or alteration/change of the approved acquired land for the said road construction and further to instruct the concerned persons/officials as per the rules of business or not is also required not to eschew. Needless to say is that the defendant no. 1 is the agent of the state of Mizoram, circular or office order may be within his authority, but notification for guidelines may be beyond his authority. Our democratic polity requires basic principles as held in **Jaipur Development**

Authority & Ors. vs Vijay Kumar Data & Anr decided on 12 July, 2011 in connection with Civil Appeal No. 7374 of 2003, the Supreme Court has held that-

> "33. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor it was authenticated manner prescribed by the Rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution."

And in **Narmada Bachao Andolan vs State Of M.P.** decided on 26 July, 2011 in connection with Civil Appeal No. 3726 of 2011, the Supreme Court has held that-

> "The decision of the individual Minister cannot be treated as the decision of the State Government and the notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void."

With regards to land acquisition process, the matter is governed by the archaic Land Acquisition Act, 1894, recently, there was one bold judgment of Hon'ble Supreme Court in **State Of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August, 2011 in connection with Civil Appeal No.5374 of 2005, wherein, the Supreme Court has held that-

> "18. In our view, the State Government had rightly rejected the recommendations made by the District Magistrate for payment of Rs.70,99,951.50 because while doing so, the concerned officer conveniently ignored the fact that Ram Rattan Lal had already been declared as unauthorised occupant of the land in question. In the face of the decision taken by the State Government, the High Court could not have relied upon the recommendations made by the District Magistrate by treating the same as an order of the State Government. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]."

If it be a void order/notification viz. Ext. P-2, the law is very clear as held in the case of **Ritesh Tewari & Anr. vs State Of U.P.& Ors.** decided on 21 September, 2010 in connection with Civil Appeal No. 8178/2010 (Arising out of S.L.P.(C) NO. 2786/2009), the Supreme Court has held that-

> "...26. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (Vide Upen Chandra Gogoi Vs. State of Assam & Ors., (1998) 3 SCC 381; Satchidananda Misra Vs. State of Orissa & Ors., (2004) 8 SCC 599; and Regional Manager, SBI Vs. Rakesh Kumar Tewari, (2006) 1 SCC 530)."

Also in **C. Albert Morris Vs. K. Chandrasekaran & Ors**., (2006) 1 SCC 228, the Supreme Court held that a right in law exists only and only when it has a lawful origin. And in **Mangal Prasad Tamoli (dead) by LRs. Vs. Narvadeshwar Mishra (dead) by LRs. & Ors**., (2005) 3 SCC 422, the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside.

In this holistic view, solely based on the Ext. P-2 which is blindly issued by the defendant no. 1 without quoting his competency in the said notification itself like whether delegated the power or not is not sustain in law in the light of the edifice of our holy constitution of India as held in **Jaipur Development Authority & Ors. vs Vijay Kumar Data & Anr (supra.)** and in **State Of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors. (supra.)**. I therefore fails to see the locus standi of the plaintiffs to file the instant suit.

Issue No. 4
Whether the plaintiffs has cause of action against the defendants or not.

The very terminology of cause of action is already settled in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

> "A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

Also vide in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr**. decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475.

In the instant case, without producing landed passes/LSCs and without showing their legal rights, the plaintiffs blindly filed the suit on the basis of the report of Joint Verification Team constituted by the defendant no. 1. Also in the plaint itself, without mentioning the exact quantum of relief sought, it was simply prayed to grant adequate compensation to the plaintiffs. As deposed by DW-1 of the defendant no. 1 Ext. P-2 viz. Notification Dt. 28th Dec., 2005 which was issued under Memo No. MPWD-7/PIU/RAP/99-Vol. 1/304 Dt. 28th Dec., 2005 itself also speaks that solely on the grounds of unforeseen requirements of land for the said road construction due to alteration/change and in an exceptional cases, land can be further acquired on the basis of the Joint Verification Team consists of the (i) Land owner concerned (ii) President of Village Council concerned or his representative (iii) NGO Consultant Sub-Professional Staff (iv) Representative of contractor and (iv) Representative of Supervision consultant. In the instant case, no land is required but merely because of debris, the survived crops and trees were calculated. Pertinently, as deposed by DW-2 of defendant no. 1, only survived crops and trees were counted by the joint verification team, if it be true, what is the necessary of compensation for such survived crops and trees.

However, Ext. P- 7 to 9 is the alleged report of joint verification team, on that basis only, the suit is being filed. Only tree (Thing) is also claimed as item no. 20 in Ext. P- 7, how can it be assessed the value as per the guidelines issued by the Revenue authorities from time to time. Thus, I fails to see clear cause of action in favour of the plaintiff but against the defendants.

Issue No. 5
Whether the plaintiffs are entitled to the relief claimed or not. If so, from whom and to what extend.

As per the lengthy discussions under various issues above, I find no reasons to grant the relief claimed by the plaintiffs in the instant suit.

Pertinently, the reliance taken by Mr. Michael Zothankhuma in the case of **State Bank Of India vs Shyama Devi** decided on 5 May, 1978 reported in 1978 AIR 1263, 1978 SCR (3) 1009, wherein, the Supreme Court by taking the ratio laid down in Leesh River Tea Co. Ltd. & Ors. v. British India Steam Navigation Co. Ltd., [1966] 3 All E.R. 593 has opined that-

> "The first of these principles is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without his actual fault or privity and without the fault or neglect of his agents of servants in the course of their employment.

> ….The plaintiff's case, as already noticed, in the plaint was that the various amounts had been handed over in cash or in cheque by her to K. D. Shukla, an employee of the Bank for crediting in her Savings Bank- account with the defendant-Bank. But Shukla fraudulently misappropriated or converted the same to his own use.
>
> ….The rule in Leesh River Tea Co.'s case (supra), squarely applies to this situation. The appellant-Bank was therefore, not liable to make good the loss of Rs. 7,000/- caused to the Respondent, by the act of K. D. Shukla, while the latter was acting as an agent of the plaintiff and not within the scope of his employment with the Bank. Nor could the fact that false and fictitious entries to cover up his fraud, were made by K. D. Shukla in the Pass Book of the respondent and in the Ledger Account of Bhagwati Prasad & Sons, make the embezzlement committed by Shukla an act committed in the course of his employment with the Bank.…."

The ratio is cogent that when the agent or employees acted arbitrarily beyond the zeal of their official capacity, vicarious liability can not be invoked upon the employer. Even in the instant case, whether the defendant no. 3 acted for the fulfillment of the directions/instructions of the defendant no. 1 is the task. Moreover, the observations of Hon'ble Gauhati High Court, Aizawl Bench in Writ Petition (C) No. 21 of 2009 Dt. 24th Feb., 2010 is also quite different from the instant case as the Gauhati High Court dealt the matter of land acquisition. Obviously, as the land will be needed for public purposes, there can be no liabilities of the employee/contractor. In the instant case, the area of land acquisition is clearly delineated but release of debris and other earth spoils in others land beyond the elaka acquired for the said road construction is a crux.

Howsoever, deposition of the lone DW for defendant no. 3 is true and acceptable, verification of the instant claimed was signed on 2.4.2007 and 4.4.2007. In the meantime, the Special Land Acquisition Officer sent a letter to the defendant no. 2 on 14th Dec., 2007 marked as Ext. P-3 for instruction to take cautious measures from rolling down of debris to the private lands. The defendant no. 2 thereby forwarded the matter to the defendant no. 3 on 17th Dec., 2007 marked as Ext. P-4. It clearly revealed that when instruction was given to the defendant no. 3 by embarking their liabilities in the instant disputes, all the works in the disputed area were already done. I therefore find any liabilities on the defendant no. 3 as intend to insist on the basis of Ext. P-3 and Ext. P-4.

ORDER

UPON appreciating evidences adduced during the proceedings and as per the findings discussed as above, it is hereby ORDERED that the suit is dismissed on merit and maintainability akin to the findings of Hon'ble Supreme Court in **Sainath Mandir Trust vs Vijaya & Ors** decided on 13

December, 2010 in connection with Civil Appeal No. 3030 of 2004, wherein, the Supreme Court has held that-

> "The Courts below also failed to take into consideration that the suit was bad for non- joinder of necessary parties in terms of Order XXXI Rule 2 of C.P.C. as all the trustees of the Trust were not joined as parties and hence the Trial Court was clearly justified in dismissing the suit as not maintainable for want of necessary permission of the Charity Commissioner under Sections 50 and 51 of the Act as well as non-joinder of all the trustees in terms of Order XXXI Rule 2 of the C.P.C. It was also submitted that the appellant-trust has been in uninterrupted possession of the suit land since 31.1.1974 and the suit property in question had already been included and recorded by the Charity Commissioner as a property of the trust and the Change Report to that effect was required in terms of Section 22 of the Bombay Public Trusts Act. It was finally submitted that the property in question was gifted for a pious purpose of construction of `Bhakta Niwas' and, therefore, considering the aforesaid factors and the comparative hardships to the parties, the suit for possession is not only fit to be dismissed on the ground of its maintainability but even on the merits of the matter."

Parties are directed to bear their own costs, the case shall stand disposed of accordingly.

Give this copy and decree to both parties and all concerned.

Given under my hand and seal of this court on this 24th November, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. MS/25/2009, Sr. CJ (A)/ Dated Aizawl, the 24th Nov., 2011

Copy to:

1. Mr. H. Chalkhuma S/o Thangzika (L), Venghnuai, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. R.L. Thanmawia S/o Vanthuama, Venghnuai, Aizawl through Mr. L.H. Lianhrima, Adv.
3. Smt. Lalnunmawii D/o Thangphunga, Venghnuai- Aizawl through Mr. L.H. Lianhrima, Adv.

4. Mr. C.T. Khuaia S/o Thanliana, Venghnuai- Aizawl through Mr. L.H. Lianhrima, Adv.
5. Mr. R. Lalrinawma S/o Pachhunga (L), Venghnuai- Aizawl through Mr. L.H. Lianhrima, Adv.
6. The Project Director, Project Implementation Unit, Office of the Engineer in Chief, Public Works Department- Tuikhuahtlang, Aizawl through Mr. R.C. Thanga, Govt. Advocate
7. The Team Leader, Sheladia Associates Inc. USA, A-1/39, Mual Veng-Chaltlang, Aizawl
8. The Chief Project Manager, RBM-TANTIA (JV), Falkland, Aizawl through Mr. Michael Zothankhuma, Sr. Adv.
9. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District-Aizawl
10. Case record

PESKAR