

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

CIVIL SUIT NO. 15 OF 2003

Plaintiff:

Mr. K. Ringzuala
S/o K. Hmingliana
Durtlang- Leitan

By Advocates

: 1. Mr. W. Sam Joseph, Adv.
2. Mr. H. Laltanpuia, Adv.
3. Mr. Zochhuana, Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the
Govt. of Mizoram
Mizoram- Aizawl
2. The Secretary to the Govt. of Mizoram
Public Works Department
Mizoram- Aizawl
3. The Engineer in Chief
Public Works Department
Govt. of Mizoram
4. The Chief Engineer
Public Works Department
Govt. of Mizoram
5. The Executive Engineer
Road North Division
Public Works Department
Govt. of Mizoram
6. The Sub-Divisional Officer
Road North Division
Public Works Department
Govt. of Mizoram

By Advocate's

: Mr. Michael Zothankhuma, Sr. Adv.

Proforma defendant:

The Director
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocate's

: Mr. R. Lalremruata, AGA

Date of Arguments : 22-08-2011

Date of Judgment & Order : 02-09-2011

BEFORE

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

JUDGMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff is the legal owner of the land covered under the said LSC No.Azl-1371 of 1992 located at Durtlang Leitan and thereby constructed three storey building within the said land and he let out some portion of the building on rent to tenants and received a monthly income of Rs.3000/- . The plaintiff has been living in the main portion of the building. The plaintiff in his plaint further submitted that the PWD Road North Division under the Govt. of Mizoram has taken up the task of widening the road from Bawngkawn upto the Durtlang Leitan. As the hillside of the road is rocky the defendant no.5 and 6 blasted with explosives the rocky portion of the land in order to remove the earth and rocks. In fact the PWD used explosives, JCB and big Crane like Hitachi and other earth moving equipments to remove the earth adjacent to the building of the plaintiff. The work of widening the road was taken up first from the Bawngkawn side and when they reached near the building of the plaintiff, the plaintiff requested the defendant no. 5 and 6 not to use explosives to blast the rocky portion adjacent to the land and building of the plaintiff and requested them to do the earth cutting adjacent to the plaintiff's building manually, but without giving any heed to the request made by the plaintiff the defendants nos. 5 and 6 started blasting the rocky portion of the land by using explosives. Due to the use of explosives in blasting the rocky portion of the land adjacent to the building of the plaintiff, the plaintiff's building was completely damaged and the building is uninhabitable and also the said building is beyond repair. Due to the huge cracks developed in the building it would be dangerous to live within the said building. As the plaintiff has no other place to stay he is forced to live in the said building even though it is uninhabitable. The plaintiff is living in the said building with constant fear.

That the plaintiff approached the defendants many times to stop the widening of the road adjacent to the building of the plaintiff so as to save his building and lives, but the defendants are continuing to blast and do all the acts detrimental to the interest of the plaintiff. In fact the plaintiff has written to the defendant no.5 requesting him not to continue with the widening work adjacent to the building of the plaintiff, but he did not give any heed to the plaintiff's request and continued with the blasting.

Since the defendants nos. 5 and 6 continued with blasting the rock adjacent to the building of the plaintiff he approached the Chairman of the Disaster Management Committee, Aizawl District to look in to the matter. The Chairman in turn had requested the Geologist to verify the matter. Accordingly, the Geologist had verified and submitted a report stating that there is possibility of damage and made certain recommendations. Even after the report was made by the Geologists, the defendants indiscriminately blasted the said portion in a hurry to finish the widening the said without looking in to the safety of the plaintiff and his family members and others occupying the building of the plaintiff. The plaintiff also approached PWD Building division to make the estimate for re-construction of the said

building within the land of the plaintiff, but they refused to do as the work was done by the PWD, hence the plaintiff approached other technical persons to make the estimate for re-construction of the said building within the land of the plaintiff, accordingly, the SDO of the PHE department had made the estimate for re-construction of the said building and as per the said estimate it would cost more than Rs.30,66,900/- for re-constructing the said building within the plaintiff's land. As the alleged illegal action of the defendants the plaintiff has no other option but to re-construct the building so as to live without fear of the building being collapsed. The plaintiff is entitled to get damages from the defendant for putting him and his family members in great mental agony and anguish and the defendants should pay a sum of Rs.10,00,000/- as damages in addition to the estimated amount for re-construction of the building. The cause of action arose when the defendants started blasting the rocky portion and removal of the earth adjacent to the building of the plaintiff in the month of October 2003. A requisite court fees at Rs. 5,000/- is also paid by the plaintiff. The Plaintiff therefore prays that-

- a) Let a decree be passed declaring that the building within the land covered under LSC no. 1371 of 1992 was damaged due to the widening of the Bawngkawn to Durtlang road by the defendants.
- b) Let a decree be passed declaring that the plaintiff is entitled to get the compensation of Rs.40,66,900/- for the damaged caused to the building and the land and the defendants be directed to pay the same to the plaintiff.
- c) By way of permanent injunction the defendants 5 and 6 be restrained from doing any widening of the road adjacent to the building of the plaintiff which is located at the Dutlang Leitan.
- d) Let the cost of the suit and interest pendente lite over the compensation at the rate of 18% per annum be decreed in favour of the plaintiff against the defendants.
- e) Let any other relief to which the plaintiff is entitled according to Justice, Equity and Good Conscience be decreed in favour of the plaintiff.

The defendants submitted written statement and denied the averments made in the plaint and stated that the semi pucca house along the road rented out to tenants was constructed recently on stable rock bed by slicing out portion of the land from the main house. It is evident from the inspection of the site of the plaintiff's house that the structure of the house where the Plaintiff resides is not firmly embedded on the firm rock bed but on the comparatively unstable loose earth over laying. In the interest of the public, the defendant took up the project of widening Bawngkawn to Durtlang Leitan road to be completed by March, 2004 and as such hired the services of Central Mining Research Institute (CMRI) Dhanbad, Jharkand who deputed four scientists under the leadership of Mr. C. Sawmliana, Scientist 'B' Blasting Department under whose supervision and guidance the project of widening of Bawngkawn to Durtlang Leitan road was undertaken from the start to the end. The project was under supervision of C.M.R.I. Scientist with modern equipments such as ground vibration monitoring instruments (seismographs and constructed control blasting to maintain ground vibrations within permissible limit (Indian Standard) and to control fly rock as well as any kind of damage to any building in its closest proximity which was witnessed by people from

the vicinity with genuine appreciation. It is further submitted that JCB and Excavator (Hitachi) were used for removing the stone boulder and loose earth and not for any other purpose as the control blasting was successful enough in slicing out rock mass for widening. It may be pertinent to mention that the progress of widening of the road started from Bawngkawn side towards Durtlang Leitan without any hindrance and complaints and on reaching the vicinity of the plaintiff's house, the said scientist C. Sawmliana supervised and conducted control blasting on 18.11.03 and ground vibration was monitored at the distance of 2.5.meters from the blasting source which is 3 meters from the plaintiff's house which means that the blasting source is 5.50 metres from the plaintiff's house with the permission of the plaintiff himself witnessed by V.C.P. Durtlang Leitan. It may be noted that as per Indian Standard Institution 1973, the ground vibration recorded on 18.10.2003 from the residence of the plaintiff was 50.1 mm/Sec. which was not sufficient to create any crack to the concrete wall or floor as well as any rock mass. To cause any crack to soil, weathered or soft rock conditions Peak Particle Velocity should be more than 70mm/Sec. And for hard rock condition Peak Particle Velocity should be more than 100mm/Sec. Therefore, in no case, ground vibration caused by blasting which reads Peak Particle Velocity 50.1 mm/Sec at 2.50 metres from the source of blasting which is 5.50 metres away from the plaintiff's house could cause any crack or damage of any degree to the plaintiff's house. As such, there was no danger nor damage caused in the vicinity of the plaintiff's house nor within his house till date as a result of the control blasting. As for the allegation of the huge crack developed within the house of the plaintiff, it may be noted that the alleged crack developed on the floor and beam of the plaintiff were already noticed even before any blasting was conducted which was witnessed by the V.C.P. Leitan, the Plaintiff and the PWD Officers. In fact, the crack on the floor is caused by shrinkage of concrete and cracks in the beam is due to inadequacy of stirrup sizes and spacing. Therefore, it is evident that the crack developed is the handiwork of the plaintiff himself which is admitted by him in front of witnesses and further blasting conducted at ground level was at a distance of 2.5.meters from the residence of Pu Thanfala which is just that Opposite of the plaintiff's house and there was no damage caused to Pu Thanfala's house nor within its vicinity and the question of causing damage to the plaintiff's house does not arise as Pu Thanfala's house is nearer to source of ground blasting than the plaintiff's house. It is further submitted that the control blasting obtained a beautiful, smooth wall (no over break) with no cracks apparent on the face of the finished wall and as such there is no possibility of cracks of any measure within the surface of the land which does not appear on the surface of the finished wall. Hence, any allegation of damage to the plaintiff's house has no connection whatsoever with the control blasting in the project of widening of road at Leitan Durtlang by the defendants and as such there is no liability for any damages towards the plaintiff. The defendants are totally unaware of the spot verification conducted by the Geologist and its findings as no information was given to the defendant. Hence the said findings cannot be accepted by the defendants. The plaintiff has never approached the PWD building division for assessment for re-construction of his house. It is humbly submitted that S.D.O. PHE department is not an authority to assess the Building and further the question of re-construction of the house of the plaintiff does not arise at all. From the assessment made by Estate Officer, PWD building Division, it is evident that the assessment made by the S.D.O. PHE is imaginary and without any basis and further there is no recommendation for re-construction of the plaintiff's house. It is humbly submitted that the execution of widening of Bawngkawn to Durtlang Leitan Road was done within the road reserve area and the question of illegality of the defendants

does not arise at all and further by any means no mental agony nor any sort of mental aggravation has been caused to the plaintiff and his family members by the action of the defendants. As such, the question of paying Rs.10 lakhs to the plaintiff by the defendant is too farfetched, without any basis and any proof. Accordingly, the defendants prayed the court to dismiss the suit.

ISSUES

The issues were framed on 24/2/2004 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 suit is maintainable in its present form and style
2. Whether the house of the plaintiff was damaged/cracked. If so to what extend. And if so, whether it was caused by blasting rocks by the defendants.
3. 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. K. Ringzuala S/o K. Hmingliana, Durtlang Leitan (Hereinafter referred to him as PW-1)
2. Mr. David Lalrintluanga S/o Lalenga, Durtlang Leitan (Hereinafter referred to him as PW-2)
3. Mr. H. Lalbiakkima, Geologist (Junior), Geology & Mining Wing, Directorate of Industries, Mizoram, Aizawl. (Hereinafter referred to him as PW-3)
4. Mr. K. Laldingliana S/o Zathangpuia, Durtlang Leitan, Member, Village Council, Durtlang, Aizawl (Hereinafter referred to him as PW-4)
5. Smt. K. Lalnghinglovi W/o L.P. Lalngheta, Durtlang Leitan (Hereinafter referred to her as PW-5)
6. Er. Lallianmawia S/o K.T. Thanga, Serchhip (Hereinafter referred to him as PW-6)
7. Mr. Zairemmawia S/o Kapphunga, Durtlang Leitan, President, YMA, Durtlang Leitan Branch, Aizawl (Hereinafter referred to him as PW-7)

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 Land Settlement Certificate

Ext. P-2 is a letter dt. 20/10/2003 submitted to the EE, PWD, Aizawl Road North Division

Ext. P -2 (a) is his true signature

Ext. P-3 is a representation dt. 22.10.2003 submitted to the Chairman, Disaster Management Committee, Aizawl

Ext. P -3 (a) is his true signature

Ext. P-4 is Geotechnical Report of House Site at Durtlang Leitan

Ext. P-5 is estimate for re-construction of his building with retaining wall

Ext. P-6 is letter issued by EAC, Aizawl to CE and SE PWD

Ext. P-7 is re-investigation report done by Geologist (Jr.) Geology and Mining

Ext. P-8 is a letter dt. 7.11.2003 issued by the President, YMA, Durtlang Leitan

Ext. P-9 is a letter dt. 7.11.2003 issued by the President, Village Council, Durtlang Leitan

During cross examination, he deposed that Geo-technical report indicates that his building was damaged due to blasting and clearing of land/earth spoil by JCB and Bulldozer etc. He denied that he did not give consent to the PWD to construct the said road as the defendants had done near his site. He admitted that Mr. Sawmvela, Scientist (B) of the Central Mining Research Institute, Dhanbah was supervising and guiding blasting done by the PWD. The building and LSC by which is covered had a road reserved of around 3 metres. In the instant case, he claimed only compensation due to damaged of his buildings to re-construct the building. His building have three storied structure. He admitted that his father who started construction did not consult any Engineers for construction. He left the building sometime in October, 2003. In the presence of his wife, Mr. Sanghrima Chawngthu and Mr. Hranthanga Zote performed structure investigation of his building. His building is in the shape of a step, the pillars and beams of all the 3 floors are made of cement/concrete which the floors are made of hardened soil. The wall of all the 3 storeys were made of tin-sheets which the wall towards the backside are all made of stone (Cubic stone). The roofs of storeys are made of GI Sheets (tin sheets). He denied that before blasting of rocks near his house, there was no cracks in his building. He also denied that he had constructed his building within the road reserve. In his vicinity, he admitted that he alone have made a complaint whilst his neighbours did not have any complaint on such blasting of rocks.

In his re-examination, he further deposed that due to fear of collapse of the building, the occupants vacated the said building. When the blasting was in operation, the occupants of his buildings were asked to get out from his house.

The **PW-2** deposed in his examination in chief that he knows the plaintiff as living in their locality. When taking up of widening road construction from Bawngkawn to Durtlang Leitan by the PWD, Road North Division, as the hillside of the road is rocky, the defendants 5 and 6 blasted with explosives of the same and also used JCB and big crane Hitachi and other earth moving machineries to remove the earth/soil adjacent to the building of the plaintiff. When the defendants intended to work near the building of the plaintiff, the plaintiff asked them not to use any explosive but refused the same. Due to use of explosives the building of the plaintiff was completely damaged and endanger to stay ahead. The plaintiff and other occupants therefore vacated the building in the month of October, 2003 and occupied their house at Rs. 800/- per month till May, 2005. The plaintiff later constructed a new Assam type building near his suit building.

In his cross examination, he deposed that he is living at Durtlang Leitan, he saw the crack on the floor which is in between the beams in the house of the plaintiff. He did not know that whether the plaintiff permitted the defendants to use JCB and crane etc. during widening of road. He denied that there was no cracking of the building of the plaintiff due to widening construction of the road from Bawngkawn to Durtlang.

The **PW-3** in his examination in chief deposed that he is working as Geologist (Junior) in the Geology and Mining under Govt. of Mizoram. As requested by the Deputy Commissioner, Aizawl under No. C. 16011/14/94-DC (A)/52, dt. 23.10.2003, he and one another Geologist went to the spot for verification, he affirmed that the defendants used explosives substances, JCB and big crane for the said work. They found that even though the PWD used control blasting for cutting of the roadside, the department at the floor portion of the road also applied blasting without control system. The shock triggered by this uncontrolled blasting at the floor of the road can be felt from a relatively far distance of about 500 m or so. This shock might have produced breaking of cementing materials between the rock beds. The breaking of this cohesive forces may not cause immediate failure of rock bed but it can pave a good chanced way for seepages and produced plane of weakness along the rock place resulting susceptibility of failure for the years to come. Hence, proper precautionary measures have to be taken to cope with possible mishaps. They also made suggestions for future in this task. As conducted second spot verification on 7th Nov., 2003, they found that cracks had been developed on the floor and beam of the house. Cracks of about 21 ft length was developed on the floor of the house with 1" width and smaller cracks were developed on 5th Nov., 2003 at the beam. These cracks on the floor and the house were not there when they conducted investigation on 24th Oct., 2003. This shows that the house site was clearly affected and no longer safe for living on with this present condition. He concluded that the cracks in the house of the plaintiff is caused by the blasting and removal of the earth in the process of the widening of the road by the PWD. Ext. P- 4 is Geotechnical report, Ext. P- 7 is Re-Investigation report.

During his cross examination, he admitted that he do not have any knowledge on blasting technology. The distance of the plaintiff's house from the edge of the road prior to widening and blasting was around 8 ft. There was around two RCC buildings located near the edge of the road besides the building of the plaintiff. He denied that the PWD did not take uncontrolled blasting. When they went to the house of the plaintiff in October, 2003, there was no cracks in his house but when they again went on 7th Nov., 2003, he found cracks in the building of the plaintiff's house but he did not know the quality of materials used for the said building and the tenure of the said building. They did not have any scientific test of the soil which surrounded the building of the plaintiff.

The **PW- 4** in his examination in chief deposed that the PWD Road North Division under the Govt. of Mizoram has taken up the task of widening the road from Bawngkawn upto the Durtlang Leitan. As the hillside of the road is rocky the defendant no.5 and 6 blasted with explosives the rocky portion of the land in order to remove the earth and rocks. In fact the PWD used explosives, JCB and big Crane like Hitachi and other earth moving equipments to remove the earth adjacent to the building of the plaintiff. The work of widening the road was taken up first from the Bawngkawn side and when they reached near the building of the plaintiff, the plaintiff requested the defendant no.5 and 6 not to use explosives to blast the rocky portion adjacent to the land and building of the plaintiff and requested them to do the earth cutting adjacent to the plaintiff's building manually, but without giving any heed to the request made by the plaintiff the defendants nos. 5 and 6 started blasting the rocky portion of the land by using explosives. Due to the use of explosives in blasting the rocky portion of the land adjacent to the building of the plaintiff, the plaintiff's building was completely damaged and the building is uninhabitable and also the said building is beyond repair. Due to the huge cracks developed in

the building it would be dangerous to live within the said building. As the plaintiff has no other place to stay he is forced to live in the said building even though it is uninhabitable. The plaintiff is living in the said building with constant fear.

In his cross examination, he deposed that the Geological report is correct in all aspect but he never read the PWD report. He did not know whether the plaintiff asked contract work to the PWD or not. The distance of the building of the plaintiff from the edge of the road is now around 4 ft. He admitted that the widening road construction done by the PWD was completed sometimes in 2003 – 2004 and no road widening was done during 2005. The floor of the lowest floor is cemented and there has been no usage of iron rod in the floor. He did not know the quality of the materials used to construct the suit building. He did not know whether PWD controlled blasting while constructing the road or not.

The **PW-5** in her examination in chief deposed that being a tenant for running a cement shop, she used to paid Rs. 1000/- per month as house rent to the plaintiff in the floor below the main building. Due to cracks of the building, she also vacated the building in Oct., 2003.

During her cross examination, she deposed that the front portion of the building was made of tinned sheets, the back wall was made of cubic stones. Her rented house was at the roadside level, the flat above her rented house was made of tin sheet. The residence of the plaintiff was separate building which was adjacent to one rented shop but sharing common stone wall at the backside. She admitted that she did not know the caused of damaged of the building of the plaintiff whether blasting or not.

The **PW- 6** in his examination in chief deposed that he is presently posted at Serchhip Sub-Division, PHE Department, Govt. of Mizoram and he make the estimate for re-construction of RCC building including retaining wall etc. for the plaintiff. He personally went to the spot and prepared estimate as per PWD Schedule of rate, 2003. The area of damaged building was $11.50 \times 7.30 = 83.95$ M2 and he prepared estimate for the same size and the cost of his calculation is at Rs. 19,06,732/-. As required dismantling of the said building for re-construction, his calculation for such dismantling is at Rs. 2,65,518/-. The grant total of his estimate is Rs. 30,66,900/-. Ext. P- 5 (a) is his signature and Ext. P- 5 (b) is his true signature (Objected by learned counsel for the depts).

During his cross examination, he deposed that he obtained B.E. (Mechanical) and never studied blasting technology. The shop in the building had tiled walls and they were also wooden planks, the roof of the shop was made of wooden planks. The cement structure and the plaintiff's shop were all joined together.

The **PW- 7** in his examination in chief deposed that he was the President of YMA, Leitan Branch during 2003. As reported to them by the plaintiff, they held a committee meeting as YMA and visited the building of the plaintiff and found cracks in the floor of the said building due to which it was uninhabitable. In their opinion, it was because of blasting done by the defendants. Ext. P- 8 and Ext. P- 8 A are issued by him.

In his cross examination, he deposed that he did not have any vital opinion in regards to the cause of cracks of the building of the plaintiff except mere presumption.

For the defendants:

The defendants had produced the following witnesses namely-

1. Dr. C. Sawmliana, Scientist E-1, Blasting Department, Central Institute of Mining and Fuel Research (CIMFR) (Hereinafter referred to as DW-1)
2. Mr. Sanghrima Chawngthu, Executive Engineer, National Highway Div. – II, Govt. of Mizoram (Hereinafter referred to as DW-2)

The **DW- 1** in his examination in chief deposed that he had done works more than 30 different mines of the country mainly related to controlled blasting and its environmental effect. He had also completed more than 35 Projects as Principal Investigator which involved Controlled Blasting. With the request from the Engineer in Chief, PWD, Govt. of Mizoram dt. 11.08.2003, Blasting Department, CIMFR, Dhanbad carried out scientific investigations for controlled blasting for safe and speedy excavation of the rock at Durtlang-Leitan. CIMFR had provided the total controlled blast design including selection of drilling machines, blasthole diameters, drilling pattern of blastholes, small blasthole diameter (32 mm) was selected to control ground vibration and flyrock within the safe limit. Smooth wall blasting technique was selected for smooth and stable final wall. Being the Project leader, he was completely involved in the control blasting operations. He had personally carried out explosive charging, final connection and final firing of the blasting rounds. By using micro-computer based seismograph (for blast vibration monitoring), he had monitored all the blasts. He had worked with Dr. P. Pal Roy, Scientist – ‘F’ and Head Blasting Department, CIMFR, Dhanbad for field investigation to establish blast design patterns at Durtlang Leitan (through cutting) of Bawngkawn to Durtlang Road. The field investigations were conducted during September to 19th Oct., 2003. During those periods, more than 20 blasts were conducted and consequent impacts were monitored to record the Peak particle velocity (PPV mm/s), their dominant frequencies (in Hz) and air overpressure by using seismographs, systematic drilling and charging patterns alongwith muffling were used to control fly rock. Smooth blasting technique was used to control final wall damage and to obtain final smooth wall. He was closely associated with the blasting operations, charged explosive himself, made connection and monitored ground vibration using micro compute based seismograph. Ext. D- 3 is the interim project report made by him and Dr. P. Pal, Ext. D- 3 (a) is his true signature. The claim of the plaintiff that huge cracks developed in his building due to the blasting of the rocky portion of the land adjacent to his building is wrong and not borne out by the field investigation and data collected by them with respect to blasting. In his opinion, it was not because of blasting of rocks. He further mentioned that higher frequency is safer, less dangerous for structures, low vibration is less dangerous than higher vibration as vibration means displacement of a particle or medium per second. The safe vibration limit for a structure based on soil/weathered or soft rock condition is 70 millimetres per second (mm/s) as per IS 6922 of 1973. In case of hard rock structure foundation the safe vibration limit is below 100 mm/s. The dangerous frequency of seismic waves generated by blasting on the plaintiff's building would have to be less than 8 hertz. He comments as a blasting expert that ground vibration from a blast can be felt even at a distance of 1 km. This however does not mean that the vibration is dangerous and having any potential damage value to any structure unless the grounds vibration value and the corresponding frequency is measured and checked by a seismograph designed specifically for blasting. Vibrations recorded during the field

investigation were found to be safe so far the structural damage was concerned. Maximum ground vibration recorded in the blast was 50.1 mm/s at a distance of only 2.5 m from the blasting source which was within the safe zone from slope stability point of view for the rock mass. No immediate damage was observed in the nearby structure, in any round of blast. However during his controlled blasting and supervision of the Leitan area in 2003, no person other than himself and Dr. P.P. Roy used any instrument to measure the controlled blasting.

During his cross examination, he further deposed that when he took up the measurement of the bedding rock, the rock inclination is 23° towards east, that means the dipping of the rock is towards Tuirial side. Universal Testing Machine, Schmidt Hammer etc. were presently used to measure the hardness of the rock. He used Schmidt Hammer in the instant work. He admitted that the building of the plaintiff was nearest to the place of blasting. As per his advised, the contractor used 2 cartridge of 125 grams of cartridge explosive containing emulsion type explosive.

The **DW- 2** in his examination in chief deposed that as per ISI, 1973, the ground vibration recorded from the residence of the plaintiff was 50.1 mm/sec which cannot create any crack to the concrete wall or floor as well as any rock mass. To cause any crack to the soil, weathered or soft rock conditions Peak Particle Velocity should be more than 70 mm/sec and for hard rock condition it should be more than 100 mm/sec. Therefore, in no case, ground vibration caused by blasting which reads Peak Particle Velocity 50.1 mm/sec at 2.50 metres from the source of blasting which is 5.50 metres away from the plaintiff's house. As such there was no danger nor damage caused in the vicinity of the plaintiff's house nor to his building/house as a result of the controlled blasting. He further deposed that the crack on the floor of the building of the plaintiff is caused by shrinkage of concrete and crack in the beam is due to inadequacy of stirrup sizes and spacing. The estimate of the building to re-construct by SDO, PHE is imaginary and without any basis. He had also conducted spot verification of the building of the plaintiff. The plaintiff has also constructed a new building with RCC structure adjacent to the old building and which is bigger and larger than the old building. Also the 3 beams including the alleged cracked beam has been removed while the old columns are still being used. It indicates that the soil is stable for building. As per the assessment made by Smt. B. Vanlalhrui, Estate Officer, PWD and Mr. V.L. Nghinglova, EE, PWD (Building Division) on the basis of the measurement taken on 21.11.2003, the valuation of the building is at Rs. 3,77,224/-. He further deposed that-

Ext. D-1 is letter dt. 9.12.2003 written by VCP, Leitan

Ext. D-2 is structural investigation report of the building of the plaintiff

Ext. D-2 (a) is his signature

Ext. D- 3 is Interim Project report

Ext. D-4 is report dt. 21.11.2003 in respect of assessment of the building of the plaintiff

Ext. D-5 and 6 are photograph taken of the control blasting taken.

During his cross examination, he deposed that the rocky portion which were blasted by them belongs to the category of sedimentary rocks. He is civil engineer by profession. He admitted that during widening of road of the same, they used JCB and Hitachi Excavator.

ARGUMENTS

Mr. W. Sam Joseph, learned counsel for the plaintiff argued that the witnesses examined by the defendants were interested parties. In fact the DW Sanghrima Chongthu was the person in-charge of the widening of the road and who was trying not to pay any compensation to the plaintiff. It is clear from the evidence of the PWs that before the defendants conducted the Blast there was no crack and after the blast was conducted cracks developed in the building of the plaintiff. The other witness examined by the defendants was the one came to conduct the blast. Hence both of them are interested witnesses. The defendants marked some documents as D-1, D-2, D-4 but the persons who had prepared the said documents were not called as witnesses even though their names were cited as witnesses in the list of witnesses submitted by the defendants. Pu Zahmingthanga who purported to have written the statement marked as Ext. D-1 was not called as witness. Further, the person who prepared the assessment of the building marked as D-4 was not produced as witness and the person who prepared conducted the structural investigation was also not examined as witness. This shows that the defendants have something to hide. As per the provisions of S.114 illustration (g) The court may presume - that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

He further submitted that the defendants relied on the evidence of only two witnesses who were interested witnesses. Whereas the plaintiff examined himself and also the other witnesses who are from the locality and the Geologist who conducted the verification at the instance of the Deputy Commissioner, Aizawl District. He has proved the Geotechnical Report and Re-investigation Report marked as Ext. P-4 and P-7. 'Sedimentary rock' is defined wikipedia as "*Sedimentary rock* is a type of rock that is formed by sedimentation of material at the Earth's surface and within bodies of water. Sedimentation is the collective name for processes that cause mineral and/or organic particles (detritus) to settle and accumulate or minerals to precipitate from a solution. Particles that form a sedimentary rock by accumulating are called sediment. Before being deposited, sediment was formed by weathering and erosion in a source area, and then transported to the place of deposition by water, wind, mass movement or glaciers which are called agents of denudation." The sedimentary rocks which are found in Mizoram are soft and it crumbles during any blast. He concluded after delving into evidences that it is clear that before the blasting was done by the defendants nos. 5 and 6 there was no crack in the building and the crack was developed after the blast and it is very clear that the Plaintiff's building was the closest to the blast location, hence it is clear that the crack occurred due to the blasting only. The defendants witnesses may say anything but they are interested witnesses. As mentioned above both of them were engaged by the government to widening the said portion of the road by using minimum damage. They being the interested persons can say only that nothing happened to the building due to the blasting, but in reality the crack occurred due to the blasting only. Hence the plaintiff is entitled to get all the reliefs claimed by him.

Mr. Michael Zothankhuma, learned senior advocate for the defendants stressed that on scrutiny of the various evidence on hand clearly shows that the claim of the plaintiff in this present civil suit is nothing more than an afterthought wherein the plaintiff is trying to take advantage of rock blasting conducted in the vicinity of his property thereby making the defendants/ Government pay for damage to his property which the

defendants did not cause. Moreover, if the shocks from the blast had been so dangerous so as to cause damage to the property of the plaintiff, the question still remains as to how the property of Mr. Thanfala, whose house is situated closer to the blasting site, is undamaged at all? As such, this entire suit is nothing more than a shrewd attempt by the plaintiff to take advantage of a situation i.e. blasting of rocks close to his property for monetary gain. With regards to the Estimate Report prepared by one Mr. Lallianmawia, Engineer of the PHE department, based on which the plaintiff is claiming an amount of Rs. 30,66,900/- (Rupees Thirty Lakhs Sixty Six Thousand and Nine Hundred only) as cost for reconstruction of his house, it must be pointed out that normally all Government buildings which is required to be assessed for evaluation by the Government and accepted by the Government is done by the PWD, Building Division. As such, the PHE department is not the concerned person so far as assessment of building is concerned as such they do not have any authority with regards to the same.

He further delved that however, the widening of the road was done in the road reserve area as can be seen from the sketch map of the plaintiffs LSC which shows the plaintiffs land begins at some distance from the main road. The plaintiff does not have any rights to claim the said land between his land and the main road as his own. However, such land is usually claimed by most people as their own land illegally and as he did not receive any money, or contract, he has filed the present vindictive fabricated case for making money. He therefore most humbly prayed that this Court may dismiss the present case as it is devoid of any merit.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

Even on the plain reading of the plaint, cause of action is clearly disclosed, a requisite court fees is paid and filed within the permissible period of time. In short, I do not find any irregularities which vitiate the proceedings.

Issue No. 2

Whether the house of the plaintiff was damaged/cracked. If so to what extend. And if so, whether it was caused by blasting rocks by the defendants.

As admitted by evidences of both parties, the building of the plaintiff was cracked in the floor and in the beams which impelled to vacate the building and further compelled to construct a new building adjacent to the previous building. Deposition of PW- 3 as Geologist who accurately conducted spot verification may be more reliable on the extend of the cracks, he deposed that as conducted second spot verification on 7th Nov., 2003, they found that cracks had been developed on the floor and beam of the house. Cracks of about 21 ft length was developed on the floor of the house with 1" width and smaller cracks were developed on 5th Nov., 2003 at the beam. These cracks on the floor and the house were not there when they conducted investigation on 24th Oct., 2003. This shows that the house site was clearly affected and no longer safe for living on with this present condition.

As clearly and undisputedly deposed by DWs 1 and 2, all precautionary measures were adopted for construction work of widening the road from Bawngkawn to Durtlang by employing more experts like eminent

Scientist of Blasting Department, Central Institute of Mining and Fuel Research (CIMFR), the scientist hailed from the said institute also cautious on the same by using all advance machines and tools to assess the safety work and perform smoothly without hurting/harming of others. No negligence on the part of the defendants is found even on perusal of evidences adduced by the plaintiff side. Meanwhile, as submitted by Mr. W. Sam Joseph, no conclusive evidence eliciting the cracks of the building of the plaintiff before blasting of rocks in the suit area were produced by the defendants. As deposed by PW-3, the cracks on the floor and the beams were not there when they conducted investigation on 24th Oct., 2003 but later found in their second investigation conducted on 7th Nov., 2003 which reveals that there was no immediate and sudden effect. The DW- 1 in his cross examination also admitted that the building of the plaintiff was nearest to the place of blasting whilst claiming other dwellers of buildings located in the vicinity of blasting preferred a complaint. Although DWs 1 and 2 comprehensively deposed all measures adopted to avoid any mishaps in the said blasting, I find no other reasons except due to blasting of the rock near the building of the plaintiff will be reasons to cause cracking of its floor and beams. Although maneuver by learned senior counsel for the defendants that other dwellers of the vicinity did not make any complaint, as admitted that the building of the plaintiff is nearest to the place of blasting, this ground may be answered in favour of the plaintiff.

The court duly appreciated the expertise of DWs 1 and 2 and other scientist involved in the said blasting of rocks, however, there can be a chance to have an effect like in the hilly terrain to the building of the plaintiff beyond all scientific precautionary measures. In a nutshell, I weightaged the credibility of deposition of PW-3 who is an independent and impartial witness deputed by the District administration to ascertain the causes and its consequences through the Deputy Commissioner. Meanwhile, before blasting of the rocks in the vicinity of the building of the plaintiff, there is no evidence to reveal the status of the quality of building whether to cope with the existing National Building Code of India or not as imposed by the Mizoram Urban and Regional Development Act, 1990. The quality of the building materials and its mode of construction may also contribute at least some factor for cracking of the floor and its beam. But, such will not be the main causes of the instant misshaping as deposed by PW-3.

Issue No. 3

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

As per issue no. 2, the cause of cracks of the buildings of the plaintiff was found due to blasting of rocks for widening construction of the road in between Bawngkawn to Durtlang, Aizawl during 2003 by using explosives. It is also found that all possible scientific measures were adopted by the defendants to commit such blasting and road construction. If there is no negligence on the part of the defendants in that arena, what kind of liabilities will be applicable in favour of the plaintiff is the moot point. More so, the very doctrine of *Res Ipsa liquitor* is not also applicable as requiring evidences to ascertain the cause of cracking of the building of the plaintiff. Howsoever, undisputedly, there is loss caused to the plaintiff due to the act of the defendants (State), it requires to be remedied even at least under the umbrella of Doctrine of *Ubi Jus Ibi remedium* as recognized 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.”

So is the paradoxical findings, the plaintiff is required to be compensated by the defendants but the amount submitted in the plaint appears exaggerated as a matter of compensation whilst no willful negligence on the part of the defendants is found. In this task, Rs. 3,77,224/- (Rupees three lakhs seventy seven thousand, two hundred and twenty four) as submitted by the defendants and deposed by DW-2 will be more fair and reasonable by adding another Rs. 1,00,000/- (One lakh rupees) for the purpose of dismantling of the existing wounded building of the plaintiff with other costs.

DIRECTIVES

Thus, the defendants are therefore directed to pay relief to the plaintiff worth amounting to Rs. 3,77,224/- (Rupees three lakhs seventy seven thousand, two hundred and twenty four) by adding another sum of Rs. 1,00,000/- (One lakh rupees) for the purpose of dismantling of the existing wounded building of the plaintiff with the sum total of Rs. 4,77,224/- (Rupees four lakhs seventy seven thousand, two hundred and twenty four) plus costs of Rs. 10,000/- (Rupees ten thousand) as advocate fee. The said amount will be paid to the plaintiff within one year from the date of this order.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Given under my hand and seal of this court on this 2nd Sept., 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- 2
Aizawl District: Aizawl

Memo No. CS/15/2003, Sr. CJ (A)/

Dated Aizawl, the 2nd Sept., 2011

Copy to:

1. Mr. K. Ringzuala S/o K. Hmingliana, Durtlang- Leitan through Mr. W. Sam Joseph, Advocate
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Mizoram- Aizawl through Mr. Michael Zothankhuma, Sr. Advocate

3. The Secretary to the Govt. of Mizoram, Public Works Department, Mizoram- Aizawl through Mr. Michael Zothankhuma, Sr. Advocate
4. The Engineer in Chief, Public Works Department-Govt. of Mizoram through Mr. Michael Zothankhuma, Sr. Advocate
5. The Chief Engineer, Public Works Department- Govt. of Mizoram through Mr. Michael Zothankhuma, Sr. Advocate
6. The Executive Engineer, Road North Division, Public Works Department- Govt. of Mizoram through Mr. Michael Zothankhuma, Sr. Advocate
7. The Sub-Divisional Officer, Road North Division, Public Works Department, Govt. of Mizoram through Mr. Michael Zothankhuma, Sr. Advocate
8. The Director, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
9. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
10. Case record

PESKAR