

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

AI ZAWL BENCH :: AI ZAWL

RFA No. 20 of 2010

Appellants :

1. The State of Mizoram, represented by the Secretary to the Govt. of Mizoram, Public Works Department, Aizawl.
2. The Chief Engineer, Public Works Department(Highway), Aizawl, Mizoram.
3. The Superintendent Engineer, Public Works Department, Highway Circle, Aizawl, Mizoram.
4. The Executive Engineer, Public Works Department, Kolasib Division, Kolasib.
5. The Sub-Divisional Engineer, Public Works Department, Bairabi Sub. Division, Mizoram.

By Advocate :

Mr. Lalsawirema,
Govt. Adv.

Respondent :

Smt. Zothanpari, D/o. Vunga, R/o.
Venglai, Kolasib, Mizoram.

By Advocate :

Mr. H. Lalrinthanga, Adv.

B E F O R E
THE HON'BLE MR. JUSTICE UJJAL BHUYAN

Date of hearing : 22nd June, 2012

Date of Judgment : 4th July, 2012

J U D G M E N T A N D O R D E R

This is an appeal by the State against the judgment and order dated 26-08-2010 passed by the learned Sr. Civil Judge, Aizawl Judicial District, Aizawl in Damage Suit No. 4 of 2008.

2. The respondent as plaintiff had instituted the suit claiming compensation of Rs. 41,40,000/- on account of damage caused to her properties by the defendants. The present appellants were the defendants in the suit.

3. The case of the plaintiff-respondent is that she is a farmer by profession and earns her livelihood by selling the farm produce. She is owner of a plot of land covered by Certificate of Land Settlement bearing No. W-1 of 2000 covering an area of 15,397.37 sq.m. located between the State highway and the agricultural link road near the national highway from Kolasib to Bairabi. The schedule of the land is described in the land certificate itself. The said land certificate was issued against permit No. 261 of 1971.

4. According to the plaintiff-respondent, she had constructed two fish ponds in her aforesaid land yielding not less than 18 quintals of fish per pond over the last five years. She had also planted several fruit bearing trees including Hatkora and Nimbu and also cultivated turmeric.

5. The defendants-appellants without any prior intimation to the plaintiff-respondent had dumped excavated earth soil of the nearby road construction (Kolasib to Bairabi highway construction) inside her land, completely damaging the two fish ponds and the plants. Such dumping of soil had destroyed the utility of the land.

6. The plaintiff respondent served legal notice dated 05-05-2008 under Section 80 of the Civil Procedure Code on the defendants-appellants claiming damages of Rs. 36,90,000/- with applicable interest. The Under Secretary to the Govt. of Mizoram, Public Works Department (PWD) replied to the said notice on 18-06-2008. In the said reply, the PWD stated that the road construction work was executed by the State PWD through a contractor, namely, M/s. East India Construction Company. The PWD had acquired land at various locations along the road for dumping of the excavated earth spoils at designated sites. It was admitted that the contractor had dumped small quantity of earth spoil by mistake within the plaintiff's land which was later on removed after learning that the land belonged to the plaintiff. However, the claim of the plaintiff of damage to the fish ponds and plantations was denied and it was contended that the earth spoils were dumped on empty land.

7. Aggrieved by the refusal of the defendants to compensate her for the loss sustained by her on account of such dumping of excavated earth spoils over her land, the plaintiff filed the suit with the claim as indicated above.

8. The defendants did not contest the suit by filing written statement though several opportunities were given.

9. The learned trial Court framed the following issues to decide the suit:

(1) Whether any damage was caused to the plaintiff by the defendants?

(2) Whether the plaintiff is entitled to compensation, if so, to what extent ?

10. To prove her case, the plaintiff examined two witnesses, including herself, who were cross examined by the defendants.

11. The learned trial Court held that damage was caused to the plaintiff's property by the defendants and that the plaintiff is entitled to compensation and determined Rs. 11,14,000/- as the quantum of compensation to be paid by the defendants to the plaintiff.

12. Heard Mr. Lalsawirema, learned Govt. Adv., Mizoram for the appellants. Also heard Mr. H. Lalrinthanga, learned Advocate for the respondent.

13. Learned State counsel submits that the contractor who was executing the road project of the State PWD and who had dumped the excavated earth spoil on the land of the plaintiff is a necessary party but the plaintiff did not implead him as a defendant in the suit. For non-joinder of necessary party, the learned trial Court ought to have dismissed the suit of the plaintiff, contends the

learned State counsel. He also submits that in a case such as this, the learned trial Court ought to have ordered a commission for inspection of the site and for submission of report but the said course of action was not adopted which has led to an erroneous finding of assessment of damages. In support of his submissions, the learned State counsel has referred to the following decisions:

(1) AIR 1963 SC 786; (Udit Narain Singa Malpaharia Vrs. Addl. Member, Board of Revenue, Bihar).

(2) AIR 1969 SC 1167; (Smt. Swaran Lata Ghosh Vrs. Harendra Kumar Banerjee & Anr.)

(3) AIR 1983 SC 271; (Munshi Ram Vrs. Narsi Ram & Anr.)

(4) AIR 2001 SC 490; (Makhan Lal Bangal Vrs. Manas Bhunia & Ors.)

(5) 2007 (3) GLT 883; (Sonfulia Chandik Vrs. Chaturbhuj Gupta & Ors.)

14. Learned counsel for the respondent on the other hand submits that the submissions of the learned State Counsel are all beyond the grounds taken in the appeal. He submits that the plaintiff had proved her case by adducing evidence which could not be dislodged in the cross-examination. He further submits that the learned trial Judge had applied her judicious mind to the facts of the case and had arrived at a fair decision. Therefore, no interference is called for.

15. The submissions made have been considered.

16. The plaintiff had specifically pleaded her case claiming compensation for the damages caused to her property by the

dumping of excavated earth spoils over her land by the State PWD. Though several opportunities were granted to the defendants for filing of written statement, the defendants failed to contest the suit by filing the written statement. The appellants therefore cannot now submit that the learned trial Court ought to have framed an issue on the point of joinder or non-joinder of the contractor through whom the State PWD was executing the work and ought to have dismissed the suit for non-joinder of necessary party. Moreover, in the present case, it is the State PWD who was executing the road project. The contractor was at best an agent executing the work on behalf of the State PWD. Therefore, in the opinion of this Court, the contractor is not a necessary party and no error was committed by the learned trial Court by not framing an issue on this aspect.

17. Now, coming to the evidence adduced, it is seen that the plaintiff examined herself as PW-1. In her evidence, she reiterated the statements made by her in the plaint and stated that because of dumping of earth spoils on her land, the fish ponds and the plantations of Hatkora, Nimbu and turmeric were destroyed. By working out the compensation under various heads, she claimed Rs. 41,40,000/-. She also stated that the damage caused to her property was witnessed by PW-2.

18. PW-2 was a Village Council Member. In his evidence he stated that the State PWD through their contractor had dumped earth spoil over the land of the plaintiff completely damaging the two fish ponds and the plantations. He further stated that the State PWD had given compensation to a number of roadside land owners

whose properties were similarly damaged but the plaintiff was left out.

19. Though the above two witnesses were cross-examined, their evidence could not be dislodged or effected in any material manner.

20. The above evidence were considered by the learned trial Court in the following manner:

“To establish and substantiate the claim Plaintiff Zothanpari was examined as witness under oath who deposed that she started living in Kolasib since 1972 when she got married to her husband who had since expired in the year 1999. Sometimes in the year 1980 she purchased a landed property covered by W.R.C permit No. 261 of 1971 covering an area of 15,397.37 Sq.m located at Minlui Kam in between State Highway and agriculture link road. The said permit was converted into Certificate of Land Settlement NO. W-1 of 2000. Since more than last ten years back they constructed double fish ponds inside the landed property and the annual yielding of said double fish pond was not less than 36 Qtls. per year and the rate of fish per quintal was Rs. 9000/-. In the said landed property they had planted Hatkora and Nimbu which are not less than 50 numbers and are fully developed and enjoyed the fruits since last ten years and the value of 50 numbers of Hatkora and Nimbu is Rs. 50,000/- per year. They had also planted Turmeric in the surrounding of the fish ponds in the said landed property and the annual yielding was not less than 50 quintals and the rate is Rs. 800/- per quintal and the annual yielding of

Turmeric is not less than Rs. 40,000/-. Due to dumping of earth spoil of the construction of Kolasib to Bairabi State Highway the said yielding of fish ponds, Hatkora, Nimbu and Turmeric are totally lost and the details of the lost is as follows:

(a) Fish ponds yielding 36 quintals per year @ Rs. 9000/- per quintal = Rs. 3,24,000/- x 10 years = 32,40,000/-

(b) Hatkora and Nimbu 50 Nos. @ Rs. 1000/- per Tree = Rs. 50,000 x 10 years = 5,00,000/-

(c) Turmeric yielding 50 quintals per year @ Rs. 800/- per quintal = Rs. 40,000 x 10 years = Rs. 4,00,000/-

Total = Rs. 41,40,000/-

She reported damages caused to her properties to the Authority of State Public Works Department and at least date was fixed for three times for inspection of extend of damages caused to her properties due to dumping earth spoil to her landed property resulting to complete damages of her properties on all appointed days she was present in the venue of inspection but only on last occasion representatives of State PWD and Land Revenue authority were present in the appointed place and she was asked what kind of pass she held and she told them that she hold a permanent Land Settlement Certificate and the authorities informed her that they will not be able to bear amount of compensation as such they will not dump earth spoil so as to cause damages to her properties but to her surprise in her absence as spoil was dump again causing damages as stated earlier she reported the matter and claim for payment of compensation but the authority gave no heat to her prayer as a result she instructed a Lawyer to give legal notice which was accordingly done on

5.5.2008 and State PWD deny her claim on 29.05.2008. Having been aggrieved by the illegal action of State PWD she instituted the present suit praying compensation to the tune of Rs. 41,40,000/- as compensation due to damages caused to her properties. She exhibited the following documents in support of her claim:

- (1) Exhibit I-A photo copy of LSC No. W-I of 2000 covering an area of 15,397.36 Sq. m.
- (2) Exhibit II- Xerox copy of Legal Notice dated 5.5.2008 claiming for compensation.
- (3) Exhibit III- a letter received from State PWD stating amongst others that earth spoil was mistakenly dumped within the plaintiff land but deny responsibility for payment of compensation as the same was removed later.

She further stated that damaged caused to her properties was also witnesseth by Kaphranga VCP of Kolasib Venglai during relevant period and she had also stated that she had incurred not less than Rs. One lakh for filing and prosecuting the present case she came to Aizawl for more than four times from Kolasib and her claim was not excessive. The Plaintiff was cross-examined by Additional GA Pu Lalremtluanga but her statement was neither shaken or falsified during cross-examination.

Another witness namely H. Kaphranga Ex-VCP was examined as witness no. 2 who deposes as follows: " I know the Plaintiff Zothanpari who held a land covered by LSC No. KLB W-1 of 2000 on the road side of National Highway from Kolasib to Bairabi. I had been holding elected post of Village Council Member of Kolasib since 1987 till February 2009. I am well acquainted with the land adjoining Highway between Kolasib to Bairabi where of the Plaintiff's land also located in the road side of the said Highway while making excavation

and earth cutting of extension of highway between Kolasib to Bairabi the State PWD through Contractor who are allotted works on the side of Kolasib to Tuichhuahen which is about 7 kms from Kolasib towards Bairabi. The State PWD through their Contractor had dumped earth spoil over the land of the Plaintiff causing complete damaged to double fish ponds, Hatkora, Nimbu, Mangoes and Turmeric with Guava. While I was a VCP of Kolasib Venglai I remembered that the State PWD had given compensation for damages caused to a number of road side land owner whose properties were damaged due to the said road construction by the present plaintiff has been left over from the list of compensation payee. The Plaintiff also complaint to me that she was omitted from compensation payee on verifying her complaint I found that she was omitted from the list of compensation payee although she was among who deserve to receive compensation in view of the extend of damage caused to her properties and even now it can be seen on the spot that she sustained extensive damaged. In my opinion the Plaintiff being a widow and no male person to make pressure to the authority in her family she was left out. I am not only VCP of Kolasib Venglai at the relevant time of causing damage to land owners of Kolasib to Bairabi Highway but I was Chairman of Joint Village Council of Kolasib Town for six consecutive year including relevant year, I know that she was left out from the list of compensation payee inspite of the fact that she has been one of the road side of highway from Kolasib to Bairabi for which the earth work and excavation for extension of road was undertaken by State PWD through Contractor during the year 2007-2008. The witness was cross examined by Additional GA but the

Statement are neither falsified nor shaken during cross examination."

21. The learned trial Court after discussing the evidence as indicated above and after observing that the defendants did not bring any evidence to the contrary, decided issue No. 1 in favour of the plaintiff. After holding that the plaintiff is entitled to compensation, the learned trial Court worked out the quantum of compensation in the following manner:

"(a) Fish ponds yielding 36 quintals per year @ Rs. 9000/- per Quintal = Rs. 3,24,000/- without any multiplier but with a conventional amount of costs of repair of the fish ponds for Rs. 1,50,000/- = Rs. 4,74,000/-.

(b) Hatkora and Nimbu 50 Nos. @ Rs. 1000/- per Tree = Rs.50,000/- x 10 years = Rs. 5,00,000/-.

(c) Turmeric yielding 50 quintals per year @ Rs. 800/- per Quintal = Rs. 40,000/- but without any multiplier for the land where turmeric were sown can be cleared by using manual and machineries so as to make the land capable of yielding the same crop of the same quantity. Instead a conventional amount of Rs. 1,00,000/- is added for costs of clearing earth spoil where turmeric are grown = Rs.1,40,000/-

Total = Rs. 11,14,000/- (Rupees Eleven lakhs Fourteen thousand) only"

22. As pointed out above, the defendants having failed to file the written statement cannot now submit that the learned trial Court went wrong in not framing an issue regarding non-joinder of necessary party by the plaintiff. Moreover, it has already been held

that the contractor is not a necessary party. Further, the evidence adduced by the plaintiff, though not very satisfactory, could not be dislodged in cross-examination. Considering the nature of the claim, the learned trial Court could have ordered a commission to inspect the site and to submit report but no such prayer having come from the defendants side, the learned trial Court thought it fit to carry out the exercise itself. The approach adopted by the learned trial Court cannot be said to be without jurisdiction and illegal.

23. However, this Court on consideration of all relevant aspects of the matter is of the view that the quantum of compensation awarded appears to be on the higher side and requires modification. The award of Rs. 1,50,000 as cost of repair of the fish ponds under the heading (a) does not appear to be justified, which is accordingly altered to Rs. 50,000/-. Likewise, the award of Rs. 1,00,000/- as cost of clearing earth spoil under the heading(c) also appears to be on the higher side, which is therefore altered to Rs. 10,000/-. In so far the compensation awarded under the heading (b), the multiplier of 10 accepted by the learned trial Court was not justified as no such multiplier was adopted while calculating the compensation under the other two heads. Therefore, the application of the multiplier of 10 is interfered with and the compensation under the heading (b) would now be Rs. 50,000/- and not Rs. 5,00,000/- as was assessed. As such, the total amount of compensation payable to the plaintiff would now be Rs. 4,74,000/- (Rs. 11,14,000/- less Rs. 1,00,000/- less Rs. 4,50,000/- less Rs. 90,000/-).

24. Because of the factual position as narrated above, a detail examination of the cited judgments is considered not necessary.

25. For the foregoing reasons, the appeal is partly allowed and the judgment and order dated 26-08-2010 of the learned Sr. Civil Judge, Aizawl in Damage Suit No. 4 of 2008 is modified to the extent indicated above. Decree to be drawn up accordingly. On orders of this Court, the appellants had deposited the awarded amount before the Registry of this Court. The Registry shall now release the modified awarded amount of Rs. 4,74,000/- to the plaintiff-respondent on proper identification after adjustment of the court fee and return the balance amount to the appellants/defendants.

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