
(2019) 10 MAN CK 0016
In the Manipur High Court
Case No : Writ Petition (c) No. 878 Of 2017

H. Ngauning And Other

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 300A

Citation : (2019) 10 MAN CK 0016

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : A. Bimol, S. Sasi, H. Prabirkumar, A. Golly, H. Suraj, A. Peter, A. Leonid, M. Rarry, S. Samarjeet

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. This writ petition has been filed by the petitioners to quash the impugned order dated 31.5.2017 passed by the fifth respondent and to direct the respondents to pay to the petitioners the compensation amount of Rs.37,59,113.25 along with interest for the damage of horticulture plants, crops etc., caused during the construction of Maram-Peren Road.

2. Brief facts are as follows:

The petitioners are Headmen of their respective villages and are representing themselves as well as the villagers of their respective villages whose standing crops, farms, building/structure, orchards, forest, etc., have been affected by the construction of Maram-Peren Road. The construction of Maram-Peren Road was commenced by 84 RCC (GREF) during September 1991 and completed in 1996 and the construction of the said road was later handed over to 15 BRTF. Later the said road was further widened when the work for double laning of the road commenced with effect from December 2006.

3. The villagers of the petitioners villages were affected by the construction of the said road and being aggrieved, they through the President, Zeliangrong Nagar Union, submitted a representation to the Deputy Commissioner for verification with regard to the damage to the standing horticulture plants and crops etc. On 09.05.1994, the office of the Deputy Commissioner, Senapati, directed the Sub Divisional Officer, Tadubi to conduct a detailed joint spot enquiry with the representatives of BRTF and the claimants to establish the ownership as well as the status/value of the standing properties and furnish a factual report of the same at an early date.

4. Pursuant to the direction of the Deputy Commissioner, Senapati, the Sub Divisional Official, Tadubi informed the Commander, 25-BRTF to depute one of his staff to participate in the joint spot enquiry to be held on 30.5.1994. Accordingly, a joint spot enquiry was conducted on 30.5.1994 with representatives from BRTF, SDO, Tadubi and representatives of the affected villages. After verification of the damages caused to the crops, farms, orchards, forest, etc., due to the construction of Maram-Peren road in respect of the petitioners villages viz., (i) Sangkhogmai; (ii) WiIong; (iii) Kinelo; (iv) Yangkhullen; (v) Bendramai and (vi) Yangkhunou, a detailed verification report was submitted by the SDO, Tadubi for further action.

5. After the receipt of the report of the SDO, Tadubi, on 22.6.1994, the Deputy Commissioner, Senapati, requested the Director (Horticulture & Soil Conservation) to furnish rate for the plants/fruits for the purpose of fixing/determining the rate for compensation. On 23.6.1994, the Additional Director (Horticulture), Manipur, furnished the formula for evaluation of the rates for the fruit plants for both bearing and non-bearing. Thereafter, on 27.7.1994, the Deputy Commissioner, Senapati, assessed a sum of Rs.37,59,113.25 as compensation for the damage of fruit bearing trees/plants and the same had been communicated to the Officer Commanding, 84 RCC (GREF). Despite assessment of the compensation by the Deputy Commissioner, the authorities of BRTF are refusing to pay the compensation.

6. Aggrieved by the refusal, the petitioners, through Zeliangrong Nagar Union, earlier approached the Gauhati High Court by filing Civil Rule No.517 of 1995 and the Gauhati High Court, vide order dated 6.6.2001, was pleased to dispose of the case by directing the Deputy Commissioner, Senapati, to decide the matter as and when the occasion arises after hearing the beneficiaries and the respondents. Since after the lapse of more than 10 years, no compensation was paid by the authorities, the Villagers of the affected villages conducted general body meeting on 15.9.2005 wherein the Chief/Headman of the six affected villages were authorised to liaison the office relating to the activities/process with the Government and financial operation of the bank to withdraw money from the relevant department.

7. On behalf of the affected villages, the Chairman and the Secretary of Maram Peren Road Development Committee (MPRDC) submitted an application on

20.10.2010 to the Deputy Commissioner, Senapati, requesting payment of Rs.37,59,113.25 with interest and the Deputy Commissioner, in turn, addressed to the Commander, 25 BRTF, to look into the matter and do the needful. Since no action was taken, again on 5.11.2013, the Chairman and Secretary of MPRDC submitted a joint representation to the Deputy Commissioner, Senapati, claiming compensation for the standing properties. The said representation was forwarded to the Commander, 15 BRTF(GREF), however, the Commander, 15 BRTF (GREF), the fifth respondent herein, informed the Deputy Commissioner, Senapati that no compensation is admissible as certain villagers have given 'no damage certificate' to the standing crops and standing horticulture plants.

8. Thereafter, on 4.6.2014, a joint meeting was held at the office of the Deputy Commissioner with representatives of 15 BRTF and concerned village Headmen/Secretaries, wherein the Chairman/Secretary of MPRDC's explanation was sought as to if the certificates had already been submitted why the dam has been again made to the office after a lapse of so many years. Again on 7.6.2014, a joint representation was submitted that the eight certificates produced by the BRTF are bogus and unauthorised. On 11.8.2014, the Deputy Commissioner, Senapati, addressed a letter to the fifth respondent requesting them to decide the matter after properly perusing all relevant documents. On 5.12.2014, the Deputy Commissioner, Senapati again requested the fifth respondent to pay the compensation amount along with the interest after calculation of the permissible interest rate.

9. Since the fifth respondent has failed to pay the compensation, the petitioners again approached this Court by filing W.P.(C) No.573 of 2015 seeking direction on the respondents to pay compensation amount along with interest. By an order dated 30.11.2016, the said writ petition came to be disposed of by directing the respondents to examine the claims of the petitioners for payment of compensation within a period of three months from the date of receipt of a copy of the order. However, by the impugned order dated 31.5.2017, the fifth respondent declined to pay compensation on the ground that the concerned village Headman/Chairman has already furnished no compensation demand certificate to the effect that no villagers shall claim any compensation for horticulture plants, crops, etc. Aggrieved by the same, the petitioners have filed the present writ petition.

10. Respondent No.2/Deputy Commissioner, Senapati, filed affidavit-in-opposition stating that on receipt of the representations and orders of the Hon'ble High Court, they have forwarded the same to the Commander, 25th BRTF and the Commander, 15th BRTF respectively with a request to look into the matter and to do the needful at the earliest in order to obviate further law suit from the interested party.

11. Respondent Nos.3 to 5 have Filed affidavit-in-opposition inter alia stating that the petitioners on one hand alleging that they are being deprived of their legitimate dues and on the other hand they are giving full support to the Border

Roads Organisation including their free land etc. If the petitioners are really deprived of their legitimate dues, they would have demanded the cost of the damaged properties during the initial construction of Maram-Peren road. Instead they extended their full co-operation by way of foregoing cost of land free, etc. if any damage during construction of Maram-Peren road and it proves that they are aware of the socio-economic development of their region due to the construction of Maram-Peren road as this is the life line of Manipur and Nagaland.

12. It is stated that though contingent bill for Rs.37,59,113.25 was received by 84 RCC (GREF), since the Headmen of the concerned village have already issued no damage certificate, the contingent bill was returned by the respondents as giving no damage certificate at the initial stage and later claiming compensation after three years from the commencement of the road construction is against ethics and not justifiable. It is also stated that if the petitioners are really deprived of their legitimate dues, they would have demanded the cost of damaged properties during the initial construction of the Maram-Peren road and then give their willingness and full fledged support to the double laning of the road. Instead, they extended their full co-Operation, which proves that they are well aware of the socio-economic development of their region due to the construction of above said road.

13. The learned counsel for the petitioners submitted that they have not been paid compensation for the damages caused to their standing crops/properties due to the construction of Maram-Peren Road by the respondent authorities, especially the authorities of BRTF for the last about 26 years. Due to such adamant attitude and apathy of the concerned authorities, the petitioners and their affected villagers have suffered not only money but also mentally affected. He would submit that the arbitrary and discriminatory acts on the part of the respondent authorities refusing to pay compensation due payable to the petitioners has completely violated the petitioners right to compensation, which is part of the right to property as enshrined under Article 300A of the Constitution of India.

14. The learned counsel further submitted that despite the Deputy Commissioner's direction for payment of compensation to the petitioners, the refusal to pay compensation by the BRTF authorities amounts to violation of petitioners fundamental right guaranteed under Articles 14 and 21 of the Constitution of India. Such arbitrary acts of the BRTF authorities not only caused serious miscarriage of justice as against the petitioners but also hardship to them.

15. The learned counsel then argued that the BRTF authorities have failed to appreciate that it is not just and fair to deprive the owner of any property without payment of compensation, especially, when the law provided that the same shall be paid. He would further submit that the grounds on which the BRTF authorities have refused to pay compensation are not sustainable and as such the petitioners and the affected villagers are entitled to get compensation for the damage caused to their standing properties along with interest.

16. The learned counsel next argued that the alleged no damage certificate to standing crops and standing horticulture plants stated by the fifth respondent are bogus and unauthorized as the same have not been counter-signed by any civil officer from Revenue Department. The respondent authorities are relying upon totally eight certificates, of which, one having the signature of Sub Divisional Officer, Tadubi and the said certificate cannot be taken into account as the same was counter-signed by the said officer on the date of issuance of certificate.

17. The learned counsel further submitted that as per the customary practices only the village Headmen have the authority in dealing with the village land matters. Arguing so, the learned counsel for the petitioners submitted that the impugned order of the fifth respondent refusing to pay the compensation as claimed by the petitioner is liable to be set aside and the respondents may be directed to pay to the petitioners the compensation of Rs.37,59,113.25 along with interest for the damage of horticulture plants, crops, etc. caused during the construction of Maram-Peren Road.

18. Per contra, the learned Government Advocate submitted that after submitting no damage certificate at the initial stage, the petitioners have no right to claim compensation for damage of horticulture plants, crops, etc. Further, the claim of the petitioners after three years from the commencement of road construction is against the ethics and the same is also not justifiable.

19. The learned Government Advocate further submitted that pursuant to the direction of this Court in W.P.(C) No.573 of 2015, the matter has been examined and intimated to the petitioners that they are not entitled for payment of compensation as sought for by them as the concerned village Headman/Chairman had already furnished no compensation demand certificate to the effect that no villager shall claim any compensation for horticulture plants, crops etc. He would further submit that there is no arbitrariness in passing the impugned order and thus, prayed for dismissal of the writ petition.

20. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

21. There is no dispute that the villagers of six villages viz., (a) Sangkhomai; (b) Willong; (c) Kenelu; (d) Yangkhullen; (e) Yangkhunou and (f) Bendramai, whose lands were affected on the initial construction of Maram-Peren road for single lane was commenced by 84 Road Construction Company during September 1991 and the construction of the said road for single lane was completed in 1996. During the aforesaid period, lots of standing properties were damaged on the construction of the said road. When on joint verification for damage of standing properties were carried out on 30.5.1994 in the presence of SDO, Tadubi, Officers of 25 BRTF and villagers, the six villagers had claimed compensation for the affected standing properties at the time of construction of the said road.

22. The grievance of the petitioners is that from the very beginning of the construction of Maram-Peren road, the villagers had been claiming compensation

for the damaged standing properties such as paddy fields, buildings, farms, orchards etc., which took place when the first construction of the road during the period 1991 to 1994. But the petitioners had abandoned the claim for payment of land compensation in respect of the double lane which took place in the year 2006 in the interest of the other villages for connecting their inter village road.

23. It appears that this is the second round of litigation claiming compensation in respect of the damages caused to the horticulture plants, crops etc. during the construction of Maram-Peren Road. Earlier, the very same petitioners have approached this Court by filing W.P.(C) No.573 of 2015. By an order dated 30.11.2016, the said writ petition came to be disposed of by this Court with the following direction:

"4. Accordingly, the present writ petition is disposed of with a direction to the respondents, more particularly, the respondent Nos.4 to 7 to examine the claim of the petitioners and other claimants for payment of compensation which exercise shall be undertaken by the authorities within a period of three months from the date of receipt of a certified copy of this order."

24. While issuing the aforesaid direction, this Court, in W.P.(C) No.573 of 2015, in paragraph 3, observed as under:

"3. Be that as it may, since the fact remains that the Maram-Peren road was constructed and widened, the authorities will examine the claim of the petitioners/affected villagers and do the needful for payment of compensation for the damages suffered by the villagers for construction of the Maram-Peren road for which the authorities will also take into account the letter written by the Deputy Commissioner, Senapati District on 11.8.2014 as the Deputy Commissioner was authorised by an order passed by the Hon'ble Gauhati High Court, Imphal Bench in Civil Rule No.517 of 1995 on 06.6.2001 to consider the matter as regards payment of compensation."

25. The aforesaid observation of this Court in the earlier round of litigation clearly stipulates direction to do the needful for payment of compensation for the damages suffered by the villagers for construction of the Maram-Peren road, for which also the authorities are directed to take into account the letter of the Deputy Commissioner, Senapati, dated 11.8.2014.

26. In the letter dated 11.8.2014 addressed to the fifth respondent, the Deputy Commissioner, Senapati, has stated as under :

"In this regard it may mention here that the concerned 6 (six) villages Headmen/ Chairmen had furnished no compensation Demand Certificates to the effect that no other villager shall claim any compensation for the horticulture plants/crops affected/damaged during the construction of the road except the claim already made by the right claimants duly verified by the joint spot enquiry team on 30.5.1994 (Copies enclosed as Annexure-F). After analysing the said documents, in case no damage certificate had been signed as mentioned by BRTF, then a

joint enquiry by the concerned SDO, BRTF and affected land owners as mentioned in Annexure "A" may not have been done.

Therefore, you are requested to do the needful for payment of compensation and settle this long pending issue."

27. Thereafter, on 05.12.2014, the Deputy Commissioner, Senapati, written a letter to the fifth respondent stating as under:

"With reference to the subject cited above and in continuation of letter No. DC (SPT) 6/82 (MPR)/94/219 dated 27.07.1994 had assessed a contingent bill for a sum of Rs.37,59,113.25 (Rupees thirty seven Iakh fifty nine thousand one hundred thirteen and paise twenty five) only as compensation of the damaged fruit bearing trees/plants as per the joint spot enquiry conducted by SDO, Tadubi along with representatives of BRTF and the affected villagers. Therefore compensation may be paid accordingly after calculation of the permissible interest rate till date. Further the list of standing crops affected damaged by the construction of Maram-Peren road as per records maintained by this office is enclosed for further necessary action."

(emphasis supplied)

28. Thus, it is clear that the concerned official viz., the Deputy Commissioner, Senapati, directed to settle this long pending issue and also directed the fifth respondent to pay compensation with permissible interest. However, the fifth respondent, issued the impugned order rejecting the claim of the petitioners stating as under:

"7. Now therefore, the petitioners and other claimants are hereby informed that in accordance with directions of Hon'ble High Court of Manipur at Imphal vide order dated 30 Nov 2016 in WP (C) No.573 of 2015, the matter of payment of compensation against damages of standing properties on Maram-Peren road due to construction of Maram-Peren Road has been examined and intimated that the petitioners are not entitled for payment of compensation as sought vide WP (Civ) 573 of 2015, as concerned village Headmen/Chairman had already furnished no compensation demand certificate to the effect that no villager shall claim any compensation for horticulture plants, crops etc affected/damaged during the construction of road and also non production of joint spot enquiry report dated 30 May 1994 duly verified by SDO Tadubi."

29. The fifth respondent mainly relied upon the no compensation demand certificates issued by some of the village Headmen. On the contrary, the petitioners contended that the eight no compensation demand certificates relied upon by the fifth respondent are all forged and unauthenticated ones as no counter-sign has been put up by any of the competent civil officer, who is dealing with the matter like Sub Divisional Officer and even the Deputy Commissioner, Senapati.

30. On a perusal of the alleged eight no compensation demand certificates, it is

seen that none of the signatures of Headman/Chairman were identified by any of the Gazetted officer to prove that the signatures of the Headman/Chairman as correct and genuine. Admittedly, the alleged no compensation demand certificates do not contain the date of execution. Almost all the certificates contain same recital. It is useful to extract the contents in the no compensation demand certificate in respect village Peren Dist-Kohima, which reads as under:

"We, The Village Authorities of village PEREN Distt. KOHIMA (NAGALAND) hereby Certify that there has not been any damage made by The "GREF" while construction of MARAM-PEREN road to any standing craps and Horticulture plants belong to our village."

The fifth respondent cannot rely upon the aforesaid no compensation demand certificates, as the same do not contain the date and counter-sign by the competent civil officer. Further, it appears that only to evade payment of compensation to the villagers, the fifth respondent is relying upon the said certificates.

31. Earlier, vide letter dated 09.5.1994, the Deputy Commissioner, Senapati, intimated the SDO, Tadubi to conduct a joint spot enquiry with the representative of BRTF and the land owners and to submit report of the standing properties. Accordingly, joint spot enquiry was conducted on 30.5.1994 and the team members submitted its report in respect of six villages in question to the SDO, Tadubi for further action. After getting the report from the SDO, Tadubi, the Deputy Commissioner, Senapati, called the rates for certain plant/fruit bearing trees from Horticulture and Soil Conservation Department on 22.6.1994. Thereafter, on 11.8.2014, the Deputy Commissioner, Senapati, directed the fifth respondent to do the needful for payment of compensation and settle the long pending issue. Despite the direction of the Deputy Commissioner, the Fifth respondent has not settled the long pending issue and neglected to pay the compensation due to the villagers involved in the present petition. Since this Court doubts the veracity of the alleged no compensation demand certificates issued by some of the villagers and held that the said certificates cannot be relied upon by the fifth respondent, the petitioners are entitled to get compensation quantified by the Deputy Commissioner, Senapati, for the damages suffered by the villagers for construction of Maram-Peren road.

32. It is pertinent to note that as against the order passed in W.P.(C) No.573 of 2015, the respondent authorities have not filed any appeal and the said order attained finality. As stated supra, since there was a direction to the respondents 4 to 7 in W.P.(C) No.573 of 2015 to examine the claim of the petitioners and other claimants for payment of compensation, the fifth respondent by violating the direction of this Court as well as the Deputy Commissioner, Senapati, cannot pass the impugned order rejecting the claim of the petitioners by relying upon the so called no compensation demand certificates issued by some of the villagers. Further, nothing has been produced by the official respondents, particularly, the fifth respondent that the alleged no compensation demand

certificates executed by them are the affected persons/land owners. Therefore, this Court is of the view that no damage certificates signed by some vested interest persons on behalf of the villagers are in collision with the respondent authorities and the same in no way deny the right of the petitioners to seek compensation for the damages suffered by them.

33. It is reiterated that despite the Deputy Commissioner's decision for payment of compensation to the petitioners, the refusal to pay the compensation by the fifth respondent amounts to violation of fundamental rights guaranteed under Articles 14 and 21 of the Constitution. Such an act of the fifth respondent has also caused serious miscarriage of justice as against the petitioners by denying them a just and reasonable compensation for the damage caused to their standing properties by the authorities. Further, the grounds on which the fifth respondent has refused to pay compensation are not sustainable in the eye of law and as such, the petitioners and the affected villagers are entitled to get compensation of Rs.37,59,113.25 for the damage caused to their standing properties along with reasonable interest quantified at 6% per annum from the date (27.7.1994) on which the Deputy Commissioner, Senapati assessed a contingent bill for a sum of Rs.37,59,113.25 till the date of deposit.

34. In the result,

(a) The writ petition is allowed and the impugned order dated 31.05.2017 passed by the Commander, 15 BRTF (GREF), the fifth respondent herein, is set aside.

(b) The 5th respondent is directed to pay a sum of Rs.37,59,113.25 to the petitioners along with interest at the rate of 6% per annum from 27.7.1994 till the date of deposit for the damage of horticulture plants, crops, etc. caused during the construction of Maram-Peren Road.

(c) The 5th respondent is directed to pay the said sum within a period of three months from the date of receipt of a copy of this Order.

(d) No costs.