

(2008) 07 GAU CK 0029
In the Gauhati High Court
Case No : W. P. (C)No. 13 of 2008

R.Laithuama

APPELLANT

Vs

State of Mizoram & Ors.

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 226
Land Acquisition Act, 1894 — Section 18, 18

Citation : (2008) 4 GLT 746

Hon'ble Judges : H.Baruah, J

Bench : Single Bench

Advocate : Helen Dawngliani, A.R.Malhotra, Haulianthanga, Joseph Lalfakawma, C.Lalramzauva, Advocates appearing for Parties

Judgement

H. Baruah, J.—The instant writ petition has been preferred with the following prayers:

"In the premises, it is most humbly prayed that your Lordships may graciously be pleased to admit this writ petition, issue rule and call for the records, calling upon the Respondents to show cause as to why teak plantation of the Petitioner within his Garden Pass No. 1/83 at Builum on the Bank of Serlui River shall not be assessed for payment of compensation, and for this, why a Commission of Inquiry shall not be constituted to take a fresh spot verification of the location of the said teak plantation of the Petitioner and why the impugned decision of the Respondents communicated vide letter Memo No. F. 14011/31 (B)/94D. C. (A)/1027 dt. 18.1.08 shall not be set aside and quashed, and after bearing both the parties to allow this petition and to pass any other order (s) as your

Lordships may deem fit and proper."

2. The State respondents filed objection in the form of affidavit in opposition wherein it is contended that constitution of a commission of inquiry is not required in view of the facts and circumstances of the case and contention

averred in the affidavit in opposition.

3. For better appreciation of the claim of the writ petitioner in the context of a constitution of a commission of inquiry, brief facts of the case of the petitioner is required to be placed at this stage.

4. The writ petitioner was the holder of Garden Pass No. 1/1983 which covers an area of 28 bighas of land. The writ petitioner in the said land planted more than 6000 Nos. of Teak trees and 3000 Nos. of Betel nuts in the year 1983-1984 and thereafter.

5. The State Government for the purpose of installation/Construction of Power Project known as "Serlui "B" Hydro Electric Power Project" acquired various lands including the land of the writ petitioner under the provisions of Land Acquisition Act, 1894. Assessment of compensation was made accordingly and a total amount of Rs. 4,14,950/- was awarded as compensation for 1734 Nos. of Teak trees and 2987 Nos. of Betel Nut trees. The said award was pronounced on 3.8.2004 (Annexure 2). The writ petitioner being not satisfied with such assessment submitted an application under Section 18 of the Land Acquisition Act, 1894 in as much as Teak trees numbering about 5000 were left out unassessed by the District Collector, though, the same were within the submergence area or in other words below the submergence line of the said Dam. On filing of the application for reference, the Deputy Commissioner rejected the same on the ground of delay and thereafter, the petitioner again submitted an application for re-verification of his Teak Garden on 11.11.2005 before the respondent No. 3 herein. The respondent No. 3 did not attend the said application.

6. The petitioner having found no other alternative approached this High Court by writ petition being No. W. P. (C) 73/2005 which was finally heard and disposed of vide judgment and order dated 16.5.2006 by which the same was dismissed. The petitioner including other landholders similarly situated filed representation before the State authorities to look into their matters. In the meantime, the Executive Engineer, Serlui "B" Project Division, Kolasib informed the petitioner that on the basis of the report of L. P. Sangkhuma, Junior Engineer of the Division, who was detailed for the purpose, the entire land of the petitioner under Village Council Pass No. 1/1983 would be submerged by a Dam (Annexure 7 & 7 A).

7. The Government having been received several complaints from various land holders including the writ petitioner called a meeting on 24.1.2007 in the office chamber of the Adviser to the Chief Minister (Tech) in connection with compensation to be made to the land holders on account of acquisition of their lands and it was decided therein that the complaints filed by the land holders soon be verified and assessment be made on urgent basis. The Secretary of the committee formed for causing re-verification of the Garden lands submitted a resolution for re-verification of the lands. The said matter was referred to Deputy

Commissioner, Kolasib but no reverification was made nor any compensation has been paid neither to the writ petitioner nor other effected land holders. It is claimed by the writ petitioner that lands belonging to Shri K. Lalchhandama, Shri P.C. Lalrinmawia, Smt. Hrangchhuani, P. C. Lalrohluia and Kaphranga are all located at a higher attitude than the land belonging to the writ petitioner under Pass No. 1/83. The lands of the above name persons were included in the submergence area of the said Dam and accordingly they were paid adequate compensation by the Government but no such compensation was awarded to the writ petitioner though, his land under Pass No. I/83 situates below the attitude of the lands of the above name persons. Vide letter No. F. 14011/31 (B)/94DC (A)/1027 dated 18.1.2008, the petitioner was informed that his land located at Builum falls above the submergence line and hence, no assessment could be done at this stage, but per information vide letter dated 9.6.2005, the Teak plantation under Garden Pass No. 1/83 would be submerged by the said proposed Dam. The writ petitioner, therefore, in view of such conflicting statement has sought for a constitution of impartial fact finding Commission of Inquiry.

8. The State respondents in their affidavit in opposition claimed that Shri L. P. Sangkhuma, Junior Engineer was detailed by the Executive Engineer, Serlui "B" Project Division, Kolasib to make a spot verification and the J. E. after verification reported that the plantation area of the petitioner would be within the submergence area and accordingly having received the report award was made in respect of Betel Nut and Teak trees. Pursuant to the decision of the meeting held in the office chamber of the Adviser to the Chief Minister (Tech), a team of officers were appointed for reverification of the land in items of the complaints and after reverification of the petitioner's land it was informed that only parts of the Garden down hill side where no plantation was found would be submerged and the rest of the Garden of the up hill side will be beyond the submergence area. It is, therefore, contended that when the garden area of the writ petitioner falls above the submergence line of the Dam, the writ petitioner cannot ask for constitution of a Commission of Inquiry for verification.

9. We have heard Mr. C. Lalramzauva, learned counsel for the petitioner as well as Mrs. Helen Dawngliani, learned GA for the State respondents.

10. Mr. C. Lalramzauva while supporting the application submits that in view of conflicting report submitted, for reappreciation of the fact, a Commission of Inquiry may be constituted by this court. It is submitted by him that though, he was paid compensation for some teak trees and betel nut trees which, according to the opinion of the Government or assessment authority fall below the submergence line. He was, however, not paid compensation to the fullest extent since the assessing authority did not take into consideration 5000 Nos. of teak trees grown by him. According to him, all the five thousand numbers of teak trees which were planted in the year 1983-1984 fall below the submergence area and for that he is entitled to have compensation for the loss. Mr. C. Lalramzauva

learned counsel for the petitioner also has brought into the notice of the fact of discrimination in the context of assessment of compensation in respect of teak trees. In support of his contention it is submitted by him that the assessing authority assessed compensation for teak trees belonging to him at the rate of Rs. 100/ per tree whereas in case of some other land holders who were given compensation at a much higher rate that too by taking into the girth, length, Cub ft. etc. of each teak tree.

11. Mrs. Helen Dawngliani, learned GA for the State respondents submitted that the procedure of calculation of compensation was adopted by taking into consideration the age of each of the teak tree. According to her, no discrimination was done in the assessment of compensation in respect of teak trees of the land holders including the writ petitioner.

12. From the facts contended, objection raised, this court finds that some disputed facts have cropped up, which are required to be settled by a competent court of civil jurisdiction. A writ court cannot sit in the original side nor as an appellate forum. All disputed facts are required to be resolved through evidence either oral or documentary. It is found from the facts that one stage, it is said that the teak trees or in other words the plantation would fall w i.. an the submergence area of the Dam, but in another stage, it is said that it would fall above the submergence line. Some other facts are also brought on records in respect of payment of compensation to the land owners whose lands were also acquired by the Government, whose lands are stated to be above the attitude of the land of the writ petitioner. So all these disputed facts cannot be resolved by this writ court and therefore, it would be appropriate for the writ petitioner to approach a civil court of competent jurisdiction for the purpose. Mrs. Helen Dawngliani, Learned G A. in support of her contention where disputed facts cropped in, relied on a decision in the case between Vinay Shukla Vs. Union of India & Ors. reported in (2007) 2 SCC 464. The Hon"ble Supreme Court in Paras 3 & 4 of the said judgment held as under :

"3. We have heard Shri K. M. Shukla, Advocate, at considerable length and have perused the writ petition. The main allegation in the writ petition is that when the petitioner, after taking dinner, sat in the car at about 11:00 p. m. on 21.9.2006, some police personnel forcibly entered the car and took him to Shivpuri and then to Jhansi, where he was made" to board the Chhatisgarh Express at 1:30 a. m. on 22.9.2006, from which he got down at Vidisha station and came back to Gwalior by catching first available train. The alleged abduction of the petitioner took place at about 11:00 p. m. on 21.9.2006 and the alleged wrongful confinement ended on 22.9.2006. This shows that the petitioner is not in any kind of detention or unlawful restraint at the present moment. Therefore, we are not inclined to entertain the present writ petition under Article 32 of the Constitution.

4. Learned counsel has next submitted that the petitioner should be awarded damages for his illegal abduction and confinement by the authorities of the

State. The allegations made by the petitioner are entirely factual in nature, which can be established only by recording oral evidence. It will be open to the petitioner to seek such legal remedy as is available to him in law for claiming damages on the ground of his alleged abduction and confinement. The writ petition is dismissed."

13. Here in our present case, the allegation being entirely factual in nature, for establishment of such facts, the only remedy would be recording of evidence both oral and documentary.

14. Having considered all the matters in its entirety, this writ petition is dismissed. However, the writ petitioner will be at liberty to approach the competent court of civil jurisdiction for his redressal, if so advised.