

(2007) 10 GAU CK 0061
In the Gauhati High Court
Case No : Writ Petition (C) No. 110 of 2005

Sh. Hrangdawla

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Lushai Hills District (Village Councils) Act, 1953 — Section 20, 25

Citation : (2008) GLT 272 Supp

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : C. Lalramzauva and A.R. Malhotra, for the Appellant; N. Sailo and Helen Dawngliani, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. A.R. Malhotra, learned Counsel for the Petitioner and also heard Mr. N. Sailo, learned Addl. A.G. assisted by Mrs. Helen Dawngliani, learned A.G.A. appearing for the respondents 1-3 and 5 to 7.

2. The Petitioner purchased a plot of land located at Hmarveng Kolasib from one Sh. Kapzawna in the year 1992. After purchase of the land the Petitioner constructed small house thereon and started living with his family members consisting of 4 children and the wife. The Petitioner, after purchase of the land applied for a revenue pass from the appropriate authority completing with all the formalities required for the purpose and accordingly a House Pass No. K.396/2001 was issued in favour of the Petitioner for the said plot of land. The house constructed was subsequently demolished and in place of the same an Assam Type house was constructed by the Petitioner spending Rs. 50,000/-. But the said Assam type house was forcibly dismantled by the respondent No. 4 on 22.7.04 without permission from the Petitioner for construction of a road starting from North Kolasib to Sairang and the land so belonged to him also was taken over forcibly by the respondent No. 4 for the public purpose. It would be appropriate to state at this stage that the revenue authority issued Land

Settlement Certificate No. 501701/01/834 of 2005 in favour of the writ Petitioner covering an area of 224.87 Sq.m. and accordingly by virtue of this Land Settlement Certificate the Petitioner became the owner and possessor of the building and the land. After demolition of his building so constructed by him and forcible taking of the land, the Petitioner approached the appropriate authority for compensation. Since the respondents rendered the Petitioner and his family homeless, it is further contended that the demolition and forcible taking over the land is an infringement of the fundamental right of the writ Petitioner guaranteed under Articles 14, 19 & 21 of the Constitution. Forcible taking over the land and demolition of the house constructed by him without adhering to the procedure established by law as provided in the Land Acquisition Act is illegal. The Petitioner, therefore, filed this writ petition under Article 300A of the Constitution for payment of compensation towards demolition of the building and forcibly occupation of the land belonged to him. The Petitioner further prays this Court to issue direction to the appropriate authority to award compensation and damages for such acquisition of the land and demolition of the house.

3. Mr. N. Sailo, learned Addl. A.G. during the course of his argument submitted that the land of the Petitioner was never taken forcibly by the Government nor the building had been damaged rather it was the respondent No. 4, the Village Council, Kolasib who had taken over the land forcibly from the Petitioner and demolished the house belonging to him. So the respondents No. 1-3 cannot be directed to make compensation etc. for acquisition of the land and demolition of the house for the purpose of construction of road.

4. Mr. A.R. Malhotra, learned Counsel for the Petitioner controverting his submission so advanced by Mr. N. Sailo submitted that the respondent No. 4 being an authority of the Government, the State Government is responsible for all the actions, omissions that resorted to by the respondent No. 4. Referring to the provisions of Sections 20 & 25 of the Lushai Hills District (Village Councils) Act, 1953, he submitted that District Local Administrative Officer, Circle Officer and Circle Assistants are instructed to inspect the villages within their respective jurisdiction and to give instructions to the Village Councils in their office work and other allied matters and they shall be responsible in their respective jurisdiction for the proper functioning of the Village Councils in general. Mr. A.R. Malhotra referring to the provisions of Section 25 also submitted that the State Government has the domain over the Village Councils by the provisions of this Act and the appropriate authority of the State Government is authorized to order dissolution of Village Councils and order for holding fresh election of the Village Councils accordingly. According to Mr. A.R. Malhotra the State Government is in the overall control of all the Village Councils and therefore, the action or omission taken or resorted to by such Village Councils are attributable to the State Government.

5. So in the face of the facts and the provisions of the law it is argued by Mr. A.R. Malhotra that the State Government cannot escape from the liability for making

compensation for illegal acquisition of the land and destruction of the Assam type house belonging to the writ Petitioner.

6. Mr. N. Sailo, learned Addl. A.G. failed to place any law that the State Government is not responsible for action of the Village Councils. Admittedly the Village Councils do not have fund of its own so the Councils are always dependent upon the financial assistance of the State Government. Mr. N. Sailo also failed to assert that the Village Councils have their own funds.

7. There is no dispute in regard to the acquisition of the land and demolition of the house by the Village Council. There is also no dispute that while acquiring the land and demolishing the house, the provisions provided in the Land Acquisition Act had not been followed and adhered to. In the Land Acquisition Act, the manner of acquisition of land is provided and overriding of such provisions as incorporated in the Land Acquisition Act, the acquisition so made can be termed as legal.

8. It is argued by Mr. A.R. Malhotra that the land had been acquired rather forcibly taken over by the Village Council for public purpose i.e. construction of a road and this aspect had been admitted by the respondent No. 4 in its affidavit-in-opposition.

9. Since the fact of acquisition of the land and demolition of the house belonging to the Petitioner without adhering to the established procedure as laid down in the Land Acquisition Act, the Petitioner is entitled to have a remedy under Article 300A of the Constitution. The argument so advanced by Mr. N. Sailo that remedy under Article 300A is not available since there is an alternative remedy available to the Petitioner is not acceptable.

10. Mr. N. Sailo also contended that since the acquisition and demolition is a disputed question of fact and the same should be settled by adhering the alternative remedy. It is argued by him that the Petitioner ought to have approached the Civil Court for appropriate remedy instead of adhering a remedy under Article 300A of the Constitution. Mr. N. Sailo in support of his contention relied on a decision in Vinay Shukla Vs. Union of India (UOI) and Others, In Para 4 of the judgment the Hon"ble Supreme Court held as under:

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.

11. Mr. N. Sailo also relied in a decision of the case between State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., in context of seeking alternative remedy in view of disputed question of facts.

12. Apparently from the facts narrated by the Petitioner we are unable to perceive any disputed question of fact in this particular case. According to Mr. N. Sailo the land had been taken over and the building had been demolished by the respondent No. 4 and not by the other respondents. This Court had already discussed herein before that all actions resorted to by Village Councils are attributable to the State. So in view of that there cannot be any disputed question of fact and therefore, the case law so placed before this Court and notice upon cannot have any bearing in our present case. The argument so put by Mr. N. Sailo is found to have no substance.

13. Having considered all the facts and circumstances appearing and the law, this Court is of the opinion that the Petitioner has a remedy under Article 300A of the Constitution.

14. In the result, the writ petition succeeds. District Collector Kolasib is directed to assess the compensation for illegal occupation of the land and demolition of the building belonging to the Petitioner. After assessment of such compensation as per law the same shall be paid to the writ Petitioner.

15. With the above directions this writ petition is disposed of.