

(2002) 05 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (C) No. 59 of 1999

Sh. Pachhunga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Guw 124

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : H. Lalrinthanga, Lalthlamuani and Dinari, for the Appellant; T. Vaiphei, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Kar, J.—The petitioner Sh. Pachhunga, claiming entitled to all remedies under the Constitution of India being a Citizen of the Union, has presented this Petition for a writ in the nature of Mandamus or any other appropriate. Writ/ Order/Direction of the like nature commanding the respondents to make payment of compensation which has been already assessed in his favour along with any other relief that the Court may think fit and proper.

2. The facts of the case, briefly stated, are that within the area of Republic Veng, Aizawl, he was, along with others, allotted land but due to construction of a playground in 1985 there was landslide and his residential house standing thereupon became insecure for which he had to vacate the same. But in spite of representation Govt. took no action to compensate the victim who was affected. Excepting Saizahawla no other victims were paid compensation. State Sports Council and Director, Sports and Youth Services, Government of Mizoram acting on behalf of the State of Mizoram were responsible to act. Four persons were affected in this case. Three of them, namely, -- Sh. Hrangha, Sh. Saizahawla and Manthanga, were either granted compensation or allotted house in exchange but the petitioner was only allowed Rs. 80,000/- as compensation due to inadequacy

of the same several representations were made and finally, there was spot verification and assessment of the compensation by duly authorised persons and amount was fixed at Rs. 4,78,407/-. The petitioner could apprehend that there was no Intention to make payment. Several representation brought him no response from the Govt.

3. The Government of Mizoram presented affidavit-in-opposition through Under Secretary, Sports & Youth Services, acting for and on behalf of all the respondents. The respondents contended that the petitioner along with others were granted compensations on humanitarian ground and Sh. Saizahawla was given alternative building in exchange of damage to his property. The construction of the Republic Veng playground in the year 1985 by Mizoram Sports Council was admitted but it was submitted that in between the house of the petitioner and the playground, there was a P.W.D. road and accordingly, the damage, if any, to the house of the petitioner was not due to the construction of the playground but was due to natural phenomenon for which the respondents cannot be held responsible. It was, however, conceded that even if the petitioner was entitled to any compensation, it was the liabilities of Mizoram Sports Council and not the other respondents.

4. After presentation of the affidavit-in-opposition, the petitioner came with another affidavit in reply to the same. He denied the contentions of the respondents that damage to his houses was not due to construction of the playground by respondents but due to natural calamities and that the compensation of Rs. 80,000/- (rupees eighty thousand) was given to him as his crops was destroyed. But, there was no payment for the damage to his residential building. That on the spot verification, the Executive Engineer, P.W.D. Aizawl Building Division made assessment of the damages pursuant to the letter issued by Deputy Commissioner, Aizawl District, Aizawl. That the connected letter was annexure xiv (reproduced as below).

Annexure-XIV

"GOVERNMENT OF MIZORAM OFFICE OF THE EXECUTIVE ENGINEER : PWD : BUILDING DIVISION;

MIZORAM : AIZAWL

No. B-35/93/_____ : Dated Aizawl, the th, July/95

To

The Deputy Commissioner,

Aizawl District, Aizawl

Subject: Assessment of Pu Pachhunga's building at Republic Veng, Aizawl.

Ref. : Your letter No. F. 14011/2/86-91/ DC(A)/51 dt. 21-12-94.

Sir.

In inviting to your reference no. cited above, I have the honour to send herewith the above statement on amounting to Rs. 4,78,407/- (Rupees four lakh seventy eight thousand four hundred seven) only after duly counter-signed for favour of your further disposal.

The assessment is prepared to Plinth Areas basis due to the reason stated in the Report/Brief History of the estimate.

Further it may be stated that the assessment is prepared in connection with compensation claimed by the owner Pu Pachhunga and that the damage is caused by construction of Playground at Republic Veng, constructed by the Sport Council. Hence, it may be pointed out that the compensation case is beyond the preview of PWD.

Yours faithfully,

Enclo: Triplicate of assessment

Sd/- B. BUALCHHUAKA Executive Engineer, PWD Aizawl Building Division, Aizawl.

Memo No. B-35/93/721-22 : Dated Aizawl, the 21st July/95.

Copy to :--

1. The Estate Officer, PWD Estate Cell for Information.
2. Pu Pachhunga of Republic Veng (Near Republic play field) for information.

Sd/- Executive Engineer, PWD., Aizawl Building Division. Aizawl".

5. I have heard the learned counsels on both sides and perused the annexures attached to the Writ Petition.

6. In this context, it may be noted that initially by single bench Judgment of this Court, this petition was rejected and on appeal (W. A. No. 17/99), the judgment of the single bench was set aside and the matter was remanded for decisions on merit.

7. The respondents in this case in support of their contentions did not file any documentary evidence. The affidavit-in-opposition was presented by Under Secretary, Sports & Youth Services on 1-6-2001, there was no separate affidavit-in-opposition from newly impleaded respondent No.7. It was be significant to note that annexures 14, 15 and 18 are uncontroverted documents which relate to facts in issue. Annexure 14 accompanies assessment report of Sh. Pachhunga's building at Republic Veng, Aizawl by the Executive Engineer, PWD and It is the forwarding letter to the Deputy Commissioner, Aizawl District, Aizawl with reference to his letter No. F. 14011/2/86-91/DC(A)/51 dt. 21-12-1994, similarly. Annexure 15 is a letter address to Director Sports & Youth Services, Mizoram, Aizawl by Additional Deputy Commissioner, Aizawl, which also mentioned that there was a joint spot inspection of the land and building

belonging to the petitioner Pu Pachhung with the help of P. W. D. (Works) officials. Annexure 15 mentioned that there are also assessment of crops damages for which the petitioner was entitled to compensation. Copy of this letter was given to the petitioner. Annexure 18 is the reminder for the payment of building compensation to the petitioner addressed to Director, Sports & Youth Services, Government of Mizoram by Executive Engineer, (Works) P. W. D. The petitioner could bring sufficient materials to the notice of the Court to trace legal rights for getting relief. I also observe that in the affidavit-in-opposition itself there is a statement which goes as follows :

"That taking into consideration the physical situation at the relevant time, the Mizoram State Sports Council, on purely humanitarian ground gave financial assistance to the affected families including the petitioner which are as follows :

1. Sh. Manthanga Rs. 1,20,000/-
2. Sh. Hrangha Rs. 3,45,660/-
3. Sh. Salzahawla A Government building in exchange of the damage to his property.
4. Sh. Pachhunga Rs. 80,000/-

That the above financial assistance was not by way of compensation for the damages sustained by them but purely as financial assistance since no direct damages were caused to them as a result of the construction of the playground".

8. This admission of respondents of making payment of higher sums to other persons excepting the petitioner and then again stating that it was given on humanitarian ground looks funny. Releasing some money on plea of humanitarian aid and then saying that no damage was sustained by petitioner directly or indirectly due to construction of playground suffered from inconsistencies and contradictions on part of the respondents.

9. In the result, the petition is allowed. It is directed that the respondents will process the payment of compensation to the petitioner within 60 to 90 days and the respondents Nos. 5, 6 & 7, will be Jointly and severally liable for the same and for the non-compliance of the order passed.

10. No costs.