
(2016) 04 MAN CK 0007
In the Manipur High Court
Case No : Writ Petition (C) No. 374 of 2008

Shri N. Lokho

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Citation : (2017) AIR(Manipur) 5 : (2016) 3 GauLT 761

Hon'ble Judges : Mr. Rakesh Ranjan Prasad, J.

Bench : Single Bench

Advocate : Mr. R.K. Umakanta, Advocate, for the Appellant; Mr. Th. Ibohal, A.G, Manipur and Mr. A. Viscount, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Rakesh Ranjan Prasad, J. (Oral) - Heard Mr. R.K. Umakanta, learned counsel appearing for the petitioners as well as Mr. Th. Ibohal, learned Advocate General, Manipur assisted by Mr. A. Viscount appearing for the respondents.

2. The prayer which has been made in this application is that the respondents-State be directed to pay compensation in terms of provision of the Land Acquisition Act for taking over the land of the petitioners situated at Shajouba village and constructing diversion road known as ?Tadubi-Shajouba Kharasom Road?. Alternatively, the prayer has been made to pass similar order as that of the order passed in case of similarly affected persons.

3. The case of the petitioners is that the petitioners are the residents of Lower Shajouba having dwelling houses, field, kitchen garden etc. Upper Shajouba and it happened so that in the 2nd week of September, 2007 there was heavy rainfall in that area of Shajouba resulting into land slide sweeping away a part of Tadubi-Shajouba Kharasom Road at village Upper Shajouba. Thereupon, the authority of Public Works Department instead of repairing the old road started constructing a new road passing through the homestead as well as agricultural land of the petitioners at village Upper Shajouba without following the due process of law

and thereby caused loss and damages, not only to the land over which dwelling houses were there but also to the standing trees and crops. According to the case of the petitioners, the land which was utilised for constructing the diversion road was to the extent of 72,000 sq.ft. including the houses. In that event the petitioners filed a representation on 05.10.2007 before the Commissioner (Works), Government of Manipur requesting therein to pay compensation at the rate of Rs. 15/- per sq.ft. and also compensation for causing damage to the houses, standing crops and trees etc. but the authority did not pay any heed to the request made by the petitioners and therefore, there was no alternative for the petitioners but to approach this Court for redressal of their grievances.

4. As against this, the respondents in affidavit-in-opposition has admitted about the fact relating to construction of road over the land ownership of which is being claimed by the petitioners. However, it has been pleaded that the lands situated in Hill Areas of Manipur have never been subjected to survey and as such, one cannot claim ownership over the land situated in the village of the Hill Areas. Further, it has been pleaded that in the Mao society the villagers live together in the village and each family does have right to use certain land for construction of dwelling house and kitchen garden. It is the Village Council/Village Authority who does have Supreme right over the land in the village and hence, the Village Council is free to take decision for the development of any land. On account of any development if displacement of the family takes place it is the responsibility of the Village Council to settle them. Further, case is that after road was washed away it was the Village Council on whose behest diversion road over the land having 100 ft. long and 9 ft. wide was constructed over the land, ownership of which is being claimed by the petitioners, so that the road shall remain away from the land slide zone. Thus, it has been pleaded that when the Village Council had been given sanction to construct diversion road over the said land the petitioners being not owner are not entitled to any compensation.

5. After having regard of the case of the parties, it does appear that on one hand, the petitioners are claiming compensation in terms of the provision of the Land Acquisition Act on account of the fact that the diversion road was admittedly constructed over the land of the petitioners. However, according to the case of the State, the petitioners under the customary law of Mao tribes do not have any title or ownership over the land rather it is Village Council who is free to take decision to have a certain construction for the development of the village and thereby the petitioners are not entitled to have any compensation.

6. Thus, the issue which has fallen for consideration is that under the customary law whether the petitioners do have right of ownership over the land on which they were having dwelling house and part of the land was being used for agriculture purposes?

7. Mr. R.K. Umakanta, learned counsel appearing for the petitioners submits that the said issue was no longer remained as res integra as it was already been decided way back in the year 1961 by the Judicial Commissioner Manipur in the

case of Luitang Khullakpa & Ors. v. Deputy Commissioner of Manipur & Anr. reported in AIR 1961 Manipur 31 wherein similar question fell for consideration as to whether the petitioners of that case belonging to Naga tribes are entitled to have a compensation on account of their land being acquired by the State, when objection had been taken by the State that the person belonging to Naga tribe residing in the village does not have right of ownership over the said land.

8. It was pointed out that the learned Judicial Commissioner by tracing the history of the ownership of the person of the Naga tribe with the help of an authentic book and also taking into account the provision of Manipur State Hill Peoples Regulation, 1947 did come to the conclusion that ownership of land and right to cultivation had been recognised in the Hill villages. Further, it was pointed out that the said decision is so celebrated that reference of it one finds in the decision rendered by the Gauhati High Court. Thus, it was submitted that there cannot be any doubt on the issue that the villagers of Naga tribes does have right of ownership over the homestead land and the land being used for agriculture purposes in which he is in possession of. Under the circumstances, the petitioners are entitled to have compensation in terms of the provision of the Land Acquisition Act and if not then in terms of the order passed by this Court exactly in similar situation whereby the authority of the State did pay compensation to the affected persons by virtue of the order passed by this Court in a number of cases including in a case bearing writ petition number W.P (C) No.887 of 2007.

9. As against this, learned Advocate General Manipur submits that the villagers of the Naga tribes does no have any independent right of ownership or title over the land in their possession. Rather its Village Council is competent to take decision as to whether any land which have been in possession of some villagers is required for development and if decision is taken by the Village Council it has to be obeyed and in case of displacement of a person from the land it is the duty of the Village Council to settle them and thus, this practise being prevalent does establish that persons of the Naga tribes does not have any independent right of ownership or title over the land in possession.

10. Respectfully, I would say that this issue no longer remains res integra as way back in the year 1961 when exactly the same issue fell for consideration before the learned Judicial Commissioner in a case of Luitang Khullakpa & 2 Ors. v. Luitang Khullakpa & Ors. v. Deputy Commissioner of Manipur & Anr. (supra) the learned Judicial Commissioner having found the system of land tenure of the Hill villages being not clear at all did put reliance on an authentic book The Naga tribes of Manipur by T.C. Hudson to find out the extent of the interest of the person belonging to Naga tribes over the land in possession. That apart the provision of Manipur State Hill Peoples Regulation, 1947 was also taken into account. Learned Judicial Commissioner having taken into account came to conclusion that the facts noted amply indicate that the villagers does have right of ownership to land. The said conclusion was arrived at after taking into account

the following facts appearing in the said case.

"(6) This case involves a decision of the rights the villagers of the Hill villages of Manipur have with respect to the lands in their occupation in the various Hill villages. The system of land tenure in the Hill villages is in a very inchoate state. Authorities either in the form of books on the subject hill peoples are lacking. The Assam Land Revenue Manual made applicable only to the valley areas of Manipur.

The Only book on the subject which has been brought to my notice by the parties is "The Naga Tribes of Manipur" by T.C. Hudson, published in 1911. Even this book contains very little about the land tenure system in the hill areas. It is not necessary at this stage to deal at any great length with these questions as it will be the duty of the land Acquisition Officer to decide the rights of the villagers in the land, if I hold in this case that the petitioners herein are entitled to claim compensation for the taking over the lands by the Government. It is sufficient to say that in the above book, Mr. Hudson states at page 105 that each village possesses a well-defined area which is sometimes demarcated with boundary stones and within which the villagers possess paramount rights of hunting, of fishing if a river be included, and of development of cultivation either by making new terraces or by jhuming. It is stated further that in the case of villages which possessed terraced fields, we find a mass of customs relating to the equitable of water throughout the terraces, the highest fields getting the water first and to prevent waste to allow it to go to the lower fields.

The book further states that land is held in several ownership but no alienation outside the clan was permitted. Again, at page 99 of the same book, we find it stated that a common feature of the village system was that the village area was strictly defined and occasionally delimited by artificial boundary marks within which the villagers are free to fish, if a river be in the area, to hunt, and if necessary even in the case of permanent village with terraced cultivation, to develop their cultivation by jhuming.

The book states that in cases where permanent villages subsist by means of jhums, the rights of ownership are recognised in the jhums which are cultivated in a strict rotation, and several ownership in the land is common, but is limited by the condition that land may not be alienated, at any rate, outside the villages, if indeed disposal outside the clan be permitted.

(7) The first attempt at codification of the system obtaining in the hill area appears to have been made by the Manipur State Hill Peoples Regulation, 1947. Even in the said regulation, the rights of villagers in the land have not been defined. There is no record to show the lands in the possession of the various villagers though as stated in Mr. Hudson's book, the boundaries of hill villages are well defined.

There is no system of assessment of lands in the hill villages. Each village has got a Khullakpa Chief and certain other village Officers like the Luplakpa. The Manipur State Hill Peoples Regulation, 1947 contains in its schedule the lists of

villages in the various subdivisions with the number of taxable houses in each village. The present village in question, namely, the Lambui village is shown as Item No.29 in the East Sub- Division Office Circle No.1 of Ukhrul with 43 taxable houses.

The only taxes collected from the Hill village by the Government are the house taxes from each house-holder or family at a fixed rate. The mode of collection is through the Khullakpa of each village. The Government in turn does not interfere with the employment and possession of the lands in the various villages so long as the house taxes are paid by the Khullapas.

The actual enjoyment and separate ownership and possession of the lands in the various villages among the villagers appear to be a matter of internal arrangement as between the Khullakpa and the villagers. We find from sections 60 to 64 of the Manipur State Hill Peoples Regulation, 1947 that provision is made for settlement of dispute regarding the ownership of land or the right of cultivation over land or regarding village boundaries. This would show that ownership of land and right to cultivation are recognised in the Hill villages."

11. It would be worthwhile to note here that ordinarily custom pleaded needs to be proved under Section 57 of the Evidence Act but nothing need to be proved if the courts can take judicial notice. When a custom had been repeatedly recognised by the courts, it passes into law of the land and proof of it then become unnecessary under Section 57 of the Evidence Act. This proposition has been laid down by *Ujagar Singh v. Mst. Jeo*, Air 1959 SC 1041. It be stated that the decision rendered in the aforesaid case by Judicial Commissioner has subsequently been taken notice of by the courts in case of *Vumsuan & 3 Ors. v. Nokam Vaiphei & 3 Ors.*, 1995 (III) GLT 617. Under the circumstances, there remain no doubt that the petitioners were having right of ownership over the land on which diversion road was constructed without resorting to provision of the Land Acquisition Act and thereby the petitioner are entitled to compensation which should be paid in the same term which had been paid to one of the similarly situated persons namely, *Mr. N. Lortho & Anr.* in terms of the order passed by this Court in W.P(C) No.887 of 2007 after determination of the area of the land of the petitioners, which was actually taken over for the purpose of constructing diversion road and other relevant factors so that the compensation be paid to the petitioners within six months from the date of receipt of a copy of this order.

12. Thus, this writ petition stands allowed.