
(2014) 03 MEG CK 0018
In the Meghalaya High Court
Case No : WP(C) No. 274/2011

Smti. Deng Bareh

APPELLANT

Vs

The State of Meghalaya and Others

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2014) 03 MEG CK 0018

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. S.P. Mahanta, learned counsel for the petitioner and Mr. R. Gurung, learned GA appearing for the respondents No. 1, 2, 3 & 7. Also heard Mr. H. Kharmih, learned counsel for the respondents No. 4-6. This is the third round of litigation the petitioner had approached this Court for a direction to the respondents to complete the land acquisition proceeding for acquiring her land measuring 218 mtrs in length and 7 in mtrs breadth, which is, at present, used by the villagers as an approached road. It is stated in the writ petition, which is not denied by the respondents that the petitioner's land measuring 218 mtrs in length and 7 mtrs in breadth had been used for construction of the village road i.e. Twah-U-Sdiah Village. The petitioner had earlier approached this Court by filing a writ petition being WP(C) No. 252(SH)2003 against the present respondents and the said writ petition had been disposed of vide judgment and order dated 08.09.2008, by directing the State respondents to take up land acquisition proceeding under the Land Acquisition Act, 1894 for acquiring the said land of the petitioner which had already been used for construction of the road and erection of poles with electric wires. For convenience, the earlier order of this Court dated 08.09.2008 is quoted hereunder:-

8.9.2008

Heard Mr. S.P. Mahanta, learned counsel for the petitioner and Mr. S. Sen, learned counsel for respondent Nos. 1, 2, 3 and 6. Also heard Mr. H. Kharmih, learned counsel for the respondent Nos. 4 and 5.

The facts of the above case are very simple, not complicated. In pursuit of Local Area Development Fund of MLA, 7-War Jai?tia Constituency, it is stated by the petitioner that the State PWD constructed a road upto Twah-U-Sdiah Village over the land of the petitioner measuring 218 mtrs length and 7 mtrs breadth, sometime, in the last part of 2002 during the subsistence of an interim order dated 22.11.2002 passed by this Court in WP(C) No. 422 (SH)2002 which was subsequently vacated on 19.05.2003.

The grievance of the petitioner is that the State PWD has encroached upon her land while constructing the road mentioned above and in addition to that, the MeSEB authorities have also erected electric poles with electric wires passing through the land of the petitioner without acquiring the land and without paying any form of rent and, as such, a direction is sought from this Court for appropriate order in accordance with law.

The respondents-the State Government, the State PWD and the MeSEB have not filed any counter affidavit disputing/controverting the averments made in the writ petition by the writ petitioner.

In the circumstances stated above, this Court is of the opinion that construction of road on the land of the petitioner and erection of electric poles with wires passing through the land of the petitioner without acquiring the land is not permissible in law and, accordingly, the respondents, particularly respondent Nos. 1, 2 and 3 are directed to take land acquisition proceeding under the Land Acquisition Act, 1894 for acquiring the land covered by the aforesaid construction and erection of poles with electric wires passing through the land of the petitioner and pay adequate compensation to her.

In view of the fact that the land belonging to the petitioner had been encroached upon in the matter stated above since 2002, it is made clear that the land acquisition proceeding shall be completed within a period of four months from the date of receipt of a copy of this order. In case the Collector is not able to complete the proceeding within the time stipulated by this Court, the Collector may approach this Court again for extension of time.

With the above, the writ petition stands disposed of.

2. The present respondents No. 4-6 preferred an appeal being Writ Appeal No. 44(SH)2008 before the Division Bench against the said judgment and order of the learned Single Judge dated 08.09.2008, which had been quoted above in extenso. The said writ appeal was dismissed with the observations that the directions for acquiring the land of the petitioner under the said earlier order of the learned Single Judge dated 08.09.2008, are more particularly, to the respondents No. 1, 2 & 3 i.e. State of Meghalaya, represented by the Chief

Secretary, Govt. of Meghalaya, the Secretary to the Govt. of Meghalaya, Public Works Department (Roads) and the Deputy Commissioner-cum-Collector, Jaintia Hills District, Jowai vide order dated 10.09.2009. For easy reference, the order of the Division Bench dated 10.09.2008 passed in Writ Appeal No. 44(SH)2008 is quoted hereunder:-

10.09.2009

Heard Mr. H. Kharmih, learned counsel for the appellant and Mr. H. Abraham, learned counsel for the respondent.

This appeal is directed against the order dated 8.9.2008 passed by the learned single Judge in WP(C) No. 252(SH) 2003 directing the State Government more particularly respondent Nos. 1, 2 and 3 in the writ petition be formally acquire the land, possession of which, has already been taken by the PWD for constructing a road and thereafter the MeSEB had erected electric posts and has drawn electric line.

Mr. Kharmih submitted that MeSEB is not liable to pay compensation to the writ petitioner since the electric posts were erected with due consent from the land owner. Besides this, the learned counsel also submitted that the land in which electric line has been drawn is a disputed land.

As can be gathered from the impugned order, before erecting electric posts PWD had already taken possession of the land and only thereafter the Electricity Board had one electric wiring. From this fact, it emerges that MeSEB did not directly encroach into the land of the petitioner and at any rate direction to acquire the land and pay adequate compensation has been give to the State authorities and not to MeSEB. At this stage the appellant authorities (MeSEB) may not be aggrieved with the said direction.

Hence, we do not find any merit in this appeal and it is accordingly dismissed.

3. It appears that inspite of the direction of this Court vide judgment and order dated 08.09.2008 passed in WP(C) No. 252(SH)2003, which had been affirmed by the Division Bench vide order dated 10.09.2009 passed in Writ Appeal No. 44(SH)2008, the State respondents did not take up land acquisition proceeding under the Land Acquisition Act, 1894, for acquiring the said land of the petitioner and as such, the petitioner had not been compensated for the said land which had already been utilized for construction of the said road. Accordingly, the petitioner again filed the present writ petition for the relief which reads as follows:-

Under the premises aforesaid, it is prayed that your Lordship, may be graciously pleased to admit this petition, issue a rule, call for the records and calling upon the Respondents to show cause as to why a writ of mandamus should not be issued directing the respondents to complete the proceeding under the Land Acquisition Act as per the earlier judgment and order dated 08.09.2008 passed in WP(C) No. 252(SH)2003 within a period of 1 month and pay the due land

compensation along with interest;

and/or

So as to why the petitioner should not be adequately compensated by payment of compensation for the portion of land acquired and used by the Respondent PWD and Me.E.C.L. alongwith interest from the date of having taken possession till payment of compensation;

and/or

So as to why other further Order/Orders should not be passed as your Lordship may deem fit and proper and after cause or causes being shown and after hearing the parties be pleased to make the rule absolute.

And for which the humble petitioner as in duty bound shall ever pray.

4. The State respondents i.e. 1, 2 & 3 who did not file the affidavit-in-opposition in the earlier writ petition i.e. WP(C) No. 252(SH)2003, filed the affidavit-in-opposition in the present writ petition. It appears that the respondents No. 1, 2, 3 & 7 had taken a new plea in their affidavit-in-opposition for the first time that the PWD did not construct the said road over the said land of the petitioner. It is fairly well settled law that any averments made in the writ petition which had not been denied by filing the affidavit-in-opposition or counter affidavit, shall deem to have been admitted by the respondents. The respondents No. 1, 2 & 3, who did not file the affidavit-in-opposition in the earlier writ petition i.e. WP(C) No. 252(SH)2003 cannot take a new plea which is quite contradictory to the earlier stand taken by them in WP(C) No. 252(SH)2003.

5. Respondents No. 4-6 stated that the respondent-Me.E.C.L. along with the Headman of the village met the petitioner who assured them that she would first discuss the matter with her family members and will intimate the decision taken by them after two or three days on her objection for construction and passing of electric line through her land in Twah-U-Sdiah village but she could not do so and the Secretary of Twah-U-Sdiah village vide letter dated 28.05.2001 addressed to the SDO (Civil) Amlarem Sub-Division, Amlarem along with the villagers had stated that the petitioner had no right to raise any objection as the construction of electric poles and passing of electric lines through her land is for the electrification of the village, which is for the interest of the public and also that when no intimation from the petitioner was received as per her assurance, as the scheme was time bound and for public interest, the electric poles were erected and the electric lines were constructed accordingly after observing the necessary formalities.

6. From the affidavit-in-opposition filed by the respondents No. 4-6, it appears that no consent had been obtained from the petitioner for erection of the electric poles for the electric lines passing through the said land of the petitioner and what the respondents No. 4-6 had stated in their joint affidavit-in-opposition is that erection of electric poles on the said land of the petitioner is for public

interest. Even, in public interest, the land of private individual cannot be used without payment of compensation. The petitioner had not given any consent for construction of the village road over her land without paying any compensation.

7. In the peculiar nature of this case, this Court passed an order dated 25.09.2013 in the present writ petition directing the Deputy Commissioner, Jowai to conduct an enquiry for ascertaining (i) who had constructed the said road in the year 2002? (ii) whether the land i.e. land measuring 218 mtrs length and 7 mtrs breadth used for construction of the said road belongs to the petitioner or not? and (iii) whether the said road is still used by the villagers or not? Pursuant to the said order of this Court dated 25.09.2013, the Deputy Commissioner, Jowai had conducted an enquiry and submitted a report dated 25.02.2014, which reads as follows:-

Enquiry report of Shri. F.B. Basan on the case of Smti. Deng Bareh versus State of Meghalaya and others.

In compliance to Memo. No. REV/REF/Case-1/2010/16, dated 5th February 2014, causing me to conduct a Joint Enquiry in the manner of the civil suit by Smti. Deng Bareh vs. State of Meghalaya & others, Case no WP(C) No. (SH) 274 of 2011 High Court of Meghalaya, regarding the pertinent questions directed by this court on the case, self along with Additional Deputy Commissioner (Revenue) West Jaintia Hills, Extra Assistant Commissioner, East Khasi Hills, SDO MeECL (Rural), representatives from PWD (Rds.) Jowai South and with the presence of the petitioner Smti. Deng Bareh conducted a joint enquiry on the 20th February 2014 at 11:45 a.m. at Twahusdiah village to ascertain the questions as per the direction of the Court. After a brief interaction with the petitioner and other parties, the following were the findings:

1. The petitioner gave a statement on the questions of the High Court stating that,

a) As per her knowledge the road which had been constructed on her land had been done so by the village authorities who told her that it was a project of the PWD but she did not consent to any party approving of the construction of the road.

b) She clearly stated that the land measuring 218 mtrs length and 7 mtrs breadth which had been used road construction belongs to her.

c) She also stated that the road is still being utilized by the villagers till this day.

2. Officials from the PWD clearly stated that the said road has not been constructed by them.

Since none of the members of the village dorbar were present on this day, it could not be establish if there was any counter argument on what the petitioner had stated. However, it is certain to conclude that the PWD has no role in the construction of the road or any knowledge of who constructed the road.

Enclosed:

Statement of petitioner Smti. Deng Bareh

Dated: 25/02/2104

Sd/- Ferdinand Basan Extra Assistant Commissioner (Revenue) West Jaintia Hills.

8. On perusal of the enquiry report, it is clear that the land measuring 218 mtrs in length and 7 mtrs in breadth belongs to the petitioner and had been used for construction of the road and the said road is still used by the villagers. Further, in the said enquiry report, it is stated that the officials from the PWD clearly stated that the said road had not been constructed by them. In this regard, for the sake of repetition, it is reiterated that the State respondent-PWD in the earlier writ petition i.e. WP(C) No. 252(SH)2003 did not deny that the PWD had constructed the said road over the land of the petitioner. Mr. SP Mahanta, learned counsel for the petitioner strenuously contended that as on today, the PWD personnel are repairing the said road.

9. The said land of the petitioner had been utilized for constructing the approach road. Construction of the approached road over the land of the petitioner may be for public purpose but the private land cannot be forcibly taken over for public purpose without compensation.

10. In the peculiar facts and circumstances considered above, this Court is of the considered view that even for public purpose, the villagers or public cannot construct the road over the said land of the petitioner without necessary compensation. Forcibly taking over the land of private individual without following due process of law even for public purpose is violation of constitutional right of the private individual under Article 300A of the Constitution of India.

11. In the peculiar nature of this case, the petitioner may take actions, in the manner provided by law, for closing of the said road unless and until, the concerned authorities pay the compensation. This Court makes this observation in the extreme circumstances in the given case. If the petitioner has taken recourse to in the manner provided by law as per observation of this Court, the authority concerned shall give necessary assistance and protection to the petitioner. With the above observations, this writ petition is allowed.