
(2010) 03 GAU CK 0007
In the Gauhati High Court

State of Mizoram and Others

APPELLANT

Vs

Sh. Hrangdawla and Another

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : AIR 2010 Guw 84 : (2011) 3 GLR 444

Hon'ble Judges : T.N.K. Singh, J;P.K. Musahary, J

Bench : Division Bench

Judgement

T.N.K. Singh, J.—This writ appeal has been filed by the appellants, respondents in WP(C) No. 110 of 2005, against the judgment and order dated 4-10-2007 passed by the learned single Judge in WP(C) No. 110/ 2005 directing the District Collector, Kolasib District to assess the amount of compensation for illegal occupation of the land and demolition of the building belonging to the respondent No. 1 herein/writ petitioner and after assessment of such compensation as per law, the same shall be paid to the writ petitioner.

2. We have heard Mr. N. Sailo, learned Addl. Advocate General appearing on behalf of the appellants/respondents in the writ petition and also heard Mr. A.R. Malhotra, learned Counsel appearing on behalf of the Respondent No. 1/writ petitioner.

3. The facts, in brief, are that the respondent No. 1 writ petitioner purchased a plot of and located at Hmar Veng, Kolasib from Sh. Kapzawna (1) in the year 1992. After purchasing the said land, he constructed a small house and started living therein with his family. Thereafter, he applied for revenue pass to the appropriate authority for the said plot of land. The Competent Authority issued a House Pass No. K-396/2001 in respect of the said plot of land purchased by the writ petitioner and thereafter, the Respondent No. 1/writ petitioner had constructed an Assam type house at the cost of Rs. 50,000/- and the said Assam type house was forcibly dismantled by the Village Council-1, Kolasib (Respondent No. 4) on 22-7-2004 for the purpose of constructing a road starting from North

Kolasib to Sairang and the said land of the writ petitioner covered by House Pass No. K.396/2001 was also taken over by the Respondent No. 4 i.e. Village Council-1, Kolasib for constructing the road for the public purpose. It is also pointed out in the writ petition that for dismantling the Assam type house constructed on the said land covered by House Pass No. K.396/2001 by the writ petitioner and also for taking over the same for public purpose, neither the State Government nor the Village Council paid the compensation to the Respondent No. 1/writ petitioner. Hence, the writ petition being WP(C) No. 110/2005 was filed by the writ petitioner for a direction to the respondents to pay compensation for the dismantling of Assam type house constructed over the land covered by the House Pass No. K.396/2001 by the Respondents and also for taking over the said land of the respondent writ petitioner. It is also alleged that after getting the House Pass in respect of the said plot of land, the petitioner also obtained the land Settlement Certificate No. 501701/01/834 of 2005.

4. The respondents filed affidavit-in-oppositions in the writ petition wherein the respondents are not denying that the said land located at Hmar Veng, Kolasib was purchased by the respondent No. 1 (writ petitioner) in the year 1992. The petitioner had obtained House Pass No. K.396/2001 for the said land and that the respondent No. 1/writ petitioner had constructed an Assam type house on the said plot of land. In the affidavit-in-opposition filed by the Respondent No. 4/Village Council, it has been categorically stated that a fresh LSC is now being processed by the Respondent No. 2 (The Secretary to the Government of Mizoram, Land, Revenue & Settlement Department, Aizawl) for the alternative plot of land allotted to the present Respondent No. 1/writ petitioner and the Respondent No. 4/Village Council also categorically stated that in order to compensate him, the respondent No. 4 had already allotted an alternative site as soon as the said house was dismantled. The Respondent No. 4 also purchased 30 cubic sawn timbers and provided to the respondent/writ petitioner; and also 4 bundle tin roof and 18 pieces of tiles were provided to the writ petitioner by Shri K. Lalrinliana, MLA of Kolasib Constituency for the construction of his new house.

5. The learned single Judge vide the impugned judgment and order directed the District Collector, Kolasib District to assess the amount of compensation for illegal occupation of the land and demolition of the building belonging to the Respondent No. 1/writ petitioner and after assessment of such compensation as per law, the same shall be paid to the writ petitioner. Being aggrieved by the impugned judgment and order of the learned single Judge passed on 4-10-2007 in W.P. (C) 110/2005, the appellants (respondents in the writ petition) has preferred the present appeal on the main ground that since there is a disputed question of facts, the writ Court cannot adjudicate the same and if there is alternative remedy of civil suit, it would not be appropriate to exercise writ jurisdiction for passing the impugned judgment and order.

6. Mr. Sailo, learned Addl. Advocate General contended that under the given facts and circumstances, there was disputed question of facts and appropriate remedy

is to file a civil suit in the Court of competent jurisdiction. As stated above, the three facts are admitted by the parties.--

(i) the respondent/writ petitioner has purchased a plot of land located at Hmar Veng, Kolasib from one Sh. Kapzawna (1) in the year 1992 and also obtained the House Pass No. K.396/2001 from the Revenue Authorities in respect of the said plot of land;

(ii) he later on obtained the land Settlement Certificate No. 501701/01/834 of 2005 for the said plot of land and

(iii) the said Assam type house of the respondent/writ petitioner constructed on the said plot of land covered by House Pass No. K.396/2001 corresponding to LSC No. 501701/01/834 of 2005 had been dismantled by the Village Council-1, Kolasib (Respondent No. 4 to the writ petition).

7. The only disputed question of facts in the present case is as to the amount of compensation to be paid by the State respondents to the writ petitioner for dismantling the Assam type house and also for taking over the land covered by House Pass No. K.396/ 2001 corresponding to LSC No. 501701/01/ 834 of 2005.

8. The Apex Court in D.K. Basu Vs. State of West Bengal, held that the claim in public law for compensation for unconstitutional deprivation of fundamental right, to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

9. The Apex Court in D.K. Basu's case (supra) held that the old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim-civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is,

therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

10. The Apex Court again in *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, held that a writ petition involving serious disputed question of facts which require consideration of evidence, which is not on record, will not normally be entertained under Article 226 of the Constitution, but there is no absolute rule that in all cases involving disputed question of facts the parties should be relegated to a civil suit.

11. Keeping in view of the decisions of the Apex Court in *D.K. Basu's case* (supra) and *ABL International Ltd.'s case* (supra), we are of the considered view that the Court has jurisdiction to entertain the present writ petition involving disputed question of facts of the type mentioned above and there is no absolute bar for entertaining the writ petition in the present nature. In the given case, three important facts, as stated above, are not disputed. What is disputed in the present case is only about the amount of compensation to be paid to the writ petitioner for dismantling his Assam type house constructed on the said plot of land covered by House Pass No. K.396/2001 corresponding to LSC No. 501701/01/834 of 2005 and also for forcibly taking over the said land. Under such circumstances, we are of the considered view that the decision taken by the learned Single Judge in the present impugned judgment and order dated 4-10-2007 passed in WP(C) No. 110/2005 that the compensation to be paid by the respondents for the damage caused to the writ petitioner by dismantling his Assam type house constructed on the land covered by House Pass No. K.396/2001 corresponding to LSC No. 501701/01/834 of 2005 should be ascertained by the District Collector, Kolasib District for making necessary assessment, is one of the acceptable views and therefore, we are not inclined to interfere with the view taken by the learned single Judge in passing the impugned judgment and order dated 4-10-2007.

12. However, it is made clear that the District Collector, Kolasib District, while making assessment of the amount of compensation for the illegal occupation of the land and demolishing the house of the writ petitioner, shall take into consideration the case of the Respondent No. 4 that some materials have already been provided to the writ petitioner as compensation for dismantling the said Assam type house.

13. With the above observations and directions, this writ appeal stands disposed of.

14. Registry is directed to send a copy of this order along with a copy of the writ petition as well as the affidavit-in-opposition to the District Collector, Kolasib District, for doing needful.