
(2017) 04 GAU CK 0002
In the Gauhati High Court
Case No : First Appeal No.5 (K) of 2013

Union of India

APPELLANT

Vs

Shri Tsuponthung Ezung

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Constitution of India, 1950 — Article 300A, Article 31A
Land Acquisition Act, 1894 — Section 23

Citation : (2017) AIR(Gauhati) 86

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Advocate : Mr. Yangerwati, C.G.C Mr. A. Mane Phom, Advocate, for the Appellants; Ms. V. Suokhrie, Addl. Sr. Govt. Advocate, for the State Respondents; Mr. P.Choudhury and Mr. Akum Jmair, Advocates, for the Private Respondents

Final Decision : Dismissed

Judgement

S. Serto, J.—These are 5(five) appeals filed by the Union of India and 3 others against the common judgment dated 6/12/2012 of the District Judge, Wokha passed in C.S. No.02/04/05/06/07 of 2003 and the decree passed in pursuance of the judgment on 12/12/2012.

2. The facts and circumstances of the case briefly stated are as follows:-

In the year 1991, 1992 with fund provided by Ministry of Surface Transport, Government of India New Delhi (Appellant No.1), construction of a new road from Wokha-Bokajan by Border Road Organization (BRO) was undertaken. For that lands were acquired from private owners through the Government of Nagaland and the actual acquisition was done through the Deputy Commissioner, Wokha. It is stated that after formalities for acquiring the lands were completed from the parties, compensation were distributed by the Deputy Commissioner, Wokha with the fund provided by the Ministry of Surface Transport. Thereafter, as stated above the road construction was carried out by BRO and completed. However, the respondents in these appeals who also claims that their lands along

with their cultivations/plantations, orchards, fisheries, canals and fruit bearing trees which were affected by the construction of the road from 16Km-31Km have not been paid compensation due to them therefore, they filed 5 different Civil Suit being C.S.No. 02/04/05/06/07 of 2003 before the District Judge, Wokha against the present appellants and against the State Government represented by the Chief Secretary to the Government of Nagaland, and the Deputy Commissioner, Wokha and 4 other private respondents praying for compensation.

3. The claims of the plaintiffs in C.S. No.2/2003, 4/2003, 5/2003, 6/2003 and 7/2003 who are the private respondents in these appeals was that they are owners of the lands described below in the chart along with the plantations made therein, orchards, fisheries, canals, fruit bearing trees which were affected by construction of the Wokha-Bokajan, therefore, they should be paid the compensation due to them.

Suits Nos.

Area of land (acres approx)

Land acquired (acres approx.)

2 of 2003 Plaintiffs/respondents in F.A. 5(K)/2013

16-17 kms 7 acres

2 acres

22-23kms 8 acres

27-28kms 7 acres

29-30kms 5 acres

4 of 2003 Plaintiffs/respondents in F.A. 6(K)/2013

28-29kms 7 acres & 12 acres

2 acres

30-31kms 6 acres

5 of 2003 Plaintiffs/respondents in F.A.7(K)/2013

23-24kms 6 acres

60,000 sq.ft

6 of 2003 Plaintiffs/respondents in F.A.8(K)/2013

23-24kms 6 acres

2 acres

29-30kms 10 acres

7 of 2003 Plaintiffs/respondents in F.A.9(K)/2013

25-26kms 7 acres

2 acres

28-29kms 6 acres

4. The learned District Judge, Wokha after issuing notice to the defendants who are appellants in all the 5 appeals including the State respondents and the private respondents tried the suits and passed the common judgment dated 6/12/2012 by which, 5 suits were disposed. The learned District Judge, Wokha framed as many as 9 issues and the same are given here below:-

1. Whether the suit is maintainable?

2. (a) (CS 2/2003) Whether the defendant No. 1 to 6 acquired the land of the plaintiff at 16-17 KM, 22-23 KM and 29-30 KM stretch during the new formation cutting of Wokha-Bokajan road which was completed in the year 1992?

(b) (CS 4/2003) Whether the defendant No. 1 to 6 acquired the land of the plaintiffs at 28-29 kms and 30-31 kms stretch, during the new formation cutting of Wokha-Bokajan road which was completed in the year 1992?

(c) (CS 5/2003) Whether the defendant No. 1 to 6 acquired the land of the plaintiffs at 23-24 kms stretch, during the new formation cutting of Wokha-Bokajan road which was completed in the year 1992?

(d) (CS 6/2003) Whether the defendant No. 1 to 6 acquired the land of the plaintiffs at 23-24 kms and 29-30kms stretch, during the new formation cutting of Wokha-Bokajan road which was completed in the year 1992?

(e) (CS 7/2003) Whether the defendant No. 1 to 6 acquired the land of the plaintiffs at 25-26 kms and 28-29 kms stretch, during the new formation cutting of Wokha-Bokajan road which was completed in the year 1992?

3. (a) (CS 2 of 2003) Whether on the acquired land the plaintiff suffered loss to his paddy fields estimated at Rs.6,73,087/- (Rupees Six lakhs seventy three thousand and eighty seven) only?

(b) (CS 4 of 2003) Whether on the acquired land the plaintiff suffered loss to his paddy fields estimated at Rs.4,42,800/- (Rupees Four Lakhs forty-two thousand) only?

(c) (CS 5 of 2003) Whether on the acquired land the plaintiff suffered loss to his paddy fields estimated at Rs.2,40,000/- (Rupees two lakhs forty thousand) only?

(d) (CS 6 of 2003) Whether on the acquired land the plaintiff suffered loss to his paddy fields estimated at Rs.2,14,062/- (Rupees two lakhs fourteen thousand and sixty two) only?

(e) (CS 7 of 2003) Whether on the acquired land the plaintiff suffered loss to his

paddy fields estimated at Rs.2,48,000/- (Rupees two lakhs forty eight thousand) only?

4. Whether proper notices were issued to the plaintiffs for acquiring the land and physical survey/verification of the land was officially conducted in the presence of the plaintiff to assess the damages for payment of compensation?

5. Whether any compensation has been paid against the land acquired, if so whether the amount of payment if any made commensurate/satisfies the actual loss suffered by the plaintiff on the land acquired?

6. Whether the defendant no.1 to 4 have released the compensation to the affected land owners after proper verification with the district administration and if so whether their liability to pay compensation still subsists?

7. Whether the plaintiffs has received any compensation for the land acquired by the official defendants during the first formation cutting of Wokha-Bokajan road?

8. Whether any compensation has been paid to the non-land owner defendants/ third party(s) against the plaintiff's, if so by whom, how and why?

9. Whether the plaintiff is entitled to receive any compensation against his land, if so the amount and payable by whom?

5. From the common judgment impugned herein it appears the Civil Suits were filed by the plaintiffs on the indulgence given by a Division Bench as well as a Single Bench of this High Court for the propose of claiming compensation from the defendant Nos. 1 to 4 who are the appellants in these appeals and defendant Nos. 5 and 6 i.e. the State of Nagaland represented by the Chief Secretary to the Government of Nagaland and the Deputy Commissioner, Wokha Nagaland. It is also seen from the judgment and order that though the appellants/defendant Nos. 1 to 4 appeared and contested the suit, the State of Nagaland and the Deputy Commissioner, Wokha did not appear in the case and contested the suit and not only that, they did not co-operate in furnishing the relevant records of the land acquisition proceeding before the learned District Judge in spite of several request and reminders sent by the Court. The learned District Judge even went to the extent of saying that he had prima facie impression that there are serious irregularities in the acquisition proceeding conducted by the defendant Nos. 5 and 6 i.e. State of Nagaland and the Deputy Commissioner Wokha which led to non-payment of compensation to the actual land owners i.e. the respondents/plaintiffs. The learned District Judge also recorded in his judgment that since the original records of the land acquisition proceedings for the lands from 0 km to 31 Kms of the Wokha-Bokajan road were not submitted by the concerned authorities, on an application filed under Section 66(4) of the Indian Evidence Act 1872 read with Section 151 of the CPC the plaintiffs were permitted to exhibit copies of the original documents as secondary evidence in the absence of primary evidence and the same was not opposed by the counsel representing the appellants/defendant Nos. 1 to 4. The learned District Judge also recorded

further, in his judgment that the defendants Nos. 1 to 4 who are the appellants in these appeals also filed a similar application, therefore, they were also permitted to do the same. Thereafter, the learned District Judge recorded in his judgment that all the plaintiffs in these suits examined 2 witnesses each who were also cross examined by the Advocate for the defendant Nos. 1 to 4 i.e. the appellants in these appeals. But for the appellants/respondents only one common affidavit in lieu of oral evidence was filed and only one common witness was examined. Thereafter, the learned District Judge discussed all the issues and recorded his findings and passed the common judgment dated 6/12/2012. The operative portion of the judgment is given here below:-

"In order to compensate the loss suffered by the Plaintiffs/land owners who are suffering from 1992 till to date and were made to run from pillar to post to obtain the compensation amounts for which the Defendants Nos. 1 to 6 had turned a deaf ear to their genuine problems as the Defendants had been party to the misappropriation of the compensation money payable to the Plaintiffs/land owners. All the plaintiffs/land owners are senior citizens and were made to suffer untold misery. I would assess the compensation of Rs.50,000/-(fifty thousand only) in each of the suits carrying an interest of 12% per annum from 1992 till the date of actual payment by the Defendant Nos. 1 to 4. The entire liability of the payments of the entire decretal amounts in the different suits would be on Defendant Nos. 1 to 4 with a liberty granted to them to recover the same from the other Defendants who according to them had been paid the compensation amount by taking appropriate legal proceedings in any Court of law. The Defendant Nos. 1 to 4 had filed a Review Petition seeking recalling of the order dated 24.09.2009 imposing a cost of Rs.10,000/- had not been pressed and the same stood dismissed.

On the basis of the discussions made herein above, I hereby pass the following decrees in favour of the Plaintiffs and against Defendant Nos. 1 to 4 in respect of the different suits, namely

- (a) CS No.2 of 2003 - Rs.6,73,870.50 with interest @ 12% per annum from 1992 till the date of actual payments to the Plaintiffs/land owners by Defendant Nos. 1 to 4.
- (b) CS No.4 of 2003 - Rs.4,42,800/- with interest @ 12% per annum from 1992 till the date of actual payments to the Plaintiffs/land owners by Defendant Nos. 1 to 4.
- (c) CS No.5 of 2003 - Rs.2,40,000/- with interest @ 12% per annum from 1992 till the date of actual payments to the Plaintiffs/land owners by Defendant Nos. 1 to 4.
- (d) CS No.6 of 2003 - Rs.2,14,062/- with interest @ 12% per annum from 1992 till the date of actual payments to the Plaintiffs/land owners by Defendant Nos. 1 to 4.

(e) CS No.7 of 2003 - Rs.2,48,000/- with interest @ 12% per annum from 1992 till the date of actual payments to the Plaintiffs/land owners by Defendant Nos. 1 to 4.

(f) CS No.2 of 2003 compensation of Rs.50,000/- payable to the Plaintiffs/land owners for the mental pain, sufferings, harassment and inconveniences caused to the Plaintiffs/land owners along with 12% interest from 1992 till the date of actual payments by Defendant Nos. 1 to 4.

(g) CS No.4 of 2003 compensation of Rs.50,000/- payable to the Plaintiffs/land owners for the mental pain, sufferings, harassment and inconveniences caused to the Plaintiffs/land owners along with 12% interest from 1992 till the date of actual payments by Defendant Nos. 1 to 4.

(h) CS No.5 of 2003 - compensation of Rs.50,000/- payable to the Plaintiffs/land owners for the mental pain, sufferings, harassment and inconveniences caused to the Plaintiffs/land owners along with 12% interest from 1992 till the date of actual payments by Defendant Nos. 1 to 4.

(i) CS No.6 of 2003 compensation of Rs.50,000/- payable to the Plaintiffs/land owners for the mental pain, sufferings, harassment and inconveniences caused to the Plaintiffs/land owners along with 12% interest from 1992 till the date of actual payments by Defendant Nos. 1 to 4.

(j) CS No.7 of 2003 compensation of Rs.50,000/- payable to the Plaintiffs/land owners for the mental pain, sufferings, harassment and inconveniences caused to the Plaintiffs/land owners along with 12% interest from 1992 till the date of actual payments by Defendant Nos. 1 to 4.

(k) Cost of Rs.20,000/- is imposed on the Defendant Nos. 1 to 4 in respect of each of the TS Nos. 2, 4, 5, 6 and 7 of 2003 payable to the Plaintiffs land owners towards the cost of litigation from the date of judgment. Further, the amount of cost of Rs.10,000/- awarded by this Court by order dated 24.09.2009 in favour of the Plaintiffs/land owners and against Defendant Nos. 1 to 4 would be shared equally @ Rs.2000/- in each of the 5 suits. The cost would carry a future interest @ 12% per annum if not paid within 3 months of the date of the decree."

6. Aggrieved by the impugned judgment and order and decree, the appellants/defendants filed 5(five) separate appeals against the same on as many as 11(eleven) grounds. However, the learned CGC had pressed only 1(one) ground. Therefore, I find no need of discussing all of them except the one pressed by the learned CGC. The ground pressed by the learned CGC is as follows; That the land was acquired after a joint verification was conducted by all the stake holders and thereafter, the compensation amount to be paid to the land owners amounting to Rs. 25.68 lakhs was deposited with the Deputy Commissioner, Wokha who is the respondent No. 4, in all the appeals except in F.A No. 8(K) of 2013, wherein he is arrayed as the respondent No.3, therefore, the appellants are not responsible any longer for giving the compensation to the respondents/plaintiffs.

7. I have heard the learned CGC for the appellants and also heard Ms. V. Suokhrie, learned Addl. Sr. Government Advocate, who appeared on behalf of the State respondents. None appeared on behalf of the private respondents. I have gone through the records and also the impugned judgment and order. From the impugned judgment and order and the submission of the learned CGC, it is clear that the stand which the appellants/defendants had taken in the trial court is still maintained in this appeal, that is they had already deposited the compensation amount to be paid, to the affected land owners, with the Deputy Commissioner, Wokha, therefore, they are no longer responsible to give any compensation to any land owners affected by the said construction of the road from Wokha-Bokajan. The learned CGC submitted that in spite of this plea taken by the appellants/defendants, the learned District Judge, Wokha had directed the appellants/defendants to pay the compensation amount to the private respondents/plaintiffs, therefore, the impugned judgment and order deserves to be set aside or overruled with an order directing the State Government of Nagaland to pay the same.

8. The learned District Judge had recorded in his judgment that it is the primary duty of the beneficiaries to pay the compensation amount in the land acquisition proceeding, therefore, the appellants/defendants cannot shirk or avoid their responsibility by saying that they had deposited the same with the Deputy Commissioner. It was their duty to see that the public money entrusted to them for a specific purpose was spend for the same. The learned District Judge went further and recorded that the private respondents/plaintiffs were benevolent enough not to ask compensation for their land but only for their affected plantations, fruit bearing trees and fisheries etc., therefore, they should have been given the same instead of making them run from pillar to post for such a long time.

I find nothing wrong in the judgment and order of the learned District Judge awarding the compensations amounting to Rs. 50,000/- each to the private respondents/plaintiffs with interest for the loss suffered by them since there was no denial from the side of the appellants/defendants on their claim. I also agree with the conclusion drawn by the learned District Judge that the responsibility of the appellants/defendants did not end when they deposited the compensation amount to the Deputy Commissioner. It was their bounden duty to see that the money deposited by them was given to the land owners. For the lack of performance of duty or duties on their part the respondents/plaintiffs cannot be allowed to suffer. They should pay the respondents/plaintiffs and if so required they may get the amounts reimbursed from the State Government of Nagaland. Because, admittedly the land was acquired for the project undertaken by them. It has been more than 25 years since the land of the respondents/plaintiffs were acquired, therefore, they should be paid without further delay and not let them continue to suffer. All the land owners are poor tribal villagers, if the compensation had been given at the time, when they should have been given, the same could have been made use by them to ameliorate themselves to some

extent from the loss they suffered. But instead they have been made to go through all the legal hurdles created by the appellants/defendants and the State Government. Both the Central Government and the State Government could have been more sensitive if not benevolent in dealing with such matters specially, when the rights of poor tribal villagers are involved.

9. In view of what has been stated above, I find no merit in these appeals, therefore, they are dismissed.