
(2016) 11 GAU CK 0050
In the Gauhati High Court
Case No : RFA No. 28 of 2014

Vanlalchhuangi

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2017) 1 GauLT 731

Hon'ble Judges : M.R. Pathak, J.

Bench : Single Bench

Advocate : Mr. Lalsawirema, Ms. Roshila Thapa and Mr. Zoramdinliana, Advocates, for the Appellants; Mrs. Linda L. Fambawl, G.A, for the Respondents

Final Decision : Disposed Off

Judgement

M.R. Pathak, J. (CAV) - Heard Mr. Lalsawirema, learned counsel appearing for the appellants and Mrs. Linda L. Fambawl, learned Government Advocate for the respondent/defendants as well as proforma respondent.

2. The appellants herein are the Land Settlement Certificate holders of land at village Tumpai in the District of Kolasib vide LSC Nos. KLB-135/1992 measuring 530.6 sq. meters and KLB-29/2000 measuring 531.24 sq. meters respectively. The appellants while enjoying the peaceful possession of their said land and intended to develop the same, they on 28.10.2008 entered into an agreement with M/S. Vodafone Essar Spacetel Limited, a company registered under the Companies Act, 1956 having its Registered Office at New Delhi and they allowed the said Company to use their aforesaid land for a cellular site consisting of cellular equipment towards polls, antennae, generator and other necessary accessories and equipments including to necessary towers so as to establish and operate a GSN Mobile Telecommunication Network at the rate of Rs. 6000/- per month.

3. Initially such development works for said Network Company was stalled by the

Deputy Commissioner, Kolasib and vide his letter under Memo No. R. 15013/3/99-DC(K)/104 dated 16.09.1999 informing the Engineer-in-Chief of PWD Government of Mizoram, Aizawl that some land around Tumpui Helipad, Kolasib belonging to some private individuals were already acquired in early part of 2007 by the PWD, Mizoram, living some areas in the South Eastern Side of the said Helipad untouched and the present petitioners are going ahead for construction of Vodaphone Tower and residential houses over their land at Tumpui and if such construction of high raised Tower and RCC residential houses are allowed to take place over their land in Tumpui area near the Helipad area, it will thwart the landing and taking off of Helicopters from the said Helipad and the land that has already been acquired shall not serve the purposed for which it was acquired and therefore, asked for acquisition of appellants" said land so as to make the said Helipad at Tumpui accessible for all types of Helicopters. By the said communication dated 16.09.2009 the Deputy Commissioner, Kolasib also informed the PWD that construction of Vodaphone Tower and residential structures over the aforesaid land of the appellants at Tumpui had been stayed directing the appellants not to go ahead with such construction.

4. It is submitted that though the neighbouring land of the appellants were acquired by the Collector, Kolasib for construction of Helipad at Tumpui, Kolasib but till date appellants" land have not been acquired. The Deputy Commissioner, Kolasib made spot verification of the Helipad area at Tumpui, including the land of the appellants and also assessed the same. Since said land of the appellants were neither acquired for of the purpose of construction of Helipad at Tumpui nor they were allowed to go ahead with the construction of the Tower and RCC structure in terms of their agreement with the Vodaphone Company, the appellants as plaintiffs preferred a suit being Civil Suit No. 2/2013 before the Court of Senior Civil Judge, Kolasib for a decree for the purpose of payment of compensation, loss and damages for an amount of Rs. 30,23,318/- with 9% interest from the date of intervention by the defendants and also for a decree for payment of rent to them for their said land from 24.06.2009 when the Deputy Commissioner, Kolasib issued the order of stay of construction of tower and residential structure over their land at Tumpui, as the appellants/the plaintiffs loss their monthly income from the Vodaphone Company. Further in the said Suit the plaintiffs also prayed before the Court for a direction to the defendants therein to vacate order of stay over the plaintiffs land or to acquire the same as per the relevant law in force. In the said suit, (i) State of Mizoram represented by its Secretary in the Mizoram General Administrative Department, Aviation Wing, (ii) Principle Consultant, GAD Aviation Wing, (iii) Deputy Commissioner-cum-District Collector, Kolasib and (iv) Secretary to the Government of Mizoram in the Land Revenue and Settlement Department, Mizoram were made party defendants.

5. Though several summons were issued to the defendants, i.e. the present respondents by the Trial Court, but they did not appear in the said suit and as such said Civil Suit No. 2/2013 proceeded ex-parte against the above noted

defendants/present respondents. After recording evidence-in-chief and considering the exhibits produced by the plaintiffs/appellants herein, the learned Trial Judge by his Judgment and Order dated 16.05.2014 came to a conclusion that the said Court lacks jurisdiction to try the said suit of the plaintiffs, the present appellants since it has been settled by the Hon''ble Supreme Court, that a Civil Suit relating to acquisition proceeding under the Land Acquisition Act as amended is barred under Section 9 of the Code of Civil Procedure and therefore dismissed the said o the plaintiffs for want of jurisdiction. Though the plaintiffs of the present appellants brought to the notice of the Trial Court that their names were not included in the award and were consequently denied the compensation, but the Trial Court came to the conclusion that the said suit is not on reference under the Land Acquisition Act and payment of rent and other compensation, etc. and the remedies prayed for by the plaintiffs lie under the Land Acquisition Act, 1894 than a Civil Court and granted liberty to the plaintiffs to approach the appropriate authority or forum for redressal of their grievances in accordance with law.

6. Being aggrieved with the said Judgment and Order dated 16.05.2014 passed by learned Senior Civil Judge, Kolasib in Civil Suit No. 2/2013 the appellants have preferred this appeal under Section 17 (2) of the Mizoram Civil Court Act read with Section 96 of the Code of Civil Procedure, 1908.

7. Part-I of the Code of Civil Procedure relates to Suits in General and it consists of Section 9 to 35-B. Out of that Section 9 to 14 of Part-I of the CPC relate to jurisdiction of the Courts and res judicata. Section 9 of the CPC provides for the Courts to try all civil suits unless barred and it reads as :-

9. Courts to try all civil suits unless barred.

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I. - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II. - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation-I or whether or not such office is attached to a particular place.

8. As the Land Acquisition Act is a self contained Act and is a complete Code itself, the Hon''ble Apex Court in catena of the decisions have laid down that with regard to acquisition of land under the said act, the payment of compensation etc. the necessary implication of the power of the Civil Court to take cognizance of a case of the Civil Suit with regard to similar benefit under the said act is excluded under Section 9 of the CPC and the Civil Court is barred from taking cognizance of such cases.

9. In the impugned Judgment and Order dated 16.05.2014 passed by the learned Trial Judge in Civil Suit No. 2/2013 cited such decisions of the Hon''ble Apex Court.

10. It is a settled law that when a legal right and its infringement are alleged, a suit would lie, and unless there is a bar against entertainment of such a suit, civil courts are bound to take cognizance of it and this, in substance is the rule laid down under section 9 of the CPC and the expression : expressly barred means barred by any enactment for the time being in force. From the impugned judgment for the purpose of initiation of any proceeding for acquisition of land under the Land Acquisition Act, 1894 as amended, first there has to be a publication of preliminary Notification under Section 4(1) of the Land Acquisition Act and for compulsory acquisition of such land a Declaration under Section 6 of the said act needs to be published and after such publication of Notification under Section 4 and then publication of Declaration under Section 6 and thereafter the Award compensation for acquisition of such land is to be passed under Section 11 of the said LA Act and the person interested whose land have been acquired under the said LA Act may approach the concerned Collector for referring the matter to the Court for proper determination of compensation. But in the present case, as seen from the impugned judgment and order dated 16.05.2014 without ascertaining first as to whether any such Notification under section 4 of the L.A act and any Declaration under section 6 of the said Act acquiring the land of the plaintiffs were published the learned Trial Judge came to the conclusion that the land of the petitioners have been acquired under the Land Acquisition Act and passed the impugned judgment stating that the said suit of the appellants/plaintiffs is barred under section 9 of the CPC.

11. As the impugned judgment is without any finding regarding acquisition of land of the appellants by publishing necessary Notification under Section 4 and Declaration under Section 6 of the Land Acquisition Act, the same is bad in law and perverted and therefore, the impugned Judgment and Order dated 16.05.2014 passed by learned Senior Civil Judge, Kolasib in Civil Suit No. 2/2013 is hereby set aside and quashed, remanding back the matter for its consideration afresh from the stage of taking evidence.

12. The appellants shall appear before the learned Senior Civil Judge, Kolasib in said Civil Suit No. 2/2013 on 09.12.2016. Since the appellants are represented by their counsel, no fresh notice is need to be issued by the Trial Judge to the parties for their appearance in the said matter.

13. Registry shall send back the LCR to the court of learned Senior Civil Judge, Kolasib forthwith along with a copy of this Judgment. No order as to cost.

14. With the aforesaid observation and direction this appeal stands disposed of.