



Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 118 of 2018

Date of Decision: 30.03.2022

Dr (Mrs.) Philamon Nongbet

Vs

Union of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. Philemon Nongbri, Adv.
 For the Respondent(s) : Mr. K. P. Bhattacharjee, GA. for R 2-4.
 Ms. P. Bhattacharjee, Adv. for R 5.
 None for R 1.

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| i) | Whether approved for reporting in Law journals etc. | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. What could be gathered from the averments made in this petition is that the petitioner is the owner of a plot of land at Lum Umpih, Umsning, Ri-Bhoi District and the adjacent land was owned by her sister Smti. Sainara Nongbet.

2. The petitioner has also stated that she has since developed her land with the construction of an Assam type 2 BHK cottage, a swimming pool



and a proper farm which consists of a fishery, cow sheds, poultry, piggery as well as a duck and swan pond amongst others.

3. For the purpose of construction of a 4(four) lane Umsning bypass on the Shillong-Guwahati highway, the respondent No. 4 (District Collector) had initiated land acquisition proceedings under the Land Acquisition Act, 1894 during the year 2010. In the process, the land of the petitioner's sister was acquired, while the land of the petitioner which was adjacent was not acquired. However, in the declaration under Section 6 of the said Land Acquisition Act, dated 25.02.2014 issued by the Deputy Secretary to the Government of Meghalaya, Revenue & Disaster Management Department, the name of the petitioner appeared at serial No. 63, 66, 67, & 69, which is actually the land belonging to Smti. Sainara Nongbet. Smti Sainara Nongbet has accordingly clarified this fact by way of a letter addressed to the Deputy Commissioner, Ri-Bhoi District dated 06.05.2014 and eventually, the land compensation award for the said plots mentioned above was received by the said Smti Sainara Nongbet.

4. The respondent No 5, the National Highway Authority of India (NHAI) then took over the land acquired and commenced with the construction of the said bypass. In the process of construction of the said road, huge amount of earth was dumped in the land of the petitioner without taking any precautionary measures of construction of a retaining wall to contain the spillage into the land of the petitioner. In fact, soil which was dumped beyond the land acquired resulted in tonnes of soil, rocks and other



debris being deposited into the petitioner's land. Drains which directly discharged unto the land of the petitioner were constructed without any outlets, again resulting in silt and mud flowing thereby destroying the cultivation, piggery structure and the fish pond being filled with mud and silt.

5. To this effect, the petitioner had submitted a representation to the respondent No. 4 on 25.01.2018 for redressal of her grievances, however no action was taken even to cause inspection to ascertain the extent of the damages, which compelled the petitioner to approach this Court with this petition.

6. The respondent No 5, on receipt of notice has filed a counter affidavit refuting the assertions of the petitioner, and has also filed a number of additional affidavits at every juncture where it considered necessary to do so.

7. It may be mentioned that this Court in course of these proceedings has, vide order dated 01.11.2018 directed that inspection be carried out to ascertain the extent of the damage in the land of the petitioner and again, on 24.04.2019 has directed the respondent No. 4 to fix a date for another inspection with advance intimation to the parties concerned. The same has been complied with and the Inspection Report dated 09.05.2019 was brought on record by the respondent No. 4 by way of an additional affidavit dated 26.06.2019.



8. The report dated 09.05.2019 filed on the basis of the inspection conducted on 07.05.2019 is reproduced herein for better clarity:

“SITE INSPECTION REPORT AND ASSESSMENT OF DAMAGE DUE TO CONSTRUCTION OF 4- LANE BY NAHI IN THE LAND OF Dr. (Mrs). PHILAMON NONGBET, LUMUMPIH, UMSNING BYE PASS.

In pursuance of your letter No. DCRB (LA) 43/2018/Rev/67/848: dated Nongpoh, the 30th April, 2019, the undersigned have re-conducted inspection along with the Officials from NHAI, Agriculture, Horticulture, PWD (Building) and Fisheries Department on the 7th May, 2019 and it is found that the land/structures and crops of Dr. (Mrs). Philamon Nongbet at Lum Umphi have been affected by spillage of soil during the construction of Umsning Bye-Pass by NHAI. Accordingly the Officers of various Departments were asked to assess the damage and estimates are submitted as follows:-

1. Horti Culture Department:- has submitted a report that the total damage is Rs. 1,50,000/- Rupees (One lakh fifty thousand) only.
2. Agriculture Department:- has submitted a report that the total damage is Rs. 72,000/- Rupees (Seventy two thousand) only.
3. Fisheries Department:- has submitted a report that the total damage is Rs. 69,950/- Rupees (Sixty nine thousand nine hundred fifty) only.
4. PWD (Building) Department:- has submitted a report that the total damage is Rs. 5,48,622/- Rupees (Five lakhs forty eight thousand six hundred twenty) only.

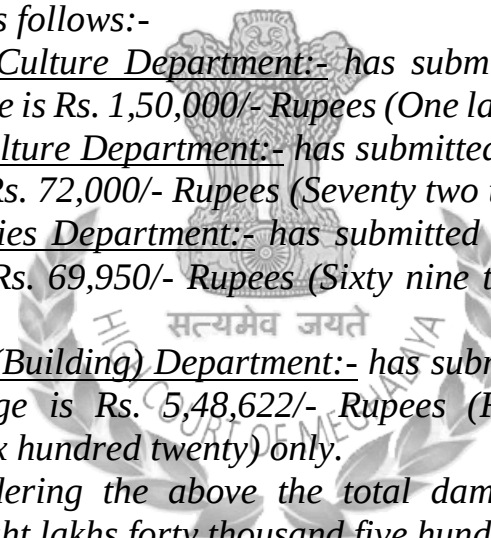
Considering the above the total damage is Rs. 8,40,572/- Rupees (Eight lakhs forty thousand five hundred seventy two) only.

It is suggested that NHAI should compensate the affected landowner Dr. (Mrs). Philamon Nongbet of an amount of Rs. 8,40,572/- Rupees (Eight lakhs forty thousand five hundred seventy two) only.

Further, it was found that NHAI had taken some corrective measures like construction of Metal Crash Barrier (MCB) all along the Umsning Bye-Pass and some steps to prevent flow of water into the land of Dr. (Mrs). Philamon Nongbet.

Submitted for favour of your kind information and further order.

Sd/-

Shri. H.K. Thabah, MCS,
Extra Assistant Commissioner (Revenue)”.




9. The respondent No. 5 by way of an additional affidavit dated 29.07.2019 has refused to admit to the veracity of the contents and details contained in the Inspection Report dated 09.05.2019 (though referred to as inspection and assessment dated 13.05.2019) basically on the ground that the said report prepared by the various departments of the Government of Meghalaya are presumptive in nature and are without justification with no supporting documents/drawings relied upon and was also not based on real facts, but was based only on the verbal/oral facts provided by the petitioner to the various department and DC, Ri-Bhoi.

10. The petitioner in response, has filed a rebuttal affidavit to the said additional affidavit dated 29.07.2019 stating that the said land was acquired by the Government in the month of February, 2014 and immediately thereafter, the respondent No. 5 commenced with the marking, digging and construction of ROW (right of way) pillars, which resulted in spillage of soil and debris initially during that period and after the main construction work was carried out, the condition of the fish ponds, the paddy and piggery structure got damaged due to the immense spillage of soil and debris.

11. The allegation that the said report was prepared by the respondent No. 4 based on presumption was also refuted by the petitioner who in the said rebuttal affidavit has stated that the report was prepared based upon the spot inspection of specialist officers of various departments of the Government of Meghalaya and was also conducted in the presence of the petitioner and the representative of the respondent No. 5.



12. Yet again, the respondent No. 5 in reply to the rebuttal affidavit of the petitioner has filed an affidavit dated 13.03.2020, wherein it was admitted that on acquisition of the land, marking, digging and construction of ROW pillars was commenced by this respondent on either side of the road land opposite every 200-metre stone and kilometre stone and the measurement of excavation of the said pillar is 0.5 m in width and depth is 0.75 m which in no way would cause spillage of soil and debris. The respondent No. 5 has however admitted that the said report was prepared upon inspection, but as per the claim of the petitioner.

13. Mr. Philemon Nongbri, learned counsel for the petitioner in his submission before this Court has focused mainly on the factum of the two inspections conducted and the assessment of damages which comes to ₹ 8,40,572/- (Rupees eight lakhs forty thousand five hundred and seventy-two) only for which the respondent No. 5 is under strict liability to compensate the petitioner for the said sum indicated. To support his case, Mr. Nongbri has cited the case of ***Creamson War v. Union of India & Ors: 2020 SCC Online Megh, 220***, particularly paragraphs 2 and 9 of the same.

14. Ms. P. Bhattacharjee, learned counsel for the respondent No. 5, in reply to the submission made by the learned counsel for the petitioner has submitted that the NHAI has started construction of the said Umsning bypass in November, 2015. The Project Highway and the road structure has been constructed as per the approved plan and profile within ROW (Right of Way) of NHAI and all the cross-drainage structure are planned as per the



natural flow of the rain water passing through the fields. The NHAI has never used the non-acquired land of the petitioner.

15. It is also further submitted that the NHAI has constructed I-Kerb to divert water Chute Drains, Stone Pitching and Metal Beam Crash Barrier within March, 2019 and as such, technically no other work is required to be carried out.

16. As to the fact that after acquisition of the land, marking, digging and construction of ROW pillars was commenced by NHAI, the same is admitted. However, in course of construction of the said ROW pillars which are fixed on either side of the road, every 200-metre stone and kilometre stone the said pillars being 0.5 m in width with the depth of excavation being 0.75 m, the same cannot be the cause for spillage of soil and debris into the land of the petitioner, asserts the respondent No. 5.

17. On the inspection report, the learned counsel has submitted that the report of the Agriculture and Horticulture Department seems to be confusing, since in the said report only ginger cultivation in the land of the petitioner was mentioned and as per the report, the season for ginger is April-December, but the construction of the said road started only in January, 2016. The report is also presumptive as the same is prepared on inspection, but only as per the claim of the petitioner. It is therefore, submitted that the claim of the petitioner is false and malafide and the same is liable to be dismissed.



18. This Court has given due consideration to the contention and submission of the rival parties herein, the principal respondent being respondent No. 5, the National Highway Authority of India (NHAI).

19. From the pleadings of the parties, the fact that the land of the petitioner is adjacent to the now completed Umsning bypass road is not disputed, inasmuch as, the respondent No. 5 has referred to the same as the non-acquired land of the petitioner.

20. Though the respondent No. 5 has claimed that in course of construction of the said bypass, the land of the petitioner was not at all damaged in any respect and even if it is so, the same could only have happened before January, 2016, the month in which the actual construction started, that is, sometime in November, 2015, the fact that on being directed by this Court, a joint inspection comprising of the relevant departments of the Government of Meghalaya, the petitioner and the respondent No. 5 was carried out, first in the absence of the respondent No. 5 and by virtue of a subsequent order, another inspection was conducted on 07.05.2019, in which a representative of the respondent No. 5 was also present, is a matter of record.

21. As regard the said inspection, the respondent No. 5 has not made or register any objection to the effect that the land inspected does not belong to the petitioner, but as stated above, had voluntarily participated in the said inspection, which was also carried out in the presence of the representatives of the Agriculture, Horticulture, PWD (Building) and Fisheries Department.



The said report also indicated the assessment of damage of the land of the petitioner, as a result of spillage of soil during the construction of Umsning bypass by the NHAI. The corrective measures taken by the NHAI such as construction of Metal Crash Barrier (MCB) to prevent flow of water into the land of the petitioner was also duly noted in the said report.

22. As noted from the contents of the additional affidavit filed by the respondent No. 4 on 28.06.2019, wherein a copy of the site inspection report and assessment of damages was placed before this Court in the same affidavit, the assessment of damages by the departments concerned was also attached thereto and on perusal of the same, it is seen that the assessment report of the respective departments is comprehensive, giving all the details necessary and the findings of the estimated value in terms of monetary value does not imply that the same was done presumptively and there is no indication whatsoever that the findings in the said assessment was at the behest or on the dictate of the petitioner herein. The contention of the respondent No. 5 suggesting that the said assessment of damage was based on the dictation of the petitioner cannot be fathom by this Court. The said contention is rejected.

23. Apart from the inspection report which by itself is conclusive, the photographs annexed by the petitioner in this petition also revealed that there is a clear indication of soil, stones and debris being deposited in the land of the petitioner.



24. In the case of *Creamson War* (supra) relied upon by the petitioner, this Court has elaborately and copiously emphasised on the law of '*absolute liability*' which rule was evolved by the Hon'ble Supreme Court in the case of *M.C. Mehta & Anr v. Union of India & Ors: (1987) 1 SCC 395* on interpretation of the case of *Rylands v Fletcher*.

25. Paragraph 2, of the *Creamson War* case quoting order dated 27.11.2019 and the relevant paragraph being paragraph 7 of the same, speaks of the applicability of the doctrine of negligence and the requisite thereof, that is, 'Duty of Care' to the negligent act of the respondent No. 5 therein, which can be equally applied to the case in hand since the situation is exactly like the present case of the petitioner herein, inasmuch as, in that case, the dispute relates to the Umsning bypass road and the damages caused to the land of the petitioner therein due to the negligent act of the respondent No. 5.

26. In view of the observations made above, this Court finds that the petitioner has been able to make out a case for compensation on account of the damages caused to her land due to the negligence of the respondent No. 5 for which, as assessed by the competent authority duly reflected in the said inspection report dated 09.05.2019 amounting to ₹ 8,40,572/- (Rupees eight lakhs forty thousand five hundred seventy-two) only has to be satisfied by the respondent No. 5 herein.

27. The respondent No. 5 accordingly is directed to make payment to the petitioner for the sum of ₹ 8,40,572/- (Rupees eight lakhs forty thousand five



hundred seventy-two) only within a period of 4(four) weeks from the date of receipt of a copy of this order.

28. Accordingly, this writ petition is hereby disposed of. No cost.

Judge

Meghalaya
30.03.2022
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