

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 74 of 2017

Date of Decision: 02.09.2022

Smti Dehila D. Sangma Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.T. Sangma, Adv.
For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA.
Mr. H. Kharmih, Addl. Sr. GA
Mr. K.P. Bhattarcharjee, GA.

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

JUDGMENT AND ORDER

1. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India seeking for issuance of a writ in the nature of mandamus calling for re-survey of the land known as Simsangre A.king land/Ampangdamgre which has been acquired by the respondent authorities for establishing Williamnagar Township.

2. The petitioner claiming to be the Nokma of Simsanggre Dawa A.king IV-56(5) land which is known as Ampangdamgre situated at Williamnagar in the East Garo Hills District of Meghalaya has stated that during the time of her predecessor-in-interest (L) Gosin Marak, the Government of Meghalaya has expressed its view to acquire the land falling within Simsanggre A.king along with the A.king land under 6(six) other Nokmas, altogether 7(seven) Nokmas for the purpose of establishing the Township of Williamnagar. In this regard, proceedings under Section 4 of the Land Acquisition Act, 1894 was drawn up and Notification No. RDA 45/78/179 dated 28.07.1983 was accordingly published.

3. The petitioner has also referred to an agreement entered by the Government with the six Nokmas as indicated in the agreement, however the predecessor-in-interest of the petitioner, (L) Gosin Marak was not included in the said agreement dated 08.01.1972.

4. It is also said that the Government has conducted a survey of the land proposed to be acquired, but has never informed (L) Gosin Marak about the same and till date no proper demarcation has been done and no proper boundary has been set up by the respondents.

5. The predecessor-in-interest of the petitioner, (L) Gosin Marak was not given an opportunity to file any objection under Section 5A of the

said Land Acquisition Act and was also not called for personal hearing as provided under Section 9 of the Act. However, the land acquired was 1618-0-11 bighas for which compensation of ₹ 80,90,550/- (Rupees eighty lakhs, ninety thousand, five hundred and fifty) only was paid to him without his consent.

6. The petitioner having doubt about the fairness and transparency of the acquisition proceedings, had filed an RTI application with some queries about the same on 16.09.2008 and has received a reply on 16.10.2008 indicating to the extent that the total land acquired from Simsangre A.king land was 1618-0-11 bighas and payment was made at ₹ 5000/- (Rupees five thousand) only per bigha, the total amount of which comes to ₹ 80,90,550/- (Rupees eighty lakhs, ninety thousand, five hundred and fifty) only. However, the petitioner in her individual capacity has caused a re-survey of the land under Simsangre A.king acquired by the Government and according to the map prepared by her, the total area of land acquired by the Government was 1995-0-0-bighas, which has resulted in an excess of 377 bighas being actually acquired.

7. After receiving the RTI information, the petitioner has then filed applications dated 18.10.2010 and 08.05.2012 requesting the State respondent to cause re-survey/re-measurement of the land acquired under Simsangre Dawa A.king land and has also prayed for payment of

compensation for the excess area of 377 bighas. Though the said applications were forwarded to the concerned authorities, yet till date, the petitioner has not received any response or reply to the same. Even the reminder dated 12.08.2013 has failed to evoke any response from the authorities.

8. Being aggrieved by the action of the authorities in not responding to the said abovementioned applications of 18.10.2010, 08.05.2012 and 12.08.2013, the petitioner approached this Court by way of a writ petition being W.P(C) No. 179(SH) of 2014. The said petition was however withdrawn with a prayer to file a fresh petition which was allowed by this Court vide order dated 26.02.2015.

9. Thereafter, the petitioner filed another representation dated 17.06.2016 with the same prayer for re-measurement and to conduct a joint survey of the total area of the land acquired by the Government. But this representation was also not responded to.

10. Thus, being aggrieved by the action of the respondents authorities in not responding to the prayer of the petitioner, the petitioner have come before this Court with this instant writ petition with the prayer as aforesaid.

11. It may be mentioned that this petition has come to be heard before this Court the second time around, as on the first occasion, this

Court, upon hearing the parties have, vide order dated 18.04.2017 directed that a joint survey by the petitioner and the respondents be carried out on the land in dispute, but on appeal before a Division Bench of this Court in W.A. No 13 of 2017, the said order was set aside vide order dated 06.12.2018 and the matter remanded to this bench to hear the parties after affording an opportunity to the respondents to file their counter affidavit which was done.

12. Mr. P.T. Sangma, learned counsel for the petitioner has submitted that the petitioner has not approached the appropriate authorities or this Court for enhancement of the compensation already awarded, but has maintained that since there is no proper demarcation nor was any boundary walls erected to differentiate the total land acquired by the Government for the establishment of Williamnagar Township, therefore, the respondent authorities may be directed to cause inspection of the same and after proper measurement have been taken, to erect a boundary wall for clear demarcation so as to avoid any dispute on complaint of encroachment, etc.

13. It is also submitted that the respondent authorities have failed to address the issue of re-measurement and demarcation of the land in question in their affidavit-in-opposition, and instead has referred to the order of the learned Special Judicial Officer, Shillong, Land acquisition

cases wherein vide order dated 20.12.1993 the learned Special Judicial Officer on consideration of the application for enhancement of the compensation awarded for the land acquired which is the same land referred to by the petitioner herein, has enhanced the compensation award which has nothing to do with the prayer of the petitioner in this instant petition.

14. The petitioner therefore prays that this petition may be allowed and the respondent authorities be directed to cause re-measurement and proper demarcation of the said acquired land.

15. Per contra, Mr. S. Sengupta, learned Addl. Sr. GA on behalf of the respondents has submitted that the preference of this instant writ petition is, but, a shocking case of abuse of the process of law and should be dismissed with exemplary costs. The same is barred by the principles of estoppel, waiver and acquiescence and also of delay and laches, inasmuch as, for an acquisition proceeding which was concluded in the year 1983, when the first acquisition proceedings took place by issuance of a notification under Section 4 of the Land Acquisition Act, 1894 and which proceedings though not completed was finally concluded by fresh notification and follow up process in the year 1983. Therefore, the petitioner by approaching this Court in the year 2017 seeking relief on the prayer made thereof, has not been vigilant and has slept over his rights as

there was no explanation on the aspect of delay. This petition is therefore liable to be dismissed at the threshold. The case of *State of Maharashtra v. Digambar: (1995) 4 SCC 683*, para 14, 18 to 24 was cited by the respondent in this regard.

16. On the factual aspect, Mr. Sengupta has submitted that at the time when the notification under Section 4 was issued on 28.07.1983, the petitioner along with others were given every opportunity to file their objection, but has failed to do so. As part of the acquisition process, the lands were duly surveyed and demarcated in the month of March, 1984. A survey report in this regard was prepared and signed by all the interested parties including the predecessor-in-interest of the petitioner herein and such survey report has accurately described the schedule of properties along with the boundaries thereof, but the predecessor-in-interest of the petitioner has failed to raise any objection at the relevant period and on this ground alone, this writ petition is liable to be rejected.

17. Another limb of argument raised by the respondents is on the issue of res-judicata, inasmuch as, a similar and identical writ petition was filed by the petitioner before this Court in the year 2014, but the same was dismissed by this Court vide order dated 26.02.2015 on the prayer of the petitioner to withdraw the same with liberty to file a fresh one. However, it is expected that the petitioner would correct the defects found in the

petition of 2014 and to file a fresh one as soon as possible, the petitioner has instead once again approached the department with a representation in April, 2016 and only after alleging that no response was forthcoming, had preferred this instant petition in the year 2017, therefore, this petition is hit by the law of constructive res-judicata.

18. In support of his contention as regard the issue of res-judicata, the petitioner has cited the following cases: -

- (i) *Henderson v. Henderson: (1843) 3 Hare 100, 627 ER 313;*
- (ii) *Asgar & Ors v. Mohan Varma & Ors: 2019 SCC Online SC 131, para 40;*
- (iii) *Shri. Sohan Lal v. Union of India & Anr: AIR 1957 SC 529, para 5 & 6;*
- (iv) *Thansingh Nathmal v. Superintendent of Taxes, Dhubri & Ors: AIR 1964 SC 1419, para 7;*
- (v) *Parvatibai Subhanrao Nalawade v. Anwarali Hasanali Makani & Ors: (1992) 1 SCC 414, para 10 and*
- (vi) *State of Rajasthan v. Bhawani Singh & Ors: 1993 Supp (1) SCC 306, para 7.*

19. On appreciation of the submission made on behalf of the rival parties, this Court would observe that on the factual aspect of the matter,

the acquisition proceedings of the land for the establishment of the Township of Williamnagar was carried out in the year 1983 by the issuance of the notification under Section 4 of the Land Acquisition Act, 1894. Within the total land proposed to be acquired, the land of the petitioner measuring about 1618-0-11 bighas was included for which as per records, compensation was awarded to the predecessor-in-interest of the petitioner (L) Gosin Marak who has received a sum of ₹ 80,90,500/- (Rupees eighty lakhs, ninety thousand, five hundred and fifty) only.

20. It is also the stand of the respondents that the predecessor-in-interest of the petitioner (L) Gosin Marak was present during the survey of the land on 19.03.1984 and has appended his signature along with 16(sixteen) others. Annexure-III to the Affidavit-in-opposition has clearly brought out this fact when it was shown that (L) Gosin Marak has appended his signature to the Survey report dated 19.03.1984 wherein the total area was shown as 5803 bighas while the land of the predecessor-in-interest was 1618-0-11 bighas.

21. This Court would also agree with the respondent to say that the petitioner only on whim and fancy has thought it fit to seek re-measurement and re-survey of the land and that too realising it only in the year 2008 or 2010, after about 26(twenty-six) years or so after which the first representation was filed on 18.10.2010. The argument of the

respondent that the principle of delay and laches is attracted in this case has substance.

22. The maxim “*Vigilantibus Non Dormientibus Jura Subveniunt*” which means that the law assists those who are vigilant with their rights and not those that sleep thereupon is very much applicable to the case of the petitioner as regard the approach to the authority with the representation for re-survey and re-measurement of the land acquired considering the fact that there is a gap of almost 27(twenty-seven) years from the year of acquisition which is 1983 to the year 2010 when the first representation was made.

23. In the case of *State of M.P & Ors v. Nandlal Jaiswal & Ors: (1986) 4 SCC 566*, para 24, the Hon’ble Supreme Court has held as follows:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction...”

24. Again, in the case of *Chennai Metropolitan Water Supply and Sewerage Board & Ors v. T.T. Murali Babu: (2014) 4 SCC 108*, para 16 the Hon’ble Supreme Court has held as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in must circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of the litigant-a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time “and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”.

25. The above has clearly illustrated the concept of delay and laches and in the case of the petitioner, even though, she has first approached the forum below after a gap of about 27(twenty-seven) years and on failure to get a response, has approached this Court, this Court is of the considered opinion that because of the inordinate delay and laches, the forum below has rightly rejected to respond to the said application. By extension, this Court would deem it proper to consider and take it that the petitioner is guilty of approaching the proper forum, including this Court at a very belated stage.

26. This Court having come to the conclusion that the case of the petitioner cannot stand on the ground that the principle of delay and laches

is attracted and the same having been decided, accordingly, the argument of the respondents on the issue of res judicata need not necessarily be discussed and the authority cited in this regard may not be elaborated.

27. In view of the above, this petition is found to be devoid of merits and the same is hereby dismissed.

28. Petition disposed of. No costs.

Judge

Meghalaya
02.09.2022
"D. Nary, PS"

