

THE HIGH COURT OF MEGHALAYA

WP(C)No.113/2013

Srimati Queen Mary Kongri,
R/o Mawryngkhong Shella,
P.O. Shella Bazar,
District: East Khasi Hills.

::: Petitioner

-Vs-

1. The State of Meghalaya, represented by the
Secretary to the Govt. of Meghalaya,
Revenue Department, Shillong.

2. The Chief Engineer,
Public Works Department (Roads),
Meghalaya, Shillong.

3. The Additional Chief Engineer (Eastern Zone),
Public Works Department, Meghalaya, Shillong.

4. The Executive Engineer,
Public Works Department (Roads),
Sohra Division, Sohra.

5. The Under Secretary to the Govt. of Meghalaya,
Public Works Department (Roads & Buildings), Shillong.

6. Officer-in-Charge, Shella Police Station.

7. Superintendent of Police,
East Khasi Hills District, Shillong.

8. Shri. Knshno Lyngdoh,
Smit, Shillong,
District: East Khasi Hills, Meghalaya.

8(A). Shri. K.S. Singhanian,
Lower Lachumiere, Shillong-1.

::: Respondents

9. The Khasi Hills Autonomous District Council,
Shillong.

::: Proforma Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. S Wahlang, Adv

For the Respondents : Mr. S Sen Gupta, GA for respdt.No.1-7
Ms. PS Nongbri, Adv for respdt.No.9
None appears for the respdt.No.8 & 8(A)

Date of hearing : **30.10.2014**

Date of Judgment & Order : **30.10.2014**

JUDGMENT AND ORDER (ORAL)

Heard Mr. S Wahlang, learned counsel for the petitioner, Mr. S Sen Gupta, learned GA appearing for the respondents No.1-7 and Ms. PS Nongbri, learned counsel for the respondent No.9. None appears for the respondents No.8 and 8(A).

2. The fact leading to the filing of the present writ petition is briefly noted. The petitioner is the owner of a plot of land which is a "Ri-Kynti" land bounded on the North by land of late Jokisor, South by land of late Robi and others, East by limestone rock and West by Shella river (Uiam River). It is an ancestral land which she inherited from her father late Mohesh Swett. It is nobody's dispute that the said land is situated within the territorial jurisdiction of the Shella Village Durbar. The said land of the petitioner i.e. "Ri Kynti" land having boundaries mentioned above, is a limestone quarry belongs to the father of the petitioner (L) Mohesh Swett. (L) Mohesh Swett who acquired the right, title and interest over the said land and limestone quarry on the strength of the Sale Deed dated 21.02.1925 executed by (L) Merisi and (L) Sottro Singh and translated copy of the Sale Deed dated 21.02.1925 is available at Annexure-1 to the writ petition. Another Sale Deed dated 13.04.1925 was executed by (L) Surendra and (L) Pro in favour of the petitioner. It is also stated that there was a dispute over a portion of the said land of the petitioner and the said dispute had already been decided by a judgment and decree of the competent court in favour of the petitioner's father. The Deputy Commissioner, Khasi & Jaintial Hills by his order dated 14.08.1939 passed in Execution Case No.3 of 1932 allowed the petitioner's father to take possession of the land schedule of which is "*U Soi lime quarry*

within Shella bounded; North by the lime quarry of Mohesh Swett; East by the limestone rock and South by the lime quarry of Robi Roy and others and West by the Bogra river” (Annexre-9 to the writ petition). As such, it is clearly pleaded case of the petitioner that the said land belongs to the petitioner and has been in continuous possession of the petitioner’s predecessors and the petitioner.

3. Under Memo. No. PW/WR/35/2004/9 dated 31.03.2004, the State of Meghalaya wrote a letter to the Chief Engineer, Public Works Department informing the project for construction of a major bridge at Shella at the cost of Rs. 577.483 i.e. (Rupees five crores seventy seven lakhs forty eight thousand three hundred) only. In pursuance to the said letter dated 31.03.2004, the Chief Engineer, Public Works Department floated tender for the said contract work and the said contract work was allotted to the respondent No.8 for construction of the said major bridge on the said land of the petitioner. Pursuant to the said contract work, the respondents wrongfully and illegally entered the said land of the petitioner and caused substantial damage to the limestone quarry within her said land. On or about 10.01.2006, the petitioner protested in writing to the illegal use of her land and also demanded suspension of the said contract work. Further on 24.01.2006, an FIR was lodged against the respondent No.8 (A) for removing about 5000 metric tons of limestone from the petitioner’s quarry. The said FIR was also received by the Officer-in-Charge, Shella Police Outpost, East Khasi Hills District, Meghalaya. It is also stated in the present writ petition that the respondents had constructed the said major bridge on the said land of the petitioner in gross violation of her right under Article 300 A of the Constitution of India as the petitioner is deprived of her property without authority of law and also stated that the said land of the petitioner had not been acquired for construction of the said major bridge. Accordingly, the

present writ petition praying for a direction to the respondents to stop the construction of the major bridge or in alternative to acquire the land of the petitioner for construction of said the major bridge by paying adequate compensation.

4. The respondents No.2-4 had filed joint affidavit-in-opposition wherein, the respondents No.2-4 stated that the land on which major bridge is constructing is the land belong to the Shella Village Durbar and the Shella Village Durbar had gifted the same to the State Govt. free of cost for construction of the said major bridge. The respondents No.2-4 in their joint affidavit-in-opposition is not denying that the said land of the petitioner is situated within the Shella Village Durbar.

5. The writ petitioner also filed affidavit-in-reply dated 08.02.2007 to the joint affidavit-in-opposition filed by the respondents No.2-4. In that affidavit-in-reply, the petitioner categorically stated that as early as 01.07.1961, the Secretary, Shella Village Durbar Committee under his letter had already informed the Wahadadar (Chief) Shella Confederacy that in Shella village there is no waste/barren land, and all the lands are being owned and possessed by the local tribal residents of the Shella village and also all the lands are private (Ri Kynti) lands having Dolil (document) and there is no land other than these types of land. The said letter of the Secretary, Shella Village Durbar Committee dated 01.07.1961 is annexed at Annexure-B to the affidavit-in-reply filed by the petitioner and it reads as follows:-

“(ENGLISH TRANSLATION)”

From,

*D.D. Roy,
Secretary, Shella Village Durbar Committee.*

To,

*The Wahadadar,
Shella Confederacy.*

Ref: *Notice dated 5th June, 1961 from the Secretary,
Durbar of the Nine villages-Shella Confederacy.*

Sir,

*I beg to submit this Report to your Honour as
under:-*

1. *That in compliance to the above Notice I beg to state
that under the Shella Village jurisdiction there is no
waste/barren land. All lands are being owned and possessed
by the local tribal residents of the Shella village and all lands
are private (Ri Kynti) land having Dolil (Document) and no any
other land other than these type of lands.*

*As such your Honour may please receipt this Report and
confirm.*

*Dated: Shella,
1st July, 1961*

*Yours faithfully,
Sd/-
D.D. Roy,
Secretary,
The Shella Village Durbar
Committee.*

*Wahadadar, Shella Confederacy
AND Seal
14/8/1961"*

6. On bare perusal of the said letter of the Secretary, Shella Village Durbar Committee, it appears that there is no waste or barren land within the jurisdiction of the Shella Village Durbar or Shella Durbar and all lands are private property. As such, it is the case of the petitioner that the Shella Village Durbar cannot execute the said Gift Deed for gifting the land of the petitioner under the Shella Village Durbar to the Govt. free of cost for construction of the said major bridge.

7. The petitioner also filed additional/supplementary affidavit dated 29.10.2014 in the present writ petition stating that the concerned Deputy Chief Engineer, Public Works Department (Roads) with reference to the present writ petition i.e. WP(C)No.42/2007, requested the Executive

Engineer, Public Works Department (Roads), Sohra Division, Sohra to initiate the process of land acquisition for construction of approaches road of the bridge immediately vide letter dated 07.05.2009. The said letter is annexed at Annexure-A to the additional/supplementary affidavit filed by the petitioner and it reads as follows:-

**“GOVERNMENT OF MEGHALAYA
OFFICE OF THE CHIEF ENGINEER: P.W.D. (ROADS)
BRIDGE DESIGN BRANCH**

No.PW/TB/BR/14/03/Pt.1/30 dated Shillong, the 7th May, 2009.

To,

*The Executive Engineer, PWD (Rds)
Sohra Divisional, Sohra.*

Sub: *Writ Petition (C) No.42/2007
Smt. Queen Mary Khongri*

Vrs

The State of Meghalaya & Others

*(Construction of major bridge over river Umiam at Shella
to connect Mawsmal Road).*

*With reference to the above, you are requested to initiate
the process of Land acquisition for construction of approaches
of the above mentioned bridge immediately.*

*This is as per order of Chief Engineer, PWD (Rds),
Shillong.*

Sd/-

(M Phanbuh)

*Deputy Chief Engineer, P.W.D. (Roads)
Meghalaya, Shillong.”*

8. On perusal of the rival contentions of the parties in their respective pleadings in the present writ petition, it is clear that the State respondents did not initiate land acquisition proceedings for construction of the said major bridge. The disputes in the present writ petition between the parties are that:

- (i) *Whether the land belong to the petitioner or to the Shella Village Durbar? and;*
- (ii) *If the land on which the said major bridge is constructed is belonged to the present writ petitioner, had the State Govt. acquired the land?.*

These disputed questions of facts are to be decided by the civil court of competent jurisdiction inasmuch as, the parties are required to produce evidence or produce oral and documentary evidence, and this Court is not the proper forum to take oral and documentary evidence to decide the disputed questions of facts. The Court is of the *prima facie* view that there are some materials or documentary evidence to show that the said land on which the major bridge is constructed belongs to the petitioner. However, the Court is not finally deciding these issues. It is left to the competent civil court to decide these issues.

9. In the above factual backdrop, this writ petition is disposed of by directing the writ petitioner to approach the civil court of competent jurisdiction to decide the issue as to whether the said land on which the said major bridge is constructed belongs to the writ petitioner or Shella Village Durbar?. It is made clear that since the petitioner is approaching the civil court by filing civil suit pursuance to the directions made by this Court, the civil suit filed by the writ petitioner, shall not be dismissed on the grounds of limitation. The civil court before whom the petitioner is filing the civil suit in pursuance of the directions made by this Court, shall dispose of the civil suit as expeditiously as possible.

10. With the above observations and directions, this writ petition is disposed of.

11. It is made clear that any observations made by this Court, shall not cause any prejudice to the competent civil court in deciding the civil suit filed by the writ petitioner.

JUDGE

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