THE HIGH COURT OF MEGHALAYA

WA No.11/2013
In WP(C) No.(SH)230/2011

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

2. The Principal Secretary to the Govt. of Meghalaya, Revenue and Disaster Management Department, Shillong.

3. The Collector, West Garo Hills, Tura. **::::** Appellants

-Vs-

1. Shri. Nether M Sangma,
Nokma of Danakgire Akhing,
West Garo Hills District, Meghalaya.

2. Smti. Enilla Ch. Marak,
Nokma of Danakgire Akhing,
West Garo Hills District, Meghalaya.

3. Tura Municipal Board represented by
Chief Executive Officer, Tura.

4. The Garo Hills Autonomous District Council,
Tura, West Garo Hills represented by the Secretary,
Executive Committee **::::** Respondents

BEFORE
HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Appellants	:	Mr. ND Chullai, Sr. GA Mr. R Gurung, GA
For the Respondents	:	Mr. HS Thangkhiew, Sr. Adv Mr. N Mozika, Adv for respts.No.1 & 2 Ms. SG Momin, Adv for respt.No.3 Mr. S Dey, Adv for respt.No.4
Date of hearing	:	***30.03.2015***
Date of Judgment & Order	:	***17.04.2015***

JUDGMENT AND ORDER

(Justice T. Nandakumar Singh)

This appeal is directed against the judgment and order of the learned Single Judge dated 13.12.2012 passed in WP(C)(SH)No.230/2011 wherein and where-under the learned Single Judge had granted the relief sought for in the writ petition filed by the respondents No.1 & 2/writ petitioners by directing the appellants to either assess the amount of compensation payable to the respondents No.1 & 2/writ petitioners or to share the income from the market or cost of the land etc. and to pay the amount within 5 (five) months w.e.f. date of the order.

2. Heard Mr. ND Chullai, learned Sr. GA assisted by Mr. R Gurung, learned GA appearing for the appellants, Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel appearing for the respondents No.1 & 2/writ petitioners, Ms. SG Momin, learned counsel for the respondent No.3 and Mr. S Dey, learned counsel for the respondent No.4.

3. The concise fact of the case leading to the filing of WP(C)(SH)No.230/2011 by the respondents No.1 & 2/writ petitioners and also the case of the appellants in their affidavit-in-opposition are recapitulated. The respondents No.1 & 2/writ petitioners are the predecessors-in-interest of Shri. Najing Sangma and Smit. Watre Ch. Marak, the then Nokmas of Danakgre, who sometime around the year 1970 entered into an oral agreement with the then functionaries of the Garo Hills Autonomous District Council (for short 'GHADC') that the then Nokmas would grant 16 Bighas of Danakgre Akhing Land to the GHADC and the GHADC would construct a market in the said land in the name and style of "Najing Bazar" and also revenue derived from the market would be shared equally by

the Nokma and the District Council. However, there was no positive action on the part of the District Council towards the construction of the said proposed “Najing Bazar” and the land measuring in area about 16 Bighas vide PP No.296 Dag No.62, Danakgre Akhing Land near FCI, Tura remained vacant. There was no move on the part of the District Council to construct the proposed market and the possession of the land was never taken over by them and as such, Danakgre Nokma continued to be in possession of the land. On the said land which was continued to be in possession of Danakgre Nokma, the respondents No.2, 3 & 4 very recently had started the construction work. It was a matter of surprise for the respondents No.1 & 2/writ petitioners inasmuch as, the predecessors-in-interest of the respondents No.1 & 2/writ petitioners had entered into an oral agreement with the GHADC and not with Tura Municipal Board for construction of the proposed “Najing Bazar” and sharing of revenue. Thereafter, they enquired about the matter in the office of the GHADC and also verified the Jamabandi Register and they came to know that the GHADC had settled the said land in favour of the Chief Executive Officer, Tura Municipal Board vide office Order No.254, Memo No. GDC.L.Ref./94/EC/1513-15 dated 31.05.1996. Further, the name of the Chief Executive Officer, Tura Minicipal Board had been entered in the Jamabandi Register in respect of the said land. Thereafter, the respondents No.1 & 2/writ petitioners applied for a certified copy of the said Jamabandi Register which was made available to them only on 22.09.2011. The respondents No.1 & 2/writ petitioners further stated that on 08.08.2011 they submitted an application to the Public Information Officer, Tura Municipal Board under the Right to Information Act, 2005 (for short ‘RTI Act, 2005’) for the information as to:-

(a) Whether the Tura Municipal Board acquired the land under the Land Acquisition Act, 1894, the land measuring 16 Bighas

covered by PP No.296, Dag No.62 and 462 standing in the name of Tura Municipal Board at Najing Bazar?

(b) If so, in which year and when the compensation was paid?

(c) if not, how Tura Municipal Board got this Patta?

(d) Whether the possession to the above land by Tura Municipal Board originated in a legal process, if so, kindly state the process.

The Public Information Officer, Tura Municipal Board vide letter dated 05.09.2011 furnished the information that the said land was not acquired under the Land Acquisition Act, 1894 and as such, the question of compensation does not arise. The said land was under the physical possession of Tura Municipal Board since its creation in the year 1973-74 after dissolution of the Tura Town Committee under the GHADC. The property of the erstwhile Tura Town Committee was devolved to the Tura Municipal Board and hence patta of the said land was issued by the GHADC.

4. The respondents No.1 & 2/writ petitioners further stated that the said land is the integral part of Danakgre Akhing. However, the same had been illegally and arbitrarily taken over by the GHADC and thereafter illegally settled it by the GHADC in favour of the Tura Municipal Board without any payment of compensation and without initiating any proceeding either under the Land Acquisition Act, 1894 or any other law. All the lands in Garo Hills are tribal lands belonging to Akhings. As such, the District Council or Tura Municipal Board cannot own any such lands unless the same has been acquired from the concerned Akhing by following due process of law and by paying compensation to the Akhing. The respondents No.1 & 2/writ petitioners are not against the construction of the market by the respondents No.3 & 4 since the same is for public purpose. However, the GHADC and

Tura Municipal Board being the State authorities, it is incumbent upon them to follow the due process of law for acquiring the land and to pay adequate compensation to the respondents No.1 & 2/writ petitioners for the land so taken. Hence, Writ Petition No.(SH)230/2011 for a direction to the appellants to initiate appropriate proceedings for acquisition of the respondents No.1 & 2/writ petitioners' Akhing Land and to pay appropriate compensation to the respondents No.1 & 2/writ petitioners for the land in accordance with the provisions of Land Acquisition Act, 1894.

5. The appellants and respondents No. 3 & 4 have filed their respective counter affidavits. The case of the appellants and respondents No.3 & 4 in their counter affidavits is that the land-in-question called "Najing Bazar" was originally Akhing Land and the same was gifted by Shri. Najing Sangma (now deceased) Nokma of Danakgre Akhing Land to the GHADC and later on the Tura Town Committee was constituted under the Meghalaya Municipal (Garo Hills Autonomous District) Act, 1979. Ultimately, the same ("Najing Bazar") had been formally handed over to the Tura Municipal Board on 18.05.1982 as per Govt. Notification dated 13.08.1979. The construction of the Bazar i.e. "Najing Bazar" was started in the year 1993-1994. The Govt. of Meghalaya out of its own fund and by taking a loan from the State Plan under the Centrally Sponsored Scheme of Integrated Development of Small and Medium Towns, the Govt. of India constructed a small shopping complex for public convenience at Najing Bazar. Also, a public notice bearing No. TMB/G-12(C)/88/892-942 dated 30.07.1998 was issued by the Chairman, Tura Municipal Board seeking applications for allotment of the stalls in Najing Bazar. Many applications were also received but unfortunately, due to the construction defects at the said Bazar, the allotments were not made and the small market complex was eventually utilized to accommodate security personnel of the Central Police Reserved Force (CRPF). The CRPF

personnel are staying at the said market complex. In the year 2008, a plan was conceived by the Tura Municipal Board and the Govt. of Meghalaya to optimize use of the Najing Bazar area keeping in mind the growing population of the town by constructing a better market complex. The project named as “Marketing Infrastructure for Migratory Vendors cum Parking” started on 11.09.2010 and the same is in progress and expected to be completed within 2012.

6. The GHADC, Tura, West Garo Hills had formally settled the said land in favour of the Tura Municipal Board only in the year 1996 vide office Order No. 254 dated 31.05.1996 after the dissolution of the Tura Town Committee and the constitution of the Tura Municipal Board under the Meghalaya Municipal (Garo Hills Autonomous District) Act, 1979. It is the further case of the appellants and respondents No.3 & 4 in their counter affidavits that the said land known as “Najing Bazar” was settled in favour of the Tura Municipal Board and also before the Tura Municipal Board had taken over the possession of the said land, the GHADC and Tura Town Committee had been in possession of the same since 1970. The construction Bazar was started in the year 1993-1994 and also the said public notice dated 30.07.1998 was issued by the Chairman, Tura Municipal Board calling applications for allotment of stalls at Najing Bazar and many applications had been received. The respondents No.1 & 2/writ petitioners did not raise any objection or did not claim the ownership of the said land on which the Najing Bazar was constructed and also to the said Notification dated 30.07.1998 for calling allotment of stalls at Najing Bazar and also when the said market complex was utilized to accommodate the security personnel of CRPF to meet the law and order problems in Tura District. It is also the further case of the appellants and respondents No.3 & 4 in their counter affidavits that the disputed question of fact as to (i) whether the said land on which Najing

Bazar was constructed was originally gifted to the GHADC as early as 1970 by the then Nokmas Shri. Najing Sangma and Smti. Watre Ch. Marak under an oral agreement on the condition that the District Council would construct a market on the said land in the name and style of “Najing Bazar” and the revenue derived from the said market would be shared equally by the Nokma and the District Council or not?, cannot be decided in the writ proceeding and also there was a considerable delay in filing the writ petition.

7. From the respective pleadings of the party, it is clear that there are serious disputed questions of fact as to (i) whether the land-in-question had been in continuous possession of the GHADC, Tura Town Committee and Tura Municipal Board since 1970 till date; (ii) whether the construction activities of Najing Bazar on the land-in-question had been started as early as 1993-1994 or not? (iii) whether the respondents No.1 & 2/writ petitioners raise any objection to the said notice dated 30.07.1998 issued by the Chairman, Tura Municipal Board calling applications for allotment of stalls in Najing Bazar or not? and (v) whether the respondents No.1 & 2/writ petitioners raise any objection to the utilization of the said Bazar for accommodation of the security personnel of the CRPF or not? It is also clear from the pleadings of the party that the respondents No.1 & 2/writ petitioners had been sleeping over their rights, if any, to the said land where the Najing Bazar was constructed more than a decade and ultimately, rose from the deep slumber for claiming their rights over the said land by filing the present writ petition i.e. WP(C)No.(SH)230/2011. The Apex Court in a catena of cases held that the writ petitioners should approach the writ court within a reasonable time and in case the writ petitioners slept over their rights for a considerable period and approached the court after a considerable delay, the writ petition should not be entertained. The Apex Court in ***Life Insurance***

Corporation of India & Ors v. Jyotish Chandra Biswas: (2000) 6 SCC 562

held that:

> "*6. ….. We find it difficult to accept the observations made by the Division Bench of the High Court extracted above that the order passed by the learned Single Judge was laconic. When there was no explanation whatsoever given by the respondent in the writ petition for delay of about six years, the learned Single Judge was right in saying so and dismissing it. ……*"

The Apex Court in ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) & Ors: (2011) 4 SCC 374*** held that:

> "*27. In **Jagdish Lal v. State of Haryana: (1997) 6 SCC 538: 1997 SCC (L&S) 1550**, the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decision in **Ajit Singh Januja v. State of Punjab: (1996) 2 SCC 715: 1996 SCC (L&S) 540: (1996) 33 ATC 239, Union of India v. Virpal Singh Chauhan: (1995) 6 SCC 684: 1996 SCC (L&S) 1: (1995) 31 ATC 813 and R.K. Sabharwal v. State of Punjab: (1995) 2 SCC 745: 1995 SCC (L&S) 548: (1995) 29 ATC 481** and this Court refused to grant the relief saying: (**Jagdish Lal** case: **(1997) 6 SCC 538: 1997 SCC (L&S) 1550**, SCC pp. 562-63, para 18)*
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> > "*18. …… this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from **Virpal Chauhan: (1995) 6 SCC 684: 1996 SCC (L&S) 1: (1995) 31 ATC 813 and Ajit Singh: (1996) 2 SCC 715: 1996 SCC (L&S) 540: (1996) 33 ATC 239** ratios. …..*"

8. The Apex Court in ***State of Uttaranchal & Anr v. Shiv Charan Singh Bhandari & Ors: (2013) 12 SCC 179*** held that:

> "*20. In **Karnataka Power Corpn. Ltd. v. K. Thangappan: (2006) 4 SCC 322: 2006 SCC (L&S) 791** the Court took note of the factual position and laid down that when nearly for two decades the respondent workmen therein had remained silent*

mere making of representations could not justify a belated approach.

21. In ***State of Orissa v. Pyarimohan Samantaray: (1977) 3 SCC 396: 1977 SCC (L&S) 424*** *it has opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in* ***State of Orissa v. Arun Kumar Patnaik: (1976) 3 SCC 579: 1976 SCC (L&S) 468****.*

22. In ***BSNL v. Ghanshyam Dass (2): (2011) 4 SCC 374: (2011) 2 SCC (Civ) 268: (2011) 1 SCC (L&S) 685*** *a three-Judge Bench of this Court reiterated the principle stated in* ***Jagdish Lal v. State of Haryana: (1997) 6 SCC 538: 1997 SCC (L&S) 1550*** *and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992*."

9. The Apex Court in ***Vinay Shukla v. Union of India & Ors: (2007) 2 SCC 464*** held that since the petitioner had approached the court claiming for award of damages basing entirely on grounds factual in nature, which can be established only by recording oral evidence, it will be open to the petitioner to seek such legal remedy as is available to him in law and therefore, the writ petition is not maintainable. Para 4 of the *SCC* in ***Vinay Shukla's*** case ***(****Supra****)*** reads as follows:-

"*4. Learned counsel has next submitted that the petitioner should be awarded damages for his illegal abduction and confinement by the authorities of the State. The allegations made by the petitioner are entirely factual in nature, which can be established only by recording oral evidence. It will be open to the petitioner to seek such legal remedy as is available to him in law for claiming damages on the ground of his alleged abduction and confinement. The writ petition is dismissed*."

10. The Apex Court in ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors v. Sukamani Das (Smt) & Anr: (1999) 7 SCC 298*** held that it is settled legal position that where the disputed questions of fact are involved in the writ petition under Article 226 of the Constitution, the writ

petition is not a proper remedy. Para 6 of the *SCC* in ***Sukamani Das's*** case ***(Supra)*** reads as follows:-

> "*6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admitted/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation*. ……."

11. The Apex Court in ***D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corpn. & Ors: (1976) 3 SCC 160*** held that:

> "*20. In our opinion in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit*."

12. For the foregoing discussions, we are of the considered view that there is a considerable delay on the part of the respondents No.1 & 2/writ petitioners in approaching the High Court by filing the writ petition i.e. WP(C)No.(SH)230/2011 for the relief sought for therein and also there was no reasonable explanation for the delay in approaching the Court. We are of the further view that there are serious disputed questions of fact in the writ

petition, which cannot be decided in the writ proceeding. Accordingly, writ petition i.e. WP(C)No.(SH)230/2011 is not entertained and in the result, the impugned judgment and order of the learned Single Judge dated 13.12.2012 is hereby set aside and quashed. However, it is left open to the respondents No.1 & 2/writ petitioners to seek appropriate remedy in the appropriate forum.

13. Writ appeal is allowed.

14. Parties are to bear their own costs.

JUDGE **CHIEF JUSTICE**

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