

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CRP. No. 30 of 2016

1. The State of Meghalaya
Represented by the Chief
Secretary to the Govt. of
Meghalaya, Shillong.
2. The Principal Secretary to the
Government of Meghalaya,
Shillong, Revenue &
Disaster Management
Department, Shillong.
3. The Deputy Commissioner
(Revenue), West Khasi Hills
District, Nongstoin.
4. The Chief Engineer, PWD
(Roads) Government of
Meghalaya, Shillong.
5. The Executive Engineer
(Roads) Nongstoin, West Khasi
Hills.

... **Petitioners**

- Versus -

Smti. Bistimorial Nongsiej
D/o Smti. Belsibon Nongsiej,
R/o Upper New Nongstoin
West Khasi Hills District,
Meghalaya.

... **Respondent**

BEFORE

THE HON'BLE MR JUSTICE SR SEN

For the Petitioners : Mr. N.D. Chullai, Sr. GA
Mr. K.P. Bhattacharjee, GA

For the Respondent : Mr. H.S. Thangkhiew, Sr. Adv
Mr. P. Nongbri, Adv.

Date of hearing : **28.09.2016**

Date of Judgment & Order : **28.09.2016**

JUDGMENT AND ORDER (ORAL)

Heard Mr. N.D. Chullai, learned Sr. GA assisted by Mr. K.P. Bhattacharjee, learned GA for the State petitioners as well as Mr. H.S. Thangkhiew, learned Sr. counsel assisted by Mr. P. Nongbri, learned counsel for the respondent.

2. The brief fact of the petitioner's case in a nutshell is that:

"The Suit land involves in Title Suit No. 1/2016 filed by the Respondent herein before the Learned Assistant to the Deputy Commissioner, West Khasi Hills District, Nongstoin was formulated way back in the year 1975 and subsequently acquired in the year 1981. The land compensation for the land in question has been paid to the Respondent's father Shri. Rupsingh Marwein who had duly accepted the said compensation. The Govt. of Meghalaya in the Department of Public Works for public good and for the purpose of easing traffic congestion intended to widen the said road and accordingly for the said purpose the Deputy Commissioner, has issued a letter dated 04.03.2010 to the Respondent's mother for spot inquiry on 10.03.2010 and accordingly a joint spot inquiry was conducted and it was found that the Respondent had already encroached into the PWD land.

The Govt. of Meghalaya in the Public Works Department in order to ease congestion on Nongstoin – Mawthawpdah road and for the purpose of free movement of vehicular traffic on the said road decided to construct a Parking Bay at Nongbah junction and accordingly issued a Short Tender Notice inviting Tender dated 06.06.2014 for construction of the said Parking Bay.

The area where the said area proposed to be constructed was under the land acquired by the Govt. way back

in the year 1981. The Respondent herein after being aggrieved by the aforesaid Tender Notice approached this Hon'ble Court by way of writ petition vide W.P. (C) No. 367/2014. This Hon'ble Court vide Order dated 19.11.2014 in the interim passed the following order.

On perusal of the said Inviting Tender dated 06.06.2014 (Annexure-10 to the writ petition), it is clear that the area of the Parking Bay is not mentioned in the said Tender, only the location of it had been mentioned. Therefore, at this state, it would not be possible to decide as to whether the said Parking Bay is constructing inside the said land of the petitioner. In such circumstances, this Court is passing interim order only to the extent that there should be no construction of Parking Bay inside the said land of the petitioner and it is also made clear that the Parking Bay mentioned in the said Tender dated 06.06.2014, shall be constructed only after proper verification or proper measurement of the area, where the Parking Bay is to be constructed, that too after giving notice to the petitioner and also measurement in presence of the petitioner.

*And accordingly in pursuant to the said interim Order the site verification was held on 20th February, 2015 and it was found that the Respondent had encroached into the PWD and had also constructed the boundary wall. The said writ petition filed by the respondent was finally disposed of by the Judgment dated 28.10.2010. While disposing the said writ petition this Hon'ble Court held that “**accordingly in the factual backdrop, this writ petition is disposed of by directing the concerned Deputy Commissioner, West Khasi Hills District, Nongstoin with the assistance of other officials of the Survey Department and appropriate Revenue authority to inspect the said lands indicated above for demarcation and measurement in the presence of both the parties i.e. the***

petitioner and officials of the Public Works Department. After demarcation, if the proposed Parking Bay is to constructed within the land of the petitioner, there shall be land acquisition proceedings and if the proposed Parking Bay is within the said acquired land or Government land, the construction of the Parking Bay shall start. The whole exercise should be completed within a period of 3 (three) months from the date of receipt of the certified copy of this order. Till the whole exercises indicated above is completed, there shall not be any further construction of the Parking Bay.

In compliance to the Judgment passed by this Hon'ble Court, a survey was conducted and it was found that the Parking Bay proposed to be constructed does not encroached into the land of the Respondent herein but fall on the land that had already been acquired by the State Govt. and accordingly a public auction was issued by the Range Forest Officer, Protection Range, Shillong for disposal of the standing trees 54 Nos. on 15th July, 2016 at 3.P.M. in the office of the Executive Engineer, PWD, Nongstoin.

The Respondent herein accordingly filed a Title Suit No. 1/2016 before the Court of the Learned Assistant to the Deputy Commissioner, West Khasi Hills, District, Nongstoin without serving Notice u/s 80 of the Code of Civil Procedure to the State Government alongwith the said Title Suit and an application for dispensing with notice to the State Government vide Misc. Case No. 3/2016 and was also filed. An application for grant of interim injunction was also filed vide Misc. Case No. 2/2016. The Learned Assistant to the Deputy Commissioner on 14.07.2016 allowed the application for leave u/S 80 of CPC and also directed maintenance of the status – quo.

The petitioner herein on receipt of the notice of filing of the Title Suit filed an application under Order VII Rule 11 CPC for rejection of the plaint. The said application was duly registered vide Misc. Case No. 4/2016.

On 26.08.2016 the said application filed by the petitioner was heard and in view of the fact that the issue of the applicability of the law of Limitation to the tribal areas in the

State of Meghalaya is subjudiced before the Full Bench of this Hon'ble Court. It was submitted that the said issue may be kept in abeyance. However, with regard to the continuance of the Order of status quo it is submitted that the order of status quo dated 14.07.2016 needs to be discontinued on the ground that the statutory requirement of Section 80 of the Code of Civil Procedure has not been complied with. However, the Learned Trial Court vide Order dated 16.09.2016 rejected and disposed of the said application. Being aggrieved by the aforesaid order dated 16.09.2016 and 14.07.2016 this Revision Petition is filed".

3. The learned Sr. GA for the State petitioner submits that the learned Court below while passing the impugned order dated 14.07.2016 in Misc. Case No. 2 of 2016 arising out of T.S. No. 1 of 2016 grossly avoided the provision of law and did not consider the requirement of notice under Section 80 of the Code of Civil Procedure as well as the limitation. Being aggrieved by the said impugned order the State petitioners approached this Court for necessary direction.

4. On the other hand, the learned Sr. counsel for the respondent submits that the matter was urgent, as such the notice could not be served in advance as the petitioner issued the notice for cutting the trees standing thereon in the suit premises.

5. The learned Sr. GA for the State petitioners in support to his submission on Section 80 of the Code of Civil Procedure relied on (i) **State of A.P. & Others .v. Pioneer Builders, A.P : (2006) 12 SCC 119 at Para 17** and (ii) **State of Kerela & Others .v. Sudhir Kumar Sharma & Others : (2013) 10 SCC 178 at Para 21** which are reproduced herein below for ready reference:

“17. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the court. Leave of the court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the court has been imposed, namely, the court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit”.

“21. We reiterate that till the application filed under Section 80(2) CPC is finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section 80(1) CPC was justifiable. According to the provisions of Section 80(2) CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) CPC would not mean that the said application was granted by the trial court”.

6. After hearing the submissions advanced by the learned counsel for the parties and after going through the impugned order dated

14.07.2016, I am of the considered view that there are three questions involved which needs to be answered elaborately in accordance with law.

1. Whether Section 80 of the Code of Civil Procedure is mandatory and exception therein?
2. Whether the exception under Section 82 (2) of the Code of Civil Procedure applies in this case? If it applies, what is the urgency that needs to be determined by the Court?
3. Whether the Law of Limitation is applicable in this instant case?

The Court to determine the above questions and to pass a speaking order with reasons in accordance with law and it is a fit case to remand back to the learned trial Court to re-examine the issues framed above by this Court and to dispose of the matter if possible within 2(two) months from the date of receipt of a certified copy of this judgment and order.

7. In the meantime, both the parties are directed not to disturb the suit premises or to make any alteration or development therein till the matter is finally decided by the learned trial Court concerned.

8. With this observation and direction the instant petition is allowed to that extent and stands disposed of.

JUDGE

D. Nary