

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No. 30 of 2018

Date of Decision : 27.06.2019

**Benish Marak**                      **Vs.**        **State of Meghalaya & Ors.**

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

For the Petitioner(s) : Mr. R. Kar, Adv.

For the Respondent(s) : Mr. Sen, Sr. GA

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

1) The pleaded case of the petitioner is that her land situated at West Garo Hills, Tura was occupied by the respondent State for the purpose of construction of Medium Irrigation Project in the year 1989 without any acquisition proceeding nor any compensation being paid. Being aggrieved thereby the writ petitioner approached this Court by way of WP(C) No. 236 (SH) 2001 for a direction to the respondent State to make a reference under Section 18 of the Land Acquisition Act, 1894 to the Special Judicial Officer, Shillong. This Court by the order dated 19.11.2001 disposed of the said writ petition by directing the Collector, West Garo Hills, Tura to make a reference under Section 18 of the Land Acquisition Act, 1894 to the Special Judicial Officer, Shillong. The learned Special Judicial Officer at Shillong

thereafter, vide order dated 20.08.2004 disposed of the matter, however, by observing that the issues regarding the damage caused during the preliminary notification period needed to be adjudicated by a competent Civil Court. The petitioner then filed a Damage Suit before the Court of Additional Deputy Commissioner, Tura, and the same was numbered as Damage Suit No. 2 of 2006.

2)           Thereafter, after separation of the Executive from the Judiciary the said Suit was transferred to the Court of Assistant to Deputy Commissioner, West Garo Hills, Tura. Vide Judgment & Order dated 12.03.2018, the Court of Assistant to Deputy Commissioner, West Garo Hills, Tura dismissed the Suit by holding that the only forum for adjudication of these issues was within the ambit of a forum established under the Land Acquisition Act, 1894 and not a Civil Court. The petitioner being aggrieved thereby is before this Court by way of the instant revision application under Rule 35 of the Administration of Justice & Police in the Garo Hills District, 1937 (hereinafter referred to as the 'Rules') read with Article 227 of the Constitution of India.

3)           Heard learned counsel for the parties.

4)           Mr. R. Kar, learned counsel for the petitioner submits that the L.A. Case No. 1 (T) of 2001 was based on the demand of the claimant for interest for the period of illegal occupation of the petitioner's land from the period 11.04.1989 to 16.03.2000. The institution of the L.A. Case he submits was as per the direction of this Court dated 19.11.2001 passed in WP(C) No. 236 (SH) 2001.

5)           He submits that in the Land Acquisition proceedings, the learned Special Judicial Officer by relying on the judgment of the Hon'ble Supreme Court in the case of ***R.L. Jain vrs. D.D.A. & Ors.*** reported in ***AIR 2004 SC 1904***, by order dated 20.08.2004 disposed of the L.A. Case, with a direction to the land owner, to take appropriate legal action to recover the rent or damages and even interest thereon,

where possession is taken-over by the Government, prior the issuance of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894.

6) The learned counsel submits, in view of the order dated 20.08.2004 passed in L.A. Case No. 1 (T) of 2001, the petitioner filed a Damage Suit bearing Damage Suit No. 2 of 2006 before the Court of the Additional to Deputy Commissioner, making a claim of Rs. 99,14,080/ but however, the suit did not proceed. He submits that, in the meantime due to separation of the Executive from the Judiciary the matter was transferred to the Court of Assistant to Deputy Commissioner at Dadenggri, who after hearing the parties vide order dated 12.03.2018, dismissed the Suit of the petitioner, holding amongst others, that the issues agitated in the case are to be decided only by a Court constituted under the Land Acquisition Act, and an ordinary Civil Court had no jurisdiction to entertain the matter.

7) The learned counsel submits that the revision application has been filed before this Court, in view of the fact that the suit was initially instituted in the court of the Additional to Deputy Commissioner and as a trial is a continuing proceeding, even after the separation of judiciary from executive, the present District and Sessions Judge is holding concurrent powers of the Additional to Deputy Commissioner, and as such revision would necessarily lie before this Court under Rule 35 of the Rules. As such he contends that the revision application is maintainable before this court.

8) The Learned counsel further submits that the damage suit should have been disposed of on merit, rather than on the point of jurisdiction, inasmuch as, evidence had already been adduced and matter had been heard after framing of issues. As such he submits the lower court had acted illegally and has failed to exercise jurisdiction vested on it by law and therefore the judgment being bad in law should be set aside.

9) Mr. S. Sen, learned Sr. GA for the respondents, in reply submits that the revision application on the face itself is not maintainable. He submits that Rule 35 of the Administration of Justice and Police in the Garo Hills District, 1937, is similar to Rule 36-A of the Administration of Justice and Police in the Khasi Jaintia Hills District, 1937, and as held in *Shyam Sunder Agarwal vs. Union of India* reported in (1996) 2 SCC 132, the revisional power under 36-A must be exercised in conformity with Sec. 115 CPC. He further submits as Sec. 115 CPC prohibits exercise of jurisdiction when the decree or order assailed is appealable the instant revision application does not deserve any consideration on this point alone. .

10) The learned counsel submits that the impugned order dated 12.03.2018 dismissing the petitioner's suit, is an appealable order under Rule 35 of the Rules, before the court of the Deputy Commissioner, and as such this instant revision application before this court is not maintainable. He further submits that the revision application has also been filed seeking invocation of Article 227 of the Constitution of India, and in the instant case, as alternative and efficacious remedy is available by way of an appeal, supervisory jurisdiction may be refused to be exercised by this Court, To buttress his submissions he had placed reliance on the case of *Surya Devi v. Ram Chander* reported in (2003) 6 SCC 675 at para 26.

11) The learned counsel further submits that though the suit had initially been filed before the Court of Deputy Commissioner, the same was a wrong Court, in view of Sec. 15 of the CPC which mandates that every suit shall be instituted in the court of the lowest grade competent to try it.

12) On the main merits of the case and the claim of the petitioner, the Learned counsel submits that the petitioner has claimed interest under Sec. 23(1A) of the Land Acquisition Act, 1894, whereas, Sec. 23(1A) allows interest only from the date of publication of notification under Sec. 4(1) till the date of the award of the

Collector or the date of taking possession of the land whichever is earlier. He submits that as held in the case of ***R.L. Jain vs. Delhi Development Authority*** it has been held that a claimant would not be entitled to interest contemplated under Sec. 23(1A) for the period prior to the publication of notification under Sec. 4 (1) and that a person is entitled to get rent or damages, only for the use and occupation, for the period the Government retains possession of the property, and the rent or damage is to be determined by the collector himself. He submits that the Special Judicial Officer has wrongly paraphrased paragraph 18 of ***R.L. Jain*** (supra) on the basis of which the petitioner approached the Civil Court and as such no relief is permissible to the petitioner in this regard.

13) Learned counsel further submits that the Land Acquisition Act, 1894 is a special and self contained statute and the power of the Civil Court stands excluded by virtue of Sec. 9 CPC, as has been held in ***State of Mizoram v. Baikchawna*** reported in (1995) 1 SCC 156 and ***State of Bihar v. Dharendra Kumar*** reported in (1995) 4 SCC 229. Learned counsel closes his arguments by submitting that the revision application should be dismissed as not being maintainable before this court, and that the relief sought for is also not permissible in law.

14) I have heard the learned counsels for the parties at length and perused the records and the impugned order, whereby the trial court has refused to entertain the suit for the reason that the civil court had no jurisdiction to try a matter, which was covered by a special Act, namely the Land Acquisition Act of 1894.

15) From the submissions of the learned counsels for the parties the first question that arises for consideration, will necessarily be whether the revision application is maintainable before this Court under Rule 35 of the Rules for the Administration of Justice and Police in the Garo Hills District, 1937. It is noted that both the parties

have no quarrel as to the settled position, that an appeal or revision as provided under Rule 35, from the decision of an Assistant to Deputy Commissioner, will lie before the Deputy Commissioner. Rule 35 of the Rules, for ready reference is quoted herein below:-

***“35. Appeal and Revision.- The High Court or Deputy Commissioner may, on application or otherwise, call for the proceedings of any case decided by any officer subordinate to him and pass such order as he may deem fit.***

***An appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants and to the High Court against an original decision of the Deputy Commissioner, if the value of the suit be Rs. 500 or over, or if the suit involve a question of tribal rights or customs, or of right to, or possession of immovable property: Provided that the petition of appeal accompanied by a copy of the order appealed against and by a clear statement of the grounds of appeal be filed within 30 days from the date of decision excluding the time required for obtaining a copy of the decision.***

***An appeal which lies to the High Court may be presented to the Deputy Commissioner, who shall, if it be in order and presented in due time, endorse upon it the date of receipt and transmit it with the records of the case to the High Court.***

***The decree of the appellate court shall be transferred to the court passing the original order for execution as a decree of its own.”***

16) Rule 35, on a plain reading provides that the High Court or the Deputy Commissioner, on application or otherwise call for the proceedings of any case decided by any officer subordinate to him, but this rule also clearly provides for a distinct procedure as far as appeals are concerned, as distinguished from other general proceedings. The order under challenge clearly falling under the part dealing with appeal and the impugned order, being an order passed by the Court of the Assistant to Deputy Commissioner, an appeal should have been presented before the Court of the Additional to Deputy Commissioner.

17) The ground taken by the petitioner for not preferring an appeal under Rule 35 before the Deputy Commissioner/ Additional to Deputy Commissioner, is for the reason that the Damage suit, was initially instituted in the court of the Additional to Deputy Commissioner, and that as the trial had commenced before the said court, notwithstanding the fact that it was transferred to the Court of the Assistant to the Deputy Commissioner which is a competent court to try the matter, the same was a continuation of proceedings of the same trial. The Court of the Additional to Deputy Commissioner it appears, had even framed issues but the suit did not proceed till after separation of the judiciary from the executive, when the suit came to be transferred to the Court of the Assistant to Deputy Commissioner, who thereafter disposed of the same. Apart from the contention of the respondents that the impugned order is an appealable order, another aspect which in my mind needs to be considered, is whether the suit which was instituted in the wrong court will preclude the filing of an appeal before the Additional Deputy Commissioner, as per the Rules, and whether the Court of the Additional Deputy Commissioner, while it was seized with the suit had ruled on any aspect of the case, to bring it within the meaning of 'case decided'.

18) Firstly, it is noted that the suit was instituted in the Court of the Additional to Deputy Commissioner which though, was not the Court of the first instance, entertained it and proceeded to try the same. However, on separation of the Judiciary from the Executive, one could say, a natural correction occurred, whereby the suit landed before a competent court of jurisdiction not by application of any party to the dispute, but by the process of separation and establishment of a regular independent judicial system, in most of the districts of the state of Meghalaya.

19) The case after being transferred to the Court of Assistant to Deputy Commissioner thereafter commenced from the

stage from where it had stopped before the Court of the Additional to the Deputy Commissioner. It is now to be examined from the records as to whether any order had been passed by the Court of learned Additional Deputy Commissioner in the matter which would preclude the petitioner from filing an appeal, and if so then whether the same would amount to be considered as a 'case decided' on any aspect, to bar an appeal under Rule 35 of the Rules for an appeal to the Court of Additional Deputy Commissioner. The records, and the order impugned, reflect that the stage at which the Suit had reached before the Court of Additional to Deputy Commissioner was that issues had been framed, and summons had been issued to the witnesses. Thereafter, on transfer after the separation of Judiciary from the Executive, the matter recommenced, before the Court of Assistant to Deputy Commissioner, and was taken up as per procedure, from where the Suit had stopped before the Court of Additional Deputy Commissioner.

20) It is also to be noted that no order had been passed by the Court of Additional Deputy Commissioner on the merit, or was any point adjudicated in the case, which would have affected or have a bearing on the outcome, or cause prejudice to either party. As such, the proceedings cannot be considered to be a 'decided case'. In this regard, a decision that is relevant, on the meaning of the expression 'case' and 'case decided' has been explained by the Hon'ble Supreme Court in the case of *Baldevdas Shivilal & Anr. vs. Filmistan Distributors (India) P. Ltd. & Ors.* reported in *1969 (2) SCC 201*. An extract of Para 11 is quoted herein below:-

***“11. It may also be observed that by ordering that a question may properly be put to a witness who was being examined, no case was decided by the Trial Court. The expression “case” is not limited in its import to the entirety of the matter in dispute in an action.....  
A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy ; every order in***



***the suit cannot be regarded as a case decided within the meaning of Section 115 of the Code of Civil Procedure.”***

(Emphasis supplied)

21) The Court of Additional Deputy Commissioner, therefore in my opinion, has not passed any order or decided any issue in the matter, to debar or technically prevent the petitioner from preferring an appeal to the said Court, moreso, when the matter has been disposed of by a competent Court of jurisdiction i.e. the Court of Assistant to Deputy Commissioner after separation of the judiciary from the Executive.

22) With regard to the invocation of Article-227 of the Constitution of India, supervisory jurisdiction may be refused to be exercised when alternative efficacious remedy by way of an appeal or revision is available. This principle and the law has been elucidated in the landmark case of *Surya Dev Rai vs. Ram Chander Rai & Ors.* reported in (2003) 6 SCC 675. Paras 24 and 29, encapsulates the manner of exercise of supervisory jurisdiction under Article-227. The said paragraphs are quoted herein below:-

***“24.The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai, (1986) Supp. SCC 401. Proceedings under [Article 226](#) are in exercise of the original jurisdiction of the High Court while proceedings under [Article 227](#) of the Constitution are not original but only supervisory. [Article 227](#) substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under [Article 227](#) is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it***

*does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.*

*29. The Constitution Bench in L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261, dealt with the nature of power of judicial review conferred by [Article 226](#) of the Constitution and the power of superintendence conferred by [Article 227](#). It was held that the jurisdiction conferred on the Supreme Court under [Article 32](#) of the Constitution and on the High Courts under Articles 226 and 227 of the Constitution is part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even by constitutional amendment, not to speak of a parliamentary legislation. A recent Division Bench decision by Delhi High Court (Dalveer Bhandari and H.R. Malhotra, JJ) in Govind Vs. State (Govt. of NCT of Delhi), (2003) 6 ILD 468 (Del) makes an in-depth survey of decided cases including almost all the leading decisions by this Court and holds:*

*"74. The power of the High Court under [Article 226](#) cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution."*

23) In view of the facts of the stated case, the availability of alternate remedy and also the conditions for exercising the powers under Article-227 being absent, the question that the same be invoked will not arise.

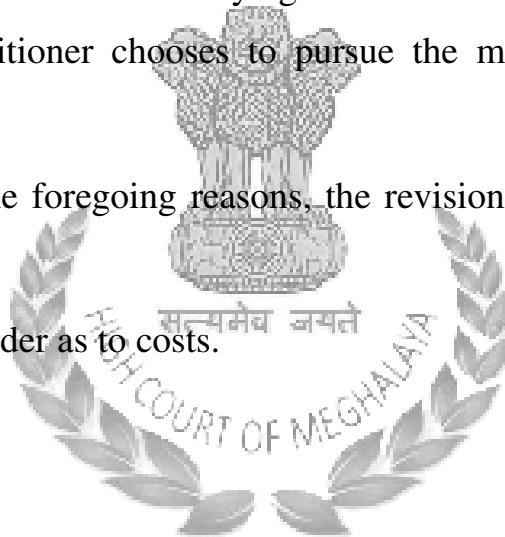
24) As discussed, on the point of maintainability under Rule 35 of the Rules, the revision application therefore fails, for the reason that the matter had been disposed of by a Court of competent jurisdiction of the first instance i.e. the Court of Assistant to Deputy Commissioner whose orders are appealable under the Rules. Further, the initial proceedings which were initiated before the Court of

Additional Deputy Commissioner not having adjudicated the dispute in any manner, the institution of the suit before the Court of the Additional Deputy Commissioner will have no effect, or prejudice the parties in any manner. The situation governing this case is peculiar and maybe unique, inasmuch as, after the separation of the Judiciary from the Executive, the matter was came to be put on the right track by itself, and as such to entertain the instant revision by this Court, would derail the process which had self corrected.

25) Accordingly the Revision fails on the ground of maintainability itself. Though arguments had been advanced on merit by both the sides, the same are not considered at this stage as the matter will have to be necessarily agitated before the lower appellate Court, if the petitioner chooses to pursue the matter by way of a regular appeal.

26) For the foregoing reasons, the revision application stands dismissed.

27) No order as to costs.



**JUDGE**

Meghalaya  
27.06.2019  
"V. Lyndem PS"