Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 194 of 2019

Date of Decision: 06.06.2025

Balpakram A.king Nokmas Social Welfare
Association Represented by its Attorney
Smti. Ruthilla R Marak.

…… **Petitioner**

-Versus-

1. The State of Meghalaya,
Represented by the Chief Conservator of Forest
(Wild Life) Shillong.

2. The Secretary Forest Department
Government of Meghalaya.

3. The Commissioner and Secretary
Revenue Department,
Government of Meghalaya, Shillong.

4. The Collector, South Garo Hills,
Baghmara.

5. Union of India represented by the Secretary,
Forest, Environment,
Government of India, New Delhi

…… **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. P. Yobin, Adv. Ms. B. Ramsiej, Adv. Mr. B. Komi, Adv.
For the Respondent(s)	:	Mr. S. Sen, GA Mr. A.H. Kharwanlang, Addl.Sr.GA. Ms. S. Laloo, GA for R 1-4. Dr. N. Mozika, DSGI with Ms. R. Fancon, Adv. for R 5.

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

ORDER

1. The petitioner's association, namely, Balpakram A.king Nokmas Social Welfare Association constitutes members who are Nokmas of A.king land situated in the South Garo Hills District of the State. The petitioner being its attorney is empowered to act in the interest of the said members of the Association.

2. Mr. P. Yobin, learned counsel for the petitioner commences his argument by narrating the history of the case of the parties to say that the respondent authorities in order to set up the Balpakram National Park, had acquired vast tracts of land totalling about 352 sq. kms. The land acquired are A.king land belonging to the Nokmas, the whole process being done so in several phases.

3. It is the submission of the learned counsel that the Nokmas are rustic villagers, who are illiterate and when the said parcel of land was acquired, no proper land acquisition proceeding was initiated, except for the issuance of purported notifications under Section 4 and Section 6 of the Land Acquisition Act, 1894. The fact however is that the illiterate Nokmas were made to sign in blank papers without being informed of their rights, including the right to receive the award of compensation under protest.

4. It is the further submission of the learned counsel that while assessing the rate of compensation, the relevant authority has completely ignored the existing rate of land as was determined by the Garo Hills Autonomous District Council (GHADC) which was ₹ 1000/- per bigha, but has instead valued the land at ₹ 200/- per bigha. No compensation was ever given for the standing trees, crops, minerals deposits etc. Even the statutory solatium was also not given to them.

5. Being aggrieved by the attitude of the respondent authorities, the petitioner's Association approached this Court (the then Shillong Bench of the Gauhati High Court) with a writ petition being W.P.(C) No. 315(SH) of 2002. The same was disposed of vide order dated 02.03.2011 giving liberty to file application for reference under Section 18 of the said Land Acquisition Act before the Collector.

6. The petitioner's Association then filed three representations dated 05.04.2011, 03.02.2012 and 12.09.2012 respectively before the Collector, South Garo Hills, Baghmara. Besides these, the petitioner's Association has also filed several other representations, the final one being dated 22.05.2017 and receiving no positive response, this Court was again approached by way of a writ petition being WP(C) No. 500 of 2018. The same was disposed of on 11.02.2019 with a direction to the respondent Nos. 3 and 4 to dispose of the pending representation by a speaking order.

7. The respondent No. 4 on receipt of the said order of this Court has then disposed of the representation of the petitioner's Association by rejecting the prayer made therein. This decision was conveyed to the petitioner's Association vide letter dated 04.03.2019. Hence this petition.

8. The learned counsel has submitted that the initial challenge here is with regard to the maintainability of this writ petition on the ground that this issue has already been decided by the then Gauhati High Court. However, even, if this contention is accepted, the learned counsel submits that there are always exceptions to the rule, one of which relates to subsequent events which has arisen after the said court's ruling.

9. It is also the submission of the learned counsel that though, it is admitted that, once a judicial order has been passed, any subsequent orders

by executive authority cannot overturn or supplant such judicial order, however, exception being that such executive order would extend benevolence to such judicial order or on equity or policy driven relief. Therefore, on such grounds, the petitioner would press for relief in this petition.

10. The learned counsel has then led this Court to the order dated 02.03.2011 passed in W.P.(C) No. 315(SH) of 2002 to say that at para 2 and 3 of the same, the Court has related the facts of the case of the petitioner's Association and on being convinced that the said land of about 352 sq. kms acquired through the year 1985 to 1995 in a number of phases at an average price of ₹ 1.65 lakhs per sq.km or about ₹ 200/- per bigha, was not according to what the petitioner's Association expected, yet at the relevant point of time, about 15 years ago, no remedy under the Land Acquisition Act, 1894 particularly under Section 18 of the same was resorted to by the aggrieved, therefore, the writ petition in so far as 352 sq. kms is concerned, is barred by non-exhaustion of an alternative statutory remedy. However, the learned counsel has reiterated that there is no bar for a representation to be made before the competent authority in this regard, which was done so.

11. In this regard, the learned counsel has also referred to a communication No. LR(B)111/2010/87 dated 21.12.2011 (Annexure-VI of this writ petition) issued by the Secretary to the Government of Meghalaya, Law Department to the Officer on Special Duty to the Govt. of Meghalaya, Forest & Environment Department wherein, the Secretary Law has opined that the land acquired for an area of 352 sq. kms was not properly measured, apart from the fact that the landowners are poor and illiterate and for that reason, adequate compensation was not paid to them in view of Section 23 of the Land Acquisition Act, 1894. The Secretary has also mentioned that the Hon'ble Gauhati High Court has adjudged that the matter is to be referred and decided by the District Collector and the Special Judge/Civil Court, which may be done so.

12. Yet again, the learned counsel has referred to a communication No. SGH/REV/9/Part I/96/204 dated Baghmara the 17th August, 2012 (Annexure-VII of this writ petition), wherein the Deputy Commissioner, South Garo Hills, Baghmara had addressed the same to the Under Secretary to the Government of Meghalaya, Revenue & Disaster Management Department, Shillong with reference to the issue of land acquisition in respect of the Balpakram National Park, more particularly, in response to the representation made by the petitioner's Association. The Deputy

Commissioner has stated that he has made an in-depth examination as to whether a reference to Civil Court can be made at that stage. Referring to a number of judgments of the court, e.g. the case before the Hon'ble Gauhati High Court reported in GLR 1993 (1) (Suppl.) 191 was cited which is a case where the Government of Meghalaya had acquired 5803 bighas of A.king land and paid ₹ 100 and ₹ 200/- per bigha to the land owners as compensation, though, the land owners had not accepted the award under protest on their approach before the Hon'ble High Court for a reference under Section 18 of the Land Acquisition Act, the High Court took a view that they are illiterate villagers, as such, had directed the Deputy Commissioner, Williamnagar to refer the case to a single court. The Deputy Commissioner finding that the case of the petitioner's Association is similar, had finally concluded that he felt inclined to make a reassessment of the land acquired and has placed the matter before the Government to consider the views/steps taken by him.

13. The learned counsel has not been able to say as to what was the response of the Government in this respect, but has however submitted that the petitioner's Association has filed a fresh representation dated 22.05.2017 before the Collector/Deputy Commissioner, South Garo Hills

with a prayer for reassessment of the award, compensation and solatium with interest, etc.

14. As has been indicated hereinabove, on receiving no response from the authorities, the petitioner's Association has then preferred a writ petition before this Court being WP(C) No. 500 of 2018 and on the same being disposed of vide order dated 11.02.2019, the representation of the petitioner's Association was rejected and was duly communicated on 04.03.2019.

15. Under such circumstances, the learned counsel has submitted that this petition is very much maintainable as there is present a fresh cause of action for the petitioner's Association to come before this Court against the rejection of their representation, and also for the fact that the land acquisition proceedings was not carried out in accordance with law, this petition cannot be dismissed at the threshold. Therefore, the respondents may be directed to file their affidavit and the matter to be heard on merits.

16. Mr. S. Sen, learned GA appearing for the State respondent Nos. 1-4 has maintained that this writ petition was filed with a misconceived perception and incorrect reading of the relevant judgment passed in a number of writ petitions, including W.P.(C) No. 315(SH) of 2002, whereby

this Court has disposed of the same vide a common judgment dated 02.03.2011.

17. As far as the petition of the writ petitioner in W.P.(C) No. 315(SH) of 2002 is concerned, the same was dismissed with the following observation:

> "…if the Petitioner is really aggrieved by the quantum of compensation so awarded, it had the remedy under section 18 of the Act for reference by the Collector to the Land Acquisition Court provided that it was filed within a period of limitation prescribed hereunder. Having not done so, the Writ Petition in so far as 352 sq. km is concerned is barred by non-exhaustion of an alternative statutory remedy."

18. The learned GA has also referred to para 6 of the said judgment, wherein the Court, while dealing with the other cases that is, Civil Rule No. 153(SH) of 1997 and Civil Rule No. 154(SH) of 1997, has observed that the petitioners in these cases either jointly or severally may file an application for reference under Section 18 of the Act and the same will be considered by the Collector. However, it is this portion of the judgment that was relied upon by the petitioner's Association to prompt them to file several representations before the authorities, seeking reference of their claim for enhanced compensation, when such direction does not include the case of the petitioner's Association.

19. This misplaced reliance would not bestow upon the petitioner's Association the right to seek statutory enhancement of compensation under

the said Act of 1894 since this door was closed to them by virtue of the said order dated 02.03.2011(supra), mainly on the ground of delay in approaching the appropriate authority.

20. Inspite of this, the petitioner's Association has filed several and successive representations addressed to various authorities including one to the Private Secretary to the Chief Minister of Meghalaya, seeking relief. In this regard, reference was also made to the communication dated 21.12.2011 from the Secretary to the Government of Meghalaya, Law Department (supra), wherein the Law Secretary has also advanced the cause of the petitioner's Association by referring to the said observations made by the court allowing some of the petitioners to approach the Collector for reference to a competent court of jurisdiction. The same is totally incorrect and is a misreading of the said order dated 02.03.2011, submits the learned GA.

21. Yet, another reference was made to the communication dated 17.08.2012 by the Deputy Commissioner, South Garo Hills, Baghmara to the Under Secretary to the Government of Meghalaya, Revenue & Disaster Management Department (supra), wherein the Collector has also come to the same conclusion that the land of the members of the petitioner's Association is to be reassessed, for which the Government's direction is

sought for in this regard. On receiving no response to the representations filed, the petitioner's Association has once again approached this Court through a writ petition being WP(C) No. 500 of 2018 with a prayer for a direction to the respondents to make payment of compensation as per the report of the Deputy Commissioner, South Garo Hills, Baghmara dated 17.08.2012. The prayer made in this petition was not allowed when the same was disposed of vide order dated 11.02.2019, directing the relevant authorities to dispose of the representation of the petitioner's Association.

22. The said representation was duly considered by the Deputy Commissioner, South Garo Hills, Baghmara and the same was rejected with the remarks made as under:

> "…I do not find any section of law under which the Petition of the Balpakram A'king Nokmas Social Welfare Association can be entertained in the present circumstance. Having accepted the quantum of compensation in full without protest, they cannot at the same time challenge it after a lapse of several years. Hence, the petition for enhancement of compensation filed by the Petitioners is found to be baseless and not maintainable."

23. The learned GA then submitted that this Court by not granting the reliefs sought for by the petitioner's Association vide its order dated 11.02.2019(supra), the petitioner's case stands barred by the principle of res-judicata which is applicable even to writ proceedings. The case of **P.**

Bandopadhya & Ors v. Union of India & Ors, (2019) 13 SCC 42 para 8.11 was referred to in this regard.

24. It is the further contention of the learned GA that the petitioner has approached the court only after a considerable lapse of time and filing of successive representations does not furnish the petitioner a new cause of action after this Court has dismissed the first writ petition being W.P.(C) No. 315(SH) of 2002 where no liberty was granted to the petitioner's Association to file such representations. The case of **Surjeet Singh Sahni v. State of U.P. & Others, 2022 SCC OnLine SC 249**, para 5 and also the case of **Union of India & Ors v. C. Girja & Ors, (2019) 15 SCC 633**, para 16, 17 and 18 was cited in this connection.

25. This Court has noted the case of the parties and have also recorded the submission and contention made by the respective counsels. Facts as indicated hereinabove, not required to be repeated, what is understood is that the petitioner on behalf of the Balpakram A.king Nokmas Social Welfare Association, has in effect sought for award of enhanced compensation for the land measuring about 352 sq. kms acquired by the Government for the Balpakram National Park.

26. Evidently, this issue was raised by the petitioner's Association before this Court in W.P.(C) No. 315(SH) of 2002, and this Court vide order

dated 02.03.2011, has rejected the claim of the petitioner's Association mainly on the ground of delay in approaching the concerned authority with an appropriate application, particularly one under Section 18 of the Land Acquisition Act, 1894. The matter would have ended there, since, there was no challenge to this order by the petitioner's Association before any higher forum, the said order is deemed to have attained finality.

27. However, as was contended by the learned GA, the petitioner being misled by another portion of the said order dated 02.03.2011, wherein as regard petitioners in other cases i.e. in Civil Rule No. 153(SH) of 1997 and Civil Rule No. 154(SH) of 1997, liberty was given to them to resort to Section 18 of the said Land Acquisition Act, such direction also being deemed to be applicable to the petitioner's Association, a reading of the whole order would clearly show that the order being a common order for three or four petitions, the operative part as far as W.P.(C) No. 315(SH) 2002, as has been indicated hereinabove, has barred further action by the petitioner's Association as far as claimed for enhancement of compensation is concerned.

28. In this regard, the contention of the learned GA that the plea of the petitioner in this case is barred by the principle of res-judicata which principle is found at Section 11 of the Code of Civil Procedure and

Explanation V and also the reliance in the case of P. Bandopadhya (supra), is found acceptable by this Court.

29. For the purpose of clarity, the provision of Section 11 Explanation V and para 8.11 of the P. Bandopadhya case are reproduced herein below:

> **"11.** ***Res judicata.*** – No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
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> **Explanation V.** – Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused."
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> **"8.11.** The decision in S.V. Vasaikar v. Union of India, 2003 SCC OnLine Bom 171 was not challenged before the Supreme Court, and has since attained finality. Therefore, the relief sought by the appellants before the High Court was barred by the principle of *res judicata*. Reference can be made to the decision of the Constitution Bench in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 wherein Sharma, J., on behalf of the five-Judge Bench, held: (SCC pp. 740-41, para 35)
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> > "35… It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the

> order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. (1962) 1 SCR 574 held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. *The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32."* (emphasis supplied)
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> Albeit the decision of the Constitution Bench was in the context of a writ petition filed under Article 32, it would apply with greater force to bar a writ petition filed under Article 226, like the one filed by the present appellants, by the operation of the principle of *res judicata*."

30. As to the contention of the learned counsel for the petitioner that the subsequent filing of relevant representation before the competent authorities to consider the case of enhancement of the said award of compensation to the members of the petitioner's Association, would constitute a fresh cause of action, here too, the counter of the learned GA citing the case of Union of India v. C. Girija (supra) is found acceptable by this Court, and as such, the plea of the petitioner on this ground, cannot be accepted at this point of time. Para 16, 17 and 18 of this citation is set down below as:

"16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in *C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115* had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an OA in the Tribunal, which was entertained and order was passed. In the above context, in para 9, following has been held: (SCC pp. 122-23)

> "9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

17. This Court again in *Union of India v. M.K. Sarkar, (2010) 2 SCC 59* on belated representation laid down following, which is extracted below: (SCC p. 66, para 15)

> "15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of

action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

18. Again, this Court in State of *Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179* had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In para 19 and 23 following was laid down: (SCC pp. 184-85)

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

* * *

23. In State of *T.N. v. Seshachalam, (2007) 10 SCC 137*, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)

'16. … filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.' "

31. The case of Surjeet Singh Sahni (supra) is not required to be discussed herein in view of the opinion of this Court on the issue of res-judicata.

32. In view of the observations made hereinabove, this Court finds that the petitioner has not been able to sustain this petition on legal grounds, particularly on the point of res-judicata. The same is found not maintainable at the threshold.

33. Petition is hereby disposed of accordingly.

Judge