

GAHC030000052013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/16/2013

Union of India and Anr.
South Block, New Delhi.

VERSUS

Zokailiana and 7 Ors.
Mission Veng, Aizawl

Advocate for the Petitioner : Mr. B. Pathak, CGC

Advocate for the Respondent : Mr Lalfakawma for R1-R6

ORDER

BEFORE
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

10.02.2023

Heard Ms. Zairamsangpuii, learned CGC appearing for the writ petitioners, also heard Mr. Lalfakwma, learned counsel appearing for the private respondents, and Ms. Mary L. Khiangte, learned Government Advocate appearing for the State respondents.

2. The facts and circumstances which led to the filing of this writ petition briefly stated, are as follows: The Armed Forces of the Central Government occupied

the lands of the private respondents since 1966, but no compensation and rental charge was ever given to them so they came before this Court by filing WP(C)/102/2000 and WP(C)/110/2000. The two writ petitions were disposed of by a combined judgment and order dated 02.05.2022, wherein the Deputy Commissioner, Aizawl was directed to verify as to whether the claim of the petitioners that their lands have been under the occupation of the respondents is true or not and, if true to assess the rental charges for the same. It was also directed that, if thereafter the respondents want to acquire the land the Deputy Commissioner may assess the compensation as per law.

3. Thereafter, the State of Mizoram filed two writ appeals being WA/2/2004 and WA/3/2004 claiming that the State Government has been paying rent to the land owners therefore, the claim for payment of rent is not justified. The two writ appeals were disposed of by a common judgment and order dated 02.09.2005 upholding the judgment and order passed by the learned Single Judge in the two writ petitions. Pursuant to the disposal of the two writ appeals, the Deputy Commissioner, Aizawl passed Award No. 2 of 2006 wherein a sum of Rs. 47,11,184/- was awarded to the private respondents as rental charges. Being aggrieved by the said award, the writ petitioners filed WA/18/2010 challenging the same. The writ appeal was disposed by an order dated 06.10.2010, in which the Deputy Commissioner, Aizawl was directed to hear all the parties involved and thereafter, pass the award as per his findings. Since there was inordinate delay on the part of the Deputy Commissioner in complying with the order passed in the writ appeal, the respondents herein approached this Court once again by filing a contempt petition being Contempt Case No. 5 of 2012. In that case, the Deputy Commissioner explained the reasons for the delay but at the same time submitted the award also. Therefore the contempt

petition was disposed *vide* order dated 09.10.2012 giving liberty to the present private respondents to take recourse to such remedies as may be available in accordance with law. The award submitted before this Court by the Deputy Commissioner was Award No. 6 of 2012 and it was dated 19.06.2012. As per the award the private respondents were awarded rental charges with 9% interest as follows:

<i>S. No.</i>	<i>Name of Land-owner</i>	<i>Total amount payable with 9% interest</i>
<i>1</i>	<i>Zokailiana</i>	<i>1470739</i>
<i>2</i>	<i>Zopianga</i>	<i>1713305</i>
<i>3</i>	<i>Zolianpuui</i>	<i>1904536</i>
<i>4</i>	<i>Zorinpuui</i>	<i>1718029</i>
<i>5</i>	<i>Chhingi</i>	<i>1730190</i>
<i>6</i>	<i>P.B. Lalzuithanga</i>	<i>565603</i>
<i>7</i>	<i>P.B. Lalzuithanga</i>	<i>9102401</i>

4. Yet, being aggrieved, the writ petitioners, i.e. the Union of India and the Defense Estate Officer are once again before this Court by filing the instant writ petition challenging the Award No. 6 of 2012.

Besides what has been stated above, some more relevant facts which must be mentioned here are: Before the instant writ petition was filed the Contempt Petition No. 14 of 2012 was filed by the private respondent nos. 1 to 5 for non-

payment of the compensation awarded to them in Award No. 6 of 2012. During the pendency of the same, the petitioners filed the instant petition challenging the award. However, during the pendency of both the cases, the writ petitioners paid Rs. 70,31,669/- to the private respondents out of the total award of Rs. 91,02,401/-.

5. Ms. Zairemsangpuii, learned CGC submitted that when the Deputy Commissioner, Aizawl was directed by the Division Bench of this Court in WA/18/2010 to conduct the verification in the presence of all concerned, the Deputy Commissioner conducted the verification and determined the rent to be paid to the petitioners in their absence, therefore the Award No. 6 of 2012, which was passed as a result of such verification and proceedings deserves to be quashed and set aside. The learned CGC by referring to the writ petition also submitted that though the Defense Estate Officer was initially informed it was only his representative, i.e. the local Army Officer who was present in the verification proceedings but in the proceedings for determination of the rental compensation no one including the local representative was present. Ms. Zairemsangpuii also submitted that the Defense Estate Officer, Guwahati, prior to receipt of legal notice dated 18.10.2012 never received copy of the award, therefore he never was given opportunity of being heard on the matter. Furthermore, the learned CGC submitted that the rate of the rental charge as determined by the Deputy Commissioner was as of the rent payable to land owners where houses are in existence in the lands occupied, but in the case of the lands of the private respondents there were no houses; therefore, the amount determined is higher than what it ought to have been.

6. Ms. Mary L. Khiangte, learned Government Advocate appearing for the State

respondents, by referring to the order passed in the Contempt Case No. 5 of 2013, submitted that the issues raised by the writ petitioners in this writ petition have been more or less settled in that order, therefore, the same issue cannot be raised again.

7. Mr. Lalfakawma, learned counsel appearing for the private respondents submitted that since the writ petitioners have already paid more than half of the award, they cannot now turn around and take a different stand because that would amount to blowing hot and cold at the same time. The learned counsel also submitted that name of one of the private respondents, namely Zolianpuui, is very much there in the Award No. 1 of 2019 which was the first award announced in respect of the same lands of the private respondents for permanent acquisition. Therefore, the claim of the petitioners that her land was never occupied is factually incorrect. Lastly, Mr. Lalfakawma submitted that since the occupation of the lands of the private respondents beginning from 1966 till the date of permanent acquisition is an undisputed fact, this Court may also direct payment of the rental charge from March 2012 to 17.07.2019.

8. From the facts and circumstances which led to the filing of the instant writ petition one can very well make out that people whose lands have been under occupation of the Central Security Forces since 1966 are yet to receive rental charges of their respective lands for no other reason but due to several litigations arising merely out of procedural lapses. It is undisputed fact that the lands of the private respondents have been under the constant occupation of the Central Security Forces since 1966 and they have never been paid rental charges and compensation for their lands. Therefore, the only issues that requires to be discussed are:

- i) Whether or not the writ petitioners were given proper opportunity of being heard during the verification of the lands and during the proceedings of determining the rates and quantum of the rents to be paid to the private respondents and
- ii) Whether the rate of the rental charge as determined should have been at the rate for which rental charges are paid to the unoccupied lands and not as where houses and properties are standing.

9. Coming to the first issue; it appears from paragraph 3.11 to 3.23 of the writ petition that the writ petitioners were involved in the process of the verification and determination of the rates and quantum of the rent to be paid to the private respondents. The Defense Estate Officer, though was not present in person, he was represented by his representatives occasionally and the objections raised by him were taken into consideration by the Deputy Commissioner before finally announcing the award. Once they (the writ petitioners) have been informed of the proceedings and once they have been present either in person or through their representatives it is for them to keep tab of the further proceedings. If they don't it is to their own risk. They cannot blame others for their inaction or indifference or negligence, especially when the land owners have been deprived of their lands for so many years. As stated above, the payment of rental charges to the land owners, i.e. the private respondents have been pending for a long time due to much litigations which arose mainly because of procedural lapses. Therefore, everyone concerned was expected to be diligent and cooperative so that the proceedings could have been taken forward and the deserving land owners receive their rental charges

at the earliest. But what can be seen from the records is that there was a lot of resistance and every opportunity was taken to delay the same as far as possible. The instant writ petition appears to be one of those tactics only. Further, the fact that a sum of Rs. 70,31,669/- out of the total sum of Rs. 91,02,40/- has been paid to the private respondents during the pendency of the Contempt Case No. 14 of 2012 and this writ petition itself shows that the writ petitioners have accepted the award and they are no longer serious about the objections that they have raised against the verification proceedings and the rates and quantum of the rental charges to be paid. Therefore, they cannot, now, turn around and insist upon the objections raised in their writ petition. One cannot blow hot and cold at the same time.

Moreover, one must remember that it is in the interest of the State that there should be an end to litigation, "*interest reipublicae ut sit finis litium*." In view of what has been stated above, I find no merit in the claims of the writ petitioners.

10. On the second issue raised by the writ petitioners, this Court is of the view that it is too late in the day to raise that kind of objection. Because when opportunity was given to them to do so they have failed to take up the same. As stated above, they were a part of the proceedings at every stage through their representatives and through written communications but they did not raise the issue. If they have not taken the opportunity given they have nobody to blame for the same. Trying to find faults on minor procedural lapses will not help their case. It is very clear from the record that it is their indifference and negligence which are the cause of all their grievances.

11. In view of the facts and circumstances and the reasons stated above, I

find no merit in the writ petition. Accordingly, it is dismissed.

Since payment of the rents have been pending for a long time, the writ petitioners should release the remaining amount at the earliest but not later than three months from the date of receipt of a copy of this order.

JUDGE

Comparing Assistant