

GAHC030000232016



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

Case No. : WP(C)/194/2016

Chuaunkunga and 256 others.
Tlangkhang ram.

VERSUS

The State of Mizoram and 6 others.
Mizoram

Advocate for the Petitioner : Mr L H Lianhrima, Sr. Adv.

Advocate for the Respondent : Mr C Zoramchhana (Addl. AG/GA, Mizoram) for R1-R2 & R7

::: B E F O R E :::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 05.04.2023

Date of Judgment : 21.07.2023

JUDGMENT & ORDER (CAV)

Heard L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the petitioners and Ms. Mary L. Khiangte, learned Govt. Advocate for the State respondents. Also heard Ms. Zairemsangpuii,

learned CGC appearing for the respondent Union of India and Mr. T. Lalnunsiam, learned counsel appearing for the respondent No. 5 i.e., the General Manager, National Building Corporation Company (NBCC).

[2.] 257 petitioners are before this Court with the following prayer:-

“In the premises, it is most humbly prayed that your Lordships may graciously be pleased to admit this petition, call for the records and issue rule calling upon the Respondents to show cause as to why the Respondents shall not be directed to pay compensation to the Petitioners as awarded to them by the Respondent No. 3 vide Draft Supplementary Award No. 1 of 2009 along with interest and solatium in accordance with Section 23 (1A) & (2) of the Land Acquisition Act, 1894 and further interest for delayed payment of the Draft Supplementary Award No. 1 of 2009 and after hearing the parties be further pleased to make the rule absolute and allow this Petition and/or to pass any other Order (s) as your Lordships may deem fit and proper.”

[3.] The petitioners have claimed payment of compensation for damages caused to their land due to the construction of Indo-Bangladesh Border Fencing (IBB Fencing), which has been assessed to the tune of Rs. 14,99,16,469/- by the Deputy Commissioner-cum-District Collector, Mamit District, Mamit (respondent No. 2) vide Draft Supplementary Award No. 1/2009 dated

07.10.2009. The District Collector concerned had also prepared Draft Award No. 1/2009 dated 26.10.2009, which was for online damage. The earlier Draft Supplementary Award was for damage beyond alignment. Both the awards were approved by the competent authority in the State Government but only Draft Award No. 1/2009 dated 26.10.2009 was satisfied, which has therefore resulted in filing of the present writ petition.

[4.] Mr. L.H. Lianhrima, learned Senior Counsel submits that the Draft Supplementary Award No. 1/2009 dated 07.10.2009 prepared by the District Collector for damage beyond alignment due to the construction of IBB Fencing was approved by the State Government and the same was conveyed to the Deputy Commissioner, Mamit District, Mamit by the Under Secretary to the Govt. of Mizoram, Land Revenue & Settlement vide communication under Memo No. K.12011/4/06-REV/Pt dated 17.06.2015. Thereafter, the same was conveyed to the respondent No. 4 by the Under Secretary to the Govt. of Mizoram, Revenue Department vide letter dated 14.07.2015 for according the sanction and therefore, the respondent authorities concerned should be directed to accord sanction and pay the compensation amount as assessed by the District Collector along with all other statutory benefits including interest as per the Land Acquisition Act, 1894 (L.A Act). The learned Senior Counsel submits that the respondent authorities concerned are aware about the land acquisition made as

they had participated in the acquisition process and that the award as approved by the State Government was also furnished to them. He submits that at any rate, the writ petition claiming compensation in terms of the Draft Supplementary Award No. 1/2009 dated 07.10.2009 was filed on 09.11.2016 and therefore, the respondent authorities concerned cannot deny payment of compensation as per the Award made by the District Collector. The learned Senior Counsel further submits that the amount of compensation assessed and awarded by the Collector under Section 11 of the L.A Act cannot be questioned in a proceeding either by the Government or by the Company or local authority at whose instance the acquisition is made except on the ground of fraud, corruption or collusion. He therefore submits that in the absence of any such ground, the petitioners cannot be deprived of the compensation that is due to them as per the Award along with all other statutory benefits. In support of his submission, the learned Senior Counsel relies upon the case of *Santosh Kumar & Ors. -Vs- Central Warehousing Corporation & Anr., (1986) 2 SCC 343*.

[5.] Ms. Zairemsangpuii, learned CGC appearing for the respondent Union of India submits that a Memorandum of Understanding (MoU) dated 17.11.2004 was signed between the NBCC and the Ministry of Home Affairs, Govt. of India. As per the MoU, the NBCC is to carry out the construction of IBB Fencing and road as per the Standard Norms of CPWD and other standard with NBCC charge

at the rate of 10% as agency charge. The alignment of IBB Fencing and road in Mizoram was carried out jointly by the Border Security Force (BSF), District Administration and the NBCC officials. She submits that in respect of Draft Award No. 1/2009 dated 26.10.2009 for online damage amounting to Rs. 68,99,656/- has already been deposited and paid to the land owners concerned. Referring to the affidavit of the respondent No. 5 dated 22.08.2017 and the affidavit-in-opposition of the respondent No. 6 dated 28.01.2021, the learned CGC submits that the existence of Draft Supplementary Award No. 1/2009 dated 07.10.2009 is not in the knowledge of the NBCC as they never received the same. Further, the Supplementary Award claimed is in respect of deemed damaged and not the actual strip of land which has been acquired for construction of IBB Fencing and roads. In fact, the compensation in respect of deemed damage, rehabilitation of livelihood for families living in border areas of the State are required to be addressed by the State Government concerned. The learned CGC further submits that the damages which were caused beyond the alignment in connection with IBB Fencing involves disputed questions of fact and the claim has to be proved by way evidence. Therefore, the claim made in the present writ petition is not maintainable in its present form and style and therefore the writ petition should be dismissed.

[6.] Mr. T. Lalnunsiam, learned counsel appearing for the respondent No. 5

also adopts the argument and submission made by the learned CGC and submits that whatever was due to be paid as compensation for construction of IBB Fencing for online damage has already been deposited and paid to the land owners/petitioners. As such, there is no amount due which has to be paid by the respondent No. 5.

[7.] Ms. Mary L. Khiangte, learned Govt. Advocate appearing for the State respondents submits that the District Collector concerned has duly performed its role and responsibility as laid down under the L.A Act by preparing the Draft Supplementary Award No. 1/2009 dated 07.10.2009 and the same was submitted to the State Government for approval. Accordingly, vide Communication dated 17.06.2015, the Supplementary Award was approved and conveyed to the District Collector concerned. Following the approval, the same was sent to the Ministry of Home Affairs for sanction and for arrangement of fund on 14.07.2015. Therefore, the Ministry of Home Affairs, Govt. of India may be directed to convey sanction and to arrange the fund required for payment of compensation to the land owners as per the Draft Supplementary Award.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As may be noticed, the claim made by the petitioners in the present writ petition is for payment of

compensation for construction of IBB Fencing as per the Draft Supplementary Award No. 1/2009 dated 07.10.2009 prepared by the Collector concerned and which was duly approved by the State Government. The State respondents in their affidavits have supported the Draft Supplementary Award No. 1/2009 dated 07.10.2009 stating that the same was duly prepared by the District Collector in terms of the L.A Act and which was also approved by the State Government. Therefore, it is now for the Ministry of Home Affairs, Govt. of India to sanction the compensation amount for payment to the land owners.

[9.] The respondent No. 5 NBCC has filed two affidavits dated 22.08.2017 and 08.03.2021. The stand taken in the affidavit-in-opposition dated 22.08.2017 is that the NBCC is an implementing agency as per the MoU dated 17.11.2004, which was signed between the NBCC and the Ministry of Home Affairs, Govt. of India. The assessed amount is to be forwarded to the Ministry of Home Affairs through the NBCC and the awarded amount as computed and assessed by the District Collector is to be sanctioned by the Ministry of Home Affairs, Govt. of India. The Draft Award dated 26.10.2009 for online damage amounting to Rs. 68,99,656/- was forwarded to the Ministry of Home Affairs through NBCC and after the amount was sanctioned, the same was deposited before the Deputy Commissioner-cum-District Collector, Mamit District, Mamit and disbursed to the land owners. As for the Draft Supplementary Award No. 1/2009 dated

07.10.2009, the same is claimed to be not in the knowledge of the NBCC and that it is not the liability and responsibility of the NBCC for satisfying the same.

[10.] In the affidavit dated 08.03.2021 of the NBCC, a similar stand has been taken and additionally, a letter dated 27.06.2008 received by the NBCC from the Ministry of Home Affairs is referred to. According to the NBCC, the said communication is an instruction from the Ministry of Home Affairs regarding the second component relating to rehabilitation packages for families ahead of fence and between the Zero line. The same was a separate policy issue which requires further examination and decision by the Ministry of Home Affairs. Since no decision was arrived yet, the issue should be deferred for the time being.

[11.] The respondent No. 6 in its affidavit dated 28.01.2021 has also taken the stand that as informed by the NBCC vide their letter dated 05.01.2021 to the Ministry of Home Affairs, they have never received the Draft Supplementary Award No. 1/2009 amounting to Rs. 14,99,16,469/-. The amount claimed is deemed damage and not the actual strip of land acquired for construction of IBB Fencing and roads. That deemed damage, rehabilitation and livelihood for families should be addressed by the State Government. Besides this, the affidavit states that claim for damages beyond the alignment would involve

disputed questions of fact and therefore, the claim for compensation in the present manner cannot be maintained.

[12.] From the stand taken by the respondents as referred to herein above, they have stated that the NBCC and the Ministry of Home Affairs were not aware about the Draft Supplementary Award No. 1/2009 dated 07.10.2009. That the same was awarded in respect of deemed damage and not the actual strip of land acquired for construction of IBB Fencing and roads. However, the fact remains that the Award itself has not been disputed by the respondents, importantly by the NBCC and the respondent Union of India by resorting to any such process as may be permissible in law. The Apex Court in the case of *Santosh Kumar & Ors.* (supra) held that apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under Section 11 of the Act may not be questioned in any proceeding by the Government or authority at whose instance the acquisition is made.

[13.] The respondent Union of India and the NBCC in their counter affidavit have denied about the knowledge of Draft Supplementary Award No. 1/2009 dated 07.10.2009 but however from a perusal of the Draft Supplementary Award No. 1/2009, it is seen that land notified for acquisition was marked out and assessed by the Technical Staff attached to the Office of

the Land Revenue & Settlement Department, Mamit District, Mamit as per the provision of Section 8 of the L.A Act in the presence of the representatives of the NBCC, the land owners and Village Council concerned. The BSF authorities of the respective area of jurisdiction also participated while the joint verification was conducted by the team. The land owners' signatures were also obtained in the assessment form as they accepted the assessment. Thereafter, upon preparation of the Award, the District Collector concerned vide his letter dated 07.10.2009 communicated the same to the State Government through the Under Secretary to the Govt. of Mizoram, Home Department. The Award thereafter came to be approved by the State Government and conveyed to the District Collector on 17.06.2015. The Under Secretary to the Govt. of Mizoram, Revenue Department then vide Communication 14.07.2015 communicated the Draft Supplementary Award No. 1/2009 to the Joint Secretary, N.E-II, Govt. of India, Ministry of Home Affairs, New Delhi for appropriate sanction.

[14.] Having regard to the MoU dated 17.11.2004, it is noticed that the NBCC being the executing agency, sanction for the awarded amount should have been routed through the NBCC to the Ministry of Home Affairs. However, since the NBCC had participated during the verification process, they cannot take the stand that they are not in the knowledge about the assessment being made and the Award that was prepared by the District Collector. The Communication dated

14.07.2015 was addressed to the Ministry of Home Affairs by enclosing the Draft Supplementary Award No. 1/2009 dated 07.10.2009 and the Ministry of Home Affairs being the appropriate authority to accord sanction of the amount also cannot take the stand that they are not aware about the said Award. Under the circumstance, payment of compensation amount as per the Draft Supplementary Award No. 1/2009 dated 07.10.2009 cannot be denied to the petitioners.

[15.] As regard the claim of the petitioners for payment of solatium and interest, the Apex Court in *Union of India & Anr. -Vs- Pushpavathi & Ors., (2018) 3 SCC 28* held that the dispute in relation to non-award of interest can be raised by an aggrieved person by taking recourse to Article 226 of the Constitution of India and further, a reference under Section 18 or Section 28-A (3) cannot be considered to be an alternative statutory remedy available to the land owner for getting the question of non-award of interest payable under Section 28 or 34 of the L.A Act decided by the Civil Court. The Apex Court therefore held that payment of interest is statutory in character and being statutory, it is mandatory for payment once conditions specified under Sections 28 or 34 are fulfilled.

[16.] In the present case, there are no materials available on record to show that the Draft Supplementary Award was illegally or arbitrarily prepared. As

such, it would not be open for the respondent authorities concerned to question the Award, which was duly prepared by the District Collector concerned and approved by the State Government.

[17.] As for the solatium and interest under Section 23(1A) and (2) of the L.A Act, this Court in Reference Case No. 1/2017 vide Judgment & Order dated 24.04.2017 held that a claim made to that effect will be maintainable. To arrive at such a conclusion, the decision of the Apex Court rendered in *Narain Das Jain -Vs- Agra Nagar Mahapalika, Agra, (1991) 4 SCC 212* was relied upon. Therefore, even in the absence of a reference application, the claim for payment of solatium and interest will be maintainable.

[18.] Thus, upon due consideration of the matter in its entirety, I find merit in the writ petition and accordingly, the Deputy Commissioner-cum-District Collector, Mamit District, Mamit (respondent No. 2) is directed to calculate the solatium and interest payable to the petitioners under Section 23 (1A) and (2) of the L.A Act and interest for delayed payment entitled to the petitioners under Section 34 of the LA Act within a period of one (1) month from the date of receipt of a certified copy of this Order. Thereafter, the respondent No. 2 shall forward the same to the respondent Nos. 5 & 6 for arranging the requisite fund. The respondent Nos. 5 & 6 upon receipt of the same within a period of three (3)

months shall deposit the entire awarded amount awarded by the Collector i.e., Rs. 14,99,16,469/- and the assessment made towards solatium and interest and also for the delayed payment before the respondent No. 2 and which shall then be disbursed to the land owners/petitioners as per their respective shares without delay.

[19.] With the above observations and directions, the writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Dika