

GAHC030000412023



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

Case No. : CRP/1/2023

Union of India and 2 Ors.
r/b Defence Secretary, Govt. of India, South Block, New Delhi-I

2: Director General

3: The Defence Estate Office

VERSUS

Lallawmsiama and 4 Ors.
S/o Zorammuana, R/o Basic Mual, Ramhlun North, Aizawl, Mizoram

2:The State of Mizoram

3:Secretary to the Govt. of Mizoram

4:Director

5:Assistant Settlement Officer-

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi

Advocate for the Respondent : Mr A.R. Malhotra for R1

ORDER**B E F O R E****HON'BLE MR. JUSTICE NELSON SAILO****07.08.2023**

Heard Mr. S K Medhi, learned CGC appearing for the petitioners and Mr. A R Malhotra, learned counsel appearing for private the respondent No. 1. None appears for the remaining State respondents.

[2.] By filing this Revision Petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908, the petitioners have challenged the Order dated 15.01.2021 passed by the Court of Senior Civil Judge-I, Aizawl in Execution Case No. 40/2013 arising out of Civil Suit No. 23/2006. According to the petitioners, the Execution Court vide the impugned order has directed the petitioners to pay rental compensation amount to Rs. 58,69,924/- for occupation of the land of the respondent No. 1 for the period w.e.f, 01.01.2006 to 30.11.2016 as assessed by the respondent Nos. 1 to 4 and communicated to the Defence Estate Officer (Judgment Debtor No. 7). The learned Execution Court has further directed the respondent Nos. 1 to 4 to assess the rental compensation payable to the respondent No. 1 w.e.f, 01.12.2016 till the date of the order within a period of two months and the present petitioners should make the payment within a period of two months. The petitioners are further aggrieved with the direction of the Execution Court that the Judgment Debtors are legally bound to comply with the order and failing which, action shall be initiated as per Section 12 of the Contempt of Courts Act, 1971.

[3.] Mr. S K Medhi, learned CGC submits that the Execution Case arises out of Civil Suit No. 23/2006 wherein, the learned Trial Court had made twofold directions. The first direction was for payment of rental compensation to the present respondent No. 1 to the tune of Rs. 48,41,812/- for occupation of his land by the security forces w.e.f.,

01.09.1986 till 31.12.2005 along with interest at the rate of 6% per annum till final payment. The calculation was made by taking the rate as Rs. 1.249/- per sq.ft. The learned CGC submits that, insofar as the said direction is concerned, the amount has been duly paid to the respondent No. 1. However, as per the second direction, the petitioners have been asked to pay rental compensation to the respondent No. 1 for occupation of his land for the period w.e.f., 01.01.2006 till the vacation of the land at the same rate of Rs. 1.249/- per sq.ft, which was to be assessed by the State authorities in the Revenue Department within a time frame of six months from the date of order/decreed. The learned CGC submits that the Army authorities are in occupation of the land of respondent No. 1 only up to 31.12.2005 and whatever liability they have for payment of rental compensation to the respondent No. 1 has already been paid. The land came to be under the occupation of the Assam Rifles w.e.f., 01.01.2006 and up till now, and that the Assam Rifles are under the Ministry of Home. As such, the Ministry of Defence is not liable to make any compensation for the land occupied by the Assam Rifles. However, the learned Execution Court vide the impugned Order dated 15.01.2021 has directed the Ministry of Defence who are the present petitioners to pay rental compensation to the respondent No. 1 although they are not in occupation of the land of the respondent No. 1. He, therefore, submits that the impugned order in view of the aforesaid reasons should be set aside.

[4.] Mr. A R Malhotra, learned counsel for the respondent No. 1, on the other hand, submits that pursuant to the disposal of the Civil Suit No. 23/2006 vide Judgment & Order dated 20.08.2009, the petitioners preferred RFA No. 14/2010 challenging the judgment & order of the Trial Court. However, the appeal was dismissed vide Judgment & Order dated 22.03.2013. Thereafter, the petitioners again filed Review Petition No. 3/2014 which was accompanied by CMA No. 226/2014 seeking condonation of delay in filing the Review Petition. However, CMA No. 226/2014 was dismissed vide Order dated 18.05.2016 and since the Review Petition was not listed along with the application, the same came to be subsequently

dismissed vide Order dated 16.06.2016. The learned counsel further submits that the petitioners at any point of time did not raise the issue that it was the Ministry of Home who were responsible to compensate the respondent No. 1 for occupation of his land by the Assam Rifles and the stand has been taken only belatedly. The learned counsel submits that the fact remains that there is no dispute regarding to the occupation of the land of the respondent No. 1 by the security forces and the petitioners without taking recourse to the remedies available to them at the relevant time, cannot now raise the plea that it is not them but the Assam Rifles who are in occupation of the land. In this connection, the learned counsel relies upon the decision of the Apex Court in *Chief Conservator of Forests, Govt. of A.P. vs. Collectors & Ors., (2003) 3 SCC 472* wherein, the Apex Court in the given facts of that case held that the State/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. He, therefore, submits that the petitioners cannot be permitted to take such a stand at this stage and the writ petition should be dismissed.

[5.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[6.] As pointed out, it appears that the petitioners had initially challenged the Judgment & Order dated 20.08.2009 by filing RFA No. 14/2010 which, however, was dismissed vide Judgment & Order dated 22.03.2013. Subsequent Review Petition No. 3/2014 along with CMA No. 226/2014 was also dismissed by this Court. In the Execution Case No. 40/2013 it is seen that the petitioners had nowhere taken the plea that it is not them who are liable to compensate the respondent No. 1 but the Home Ministry. After a direction was passed not only in the Civil Suit, but also in the Execution Case No. 40/2013, it will not be open for the petitioners to now take a new plea that they are not liable to pay the compensation in view of the fact that land is occupied by Assam Rifles for the period concerned. As relied upon by the learned

counsel for the respondent No. 1, the Apex Court in *Chief Conservator of Forests (supra)* has held that inter-departmental disputes whether it be a State or Union of India should be resolved at the Government level and should not be brought to the Court. Similarly, in the instant case as well, if the Defence Ministry thinks that it is the Assam Rifles who are to pay the compensation since they are the one in occupation of the land for the period concerned, it is for them to take up the matter when the Home Ministry.

[7.] As already noticed, right from the pendency of the Civil Suit till the disposal of the Execution Case, this issue has not been brought up by the petitioners. As such, the same cannot be gone into at this stage. The Revision Petition is found to be without merit and is accordingly dismissed.

JUDGE

Comparing Assistant