

GAHC030001422023



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

Case No. : WP(C)/30/2023

The Union of India r/b the General Manager(Con), N.F.Railway, Maligaon and Anr.
Guwahati

VERSUS

Sh.H.Lalnunmawia and 108 Ors.
S/o Darliana(L)
R/o Hortoki, Mizoram

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi

Advocate for the Respondent : Mr. Jonathan L Sailo for R1 - R107

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

25.05.2023

Heard Mr. S.K. Medhi, learned CGC appearing for the petitioners i.e. Union of India and Mr. Jonathan L. Sailo, learned counsel appearing for respondent Nos. 1 to 107. Also heard Mr. C. Zoramchhana, learned Addl. Advocate General appearing for respondent Nos. 108 to 109.

2. By filing this writ petition, the petitioners have challenged the Judgment and Award dated 27.05.2019 passed by the Court of Addl. District Judge-I, Aizawl in

Review Petition No. 2/2018 arising out of LA Case No. 30/2014. The petitioners have contended that vide the impugned Judgment and Award, the learned LA Judge has awarded the private respondents interest payable under Section 28 and Section 34 of the LA Act, 1894 (LA Act). The learned CGC submits that the learned LA Judge in an application filed under Section 18 of the LA Act cannot award the land owners/applicants interest payable under Sections 28 and 34 of the LA Act in view of the Apex Court decision in *Union of India & Another Vs. Pushpavathi & Others, (2018) 3 SCC 28*. In this connection, the learned CGC draws the attention of this Court to paragraph 41 of the said Judgment which is abstracted hereunder for ready perusal:-

“41. In the light of the foregoing discussion, we are of the considered opinion that the dispute in relation to non-award of interest can be raised by an aggrieved person only by taking recourse to Article 226 of the Constitution in writ petition. In other words, reference under Section 18 or Section 28-A(3) cannot be considered to be an alternative statutory remedy available to the landowner for getting the question of non-award of interest payable under Sections 28 or/and 34 of the Act decided by the civil court.”

3. The learned CGC therefore submits that the impugned Judgment and Award of the LA Judge should be set aside.

4. Mr. Jonathan L. Sailo, learned counsel appearing for the private respondents on the other hand submits that the Apex Court in *Shree Vijay Cotton & Oil Mills Ltd Vs. State of Gujarat, (1991) 1 SCC 262* held that according to the Apex Court once the provision of Section 34 of the LA Act is attracted, it is obligatory for the Collector to pay the interest. If he fails to do so, the same can be claimed from the Court in proceedings under Section 18 of the Act or even from the appellate Court/Courts. He

therefore submits that in view of the said decision, rendered by a Coordinate Bench of the Apex Court, there is no impediment for the Reference Court to grant payment of interest under Section 34 of the Act including Section 28 of the LA Act. By referring to paragraph 20 of the writ petition, he submits that in fact in respect of the interest payable under Section 28 of the LA Act, the petitioner Union of India has no objection since the same is applicable as per the relevant provisions of the LA Act.

5. It is however noticed that the Apex Court in *Pushpavathi & Others(Supra)* while rendering its Judgment and Award on 06.02.2018 had also taken into consideration the decision of the same Court in *Shree Vijay Cotton & Oil Mills Ltd(Supra)*. Therefore, this Court is of the considered view that the decision rendered in *Pushpavathi & Others(Supra)*, will be applicable in absence of anything to the contrary.

6. In view of above, the impugned Judgment and Award dated 27.05.2019 passed by the LA Judge in Review Petition No. 2/2018 arising out of LA Case No. 13/2014 is hereby set aside. However, while doing so, it is hereby provided that there will be no bar for the private respondents to claim interest payable to them under Section 28 and Section 34 of the LA Act in appropriate proceedings as may be permissible in law.

7. It is needless to mention herein that the consequential assessment made by the District Collector, Kolasib pursuant to the passing of the impugned Judgment & Award dated 27.05.2019 is also hereby set aside.

8. Writ petition is accordingly stands disposed of.No cost.

JUDGE

Comparing Assistant