

GAHC030001442021



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

Case No. : LA.App./1/2021

Lalnunduatpuia and Anr.
AIZAWL

VERSUS

District Collector, Mamit and 2 Ors.
MAMIT

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

Advocate for the Respondent : Ms. Mary Lalruatkimi Kiangte,(Addl. A.G./G.A.) for R1 & R2

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 28-07-2023

Heard Mr. L.H. Lianhrima, learned senior counsel for the appellants along with Ms. Zairemsangpuui, learned CGC for respondent No. 3 and Ms. Mary L. Kiangte, learned Government Advocate for respondent Nos. 1 & 2.

[2.] This is an appeal under Section 17(1) of the Mizoram Civil Courts' Act, 2005 r/w Section 54 of the LA Act, 1894 and Section 96 of the Civil Procedure Code against the Judgment & Order dated 26.02.2021 passed by the Additional District & Sessions

Judge, Aizawl Judicial District, Aizawl in L.A. Case No. 01 of 2016.

[3.] Brief facts leading to this case is that, the appellants/petitioners were land owners of LSCs No. 4009/10/25 of 2007 and No. 4009/10/24 of 2007. The land was acquired by the Ministry of Home affairs for the establishment of Border Out Post for Border Security Force within Mamit District, under Draft Award No. 1 of 2011 made on 20.09.2011, amounting to Rs. 35,69,034/- for the standing crops/plants, approved by the Government on 22.11.2011. Aggrieved by the Draft Award dated 20.09.2011, the petitioners on 30.08.2012, had approached the District Collector, Mamit, by filing an application under Section 18 of the Land Acquisition Act, 1894 for reference of Award No. 1/2011 for determination of the Court. The reference was for payment of cost of land to the petitioners @Rs. 30 per sq.ft. The petitioners also claimed for adequate compensation in respect of the Assam Type house building at the prevailing market rates for the first year of occupation and for payment of solatium @ 30% of the award and interest @ 9%. A reassessment was then held on 16.08.2013 by the District Collector and necessary calculation of the land value was made @Rs 15/- per sq.ft and a compensation of Rs. 58,24,470/- was paid to the petitioners on 23.07.2015. Thereafter, the District Collector, Mamit vide letter dated 16.02.2016 referred the application to the District & Sessions Judge, Aizawl Judicial District, Aizawl.

[4.] The respondents objected to the reference application, claiming that there was no cause of action against the respondents and that the suit was hopelessly

barred by limitation and ought to be dismissed outright. The respondents submitted that the notification under Sub-section 1 of Section 4 of the LA Act was issued by the Government of Mizoram for acquisition of land for establishment of 9 (nine) border out post for BSF and Draft Award No. 1/2011 was made to the tune of Rs. 35,69,034/- on 20.09.2011, while the petitioners submitted their application under Section 18 of the LA Act on 30.08.2012 after lapse of more than 11 months. As such, the reference application is barred by limitation. That the petitioners received compensation without protest under Section 31(2) of the LA Act and therefore, the application cannot be entertained or accepted as the same is barred by limitation. From the pleading of both the parties, the learned Trial Court framed the following issues on 05.02.2019:-

- “(i) Whether the present reference application filed by the petitioners u/s18 of the L.A. Act, 1894 is barred by limitation or not? Whether there is a locus standi to file the petition?*
- ii) Whether the petitioners are entitled to receive payment of land value at the rate of Rs 30/- per sq feet?*
- iii) Whether the petitioners are entitled to receive payment in respect of the 14 Assam Type house buildings constructed within LSCs No 4009/10/25 of 2007 and No. 4009/10/24 of 2007 belonging to the petitioners as per existing market value?*
- iv) Whether the petitioners are entitled to receive payment of solatium @ 30% and 12 % interest as per provision?*
- v) If entitled to compensation, who shall be liable to pay the same?”*

Thereafter, as many as 4 witnesses were examined and the learned Trial

Court passed the impugned Judgment & Order dated 26.02.2021 finding issues No. 1 to 3 in favour of the respondents, issue No. 4 for payment of solatium and interest was not challenged or objected by the respondents. Aggrieved, the appellants have filed the instant appeal.

[5.] Mr. L.H. Lianhrima, learned senior counsel for the appellants submits that the Draft Award No. 1/2011 was made on 20.09.2011, without giving land value though the appellants/petitioners are LSC holders. Thereafter, additional award was made after a joint verification was done and a meeting held on 02.04.2013, in the office of the District Collector, Mamit wherein final assessment of the land was valued at Rs. 15/- per sq.mtrs was made. As such, the period of limitation cannot run from the date of Draft Award No. 1/2011 as re-assessment was made on 23.07.2013 and approval for the same was conveyed on 03.10.2013 to the District Collector, Mamit. Hence, there can be no delay in filing the reference application since the award was re-assessed and the final award issued after the reference application was filed. That delay if any, should be condoned in view of the decision of the Apex court in *Imrat Lal & Ors. vs. Land Acquisition Collector & Ors.*, reported in (2014) 14 SCC 133 (Para 11), wherein the villagers are by and large illiterate and not conversant with the intricacies of law.

[6.] The learned counsel for the appellant further submits that the Reference Court failed to examine and discuss the oral evidences as well as documentary

evidences available on record to find out the facts and circumstances of the non-payment of land value, in spite of being LSC holders and the inadequate re-assessment of compensation at the later stage. The learned counsel submits that the petitioner No. 1 had adduced evidence in the court wherein the Addl. District and Sessions Judge in L.A No. 31/2013 for construction of Railway from Siarang to Bairabi had calculated the value of the land acquired @ Rs. 200/- per sq. ft. which was upheld by the Gauhati High Court and the Apex Court. The Apex Court had forbidden the use of triangular method and had approved the value of Rs.38/- per sq.ft for assessment of compensation in far flung areas of Lunglei. The learned counsel for the appellants by citing the decision of the Apex Court in *Ajit Singh & Ors. Vs. State of Punjab & Ors.*, reported in (1994) 4 SCC 67 (Para 5) also submits that once the appellants have filed reference under section 18 of the L.A Act, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The learned counsel for the appellant further submits that the learned Trial Court had relied on judgments which were not relevant in the instant case, while decision the case and that that court should not place reliance on decisions without discussing as to how the factual situation fits as held by the Apex Court in *Bharat Petroleum Corporation Ltd Vs. N.R. Vairamani*, reported in (2004) 8 SCC 57.

[7.] The learned senior counsel for the appellants/petitioners relied on the following decisions in support of his submission for enhancement of the award:-

(i) *Ashok Kumar & Ors. Vs. St. of Haryana*, reported in (2016) 4 SCC 555 (Para 7)

(ii) *State of Mizoram & Ors. Vs. C. Lalbiakthanga*, reported in 2012 (1) GLT 53 (Para 17)

(iii) *Northern Front Railway Vs. Sh. Manliana & 7 Ors* in RFA No. 10/2015 in the Gauhati High Court.

(iv) *Narender & Ors. Vs. St. of U.P* reported in (2017) 9 SCC 426 (Para 5)

[8.] Ms. Zairemsangpuii learned CGC appearing for respondent No. 3 submits that the draft award was made on 20.09.2011 and the reference under section 18 of L.A Act should be made within 6 weeks, however, in the instant case, it was made after 11 months and thus barred by limitation. The learned CGC further submits that though subsequent amendment to the draft award was made on 23.07.2013, they cannot automatically rely on the reassessment of the award, wherein the land value was assessed @ Rs 15/- per sq.ft. That this is new development after the Award made on 20.09.2011 and after the reference application was filed on 30.08.2012. The petitioner should have filed a afresh application for the enhancement of the award if aggrieved. She further submit that the petitioners had received the full amount of the supplementary award of Rs. 58,24,470/- without protest and therefore cannot protest at this late stage.

[9.] Ms. Mary L. Khiangte, learned Government Advocate also submits that the petition was liable to be dismissed out right being barred by limitation under section 18(2) of the L.A Act, 1894.

[10.] Having heard the submissions made by both the parties, the points for consideration before this court are whether the reference application filed on 30.08.2012 by the appellants/petitioners u/s 18 of the L.A. Act, 1894 was barred by limitation since the draft award was made on 20.09.2011 and if not barred, whether the appellants are entitled to receive payment of land value at the rate of Rs 30/- per sq ft.?

[11.] Section 18 of the Land Acquisition Act, 1864 is reproduced herewith;

“Reference to Court. —

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

[12.] A perusal of the evidence adduced by the parties in the court shows that the draft Award No. 1/2011 was made on 20.09.2011, which was only for compensation of crop/trees damages in the landed properties of the appellants, covered by LSC No. 4009/10/25 of 2007 and LSC No. 4009/10/24 of 2007 to the tune of Rs. 35,69,034/-. Aggrieved by this Award No. 1/2011 dated 20.09.2011, the appellants had filed their reference application on 30.08.2012. The grounds for reference are that: i) rental compensation should be given to the appellants for the 14 nos. Assam type buildings which were occupied by BSF and Agarwal Company for the past several years without paying any rental charge. ii) For payment of land value at the rate of Rs.30/- per sq.ft. iii) For payment of adequate compensation in respect of 14 no. of Assam type house building built within the LSCs. iv) For payment of solatium @ 30% of the award and interest @ 9% for the first year of occupation and @15% for the remaining years.

[13.] The reference application was filed on 30.08.2012 being aggrieved with the draft award dated 20.09.2011, thus it is clear that it was not filed within the stipulated six weeks under section 18 (2) of the L.A Act. There was no any application filed for the condonation of delay. The reason for the delay in filing the reference

application as explained by the appellants, who deposed as Petitioner witnesses Nos. 1 and 2 before the Reference Court, was that they did not receive any notice of the Draft award and that the same was obtained through RTI application on 15.05 2015, however as admitted by them in their cross examination, the reference application was filed on 30.08.2012 and this contradiction in the explanation given remained unexplained. Further, there is no evidence produced before the Reference Court to support the claim that the appellant got to know of the Draft award through RTI, for this reason, this court finds the explanation given for the delay in filing the reference application unsustainable.

[14.] It is seen that after the reference application was filed against the Award 1 of 2011 dated 20.09.2011, the Deputy Commission had re-assessed the initial Award no 1 of 2011 and issued a revised/re-assessed amount of compensation by including the land value of the acquired land @Rs. 15/- per sq.ft. on 16.08.2013 which amounted to Rs. 58,24,470/- and the same was received by the appellants on without protest. However, this court finds that the instant reference application was filed on 30.08.2012, before the re-assessment was done on 27.07.2013 being aggrieved by the compensation amount of Rs. 35,69,034/- only for damaged crops in Award No. 1 of 2011. Thus, if the appellants were later aggrieved with the re-assessed amount, the appropriate procedure should have been for the appellant to file a fresh reference application, if aggrieved by the subsequent re- assessment which was compensation for the land acquired, valued @ Rs. 15 per sq. ft.

[15.] It is seen that the learned Lower Court disposed of the reference application and decided issue No. 1 in favour of the respondents by finding that the reference application dated 30.08.2012, filed by the petitioners u/s 18 of the L.A. Act, 1894 was barred by limitation. However, if such is the finding, the learned Court below should have dismissed the reference application at the outset being barred by limitation, instead, the Reference court had proceeded and considered all the other issues framed.

[16.] For the above reasons, this Court of the considered view that the reference application dated 30.08.2012 against the Award No. 1 of 2011 dated 20.09.2011 was filed beyond the stipulated time frame of 6 (six) weeks under section 18 (2) of L.A Act, 1894. That the re- assessment of the award on 23.08.2013 is a new development after the Award dated 20.09.2011. Thus, on finding that the reference application was filed beyond the limitation period stipulated under section 18(2) of the Land Acquisition Act, 1894, this Court finds that the other contested issues framed need not be discussed any further, the matter being barred by limitation.

[17.] The L.A Appeal is thus disposed with the above observations. The above observation, however, will not bar the appellant from filing a fresh reference application, if so advised, against the subsequent amendment to the draft award i.e., subsequent re-assessed amount. Accordingly the Judgment & Order dated 26.02.2021 passed by the Additional District & Sessions Judge, Aizawl Judicial District

in L.A. Case No. 01 of 2016 is interfered with to the extend discussed.

[18.] L.A. App. No. 1 of 2021 stands disposed of as above.

JUDGE

Comparing Assistant