

GAHC030002002021



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

Case No. : RFA/20/2022

North East Frontier Railway
N.F. Railway, Tarapur, Silchar, Assam

VERSUS

Rothanga and 281 ors.
Hortoki 2:Sh. Vanlalhruaia

3:Sh. C. Raltawna

4:Smt. Rohmingthangi

5:Sh. C. Lalchhanhima

6:Sh. Lalkhawngaiha

7:Sh. Lalnunmawia

8:Smt. Krosmawii

9:Smt. Lalbeli

10:Smt. Chhawni

11:Sh. Biakmawi

Advocate for the Petitioner : Mr. Ali Hussain

Advocate for the Respondent : Mrs. H Lalmalsawmi, (Addl.AG/GA Mizoram) for R282

Linked Case : I.A.(Civil)/83/2022

North East Frontier Railway
N.F. Railway
Tarapur
Silchar
Assam

VERSUS

Rothanga and 281 ors
Hortoki

2:Sh. Vanlalhruaia
Hortoki

3:Sh. C. Raltawna
Hortoki

4:Smt. Rohmingthangi
Hortoki

5:Sh. C. Lalchhanhima
Hortoki

6:Sh. Lalkhawngaiha
Hortoki

7:Sh. Lalnunmawia
Hortoki

8:Smt. Krosmawii
Hortoki

9:Smt. Lalbeli
Hortoki

10:Smt. Lalchhawni
Hortoki

11:Sh. Biakmawia
Hortoki

Advocate for the Petitioner : Ali Hussain
Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT & ORDER

Date : 05-12-2023

Heard Mr. R.K. Dev Choudhury, learned Dy. Assistant Solicitor General of India for the appellant along with Mr. B. Lalramenga, learned counsel for the respondents.

[2.] This court in its order dated 23.01.2023, had made the following observation and order:-

“This Regular First Appeal has been filed against the Judgment & Order dated 03.07.2020 passed in Review Petition No. 17/2019, by which the rate of compensation payable to the respondents for acquisition of their lands has been enhanced from Rs. 25/- to Rs. 60/- per sq.ft.

The brief facts of the case is that pursuant to Award No. 1/2012 (Part 'C' Hortoki) the respondents' lands were acquired for construction of a railway line from Bairabi to Sairang. The respondents were given compensation for their crops, fish ponds, buildings etc. which were within their acquired lands. However, no market value was given for the acquired lands.

Being aggrieved, the respondents filed a reference petition under Section 18 of

the Land Acquisition Act, 1894, praying for payment of compensation for the value of their lands. The reference petition was thereafter sent to the Court of the Additional District Judge-I, Aizawl, wherein it was registered as LA No. 30/2014.

LA No. 30/2014 was disposed of by the Reference Court vide Judgment & Award dated 05.02.2015, by holding that the respondents were entitled to be paid the value of their lands in terms of the LA Act, 1894 and the Reference Court accordingly fixed the compensation rate at Rs. 25/- per sq.ft. 4 (four) years later, the respondents filed Review Petition No. 17/2019 in the Court of the Additional District Judge-I, Aizawl, arising out of LA Case No. 30/2014, praying for enhancement of the compensation rate awarded for the value of their lands, on the ground that the respondents' counsel in the learned Reference Court had wrongly claimed only Rs. 25/- per sq.ft. for the market value of their lands, while the respondents had actually informed the counsel to claim not less than Rs. 100/- per sq.ft. for the value of their lands.

Review Petition No. 17/2019 was disposed of by the Review Court vide Judgment & Order dated 03.07.2020, by holding that the respondents were entitled compensation @ Rs. 60/- per sq.ft. for the market value of their lands, along with solatium and interest under Section 23 of the LA Act, 1894. The Review Court also held that the respondents were entitled to interest under Sections 28 & 34 of the LA Act, 1894.

Being aggrieved by the Judgment & Order dated 03.07.2020 passed in Review Petition No. 17/2019, the appellants have filed the present Regular First Appeal.

Mr. R.K. Chowdhury, the learned Deputy SGI submits that the learned Reference Court, in its Judgment & Award dated 05.02.2015, had clearly stated the fact that the respondents were claiming only Rs. 25/- per sq.ft. as compensation for the market

value of their lands, as persons whose lands were covered by Land Settlement Certificate (LSC) had been given the said rate in terms of Award No. 1/2012 (Part 'C', Hortoki). He submits that as the respondents' lands were covered by Periodic Pattas/Village Council Passes, there was no infirmity with the awarding of compensation at the same rate as given to LSC holders. However, vide the impugned judgment and order passed in Review Petition No. 17/2019, the Review Court has without any basis, enhanced the market value of the land of the respondents from Rs. 25/- to Rs. 60/- per sq.ft. He also submits that as the respondents were satisfied with the award of Rs. 25/- per sq.ft. passed by the learned Reference Court, there was no justification for the Review Court to enhance the said compensation rate.

Mr. B. Lalramenga, the learned counsel for the respondents submits that the appeal is not maintainable, as the order allowing the review petition should have been challenged under Order 43 Rule 1(w) and not under Section 96/Order 41 of the CPC. He also submits that the review petition was maintainable as a Review Court can always look into its earlier order for any other sufficient reasons. He also submits that the land holders having land at Sihhmui for the same stretch of railway line in LA Case No. 31/2013 had been awarded compensation @ Rs. 200/- per sq.ft. and as such, there was no infirmity with the award of Rs. 60/- per sq.ft. for land in the Hortoki area. In support of his submissions, the learned counsel has relied upon the judgments of the Apex Court in the case of (i) Board of Control for Cricket in India & Anr. Vs. Netaji Cricket Club & Ors., reported in (2005) 4 SCC 741 (Para 89 & 90), (ii) Ravindra & Anr. Vs. Special Land Acquisition Officer, UKP, Bagalkot, reported in (2017) 11 SCC 495 (Para 4), (iii) Imrat Lal & Ors. Vs. Land Acquisition Collector & Ors., reported in (2014) 14 SCC 133 (Para 9 to 11 & 15), (iv) Dhiraj Singh (Dead) through Legal Representatives & Ors. Vs. State of Haryana & Ors., reported in (2014) 14 SCC 127 (Para 9 to 12 & 16) and (v) Mahesh Dattatray Thirthkar Vs. State of Maharashtra, reported in (2009) 11 SCC 141 (Para 52).

Mr. B. Lalramenga shall obtain instructions and produce documents as to whether any lands within the Hortoki area had been acquired @ Rs. 60/- per sq.ft. for construction of the railway line from Bairabi to Sairang."

[3.] Mr. R.K. Chowdhury, the learned Dy. SGI for the appellant reiterates his earlier submissions and submits that the statement of the respondent No. 1 clearly shows that he was satisfied with the market value of his land which was assessed initially at Rs. 25/- per sq.ft. He further submits that if the respondent No. 1 has shifted the blame on his previous counsel, by stating that he had informed his counsel that the value of his landed property acquired should not be less than Rs. 100/- per sq.ft., then his previous counsel should have been made a party in the case. He further submits that the Deputy Commissioner is the competent authority to decide the value of the land and accordingly, had decided the value of the land at Rs. 25/- per sq.ft. as compensation for the market value of the lands of the private respondents in terms of Award No. 1/2012 (Part 'C', Hortoki). The learned Dy. SGI also submits that in Review Petition No. 17/2019, the Review Court had referred to LA Case No. 31/2013, where the land holders having land at Sihhmui, which is at Aizawl District, for the same stretch of railway line had been awarded compensation @ Rs. 200/- per sq.ft., but has not given any substantial reason as to why the value of the land of the petitioners which was at Kolasib was enhanced from Rs. 25/- per sq.ft. to Rs. 60/- per sq.ft. The learned Dy. SGI submits that the enhancement of the market value of Award No. 1/2012 (Part 'C', Hortoki) from Rs. 25/- per sq.ft. to Rs. 60/- per

sq.ft. was without any basis and therefore liable to be set aside.

[4.] Mr. B. Lalramenga, learned counsel for the private respondents on the other hand submits that there was no infirmity with the Judgment & Order dated 03.07.2020 passed in Review Petition No. 17/2019 by the Review Court under order 47 C.P.C. The learned counsel submits that the Review Court while enhancing the market of value of the acquired land, held that the previous counsel of the petitioners had made a wrong submission and claimed only Rs. 25 per sq.ft. for the market value of their lands, while the petitioners had claimed that the market value of their lands is not less than Rs. 100 per sq.ft. The learned counsel submits that the Review Court had referred to LA Case No. 31/2013, where the land holders having land at Sihhmui, for the same stretch of railway line had been awarded compensation @ Rs. 200/- per sq.ft., the Review court held that it would be justified in enhancing the value of land of the petitioners to Rs.60 per sq.ft. since the acquired land of the petitioner is within Kolasib District and the value of the land would be much lesser than the land acquired in L.A Case No. 31 of 2013 which is within Aizawl District. The learned counsel submits that if the Review court finds the assessment of the market value of the land acquired, to be less, it can enhance the same, if sufficient reason is found to do so.

[5.] The learned counsel submits that in such similar cases, the courts have enhanced the market value of the land acquired for the construction of a railway line from Bairabi to Sairang. The learned counsel has referred to the Judgment & Order

dated 29.03.2018 passed by a Co-ordinate bench of this Court in RFA No. 10/2015 (*Northern Front Railway vs. Shri. Manliana & 7 Ors.*) which was filed to challenge the Judgment & Award dated 19.08.2014 passed by the Additional District Judge, Aizawl in LA Case No. 15/2012, and the Co-ordinate Bench of this Court had upheld the Award No. 1 of 2012 for Part A- Bairabi, where the market value of the land was fixed at Rs. 60/- per sq.ft. by the Additional District Judge, Aizawl. Accordingly, the N.F. Railway, Maligaon had issued Sanction Memorandum No. 33 (Land)/2022 dated 16.06.2022 for payment of the awarded amount. The learned counsel also submits that in the Judgment & Award dated 19.03.2014 in LA Case No. 10/2012 (*Shri. Zohmingsanga Vs. District Collector, Kolasib District & 2 Ors.*), the Additional District & Sessions Judge, Aizawl had enhanced the market value of the land from Rs.25/- per sq.ft. to Rs. 68 per sq.ft. in Award No. 1 of 2012 (Part-A-Bairabi), thereafter, the Northern Front Railway had issued a letter dated 18.08.2022 for payment of the enhanced amount of Rs. 90,72,462/-.

[6.] The learned counsel for the respondent submits that the review was to look whether sufficient compensation was given and not on the facts whether or not the counsel had given wrong submission in the Court. The learned counsel by referring to the decision of the Apex Court in *Bhag Singh & Ors. Vs. Union Territory of Chandigarh through the Land Acquisition Collector, Chandigarh*, reported in (1985) 3 SCC 737 (para 3) and submits that compensation higher than what is claimed for can be given if the parties are found to be entitled. The claimants are to be treated like

the other claimants and as such, the market value should be determined and considered equally. The learned counsel has referred to the decision of the Apex court in *Ravindra & Anr. Vs. Special Land Acquisition Officer, UKP, Bagalkot*, reported in (2017) 11 SCC 495 (para 4), where same award was given for the same acquisition and same notification. He has also cited *Dhiraj Singh (Dead) through Legal Representatives & Ors. Vs. State of Haryana & Ors.*, reported in (2014) 14 SCC 127 (para 9, 10, 11 & 15), *Mahesh Dattatray Thirthkar Vs. State of Maharashtra*, reported in (2009) 11 SCC 141 (para 52).

[7.] The learned counsel submits that the close proximity of the villages is also to be considered while considering the market value. He has referred to the following decisions of the Apex Court with regards to equal compensation if the land acquired is in close proximity of the villages (i) *Thakur Kuldeep Singh (Dead) through Lrs. & Ors. Vs. Union of India & Ors.*, reported in (2010) 3 SCC 794 (para 12 & 13), (ii) *Union of India Vs. Bal Ram & Anr.*, reported in (2010) 5 SCC 747 (para 4 & 5) and (iii) *Satpal & Ors. Vs. Union of India*, reported in (1997) 11 SCC 423 (para 3).

[8.] Mr. R.K. Chowdhury, the learned Deputy SGI for the appellant in rebuttal, submits that in the cases referred to, in the Judgment of a Co-ordinate bench of this court dated 29.03.2018 in RFA No. 10/2015, upholding the Judgment & Award dated 19.08.2014 passed in LA Case No. 15/2012 and the Judgment & Award dated 19.03.2014 in L.A case No. 10/2012, the landed property acquired for the construction

of Railway line between Bairabi to Sairang refers to '*Part A- Bairabi*' in Award No. 1 of 2012, while in the instant case the Railway line construction of between Sairang to Bairabi refers to '*Part-C Hortoki*' in Award No. 1 of 2012, which are at different locations and therefore, the learned Trial Court has not given any justification as to how the value of the land has been enhanced from Rs. 25/- per sq.ft. to Rs. 60/- per sq.ft. The Deputy Commissioner, who is the current authority to assess the value of the land and has correctly assessed the value of the land acquired in Award No. 1 of 2012 Part-'C' Hortoki @ Rs. 25/- per sq.ft.

[9.] I have heard and considered the submissions of both the rival parties.

The points for consideration from the above submissions are:-

- i) whether the reasons given by the Review Court in enhancement of the market value of the land acquired in Award No. 1 of 2012 Part-A Hortoki @ Rs. 25/- per sq.ft. to Rs.60 per sq.ft. can be considered a sufficient reason
- ii) If not, whether the enhancement of the market value of the land, acquired for construction of the railway line from Bairabi to Sairang in Award No. 1 of 2012 (Part-'C' Hortoki), from Rs. 25/- per sq.ft. to Rs.60 per sq.ft can be justified in view of the Judgment passed by a Co-ordinate bench of this court in RFA No. 10/2015 dated 29.03.2018 which upheld the Judgment & Award dated 19.08.2014 passed in LA Case No. 15/2012, where the market value of the land was fixed at Rs. 60 per sq.ft in

Award No. 1 of 2012 - Part-'A' Bairabi and in the Judgment & Award dated 19.03.2014 in L.A case No. 10/2012, wherein the market value of the land was enhanced from Rs 25 per sq.ft to Rs. 68 per sq.ft in Award No. 1 of 2012 (Part-'A' Bairabi)

[10.] On perusal of the reasons given by the Review court for enhancement in Award No.1 of 2012 (Part-A Hortoki) @ Rs. 25/- per sq.ft. to Rs. 60 per sq.ft., which is, that the previous counsel of the petitioner/instant respondents, without consulting them had mentioned the value of the land @ Rs.25 per sq.ft. and that this would have to be considered as a mistake committed by their previous counsel, since the petitioners had claimed not less than Rs. 100 per sq.ft. The Review court also referred to L.A case No. 31 of 2013, wherein in the same notification the land was also acquired for the construction of Railway line for Bairabi to Sairang, the value of the land was fixed at Rs. 200/- per sq.ft., the Review Court felt that since the land of the petitioner is within Kolasib District and the value of the land would be much lesser than the land acquired in L.A case No. 31 of 2013, which is within Aizawl District, and held that the enhancement @ Rs.25 per sq.ft. to Rs. 60 per sq.ft. is appropriate. This court find that the above reasons given by the Review Court in enhancing the market value of the land acquired from Rs. 25/- per sq.ft. to Rs. 60/-per sq.ft. is not based on any document or evidence adduced by the parties, except for an opinion that the same market value for the land within Aizawl District cannot be applied for land acquired within Kolasib District. For the above reason, this court is of the considered opinion that the enhancement of Award No. 1 of 2012 Part-A Hortoki from Rs. 25/- per

sq.ft. to Rs.60/- per sq.ft. has not been substantiated by any document or evidence.

[11.] This court also finds that a Co-ordinate Bench of this court in RFA No. 10/2015 dated 29.03.2018, upheld the Judgment & Award dated 19.08.2014 passed in LA Case No. 15/2012, in fixing the market value of the land at Rs. 60/- per sq.ft. for the landed property acquired for the construction of Railway line between Bairabi to Sairang. A perusal of judgment in RFA No. 10/2015 shows that the Co-ordinate bench of this High court found it fit to uphold the Judgment & Award dated 19.08.2014 passed in LA Case No. 15/2012, since the learned court below was of the opinion that the learned Court in fixing the market value of the land duly appreciated the evidences led by the private respondents (6 nos.) as well as the relevant factors for fixation of market value of land which was also located in the sub town of Bairabi. In L.A case No. 10/2012, the acquired land was covered by Award No. 1 of 2012 mentioned as (Part A- Bairabi). In L.A Case No.10/2012, it is noted that the court had given it reasons from the evidence adduced, that the land acquired (Part A- Bairabi) was also located within the residential area of Bairabi sub town and therefore, had fixed the value of the land acquired at Rs 68/- per sq.ft.

[12] In the instant case, the Railway line construction is between Sairang to Bairabi and the land of the respondents is covered by Award No. 1 of 2012 (Part-'C', Hortoki). It is seen that the Review court has not discussed any relevant factors for fixation of market value of land nor discussed the location of the land acquired or any

close proximity of the villages which is also to be considered while considering the market value. As held by the Apex Court in ***Thakur Kuldeep Singh v. Union of India, (supra)*** held that “*while fixing compensation, it is the duty of the Land Acquisition Collector as well as the court to take into consideration the nature of the land, its suitability, nature of the use for which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally (sic relevant) to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available.*”

[13.] In view of the above decision, it is seen that the Revision Court has not shown the similarities or explanation why the land covered by Award No. 1 of 2012 (Part-C, Hortoki) and the land covered by Award No.,1 of 2012 (Part-A, Bairabi), should be treated alike. It also appears that the land covered in Award No. 1 of 2012 (Part-A, Bairabi) and Award No. 1 of 2012 (Part-C, Hortoki) covered by the same notification are not coming under the same villages. The learned Trial Court has not given any justification as to how the value of the land has been enhanced from Rs. 25/- per sq.ft. to Rs. 60/- per sq.ft. This court also finds that the learned counsel for the respondent has not produced the documents to show that the lands within the Hortoki area had been acquired @ Rs. 60/- per sq.ft. for construction of the railway

line from Bairabi to Sairang.

[14.] In view of the above findings, this court is constrained to hold that the Judgment and Order dated 03/07/2020 passed in Review Petition No.17/2019, arising out of L.A Case No.30/2014 passed by the Learned Court of Additional District & Sessions Judge-I, Aizawl shall be set aside and quashed.

[15.] Accordingly, RFA No. 20 of 2022 is allowed and stands disposed of.

JUDGE

Comparing Assistant