

GAHC030002802023



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

Case No. : WP(C)/59/2023

Sh. H. Lalnunmawia and 106 Ors.
S/o Darliana (L)
R/o Hortoki, Mizoram.

VERSUS

The State of Mizoram R/b the Chief Secretary to the Govt. of Mizoram and 8 Ors.
Aizawl, Mizoram. 2:The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.

3:The Director
Land Revenue and Settlement Dept.
Govt. of Mizoram.

4:The District Collector/ District Commissioner
Kolasib District.

5:The Union of India R/b the Secretary
Railway Board
Ministry of Railways
Govt. of India

6:The Northeast Frontier Railway
R/b its General Manager/ Construction

7:The Chief Administrative Officer
Construction-I
Northeast Frontier Railway

8:The Chief Engineer
Construction-2
Northeast Frontier Railway

9:The Deputy Chief Engineer
Construction / Bairabi
Northeast Frontier Railwa

Advocate for the Petitioner : Mr. Jonathan L Sailo

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

1st June, 2023

Heard Mr. Jonathan L. Sailo, learned counsel for the petitioners and Mr. P.C. Lalthangmawia, learned Government Advocate for the State respondents and Ms. Zairemsangpuii, learned CGC for the respondents Union of India/NF Railway. Having regard to the nature of case projected by the petitioners, the matter is taken up for disposal at the motion stage itself.

2. Brief facts for the purpose of disposing the instant writ petition may be narrated at the outset. The petitioners were awarded certain amount of compensation towards crops and trees vide Award No. 1/2012 Part-C Hortoki dated 13.09.2012 for acquisition of their land to construct railway line from Bairabi to Sairang. Since no land value was granted to the petitioners, they filed a reference application under Section 18 of the

Land Acquisition Act, 1894 (LA Act) and the same was registered as LA Case No. 30/2014. The reference application was disposed of vide Judgment and Award dated 05.02.2015 by awarding the petitioners land value @ Rs. 25 per square feet alongwith solatium and interest as provided under Section 23 of the LA Act. It is the case of the petitioners that possession of the land was taken over on 04.03.2013 while payment of the land value without interest was made only on 21.11.2015. As such, they claim that they are entitled to payment of interest under Section 28 and Section 34 of the LA Act.

3. Similarly situated persons numbering 179, who were also party to LA Case No. 30/2014 filed CMA No. 114/2018 claiming interest under Section 28 and Section 34 of the LA Act. The Reference Court vide Judgment and Order dated 25.07.2018 awarded the said petitioners interest under Section 28 and Section 34 of the LA Act. According to the present petitioners, those petitioners were paid interest under Section 34 of the LA Act on 07.01.2019 and interest under Section 28 of the LA Act on 05.04.2022. Since their case is also covered and similar to the 179 petitioners who filed CMA No. 114/2018, the instant petitioners filed Review Petition No. 2/2018 claiming similar benefit. Accordingly, the Reference Court vide Judgment and Order dated 27.05.2019 allowed the review application and granted the petitioners similar benefit of payment and interest under Section 28 and Section 34 of the LA Act. Following the Judgment and Order, the District Collector made the assessment but as the same was not paid to the petitioners, they filed Execution Case No. 28/2020. The execution case however

was disposed of vide Order dated 24.01.2022 by the Execution Court on the ground that the petitioners failed to mention the correct mode of execution in their application. However, while disposing of the execution case, the Execution Court granted liberty to the petitioners to file a fresh execution petition.

4. Aggrieved with the Order dated 24.01.2022, the petitioners preferred Civil Revision Petition No. 2/2022 before this Court. The same was disposed of vide Order dated 04.11.2022 by remanding the matter back to the Execution Court for considering the Execution Case after recording a finding that the petitioners had indeed mentioned the mode of execution in their application.

5. On remand, the Execution Court vide Orders dated 08.12.2022 and 02.03.2022 directed the Judgment Debtor No. 2 to appear before the Court to answer to the averments made in the Execution application. It is at this stage that the respondents Union of India/NF Railway preferred WP(C) No. 30/2023 claiming that the Execution Court acted without authority and beyond its jurisdiction. The writ petition was then disposed of vide Order dated 25.05.2023 by observing that in view of the Apex Court decision in *Union of India & Another Vs. Pushpavathi & Others, (2018) 3 SCC 28*, the LA Judge could not have awarded interest payable under Section 28 and Section 34 of the LA Act, while considering a reference application under Section 28. Accordingly, the Judgment and Award dated 27.05.2019 passed by the LA Judge in Review Petition No. 2/2018 arising out of LA Case No. 30/2014 was set aside. However, while doing so, liberty was granted to the private respondents, i.e., the present petitioners to claim

interest payable to them under Section 28 and Section 34 of the LA Act in appropriate proceedings as permissible in law. That is how the present petitioners are again before this Court by invoking Article 226 of the Constitution of India praying for payment of interest under Section 28 of the LA Act.

6. Mr. Jonathan L. Sailo, learned counsel for the petitioners submits that at this stage, the petitioners are before this Court only with their claimed for payment of interest under Section 28 of the LA Act. He submits that the respondent Union of India/NF Railway in the earlier round of litigation i.e. WP(C) No. 30/2023 at paragraph No. 20 of the said writ petition had clearly admitted that the petitioners are entitled to payment of interest under Section 28 of the LA Act. In support of his submission, the learned counsel draws the attention of this Court to annexure -16 of the writ petition which is a copy of WP(C) No. 30/2023. The relevant page being page No. 160 of the said writ petition. The relevant paragraph may be abstracted below for ready perusal:-

”The Hon’ble Reference Court vide judgment dated 05.02.2015 passed in L.A. Case No. 30/2014 enhanced the land value @Rs. 25/- per sq. ft. which is entirely the excess amount against the award. As such, interest U/s 28 of the L.A. Act 1894 will be applicable on the entire amount which is fixed by the Hon’ble Reference Court @Rs.25/- per sq. ft.”

7. Mr. Jonathan L. Sailo, learned counsel therefore submits that in view of the clear admission on the part of the respondents authorities and also the entitlement of the petitioners as per Section 28 of the LA Act for being paid interest on the excess amount awarded by the LA Judge, Court may direct the respondent Authorities to make necessary payment to the petitioners.

8. Having regard to the specific prayer made by the petitioners in respect of their claim under payment of interest under Section 28 of the LA Act and having regard to the admitted position that they are entitled to the same and also to the fact that the respondents have also admitted to the claim of the petitioners, the writ petition is disposed of with the direction to the District Collector, Kolasib to make an assessment on the entitlement of the petitioners for payment of interest under Section 28 of the LA Act within a period of one month from the date of receipt of certified copy of this order.

9. It is also further provided herein that since the District Collector has already made a combined assessment of interest payable under Sections 28 and 34 of the LA Act as can be seen from the communication dated 29.08.2019 (Annexure-10) which was written to the Deputy CE/Con/Bairabi at Silchar, NF Railways, Silchar by the District Collector, the interest calculated under Section 28 of the LA Act which appears at column Nos. 11 and 12 of the calculation may be segregated and forwarded to the NF Railway Authority for arrangement of the fund. The NF Railway shall make necessary arrangement of the fund within a period of 6 weeks from the date of receipt of the calculation by the District Collector and deposit the same to the District Collector, Kolasib. Thereafter, the same be disbursed to the petitioners without delay.

10. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant