

GAHC030002822023



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

Case No. : WP(C)/61/2023

Smt. Lalnunthari
D/o Lalthuama,
R/o D-30/1, PWD Tlang, Zarkawt, Aizawl, Mizoram.

VERSUS

Union of India and 6 Ors.
R/b the Secretary to the govt. of India, Ministry of Defence, South Block, New Delhi-110011. 2:The Secretary to the Govt.of India
Ministry of Home

3:The Director (North East-II) Govt. of Inida
Ministry of Home Affairs

4:The Defense Estate Officer
Gauhati Circle

5:The State of Mizoram R/b the Chief Secretary to the Govt. of Mizoram

6:The Special Secretary to the Govt.of Mizoram
Land Revenue and Settlement Dept.

7:The District Collector/ Deputy Commissioner
Aizawl District

Advocate for the Petitioner : Mr. Samuel Vanlalhriata

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1 - 4

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

For the petitioner : Mr. Samuel Vanlalhriata, Advocate

For the respondents : Ms. H. Lalmalsawmi, GA, Mizoram
Ms. Zairemsangpuii, CGC

Date of hearing : 16.11.2023

Date of Judgment/Order : 16.11.2023

JUDGMENT & ORDER (ORAL)

16.11.2023

Heard Mr. Samuel Vanlalhriata, learned counsel for the petitioner. Also heard Ms. Zairemsangpuii, learned CGC for the respondent Nos. 1 to 4 and Ms. H. Lalmalsawmi, learned Government Advocate, Mizoram appearing for the State respondent Nos.5 to 7.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for an order for payment of rental compensation to her for occupation of her land by the Security Forces for the period from 1996 to 11.06.2018.

3. The grievance of the petitioner in this writ petition is that she is the absolute and legal owner of a plot of land covered under Land Settlement Certificate No.Azl-282 of 1996 located at Thuampui Helipad Area, Aizawl, Mizoram. Although the said land was occupied by the Security Forces in 1996, the acquisition proceeding was initiated only on 11.06.2018 by publishing a

preliminary notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short 'the Act') by the respondent No. 7, the District Collector/Deputy Commissioner, Aizawl District. It is the case of the petitioner that in spite of occupation of her land by the Security Forces under the Ministry of Defence, Government of India since 1996, she has not been paid any rent by the respondents till date.

4. Mr. Samuel Vanlalhriata, learned counsel for the petitioner, submits that the instant case is covered by the judgment, dated 15.02.2023 passed by this Court in WP(C) No.170/2019 (Annexure-XI). Mr. Vanlalhriata also submits that some land owners of Thuampui Helipad area, whose lands were occupied by the Security Forces, earlier filed WP(C) No.102/2000 and WP(C) No.110/2000 praying for rental compensation, which were allowed by this Court vide common judgment and order, dated 02.05.2002. But, Mr. Vanlalhriata submits that as the direction of this Court was not followed, the petitioners therein filed Contempt Case No.14/2012 for compliance of the said common judgment and order pursuant to which the respondent No. 7 issued Preliminary Notification, dated 11.06.2018 bearing No.K.12011/53/17-REV under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of land occupied by the Security Forces under the Ministry of Defence, Government of India at Thuampui Helipad area, Aizawl. Pursuant to the aforesaid Preliminary Notification, dated 11.06.2018, Mr. Vanlalhriata submits, the respondent No. 7 issued declaration under Section 19(1) of the Act bearing No.K.12011/53/2017-REV, dated 10.10.2018 declaring that the lands within Thuampui Helipad area are required for public purpose, viz., continued occupation of the land by the Security Forces under the Ministry

of Defence. Thereafter, Mr. Vanlalhriata submits, observing all formalities, the respondent No. 7 issued Draft Award No. 1 of 2019, dated 18.07.2019 whereby 76 numbers of LSCs were notified for acquisition on permanent basis, wherein the petitioner was placed at Sl. No. 59 and the same was forwarded to the office of the respondent No. 7 by the respondent No. 6 vide letter, dated 18.07.2019 for approval of the competent authority. Mr. Vanlalhriata submits that after approval of the aforesaid Draft Award, the respondent No. 7 issued a notification 'Pronouncement of Award No.1 of 2019', dated 11.10.2019 bearing Memo No. F.15012/20/2018-DC(A)/347 intimating all persons concerned that the Award No.1 of 2019 was due to be pronounced on 14.11.2019. Mr. Vanlalhriata further submits that although the land of the petitioner was acquired on a permanent basis vide Award No.1 of 2019, the petitioner has never been paid any rent or compensation and she has been deprived of her peaceful possession of the land since 1996 till the date of acquisition. Mr. Vanlalhriata also submits that the respondents, more particularly, the respondent Nos. 1 to 5 have paid rental compensation to certain land owners whose lands are also under occupation by the Security Forces for the period prior to acquisition of the lands vide Award No.1 of 2019 and therefore, the respondents are bound by the Principles of Estoppel and Acquiescence and cannot deny the prayer of the petitioner for payment of compensation.

5. Ms. H. Lalmalsawmi, learned Government Advocate, Mizoram appearing for the State respondent Nos.5 to 7, submits that the petitioner is entitled to rental compensation from the year of issue of LSC on her land holding, that is, from 06.06.2011 in the light of the judgment and order, dated 15.02.2023 passed in WP(C) No. 170/2019.

6. Ms. Zairemsangpuui, learned CGC for the respondent Nos. 1 to 4 has agreed

to the submission made by Ms. Lalmalsawmi, learned Government Advocate, Mizoram.

7. A perusal of the Award No. 01 of 2019, dated 18.07.2019 vide Annexure- VI, it appears that an area of 58452.09 sq. m. was acquired by the respondent No. 7, the Deputy Commissioner/District Collector, Aizawl for the purpose of construction of Helipad at Thuampui, Aizawl and for its continued occupation by the Security Forces under the Ministry of Defence/Respondent No. 1 herein, after conducting a joint preliminary survey of lands by the respondent No. 7 and representatives of the respondents/MoD, which was under occupation of 63 land owners. Accordingly, the land area proposed to be acquired was demarcated and marked on the map. In addition, area of 16 land holders, who reported during the aforesaid survey period were also verified and marked on the map. Thereafter, as required under Section 15 of the Act, hearing of objections was held on 29.08.2018 and after the objection hearing, it was, *inter alia*, recommended that the competent authorities may take necessary action towards payment of rents to the land holders on the occupied areas. After due process, the Government of Mizoram published a draft declaration for the aforesaid area of 58452.09 sq. meter under Section 19(1) of the Act declaring that the said land was required for public purposes as specified under Section 11(1) of the Act vide the Notification, dated 10.10.2018 and directed the Deputy Commissioner, Aizawl/respondent No. 7 to perform the functions of the Collector under the Act. Accordingly, the District Collector published public notice stating that the Government intends to take possession of the land and that claims to compensations for all interest in such land may be made to him. It further appears that the land valuation was assessed and accordingly, the final valuation of the land as compensation amount was assessed at

Rs.69,10,85,089.00/- in addition to hundred percent solatium and additional amount to be calculated @12 percent per annum on the market value for the period commencing from the date of publication of the notification under Section 11(1) of the Act to the date of Award. In the aforesaid Award, under the head "Structure Valuation", the District Collector mentioned that the area has been occupied by the Security Forces since 1966. In Serial No. 18 of the said Award the names of the persons interested in the acquired land and the nature of their respective interests were mentioned, where the name of the present petitioner appeared in Serial No.59. Prior to acquisition of the aforesaid land of the petitioner, the petitioner's land was under the occupation of the Security Forces for quite some time and thus, she was deprived of enjoyment of the fruits of their occupation of the acquired lands for which she is entitled to be compensated by way of payment of rent.

8. Accordingly, the respondent No. 7 made assessment of the rent payable to the petitioner for the period from 01.04.2012 to 10.06.2018 which was assessed at a total amount of Rs.70,91,024/- and requested the Defence Estate Officer to deposit the aforesaid amount with the Office of the Respondent No. 7 for payment to the petitioner. However, the petitioner herein has prayed for payment of rental compensation for occupation of her land by the Security Forces for the period from 1996 till the period of acquisition of their lands as per law. The record does not reveal as to what exactly was the amount due to the petitioner as rental compensation for the aforesaid period.

9. In Paragraph No. 18 of *R.L. Jain Vs. DDA and Ors., reported in (2004) 4 SCC 79*, the Hon'ble Supreme Court observed as hereinbelow extracted-

“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.”

10. It may pertinently be pointed out that a Land Settlement Certificate (LSC) is a vital legal document issued by the state government in the name of the owner of a property. Therefore, the petitioner having secured the LSC within the acquired land area is entitled to rent compensation from the year of issue of LSC on her land holding, that is, 06.06.2011. It is noticed that the respondent No. 7/District Collector, Aizawl has already assessed the rental compensation payable for the period 01.04.2012 to 10.06.2018. On the other hand, the respondents No. 1, 2, 3, 4/MoD have not challenged the legality and validity of the LSC issued in favour of the petitioner or that the said LSC is without any legal force and also, the aforesaid Award No. 01 of 2019. In this context, it may be stated that constitutionally, the government is under obligation to do welfare of its citizens and as such, government cannot claim the benefits of limitation to defeat the genuine claims for fair compensation of private persons in respect of their lands acquired for public purposes in due process of law.

11. In the premises, the respondents are directed to pay rental compensation to the petitioner for occupation of her land by the Security Forces since the year of issue of the LSC, till formal acquisition of her land, after due assessment by the respondents, more particularly, by the respondent No. 7, District

Collector/Deputy Commissioner, Aizawl District, Mizoram giving opportunity of being heard to the petitioner within a period of 6(six) months from the date of this order. It is made clear that in the event of failure to pay the rental compensation to the petitioner within the aforesaid period of 6(six) months, interest @3 percent per annum, shall be payable thereafter on the compensation amount till the date of payment.

With the above direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant