

GAHC030004022022



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

Case No. : WP(C)/97/2022

C. Rotluanga
Keifang, Aizawl District, Mizoram.

VERSUS

State of Mizoram, Represented by The Secretary to the Govt. of Mizoram, Revenue
Dept. and 2 Ors.
Aizawl, Mizoram 2: The Director
Land Revenue and Settlement
Govt. of Mizoram.

3: The District Collector
Aizawl District

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

Advocate for the Respondent : Ms. Mary Lalruatkimi Kiangte (Addl.A.G./G.A., Mizoram) for R1-
R3

ORDER

Date : 07-09-2023

BEFORE

HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr. L.H. Lianhrima, learned senior counsel for the petitioner and
Ms. Mary L. Kiangte, learned counsel for the State respondents.

2. The case of the petitioner is that the land of the petitioner, which was

covered by Periodic Patta, was acquired under the Land Acquisition Act, 1894 (LA Act, 1894 in short), vide Award No. 3/2013 dated 25.02.2014. Compensation for acquisition of land was paid to the petitioner amounting to Rs. 1,90,01,961/-. However, out of the compensation amount stated above, 15% cess was deducted and remitted to the Revenue Department, Government of Mizoram, in terms of Rule 47(4) of the Mizoram (Land Revenue) Rules, 2013, herein after referred to as the '2013 Rules'.

3. The petitioner's case is that no cess could have been deducted from the compensation amount awarded to the petitioner, in terms of the Judgments of this Court passed in WP(C) No. 36/2021 and WP(C) No. 24/2021. He submits that Rule 47(4) of the 2013 Rules could be applied only to cases where acquisition had been made on the basis of land acquisition laws or policy promulgated by the Government of Mizoram and not under the LA Act, 1894.

4. Ms. Mary L. Khiangte, learned counsel for the State respondents, on the other hand, submits that the fact situation in WP(C) No. 36/2021 and WP(C) No. 24/2021 are not similar to the facts of this case and as such, the orders passed in the above 2 (two) cases are not applicable to the facts of this case. She also submits that Rule 47(4) of the 2013 Rules clearly provides for deduction of 15% cess from the compensation amount awarded for acquisition of land under the LA Act, 1894, prior to 2013 Rules being amended by way of Mizoram (Land Revenue) (Amendment) Rules, 2019, herein after referred to as the 'Amendment Rules, 2019'.

5. I have heard the learned counsels for the parties.

6. The facts of the case show that the petitioner's land had been acquired under the LA Act, 1894 and compensation was accordingly paid in the year 2014, in pursuant to Award No. 3/2013 dated 25.02.2014. 15% cess was deducted from the compensation amount and remitted to the Public Ex-Chequer on 02.05.2014. Rule 47(4) of the 2013 Rules provides for deduction of 15% cess from the compensation amount awarded for acquisition of land under the LA Act, 1894. As such, there is no infirmity in the deduction of 15% cess from the compensation amount awarded to the petitioner under the LA Act, 1894.

7. Rule 47(4) of the 2013 Rules states as follows:-

"47.(4) In case of acquisition of land covered by House Pass or Stall Pass or Shop Pass or Periodic Patta or Land Lease under Land Acquisition Act, 1894 as amended from time to time, compensation may be paid as per assessment by the concerned Collector of the District provided that the validity of the tenure of the said land holding has not expired. In addition to crops and building damage compensation, land value may also be assessed and out of the assessed amount, 15 percent of land value shall be remitted to Revenue Department as cess on value of land."

8. Rule 47(4) of the 2013 Rules was amended in the year 2019, by way of the Mizoram (Land Revenue) (Amendment) Rules, 2019, hereinafter referred to as the "Amendment Rules, 2019", wherein the words and figures "Land Acquisition Act, 1894" was substituted by the words "any land acquisition law or policy of the Government of Mizoram for the time being in force".

Amendment of Rule 47 by way of the Amendment Rules, 2019 states as follows:-

"3. Amendment of Rule 47: In sub-rule (4) of rule 47 of the Principal

Rules, for the words and figures "Land Acquisition Act, 1894", the words "any land acquisition law or policy of the Government of Mizoram for the time being in force" shall be substituted."

A reading of Rule 47(4) of the 2013 Rules and the Amendment Rules, 2019 shows that the provisions of Rule 47(4) would come into play only when land has been acquired under any land acquisition law or policy made by the Government of Mizoram.

9. In WP(C) No. 36/2021, lands had been acquired in terms of Award No. 3/2019 under the Railways Act, 1989. This Court had directed the return of the deducted 15% cess to the petitioners' therein, as the amended Rule 47(4) of the 2013 Rules did not provide for deduction of 15% cess from the compensation amount made for acquisition of land in terms of Railways Act, 1989, as the Amendment Rules, 2019 only provided for deduction of 15% cess from lands acquired under any land acquisition law or policy made by the Government of Mizoram. As such, the decision made in WP(C) No. 36/2021 is not applicable to the facts of this case.

10. In respect of WP(C) No. 24/2021, lands had been acquired in the year 2012, vide Award No. 5/2012 under the LA Act, 1894. The same was put to challenge by the land owners, by filing a reference application under Section 18 of the LA Act, 1894. The learned Reference Court allowed the reference application by enhancing the land value payable to the land owners. Consequently, the land owners were paid their compensation in the year 2016. However, as 15% cess had been deducted by the Government from the compensation amount, the land owners approached this Court by way of WP(C) No. 24/2021. This Court, on considering the facts of the case, held that the

Government could not have deducted 15% cess from the compensation amount awarded to the land owners, inasmuch as, Rule 47(4) of the 2013 Rules could not have been applied at the time the Award No. 5/2012 was pronounced, as the 2013 Rules came into effect only on 17.07.2013, i.e., after Award No. 5/2012 was pronounced. The reason given was that the 2013 Rules could not be applied retrospectively and as such, there was no ground for the Government to have deducted 15% cess.

11. In the present case, the petitioner's herein had been awarded compensation for acquisition of his land under the LA Act, 1894 on the basis of Award No. 3/2013, which had been pronounced on 25.02.2014. Thus, on the date Award No. 3/2013 was pronounced, the 2013 Rules had already come into force, i.e., w.e.f. 17.07.2013. As such, there was no infirmity with the State Government in deducting 15% cess from the compensation amount awarded to the petitioner under Rule 47(4) of the 2013 Rules.

12. In view of the reasons stated above, this Court does not find any reason to interfere with the action of the State respondents, in deducting 15% cess from the compensation amount awarded to the petitioner.

13. The writ petition is accordingly dismissed.

JUDGE