

GAHC030004722023



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

Case No. : WA/7/2023

C.Lalremtluanga and 103 Ors
S/o Rallianzuala
R/o Kawnpui, Mizoram 2: Chhuanawmi

3: L.H. Hauthuama

4: Lalthakima

5: Vanlalruati

6: R.Lalmangaihi

7: Lalrohlua

8: Vanlaldiki

9: Lalramchuani

10: Ellen Diki

11: Ellen Diki

12: P.C. Thanliana

13: Vanlaldika

14: P.C. Thanliana

15: F.Laldinpuii

16: M.Zohmingthangi

17: Vanlaldika

18: Lalrinchhani

19: Lalrinawma

20: Vanlalchhuanga

21: Vanlalchhuanga

22: Lalrinawma

23: Lalmalsawmi

24: Lalthansanga

25: Lalmalsawmi

26: Lalengzama

27: Lalchungnunga

28: Lalhmingliana

29: S.K.Sanga

30: Lalduhveli

31: Thanhliri

32: Vanengmawii

33: Lalthansanga

34: Lalmalsawmi

35: Zothanpari

36: P.C.Thanliana

37: Sairengpuii

38: Lalrinawma

39: Mankungi

40: Varziki

41: Zothanpari

42: Varziki

43: F.Vanlalvena

44: Vanlalhriata

45: F.Laldinpuii

46: Lalramchuani

47: Lalthansanga

48: R.Lalruatmawia

49: Vanlalhriata

50: Dobola

51: Malsawmsangi

52: Lalchungnunga

53: T.Remsangpuii

54: J.C.Lalrinmawia

55: Ramdinzaua

56: Lalduhawma

57: Lalenga

58: Lalthanga

59: Lalngaihawmi

60: Lalrinchhana

61: VL Nghaki

62: Lalthazuala

63: Zonunsangi

64: Vincent Zothankima

65: Lalnunmawia

66: Lalringzuali

67: Ramliana

68: Darthanmawii

69: Lalramnghaki

70: Malsawmsangi

71: Malsawmsangi

72: Vanlalthanga

73: Lalthangmawia

74: RK Vanlalliana

75: Rothangliani

76: Lalhminghsanga

77: T.Rohnuna

78: Zohmingsangi

79: H.Lalngkhakliana

80: C Lalsangluaia

81: Zonunsanga

82: Joan Lalramngaihsangi

83: Lalrokhumi

84: Samuel Zothantluanga

85: Zosangliana

86: Biaktluangi

87: Laltanpuui

88: Lalngilneii

89: Malsawmi

90: H Laltanpuia

91: Nu-I

92: C. Ramthara

93: Bobby Lalrokima

94: M Darthangpuii

95: Zathangpuia

96: C Lalbiakenga

97: H Lalzawmliana

98: Ralliantawni

99: Lalramdinthara

100: Lalrinawma

101: A Chhuanvawra

102: B Vanlalsiama

103: R Lalthanpari

104: Malsawmsang

VERSUS

The State of Mizoram and 5 Ors
Aizawl2:District Collector/Deputy Commissioner

3:The Union of India R/b The Secretary
Railway Board

4:General Manager (Con)

5:Dy. CE Construction

6:The Chief Administrative Officer (Construction-I

Advocate for the Petitioner : Mr. Lalsawirema

Advocate for the Respondent : Mrs. Linda L Fambawl, G.A., Mizoram for R1 & R2

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
ORDER

16.11.2023
(Nelson Sailo, J)

Heard Mr. Lalsawirema, learned counsel for the appellants, Mr. C. Zoramchhana, learned Addl. Advocate General for the State respondents and Ms. Zairemsangpui, learned CGC for the respondent Union of India.

[2.] By filing this writ appeal, the appellants have challenged the Order dated 08.08.2023 passed by the learned Single Judge in WP(C) No. 98/2023 whereby, the claim of the petitioners for payment of interest under Section 28 of the Land Acquisition Act, 1894 (L.A Act) was rejected. The claim of the petitioners in the writ petition are for payment of interest under Section 28 of the LA Act as well as under Section 34 of the LA Act. Mr. Lalsawirema, learned counsel for the appellants submits that the claim for payment of interest under Section 28 of the L.A Act could not have been rejected by the learned Single Judge in view of the fact that it is the statutory

right of the appellants as land owners to get appropriate compensation in terms of the LA Act which includes not only the land value, compensation towards crops etc., but also all the interests payable as provided under the said Act. The learned counsel submits that no doubt the appellants did not make a specific prayer or claim for payment of interest under Section 28 in the earlier two proceedings filed by them which, in fact, was due to non consideration of their representation filed before the District Collector concerned claiming the benefit as entitled to them under Section 28A and Section 34 of the LA Act. The same, however, cannot be a bar for them to claim interest under Section 28 of the L.A Act. The learned counsel submits that the case of the appellants is squarely covered by a Judgment & Order of this Court rendered in Writ Appeal No. 2/2018 wherein, the Appellate Court upon relying the decisions of the Apex Court in *Sundar vs. Union of India, (2001) 7 SCC 211* and *Union of India & Anr. vs. Pushpavathi & Ors., (2018) 3 SCC 28* besides others had held that the appellants therein were entitled to get payment of interest under Section 28 of the L.A Act. He submits that the appellants in that case were also covered under Award No. 1/2012 (Kawnpui Part 'B') which is similar to the present case. As such, the appellants cannot be deprived of similar benefit of being paid interest under Section 28 of the L.A Act. The learned counsel submits that IF such relief is granted to the appellants, no third party rights are affected, and therefore, a technical approach that the claim is belated or the appellants have waived their rights cannot be grounds for rejecting their claim. He, therefore, submits that the impugned Order dated 08.08.2023, insofar as the

rejection of the claim of the appellants under Section 28 of the L.A Act is concerned may be interfered with.

[3.] Mr. C Zoramchhana, learned Addl. Advocate General appearing for the State respondents submits that the learned Single Judge had rightly passed the Order dated 08.08.2023 by observing that the appellants as writ petitioners have waived their right to claim interest under Section 28 of the LA Act. He submits that the learned Single Judge was also correct in observing that there was much delay in making such a claim apart from the application of the principles of waiver. The learned counsel submits that the appellants had approached this Court on two earlier occasions by filing WP(C) No. 80/2015 and WP(C) No. 115/2018. In filing those two writ petitions, the appellants had never raised any claim for payment of interest under Section 28 of the LA Act and therefore, the claim made belatedly has been rightly rejected by the learned Single Judge by observing that there has to be an end to the claim made by the petitioners. The learned Addl. Advocate General, therefore, submits that the writ appeal has no merit and the same should be dismissed. In support of his submission, the learned Addl. Advocate General has relied upon the case of *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited & Ors.*, reported in (2021) 13 SCC 225 (para 11) and *Dr. Akshya Bisoi & Anr. vs. All India Institute of Medical Sciences & Ors.*, reported in (2018) 3 SCC 391 (para 19).

[4.] Ms. Zairemsangpui, learned CGC appearing for the respondent Union of

India adopts the argument made by the learned Addl. Advocate General and submits that the claim made by the appellants in the writ petition is only an afterthought in view of the fact that they had adequate opportunities to raise their claim for payment of interest under Section 28 of the L.A Act in the earlier two writ proceedings. Having failed to do so, the learned Single Judge rightly rejected their claim as belated and a claim having suffered from delay and laches.

[5.] We have heard the submissions made by the learned counsel for the rival parties and perused the materials available on records.

[6.] As may be noticed, grievances projected by the appellants is with regard to the rejection of the claim made by the appellants as writ petitioners for payment of interest under Section 28 of the L.A Act in their writ petition i.e., WP(C) No. 98/2023 while the claim for payment of interest under Section 34 of the same Act has been kept alive. The grounds for rejecting the claim of the appellants for payment of interest under Section 28 of the L.A Act are two folds. Firstly, the learned Single Judge observed that the petitioners have waived their right to make such a claim in view of the fact that no such claim was made in the earlier two rounds of litigation i.e., W(C) No. 80/2015 and WP(C) No. 115/2018. Therefore, according to the learned Single Judge, there has to be an end on the claim made by the petitioners and hence, declined to entertain prayer in this regard. The second ground of rejection is that the award itself having been paid in the year 2017, the claim now made in 2023 for

payment of interest under Section 28 of the L.A Act being belated, the claim cannot be maintained.

[7.] We have perused the Judgment & Order dated 06.09.2022 passed by this Court in the Writ Appeal No. 2/2018 wherein, a similar question arose on the entitlement of interest under Section 28 of the L.A Act. This Court in allowing the said writ appeal had relied upon the decision of the Apex Court in *Sundar vs. Union of India (supra)* and also in *Union of India & Anr. vs. Pushpavathi & Ors.(supra)*. Paragraph Nos. 10, 11 &12 of the Judgment & Order dated 06.09.2022 may be abstracted hereunder:

“...[10.] In Sunder (supra), the question referred to the Constitution Bench of the Apex Court was as to whether the State is liable to pay interest on the amount envisaged under Section 23 (2) of the LA Act and further, in calculating the interest as mentioned in Section 28 of the LA Act, the amount of solatium envisage in Section 23 (2) of the Act should be included in or excluded from the sum on which the interest is liable to be paid. Affirming the question in favor of the land owner and against the State, the Apex Court by quoting the reasoning given by the Division Bench of Punjab & Haryana High Court in State of Haryana -Vs- Kailashwati AIR 1980 P&H 117 held that person entitled to the compensation awarded is entitled to get interest on the aggregate amount including solatium. Paragraph 10 of the judgment rendered by the Punjab & Haryana High Court in the above referred case is abstracted below for ready perusal:-

"Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner; then from the plain terms of section 28 of the act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well."

[11.] The Apex Court also relied upon the decision rendered in Sunder (supra) in a subsequent case i.e., Bhanushankar Oghadbhai Mehta (DEAD) By Legal Representatives (supra) by holding that in view of the Constitution Bench judgment in Sunder (supra), the entitlement of land owners to interest and solatium is automatic. The Apex Court in Union of India & Anr. -Vs- Pushpavathi & Ors. (supra) held that the dispute in relation of non award of interest can be raised by an aggrieved person only by taking recourse to Article 226 of the Constitution in a writ petition and that reference under Section 18 or Section 28 A(3) cannot be considered to be an alternative statutory remedy available to the landowner for getting the question of non-award of interest payable under Sections 28 or/and 34 of the Act decided by the Civil Court.

[12.] Applying the above ratio to the instant case, it may be seen that although the appellants may have not raised their specific grievance immediately after the Award was passed but the fact remains that they have claimed for payment of interest under Section 28 of the LA Act by filing a writ petition. As such, the appellants cannot be deprived of the benefits of getting interest under Section 28 of the L.A Act."

[8.] As may be noticed, the Apex Court in *Sundar vs. Union of India (supra)* had also taken into account a reasoning given by the Division Bench of Punjab & Haryana High Court in *State of Haryana vs. Smt. Kailashwati & Ors.* wherein, it was held that solatium provided under Section 23(2) of the L.A Act forms as an integral and statutory part of the compensation awarded to the land owner. That from the plain reading of Section 28 of the LA. Act, it is evident that the interest payable on the compensation awarded is not only on the market value but also on the statutory solatium. The Apex Court as may be noted in *Pushpavathi & Ors.*, are also held that non award of interest under Section 28 of the L.A Act can be raised by the person aggrieved under Article 26 of the Constitution of India. Therefore, the question is as to whether the statutory rights available to the appellants as land owners for payment of all the interest entitled to them under the LA Act can be curtailed on technical grounds i.e., delay and on the principles of waiver. In order to see whether such a technical view can be adopted, we have perused the claim of the appellants in WP(C) No. 80/2015 which was for a direction to the District Collector to consider their application

filed under Article 28A of the L.A Act. In WP(C) No. 115/2018, the appellants as writ petitioners had approached this Court with the grievance that their application under Section 34 of the L.A Act filed before the District Collector concerned was not considered and disposed. Both the writ petitions were disposed of with a direction to the District Collector concerned to consider the applications/representations submitted by the writ petitioners as per law within a time frame. The appellants may have not made their claim at the relevant point of time but in our considered view that by itself cannot be a ground to debar them from making such a claim at a subsequent stage. In raising such a claim, the question of there being a clash with the rights of a third party is also not to be seen. It may further be noticed that the award itself was made in the year 2012 i.e., Award No. 1/2012 (Kawnpui Part 'B'). Despite the award being made in 2012 the issue regarding payment of compensation was not finally settled in view of the pending applications under Section 28A and under Section 34 filed by various land owners. We have also perused the grounds taken by the appellants in this appeal wherein, due to the medical condition of the counsel for the appellants, timely action could not be taken for seeking appropriate remedy. Such ground in our considered view needs to be also considered particularly, when the claim is made for what is due to the appellants as per the statutory provisions under the LA Act. Therefore, upon due consideration, we are of the considered view that the Order dated 08.08.2023, insofar as depriving the appellants of their right to claim payment of interest under Section 28 of the L.A Act is concerned requires interference.

Accordingly, the impugned Order dated 08.08.2023 insofar as rejecting the claim of the appellants for payment of interest under Section 28 of the LA Act is concerned is hereby set aside The writ petition shall now be considered and decided in respect of all the claims made by the writ petitioners on its own merit.

[9.] With the above observation and direction, Appeal stands disposed of as allowed.

JUDGE

JUDGE

Comparing Assistant