

GAHC030005542019



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

Case No. : WP(C)/170/2019

1. Remsiamma Ngente

S/o Denga (L)

R/o H. No. KB-10, Lunglei Road,
Bawngkawn, Aizawl, Mizoram

2. Lalnunngila

S/o Lungmuana (L)

R/o E-69/1, Chawnga Road
Khatla, Aizawl, Mizoram

3. H. Lalrintluanga (L)

Represented by his legal heir,
Zosangliana Hmar

S/o H. Lalrintluanga (L)

R/o Hmuifang, Aizawl District, Mizoram

.....**Petitioners**

-VERSUS-

1. Union of India represented by the Secretary to the Government of India, Ministry of Defence, South Block, New Delhi- 110011

2. The Secretary to the Government of India, Ministry of Home, North Block, New Delhi

3. The Director (North East-II)

Government of India
Ministry of Home Affairs
North Block, New Delhi

4. The Defence Estate Officer,
Gauhati Circle, P.O. Silpukhuri,
Gauhati- 781003

5. The State of Mizoram
Represented by the Chief Secretary to
the Government of Mizoram,
New Capital Complex, Khatla,
Aizawl , Mizoram

6. The Special Secretary to the Government
of Mizoram, Land Revenue & Settlement Department, New Capital
Complex, Khatla,
Aizawl, Mizoram

7. The Deputy Commissioner/District Collector
Aizawl District, Treasury Square, Aizawl Mizoram

.....Respondents

Advocate for the petitioners : Mr. Lalfakawma

Advocate for the respondents : Ms. Zairemsangpui,
CGC (R1- R4)
Ms. Mary L. Khiangte,
GA, (R5- R7)

**BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR**

Date of hearing : 15.02.2023

Date of Judgment/ Order : 15.02.2023

JUDGMENT & ORDER

15.02.2023

Heard Mr. Lalfakawma, learned counsel appearing for the petitioners. Also heard Ms. Zairemsangpui, learned CGC, appearing for the respondent Nos. 1 to

4 and Ms. Mary L. Khiangte, learned Government Advocate, Mizoram appearing for the respondent Nos. 5 to 7.

2. By this petition under Article 226 of the Constitution of India, the petitioners have prayed for an order for payment of rental compensation to them for occupation of their lands by the Security Forces for the period from 1994 till the period of acquisition of their lands.

3. The grievance of the petitioners in this writ petition is that they are the owners of lands located at Thuampui Helipad Area, Aizawl covered by various Land Settlement Certificates (L.S.C.). Since 1994 their lands have been occupied by the Security Forces. However, the acquisition proceedings of the lands of the petitioners were initiated only on 11.06.2018 by publishing 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 Deputy Commissioner/District Collector, Aizawl. It is the case of the petitioner that in spite of occupation of their lands by the Security Forces under the Ministry of Defence, Government of India since 1994, they have not been paid any rent by the respondents.

4. Mr. Lalfakawma, learned counsel appearing for the petitioners, has reiterated the above contentions made in the writ petition and has drawn attention to Paragraph No. 18 of the judgment passed by the Hon'ble Supreme Court in *R.L. Jain (D) by LRs. Vs. DDA and Ors., reported in (2004) 4 SCC 79*. Learned counsel further submits that 50 percent of the Award amount has already been paid by the government.

5. Ms. Mary L. Khiangte, learned Government Advocate, appearing for the State respondents, submits, with reference to the averments made in the affidavit-in-opposition that while being occupied by the Security Forces the petitioners acquired LSCs in 1994 etc. for the same and after the survey was done for the purpose of initiation of the acquisition process, it was revealed that the petitioners' lands were located within the area occupied by the Security Forces. Ms. Khiangte further submits that it was only after the survey was done, the petitioners claimed rental on their lands and as such, they are now estopped from claiming any rent after lapse of about 26 years and accordingly, the petition is barred by law of limitation.

6. Ms. Zairemsangpui, learned CGC, appearing for the Union of India/MOD, submits that demand of rental compensation of the land at helipad area at Thuampui was initially received from the Office of the Deputy Commissioner, Aizawl, where the number of claimants were 65 for the period w.e.f. 01.09.1986 to 31.12.1997 and the names of the present petitioners were not shown therein indicating thereby that the lands of the petitioners were not under the occupation of the Security Forces. Ms. Zairemsangpui further submits that the rental compensation of the lands at the aforesaid helipad area was again received from the Office of the Deputy Commissioner, Aizawl, where the number of claimants was 45 from the period 01.01.1998 to 31.12.2005. The names of the present petitioners were not shown in the said list indicating thereby that the lands of the petitioners were not under occupation of the Security Forces. It is also submitted by Ms. Zairemsangpui that the demand for rental compensation of land at the aforesaid helipad area was received for the third time from the Office of the Deputy Commissioner, Aizawl, in which the number of claimants was 45 for the period 01.01.2006 to 31.12.2007. The names of the

present petitioners were not shown in the said list of claimants indicating thereby that the lands of the petitioners were not under occupation of the Security Forces. The petitioners' names, Ms. Zairemsangpui submits, were not even mentioned in the Survey Report for issuing preliminary notification submitted by the Under Secretary to the Government of Mizoram and as such, the lands of the petitioners are not under the occupation of the Security Forces. However, the names of the petitioners were mentioned for the first time at Serial Nos. 39, 40, 44 and 45 in the Award No. 1 of 2019, dated 18.07.2019. Therefore, as the names of the petitioners were not mentioned in the report of the preliminary survey of land as such, the Draft Award No. 1/2019 has to be verified afresh jointly by the State Revenue Authorities and the MoD. Ms. Zairemsangpui emphatically submits that the petitioners had no land in the aforesaid occupied area making their claim contradictory to the official documents of the Government of Mizoram which need to be proved by way of evidence before the Civil Court since the instant petition involves the disputed questions of fact.

7. A perusal of the Award No. 01 of 2019, dated 18.07.2019 vide Annexure-10, 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 50 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 names of the present petitioners appeared. Prior to acquisition of the aforesaid lands of the petitioners, the petitioners' lands were under the occupation of the Security Forces since 1966 till the time of acquisition and thus, they were deprived of enjoyment of the fruits of their occupation of the acquired lands for which they

are entitled to be compensated by way of payment of rent.

8. Accordingly, the respondent No. 7 made assessment of the rent payable to the petitioners for the period from 01.04.2012 to 10.06.2018 which was assessed at a total amount of Rs.78,32,156/- and requested the Defence Estate Officer to deposit the aforesaid amount with the Office of the Respondent No. 7 for payment to the petitioners. However, the petitioners herein have prayed for payment of rental compensation for occupation of their lands by the Security Forces for the period from 1994 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 petitioners 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 is noticed that the petitioners were the LSC holders of their respective lands as shown hereinbelow-

Sl. No.	Name	Land Holding	Location	Area (in Sqm)	Claim Period
1	Remsiamama Ngente	LSC No.278/1996	Thuampui	449.9	1996-2018
		LSC No. 279/1996	Thuampui	449.9	1996-2018
2	Lalnunngila	LSC No. 103202/01/665 of 2003	Thuampui	122.1	2003-2018
3	H. Lalrintluanga (L) Represented by Zoliansanga Hmar	LSC No. 784/1994	Thuampui	124.58	1994-2018

11. 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 petitioners having secured the LSCs within the aforesaid acquired land area are entitled to rent compensation from the respective years of issue of LSCs on their land holdings. 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 has not challenged the legality and validity of the LSCs issued in favour of the petitioners or that those LSCs are 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.

12. In the premises, the respondents are directed to pay rental compensation to the petitioners for occupation of their lands by the Security Forces since the

respective years of issue of the LSCs, shown above, till formal acquisition of their lands, 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 petitioners 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 petitioners within the aforesaid period of 6(six) months, interest @3 percent per annum, shall be payable thereafter on the compensation amounts till the date of payment.

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

JUDGE

Comparing Assistant