

GAHC030006272023



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

Case No. : WP(C)/142/2023

Sh. Lalnunduatpuia and Anr.
S/o Lalzara
R/o West Phaileng, Mamit District 2: Sh. Lalenkawla
S/o Lalzara

R/o West Phaileng
Mamit Distric

VERSUS

The Deputy Commissioner and District Collector, Mamit District and 3 Ors.
Mizoram 2:The Secretary to the Govt. of Mizoram
Revenue Dept.
Mizoram
Aizawl

3:The Union of India r/b the Secretary to the Govt. of India
Ministry of Home Affairs
North Block
Central Secretariat
New Delhi-1

4:The Deputy Inspector General
Sector Headquarters
Border Security Force (BSF)
Durtlang
Aizawl
Mizora

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

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 & 2

ORDER
BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

24.11.2023

Heard Mr. L.H. Lianhrima, learned Senior Counsel assisted by Mr. T. Lalzekima, learned counsel for the petitioners, Ms. Baby Laldinzuali, learned counsel who appears on behalf of Ms. Zairemsangpuii, learned CGC who represents the respondent Union of India and Mr. P.C. Lalthangmawia, learned Government Advocate, who appears for the State respondents. Having regard to the nature of the claim made in this writ petition, the same is taken up for disposal at the motion stage.

[2.] By filing this writ petition, the two (2) petitioners claim for payment of solatium and interest under Section 23 (1A) and Section 23 (2) of the Land Acquisition Act, 1894 (L.A Act) for the acquisition of their land for construction of Border Out Post (BOP) in Nabacherra in the district of Mamit, Mizoram. According to the petitioners, they were awarded compensation towards standing crops/plants vide Draft Award No. 1/2011 prepared by the Deputy Commissioner-cum-District Collector, Mamit District, Mamit. Later on, reassessment was made by including compensation towards the value of their land and the same was approved by the State Government in the Revenue Department. The petitioners not being satisfied with the amount of

compensation awarded to them filed a Reference Application before the District Collector concerned and the same was referred to the L.A Judge by the District Collector. The reference was registered as L.A Case No. 1/2016 and the L.A Judge vide Judgment & Order dated 26.02.2021 although finding the petitioners to be entitled to receive interest and solatium at the rate provided under Section 23 (1A) and Section 23 (2) of the L.A Act, dismissed the Reference Application as barred by time.

[3.] The petitioners being aggrieved challenged the Judgment & Order dated 26.02.2021 passed by the L.A Judge by filing L.A Appeal No. 1/2021 before this Court. This Court vide Judgment dated 28.07.2023 did not interfere with the order of the L.A Judge but at the same time observed that in view of the reassessment made by the respondent authorities, the petitioners were at liberty to approach the L.A Judge with a fresh Reference Application.

[4.] After the disposal of L.A Appeal No. 1/2021 in the above manner, the petitioners instead of preferring a Reference Application in terms of the liberty granted to them have filed the instant writ petition claiming for payment of solatium and interest under Section 23 (1A) and Section 23 (2) of the L.A Act. Mr. L.H. Lianhrima, learned Senior Counsel submits that since the petitioners have been waiting for a long time to get the benefit due to them, they do not

desire to go back to the Reference Court and instead claim whatever is due to them towards solatium and interest by filing the instant writ petition. The learned Senior Counsel submits that solatium and interest being a part and parcel of the compensation, a direction may be issued to the District Collector concerned to make the assessment as entitled to the petitioners and the same be paid by the Acquiring Authority i.e., the respondent Nos. 3 & 4. In support of his submission, the learned Senior Counsel has relied upon the decision of the Apex Court in *Patel Joitaram Kalidas & Ors. -Vs- Spl. Land Acquisition Officer and Anr. (2007) 2 SCC 341* apart from the other authorities which are annexed in the writ petition itself.

[5.] To this submission, Ms. Baby Laldinzuali, learned counsel and Mr. P.C. Lalthangmawia, learned Govt. Advocate submit that this Court may consider the prayer made by the writ petitioners and pass appropriate Orders as it deems fit and proper.

[6.] As may be noticed, the specific prayer of the petitioners is for payment of interest and solatium under Section 23 (1A) and Section 23 (2) of the L.A Act which according to them was not calculated and paid to them under the Draft Award No. 1/2011 and the subsequent assessment made by the District Collector which was also approved by the State Government. The Apex Court in

Narain Das Jain -Vs- Agra Nagar Mahapalika, Agra (1991) 4 SCC 212 with regard to the payment of solatium and interest under the L.A Act at paragraph Nos. 6 & 7 of the Judgment held as follows:-

“6. Section 23(2) of Land Acquisition Act, as it then was, provided that in addition to the market value of the land, as provided in sub-section (1) of section 23, the court shall in every case award a sum of rupees fifteen per centum on such market value in consideration of the compulsory nature of acquisition. Solatium, as the word goes, is "money comfort", quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen, by a welfare state such as ours. The concern for such a citizen was voiced by the Law Commission of India in its Report submitted in 1957 on the Need for Reform in the Land Acquisition by observing as follows:

"We are not also in favour of omitting Section 23(2) so as to exclude solatium of 15% for the compulsory nature of the acquisition. It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he could have occupied had there been no acquisition; he may have to spend a considerable further amount for putting himself in the same position as before..... As pointed out by Fitzgerald the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it. This principle has been in force in India ever since the Act of 1870. The Select Committee which examined the Bill of 1883 did not think it necessary to omit the provision but on the other hand transferred it to Section 23.

7. The importance of the award Of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made."

[7.] As may be seen, according to the Apex Court, solatium is "money comfort", quantified by the statute, and given as a conciliatory measure for the compulsory acquisition of the land of the citizen, by a welfare state such as ours. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any

stage where the Court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

[8.] A Division Bench of this Court in Reference Case No. 1/2017 [Young Lai Association (YLA) & Anr. -Vs- State of Mizoram & 3 Ors.] vide Judgment & Order dated 24.04.2017 on the question as to whether a claim for payment of solatium and interest can be maintained in a writ petition answered the question in affirmative. The Division Bench held that claim of interest and solatium is a statutory right of the person interested and non-payment of such interest and solatium would be a failure on the part of the Collector to discharge statutory duty vested on him. If there is such failure on the part of the public authority in the discharge of statutory duty, certainly a writ Court would be well within its jurisdiction to issue a writ of mandamus to compel the public authority to discharge his statutory duty. The fact that alternative remedy is available under Sections 13(A) and 18 of the LA Act, 1894 would not debar the writ Court from exercising such jurisdiction in an appropriate case. The Judgment of the Division Bench of this Court was also relied upon by this Court in WP(C) No. 194/2016 (Chaukunga -Vs- State of Mizoram & Ors.).

[9.] In *Patel Joitaram Kalidas & Ors.* (supra), on the claim made in respect to payment of solatium and interest, the Apex Court was of the view that grant of

the same is consequential and automatic under the L.A Act and therefore, the matter required no remand to the High Court as it only involves arithmetical calculation and not application of judicial mind or exercise of judicial discretion. In making such an observation and calculation, the Apex Court also referred to the earlier decision of the same Court rendered in *Sunder -Vs- Union of India (2001) 7 SCC 211*. As a result, the Collector was directed to make the necessary assessment with payment thereof without further delay.

[10.] Having regard to the facts not disputed in the present case as well that the petitioners having not been paid solatium and interest and having regard to the provisions of law and the various authorities cited herein above, it can only be concluded that the petitioners will be entitled to be paid solatium and interest for the acquisition of their land. Accordingly, the Deputy Commissioner-cum-District Collector, Mamit Distric, Mamit is directed to calculate the solatium and interest payable to the petitioners under Section 23 (1A) and Section 23 (2) of the L.A Act within a period of one (1) month from the date of receipt of a certified copy of this Order. It is seen that the Draft Award No. 1/2011 was prepared on 20.09.2011 and the reassessment made by the Collector was approved by the State Government in the Revenue Department and conveyed to the Collector vide letter dated 03.10.2013 and the actual payment of the compensation made on 23.07.2015, therefore the District

Collector shall also make calculation towards payment of interest for delayed payment as stipulated under Section 34 of the L.A Act within the aforesaid period as stated. Upon making such calculation, the District Collector shall forward the same to the respondent Nos. 3 & 4, who in turn shall arrange the required fund within a period of three (3) months from the date of receipt of the same from the District Collector. The amount shall then be deposited before the District Collector, Mamit District, Mamit without delay and the Collector shall disburse the same to the petitioners immediately.

[11.] With the above observations and directions, the Writ Petition stand disposed of. No Cost.

JUDGE

Comparing Assistant