

GAHC030001202023



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

Case No. : WP(C)/23/2023

Sh John Zoremsiama and 5 Ors.
S/o Jerome Lalbiaktluanga(L)
R/o Bairabi, Kolasib District 2: Sh Robert Lalnundanga

3: Smt Kapzami

4: Smt. K.Malsawmtluangi

5: Sh C.Vanlalnghaka

6: Sh Lalhruaizel

VERSUS

Northern Frontier Railway r/b the Deputy Chief Engineer, CON/III/SCL and 2 Ors.
Silchar, Assam

2:The Secretary to the Govt. of Mizoram
Revenue Deptt.

3:The District Collector
Kolasib District
Mizora

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

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1
Ms. H. Lalmalsawmi, G.A for R 2 & 3.

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

J U D G M E N T & O R D E R

02.05.2024

Heard Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the petitioners and Ms. Zairemsangpuii, learned CGC for the respondent No. 1 and Mrs. H. Lalmalsawmi, learned Govt. Advocate for the respondent Nos. 2 & 3.

[2.] Having regard to the nature of the case and the projection made by the petitioners and also the response made by the respondent Nos. 2 & 3, the writ petition is taken up for disposal at this stage. The case of the writ petitioners is that they are the owners of their respective plots of land situated at Bairabi in the district of Kolasib, Mizoram and they possess their respective Periodic Pattas, issued by the competent authority. The N.F. Railway in order to construct the railway line required certain area of land and accordingly, the District Collector initiated the land acquisition process. Consequently, the District Collector came up with Draft Award No. 1/2012, which was approved by the competent authority. Although the petitioners received their share of compensation towards crops and other plantations, they did not receive any compensation towards the value of their land

and therefore, they approached the Reference Court under Section 18 of the Land Acquisition Act, 1894 (LA Act). Their application was registered as L.A Case No. 15 of 2012. The Reference Court consequently upon considering the case projected by the parties came to the conclusion that the petitioners were entitled to the value of their land and direct assessment of compensation of their land @ Rs. 60/- per Sq.ft. The amount that was assessed consequent upon the direction of the Reference Court was paid to the petitioners only on 16.06.2022. It is therefore the case of the petitioners that possession of their land was taken over by the Railway authorities on 03.04.2013 whereas, payment was made only on 16.06.2022 and therefore, they are entitled to be paid the interest entitled to them in terms of Section 28 and 34 of the LA Act.

[3.] Mr. L.H. Lianhrima, learned Senior Counsel referring to Section 28 of the LA Act submits that as per the said provision, the Collector may direct payment of interest on the excess compensation at the rates provided under the said Section i.e., @ 9% per annum from the date of possession was taken till payment of the excess amount to the Court. He submits that as per the proviso to the said Section, the Court may also direct that where such excess or any part thereof is paid to the Court after the date of the expiry of a period of one (1) year from the date on which possession is taken, interest at the rate of 15% per annum shall be payable from the date of expiry of the said period of one (1) year on the amount of such

excess or part thereof which has not been paid in the Court before the date of such expiry. He submits that since the original Award of the Collector did not award any compensation towards land value and it was subsequently awarded by the Reference Court, the petitioners are entitled to be paid interest as per Section 28 of the LA Act.

[4.] The learned Senior Counsel by further referring to Section 34 of the LA Act submits that when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% per annum from the time of taking possession until the same is paid or deposited. Further, if such compensation or any part thereof is not paid or deposited within a period of one (1) year from the date on which possession is taken, interest @ 15% per annum shall be payable from the date of expiry of the said period of one (1) year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. The learned Senior Counsel submits that since possession was taken on 03.04.2013 and payment made only on 16.06.2022, the petitioners are entitled to compensation as per Section 34 of the LA Act as well.

[5.] The learned Senior Counsel further submits that in respect of the petitioner No. 6, the statement of assessment of compensation prepared by the officials concerned showed the area of land affected by the acquisition to be $130 \times 70 =$

9100 Sq.m. However, when the Collector had made the assessment, the same was converted into Sq.ft and was erroneously shown as 91621.4 Sq.ft. He submits that the actual conversion of 9100 Sq.m is 97,952.4 Sq.ft. Due to the mistake, an area of 6331 Sq.ft belonging to the petitioner No. 6 has been omitted and compensation was not paid to him for that area. Referring to the affidavit of the respondent Nos. 2 & 3, the learned Senior Counsel submits that the said respondents have clearly admitted the mistake committed at paragraph No. 5 of their affidavit. He therefore submits that the respondent authority concerned i.e., the Collector may be directed to make necessary correction and re-assess the amount of actual compensation to be paid to the petitioner No. 6 besides directing the said authority for assessing interest payable under Section 28 and Section 34 of the LA Act. The learned Senior Counsel in support of his submission relied upon the Division Bench decision of this Court in *Zosiami & Ors. -Vs- District Collector cum Deputy Commissioner & Ors.* reported in 2022 (5) GLT 836.

[6.] Ms. Zairemsangpuui, learned CGC appearing for the respondent No. 1 submits that she has sought for instructions from the respondent No. 1 on several occasions but till date, she has not been given any instructions and therefore, she is unable to make any submission.

[7.] Mrs. H. Lalmalsawmi, learned Govt. Advocate submits that her submission is limited to what has been stated in the affidavit-in-opposition filed by the

respondent Nos. 2 & 3 on 06.09.2023. She submits that the Surveyor concerned indeed recorded the area of land belonging to the petitioner No. 6, which was to be affected as 9100 sq.m but however, there has been some mistake in the conversion of the same into Sq.ft. Besides this, the learned Govt. Advocate submits that the respondents do not have anything to say as regards the interest claimed and that Court may consider the prayer made and pass appropriate orders in terms of the law applicable.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The case of the petitioners as may be noticed is that possession of their respective land has been taken over for the construction of the railway line on 03.04.2013 but however, payment of compensation was made only on 16.06.2022 and therefore, they are entitled to be paid interest in terms of Section 28 as well as 34 of the LA Act. The provision of Section 28 and 34 of the LA Act has already been reflected herein above as submitted by the learned Senior Counsel. The respondent No. 1 despite notice has failed to make any response to the claim made by the petitioners. The respondent Nos. 2 & 3 have also not been denied the claim made by the writ petitioners. In fact, they have agreed that there has been miscalculation in respect of the area of land affected in the case of petitioner No. 6. Thus, this Court does not find any impediment in disposing of the writ petition by issuing appropriate

directions.

[9.] This Court in *Zosiemi & Ors. (supra)* had relied upon the decision of the Apex Court in *Union of India & Anr. -Vs- Pushpavathi & Ors. (2018) 3 SCC 28* wherein, it was held that the dispute in relation to non-award of interest can be raised by an aggrieved person by taking recourse to Article 226 of the Constitution of India in a writ petition and that reference under Section 18 or Section 28A(3) cannot be considered to be an alternative statutory remedy available to the land owner for getting the question of non-award of interest payable under Section 28 or/and 34 of the LA Act. Accordingly, appropriate directions were issued to the District Collector to make the calculation of interest before the appellants concerned in terms of the said Sections.

[10.] Thus, upon due consideration of the submission made and also the materials available on record, the writ petitioners are found to be entitled to the relief claimed for. Accordingly, the District Collector, Kolasib (respondent No. 3) is directed to make an assessment of the interest payable to the petitioners both in terms of Section 28 of the LA Act as well as Section 34 of the same Act by taking to consideration the date of possession of the land and the actual payment that was made to them. The District Collector shall also calculate the amount of compensation payable to the petitioner No. 6 as per the correct conversion of area $130 \times 70 = 9100$ Sq.m, which inadvertently appears to have been wrongly

calculated.

[11.] The entire exercise as directed herein above shall be completed by the District Collector as expeditiously as possible and preferably within the outer limit of six (6) weeks from the date of receipt of a certified copy of this Order. The assessment and calculation made by the District Collector shall be forwarded to the N.F. Railway authorities and the latter shall make the required fund available within a period of three (3) months from the date of receipt of the calculation from the District Collector and deposit the same before the District Collector without delay. The amount so deposited shall then be released to the petitioners as per their respective entitlement immediately.

[12.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant