

GAHC030001482023



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

Case No. : WA/1/2023

State of Mizoram and 5 Ors.
Aizawl

VERSUS

Lallianchhunga and 35 Ors.
North Chaltlang, Mizoram

Advocate for the Petitioner : Addl. AG/GA, Mizoram

Advocate for the Respondent : Mr. G Alam

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGEMENT

(Nelson Sailo, J)

Heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. P. Baruah, learned counsel for the appellants, Ms. Dinari T. Azyu and Mr. Lalsawirema, learned counsels for the respondents.

[2.] This is an intra Court appeal filed by the appellants against the Judgment & Order dated 23.03.2016 passed by the learned Single Judge in WP(C) No. 10/2016

wherein, the observation of the Law & Judicial Department vide their I.D No. LJD.24/2014/433 dated 03.12.2015 that the Draft Award No. 3/2014 had lapsed since the Award was not pronounced within a period of two (2) years from the date of issuance of Notification under Section 6 of the Land Acquisition Act, 1894 (LA Act) was not only set aside but also the letter dated 10.12.2015 by which the said observation of the Law & Judicial Department was communicated by the Under Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department to the Deputy Commissioner, Kolasib District, Kolasib was also set aside while directing the respondents to pay the compensation as per the Draft Award No. 3/2014 within a period of six (6) months from the date of receipt of a certified copy of the Order.

[3.] The Writ Appeal was initially filed in the Principal Seat of this Court at Guwahati wherein, it was registered and numbered as W.A No. 333/2018. The records reveal that there was delay in filing the Writ Appeal but a separate application for condonation of delay was not filed. Subsequently, an application for condonation of delay was filed i.e., I.A(C) No. 1056/2017 and vide Order dated 09.11.2018, the delay was condoned. The appellants also filed a separate Interlocutory Application namely, I.A(C) No. 1902/2018 seeking stay of the impugned Judgment & Order of the learned Single Judge and also, the proceedings in Contempt Case No. 29/2016. Accordingly, this Court vide Order dated 26.08.2019 suspended the impugned Judgment & Order of the learned Single

Judge. The said order was passed in the writ appeal.

[4.] Dr. A. Saraf, learned Senior Counsel submits that the impugned Judgment & Order is not sustainable in view of the fact that the approval given on the Draft Award No. 3/2014 and communicated vide Communication dated 21.05.2015 to the Deputy Commissioner, Kolasib District, Kolasib by the Under Secretary to the Govt. of Mizoram, Revenue Department was not an approval for the entire Award prepared by the District Collector concerned but a partial approval only. Since the approval was given by the State Government partially only and therefore, the acquisition proceedings had only lapsed as it was not completed within the stipulated period of two (2) years as provided under Section 11A of the LA Act. In support of his submission, the learned Senior Counsel relies upon the case of *Bailamma (SMT) Alias Doddabailamma (Dead) & Ors. -Vs- Poornaprajna House Building Cooperative Society & Ors. (2006) 2 SCC 416*. Referring to the said Judgment of the Apex Court, the learned Senior Counsel submits that the acquisition proceedings can be said to be complete with the pronouncement of the Award without any alteration but however, if there is any alteration, it cannot be said that the Award is complete. Therefore, the Award in terms of Section 11A will lapse after a period of two (2) years from the date of notification under Section 6 of the LA Act.

[5.] The learned Senior Counsel however submits that in the meantime certain

developments took place after the filing of the Writ Appeal. He submits that a so called Coordination Committee, Serkhan to Bagha Road represented by their Chairman filed a Writ Petition before this Court i.e., WP(C) No. 167/2017 alleging that there were a number of false claims made by land owners and at the same time, genuine land owners who were affected were not getting their due compensation and for which, the Committee was formed to check such irregularities. That in the said Writ Petition, stand taken by the State respondents as well was that they were in favor of the reassessment of the actual damages of private properties belonging to private persons and for that the process of identification had already been started and completed to some extent. Further, in some areas where compensation were assessed and included in the Award had been diverted and therefore, there was excessive assessment.

[6.] This Court taking note of the issue raised by the petitioners and the response made by the respondents vide Order dated 19.03.2018 disposed of the writ petition by directing the respondents to take into consideration the faulty process which inadvertently cropped up in the final compensation list and complete the process of both identification of the actual affected persons and the subsequent disbursal of the compensation to the affected persons within a period of two (2) months from the date of receipt of a copy of the Order.

[7.] The learned Senior Counsel submits that in terms of the said direction, the

authorities concerned undertook the exercise as directed and came up with a revised Draft Award and the same was approved by the State Government in the Land Revenue & Settlement Department and conveyed to the Deputy Commissioner, Kolasib District, Kolasib on 01.08.2018. As per the exercise that was undertaken, the authorities concerned found that there were as many as 167 bogus claims for land compensation. The revised Draft Award only included those persons whose land are genuinely affected and that the Award made has been received by some of the land owners while some others have refused to accept the same. He submits that at any rate, the Order dated 19.03.2018 passed in WP(C) No. 167/2017 has not been challenge by anybody before any forum and therefore, the same has attained its finality. Therefore, in view of the developments pursuant to the Order dated 23.03.2016 passed in WP(C) No. 10/2016, a revised Draft Award has been made and approved by the State Government and therefore, the issue raised in the instant Writ Appeal and the challenge made to the Judgment & Order of the learned Single Judge has been rendered redundant. The learned Senior Counsel therefore submits that under the facts and circumstances, the Writ Appeal may be closed.

[8.] Mr. Lalsawirema, learned counsel for the respondents on the other hand submits that the appellants in the Writ Appeal have only challenged the observation of the Law & Judicial Department dated 13.12.2015 as can be seen

from the grounds of the Writ Appeal and that they have failed to challenge the interference made by the learned Single Judge to the letter dated 10.12.2015 issued by the Under Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department. He submits that it is a common knowledge that the advice of the Law & Judicial Department is not binding upon the Government and that the Government may or may not accept their observation or opinion. Therefore, failure to challenge the letter dated 10.12.2015 will render the Writ Appeal ineffective. The learned counsel further submits that the State Government cannot absolve itself from their liability to compensate the land owners in terms of the Award since possession of the land of the land owners had already been taken by starting the work on 24.09.2011. He further submits that the claim made and accepted by the State that there are bogus claims for compensation is in fact a disputed question of fact and in order to resolve such claim, the Government can very well file a Reference Application under the LA Act before the Reference Court. He therefore submits that the acquisition proceedings initiated by the State should be taken to its logical conclusion by compensating the land owners in terms of the Award No. 3/2014.

[9.] The learned counsel in support of his submissions has relied upon the following authorities:-

(1) Abdul Karim Allarakha -Vs- State of Rajasthan & Anr. (1982) 3 SCC 227

(2) Kaliyappan -Vs- State of Kerala & Ors. (1989) 1 SCC 113 and

(3) Govt. of A.P & Anr. -Vs- Syed Akbar (2005) 1 SCC 558.

[10.] Ms. Dinari T. Azyu, learned counsel for the respondents also adopts the argument made by Mr. Lalsawirema, learned counsel. She further submits that the direction given by this Court in WP(C) No. 167/2017 was only to consider the faulty process which inadvertently cropped up in the final compensation list and then to complete the process of identification of actual affected persons and disbursal of compensation within a period of two (2) months. However, the authorities concerned instead came up with a revised Draft Award by not only dropping the names of some of the persons included in the original Draft Award No. 3/2014 but also revising the amount of compensation to be received by the land owners by reducing the area of land to be acquired. The same clearly being against the direction given in WP(C) No. 167/2017, the revised Draft Award cannot be acted upon or accepted in any manner.

[11.] The learned counsel further submits that in fact some of the land owners being aggrieved with the said action of the authorities have approached this Court by filing WP(C) No. 37/2019 and the same is still pending as on date. She submits that it was observed in that case that in view of the pendency of the instant Writ Appeal, the said Writ Petition be kept in abeyance till finalization of the Writ Appeal. She submits that a number of Reference Applications are also pending

before the Reference Court arising out of the Draft Award No. 3/2014 and therefore, if the revised Draft Award as prepared by the authorities is accepted, the Reference Applications would only be rendered infructuous and thereby, causing great loss and hardship to the land owners concerned. She thus submits that the Writ Appeal should be dismissed.

[12.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. As already stated earlier, according to the State appellants since the Award concerned could not be finalized within a period of two (2) years from the date of issuance of the Notification under Section 6 of the LA Act, the Award No. 3/2014 was declared to have lapsed as was advised by the Law & Judicial Department. Both the advice of the Law & Judicial Department as well as the Communication by which the decision of the Law & Judicial Department was conveyed were interfered with by the learned Single Judge through the impugned Judgment & Order and the respondents in that writ petition were directed to pay the compensation awarded to the writ petitioners as per the Draft Award No. 3/2014 within a period of six (6) months from the date of receipt of a certified copy of the Order.

[13.] Pursuant thereto, WP(C) No. 167/2017 was filed by the Coordination Committee represented by their Chairman alleging that there were certain false claims in the compensation assessed while the genuine land owners were being

deprived of their original compensation. During the proceeding in the said writ petition, it was not brought to the notice of the Writ Court that on 23.03.2016, a coordinate Bench of this Court in WP(C) No. 10/2016 had already issued certain direction for payment of the compensation in terms of the Draft Award No. 3/2014. The State of Mizoram was indeed a party respondent in the said writ proceeding and surprisingly, no information was given to the Court about the direction passed in WP(C) No. 10/2016. Therefore, the exercise of looking into the faulty process which inadvertently cropped up in the final compensation list was taken up and by which, certain names were admittedly omitted after a finding was arrived at that there were as many as 167 bogus claims. Further, in terms of the revised Draft Award, compensation amount has been disbursed to those land owners who have agreed to accept the awarded amount while there are some who have refused to accept the amount awarded.

[14.] At any rate, the direction passed in WP(C) No. 167/2017 vide Order dated 19.03.2018 has been acted upon and that the same has not been questioned nor challenged by anyone including the present respondents. In view of such development, the challenge made in the Writ Appeal has only been rendered redundant, if not infructuous. The respondents have raised the issue of the steps taken by the authorities to be not in terms of the direction passed in WP(C) No. 167/2017. However, the same in our considered view, cannot be a subject or issue

to be gone into in the present Writ Appeal. In other words, the scope of the instant Writ Appeal in our considered view cannot be enlarged by taking into account what had transpired in respect of the issue raised in another writ petition and whether the same was decided in an appropriate manner or not.

[15.] Therefore, taking into account the specific issue raised in the instant Writ Appeal and the challenge made to the direction of the learned Single Judge and further taking into account the subsequent developments that have taken place, we find that nothing is left in the Writ Appeal to be examined. Accordingly, the Writ Appeal is dismissed.

[16.] It is however observed that the dismissal of the instant Writ Appeal would not mean that the respondents or any of the genuine land owners are debarred from asserting their rights and claims which however should be in accordance with and as may be permissible in law. As we have come to the above conclusion, there will be no requirement to dwell upon the authorities relied upon by the parties.

JUDGE

JUDGE

Comparing Assistant