

GAHC030003152021



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

Case No. : WP(C)/92/2021

Chuangkima and 3 Ors.
Chhingchhip, Mizoram

2: Sapliana

3: R.Laltlankima

4: Darkhum

VERSUS

State of Mizoram and 2 Ors.
r/b Chief Secretary, Govt. of Mizoram

2:Secretary

3:Special Secretary to the Govt. of Mizora

Advocate for the Petitioner : Mr Lalfakawma

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

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

JUDGMENT & ORDER (ORAL)

20.11.2024

Heard Mr. Lalfakawma, learned counsel for the petitioners and Ms. H Lalmalsawmi, learned Government Advocate for all the respondents.

[2.] By filing this writ petition, the petitioners have prayed for setting aside the Notification dated 11.09.2019 (Annexure-5) by which, the multiplication factor for value of land acquired for determining of compensation of land has been fixed as 1 (one) both for urban areas as well as for rural areas in terms of the First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013).

[3.] Mr. Lalfakawma, learned counsel for the petitioners submits that as per the First Schedule of the Act of 2013, more particularly at Serial No. 2, it has been provided that the factor by which the market value is to be multiplied in the case of rural areas can range from 1 (one) to 2 (two) and shall be based on the distance of the project from urban areas as may be notified by the appropriate Government. He submits that the respondents have however made the multiplication factor to be 1 (one) both for rural as well as for urban areas.

The learned counsel submits that in response to the information sought by the petitioner through RTI, asking for the notified urban areas, the petitioner has been provided with a list of notified urban areas in the State of Mizoram, which does not include Chhingchhip village. Therefore, the land of the petitioner being situated in Chhingchhip and which is a village and undisputedly a rural area, the same cannot be equated with that of an urban area. By making the multiplication factor common for urban and rural area, the petitioner has only been deprived of reasonable and adequate compensation for acquisition of his land under the National Highways Act, 1956 which relates to the Act of 2013.

[4.] The learned counsel further submits that the Ministry of Road Transport & Highways, Govt. of India has issued an advisory dated 28.12.2017, advising the States concerned through their Chief Secretaries to consider fixation of the multiplication factor as per the First Schedule of the Act of 2013, as many States too had notified a single multiplication factor common for both urban and rural areas. Drawing the attention of this Court to the multiplication factor notified by some of the States such as Kerala, Meghalaya, Odisha, Rajasthan, etc., the learned counsel submits that the multiplication factor has been fixed in such a manner by the States concerned that it varies from 1 to 2 depending upon the distance of the project from the urban area which is in accordance with the

mandate of Schedule-1 to the Act of 2013. However, in case of the State of Mizoram by issuing the impugned Notification dated 11.09.2019, a common multiplication factor has been prescribed both for urban and rural areas and having regard to the prescription of the provisions of the Act of 2013, the impugned notification cannot be sustained and the same should be set aside.

[5.] Ms. H Lalmalsawmi, learned Government Advocate, on the other hand, by referring to the counter affidavit filed by the respondents on 28.01.2022 submits that in the Notification dated 11.09.2019, it has clearly been indicated that the situation of land holdings and their utilization within the State of Mizoram is different from that of all other States in the Country. Therefore, having regard to the peculiarity of the State of Mizoram and importantly having regard to the fact that the applicability of the Act of 2013 or the Mizoram (Land Acquisition, Rehabilitation & Resettlement) Act, 2016 having not been settled, the competent authority in the State Government fixed and notified the multiplication factor found to be appropriate. Therefore, the Notification dated 11.09.2019 should not be interfered with.

[6.] I have considered the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[7.] There is no dispute to the fact that Serial No. 2 of the First Schedule to

the Act of 2013 provides for factor by which market value is to be multiplied in case of rural areas ranging from 1 to 2 depending upon the distance of the project from the urban area. Serial No. 3 of the First Schedule provides that the factor by which the market value is to be multiplied in case of urban area is 1 (one). The fixation of the multiplication factor can be 1 (one) in respect of rural areas as well but having regard to the prescription, it may not be constant but may range from 1 to 2 depending on the distance of the project from the urban area as notified by the appropriate Government. In the reply to the RTI query made by the petitioner, as many as 23 towns have been notified to be urban areas within the State of Mizoram. However, the same does not include Chhingchhip village. Therefore, in the considered view of this Court, if the multiplication factor is made to be 1 (one) as a common figure for both urban and rural areas, the intent and purport of the Act of 2013, more particularly in the First Schedule, will not be served and thereby, depriving adequate and appropriate compensation to those having their land in rural areas and acquired for any purpose whatsoever. Further, W.A No. 70/2018 mentioned in the impugned Notification dated 11.09.2019 has already been disposed of by a Division Bench of this Court vide its Judgment & Order dated 30.10.2024 by dismissing the writ appeal. In other words, a common Judgment & Order dated 15.11.2018 passed by the learned Senior Judge in WP(C) Nos. 20 & 30/2014

has been upheld by the Appellate Court. Therefore, unless the Appellate Court's decision is interfered with by higher forum, there cannot be any dispute regarding the applicability of the Act of 2013.

[8.] Upon due consideration and after hearing the parties, this Court is of the considered view that the Notification dated 11.09.2019 cannot be sustained as the same is not in conformity with the prescription of the First Schedule of the Act of 2013. Accordingly, the same is set aside. The respondents are hereby directed to consider fixing appropriate multiplication factor strictly in terms of First Schedule of the Act of 2013, by providing appropriate multiplication factor in respect of rural areas as may be found to be just and expedient and appropriate. Such exercise should be initiated and completed within a period of 3 (three) months from the date of receipt of a certified copy of this order.

[9.] The Writ Petition accordingly stands disposed of as allowed. No cost.

JUDGE

Comparing Assistant