

GAHC030003802021



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

Case No. : WP(C)/106/2021

T. Lalramchhuani and 5 Ors.
Dawrkawn, Keifang, Mizoram

2: Ralmanliana S/o Chawngthuama (L)

3: John MS Dawnga

4: K.Vanlalruata (L)

5: Martin Lalthamawia

6: T.Robert Rohminglian

VERSUS

Govt. of India and 5 Ors.
R/b Secretary, Ministry of Road Transport and Highways, Govt. of India, N.Delhi
2: National Highways and Infrastructure Development Corporation Limited
(NHIDCL)

3: The Executive Director (Projects) NHIDCL

4: State of Mizoram

5:Secretary

6:Deputy Commissioner cum Competent Authorit

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Ms Zairemsangpuii (CGC) for R1

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

JUDGMENT & ORDER

05.03.2024.

Heard Mr. A.R. Malhotra, learned counsel for the petitioners, Ms. Zairemsangpuii, learned CGC for the respondent No. 1, Mr. C. Lalfakzuala, learned counsel for the respondent Nos. 2 & 3 and Mrs. Mary L. Khiangte, learned Govt. Advocate for the respondent Nos. 4, 5 & 6.

[2.] By filing this writ petition, the petitioners have prayed for setting aside the Office Order dated 13.08.2021 (Annexure - 7) and for a direction to the respondent authorities concerned to pay them compensation for their acquired land as per the assessment made by the Competent Authority For Land Acquisition (CALA) on 17.04.2021 (Enclosure to Annexure - 6).

[3.] It is the case of the petitioners that the Ministry of Road Transport & Highways, Govt. of India decided to undertake the work of building (widening/two

lane with paved shoulder/four laning etc), maintenance, management and operation of NH-6 (NH-53) in the stretch of land from Km 15 - Km 30.05 and Km 30.05 - Km 50.36 which is within the jurisdiction of the Deputy Commissioner, Saitual, Mizoram. The respondent No. 1 appointed the respondent No. 6 as CALA under Section 3(a) of the National Highways Act, 1956 (National Highways Act) to perform the function of acquiring land for the said project.

[4.] The respondent No. 1 after being satisfied that the land was acquired for the aforesaid public purpose in exercise of powers conferred by Section 3A(1) of the National Highways Act issued Notification dated 11.08.2020 in the Gazette of India giving a brief description of the land in the Schedule which was required for the proposed construction.

[5.] Thereafter, the respondent No. 1 after being satisfied that the land was required for the aforesaid public purpose had again in exercise of the powers conferred by Section 3A(1) of the National Highways Act issued another Notification which is also dated 11.08.2020 in the Gazette of India giving a brief description of the land in the Schedule required for the said construction. Both the Notifications dated 11.08.2020 issued under Section 3A(1) of the National Highways Act were published in the local dailies 'Aizawl Post' and 'Saitual Post' on 28.08.2020 and 29.08.2020 respectively.

[6.] Thereafter, hearing was conducted by CALA under Section 3(c) of the

National Highways Act and subsequently, the Central Government vide Notification dated 29.09.2020 under Section 3D of the same Act declared that the land described in the Schedule should be acquired for the purpose mentioned in the two (2) Notifications dated 11.08.2020.

[7.] That subsequently, the respondent No. 6 made the Award dated 17.04.2021 under Section 3G of the National Highways Act determining the compensation payable to the petitioners for the acquisition of their land by including compensation for the stone quarries belonging to them. However, while the petitioners were waiting payment of compensation to them as per the Award dated 17.04.2021, the respondent No. 6 without their knowledge revised Package Nos. 2 & 3 of the Award dated 17.04.2021 by deducting the compensation awarded to the petitioners for acquisition of their quarries by issuing a revised Award dated 18.08.2021. The petitioners came to learn about the revised Award through an RTI application made by them. The respondent No. 6 against their RTI application also clarified that the Award under 3G Part-II was issued twice since the respondent No. 1 could not approve the first Award dated 17.04.2021 and therefore, the respondent No. 6 had issued the revised Award dated 18.08.2021 in accordance with the Order of the State Government in the Revenue Department dated 13.08.2021.

[8.] Mr. A.R. Malhotra, learned counsel for the petitioners submits that the letter

dated 21.09.2021 issued by the respondent No. 6 clearly reveals that the Award under 3G of the National Highways Act was illegally revised due to the impugned Order dated 13.08.2021 which otherwise was issued in clear violation of the Govt. of Mizoram (Transaction of Business) Rules, 2014 (Transaction of Business Rules) framed under the provisions of Article 166(2) and (3) of the Constitution of India. Referring to Rule 10 & 11 of the Transaction of Business Rules, the learned counsel submits that order or instruments made or executed by or on behalf of the Govt. of Mizoram should be expressed to be made or executed in the name of the Governor of Mizoram and shall be signed either by the Chief Secretary, Addl. Chief Secretary, Principal Secretary, Commissioner, Secretary, Special Secretary, Addl. Secretary, Joint Secretary, Deputy Secretary, Under Secretary or other Officer as may be specifically empowered in that behalf and such signature shall be deemed to be proper authentication of such order or instrument. He submits that the impugned Order dated 13.08.2021 having been issued in violation of Rule 10 & 11 of the Transaction of Business Rules, the same cannot be taken into consideration for any purpose or ideally the same should be set aside.

[9.] The learned counsel for the petitioners further submits that the Award dated 17.04.2021 was prepared and issued by the respondent No. 6 as per the relevant provisions of the National Highways Act and that the said authority having finalized the Award, he cannot review the Award in the manner it was done by

preparing a revised Award dated 18.08.2021. In other words, after preparing the Award dated 17.04.2021, the role of the said authority as CALA is discharged and has become functus officio. Therefore, the revised Award dated 18.08.2021 cannot be acted upon for any purpose and the respondent authorities may be directed to pay the petitioners compensation as per the original Award dated 17.04.2021. In support of his submission, Mr. A.R. Malhotra, learned counsel relies upon the decision of the Bombay High Court (Division Bench) on 28.02.2023 in *WP(C) No. 5327/2022 (Sau Sangeeta Natwarlal Karwa -Vs- State of Maharashtra & 3 Ors.)*. The learned counsel also relies upon the case of *State of Uttaranchal & Anr. -Vs- Sunil Kumar Vaish & Ors. (2011) 8 SCC 670*.

[10.] Ms. Zairemsanpuui, learned CGC appearing for the respondent No. 1 submits that although she had sent the draft affidavit-in-opposition of the respondent No. 1 for vetting but she has not received back the same despite many reminders. Therefore, she is unable to make any submission on behalf of the respondent No. 1.

[11.] Mr. C. Lalfakzuala, learned counsel for the respondent Nos. 2 & 3 submits that the petitioners have an alternative statutory remedy under Section 3G(5) of the National Highways Act and without availing such remedy, the petitioners have come before this Court. Therefore, the writ petition is not maintainable and should be dismissed. In support of his submission, the learned counsel relies upon the

Judgment dated 20.09.2022 rendered by the Supreme Court of India in *Civil Appeal No. 4956/2022 [State of Maharashtra & Ors. -Vs- Greatship (India) Limited.]*.

[12.] Mrs. Mary L. Khiangte, learned Govt. Advocate appearing for the respondent Nos. 4 to 6 submits that the petitioner No. 2 has already received the Award without any protest as was computed by the CALA on 18.08.2021. Therefore, the petitioner No. 2 cannot have any legitimate claim in the present case. The learned Govt. Advocate further submits that the petitioner Nos. 5 & 6 are holders of Village Council Pass and under the Revenue laws of the State, Village Councils are not competent to issue Garden Pass and therefore, the petitioner Nos. 5 & 6 have not right to claim land compensation. The learned Govt. Advocate also submits that although there are no specific provisions under the National Highways Act, permitting the CALA to make a revise Award, there is no provision debarring the CALA from making a revised Award as well. Considering the fact that the Right to Mines, Quarries, Minerals and Mineral Products including Mineral Oil, Natural Gas and Petroleum vest in the State Government as per Section 12(4) of the Mizoram (Land Revenue) Act, 2013 (Land Revenue Act), the petitioners do not have any right to claim compensation for the quarries which again is regulated by the Mizoram Minor Mineral Concession Rules, 2000 (Minor Minerals Concession Rules) framed in exercise of the powers conferred by Section 15(1) of the Mines &

Minerals (Regulation & Development) Act, 1957. She therefore submits that the writ petition has no merit and the same should be dismissed.

[13.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record. From the projection made by the petitioners, the issue to be decided is as to whether the CALA in exercise of its powers under the National Highways Act can revise the Award prepared by it and secondly, whether the impugned Order dated 13.08.2021 which appears to be the basis for preparing the revised Award dated 18.08.2021 is sustainable in law having regard to the relevant provisions of the Transaction of Business Rules.

[14.] Coming to the first issue, it may be seen that as per Section 3G of the National Highways Act where land is acquired under the said Act, the competent authority under the Act shall determine the amount of compensation payable to the land owners. Section 3G also provides for the procedure to be followed in determining the amount of compensation which includes publication of the public notice in two (2) local newspapers. The said provision also provides for an opportunity to the persons interested in such line to appear in person or by an agent or by a legal practitioner before the competent authority. Section 3G (5) further provides that if the amount determined by the competent authority under Sub-Section (1) or Sub-Section (2) is not acceptable to either of the parties, the amount shall or in application by either of the parties, be determined by the

Arbitrator to be appointed by the Central Government and that subject to the provisions of the National Highways Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every arbitration under the Act. Section 3G (7) provides for the factors to be taken into consideration by the competent authority or the Arbitrator in determining the amount of compensation under Sub-Section (1) or Sub-Section (5), as the case may be.

[15.] In the present case, it appears that the CALA had prepared the Award under Section 3G on 17.04.2021 but since there was objection or non-acceptance from the respondent Nos. 2 & 3 as can be seen from the RTI reply dated 21.09.2021, the CALA prepared a revised 3G estimate dated 18.08.2021 by excluding the compensation amount awarded towards quarries. Irrespective of the fact as to whether one is entitled to receive compensation for quarries, the fact remains that the statutory provision provided under Section 3G (5) of the National Highways Act was not invoked by either of the parties.

[16.] The learned Govt. Advocate had submitted that although there is no provision empowering the CALA to make a revise estimate but at the same time, there is no provision debarring the said authority from making a revise estimate. Such submission in the considered view of this Court cannot be accepted in view of Section 3G (5) which clearly provides that if the amount computed by CALA is not accepted to either of the parties, they can make an application for the appointment

of an Arbitrator by the Central Government. The appointed Arbitrator can take recourse to Section 3G (7) of the National Highways Act in determining the claim made by the parties concerned. Therefore, under the National Highways Act, the Award can be revised but the same can be done only by the Arbitrator and not the CALA. It is a well settled principle of law that when the law prescribes a thing to be done in a certain manner, the same has to be done in that manner only and not otherwise.

[17.] A Division Bench of the Bombay High Court in *Sau Sangeeta Natwarlal Karwa* (supra) while dealing with a case of similar nature held that the CALA constituted under the National Highways Act does not have the authority to make any correction or for that matter to pass any order in the nature of correction of an Award or amendment of the Award. Once the Award has been passed by the competent authority, the competent authority loses any authority to tinker with it in any manner whatsoever. The Court further observed that although Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Act of 2013) empowers the Collector to make correction to the awards within a time frame but the same is not available to CALA constituted under the National Highways Act. I am in respectful agreement with the decision of the Bombay High Court. Although the decision may not be binding to this Court but it certainly has a persuasive value in absence of any

materials to the contrary.

[18.] As regards the second issue about the non-maintainability of the impugned Order dated 13.08.2021, it may be seen that it is not the case of the State respondents that compensation for value of land was wrongly awarded by the CALA to the petitioner Nos. 5 & 6 and that they have filed a complaint under Section 3G (5) of the National Highways Act. In absence of any such complaint, this Court is not inclined to examine the illegality of the compensation awarded to petitioner Nos. 5 & 6. It may further be seen that the offending portion of the impugned Order dated 13.08.2021 according to the petitioners is Clause 5 in particular. According to them in view of Clause 5, the Award dated 17.04.2021 was revised by the CALA on 18.08.2021. The petitioners further contend that since the impugned Order dated 13.08.2021 has been issued in violation of Clause 10 & 11 of the Transaction of Business Rules, the Order is liable to be set aside. It may further be seen that Clause 5 of the impugned Order dated 13.08.2021 is merely a reproduction of Section 12(4) of the Mizoram Land Revenue Act, which was otherwise published in the Mizoram Gazette Extraordinary in Volume XLII Issue No. 218 dated 02.05.2013. Therefore, in the considered view of this Court, there will be no requirement for the said provision to be notified separately by invoking Clause 10 & 11 of the Transaction of Business Rules. Therefore, the impugned Order dated 13.08.2021 in the considered view of this Court requires no

interference.

[19.] Finally, the contention of the learned counsel for the respondents that the petitioners ought to have availed the statutory remedy under Section 3G (5) of the National Highways Act upon being duly considered, this Court finds that the revised estimate made by the CALA on 18.08.2021 being without any application made by either of the parties under Section 3G (5), the petitioners cannot be debarred from approaching this Court through the instant writ petition.

[20.] In the result, I find merit in the writ petition and accordingly, the petitioners are found entitled to receive compensation as per the Award dated 17.04.2021 prepared by CALA. It is further provided herein that since there is no period of limitation prescribed for filing an application by a party aggrieved under Section 3G (5) of the National Highways Act, liberty is also granted to the respondents to avail the remedy available, if so advised. If such an application is filed by the respondents, it will be obligatory on the part of the respondent Nos. 2 & 3 to deposit the entire amount awarded as per the revised estimate dated 18.08.2021 within a period of one (1) month from the date of application made under Section 3G (5) of the National Highways Act before the respondent No. 6. The respondent No. 6 shall then disburse the amount to the petitioners as per their entitlement immediately and that the same shall be without any prejudice to their rights to claim for enhanced compensation as per the original Award dated 17.04.2021.

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

JUDGE

Comparing Assistant