

GAHC030003822022



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

Case No. : WP(C)/92/2022

North Eastern Frontier Railway r/b Dy.Chief Engineer CON/III/SCL, Silchar
Silchar

VERSUS

Mr. B Ngunchunga (L) substituted by his daughter C. Lallianzuali and 3 Ors.
Aizawl2:The District Collector
Kolasib District

3:The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram

4:The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Deptt

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi

Advocate for the Respondent : Ms. Mary Lalruatkimi Kiangte Addl.AG, Mizoram for R2 to R4

Linked Case : WP(C)/93/2022

North Eastern Frontier Railway r/b the Dy. Chief Engineer
CON/III/SCL
Silchar
Silchar

VERSUS

Ms. Anne Zothangpuii and 5 Ors.
D/o Zairemthanga (L)

R/o Dawrpui Vengthar

Aizawl
Mizoram

2:The District Collector
Kolasib District
Kolasib
Kolasib

3:The State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram.
Aizawl

4:The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Deptt.
Aizawl

5:Sh. Lalhluna
Treasurer
Mizoram Cultivators Union

Aizawl
Mizoram

6:Sh. Lalruatkima
Secretary
Mizoram Cultivators Union

Aizawl
Mizoram.

Advocate for the Petitioner : Mr. Sanjay Kumar Medhi
Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte Addl.AG
Mizoram for R2 to R4

ORDER
BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

08.04.2024

Heard Mr. S.K. Medhi, learned CGC for the petitioners in both the writ petitions. Also heard Mr. L.H. Lianhrima, learned senior counsel appearing for the private respondent No. 1 in WP(C) No. 92/2022 and for the private respondent Nos. 5 & 6 in WP(C) No. 93/2022. Mr. Lalbiaknunga Hnamte, learned counsel appears for the private respondent No. 1 in WP(C) No. 93/2022, while Mrs. Mary L. Khiangte, learned Government Advocate appears for the State Government. As the subject matter in issue is the same in both the cases, they are both being decided by this common order.

2. The brief facts of the case is that the private respondents No. 1 are the owners of land in Khamrang and Mualkhang in Kolasib District. Due to the proposal for construction of a Railway line from Bairabi to Sairang through Kolasib District, the lands of the private respondents were acquired @ Rs. 15 per sq. ft. under the Land Acquisition Act, 1894, herein after referred to as the LA Act, 1894, vide Award No. 1/2012 (Part-D 'Khamrang' and Part-E 'Mualkhang').

3. Some landowners, who were aggrieved with the rate of compensation applied for acquisition of their lands pursuant to Award No. 1/2012 (Part-D 'Khamrang' and Part-E 'Mualkhang') and as no interest or solatium had been given to them, submitted reference petitions under Section 18 of the LA Act, 1984, which was registered as L.A. Case No. 15/2013 and L.A. Case No.

19/2013. L.A. Case No. 15/2013 and L.A. Case No. 19/2013 were disposed of vide Judgment & Award No. 31.01.2014 and 06.03.2014 respectively by the learned Reference Court, by awarding interest @ 12% p.a and solatium @ 13% p.a. in terms of Section 23 of the LA Act, 1894, besides enhancing the rate of compensation from Rs. 15 per sq. ft. to Rs. 25 per sq. ft.

4. The private respondent No. 1 in WP(C) No. 92/2022 and the private respondent No. 1 in WP(C) No. 93/2022 submitted applications dated 11.06.2015 under Section 28A of the LA Act, 1894, for re-determining the amount of compensation to be paid to them in view of the enhancement of the rate of compensation in L.A. Case No. 15/2013 and L.A. Case No. 19/2013. However, the private respondents' application under Section 28A of the LA Act, 1894 for enhancement of the rate of compensation from Rs. 15 per sq. ft. to Rs. 25 per sq. ft., in terms of the Judgments & Awards passed in L.A. Case No. 15/2013 and L.A. Case No.19/2013, was rejected by the Deputy Commissioner/District Collector, Kolasib vide Orders dated 09.09.2015, by holding that the District Collector was not empowered to re-determine the compensation amount for enhancing the land value, which had been fixed by the State Government.

5. Being aggrieved with the same, the private respondent No. 1 in both the writ petitions filed WP(C) No. 165/2015, praying for setting aside the Orders dated 09.09.2015 passed by the Deputy Commissioner/District Collector, Kolasib District.

6. This Court disposed of WP(C) No. 165/2015, vide Order dated 23.11.2015, by setting aside the Orders dated 09.09.2015 passed by the Deputy

Commissioner/District Collector, Kolasib. This Court further directed the Deputy Commissioner/District Collector to consider the applications under Section 28A for enhancement of the rate of compensation afresh. Paragraph Nos. 42, 43 & 44 of the Order dated 23.11.2015 passed in WP(C) No. 165/2015 is reproduced herein as follows:-

“42. After hearing the parties and considering in the entire aspect of the matter, the impugned orders of the Deputy Commissioner, Kolasib District, Kolasib under Memo Nos. 15012/11/2015/Sec.28(A)-DC(K) and No. 15012/11/2015/Sec.28(A)-DC(K)/11, both dated 09.09.2015 are hereby set aside and quashed and the Deputy Commissioner, Kolasib District, Kolasib is hereby directed to consider the applications of the petitioners under Section 28A of the LA Act dated 11.06.2015, received by his office on 16.06.2015, afresh, considering the maintainability of said applications of the petitioners first and then to pass appropriate order in accordance with law, considering the terms of the aforementioned settled proposition of law.

43. Petitioners shall submit certified copy of this order before the Deputy Commissioner, Kolasib District, Kolasib on or before 15th December, 2015.

44. Accordingly, this petition is partly allowed, with the observation and directions made herein above.”

7. Pursuant to the Order dated 23.11.2015 passed in WP(C) No. 165/2015, the Deputy Commissioner, Kolasib District, vide letter dated 18.04.2016 enhanced the compensation rate payable to the private respondents from Rs. 15 per sq. ft. to Rs. 25 per sq.ft. and accordingly made assessment for payment of

the compensation amount @ Rs. 25 per sq.ft., which amounted to Rs. 73,68,862/-.

8. Subsequent to the above events, the private respondents filed a second application under Section 28A of the LA Act, 1894 for further enhancement of the rate of compensation from Rs. 25 per sq.ft. to Rs. 125 per sq. ft. The Deputy Commissioner/District Collector, Kolasib thereafter, vide the impugned Order dated 26.06.2019 enhanced the rate of compensation payable to the private respondents @ Rs. 125 per sq. ft. on the basis of an Award passed in connection with L.A. Case No. 10/2012, pertaining to one Mr. Zodinsanga.

9. The learned CGC appearing for the writ petitioner submits that there cannot be a second application under Section 28A of the LA Act, 1894, when the first application of the private respondents under Section 28A had already been allowed by the authority concerned. The learned CGC submits that as per the Judgment of the Supreme Court in the case of *Union of India and Another Vs. Pradeep Kumari and Others*, reported in 1995 2 SCC 736, only one application can be moved under Section 28A of the LA Act, 1894. He accordingly submits that the Deputy Commissioner/District Collector having already allowed the first application under Section 28A, there was no provision for considering/allowing the second application under Section 28A, for further enhancement of the rate of compensation. He accordingly prays that the impugned Order 26.06.2019 should be set aside.

10. The learned counsels for the private respondents in both the writ petitions submit that besides the land of the private respondents, the land of one Mr. Zodinsanga had also been acquired for constructing the Railway line from

Bairabi to Sairang. They submit that Mr. Zodinsanga's land had been acquired @ Rs. 25 per sq. ft vide Award No. 1/2012 (Part A- Bairabi). As Mr. Zodinsanga was aggrieved with the rate of compensation for acquisition of his land, he had filed a Reference Petition under Section 18 of the LA Act, 1894. The same was registered as L.A. Case No. 10/2012 which was disposed of, vide Judgment and Award dated 23/2018 by the Reference Court, by enhancing the rate of compensation from Rs. 25 per sq.ft. to Rs. 125 per sq.ft. They submit that as the same Railway line is going to pass through the lands of the said Mr. Zodinsanga and the private respondents, the rate of compensation awarded to Mr. Zodinsanga should also be applied for acquiring the land of the private respondents.

11. Mr. S.K. Medhi, learned CGC submits in reply to the above, that the land of Mr. Zodinsanga is located at Bairabi which is in a sub town area and which is 80 km away from the land of the private respondents, which is a village area. He accordingly submits that the rate of compensation for acquiring the lands of the private respondents and the said Mr. Zodinsanga cannot be the same.

12. Mrs. Mary L. Khiangte, learned State Government Counsel submits that she has got no comments to make in this case.

13. I have heard the learned counsels for the parties.

14. The issue that is to be decided is whether land owners can file a second application under Section 28A of the LA Act, 1894, when the prayer for re-determining the compensation amount made in the first application under Section 28A has been allowed/decided by the State respondents.

15. As can be seen from the pleadings, the land of the private respondents No. 1 had been acquired @ Rs. 15 per sq. ft. vide Award No. 1/2012 (Part-D 'Khamrang') and (Part-B 'Mualkhang'). Further, the application of the private respondents No. 1 under Section 28A of the LA Act, 1894, for enhancement of the rate of compensation from Rs. 15 per sq.ft. to Rs. 25 per sq.ft, was subsequently allowed. Thus, the grievance of both the private respondent No. 1 had been redressed by the State respondents. Once the private respondents application under Section 28A had been allowed by the Deputy Commissioner/District Collector, Kolasib on 18.04.2015, the said Deputy Commissioner/District Collector, Kolasib became *functus officio*, in so far as the question of further enhancement of compensation was to be considered in terms of a second application made by both the private respondent No. 1 under Section 28A of the LA Act, 1894.

16. In the case of *Union of India and Another Vs. Pradeep Kumari and Others (Supra)*, the Supreme Court has held that only one application can be moved under Section 28A of the LA Act, 1894, for re-determination of compensation.

The Supreme Court has held that a person would be able to seek re-determination of the amount of compensation payable to him under Section 28A of the LA Act, 1894, provided the following conditions are satisfied:-

- (i) An award has been made by the Court under Part III after the coming in to force of Section 28-A;
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in

that reference;

(iii) The person moving the application under Section 28A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28A for re-determination of compensation by an applicant.

17. As the private respondents' No. 1 in both the writ petitions first application under Section 28A had been allowed, the second application under Section 28A of the LA Act, 1894 could not have been considered by the Deputy Commissioner/District Collector, Kolasib in terms of the Judgment of the Supreme Court, as mentioned above.

18. In view of the reasons stated above, the impugned Order dated 26.06.2019 passed by the Deputy Commissioner/District Collector, Kolasib on the basis of a second application under Section 28A, further enhancing the rate of interest from Rs. 25 per sq.ft. to Rs. 125 per sq. ft., being in excess of his jurisdiction, is hereby set aside.

19. It has been stated at the bar that no payment has been made to the private respondents in respect of the compensation amount payable @ Rs. 25 per sq.ft. even till today. The petitioners are accordingly directed to pay the private respondents the compensation amount @ Rs. 25 per sq.ft, within a period of three months from today.

20. The writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant