

GAHC030004162023



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

Case No. : WP(C)/97/2023

Sh. Lalngilneia and Anr.
S/o Lalupaliana (L)
R/o College Veng
Aizawl, Mizoram 2: Sh. Lualupliana (L) R/b Lalngilnei

VERSUS

State of Mizoram and 5 Ors.
R/b the Chief Secretary to the Govt. of Mizoram,
Aizawl, Mizoram 2: The Secretary
Land Revenue and Settlement Dept.
Govt. of Mizoram

3: The Secretary
Public Works Dept.
Govt. of Mizoram

4: The Engineer-in-Chief
Public Works Dept.
Govt. of Mizoram

5: The Director
Land Revenue and Settlement Dept
Govt. of Mizoram

6: The Deputy Commissioner/District Collector
Aizawl District

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1 - 6

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

O R D E R

23.01.2024

1. Heard Mr. Lalfakawma, learned counsel for the petitioners. Also heard Mrs. Linda L. Fambawl, learned Additional Advocate General for the State respondents.

2. The petitioners, who are owners of the lands covered by Periodic Patta No.4001003/10/267 of 2005 and Periodic Patta No.4001003/10/266 of 2005 are claiming compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 on account of the State respondents having constructed a road on their lands without their permission. They accordingly pray that their lands should be acquired and compensation be paid to them.

3. The petitioners' counsel submits that the petitioner no.2 is the owner of the land covered by Periodic Patta No.4001003/10/266 of 2005 on account of a Heirship Certificate No.1164/2020 being issued by the Senior Civil Judge-III, Aizawl on 03.12.2020 in his favour.

4. The petitioners' counsel submits that though Periodic Pattas have been issued under the provisions of the Mizoram District (Agricultural Land) Act, 1963

and Mizoram District (Agricultural Land) Rules, 1971, the rights of the petitioners as Periodic Patta holders are governed by the Mizoram (Land Revenue) Act, 2013 and Mizoram (Land Revenue) Rules, 2013 read with Mizoram (Land Revenue) (Amendment) Act, 2020, inasmuch as, the validity of the Periodic Pattas have been extended in terms of the Mizoram (Land Revenue) Act, 2013 (hereinafter referred to as "the 2013 Act"); Mizoram (Land Revenue) Rules, 2013(hereinafter referred to as "the 2013 Rules") and the subsequent amendment made thereunder. He submits that the 2013 Act and the 2013 Rules have repealed the Mizoram District (Agricultural Land) Act, 1963 and the Mizoram District (Agricultural Land) Rules, 1971,

5. The learned counsel has relied on Section 24 and 25 of the 2013 Act; Rule 47(4) of the 2013 Rules and Section 75(A) of the Mizoram (Land Revenue) (Amendment), Act 2022. In support of his submission that the petitioners are entitled payment of compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, which are reproduced hereinbelow as follows :

“Section 24. Status of a Periodic Patta-holder

Every person belonging to any of the following classes shall be called a Periodic Patta holder or a temporary licensed cultivator and shall have all the rights and be subject to all the liabilities conferred or imposed upon the periodic patta-holder by or under this Act, namely –

(1) Every person who, at the commencement of this Act, holds any land from the Government under a valid periodic patta granted by the competent authority, and his successor-in-interest.

(2) Every person who acquires the rights of a periodic patta holder under or in accordance with the provisions of this Act and such rules as may be

made in this behalf.

“Section 25. Rights of a Periodic Patta-holder

A Periodic Patta-holder shall have a temporary right, title, interest and possession in the land held by him for such period and under such terms and conditions as the Government may specify in the periodic patta and shall have no right of transfer of ownership or inheritance of the land beyond the period as are specified in his periodic patta. Provided that where no period is fixed in the existing periodic patta the validity of such patta shall, unless renewed, be deemed to expire after five years from the date of commencement of this Act.”

“Rule 47 (4) *In case of acquisition of land covered by House Pass or Stall Pass or Shop Pass or Periodic Patta or Land Lease under Land Acquisition Act, 1894 as amended from time to time, compensation may be paid as per assessment by the concerned Collector of the District provided that the validity of the tenure of the said land holding has not expired. In addition to crops and building damage compensation, land value may also be assessed and out of the assessed amount, 15 percent of land value shall be remitted to Revenue Department as cess on value of land”.*

"Section (75 A) Share of Government on Acquisition of Land:-

(1) In case of acquisition of land covered by House Pass or Stall Pass or Shop Pass or Periodic Patta or Land Lease, in which the pass holder have a temporary rights, title, interest and possession in the land held, for the purpose of the Union and State crops and building damage compensation as well as land value may be assessed and be paid by the concerned Collector of the District or the concerned Competent Authority for Land Acquisition as the case may be, provided that the validity of the tenure of the said land holding has not expired.

(2) Out of the land value paid under sub-section (1) the 15 percent share of the Government shall be deducted by the District Collector or

Competent Authority for Land Acquisition as the case may be who shall remit to the State Government Account as revenue.

(3) The share of the Government collected under sub-section (2) shall be utilized for the purpose of land administration and other ancillary purposes.

(4) The Government of Mizoram may notify such acts under which acquisition made would be subject to such collection of share.

(5) Share of the Government shall also be deducted from the Award not yet pronounced even if notification for acquisition was issued under any land acquisition Act by the Union or State."

6. The learned counsel for the petitioners also submits that a perusal of the affidavit-in-opposition filed by the respondent nos.1 to 6 shows that the State respondent have taken a stand that there is no evidence or proof or confirmation that the said lands of the petitioners have been affected by the construction of the PMGSY road by the PWD, as no spot verification has taken place. As such, a direction may be issued to the State respondents to conduct a spot verification, to verify whether a road has been constructed over the petitioners' lands.

7. Mrs. Linda L. Fambawl, learned Additional Advocate General submits that notice was issued to all the interested persons and the President of the Village Council of Sairang/Lengte villages, for display in the public notice board, with regard to the fact that objections could be raised by the interested persons whose lands were to be affected by the construction of the bypass road for upgrading the existing Sairang to Lengte road. However, the petitioners did not submit any objections, they are estopped from claiming any compensation.

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

9. As there is a disputed question of fact with regard to whether the construction of the road by the PWD has affected the lands of the petitioners, which can be verified on the basis of a spot verification, this Court is of the view that a spot verification should take place, to verify the correctness of the claim made by the petitioners. Accordingly, respondent nos.2 to 6 or their representatives shall conduct a spot verification with the petitioners or their representatives, with regard to whether the road constructed for upgradation of the existing Sairang to Lengte road had been made on the lands of the petitioners or whether the road constructed has not been made on the petitioners' land, but has nevertheless damaged the same. If it is found that the road has caused damage to the petitioners lands or the road has been constructed on the lands of the petitioners, the State respondents shall take a decision as to whether damages is to be paid or the land is to be acquired, in terms of the result of the spot verification made in the verification report. A reading of Rule 47(4) of the 2013 Rules and Section 75 A of the Mizoram (Land Revenue) (Amendment), Act 2022 shows that lands covered by periodic pattas can also be acquired, provided the periodic patta is valid. In the event the respondents are to acquire the lands of the petitioners, necessary formalities for the same including payment of compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 should be completed within 3 (three) months from the date of the verification report. The spot verification on the lands of the petitioners and the verification report should be made by the respondent nos. 2

to 6 or their representatives, within a period of 2 (two) months from the date of receipt of a copy of this order.

10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant