

GAHC030004382023



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

Case No. : WP(C)/103/2023

Sh. B. Johnson and 6 Ors.
S/o B. Zawhana
R/o New Laty, Siaha District

2: HC. Chokhu

3: HC. Laikhy

4: Zawsua

5: Dixon Beibiezi

6: Chhotua Khithie

7: HC. Hrahi

VERSUS

Union of India and 5 Ors.
R/b the Secretary, Border Roads Development Board, Sena Bhavan 'B' Wing, New
Delhi-110010

2:The Chief Engineer
Border Road Task Force (BRTF)

3:The Secretary
Land Revenue and Settlement Dept.
Govt. of Mizoram

4:The Deputy Commissioner/District Collector
Siaha District

5:The Executive Secretary
i/c Land Revenue and Settlement Dept.
Mara Autonomous District Council

6:The Senior Revenue Office
Land Revenue and Settlement Dept.
Mara Autonomous District Council

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Addl. AG/GA, Mizoram for R3 & 4

Linked Case : WP(C)/60/2023

Sh. Zohruailiana and 73 Ors.
S/o Hrahia

New Laty
Saiha District
Mizoram.

2: Sh. H.C. Bieso
S/o H.C. Hrahia

New Laty
Saiha District
Mizoram.

3: Smt. S. Mudi
S/o S. Chakhai
New Laty
Saiha District
Mizoram

4: Sh. H. Chihra
S/o H. Laichho

New Laty
Saiha District
Mizoram.

5: Sh. L. Pahra
S/o Litha
New Laty
Saiha District
Mizoram

6: Smt. S. Sokhai
D/o S. Machho

New Laty
Saiha District
Mizoram

7: Sh. N. Hlybei
S/o Hrachyu

New Laty
Saiha District
Mizoram

8: Sh. Lysa
S/o Thathlo
New Laty
Saiha District
Mizoram

9: Sh. Bieso
S/o HC. Hrahia
New Laty
Saiha District
Mizoram

10: Sh. H.C.Choma
S/o Chiahmo
New Laty
Saiha District
Mizoram

11: Sh. B. Vachhua
S/o Ranyu(L)
New Laty
Saiha District
Mizoram

12: Sh. Beihrorona
S/o V.B. Lakho
New Laty
Saiha District
Mizoram

13: Sh. H.C. Hrahia
S/o Mylo
New Laty
Saiha District
Mizoram

14: Sh. Thatu
S/o Hlykhu
New Laty
Saiha District
Mizoram

15: Smt. L. Flory
D/o C.L. Pawsie
New Laty
Saiha District
Mizoram

16: Sh. Zawsu
S/o Tlachho
New Laty
Saiha District
Mizoram

17: Sh. Ch. Eko
S/o Khaitlo
New Laty
Saiha District
Mizoram

18: Sh. H.C. Hruakhu
S/o H.C. Sialo
New Laty
Saiha District
Mizoram

19: Smt. Hana
D/o K. Khotha
New Laty
Saiha District
Mizoram

20: Sh. L. Simona
S/o Litha
New Laty
Saiha District
Mizoram

21: Sh. Beikhairona
S/o S. Pasa
New Laty
Saiha District
Mizoram

22: Sh. H.C. Khotu
S/o H.C. Hrakhai
New Laty
Saiha District
Mizoram

23: Sh. Kristahrohnei Khithie
D/o K.T. komo
New Laty
Saiha District
Mizoram

24: Sh. Molai Hlychho
S/o Khatu Hlychho
New Laty
Saiha District
Mizoram

25: Sh. Marshall J. Mokhu
S/o J. Mokhu
New Saiha
Saiha District
Mizoram

26: Sh. Thahlo
S/o Chiatlo
New Laty
Saiha District
Mizoram

27: Sh. K. Siahmo
S/o Thako
New Laty
Saiha District
Mizoram

28: Sh. Hrokhu
S/o Pilyu
New Laty
Saiha District
Mizoram

29: Sh. S. Beihrua
S/o S. Salao (L)
New Laty
Saiha District
Mizoram

30: Sh. HC. Beichatlai
S/o HC. Hrahia
New Laty
Saiha District
Mizoram

31: Sh. Beibielai
S/o Beilakho
New Laty
Saiha District
Mizoram

32: Sh. L. Beikhochhi
S/o L. Pakho
New Laty
Saiha District
Mizoram

33: Sh. K.T. Cholua
S/o K.T. Siahmo
New Laty
Saiha District
Mizoram

34: Sh. Awmpuia
S/o Thawnalha
New Laty
Saiha District
Mizoram

35: Sh. H.C. Locho
S/o H.C. Hracho
New Laty
Saiha District
Mizoram

36: Sh. K. Pawtha
S/o K. Hino
New Laty
Saiha District
Mizoram

37: Sh. Thawnalha
S/o Lalmuana
New Laty
Saiha District
Mizoram

38: Sh. C. Thahe
S/o Haihmo (L)
New Siaha
Siaha District
Mizoram

39: Sh. NT Sanga
S/o Sh. NT Leipo
R/o Siaha bazar
Siaha District
Mizoram.

40: Sh. Beima
S/o Sh. Zawsua

R/o Siaha District
Mizoram

41: Sh. B. Beirokhu
S/o Sh. B. Vachhua

R/o Siaha District
Mizoram.

42: Sh. Beipadaosia
S/o Sh. HC. Hnailua

R/o Siaha District
Mizoram

43: Sh. S. Nango
S/o Sh. S. Chi-O

R/o Siaha District
Mizoram

44: Sh. HC. Beithielai
S/o Sh. HC Pawhra

R/o Siaha District
Mizoram

45: Sh. Pawlai Hlychho
S/o Hrahia

R/o Siaha District
Mizoram

46: Sh. B. Nonai
S/o Sh. Seitia
R/o Siaha District
Mizoram

47: Sh. Vabeihruasa
S/o S. Chi-O
R/o Siaha District
Mizoram

48: Sh. H. Pawhra
S/o Sh. Chalo 'L'
R/o Siaha District
Mizoram

49: Sh. S. Beikhaihnia
S/o Zahmo 'L'
R/o Siaha District
Mizoram

50: Sh. Sachi
S/o Sh. Thyulia
R/o Siaha District
Mizoram

51: Sh. Muankima
S/o Tialchhuma
R/o Siaha District
Mizoram

52: Sh. M. Chhalai
S/o Sh. Tharu 'L'
R/o Siaha District
Mizoram

53: Sh. Ekilizi
Sh. Viatyu
R/o Siaha District
Mizoram

54: Sh. H.C. Rasia
S/o Zawba
R/o Siaha District
Mizoram

55: ECM R/b Sh. B. Johana
New Laty
R/o Siaha District
Mizoram

56: Sh. H. Zohmingthanga
S/o H. Zoliana
R/o Siaha District
Mizoram

57: Sh. L. Lova
S/o L. Saiko 'L'
R/o Siaha District
Mizoram

58: Sh. Vakho Hnaihly
S/o Khiko Hnaihly
R/o Siaha District
Mizoram

59: Sh. Siaki
S/o Pholua
R/o Siaha District
Mizoram

60: Sh. K. Ngiachho
S/o K. Chaly 'L'
R/o Siaha District
Mizoram

61: Sh. Chhacho
S/o Sh. Thatu
R/o Siaha District
Mizoram

62: Sh. Hlaichho
S/o Toli
R/o Siaha District

Mizoram

63: Sh. F. Heichho
S/o Sh. Tule
R/o Siaha District
Mizoram

64: Sh. Beisu Pathai
S/o Sh. Zalua
R/o Siaha District
Mizoram

65: Sh. Beingiapasa
S/o Sh. Satlua
R/o Siaha District
Mizoram

66: Sh. Khawsa
S/o Viatyu
R/o Siaha District
Mizoram

67: Sh. Beirakaw
S/o Sh. Vanlalliana
R/o Siaha District
Mizoram

68: Sh. Beithlalo
S/o Sh. Rapai 'L'
R/o Siaha District
Mizoram

69: Sh. HC. Beidy
S/o Sh. Laikhy
R/o Siaha District
Mizoram

70: Sh. Nevili
S/o Sh. Ngotha
R/o Siaha District
Mizoram

71: Sh. S. Laihie
S/o Hiko
R/o Siaha District
Mizoram

72: Sh. H. Nizili

S/o Sh. K. Pawtha
R/o Siaha District
Mizoram

73: Sh. S. Halai
S/o Sh. S. Sathlu
R/o Siaha District
Mizoram

74: Sh. C. Zawbei
S/o Sh. Diachho
R/o Siaha District
Mizoram
VERSUS

The Union of India R/b the Secretary
Border Roads Development Board and 5 Ors.
Sena Bhavan B Wing
New Delhi-110010.

2:The Chief Engineer
Border Road Task Force (BRTF)
Project Pushpak GREF
C/o 99 APO.

3:The Secretary
Land Revenue and Settlement Department
Govt. of Mizoram
Aizawl
Mizoram.

4:The Deputy Commissioner/ District Collector
Siaha District
Mizoram.

5:The Executive Secretary
i/c Land Revenue and Settlement Dept.
MADC
Siaha District
Siaha.

6:The Senior Revenue Officer
Land Revenue and Settlement Dept.
MADC
Siaha.

Advocate for the Petitioner : Ms Dinari T Azyu
Advocate for the Respondent : Ms Zairemsangpuui

CGC for R1 & 2

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 30.10.2024

Date of Judgment : 21.11.2024

J U D G M E N T & O R D E R (CAV)

Heard Ms. Dinari T Azyu, learned counsel for the petitioners and Ms. Zairemsangpuii, learned CGC for the respondent Union of India. Also heard Ms. Lalnunhlui, learned Government Advocate for the State respondents and Mr. Lalfakawma, learned counsel for the respondent MADDC. Both the writ petitions will be disposed of by this common order as the issues involved are similar. In WP(C) No. 60/2023, there are 74 writ petitioners while in WP(C) No. 103/2023, there are 7 writ petitioners.

[2.] The case of the petitioners is that they are the owners of their respective lands within the Siaha district and the respondent authorities through the BRTF had undertaken the construction of Kawlchaw-Phura-Tongkolong road and that they were not awarded any compensation. This Court, in WP(C) No. 160/2016 & WP(C) No. 224/2016 vide Orders dated 22.09.2016 & 08.12.2018 respectively, had directed the respondent authorities to conduct a spot verification to find out whether road had been constructed through the land of the petitioners and if it

was constructed, to prepare a supplementary award for acquisition of the land of the said petitioners. According to the instant petitioners, although verification was done and assessment made as well but the same was only in respect of the lands which fell between the stretch of 00 km – 20 km along the Kawlchaw-Phura-Tongkalong road. The land of the petitioners whereas fell beyond 00 km – 20 km and therefore, they were not included in the verification and assessment of the compensation. The petitioners, therefore, filed WP(C) No. 53/2017 which was disposed of vide Judgment & Order dated 02.05.2018 by directing the respondents to invoke the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013) to assess the compensation payable to the petitioners and if they wanted to vacate the land of the petitioners, to pay damages within a time frame.

[3.] Pursuant thereto, the Collector concerned prepared Award No. 5/2020 (Annexure-3), awarding compensation to the petitioners as per the Act of 2013. The award in respect of WP(C) No. 60/2023 is dated 31.01.2020. Similarly, in case of WP(C) No. 103/2023, the Collector prepared Award No. 5 Additional-I/2024 dated 05.07.2024. The award was an additional award since the petitioners in WP(C) No. 103/2023 were left out in the earlier award.

[4.] It is the case of the petitioners that the respondent authorities have illegally deducted 10% of the cost of the land towards cess and that interest as per Section 80 of the Act of 2013 was not awarded to them and further, the market value of the land should be enhanced in proportion to the rates admissible to other parts of the State.

[5.] Mrs. Dinari T Azyu, learned counsel submits that as per Section 23(2)(b) of the Mara Autonomous District Council (Land & Revenue) Act, 2018 (Act of 2018), cess can be collected and levied to the extent of 15% from the value of the land for spot verification, survey and measurement and/or any other administrative work as provided under Section 22(1) of the Act of 2018. The learned counsel submits that the MADC in the Land Revenue & Settlement Department purportedly in exercise of the powers conferred by Section 23(2) of the Act of 2018, issued the Notification on 23.09.2019 levying Revenue cess to the extent of 10% from any land holder from the value of the land for conducting a spot verification, survey and measurement and or any other administrative work as envisaged under Section 23(2) of the Act of 2018. She submits that the Act of 2013 does not provide that cess can be collected or deducted from the amount of compensation to be received by the land owners for acquisition of their land. However, despite the same, 10% cess from the

total cost of the land has been deducted to be remitted to the LADC. She submits that as per the summary of the award, administrative cost @ 2.5% of the total compensation has already been deducted admittedly as per Section 23(2)(b) of the Act of 2018. Despite the same, cess @ 10% of the total cost of land has again been deducted as can be seen from Sl. No. 3 of the summary of the award. She submits that the same having not been provided by the Act of 2018, the amount so deducted should be refunded back to the petitioners.

[6.] The learned counsel further submits that interest as per Section 80 of the Act of 2023 has not been assessed and paid to the petitioners. She submits that since compensation was not paid to the petitioners at the time of taking possession of their land, they are entitled to payment of interest as stipulated under Section 80 of the Act of 2013. She further submits that the petitioners not being satisfied with the market value at the time by the Collector to assess the compensation submitted their application under Section 64 of the Act of 2013, which is similar to a reference application under Section 18 of the Land Acquisition Act, 1894 (LA Act) on 09.03.2021 but the reply they got on making a query through an RTI application was that the Land Acquisition, Rehabilitation and Resettlement Authority has not been constituted by the State Government. She, therefore, submits that the petitioners having no other option have filed

the instant writ petitions praying for appropriate reliefs.

[7.] The learned counsel also submits that as per the stand taken in the affidavit-in-opposition filed by the State respondents, they have no objection if a direction is given for constitution of the Land Acquisition, Rehabilitation and Resettlement Authority. Further, they have also stated that the amount of cess deducted from the compensation awarded to the petitioners is still lying with the District Collector. Therefore, Court may direct the respondent authorities to refund the deducted amount of cess to the petitioners and at the same time direct the constitution of Land Acquisition Rehabilitation and Resettlement Authority.

[8.] Ms. Dinari T Azyu, learned counsel for the petitioners submits that this Court in WP(C) No. 36/2024 vide Order dated 08.09.2021 in respect of the deduction of cess under the Mizoram (Land & Revenue) Rules, 2013 held that since land was acquired under the Central Act and not under any Revenue laws of the State, deduction of cess was not permissible. The same was in view of the amendment made to Rule 47 of the Mizoram (Land & Revenue) Act, 2013 by the Mizoram (Land Revenue) (Amendment) Rules, 2019. She submits that in the present case as well since the land of the petitioners were acquired under the Act of 2013, similar principle will also apply. Therefore, deduction made

towards cess from the compensation to be received by the petitioners is illegal and the same should be refunded back to them.

[9.] Ms. Zairemsangpuii, learned CGC submits that the respondent Union of India has no comments to make insofar as the deduction of the compensation towards cess is concerned. However, she submits that the petitioners have not enclosed any certificate in respect of taking over possession of land. Referring to the writ petition, the learned CGC submits that the petitioners themselves are not sure about the date of taking over possession of their lands and therefore, the matter involves disputed questions of fact which cannot be resolved in a writ proceeding. She submits that there has been no delay on the part of the respondent Union of India in paying the compensation amount as assessed by the Collector concerned. Therefore, she submits that the petitioners cannot have any legitimate grievance against the respondent Union of India.

[10.] Ms. Lalnunhlui, learned Government Advocate appearing for the State respondents submits that the prayer for constitution of Land Acquisition, Rehabilitation and Resettlement Authority is beyond the pleadings of the petitioners and therefore, no relief can be granted beyond their pleadings. She further submits that as for the determination of market value, the criteria under the Act of 2013 and Mizoram (Land Acquisition, Rehabilitation and

Resettlement) Act, 2016 (Act of 2016) are similar and should be based on the sale records of Sale Deeds registered in Registrar of Land Revenue Office.

[11.] Mr. Lalfakawma, learned counsel for the respondent MADC submits that the petitioners have not challenged the Notification dated 23.09.2019 by which, Revenue cess has been levied to the extent of 10% of the value of land in terms of Section 23(2) of the Act of 2018. Referring to Section 22(2) of the Act of 2018, he submits that in certain cases, the concerned authority in the MADC may, on its own initiative, perform such needful work as it may find necessary in presence or in consultation with the land owner or otherwise. The learned counsel submits that likewise in certain cases, there is no requirement for consultation. He submits that unlike the Revenue laws of the State Government, wherein cess is levied for acquisition of land under the State laws, there is no such provision in the Act of 2018. The cess that has been collected or deducted from the compensation amount awarded to the petitioners is for the conduct of spot verification, survey and measurement and/or administrative work. As per Section 23(2)(b) of the Act of 2018, cess can be levied to the extent of 15% of the cost of the land but however, the MADC has decided to levy Revenue cess only to the extent of 10% of the value of the land vide Notification dated 23.09.2019. The same being as per the provisions of the Act of 2018 and in the

absence of any challenge to the Notification dated 23.09.2019, the action of the respondent authorities concerned cannot be questioned and the writ petition should be dismissed.

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

[13.] From the projection made by the petitioners, three issues have been raised namely; deduction of 10% cess from the cost of the land as awarded by the Collector, payment of interest under Section 80 of the Act of 2013 and enhancement of market value of the land at par with the rates admissible to other parts of the State.

[14.] Insofar as the imposition of cess is concerned, the same is found in Section 23 under Chapter-V of the Act of 2018. Power has been conferred to the Executive Committee of the MADC under Section 23(1) of the same Act to issue a public notification or an official order, levying or collecting cess from land owners amongst others. Further, under Section 23(2) of the same Act, subject to Section 22 of the same Act, the Executive Committee by public notification or by official order can collect and levy cess to the extent of 15% from the value of land for conducting spot verification, survey and measurement or any other administrative work or otherwise as provided and envisaged under Section 22(1)

of the Act. The Act of 2018, however, does not provide for deduction of cess from the amount of compensation awarded to the land owners for acquisition of their land. If the cess deducted is to be considered as the amount towards the expenses for conduct of spot verification, for survey and measurement or for any other administrative works, the summary of the award at Sl. No. 8 otherwise has already provided for administrative cost @ 2.5% of the total compensation. Therefore, it only appears that there is no justification for deduction of 10% of the total cost of the land towards cess from the compensation to be received by the land owner for acquisition of his land.

[15.] As for the second issue which is in respect of payment of interest for non-payment of compensation at the time of taking possession of the land, the same is the prescription of the Act of 2013 and therefore, the petitioners cannot be deprived of such benefit. The summary of the award apparently does not contain award of interest under Section 80 of the Act of 2013. Such being the position, the grievance projected by the petitioners in this regard is found to be legitimate and needs to be redressed.

[16.] Lastly, in respect of the claim for enhanced market value of the land by the petitioners, Chapter-VIII of the Act of 2013 provides for establishment of Land Acquisition, Rehabilitation and Resettlement Authority in the mode and

manner as prescribed thereunder. The State respondents in their counter affidavit in WP(C) No. 60/2023 at paragraph No. 13 have stated as follows:-

“That with regard to the statements made in paragraph No. 15 of the writ petition, I say that since the MLARR Act, 2016 is sub-judiced before the Division Bench, Gauhati High Court, the Government of Mizoram could not establish the “Land Acquisition, Rehabilitation & Resettlement Authority”. If the Hon’ble High Court desires to constitute the said Authority, the Government of Mizoram is ready to constitute at anytime.”

[17.] From the above abstract, according to the State respondents as the matter relating to Act of 2016 is sub-judiced before the Division Bench of this Court, the State Government could not establish the Land Acquisition, Rehabilitation and Resettlement Authority. However, during the course of the argument, this Court has been informed that the issue pertaining to the Act of 2016 has been decided by a Division Bench of this Court in W.A Nos. 70 & 71/2018, vide Judgment & Order dated 30.10.2024. The writ appeals filed by the State respondents, against the Judgment & Order of the learned Single Judge holding that the Act of 2016 is not applicable, has been upheld by dismissing the writ appeals. Therefore, there appears to be no impediment in constituting the Land Acquisition, Rehabilitation and Resettlement Authority now.

[18.] Upon due consideration of the matter in its entirety, the following directions are made:-

1. The Act of 2018 does not contemplate deduction of cess from the compensation to be received by the land owners and therefore, deduction of cess made from the amount to be received by the petitioners is only illegal. Hence, the amount so deducted should be refunded to them within a period of 2 (two) months from the date of receipt of a certified copy of this order.
2. The District Collector concerned shall determine the date of taking over possession of the land of the petitioners after giving them due opportunity of hearing alongwith the BRTF authorities, within a period of 2 (two) months. Upon such determination, the Collector shall assess the amount of interest payable to the petitioners and forward the same to the respondent Union of India (respondent Nos. 1 & 2) who shall upon receipt of the same and within a period of 2 (two) months deposit the amount so assessed before the Collector for disbursement to the land owners.
3. The State respondents shall, within a period of 3 (three) months from the date of receipt of a certified copy of this order, establish Land Acquisition, Rehabilitation and Resettlement Authority in terms of Chapter-VIII of the Act of 2013. Once the same is established, any person interested and who has not accepted the award may make a reference in terms of Section 64 of the Act of 2013 and the applications so made shall be considered in accordance with law.

[19.] With the above observations and directions, the Writ Petitions are disposed of. No cost.

JUDGE

Comparing Assistant