

GAHC030005452023



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

Case No. : WP(C)/127/2023

Sh. B. Chhuasa and 50 Ors.
S/o B. Beilua,
R/o Laki, Siaha District, Mizoram 2: Sh. C. Tlasei

3: Sh. B. Beirokhai

4: Smt. P.Sari

5: Sh. B.Valy

6: Sh. Falton K Beihrotha @ K. Hrahmo

7: Sh. Beizahnie

8: Smt. B. Melezi

9: Sh. P. Vahnei

10: Sh. B. Johana

11: Sh. T. Beihro

12: Sh. B. Rosa

13: Sh. Hneilaw Bohia

14: Sh. HC. Beihrotlua

15: Sh. TT. Lychhi

16: Sh. C. Thahe

17: Sh. K. Beihi

18: Sh. Kochha

19: Sh. Zochei

20: Smt. Deichhai

21: Sh. HC. Chikhai

22: Sh. C. Thahe

23: Sh. T. Seido

24: Smt. K. Nuso

25: Sh. ST. Beireithai

26: Sh. L. Zakhu

27: Sh. B. Pazaw

28: Sh. AZ. Viasa

29: Sh. B. Lawsua

30: Sh. B. Khaihe

31: Sh. PK. Bohia

32: Sh. RV. Bohia

33: Sh. K. Mothie

34: Sh. V. Laiba

35: Sh. PK. Bohia

36: Sh. M. Mawkhu

37: Sh. T. Pakhai

38: Sh. Zoro B Khepha

39: Smt. Merijohn

40: Sh. Chikhai

41: Sh. HC. Khaihmo

42: Smt. Chhadia

43: Sh. A. Tlado

44: Sh. S. Ngiakha

45: Sh. T. Hrothlie

46: Sh. B. Beithyuheih

47: Sh. S. Kothie

48: Sh. L. Hrahi

49: Sh. L. Zakhu

50: Sh. C. Lameka

51: Sh. Tos

VERSUS

Union of India and 5 Ors.

R/b the Secretary to the Govt. of India, Ministry of Defence, Sena Bhavan 101A,
South Block, New Delhi-110011 2: The Chief Engineer
Border Road Task Force (BRTF)

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

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 Officer
Mara Autonomous District Council

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Ms Zairemsangpuui, CGC for R1 & 2

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER**

Date : 25-11-2024

Heard Mr. Victor L. Ralte, learned counsel for the petitioners. Also heard Ms. Zairemsangpuii, learned CGC for the respondent Nos. 1 & 2, Mrs. H. Lalmalsawmi, learned Government Advocate for the State respondent Nos. 3 & 4 and Mr. S. Pradhan, learned counsel for respondent Nos. 5 & 6.

2. The instant writ petition is filed for the issuance of the appropriate writ or order to the respondents on the acquisition of landed property of the petitioners for the construction of road over the land by the BRTF.

3. The case of the petitioners is that they were the owners of the landed properties within the Siaha District and were issued their respective land passes by the Competent Authority under the Mara Autonomous District Council (MADC). The respondent authorities under the BRTF undertook the construction of road within the Siaha District and notification was issued for the stretch of land along the alignment of Tipa-Laki-Lope-Lopu (TLLL) road (57 Km – 70 Km Sub-sector). The preliminary notification dated 17.05.2017 was issued under Section 11(1) of the Mizoram (Land Acquisition, Rehabilitation and Resettlement) Act, 2016 (also referred as Act of 2016). Meanwhile, the Act of 2016 was put to challenged before this Court in WP(C) No. 20/2014 and WP(C) No. 30/2014, wherein the learned Single Judge vide a common Judgment & Order dated 15.11.2017 disposed of the two writ petition by stating that the Act of 2016 enacted by the State of Mizoram could not be applied for acquisition of

land for public purposes since it is repugnant to the law made under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (also referred to as RFCTLARR Act, 2013). Thereafter, an appeal was filed against the said Judgment & Order dated 15.11.2017 before the Division Bench registered as Writ Appeal No. 70/2018. The respondent No. 3 had then issued another Preliminary Notification dated 16.10.2019 under Section 11(1) of the Act of 2016 stating that the notification issued earlier on 17.05.2017 was already lapsed for taking further action under the Act of 2016. It was specifically stated at para 8 of the notification that the said notification will not bar to make further claim under RFCTLARR Act, 2013 depending upon the outcome of the pending Writ Appeal No. 70/2018. The respondent No. 3 on 16.10.2019 further extended the Notification dated 16.10.2019 on 07.05.2021 for another period of 12 months w.e.f. 15.10.2021 to 14.10.2021. The respondent authority then prepared the Draft Award No. 10/2023 under the Act of 2016 which was submitted by the Deputy Commissioner, Siaha District vide letter dated 25.01.2023. The said letter also stated that "*It may be clarified here that the notification issued in 2017 is applied for fixation of rate of crops, etc. as this office does not have knowledge of the notification issued on 2020. Thus, the later notification is applied in this Award*", which was duly approved by the Government. Subsequently, the compensation amount was disbursed to the petitioners during the end of the month of May, 2023. The petitioners being highly aggrieved and dissatisfied with the Award No. 10/2023, has filed the instant writ petition for payment of compensation due to them as per law.

4. The learned counsel submitted that during the pendency of the instant writ petition, the Writ Appeal No. 70/2018 & Writ Appeal No. 71/2018 was disposed

of in a common Judgment & Order dated 30.10.2024, wherein the Judgment & Order dated 15.11.2017 passed by the learned Single Judge in WP(C) No. 20/2014 & WP(C) No. 30/2024 was upheld. The learned counsel for the petitioners also submitted that the instant writ petition is also covered by the judgments of a Coordinate Bench of this Court in WP(C) No. 103/2023 and WP(C) 60/2023 disposed of by a common order dated 21.11.2024 and WP(C) No. 125/2021 and WP (C) 137/2022 also disposed of by a common order dated 21.11.2024 wherein the petitioners were paid compensation under the Act 2013 and the deducted cess amount of 10% as cess was duly returned to the petitioners.

5. The learned counsel thus submits that in view of the above mentioned decision of the learned Division Bench and the Coordinate Bench of this Court, the impugned Award No. 10/2023 should be interfered/modified by directing the respondents to pay compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 with all the consequential benefits. That the respondent Nos. 5 & 6 (MADC) should be directed to release the deducted 10% cess to the petitioners immediately and that the respondent No. 4 Deputy Commissioner, Siaha should be directed to make assessment of interest in terms of Section 8 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 and direct the respondent Nos. 1 & 2 (BRTF) to sanction the cess amount and make payment to the petitioners immediately. It is also submitted that the market value of the lands of the petitioners should be enhanced in proportionate with the rate admissible to other parts of the State and hereby direct the respondents to make payment in

terms of the enhanced amount to the petitioners.

6. Ms. Zairemsangpuii, learned CGC in all fairness submits that in view of the judgment passed by the learned Division Bench in Writ Appeal No. 70/2018 and Writ Appeal No. 71/2018, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 is applicable in the instant case.

7. Mrs. H. Lalmalsawmi, learned Government Advocate submits that the State respondents do not contest the instant writ petition on the disposal of the Writ Appeal No. 70/2018 and WP(C) No. 71/2018, since she has not received any instruction or information as to whether the state respondents prefer an appeal against the Judgment of the Division Bench.

8. Mr. S. Pradhan, learned counsel for the respondent Nos. 5 & 6 submits that he does not contest the claim of the petitioners in view of the judgment of the Coordinate Bench of this Court in WP(C) No. 125/2021 and WP(C) No. 103/2023 but has submitted that the mention cess amount has not been transferred to the respondent Nos. 5 & 6 and that the collected cess amount of 10% is still with the Deputy Commissioner, Siaha.

9. On considering the submissions made by the learned counsels for both the parties, it is seen that the Writ Appeal No. 70/2018 & Writ Appeal No. 71/2018 was disposed of in a common Judgment & Order dated 30.10.2024 wherein it was held that:

“34. In view of the above discussion, we are of the view that the Legislative

Assembly of the State of Mizoram had enacted the Mizoram Land Acquisition Act by invoking the power conferred under Article 246 of the Constitution of India on the subject matter "acquisition and requisition of property" as enumerated in Entry 42 of List-III of Seventh Schedule of the Constitution and not on the subject enumerated in Entry 18 of List-II of the Seventh Schedule of the Constitution. As such, we have no hesitation in holding that the Act of 2013 is not hit by the restrictions imposed under Article 371(G) of the Constitution of India and the same is applicable in the State of Mizoram by virtue of Clause (2) of Section 1 of the Act of 2013, whereas the Mizoram Land Acquisition Act being repugnant to the Act of 2013, cannot be made applicable in the State of Mizoram in the absence of assent of the President of India in terms of Article 254 of the Constitution of India.

35. Under the constitutional scheme as per Article 256 of the Constitution, the executive power of every State is required to be exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State. Article 257 of the Constitution provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union. In such circumstances, the State of Mizoram is obliged to ensure compliance of the Act of 2013 made by the Parliament."

Thus, it is clear that the Act of 2013 is to be applied in the instant case.

10. It is also seen the facts and circumstances of the instant case is similar to the facts and circumstances of the case in WP(C) No. 125/2021 and WP (C) 137/2022 disposed of by a common order dated 21.11.2024, wherein the

learned Single Judge had also held that the case was covered by the decision of a Coordinate bench in WP(C) No. 103/2023.

The learned Single Judge in a common Judgment dated 21.11.2024 in WP(C) No. 103/2023 and 60 of 2023 had observed as follows:-

“[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.”

11. Thus, in view of the common judgment of the learned Division Bench dated 30.10.2024 in Writ Appeal No. 70/2018 and Writ Appeal No. 71/2018 and the above observations of a Coordinate Bench of this Court in WP(C) No. 103/2023 relied upon a Coordinate Bench in WP(C) No. 125/2021 and WP (C) 137/2022 disposed of by a common order dated 21.11.2024 and also considering the submissions made by the learned counsels for the respondents, this Court finds it appropriate to pass an order similar to those passed by the Coordinate Bench of this Court in WP(C) No. 125/2021 and WP (C) 137/2022 disposed of by a common Order dated 21.11.2024, by directing the State respondents to take necessary steps to pay compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with all the consequential benefits after the deduction of the amount already received by them under the Act of 2016.

Further, the Respondent No. 4 District Collector/DC Siaha, is to make

assessment of interest in terms of section 80 of the Act of 2013. All such an exercise as required, shall be undertaken by the Collector as expeditiously as possible, within a period of four (4) months from the date of receipt of applications to be submitted by the petitioners in pursuance of the same. Thereafter, after completion of all due steps, the respondents Nos. 1 & 2 (BRTF) are to sanction the assessed amount and make payment to the petitioners immediately through the District Collector/DC Siaha, within a period of 3 (three) months. The amount already received by the petitioners as compensation shall be deducted from the assessment and compensation so made.

2) Also, since a direction has already been given by this Court vide common Judgment & Order dated 21.11.2024 in WP(C) Nos. 103 and 60 of 2023 to constitute Land Acquisition, Rehabilitation and Resettlement Authority, any application submitted by the petitioners before the District Collector shall be treated as an application for reference and the Collector shall forward the same before "the Authority concerned as and when the same is established. The applications shall then be considered by the Authority in accordance with law."

3) The respondents concerned are also directed to release the deducted 10% cess to the petitioners immediately since this issue has already been settled by the Judgments of the coordinate bench of this court in dated 21.11.2024 in WP(C) Nos. 103 and 60 of 2023 as noted above.

12. With the above observations and directions, WP(C) No. 127 of 2023 stands disposed of. No cost.

JUDGE

Comparing Assistant