

GAHC030006192019



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

Case No. : LA.App./9/2019

Lalrotluangi
Sakawrtuichhun, Aizawl

VERSUS

District Collector, Aizawl and 3 Ors.
Aizawl2:Secretary to the Government of Mizoram
Public Works Department

3:Engineer in Chief
Public Works Department

4:Secretary to the Government of Mizora

Advocate for the Petitioner : Mr Anil Rinliana Malhotra

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

Linked Case : LA.App./8/2019

Vanlalfela Hrahsel
Sakawtuichhun

Aizawl

VERSUS

The District Collector
Aizawl and 3 Ors
Aizawl

Advocate for the Petitioner : Mr Anil Rinliana Malhotra
Advocate for the Respondent : Ms Linda L Fambawl(Addl.AG/GA
Mizoram)

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

JUDGMENT & ORDER

27.02.2024.

This Order will dispose of both the cases since the issues involved are similar. Heard Mr. C. Lalramzauva, learned Senior Counsel assisted by Mrs. Emily Lalrinzuali Chhangte, learned counsel for the appellants and Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General for the respondents.

[2.] Both the appeals are filed under Section 54 of the Land Acquisition Act, 1894 (L.A Act) read with Section 17 of the Mizoram Civil Courts Act, 2005 and Order 41 Rule 1 of the Code of Civil Procedure (CPC) from the Judgment & Order dated 14.08.2019 passed by the learned Addl. District Judge-III, Aizawl in L.A Case No. 3/2014 in respect of L.A Appeal No. 8/2019 and against the Judgment & Order dated 31.07.2019 passed by the same Court in L.A Case No. 4/2014 in respect of L.A Appeal No. 9/2019.

[3.] The case projected by the appellants in L.A Appeal No. 8/2019 is that he is the owner of a plot of land covered by LSC No. 103102/10/496 of 2013 (No. 1023/12/10/496 of 2013) located at Sakawrtuichhun, Aizawl with total area measuring 125692.94 Sq.ft. His land was acquired for construction of road from Sihhmui to Ramrikawn under the L.A Act by the District Collector, Aizawl (Collector) through Award No. 1/2013. The area of land of the appellant which was acquired was 15526.68 Sq.ft. Besides being paid compensation for crop damage, the appellant was compensated for acquisition of his land @ Rs. 42/- per Sq.ft. Receiving the assessed amount under protest, the appellant filed a Reference Application under Section 18 of the L.A Act before the Collector, which was then referred to the L.A. Judge for consideration. The Reference Application was registered as L.A Case No. 3/2014. Against the Reference Application, the Collector filed written statement but the other respondents did not contest the Reference Application. On the basis of the pleadings, the Reference Court framed four (4) issues and after considering the evidence of the parties passed the impugned Judgment & Order dated 14.08.2019 by enhancing the value of the land to Rs. 58/- per Sq.ft. The appellant not being satisfied is before this Court in appeal.

[4.] Similarly, the facts projected in L.A Appeal No. 9/2019 is that the appellant is the owner of a plot of land covered by LSC No. 103602/01/1301 of 2004 located at Sakawrtuichhun, Aizawl measuring 587.56 Sq.m/4170.17 Sq.ft in area. The

Collector vide Award No. 1/2013 acquired lands belonging to various individuals for the purpose of construction of road from Sihhmui to Ramrikawn and that land measuring 5390.11 Sq.ft belonging to the appellant was also included. The appellant was paid compensation @ Rs. 42/- per Sq.ft for her acquired land which she received under protest. She then filed Reference Application under Section 18 of the L.A Act, which was registered as L.A Case No. 4/2014. The Collector filed a written statement against the Reference Application while the other respondents did not contest the case. The Reference Court framed four (4) issues and thereafter, upon considering the evidence of the parties disposed of the Reference Application by awarding the appellant compensation @ Rs. 58/- per Sq.ft for her acquired land. Still aggrieved with the same, the appellant is before this Court.

[5.] Mr. C. Lalramzauva, learned Senior Counsel submits that the L.A Judge while determining the cost of the land of the appellant did not take into consideration the prevailing market value of their land and that it was grossly undervalued. Referring to the Reference Application, the learned Senior Counsel submits that according to the appellants, the market value of the land cannot be less than Rs. 1000/- per Sq.ft in view of the fact that the entire land covered by the LSC of the appellants is full of high quality stone which has been considered by the Mizoram Public Works Department as Grade-I for the purpose of construction of roads and buildings and all other masonry works. The learned Senior Counsel submits that the appellants

with the help of different types of machinery have been operating a stone quarry within their respective lands. They have also engaged 15 to 30 labourers in every working day and earning daily profits ranging from Rs. 10,000/- to Rs. 50,000/-. Considering the volume of the stone deposit within their land, it will take more than 100 years for extracting the entire stone deposit. The appellants have also been issued their respective permits for extracting minor minerals under the Mizoram Minor Minerals Concession Rules, 2000 by the Directorate of Geology & Mineral Resources and they have been paying royalty @ Rs. 40/- per Cubic meter of the minerals removed from the quarry. Therefore, the market value of the land cannot be below Rs. 1000/- per Sq.ft. The learned Senior Counsel also submits that in support of their claims, the appellants examined themselves and two (2) other witnesses in both the cases. In L.A Case No. 4/2014, one (1) defendant witness and four (4) Court witnesses were examined. The learned Senior Counsel submits that despite the claim and evidence led by the appellants, the learned L.A Judge failed to take into consideration the composition of the land of the appellants i.e., high quality stone and therefore they were running a stone quarry and making handsome profit out of it. The learned Senior Counsel also submits that relevant considerations which are to be made while assessing land compensation is provided under Section 23 of the L.A Act but however, the learned L.A Judge failed to take the same into consideration and therefore, grave injustice has been caused to the appellants by awarding them compensation lesser than what they are

entitled to. He further submits that Court may accordingly allow the prayer of the appellants or fixed appropriate value of land which it considers fit and proper. In support of his submission, the learned Senior Counsel relies upon the following authorities:-

(i) Salaha Begaum & Ors. -Vs- Special Land Acquisition Officer (2013) 11 SCC 426.

(ii) Krishan Kumar -Vs- Union of India & Ors. (2015) 15 SCC 220.

(iii) Thakur Kuldeep Singh & Ors. -Vs- Union of India & Ors. (2010) 3 SCC 794.

[6.] Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General on the other hand submits that the land to be acquired were graded into four (4) categories by the Collector i.e., Group A, B, C & D. The land of the appellants belongs to the Group C category and the value of the land was fixed at Rs. 42 per Sq.ft. The appellants not being satisfied approached the Reference Court who then taking into account the market value of the land and the fixation of land value in other similar cases under the same Award fixed Rs. 58/- per Sq.ft as the land value. The same was also not only accepted but also relied upon by the counsel for the appellants before the L.A Judge. Therefore, the appellants are estopped from claiming any further enhancement when Rs. 58/- per Sq.ft as the land value was already accepted by them. The learned Addl. Advocate General further submits

that the learned L.A Judge has also rightly detected the fact that the total area of the land in respect of the appellant in L.A Appeal No. 9/2019 being only 0.29 bighas = 387.56 Sq.m = 4170.70 Sq.ft, the Collector had made an assessment for an area of 5390.11 Sq.ft for compensating the appellant. Due to such calculation, the appellant concerned has been wrongly benefited which was discovered and rectified by the learned L.A Judge. Therefore, no interference is called for on the rectification made by the Court below.

[7.] The learned Addl. Advocate General further submits that although a reference has been made regarding L.A Appeal No. 7/2019 by the counsel for the appellants before the L.A Judge but the same pertains to Group B land and therefore, not relevant for the present case. The learned L.A Judge by framing four (4) issues have taken into consideration the claims made by the appellants for enhancement of compensation and finally came to the conclusion through the impugned judgments. As such, there is no merit in the instant appeals and the same should be dismissed.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record, including the original record pertaining to Award No. 1/2013 that was requisitioned. From the record, it is seen that the land under LSCs are graded according to location for fixation of market value under five (5) Grades/Groups. Group C land which we are concerned

about in the present appeals has a fixation of Rs. 42/- per Sq.ft as land value. Reason given for such fixation are (i) Sakawrtuichhun village area: The proposed new road alignment being around 50 meters below the existing road in most of the area, the gradient also being slightly steep, fixation of Rs. 42/- per Sq.ft was found appropriate (ii) Lungverh and Power grid area: There is a precedence of Rs. 42/- in the acquisition for Power grid approach road widening in the year 2013 and therefore, Rs. 42/- was found appropriate. The land of both the appellants fall under this category and therefore, they both were awarded compensation as per the fixed rate of Rs. 42/- per Sq.ft towards land value. Being dissatisfied, they filed separate Reference Applications claiming that they were in possession of land which was rich in good quality stones and that they were running a stone quarry by installing various machineries and engaging a good number of manual work force. On the basis of their claim, the Reference Court framed four (4) issues. The first issue was regarding maintainability of the Reference Application and it was answered in the affirmative. In respect of the second and third issues, which was as to whether the market value of the land of the appellants was undervalued by the Collector and whether the appellants are entitled to enhancement. The learned Reference Court while considering these two (2) issues noticed that the area of land acquired in respect of the appellant in L.A Appeal No. 9/2019 was more than what was given in her LSC. The evidence led by the appellant and also the report of the Local Commission constituted by the Court were also referred to but

however, the Reference Court decided to adopt the rate fixed by a coordinate Bench of the same Court in L.A Case No. 7/2014 vide Judgment & Order dated 27.06.2018 arising out of the same Award i.e., Rs. 58/- per Sq.ft for Group C land. It may be seen that neither the Local Commission report, which examined lands sold/bought in and around the area and thereafter concluding that market value should be Rs. 120/- per Sq.ft nor the claim of the appellants running stone quarry were taken into consideration. It may further be seen that the fourth and last issue framed by the learned Reference Court was as to whether the appellants were entitled to be paid compensation due to loss of income from their stone quarry was also not considered. All that the Court held was that it did not find any plausible reasons to decide prospective loss for denying operation of stone quarry of the appellants in their favor for want of sufficient evidence. It may however be seen that the issue framed is not only regarding prospective loss but the claim of the appellants that they are operating stone quarry and their respective land being rich in good quality stone deposits, they should be appropriately compensated. From a perusal of the impugned Judgment & Order, it is seen that the Reference Court has completely failed to take this aspect or claim into consideration. The claim of the appellants is for enhancement of the compensation amount by taking into account the ingredients of their land and the activities they were engaged into before acquisition. The Apex Court in *Thakur Kuldeep Singh & Ors.* (supra) held that the market value determined should be just, adequate and reasonable. In other words,

the Judge who sits in the armchair of the willing buyer and seeks an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions is a relevant factor. The Apex Court in *Krishan Kumar* (supra) in the given facts of that case and by relying upon the earlier judgment of the same Court held that when the evidence produced by the parties is not sufficient to determine the compensation with exactitude, the principle of 'guesstimate' can be resorted to, provided the same are within the limitations specified under Section 23 & 24 of the L.A Act.

[9.] Thus, upon due consideration, this Court finds that the claim for enhanced value of land due to the nature of composition of the land of the appellants having not been considered, the matter should be remanded back to the Reference Court for reconsideration from the stage of appreciating the evidences. It is therefore ordered accordingly. Both the impugned Judgment & Order are hereby set aside.

[10.] The parties are directed to appear before the learned District Judge on 12.03.2024 along with a certified copy of this Order whereafter, the learned District Judge shall either proceed with the matter itself or endorse the matter to any of the competent Court for consideration of the case from the stage of appreciation of evidence. It is also made clear that the parties should be given due opportunity of hearing by the Court concerned before a final decision is taken. The learned Court

re-considering the matter should keep in mind that the total area of land belonging to the appellant in L.A Appeal No. 9/2019 or L.A Case No. 4 of 2014 as per her LSC is 0.29 bighas = 387.56 Sq.m = 4170.17 Sq.ft. Further, any payments already made will have to be adjusted depending upon the outcome of the reference petitions.

[11.] With the above observation and direction, both the Appeals stands disposed of. Registry shall send back the original records that was requisitioned and received from the D.C, Aizawl immediately.

JUDGE

Comparing Assistant