

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL**

L.A Case No.4/2013

P R E S E N T

Mrs.Helen Dawngliani
Addl. District & Sessions Judge – III

1. Lalengkimtitheia
2. Lungmuana
3. Lallungliani
4. Vanlalthlana
5. Thiamchawngi
6. Ononjoy
7. Nilbahadur
8. Manui
9. Dorchoram
10. Rambo
11. Ramzauva
12. Daia
13. Lalchawimawia
14. Nobiram
15. Kapmawia
16. Lalngilneiha
17. Tlansan Hmar
18. Khetrojoy
19. Rinchhana
20. Vuana-I
21. Manjarung
22. Satirai
23. Lawmkima
24. Rinzuala
25. Zorinkima
26. Dula
27. Mohindro
28. Dosanga
29. Nakurai
30. Rammawia
31. Dobola
32. Thanga
33. BudaSingh
34. Nokorai
35. Taudulha
36. Lalengkima
37. Nasarung
38. Joela
39. Muanpuia
40. Ropuia
41. Nisia
42. Rinchhana
43. Ramliana

44. Mungoti
 45. Melkoram
 46. Baikhonto
 47. Nironjon
 48. Linjorai
 49. Chandiram
 50. Chotoino
 51. Burdirram
 52. Nadurai
 53. Lalmangaiha
 54. Ramzauva
 55. Subidra
 56. Dilcham
 57. Satirai
 58. Lalfakzuala
 59. Rangnangti
 60. Jobinti
- All are Rajdali.

... Applicants

Versus

1. District Collector, Kolasib District, Kolasib
 2. Northern Front Railway represented by
Dy.Chief Engineer/CON/II/SCL Silchar
 3. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
Aizawl, Mizoram
- Respondents

Date of Hearing	15.01.2014
Date of Judgment & Award	31.01.2014

APPEARANCE

- | | | | |
|----|---------------------|-------|--|
| 1. | For the Applicants | | Mr. K. Kawlkhuma
Mr. Lalropara Singson, Advocates |
| 2. | For Respondent No.1 | | None |
| 3. | For Respondent no.2 | | Mr. Rupendra Mohan Das, Advocate |
| 4. | For Respondent No.3 | | Mrs. Rose Mary, Addl. GA |

JUDGMENT & AWARD

1. The applicants are landowners within the land acquired for construction of new railway line by NF Railways from Bairabi to Sairang. Notification u/s 4 of the Land Acquisition Act, 1894 was issued by the Govt. of Mizoram, Revenue Department vide memo No. K.12011/25/2011-REV dt.2.8.2011. Thereafter declaration u/s 6 of the said Act was issued by the Govt. of Mizoram vide memo no.K.1200/25/2011-REV dt.24.1.2012. Thereafter Award No.1 of 2012 (Part C-Hortoki) was passed by the Respondent No.1 on 28.9.2012.

2. Aggrieved by Award No.1 of 2012(Part C-Hortoki) the petitioner submitted an application u/s 18 of the Land Acquisition Act to the Respondent No.1 for payment of land value alongwith solatium and interest as per law. The matter was then referred to this court for adjudication. The grievance of the petitioners as highlighted in the reference application is that the Collector failed to make any assessment for value of the land while awarding Rs.25/-per sq.ft for those lands covered by land Settlement Certificates. The petitioners possess Village Council Pass for their lands. They pray that they may be given land value at the rate fixed by the District Collector i.e Rs.25/-sq.ft alongwith solatium and interest, interest @ 9% u/s 28 of the L.A Act and interest @ 9%pa as per section 34 of L.A.Act.

3. None appears for Respondent No.1 despite due receipt of Notice. Respondent submitted written objection through their counsel Mr. Rupendra Mohan Das but failed to further contest the claim. Addl. GA appeared for respondent No.3 but no objection has been filed by the said respondent.

4. Respondent No. 2 in its written objection have submitted that they have paid the compensation assessed by the District Collector to the said Collector for further disbursement to the beneficiaries/land owners. No further payment is due to them. The said respondent submitted that the cause of action against them will arise only if the court passes any Order/direction/award for further payment. It was also highlighted in the objection that since the railway authorities has nothing to deal with the appellants in the proceedings their appearance/non-appearance is redundant and that they have got no reason to submit anything since compensation was assessed by the District Collector.

5. Though only Respondent No.2 filed objection, the following issues were framed:-

- i) Whether the application is maintainable in its present form and style?
- ii) Whether the applicant is entitled to payment of solatium and interest as per sec. 23(1A) & 23(2) LA Act?
- iii) Whether the applicants are entitled to payment of market value of the lands, if son, to what extend?

6. In support of their submission, petitioners adduced evidence by examining Rinchhana s/o Ramsadu whose examination-in-chief on affidavit was submitted. However, none of the witnesses were cross examined.

7. The evidence of the lone witness for the petitioners in brief is that they are the legal and rightful owners of the acquired lands. The Village Council Passes

were issued to them by the Village Council/Court of Hortoki for house site in terms of the power conferred upon them by sec.3(1) of the Lushai Hills District(house Sites) Act, 1953. They urged that they have equal rights with that of settlement holders. The witness also depose that they regularly pay Zoram Chhiah and House tax to the Revenue Department, Govt. of Mizoram and due to compulsory acquisition of their lands they have already submitted their Passes to the District Collector, Kolasib. The witness deposed that none assessment of the value of their lands is discriminatory and that they are also entitled to payment of solatium and interest u/s 23(1A) and Sec.23(2) L.A Act, payment of interest u/s 28 and 34 of the L.A Act. The witness also stated that on 7.1.2013 they have received their respective share of compensation in terms of the Award under protest.

8. Mr. K. Kawlkhuma, the Ld. Counsel for the petitioners in order to support the claim of the petitioners have placed on record the Judgment & Order dt.18.11.2011 passed by the honb'le Gauhati High Court in RFA No.22 of 2010(State of Mizoram & Ors versus Lalbiakthanga) which was affirmed by the honb'le Apex Court vide its Order dt.19.2.2013 in Civil Appeal No.2731 of 2012. The ld. Counsel has also produced the decision of the honb'le Apex court in the case of Special Land Acquisition and Rehabilitation Officer, Sagar vesus M.S.Seshagiri Rao & Anr reported in 1968 AIR 1045. The ld. Counsel however submitted that they would not press for payment of interest u/s 28 & 34 LA Act.

9. I have heard the Ld. Counsel and perused the materials on record including the Award No.1 of 2012 (Part C-Hortoki). From the apportionment of Compensation, it is noticed that no assessment has been made for land value in respect of lands covered by Periodic Patta, Village Council Pass and District Council Pass. It is also noticed that in respect of such Passes, compensation has been paid for damage caused to buildings (Kutchas) and crops. A conjoint reading of sec.18 and 23 of the Land Acquisition Act makes it clear that reference court is passed the stage of ownership or title of the land. Further in the case at hand, no objection has been raised with regard to ownership of the land or genuineness of the Passes possessed by the petitioners.

10. In the case of (State of Mizoram & Ors versus Lalbiakthanga (Supra) the honb'le Gauhati High Court (Aizawl Bench) as held as follows:-

“15. Under Section 8 of the Mizo District (Land and Revenue) Act, 1956, settlement holder has been defined in Section 2(8). As per the said definition, “settlement holder” means any person other than a pass holder, who has entered into an engagement with the District Council to pay land revenue and is deemed to

have acquired the status of settlement holder under Section 7 of the said Act. Section 7 of the said Act provides that the settlement holder shall have heritable and transferable right of use on or of sub-letting in his land subject to 2 (two) conditions, namely:

“(1) payment of all revenue and taxes from time to time legally assessed or imposed in respect of the land, and

(2) such terms and conditions as are expressed in his settlement lease and the rules made thereunder”.

16. In the present case the respondent is holding a Periodic Patta since 1976 continuously till the acquisition of the land. Therefore, the contention advanced by the appellant that the respondent being a Periodic Patta holder is not entitled to any compensation is without any substance and is hereby rejected. In any case, the crucial expression appearing in Section 18 of the Act is “person interested”. Any “person interested” is defined in Section 3(b) of the Act. As per the said definition, the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

The said decision of the honb’le Gauhati High Court was challenged before the honb’le Apex Court which was registered as Civil Appeal No.2731 of 2012. Vide Order Dt.19.2.2013 the honb’le Apex Court as held “During the course of hearing, learned counsel for the parties agreed that the impugned judgment may be modified and the rate of compensation determined by the Reference Court, as affirmed by the High Court, may be modified from Rs.40/- per square feet to Rs.38/-per square feet.

In view of the statement made by learned Counsel, this appeal is disposed of in the following terms.....”.

11. From a reading of the above two Judgments, it is clear that recognizing the right of a periodic patta holder, the State of Mizoram who filed an appeal before the honb’le Apex Court came to an agreement with the respondent only on the value of the land. In other words, it can be understood that the right of the Periodic Patta holder to receive compensation for value of the land is no longer res integra and that even Patta holders are “persons interested’ within the meaning of section 3(b) of the Act and are entitled to compensation for the land.

12. The petitioners in the instant case are holders of Village Council Pass and District Council Pass. Village Council Passes are issued under the provision of the Lushai Hills District (House Sites) Act, 1953. Section 3 of the said Act authorizes

the Village Council to allot sites within its jurisdiction for residential and other non-agricultural purpose with the exception of shops and stalls which include hotels and other business houses of the same nature. Section 6,7 & 8 deals with the manner in which the occupants can be evicted. Recognizing the rights of the petitioners over the said lands, they have been compensated for the damage caused to their houses/crops due to compulsory acquisition of their lands vide Award no.1 of 2012(Part C-Hostoki).

13. Section 3(a) of the Land Acquisition Act defines land as – *“the expression ‘land’ includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth”*. Considering the fact that the petitioners in the instant case has been granted compensation for crops and houses and keeping in mind the definition of ‘land’ as stated above as well as the definition of ‘person interested’ u/s 3(b) of the land Acquisition Act, I am of the view that there is no reason why the petitioners cannot be regarded as ‘persons interested’ within the meaning of the Act.

14. In the case of **Special land Acquisition & Rehabilitation Officer, Sagar versus M.S.Seshagiri Rao & Anr (supra)** wherein the government of Mysore granted a plot of land to the respondents with the added condition that “in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation”. The Government acquired the land by adopting the procedures prescribed by the land Acquisition Act but no compensation was awarded to the grantees for the land. The High Court, in appeal held that since the government failed to exercise the right which it had under the terms of the grant and had acted under the Land Acquisition Act, the grantees were entitled to compensation as provided under the Act. In appeal before the honb’le Apex Court, it has been held that after obtaining possession of the of the land in pursuance of statutory authority under section 17 of the Land Acquisition Act, the Government could not seek to exercise the option conferred by the terms of the grant. The grantees were entitled to compensation for the land of which the ownership was vested in them. But in assessing compensation payable to the grantees, existences of condition which severely restricted their right could not be ignored. The Act is silent as to the acquisition of partial interests in land but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, the market value of the land must be determined and apportioned amongst the persons entitled to the land. Where the interest of the

owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog.

15. In the case at hand, there is no clause in the Passes possessed by the petitioners severely restricting their rights nor is there any claim from the government claiming rights over the land. It is also not in dispute that the petitioner pay taxes regularly for their lands and their ownership is never put into challenge.

16. For the reasons indicated above, I am of the view that no reasonable ground exist to deprive the petitioners who posses Village Council Passes of being compensated for the value of the land covered by compulsory acquisition.

17. Since the petitioners are satisfied with the rate fixed by the District Collector in respect of Land Settlement holders which is Rs.25/- per sq.feet, the District Collector, Kolasib District, Kolasib shall reassess the compensation payable to the petitioners by including the value of the land which is to be calculated @ Rs.25/- per sq.feet alongwith 30% as solatium on the market value u/s 23(2) of the land Acquisition Act and interest @ 12% pa on the market value u/s 23(1A) of the said Act within a period of 2 months from today. The amount so calculated shall be satisfied by Respondent No. 2 NF Railways within a period of 2 months thereafter and disbursed to the Claimants by the Respondent No. 1 i.e. District Collector, Kolasib District, Kolasib.

18. Within the above Order, the reference petition stands disposed off.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

Memo No. AD&SJ/2013 : Dated Aizawl, the 31st January, 2014

Copy to: -

1. Applicants through Counsel Mr. K. Kawlkhuma, Advocate.
2. District Collector, Kolasib District, Kolasib.
3. Northern Front Railway represented by Dy.Chief Engineer/CON/II/SCL Silchar.
4. Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department through Counsel, Mrs. Rose Mary, Addl Govt. Advocate.
5. Registration Section.
6. Guard File.
7. Case Record.

P E S H K A R