

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

L.A Case No.24/2013

P R E S E N T

Mrs. Helen Dawngliani
Addl. District & Sessions Judge

1. Phirthanga S/o Thanvela
R/o Mualkhang
2. Phirthanga S/o Thanvela
R/o Mualkhang
3. Phirthanga S/o Thanvela
R/o Mualkhang
4. Phirthanga S/o Thanvela
R/o Mualkhang
5. F. Vanlalhluna R/o Mualkhang
6. Lalthianghlina S/o Sangthuama
R/o Mualkhang
7. Lalthianghlina S/o Sangthuama
R/o Mualkhang
8. Laltlanzovi D/o Danthanga
R/o Mualkhang
9. Thanliana S/o Vawma
R/o Mualkhang
10. Lahnuna S/o D. Lalauva
R/o Mualkhang
11. Lalawmpuia S/o Rokhuma
R/o Mualkhang
12. Lalrinkima S/o Patea
R/o Mualkhang
13. Lalruata Ralte S/o Manhleia
R/o Mualkhang
14. Lalthlamuanpuii D/o Biakliana
R/o Mualkhang
15. Lalrimawia S/o Siana
R/o Mualkhang
16. Lalhlira S/o Zakiamlova
R/o Mualkhang
17. Lalpianmawia
18. Ngurhmingsangi D/o Rothuama
R/o Mualkhang
19. M. Lallawmawmi
R/o Mualkhang
20. C. Rochungnunga S/o Laldailova
R/o Mualkhang
21. Khawvelthanga S/o Lalthanzuala
R/o Mualkhang
22. Khawvelthanga S/o Lalthanzuala
R/o Mualkhang
23. C. Lalthangmawia S/o C. Lalenga
R/o Mualkhang
24. Rothanga S/o Kawla (L)
R/o Mualkhang
25. Kapzuali D/o Hminga
R/o Mualkhang

26. Lalmawipuia H/o L.H. Zarzovi
R/o Mualkhang
 27. Lianhlira S/o Rinliana
R/o Mualkhang
 28. H. Laltlanliana S/o Kaptluanga (L)
R/o Mualkhang
- ... 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 ... 23.06.2014
Date of Judgment & Award ... 27.06.2014

A P P E A R A N C E

1. For the Applicants ... Ms. N. Lalzawmliani, Advocate
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

J U D G M E N T & A W A R D

1. The applicants are land owners 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 followed by Award No.1 of 2012 (Part E-Mualkhang) by the Respondent No.1 on 28.1.2013.

2. Aggrieved by Award No.1 of 2012 (Part E-Mualkhang) the petitioners submitted an application u/s 18 of the Land Acquisition Act to the Respondent No.1. The matter was then referred to this court for adjudication. The grievance of the petitioners as highlighted in the reference applicants are that they are owner of lands covered by Periodoc Pattas, Village Council Passes and District Council Passes. The District Colloector, while making assessment of compensation failed to make any assessment for value of the land while awarding Rs. 25/- per sq.ft for those land owners who posses Land Settlement Certificates. They urged that being deprived of payment for value of land only because they are not settlement certificate holders is arbitrary and clear discrimination. They submitted that the said deprivation is violation of their Right

enshrined in the Constitution of India under Article 300 A. 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.

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 applicants who are owners of Village Council Passes and Periodic Pattas are entitled to payment of land value as settlement holders?
If so, to what extend?
- iii) Whether the applicants are entitled to the reliefs claimed, if so, who is liable to make payment?

6. In support of their submission, petitioners adduced evidence by examining three witnesses namely Rothanga S/o Kawla (L) R/o Mualkhang and Phirthanga S/o Thangvela R/o Mualkhang. Examination-in-Chief of these witnesses on affidavit were submitted and documents were exhibited. However, none of the witnesses were cross examined.

7. It is seen from the evidence of the 2 witnesses that they possess Periodic Patta and Village Council Pass which falls within the lands acquired by Respondent No.2 i.e. NF Railways vide Award no. 1 of 2012 (Part E-Mualkhang) PW Phirthanga stated that the Periodic Patta was issued under the Mizo District (Agricultural Land) Act, 1963 and PW Rothanga stated that their Village Council Pass was issued under the Lushai Hills District (House sites) Act, 1953. Both of them stated that while apportioning the Award, the District Collector did not calculate the market value of the land whereas for Settlement Certificate Orders, market value of Rs. 25/sq.ft. was given. The witnesses stated that in view of the manner in which their respective Pattas/Pass were issued, there is no reason

why they should be deprived the market value of the land. The witnesses in addition has also made a claim for payment of solatium and interest. According to them, non payment of market value of the land to Periodic Patta and VC Pass holders while giving the same to Settlement holders is arbitrary, discriminatory and cannot withstand the scrutiny of law and that it is violative of Article 300A of the Constitution of India.

8. Ms. N. Lalzawmliani, 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. Ld. Counsel has fairly submitted that some of the petitioners are amongst the persons whose ownership were re-verified by the Govt. during pendency of the case. The ld. Counsel therefore submitted that in respect of those persons whose ownership is re-verified they will not claim for any payment of compensation until their status is clarified by the Govt.

11. I have heard the Ld. Counsel and perused the materials on record including the Award No.1 of 2012 (Part E-Mualkhang). 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 (Kutcha) and crops.

12. 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 expereessed 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 as “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. However, 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.....”.

13. 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 recognised by the State and their only grievance is with regard to the rate of market value. Accordingly, even Periodic Patta holders are persons interested within the meaning of Sc. 3(b) of the Act and are entitled compensation.

14. In the instant case, Petitioners No. 1 and 10 whose name figure in Sl. No. 1 & 58 of the Award are Periodic Patta holders. A reading of the Apportionment of the Award No.1 of 2012 (Part-E-Mualkhang) shows that assessment have not been made for the value of the land of these Periodic Patta holders. The grievance of these petitioners are squarely covered by the decision of the honb’le Gauhati High Court which have not been interfered by the honb’le Apex Court. Situated thus, there is no reason why the petitioners who are similarly situated should be deprived of payment of the value of their lands falling within the area for compulsory acquisition.

15. The rest of the petitioners are holders of Village 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 E-Mualkhang).

16. 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.

17. Further, upon perusal of one of the Periodic Patta enclosed to the reference application which is exhibited as Ext. P-5 it is noticed that one of the conditions is *“9. This Periodic Patta may be cancelled without compensation at any time even before the expiry of the period of allotment, if the same is required for the collection of the Agricultural products in it”*. In spite of the presence of such a clause, holder of Periodic Patta has been regarded as person interested within the contained meaning of Sec. 6(a) LA Act. In the case of **Special land Aquisition & 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 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.

18. In the case at hand, there is no clause in the Pass possessed by the petitioners severely restricting their rights nor is the government claiming rights over the land.

19. For the reasons indicated above, I am of the view that no reasonable ground exist to deprive the petitioners who possess Village Council Passes from payment compensation for value of the land.

20. 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.

It is made clear that no payment will be given to those petitioners whose ownership was re-verified during pendency of this application. Their status is subject to the re-verification report.

21. The case stands disposed off accordingly.

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

Memo No. _____AD&SJ/2014 : Dated Aizawl, the 27th June, 2014

Copy to: -

1. Applicants through Counsel Ms. N. Lalzawmliani, Advocate.
2. District Collector, Kolasib District, Kolasib.
3. Northern Front Railway through Mr. Rupendra Mohan Das, Advocate.
4. Secretary, LR & S through Counsel, Mrs. Rose Mary, Addl. Govt. Advocate.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R