

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.13/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

Zoramchhana

...Applicants

Versus

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

..... Respondents

Date of Hearing 4.6.2013

Date of Judgment & Award 27.6.2013

A P P E A R A N C E

1. For the Applicants Mr. C.Lalrinpuia
Ms.Cicily Zonunfeli 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

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

Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-

REV dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. The notification was published in the official gazette and in two daily newspapers. Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Thereafter, Draft Award No.1 of 2012(Part-C- Hortoki) dt.13th Sept. 2012 was made by the Respondent No.1 and the same was approved by the Government of Mizoram, Revenue Department vide its letter No.K.12011/25/2011-REV dt.24th Sept. 2012.

Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter was proceeded Ex-parte against the Respondent No.1(District Collector, Kolasib District, Kolasib) vide Order dt.24.5.13. Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance was made by the said respondent. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

Though in the application made u/s 18 of the Land Acquisition Act, 1894, claim was made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act. The Ld. Counsel for the applicants, on 24.5.2013, submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
2. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

I have heard the Ld. Counsels. Apart from the respondent No.2 no objection is received from respondent No.1 & 3. As no objection is filed by Respondent

No.3 and no instruction is given, the Ld.Addl.GA have no submission. The Mr.C.Lalrinpuia Ld. Counsel for the applicants submitted that Award No. 1 of 2012 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act though payment of the same is mandatory. The Ld. Counsel also submitted that at the time of pronouncement of the Award, neither the applicants nor their representatives were present and when they received the compensation in the month of January, 2013 in terms of the Award, the petitioners only came to learn about the essential contents of the Award. The Ld. Counsel argued that since no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act.

Before making a decision on the issues, it is first necessary to examine whether the applicants are barred by limitation and whether they are barred u/s 31(2) of the Land Acquisition Act?

Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court has enclosed a certified copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.9.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. In the absence of such material, I see no reason why the applicants cannot be provided with 6 (six) months as per sec.18(2)(b) of the Land Acquisition Act, to make an application for reference to the Court u/s 18 of the said Act. In the instant case, application for reference u/s18 of the Land Acquisition Act was received by the office of the District Collector, Kolasib District on 14.3.2013, which is clearly within 6 months from January, 2013 when the award was received by the applicants under protest.

With regard to the receipt of their respective share of compensation in terms of the Award, the applicants asserted that in the month of January 2013 when they received the compensation in terms of the Award, they only came to know about the contents of the Award.

ISSUE No.1

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire compensation awarded and exclusion of the same would violate the statutory right of the applicants. The applicants are thus entitled to payment on interest @ 12%pa

on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector**_reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs._____/-(Rupees _____) for the period commencing from 2nd Aug.2011 i.e notice u/s4(1)of LA Act to 13th Sept. 2012 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs._____/-(Rupees _____) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the

presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest.

Announced in open court and given under my hand and the seal of this court on this the 27th day of June, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.5/2013

P R E S E N T
Mrs.Helen Dawngliani

Addl.District & Sessions Judge – III

1. Nunmawia
S/o Ramprosad
R/o Dilzau
2. F. Laldinpuii
D/o Vanlalchhuanga
R/o Kolasib
3. Aspro C/o Lalhruaitluangi
R/o Kolasib
4. Vanlalchhuanga S/o Thangluaii
R/o Kolasib
5. Lalmalsawmi W/o Lalthansanga
R/o Aizawl.
6. Sasnorai R/o Rajdali
7. Dawrchawram R/o Rajdali
8. Lalfakzuala S/o Lungsenham
R/o Rajdali
9. Raimona S/o Aspro
R/o Rajdali
10. Lalthansanga S/o V.L Hruaia
R/o Aizawl
11. Varziki D/o Mankunga
R/o Aizawl
12. Khetrojoi C/o C.Lalhmingliana
R/o Rajdali
13. Vanlaldiki D/o Vanlalchhuanga
R/o Kolasib
14. Lalmalsawmi W/o C. Lalrinpuia
15. Aspro S/o Muithaila
R/o Rajdali
16. Manui C/o Ronjona
R/o Rajdali
17. Nironjon S/o Ramzauva
R/o Rajdali
18. Liporjoy C/o Remthangi
R/o Rajdali
19. Lalngilneia S/o Golkoram
R/o Rajdali
20. Lalmangaiha S/o Dappharai
R/o Rajdali
21. Dilcham S/o Kesoh
R/o Rajdali
22. Kholoti C/o Tlanmawii
R/o Kolasib
23. Lalchhuanthangi D/o C.Lianzuala

- R/o Kolasib
- 24.Mohindro S/o Sobiram C/o P.L Zohmingliana
- 25.Lawmkima S/o Horena
- R/o Rajdali
- 26.Chotoino S/o Boronjoy
- R/o Rajdali
- 27.Lahlira S/o Zankhuanga
- R/o Aizawl
- 28.Thangliantluanga S/o K.T Vunga
- 29.Lalhruaia S/o Sangkhuma
- R/o Kolasib
- 30.Lalthlamuani D/o Sangkhuma
- R/o Lungdai
- 31.Ruatsanga S/o Nuntluanga
- Hortoki
- 32.Vanlalrui S/o Lalnuntluanga
- R/o Hortoki
- 33.Lalchhantluangi D/o Lalnuntluanga
- R/o Hortoki
- 34.Benamina S/o Rozama
- R/o serkhan
- 35.Hmingdailova s/o Zaia
- R/o Serkhan
- 36.Lalvensanga
- 37.Hmangaihsangi S/o Hmingdailova
- R/o Serkhan
- 38.Lalzamlova S/o Sangkhuma
- 39.Lalnuntluanga S/o Challianngenga
- R/o Hortoki
- 40.H.K Lalbiaknunga S/o Rohmingthanga
- R/o Hortoki
- 41.H.Vanlalsiama S/o Lalbiakchhunga
- R/o Hortoki
- 42.Rochhingpuii D/o Thangmawia
- R/o Kolasib
- 43.Zonunsanga S/o H. Vanlalpeka
- R/o Kolasib
- 44.Vanlalzawmi D/o R. Lalawmpuia
- R/o Bairabi
- 45.Remsia S/o Piangthanga
- R/o Aizawl
- 46.Lalngakliani D/o Zangenga(L)
- R/o Hortoki
- 47.Vanlalawmpuia S/o Denghmingliana
- R/o Bairabi
- 48.Zothanpari D/o Thanhanga

R/o Aizawl
49.Hmangaihzuala S/o Nunziri
R/o Hortoki
50.Lalmuanpuia S/o Nunmawia
R/o Hortoki

.....Applicants

Versus

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

..... Respondents

Date of Hearing 21.6.2013

Date of Judgment & Award 27.6.2013

A P P E A R A N C E

1. For the Applicants Mr. Lalropara Singson
Ms.K.Kawlkhuma,
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

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

1. Applicants are land owners whose lands fall within the acquired lands covered by Award No. 1 of 2012(Part-C-Hortoki). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was signed by the Respondent No.1 on 13th September 2012 and approval by the Government was conveyed to the said respondent vide letter No.K.12011/25/2011-REV dt.24th Sept.2012.

Being aggrieved by Award No.1 of 2012(Part-C-Hortoki), the applicants made an application u/s 18 LA Act to the District Collector, Kolasib and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) vide Order dt.21.5.13. Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance has been made by the said respondent. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The reference application is made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act. The Ld. Counsel for the applicants on 21.5.2013 submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

4 In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

- i. Whether the application is maintainable in its present form and style?
- ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
- iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

5. I have heard the Ld. Counsel. Apart from the respondent No.2 no objection is received from respondent No.1 & 3. As no objection is filed by Respondent No.3 and no instruction is given, the Ld.Addl.GA have no submission. Mr.Lalropara Singson, Ld. Counsel for the applicants submitted that the Collector failed to give immediate notice of the Award which was in clear violation of section 12 LA Act and as such the applicants are entitled to enjoy sec.18(2)(b)LA Act. The Ld Counsel also submitted that the applicants received their respective share of compensation in terms of the Award on 7.1.2013 under protest and even if the date of receipt of the award is taken as the knowledge of the Award, the applicants are well within time and not barred by limitation. Mr.Lalropara further submitted that Award does not include Solatium and interest u/s 23(1A) and 23(2)LA Act which is mandatory and prays to award the same to the applicants.

6. Issue No.1

Whether the suit is maintainable in its present form and style ?

7. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court include a certified copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.9.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12 of the LA Act is also not seen from the record. In the instant case, as stated by the Ld. Counsel for the applicants, compensation in terms of the Award was received under protest on 7.1.2013. The application for reference u/s18 of the Land Acquisition Act was forwarded to the Court for adjudication by the District Collector, Kolasib District on 6.2.2013 and the same was received on 12.2.2013. Since the application u/s 18 LA Act does not bear any date, even if 6.2.2013 is taken as the date of application, it is well within 6 weeks from 7.1.2013 the applicants received compensation in terms of the Award under protest.

8. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

9. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

10. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

11 A perusal of the Supplementary Award No.1 of 2010 clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

12. A reading of section 23(1A)and 23(2) LA Act shows that they are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. Moreover, in the instant case, the applicants/landowners have been disbursed their respective share of compensation in terms of the Award. The honb'le apex court in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case"*

leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

Keeping in mind the interpretation given by the honb'le Apex Court, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.2194309/-(Rupees Twenty One Lakh Ninety Four Thousand Thee Hundred And Nine) for the period commencing from 2.8.2011 i.e notice u/s4(1)of LA Act to 24th Sept. 2012 i.e date of approval of Award.

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.47,78,775/-(Rupees Forty Seven Lakh Seventy Eight Thousand Seven Hundred And Seventy Five) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest.

Announced in open court and given under my hand and the seal of this court on this the 27th day of June, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

A P P E A R A N C E

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

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

1. Applicants are land owners whose lands fall within the acquired lands covered by Award No. 1 of 2012(Part-C-Hortoki). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was signed by the Respondent No.1 on 13th September 2012 and approval by the Government was conveyed to the said respondent vide letter No.K.12011/25/2011-REV dt.24th Sept.2012.

Being aggrieved by Award No.1 of 2012(Part-C-Hortoki), the applicants made an application u/s 18 LA Act to the District Collector, Kolasib and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter has been proceeded in the absence of the Respondent No.1&2 in terms of Order dt.21.5.13. Respondent No.3 i.e Land & Revenue Department, Government of Mizoram though represented by the Ld.Addl.GA did not file any objection despite sufficient opportunity being offered for the same.

3. The reference application has been made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act. The Ld. Counsel for the applicants on 21.5.2013 submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

4 In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

- i. Whether the application is maintainable in its present form and style?
- ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
- iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

5. I have heard the Ld. Counsel. As no objection is filed by Respondent No.3, the Ld.Addl.GA did have no submission. Mr.Lalropara Singson, Ld. Counsel for the applicants submitted that the Collector failed to give immediate notice of the Award which is a clear violation of section 12 LA Act and as such the applicants are entitled to enjoy sec.18(2)(b)LA Act. The Ld Counsel also submitted that the applicants received their respective share of compensation in terms of the Award on 16.1.2013 under protest and even if the date of receipt of the award is taken as the knowledge of the Award, the applicants are well within time and not barred by limitation. Mr.Lalropara further submitted that Award does not include Solatium and interest u/s 23(1A) and 23(2)LA Act which is mandatory and prays to award the same to the applicants.

6. Issue No.1

Whether the suit is maintainable in its present form and style ?

7. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court include a certified copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.9.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. In the instant case, as stated by the Ld. Counsel for the applicants, compensation in terms of the Award was received under protest on 16.1.2013. The application for reference u/s18 of the Land Acquisition Act was submitted to the District Collector, Kolasib on 18/2/2013 and forwarded to the Court for adjudication by the District Collector, Kolasib District on 6.3.2013 and the same was received on 13.3.2013. Since Notice u/s 12(2) LA Act have not been issued, the date of knowledge has to be taken as the date of receipt of compensation in terms of the Award i.e 16.1.2013. The application u/s 18 LA Act was submitted on 18.2.13, which is well within 6 weeks from 16.1.2013 i.e when the applicants received compensation in terms of the Award under protest.

8. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

9. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

10. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

11. A perusal of the Award No.1 of 2010 clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

12. A reading of section 23(1A)and 23(2) LA Act clearly shows that they are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. Moreover, in the instant case, the applicants/landowners have been disbursed their respective share of compensation in terms of the Award. The honb'le apex court in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontanously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the interpretation given by the honb'le Apex Court, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.110892/-(Rupees One Lakh Ten

Thousand Eight Hundred Ninety Two) for the period commencing from 2.8.2011 i.e notice u/s4(1)of LA Act to 24th Sept. 2012 i.e date of approval of Award.

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.241500/-(Rupees Two Lakh Forty One Thousand Five Hundred) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest.

Announced in open court and given under my hand and the seal of this court on this the 27th day of June, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No _____/2012

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

H.Lalropuia &___ Ors

...Applicants

Versus

State of Mizoram & Ors

..... Respondents

Date of Hearing _____

Date of Judgment & Award _____

C O R R I G E N D U M

Referring to the above mentioned Judgment & Award at paragraph No.____
line No._____, the figure Rs._____shall be read as
“Rs._____”

This corrigendum is made on this the 26th June, 2013 u/s 152 CPC

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District ; Aizawl

25.6.2013 It is noticed that there is arithmetical mistake while calculating
interest @ 12%pa for a period of three years.

Ld. Counsels be asked to appear on 26.6.13.

26.6.13. Ld.Counsels for the parties are present.

Arithmatical error in the calculation of interest @ 12% pa in the Judgment & Award dt._____ is shown to the Ld. Counsels.

Corrigendum u/s 152 CPC is made and attached to the Judgment & Award. Copy of the same be furnished to all the parties.

The arithmetical error of the figure Rs._____appearing at paragraph No._____ line No._____of the judgment & Award shall be read as “Rs._____”.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.8/2012

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

C.Biakmawia & Ors

...Applicants

Versus

- 1. District Collector,
Mamit District, Mamit
- 2. Secretary to the Govt. of Mizoram
Public Works Department.
Aizawl : Mizoram
- 3. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Deptt.
Aizawl : Mizoram

..... Respondents

Date of Hearing
Date of Judgment & Award

A P P E A R A N C E

- 1. For the Applicants Mr.J.Lalremruata Hmar
Mr.K.Kawlkhuma
Mr.James Lalrintluanga
Mr.H.Lalremruata dvocates
- 2. For Respondents No.1 None
- 2. For respondents No.2 & 3 Mrs. Rose Mary, Addl.GA

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

1. The applicants are owner of lands located with the lands acquired by the Government of Mizoram, Public Works department for widening of NH 150 to two lane standard from Lengpui to Tripura border under Mamit District for which Award no.1 of 2010 was made by the District Collector, Mamit District, Mamit.

Aggrieved by non payment of solatium @ 30% and interest @ 12%pa in per section 23(2) and 23(1A) of the Land Acquisition Act, the applicants submitted an application u/s 18 of the Land Acquisition Act(LA Act in short) for reference to the court and the same has been referred to this court for adjudication.

2. Notices were issued to all the respondents. Respondents no.1 despite receipt of notice did not enter appearance. Respondent No.2 submitted written objection. No written objection is submitted by respondent No.3.

3. Heard the Ld. Counsels.

Mr.J.Lalremruata Hmar, Ld. Counsel for the applicants submitted at the outset that in the Award in question, areas acquired for widening as well as for diversion/bypass were included. The present applicants are owners of lands covered by the widening portion. According to the Ld. Counsel, it appears that the respondents, specially, the respondent No.2 is confused with the purpose for which the lands of the applicants were acquired i/e whether it was within the widening or diversion/bypass portion. The Ld. Counsel submitted that the applicants came to know about the existence of the Award No.1 of 2010 only on 24.2.2010 when he, acting as representative of the applicants sought information of the same through RTI. The Ld. Counsel further argued that the District Collector, Mamit failed to give immediate notice of the Award to the petitioners as per sec.12 of the LA Act and as such the petitioners are entitled to enjoy the benefit of sec.18(2)(b) LA Act. The Ld. Counsel also submitted that the petitioners received their respective share of compensation in terms of the Award only from 17.10.2012 onwards, which is after submission of application u/s 18 LA Act. The Ld. Counsel therefore submitted that the application is not barred by time and as such the petitioners are entitled to payment of solatium and interest @ 12%pa in terms of the provision of sec.23(1A)(2) of the LA Act.

In support of his submissions the Ld. Counsel placed reliance on the decision of the honb'le Apex Court in the case of **Premji Nathu versus State of Gujarat** reported in **(2012)5 SCC 250**.

On the other hand, Mrs. Rose Mary, Ld. Addl.GA appearing for respondents No.2 & 3 by relying on the objection filed by the respondent No.3(Public Works Department) submitted that the petitioners did not raise any objection to the notice u/s 4 of the LA Act and when the compensation was disbursed, they received the same without any protest. The Ld. Counsel further submitted that the petitioners are well aware of their respective share of

compensation as per the Award at the time of signing of documents in the office of the District Collector at Mamit. The Ld. Addl.GA also argued that the petitioners were fully aware of the process for the sanction of Supplementary Award No.1 of 2010 which was sent to the Central Govt. in the month of September, 2011. According to the Ld. Counsel, the representatives of the Project Affected People(PAP) often visited the office of the Respondent No.2 to apprise the situation regarding sanction of the Supplementary Award No.1 of 2010. Mrs. Rose Mary further submitted that part payment of Rs.3.13 crores was made on 12.12.2011 due to fund constraints only to those Project Affected People whose lands falls within the diversion portion of the proposed alignment in the National Highway 44A corridor from Lengpui to Langkaih. The same was disbursed from the office of the District Collector, Mamit on 7th & 8th February, 2012. That being the situation, the Ld. Counsel argued that it is rather strange how the petitioners claim to have knowledge of the Award only on 24.2.2012 when by such time they have already received their respective share of compensation in term of the said Award. According to the Ld. Counsel, it is no doubt the statutory right of the petitioners to get solatium but the same has to be within time as prescribed by the LA Act. The Ld. Counsel, by relying on the objection filed, also raises doubt on the signatures of the petitioners.

4. At this stage the evidence adduced by the parties may be briefly highlighted :-

PW Nghakliana is one of the claimant/applicants and deposed on behalf of all the applicants. He stated that they gained knowledge of the Award only on 17.10.2012 when they received their respective share of compensation in terms of the Award for widening. He also stated that the District Collector of Mamit failed to give them notice of the Award(widening) even after it was approved by the concerned authority. He stated that they(applicants) filed their application u/s 18 of the LA Act before they received their share of compensation and that the same was filed within time. The witness has placed on record three Actual Payment receipts as sample to show that compensation for widening was received on 17.10.2012. In his cross examination, he stated that they came to know about the Award only on 17.10.2012 when they received their respective share of compensation in terms of the Award. He also stated that they were informed that the money was there in terms of the Award when they put their signatures at DC's Office Mamit. He admitted that payment of Rs.3.13 Crores was made on 7th and

8th February, 2012 and according to him the said payment was for those area covered for the purpose of diversion. He denied that they were aware of the Award even prior to 24.2.2012. He denied the suggestion that the District Collector through the VC made public announcement regarding distribution of compensation. He also denied that their representatives and Vcmemebers put their respective signatures in the Award at the time of pronouncement. He further denied the suggestion that though they saw the award from their representatives in time there has been delay on their part in filing the application.

DW No.1/H.Lalthanpuia who is the Sub.Divisional Officer, National Highway Sub.Division-II, Mamit deposed that Notification u/s 4 LA act was issued on 12.11.2007. No separate notification was issued for the area that would be covered for diversion and widening of the national highway(NH 44A). Thereafter, Award no.1 of 2008 was pronounced by the District Collector of Mamit. In terms of the Award payment was made in the year 2008 atself. However, as there was some complaints by some persons whose lands were not included in the Award though their lands were damaged, Supplementary Award No. 1 of 2010 was made. In terms of the Supplementary Award payment was made to the land owners on 7th&8th February, 2012. He stated that sine he is not part of the establishment of the District Collector, he does not know in what manner the Award was made known to the landowners. But he learnt from the officials of the District Collector's office that representatives of the Project affected People(PAP) often go to their office and asked them of the status of the Award as well as the process being undertaken. According to this witness even if it is presumed that the landowners were not given notice of the Award, but on 7th & 8th February, 2012 when they received compensation they know the existence of the Award and since application u/s 18 LA Act was submitted only on 16th Aug.2012 it is clearly beyond 6 months and as such their application is barred by limitation. In his cross examination he stated that he does not know whether the compensation which was disbursed on 7th & 8th February, 2012 was only in respect of those land acquired for diversion. Since he joined his present post only in the month of December, 2012 he does not know whether the present applicants are amongst the landowners who received compensation on 7th & 8th February, 2012. He does not know whether the District Collector complied with the provision of section 12(2)LA Act while pronouncing the Award as well as Supplementary Award. He also stated that National Highway Sub.Division-II, Mamit does not

receive all correspondence from the DC Mamit in connection with the present acquisition.

DW No.2/K.Zorammuana is the Subordinate Deputy Commissioner at Mamit District, Mamit. He stated that as per record, on 23.1.2012 there was a meeting of the representatives of the District Collector, village Council President, landowners and their representatives in the chamber of the District Collector, Mamit regarding the instant Award. He also stated that on 6.2.2012 notice was issued to the Village Councils concerned and landowners that disbursement will be made w.e.f 8.2.2012 for widening. Accordingly, compensation was disbursed from 8.2.12. The witness further stated that though no separate Award was made for diversion and widening, Notice u/s 4 dt.17.11.2007 would show that it was for widening and diversion of road to two lane standard from Lengpui to Tripura border within Mamit District. According to this witness as no objection was raised by the landowners u/s 5A of the LA Act, it loses its nature of compulsory acquisition as such the landowners are not entitled to payment of solatium and interest. The witness further deposed that as the claimants/their representatives were present in the meeting on 23.1.2012 it can be presumed that they were aware of the Award. On 6.2.2012 notice regarding disbursement of the Award was issued and there is no reason why the said notice cannot be regarded as notice of the Award. As such the reference application is barred by time. In his cross examination, the witness stated that he joined his posting on 8.8.2013 and he has not come across the minutes of the meeting dt.23.1.2012. He has carefully perused the record before coming to the Court. He does not know whether the notice dt.6.2.12 sent to the village councils and each and every landowners are available on record. He denied the suggestion that he does not know an Award under the LA Act. According to him, an Award should contain name of the landowners and amount of compensation due to them. He admitted the suggestion that notice dt.6.2.2012 does not contain the name of the landowners and the amount of compensation due to each of them. However, he denied the suggestion that Notice u/s 6.2.12 cannot be construed as Notice u/s 12(2) LA Act. He admitted the suggestion that in the notice dt.6.2.12 the first paragraph reads “ NH-44 diversion in a paltlang ram neitute zangnadawmna(compensation).....”. He admitted the suggestion that a plain reading of the notice dt.6.2.2012 it appears that it is for those lands within the diversion area. He also admit that in the notice dt.6.2.12 there is no mention that it was issued u/s 12(2) LA Act. He further stated that on perusal of the reference application forwarded by the District Collector u/s 19 LA

Act he does not find any document regarding the particulars of the representatives of the landowners who were present in the meeting on 23.1.12

This witness could not reply the query made by the Court as to who all were present at the time of pronouncement of the Award by stating that he has not brought the record with him and that he does not know the date of pronouncement of the Award.

4. Vide Order Dt. 24.9.2012 the Ld. Counsel for the petitioners submitted that they will limit their claim only towards payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

5. The issues that require to be decided therefore are :-

- i) Whether the application is maintainable in its present form and style?
- ii) Whether the application is barred by limitation ?
- iii) Whether the applicants are entitled to payment of solatium and interest as prayed for ?

6. A perusal of the Supplementary Award No.1 of 2010 clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

7. Issues No. 1 & 2 :-

8. Section 18 of the LA Act prescribed the period within which objection can be filed. Sec 18(2)(a) reads :--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award.

(b) in other cases, within six weeks of the receipt of the notice from the Collector under sec.12, sub section(2), or within six months from the date of the Collector's award, which ever period shall first expire."

Section 12(2) provides:-

"(2) the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made".

9. It is not the case of the respondents that Notice u/s (12)(2) LA Act was issued. Respondent No.1 who is supposed to issue Notice u/s 12 of the LA Act have not made any representation. No explanation is also given with regard to the manner in which the acquisition was carried out nor is there compliance of sec.19 LA Act. Though respondent No.3 submitted that the petitioners are aware of their respective share of compensation, they have not given a clear reply that notice u/s 12 LA Act was issued to the land owners by the District Collector, which is a mandatory provision. The only document available in this regard is the letter dt.24.2.2012 addressed to Mr.J.Lalremruata, Ld. Counsel for the petitioner from the SPIO, DC's office, Mamit directing him to collect the information required regarding payment of compensation.

In the case of **Premji Nathu(supra)** the honb'le Apex Court has held :-
"15.. What needs to be emphasized is that along with the notice issued under Section 12(2) of the Act, the landowner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the court".

In the case of **State of Punjab versus Qaisar Jehan Begum** reported in **AIR 1963 SC 1604** the honb'le Apex court has earlier held as follows :-
"5..... It seems clear to us that the ratio of the decision in Harish Chandra Case is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with the knowledge of the contents of the award whether he reads it or not. Similarly, when a party is present in court either personally or through his representative when an award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of essential contents of the award"(emphasis supplied).

10. Apart from the failure to comply with section 12(2) LA Act, as the Respondent No.1 i.e District Collector, Mamit has failed to file any objection nor complied with the provision of sec.19 LA Act it is not known whether notice was

ever made to the petitioners/land owners. Further, there is no provision in the LA Act, where presumption can be drawn regarding Notice which can take the place of Notice U/s 12(2) LA Act. In the instant case, DW/K.Zorammuana admitted that in the notice dt.6.2.2012 there is no mention that the said notice was issued u/s 12(2) of the Land Acquisition Act

11. The applicants stated that their lands fall within the area taken for widening of the National Highway and that payments which were made earlier i.e before they filed the application u/s 18 LA Act are in respect of those lands owners whose lands fall within the diversion area. The submission of the applicants is that they received the compensation in terms of the Award only after filing the present application from 17.10.2012 onwards. In this regard, Respondent No. 3 in reply to para No.3 4 of the application have stated “*A part payment of Rs.3.13 crores was made on 12th December 2011 due to fund constraints, only for the PAP’s in the Diversion/Bypass portion of the proposed alignment in the NH44A corridor from Lengpui t o Langkaih. This was disbursed by the D C Mamit on 7th & 8th February 2012 in Mamit....*” . Apart from this, no statement is made by the respondents about payment already being made to the applicants prior to the filing of the application u/s 18 LA Act. From the statements of the said respondents, it is clear that they admitted the stand of the applicants that payments which were made earlier were in respect of the lands covered by Diversion/Bypass portion. They have not rebutted the stand of the applicants that their lands fall within the area meant for widening of the highway. A notice dt.6.2.12 which the respondents asserted that it was send to the landowners clearly shows that the said payment was to be made for those lands falling within the diversion area- the notice reads “ NH-44A diversion in a paltlang ram neitute zangnadawmna(compensation)....”

12. Keeping in mind the interpretation given by the honb’le Apex Court in the case of **State of Punjab versus Qaisar Jehan Begum (supra)**, it appears from the pleadings of the respondent that no specific date can be quoted as the date on which the petitioners can be considered to have knowledge of the contents of the Award.

13. Doubt has been raised by the Respondent No.3 regarding the applicants claim of gaining knowledge of the Award only on 24.2.2012. In this regard, it appears that such averment is contradictory to their own statement wherein they have stated that the payments which were made on 7th & 8th February, 2012 were in respect of land owners whose lands fall within the diversion/bypass areas, whereas, the lands of the present petitioners are within the area acquired for widening and not for Diversion/Bypass though all such lands were covered by the same Award.

14. The honb'le Apex Court in the case of **Sunder versus Union of India** reported in **(2001) 3Suppl.SCR 176 h** has held as follows :-

“22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer, in the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in sub-section(2) ‘in consideration of the compulsory nature of acquisition’ is thus not the same as damages on account of the disinclination to part with the land acquired”

A reading of the said decision would imply that payment of solatium does not depend on the inclination or disinclination of the landowner to part with the land.

Further in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court “in every case” leaves no discretion with the court in not awarding it in some*

cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

14. From the above discussion, since the respondents have not pleaded that Section 12(2)LA Act was complied with and since they have not stated that compensation disbursed to some land owners during the month of February, 2012 include the present applicants or that the same was received by the petitioners without protest, I do not find any reason why the application should be barred by limitation or on other technicalities raised by the respondents. Accordingly, the said issues are decided in favour of the applicants.

15. Issue No.3

A perusal of the Award itself would clearly show that it does not include solatium and interest u/s 23(1A)(2) L A Act. A reading of the provisions of Section 23(1A) and Sec.23(2) of the LA Act shows that it is mandatory upon the court to award interest @12%pa and solatium @30%. A bare reading of the Award would show that the compensation does not include payment u/s 23(1A)&(2) of the LA Act. While deciding on Issue No.1 & 2 it has been held that the application is not barred by limitation. Further, since it has also been decided that the land owners who received compensation in the month of February 2012 were not the present applicants, and the submission of the applicants is that they received the Award during the pendency of this application, I find that the question as to whether the applicants received the award under protest or not (as provided u/s 31 LA Act) would not have any relevance. Even if the applicants did not specifically received the award under protest, the fact that application u/s 18LA Act have been filed prior to receipt of the award shows that the applicants are aggrieved by the Award.

Accordingly, Issue No.3 is also decided in favour of the applicants.

A W A R D

In terms of the Award No.1 of 2010, the total amount of compensation payable to the _____petitioners is Rs. _____/-(Rupees _____) only. In

addition to the said amount, the applicants shall be entitled to payment of solatium u/s 23(2) LA Act @30% in addition to the market value of the land in consideration of the compulsory nature of acquisition amounting to Rs. _____/-(Rupees _____)only.

Further, as per sec.23(1A) of the LA Act, in addition to the market value, the applicants shall be entitled to payment of interest @12%pa from the date of publication of Notice u/s4 LA Act i.e 12.11.2007 to the date of the award of the Collector i.e 13.1.2011 which is the date of approval of the Award amounting to Rs. _____ (Rupees) which is calculated for three years.

Respondent No.3(Public Works Department) who is the acquiring Department is liable to pay the said amount within a period of three months from today failing which the said additional amounts payable shall carry an interest @6%per annum.

***** para 5 of W/s, addl.doc.

(HELEN DAWNGLIANI)

Addl. District 7 Sessions Judge-III

Aizawl judicial District : Aizawl

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

LA Case No.3/2013

1. Kamilapati Jaisi
2. R.Zothansanga
3. Hmangaihzuai
4. R.Thangliana
5. C.Lianzuala
6. R.Challiana
7. Khawliani
8. Lalnghinglova
9. Seiziki
- 10.PC Lalthuama
- 11.R.Hrangbuaia
- 12.Ramnunthanga
- 13.J.Rohununa
- 14.Liansuama
- 15.Laluma
- 16.Thangpuii
- 17.Sangliana
- 18.Remthangkhuma

- 19.Lalsangbera
- 20.Thanseia
- 21.Lalengliana
- 22.Saithankunga
- 23.Lalthanmawia
- 24.Tlanghimngliana
- 25.Lalzama
- 26.Lalthanpuia
- 27.Vanlalthangi
- 28.Lalengliana
- 29.Zohmingliani
- 30.R.Lalliansanga
- 31.Lalchhingi
- 32.Lallianbuka
- 33.]Rothangvungi
- 34.Lalrinthanga
- 35.Zaikima
- 36.Vanlalvena
- 37.PC Sangliana
- 38.Lalmalsawma
- 39.John Rinmawia
- 40.R.Chhawntluangi
- 41.C.Lalsangbera
- 42.Vanlalchhuanga
- 43.H.Thanzauva
- 44.KL Zikpuia

..... claimants/ applicants

Versus

1. District Collector, Aizawl District, Aizawl.
2. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department

Aizawl, Mizoram

3. Secretary to the Govt.of Mizoram
Power & Electricity Department
Aizawl, Mizoram

.... Respondents

A P P E A R A N C E

1. For the Applicants Mr. _____
2. For Respondent No.1 Mr.R.Lalremruata, Advocate
3. For Respondent No.2 &3 Mrs. Rose Mary, Addl.GA

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

1. Applicants are land owners whose lands fall within the acquired lands covered by Award No. 9 of 2012 for construction of 132 KV line from Luangmual to Melriat. The said Award was signed by the Respondent No.1 on 17.1.2013.

Being aggrieved by Award No.9 of 2012 the applicants through their representative Hmangaihzualli made an application u/s 18 LA Act to the District Collector, Aizawl claiming for payment of Solatium u/s 23(1A) and interest 12%pa u/s 23(2) of the LA Act. The said application has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Mr.R.Lalremruata, the Ld. Counsel for the respondent No.1 (DC Aizawl) on 22.3.2013 submitted that the said respondent does not have any objection. Similarly, Mrs. Rose Mary, Ld. Addl.GA appearing for the respondents No. 2 & 3 on 2/7/2013 submitted that the said respondents will not file objection. In support of her submission, the Ld. Counsel has also placed on record communication No.C..18015/147/13-EC/EO(P)/5 dt.13.6.2013 from the Asst.Engineer, P&E Department.

3. No objections has been raised by the respondents. I have also carefully perused the record and it is seen that the application u/s 18LA Act was filed on 17.1.2013 i.e on the same day when the Award was pronounced. As such, the application is not barred by time.
4. I have heard the Id. Counsels for the applicants. Since no objection is raised by the respondents, there is no need to hear their Counsels.
5. A perusal of the Award No.9 of 2012 clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.
6. A reading of section 23(1A)and 23(2) LA Act clearly shows that they are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. The honb'le apex court in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontanously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the intention of the legislature in enacting the Land Acquisition Act and interpretation given by the honb'le Apex Court to the provision of Sec 23(2) of the LA Act, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs. 431829.57/-(Rupees _____) for the period commencing from 25.11.2011 i.e notice u/s4(1)of LA Act to 17.1.2013 i.e date of the Award.

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs. 9,44,950.98/- say Rs.9,44,

951(Rupees nine lakhs forty four thousand nine hundred and fifty one) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.3(Power & Electricity Department, Govt. of Mizoram) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court on this the 6th day of August, 2013.

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.25/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

1. Zorini
D/o Zoramchuana
R/o Bairabi
2. S.Vanlalmawia
S/o Thiamkima
R/o Bairabi
3. Zodinliana
S/o Ramhluna Khiangte
R/o Chaltlang, Aizawl
4. Lalbiaktluanga
S/o Hauchhawna
R/o Vairengte
5. Sairengpuii
w/o Rivenga(L)
R/o Aizawl

...Applicants

Versus

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

..... Respondents

Date of Hearing 8.8.2013

Date of Judgment & Award 21.8.2013

A P P E A R A N C E

1. For the Applicants Mr. Lalropara Singson
Mr.K.Kawlkhuma 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

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

1. Applicants are land owners whose lands fall within the acquired lands covered by Award No. 1 of 2012(Part-A- Bairabi). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was approval by the Government was conveyed to the said respondent vide letter No.K.12011/25/2011-REV dt.24th May.2012.

Being aggrieved by Award No.1 of 2012(Part-A-Bairabi), the applicants made an application u/s 18 LA Act to the District Collector, Kolasib and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) & 2(NF Railway) vide Order dt.8.8.13. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The reference application is made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act. The Ld. Counsel for the applicants on 8.8.2013 submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

4 In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

- i. Whether the application is maintainable in its present form and style?
- ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
- iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

5. I have heard Mr.Lalropara Singson, Ld. Counsel for the applicants. The Ld. Counsel submitted that the Collector failed to give immediate notice of the Award which was in clear violation of section 12 LA Act and as such the applicants are entitled to enjoy sec.18(2)(b)LA Act. The Ld Counsel also submitted that the applicants received their respective share of compensation in terms of the Award from 10.8.12 under protest and submitted application u/s 18 LA Act on 23.8.12 as such the application is not barred by limitation.

Mr.Lalropara further submitted that Award does not include Solatium and interest u/s 23(1A) and 23(2)LA Act which is mandatory and prays to award the same to the applicants.

6. Issue No.1

Whether the suit is maintainable in its present form and style ?

7. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-A-Bairabi) was approved on 24th May, 2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court include a copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.5.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12 of the LA Act is also not seen from the record. In the instant case, as stated by the Ld. Counsel for the applicants, compensation in terms of the Award was received under protest from 10.8.2012 onwards. The application for reference u/s18 of the Land Acquisition Act was filed on 23.8.2012 and forwarded to the Court for adjudication by the District Collector, Kolasib District on 22.5.2013 and the same was received on 22.5.2013 itself. The application u/s 18 LA Act was filed on 23.8.2012. If the date of receipt of Award is taken as date of knowledge of the Award, the application is well within time. The forwarding letter of the reference application also shows that the applicants received compensation in terms of the Award under protest.

8. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

9. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

10. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

11 A perusal of the Award No.1 of 2012(Part-A-Bairabi) clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

12. A reading of section 23(1A)and 23(2) LA Act shows that they are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. Moreover, in the instant case, the applicants/landowners have been disbursed their respective share of compensation in terms of the Award. The honb'le apex court in the case of

Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court “in every case” leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the interpretation given by the honb’le Apex Court, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.3,20,647/-/(Rupees three lakhs twenty thousand six hundred and forty seven) for the period commencing from 2.8.2011 i.e notice u/s4(1)of LA Act to 24.5.2012 i.e date of approval of the award Award

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.10,60,110/-/(Rupees ten lakhs sixty thousand one hundred and ten) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest from the same Award.

Announced in open court and given under my hand and the seal of this court
on this the 21st day of August, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.16/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

Zairemthanga
S/o Chhunzova
R/o Dawrpui Vengthar, Aizawl

...Applicant

Versus

1. District Collector, Kolasib District, Kolasib
2. Northern Front Railway represented by

Deputy Chief Engineer CON/III/SCL, Silchar

3. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department

..... Respondents

Date of Hearing 16.8.2013

Date of Judgment & Award 30.8.2013

A P P E A R A N C E

- | | | | |
|----|---------------------|-------|---------------------------------|
| 1. | For the Applicant | ..... | 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 applicant owns a plot of land which falls within the acquired lands covered by Award No. 1 of 2012(Part-D- Khamrang). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was signed by the Respondent No.1 on 28th January 2013

Being aggrieved by Award No.1 of 2012(Part-D-Khamrang), the applicant filed an application u/s 18 LA Act to the District Collector, Kolasib on 18.3.13 and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) vide order dt.16.8.2013. Respondent No. 2(NF Railway) filed written objection. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The reference application is made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2) and for payment of compensation in respect of crops damaged at the prevailing market rate i.e double the amount.

4. However, on 16.8.2013, Ms.N.Lalzawmliani, Ld. Counsel for the applicant submitted that they will limit their claim to payment of 30% solatium and interest @12 % pa u/s 23(2) and 23(1A) LA Act. Accordingly, the only issues that has to be decided are:-

i. Whether the application is maintainable in its present form and style?

ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

5. In the objection filed by the Respondent No.2, it has been submitted that the said respondent has paid the compensation assessed by the District Collector to the said authority for onward payment to the beneficiaries. The said respondent submitted that as they have paid the compensation in terms of the assessment made by the District Collector, the cause of action will arise against them only if any order, direction or award for further payment is made by this court through the District Collector. Accordingly, they submitted that their appearance/non-appearance in the proceeding is redundant so far as the hearing and/or decision of the case is concerned.

6. I have heard Ms.N.Lalzawmliani, Ld. Counsel for the applicants. The Ld. Counsel submitted that the Collector failed to give immediate notice of the Award which was in clear violation of section 12(2) LA Act and as such the applicants are entitled to enjoy sec.18(2)(b)LA Act. The Ld. Counsel submitted that the reference application was filed as soon as the applicant learnt about the existence of the Award and it is within 6 months from the Collector's Award. Ms.N.Lalzawmliani further submitted that the Award does not include Solatium and interest u/s 23(1A) and 23(2)LA Act which are mandatory and prays to award the same to the applicants.

7. Issue No.1

Whether the suit is maintainable in its present form and style ?

8. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-D-Khamrang) was made on 28.1.2013. From the documents enclosed by the office of the District Collector while making reference to court for adjudication, there is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. As per record, the reference application u/s 18 LA Act was received by the office of the District Collector vide receipt No.2669 on 18.3.2013. Since there is no material to show that Notice u/s 12(2) LA Act was issued nor any material to suggest that the applicant or his representative were present at the time of pronouncement of the Award, considering the scheme of the Act, I do not find any reason why the provision of sec. 18(2)(b) LA Act cannot be extended to the applicant.

Considered thus, the provision of section 18(2)(b) LA Act is extended to the applicant. The Award was passed on 28.1.2013 and reference application u/s 18 LA Act was filed on 18.3.2013 which is well within 6 months from the Collector's Award.

9. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

10. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

11. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

12. A perusal of the Award No.1 of 2012(Part-E-Mualkhang) clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

13. Section 23(1A)and 23(2) LA Act are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. The honb'le apex court in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontanously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the interpretation given by the honb'le Apex Court, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicant Zairemthanga is awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs. Rs.12, 53, 548(Rupees twelve lakhs fify three thousanf five hundred and forty eight) for the period commencing from 2.8.2011 i.e notice u/s 4(1) of LA Act to 28.1.2013 i.e date of Award.

The applicant shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs. 21,14,349(Rupees twenty one lakhs fourteen thousand three hundred and forty nine) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court on this the 30th day of August, 2013.

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

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

L.A Case No.17/2013

P R E S E N T
Mrs.Helen Dawngliani

Addl.District & Sessions Judge – III

C.Ngunchunga
S/o C.Zakhama
R/o Hunthar Veng, Aizawl

...Applicant

Versus

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

..... Respondents

Date of Hearing 16.8.2013

Date of Judgment & Award 30.8.2013

A P P E A R A N C E

- | | | | |
|----|---------------------|-------|---------------------------------|
| 1. | For the Applicant | ..... | 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 applicant owns a plot of land which falls within the acquired lands covered by Award No. 1 of 2012(Part-E- Mualkhang). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was signed by the Respondent No.1 on 28th January 2013

Being aggrieved by Award No.1 of 2012(Part-E-Mualkhang), the applicant filed an application u/s 18 LA Act to the District Collector, Kolasib on 18.3.13 and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) vide order dt.16.8.2013. Respondent No. 2(NF Railway) filed written objection. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The reference application is made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2) and payment of compensation in respect of crops damaged at the prevailing market rate i.e double the amount. However, on 16.8.2013, Ms.N.Lalzawmliani the Ld. Counsel for the applicant submitted that they will limit their claim only towards payment of solatium u/s 23(2) and interest @ 12%pa u/s 23(1A) of the LA Act.

4 In view of the submission made by the Ld Counsel for the applicant, the only issues to be decided are:-

- i. Whether the application is maintainable in its present form and style?
- ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
- iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

5. In the objection filed by the Respondent No.2, it has been submitted that the said respondent has paid the compensation assessed by the District Collector to the said authority for onward payment to the beneficiaries. The said respondent submitted that as they have paid the compensation in terms of the assessment made by the District Collector, the cause of action will arise against them only if any order, direction or award for further payment is made by this court through the District Collector. Accordingly, they submitted that their appearance/non-appearance in the proceeding is redundant so far as the hearing and/or decision of the case is concerned.

6. I have heard Ms.N.Lalzawmliani, Ld. Counsel for the applicants. The Ld. Counsel submitted that the Collector failed to give immediate notice of the Award which was in clear violation of section 12 LA Act and as such the applicants are entitled to enjoy sec.18(2)(b)LA Act. The Ld. Counsel also submitted that the applicant filed his application u/s 18 LA Act as soon as he came to learn about the pronouncement of the Award and that the reference application is filed within 6 months from the Collector's Award. Ms.N.Lalzawmliani further submitted that Award does not include Solatium and interest u/s 23(1A) and 23(2)LA Act which is mandatory and prays to award the same to the applicants.

6. Issue No.1

Whether the suit is maintainable in its present form and style ?

7. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-E-Mualkhang) was made on 28.1.2013. From the documents enclosed by the office of the District Collector while making reference to court for adjudication, there is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. As per record, the reference application u/s 18 LA Act was received by the office of the District Collector vide receipt No.2668 on 18.3.2013. Since there is no material to show that Notice u/s 12(2) LA Act was issued nor any material to suggest that the applicant or his representative were present at the time of pronouncement of the Award, considering the scheme of the Act, I do not find any reason why the provision of sec. 18 (2)(b) LA Act cannot be used for the applicant.

Considered thus, the provision of section 18 (2)(b) LA Act is extended to the applicant. The Award was passed on 28.1.2013 and reference application u/s 18 LA Act was filed on 18.3.2013 which is well within 6 months from the Collector's Award.

8. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the

District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

9. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

10. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

11 A perusal of the Award No.1 of 2012(Part-E-Mualkhang) clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

12. Section 23(1A)and 23(2) LA Act are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. The honb'le Apex court in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontanously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the interpretation given by the honb'le Apex Court, the provision of sec. 23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicant C.Ngunchunga is awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs. 6,37,936/- (Rupees six lakhs thirty seven thousand nine hundred and thirty six) for the period commencing from 2.8.2011 i.e notice u/s4(1)of LA Act to 28.1.2013i.e date of Award

The applicant shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs. 10,76,001/- (Rupees ten lakhs seventy six thousand and one) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court on this the 30th day of August, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.18/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

1. Lalrochhari
2. Laltuakliana S/o Thanga
R/o Rastali
3. Vanlalduha S/o Rualzachinga
R/o Hortoki
4. R. Lalawmpuia S/o Denghmingliana
R/o Bairabi
5. Lalrochhari D/o V.L. Duha
R/o Hortoki
6. Lalinghakliani D/o Zangenga (L)
R/o Hortoki
7. Liporjoy C/o Remthangi
R/o Rajdhali
8. Lalchawithanga S/o Lalneihthanga
R/o Rajdhali
9. Hrangkhuma S/o Thangtinsela
R/o Kolasib
10. Rochunga S/o Hrangkhuma
R/o Kolasib
11. Remthangi D/o Khianghluna
R/o Kolasib
12. Thanhli D/o Lahnuna
R/o Kolasib
13. Vanengmawii D/o R. Lahnuna
R/o Kolasib
14. Lalfakzuala S/o Raimonda
C/o Lalengvari R/o Rajdhali
15. V.L. Malsawma S/o Lalrammawia
R/o Kolasib
16. Lalrammawia S/o Sapmawia
R/o Kolasib
17. Zonunsanga S/o H. Vanlalpeka
R/o Kolasib
18. Zonunsanga S/o Lalrammawii
R/o Kolasib
19. Vanlalzawmi D/o R. Lalawmpuia
R/o Bairabi
20. Vanlalawmpuia S/o Denghmingliana
R/o Bairabi

... Applicants

Versus

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

Date of Hearing	.....	19.08.2013 & 2.9.13
Date of Judgment & Award	.....	03.09.2013

A P P E A R A N C E

- | | | | |
|----|-----------------------|-------|---|
| 1. | For the Applicants | | Mr. R. Lalhmingmawia
Mr. C. Lalrinchhunga, Advocates |
| 2. | For Respondent No.1&2 | ..... | None |
| 3. | For Respondent No.3 | ..... | Mrs. Rose Mary, Addl.GA |

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

1. Applicants are landowners whose lands fall within the acquired lands covered by Award No. 1 of 2012 (Part-C- Hortoki). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang. The said Award was signed by the District Collector, Kolasib District, Kolasib on 13th September, 2012.

Being aggrieved by Award No.1 of 2012(Part-C-Hortoki), the applicants made an application u/s 18 LA Act to the District Collector, Kolasib and the same has been referred to this court for adjudication.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) & 2(NF Railway) vide Order dt.10.6.2013. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The reference application is made for payment of interest @ 12% pa as per sec. 23(1A), 30% as solatium u/s 23(2) and interest @ 9% p.a. as per sec.28 of the Land Acquisition Act. The Ld. Counsel for the applicants on 19.8.2013 submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12% p.a. on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

4 In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

- i. Whether the application is maintainable in its present form and style?
- ii. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
- iii. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

5. I have heard Mr. R. Lalhmingmawia, Ld. Counsel for the applicants. The Ld. Counsel submitted that the Collector failed to give immediate notice of the Award which was in clear violation of section 12 LA Act and as such the applicants are entitled to enjoy sec.18(2)(b) LA Act. The Ld Counsel also submitted that the applicants received their respective share of compensation in terms of the Award on 7.1.2013 under protest and submitted application u/s 18 LA Act on 8.4.13 as such the application is not barred by limitation. Mr. R. Lalhmingmawia further submitted that Award does not include Solatium and interest u/s 23(1A) and 23(2) LA Act which is mandatory and prays to award the same to the applicants.

6. Issue No.1

Whether the suit is maintainable in its present form and style?

7. Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was approved on 24th Sept. 2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court include a copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.9.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12 of the LA Act is also not seen from the record. In the instant case, as stated by the Ld. Counsel for the applicants, compensation in terms of the Award was received under protest from 10.8.2012 onwards. The application for reference u/s18 of the Land Acquisition Act was filed on 23.8.2012 and forwarded to the Court for adjudication by the District Collector, Kolasib District on 22.5.2013 and the same was received on 22.5.2013 itself. The application u/s 18 LA Act was filed on 23.8.2012. If the date of receipt of Award is taken as date of knowledge of the Award, the application is well within time. The forwarding letter of the reference application also shows that the applicants received compensation in terms of the Award under protest.

8. Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

9. ISSUE No.2 & 3

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894 and solatium @30% in terms of Sec.23(2) LA Act?

10. The prayer made by the Applicants in this application is for payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

11 A perusal of the Award No.1 of 2012(Part-C-Hortoki) clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

12. A reading of section 23(1A)and 23(2) LA Act shows that they are mandatory in nature. A reference court is passed the stage of the question of title of the landowners so also the extend of acquisition. Moreover, in the instant case, the applicants/landowners have been disbursed their respective share of compensation in terms of the Award. The honb'le apex court in the case of **Narain Das(since deceased) versus Agra Nagar**

Mahapalika, Agra reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court “in every case” leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

Keeping in mind the interpretation given by the honb’le Apex Court, the provision of sec.23(1A) of the LA Act which is similarly worded with section 23(2) has to be given the same interpretation.

Accordingly Issue No.2&3 are also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12% pa as provided u/s 23(1A) amounting to Rs. _____/-/(Rupees _____) for the period commencing from 2nd Aug.2012 i.e notice u/s4(1) of LA Act to 13.9.2012 i.e date of the Award

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs. _____/-/(Rupees ten lakhs sixty thousand one hundred and ten) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No. 2 (Northern Front Railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest from the same Award.

Announced in open court and given under my hand and the seal of this court on this the ____ day of Sept., 2013

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.10/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

- 1. Ngentluanga
- 2. Lalnunmawia Ngente
- 3. Laltinkhuma
- 4. Raimon
- 5. Liangngura
- 6. Liansawta
- 7. Lalhmingmawia
- 8. Laldingliana
- 9. Hmingthanzauva
- 10. Lalrinmawia
- 11. Rosangkima
- 12. Lalthansanga
- 13. Lalnunmawii
- 14. Vanlalruati
- 15. Romana
- 16. Dohoram
- 17. Malsawmsangi
- 18.84

...Applicants

Versus

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

..... Respondents

Date of Hearing 30.8.2013

Date of Judgment & Award 12.9.2013

A P P E A R A N C E

- 1. For the Applicants Mr. C.Lalrinchhunga
Mr. Jacob T.Vanlawma
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 |

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

Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-REV dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. The notification was published in the official gazette and in two daily newspapers. Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Thereafter, Draft Award No.1 of 2012(Part-C- Hortoki) dt.13th Sept. 2012 was made by the Respondent No.1.

Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter was proceeded Ex-parte against the Respondent No.1(District Collector, Kolasib District, Kolasib) vide Order dt.23.5.13. Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance was made by the said respondent. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

Though in the application made u/s 18 of the Land Acquisition Act, 1894, claim was made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act.

I have heard the Ld. Counsels. Apart from the respondent No.2 no objection is received from respondent No.1 & 3. As no objection is filed by Respondent No.3 and no instruction is given, the Ld.Addl.GA have no submission. The Ld. Counsel for the applicants, at the outset submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act. The

Mr.C.Lalrinchhunga Ld. Counsel for the applicants submitted that Award No. 1 of 2012 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act though payment of the same is mandatory. The Ld. Counsel also submitted that at the time of pronouncement of the Award, neither the applicants nor their representatives were present and when they received the compensation on 7.1.2013 in terms of the Award under protest. The Ld. Counsel argued that since no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the application is maintainable in its present form and style ?
2. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
3. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

Issue No.1:-

Whether the application is maintainable in its present form and style ?

Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. From the documents enclosed by the office of the District Collector, Kolasib District, Kolasib while making a reference to the court there is no material to show that the applicants nor their representatives were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record . In the instant case, the applicants received their respective share of compensation in terms of the Award under protest on 7.1.2013. Application u/s18 of the Land Acquisition Act was submitted to the District Collector, Kolasib District on 14.2.2013.

Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire

compensation awarded and exclusion of the same would violate the statutory right of the applicants. The applicants are thus entitled to payment on interest @ 12%pa on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector** reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs._____/-(Rupees _____) for the period commencing from 2nd Aug.2011 i.e notice u/s4(1)of LA Act to 13th Sept. 2012 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs._____/-(Rupees _____) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest.

Announced in open court and given under my hand and the seal of this court on this the 12th September, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.9/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

1. C.Lalhmingliana
2. Lalhruaia
3. Ruatkima
4. Lalmangaihzuala
5. Malsawma
6. HD Lalramliana
7. Lalthanguri

8. Lalmuanawmi
9. Ronald Lalramchhana
10. Lalremmawia
11. VL Ngurliansangi
12. Lalthakimi
13. Bawikunga
14. Lalchhanhima
15. Keimanthanga
16. Lalthangmawia
17. Chawngghmingthanga
18. Lalrosanga
19. Chuhi
20. HC Lalhmingthanga
21. Chanchinmawia
22. Rohlupuii
23. Lalchualovi
24. Lalbeli
25. Bawihkunga
26. Vanlalkima
27. Vanlallura
28. Lalrinsanga
29. F.Thangluaia
30. Lawmkima
31. R.Kapthanga
32. Lalhmingthanga
33. Rochungnunga
34. HD Lalduhawma
35. HD Malsawmkima
36. Darremsangi
37. Vanneihtluanga
38. Darrotluanga
39. Laltinkhuma
40. Lalrorela
41. Lalbuatsaiha
42. Laltawngchhana
43. Hmangaihzuala
44. Liankhuma
45. Vanrampanmeka
46. Lalfakzuala
47. Lalremsiama
48. Ringzuala
49. Zonunsanga
50. Lalngaihawma
51.216

...Applicants

Versus

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

..... Respondents

Date of Hearing 19.9.2013

Date of Judgment & Award 30.9.2013

A P P E A R A N C E

1. For the Applicants Mr. S.Pradhan
Mr. Lalrinpuia 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

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

Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-REV dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. The notification was published in the official gazette and in two daily newspapers. Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Thereafter, Draft Award No.1 of 2012(Part-C- Hortoki) dt.13th Sept. 2012 was made by the Respondent No.1.

Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter was in the absence of Respondent No.1(District Collector, Kolasib District, Kolasib) . Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance was made by the said respondent. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

I have heard the Ld. Counsels. Apart from the respondent No.2 no objection is received from respondent No.1 & 3. As no objection is filed by Respondent No.3 and no instruction is given, the Ld.Addl.GA have no submission. The Ld. Counsel for the applicants, at the outset submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act though in the application u/s 18 LA they have also claimed other reliefs. The Mr.C.Lalrinpuia Ld. Counsel for the applicants submitted that Award No. 1 of 2012 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act though payment of the same is mandatory. The Ld. Counsel also submitted that at the time of pronouncement of the Award, neither the applicants nor their representatives were present. The Ld. Counsel submitted that the applicants received their respective share of compensation in terms of the Award under protest during the month of January 2013 and only thereafter, they came to lean about the essential ingredients of the Award. The Ld. Counsel argued that since no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the application is maintainable in its present form and style ?
2. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
3. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in term s of sec.23(2) of the Land Acquisition Act?

Issue No.1:-

Whether the application is maintainable in its present form and style ?

Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. From the documents enclosed by the

office of the District Collector, Kolasib District, Kolasib while making a reference to the court there is no material to show that the applicants nor their representatives were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record . In the instant case, the applicants received their respective share of compensation in terms of the Award under protest during the month of January, 2013. Application u/s18 of the Land Acquisition Act was submitted to the District Collector, Kolasib District on 19.2.2013.

Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire compensation awarded and exclusion of the same would violate the statutory right of the applicants. The applicants are thus entitled to payment on interest @ 12%pa on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector** reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it

follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs._____/-(Rupees _____) for the period commencing from 2nd Aug.2011 i.e notice u/s4(1)of LA Act to 13th Sept. 2012 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs._____/-(Rupees ____) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest, for the same land ad under the same Award..

Announced in open court and given under my hand and the seal of this court on this the 30th September, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.29/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

1. Thandanga
- 2.
- 3.

...Applicants

Versus

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

..... Respondents

Date of Hearing 30.9.2013

Date of Judgment & Award 8.10.2013

A P P E A R A N C E

1. For the Applicants Mr. Lalropara Singson
Mr.K.Kawlkhuma Advocates
2. For Respondent No.1 None
3. For Respondent No.2 Mr.Rupendra Mohan Das, Advocate

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

Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-REV dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. The notification was published in the official gazette and in two daily newspapers. Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Thereafter, Draft Award No.1 of 2012(Part-C- Hortoki) dt.13th Sept. 2012 was made by the Respondent No.1.

Notice were issued to all the respondents. Despite due receipt of notice, as no representation was made, the matter was in the absence of Respondent No.1(District Collector, Kolasib District, Kolasib) . Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance was made by the said respondent.

I have heard the Ld. Counsels. Apart from the respondent No.2 no objection is received from respondent No.1. The Ld. Counsel for the applicants, at the outset submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act though in the application u/s 18 LA they have also claimed other reliefs. The Mr.Lalropara Singson Ld. Counsel for the applicants submitted that Award No. 1 of 2012 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act though payment of the same is mandatory. The Ld. Counsel also submitted that at the time of pronouncement of the Award, neither the applicants nor their representatives were present. The Ld. Counsel submitted that the applicants received their respective share of compensation in terms of the Award under protest during the month of January 2013 and only thereafter, they came to lean about the essential ingredients of the Award. The Ld. Counsel argued that since no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the application is maintainable in its present form and style ?

2. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
3. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

Issue No.1:-

Whether the application is maintainable in its present form and style ?

Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. From the documents enclosed by the office of the District Collector, Kolasib District, Kolasib while making a reference to the court there is no material to show that the applicants nor their representatives were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record . In the instant case, the applicants received their respective share of compensation in terms of the Award under protest during the month of January, 2013. Application u/s18 of the Land Acquisition Act was submitted to the District Collector, Kolasib District on 15.4.2013.

Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire compensation awarded and exclusion of the same would violate the statutory right of the applicants. The applicants are thus entitled to payment on interest @ 12%pa on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector** reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.9,60,605/-(Rupees Nine lakhs sixty thousand six hundred and five) for the period commencing from 2nd Aug.2011 i.e notice u/s4(1)of LA Act to 13th Sept. 2012 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.21,27,555/-(Rupees twenty one lakhs twenty seven thousand five hundred and fifty five) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest, for the same land ad under the same Award..

Announced in open court and given under my hand and the seal of this court on this the 8th October, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III

Aizawl Judicial District : Aizawl.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.21/2013

P R E S E N T

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

1. Michael C.Lawnga
S/o Kapchhunga(L)
R/o Hmunnghak
2. John Malsawma
S/o Sapruaia
R/o Hmunnghak
3. K.Zakhuma
S/o Hrangkhuma
R/o E.Phaileng
4. Zodingliana
S/o Ialparmawia
R/o Pehlawn
5. Lawmkima
S/o Lalthanmawia
R/o Pehlawn

...Applicants

Versus

1. District Collector
Aizawl District, Aizawl
2. Secretary to the Govt. of Mizoram
Public Works Department
Aizawl, Mizoram
3. Chief Engineer
PWD(Highway)

Govt.of Mizoram, Aizawl

4. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
Aizawl, Mizoram.

..... Respondents

Date of Hearing 14.10.2013

Date of Judgment & Award 21.10.2013

A P P E A R A N C E

1. For the Applicants Ms.N.LalzawmlianiAdvocates
2. For Respondent No.1 Mr.R.Lalremruata, Advocate
3. For Respondent No.2-4 Mrs.Rose Mary, Addl.GA

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

Lands being required by the Respondents No.2 & 3 for widening of NH54 to 2 lane standard from 0/00 to 60/00km, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a Notification u/s 4(1) of the Land Acquisition Act, 1894 vide No.K.15011/102/2005-REV dt.21.6.2010 and Notification u/s 6 LA Act was issued vide memo No.K.15011/102/2005-REV dt.24.6.2010. Thereafter Award No.6 of 2010 was pronounced. After the pronouncement of the Award most of the land owners received their respective share of compensation. However, the Award has left out the names of five persons whose crops/trees and buildings were already assessed with the other owners. The said five persons are the present applicants. In respect of the five persons, Supplementary Award No.6 of 2010 was pronounced by the District Collector on 25.2.2013.

Notice were issued to all the respondents. The respondents entered appearance through their respective counsels but objections have not been filed despite sufficient opportunity being granted to them.

I have heard the Ld. Counsel for the applicants.. The Ld. Counsel for the applicants, at the outset submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as

provided u/s 23(2) and 23(1A) of the Land Acquisition Act. The Ms.N.Lalzawmliani, Ld. Counsel for the applicants submitted that Supplementary Award No. 6 of 2010 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act and that at the time of pronouncement of the Award, neither the applicants nor their representatives were present. The Ld. Counsel argued that since no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the application is maintainable in its present form and style ?
2. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
3. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

Issue No.1:-

Whether the application is maintainable in its present form and style ?

Upon perusal of the record, it is seen that Supplementary Award no.6 of 2010 was signed on 25.2.13. From the documents enclosed by the office of the District Collector, Aizawl District, Aizawl while making a reference to the court there is no material to show that the applicants nor their representatives were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. As such, I do not see any reason why the benefit of Sec.18(2) LA Act shall not be extended to the applicants. In the instant case, the Award was signed on 25.2.2013 and application u/s was submitted to the District Collector, Kolasib District on 7/5/13 which is within 6 months from the date of the Award.

Accordingly, I do not find that the application is barred by limitation and I see no reason why it cannot be adjudicated in the manner it was referred by the District Collector to the court for adjudication. Hence, Issue No.1 is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire compensation awarded and exclusion of the same would violate the statutory right

of the applicants. The applicants are thus entitled to payment on interest @ 12%pa on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector** reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the Land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.2,16,954/-(Rupees two lakhs sixteen thousand nine hundred and fifty four) for the period commencing from 21.6.2010 i.e notice u/s4(1)of LA Act to 25.2.2013 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.2,06,866/-(Rupees two lakhs six thousand eight hundred and sixty six) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondents No.2 & 3 within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court
on this the 21st October, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.37/2013

P R E S E N T
Mrs.Helen Dawngliani

Addl.District & Sessions Judge – III

1. C.Lalchhanhima
2. Lalnunmawia
3. C.Zothansangi
4. C.Lalrintluanga
5. Lalzarmawii
6. F.Zarzoliana
7. Lalthianghlimi
8. Laltanpuii
9. Laldingliana
- 10.Lalrintluanga
- 11.Laltlanhlua
- 12.K.Thanchungnunga
- 13.Lalkima
- 14.Lalpianfela
- 15.Laltluanpuii
- 16.Lalramliana
- 17.Vanlaldika
- 18.R.Lalhmgangaiha
- 19.Lalremmawia
- 20.Lalthankimi
- 21.M.Darthangpuii
- 22.22.Biakthangi
- 23.Jobinti
- 24.R.Sangkhuma
- 25.Rinpuii
- 26.Horendro
- 27.Lalchhuanmawia
- 28.Vanlalngheta
- 29.HT Rila
- 30.Lalrovi
- 31.Lalngilneia
- 32.Nobiram
- 33.Debola
- 34.Dependa
- 35.Lalramchuani
- 36.Zoliansangi
- 37.Michael Vanlalrema

37.

...Applicants

Versus

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

..... Respondents

Date of Hearing 23.10.2013

Date of Judgment & Award 29.10.2013

A P P E A R A N C E

1. For the Applicants Mr. C.Lalrinpuia
Ms.Cicily Zonunfeli
Advocate
2. For Respondent No.1 None
3. For Respondent No.2 None

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

Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-REV dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. The notification was published in the official gazette and in two daily newspapers. Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Thereafter, Draft Award No.1 of 2012(Part-C- Hortoki) dt.13th Sept. 2012 was made by the Respondent No.1 and the same was approved by the Government of Mizoram, Revenue Department vide its letter No.K.12011/25/2011-REV dt.24th Sept. 2012.

Notice were issued to the three respondents. Despite due receipt of notice, no representation was made by the respondents and the matter is proceeded in their absence.

Though in the application made u/s 18 of the Land Acquisition Act, 1894, claim was made for payment of interest @ 12% pa as per sec.23(1A), 30% as solatium u/s23(2), interest @ 9%pa as per sec.28 and interest 9%pa as per section 34 of the Land Acquisition Act. The Ld. Counsel for the applicants, at the time of hearing on 23.10.13, submitted that they will limit their claim only for payment of solatium @ 30% and interest @ 12%pa on the market value of the land as provided u/s 23(2) and 23(1A) of the Land Acquisition Act.

In view of the submission made by the Ld Counsel for the applicants, the only issues that has to be decided are:-

1. Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?
2. Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

I have heard the Ld. Counsel for the applicants.

Mr.C.Lalrinpuia Ld. Counsel for the applicants submitted that Award No. 1 of 2012 does not include solatium and interest provided u/s 23(1A) and 23(2) LA Act though payment of the same is mandatory. The Ld. Counsel also submitted that at the time of pronouncement of the Award, neither the applicants nor their representatives were present that no Notice u/s 12(2) LA Act was issued, the applicants are entitled to the extended i.e 6 months period u/s 18 LA Act._____

Before making a decision on the issues, it is first necessary to examine whether the applicants are barred by limitation and whether they are barred u/s 31(2) of the Land Acquisition Act?

Upon perusal of the record, it is seen that Award no.1 of 2012(Part-C-Hortoki) was made on 13th Sept.2012. The documents enclosed from the office of the District Collector, Kolasib District, Kolasib while making a reference to the court has enclosed a certified copy of the approval of the Award by the State Government vide letter No.K.12011/25/2011-REV dt.24.9.2012. There is no material to show that the applicants were present at the time of pronouncement of the Award. Notice as provided u/s 12(2) of the LA Act is also not seen from the record. In the absence of such material, I see no reason why the applicants cannot be provided with 6 (six) months as per sec.18(2)(b) of the Land Acquisition Act, to make an application for reference to the Court u/s 18 of the said Act. In the instant case, application for reference u/s18 of the Land Acquisition Act was

received by the office of the District Collector, Kolasib District on 15.4.2013 , which is clearly which is _____

With regard to the receipt of their respective share of compensation in terms of the Award, the applicants asserted that in the month of January 2013 when they received the compensation in terms of the Award, they only came to know about the contents of the Award.

ISSUE No.1

Whether the applicants are entitled to payment of interest @12% pa u/s 23(1A) of the Land Acquisition Act, 1894?

In the Apportionment of the Award annexed to the Award, interest @ 12%pa on the market value of the land as provided u/s23(1A) of the Land Acquisition Act was not calculated. The said interest was also not calculated for damage to crops/buildings/fish pond. Interest payable should be on the entire compensation awarded and exclusion of the same would violate the statutory right of the applicants. The applicants are thus entitled to payment on interest @ 12%pa on the market value of the land which would also include damage to crops etc. as held by the honb'le Apex Court in the case of **Chaturbhuj Pande versus Collector**_reported in **1969 AIR(SC)25**. Accordingly, the applicants shall be entitled to payment of interest @12%pa as provided u/s 23(1A) of the land Acquisition Act and the issue is decided in favour of the applicants.

ISSUE No.2

Whether the applicants are entitled to payment of 30% on the market value of the land in view of the compulsory nature of acquisition in terms of sec.23(2) of the Land Acquisition Act?

The applicants have made a claim for payment of solatium 30% on the market value of the land as provided u/s23(2) of the L.A Act. The said provision mandates solatium for an amount calculated at 30% on the market value of the land in view of the compulsory nature of acquisition. In the Award No.1 of 2012(Part-C- Hortoki), the District Collector did not make any award for solatium calculated at 30% of the market value of the land. The provision of sec.23(2) of the L.A Act mandatorily provides for making such award by the Court. It has been held in a catena of decisions by the honb'le Apex Court as well as the Honb'le High Courts that solatium is very much a part of compensation and it follows automatically the market value of the land acquired as a shadow to a man. Solatium is provided in terms of money as and by way of solace to the party who is deprived of his land. It is a statutory benefit given under sec.23(2) of the Act. It is therefore held that the applicants are entitled to solatium provided u/s23(2) of the Act. This issue is also decided in favour of the applicants.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs._____-/(Rupees _____) for the period commencing from 2nd Aug.2011 i.e notice u/s4(1)of LA Act to 13th Sept. 2012 i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs._____-/(Rupees _____) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2(Northern Front railway) within a period of 90 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Before parting, as a matter of precaution, since reference application is filed in group and most of the applicants are rustic villagers, it is made clear that the presence of one land owner in more than one applications filed in group will not entitle the said owner for getting more payment than once in respect of solatium and interest.

Announced in open court and given under my hand and the seal of this court on this the 29^h day of October, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

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

L.A Case No.2/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

1. K.Lianzama
R/o Hmunnghak
Aizawl District, Mizoram

2. Peter Lalmawia
R/o Hmunnghak
Aizawl District, Mizoram

...Applicants

Versus

1. District Collector, Aizawl District, Aizawl

2. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
Aizawl, Mizoram

3. Secretary to the Govt. of Mizoram
Public Works Department

4. Chief Engineer
Public Works Department (highway)
Govt. of Mizoram, Aizawl

..... Respondents

Date of Hearing 17.10.13 & 28.10.13

Date of Judgment & Award 8.11.13

A P P E A R A N C E

1. For the Applicants Mr. LH Lianhrima
Mrs.Buangthangpuii
Advocates
2. For Respondent No.1 Mr.R.Lalremruata
Advocate
3. For Respondent No.2-4 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 upgradation of NH 150 to double lane roads from 0.00KM to 60.00km(Khawruhlian to East Phaileng). For the said purpose Notification u/s4 of the land Acquisition Act was issued on 12.6.2008 and thereafter Award no6/2010. Landowners including the applicants received their respective share of compensation in terms of the Award No.6 of 2010.
2. The applicants made representation to the respondent No.1 19.4.2012 for payment of Solatium and interest u/s 23(1A)(2) of the Land Acquisition Act. However, as no action was taken as desired, the applicants approached the hon'ble Gauhati High Court by filing a writ petition which was registered as WP(C)No.65/2012. The said writ petition was disposed off by the honb'le Gauhati High Court vide its Order dt.5.9.12 a direction was issued to the Respondent No.1 to consider the representation of the petitioners dt.19.4.2012 and to take decision thereon in accordance with law. Thereafter, reference u/s18 of the LA Act was made by the Respondent No.1 on 8.1.2013.

3. Upon receipt of the case on being endorsed to this court by the Ld.District Judge, notices were issued to all the respondents. In response, the Respondent No.1 through its Counsel submitted that they have no objection in payment of Solatium and interest to the applicants. However, Respondents No.2-4 failed to submit their objection despite opportunity being granted till 17.7.2013.
4. I have heard Mr.LH Lianhrima Ld. Counsel for the applicants who submitted that payment of Solatium and interest u/s 23(1A)&(2) of the Land Acquisition Act is the statutory right of the applicants who have been permanently deprived of the enjoyment of their lands due to compulsory acquisition. The Ld. Counsel argued that the Respondent No.1 failed to comply with the provision of section 12(2) of LA Act. The Ld. Counsel submitted that the Respondent No.1 duly received the Order passed by the honb'le Gauhati High Court and having considered the same, referred the representation of the applicants for adjudication by the court u/s18 of the LA Act. According to the Ld.Counsel, other land owners who are similarly situated have long been paid their share of compensation including solatium and interest and there is no justification to deny the same benefit to the present applicants.
5. As mentioned above, Respondent No.1 raises no objection to the claim made by the applicants and there is no pleading for respondents No.2-4 despite sufficient opportunity being granted.
6. In the case at hand, the honb'le Gauhati High Court vide its Order dt.5.9.12 had directed the Respondent No.1 to *"consider the representation of the petitioners dt.19.4.2012*

and take decision thereon in accordance with law at an early date". With such specific direction from the Honb'le Gauhati High Court, it cannot but be presumed that reference was made by the Respondent No.1 after due consideration of the application including its maintainability and having considered the same to be maintainable, referred the same to the Court for determination u/s 18 of the LA Act. The said inference can also be drawn due to the fact that the Respondent No.1 did not raise any objection to the claim of the applicants in the present application.

7. In the given facts and circumstances of the case, more particularly the fact that Respondent No.1 referred the matter after considering the representation of the applicants as directed by the honb'le Gauhati High Court and also the fact that the said respondent raises no objection to the claim of the applicants, I do not find any impediment in awarding Solatium and interest to the applicants u/s 23 (2) & (1A) of the Land Acquisition Act.

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs._____/-(Rupees _____) for the period commencing from _____ i.e notice u/s4(1)of LA Act to _____ i.e date of Award .

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.____/-(Rupees ____) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.3 &4(_____) within a period of 60 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court on this the 8th November, 2013

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

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

L.A Case No.1/2013

P R E S E N T

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

1. Hranghleia R/o Khawruhlian
2. Rochungnunga R/o Khawruhlian
3. Lalsawmliana R/o Khawruhlian
4. Lalthlamuana R/o Khawruhlian
5. TC Lalngaizuala R/o Khawruhlian
6. RK Malsawma R/o Khawruhlian
7. TC Ngaizuala r/o Khawruhlian
- 30.

...Applicants

Versus

1. District Collector, Aizawl District, Aizawl

3. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
Aizawl, Mizoram

3. Secretary to the Govt. of Mizoram
Public Works Department
4.Chief Engineer
PublicWorks Department(highway)
Goct.of Mizoram, Aizawl

..... Respondents

Date of Hearing 8.11.2013

Date of Judgment & Award 15.11.2013

A P P E A R A N C E

1. For the Applicants Mr. K.Kawlkhuma
Mr.Lalbiakkima
Advocates

2. For Respondent No.1 Mr.R.Lalremruata
Advocate

3. For Respondent No.2-4 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 widening of NH 150 to double lane roads from 0.00KM to 60.00km(Khawruhlian to East Phaileng). For the said purpose Notification u/s 4 of the Land Acquisition Act was issued on 12.6.2008 and thereafter Award no. 6/2010. Landowners including the applicants received their respective share of compensation in terms of the Award No.6 of 2010.
2. The applicants made representation to the respondent No.1 23.11.11 for payment of Solatium and interest u/s 23(1A)(2) of the Land Acquisition Act. The same was referred to the court for determination u/s 18 of the Land Acquisition Act
On 8.1.12 alongwith the application u/s18 of the said Act by other applicants in the same Award i.e Award no.6 of 2010.
3. Upon receipt of the case on being endorsed to this court by the Ld.District Judge, notices were issued to all the respondents. In response, all the respondents through their respective Counsel submitted that they have no objection in payment of Solatium and interest to the applicants.
4. The applicants examined one Rothuama as their witness. He stated on oath that they have knowledge of the Award only on 5.6.2012 when they received their respective share of compensation. Since the respondents did not raise objection, the witness was not cross examined.
5. As the respondents does not raise objection to the application and since the lone witness was not cross examined by the respondents in view of the fact that they do not have objection, I have no other option but to believe the statement of the lone witness.
6. In the absence of any objection from the respondents and the reference being made alongwith another application under the same Award who are similarly situated as in LA Case

No.2/13, I do not find any reason why the same benefit should not be extended to the applicants

A W A R D

The applicants are awarded an additional amount in the form of interest @ 12%pa as provided u/s 23(1A) amounting to Rs.8,087.00/-(Rupees eight thousand eighty seven) only

The applicants shall also be entitled to solatium at the rate of 30% from the entire amount of compensation award which is Rs.6,15,002/-(Rupees six lakhs fifteen thousand and two) as per sec.23(2) of the Land Acquisition Act, 1894.

The additional amount so awarded shall be satisfied by the Respondent No.2 to 4(PWD) within a period of 60 days from today. The amount shall bear interest at the rate of 6% pa in case of failure to deposit the awarded amount within the stipulated time.

Announced in open court and given under my hand and the seal of this court on this the 15 November, 2013

(HELEN DAWNGLIANI)

Addl.District & Sessions Judge-III

Aizawl Judicial District : Aizawl.

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

L.A Case No.15/2013

P R E S E N T

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

1. K.Zoliana

82.

...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 _____

Date of Judgment & Award _____

A P P E A R A N C E

1. For the Applicants Ms.N.Lalzawmliani
Advocate

2. For Respondent No.1 None

4. For Respondent no.2 Mr. Rupendra Mohan
Das, Advocate

3. 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. Thereafter Award No.1

of 2012(Part D-Khamrang) was made by the Respondent No.1 on 28.1.2013.

3. Aggrieved by Award No.1 of 2012(Part D-Khamrang) 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 land owners who possess land Settlement Certificates. The petitioners possess Periodic Patta, Village Council Pass and District Council Pass for their lands. 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 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.
4. 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.
5. 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.

7. 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 so, to what extent?
- iv) Whether the applicants are entitled to the reliefs claimed, if so, to what extent?

8. In support of their submission, petitioners adduced evidence by examining four witnesses namely K.Zoliana, Vanlalngheta, Vanlalnghaka and C.Vanlalhruaia. Examination-in-Chief of these witnesses on affidavit was submitted and documents were exhibited. However, none of the witnesses were cross examined.

10. It is seen from the evidence of these witnesses that the petitioners possess lands covered by Periodic Patta, Village Council Pass and District Council Pass which fall within the lands acquired by the Respondent No. 2 NF Railways vide Award No.1 of 2012(Part - D Khamrang). They depose that their Periodic Pattas were issued under the Mizo District(Agricultural land) Act, 1963 and the Lushai Hills District(House Sites) Act, 1953. They depose that the District Collector while quantifying the compensation payable to them has failed to give them compensation for the land value with its solatium and interest. They stated that non payment of compensation for the land value only because they do not possess a

settlement certificate is arbitrary, discriminatory and violative of Article 300 A of the Constitution of India. They depose that their non willingness to part with their land the same has been compulsorily acquired by them. Accordingly, due to compulsory acquisition they stand to loose their lands which they have looked after and developed through their hard earned money for a number of years and resultantly they have been deprived of the benefits arising from their lands. They also depose that in view of the compulsory nature of acquisition of their lands, they are entitled to payment of 30% of the Award as solatium and interest @ 12%pa as provided by the Land Acquisition Act itself.

11. 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 Id. 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.

12. I have heard the Ld. Counsel and perused the materials on record including the Award No.1 of 2012(Part D - Khamrang). 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(Kutchha) 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.

13. 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 enetered 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 ransferable right os 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 expereesed in his settlement lease and the rules made thereunder".***

16. *In the present case the respoendent 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.....".

17. 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.

18. In the instant case, Petitioners No.5(Lalnuntluangi), No.9(Ramdinthara), No.21. K.Laikhuma, No.22 & 23 Vanlalngheta, No. 25. Lalhmangaihzuala, No.29. Lalbiakliani, No.30. Rebeki and No.46. Sangthankima are Periodic Patta holders. A reading of the Apportionment of the Award No.1 of 2012(Part-D-Khamrang) 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.

19. The rest of the petitioners 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 D-Khamrang).

20. 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.

21. 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 presence of such a clause, holder of Periodic Patta has been regarded as ‘person interested’ within the meaning of the Act and granted compensation for the value of the land. In the case at hand, neither the Village Council Pass or District Council Pass contain any such conditions. In the case of **Special land**

CAquisition & 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 ybder 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.

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

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

24. 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, Kolsaib shall reassess the compensation payable to the petitioners by including the value of the land which is to be calculated a@ 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. The same shall be paid

(HELEN DAWNGLIANI)

Addl.District & Sessions Judge-III

Aizawl Judicial District : Aizawl.

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 & 59 Ors

...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 _____

Date of Judgment & Award _____

A P P E A R A N C E

1. For the Applicants Mr.K.Kawlkhuma
Mr.Lalropara

Singson Advocate

2. For Respondent No.1 None

5. For Respondent no.2 Mr. Rupendra Mohan
Das, Advocate

3. 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. 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.

4. 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 so, to what extent?

5. 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.

6. 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 deposed 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.

11. 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 versus M.S.Seshagiri Rao & Anr reported in 1968 AIR 1045.

7. 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(Kutchha) 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.

8. 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.....".

9. 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.

10.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).

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.foot, the District Collector, Kolasib

District, Kolsaib shall reassess the compensation payable to the petitioners by including the value of the land which is to be calculated a@ 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.

(HELEN DAWNGLIANI)

Addl.District & Sessions Judge-III

Aizawl Judicial District : Aizawl.

6. The hon'ble Apex Court in the case of *Atma singh & Ors versus State of Haryana & Anr* reported in (2008) 2 SCC 568, has held as follows :-

" 4. In order to determine the compensation which the tenureholders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the Court shall take into consideration while section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The expression 'market value' has been subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arms length nor façade of sale not fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities.

3. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to

its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration."

It is also noted that though it claimed that the land in question is located within the residential area of Bairabi, no permanent structures including a building have been constructed with the said land. On the contrary, it is noticed through the claim itself that there were a number of trees and crops as well as a fish pond within the land.

No sale instances of neighboring land between a willing purchaser and a willing seller have been brought on record so as to have a yardstick for calculation of the market value of the land.

8.B. Having concluded that the land in question does not enjoy all the advantages as the land acquired under Award No.1 of 2006, at the same time, it is seen that the statement made by the petitioner with regard to the advantages, accessibility and potentiality of the said land have not been rebutted by the respondents. The petitioner contended that his land enjoys the basic amenities such as electricity, telephone and water supply. That it is barely 80 metres from the National Highway and a wholesale market building was constructed by the Trade & Commerce Department of the State. _____

10. Coming to the claim for damage caused to the fish pond and the products from the fish pond the petitioner has made a claim that the rate should be fixed at Rs.76per sq.m and loss of income

for 15 years amounting to Rs.11,70,000 @ Rs.78,000/pa calculated @ Rs.120 per Kg for 650 Kgs. Apportionment of Award No. 1 of 2012(Part A-Bairabi) shows that compensation amounting to Rs. 84,000/- calculated @ Rs.56/-per sq.m have been awarded to the petitioner. Since the apportionment of the Award shows that the petitioner have been compensated for the damage caused to his fish pond, it is not the purview of this court to see if the fish pond actually existed or not. In the case at hand, the respondents have not contested the application apart from the respondent No.2 filing a written objection. But the the petitioner is not absolved of his burden to substantiate his claim by cogent and reliable evidence. He has to stand on his own feet and cannot take the benefit of the absence of the respondent.

10.A. The oral evidence adduced by the petitioner is silent about the number of fishes, the stages of fishes, the profit(if any) he used to derive from the fish pond, the number of seedlings, the expenditure he incurred in constructing and developing the fish pond, for how long has he been looking after the fish pond etc. which will be relevant for consideration of a suitable compensation. The petitioner has also not stated that due to acquisition of his land including the fish pond he has been prevented from selling the fishes existing at the time of acquisition. Further to have an annual yield of 6.5 quintals as claimed, the petitioner would certainly require to have someone to look after his fish pond. However, no such evidence have been adduced. The claim is made u/s 23(1) clause fourthly of the Land Acquisition Act. It is thus a claim for 'damage'. What is 'damage' _____. The petitioner has also calculated future loss of income for a period of 10 years. It is not known on what basis the petitioner chose 10 years. In order to calculate damage the loss has to be proximate consequence of the acquisition. The income derived from a fish pond cannot be regarded as permanent income. It depends on many factors and can fluctuate even without any outside intervention. As such the annual yield cannot be foreseen by anyone.

The petitioner has not brought on record any material or document to substantiate his plea that the average annual fish product is 6.5 quintals, that the market value of Fish at the time issuance of Notification u/s 4 LA Act was Rs.120/- or that the average rate of one Kilogram of fish at Bairabi is Rs.120/-. At the same time there is no Notification from the State Government with regard to value of fish/fish pond unlike crops and trees. The compensation given @ Rs.56/- per sq.m for the fish pond cannot be for the land since the same was calculated separately. The same was for the product from the fish pond.

The evidence being vague and sketchy

11. Coming to the claim for payment of compensation for damage caused to crops, trees etc. It is seen from the evidence adduced by the petitioner that he has made his claim on the basis of the rate fixed by the State Government which was published in January, 2010. Accordingly, the petitioner has made a claim of Rs.1,00,200/-. I have perused the Award No.1 of 2012(Part A-Bairabi) wherein the petitioner have been awarded a sum of Rs.1,00,200/- for the crops. A reading of the reference application of the petitioner show that he received the compensation in terms of the Award under protest on 10th August, 2012. It therefore appears that the petitioner have already been compensated for the damage caused to his crops and trees at the rate claimed by him amounting Rs.1,00,200/- in total. This claim of the petitioner is thus infructuous.

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

L.A Case No.10/2012

P R E S E N T

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

Zodinsanga
S/o L.Thantluanga
R/o College Veng, Aizawl

...Petitioner

Versus

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

..... Respondents

Date of Hearing _____

Date of Judgment & Award _____

A P P E A R A N C E

- | | | | |
|----|---------------------|-------|--|
| 1. | For the Petitioner | | Mr.LH Lianhrima
Ms.Lalthlamuani 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 |

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

1. The applicant owns a plot of land under LSC No.4 of 2005 covering 61009 Sq.Ft. which falls within the acquired lands covered by Award No. 1 of 2012(Part-A- Bairabi). The said acquisition has been carried out for construction of railway track from Bairabi to Sairang.

Being aggrieved by Award No.1 of 2012(Part-A- Bairabi), the petitioner filed an application u/s 18 LA Act to the District Collector, Kolasib on 28.8.2012 and the same has been referred to this court for adjudication. It is also highlighted

in the reference application that the petitioner received his share of compensation in terms of the Award under protest on 10th Aug.2012.

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter is proceeded in the absence of the Respondent No.1(District Collector, Kolasib District, Kolasib) vide order dt.23.4.2013. Respondent No. 2(NF Railway) filed written objection. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. The grievances of the petitioner which are highlighted in his application under section 18 of the Land Acquisition Act, 1894 are :-

a) For an increase in the market value of the land from Rs.25/-sq.ft to Rs.118/-per sq.ft.

b) For re-verification and re-assessment of the land compensation as a total area of the old cemetery at Bairabi North containing as many as 198 graves is to be acquired his land in the adjoining area appears to be acquired totally.

C) For re-verification and re-assessment of the fish pond within his land.

D) For payment of interest @ 12% pa as per sec.23(1)(1-A) of the Land Acquisition Act and solatium @ 30% .

4. In the case at hand, as stated above, only the respondent No.2 i.e NF Railway filed objection.

The said respondent also fail to make further appearance apart from submitting the objection. The main contents of the written objection are that the quantum of compensation as assessed by the Collector have been paid by them to the Collector for onward payment to the beneficiaries/owners, that they being impleaded as a party is without any reason, the cause of action will arise against them only if any Order/direction/award for further payment is required by the Court, since they do not have anything to deal with the petitioner in the proceedings their appearance/non-appearance is redundant and that the court may pass necessary orders/directions and they have got no reason to submit anything since the compensation was assessed by the Collector of the District.

5. Though no concrete objections have been raised to form an issue, yet for proper and better adjudication of the case the following issues have been 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 @12%pa in terms of sec.23(1A)(2) of the LA Act?
- iii) Whether the market value of the land is liable to be enhanced as prayed for ?
If so, to what extend
- iv) fish pond and reverification graves

6. In order to substantiate his claim, the petitioner himself was examined as the lone witness.

The petitioner deposed that the total area of his land to be acquired is _____. The land in question is located within the residential area of Bairabi sub-town, only at about 80 metres from the National Highway 154 with truckable access. He stated that in the close vicinity wholesale market was constructed by the Trade & Commerce Department of the State and the location enjoys the advantages of basic amenities like telephone, water supply and electrification etc. That in the year 2006 there was acquisition of land within the residential area of Bairabi Sub town wherein the market value of the land was fixed at Rs.75.35 per sq.ft/Rs.800 per sq.m. The petitioner stated that his land in question has a lot of similarities with the land acquired in the year 2006. The petitioner further deposed that in view of the drastic increase in human needs from the year 2006 fixation of market value at Rs,118 per sq.feet is reasonable and that since the year 2006 government employees have already been paid 58% Dearness Allowances. The petitioner further claim payment of solatium and interest as provided u/s 23(1A) and 23(2) of the Land Acquisition Act. The petitioner further deposed that fixation of compensation @ Rs.56 per sq.m for the damage caused to his fish pond is too low and prays for an increase to Rs.76/-sq.m for an area of 2542.75 sq.m. The petitioner further deposed that as a result of the proposed acquisition, he should be compensated for the loss of income from his fish product calculated @ Rs.120/- Kg for 650 Kgs for a period of 15 years. The petitioner also stated that for the damage caused to his crops and trees he should be given compensation amounting to Rs.1,00,200/-

The lone witness for the petitioner have not been cross examined by the respondents.

7. The honb'le Apex Court in the case of *Chimanlal Hargovinddas versus Special Land Acquisition Officer, Poona & Anr* reported in (1988) 3 SCC 751 has held as follows :-

“4. The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the Court hearing the Reference. It is merely a offer made by the Land Acquisition Offiecr and the material utilized by him cannot be utilized by the Court unless produced

and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it(Emphasis supplied).....(GLT 2012 Vol4 page100)

8. A reading of the Award No.1 of 2012(Part A-Bairabi) the land acquired falls within Bairabi area of Kolasib District and that the said lands have been developed for Gardens etc. It is for the petitioner to substantiate his claim by leading a cogent and reliable evidence.

9. In respect of the claim for enhanced market value for the land from Rs.25/- per sq.ft to Rs.118 per sq.ft., a reading of the deposition of the petitioner would show that the basis of claim are the location of the land in question which is within the residential area of Bairabi Sub town, about 80m from NH 154 and truckable, the construction of a wholesale market by the Trade & Commerce Department of the State in its close vicinity, the area enjoying basis amenities like water supply/electrification/telephone etc. The petitioner also compared his land with the land acquired in the year 2006 within Bairabi sub town @ 75.35 per sq.ft. In order to substantiate his claim, the petitioner also stated that an increase of Dearness Allowance @ 58% since the year 2006 would show that his claim for fixing the rate @ Rs.118 per sq.ft is reasonable.

9.A The hon'ble Apex Court in the case of *Atma singh & Ors versus State of Haryana & Anr* reported in (2008) 2 SCC 568, has held as follows :-

" 4. In order to determine the compensation which the tenureholders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the Court shall take into consideration while section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The expression 'market value' has been subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In

considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arms length nor façade of sale not fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities.

5. *For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration."*

9.B. The petitioner have enclosed an extract of Award No.1 of 2006 wherein the Market value is fixed @ Rs.800/-per sq.m. The said abstract have been exhibited as Ext.P-4. It may be noticed that in the said abstract it is mentioned " *The Land value of LSC No.W.-12/91 is respect of John Lalrinchhana is specially awarded at the rate of Rs.800/-per sq.m because the land is situated at the residential area near railway Station*". The precedents taken by the Respondent No.1 while fixing the market value in respect of Award No.1 of 2012(Part A-Bairabi) also include Award no.1 of 2006. What may be noted from the Ext.P-4 is that the rate of @ Rs.800/-

per sq.m was specially fixed because of the location of the land in question in a *"residential area near railway Station"*. It may be noted in the instant case that there is no mention about the land being located close to the Railway Station though it has been asserted that it is within the residential area of Bairabi Sub-town. From a reading of the abstract of Award No.1 of 2006, it is clearly gives an impression that the rate so fixed was because of the advantages which the land enjoyed being close to the Railway Station. It is a known factor that land around the railway station enjoys certain economic advantages as a lot of business can be carried in such an area and as they enjoy a lot of conveniences which would undoubtedly increase the value of the land. What therefore transpired is that the similarity of the two land is that both of them are located in a residential area of Bairabi Sub Town. The difference between them in the land acquired under Award No.1 of 2006 is near the railway station, but there is no mention about the Railway Station being in the vicinity in the instant land covered by Award No.1 of 2012(Part A- Bairabi). As such, the two lands may be similar, but for the difference between the two lands have a crucial bearing on determination of the land value. As such I am of the considered opinion that the land in question cannot be given special treatment for fixing the market value as was done in case of *LSC No.W.-12/91*.

9.C It is also noted that though he claimed that the land in question is located within the residential area of Bairabi, no permanent structures including a building have been constructed with the said land. On the contrary, it is noticed through the claim itself that there were a number of trees and crops as well as a fish pond within the land. No sale instances of neighboring land between a willing purchaser and a willing seller have been brought on record so as to have a yardstick for calculation of the market value of the land.

9.D. Having concluded that the land in question does not enjoy all the advantages as the land acquired under Award No.1 of 2006, at the same time, it is seen that the statement made by the petitioner with regard to the advantages, accessibility and potentiality of his land have not been rebutted by the respondents. The petitioner contended that his land enjoys the basic amenities such as electricity, telephone and water supply. That it is barely 80 metres from the National Highway and a wholesale market building was constructed by the Trade & Commerce Department of the State. It cannot be lost sight of the fact that the general trend in the prices of land is on the rise. Though the land may not be located in a commercial area, the fact that it being located within the residential area of Bairabi Sub town, it being provided with basic amenities such as water supply/electricity /telephone and the land being located at 80 from NH 154 and being a truckable road shows that even if there is no actual improvement in the infrastructure, it has the potential and possibility of improvement. Further, in the case of *Land Acquisition Officer revenue Divisional Officer, Chittor versus L.Kamamma & Ors (1998)2SCC 385*, the Honb'le Apex Court held :-

"7.When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side should be at lower rate may not stand to reason because when sites are formed those abutting the main road have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site.".

9.E. It may also be borne in mind that from the time Award No.1 of 2006 was made to the date of Notification u/s 4 of the Land Acquisition Act i.e 2.8.2011, 5 year have passed. The market value of land are on the rise and not stagnating. The fact that Bairabi sub.town itself is the only place in the State which is connected by train or in other words it is a town through which the State is connected with the rest of the country by railway/train also needs to be taken notice of. The petitioner has also placed reliance on Award No.6 of 2007 wherein the acquired lands were located at Durtlang and acquired @ Rs.150 per sq.ft. However, Durtlang is located with Aizawl City and the same cannot be compared with the land of the petitioner which is located in the subtown of Bairabi.

9.F. Taking into account all the plus and minus points regarding the claim of the petitioner for enhancing the amount of market

value of his land from Rs.25 to Rs.118/-per sq. I find that the market value fixed by the District Collector does not appear to be appropriate. Accordingly, I find that reasonable ground exist to enhance the market value of the land.

9.G. In the case at hand, there is no sale instance. The recent acquisition in the said sub town is Award no. 1 of 2006. As mentioned earlier the land acquired by the said Award is not the same the land acquired in the instant case. The land covered by Award no.1 of 2006 appears to enjoy more commercial advantages by it being located close to the Railway Station. But it was also a residential area like the land of the petitioner in the subtown of Bairabi. Some element of guess work would no doubt be involved in arriving at the market value. For the special advantages it enjoy, the market value was fixed at Rs.75/-per sq.ft for the land acquired by Award No.1 of 2006. For the land in question comparing both the lands and considering its advantages and disadvantages, 60% of Rs.75/- which is Rs.45/- should be considered reasonable market rate in the year 2006. Five years lapse from 2006 upto the time Notification u/s 4 LA Act dt._____ was issued. As stated earlier price of land are on the rise and they are not stagnating. The potentiality which the land in question enjoys as a result of the process of acquisition cannot be taken into consideration. The rise in price of land in urban areas would be much higher than in rural areas. In the instant case we are dealing with a land which is situated in a sub town. The rate of annual increase of market value in such an area would be 10% to 20% at the most. Accordingly, by taking Rs.45/- per sq.ft as the market value in the year 2006, with an annual increase of 10% in the market value, the increase in the value of the land in question for 5 years i.e from 2006 to _____ would be Rs.67.5 say Rs.68/-per sq.ft.

10. Coming to the claim for damage caused to the fish pond and the products from the fish pond the petitioner has made a claim that the rate should be fixed at Rs.76per sq.m and loss of income

for 15 years amounting to Rs.11,70,000 @ Rs.78,000/pa calculated @ Rs.120 per Kg for 650 Kgs. Apportionment of Award No. 1 of 2012(Part A-Bairabi) shows that compensation amounting to Rs. 84,000/- calculated @ Rs.56/-per sq.m have been awarded to the petitioner. Since the apportionment of the Award shows that the petitioner have been compensated for the damage caused to his fish pond, it can be safely inferred that the fish pond actually existed. In the case at hand, the respondents have not contested the application apart from the respondent No.2 filing a written objection. But the the petitioner is not absolved of his burden to substantiate his claim by cogent and reliable evidence. He has to stand on his own feet and cannot take the benefit of the absence of the respondent.

10.A. The oral evidence adduced by the petitioner is silent about the number of fishes, the stages of fishes, the profit(if any) he used to derive from the fish pond, the number of seedlings, the expenditure he incurred in developing the fish pond, for how long has he been looking after the fish pond etc. which will be relevant for consideration of a suitable compensation. The claim is made u/s 23(1) fourthly of the Land Acquisition Act. It is thus a claim for 'damages'. Ordinarily damages are equivalent to the loss suffered by the plaintiff. The idea of civil law is to compensate the injured party by allowing him, by way of damages, a sum equivalent to the loss caused to him. As such, damages should be the proximate consequences of the injury/loss.

. It is not the case of the petitioner that due to compulsory acquisition of his land he has been debarred from selling the existing fishes from the fish pond. The petitioner has not brought on record any material or document to substantiate his plea that the average annual fish product is 6.5 quintals, that the market value of Fish at the time issuance of Notification u/s 4 LA Act was Rs.120/- or that the average rate of one Kilogram of fish at Bairabi is Rs.120/-. However, in the absence of any rebuttal from the respondents, if the statement of the petitioner is presumed to be

true, the annual yield would be Rs.78000/-. The petitioner have already received an amount of Rs.84000/- as compensation for the damage caused to the fish pond as per Award No.1 of 2012(Part A-Bairabi). The petitioner also claimed that the damage caused to the fish pond should be calculated @ Rs.76/-sq.m which is 36% increase over Rs.56/-per sq.m. The petitioner stated that his claim was made on the basis of an assessment made by the District Collector of Kolasib in the year 2006. An extract of Award No. 1 of 2006 which the petitioner exhibited does not contain such an assessment. Such kind of claim is a statement from which documentary evidence can be expected to be forthcoming. But the petitioner in a very casual manner, as a matter of course simply stated that the amount claimed by him is based on the assessment made in the year 2006. Though there may not be any rebuttal, it is the duty of the petitioner to prove his case and to atleast produce the basis of his claim. This is not done by the petitioner. Under such circumstance, it cannot but be concluded that the claim has been made without any basis.

The petitioner has also made a claim for payment of future damages for a period of ten years. Prospective or future damages in torts means compensation for damage which is quite likely result of the defendant's wrongful act but which has not actually resulted at the time of the decision of the case. As such proximity of loss of income with the act of the defendant should be the guiding factor. For example a person being crippled due to wrongful act of the other/accident is likely to suffer loss in his earning capacity in future. However, in the case at hand the yielding of fish products from the fish pond may vary at any time even due to natural calamities. If future damages is to be given for fish products from a fish pond, what about standing crops, trees, vegetables and timber ? This Court has not come across future damages being given for such agricultural products which may be of high commercial value.

For the aforesaid reason, this Court is of the considered opinion that the claim for future damages in respect of the fish pond is not based on any sound principle of law and that the same cannot be entertained.

11. Coming to the claim for payment of compensation for damage caused to crops, trees etc. It is seen from the evidence adduced by the petitioner that he has made his claim on the basis of the rate fixed by the State Government which was published in January, 2010. Accordingly, the petitioner has made a claim of Rs.1,00,200/-. I have perused the Award No.1 of 2012(Part A-Bairabi) wherein the petitioner have been awarded a sum of Rs.1,00,200/- for the crops. A reading of the reference application of the petitioner show that he received the compensation in terms of the Award under protest on 10th August, 2012. It therefore appears that the petitioner have already been compensated for the damage caused to his crops and trees at the rate claimed by him amounting Rs.1,00,200/- in total. This claim of the petitioner is thus infructuous.

A W A R D

The market value of land covered by LSC No._____ belonging to Zodinsanga shall be re-assessed by the District Collector, Kolasib at the rate of Rs.68/-per sq.ft for an area of _____. The amount so arrived at shall be paid by the Respondent No.2(NF Railway) within a period of two months from the Award. The reference claimant shall also be paid solatium @ 30% on the _____ as per sec._____ alongwith interest @12%pa from the date of Notification u/s 4 LA Act i.e to the date of the Award.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

CMA No.519/2013
In LA Case No.42/2013

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

Lalramthara(Sl.No.127) & 133 Ors

...Applicants

Versus

1. State of Mizoram represented by the Chief Secretary
To the Govt. of Mizoram.
2. District Collector, Kolasib District
Kolasib
3. Northern Front railway represented by
Deputy Chief Engineer CON/III/SCL, Silchar

4. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department

..... Respondents

Date of Hearing 28.2.2014

Date of Order 4.3.2014

A P P E A R A N C E

- | | | | |
|----|-------------------------|-------|------------------------------------|
| 1. | For the Applicants | ..... | Mr. Lalramhluna Advocate |
| 2. | For Respondent No.1 & 4 | ..... | Mrs. Rose Mary, Addl.GA |
| 3. | For Respondent No.2 | ..... | None |
| 4. | For respondent No.3 | | Mr.Rupendra Mohan Das,
Advocate |

O R D E R

1. The instant application has been filed under Order XXXIX Rule CPC for grant of temporary injunction against the respondents from damaging, alienating and trespassing the graves of the applicants relatives in the process of land acquisition in terms of Award no.1 of 2012(Part A-Bairabi). The reference application filed by the applicants u/s 18 of the Land Acquisition Act which is registered as LA Case No.42/2013 is pending disposal before this Court.
2. Written objection is received only from Respondent No.3(NF Railway). The said respondent had stated that they have not yet started any works of development of land and placing tracks over the disputed land/graveyard while abiding by the orders of this Court. The said respondent further prays for early settlement of the dispute so as to enable them to proceed with the project. It is also further contended that in other portions of Bairabi – Sairang sector works are already in progress except the particular portion.

Apart from submitting written objection, the said respondent failed to make further appearance.

3. Respondent No.2 failed to enter appearance. Respondent No.1 & 4 are represented by the Ld. Addl.GA, but no objection is filed.
4. Mr.Lalramhluna Ld. Counsel for the applicants submitted that the some claimants had approached the Honb'le Gauhati High Court by filing a writ petition which is registered as WP© No.101/2013. The grievance of the petitioners in the said writ petition is that the graves owned by them are to be affected by the acquisition of land under Award No.1 of 2012(Part A-Bairabi) but their names were not included whereas the names of 128 grave owners were included and that they have not been paid any compensation.

The said writ petition No.WP(C) No.101/2013 was disposed off vide Judgment & Order dt.13.2.2014 with the following direction :-

"a) The petitioners shall file a fresh representation before the respondent No.4 i.e District Collector, Kolasib District, Mizoram within a period of 2(two) weeks from today.

b) the respondent No.4 District Collector, Kolasib District, Mizoram on receipt of the said representation shall dispose off the same within a period of 1(one) month from the date of receipt of the representation so filed by the petitioner by a speaking order.

5. Upon perusal of the materials on record, particularly, LA Case No.42/2013, it is noticed that the said reference was made in compliance of the Order Dt.13.9.2013 passed by the honb'le gauhati High Court in WP (C) No.102/2013.

6. Perused the Order dt.13.9.2013 passed by the honb'le Gauhati High Court in the case of C.Lalramthara wherein the honb'le High Court has allowed the prayer of the petitioners to treat their applications as an application u/s 18 LA Act. Accordingly, in compliance with the said Order of the honb'le High Court, the applications were referred to Court u/s 18 LA Act for adjudication.
7. A reading of the objection filed by the Respondent No.3(NF Railway) shows that they have not started any works of development of land and placing tracks over the disputed land/cemetery in compliance of the order passed by this court. In other portions of Bairabi-Sairang work is already in progress.
8. The Judgment & Orders passed by the hon'ble Gauhati High Court more particularly in WP (C) No.101/2013 wherein fresh assessment has been directed to be carried out is also to be kept in mind while considering this application.
9. In the instant case, the fact that the land in question is the grave(s) involving the sentiments of the petitioners is to be kept in mind, Secondly, re-assesment/further verification has to be conducted in respect of the area in the cemetery which will be acquired/damaged by the project in terms of the Judgment & Order Dt.13.2.2014 in WP(C) No.101/2013, thirdly, the fact that in the event of the graves being destroyed in the process of carrying out the project the ultimate outcome of the reference application i.e LA Case No,42/2013 can be futile and fourthly, work having not begun in the said portion of land though in the other area work has been executed, I am of the considered view that prima facie case and balance of convenience are in favour of the applicants. Further, the land in question in the instant application are not ordinary lands. They are the graves of the near and dear ones of the

applicants. As such, any damage caused to such graves without the satisfaction of the applicants would involve hurting the sentiments and emotion of the applicants. Accordingly, the matter has to be dealt with extreme care and caution and any damage done cannot be compensated in terms of money.

10. For the reasons indicated in the foregoing paragraphs, I find that sufficient ground has been made out for grant of temporary injunction in favour of the applicants.
11. Accordingly, temporary injunction is issued to the respondents more particularly Respondent No.3(NF Railway) to refrain from damaging the graves belonging to the applicants till final disposal of LA Case No.42/2013 or till further order, whichever is earlier, while carrying out the construction work of railway track from Bairabi to Sairang.
12. With the above Order, the application stands disposed off.

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge
Aizawl Judicial District : Aizawl

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

L.A Case No.19/2013

P R E S E N T

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

H.Kawla

...Applicants

Versus

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

..... Respondents

Date of Hearing 28.2.2014

Date of Judgment & Award 6.3.2014

A P P E A R A N C E

1. For the Applicants Ms.N.Lalzawmliani
Advocate

2. For Respondent No.1 None

9. For Respondent no.2 Mr. Rupendra Mohan
Das, Advocate

3. 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. Thereafter Award No.1 of 2012(Part E-Mualkhang) was made 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 owner of lands covered by Periodoc Pattas, Village Council Passes and District Council Passes. The District Collector, 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 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 their respective lands in view of the passes/permit possessed by them? If so, to what extend?
- iv) 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 Thansanga, Rothangvunga and C.lalchhandama. Examination-in-Chief of these witnesses on affidavit was submitted and documents were exhibited. However, none of the witnesses were cross examined.

7. It is seen from the evidence of these witnesses that the petitioners possess lands covered by Periodic Patta, Village Council Pass and District Council Pass which fall within the lands acquired by the Respondent No. 2 NF Railways vide Award No.1 of 2012(Part – E Mualkhang). They depose that their Periodic Pattas were issued under the Mizo District(Agricultural land) Act, 1963 and the Lushai Hills District(House Sites) Act, 1953. They depose that the District Collector while quantifying the compensation payable to them has failed to give them compensation for the land value with its solatium and interest. They stated that non payment of compensation for the land value only because they do not possess a settlement certificate is arbitrary, discriminatory and violative of Article 300 A of the Constitution of India. They depose that their non willingness to part with their land the same has been compulsorily acquired by them. Accordingly, due to compulsory acquisition they stand to lose their lands which they have looked after and developed through their hard earned money for a number of years and resultantly they have been deprived of the benefits

arising from their lands. They also depose that in view of the compulsory nature of acquisition of their lands, they are entitled to payment of 30% of the Award as solatium and interest @ 12%pa as provided by the Land Acquisition Act itself.

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 Id. 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.

10. 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(Kutchha) 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.

11. 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 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.....".

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. In the instant case, Petitioners No. _____ 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.

12. The rest of the petitioners 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 E-Mualkhang).

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. 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 contain In the case of **Special land CAquisition & 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.

15. 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.

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 and District Council Pass from payment compensation for value of the land.

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, Kolsaib shall reassess the compensation payable to the petitioners by including the value of the land which is to be calculated a@ 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. The same shall be paid-----

(HELEN DAWNGLIANI)
Addl.District & Sessions Judge-III
Aizawl Judicial District : Aizawl.

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

Execution Case No.67/2012

P R E S E N T

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

K.Vanlalmuana

...Decree holder

Versus

RIPANS

Represented by its Director.

..... Judgment Debtor

Date of Hearing _____

Date of Judgment & Award _____

A P P E A R A N C E

1. For the Decree holder Mr.W. Sam Joseph Advocate
2. For the Judgment Debtor Mr.A.R.Malhotra Advocate

J U D G M E N T & O R D E R

1. The instant application has been filed for execution of the Judgment & Order dt.7.7.2010 passed by the Ld. Addl. District Judge-I, Aizawl in LA Case No. 15 of 1999 and affirmed by the honb'le Gauhati High Court vide its Judgment & Order dt.3/5/2012 in RFA No.15 of 2010.
2. The Decree holder owns of plot of land covered by LSC No.AZL.1506/1989 located at Zemabawk which falls within the land acquired for location of Regional Para Medical and Nursing Training Institute at Zemabawk vide Award No.3 of 1990 and Award No.3 of 1993. The amount awarded to the decree holder was Rs.3,28,889/- and the same was received under protest on 15.7.1999.
3. The total area of land of the decree holder which was acquired was 7940Sq.ft. Vide Judgment & Order dt.7/7/2010, the market value of the land was raised to Rs.100/-sq.ft from Rs._____. The relevant portion of the said Judgment & Award is reproduced below :-

"40.....

.... And for the secondly, thirdly and fourthly clauses; the petitioner is also entitled to get the compensation on all the grounds mentioned in his reference application at the following rates:

(a) For making and maintaining truck able road Rs.85,782/- as assesses by the acquiring authority.

- (b) For maintaining and making terraces Rs.30,000/-*
- (c) For making and maintaining Fish Pond Rs.10,000/-*
- (d) For making swimming pool Rs.8,000/- and for maintaining swimming pool Rs.20,000/-*
- (e) For lost of Fruit nursery Rs.30,000/- this is his annual income from the fruit nursery as stated above.*
- (f) For making and maintaining play ground Rs.1,00,000/-*
- (g) Injury occasioned for severance of the land Rs.2,00,000/-*

41. Accordingly, I hold that the assessment made by the District Collector was not according to the market value of the land and the assessment shall be made on accordance with the market value of the land. Hence the opposite party the District Collector is to make assessment at the rate of Rs.100/-per sq.ft for the acquired area of 7940 sq.ft of the petitioners land, and would include the entitled compensation as listed above. The District Collector is to pay compensation within 3 months. However the amount already paid to the petitioner in the Award No.1 of 1998 shall be deducted. The petitioner is also entitled to get the solatium of 30% and interest at the rate of 12% over the compensation as well as over the solatium.

42. In addition to this the petitioner/claimant shall be given a sum of Rs.50,000/- to meet the expenditure incurred by him."

4. In the instant case, the Judgment debtor deposited a sum of Rs,17,82,847/- and the same was received by the Decree holder under protest on 10.5.2013.

5. The decree holder filed an application stating interalia that the manner of calculation of solatium and interest u/s 23(1) and 23(2) LA Act are not in consonance with the relevant law. The decree holder further made a prayer for being extended the benefit u/s 28 of the said Act.

6. Perusal of the execution petition clearly shows that the amount and interest due upon the decree holder is "Rs.12,77,782/-(Rupees twelve lakh seventy seven thousand

seven hundred and eighty two only) with interest @ 12 %p.a from dt.27.7.1999 with Rs.50,000/- as expenditure over the suit and also 30% solatium with @ 12% interest over solatium from dt.27.7.1999 as per Court's order."

7. Section 28 LA Act is reproduced as below :-

"28._____

IN THE COURT OF THE ADDL.DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.15/2012

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge

1. Manliana
S/o Chungkhawliana(L)
R/o Bairabi South
2. Zasanga
S/o Chala
R/o Bairabi South
3. Zathangpuia
C/o PC Lalpianzuia
R/o Bairabi North
4. Lalthanglura
S/o Zara(L)
R/o Bairabi North

5. Nu-i
D/o Nuntluanga
R/o Bairabi North

6. Lalbuka
S/o Thangkunga(L)
R/o Bairabi North

...Claimant/Applicants

Versus

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

..... Respondents

Date of Hearing _____

Date of Judgment & Award _____

A P P E A R A N C E

- | | | | |
|----|---------------------|-------|---|
| 1. | For the Applicants | | Mr. LH Lianhrima
Ms.Lalthlamuani 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 |

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

1. Lands being required by the Northern Front Railway for construction of Railway track from Bairabi to Sairang, the Government of Mizoram through its Commissioner/Secretary Revenue Department had issued a No.K.12011/25/2011-REV

dt.2nd Aug. 2011 issued a Notification u/s 4(1) of the Land acquisition Act, 1894 with a Schedule of land within Kolasib District for the purpose of construction of Railway line from Bairabi to Sairang, covering a stretch of land along the proposed railway line from Bairabi 0.575 to 42.241 Kms within Kolasib District. . Thereafter, vide No.K.12011/25/11-REV dt.24.1.2012 Notification u/s 6 of the Land Acquisition Act, 1894 was issued by the Government of Mizoram through its Principal Secretary, Revenue Department. Draft Award No.1 of 2012(Part-A- Bairabi).

2. Notice were issued to the three respondents. Despite due receipt of notice, as no representation was made, the matter was proceeded Ex-parte against the Respondent No.1(District Collector, Kolasib District, Kolasib) vide Order dt.23.4.2013. Respondent No.2 filed their objection, wherein, they submitted that the amount of compensation assessed by Respondent no.1 was paid by them to the said respondent for onward payment to the beneficiaries/land owners of the acquisitioned land and that the cause of action will arise against them in the event of any Order/Direction/award made by this Court for further payment. Apart from submission of the written objection, no further appearance was made by the said respondent. No objection has been filed by the Respondent No.3 i.e Land & Revenue Department, Government of Mizoram despite sufficient opportunity being offered for the same.

3. Despite the fact that the application have not been objected by the respondents, the following issues/points were evolved for proper adjudication of the matter :-

- i) Whether the application is maintainable in its present form and style ?
- ii) Whether the petitioners are entitled to the market value of their respective lands? If so, at what rate ?
- iii) Whether the applicants Zathangpuia, Lalthanglura and Zasanga are entitled to payment of damages for damage caused to their fish pond ?
- iv) Whether re-assessment of the lands of Nu-i and Lalbuka are required in respect of crops and fruit bearing trees?
- v) Whether reassessment of the wet rice cultivation of Manliana is required ?
- vi) Whether the applicants are entitled to payment of solatium and interest @ 30% and 12%pa as per Sec.23(2) and 23(1-A) of the Land Acquisition Act?

4. Heard the Ld. Counsels.

IN THE COURT OF THE ADDL.DISTRICT JUDGE-III
AIZAWL JUDICIAL DISTRICT: AIZAWL

L.A Case No.8/2012

P R E S E N T
Mrs.Helen Dawngliani
Addl.District & Sessions Judge – III

C.Biakmawia & Ors

...Applicants

Versus

1. District Collector,
Mamit District, Mamit
2. Secretary to the Govt. of Mizoram
Public Works Department.
Aizawl : Mizoram
3. Secretary to the Govt. of Mizoram
Land Revenue & Settlement Deptt.
Aizawl : Mizoram

..... Respondents

Date of Hearing _____

Date of Judgment & Award _____

A P P E A R A N C E

- | | | | |
|----|--------------------------|-------|--|
| 1. | For the Applicants | | Mr.J.Lalremruata Hmar
Mr.K.Kawlkhuma
Mr.James Lalrintluanga
Mr.H.Lalremruata dvocates |
| 2. | For Respondents No.1 | ..... | None |
| 2. | For respondents No.2 & 3 | ..... | Mrs. Rose Mary, Addl.GA |

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

4. The applicants are owner of lands located with the lands acquired by the Government of Mizoram, Public Works department for widening of NH 150 to two lane standard from Lengpui to Tripura border under Mamit District for which Award no.1 of 2010 was made by the District Collector, Mamit District, Mamit.

Aggrieved by non payment of solatium @ 30% and interest @ 12%pa in per section 23(2) and 23(1A) of the Land Acquisition Act, the applicants submitted an application u/s 18 of the Land Acquisition Act(LA Act in short) for reference to the court and the same has been referred to this court for adjudication.

5. Notices were issued to all the respondents. Respondents no.1 despite receipt of notice did not enter appearance. Respondent No.2 submitted written objection. No written objection is submitted by respondent No.3.

6. Heard the Ld. Counsels.

Mr.J.Lalremruata Hmar, Ld. Counsel for the applicants submitted at the outset that in the Award in question, areas acquired for widening as well as for diversion/bypass were included. The present applicants are owners of lands covered by the widening portion. According to the Ld. Counsel, it appears that the respondents, specially, the respondent No.2 is confused with the purpose for which the lands of the applicants were acquired i/e whether it was within the widening or diversion/bypass portion. The Ld. Counsel submitted that the applicants came to know about the existence of the Award No.1 of 2010 only on

24.2.2010 when he, acting as representative of the applicants sought information of the same through RTI. The Ld. Counsel further argued that the District Collector, Mamit failed to give immediate notice of the Award to the petitioners as per sec.12 of the LA Act and as such the petitioners are entitled to enjoy the benefit of sec.18(2)(b) LA Act. The Ld. Counsel also submitted that the petitioners received their respective share of compensation in terms of the Award only from 17.10.2012 onwards, which is after submission of application u/s 18 LA Act. The Ld. Counsel therefore submitted that the application is not barred by time and as such the petitioners are entitled to payment of solatium and interest @ 12%pa in terms of the provision of sec.23(1A)(2) of the LA Act.

In support of his submissions the Ld. Counsel placed reliance on the decision of the honb'le Apex Court in the case of **Premji Nathu versus State of Gujarat** reported in **(2012)5 SCC 250**.

On the other hand, Mrs. Rose Mary, Ld. Addl.GA appearing for respondents No.2 & 3 by relying on the objection filed by the respondent No.3(Public Works Department) submitted that the petitioners did not raise any objection to the notice u/s 4 of the LA Act and when the compensation was disbursed, they received the same without any protest. The Ld. Counsel further submitted that the petitioners are well aware of their respective share of compensation as per the Award at the time of signing of documents in the office of the District Collector at Mamit. The Ld. Addl.GA also argued that the petitioners were fully aware of the process for the sanction of Supplementary Award No.1 of 2010 which was sent to the Central Govt. in the month of September, 2011. According to the Ld. Counsel, the representatives of the Project Affected People(PAP) often visited the office of the Respondent No.2 to apprise the situation regarding sanction of the Supplementary Award No.1 of 2010. Mrs. Rose Mary further submitted that part payment of Rs.3.13 crores was made on 12.12.2011 due to fund constraints only to those Project Affected People whose lands falls within the diversion portion of the proposed alignment in the National Highway 44A corridor from Lengpui to Langkaih. The same was disbursed from the office of the District Collector, Mamit on 7th & 8th February, 2012. That being the situation, the Ld. Counsel argued that it is rather strange how the petitioners claim to have knowledge of the Award only on 24.2.2012 when by such time they have already received their respective share of compensation in terms of the said

Award. According to the Ld. Counsel, it is no doubt the statutory right of the petitioners to get solatium but the same has to be within time as prescribed by the LA Act. The Ld. Counsel, by relying on the objection filed, also raises doubt on the signatures of the petitioners.

4. Vide Order Dt. 24.9.2012 the Ld. Counsel for the petitioners submitted that they will limit their claim only towards payment of Solatium U/s 23(2) and interest @12%pa U/s23(1A) of the Land Acquisition Act.

5. The issues that require to be decided therefore are :-

- i) Whether the application is maintainable in its present form and style?
- ii) Whether the application is barred by limitation ?
- iii) Whether the applicants are entitled to payment of solatium and interest as prayed for ?

6. A perusal of the Supplementary Award No.1 of 2010 clearly show that it does not include Solatium U/s 23(2) and interest @12%pa u/s 23(1A) of the LA Act.

7. Issues No. 1 & 2 :-

8. Section 18 of the LA Act prescribed the period within which objection can be filed. Sec 18(2)(a) reads :--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award.

(b) in other cases, within six weeks of the receipt of the notice from the Collector under sec.12, sub section(2), or within six months from the date of the Collector's award, whichever period shall first expire."

Section 12(2) provides:-

"(2) the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made".

9. It is not the case of the respondents that Notice u/s (12)(2) LA Act was issued. Respondent No.1 who is supposed to issue Notice u/s 12 of the LA Act have not made any representation. No explanation is also given with regard to the

manner in which the acquisition was carried out nor is there compliance of sec.19 LA Act. Though respondent No.3 submitted that the petitioners are aware of their respective share of compensation, they have not given a clear reply that notice u/s 12 LA Act was issued to the land owners by the District Collector, which is a mandatory provision. The only document available in this regard is the letter dt.24.2.2012 addressed to Mr.J.Lalremruata, Ld. Counsel for the petitioner from the SPIO, DC's office, Mamit directing him to collect the information required regarding payment of compensation.

In the case of **Premji Nathu(supra)** the honb'le Apex Court has held :-
"15.. What needs to be emphasized is that along with the notice issued under Section 12(2) of the Act, the landowner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the court".

In the case of **State of Punjab versus Qaisar Jehan Begum** reported in **AIR 1963 SC 1604** the honb'le Apex court has earlier held as follows :-

"5..... It seems clear to us that the ratio of the decision in Harish Chandra Case is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with the knowledge of the contents of the award whether he reads it or not. Similarly, when a party is present in court either personally or through his representative when an award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of essential contents of the award"(emphasis supplied).

10. Apart from the failure to comply with section 12(2) LA Act, as the Respondent No.1 i.e District Collector, Mamit has failed to file any objection nor complied with the provision of sec.19 LA Act it is not known whether notice was ever made to the petitioners/land owners. Further, there is no provision in the LA Act, where presumption can be drawn regarding Notice which can take the place of Notice U/s 12(2) LA Act.

11. The applicants stated that their lands fall within the area taken for widening of the National Highway and that payments which were made earlier i.e before they filed the application u/s 18 LA Act are in respect of those lands owners whose lands fall within the diversion area. The submission of the applicants is that they received the compensation in terms of the Award only after filing the present application from 17.10.2012 onwards. In this regard, Respondent No. 3 in reply to para No.3 4 of the application have stated “*A part payment of Rs.3.13 crores was made on 12th December 2011 due to fund constraints, only for the PAP’s in the Diversion/Bypass portion of the proposed alignment in the NH44A corridor from Lengpui t o Langkaih. This was disbursed by the DC Mamit on 7th & 8th February 2012 in Mamit....*” . Apart from this, no statement is made by the respondents about payment already being made to the applicants prior to the filing of the application u/s 18 LA Act. From the statements of the said respondents, it is clear that they admitted the stand of the applicants that payments which were made earlier were in respect of the lands covered by Diversion/Bypass portion. They have not rebutted the stand of the applicants that their lands fall within the area meant for widening of the highway.

12. Keeping in mind the interpretation given by the honb’le Apex Court in the case of **State of Punjab versus Qaisar Jehan Begum (supra)**, it appears from the pleadings of the respondent that no specific date can be quoted as the date on which the petitioners can be considered to have knowledge of the contents of the Award.

13. Doubt has been raised by the Respondent No.3 regarding the applicants claim of gaining knowledge of the Award only on 24.2.2012. In this regard, it appears that such averment is contradictory to their own statement wherein they have stated that the payments which were made on 7th & 8th February, 2012 were in respect of land owners whose lands fall within the diversion/bypass areas, whereas, the lands of the present petitioners are within the area acquired for widening and not for Diversion/Bypass though all such lands were covered by the same Award.

14. The honb'le Apex Court in the case of **Sunder versus Union of India** reported in **(2001) 3Suppl.SCR 176 h** has held as follows :-

“22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer, in the latter, the landowner has the widest advantage in finding out a would-be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and parting with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in sub-section(2) ‘in consideration of the compulsory nature of acquisition’ is thus not the same as damages on account of the disinclination to part with the land acquired”

A reading of the said decision would imply that payment of solatium does not depend on the inclination or disinclination of the landowner to part with the land.

Further in the case of **Narain Das(since deceased) versus Agra Nagar Mahapalika, Agra** reported in **1991 SCR(1)389** has held that *the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the Court “in every case” leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.*

14. From the above discussion, since the respondents have not pleaded that Section 12(2)LA Act was complied with and since they have not stated that compensation disbursed to some land owners during the month of February, 2012 include the present applicants or that the same was received by the petitioners

without protest, I do not find any reason why the application should be barred by limitation or on other technicalities raised by the respondents. Accordingly, the said issues are decided in favour of the applicants.

15. Issue No.3

A perusal of the Award itself would clearly show that it does not include solatium and interest u/s 23(1A)(2) L A Act. A reading of the provisions of Section 23(1A) and Sec.23(2) of the LA Act shows that it is mandatory upon the court to award interest @12%pa and solatium @30%. A bare reading of the Award would show that the compensation does not include payment u/s 23(1A)&(2) of the LA Act. While deciding on Issue No.1 & 2 it has been held that the application is not barred by limitation. Further, since it has also been decided that the land owners who received compensation in the month of February 2012 were not the present applicants, and the submission of the applicants is that they received the Award during the pendency of this application, I find that the question as to whether the applicants received the award under protest or not (as provided u/s 31 LA Act) would not have any relevance. Even if the applicants did not specifically received the award under protest, the fact that application u/s 18LA Act have been filed prior to receipt of the award shows that the applicants are aggrieved by the Award.

Accordingly, Issue No.3 is also decided in favour of the applicants.

A W A R D

In terms of the Award No.1 of 2010, the total amount of compensation payable to the _____petitioners is Rs. _____/-(Rupees _____) only. In addition to the said amount, the applicants shall be entitled to payment of solatium u/s 23(2) LA Act @30% in addition to the market value of the land in consideration of the compulsory nature of acquisition amounting to Rs. _____/-(Rupees _____)only.

Further, as per sec.23(1A) of the LA Act, in addition to the market value, the applicants shall be entitled to payment of interest @12%pa from the date of publication of Notice u/s4 LA Act i.e 12.11.2007 to the date of the award of the

Collector i.e 13.1.2011 which is the date of approval of the Award amounting to Rs. _____ (Rupees) which is calculated for three years.

Respondent No.3(Public Works Department) who is the acquiring Department is liable to pay the said amount within a period of three months from today failing which the said additional amounts payable shall carry an interest @6% per annum.