

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

L.A Case No.10/2012

P R E S E N T

Mrs. Helen Dawngliani
Addl. District & Sessions Judge

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 10.03.2014

Date of Judgment & Award 19.03.2014

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/points have been framed/formulated:-

- 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) Whether the applicant is entitled to enhanced damages including future damages for the fish pond?
- v) Whether the applicant is entitled to compensation as claimed for the crops and trees?

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 5760 Sq.m. 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).....”

Issue No. 1

8. The status of the petitioner as ‘person interested’ within the meaning of sec. 3(b) LA Act have not been challenged. The Award in question does not bear a date except the approval of the Award by the government which is 24.5.2012. There is no mention about pronouncement of the Award in terms of Sec.12 of the LA Act. The reference Claimant has stated that on 10th August 2012 he received under protest his share of compensation in terms of the Award. The reference application was filed on 28th August 2012 and the same has been forwarded for adjudication. I am therefore of the view that the reference claimant has made the application in kind and that he being the owner of the land acquired by Award no. 1 of 2012 (Part A-Bairabi) the present reference application is legally maintainable.

Issue No. 3

9. 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.A. 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.B. 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.C. The petitioner has enclosed an extract of Award No.1 of 2006 wherein the Market value is fixed @ Rs.800/-per sq.m. The said extract 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 said land in question in a "*residential area near railway Station*". In the extract of Award no.1 of 2006 it is also mentioned that the land acquired is "*even in*

touch with the one and only Railway Station in Mizoram". 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 extract of Award No.1 of 2006, it clearly gives an impression that the rate so fixed was because of the advantages which the said land enjoyed being close to the Railway Station. It is a known factor that land around 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 is 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 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.D. 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 within 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.E. 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.F. 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.G. 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, I find that the market value fixed by the District Collector is on the lower side. Accordingly, I find that reasonable ground exist to enhance the market value of the land.

9.H. 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 as 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.2.8.2011 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 not be more than 10%. 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 2.8.2011 would be Rs.67.5 say Rs.68/-per sq.ft.

Issue No. 4

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 petitioner is not absolved of his burden to substantiate his claim by cogent and reliable evidence. So that the probability factor leans in his favour.

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) clause 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/act.

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 or for any other reason. If future damages is to be given for fish products from a fish pond, what about standing crops, fruit bearing trees, vegetables and timber? Expected future loss of agricultural loss or horticultural loss including loss from fish pond cannot be the proximate consequence of the acquisition.

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 and that the petitioner has been duly compensated for the damage caused to the fish and fish pond.

Issue no. 5

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.

Issue No. 2

12. Whether the applicant is 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 Application, interest @ 12%pa on the market value of the land as provided u/s 23(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 applicant is 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.

Whether the applicant is 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 applicant has made a claim for payment of solatium 30% on the market value of the land as provided u/s 23(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-A-Bairabi), 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/s 23(2) of the Act. This issue is also decided in favour of the applicants.

13. The petitioner in his application u/s 18 LA Act prays for re-verification and re-assessment of his land on the ground that the total area of an old cemetery at Bairabi North containing as many as 198 graves is to be acquired, his land in thie adjoining area appears to be acquired totally. But he has not led any evidence regarding this claim and has not made any mention about it in his deposition on affidavit. Since the claim is not supported by any evidence either oral or documentary, it cannot be acted upon.

A W A R D

The market value of land covered by LSC No. 4 of 2005 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 61009 sq.f. within 1 month from the date of receipt of this Order. The amount so arrived at shall be paid by the Respondent No.2 (NF Railway) within a period of two months thereafter. The reference claimant shall also be paid solatium @ 30% on the compensation so assess as per sec. 23(2) LA Act alongwith interest @ 12%pa from the date of Notification u/s 4 LA Act i.e 2nd August 2011 to the date of the Award/Approval of the Award dt.24.5.2012 as per sec. 23(1-A) LA Act. Any compensation already received by the claimant shall be deducted at the time of making further payment.

With the above Order, the reference application stands disposed off.

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

Memo No. ____/AD&SJ/2014 : Dated Aizawl, the 19th March, 2014
Copy to: -

1. Zodinsanga S/o L. Thantluanga R/o College Veng, Aizawl through Counsel Mr. L.H. Lianhrima, Advocate.
2. District Collector, Kolasib District, Kolasib.
3. Northern Front Railway represented by Deputy Chief Engineer CON/III/SCL, Silchar through Counsel Mr. Rupendra Mohas Das, Advocate.
4. Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department through Counsel Mrs. Rose Mary, Addl. GA.
5. Registration Section.
6. Guard File.
7. Case Record.

PESHKAR