

**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

1. C. Lalrohlua S/o Challeta
R/o Aizawl
2. Vanlalsawma S/o R. Lalvanga
R/o Aibawk, Aizawl
3. Lalhruaitluanga S/o Zasanga
R/o Aizawl
4. Lalthansangi D/o R. Lalhmingthanga
R/o Aizawl
5. Vanlallura S/o Vanlalhlua
R/o Vaivakawn, Aizawl
6. Lalruatkima S/o Lalsangliana
R/o Khatla, Aizawl
7. C. Ngura S/o Laltana
R/o Chaltlang, Aizawl
8. Lallawmkimi D/o H. Zakhuma
R/o ITI, Aizawl
9. Lalmawii D/o C. Ngura
R/o Chaltlang
10. Lalkima Sailo S/o Thangsavunga
R/o Armed Veng, Aizawl
11. Anthony Chhuanvawra S/o Lianbuaia
R/o ChawlhmunAizawl
12. Lalthansangi D/o R. Lalhmingthanga
R/o Aizawl
13. Benjamin VL. Hriatpuia S/o K. Rodala
R/o Ramhlun, Aizawl
14. H. Zosangliana S/o H. Lalmawia (L)
R/o Hunthar, Aizawl
15. Laltlanthangi D/o V. Remlalnghaka
R/o Aizawl
16. Vanlalphenah S/o Lalengliana
R/o Kanan Veng, Aizawl
17. Thantluanga S/o Hauva
R/o Kanan Veng, Aizawl
18. K. Thansiami D/o Chhawnzinga (L)
R/o Kanan Veng, Aizawl
19. Chawngthankhuma S/o Tuanchungnunga
R/o Sairang, Aizawl
20. C. Nundanga S/o Chhiarkhuma
R/o Ramhlun Venglai, Aizawl
21. Thansanga S/o Hauva (L)
R/o Dawrpui, Aizawl
22. Zodinsanga S/o Vanlaldika
R/o Vaivakawn, Aizawl
23. K. Lalmuanpuui D/o Saitluanga (L)
R/o Aizawl
24. Ramfangzauvi D/o B. Rohmingthanga
R/o Chaltlang, Aizawl

25. Rothangvunga S/o P.C. Sapnela
R/o Chawnpui, Aizawl
26. Lalbiakthanga Khiantge S/o Lalnghenga (L)
R/o Chanmari, Aizawl
27. A.C Zonunmawia S/o Lalnunmawia
R/o Tuikual South, Aizawl
28. Thansanga S/o Hauva (L)
R/o Dawrpui, Aizawl
29. H. Kawla S/o Rualkhuma
R/o Kanan Veng, Aizawl
30. Thansanga S/o Hauva
R/o Dawrpui, Aizawl
31. Kapthanthuama S/o Tuka (L)
R/o Kanan Veng, Aizawl
32. R. Zatawna S/o Lalvuana
R/o Kanan Veng, Aizawl
33. Thantluanga S/o Hauva (L)
R/o Kanan Veng, Aizawl
34. C. Lalchhandama
R/o Mission Veng, Aizawl
35. F. Malsawma
R/o Chawnpui, Aizawl
36. Lalhlimpuii Chawngthu D/o C. Lalremsiamia
R/o Venghlui, Aizawl
37. Joseph H. Ramsanga S/o H. Hrangdawla
R/o Tuikual south, Aizawl
38. K. Lalchawimawia S/o Thangseia (L)
R/o Lungdai, Mizoram
39. C. Roliana
R/o Khatla, Aizawl
40. Lalmachhuani D/o Nikunga
R/o Mualkhang, Mizoram
41. F. Darngbaka S/o Thangzinga (L)
R/o Ramhlun South, Aizawl
42. Zion Lalthanpuii D/o H. Hrangdawla (L)
R/o Tuikual South, Aizawl
43. Ralneihthanga S/o Lalhmingthanga
R/o Govt. Complex, Aizawl
44. Liansangi D/o Thavapa
R/o Dawrpui Vengthar, Aizawl
45. T. Lalmuanpuii S/o R.L. Kapa
R/o Aizawl
46. Vanlalhluni D/o Kapmawia
R/o Chaltlang, Aizawl
47. Lalhruaia S/o Neihkima (L)
R/o Chhinga Veng, Aizawl
48. Lalmuanpuia Ralte S/o Vanlalrema (L)
R/o Aizawl
49. Sangluaii D/o Lalliana
R/o Mualkhang
50. Zothansanga S/o Vanlalhruaia
R/o Ramhlun, Aizawl
51. Vanlalthanga S/o K.S. Thanga
R/o Lungdai, Aizawl
52. Lalnunchawii D/o Lalhruaitluanga

R/o Aizawl

53. Lalthazuala S/o Lalrinnunga

R/o Vaivakawn

54. Lalsangpuii D/o Thangchhingpuia

R/o Vaivakawn, Aizawl

55. Lalnunringa S/o R.L. Lalthanzauva

R/o Vaivakawn

56. Lalthanpari D/o Lalruata (L)

R/o Aizawl

57. Vanlalpeki D/o Liankhuma

58. Sangthanglura S/o R. Hruailiana

R/o Durtlang Leitan

... 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

... 28.02.2014

Date of Judgment & Award

... 06.03.2014

APPEARANCE

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

2. For Respondent No.1 ... None

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

4. For Respondent No.3 ... Mrs. Rose Mary, Addl.GA

JUDGMENT & AWARD

1. The applicants are land owners within the land acquired for construction of new railway line by NF Railways from Bairabi to Sairang. Notification u/s 4 of the Land Acquisition Act, 1894 was issued by the Govt. of Mizoram, Revenue Department vide memo No.K.12011/25/2011-REV dt.2.8.2011. Thereafter declaration u/s 6 of the said Act was issued by the Govt. of Mizoram vide memo no.K.1200/25/2011-REV dt.24.1.2012 followed by Award No.1 of 2012 (Part E-Mualkhang) by the Respondent No.1 on 28.1.2013.

2. Aggrieved by Award No.1 of 2012 (Part E-Mualkhang) the petitioners submitted an application u/s 18 of the Land Acquisition Act to the Respondent No.1. The matter was then referred to this court for adjudication. The grievance of the petitioners as highlighted in the reference applicants are that they are owner of lands covered by Periodoc Pattas, Village Council Passes and District Council Passes. The District Colloector, while making assessment of compensation failed to make any assessment for

value of the land while awarding Rs. 25/- per sq.ft for those land owners who possess 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 were 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 Village Council passes were issued under 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 none 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 despite their non willingness to part with their land the same has been compulsorily acquired. 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 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.

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

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

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

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

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

(2) such terms and conditions as are 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.....”.

13. From a reading of the above two Judgments, it is clear that recognizing the right of a periodic patta holder, the State of Mizoram who filed an appeal before the honb’le Apex Court came to an agreement with the respondent only on the value of the land. In other words, it can be understood that the right of the Periodic Patta holder to receive compensation for value of the land is recognised by the State and their only grievance is with regard to the rate of market value. Accordingly, even Periodic Patta holders are persons interested within the meaning of Sc. 3(b) of the Act and are entitled compensation.

14. In the instant case, Petitioners whose names figure in Sl. 47, 55, 61, 77, 90, 93, 95, 96 and 102 of the Award are Periodic Patta holders. A reading of the Apportionment of the Award No.1 of 2012 (Part-E-Mualkhang) shows that assessment have not been made for the value of the land of these Periodic Patta holders. The grievance of these

petitioners are squarely covered by the decision of the honb'le Gauhati High Court which have not been interfered by the honb'le Apex Court. Situated thus, there is no reason why the petitioners who are similarly situated should be deprived of payment of the value of their lands falling within the area for compulsory acquisition.

15. The rest of the petitioners are holders of Village Council Pass 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).

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

17. Further, upon perusal of one of the Periodic Patta enclosed to the reference application which is exhibited as Ext. P-5 it is noticed that one of the conditions is *“9. This Periodic Patta may be cancelled without compensation at any time even before the expiry of the period of allotment, if the same is required for the collection of the Agricultural products in it”*. In spite of the presence of such a clause, holder of Periodic Patta has been regarded as person interested within the contained meaning of Sec. 6(a) LA Act. In the case of **Special land Aquisition & Rehabilitation Officer, Sagar versus M.S.Seshagiri Rao & Anr (supra)** wherein the government of Mysore granted a plot of land to the respondents with the added condition that *“in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation”*. The Government acquired the land by adopting the procedures prescribed by the land Acquisition Act but no compensation was awarded to the grantees for the land. The High Court, in appeal held that since the government failed to exercise the right which it had under the terms of the grant and had acted under the Land Acquisition Act, the grantees were entitled to compensation as provided under the Act. In appeal before the honb'le Apex Court, it has been held that

after obtaining possession of the land in pursuance of statutory authority under section 17 of the Land Acquisition Act, the Government could not seek to exercise the option conferred by the terms of the grant. The grantees were entitled to compensation for the land of which the ownership was vested in them. But in assessing compensation payable to the grantees, existences of condition which severely restricted their right could not be ignored. The Act is silent as to the acquisition of partial interests in land but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, the market value of the land must be determined and apportioned amongst the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog.

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

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

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

21. The case stands disposed off accordingly.

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

Memo No. AD&SJ/2014 : Dated Aizawl, the 6th March, 2014
Copy to: -

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

P E S H K A R