

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

L.A. Case No. 40 (A) of 2013

1. Rinmawia
S/o Ngurvuana (L),
R/o Phulmawi, Aizawl District.
2. Manthianga
S/o Zaduha (L),
R/o Tlungvel, Aizawl District.
3. Vanlalthianga
S/o Lalngheta (L),
Ro Tlungvel, Aizawl District.
4. Thangbuaia
S/o Sangkhuma (L),
R/o Tlungvel, Aizawl District.Plaintiffs

-Versus-

1. District Collector, Aizawl.
2. Oil India Ltd
Hqrs. Duliajan, Assam.Defendants

APPEARANCE

For the Plaintiffs	:	Shri K. Kawlkhuma, Advocate.
For the Defendant No. 1	:	None appears.
For the Defendant No. 2	:	Shri, A.R. Malhotra, Advocate.

Hearing	:	2.3.2016
Order delivered on	:	14.3.2016

ORDER

1. In short, the case of the plaintiffs is that, after issuance of the necessary notifications required by the L.A. Act, 1894, their lands located at Phulmawi, Aizawl District covered by periodic pattas were acquired for Oil India Ltd. for the purpose of construction of drilling well (LOC-2) to explore hydrocarbon. Against the Award No. 11 of 2012, they submitted reference application to the District Collector, Aizawl under Section 18 of the L.A. Act, 1894 for payment of land value along with solatium @ 30% of the award, interest @ 12% per annum of the award and interest on excess compensation as per provision of section 28 of L.A. Act. On that basis of the reference application, the matter was first referred to the learned District Judge, Aizawl Judicial District and the same was transferred to this Court.

2. The District Collector, Aizawl challenged entitlement of land value with solatium and interest by submitting written objection. According to the District Collector, the plaintiffs are not entitled to payment of the land value, solatium and interest inasmuch as their lands are not covered by Land Settlement Certificate in terms of the Notification vide Memo No. K.12011/10/07-REV dated 29.12.2009.

3. The Oil India Ltd also submitted written objection. In the written objection, the Oil India Ltd challenged the application filed by the plaintiffs under Section 18 of the L.A. Act, 1894 on the ground that there is no name of the plaintiffs and the District Collector had not sent full information to the Court regarding the entire lands of the plaintiffs acquired as required by Section 19 of the Act. The Oil India Ltd also challenged that the failure of the plaintiffs to submit claims for compensation including details of rents and profits received or receivable from the proposed land for the next proceeding three years during the course of objection hearing is another factor for rejecting the plaintiffs' claim for compensation. In the result, the claim of solatium @ 30%, interest @ 12% of the award and interest over the excess compensation as provided under Section 28 of the Act is also liable to be rejected for not assessing market value of their lands inasmuch as the plaintiffs are not LSC holders.

4. It is apparent from the Abstract of Award No. 11 of 2012 that the plaintiffs received compensation from crops/trees and they are as follow: -

Sl.	Name of land owner	Address	Status of Pass	Land Value per Sq.ft in Rupees	Crops/trees Compensation in	Total Award payable in Rupees
5	Rinmawia	Phulmawi	P.P. No. 17/81	-	Rs.2,91,550.00	Rs.2,91,550.00
7	Manthianga	Tlungvel	P.P. No. 242/86	-	Rs.11,400.00	Rs.11,400.00
27	Vanlalthianga	Tlungvel	P.P. No. 12/04	-	Rs.64,116.00	Rs.64,116.00
28	Thangbuaia	Tlungvel	P.P. No. 99/11	-	Rs.1,41,100.00	Rs.1,41,100.00

5. As the parties submitted their proposed issues, the following issues are framed :-

- i) Whether the reference application has been filed as required u/s 18 (1) of the L.A. Act, 1894?
- ii) Whether the District Collector, Aizawl failed to comply with the provision of Section 19 of L.A. Act while referring the matter to the Court?
- iii) Whether the Petitioners who are owners of PPs and VC passes are entitled to receive market value/ land value at the rate fixed for settlement holders along with solatium and interest u/s 23(2)/23(1A) of LA Act?
- iv) Whether the Applicants are entitled payment separately for land value and for crops?

6. The learned Counsels appearing for the rival parties at the time of hearing on maintainability were heard before my predecessor. The Issue No. 1 was found maintainable leaving the other issues to be settled at the time of judgment.

7. In support of their submission, the plaintiff adduced evidence by examining one witness, namely, Shri Zohmangaiha. The Examination-in-Chief of the plaintiff's witness was submitted and he was cross-examined by the Defendant No.2/Oil India Ltd. In the evidence of the plaintiffs, the witness deposed that the plaintiff's lands covered by periodic pattas were acquired for Oil India Ltd. for the purpose of construction of drilling well to explore hydrocarbon and they claimed land value @ Rs. 23/- per square feet and also for payment an interest. On cross examination, he was representing all the plaintiffs and not Chaldailova, Zakunga and Lalhmingliana who are also periodic patta holders. He admitted that he had not given any reason why he claimed Rs. 23/- per square feet for their lands. He admitted that his name is not included in the Abstract of Award No. 11 of 2012. He denied that the periodic patta holders are not entitled to market value of their lands. He further denied that the periodic patta has lesser value than LSC. He also denied that they did not sign the reference application at the time of submitting to the District Collector. Finally, he admitted that they had not stated in the reference application the amount of market value of their lands claimed by them. On cross examination by the District Collector, the cross-examination by the Oil India was adopted.

8. The Oil India Limited also adduced by examining one witness, namely, Kausik Rajkhowa working as Senior Legal Officer in the Oil India Limited. The Examination-in-Chief of the defendant No. 2 was submitted and he was cross-examined by the plaintiffs. In the evidence, the witness deposed that the reference application filed by the plaintiffs without having signatures or names is not maintainable. The witness further deposed that the District Collector had not sent the details of the full information to the Court to decide as provided by Section 19 of LA Act. The witness also deposed that the plaintiffs failed to submit their statement with all detail including the basis of their claim as required by Section 9(1) of the Act. The solatium and interest cannot be given to the plaintiffs inasmuch as the market value of the land was not assessed by the District Collector inasmuch as they are periodic patta holders and not LSC holders. Finally, the witness deposed that the plaintiffs cannot claim interest over the excess compensation as provided by Section

28 of the Act. On cross-examination, the witness deposed that the plaintiffs/applicants who are holding VC pass were deleted from the present case.

9. The District Collector also adduced by examining one witness, namely, Lalhlimpuii Ralte working as SDC, Aizawl. The Examination-in-Chief of the defendant No. 1 was submitted and she was cross-examined by the defendant No.2 and the plaintiffs. In the evidence, she deposed that the reference application is not maintainable. The solatium and interest cannot be claimed by the plaintiffs inasmuch as they are not having LSC title. She further deposed that the measurement of the land acquired and the assessment for crop damage and building were made following all norms and procedure, and there is no question of fresh measurement or assessment. She also deposed that the plaintiffs' land having no LSC title cannot be given land value as per Revenue Department's Notification dated 29.12.2009. On cross-examination by the plaintiffs, she deposed that she was not posted in the office of the District Collector when the plaintiffs' lands were acquired by the Govt. of Mizoram, but her examination-in-chief was derived from the records maintained by the office of the District Collector, Aizawl. She denied that the periodic patta holders are the land owners of the acquired lands. She also denied that the plaintiffs are entitled to land valuation at the same rate fixed for the LSC holders. On cross-examination by the Oil India Ltd., the witness admitted that the reference petition had been received by the District Collector on 27.8.2013, but there is no signature of the plaintiffs in both pages of the reference application. She also admitted that she did not find any claim made for compensation towards crop damage. Ext. D-1 is the reference petition received by the District Collector on 27.8.2013. On further cross-examination by the plaintiffs, she did not know whether the list of the petitioners along with their signatures in Case Record were the signatures of the petitioners or not.

10. The points of issues framed are discussed hereunder:-

i) Whether the reference application has been filed as required u/s 18 (1) of the L.A. Act?

The first point of issue was already found maintainable by my predecessor. It is pertinent to mention here that the District Collector who received the reference application filed under section 18 of L.A. Act, 1894 has not challenged whether written application was made by the plaintiffs. It is also in the evidence that the plaintiffs put their signatures in the reference application at the time of submitting it to the District Collector. Hence, the first point of issue is decided in favour of the plaintiff.

ii) Whether the District Collector, Aizawl failed to comply with the provision of Section 19 of L.A. Act while referring the matter to the Court?

According to the Oil India Limited, the District Collector did not send details of the compensation proceedings while forwarding the reference application to the Court. However, failure to send all the details is a mere irregularity. The reference application can be disposed of without the Collector's statement and the details furnished to this Court. The second point is also decided in favour of the plaintiffs.

iii) Whether the Petitioners who are owners of PPs and VC passes are entitled to receive market value/land value at the rate fixed for settlement holders along with solatium and interest u/s 23(2)/23(1A) of LA Act?

The instant case was earlier pending in the Court of Shri Vanlalmawia, learned Additional District Judge, Aizawl. But, on the prayer of the plaintiffs, the case was transferred to my predecessor as the analogous case was pending in the Court of my predecessor. It is pertinent to mention here that all the VC pass holders as plaintiff/applicants in the instant case were deleted as party vide Order Memo no. 795/AD & SJ (A)/2014 dated 26.11.2014 passed by my predecessor and the case was proceeded in their absence. Hence, the present plaintiffs are periodic patta holders which can be seen from the Abstract of Award No. 11 of 2012 at Annexure-II. In the Award were given compensation for the damages caused to their crops and trees without payment of their lands value on the ground that they were periodic patta holders.

In the Notification dated 29.12.2009 issued by the Secretary to the Government of Mizoram, Revenue Department annexed to the written objection submitted by the District Collector, it is shown that periodic patta holder does not acquire right over the land. Hence, value of the land shall not be assessed.

I heard Shri K.Kawlkhuma, learned Counsel appearing for the plaintiffs. According to the learned Counsel, the plaintiffs as periodic patta holders are entitled to receive payment of land value of their acquired lands. The learned Counsel relied on the Judgment & Order dated 18.11.2011(State of Mizoram & Ors versus C. Lalbiakthanga) passed by the Hon'ble Gauhati High Court, Aizawl Bench in R.F.A. No. 22 of 2010, which was affirmed by the Hon'ble Apex Court vide its Order dated 19.2.2013 in Civil Appeal No. 2731 of 2012.

In the case of State of Mizoram & Ors versus Lalbiakthanga (Supra), the Hon'ble Gauhati High Court, Aizawl Bench has 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 appellants 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" can invoke the provision of Section 18 of the Act. The expression "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 Hon'ble Gauhati Court was challenged before the Hon'ble Apex Court which was registered as Civil Appeal No. 2731 of 2012. The Hon'ble Apex Court in its order dated 19.2.2013 has held as follows,

'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 statements made by learned Counsel, this appeal is disposed of the following terms.....'

A combined reading of the two judgments shows that recognizing the right of a periodic patta holder, the State of Mizoram who filed appeal before the Hon'ble Apex Court came to an agreement with the respondent relating to land value. In other words, it can be understood that even periodic patta holder has a right to receive compensation for value of the land inasmuch as they are "persons interested" within the meaning of section 3 (b) of the Act and are entitled to compensation for the land.

A reading of the Abstract of Award No.11 of 2012 shows that assessment has not been made for the value of the land of the said periodic patta holders. The grievances of these petitioners are squarely covered by the decision of the Hon'ble Gauhati High Court which has not been interfered by the Hon'ble Apex Court. In the result, there is no reason why the plaintiffs who are similarly situated should be deprived of from paying the value of their lands falling within the area compulsorily acquired with solatium and interest.

Hence, the third point of issue is decided in favour of the plaintiffs.

iv) Whether the Applicants are entitled payment separately for land value and for crops?

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 plaintiffs in the instant case has been granted compensation for crops and trees 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 considered view that there is no reason why the plaintiffs cannot be regarded as "persons interested" within the meaning of the Act.

Hence, I am of the view that no reasonable ground exists to deprive the plaintiffs who possess periodic patta from payment of compensation for value of the land.

11. The plaintiffs did not mention any rate of their claim of the land value in their reference application. The plaintiffs did not give any reason of their claim for land value at the rate of Rs. 23 per square feet. In the Award No. 11 of 2012, the market value of the land of Shri Romawia covered by LSC No. 27 of 2001 was fixed at Rs. 22 per square feet; the market value of the land of Shri H.Manhleia covered by L.S.C. No. 448 of 2012 was fixed at Rs. 18 per square feet and the market value of the land of Shri Lalrinawma covered by LSC No. 27 of 2001 was fixed at Rs. 14 per square feet after careful survey of the location. As the plaintiffs did give any reason

of their claim for the land value, I find it justified to fix the market value of their lands at the rate of Rs. 12 per square feet. Hence, the District Collector shall assess the market value of the lands of the plaintiffs @ Rs. 12/- per square feet along with 30% as solatium on the market value of their lands u/s 23(2) of the Land Acquisition Act and interest @ 12% per annum on the market value of their lands u/s 23(1A) of the said Act within a period of 2 months from today. The amount so calculated shall be satisfied by the Respondent No. 2 Oil India Limited within further period of 2 months. The amount shall be disbursed to the plaintiffs by the Defendant No. 1 i.e. District Collector, Aizawl District, Aizawl.

12. Within the above Order, the present case stands disposed off.

Order is delivered in the open court on this 14th day of March, 2016 under my hand and seal.

Sd/- VANLALENMAWIA
Addl. District Judge
Aizawl Judicial District,
Aizawl, Mizoram.

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 14th March, 2016

Copy to: -

1. Plaintiff's through Counsel Sh. K. Kawlkhuma, Advocate.
2. District Collector, Aizawl through Smt. Rose Mary, Standing Counsel.
3. Oil India Ltd. through Counsel Shri A.R. Malhotra, Advocate.
4. District Judge, Aizawl Judicial District, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R