
(2016) 01 GAU CK 0035
In the Gauhati High Court
Case No : WP(C) No. 1 of 2016

Sh. Zomuana and Anr.

APPELLANT

Vs

State of Mizoram and Ors.

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Citation : (2016) 4 GauLR 683 : (2016) 3 GauLT 337

Hon'ble Judges : M.R. Pathak, J.

Bench : Single Bench

Advocate : Mr. Zochhuana, Mr. Lalchhanliana Khiangte, Ms. Mary Lalruatkimi Chhangte, Ms. K. Lalchhanhima, Ms. K. Vapawngia, Mr. R. Lalnunpuia & Mr. P.C. Lalremmawia, Advocates, for the Appellant; Addl. AG, GA & Mr. Ali Hussain, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

M.R. Pathak, J.— Heard Mr. Zochhuana, learned counsel appearing for the petitioners. Also heard Mr. Samuel Vanlalhriata, learned Govt. Advocate appearing for the respondent Nos. 1, 2 & 3 and Mr. Ali Hussain, learned Standing counsel appearing for the respondent No. 4 i.e. Northeastern Frontier Railway.

2. The land of the petitioners, measuring 2 Bighas each, at Khamrang Village Council area under Kolasib District involved in the case was required under the Land Acquisition Act, 1894 as amended for construction of railway line by the N.F. Railways from Bairabi to Sairang. Notification under Section 4(1) and Declaration under Section 6(1) of the L.A. Act for acquisition of the land involved in the case were issued on 02.08.2011 and 24.01.2012 respectively.

3. Initially the Collector of Kolasib District on 29.01.2014 in his Draft Award No. 1/2014 (Part-D Khamrang) determined only value of the standing Crops over the acquired land as Damage Compensation payable to the petitioners, since petitioners are only Village Council Pass Holders on the land in question and said Award was approved by the State Government in the Revenue Department on

24.02.2014. But prior to said approval of the Award by the State Government; possession of the land of the petitioners involved in the case was taken over on 22.01.2014. Thereafter, the said Collector on 07.08.2014 directed the Railway authorities to deposit the awarded amount with it for disbursement of land acquisition compensation to the land owners involved in the said case, including the Interest @ 12% under Section 23 (1-A) and Solatium @ 30% under Section 23 (2) of the L.A. Act on the said value of the crop, but without determining the acquisition compensation for the land of the petitioners although it was acquired permanently. The Railway authorities accordingly deposited the approved awarded amount and the Collector of Kolasib disbursed the awarded amount of compensation to the petitioners in August, 2014 itself.

4. The petitioners being aggrieved submitted application under Section 18 of the L.A. Act before the Collector for referring the matter to the Court for proper determination of adequate compensation for permanent acquisition of their land and the said application of the petitioners being filed within the prescribed time, the Collector accordingly referred the matter to the Court. On such reference, it was registered & numbered as L.A. Case No. 29/2014 and the learned Additional District Judge, Aizawl Judicial District, Aizawl, being the Reference Court, by its order dated 24.09.2014 disposed of the said L.A. Case No. 29/2014 determining the market value of the acquired land of the petitioners involved in the case at Rs. 25/- per sq. ft. and accordingly directed the District Collector to re-asses the market value @ Rs. 25/- per sq. ft. and further directed the Railway authorities to pay the amount so arrived at (by the Collector) within a period of two months from the Award. The Reference Court in the said Award dated 24 .09.2014 also directed that the reference claimant, i.e. the petitioners shall be paid Solatium @ 30% on the compensation under Section 23 (2) of the L.A. Act along with Interest @ 12% p.a. under Section 23 (1-A) from the date of Notification under Section 4(1) of the L.A. Act to the date of the Award.

5. In terms of the said Award dated 24.09.2015 of the Reference Court, the Collector Kolasib re-determined the Award and on 21.10.2014 directed the Railways Department to deposit a Total amount of Rs. 21,41,378/- as re-assessed compensation at the earliest for disbursal to claimants, which on being deposited by the requiring department, was duly received by the petitioners.

6. Mr. Zochhuana, learned counsel for the petitioners has also submitted that till date the respondents have not filed any appeal against the Judgment & Award of the Reference Court dated 24.09.2014 passed in L.A. Case No. 29 of 2014 and as such, by the passage of time, said Judgment & Order dated 24.09.2014 has become final & absolute.

7. The petitioners contention herein is that they have not been paid statutory interest on the awarded amount of 30% Solatium from the date of taking over possession of their land involved in the case by and as such they have approached the Court by this Writ Petition under Article 226 of the Constitution of India for a direction to the respondents to make such full payment to the

petitioners.

8. Section 15 of the Land Acquisition Act relates to the matters to be considered and neglected and it provides that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 & 24 of the Act.

9. Section 23 of the L.A. Act relates to the matters to be considered in determining compensation and Section 23 (2) provides that -

"23(2) - In addition to the market-value of the land as provided in Section 23(1) of the Act, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

10. As such Solatium @ 30% is payable only on the market value of the land in a compulsory nature of acquisition of land under the Land Acquisition Act, 1894.

11. Part V of the Land Acquisition Act, 1894 as amended, containing Sections 31 to 34 relates to "Payment" and Section 34 of the said Act relates to "Payment of Interest" and it reads as follows:

"34. Payment of interest. -

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

12. Part III of the Land Acquisition Act, 1894 as amended, containing Sections 18 to 28A relates to "Reference to Court and Procedure Thereon" and Section 28 of the said Act relates to direction to the Collector to pay interest on the excess compensation determined by the Court on reference and it reads as follows:

"28. Collector may be directed to pay interest on excess compensation:-

If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per

centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

13. Except the aforesaid two provisions, there are no other provisions in the Land Acquisition Act, 1894 for payment of interest. The Hon"ble Supreme Court in the case of Priya Vart v. Union of India, reported in (1995) 5 SCC 437, a proceeding under the Land Acquisition Act, have held that:-

"when the Act prescribes payment of interest at a particular rate, it needs to be awarded at the rate prescribed and in no other way."

14. From the observation made by the Hon"ble Supreme Court in the case of Dr. Sham Lal Narula v. Commissioner of Income-tax, Punjab, J & K etc., reported in AIR 1964 SC 1878, it can be seen that the interest required to be paid under Section 34 or Section 28 are not compensation for deprivation of the land in pursuance of the acquisition proceedings; but, it is an amount which is required to be paid for the reason that the person who is deprived of the possession of the land not having been paid compensation at that time, he is deprived of the use of the amount of compensation for the land to which he was entitled to receive at the time of his dispossession. The amount described as interest payable under Section 34 and Section 28 of the Act, represents compensation for delayed payment of the amount of compensation or the land acquired and the expression "interest" in those Sections are compensation for the delayed payment of compensation.

15. In the case of Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat, reported in (1991) 1 SCC 262, the Hon"ble Apex Court has held that-

"Once the conditions under Section 28 or Section 34 of the Act are satisfied the award of interest is consequential and automatic. The mandatory provisions of Section 34 of the Act specifically provides that when the amount of compensation is not paid on or before taking possession of the land the Collector shall pay interest as provided from the date of taking over possession. When once the provisions of Section 34 are attracted it is obligatory for the Collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings under Section 18 of the Act or even from the Appellate Court/Courts thereafter. A decree, is the sum total of conclusions reached by the Courts in determining compensation under Section 23 of the Act on appreciation of the evidence between the parties. The costs under Section 27 and the interest under Sections 28 and 34 are added to the compensation amount to make it a consolidated award. The costs and interest under the Act if not awarded by the lower Court can always be awarded by higher Courts in any proceedings under the Act and to any party entitled to the same under the Act."

16. In the case of Union of India v. Budh Singh reported in (1995) 6 SCC 233, the Hon"ble Supreme Court observed that -

"the payment of interest under the Act (Land Acquisition Act) is squarely covered by the provisions of the Act. The Government, while exercising its power of eminent domain, are entitled to have the notification under Section 4(1) published in the State Gazette and if after taking possession of the land, if the awarded amount is not paid, the provision is made for payment of interest under Section 34 of the Act. The other provision relevant for this purpose is Section 28 of the Act, which empowers the reference Court or the High Court for awarding interest on the enhanced compensation from the date of taking possession till date of payment as provided and it is the statute that covers the entire field of operation of the liability of the State to make payment of interest and entitlement thereof by the owner when possession of land is taken over and the condition precedent is publication of the notification under Section 4(1) in the appropriate gazette which gives the legitimacy to the State to take possession of the land in accordance with the provisions of the Act and that any possession otherwise would not be considered to be possession taken under the Act. The statute also imposes liability on the State to reimburse the costs incurred by the owner to defend the proceedings under the Act and that the Act is a self-contained code and common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to the provisions of the statute."

17. In a case of payment of interest under Sections 34 & 28 of the Land Acquisition Act, 1894 and on the amount of Additional Amount & Solatium under Sections 23 (1-A) & 23 (2) of the said Act, a Constitution Bench of the Hon'ble Supreme Court in the case of *Sunder v. Union of India*, reported in (2001) 7 SCC 211 have held that-

"the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including Solatium". The question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land on account of acquisition proceedings is not given the amount which law demands to be paid to him; any delay thereafter would only be to his detriment. There must be a provision to buffet a such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Act. The interest has to accrue as per (Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. The terms "sum awarded" or "amount awarded" occurring in Sections 34 and 28 of the Act would include not only the compensation determined by taking note of the six factors mentioned in Section 23(1) of the Act, but also amounts awarded under the remaining sub-sections of Section 23 as well, for the purpose of calculating interest. The words "compensation to be awarded" used in Section 23(1) of the Act refer to the total of the sums awarded with reference to the six factors enumerated in Section 23(1). On the other hand, the words "amount

awarded" or "sum awarded" in Sections 28 and 34 of the Act refer to the aggregate of the compensation determined by the Court under Section 23(1), the additional amount payable under Section 23(1-A) and the Solatium payable under Section 23(2) of the Act."

18. In order to decide the question whether the provisions of Section 34 of the Land Acquisition Act regarding payment of interest would be applicable to a case where possession has been taken over prior to the issuance of Notification under Section 4 (1) of the Act, a Bench of three Judges of the Hon"ble Supreme Court in the case of R.L. Jain v. DDA reported in (2004) 4 SCC 79 have held that -

"the Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the landowner. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will be dehors the Act. It is for this reason that both Sections 11 (1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act and that these provisions show in unmistakable terms that publication of notification under Section 4(1) is the sine qua non for any proceedings under the Act. Where land is acquired after the preliminary notification under Section 4(1) of the Act, the normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof."

19. Another Constitution Bench of the Hon"ble Supreme Court in the case of Gurpreet Singh v. Union of India, reported in (2006) 8 SCC 457 with regard to the issue as to whether in the light of the decision in Sunder"s case (supra), the awardee/decreree-holder would be entitled to claim interest on Solatium in execution though it is not specifically granted by the decree; have observed that-

"It is well settled that an execution Court cannot go behind the decree. If, therefore, the claim for interest on Solatium had been made and the same has been negative either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate Court, the execution Court will have necessarily to reject the claim for interest on Solatium based on Sunder on the ground that the execution Court cannot go behind the decree. But if the award of the Reference Court or that of the appellate Court does not specifically refer to the question of interest on Solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate Court, and merely interest on compensation is awarded, then it would be open to the execution Court to apply the ratio of Sunder and say that the compensation awarded includes Solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not.

Interest on Solatium can be claimed only in pending executions and not in closed executions and the execution Court will be entitled to permit its recovery from the date of the judgment in Sunder (19.9.2001) and not for any prior period and that the same will not entail any re-appropriation or fresh appropriation by the decree-holder."

20. In the case of State of Punjab v. Amarjit Singh, reported in (2011) 4 SCC 724 the Hon"ble Supreme Court have held that-

" While market value and compensation are factors to be assessed and determined by the Court, no such judicial exercise is involved in regard to additional amount payable under Section 23(1-A) and solatium payable under Section 23(2) as they are statutory benefits payable automatically at the rates specified in those sub-sections, qua the market price. No reasons need to be assigned for grant of additional amount or Solatium.

Thus a person whose land is acquired is entitled to the following amounts under the Act (Land Acquisitions Act):-

(a) Compensation determined under Section 23(1) of the Act (comprising the market value of the land referred to as the first factor and any damages/expenses referred to as the second to sixth factors under the said sub-section).

(b) Solatium at 30% on the market value determined as the first factor under Section 23(1) of the Act.

(c) Additional amount at 12% per annum of the market value of the land referred to as the first factor under Section 23(1) of the Act for the period specified in Section 23(2).

(d) Interest on the aggregate of (a), (b) and (c) above for the period between the date of taking possession to the date of payment/deposit at the rate of 9% per annum for the first year and 15% per annum for the remaining period.

Payments made are to be adjusted and accounted in the manner set out in Gurpreet Singh v. Union of India (supra)."

21. The Hon"ble Apex Court in the case of Kapil Mehra v. Union of India reported in (2015) 2 SCC 262 have held that -

"43. The Land Acquisition Act, 1894, provides for payment of interest to the claimants either under Section 34 or under Section 28 of the Act. Section 34 of the Act fastens liability on the Collector to pay interest on the amount of compensation to be worked out in accordance with provisions of Section 23(1) and the subsection thereof, at the rate of 9% per annum from the date of taking possession until the amount is paid or deposited. As per the proviso to Section 34, if the compensation amount or any part thereof is not paid or deposited within a period of one year from the date of taking over possession, interest shall be payable at the rate of 15% p.a. from the date of expiry" of the said period of one year on the amount of compensation or part thereof which has not been paid

or deposited before the date of such expiry.

44. Section 28 empowers the Courts, if it was enhancing the compensation awarded by the Collector, to award interest on the sum in excess of what the Collector had awarded as compensation. Both in terms of Section 34 and Section 28, interest at the rate of 9% p.a. is payable for the first year of taking possession and 15% p.a. thereafter, if the amount of compensation was not paid or deposited within a period of one year or deposited thereafter.

45. Award of interest under Section 34 is mandatory inasmuch the word used in the section is "shall". The scheme of the Act and the express provisions thereof establish that the interest payable under Section 34 is statutory. The claim for interest under Section 28 of the Act proceeds on the basis that due compensation not having been paid, the claimant should be allowed interest on the enhanced compensation amount. The award of interest under Section 28 is discretionary power vested in the Court and it has to be exercised in a judicious manner and not arbitrarily. The use of the word "may" in Section 28 does not confer any arbitrary discretion on the Court to disallow interest for no valid or proper reasons. Normally, the Court awards interest if it enhances the compensation in excess of the amount awarded by the Collector, unless there are exceptional circumstances."

22. In the case of Manipur Tea Co. (P) Ltd. v. Collector of Hailakandi, reported in (1997) 9 SCC 673, the Hon'ble Supreme Court have held that:-

"13. It is then contended that by operation of the proviso to Section 28 of the Act, the claimants would be entitled to interest for one year from the date of taking possession @ 9% per annum and for the balance period @ 15% per annum on the enhanced compensation. We find force in the contention.

14. It is sought to be contended for respondents that the reference Court and the High Court have proceeded on the principle that the Court has discretion to award interest @ 15% or less and on facts, the Court found that 9% would be reasonable rate of interest. We find that the approach adopted by the reference Court and High Court is not correct since the statute has given measure of assessment of interest for the first year @ 9% from the date of taking possession and on expiry thereof @ 15% till date of deposit into Court of the enhanced compensation. It is a legislative principle that the claimant would be entitled to the rate of interest for the said period.

15. Under these circumstances, though the word "may" has been used in proviso to Section 28 of the Act, it has to be construed as "shall" and, therefore, the claimants would be entitled to interest at the rate of 9% on enhanced compensation for one year and thereafter @ 15% till date of deposit in the Court."

23. In the present case. Notification under Section 4(1) under the L.A. Act for acquisition of the land involved in the case was issued on 02.08.2011 and

possession of the land involved in the case was taken over on 22.01.2014. whereas the Government in the Revenue Department approved the Award of the Collector on 24.02.2014. whereas the Collector paid compensation to the petitioners in August 2014. As per the Judgment & Award of the Reference Court dated 24.09.2015 passed in L.A. Case No. 29/2014 of the Reference Court, the Collector Kolasib re-determined the Award and vide his communication No. LA. 29/2014-NFR(C)/DC(K))/9 dated 21.10.14 directed the Railways Department to deposit a Total amount of Rs. 21,41,378/- as total amount payable. A copy of the said communication has been annexed to the petition and from the same it can be seen that only 30% Solatium under Section 23(2) of the L.A. Act has been calculated on the market value of the land, but statutory interest under Section 28 of the said Act was neither assessed by the Collector nor paid to the petitioners.

24. Similarly from the communication No. F.15012/11/2013-DC(K) of the Deputy Commissioner, Kolasib dated 07.08.2014, annexed to the petition, it can be seen that the Collector concerned neither assessed the statutory interest as specified under Section 34 of the L.A. Act nor paid the same to the petitioners.

25. Hon"ble Supreme Court in the case of DDA v. Mahender Singh reported in (2009) 5 SCC 339 a matter involving land acquisition compensation, have observed as follows:-

"The Act is a complete code and lays down detailed procedure for acquisition of land, payment of compensation including Solatium and additional market value. It is to be noted that under Section 34 interest @ 9% from the date of taking over the possession till payment for the first year @ 15% for subsequent years is payable. Section 28 is the only other provision which deals with the award of interest. The said provision empowers the Court to award interest on the excess amount awarded over and above the amount awarded by the Collector.

There is no dispute that apart from Sections 28 and 34 which deal with payment of interest to persons entitled to receive compensation, there is no other provision envisaging payment of interest. The Collector, Land Acquisition is liable to pay interest on statutory rates to such persons only when possession has been taken over before the payment of the entire compensation to them under Section 34.

The statute provides for payment of interest to the landowners and the Court has no power to award interest in a manner other than the one prescribed by the statute. There is no other provision empowering the Court to award interest on equitable ground as equitable consideration has no role to play in determination of the compensation and the manner of awarding interest as enjoined under the Act. The same has to be administered in the manner laid down in the Act and in no other way. As a concomitance, the equity jurisdiction of the Court is taken out and the Act enjoins the Court to grant interest as per the statutory rates specified in the Act.

As the Act is a self-contained code, common law principles of justice, equity and good conscience cannot be extended in awarding interest, contrary to or beyond the provisions of the statute."

26. In the said case of DDA v. Mahender Singh, the Hon"ble Apex Court concluded that:-

"in view of what has been indicated above, the conclusion is irresistible that while exercising jurisdiction under Article 226 of the Constitution there is no scope for direction to pay interest in a manner not contemplated by either Section 28 or 34"

and accordingly allowed the appeal setting aside the impugned judgment, wherein the High Court in a Writ Petition directed the appellant to pay interest under Section 34 of the LA. Act and cost to the respondent/ petitioner/ claimant.

27. It is a settled law that costs and interest under the Land Acquisition Act can always be awarded by the Courts in a proceeding only under the said Act to any party entitled to the same under the Act. Since the said statute itself provides adequate and complete remedy.

28. For the reasons above, this writ petition of the petitioners is not maintainable and the prayer made by them cannot be granted in a writ petition under Article 226 of the Constitution of India. However, the petitioners may approach the appropriate forum under the Land Acquisition Act, 1894 as amended for redressal of their grievances and in the event of their said approach; the authority concerned shall consider the case of the petitioners in accordance with law.

29. With the aforesaid observations and direction, this writ petition stands disposed of.