

(2011) 11 GAU CK 0048
In the Gauhati High Court
Case No : Regular First Appeal No. 22 of 2010

State of Mizoram and Others

APPELLANT

Vs

Mr. C. Lalbiakthanga

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Land Acquisition Act, 1894 — Section 18, 18(1), 3, 4(1)
Mizo District (Land and Revenue) Act, 1956 — Section 2(8), 7, 8
Mizoram Civil Courts Act, 2005 — Section 17

Citation : (2012) 1 GLD 159

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Aldrin Lallawmzuala, for the Appellant; L.H. Lianhrima, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—The respondent is the owner and possessor of a plot of land measuring 15 bighas under Periodic Patta No. 346/76 located at Pukpui in the district of Lunglei, Mizoram. The said land was developed by the respondent and his family members where they cultivated various-crops and vegetables yielding good returns. According to the respondent, this was the main source of income and sustenance. For the construction of the Aizawl-Thenzawl-Lunglei road under the World Bank Aided Project, it became necessary to acquire the aforesaid land of the respondent. Accordingly, land acquisition process was initiated on 14-3-2001 by issuance of notice u/s 4(1) of the Land Acquisition Act, 1894. Ultimately, an award No. 1 W. B of 2003 was passed on 20-9-2003. Land acquired was 48958.00 sq. ft. and the compensation awarded was Rs. 1,00,048.00.

2. The State Government of Mizoram has prepared a policy called the "Resettlement and Rehabilitation Policy" which is applicable to the World Bank Aided projects for construction of roads in the State of Mizoram. According to

Clause 2.3 of the said policy, all the acquisition of private lands would be carried out under the Land Acquisition Act, 1894 (briefly "the Act" hereafter) and further support will be extended under the broad principles of the policy to meet the replacement value of the assets and to improve the standard of living of the displaced people. Clause 5.1(ii) of the policy acknowledges the traditional practice recognizing people's right over the land and provides that absence of legal title to land will not bar the people from getting assistance at the replacement value for the affected land. As per Clause 5.2(ii), the compensation for land and building shall be provided within the ambit of the Act and to meet the replacement value, resettlement and rehabilitation assistance will be provided. Clause 5.2 (iv) provides that in case of acquisition of houses/buildings/ other assets, the replacement value will be assessed as per procedure laid down in Clause 7.5 and that if the replacement value is more than the compensation determined, the difference would be paid by the project in the form of assistance. As per Clause 7.1, the compensation payments will be based on official record and physical verification. If 75% or more land holding is acquired or when the remaining part of the land after acquisition becomes unviable, the owner will have the right to seek acquisition of his/her entire contiguous holding/ property provided the residual land is less than the Minimum Economic Holding (Clause 7.3). Clause 7.8 provides for constitution of a committee to determine the replacement value of the land and structures, for assessing the temporary impact and for providing necessary guidance for assistance.

3. In compliance with Clause 7.8 as referred to above, a Special Committee for Lunglei town area including the Pukpui area within which the land of the respondent is situated was constituted on 10-1-2003. The said committee took a decision on 7-5-2003 vide resolution No. 4 determining the land value. The said committee decided that Rs. 0.50 per Sq. ft. should be adopted with regard to agricultural land.

4. In terms of the said policy, the assistance payable to the respondent for the acquisition was initially calculated at Rs. 19,012/-. An objection being raised by the respondent, the said land of the respondent was reassessed and the replacement value was calculated at Rs. 1,00,048/-, following which the award was passed as stated above. The awarded amount was received by the respondent in 2(two) installments on 29-11-2003 and 29-4-2004.

5. As the respondent was aggrieved by the assistance provided, he submitted a representation before the Special land Acquisition Officer to assess the value of his land at Rs. 50 per sq. ft. and to take into consideration the potentialities of the land. A further prayer was made that if his prayer could not be granted by the authority, reference should be made u/s 18 of the Act. Since the prayer of the respondent could not be acceded to, a reference u/s 18 of the Act was made to the District Magistrate and Deputy Commissioner, Lunglei district on 4-4-2007, which was then the Court within the meaning of the Act as the separation of the Judiciary had not yet taken place.

6. The said reference was registered as LA Case No. 1 of 2007. The Reference Court vide the judgment and order dated 17-9-2010 held that the respondent is entitled to Rs. 40 per sq. ft. for his acquired land. He held that the application of the triangular method for measuring the acquired land of the respondent was not correct as the same had resulted in acquired land being excluded from the measurement resulting in loss to the respondent and, therefore, directed the Special Land Acquisition Officer not to apply the triangular method while measuring the acquired land of the respondent. He further directed the Special Land Acquisition Officer to re-measure the acquired land of the respondent without applying the triangular method and thereafter to make assessment at the rate of Rs. 40/- per sq. ft. with 12% interest per annum for 1(one) year from the date of possession and 15% interest for the remaining years till payment. He further directed payment of solatium at the rate of 30% within 60(sixty) days. It is against this order that the State has filed the present appeal u/s 17 of the Mizoram Civil Courts Act, 2006 read with Order XLI , Rule 1 of the Civil Procedure Code.

7. I have heard Mr. Aldrin Lal-lawmzuala, learned Addl. Adv. Gen. appearing for the appellants. I have also heard Mr. L.H. Lianhrima, learned counsel appearing for the sole respondent.

8. The learned Addl. Adv. Gen. submits that the respondent has no right to claim compensation as he was only a Periodic Patta holder of the land which was acquired. He further submits that the respondent being a Periodic Patta holder, he is not entitled to receive any compensation for the acquisition of such land. All that he is entitled to is assistance under the policy. In fact, he was only paid assistance and not any compensation. He further submits that the respondent had no right to take recourse to the provisions of Section 18 of the Act since there is a Grievance Redressal Committee constituted under the policy. He also questioned the rationale behind enhancement of the land value from 50 paise to Rs. 40 per sq. ft., which he contended was without any basis. He further submitted that in the hilly terrain, the triangular method is the most appropriate one and the same was uniformly applied to all the persons whose lands were acquired.

9. Opposing the submissions of the learned Addl. Adv. Gen., Mr. L.H. Lianhrima, learned counsel for the respondent submits that from the deposition of the Special Land Acquisition Officer it is clear that the resettlement and rehabilitation policy neither had the sanction of the State Legislature nor was it published in the official gazette. Therefore, the same cannot be relied upon. The learned counsel submits that the DW-1 i.e. the Special Land Acquisition Officer admitted in his cross-examination that he had made assessment and made payment of land value in respect of certain persons who were holding Periodic Patta and Village Council Passes at the rate of Rs. 40/- per sq. ft. while in the case 2(two) persons both being Periodic Patta holders compensation at the rate of Rs. 50 per sq. ft. were paid. Pointing out to the statement made by the DW-1 in his cross-

examination, the learned counsel pointed out that he had admitted to have applied the provisions of the Act in acquiring the land of the respondent. He further contended that there is no material to show that the triangular method was uniformly applied. He submitted that the appeal should be dismissed because the State did not contest the reference by filing their written statement/objection.

10. The rival submissions made at the Bar have been duly considered. I have perused the case records and also the relevant provisions of law.

11. The salient features of the relief and rehabilitation policy framed by the Government of Mizoram have been duly taken note of in the preceding paragraphs of the judgment. The Special Land Acquisition Officer i.e. the D.W-1 in his cross-examination has categorically admitted that he had applied the provisions of the Act while acquiring the land of the respondent. The Act is a self contained code dealing with all aspects of land acquisition. When a statutory enactment is holding and covering the field, there is no question of any policy, whether having the sanction of the State Legislature or not or whether published in the official gazette or not, replacing or encroaching upon the domain covered by the statute. The policy can at best supplement but cannot supplant the provisions of the Act. A meticulous scrutiny of the provisions of the policy makes it clear that the purpose behind framing the policy is to supplement the Act. It has been admitted in his evidence by the DW-1 that the land of the respondent was acquired under the provisions of the Act. The respondent did not accept the compensation assessed. Therefore, he made the application before the Special Land Acquisition Officer. It is the said authority which made the reference and not the respondent u/s 18 of the Act. Therefore, the contention of the appellants that the respondent had no right to claim compensation under the Act or to take recourse to the provisions of Section 18 of the Act is without any substance and is hereby rejected.

12. Before proceeding further, let us have a closer look at Section 18 of the Act. Section 18(1) of the Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation amongst the persons interested. Thus, from a reading of Section 18(1), it is clear that only in respect of the following 4(four) matters a reference can be made to the Court :

- (1) the measurement of the land,
- (2) the amount of compensation,
- (3) the persons to whom the compensation is payable, and
- (4) apportionment of the compensation amongst the persons interested.

A reference u/s 18 gives rise to a judicial proceeding. The person challenging the award becomes the plaintiff and he has to satisfy the Court regarding his claim. In other words, the proceeding before the Court is on the basis of the legal evidence adduced and it has to arrive at its own judicial finding and on such basis, has to pass an award. The Court in such a case does not function as an appellate Court over the award passed by the Land Acquisition Officer. In a proceeding u/s 18, the award passed by the Land Acquisition Officer is not a judgment open to challenge. The award so made becomes a mere offer. The Court is not bound to follow the method of valuation adopted by the Land Acquisition Officer and should not take into account the materials relied upon by the Land Acquisition Officer unless such material is produced and proved before the Court. The only limitation on the Reference Court is that the market value of the land assessed by it should not be less than that offered by the Land Acquisition Officer. The Apex Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, laid down the broad parameters within which the Reference Court should decide the reference :--

(1) A reference u/s 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 an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation 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.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.....

In the said judgment, the Apex Court further noted that the Reference Court should determine the market value of the acquired land in a common sense manner as a prudent man of the world of business would do.

13. Having noticed the broad principles governing the jurisdiction of the Reference Court u/s 18 of the Act, let us now examine the present case. In his deposition the Special Land Acquisition Officer (DW-1) admitted that he had made assessment and made payment of land value in respect of Periodic Patta

and Village Council Pass holders, namely, Churchila, Lalramtlunga of Zemabawk, Lalremtlunga of Selam, Thansangi of Thlatlang, Lalbuanga Sailo of Thakthing and Ralkapzaua of Salem Veng and Chullova of Salem Veng. Preceding further, he disposed that in respect of two Periodic Patta holders, namely, (1) Churchila (2) Lalramtlunga, compensation was paid at the rate of Rs. 40/- and Rs. 50/- per sq. ft. respectively. He further admitted that two persons, who are residents of Salem Veng and holding Village Council Passes were given land value at the rate of Rs. 50/- per sq. ft. However, in the case of the respondent 50 paise per sq. ft. was paid on the basis of the decision of the committee constituted under the policy. The respondent in his deposition, particularly in paragraph-6 thereof has justified his claim of Rs. 50/- per sq. ft which could not be dislodged in the cross-examination. I further find that no material could be brought on record by the present appellants to show that the triangular method was uniformly applied. In fact, the Reference Court noted in the impugned judgment and order that the State Government did not contest the reference by submitting their written statement. On the other hand, the respondent could successfully convince the Reference Court that the triangular method was arbitrarily and discriminatorily applied only in his case. The respondent in his deposition before the Court clearly stated that the triangular method was applied only in his case but was not applied in the case of others whose lands were also acquired. The said assertion of the respondent could not be dislodged in the cross-examination.

14. u/s 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 u/s 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".

15. 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.

16. In the circumstances noted above, the Reference Court is fully justified in holding that the respondent is entitled to receive Rs. 40/- per sq. ft for his acquired land and that the appellants were not justified in applying the triangular method in respect of the respondent.

17. That brings us to the concluding direction of the judgment of the Reference Court. Instead of directing the Special Land Acquisition Officer to re-measure the acquired land of the respondent without applying the triangular method and thereafter to make the assessment at the rate of Rs. 40/- per sq. ft, the Reference Court ought to have carried out that exercise itself. In passing such a direction, the Reference Court virtually acted as an appellate Court and remanded the matter to the Special Land Acquisition Officer for a fresh inquiry. I am of the considered opinion that the learned Court below ought to have avoided such a course of action and instead should have re-assessed the acquired land of the respondent by taking necessary evidence. In view the aforesaid, I find no merit in the appeal. The same is hereby dismissed. The judgment and order of the Reference Court dated 17-9-2010 passed by the learned Addl. District and Sessions Judge, Lunglei in L.A Case No. 1 of 2007 is upheld, subject to the modification as indicated above. The Reference Court shall complete the exercise as indicated above within a period of 3(three) months from today and thereafter pass the necessary-award. There shall be no order as to cost.