

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) No. 92 of 2016

Smt Daplin Umsong
Daughter of (L) Kynjai Pyngrope
Resident of 17th Mile Byrnihat,
Ri-Bhoi District, Meghalaya

:::::: **Petitioner**

-Versus-

1. State of Meghalaya,
Represented by Commissioner
Secretary, Govt. of Meghalaya
2. The Collector,
Ribhoi District at Nongpoh
3. The National Highway Authority of
India, Represented by Chairman,
Sector 10 Dwarka, New Delhi-11075
4. Project Director,
National Highway Authority of India,
Suraj Nagar, Mukunola path, G.S. Road,
Khanapara, Guwahati.

:::::: **Respondents**

WP(C) No. 93 of 2016

Smt Bir Umsong
Daughter of (L) Kynjai Pyngrope
Resident of Lum Nongrim, Byrnihat
Ri-Bhoi District, Meghalaya

:::::: **Petitioner**

-Versus-

1. State of Meghalaya,
Represented by Commissioner
Secretary, Govt. of Meghalaya
2. The Collector,
Ribhoi District at Nongpoh
3. The National Highway Authority of
India, Represented by Chairman,
Sector 10 Dwarka, New Delhi-11075

4. Project Director,
National Highway Authority of India,
Suraj Nagar, Mukunola path, G.S. Road,
Khanapara, Guwahati.

:::::: Respondents

BEFORE THE HON'BLE MR JUSTICE SR SEN

For the Petitioners : Mr. R. Kar, Adv.
For the Respondents : Capt. Pradeep Kumar, Adv
& Mr. S. Sen Gupta, Addl. Sr. GA.
Date of hearing : **16.11.2016**
Date of Judgment & Order : **25.11.2016**

JUDGMENT AND ORDER

Heard Mr. R. Kar, learned counsel for the petitioner as well as Capt. Pradeep Kumar, learned counsel for the respondents No. 3 and 4 and Mr. S. Sen Gupta, learned Addl. Sr. GA for the respondents No. 1 and 2.

2. The brief fact of the petitioner's case in a nutshell is that:

"The petitioner is a Khasi Woman, who is an Agriculturist/Horticulturist having her own plot of land at Byrnihat area of Ri Bhoi District. In the year 2010 her land was acquired for the purpose of construction of Jorabat to Lad Umroi portion of the National Highway. As she was paid inadequate compensation, she had approached the Collector who referred her case before the Special Judicial Officer at Nongpoh, Ri-Bhoi District. The said case which is referred as LA 12 of 2014 is still pending.

That in the mean time in the year 2013 additional plot of her land was acquired under the New Act i.e. The Right to Fair Compensation & Transparency in the Land Acquisition Act, Re-Settlement and Re-Habilitation Act, 2013 which required a separate parameter to be considered for the purpose of award of the acquired land. The New Act was enacted to provide a better deal to the farmers.

However though the compensation was paid on the new Act the quantum of the same was too less and it appears that parameter set out by the new law was not considered for the purpose of compensation. The petitioner being aggrieved approached the authorities to refer her case before the appropriate authority in terms of Section 51 of the Act, but it appears that the State is yet to constitute an appropriate authority which has the power to determine fair compensation. The petitioner's case is that Constitution of the authority is mandatory and as such the respondent State is bound to constitute the same keeping in view the beneficial nature of the Act i.e. the New Act of 2013 and non constitution of the authority has adversely affected her interest as she remains forum less to ventilate her grievance and hence the petitioner approaches this Hon'ble High Court under 226 of the Constitution of India, praying your Lordships intervention into the matter by directing the state to constitute an authority for the purpose of adjudication of her claim".

3. The learned counsel for the petitioner submitted that the State Government had acquired a plot of land at Byrnihat area of Ri-Bhoi District in the year 2010 for the purpose of construction of Jorabat to Lad Umroi portion of the National Highway and the petitioner was paid inadequate compensation. And the matter was pending as L.A. No. 12 of 2014 before the Special Judicial Officer at Nongpoh, Ri-Bhoi District under the Land Acquisition Act till date.

That in the meantime in the year 2013 additional plot of land was also acquired from the land of the petitioner under the New Act of 2013. The new Act was enacted to provide a better deal to the farmers, though the compensation was paid on the new Act, but the quantum of the same was too less. He also further argued that, while awarding compensation, the parameter set out by the new law was not considered. Therefore, the petitioner approached to refer in terms of Section 51 of the Land Acquisition Act, 2013. The learned counsel further argued that the Constitution of the authority under the new Act of 2013 is mandatory and prayed for necessary order.

4. On the other hand, the learned counsel for the respondents No. 2 and 3 submitted that, 80% of the compensation was awarded as per the assessment made by the Deputy Commissioner, Ri-Bhoi District, Nongpoh and there is no question of paying less compensation and further submits that adequate compensation was paid. So, the petition may be dismissed.

5. After hearing the submissions advanced by the learned counsel, it is apparent that the land was acquired under the new Act called “The Right to Fair Compensation & Transparency in the Land Acquisition Act, Re-Settlement and Re-Habilitation Act, 2013. It is also an undisputed fact that, 80% of the compensation was paid to the petitioner.

6. Now the question which arises before this Court is whether the compensation so paid is adequate? To answer this question, we will have to follow the procedure laid down under the new Act, 2013. Section 15 provides the Submission for Hearing of Objections, Section 28 provides the Parameters to be considered by Collector in determination of award, Section 51 makes a provision for Establishment of Land Acquisition, Rehabilitation and Resettlement Authority, Section 64 makes a clear provision for Reference to Authority.

For ready reference Section 51 of the Act speaks as follows:

“51. Establishment of Land Acquisition, Rehabilitation and Resettlement Authority. – (1) *The appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish, by notification, one or more Authorities to be known as —the Land Acquisition, Rehabilitation and Resettlement Authorityll to exercise jurisdiction, powers and authority conferred on it by or under this Act.*

(2) The appropriate Government shall also specify in the notification referred to in sub-section (1) the areas within which the Authority may exercise jurisdiction for entertaining and deciding the references made to it under section 64 or applications made

by the applicant under second proviso to 28 sub-section (1) of section 64”.

7. Section 64 further speaks about Reference to Authority which is reproduced herein below for ready reference:

“64. Reference to Authority.— (1) *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 Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:*

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector’s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector’s award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso”.

8. On combined reading of Section 51 and Section 64, it is understood that the Government concerned is bound to notify and to establish the authority to settle the Land Acquisition, Rehabilitation and Resettlement and Section 64 provides how to make a Reference to Authority.

9. Since in this case, the land has been acquired under the new Land Acquisition Act, 2013, the Secretary, Law Department, Government of Meghalaya is directed to notify and to establish the authority immediately within 15(fifteen) days from the date of receipt of a certified copy of this judgment and order. Thereafter, the petitioner will be at liberty to make a reference to the Authority concerned through the Collector of the District.

10. Since the facts and circumstances of the WP(C) No. 92 of 2016 and WP(C) No. 93 of 2016 are similar and equal in nature, both the petitions are allowed and stands disposed of by this common judgment and order.

11. No order as to costs.

JUDGE

D. Nary