GAHC030003822021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/5/2021

State of Mizoram and 3 Ors
Chief Secretary to the Government of Mizoram Aizawl

VERSUS

Sh. Darkunga and 162 Ors
Zohmun, Mizoram

Advocate for the Petitioner : Addl. AG/GA, Mizoram

Advocate for the Respondent : Mr Lalfakawma

Linked Case : WA/12/2022

State of Mizoram and 2 Ors
R/b Chief Secretary to the Govt. of Mizoram
Aizawl

2: Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.
Aizawl

3: Deputy Commissioner/District Collector
Govt. of Mizoram
Aizawl District
Aizawl
VERSUS

C.Rochungnunga and 2 Ors.
S/o Zachhinga

Zohmun
Mizoram

2:C.Laltlanthanga
Zohmun
Mizoram

3:Zachhinga (L) r/b his legal representative C.Rochungnunga
Zohmun
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Vanlalnghaka

Linked Case : WA/10/2021

State of Mizoram and 3 Ors
R/b Chief Secretary
Govt. of Mizoram
Aizawl

VERSUS

Sh. Vanlalliana and 70 Ors
Saipum
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Lalfakawma

Linked Case : I.A.(Civil)/119/2022

State of Mizoram and 4 Ors
r/b the Chief Secretary to the Govt. of Mizoram
Aizawl

2: Secretary to the Govt
. of Mizoram
Land Revenue and Settlement Dept.

Aizawl

3: Deputy Commissioner/District Collector
Aizawl District
Aizawl

4: Deputy Commissioner
Aizawl District
Aizawl

5: Secretary to the Govt. of Mizoram
Forest and Environment Dept.
Aizawl
VERSUS

R.Lalhmingsanga and 11 Ors
S/o R.Lalkhawhluna
N.Serzawl
Mizoram

2:R.Lalkhawhluna
N.Serzawl
Mizoram

3:R.Thanchhunga (L) r/b his son and legal representative Sh Vanlalhlua
N.Serzawl
Mizoram

4:Sarah Lalremruati
D/o V.L.Para
Chaltlang
Aizawl

5:V.L.Para
S/o Buaia
Chaltlang
Aizawl

6:L.H.Zuala
S/o Auva
Zemabawk Kawn Veng-II
Aizawl

Advocate for the Petitioner : Mr C Zoramchhana
Advocate for the Respondent :

Linked Case : WA/7/2021

State of Mizoram and 2 Ors
R/b Chief Secretary
to the Government of Mizoram
Aizawl

VERSUS

Sh. Malsawma and 229 Ors
Mauchar
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Lalfakawma

Linked Case : I.A.(Civil)/120/2022

State of Mizoram and 2 Ors.
R/b Chief Secretary to the Govt. of Mizoram
Aizawl

2: Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.
Aizawl

3: Deputy Commissioner/District Collector
Govt. of Mizoram
Aizawl District
Mizoram
VERSUS

C.Rochungnunga and 2 Ors.
S/o Zachhinga
Zohmun
Mizoram

2:C.Laltlanthanga
S/o Rochungnunga
Zohmun
Mizoram

3:Zachhinga (L)
r/b his legal representative C.Rochungnunga
Zohmun
Mizoram

Advocate for the Petitioner : Mr C Zoramchhana
Advocate for the Respondent :

Linked Case : WA/11/2021

State of Mizoram and 3 Ors
R/b Chief Secretary
Aizawl Mizoram

VERSUS

Sh. Mitinpawla and 16 Ors
N. Serzawl
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Lalfakawma

Linked Case : WA/6/2021

State of Mizoram and 3 Ors
Chief Secretary
to the Government of Mizoram Aizawl

VERSUS

Sh. Lalthamanga and 53 Ors
Sakawrdai
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram

Advocate for the Respondent : Mr Lalfakawma

Linked Case : WA/8/2021

State of Mizoram and 3 Ors
R/b Chief secretary
Government of Mizoram
Aizawl

VERSUS

Sh. Ngurthanmawia and 34 Ors
Khatla
Aizawl

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr A.R. Malhotra

Linked Case : I.A.(Civil)/176/2024

State of Mizoram and 3 Ors.
Represented by the Chief Secretary
Govt. of Mizoram
Aizawl

VERSUS

Sh Lalthamanga and 53 Ors.
S/o Zaipuia
R/o Sakawrdai
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr A.R. Malhotra

Linked Case : WA/13/2021

State of Mizoram and 3 Ors
Chief Secretary
to the Govt. of Mizoram

VERSUS

Sh. Lalremkunga and 21 Ors
Saipum
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr A.R. Malhotra

Linked Case : WA/12/2021

State of Mizoram and 3 Ors
Chief Secretary
to the Goverment of Mizoram
Aizawl

VERSUS

Sh. C. Zarmawia and 45 Ors
N. Hlimen
AizaWL
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Lalfakawma

Linked Case : WA/11/2022

State of Mizoram and 3 Ors

R/b Chief Secretary to the Govt. of Mizoram
Aizawl

2: Chief Secretary
Govt. of Mizoram
Aizawl

3: Secretary to the Govt. of Mizoram
Land Revenue and Settlement Dept.
Aizawl

4: Deputy Commissioner/ District Collector
Aizawl District
Aizawl

5: Secretary to the Govt. of Mizoram
Forest and Environment Dept.
Aizawl
VERSUS

R.Lalhmingsanga and 11 Ors.
N.Serzawl
Mizoram

2:R.Lalkhawhluna
N.Serzawl
Mizoram

3:R.Thanchhunga (L)
R/b his son and legal representative Sh Vanlalhlua
N.Serzawl
Mizoram

4:Sarah Lalremruati
D/o V.L.Para
Chaltlang
Aizawl

5:V.L.Para
S/o Buaia
Chaltlang
Aizawl

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr J C Lalnunsanga for R1 - R11

Linked Case : WA/9/2021

State of Mizoram and 3 Ors
R/b Chief Secretary
To the Government of Mizoram
Aizawl

VERSUS

Sh. Manglianthanga and 33 Ors
N. Hlimen
Aizawl
Mizoram

Advocate for the Petitioner : Addl. AG/GA
Mizoram
Advocate for the Respondent : Mr Lalfakawma

- BEFORE -

HON'BLE MR. JUSTICE DEVASHIS BARUAH

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of Hearing : 28.10.2024.

Date of Judgment : 29.11.2024.

JUDGMENT AND ORDER (CAV)

(D. Baruah, J.)

Heard Mr. B. Deb, the learned Advocate General assisted by Ms. Lalnunhlui, the learned Government Advocate appearing on behalf of the State of Mizoram. We have also heard Mr. C.

Lalramzauva, the learned Senior counsel assisted by Mr. A. R. Malhotra, the learned counsel appearing on behalf of the Respondents in Writ Appeal Nos. 8, 11 and 13 of 2021 as well as Mr. Lalfakawma, the learned counsel appearing on behalf of the private Respondents in Writ Appeal Nos. 5, 6, 7, 9, 10 and 12 of 2021 as well as Mr. J. C. Lalnunsanga for the Respondents Writ Appeal Nos. 11/2022 and 12/2022. We have also heard Mr. V. K. Jindal, the learned Senior counsel assisted by Mr. R. Subedi, the learned counsel appearing on behalf of the NEEPCO.

2. This instant batch of Writ appeals are directed against the common judgment and order dated 27.01.2021 passed in 11 (eleven) writ petitions whereby the learned Single Judge had -

(a) Set aside the impugned order dated 05.08.2016 passed by the Chief Secretary to the Government of Mizoram;

(b) Set aside the notification dated 28.01.1965 made under Section 14 read with Section 21 of the Mizo District (Forest) Act, 1955;

(c) The Petitioners in the batch of writ petitions were given the liberty to seek alternative remedy for execution of the Awards in accordance with the procedure prescribed in the Land Acquisition Act, 1894 (for short 'the Act of 1894'); and

(d) The State of Mizoram was given the liberty to pay compensation amounts to the writ petitioners.

3. At the outset, it is very pertinent to mention that by this impugned judgment and order, the learned Single Judge decided three different grievances raised in the writ petitions. Out of the eleven writ petitions, nine of them were grievances of non-payment of the entitlement as per Awards passed by the Collector in terms with the Act of 1894. Two writ petitions which were filed subsequently in the year 2017, raised two grievances. The first grievance was non-satisfaction of the Awards and thereby seeking directions. Secondly, the Petitioners in these two writ petitions were aggrieved by order dated 05.08.2016 and the Notification dated 28.01.1965 and accordingly challenged the order dated 05.08.2016 issued by the Chief Secretary to the Government of Mizoram as well as the notification dated 28.01.1965 made under Section 14 read with Section 21 of the Mizo District (Forest) Act, 1955 (for short 'the Act of 1955') whereby half mile on either side of 16 rivers were made Council Reserve Forests.

4. To decide the legality of the impugned judgment and order, we find it appropriate first to deal with the facts which led to the filing of the various writ petitions and the passing of the impugned judgment and order.

5. The Government of Mizoram had taken a policy decision to set up 60 MW Hydro Electric Project over the River Tuirial in the year 1996. The project was to be set up with the help of the North East Electric Power Corporation Limited (NEEPCO), a Government of India Undertaking having its registered Office at Shillong. In that regard, an agreement was entered into by and between the Government of Mizoram and NEEPCO for execution of the Tuirial (60 MW) Hydro Electric Project on 29.05.1996. The said Agreement contained various clauses. Amongst the said clauses, Clause-8 of the said agreement stipulated that the total land required for the construction and completion of the project shall be acquired by the State Government and handed over to NEEPCO on payment of the necessary fee to the State Government as assessed by the State Government.

6. It is pertinent herein to mention that a communication was issued on 10.08.1990 much prior to entering into the Agreement dated 29.05.1996. In the said letter, the Conservator of the Forests, Government of Mizoram reported that the land which would be required for the Tuirial Hydro Electric Project and more particularly, the whole submergent area would fall inside the Riverine Reserved Forest of Tuirial. It was also mentioned that since the area was a Riverine Reserve Forest Area, issuance of LSC or periodic patta for WRC and garden were completely illegal. It is also seen from the

records and more particularly the communication dated 15.10.1993 that a request was made for approval of diversion of 53.80 Hectares of forest land for clearance of the Tuirial Hydro Electric Project. Additionally, it is also seen from a communication issued by the Secretary, Ministry of Power, Government of India to the Chief Secretary, Government of Mizoram dated 19.09.2003 wherein there was a mention that budgetary provision of only Rs.431.97 lakhs was made for preliminary and land acquisition and there was no provision made towards crop compensation. The said budgetary provision was on the basis that the submergent area was part of the Reserved Forest Area.

7. In spite of the above, the Agreement executed on 29.05.1996 contained Clause-8 wherein the question of land acquisition and payment thereof was mentioned. It is further apparent from the records that the Secretary to the Government of Mizoram, Land Revenue and Settlement Department had issued a notification bearing No.K.12011/1/96-REV dated 03.03.1997 under Section 4(1) of the Act of 1894 whereby it was notified that the land specified in the Schedule thereto was likely to be needed for public purposes viz. acquisition of land for Tuirial Hydro Electric Project. The Schedule as mentioned in the said notification pertained to the area wherein the boundary extended from the river bank approximately 75 meters towards the hillside on both sides of the

river Tuirial towards the hill for a distance of 85 kms from the dam Axis towards upstream side of the river. It was also mentioned that in the case of tributaries – Hachelui, Maitailui and Tuiawn the boundaries extend from the river banks 50 meters towards the hill for a distance of 8.5 Km, 6 Km and 6 Km respectively from their confluence towards upstream side. The submergence area was mentioned in the Schedule to be 5210.50 Hectares. It further appears that the initiation of the land acquisition proceedings was keeping in mind the Agreement dated 29.05.1996.

8. Thereupon the Respondents in the Revenue Department of the Government of Mizoram conducted demarcation as well as survey of the land from 07.11.1997 to 12.12.1997 and identified the lands to be acquired for Tuirial Hydro Electric Project. The lands claimed to belong to the Petitioners in all the writ petitions were within the submergence area of the said project and it was to be acquired for the said public purpose. Subsequent thereto, a joint inspection/assessment of the land/crops within the project area were conducted with effect from 06.01.1998 to 16.01.1998 by NEEPCO as well as the officials of the Government of Mizoram and the land compensation bill was prepared by the Deputy Commissioner/District Collector Aizawl and sent to NEEPCO through the Government of Mizoram.

9. It is pertinent herein to mention about a communication which was issued by the Executive Director of NEEPCO on 22.03.1999 wherein it was mentioned that as per Clause-8 of the MoU, the NEEPCO was yet to be served any compensation bill from the Government of Mizoram. It was further mentioned that the payment can be released by NEEPCO against land compensation only after receipt of the land compensation proposal and bill from the Government of Mizoram. Under such circumstances, the Executive Director of NEEPCO requested the Chief Secretary, Government of Mizoram to pass necessary instructions to the concerned authorities so that the land compensation for the project area is settled at the earliest and to enable NEEPCO to release certain payments within the financial year. This communication is enclosed as Annexure-2 to WP(C) No.45/2017.

10. It is further seen from the records that in the year 1998-99, NEEPCO released an amount of Rs.34,00,000/- for 515.21 Hectares of land out of 5380 Hectares towards crop compensation of 33 listed individuals. The formalities of handing over and taking over of the land had also been completed. The records further reveals that although initially the acquisition proceedings was initiated for 5210.50 Hectares, but in the said land acquisition proceedings being Award No.2/1998, only 515.21 Hectares of land was acquired. This aspect of the matter would be seen from the affidavit filed by the

Chief Secretary, Government of Mizoram dated 05.04.2018 in the writ proceedings. It is also seen from the said affidavit that out of 515.21 Hectares, 47.43 Hectares were private lands and 467.77 Hectares were Government lands.

11. Resultantly, on 20.08.2001 another notification was issued by the Secretary to the Government of Mizoram, Revenue Department under Section 4 of the Act of 1894 in respect to plots of land admeasuring 4850 Hectares (approx.). The Schedule to the said notification only mentioned "Submergent area of Tuirial Hydro Electric Project" – 4850 Hectares (approx.)

12. It is seen from the records that pursuant thereto, thirty-five (35) persons approached this Court by filing three writ petitions being WP(C) No.90/2002, WP(C) No.91/2002 and WP(C) No.92/2002. These writ petitioners claimed that they were issued Land Settlement Certificate (LSC) by the Revenue Authorities of the Government of Mizoram. The said writ petitions were disposed of vide an order dated 01.08.2002 by the learned Single Judge with a direction that the writ petitioners in those writ petitions shall file applications showing their interest in the land which was sought to be acquisitioned by the State Government and claim compensation, within a period of one month from the date of the said order. Thereupon, the Deputy Commissioner/Collector Aizawl, who was the

Respondent No.3 therein was directed to expeditiously and not later than a period of four months dispose of, in accordance with law, the claim applications which the petitioners might have already filed or are likely to file in pursuance to the said order. This Court further directed that if the land or any part or portion thereof is not required to be acquisitioned, the petitioners concerned may be informed accordingly by the Deputy Commissioner/Collector, Aizawl. It was further observed that if in any part or portion thereof possession had already been taken by the Respondents, they shall vacate within a period of four months. In addition to that, the petitioners in those writ petitions were also given the liberty to claim rents or mesne profits in respect to such possession, if permissible under law.

13. Subsequent to the said order dated 01.08.2002 passed in the above mentioned 3 (three) writ petitions, the Deputy Commissioner, Aizawl issued a communication to the Secretary to the Government of Mizoram, Revenue Department, Mizoram dated 13.03.2003 wherein it was mentioned that out of the 35 writ petitioners in the three writ petitions, the land belonging to 34 writ petitioners were found to have been located within the proposed submergent area of the Tuirial Hydro Electric Project which falls under N. Serzawl and Ratu Village Council area. In the said communication, it was categorically stated that the land of those 34

writ petitioners in total admeasured 697.27 Bighas. It was also mentioned that the remaining private land holdings other than of those petitioners in the three writ petitions within the area covered under the Third Phase Compensation Assessment Survey, were also verified and crops were counted. Under such circumstances, various details were forwarded to enable the State Government for issuance of the declaration under Section 6 of the Act of 1894.

14. Subsequent to the said communication dated 08.04.2003, the Government of Mizoram through its Commissioner and Secretary, Revenue Department published the notification under Section 6 of the Act of 1894 thereby declaring that the lands admeasuring 697.27 Bighas were required for acquisition for public purpose. The names of the 34 persons as well as the areas against their names were mentioned in the declaration.

15. In the meanwhile, it is also pertinent to mention that the District Collector, Aizawl upon the directions of the State of Mizoram also initiated acquisition proceedings for the balance amount i.e. 4849 Hectares in phase manner. The entire exercise carried out resulted in passing of four Awards, the details of which are herein under:

(A) Award No.4/2002 :

This Award was made and published by the District Collector on 18.06.2002 for an amount of Rs.8,04,90,627/- towards the payment of compensation to 352 awardees for trees, crops, plants etc. in respect of an area admeasuring 9310.39 Bighas of land to be acquired for submergence area (Phase-I). The lands which fell within the purview of the Award were within the village council area of Mauchar, Saipum and North Hlimen. Under Section 4, notification was issued on 20.08.2001 and the declaration was made on 11.04.2002. In respect to the said award, the total temporary private holdings were 352 in numbers against 5508 Bighas and the remaining being 3802.39 Bighas were Government Free Land. No compensation was determined in respect to land value on the ground that the land held were under temporary passes.

(B) Award No.5/2002 :

This Award was made and published by the District Collector for an amount of Rs. 68,52,716/- to be paid to 74 numbers of awardees as compensation for trees, crops, plants etc. in respect of 857.84 Bighas of land acquired for submergence area (Phase-II) of the Tuirial Hydro Electric Project. It is pertinent to mention that land in respect to this award fell within the area of the Village Council of Saipum and Mauchar. Section 4 notification was issued on 18.01.2002 and the declaration under Section 6 was made on

10.07.2002. Out of the total land of 857.84 Bighas, 635 Bighas were in respect of temporary private land holdings - 74 numbers and the remaining 222.84 Bighas were Government free lands. No compensation was determined towards land value as the lands were held under temporary passes.

(C) Award No.5/2003 :

This Award was made and published on 16.07.2003 for an amount of Rs.5,58,60,928/- for payment to 348 numbers of awardees as compensation for trees, crops, plants etc. in respect of 16468.77 Bighas of land acquired for submergence area (Phase-II) of the Tuirial Hydro Electric Project. The land in respect of this award fell within the Village Council area of Mauchar, Zohmun, Falsang, North Hlimen and North Khawdungsei. The notification under Section 4 was issued on 20.08.2001 and the declaration under Section 6 was issued on 18.11.2002. Out of the total area admeasuring 16468.77 Bighas, 5535.5 Bighas were pertaining to temporary private land holdings of 366 awardees and the remaining 10933.27 Bighas were Government free lands. No compensation was determined towards land value as the lands were held under temporary passes.

(D) Award No.6/2003:

This Award was made and published on 25.09.2003. In respect to the instant Award, the area fell within the Village Councils of North

Serzawl, Ratu, Sunhluchhit, North Hlimen, and Bookpui. As already stated above, the notification was issued under Section 4 on 20.08.2001 and the declaration was made on 09.05.2003. The award was for an amount of Rs.8,85,50,461/- for payment to various awardees in respect of 9189.94 Bighas of land (Phase-III). Out of the total 9189 Bighas of land, 5553.51 Bighas pertained to Government free lands and 3636.43 Bighas were in respect to temporary private holdings of 196 awardees. It is further relevant to mention that in respect to 1,35,25,344 sq. ft. of area, where 48 awardees had LSC, the compensation was determined on the value of the land at Rs.2/- per sq. ft. In this award, interest in terms which Section 23(1-A) of the Act of 1894 was awarded and further damage compensation for standing crops was awarded to the tune of Rs. 5,53,36,663/-. In total, the amount was determined at Rs.8,85,50,461/-. The calculation so worked out in respect to this Award being relevant is mentioned herein under:

1	Cost of land covered by LSC measuring 1,35,25,344 sq. ft. -	Rs.2,70,50,688/-
2	12% interest w.e.f. 20.08.2001 to 14.07.2003 i.e. 693 days	Rs.61,63,110/-
3	Damage compensation for standing crops etc. -	5,53,36,663/-
	Total	Rs.8,85,50,461/-

It is very relevant herein to note that except the 48 awardees pertaining to Award No.6/2003, no compensation was determined to the other awardees in connection with the four Awards for the value of land. All the four awards above mentioned were made and published with due approval of the Government of Mizoram as would be seen from the materials record.

16. The materials on record further show that the 34 writ petitioners in the three writ petitions i.e. WP(C) No.90/2002, WP(C) No.91/2002 and WP(C) No.92/2002 who were the awardees in Award No.6/2003, filed a writ petition being WP(C) No.82/2004 seeking directions for payment of the compensation awarded by the Collector vide Award No.6/2003 and further seeking directions for calculation of interest in terms with the provisions of the Act of 1894 with effect from 03.03.1997, i.e. the date when the initial notification under Section 4(1) of the Act of 1894 was issued by the authority. In the meantime, while the said writ petition was pending, these very petitioners had also sought for a reference to the Court under Section 18 of the Act of 1894 objecting to the quantum of compensation. On the basis of the said objection, a reference proceedings being LA(C) No.1/2004 was instituted. The learned Single Judge vide an order dated 07.06.2005 disposed of WP(C) No.82/2004 holding inter alia that no relief can be granted as the Petitioners of the said writ petition had already approached the

learned Land Acquisition Judge. Accordingly, the said writ petition was closed observing that the petitioners therein may pursue the reference proceedings before the learned Land Acquisition Judge for early disposal.

17. It is further seen that in the proceedings being LA(C) No.1/2004, an order was passed on 26.09.2005 whereby the District Collector was directed to pay 30% solatium with interest @12% per annum from the date of the first notification. Subsequent thereto, a supplementary award was made being Supplementary Award No.6/2003 amounting to Rs. 4,66,06,436/- and the same was duly approved by the Government of Mizoram on 05.01.2006. Admittedly, there is no challenge to the said award passed by the learned Land Acquisition Judge and consequently, the same attained finality. On the other hand, the passing of the Supplementary Award and it's approval being granted shows that the State of Mizoram accepted the said decision of the learned Land Acquisition Judge.

18. The records further reveal that a communication was issued by the Deputy Commissioner, Aizawl District to the Chairman and Managing Director, NEEPCO for payment of compensation under the Tuirial Hydro Electric Project whereby informations were sought as to whether NEEPCO would clear the outstanding liabilities of compensation as per the Award No.4/2002, Award No.5/2003 and

Award No.6/2003 before resuming the project work and further when would the fourth and final phase of compensation assessment be conducted under the Tuirial Hydro Electric Project.

19. The records also reveal that the Petitioners in WP(C) No.82/2004 yet again approached this Court by filing another writ petition being WP(C) No.77/2006 seeking appropriate writ, direction(s) and order(s) so that the awarded amount as per the Award No.6/2003 and the and the Supplementary Award No.6/2003 be paid to the Petitioners. The learned Single judge vide an order dated 04.12.2007 disposed of the said writ petition whereby it was observed that the petitioners therein may initiate appropriate execution proceedings before the appropriate forum to ventilate the grievances. The learned Single Judge further in deciding the said writ petition made observations to the effect that the stand of the NEEPCO about its non-liability was not sustainable and runs counter to their earlier stand. It was further observed that the NEEPCO in whose favour the acquisition was made would naturally be liable to deposit the awarded amount if not done in the meantime. At this stage, it is also relevant to observe from the contents of judgment and order dated 04.12.2007 that the counsel appearing for NEEPCO in the said proceedings made specific submissions as would appear at paragraph No.5 of the said judgment and order dated 04.12.2007 to the effect that NEEPCO was not liable to pay on account of

certain understanding culminating in MoU/Agreement between the State Respondents and NEEPCO. This aspect assumes importance as would be seen upon a further elaboration of the facts.

20. Being aggrieved by the said directions passed by the learned Single Judge in its judgment and order dated 04.12.2007 in WP(C) No.77/2006, NEEPCO preferred a Writ Appeal before the Coordinate Bench of this Court which was registered and numbered as Writ Appeal No.426/2007. Vide an order dated 21.04.2010, the Coordinate Bench of this Court disposed of the said Writ Appeal observing inter alia that taking into account the scope of the writ petition, the High Court could either interfere in the matter by directing the State Government to pay the money or as observed by the learned Single Judge, could ask the petitioners to approach the Land Acquisition Officer or the Court. It was further observed that in such matters as there was very little scope of interference, the learned Single Judge ought not to have made observations as made in paragraphs 6 and 8 of the judgment dated 04.12.2007. Accordingly, the observations made in paragraphs 6 and 8 of the said judgment were set aside and it was categorically observed that the parties would be free to settle their scores before the appropriate forum. The above observations to the effect that the parties shall settle their scores before the appropriate forum would mean that the Coordinate Bench of this Court did not decide as to

whether the State of Mizoram or NEEPCO would be liable to pay the compensation. The said aspect was left open to be decided in the appropriate forum. We further find it very appropriate herein to observe that these observations were made only in respect to the proceedings initiated by the 34 awardees in Award No.6/2003 and Supplementary Award No.6/2003. There is nothing on record to show that similar observations and findings in judicial proceedings insofar as the other three Awards or even in respect to the other Awardees of Award No.6/2003 other than those 34 Awardees.

21. Contemporaneously, another development took place while these litigations were going on. A Public Interest Litigation was filed in the year 2008 being PIL No.15/2008 alleging inter alia that in the matter of land acquisition for installation of the project by NEEPCO, certain lands were offered by the State of Mizoram and the said lands were forest lands. But, however, certain persons exercising and utilizing their influence, politically or otherwise, lodged their claims before the Land Acquisition Officer. It was also alleged that such persons in connivance with the Government Officials had led to passing of awards in favour of such persons. On the basis of the said PIL being filed, the Co-ordinate Bench of this Court vide an order dated 21.04.2010 directed that the matter be investigated by the Central Bureau of Investigation.

22. It is relevant to mention that the Central Bureau of Investigation submitted the charge sheet in the month of May, 2012 before the learned Special Judge, Mizoram. In the said charge sheet, it was inter alia opined that out of 352 cultivators, 303 cultivators were the genuine cultivators of the three villages namely Saipum, Mauchar and North Hlimen. However, the remaining 49 persons were neither villagers of the village Saipum nor had been allotted any land as cultivator by the President, Village Council/ of Saipum village. It is however very pertinent to mention that the allegations so made in the charge sheet against those 49 persons are not petitioners before this Court. It is also very pertinent to observe that as per the allegations made in the charge sheet, these 49 persons were purportedly issued passes in the year 1983 by a person who had no authority to do so. The charge sheet only referred to the Award No.4/2002 and not other Awards.

23. In the meantime, the 34 writ petitioners in WP(C) No.77/2006 filed an execution proceedings being registered as Execution Case No.13/2010 before the Court of the learned Additional District and Session Judge No.1, Aizawl. An order was passed on 10.12.2010 whereby the learned Additional District and Sessions Judge opined that once the Award/Supplementary Award had been made and approved by the appropriate Government, the private land owners cannot be made to suffer due to inaction on the

part of the authorities concerned. It was observed that the State of Mizoram had a legal obligation to make payment of the said awarded amount of compensation with effect from 15.07.2003 till full and final payment of the said Award by procuring the same from NEEPCO and thereupon depositing the same in the Court for payment to the Awardees within a period of two months from the date of the said order. These directions so passed, resulted in filing of another proceedings by NEEPCO being CRP No.2/2011. The said revision application under Article 227 of the Constitution was disposed of vide judgment and order dated 02.07.2012.

24. It is pertinent to mention that the said revision application arose out of a proceedings being Execution Case No.13/2010 filed by the 34 writ petitioners in WP(C) No.77/2006. The learned Single Judge vide the said judgment observed that as the State had acquired the land under the provisions of the Act of 1894 and as such was liable to pay compensation to the land owners. It was observed that the question as to whether the State Government should recover the amount from NEEPCO or whether NEEPCO should pay the said amount to the State Government is a matter to be decided by and between the said two authorities and nowhere concerns the land owners. The learned Single Judge further directed that the State Government had to satisfy the Award and therefore it had to deposit the awarded amount of compensation with the

learned Executing Court. In view of such observations, the learned Single Judge modified the order dated 10.12.2010 passed by the learned Executing Court by setting aside the direction to the effect "by procuring the same from NEEPCO". The learned Single Judge further before parting with the records observed that in view of the CBI investigation and the stand taken by the Forest Department, Mizoram, the Chief Secretary to the Government of Mizoram was at liberty to look into the matter and take a conscious decision keeping in view the public interest involved.

25. It is further pertinent to mention that pursuant to the above mentioned judgment and order dated 02.07.2012, as there was no deposit by the State of Mizoram, the amount of compensation before the learned Executing Court, a contempt application was filed by the 34 petitioners alleging non-compliance to the judgment and order dated 02.07.2012 passed in CRP No.2/2011. The said contempt proceedings were registered and numbered as Contempt Case No.9/2014. However, the said contempt application was dismissed vide an order dated 08.05.2015 on the ground that there was no specific directions as regards the time frame for compliance with the order dated 02.07.2012 in CRP No.2/2011.

26. The records further reveal that the dispute as regards payment of the compensation in respect to the awardees of the

awards being Award No.4/2002, Award No.5/2002, Award No.5/2003 and Award No.6/2003 were the subject matter of discussions amongst the various officials and there were various departmental and inter-departmental correspondences including Cabinet Meetings. However, nothing further progressed as regards payment of the compensation. Resultantly, WP(C) No.130/2013, WP(C) No.16/2014 and WP(C) No.118/2015 were filed by the awardees of Award No.04/2002.

27. At this stage, it is very relevant to mention that an association in the name and style of "Tuirial Compensation Claimants Association, Mizoram Phase-I" served an ultimatum to NEEPCO on 14.07.2003 to pay up the assessed awarded amount of Rs.8.05 crores falling which the said association would resort to road blocking and stoppage of work at the project. The said Association thereupon resorted to blockade with effect from 01.08.2003. Ultimately, after protracted discussions amongst the representatives of the Tuirial Compensation Claimants Association, Mizoram Phase-I; NEEPCO and the State of Mizoram, an amount of Rs. 4.02 Crores was agreed to be released by NEEPCO by 10.09.2003. It was also agreed during the discussion that the remaining amount would be released upon availability of funds. It was under such circumstances, the agitation was called off and project work resumed from 14.01.2011. However, the remaining

50% of the amount in respect to the Award No.4/2002 was not released. Under such circumstances, the writ petitioners in WP(C) No.130/2013, WP(C) No.16/2014 and WP(C) No.118/2015 sought a writ in the nature of mandamus directing the Respondent Authorities including the State of Mizoram to pay the remaining 50% of the dues along with other consequential amounts.

28. The awardees of Award No.5/2002 filed one writ petition being WP(C) No. 131/2013 seeking directions for payment of the awarded sum to them as per the provisions of the Act of 1894 thereby including solatium and interest.

29. The awardees of Award No.5/2003 filed four writ petitions being WP(C) No.132/2013, WP(C) No.135/2013, WP(C) No.116/2015 and WP(C) No.22/2014 whereby they sought directions upon the State Respondents, including NEEPCO that the said authorities be directed to make payment of the awarded sum along with Solatium and interest as per the Act of 1894.

30. It is noteworthy to mention that the awardees in respect to the Award No.4/2002, Award No.5/2002 and Award No.5/2003 and most of the awardees in Award No.6/2003 did not file any objection under Section 18 of the Act of 1894. Therefore, there was no award by any Land Acquisition Court within the meaning of Section 26 of the Act of 1894 in respect to such awardees. Under such

circumstances, the understanding to the grievances raised in the writ petitions concerning these awards ought to be that they were seeking a writ in the nature of mandamus for a direction upon the Respondents for payment of their entitlement as per the awards and further that the compensation towards solatium and interest be added to the awarded amounts.

31. Fifteen (15) awardees of Award No.6/2003 who had not sought for any reference under Section 18 of the Land Acquisition Act, 1894 filed a writ petition which was registered and numbered as WP(C) No.117/2015 seeking directions that the Respondents should pay their entitlement.

32. While the aforementioned writ petitions were pending, the Chief Secretary to the Government of Mizoram passed an order on 05.08.2016 holding inter alia that the LSCs so issued to those 34 writ petitioners were illegal as the same could not have been issued within such Riverine Reserve Forest. Further to that, as per the said order, these LSCs were issued directly by the then Assistant Settlement Officer without approval of the Government. Accordingly, the Revenue Department was directed to formally cancel all the LSCs of the land owners concerned thereof; the District Collector was directed to take appropriate steps for cancellation of the Award No.6/2003 and the Supplementary Award No.6/2003 and the

concerned Government Advocate was directed to take appropriate steps before the Executing Court.

33. The records further reveal that after passing of the order dated 05.08.2016, show cause notices were issued to submit explanations as to why their LSCs should not be cancelled. This order dated 05.08.2016 and the basis on which the order was passed i.e. the notification dated 21.06.1965 were the subject matter of challenge in two writ petitions being WP(C) No.45/2017 and WP(C) No.51/2017.

34. It is pertinent at this stage to mention that none of the Awards being Award No.4/2002; Award No.5/2002; Award No.5/2003; Award No.6/2003 and the Supplementary Award No.6/2003 have been cancelled or set aside in any proceedings including judicial proceedings. Various pleadings were filed by both the State Respondents as well as the NEEPCO justifying reasons for non-payment of the awarded sum to the petitioners in all the writ petitions as well as also justifying their stand as regards the issuance of the order dated 05.08.2016. In addition to that, the manner in which the notification dated 21.06.1965 was issued was brought on record.

35. The learned Single Judge after hearing all the parties passed the impugned judgment and order holding inter alia that the

notification dated 28.01.1965 was not made in accordance with the provisions of Section 14 to 21 of the Mizo District (Forest) Act, 1955 (for short 'the Forest Act of 1955') and accordingly the same was set aside and quashed. The learned Single Judge further opined that the grounds of delay and laches to challenge the gazetted notification dated 19.05.1965 notifying the Notification dated 28.01.1965 cannot come on the way of the Petitioners' right to seek relief of compensation under the Awards as the cause of action for challenge of the said notification dated 28.01.1965 by the Petitioners arose only from the date of knowledge of the impugned order dated 05.08.2016. It was also observed by the learned Single Judge that in terms of Section 22 of the Act of 1955, the Executive Committee of the then Mizo District Council or the Government of Mizoram (after amendment) had the power and authority to make allotment of lands to any individual or community granting rights of any nature to such individuals of a community as the case may be and therefore the land allotments made by issuing LSCs in favour of the Petitioners could not have been cancelled without following the procedure prescribed under the Mizoram (Land Revenue) Act, 2013 and the Rules made therein under. The learned Single Judge further observed that as these lands have been included in the final awards made under the Act of 1894, the question whether those were valid or not cannot be gone into at the belated stage. In addition to that,

the learned Single Judge also held that the claims of the Respondent Government being Riverine Reserve Forests were not raised literally in course of the acquisition proceedings leading to the said Awards which have attained finality on receiving the Government approval and as such the same cannot be raised at the belated stage to defeat the rights of the petitioners to compensation in terms of the award.

36. It was further observed that a land acquisition award undoubtedly had the sanctity of a decree, and as such, in the complicated backdrop of the claims and counterclaims of the parties, the awards in questions cannot be executed by resorting to the extraordinary jurisdiction under Article 226 of the Constitution by way of issuance of a writ of mandamus or a certiorari as a shortcut method to compel the Government which had not bothered to pay the compensation to the awarded person whose landed properties had been acquisitioned more than 18 years ago for public purpose. It was observed that the petitioners apparently have an alternative and efficacious remedy in the Act of 1894 to compel the Government to pay the compensation due to them and in view of the complicated nature of facts involved, the claims and counterclaims of the State Government, the writ jurisdiction cannot be the appropriate remedy to enforce their rights. With those above observations, the learned Single Judge passed the impugned

judgment and order with the various observations and directions, the details of which have already been referred to in Paragraph No.2 of the instant judgment.

37. Pursuant to the impugned judgment and order passed by the learned Single Judge, the instant eleven Writ Appeals were filed by the State of Mizoram. However, these Writ Appeals were withdrawn on 09.11.2022 with liberty to file afresh. It is relevant to take note of that the Supreme Court in I.A. Nos. 66542, 66546, 66548 of 2024 in WP(C) No.202/1995 *(**In Re T.N. Godavarman Thirumulpad Vs. Union of India and Others**)* taking into consideration the submissions made by different parties, including the State of Mizoram as well as the National Highway and Infrastructure Development Corporation Limited to the effect that the impugned judgment passed by the learned Single Judge was causing various problems, vide an order dated 18.09.2024 restored the instant batch of Writ Appeals. It is pertinent to take note of that the Supreme Court while restoring the appeals observed that restoration of the appeals were necessary in view of the huge ramifications caused by the impugned judgment and order passed by the learned Single Judge and also the cascading effect that it may have on various issues including construction of highways or rights of citizens. The Supreme Court further requested this Court to decide these appeals as expeditiously as possible and in any case, within a

period of three months from the date of the said order. It is under such circumstances, the Writ Appeals have been listed for hearing before us.

38. Before moving forward, we would like to take note of that the Tuirial Hydro Electric Project is presently in operation after the inauguration done by the Prime Minister of India on 16.12.2017.

CONTENTIONS OF THE LEARNED COUNSELS FOR THE PARTIES:

SUBMISSION ON BEHALF OF THE APPELLANTS:

39. The learned Advocate General appearing on behalf of the State of Mizoram submitted that the learned Single Judge while passing the impugned judgment and order dated 27.01.2021 committed gross legal error by not considering several important judgments of the Supreme Court pertaining to reserve forest areas. He submitted that the non-consideration had resulted in setting aside of the notification dated 28.01.1965. He further submitted that the learned Single Judge also failed to take note of the notification dated 28.01.1965 published in the Assam Gazette pertaining to the Riverine Reserve Forest in its proper perspective.

40. The learned Advocate General further submitted that upon the enactment of the Forest (Conservation) Act, 1980 (for short 'the Act of 1980') no State Government or other authority, without the

prior approval of the Central Government can make any order directing that any reserve forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof shall cease to be reserved and that any forest land or any portion thereof may be used for any non-forest purpose. The learned Advocate General submitted that in view of the non-obstinate Clause in Section 2 of the Act of 1980, the said provision overrides all other laws for the time being in force in the State of Mizoram.

41. He submitted that the declaration/notification of the Riverine Reserve Forest (RRF) has to be understood to have started only from the issue of the preliminary notification dated 16.04.1956 followed by the final notification dated 28.01.1965. Drawing reference to the various old records available in the Mizoram State Archives, the learned Advocate General submitted that the actual history of the Riverine Reserve Forest dates back to the year 1897, which was not taken into consideration by the learned Single Judge while passing the impugned judgment and order dated 27.01.2021. The learned Advocate General further submitted that the learned Single Judge had committed a gross legal error while quashing the notification published in the Assam Gazette dated 19.05.1965 on the ground that as per the learned Single Judge, it was inconceivable that the preliminary notification of the Riverine Reserve Forest could

be dated 16.04.1956 when it was published in the "Zoram Hriattirna" in it's issue dated 29.02.1956 which was much prior to the date of the notification. In that regard the learned Advocate General has drawn the reference to the true copies of the "Zoram Hriattirna" of the issues dated 15.01.1956, 31.01.1956, 15.02.1956 and 15.03.1956 which shows that the dates of the notification/orders mentioned is after the date of issue of "Zoram Hriattirna". He therefore submitted that it was a general practice of publishing a notification in "Zoram Hriattirna" which was published at a date prior to the issue of the notification.

42. The learned Advocate General further submitted that the learned Single Judge while passing the impugned judgment and order whereby the notification dated 28.01.1965 was set aside and quashed, failed to take note of the ramifications it would cause as well as the environmental degradation. He submitted that in terms with the notification dated 28.01.1965, the total area which was reserved as Riverine Reserve Forest was 1832.50 Sq. Kms. and setting aside of the said notifications would result in reduction in 1930 Sq. Kms which was quite significant and there is every likelihood of environmental damage, ecological imbalance resulting in illegal felling of forest trees, illegal sand mining, etc. He therefore submitted that this aspect of the matter was duly considered by the Supreme Court and it is under such circumstances, the Writ Appeals

were restored.

43. The learned Advocate General further submitted that at the time when the acquisition proceedings was initiated, the notification dated 28.01.1965 was holding the field. That being so, the entire land acquisition proceedings and subsequent awards based on such proceedings could not have been made and therefore the question of directions for enforcement of the awards in question do not arise.

44. He submitted that the order dated 05.08.2016 passed by the Chief Secretary were based on the factors with respect to the declaration of the land as a forest area and the non-validity of the land passes, land settlement certificates and pattas given in the forest area and as such the impugned order dated 05.08.2016 ought not to have been interfered with by the learned Single Judge.

45. The learned Advocate General further submitted that the learned Single Judge completely erred in law in not taking into consideration the aspect of delay and laches in challenging the notification dated 28.01.1965. He submitted that the writ petitions were filed after 52 years from the date of the issuance of the notification dated 28.01.1965. The learned Advocate General submitted that the learned Single Judge failed to appreciate that the cause of action for challenging the notification would have been in the year 1965 or immediately thereupon and not when the LSCs

were cancelled vide an order dated 05.08.2016. He submitted that creation of a right is always subject to the law and as such the LSCs were subject to the Act of 1955 and the Notification dated 28.01.1965.

SUBMISSION MADE BY THE LEARNED COUNSELS FOR THE PRIVATE RESPONDENTS:

46. Per contra, Mr. C. Lalramzauva, the learned Senior counsel appearing on behalf of the private respondents in WA No.8/2021, WA No.11/2021 and WA No.13/2021 submitted that the impugned notification dated 19.06.1965 was void, invalid and nonest in the eye of law inasmuch as the same was not made in accordance with law. He submitted that the statutory provisions under Section 15 to 21 of the Act of 1955 were not complied with as there was no preliminary notification before issuance of the final notification. Referring to the issue dated 29.02.1956 of the "Zoram Hriattirna", wherein the Notification dated 15.04.1956 was published, he submitted that a reading of the same would show that it was a final notification under Section 14 and 21 of the Act of 1955 declaring the Council Reserve Forest with effect from 01.03.1956. He, therefore, submitted if the notification dated 15.04.1956 cannot be construed to be a preliminary notification, the final notification so issued on 28.01.1965 is bad in law. Additionally, the learned Senior

counsel further submitted that it is quite strange and surprising as to how a notification dated 16.04.1956 could have been published in the "Zoram Hriattirna" dated 29.02.1956. In that regard, the learned Senior counsel submitted that it is a well settled principle of law that when a power is given to do a certain thing in a certain way, the same must be done in that way or not at all.

47. The learned Senior counsel further submitted that the right to challenge the notification only arose when the said notification dated 28.01.1965 was used as an instrument for passing the impugned order dated 05.08.2016 by the Chief Secretary to the Government of Mizoram by which the LSCs of the petitioners were directed to be cancelled. He submitted that all throughout the acquisition proceedings as well as till the impugned order dated 05.08.2016 was passed, the Government of Mizoram had all along supported the case of the Petitioners to the effect that the petitioners who were the awardees were entitled to the compensation. The State of Mizoram never raised the issue of reserved forest or the notification dated 28.01.1965 and this aspect of the matter can be seen from a perusal of the judgment dated 02.07.2012 passed by the learned Single Judge in CRP No.2/2011 which had attained finality.

48. Further referring to the various orders being passed by the

learned Single Judge as well as the Co-ordinate Bench of this Court in the various proceedings, the learned Senior counsel submitted that the State of Mizoram had all along supported the case of the awardees to be entitled to the compensation. He therefore submitted that at this stage the State Government cannot be permitted to take a different stand. In that regard, the learned Senior counsel submitted that a litigant cannot be permitted to approbate as well as reprobate at the same time.

49. The learned Senior counsel also submitted that the Awards having attained finality, the rights of the awardees to be entitled to compensation cannot be nullified, as it would amount to violation of provisions of the Act of 1894 as well as Article 300A of the Constitution. He submitted that the right of restitution through fair compensation have been recognized as an integral part of the process of acquisition. In addition to that, the learned Senior counsel further submitted that the order dated 05.08.2016 violates the mandate of Article 166(1) of the Constitution.

50. Mr. Lalfakawma, the learned counsel appearing on behalf of the Respondents in WA No.5/2021, WA No.6/2021, WA No.7/2021, WA No.9/2021, WA No.10/2021, WA No.11/2021 and WA No.12/2021 made similar submissions to what Mr. C. Lalramzauva, the learned Senior counsel made and in order to avoid repetition,

the same are not again reiterated in the instant judgment. Be it as it may, the learned counsel further submitted that this Court in exercise of the jurisdiction conferred under Clause 15 of the Letter Patent is sitting as a Court of Correction and has the authority to correct its own order in exercise of the same jurisdiction vested in the Single Bench. This submission has been made in view of the fact that we during the course of hearing made a specific query upon the learned counsels appearing on behalf of the various writ petitioners who are the private respondents in the present appeals as to what alternative and efficacious remedy, the Petitioners who have not sought any reference in terms with Section 18 of the Act of 1894 had inasmuch as prima facie it transpired that the Executing Court cannot execute an award passed by the District Collector inasmuch as such award(s) would not come within the meaning of 'decree' in terms of Section 26(2) of the Act of 1894.

SUBMISSION ON BEHALF OF THE LEARNED COUNSEL FOR NEEPCO:

51. Mr. V. K. Jindal, the learned Senior Counsel appearing on behalf of the NEEPCO submitted that the Petitioners are not entitled to any amount from NEEPCO. He submitted that vide the communication dated 10.08.1990, the Forest Department of the Government of Mizoram informed that the entire submerged area would fall inside the Riverine Reserve Forest of Tuirial. It was also

mentioned in the said communication that since the area fell within the Riverine Reserve Forest, issuance of either LSCs or Periodic Patta for WRC and garden was completely illegal. He submitted that based upon such report, NEEPCO entered into a Memorandum of Understanding dated 29.05.1996 with the State Government of Mizoram. Subsequent thereto, the Secretary (Forest), Government of Mizoram took up the matter with the Government of India, Ministry of Environment and Forest vide various communications dated 10.04.1992, 15.10.1993 and 05.11.1999 for seeking approval of the Central Government in accordance with the provisions of Section 2 of the Act of 1980 for diversion of the entire 5,380 Hectares of forest land for Tuirial Hydro Electric project. The Government of India vide a communication dated 16.03.2000 conveyed its approval to the Secretary (Forest) Government of Mizoram, subject to fulfillment of the conditions contained therein which also included the condition relating to payment of compensatory afforestation over equal area of non-forest land which was fixed by the State Government to the tune of Rs.24.46 crores. The said amount of Rs.24.46 crores have already been paid to the Forest Department of the Government of Mizoram and as such NEEPCO is not liable to pay any compensation.

52. In addition to that, the learned Senior Counsel also drew the attention of this Court to the MoU dated 29.05.1996 entered

into between the Government of Mizoram and NEEPCO and referred to Clause-8 of the said MOU which provided that the land required for the project would be acquired by the State Government and handed over to NEEPCO on payment of necessary fee to the State Government as assessed by the State Government. The learned Senior Counsel submitted that as the acquired land according to the Forest Department of the State Government was a forest land, the amount paid for compensatory afforestation was the necessary fee i.e. Rs.24.46 Crores which have been duly paid to the Government of Mizoram. He further submitted that in various proceedings, this Court had categorically held that the NEEPCO was not liable for payment of the compensation. In that regard, he made reference to the order dated 21.04.2010 passed in Writ Appeal No. 426/2007 as well as the order dated 02.07.2012 passed in CRP No.2/2011.

53. The learned Senior Counsel further submitted that the Tuirial Hydro Electrict Project work which commenced had to be suspended with effect from 09.06.2004 because of an agitation program initiated by the land owners association. He submitted that the said project work only recommenced with effect from 14.01.2011 after an undertaking given by the Chief Secretary to the Government of Mizoram to the Secretary, Ministry of Power, Government of India dated 29.06.2010 that the State Government would maintain the law and order in and around the project area

and also would do its best to settle the rehabilitation and resettlement issues including the crop compensation which would be subject to the outcome of the PIL pending in the Gauhati High Court. It is therefore the submission of the learned Senior Counsel appearing for NEEPCO that taking into account the above aspects of the matter, the learned Single Judge in the impugned judgment and order did not issue any directions upon the NEEPCO for payment of any amount, rather, it was only the State Government who was given the liberty to make payment.

POINTS THAT ARISE FOR CONSIDERATION:

54. From the materials on record as well as the submissions so made by the learned counsels, the following points for determination arise for consideration.

(i) Whether the learned Single Judge was justified in setting aside the notification dated 28.01.1965 made under Section 14 read with Section 21 of the Act of 1955?

(ii) Whether the learned Single Judge was justified in setting aside the impugned order dated 05.08.2016 passed by the Chief Secretary to the Government of Mizoram?

(iii) What is the effect on Award No.6/2003, Supplementary Award No.6/2003 as well as Award No.4/2002, Award No.5/2002

and Award No.5/2003 if the points for determination Nos.(i) and/or (ii) are decided in favour of the Appellants?

(iv) Whether the learned Single Judge was justified in relegating the Petitioners in the batch of writ petitions to seek alternative remedy for execution of the awards in accordance with the procedure prescribed in the Act of 1894?

(v) What relief or reliefs the parties before us are entitled to?

IN Re : THE FIRST POINT FOR DETERMINATION:-

55. Let us first take up the first point of determination. The learned Single Judge in the impugned judgment and order had set aside the notification dated 28.01.1965 published in the Assam Gazette dated 19.05.1965 on the ground that while making the final notification under Section 21 of the Act of 1955, no preliminary notification as required under Section 15 of the Act of 1955 was ever published in the official bulletin of the Council "Zoram Hriattirna". The learned Single Judge further held that there was no delay in the challenge to the said notification dated 28.01.1965 inasmuch as the cause of action to challenge the said notification to the petitioners arose only on and from the date of the order dated 05.08.2016 passed by the Chief Secretary to the Government of Mizoram. In addition to that, the learned Single Judge also held that

the notification dated 16.04.1956 under Section 14 read with Section 21 of the Act of 1955 was published by the Executive Committee of the Mizo District Council which the State Respondents claimed to be the preliminary notification in the "Zoram Hriattirna" in its issue dated 29.02.1956 i.e. before the date of the notification without any explanation and as both the dates could not be reconciled the said Notification was contradictory. It was also observed that there was an unexplained delay of 10 years from the preliminary notification in publishing of the final notification in the Assam Gazette dated 19.05.1965 by the State Government. It is on the basis of above, the learned Single Judge came to an opinion that the impugned notification dated 28.01.1965 which was published in the Assam Gazette dated 19.05.1965 was contrary to the Act of 1955 and accordingly was set aside and quashed.

56. The Mizo District (Forest) Act, 1955 (Act of 1955) was enacted by the Mizo District Council to provide for management of forest in the Mizo Autonomous District which are not reserved forests. The said Act came into force w.e.f. 1st of January, 1956.

(A) Section 2(4) of the Act of 1955 defines "Council Reserve Forest" to mean any forest constituted as such by or under the orders of the Mizo District Council. In Section 2(13) of the Act of 1955, "reserved forest" has been defined to have the same meaning

as assigned to it by sub-paragraph (2) of paragraph 3 of the Sixth Schedule to the Constitution.

(B) Section 14 to Section 21 of the Act of 1955 deals with the procedure for constituting a Council Reserve Forest. It starts with a notification of proposal to constitute a Council Reserve Forest as stipulated in Section 15 which is required to be published by way of a notification in "Zoram Hriattirna" stipulating (a) declaring that the Executive Committee proposed to constitute such land a reserve forest; (b) specifying as nearly as possible the situation and limits of such land; and (c) inviting claims of rights and objections.

(C) Subsequent to issuance of such notification, the Executive Committee which is defined in Section 2(8) of the said Act of 1955 shall cause the area to be surveyed and demarcated by one or more of the Council Forest Officers not below the rank of a Forester and who shall enquire into any right of any person in the area and shall also submit report to the Executive Committee which shall deal with all points including compensation involved or alteration of the area recommended.

(D) Section 17 of the Act of 1955 stipulates the manner in which claims of right(s) on the land and when, to whom and how objections against the proposed Council Reserve Forest is required to be submitted i.e. in writing to the Executive Committee within

120 days from the date of publication of the notification under Section 15 of the Act of 1955.

(E) Section 18 stipulates that there shall be a Council Forest Tribunal who shall decide all claims of rights on land, as well as all objections against the proposed reserve forest. The orders of the Forest Tribunal shall be published forthwith in the Assam Gazette.

(F) In terms with Section 19 of the Act of 1955, a provision for Appeal is provided whereby an Appeal could be filed before the Executive Committee within 30 days of the order issued by the Council Forest Tribunal.

(G) Section 21 stipulates the issuance of the final notification constituting the Council Reserve Forest. In terms of the said Section, the Executive Committee shall, after disposal of all appeals, publish in the Assam Gazette, the final notifications specifying the limits of the Council Reserve Forest incorporating therein any changes and modifications made from the preliminary notifications under Section 15 of the Act of 1955 and declaring the same to be a Council Reserve Forest from the date fixed by such notification.

(H) It is also very appropriate herein to take note of Section 22 of the Act of 1955 which stipulates that no person shall have any right of any nature in or over the land within the area of the Council

Reserve Forest except those that may have been conceded in the final notification referred to in Section 21 of the Act of 1955. Be that as it may, the said provision also empowered the Executive Committee or any other officer empowered in that behalf to permit or grant rights of any nature to an individual or community for the benefit of community or communities.

57. It is seen from the materials so placed by way of an additional affidavit filed by the State on 21.10.2024 that even prior to the Act of 1955 was enacted, there were certain interdepartmental communications as far back as on in the year 1951 from which it appears that there existed a Riverine Reserve Order which led to difficulties for the Chakma Community to live in Lushai Hills as there would be no jhooming land for them. It is also seen from the extracts placed on record that as per the Riverine Reserve Order which was then holding the field, an area of 1 mile radius on both sides of the banks of the river that can be used for plying boats were reserved by the Forest Department and the people were not allowed to start jhooming cultivation. There was also a penalty for contravention of such order inasmuch as such persons who contravened the Order were to be prosecuted. Be that as it may, there is nothing on record on what basis the said Riverine Reserve Order was made. Additionally, the Appellants failed to show the source of power to make the Riverine Reserve Order prior to the

enactment of the Act of 1955.

58. The records further reveals that on 16.04.1956, a notification was issued by the Chief Executive Member, Mizo District Council which was published in the 29.02.1956 edition of the "Zoram Hriattirna" wherein it was mentioned that the Executive Committee of the Mizo District Council was pleased to declare that forest within 1 (one) mile on either side of 16 navigable rivers would be Council Reserve Forest. The publication of the Notification dated 16.04.1956 in the edition of 29.02.1956 of the "Zoram Hriattirna" assumes relevance taking into account that the learned Single Judge in setting aside the notification dated 28.01.1965 was of the opinion as to how a notification of a subsequent date could have been published in a prior dated edition of the "Zoram Hriattirna".

59. The learned Advocate General while referring to the various editions of the "Zoram Hriattirna" enclosed to the additional affidavit filed on 21.10.2024 submitted that it was the general practice followed then of publishing of notifications in an earlier edition of "Zoram Hriattirna". This aspect appears to be true inasmuch as a perusal of Annexure-7 series to the said Affidavit shows that the Executive Order No.3/1956 dated 01.02.1956 was published in the edition of 15.01.1956. Similarly, the notification dated 18.02.1956 was published in the Edition of 31.01.1956 and so on. Be that as it

may, a question arises as to whether the Preliminary Notification being not published in a future edition of the "Zoram Hriattirna" would nullify the final notification that too after a period of 52 years when such final Notification was holding the field.

60. We have also perused the final Notification dated 28.01.1965 published in the Assam Gazzette dated 19.05.1965 whereby the area within half a mile on either side of 16 rivers mentioned therein was constituted as Council Reserve Forest with effect from the date of the notifications dated 16.04.1956 and 16.09.1957. There is no material on record to show that there was any challenge to the issuance of both the Preliminary Notification or the final Notification till the filing of the Writ Petitions i.e. WP(C) No.45/2017 and WP(C) No.51/2017. At this stage, we find it apropos to observe that though the Preliminary Notification dated 16.04.1956 appears at the first blush to be a final Notification but the manner in which the said Notification issued i.e. made by the Executive Committee and published in the "Zoram Hriattirna" would show that the said Notification was in fact a Preliminary Notification and not the Final Notification.

61. At this stage, we find a judgment of the Supreme Court in the case of ***B.K. Srinivasan and Others Vs. State of Karnataka and Others*** *reported in* ***(1987) 1 SCC 658*** which is apt to rely upon

wherein the Supreme Court was dealing with the publication or promulgation of the notification and how and when the notification becomes effective. Paragraph 15 of the said judgment being relevant is reproduced herein below.

> "***15.*** *There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is*

confined to small local areas. In such cases publication or promulgation by other means may be sufficient."

(emphasis supplied to the underlined portion)

62. From a perusal of the above quoted paragraph, it would be seen that the Supreme Court observed that in order that a subordinate legislation, as in the instant case the notification dated 28.01.1965, is required to be published in the manner in which parent statute or the subordinate legislation prescribes and if there is no prescription, then in the customarily recognized official channel i.e. the Official Gazette. A perusal of Section 21 of the Act of 1955 would show that the manner of publication have been categorically mentioned to be the Assam Gazette. It was further observed by the Supreme Court that the said notification would take effect from the date of such publication or promulgation.

63. Therefore, from the above, it would be seen that with the publication of the notification dated 28.01.1965 in Assam Gazette on 19.05.1965, the notification dated 28.01.1965 had become operational and taking into account the language of Section 21 of the Act of 1955, the said notification dates back to 16.04.1956. Under such circumstances, the notification dated 28.01.1965 had come into operation and was holding the field. The cause of action for challenge to the said notification would therefore arise upon the issuance of the said notification if the Notification was not made in

accordance with the prescription of law and in this case, the Act of 1955.

64. We further find it very apt to observe that the effect of the Notification dated 28.01.1965 was that the area within half a mile of the banks of the 16 rivers were made "Council Reserve Forest". Therefore, any rights or claims accrued subsequent to the Notification was subject to the said Notification and by virtue thereof, Section 22 of the Act of 1955 that too w.e.f. 16.04.1956 which was date as per the Notification dated 28.01.1965. In other words, the effect of the Notification had been statutorily imposed by Section 22 of the Act of 1955 and as such all rights, liabilities, claims etc. in the areas which fell within the Notification were subject to the said Notification. Accordingly, the rights of the Petitioners over the land were also subject to the Notification dated 28.01.1965. The question of having no knowledge of the Notification or the notification was not applied till 05.08.2016 is totally misconceived. We are therefore of the opinion that the learned Single Judge erred in law in arriving at his findings that the date of the knowledge of the Notification should be the order dated 05.08.2016 passed by the Chief Secretary.

65. In that perspective, the question arises as to whether the learned Single Judge decided the aspect of delay and laches as per

the settled principles. The learned Single Judge held that the date of the knowledge of the notification dated 28.01.1965 should be attributed to the date of the order dated 05.08.2016 and as such, the writ petitions challenging the notification dated 28.01.1965 did not suffer from any delay or laches. We have already opined supra that such a view was legally not sustainable. Be that as it may, we find it necessary at this stage to deal with the concept of delay and laches infra.

66. It is the settled principle of law that the Limitation Act, 1963 sets out the maximum period within which suits, appeals, and applications must be filed before the Court. Cases brought after this prescribed period are typically barred due to delay unless the Court condones the delay. However, it is important to take note of that the Limitation Act, 1963 does not apply to writ proceedings and therefore there is no prescribed period within which a writ proceedings needs to be filed. Be that as it may, as held by the Supreme Court in the case of ***Aflatoon vs Lt. Governor of Delhi and Others*** reported in ***(1975) 4 SCC 265*** (Paragraph 11), a writ petition filed belatedly after a considerable delay is barred by the operation of the doctrine of laches. It was observed that the said doctrine of laches is a common law principle disallowing a claim because it has been brought to the Court after an unreasonable lapse of time. It is based upon the maxim "*Vigilantibus non dormientibus jura*

subveniunt" which means that the law assists those who are vigilant with their rights and not those that sleep thereupon. Hence, even in absence of the prescription of a statutory time limit for its filing, a claim that has been filed after a significant delay can be rejected at the threshold by invoking the doctrine.

67. There are various reasons why the doctrine of laches are applied to writ proceedings inasmuch as if a claim brought after considerable delay are entertained, it may affect third party rights which have been established during the time lapse and it would also be unjust to prejudice innocent parties due to tardiness of the claimants. Additionally, considering a delayed claim could be unfair to the opposite party as they may have lost access to crucial evidence needed to defend any claim. Reopening a case after a significant delay could thus place the opposite party at a disadvantage, potentially resulting in an unjust or an inaccurate outcome. Moreover, it is essential to put a time limit on proceedings to provide certainty and prevent confusion from cases being in perpetual flux.

68. In a recent judgment of the Constitution Bench of the Supreme Court i.e. ***In Re: Section 6A of the Citizenship Act, 1955*** *reported in* ***2024 SCC OnLine SC 2880***, the majority opinion authored by His Lordships Surya Kant J. opined that it is a settled

law that the doctrine of laches is not an inviolable legal rule but a rule of practice that must be supplemented with sound exercise of judicial discretion. It was observed that under two circumstances, the doctrine of laches cannot be applied. First, are those cases where the claims affect the public at large and secondly, those cases where the vires of a statute are challenged vis-à-vis the Constitution. In other words, when cases arise pertaining to promoting the larger public interest and if such a claim affects the public at large, the Court should go into the merits of the case. It was further observed that taking into account the idea of transformative constitutionalism, where a vires of a statute is challenged vis-à-vis a Constitution, the doctrine of laches cannot be applied.

69. The facts above narrated would show that 47 Petitioners have assailed the Notification dated 28.01.1965 for the reason that the Chief Secretary, Government of Mizoram had passed the order dated 05.08.2016 based on the said Notification dated 28.01.1965. There is no public interest element involved. Moreover, the only ground taken to challenge the Notification dated 28.01.1965 is that the Preliminary Notification was published in a prior edition of "Zoram Hriattirna" and there was a delay of 10 years in publishing the final notification. The said challenge at best can be attributed as a challenge to the Preliminary Notification not published in

accordance with Section 15 of the Act of 1955. The challenge on the ground of lapse of 10 years in publishing the final Notification has no legs to stand taking into account that the Act of 1955 do not mandate within what time the final Notification is required to be issued. Therefore, as there was no public interest or there being no challenge to the vires of a statute vis-à-vis the Constitution, the exceptions for non-application to the doctrine of delay and laches are not there. On this count alone, we are of the opinion that the direction so passed by the learned Single Judge to set aside the notification dated 28.01.1965 which was published in the Assam Gazette on 19.05.1965 is bad in law for which the impugned judgment insofar as setting aside the Notification dated 28.01.1965 is required to be interfered with.

70. In addition to that, we are of the opinion that the learned Single Judge failed to take into account that a writ of certiorari being a high prerogative writ, should not be issued on a mere asking. The Court while exercising the extraordinary jurisdiction under Article 226 of the Constitution, in a given case, even if some action or order challenged in the writ petition is found to be illegal or invalid, the High Court can still refuse to upset it with a view to doing substantial justice between the parties. The learned Single Judge with due respect, did not take into account that setting aside of a Notification dated 28.01.1965 constituting a Riverine Reserve

Forest would have huge ramification as an area admeasuring 1832.50 sq. kms. which was all along a Riverine Reserve Forest with effect from 16.04.1956 would be rendered a non-forest land thereby seriously impacting the ecological balance and would result in environmental damage leading to illegal felling of forest trees, illegal sand mining, etc. The learned Single Judge also failed to take note of the Act of 1980 and the reasons for its enactment i.e. conservation of the forest reserves. Accordingly, we are of the opinion that the impugned judgment insofar as setting aside the notification dated 28.01.1965 requires to be interfered with.

IN Re : THE SECOND POINT FOR DETERMINATION:-

71. This bring us to the second point of determination as regards the legality of the order dated 05.08.2016 which the learned Single Judge had set aside and quashed. This Court has duly perused the order dated 05.08.2016 whereby the Chief Secretary to the Government of Mizoram held that the issuance of LSCs within Riverine Reserve Forest Area that too by the then Assistant Settlement Officer without the approval of the Government was illegal and accordingly issued various directions. The said order can be bifurcated into two parts. One is the content and second is the directions.

72. It is pertinent to mention that in the foregoing paragraphs

of the instant judgment, we have observed that only in respect to 48 awardees concerning Award No.6/2003 and supplementary Award No.6/2003, the compensation has been determined in respect to the value of the land admeasuring 1,35,25,344 sq. ft. Other than that, compensation was determined in respect to the trees, crops, etc. A perusal of the Award No.6/2003 would show that the compensation on account of the value of the land have been awarded in favor of 48 awardees on account of LSCs issued post 1993. Admittedly, these LSCs were issued by the Assistant Settlement Officer. There is no material on record to show that the LSCs were issued on the basis of some pre-existing rights, although the learned Senior Counsel appearing on behalf of the private respondents in Writ Appeal Nos. 8/2021, 11/2021 and 11/2022 submitted so. Therefore, the question arises as to whether such LSCs could have been at all issued more particularly taking into consideration Section 2 of the Act of 1980.

73. The learned Advocate General, Mizoram referred to a judgment of the Supreme Court in the case of ***Nature Lovers Movement Vs. the State of Kerala and Others*** *reported in* ***(2009) 5 SCC 373*** wherein the Supreme Court held that in view of the settled principles of law, the Act of 1980 would be applicable to all forests irrespective of the ownership or classification thereof and after 25.10.1980, i.e. the date of enforcement of the Act of 1980, no

State Government or other authority without the approval of the Central Government can pass an order or give a direction for de-reservation of the reserve forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government. It was also observed that if any forest land or any portion thereof have been used for non-forest purpose like undertaking of a mining activity for a particular length of time prior to the enforcement of the Act of 1980, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25.10.1980 without obtaining prior approval of the central Government.

74. In the instant cases, it would be seen that the petitioners in WP(C) No.45/2017 and WP(C) No.51/2017 claim rights on the basis of the LSCs which were issued after 25.10.1980. Admittedly, there was no approval taken from the Central Government. Consequently, the issuance of the said LSCs was contrary to the provisions of the Act of 1980. These observations of ours are in respect to the first part of the order dated 05.08.2016.

75. Be that as it may, the second part raises a fundamental question as to whether the Chief Secretary was right in issuance of

the directions pursuant to the findings that the LSCs were contrary to law in his order dated 05.08.2016. The directions so issued by the Chief Secretary, Mizoram were:

(i) The Revenue Department was directed to formally cancel all LSCs of the land owners concerned.

(ii) The District Collector was directed to take appropriate steps for cancellation of the Award No.6/2003 and the Supplementary Award No.6/2003.

(iii) The Government Advocate concerned was also instructed to take appropriate steps in the execution proceedings as all the LSCs concerned in respect to the Award No.6/2003 and the Supplementary Award No.6/2003 were found to be illegal and cancelled by the Government.

76. To decide the legality of the directions, we find it very pertinent to take note of certain provisions of the Act of 1894.

77. The Act of 1894 was enacted for acquisition of land for public purposes and for companies keeping in tune with the provisions of Article 300A of the Constitution. Section 4 of the said Act of 1894 stipulates initiation of proceedings for acquisition. A reading of the said Section 4 of the Act of 1894 reveals that when it appears to the Appropriate Government that the land in any locality

is needed or is likely to be needed for any public purpose or for a company, a notification would be issued in the manner stipulated therein. Therefore, upon issuance of a notification under Section 4 of the Act of 1894, the acquisition proceedings are initiated which is an act of the Appropriate Government. The expression "Appropriate Government" is defined in Section 3(ee) of the Act of 1894. In the instant cases, the notifications were issued under Section 4 of the Act of 1894 by the State of Mizoram through its Secretary, Department of Revenue.

78. Section 6 of the Act of 1894 stipulates that a declaration would be issued declaring that the land covered by notification under Section 4 of the Act of 1894 is needed for public purpose or for the company. This declaration is to be issued when the Appropriate Government is satisfied that the particular land is needed for public purpose or for a company. Admittedly, in the instant cases, declarations were made by the State of Mizoram declaring that the lands involved in the notification under Section 4 of the Act of 1894 were needed for public purpose. It is relevant at this stage to take note of Section 6(3) of the Act of 1894 which stipulates that when a declaration is made and notified in the manner prescribed in Section 6 of the Act of 1894, the said declaration shall be conclusive evidence that the land is needed for public purpose or for company and after making such declaration,

the Appropriate Government can acquire the land in the manner stipulated in Part-II of the Act of 1894.

79. Section 7 of the Act of 1894 is pertinent inasmuch as after the declaration is made, the Appropriate Government or some Officer authorized by the Appropriate Government would direct the Collector to take order for acquisition of the land. This Section is very important inasmuch as upon the directions issued to the Collector to take order for the acquisition of land, the Collector acts as an Agent of the Appropriate Government. The materials on records shows that the Government of Mizoram directed the Collector to take order for acquisition of the land and as such, the Collector therefrom performed his functions as an Agent of the State of Mizoram.

80. Section 8 of the Act of 1894, stipulates that the Collector shall thereupon cause the land to be marked out and further make a plan. Thereupon, in terms with Section 9 of the Act of 1894, public notice would be issued to persons interested calling upon them that they may make claims to compensation for the interests in such lands. The manner in which such notice is required to be issued is further stipulated in Section 9 of the Act of 1894.

81. Section 11 of the Act of 1894 stipulates about the enquiry and award of the Collector. It is very pertinent at this stage to take

note of that the award shall include -

(i) The true area of the land;

(ii) The compensation in the opinion of the Collector should be allowed for the land; and

(iii) The apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, the Collector has information, whether or not they have respectively appeared before him.

82. A perusal of the awards being Award No.4/2002, Award No.5/2002, Award No.5/2003, Award No.6/2003 and the Supplementary Award No.6/2003 categorically shows that these aspects of the matter have been duly incorporated in the said awards.

83. It is also very pertinent to mention that the Collector, before making the Award, has to obtain the previous approval of the appropriate Government or of such Officer as the appropriate Government may authorize in their behalf. In the instant case it is seen from the materials on record that the appropriate Government i.e. is the State of Mizoram have duly granted the approval to the Collector so that the Award can be filed in the Collector's office.

84. Section 12 of the Act of 1894 is very pertinent for the present dispute inasmuch as in terms with Section 12(1) of the Act of 1894, when such award is filed in the Collector's Office and save and except as provided in the other provisions of the Act of 1894, it shall be final and conclusive evidence as between the Collector and the person interested whether they have respectively appeared before the Collector or not, in respect to the true area, the value of the land and the apportionment of compensation amongst the persons interested. The finality attached by Section 12 of the Act of 1894 also binds the Appropriate Government as the Collector had performed his duties as an agent of the Appropriate Government.

85. Section 13A of the Act of 1894 only empowers the Collector by an order within six months from the date of the Award or where the Collector has been required under Section 18 of the Act of 1894 to make a reference to the Court, before making of such reference, correct any clerical or arithmetical mistakes in the Award or errors arising therefrom either on his own motion or on an application of any person interested or a local authority.

86. At this stage, this Court finds it very pertinent to take note of a judgment of the Supreme Court in the case of ***Naresh Kumar and Others Vs. Government (NCT of Delhi)*** *reported in* ***(2019) 9 SCC 416*** wherein the Supreme Court dealt with the interplay between

Sections 11, 12 and 13A of the Act of 1894. Paragraph Nos.8 to 12 of the said judgment being relevant are reproduced herein under.

"***8.*** *There is no provision under the Land Acquisition Act, 1894 for review of the award once passed under Section 11 of the Act and had attained finality. The only provision is for correction of clerical errors in the award which is provided for under Section 13-A of the Act, which was inserted with effect from 24-9-1984. The relevant Section 13-A of the Act reads as under:*

13-A. Correction of clerical errors, etc*.—(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under Section 18 to make a reference to the court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:*

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue."

(emphasis supplied)

9. *A bare reading of the said Section 13-A would make it clear that the same is not a provision for review of the award but only for correction of clerical or arithmetical mistakes in the award. It is further provided in sub-section (1) of Section 13-A that*

the said correction can be made at any time, but not later than six months from the date of award. In the present case, the Land Acquisition Collector has actually not made any correction of clerical or arithmetical mistake, but has in fact reviewed the award dated 1-10-2003 by its Review Award No. 16/03-04 dated 14-7-2004, which was also clearly passed beyond such period of six months.

10. *In our considered view, the review award could not have been passed under Section 13-A of the Act, which is meant only for correction of any clerical or arithmetical mistake. There is no other provision in the Act under which the said order dated 14-7-2004 could have been passed.*

11. *In the present case, the compensation for the structure on the land has been deducted from the award dated 1-10-2003 by the review award dated 14-7-2004 on the ground of the same being illegal structure, which actually amounts to review of the award and cannot be said to be a correction of any clerical or arithmetical mistake. The question whether the structure on the land of the appellants was legal or illegal could only be decided after the parties were given opportunity to adduce evidence, which correction cannot be termed as correction of any clerical or arithmetical mistake. There being no provision under the Land Acquisition Act, 1894 for review of the award, the passing of the order dated 14-7-2004 in Review Award No. 16/03-04 cannot be justified in law.*

12. *Section 12 of the Act clearly provides that the award of the Collector shall become final on the same being filed in the Collector's office, of which the Collector shall give immediate notice to the persons interested. From the facts of this case, it is clear that the award dated 1-10-2003, of which due notice had been given to the appellants and part compensation had also been paid to the appellants in pursuance thereto, had become final and the same could not have been reviewed, and that too beyond a period of six months, within which period only clerical or arithmetical mistakes could have been corrected."*

87. A perusal of the above quoted paragraphs would show that

once the award is final in terms of Section 12 of the Act of 1894, the same cannot be reviewed that too, beyond a period of six months. It was further observed that only clerical or arithmetical mistakes could have been corrected. Taking into account the said judgment of the Supreme Court in the case of ***Naresh Kumar*** (supra), we are of the opinion that the Chief Secretary in the order dated 05.08.2016 could not have directed the District Collector to take appropriate steps for cancellation of the Award No.6/2003 and the Supplementary Award No. 6/2003. In addition to that, it is also very relevant to take note of that both the Award No.6/2003 and the Supplementary Award No. 6/2003 have attained finality having not been interfered with in any proceedings.

88. In the foregoing paragraphs of the instant judgment, we had taken note of Section 12 of the Act of 1894 which stipulates that the Award so filed in the Collector's Office shall be final except as provided in the other Sections of the Act of 1894. The reference to the other Sections pertains to modifications made to the award by the Reference Court or by the High Court under the provisions of the Act of 1894. Be that as it may, the permissible modifications by the Reference Court or the High Court is subject to Section 21 and Section 25 of the Act of 1894. This aspect of the matter is clear from the judgment of the Supreme Court rendered in the case of ***Sharda Devi Vs. State of Bihar and Another*** *reported in* ***(2003) 3 SCC***

128. Paragraph No.34 of the said judgment being relevant is quoted herein below:

> "***34.*** *The award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have appeared before the Collector or not, on two issues : (i) as to true area i.e. measurement of land acquired, (ii) as to value of the land i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the "persons interested" — again, between the Collector and the "persons interested" and not as amongst the "persons interested" inter se. In the event of a reference having been sought for under Section 18, the Collector's award on these issues, if varied by the civil court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by the Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum."*

89. Under such circumstances also, we are of the opinion that the Chief Secretary could not have directed the District Collector concerned to take appropriate steps for cancellation of the Award No.6/2003 and the Supplementary Award No. 6/2003. The power to cancel an Award by the Collector after it had attained finality is alien to the Scheme of the Act of 1894.

90. It is also very pertinent to take note of that as per the Scheme of the Act of 1894, land stands statutorily vested upon the State when possession is taken under Section 16 of the Act of 1894 or if possession had already been taken under Section 17(1) of the said Act of 1894. In the Constitution Bench judgment of the

Supreme Court rendered in the case of ***Indore Development Authority Vs. Manoharlal and Others*** *reported in* ***(2020) 8 SCC 129***, it had been categorically observed that once an award is passed and the possession had been taken prior or post the award, the land absolutely vests in the State. The provisions of the Act of 1894 do not provide any recourse once land vests upon the State after possession is taken post or prior to the award.

91. In the instant cases, the possession of the lands have already been taken pursuant to the passing of the awards in the year 2003 and much prior to the passing of the order dated 05.08.2016. Therefore, the cancellation of the LSCs so directed to be done in the year 2016 by the State of Mizoram after getting the said land vested upon the State is too late in the day that too when the Award No.6/2003 and the Supplementary Award No.6/2003 have already attained finality. Therefore, we are of the opinion that though the Chief Secretary to the Government of Mizoram had rightly opined that the LSCs which were issued to the 48 awardees in terms with the Award No.6/2003 were not in accordance with law but in view of the aforesaid observations, the directions in terms with the order dated 05.08.2016 was not legally permissible. Therefore, the setting aside of the order dated 05.08.2016 by the learned Single Judge do not call for any interference, however for the different reasons assigned herein above.

IN Re : THE THIRD POINT FOR DETERINATION:-

92. In the backdrop of the above determinations rendered in respect to points for determination (i) and (ii), let us take the point for determination No.(iii) as to what is the effect on the Award No.6/2003, Supplementary Award No. 6/2003 as well as Award No.4/2002, Award No.5/2002 and Award No.5/2003 if the point for determination No.(i) and/or (ii) are decided in favour of the Appellants.

93. It is very pertinent to mention that the State of Mizoram as well as the NEEPCO have allowed the Award No.4/2002, Award No.5/2002 and Award No.5/2003 to attain finality. Possession of the lands included in the said Awards have already been taken and presently, the said lands fall within the submergent area of Tuirial Hydro Electric Project which is in operation since 2017. Insofar as the Award No.6/2003 and Supplementary Award No.6/2003, the same had also attained finality and the area of lands included in these Awards are now in the submergent area of the Tuirial Hydro Electrical Project.

94. Therefore, two questions arise for consideration. The first question is in respect to whether the awardees of Award No.4/2002, Award No.5/2002 and Award No.5/2003 as well as the awardees of Award No.6/2003 other than the LSC holders are entitled to receive

the compensation in spite of the fact that the lands fell within the Riverine Reserve Forest. The second question is as to whether the LSC holders in Award No.6/2003 and the Supplementary Award No.6/2003 would be entitled to the compensation.

95. Let us take the first question. The Awards i.e. Award No.4/2002, Award No.5/2002 and Award No.5/2003 as well as the Award No.6/2003 insofar as the awardees other than the LSC holders were only determined to be entitled to compensation towards damage to their crops, trees etc. These awardees were not awarded any compensation on account of the market value of the land though they had Village Council Passes, Superintendent Passes, District council Passes as well as Lal Passes as would be seen from a perusal of the said Awards. It is further seen from the said Awards that joint verification was carried out and it was found that different types of crops/trees like nimbu, teak, orange, hatkora etc. were there. In addition to that, there were also fish ponds, graveyards and WRC within the lands in question. Further to that it was also found that there were a large number of teak, Orange etc. plantation as was found out during the assessment survey. There is no material on record which suggests that these verifications were non-existent or a result of fraud or collusion. It is under such circumstances, in the Award No.4/2002, Award No.5/2002, Award No.5/2003 as well as in Award No.6/2003, compensation was

awarded under the heading of damage compensation for standing crops etc. At this stage, we find it relevant to take note of Section 23 of the Act of 1894 and more particularly the heading "secondly" which stipulates that damage sustained by person interested, by reason of taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession to be a relevant parameter for determination of compensation.

96. We further find it appropriate that a "person interested" within the meaning of Section 3(b) of the Act of 1894, would include any person claiming an interest in the compensation to be made on account of the acquisition of land and even a person shall be deemed to be interested, if he is interested in an easement affecting the land. We are therefore of the opinion that as pursuant to verifications being carried out as mentioned in the Awards, the awardees were entitled to compensation on account of the damage caused to the standing crops or trees etc., irrespective of the fact that the lands fell within the Riverine Reserve Forest. In addition to that, the awards having attained finality, the provisions of the Act of 1894 read with Article 300A of the Constitution imposes an obligation upon the State Government to pay the compensation in terms with the Awards. Refusal to do so would violate the mandate of Article 300A of the Constitution.

97. We at this stage also find it apt to take note of CBI charge sheet, the details of which we have already mentioned with in the previous segments of the instant judgment. The CBI charge sheet only mentioned about 49 persons out of the various awardees and more particularly in respect to Award No.4/2002 they have illegally obtained Village Passes in the year 1983. There is no finding whatsoever that the other awardees had committed any illegalities. In addition to that, it was also opined that upon investigation, these awardees apart from the 49 awardees were genuine cultivators. There is also nothing on record to show that the State Government had alleged that the awards have been fraudulently prepared and approved by the State Government. At this stage, we find it relevant to refer to the judgment of the Supreme Court in the case of ***Santosh Kumar and Others Vs. Central Warehousing Corporation and Another*** *reported in* ***(1986) 2 SCC 343***. Paragraph Nos.4 and 5 of the said judgment are reproduced herein under:

> "***4.*** *In our view there cannot be any possible doubt that the scheme of the Act is that, apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under Section 11 of the Act may not be questioned in any proceeding either by the government or by the company or local authority at whose instance the acquisition is made. Section 50(2) and Section 25 lead to that inevitable conclusion. Surely what may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Article 226. Article 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute. When Section 50(2) expressly bars the*

company or local authority at whose instance the acquisition is made from demanding a reference under Section 18 of the Act, notwithstanding that such company or local authority may be allowed to adduce evidence before the Collector, and when Section 25 expressly prohibits the court from reducing the amount of compensation while dealing with the reference under Section 18, it is clearly not permissible for the company or local authority to invoke the jurisdiction of the High Court under Article 226 to challenge the amount of compensation awarded by the Collector and to have it reduced.

5. *Long ago, it was held in Ezra v. Secy. of State for India, and it has never been doubted since, "that the "award" in which the enquiry by the Collector results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands" and that, "if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the court". As pointed out by this Court in Raja Harish Chandra v. Deputy Land Acquisition Officer, the observations of the Privy Council in Ezra case indicate that the Collector, in making an award, acts as an agent of the Government, and that the legal character of the award made by the Collector is that of a tender or offer by him on behalf of the Government. (See also Mohammad Hasnuddin v. State of Maharashtra.) If the Collector making an award was in law making an offer on behalf of the Government, it is difficult to appreciate how the Government or anyone who could but (sic put) claim through the Government would be entitled to question the award, apart from fraud, corruption or collusion."*

98. The observations made in the above quoted paragraphs of the judgment would therefore show that the State of Mizoram cannot now challenge the Awards and consequently cannot deny the payments. The amounts entitled as per the Awards have been quantified and statutorily the awardees of these Awards are entitled

to the amounts payable. Therefore, taking into account the provisions of the Act of 1894 read along with Article 300A of the Constitution, a duty is cast upon the State of Mizoram to make payment to the awardees of these Awards and failure to do so entitles the awardees to writ of mandamus directing the State of Mizoram to make payment as regards the Awards.

99. Let us now come to the aspect pertaining to the entitlement of the LSC holders of the Award No.6/2003. In the previous segments of the instant judgment, we have held that the Award No.6/2003 as well as the Supplementary Award No.6/2003 were allowed to attain finality. Apart from that, the entitlement on the basis of the Awards cannot now be refused by the State of Mizoram in view of the law laid down by the Supreme Court in ***Santosh Kumar (supra)*** as well as ***Naresh Kumar (supra)*** and the observations made herein above.

AN IMPORTANT PERSPECTIVE :-

100. Before concluding in our adjudication on the point for determination No.(iii), an important aspect touching on the rights of the awardees cannot be overlooked. The State of Mizoram occupies a unique place insofar as its topography vis-à-vis the topography of rest of India. As per the India State Forest Report, 2021, the total forest cover in India is 21.72% of the geographical area of the

country. Compared to the said, the total forest cover in the same report for the State of Mizoram is 84.53% of its geographical area. The details of the forest in the State of Mizoram is also available in the additional affidavit filed by the State on 21.10.2024. The State of Mizoram is inhabited mostly by various tribes who are enlisted as Scheduled Tribes in terms with the Presidential Order under Article 342 of the Constitution i.e. Constitution (Scheduled Tribes) Order,1950 as amended. upto date. Around 96% of the population of Mizoram comprises of Scheduled Tribes.

101. It is further very pertinent to take note of that taking into account the topography of the State of Mizoram, these tribes used to live close to and within the forest. Before the advent of the British rule, these tribes who were forest dwellers used and managed forest land and resources according to the customary norms and belief system. However, under the colonial rule, these community-controlled resource management systems were dismantled. This aspect of the matter can also be seen in rest of the parts of India as would appear from the Article of the noted historian Shri Ramchandra Guha - ***Forestry in British and Post British India, A Historical Analysis*** which was published in the ***Economic and Political Weekly Volume - 18, No. 45/46 dated 05.12.1983***.

102. It would also be seen from the historical analysis that the colonial regime's exclusive power to regulate forests and pastures were first asserted by enactment of the Indian Forest Act, 1865. Subsequent thereto, a more authoritative legislation was enacted i.e. the Indian Forest Act, 1878 whereby for the first time forests were legally characterized as reserve forests, protected forests and village forests. In terms with the said Act of 1878, the authorities were conferred with the power to identify and demarcate valuable tracts of forest land that they needed, especially for the development of railways, while retaining the flexibility to revise their policy from time to time regarding the remaining extent of the forest land. Subsequent thereto, the Indian Forest Act, 1927 was enacted. The said Act still governs the field. In terms with the said Act, it allowed the Forest Department to declare any forest land or waste land as reserved forest land and prohibit people's access to these reserve forests without prior approval. It imposed similar conditions in respect to protected forests and village forests. The Act of 1927 ensured provisions for materials required for development of the Railways and the expanding markets for the British industrial products. It is however very pertinent to mention that these three enactments made during the British regime considered nothing about the forest dwellers.

103. Post independence, while the Indian Forest Act, 1927 was

retained, the National Forest Policy, 1952 was made. A perusal of the National Forest Policy, 1952 would show that it did not take care of the rights of the forest dwellers or for regularizing or recognizing their rights. Rather, the said forest policy encouraged the need for sustained supply of timber and other forest produce required for defence, communications and industry. In fact, the said forest policy emphasized production forestry thereby giving priority to ensuring a sustained supply of timber and other forest produce to meet the requirements of defence, communication and industry. It is however very interesting to take note of that in the National Forest Policy, 1952, it was mentioned that as regards the Part-A States, adequate forest legislation existed in the form of the Indian Forest Act, 1927 and in Part-B States, there were forest regulations having the force of law. But there were some Part-C States where forest law did not exist. It was therefore mentioned that those States without a proper Forest Act should enact legislation at an early date in the lines of the Indian Forest Act, 1927 or validate the said Act for their territory. The Act of 1955 came into force with effect from 01.01.1956 pursuant to the National Forest Policy, 1952. Prior to that, the rights in respect to the forests of the State of Mizoram (which was then the Lushai Hills) were mostly regulated by the Chieftains as well as the village councils who issued passes. Further, from the materials available on record, it also shows that there was

a Riverine Forest Order but nothing is on record as to the source of the power to make such Riverine Reserved Order.

104. In view of the impetus given in the National Forest Policy, 1952 for the purpose of ensuring a sustained supply of timber and other forest produce to meet the requirements of defence, communication and industry it led to major depletion of the forestry in India mostly in other parts of India. This necessitated the amendment to the Constitution by the Constitution (42nd Amendment) Act, 1976 whereby Article 48A, Article 51A as well as Entry 17A was inserted to the List-III of the Seventh Schedule of the Constitution. Pursuant thereto, the Act of 1980 was enacted whereby the Central Government was granted pervasive control over all forests and without its approval, no rights could be created. The enactment of the Act of 1980 shows a major shift in the policy from reservation of forest to conservation of forest.

105. Be that as it may, all these while, the regularization or recognition of the tribal forest dwellers rights were neither recognized or regularized or there was no policy made for them. For the first time, in the National Forest Policy, 1988 the rights of the forests dwellers and the lives of the tribals and the poor living within and near the forest were recognized as would be seen from Clauses 4.3.4.2, 4.3.4.3 and 4.3.4.4 of the National Forest Policy, 1988. This

led the Ministry of Environment and Forest to issue six Circulars on 18.09.1990 whereby taking into account the Act of 1980, the State Governments were asked to make necessary verifications and recognize rights of the forest dwellers and tribals prior to 25.10.1980 which is the date of coming into force of the Act of 1980. Be that as it may, it appears that nothing much was done towards implementation of these circulars in the State of Mizoram. In fact, prior thereto, there was also a publication of the 29th Report of the National Commission for Scheduled Caste and Scheduled Tribes, 1989 which recommended a framework to address the rights of Scheduled Tribes over the forest land and settle disputed claims across India. In the year 1996, the Panchayat (Extension to Schedule Areas) Act, 1996 was enacted which empowered the Schedule Tribes to determine the use and management of common property resources in the Fifth Schedule Areas. However, the same had no impact insofar as the State of Mizoram was concerned. It is also seen from various reports that there were various agitations in respect to the forest rights of the forest dwellers as well as the Scheduled Tribes. This resulted in passing of the Scheduled Tribes (Recognition of Forest Rights) Act, 2006 (for short, 'the Act of 2006') in the Parliament on 15th of December, 2006 which received the approval of the President on 29.12.2006. Thereupon, the Rules were made in December, 2007 and the Act of 2006 came into force

with effect from 01.01.2008.

106. It is pertinent at this stage to take note of that the Statements of Objects and Reasons of the said Act of 2006 as well as its preamble which categorically shows that the legislature had duly recognized that the forest rights on ancestral lands and their habitat of the forest dwellings Scheduled Tribes and other traditional forest dwellers were not adequately recognized in the consolidation of the State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Schedule Tribes and other traditional forest dwellers who were integral to the very survival and the sustainability of forest ecosystem.

107. At this stage, we feel it apt to observe that we are aware that the Act of 2006 came into operation much after the Awards were made but taking into account that legislatively, the Parliament had recognized that historical injustice was inflicted upon the forest dwelling Scheduled Tribes and other traditional forest dwellers in the consolidation of the State Forests, we find that the reference to the Act of 2006 is relevant.

108. Section 2(c) of the Act of 2006 defines who are "forest dwelling Scheduled Tribes" to mean members or community of the Schedule Tribe who primarily reside in and who depend on the

forest or forest lands for bona fide livelihood needs and includes Schedule Tribe pastoralist communities. Section 2(o) of the Act of 2006 defines "other traditional forest dwellers" to mean any member or community who has for at least three generations prior to 13th day of December, 2005 primarily resided in and who were dependent on a forest or forest land for bona fide livelihood needs. The Explanation to section 2(o) of the Act of 2006 further explained that the term 'generation' in Section 2(o) of the Act of 2006 means a period comprising of 25 years. A conjoint reading of Section 2(c) and 2(o) of the Act of 2006 shows that in the case of forest dwelling Scheduled Tribes, there is neither any requirement of three generations to be residing in the forest nor there is any cut off date which otherwise the eligibility of "other traditional forest dwellers.

109. At this stage, it is also pertinent to mention that Section 2(d) of the Act of 2006 defines "forest land" to mean various forms of forest including reserved forests, sanctuaries and even national parks. A further perusal of Section 3 of the Act of 2006 would show that various forms of rights including the right to hold and live in forest land, ownership, settlement have been duly recognized. Section 4 of the Act of 2006 statutorily confers the Central Government recognition to vesting of forest rights upon the forest dwellings Scheduled Tribes in States or in areas in States where

they are declared as Scheduled Tribes in respect of all forest rights mentioned in Section 3 as well as to other traditional forest dwellers in respect of all forest rights mentioned in Section 3.

110. It is also very pertinent to note that Section 4 of the Act of 2006 starts with a non-obstinate clause thereby the recognition given to this forest dwelling Scheduled Tribes and other traditional forest dwellers by the Central Government was without the fetters imposed by the Act of 1980.

111. It is further pertinent to mention that the State of Mizoram by virtue of Article 371G of the Constitution adopted the Act of 2006 in the year 2009 and thereafter in 2019 revoked such approval. Subsequently on 03.08.2024, again adopted the Act of 2006.

112. In the backdrop of the above, if we take note of the materials on records; the charge sheet submitted by the CBI as well as the Awards in question, it would show that these awardees were living in the forest lands by raising crops, plantations etc. The State of Mizoram through the Collector carried out necessary verifications and on the basis thereof, the Awards were made. It is also relevant that the 49 persons who have been alleged to have falsely made claim for compensation are not Petitioners before this Court. Coupled with the above, the legislative recognition of the historical injustice to the forest dwelling Scheduled Tribes in the Statement of

Objects and Reasons as well as the Preamble to the Act of 2006, it is our opinion that the Petitioners cannot be deprived of the compensation determined as per the Award No.4/2002, Award No.5/2002, Award No.5/2003, Award No.6/2003 and Supplementary Award No.6/2003 which have attained finality.

113. In addition to that, we further find it relevant to take note of that in the various proceedings prior to the filing of the batch of writ petitions, the State Government had always taken a stand that the awardees are entitled to the compensation. These aspects would be apparent from a perusal of the judgment and order dated 04.12.2007 in WP(C) No.77/2006, the judgment and order dated 21.04.2010 in WA No.426/2007 as well as the judgment and order dated 02.07.2012 in CRP No.2/2011. However, it appears that post the observations made in the order passed by the learned Single Judge on 02.07.2012 in CRP No.2/2011, the State Government changed its stance to the effect that the awardees are not entitled to the compensation on the ground that the land fell within the reserved forest. This in our opinion if permitted would result in allowing the State of Mizoram to approbate and reprobate.

114. Moreover, the State of Mizoram having allowed the Awards to attain finality and as such, the State of Mizoram cannot now be permitted to resile from the Awards else the very sanctity attached

to the Awards by the provisions of the Act of 1894 would be lost.

115. Accordingly, we are therefore of the opinion that decision in favour of the Appellants in respect to the point for determination No.(i) would not affect the rights of the awardees of Award No.4/2002, Award No.5/2002, Award No.5/2003, Award No.6/2003 and Supplementary Award No.6/2003 to receive the compensation as per the Awards.

IN Re : THE FOURTH POINT FOR DETERMINATION:-

116. This leads us to the fourth point for determination i.e. whether the learned Single Judge was justified in relegating the Petitioners in the batch of petitions to seek alternative remedies for execution of the awards in accordance with the procedure prescribed in the Act of 1894.

117. In the previous segments of the instant judgment, we have categorically delineated the three types of grievances which were subject matter of consideration in the batch of writ petitions. Amongst the three grievances, the grievance in 9 (nine) writ petitions pertains to non-payment of the amount determined as per the awards i.e. in WP(C) No.135/2013, WP(C) No.132/2013, WP(C) No.130/2013, WP(C) No.118/2015, WP(C) No.131/2013, WP(C) No.117/2015, WP(C) No.116/2015, WP(C) No.16/2014 and WP(C)

No.22/2014. In addition to the above, in one writ petition being WP(C) No.51/2017, these petitioners though challenged the order dated 05.08.2016 but also sought for compensation to be paid in terms with the Award No.6/2003. These writ petitioners were not a part of the Reference Court proceedings which led to the passing of the Supplementary Award No.6/2023. The instant point for determination therefore primarily relates to the grievances of the writ petitioners who have not sought any reference against the Awards.

118. Under such circumstances, the question arises as to whether the learned Single Judge was justified in relegating them to avail remedies under the provisions of the Act of 1894?

119. At this stage, we find it very pertinent to observe that Section 26 of the Act of 1894 only refers to awards made under Part-III of the Act of 1894 i.e. an award passed by the Reference Court. Section 26 of the Act of 1894 however, would not cover an award in terms with Part-II i.e. an award under Section 11 of the Act of 1894. It is further seen that as per Section 31 of the Act of 1894, the Collector is statutorily obligated to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award and it is only when the circumstances exist, as mandated under Section 31(2), the Collector

has to deposit the amount of compensation before the Reference Court. As a statutory duty is imposed upon the Collector and as the Collector as well as the State of Mizoram have failed to comply with the same, the interest of justice would have been met if appropriate directions were issued to the State of Mizoram to pay the awarded compensation to the awardees of Award No.4/2002, Award No.5/2002 and Award No.5/2003 as well as the awardees of Award No.6/2003 (who were not a party to LA(C) No.1/2014) to the extent they are entitled to.

120. There are two facets to the above point for determination.

(a) Whether the learned Single Judge was justified in relegating these Petitioners to avail remedies under the provisions of the Act of 1894?

(b) Whether in the present intra Court appeals filed by the State of Mizoram and not by these writ petitioners, can we pass appropriate directions to make payment of the dues to these Petitioners?

121. For deciding the question as to whether the learned Single Judge was justified in relegating these Petitioners to avail remedies under the provision of the Act of 1894, we find it relevant to take note of certain provisions of the Act of 1894. These writ petitioners

admittedly did not seek any reference in terms with Section 18 of the Act of 1894. Therefore, the Award made by the Collector, i.e. Award No.4/2002, Award No.5/2002, Award No.5/2003 as well as the Award No.6/2003 (other than those who are beneficiaries of Supplementary Award No.6/2003) have attained finality. It is also relevant to take note of that even after passing of the order in LA(C) Case No.1/2004 on 26.09.2005, no steps were taken under Section 28A of the Act of 1894 seeking redetermination of the amount under Section 28A of the Act of 1894 or had taken any further steps in terms with Section 28A(3)of the Act of 1894.

122. Therefore, insofar as these writ petitioners or the awardees in Award No.4/2002, Award No.5/2002, Award No.5/2003 as well as the Award No.6/2003 (other than those who are beneficiaries of Supplementary Award No.6/2003) do not have an Award within the meaning of Section 26 of the Act of 1894. At this stage, we find it relevant to reproduce Section 26 of the Act of 1894 as the same has relevance.

> "*26. Forms of awards. – [(1)] Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.*
>
> *[(2) Every such award shall be deemed to be a decree and the statement of the*

grounds of every such award a judgment within the meaning of section 2. clause (2), and section 2, clause (9), respectively of the Code of Civil Procedure 1908 (5 of 1908)].”

123. From a perusal of the above quoted Section, it would be seen that it only refers to Awards made under Part-III of the Act of 1894 i.e. an award passed by the Reference Court and not by the Collector. Further to that, Section 26 of the Act of 1894 do not cover an Award in terms with Part-II i.e. an award made under Section 11 of the Act of 1894. Consequently, Sub-Section (2) of Section 26 of the Act of 1894 is not attracted in respect to those awards falling within the ambit of Part-II of the Act of 1894 and as such, it would not be a decree within the meaning of Section 2(2) and Section 2(9) of the Code of Civil Procedure, 1908. The effect of the above is that these Awards cannot be put to execution before a Court of civil jurisdiction.

124. Be that as it may, Part-V of the Act of 1894 deals with payment. Section 31 of the Act of 1894 categorically imposes an obligation upon the Collector, on making an Award under Section 11 of the Act of 1894 to tender payment of the compensation awarded by him to the persons interested entitled thereto, according to the Award and shall pay it to them unless prevented by one or more of the contingencies mentioned in Sub-Section (2) of Section 31 of the Act of 1894. This statutory obligation cast upon the Collector by

Section 31(1) of the Act of 1894, in our opinion, entitles the persons interested who have not received the compensation to approach this Court under Article 226 of the Constitution. In this regard, we find it relevant to take note of the judgment of the Supreme Court in the case of ***Indore Development Authority (supra)*** wherein the Constitution Bench of the Supreme Court in clear terms observed that the Collector has to tender payment of compensation awarded by him to the persons interested entitled thereto according to the Award and failure to do so, the Collector shall be liable to pay the amount awarded with interest thereon at the rate of 9% from the time of taking possession until it had been so paid or deposited and after one year, from the date on which the possession is taken, interest payable shall be @15%. It was further observed that a payment has to be tendered under Section 31(1) of the Act of 1894 unless the Collector is prevented from making payment as provided in Section 31(2) of the Act of 1894. Paragraph Nos.117, 118, and 120 of the said judgment being relevant are reproduced herein under:

> "***117.*** *Payment of compensation under the 1894 Act is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless "prevented" by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a non obstante clause which*

authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.

118. *Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from doing so, for any of the three contingencies provided by sub-section (2). Section 31(2) provides for deposit of compensation in court in case the State is prevented from making payment in the event of:*

(i) refusal to receive it;

(ii) if there be no person competent to alienate the land;

(iii) if there is any dispute as to the title to receive the compensation; or

(iv) if there is dispute as to the apportionment.

In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

120. *It is apparent from the 1894 Act that the payment of compensation is dealt with in Part V, whereas acquisition is dealt with in Part II. Payment of compensation is not made precondition for taking possession under Section 16 or under Section 31 read with Section 34. Possession can be taken before tendering the amount except in the case of urgency, and deposit (of the amount) has to follow in case the Collector is prevented from making payment in exigencies as provided in Section 31(3). What follows is that in the event of not fulfilling the obligation to pay or to deposit under Sections 31(1) and 31(2), the 1894 Act did not provide for lapse of land acquisition proceedings, and only increased interest follows with payment of compensation."*

125. In addition to that, we also find it relevant to take note of another recent judgment of the Supreme Court in the case of ***Ultra-Tech Cement Limited Vs. Mast Ram and Others*** *reported in* ***2024 SCC***

Online SC 2598. In the said judgment, the Supreme Court categorically observed that acquisition of land for public purpose is undertaken under the power of eminent domain of the Government and much against the wishes of the owners of the land which gets acquired. It was observed that when such a power is exercised, it is coupled with a bounden duty and obligation on the part of the Government to ensure that the owners whose lands gets acquired are paid compensation/awarded amount as declared by the statutory award at the earliest. Paragraph Nos. 44, 45, 46, 47, 48, 49 and 50 of the said judgment being relevant are reproduced herein under:

> "***44.*** *In Roy Estate v. State of Jharkhand, (2009) 12 SCC 194; Union of India v. Mahendra Girji, (2010) 15 SCC 682 and Mansaram v. S.P. Pathak, (1984) 1 SCC 125, this Court underscored the importance of following timelines prescribed by the statutes as well as determining and disbursing compensation amount expeditiously within reasonable time.*
>
> ***45.*** *The subject land came to be acquired by invoking special powers in cases of urgency under Section 17(4) of the 1894 Act. The invocation of Section 17(4) extinguishes the statutory avenue for the landowners under Section 5A to raise objections to the acquisition proceedings. These circumstances impose onerous duty on the State to facilitate justice to the landowners by providing them with fair and reasonable compensation expeditiously. The seven sub-rights of the landowners identified by this Court in Kolkata Municipal Corporation (supra) are corresponding duties of the State. We regret to note that the amount of Rs. 3,05,31,095/- determined as compensation under the Supplementary Award has not been paid to the landowners for a period of more than two years and the State of Himachal*

Pradesh as a welfare State has made no effort to get the same paid at the earliest.

46. *This Court has held in Dharnidhar Mishra (D) v. State of Bihar, 2024 SCC OnLine SC 932 and State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. This Court held in Tukaram Kana Joshi thr. Power of Attorney Holder v. M.I.D.C., (2013) 1 SCC 353 that in a welfare State, the statutory authorities are legally bound to pay adequate compensation and rehabilitate the persons whose lands are being acquired. The non-fulfilment of such obligations under the garb of industrial development, is not permissible for any welfare State as that would tantamount to uprooting a person and depriving them of their constitutional/human right.*

47. *That time is of the essence in determination and payment of compensation is also evident from this Court's judgment in Kukreja Construction Company v. State of Maharashtra, 2024 SCC OnLine SC 2547 wherein it has been held that once the compensation has been determined, the same is payable immediately without any requirement of a representation or request by the landowners and a duty is cast on the State to pay such compensation to the land losers, otherwise there would be a breach of Article 300-A of the Constitution.*

48. *In the present case, the Government of Himachal Pradesh as a welfare State ought to have proactively intervened in the matter with a view to ensure that the requisite amount towards compensation is paid at the earliest. The State cannot abdicate its constitutional and statutory responsibility of payment of compensation by arguing that its role was limited to initiating acquisition proceedings under the MOU signed between the Appellant, JAL and itself. We find that the delay in the payment of compensation to the landowners after taking away ownership of the subject land from them is in contravention to the spirit of the constitutional scheme of Article 300A and the idea of a welfare State.*

49. *Acquisition of land for public purpose is undertaken under the power of eminent domain of the government much against the wishes of the owners of the land which*

gets acquired. When such a power is exercised, it is coupled with a bounden duty and obligation on the part of the government body to ensure that the owners whose lands get acquired are paid compensation/awarded amount as declared by the statutory award at the earliest.

50. *The State Government, in peculiar circumstances, was expected to make the requisite payment towards compensation to the landowners from its own treasury and should have thereafter proceeded to recover the same from JAL. Instead of making the poor landowners to run after the powerful corporate houses, it should have compelled JAL to make the necessary payment."*

126. From the above quoted paragraphs of the judgment of the Supreme Court, it is clear that there is a duty conferred upon the Collector as well as the State of Mizoram to make payment of the awarded amount. This being the position in our opinion, the learned Single Judge ought not to have relegated these Petitioners to approach a forum under the Act of 1894 which in law did not exist after having categorically arrived at an opinion that four Awards so passed being Award No.4/2002, Award No.5/2002, Award No.5/2003 as well as the Award No.6/2003 have attained finality and the petitioners were entitled to the amount.

127. These observations have also attained finality. Under such circumstances, the learned Single Judge therefore ought not to have relegated these Petitioners in connection with Award No.4/2002, Award No.5/2002, Award No.5/2003 and Award No.6/2003 (other than those beneficiaries of the Supplementary Award No.6/2003) to

take steps before the appropriate form under the provisions of the Act of 1894.

128. Be that as it may, the second aspect which arises for consideration before us is as to whether we, in exercise of the intra Court Appellate jurisdiction initiated by the State of Mizoram and not by those writ petitioners, can exercise the powers which the learned Single Judge ought to have exercised. To decide this aspect, we find it very relevant to take note of that a perusal of Article 226(1) of the Constitution which empowers every High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including the writ in the nature of habeas corpus, mandamus, prohibition, qua warranto and certiorari or any of them for the enforcement of any of the rights conferred by Part-III and for any other purpose.

129. Clause (14) of Article 366 of the Constitution defines the term "High Court" to mean any Court which is deemed for the purpose of the Constitution India to be a High Court for any State and includes (a) any Court in the Territory of India constituted or reconstituted under the Constitution of India as a High Court and (b) any other Court in the Territory of India which may be declared

by the Parliament by law to be a High Court for all or any of the purposes of the Constitution of India.

130. It is very pertinent to observe that the powers conferred upon the High Court under Article 226 of the Constitution become capable of being exercised in accordance with any general right of appeal from the decision of the High Court and there is nothing in Article 226 of the Constitution which requires that the powers thereunder must be exercised once and for all. In theory, an Appeal is a continuation of the hearing of the suit or other original proceedings and ordinarily the Appellate Court has all the powers which the Court of the first instance can exercise. Therefore, when a Division Bench entertains an Appeal from a decision of a Single Judge in exercise of the powers under Article 226 of the Constitution, the Division Bench, in deciding such Appeal, exercise the same power under that Article, whether it (the Division Bench) affirms, reverses or modifies the decision of the Single Judge. The nature and content of the power conferred by Article 226 of the Constitution cannot be said to have been interfered with by a mere provision for an appeal, without anything more, to a Division Bench from a decision of a Single Judge in exercise of the powers under Article 226 of the Constitution. The provision for an Appeal as would appear from Rule 2(2) of Chapter V-A of the Gauhati High Court Rules merely therefore regulates the exercise of that power by our

High Court.

131. In this regard, we find it pertinent to observe that in the present intra Court appeals, which we are dealing, the power can be traced to Clause (14) of the Letters Patent constituting the High Court of the Judicature at Bengal dated 14.05.1862 which was made applicable to our High Court by virtue of the Assam High Court Order, 1948 dated 01.03.1948. Therefore, while adjudicating these intra Court appeals, we are sitting as a Court of Correction and therefore can correct our own orders in exercise of the same jurisdiction as was vested upon the learned Single Judge. In this regard, we find it relevant to refer to a judgment of the Supreme Court in the case of ***Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others*** *reported in* ***(1996) 3 SCC 52*** and more particularly paragraph No.2 which is reproduced herein under:

> "***2.*** *Mr Ram Kumar, learned counsel for the appellants, inter alia contends that the Letters Patent Bench of the High Court could not have upset a finding of fact recorded by a learned Single Judge on fresh reconciliation of the two documents, arriving at different results than those arrived at earlier by the two courts aforementioned. Though the argument sounds attractive, it does not bear scrutiny. Against the orders of the trial court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in*

exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language. That apart the construction of the aforementioned two documents involved, in the very nature of their import, a mixed question of law and fact, well within the powers of the Letters Patent Bench to decide. The Bench was not powerless in that regard."

(emphasis supplied to the underlined portion)

132. We further find it also relevant to take note of another judgment of the Supreme Court in the case of ***Roma Sonkar Vs. Madhya Pradesh State Public Service Commission and Another*** *reported in* ***(2018) 17 SCC 106*** wherein also the Supreme Court categorically observed that the Single Bench as well as the Division Bench exercises same jurisdiction under Article 226 of the Constitution. Under such circumstances, the Division Bench in an intra Court appeal cannot remit the matter to the Single Judge for moulding the relief. The duty of the intra Court Appellate Forum is primarily to consider the correctness of the view taken by the Single Judge. Paragraph No.3 of the said judgment being relevant is reproduced herein under.

"***3.*** *We have very serious reservations whether the Division Bench in an intra-court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by*

the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra-court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge."

(emphasis supplied to the underlined portion)

133. The above propositions of law clearly show that the jurisdictions so exercised by the learned Single Judge as well as the jurisdictions so exercised by us in these intra Court appeals are one and the same jurisdiction i.e. exercising the powers under Article 226 of the Constitution. It is further seen that while exercising the powers as an intra Court Appellate forum, the Division Bench sits as a Court of Correction and corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Further to that, the lis which was before the Single Judge with an appeal being preferred is continued before the Division Bench.

134. Taking into account the above, we are of the opinion that we, while exercising our powers in these Intra Court Appeals, can grant the relief which the learned Single Judge ought to have granted in spite of arriving at a categorical finding that the awards have attained finality and the writ petitioners were entitled to the amounts. This therefore, answers the fourth point for

determination.

IN Re : FIFTH POINT FOR DETERMINATION:-

135. The instant point for determination is pertains to what relief or reliefs the parties before us are entitled to.

136. We accordingly in view of our observations made hereinabove dispose of these Writ Appeals with the following observations and directions:

(i) We set aside the observations, findings and directions of the learned Single Judge in the impugned judgment and order dated 27.01.2021 whereby the notification dated 28.01.1965 which was published in the Assam Gazette on 19.05.1965 was set aside and quashed.

(ii) The setting aside of the order dated 05.08.2016 passed by the Chief Secretary, Government of Mizoram vide the impugned judgment and order dated 27.01.2021 is not interfered with however for different reasons as assigned supra.

(iii) We hold that the awardees of Award No.4/2002, Award No.5/2002, Award No.5/2003, Award No.6/2003 and the Supplementary Award No.6/2003 are entitled to the amounts as

made in the said Awards. The State of Mizoram is statutorily obligated to make payment of the said Awards.

(iv) The State of Mizoram is directed to pay the awardees of Award No.4/2002, Award No.5/2002, Award No.5/2003, Award No.6/2003 (other than the beneficiaries of the Supplementary Award No.6/2003) which would include the Petitioners in WP(C) No.135/2013, WP(C) No.132/2013, WP(C) No.130/2013, WP(C) No.118/2015, WP(C) No.131/2013, WP(C) No.117/2015, WP(C) No.116/2015, WP(C) No.16/2014 and WP(C) No.22/2014 and WP(C) No.51/2017 their entitlement as per the Awards along with interest in terms with Section 34 of the Act of 1894 within a period of 3 (three) months from today.

(v) In respect to the awardees of Supplementary Award No.6/2003 i.e. the writ petitioners in WP(C) No.45/2017, they would be at liberty to further proceed with the execution proceedings i.e. Execution Case No.13/2010.

(vi) This Court had not adjudicated as to whether the State of Mizoram or NEEPCO or any other authority is liable to pay the compensation. However, taking into account the judgment of the Supreme Court in the case of ***Mast Ram (supra)***, we have directed the State of Mizoram which is a welfare State and being constitutionally obligated to make the payment as directed above

within the period stipulated.

(vii) The observations and directions made hereinabove shall not act as a bar to the State of Mizoram to recover the same from NEEPCO or any other authority if permissible as per the Memorandum of Understanding dated 29.05.1996 and other negotiations entered into between the State of Mizoram and NEEPCO and other Authorities.

J U D G E **J U D G E**

Comparing Assistant