GAHC030000942021



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

Case No.: WP(C)/21/2021

Lalremruata and 9 Ors.

SERHMUN, MAMIT2: NGURCHUAILOV

VERSUS

State of Mizoram and 4 Ors.

AIZAWL 2:SECRETARY TO THE GOVERNMENT OF MIZORA

Advocate for the Petitioner : Mr Aldrin Lallawmzuala

Advocate for the Respondent: Ms. Mary Lalruatkimi Khiangte (GA, Mizoram)

BEFORE HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

20.06.2022

Heard Mr. Aldrin Lallawmzuala, learned counsel for the petitioners and Ms. Mary L. Khiangte, learned counsel for the State respondents.

2. The petitioners' case in brief is that due to the inclusion of the area covered by the Serhmun Village Council in the Dampa Tiger Reserve (Dampa Wildlife Sanctuary) vide preliminary Notification dated 24.07.2017 and final Notification dated 06.09.2018, the petitioners have to leave Serhmun Village and relocate themselves in an area outside the

Dampa Tiger Reserve.

- 3. The petitioners' counsel submits that the petitioners having lands within the Serhmun village, the petitioners lands should be acquired and they should be given compensation in terms of the *Right to Fair Compensation and Transparency in Land Acquisition*, Rehabilitation and Resettlement Act, 2013 (in short '2013 Act'). The petitioners' counsel submits that though a number of villagers of Serhmun village have received compensation of Rs. 10 lakhs for relocation from the Dampa Wildlife Sanctuary, the petitioners are not willing to accept the Rs. 10 lakhs compensation provided to each family for relocation, as they should be provided compensation in terms of the 2013 Act and Article 300A of the Constitution.
- 4. The learned counsel for the petitioners further submits that the petitioners had earlier approached this Court vide WP(C) No. 123/2018, for acquisition of the lands of the petitioners as per the acquisition Act applicable in the State of Mizoram. The petitioners had also taken the stand before this Court that though other Villagers of Serhmun Village had executed the Agreement with the State respondents, for payment of compensation of Rs. 10 lakhs as full and final settlement, for relocation from the Dampa Wildlife Sanctuary to an area outside the sanctuary, no agreement had been executed between the petitioners and the State respondents. Thus, the State respondents were bound to acquire the lands of the petitioners as per law. He submits that as the petitioners had not submitted any representation(s) with regard to their grievance before filing WP(C) No. 123/2018, this Court had disposed of WP(C) No. 123/2018 vide Order dated 22.08.2019, with liberty being given to the petitioners to first approach the respondent No. 5 with their grievance. A direction was also given to the Deputy Commissioner, Mamit to examine the petitioners' representation and take a decision on the same.
- 5. The petitioners' counsel submits that the direction passed by this Court in its Order dated 22.08.2019 in WP(C) No. 123/2018 has not been complied with by the Deputy Commissioner, Mamit. He accordingly prays that a direction should be issued to the Deputy Commissioner, Mamit to take a decision on the petitioners' representation, strictly in terms of the direction passed in the Order dated 22.08.2019 passed in WP(C) No. 123/2018. The petitioners' counsel thus prays that the impugned final Notification dated 06.09.2018 and the Deputy Commissioner letter dated 05.02.2021 should be set aside. Further, the respondents

should verify whether the petitioners' lands are within the extended Dampa Tiger Reserve and if it is found to be within the extended Dampa Tiger Reserve, the lands of the petitioners should be acquired as per law.

- **6.** Ms. Mary L. Khiangte, the learned counsel for the State respondents submits that the direction passed in WP(C) No. 123/2018 has been complied with by the Deputy Commissioner, Mamit, vide letter dated 05.02.2021. Besides the above, the counsel for the State respondents submits that none of the petitioners have resided in Serhmun Village at any point of time. Further, the ownership of the land holdings of the petitioners is doubtful and disputed by the State respondents.
- **7.** I have heard the learned counsels for the parties.
- **8.** The petitioners had submitted a representation dated NIL to the Deputy Commissioner, Mamit in terms of the Order dated 22.08.2019 passed in WP(C) No. 123/2018, stating that no Agreement was signed between the parties with regard to payment of Rs. 10 lakhs as compensation, for relocation from the Dampa Wildlife Sanctuary and as such, the lands of the petitioners should be acquired as per the 2013 Act.
- **9.** The office of the Deputy Commissioner replied to the petitioners' representation dated NIL, vide letter dated 05.02.2021, stating that upon instructions received by the DC's office from the State Government, the representation submitted by the petitioners for preparation of Draft Award under Section 24 (2) (b) of the Wild Life (Protection) Act, 1972 and the 2013 Act could not be entertained.
- **10.** The impugned letter dated 05.02.2021 issued by the Office of the Deputy Commissioner, Mamit also states that the villagers of Serhmun village had consented to relocation as per Section 25(2) of the Wild Life (Protection) Act, 1972 on 31.01.2001 and the petitioners were also a party to the same. Due to the Agreement entered between the villagers of Serhmun village with the Government of Mizoram, wherein they consented to surrender their rights to their lands under Section 24 of the Wild Life(Protection) Act, 1972, the preliminary notification dated 24.07.2017 and final Notification dated 06.09.2018 were issued. The compensation package for relocation of the Serhmun villages amounting to Rs. 10 lakh per family was paid. The letter also stated that acquisition proceedings was not

necessary, if the owner of the lands to be acquired, had come into an Agreement with the Government for surrendering his rights to the lands in question. As such, there was no question of acquiring the lands of the petitioners by paying compensation to them.

On perusing the Deeds of Agreement allegedly signed by the petitioners, whereby they have apparently agreed to receive payment of compensation of Rs. 10 lakhs for relocation purposes, it is seen that no one on behalf of the State Government had signed the said Agreements, except for one agreement, besides the same not being registered as per the Registration Act, 1908. As such, the Deed of Agreements, which are annexed to the writ petition, cannot be said to be valid Agreements as no one had signed the said Agreements, except for one, on behalf of the State Government, besides the same not being registered. As such, the said Agreements cannot be said to be binding upon the petitioners or the State respondents, especially when the petitioners have not taken the Rs. 10 lakhs compensation for the purpose of relocation and as they have neither acted upon the said incomplete Deeds of Agreement.

- **11.** The affidavit-in-opposition of the State respondents at paragraph 5 shows that the validity of the land holdings of the petitioners have been disputed by the State respondents on various grounds.
- **12.** The relevant portion of paragraph 5 of the affidavit-in-opposition of the State respondents is reproduced below:-
 - "5.(i) House Site Pass No. 174 which was allegedly issued to the Petitioner No. 1 was issued under Section (2) of the Lushai Hills District (House Sites) Act, 1963 whereas the Village Council is empowered to allot the site for residential purpose under Section 3 of the Lushai Hills District (House Sites) Act, 1953. Besides, the Pass Holder's signature is absent in the said House Site Pass No. 174.
 - (ii) Periodic Patta No. 400406/10/70 of 2006 belonging to the Petitioner No. 2 was valid only for a period of 5 years with effect from 2006. As such, the same had expired in the year 2011. The copy of the said Periodic Patta which was annexed in the Writ Petition as Annexure II 'B' did not show anything to indicate the renewal of this periodic Patta No. 400406/10/70 of 2006.

- (iii) Another House Site Pass No. 21 dated 28.08.2001 was allegedly issued in favour of the Petitioner No. 2 by the concerned VCP on 10.09.2001. The date given at the top page of the said House Pass and the date of issuing the same by the concerned VCP are different and this clearly manifested the contradiction which further corroded the authenticity of the House Pass and due to this reason, it cannot be accepted.
- (iv) The Periodic Patta No. 400406/10/151 of 2010 belonging to the petitioner No. 3 appeared to have been renewed till 18.11.2020. However, there is no evidence to indicate that the said Periodic Patta was further renewed.
- (v) Another House Site Pass No. 54 dated 28.08.2001 was allegedly issued in favour of the Petitioner No. 3 by the concerned VCP on 15.11.2001. The date given at the top page of the said House Pass and the date of issuing the same by the concerned VCP are different and this clearly manifested the contradiction which further corroded the authenticity of the House Pass and due to this reason, it cannot be accepted.
- (vi) The Periodic Patta No. 400406/10/53 of 2005 belonging to the petitioner No. 4 i.e., Shri H. Lalthanhawla @ H. Thanhawla appeared to have been renewed till 14.07.2020. However, there is no evidence to indicate that the said Periodic Patta was further renewed.
- (vii) Although another House Pass (Annexure II 'G' to the Writ Petition) allegedly belonging to the Petitioner No. 4 shows that he was given the House Pass No. 79 of 2004; in the earlier Writ Petition i.e., WP(C) No. 123/2018 filed by the Petitioners, the number of House Pass i.e., "No.79 of 2004" was not appended therein and instead, only the 'date' of issuing the alleged House Pass was written as "Dated Serhmun, The 19.02.2004". Besides, there was no indication as to whether it was maintained in the Village Record. Hence, this has casted a serious doubt and it cannot be accepted as genuine.

Photo copy of the House Pass in the earlier Writ Petition i.e., WP(C) No. 123/2018 allegedly belonging to the Petitioner No. 4 in the earlier Writ Petition i.e., WP(C) No. 123/2018 is annexed hereto and marked **as ANNEXURE –V**.

(viii) The Periodic Patta No. 400406/10/14 of 2010 belonging to the petitioner No. 5 was valid

- only for a period of 5 years with effect from 2010. As such, the same had expired in the year 2015. The copy of the said Periodic Patta which was annexed in the said Writ Petition did not show anything to indicate the renewal of this periodic Patta No. 400406/10/148 of 2010.
- (ix) The House Site Pass No. 71 dated 26.10.2004 was allegedly issued in favour of the Petitioner No. 5 by the concerned VCP on 06.08.2010. The date given at the top page of the said House Pass and the date of issuing the same by the concerned VCP are different and this clearly manifested the contradiction which further corroded the authenticity of the House Pass and due to this reason, it cannot be accepted.
- (x) The Periodic Patta No. 400406/10/52 of 2005 belonging to the petitioner No. 6 was valid only for a period of 5 years with effect from 2005. As such, the same had expired in the year 2010. The copy of the said Periodic Patta which was annexed in the said Writ Petition did not show anything to indicate the renewal of this periodic Patta No. 400406/10/52 of 2005.
- (xi) The House Site Pass No. 45 dated 24.05.2004 allegedly issued to the Petitioner No. 6 is prima facie dubious inasmuch as the signature of the concerned VCP namely Shri Lalramthlira is different by comparing with his other alleged signature as appended in the House Site Pass dated 19.02.2004 belonging to Shri H. Lalthanhawla, the Petitioner No. 4 herein.
- (xii) The House Site Pass No. 68 dated 19.02.2004 allegedly issued to the Petitioner No. 7 is also prima facie dubious inasmuch as the signature of the concerned VCP namely Shri Lalramthlira is different by comparing it to his other alleged signatures as appended in the House Site Pass dated 19.02.2004 belonging to the Petitioner No. 4 and in the aforesaid House Pass No. 45 of 2003 2005 belonging to the Petitioner No. 6.
- (xiii) The House Site Pass No. 44 dated 29.08.2001 allegedly issued to the Petitioner No. 8 is prima facie doubtful inasmuch as the signature of the concerned VCP namely Shri Lalkhuma is different by comparing it his other alleged signature as appended in the House Site Pass No. 21 dated 28.08.2001 belonging to the Petitioner No. 2.
- (xiv) The House Site Pass No. 57 dated 20.08.2004 allegedly issued to the Petitioner No. 9 is also prima facie dubious inasmuch as the signature of the concerned VCP namely Shri Lalramthlira is different by comparing it to his other alleged signatures as appended in the House Site Pass dated 19.02.2004 belonging to the Petitioner No. 4; in the House Pass No. 45 of 2003 2005 belonging to the Petitioner No. 6 and in the House Site Pass No. 68 dated 19.02.2004 issued to the Petitioner No. 7.
- (xv) The Periodic Patta No. 400406/10/78 of 2006 belonging to the Petitioner No. 10 appeared to have been renewed once after it expired in the year 2011. However, there is no evidence to indicate that the said Periodic Patta was further renewed thereafter in order to confer the right to him.
- (xvi) Another House Site Pass No. 80 dated 19.02.2004 allegedly issued to Petitioner No. 10 is also prima facie doubtful inasmuch as the signature of the concerned VCP namely Shri Lalramthlira is different by comparing it to his other alleged signatures as appended in the

House Site Pass dated 19.02.2004 belonging to the Petitioner No. 4; in the House Pass No. 45 of 2003-2005 belonging to the Petitioner No. 6; in the House Site Pass No. 68 dated 19.02.2004 issued to the Petitioner No. 7 and in the House Site Pass No. 57 dated 20.08.2004 issued to the Petitioner No. 9."

- 13. On considering the fact that there is a dispute with regard to the validity of the petitioners land holdings, this Court is of the view that a direction for acquisition of the petitioners lands cannot be made by this Court at this stage. The same can be done only after the validity of the petitioners' land holdings are proved. Accordingly, as disputed questions of facts are involved, this Court is of the view that the appropriate forum for taking a decision on the validity of the petitioners land holdings would be the Civil Court. Accordingly, the petitioners are given the liberty to approach the Civil Court with their grievance.
- **14.** If the land holdings of the petitioners are found to be valid, the same would have to be acquired as per the applicable land acquisition law.

The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant