

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP (C) No.373/2016

Date of order: 19.09.2019

Shri Lamboklang Myllemngap Vs. Deputy Commissioner/Collector  
Ri-Bhoi District &ors

**Coram:**

**Hon'ble Mr. Justice Ajay Kumar Mittal, Chief Justice**

For the Petitioner/Appellant(s) : Mr. EB Sangma, Adv.  
For the Respondent(s) : Mr. A Kumar, Advocate General with  
Mr. KP Bhattacharjee, GA

- i) Whether approved for reporting in Law journals etc.: Yes
- ii) Whether approved for publication in press: Yes

1. The petitioner has approached this Court by way of present writ petition filed under Article 226 of the Constitution of India, inter alia, impugning letter No.DCRB (LA)12/2008/Pt-I/59/1170 dated 04.10.2016 and letter No.DCRB (LA) 12/2008/Pt-I/74/1372 dated 26.10.2016 issued by respondent No.1 requiring the petitioner to dismantle the two storied structure.

2. Briefly, the relevant facts as narrated in the petition may be noticed. The petitioner claims to be the owner and in possession of the landed property along with a two-storied RCC building situated at Ronghona Village, Ri-Bhoi District, Meghalaya measuring about 955.22 sq.mt. The respondent No.3 had issued a notification No.RDA.21/2007/45 dated 21.03.2011 under Section 4 of the Land Acquisition Act, 1894 (for short the "Act") notifying the proposed acquisition of land measuring approximately 3,07,600 sq.mts. from village Tetelia to Byrnihat in Ri-Bhoi District which was needed for public purpose, namely, for construction of New BG Railway Line from Tetelia to Byrnihat. Subsequently, vide notification No.RDA.21/2007/7 dated 13.03.2012 under Section 6 of the Act a declaration for the said purpose was made. According to the petitioner, the disputed land of the petitioner fell within the area of the land which was intended to be acquired by the said proposed acquisition and his

name was also included in the list of claimants for award of compensation after preliminary survey of the land was conducted in pursuance of the issuance of notification under Section 4 of the Act. However, after the issuance of declaration under Section 6 of the Act, no notice was issued under Sections 9 and 11 of the Act in continuation of the acquisition proceedings. The petitioner asserts that though the notification under Sections 4 and 6 of the Act were issued, at no point of time, the respondents or any other authority took over the possession of petitioner's land except for conducting initial survey for measurement of his land. The petitioner pleads that he was not disturbed from making any development of his land including continuance of his construction which was under way at the time of issuance of the notification. The petitioner completed the construction of his building by the month of January 2013. The case of the petitioner is that before an award under Section 11 of the Act could be made, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity 2013 Act) came into force w.e.f. 26.09.2013, and, therefore, award was required to be made under 2013 Act.

3. To the surprise of the petitioner, in June 2014, the petitioner received a payment notice vide Memo No.DCRB(LA)3/95/P-t/19 dated 11.06.2014 informing him that the competent authority after getting approval of the State Government declared the award on 21.03.2014. As per petitioner, Notice under section 9 of the Act or Section 21 of the 2013 Act was not issued thereby depriving the petitioner of his legitimate right to state the nature of his interest in the land and the entitlement of amount of compensation. The petitioner feeling aggrieved submitted a representation dated 18.08.2014 to respondent No.1 bringing to his notice the non-consideration of the building standing on his land for the purposes of calculation of amount of compensation by the concerned authority and requested it to include the value of the building standing on his land for assessing the compensation amount. No action was taken by the State on the said representation.

4. After a lapse of more than two years, the petitioner was served with the notice dated 04.10.2016 directing the petitioner to dismantle the two-storied building situated on his land within two weeks by asserting that the said structure was constructed after proceedings of the land acquisition had been initiated. Along with the notice dated 04.10.2016, the minutes of the meeting held on 26.08.2015 in the Chamber of Additional Deputy Commissioner (Rev), Ri Bhoi District, Nongpoh was also enclosed which according to the petitioner was held in his absence as no notice was received by him.

5. The notice dated 04.10.2016 was followed by issuance of another reminder vide Memo No.DCRB(LA)12/2008/Pt-I/74/1372 dated 26.10.2016 requiring him to dismantle the structure. As the situation was alarming and the petitioner was in the dark about the process which was adopted and followed by the respondents in the entire acquisition proceeding leading to the issuance of notices dated 04.10.2016 and 26.10.2016, he immediately applied for copies of the related declaration, notification and award statement which were supplied to him vide letter No.DCRB(LA)3/95/Pt-II/43/1378 dated 27.10.2016.

6. The challenge has been made to the action of the respondents in passing the award dated 21.03.2014 and letter and reminder dated 04.10.2016 and 26.10.2016 on the ground that the provisions as contained in Sections 9 and 11 of the Act and Sections 21 and 23 of the 2013 Act are mandatory provisions and same are required to be strictly adhered to before any final award was prepared and declared and non adherence to the said provisions would render the entire final award arbitrary and illegal. Further, Section 11 of the Act and/or Section 23 of the 2013 Act mandates that prior to the making of an award, the respondent No.2 was duty bound to cause an enquiry in pursuance to the issuance of notice under Section 9 of the Act and/or Section 23 of the 2013 Act with regard to the interest of the person(s) claiming compensation, rehabilitation and resettlement. Still further, the entire action on the part of the respondents particularly respondent No.1 was illegal inasmuch as the procedure adopted by the respondents in preparation of the final award dated 21.03.2014, letter dated

04.10.2016 and reminder dated 26.10.2016 are not in accordance with the provisions of law enshrined in the Act and/or 2013 Act. Hence, the present petition for quashing and setting aside the impugned award dated 21.03.2014 and notices dated 04.10.2016 and 26.10.2016 issued by the respondents No.1 and 4.

7. Upon notice, affidavit-in-opposition on behalf of respondent No.1 has been filed wherein, it has been categorically averred that as per minutes of the meeting dated 27.08.2015 (Annexure-2 at page-12), under the Chairmanship of Additional Deputy Commissioner (Rev) with the Railway officials, it was clearly recorded that the two storied structure belonging to the petitioner was constructed post declaration of notification issued under Section 4 of the Act and, therefore, there was no assessment of the structure. The notification under Section 4 of the Act for construction of New BG Railway Tetelia-Byrnihat passing through the two villages of Lumnongrim and Ronghona, was published in two daily newspapers, i.e., Shillong Times and Mawphor on 06.04.2011. However on 08.04.2011, certain objections by Headman of the respective villages and other landowners of the area were received. A Joint Action Committee of the area had reiterated the issues vide letter dated 20.12.2011. A report under Section 5A of the Act was sent to the Government on 24.02.2012. Subsequently, the declaration under Section 6 of the Act was published on 21.03.2012 in both Shillong Times and Mawphor. On 28.02.2014, notices under Section 9 of the Act were issued to the provisional list of landowners declared under Section 6 of the Act, out of which only three persons had appeared. The others present claimed to represent the cause of Joint Action Committee. Further, it has been pleaded that in para 4 of the petition, the petitioner was aware of the fact that his plot of land fell within the proposed alignment of the Railway line yet, he chose to construct the two storied structure without seeking any clarification from the office of the Collector, after the survey.

8. In para 10 of the affidavit-in-opposition, according to the respondent No.1, after coming into effect of the 2013 Act, all components for

determination of compensation of Land and Award (Annexure-8 at page-31) wherein the petitioner was placed at Sl.No.65, was done as per Section 24 of the 2013 Act where it is provided that when no Award had been made under the old Act, then all provisions of the New Act relating to determination of compensation shall apply. The compensation was accordingly disbursed as per the provisions of 2013 Act. As per assertion in para 12 of the affidavit-in-opposition replying to averments made in paras 8 and 9 of the writ petition, it is stated that after Section 9 hearing of the Act, the District Administration was able to resolve the issues with the Joint Action Committee as well as the actual landowners of the area where subsequently, area of land and structure could be determined and entered in the Award as per 2013 Act. As there was some apportion to the railway project, the exact landowners and their areas could not be determined initially. However, the residents of the village including the petitioner were aware of the proposed railway alignment as admitted in para 4 of the writ petition.

9. The compensation for land belonging to the petitioner measuring an area of 995.22sq.mts was apportioned as per 2013 Act (Annexure-9 at page-37). However, since the two storied structure was raised after the issuance of Section 4 notification, the petitioner is not entitled to any compensation.

10. The petitioner did not come forward to receive compensation for his affected land although the award was accepted by all the villagers. Still the case was referred to the Court of Special Judicial Officer vide letter No.DCRB(LA) 29/2014/Rev-I/Pt-I/ dated 17.12.2015 (Annexure-10 at page-41). As per the order of the Special Judicial Officer, Nongpoh dated 25.11.2016 (Annexure-11 at page-43) passed in (Ref) L.A. Case No.31 of 2015 the claimant was provided last opportunity for filing proper claim petition, which he did not. The petitioner, instead of raising these issues before the Court of the Special Judicial Officer, despite due opportunity given to him, he chose not to appear or file any claim objection before the

said Court; as a result the case was dismissed in default of claimant. On the aforesaid premises, prayer for dismissal of the writ petition has been made.

11. Besides respondent No.1, respondent No.5 has also filed affidavit-in-opposition reiterating the stand of the State and additionally pleading that the possession of the acquired land was delivered to it on 17.11.2014.

12. Rejoinder affidavit had been filed by the petitioner contraverting the averments in the affidavit-in-opposition and reiterating those in the writ petition. Additionally, it has been pleaded that invoking of Section 33 of the 2013 Act by the Collector was misplaced as it only related to correction of clerical or arithmetical mistakes occurring in the original award. An additional affidavit has also been filed giving the details of expenditure incurred on construction of two storied RCC Building at Ronghona, Ri Bhoi District.

13. I have heard learned counsel for the parties.

14. Notification No.RDA.21/2007/45 under Section 4 of the Act was issued on 21.03.2011 followed by Notification No.RDA.21/2007/7 dated 13.03.2012 under Section 6 of the Act. The State Government had announced the award on 21.03.2014. As per respondent No.5 possession of the acquired land was delivered to it on 17.11.2014 though this fact is disputed by the petitioner. In such a situation, the acquisition proceedings stood concluded and the acquired land vested absolutely in the Government, free from all encumbrances. Once that was so, then notice/letter dated 04.10.2016 and reminder dated 24.10.2016, could not be faulted. The petitioner has approached this Court by way of present petition after expiry of more than two years of the announcement of the award. The writ petition is thus, hit by delay and laches.

15. The plea of the petitioner in the rejoinder affidavit that the Collector had invoked Section 33 of the 2013 Act while passing the award which deals with correction of clerical or arithmetical mistakes occurring in the original award and, therefore, the award stands vitiated would not succeed as a perusal of the award Annexure-8 at page 32 dated 19.09.2014 shows that these are the proceedings under Section 33, whereas, the original award had been passed on 21.03.2014. Even otherwise the additional

award has been made under the 2013 Act and mentioning of wrong provision as claimed by the petitioner would not render the additional award void and nullity.

16. Next, Section 9 of the Act deals with Notice to persons interested. It provides for opportunity to “person interested” to file claim petition for determining market value of the land. Section 9 of the Act is in the following terms:-

**“9. Notice to persons interested.**-(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and <sup>1</sup> [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].”

17. The effect of failure of issuance of notice under Section 9 of the Act was examined by the Supreme Court in *May George v. Special Tahsildar & ors: (2010) 13 SCC 98*. It was concluded that it would not adversely affect subsequent proceedings including award and title of the Government in the acquired land. It was observed that so far as person interested is concerned, he is entitled only to receive compensation and, therefore, there

may be a large number of disputes for which he may approach Collector to make a reference to the Court under Section 18 or 30 of the Act. It was expressed that irregularity in service of notice is a curable irregularity and would not render the award under Section 11 of the Act to be invalid. The relevant observations read thus:-

“14. Section 9 of the Act provides for an opportunity to the “person interested” to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim under Section 9 even after receiving the notice, he still has a right to make an application for making a reference under Section 18 of the Act. Therefore, the scheme of the Act is such that it does not cause any prejudicial consequence in case the notice under Section 9(3) is not served upon the person interested.”

18. After considering the statutory provisions and various pronouncements, it was concluded as under:-

“26. The instant case is required to be examined in the light of the aforesaid settled legal provision. In fact, failure of issuance of notice under Section 9(3) would not adversely affect the subsequent proceedings including the award and title of the Government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under Section 30 of the Act.

27. In *G.H. Grant (Dr.) v. State of Bihar*<sup>14</sup>: [AIR 1966 SC 237], this Court has held that if a “person interested” is aggrieved by the fact that some other person has withdrawn the compensation of his land, he may resort to the procedure prescribed under the Act or agitate the dispute in suit for making the recovery of the award amount from such person.

28. In fact, the land vests in the State free from all encumbrances when possession is taken under Section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings. In spite of the fact that Section 9 notice had not been served upon the person interested, he could still claim the compensation and ask for making the reference under Section 18 of the Act. There is nothing in the Act to show that non-compliance therewith will be fatal or visit any penalty.

29. The view taken by us hereinabove stands fortified by large number of judgments of this Court wherein it has been held that if there is an irregularity in service of notice



under Sections 9 and 10, it could be a curable irregularity and on account thereof, award under Section 11 would not become invalid (see *State of T.N. v. Mahalakshmi Ammal*<sup>15</sup>: [(1996) 7 SCC 269] and *Nasik Municipal Corpn. v. Harbanslal Laikwant Rajpal*<sup>16</sup>: [(1997) 4 SCC 199].”

19. Still further, the Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are self-contained code within the framework of its limited purpose of acquisition of land. It provides for complete mechanism for acquisition of land including the process of execution, payment of compensation as well as legal remedies in case of any grievances. The petitioner claimed value for the construction of two storied building, whereas, the stand of the State is that it was raised after the issuance of Notification under Section 4 of the Act. In such circumstances, the issue involves questions of fact regarding the date of construction and, therefore, the reference Court would be the appropriate forum to adjudicate the issue. In view thereof, the claim of the petitioner that no compensation for two storied building has been granted could not be acceded to in the writ jurisdiction. Thus, no ground to interfere in the award announced by the State dated 21.03.2014 or the additional award dated 19.09.2014 has been made out.

20. The Collector had made a reference under Section 18 of the Act to the Court of Special Judicial Officer at Nongpoh [as per Annexure-10 (page 42 of the affidavit-in-opposition) of respondent No.1] on 17.12.2015 which was ultimately dismissed-in-default on 25.11.2016 for non-appearance of the claimant-writ petitioner. The provisions of Section 18 of the Act are analogous to Section 64 of 2013 Act. The petitioner approached this Court by way of present writ petition on 17.11.2016. Therefore, in the interest of justice and equity, it is directed that the petitioner shall be at liberty to seek revival of the reference petition made by the Collector which was dismissed in default on 25.11.2016. Since, the petitioner had approached this Court prior thereto, and the writ petition was pending in this Court therefore, in case the petitioner moves an application seeking restoration of the reference petition within 30 days from the date of

receipt of certified copy of the order, the reference Court shall recall its order dated 25.11.2016 and thereafter proceed in the matter in accordance with law. Accordingly, the writ petition stands disposed of in the manner indicated above. Needless to say, the observations made hereinbefore are for the purposes of decision of the writ petition and shall not be taken to be an expression of opinion on the merits of the controversy.

**(Ajay Kumar Mittal)**  
**Chief Justice**

Meghalaya  
19.09.2019  
"*Lam* AR-PS"

