

SUPREME COURT OF INDIA

Lalrivenga & Anr.

Vs.

State of Mizoram & Ors.

C.A.No.7825 of 2011

(G.S.Singhvi and H.L.Dattu,JJ.,)

13.09.2011

JUDGMENT

G.S.Singhvi,J.,

SLP(Civil)No.18850 of 2006

1. Leave granted.

2. This appeal is directed against the judgment of the Division Bench of the Gauhati High Court whereby the appeal preferred by the respondents against the order of the learned Single Judge was allowed and it was declared that Land Settlement Certificates issued in favour of the appellants after the publication of declaration issued under Section 6(1) of the Land Acquisition Act, 1894 (for short, 'the Act') and notification dated 14.6.1985 prohibiting allotment of land to any private individual will not confer any right upon them to claim compensation in respect of the acquired land.

3. The appellants purchased land measuring 11.37 bighas from Dangliana to whom Periodic Patta No. 40/81 is said to have been granted under Rule 6 of the Mizo District (Agricultural Land) Rules, 1971. They submitted applications to Director, Land Revenue and Settlement, Mizoram (respondent No.2) who had issued order dated 18.1.1983 authorising Assistant Settlement Officer-II to decide such applications for grant of Land Settlement Certificates. After considering the applications, the Settlement Officer issued certificates bearing Nos.AZ-2279 of 1987 and AZ-2278 of 1987 in favour of the appellants under Section II of the Mizo District (Land Revenue) Act, 1956.

4. In the meanwhile, the State Government issued notification dated 14.5.1985 under Section 4(1)of the Act for the acquisition of land in villages old Beraw and Zokhawsang for a public purpose, namely, allotment to the Assam Rifles in lieu of the site occupied by them in Aizawl town. After one month, the State Government issued order dated 14.6.1985 and imposed restriction on the allotment of land to private persons along the main National Highway and the road going to old Zokhawsang Village.

5. Another notification was issued on 13.8.1987 under Section 4(1) for the acquisition of area between the site allotted to the Church for locating Theological College and N.H.-54 Aizawl-Lunglei Road at Lokhawsang for allotting the same to the Assam Rifles. The declaration issued under Section 6 of the Act was published in Mizoram Gazette dated 20.11.1987. Land Acquisition Collector, Aizawl passed an award sometime in July/August 1988 for payment of compensation of Rs.92,59,156/-.

6. As a sequel to initiation of the acquisition proceedings, the State Government directed respondent No.2 to cancel the Land Settlement Certificates issued in favour of the appellants and others on the ground that the same were issued without the approval and sanction of the competent authority and in violation of Government Notification No. LRR/B-40/84-85/19 dated 14.5.1985 and Order No. LRR/B-40/84-85/21 dated 14.6.1985. Thereupon, respondent No.2 passed order dated 8.8.1988 and declared that the Land Settlement Certificates issued in favour of the appellants were invalid.

7. The appellants challenged the acquisition proceedings in a petition under Article 226 of the Constitution which was registered as Civil Rule No. 3943 of 1994. They also prayed for quashing of order dated 8.8.1988 issued by respondent No.2 and for issue of a mandamus to the respondents to pay full compensation with interest and solatium in lieu of the acquisition of their land. In the counter affidavit filed on behalf of the respondents, it was pleaded that order dated 14.6.1985 was issued by the State Government because after publication of notification dated 14.5.1985, the writ petitioners and other similarly situated persons had connived with some unscrupulous officers and were trying to convert their agricultural passes into Land Settlement Certificates or get fresh permanent settlement so that they could claim compensation. It was further pleaded that declaration issued under Section 6 of the Act was published in the Mizoram Gazette dated 1.10.1985 and also in the local newspapers. The cancellation of the Land Settlement Certificates was justified on the premise that the same were issued without the sanction of the competent authority and in violation of Government order dated 14.6.1985.

8. The petition filed by the appellants was transferred to Aizawl Bench of the High Court and was re-numbered as Writ Petition (C) No.114 of 2000. At the hearing of the petition, learned counsel for the parties agreed that despite cancellation of the Land Settlement Certificates, the appellants are entitled to compensation. The learned Single Judge took cognizance of the statement of the learned counsel and passed order dated 7.1.2003, the relevant portion of which is extracted below:

".....At the time of argument, counsels appearing for the parties have agreed that although the House Site Settlement Certificates was cancelled by the order passed No.8.8.88 the petitioners shall be entitled to a compensation, whatsoever payable under the law, for the land falling under the Certificates No.G.274/88 and G./275/86 which are the Agricultural Land Settlement Certificates, for the acquisition of the land. The petitioners certificate of Agricultural Land Settlement Certificate No.G.274/86 and G.275/86 having not been cancelled they are entitled for grant of

compensation for acquisition of these lands under the Land Acquisition Act as per law which according to petitioners is not paid to them. The Certificates which have been cancelled are only the House Site Settlement Certificates No.AZ-2278/87 and No.AZ-2279/87. The petitioners are entitled to compensation for acquisition of right of the petitioner in the land of which they held under Agricultural Land Settlement Certificate. The respondents are directed to assess the compensation in accordance with law and pay the same to the petitioner's."

9. Although, the aforesaid order was passed with the consent of the learned counsel appearing on their behalf, the respondents challenged the same in Writ Appeal No.1 of 2005. The Division Bench of the High Court did take cognizance of the appellants' plea that the Land Settlement Certificates issued in their favour could not have been cancelled on the premise that the land had already been acquired because notification dated 14.5.1985 had not been published in the Official Gazette, but negated the same by making the following observation:

"It appears from the official gazette that the declaration under Section 6(1) dated 1/10/85 was published in the official gazette on 4/10/85, which presupposes the publication of the notification under Section 4(1) of the Act. That apart another notification dated 14/6/85 was also issued which was published in the official gazette on the same day restricting/freezing the allotment of land in question to the private individuals and directing all concerned not to entertain the applications for such allotment within the area specified in the said notification, which has not been challenged in the writ proceeding. Once the land acquisition proceeding has been initiated and notification dated 14/6/85 is issued prohibiting allotment of land in question in favour of any person, there cannot be any conversion of the passes into the land settlement certificate conferring better right on any person."

10. Shri Shourjiyo Mukherjee, learned counsel for the appellants argued that the finding recorded by the Division Bench of the High Court on the legality of the Land Settlement Certificates issued in favour of the appellants is ex facie erroneous and is liable to be set aside because the same is based on an unfounded assumption that notification dated 14.5.1985 had been published in the Official Gazette and the order issued by the State Government prohibiting allotment of land to the private individuals was applicable to their case. Learned counsel submitted that the respondents had not produced any evidence to show that the notification issued under Section 4(1) of the Act had been published in the Official Gazette and argued that in the absence of such publication, the Division Bench of the High Court was not justified in relying upon the publication of declaration issued under Section 6 in the Official Gazette for recording a finding that Section 4(1) notification must have been likewise published in the Official Gazette. Learned counsel emphasised that the Land Settlement Certificates issued in favour of the appellants could not have been declared invalid on the ground that the same were not sanctioned by the competent authority because vide order dated 18.1.1983, respondent No.2 had authorised the Assistant Settlement Officer-II to decide the applications made for grant of such certificate and the Settlement Officer who issued certificates in favour of the appellants was senior to the designated officer. Shri

Mukherjee then argued that the prohibition contained in the Government order dated 14.6.1985 could not have been invoked in the appellants' case because they had purchased land from a private individual, namely, Dangliana in 1984 and no allotment had been made in their favour by any public authority.

11. Shri R.F. Nariman, learned Solicitor General fairly stated that the Official Gazette in which notification dated 14.5.1985 was published has not been produced either before the High Court or this Court, but argued that the appellants cannot claim compensation in lieu of the acquisition of land in question because the purchase made by them was contrary to the statutory rules and order dated 14.6.1985. Learned Solicitor General further argued that the Court may not interfere with the impugned judgment because the appellants had obtained Land Settlement Certificates by manipulations and the same were rightly cancelled by the State Government.

12. We have considered the respective submissions/arguments and carefully scrutinized the record. In our view, the reasons assigned by the Division Bench of the High Court for setting aside the order of the learned Single Judge are legally unsustainable. Section 4(1) of the Act, which provides for publication of preliminary notification, reads as under:

"4. Publication of preliminary notification and powers of officers thereupon.-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification."

13. A reading of the above reproduced provision makes it clear that the notification issued by an appropriate Government proposing the acquisition of land must be published in the Official Gazette and two daily newspapers having wide circulation in the locality of which at least one shall be in the regional language. Not only this, the Collector is under an obligation to ensure that public notice of the substance of such notification is given at convenient places in the locality. This Court has repeatedly held that the requirement of publication of notification in the Official Gazette and two local newspapers is mandatory. The Division Bench of the High Court upheld the acquisition of land by assuming that notification dated 14.5.1985 issued under Section 4(1) must have been published in the Official Gazette because the declaration issued under Section 6 was published in the Official Gazette. In our view, this approach of the High Court was clearly erroneous. The question whether the notification issued under Section 4(1) was published in the Official Gazette is a question of fact and such question cannot be decided on assumptions and conjectures or inferences. Whenever the acquisition of land is challenged on the ground that the notification has not been published as per the mandate of the statute, the authority defending the acquisition is under an obligation to produce evidence in the form of documents to prove that the

requirement of publication has been complied. In the absence of such evidence, the Court cannot decide challenge to the acquisition proceedings by assuming that the particular notification had been published as per the requirement of law. In the present case, no material was produced before the High Court and none has been produced before this Court to show that notification dated 14.5.1985 issued under Section 4(1) of the Act had been published in the Official Gazette. Therefore, the High Court was not justified in declining relief to the appellants by assuming that the said notification must have been published in the Official Gazette because other notifications including the one issued under Section 6 was published in the Official Gazette.

14. We also agree with Shri Mukherjee that the Land Settlement Certificates issued in favour of the appellants could not have been cancelled on the ground that the same were issued without the sanction or approval of the competent authority. The respondents have not controverted the appellants' assertion that vide order dated 18.1.1983, respondent No.2 had authorised the Assistant Settlement Officer-II to process and decide the applications for grant of the Land Settlement Certificates. It is also not in dispute that the appellants had purchased land in 1984 and the Settlement Officer had issued the Land Settlement Certificates in 1987 after duly scrutinizing the applications made for that purpose. This action of the concerned officer was not in violation of order dated 14.6.1985 vide which allotment of land to private individuals was restricted/freeze along the main National Highway and the road leading to old Zokhawsang village which was earmarked for shifting of First Assam Rifles. Indeed, it was neither the pleaded case of the respondents before the High Court nor any evidence was produced to show that the land in question had been allotted to the appellants by any public authority.

15. In the result, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge is restored. The respondents are directed to pay the amount of compensation to the appellants in terms of the order of the learned Single Judge within a period of three months from the date of receipt/production of copy of this order. The parties are left to bear their own costs.