

GAHC030007682024



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

Case No. : WA/19/2024

The National Highways and Infrastructure Development Corporation Limited
(NHIDCL) and Anr.
R/b the Managing Director, 3rd Floor, PTI Building 4, Parliament Street, New Delhi-
11001 2: The Executive Directo

VERSUS

Sh T.Zahluta @Zahluta and 6 Ors.
S/o T.Zahnuka (L) R/o Bungtlang, Serchhip District, Mizoram 2:The State of
Mizoram

3:The Secretary to the Govt. of Mizoram

4:The Director

5:The Competent Authority for Land Acquisition (CALA)-cum-Deputy
Commissioner

6:The Union of India

7:The Regional Office

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE PRANJAL DAS

For the Appellant : Mr. T. Lalzekima, Advocate
For the Respondent(s) : Mr. Jonathan Lalrintluanga for R. 5
Mr. Jonathan L. Sailo for R. 1
Mrs. Caroline K. Lungawipuii, GA for R 2-4.
Ms. Zairemsangpuii, CGC for R 6 and 7

Date on which judgment is reserved : **22.01.2026**
Date of pronouncement of judgment : **30.01.2026**
Whether the pronouncement is of the : N/A
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Michael Zothankhuma, J)

1. Heard Mr. T. Lalzekima, learned counsel for the appellant/National Highways and Infrastructure Development Corporation Limited (NHIDCL). Also heard Mr. Jonathan L. Sailo, learned counsel for respondent No. 1 (Writ Petitioner), Mr. Jonathan Lalrintluanga, learned counsel for respondent No. 5/Competent Authority for Land Acquisition (CALA), Ms. Caroline K. Lungawipuii, learned Govt. Advocate for respondent Nos. 2 – 4 and Ms. Zairemsangpuii, learned CGC for respondent Nos. 6 & 7.

2. The present appeal has put to challenge the impugned Order dated 16.11.2023 passed by the learned Single Judge in WP(C) No. 104/2023, wherein the learned Single Judge had directed the "Competent Authority for Land

Acquisition" (CALA), to make an appropriate assessment of the land value of the writ petitioner's land, which was affected due to construction work alongwith all other statutory benefits and to forward the same to the Union of India and NHIDCL, who was to then deposit the assessed amount for payment to the writ petitioner. The impugned order passed by the learned Single Judge has been challenged, on the ground that the writ petition had been disposed of without giving ample opportunity to the appellants to file affidavit-in-opposition, stating that the land of the writ petitioner was no longer required.

3. The writ petitioner's case is that the land of the writ petitioner and others had been acquired for construction of a road. The compensation for the crops and land was given to all the land owners, except the writ petitioner, who was given compensation for crops only. In the assessment for compensation made under Section 3G of the National Highways Act, 1956, (hereinafter referred to as the '1956 Act'), no compensation for land value had been assessed in respect of the petitioner's land, which was covered by Periodic Patta No. 62/2004, though compensation for land value had been assessed in respect of other land owners, for similar land holdings covered by other Periodic Pattas. A notification was also issued on 10.10.2018 under Section 3D (1) of the 1956 Act.

4. Being aggrieved by not being given compensation for the value of the land, while other land owners were given compensation for the value of the land covered by Periodic Pattas, the writ petitioner filed WP(C) No. 104/2023, praying for a direction to be issued to the respondent authorities, to make assessment of the value of his land as compensation for acquisition of his land, in terms of the 1956 Act. The learned Single Judge thereafter, provided time on 3 (three) occasions, i.e., 22.08.2023, 18.09.2023 and 05.10.2023 for submission of

affidavit-in-opposition by the present appellants. The same not having been done, the learned Single Judge disposed of the writ petition vide the impugned Order dated 06.11.2023, by allowing the writ petition and directing CALA to make an assessment of the value of the land of the petitioner and to make payment of the compensation amount.

5. The learned counsel for the appellants submits that the road constructed by the appellants, which was completed in February 2026, did not touch or use any part of the writ petitioner's land. As the appellants did not require the writ petitioner's land, there was no question of paying compensation to the writ petitioner and the petitioner could take back his land. He also submits that compensation for crops and the consequential solatium for the crops has been paid to the writ petitioner.

6. The learned counsel for the appellants thus submits that the impugned order should be set aside and the case be remanded to the learned Single Judge for a fresh decision, after allowing the appellants to submit an affidavit-in-opposition.

7. Mr. Jonathan L. Sailo, learned counsel for the writ petitioner submits that ample opportunity had been given to the appellants to submit their affidavit. As there was no dispute with regard to the fact that the land of the writ petitioner had been acquired in terms of the 1956 Act and compensation paid for crops along with solatium, there was no need for granting further time to the appellants to file affidavit-in-opposition on undisputed questions of fact. He submits that the question of returning back the land of the writ petitioner, after it vested absolutely with the appellants in terms of Section 3D of the 1956 Act, does not arise, as the NHIDCL cannot divest the land back to the writ petitioner,

in terms of the Judgment of the Supreme Court in the case of the **V. Chandrasekaran and Anr. Vs Administrative Officer and Ors**, reported in **(2012) 12 SCC 133** and in the case of **Indore Development Authority Vs Manoharlal and Ors**, reported in **(2020) 8 SCC 129 Para 148** and in the Judgment of the **Himachal Pradesh High Court** in the case of **Sukh Dev and Ors Vs. Union of India and Ors**, reported in **(2022) SCC HP 6425**.

8. Mr. Jonathan Lalrintluanga, learned counsel for respondent No. 5 (CALA) submits that prior to filing of the writ petition, the respondent No. 1/writ petitioner had submitted an RTI application dated 08.05.2023 to CALA, asking as to why the 3G assessment for acquisition of land of the land owners did not include land value in respect of the writ petitioner's land, when the lands of other land owners, covered by Periodic Pattas, were assessed for compensation. The same was replied to by CALA, wherein it was stated that the reason for not paying the writ petitioner compensation on the value of the land along with the other land owners, was due to a clerical error. The RTI question put to CALA by the writ petitioner was replied to vide letter dated 22.06.2023 issued by the SPIO cum Addl. DC, Serchhip.

9. We have heard the learned counsels for the parties.

10. Section 3D, 3E and 3F of the 1956 Act are reproduced herein below as follows:-

3D. Declaration of acquisition.- (1) *Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report,*

the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3E. Power to take possession.-*(1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person n who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.*

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply

- (a) *in the case of any land situated in any area (a) TO 2009 metropolitan area, to the Commissioner of Police;*
- (b) *in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,*

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3F. Right to enter into the land where land has vested in the Central Government.-*Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.*

11. The land of the writ petitioner/respondent No. 1 covered by Periodic Patta No. 62/2004 and the lands of other persons covered by Periodic Pattas had been acquired for the purpose of road widening of National Highway 54 under the National Highways Act, 1956. On 25.07.2018, Notification u/s 3A (1) of NH Act was issued by the Ministry of Road Transport & Highway, wherein the land belonging to the respondent No. 1 was included for acquisition. On 10.10.2018 Declaration u/s 3D of NH Act was published in Official Gazette and as per Section 3D (2) NH Act ownership of all the lands in the Notification, including the land of the respondent No. 1, vested in the Central Govt. absolutely, free from all encumbrances. On 07.03.2019 the D.C., Serchhip/CALA passed Award

under Section 3G of NH Act, wherein the respondent No. 1 was listed at Serial No. 132. All land owners included in the 3G Award, whose lands were covered by LSCs and Periodic Pattas, had been awarded compensation and paid their respective land value along with the value for crops. However, even though the respondent No. 1's acquired land was also covered by a Periodic Patta, validly issued by the concerned authority, compensation for land value was not given. On 29.08.2019 possession of the respondent No. 1's land was taken over vide Notice u/s 3 E(1) of NH Act.

12. The respondent No. 1 submitted an RTI application on 08.05.2023 to the D.C/CALA, Serchhip enquiring – whether all periodic patta holders in the Award dated 07.03.2019 issued by the CALA, Serchhip were awarded and paid compensation for the value of their lands. On 22.06.2023 the SPIO/Addl. D.C, Serchhip in his reply letter to the RTI application stated – (i) Yes, assessment and payment of land value compensation in respect of periodic patta holders has been made vide Award dated 07.03.2019. (ii) Due to clerical error, land value was not given to the respondent No. 1.

13. On 05.09.2023, the appellants issued letter dated 05.09.2023 to CALA stating that the land of the respondent No. 1/writ petitioner, was not required as NHIDCL had waited the land for almost 4 (four) years and in the meantime, the

road had been constructed without utilizing the land of the writ petitioner. The contents of the NHIDCL Letter dated 05.09.2023 to CALA is reproduced herein below as follows:-

Ref: 1. Writ petition W.P(C) No. 104 of 2023 (Shri. T.Zahluta Vrs SOM & 7 Ors)

2. NHIDCL Letter no.201/NHIDCL/PMU-Lunglei/NH-54/WK/Pkg-03/2214 dated 04.09.2023.

3. Contractor letter BIPL/NHIDCL/GM/PKG-3/2020-23/1054 dated 04.09.2023.

Sir,

1. With reference to the subject cited above and letter under reference (1) in the case T.Zahluta Chainage 132+690 of which is self-explanatory, in this connection it is pertinent to mention that road has been already constructed within the given ROW and no land has been utilized till date, which has been also confirmed by the EPC Contractor vide letter under reference (3) as to complete the project on the stipulated given time, since the committed completion date has been already issued by the competent authority after extension of time (EOT) i.e. 28.02.2023.

2. In this context, it is pertinent to mention that there is NO Requirements of land since, NHIDCL has waited for the land for almost 04 years, hence, without waiting further, ROW has been squeezed and necessary construction has already been completed accordingly the said land is no more required by NHIDCL.

3. Submitted for your kind information and case may be dealt accordingly please.

14. The respondent No. 1 then filed W.P(C) No. 104/2023 praying for a direction, directing the CALA, Serchhip to make assessment of land value compensation in respect of the petitioner's acquired land covered by Periodic

Patta No. 62/2004 along with all applicable statutory benefits as per law and for a direction to the NHIDCL to make payment as per the assessment of the CALA, Serchhip. W.P(C) No. 104/2023 was allowed and disposed by the Hon'ble Single Judge vide the impugned Order dated 16.11.2023.

15. Pursuant to the Order dated 16.11.2023 passed in W.P(C) No. 104/2023, on 29.11.2023 the CALA, Serchhip made an assessment of the total land value compensation including solatium for the respondent No. 1 amounting to Rs. 10,23,767 only. Against the order dated 16.11.2023 passed in W.P(C) No. 104/2023 the appellants/NHIDCL has filed the present writ appeal.

16. As can be seen from the above facts, NHIDCL had for the first time stated on 05.09.2023, that it did not require the land of the respondent No. 1/writ petitioner, even though Notifications under Section 3A(1), 3D(2), 3G and Notice under Section 3E(1) had already been issued under the National Highway Act, 1956

17. A reading of the above Notifications, Declaration, Award and Notice shows that the land of the respondent No. 1 had already vested absolutely with the Government and possession of the land had also been taken on 29.08.2019, that is prior to the letter of the NHIDCL dated 05.09.2023, which stated that NHIDCL did not require the said land.

18. The payment for the crops and the land value of the lands in terms of the Award, had been made prior to the NHIDCL letter dated 05.09.2023. When other lands covered by similar Periodic Pattas had been assessed for land compensation, there was no justification not to assess the land of respondent No. 1, for payment of compensation for the value of land. Further, the reply made by the SPIO/Addl. District Council, Serchhip, in his RTI reply Letter dated 22.06.2023, shows that the absence of land value in the Award, only in respect of the respondent No. 1, was due to a clerical mistake.

19. Thus, keeping all of the above in view, the only question that is now to be decided is as to whether compensation of land value can be denied to the respondent No. 1, only because the NHIDCL has now taken a stand that the road constructed did not touch the land of the respondent No. 1 and that the said land was not required any longer. In this respect, it would be profitable to refer to the decisions of the Hon'ble Supreme Court and the decision of the Hon'ble Himachal Pradesh High Court.

20. In the case of ***V. Chandrasekaran and Anr. Vs Administrative Officer and Ors***, reported in ***(2012) 12 SCC 133***, the Supreme Court has held in para 25, 26 and 27 as follows:-

“25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the

statutorily stipulated period. [Vide: [Awadh Bihari Yadav v. State of Bihar & Ors.](#), (1995) 6 SCC 31; [U.P.Jal Nigam v. Kalra Properties \(P\) Ltd.](#) (1996) 3 SCC 124; [Allahabad Development Authority v. Nasiruzzaman & Ors.](#), (1996) 6 SCC 424, [M. Ramalinga Thevar v. State of T.N.](#), (2000) 4 SCC 322; and [Govt. of Andhra Pradesh v. Syed Akbar & Ors.](#), (2005) 1 SCC 558: AIR 2005 SC 492.

26. *The said land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of [Section 48](#) of the Act, or under [Section 21](#) of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide: [State of Madhya Pradesh v. Vishnu Prasad Sharma](#), AIR 1966 SC 1593, [Lt. Governor of Himachal Pradesh & Anr. v. Shri Avinash Sharma](#), (1970) 2 SCC 149: AIR 1970 SC 1576, [Satendra Prasad Jain v. State of U.P. & Ors.](#), (1993) 4 SCC 369: AIR 1993 SC 2517, [Rajasthan Housing Board & Ors. v. Shri Kishan & Ors.](#), (1993) 2 SCC 84 and [Dedicated Freight Corridor Corporation of India v. Subodh Singh](#), (2011) 11 SCC 100): (2011) 3 SCC (Civ) 604.*

27. *The meaning of the word 'vesting', has been considered by this Court time and again. In [Fruit and Vegetable Merchants Union v. The Delhi Improvement Trust](#), AIR 1957 SC 344, this Court held that the meaning of word 'vesting' varies as per the context of the Statute, under which the property vests. So far as the vesting under [Sections 16 and 17](#) of the Act is concerned, the Court held as under:-(AIR p.353, para 19)*

"19.....In the cases contemplated by [Sections 16 and 17](#), the property acquired becomes the property of the Government without any condition or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration."

21. In the case of the ***Indore Development Authority Vs Manoharlal and Ors***, reported in **(2020) 8 SCC 129**, the Supreme Court, after considering various decisions, to understand the word "vesting" in relation to acquisition of

land under the Right to Fair Compensation and Transparency and Land Acquisition, Rehabilitation and Resettlement Act, 2013, hereinafter referred to as the 2013 Act, held that once there was vesting of land, free from all encumbrances to the State, there was no provision for divesting the same.

22. In the case ***of Star Wire (India) Limited Vs. State of Haryana 1996 11 SCC 698*** it was observed that once an Award has been passed and possession had been taken in terms of the Land Acquisition Act, 1984, the land vests in the State free from all encumbrances. Para 141 and 145 of ***Indore Development Authorities Vs. Manoharlal & Ors. (Supra)*** is reproduced herein below as follows:

“144. Black's Law Dictionary defines "vested" as follows:

(18c) Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional absolute a vested interest in the estate.

‘Unfortunately, the word "vested" is used in two senses. Firstly, an interest may be vested in possession, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession if it does confer a fixed right of taking possession in the future.’ George Whitecross Paton, A Textbook of Jurisprudence 305 (CW. Paton & David P. Derham eds., 4th Edn., 1972).

'A future interest is vested if it meets two requirements: first, that there be no condition precedent to the interest's becoming a present

estate other than the natural expiration of those estates that are prior to it in possession; and second, that it be theoretically possible to identify who would get the right to possession if the interest should become a present estate at any time.' Thomas F. Bergin & Paul C. Haskell, *Preface to Estates in Land and Future Interests* 66-67 (2nd Edn., 1984)."

145. In Webster's Dictionary, "vested" is defined as:

1. Clothed; robed, especially in church vestments. 2. in law, fixed; settled; absolute; not contingent upon anything: as, a vested interest."

23. In the case of ***Sukh Dev and Ors Vs. Union of India and Ors***, reported in **(2022) SCC HP 6425**, the Himachal Pradesh High Court held that when lands have been acquired under the National Highways Act, 1956 read with provisions of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 and Notifications under Section 3A, 3D (1), 3D (2) have been issued and even the Award under the provisions of Section 3 (G) & (H) of the 1956 was passed, the Award presupposes taking over of possession of lands in question by the respondents, in terms of Section 3 (E) of the 1956 Act. In that case, there is no escape from the conclusion that the acquired lands completely vested with the acquiring authority and there was no provision which permitted divesting of land.

24. In the present case, in view of the various Notifications Declaration, Award and Possession Notice having been issued in terms of Section 3 of the 1956 Act, besides payment of compensation for crops having been made to the

respondent No. 1, prior to the NHIDCL deciding that they did not require the land of the respondent No. 1, which has been vested absolutely with the Government, free of all encumbrances, the same cannot be divested. The appellants and the Government are bound to take the acquisition proceedings to its logical end and will have to pay the compensation amount of the land value to the respondent No. 1. They cannot deny or escape their liability from making payment of compensation for the land of the writ petitioner, while making payments in respect of similar land holdings.

25. When the land of the writ petitioner vests absolutely with the Government, possession of the land has been taken and payment of compensation for crops has been made, the appellants cannot turn around and divest the land back to the writ petitioner, even if the land was not eventually used or touched by the appellants. The appellants are bound to follow through with the due compensation amount payable to the writ petitioner. This would be in consonance with the judgments referred to above.

26. In view of the above, we do not find any reason to interfere with the impugned Judgment of the learned Single Judge.

27. The Writ Appeal is dismissed.

JUDGE

JUDGE

Comparing Assistant