
(2011) 02 GAU CK 0074
In the Gauhati High Court
Case No : Writ Petition (C) No. 49 (K) of 2010

Atoka Sema

APPELLANT

Vs

State of Nagaland and Another

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 GLT 657

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : S.M. Ozukum and Lydia, for the Appellant; Y. Longkumer, Addl. Senior Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—Heard Mr. S.M. Ozukum and Ms. Lydia, learned Counsel, appearing for the Petitioner. Also heard Ms. Y. Longkumer, learned Addl. Senior Government Advocate, appearing for the State- Respondents.

2. The Petitioner, who was occupying a plot of land, measuring 0B-IK-19Ls, adjacent to his own land, submitted an application before the Deputy Commissioner, Dimapur, Nagaland. seeking allotment of the said plot of land. On the basis of the said application, a Surveyor was appointed to verify and submit his report and accordingly the Surveyor, after verification, submitted report. On the basis of the said report, the Deputy Commissioner, Dimapur, Nagaland. vide Order No. Rcv-4/92-D/4161 -65, dated 08.06.2007, regularized the occupation of the land, measuring 0 B-I K-19 Ls, in favour of the Petitioner. Accordingly, the relevant jamabandi was issued covering the said land by Patta No. 145, Dag No. 4/165, Block No. 2 of Dimapur Mouza No. 2, in favour of the Petitioner. Subsequently, at the instance of Dimapur Naga Student Union, the Deputy Commissioner, Dimapur, Nagaland, by his impugned Order No. Rev-16/2007-D/Pt. file, dated 23.03.2010, cancelled the said allotment/patta. issued in favour of the Petitioner, without issuing any notice or giving any opportunity of showing

cause to the Petitioner, in whose favour the land was duly allotted. As the allotment made and the patta issued in favour of the Petitioner was cancelled, without giving him any opportunity of being heard or showing cause, the Petitioner has come with this writ petition by invoking writ jurisdiction under Article 226 of the Constitution of India, seeking a direction for quashing and setting aside the impugned order, dated 23.03.2010 aforesaid.

3. Notice being issued, the State-Respondents have appeared through the Addl. Senior Government Advocate, but failed to contest or deny the Petitioner's claim, by filing any counter affidavit, in spite of giving opportunity.

4. Mr. S.M. Ozukum, learned Counsel, appearing for the Petitioner, has submitted that, as the land was allotted in favour of the Petitioner, followed by issuance of patta and dag numbers, the cancellation of the said allotment and the patta, without giving any notice or opportunity of showing cause, was arbitrary and in violation of principles of natural justice.

5. There is nothing on record to dispute the contentions, raised by the writ Petitioner. The Petitioner, in his writ petition, clearly stated that before passing the impugned order, no notice was issued to him and that he was not given any opportunity of being heard or showing cause. There is no dispute that the land in question was allotted in favour of the Petitioner, vide order, dated 08.06.2007, issued by the Deputy Commissioner, Dimapur, Nagaland, which reads as follows:

ORDER

Dt. Dimapur, the 8th March, 2007 No. Rev- 4/92-D/4161-65/Basing on an application received from Shri Atoka Sema, directed surveyor to verify the site.

As per report the report the Applicant is in occupation of land measuring an area 0 B-1K-19 Ls at Block No. 2, which falls under part of Dag No. 4. Since the Applicant is in occupation of the above land. There is no complain the same size of 0 B-1K-19 Ls is hereby regularized in favour of Shri Atoka Sema as there is no dispute.

He is required to pay premium Rs.

Sd/- K. Nzimongo Mguillie Deputy Commissioner Dimapur: Nagaland

6. Following the said allotment, the jamabandi was prepared, mentioning the Patta No. 145 and Dag No. 4/165, in favour of the Petitioner. The remark column of the said jamabandi, which is annexed to the writ petition as Annexure -"C" indicates that the land was regularized vide D.C.S. Order No. Rev-4/92-D/4161-65, dated 8th June, 2007. The writ Petitioner, in his writ petition, has clearly stated that, after allotment of the said land, the Petitioner was regularly paying the land revenue. A copy of the receipt towards payment of land revenue, has been annexed to the writ petition as Annexure- "E". The impugned order, dated 23.3.2010, issued by the Deputy Commissioner, Dimapur, Nagaland, reads as follows:

ORDER

Dt. Dimapur, the March, 2010 No. Rev-16/2007-D/Pt. file/Reference Dimapur Naga Student Union representation dated 02/03/2010 the allotment made vide Order No. Rev-4/92-D/4161-65 dated 8th June 2007 in favour of Shri Atoka Sema under the land covered by Dag No. 4 measuring an area of 0 B-1K-19 Ls at Block No. 2 recorded as Patta No. 145 Dag No. 4/165 at Block No. 2 is hereby declared cancelled with effect from the date of issue of this order.

Therefore the surveyor I/C Revenue Record branch is directed to cancel the aforesaid allotment/patta as above.

Sd/ Maong Aier Deputy Commissioner Dimapur: Nagaland

No. Rev- 16/2007-D/Pt. file/12604-09

Dt. Dimapur, the 23rd March, 2010

The above order does not indicate that the Petitioner was given any notice or opportunity of showing cause, before passing the said impugned order. As the land was duly allotted in favour of the Petitioner, he acquired right to enjoy the said land, unless the said right was taken away by due process of law, Therefore, he was entitled to be served with a notice, asking him to show cause, if any, as to why the allotment made and the patta issued in his favour should not be cancelled.

7. From the impugned order and the contention made by the Petitioner, it appears that the allotment of land and the patta were cancelled without giving any notice and opportunity of showing cause. Therefore, the cancellation of the allotment order and the patta issued in favour of the Petitioner, thereby depriving the Petitioner from enjoying the said land, without due process of law, was arbitrary and violative of principles of natural justice.

8. In view of the above discussion, this Court has to hesitation in holding that there is sufficient merit in this writ petition, requiring interference with the impugned order aforesaid.

9. Accordingly, the impugned order, dated 23.03.2010, issued by the Deputy Commissioner, Dimapur, Nagaland is set aside and quashed. However, it is made clear that the authority concerned will be at liberty to pass necessary order with regard to the allotment of the said land as per law, giving sufficient opportunity to the Petitioner.

10. The writ petition is allowed. No Costs.