

(2004) 02 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 11 (AP) of 2002

Dugi Tajik

APPELLANT

Vs

Chief Secy. Govt. of A.P. and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Arunachal Pradesh (Land Records and Settlement) Act, 2000 — Section 4, 5(1), 5(2), 83(1)

Assam Frontier (Administration of Justice) Regulations, 1945 — Regulation 50

Citation : (2005) GLT 613 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : T. Michi, for the Appellant; B.L. Singh and P. Taffo, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. T. Michi, learned Counsel for the Petitioner, Mr. B.L. Singh, learned Senior Govt. Advocate for the state Respondents and Mr. P. Taffo, learned Counsel for the private Respondent No. 3.

2. At the outset Mr. Taffo, learned Counsel for private Respondent raised a preliminary objection regarding the maintainability of the present revision petition on the ground that the order dated 9.8.2002 was passed by the Deputy Commissioner as a Revenue Officer, therefore, according to the provisions of Section 83(1)(b) of the Arunachal Pradesh (Land Settlement and Records) Act, 2000 which comes into effect from 17th November, 2000, an appeal shall lie to the Govt. According to the learned Counsel for private Respondent No. 3, in view of this specific provisions in the Act, the present Revision Petition is not maintainable.

3. Mr. T. Michi, learned Counsel for the Revision Petitioner on the other hand contended that in accordance with the provisions of Section 4 of Act, the Govt. has appointed the Director of Land Management, Govt. of Arunachal Pradesh as Revenue Officer for the State of Arunachal Pradesh. Therefore, according to the learned Counsel the power of Revenue Officer can only be exercised by the

Director of Land Management and the Deputy Commissioner is not the Revenue Officer and as such when the order is not passed in the capacity as Revenue Officer, no appeal lies to the Government. The Revision Petition, is therefore, maintainable in terms of Regulation 50 of the Assam Frontier (Administration of Justice) Regulation, 1945, for short, the Regulation.

4. Section 4 of the Act provides that the Government may appoint a Revenue Officer from amongst the classes of Revenue Officers enumerated in Section 4. Therefore, in exercise of this power u/s 4 of the Act the Director of Land Management was appointed as Revenue Officer for the State. The Director of Land Management is therefore responsible for the cadastral survey of the Govt. land in the State as per the Notification dated 2.5.01. The said Notification is quoted below:

GOVERNMENT OF ARUNACHAL PRADESH LAND MANAGEMENT DEPARTMENT:
ITANAGAR No. LR-59/88 (Vol. III) Dated, Itanagar the May, 2001.

NOTIFICATION

In exercise of the powers conferred by Section 4 of the Arunachal Pradesh (Land Settlement & Records) Act, 2000 (Act No. 10 of 2000), the Governor of Arunachal Pradesh is pleased to appoint the Director of Land Management, Govt. of Arunachal Pradesh to act as Revenue Officer for the State of the Arunachal Pradesh.

The Governor is further pleased to order that the Revenue Officer of the State of Arunachal Pradesh shall henceforth carry out Cadastral Survey of the Government lands in the State and shall appoint other Survey Officers or any other officers at such time on such date as may be to assist him by notification in the Official Gazette. He is also authorised to assign the actual work of Cadastral Survey to other Govt. of India's recognised Cadastral Survey Organisations or Private Surveyors and Engineers on the line.

Sd/-T. Taloh Secretary, Land Management, Govt. of Arunachal Pradesh,
Itanagar.

Since the Notification is for appointment of Revenue Officer for the State, we may look into the provisions of Section 5(1)(2) of the Act which reads as follows:

5(1) Each districts shall be placed under the charge of a Deputy Commissioner who shall be in charge of the revenue administration of the district and exercise the powers and discharge the duties of the Deputy Commissioner under this Act or any other law for the time being in force and shall exercise so far as is consistent therewith such other powers of superintendence and control within the district and over the officers subordinate to him as may from time to time be prescribed.

(2) The Additional Deputy Commissioner shall exercise all such powers and perform all such duties of the Deputy Commissioner or other Revenue Officer as

the State Government may specify by notification in the Official Gazette.

5. A perusal of the provisions of above Section 5(1)(2) it shows that the Deputy Commissioner is in charge of Revenue Administration at the district level. Therefore, he is the Revenue Officer for the District. However, on perusal of the impugned order dated 9.8.2002 passed by the Deputy Commissioner, Papumpare District under No. DC/LA (Govt.) 058/2000 it shows that the impugned order was passed by the Deputy Commissioner in the capacity of Judicial Officer as a Court and not in the capacity of Revenue Officer. That being the position, I am of the opinion that this Revision Petition is maintainable under provisions of Regulation 50 of the Regulation.

6. Coming to the facts of the case, briefly stated is that the Petitioner was allotted a plot of land measuring 3750 Sq.M. at "A" Sector, Naharlagun vide allotment order dated 1.4.1993 as per the boundaries contained in the allotment order. However, the said plot of land allotted to the Petitioner was reduced to an area of 1875 Sq. M. vide allotment order dated 6.9.1993.

7. According to the Petitioner, out of the said land allotted to him, he had allowed the husband of the private Respondent No. 3 Shri N.H. Sera to occupy a portion of the land as per agreement dated 28.4.1994 on condition that the said husband of the Respondent shall vacate the land without any objection when the same is required by the Petitioner. However, the said husband of the private Respondent No. 3 did not vacate the land when the Petitioner wanted back the land.

8. When the husband of the private Respondent No. 3 did not vacate the land, a complaint was lodged by the Petitioner to the Extra Assistant Commissioner, Papumpare, Naharlagun and the Extra Assistant Commissioner by an order dated 17.5.2000 has decided that the Petitioner is the legal owner of the land in question and he has right to eject Shri N.H. Sera (husband of private Respondent) from his present occupation of the land. Subsequently vide Eviction Notice dated 19.5.2000, the Deputy Commissioner has issued eviction notice against Shri N. H. Sera (husband of private Respondent). After the issue of the said eviction notice by the Deputy Commissioner, Papumpare, the private Respondent had approached this Court by way of filing a writ petition and this Court has passed an order directing the Deputy Commissioner, Papumpare to consider her case for allotment of land or a portion of land under the occupation of private Respondent No. 3. The said direction of this Court was duly considered by the Deputy Commissioner, Papumpare and by order dated 17.11.2000, the learned Deputy Commissioner came to the following conclusion:

From the perusal of the records, hearing of the parties and witnesses and the field verification it is clear that Smt. Nabam Yape is presently occupying a portion of land allotted to Shri Dugi Tajik. The claim of the Petitioner that she is occupying the land outside the allotted land of Shri Dugi Tajik, could not be substantiated.

From the circumstances of the case, it is also clear that present land, occupied by Smt. Nabam Yape, cannot be outside the land of Shri Dugi Tajik. Had there been some vacant land near the land of Shri Dugi Tajik, Shri H.N. Sera, the husband of the Petitioner would have occupied that vacant land as the case of allotment of that land could have been considered by the Govt. The signing of Deed of Agreement with Shri Dugi Tajik clearly indicates that no vacant land was available adjacent to the land of Shri Dugi Tajik and therefore the petitioner and her husband had to take land from Shri Dugi Tajik. The claim of the Petitioner before the Hon"ble High Court that she is in occupation of the land since 1990 is not true.

By the above decision of the Deputy Commissioner, Papumpare, it shows that the present Petitioner was held to be the owner of the land which was occupied by the private Respondent. It was also held that the land of the private Respondent cannot be outside the land of the Petitioner. After the above order was passed by the learned Deputy Commissioner, Papumpare, the Petitioner has approached the Deputy Commissioner, Papumpare for eviction of the private Respondent from his land.

9. Against the order passed by the learned Deputy Commissioner, Papumpare, the private Respondent has submitted a Review Petition before the learned Deputy Commissioner, Papumpare and thereafter this impugned order dated 9.8.2002 was passed.

10. Upon hearing learned Counsel appearing for the parties and on perusal of records, it is seen that it is the admitted position that the Petitioner was allotted a plot of land measuring 3750 Sq.M. at "A" Sector, Naharlagun vide allotment order dated 1.4.1993. Thereafter the area of the said land was reduced to 1875 Sq. M. by an allotment order dated 6.9.1993. However, the private Respondent has contended that the allotment of land to the Petitioner by the allotment order dated 6.9.1993 was in 2 (two) plots measuring 1875 Sq.M. and that the land under occupation of the private Respondent was not within the land of the Petitioner. This point raised by the private Respondent is also admitted in paragraph 3 of the Revision Petition whereby it shows that by the allotment order dated 6.9.1993, the Petitioner was allotted 2 plots of land i.e. plot (A) is 475 Sq.M. and plot (B) is 1399.86 Sq.M. This position regarding the allotment of land to the Petitioner, whether in one plot or two plots and whether the land of the private Respondent falls within the allotted land of the Petitioner are the two important issues to be decided in the instant case.

11. A perusal of the original records received from the Court of the Deputy Commissioner, Papumpare, it is seen that although the Deputy Commissioner has decided the matter as a Court, but no evidence was recorded by the learned Deputy Commissioner, Papumpare. There is also no issues framed on the basis of the claim and the counter claims made by the parties. Needless to say that while passing the impugned order dated 9.8.2002, the learned Deputy Commissioner has come to the following conclusions:

As per the facts and the depositions available in the matter, it is clear that Shri Dugi Tajik was allotted a plot of land measuring 875 Sq. Mtr. vide Govt. Order No. DL/L-4/83-85/93 dtd. 6.9.93 at "A" Sector, Naharlagun. On 28.4.94 Shri Dugi Tajik and Shri H.B. Sera (Husband of Smt. Nabam Yape) entered into an agreement for a portion of the allotted land for use measuring 840 sq. mtr. The issue of this agreement was decided in order dtd. 17.11.2002 and there is no need to go into this issue again. However, the fact remains that Shri Dugi Tajik has also tried to dispose of this particular portion of land to Shri L. Tatam, vide Govt. order No. LR-4/98/Dtd. 24th July/2001. This shows that Shri Tajik has sufficient land for residential purpose and Smt. Nabam Yape does not have any land for the residential purpose in capital complex area. The Govt. Policy for land regularization does not provide freedom to any individual to occupy excess land than his requirement and in the instant case it is clear that Shri Dugi Tajik is having sufficient land and he is interested in disposing his allotted portion of land to others. On the other hand Smti. Nabam Yape is fighting for the survival for land.

Considering all the facts and the materials available in the case it is ordered that the land available with Shri Nabam Yape in the form of encroachment be measured and be restricted to 500 sq. mtr. And the remaining portion be provided to Shri Dugi Tajik in view of the allotment order vide No. DL/L-4/83-85/93 Dtd. 6.9.93. EAC(LM) shall take action accordingly within 15 (fifteen) days of the receipt of this order. Thus the directives of Hon'ble Gauhati High Court W.P.(C) No. 2374 of 2000 dated 18.5.2000, W.P.(C) No. 191 (AP) 2001 dated 7.6.2001 and No. W.P.(C) 191 (AP)-2001 dated 12.6.2001 and the review petition of Smti Nabam Yape dated 27.11.2001 are hereby are adhered.

12. By the above conclusion reached at by the learned Deputy Commissioner, it is seen that the order was passed on humanitarian consideration on the ground that the Petitioner is alleged to have sufficient land and had attempted to self the allotted land and that since the private Respondent has no land, the land of the Petitioner occupied by the private Respondent is to be allotted to her. This decision is purely on humanitarian consideration and not on the basis of the facts and circumstances of the case. There is no record to support the above conclusion reached at by the learned Deputy Commissioner, Papumpare.

13. Considering all facts and circumstances of the case, I am of the opinion that the matter required to be decided afresh by the Court of Deputy Commissioner, Papumpare by following due procedure of law. Consequently the impugned order dated 9.8.2002. Annexure-I to the Revision Petition is hereby set aside and quashed and the case is remanded back to the learned Deputy Commissioner, Papumpare for fresh trial.

The learned Deputy Commissioner, Papumpare is directed to try the case afresh by allowing the parties to adduce their evidence and also to frame issues in the light of the observation mentioned above and after following the due procedure of law shall pass an appropriate and reasoned order in accordance with law and

principles of natural justice. An endeavour shall be made to dispose of the matter as early as possible, preferably within a period of 4 (four) months from the date of receipt of the records.

This Revision Petition is accordingly disposed of.

There shall be no order as to costs.