
(2010) 09 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No's. 111 (K) and 217 (K) of 2009

Inavi Village

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Constitution of India, 1950 — Article 371A
Forest (Conservation) Act, 1980 — Section 3
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2, 4(3), 4(5)
Wild Life (Protection) Act, 1972 — Section 34A

Citation : (2011) 1 GLR 69

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : P. Khataniar, A. Kukavi Zhimomi, Bodo and I. Longjem, for the Appellant; L.S. Jamir, Y. Longkumer and T.B. Jamir, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. P. Khataniar, learned Counsel appearing for the Petitioner Inavi Village. Also heard Mr. I. Longjem, learned Counsel appearing for the Petitioner Naga United/Inavi Village. Mr. L.S. Jamir, learned Addl. Advocate General along with Ms. Y. Longkumer, appears for the State Respondents. The Union of India is represented by Mr. T.B. Jamir, learned Central Government Standing Counsel.

2.1 It has been made be clear at the very outset that in the 2 (two) writ petitions, the prayers of the Petitioners are substantially same and the only reason for the 2 separate petition as explained in the WP(C) No. 217(K)/2009 is because of the difference amongst the writ Petitioners, on the nomenclature of the village under which they seek recognition. One group led by Havito Sumi wish to be identified as representative of the Inavi village whereas the other group headed by Tokugha Achumi, wish to be recognized as the Naga United/ Inavi village.

2.2 Barring the above difference on the nomenclature of the village, both groups claim right of occupation of forest land within the Intangki Reserve Forest, National Park and Wild Life Sanctuary notified on 7.5.1923, 22.4.1975 and 3.3.2009 respectively.

3.1 Arguing the WHO 111(K)/2009, Mr. P. Khataniar submits that when the Petitioners wanted to settle down in the area, the Nagaland Home Commissioner on 22.4.1988 accorded permission to the intending migrants to establish a village at a place called Hazadisa and on the basis of such permission it is claimed that the Inavi village was established in the area, adjacent to the recognized Beisumpukam village near the Monglomukh river with the following land boundaries:

North - Beisumpukam Village

South - Intangki River

East - Dhansiri River

West - Monglamukh River

3.2 After the village was established, the Petitioners sought Government recognition of their village and according to the annexures appended in the writ petition, recommendation were made by the local Revenue Authorities for establishment of the Petitioner village in the Intangki Forest area and also for granting recognition to the said village. But it is apparent that Petitioners occupation was not peaceful as it is the Petitioners own averments in the writ petition, that the settlers were subjected to eviction(s) on as many as 27 occasions. But since the Petitioners were determined to settle in the area, they have regrouped and reoccupied the area, after each eviction operation(s).

3.3 Mr. Khataniar contends that the eviction operation(s) against the Petitioner have been selectively made since no such eviction operation has been carried out against the neighbouring Beisumpukam village. It is further submitted that since the Petitioner are Naga Tribesmen and are dependent on forest and its resources, they are entitled to protection granted under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("the Forest Dwellers Act").

3.4 The learned Counsel refers to the provisions of Section 4(3) of the Forest Dwellers Act to show that the benefits under the Act should be available to the Petitioners as they occupied the forest land before the appointed date, i.e., 13th day of December, 2005. Reference to the provisions of Section 4(5) of the Forest Dwellers Act has also been made by the Petitioner's counsel to contend that until the verification exercise for recognition of their rights under the Act is concluded, they should not be subjected to eviction from their occupied forest land.

4. Mr. I. Longjem, learned Counsel representing the other group of the Intangki villagers supplementing the arguments submits that the State authorities

launched the eviction operation without following the due process of law. The learned Counsel further submits that as the Petitioners have no other land for their settlement they have time and again regrouped and reoccupied the forest area after every eviction operation.

5.1 Refuting the right claimed by the Petitioners to the protection and privileges under the provisions of Forest Dwellers Act, Mr. L.S. Jamir, learned Addl. Advocate General submits that since the Petitioners have encroached into a notified National Park and wild life sanctuary, they are to be considered as illegal encroachers and since they have put forest lands to non-forest use, strict action under the provisions of the Forest Conservation Act, 1980 and Wild Life Protection Act are required to be taken against such illegal encroachers.

5.2 By referring to the map of the Intangki National Park area, the learned Addl. Advocate General contends that the permission accorded to establish Intangki village was at different place called Hazadisa at a distance of about 6/7 k.m. away from the Intangki National Park and on the basis of the permission accorded on 22.4.1988 for a different place, the Petitioners are not entitled to encroach upon the Intangki Forest land.

5.3 As regards the protection claimed by the Petitioners under the Forest Dwellers Act, the learned Addl. Advocate General contends that object of the said Forest Dwellers Act is to vest certain rights on those forest dwellers who are residing in the forest area for generations and since the Petitioners are relatively recent migrants to the said forest area and are not residing there from generation to generation, they can't claim protection under the said Act in the Intangki forest area.

5.4 In support of his contention, the learned Addl. Advocate General refers to the averments made in paragraph 5 of the WP(C) 217/2009 where the writ Petitioners have themselves stated that they originally belonged to village Iphonumi in Pughoboto Sub-division of Zunheboto district and considering the availability of large tracts of land within the Intangki forest, the Petitioners decided to migrate and establish a new village in the forest area.

5.5 It is further contended on behalf of the Government that there can be no automatic application of the provisions of the Forest Dwellers Act in the State of Nagaland. Since the Forest Dweller Act deals with ownership and transfer of land and its resources and any Central Act dealing with these subjects, can have no legal application in Nagaland. This is because of Article 371A of the Constitution where it is provided that the Legislative Assembly of Nagaland must resolve to apply such parliamentary enactment to apply it to the State of Nagaland.

5.6 By referring to the provisions of Section 34A of the Wild Life (Protection) Act, 1972 (hereinafter referred to as the Wild Life Act) the State contends that it has the legal authority to evict encroachers from a sanctuary or a National Park and remove unauthorized structures and constructions raised by the encroachers on National Park land.

5.7 The learned Addl. Advocate General also refers to the joint Survey Report (prepared on the strength of this Court's order dated 8.10.2009) to show that the occupied lands fall within the Intangki National Park within its tourist zone where only limited visiting rights are available for Tourists and that too under strict regulation in the company Sub-section (5) of Section 4 of the Forest Dwellers Act. The procedure for vesting of forest rights are specified under Chapter (iv) of the Act and a mechanism for redressal is also provided, if anyone is aggrieved by the original authority's decision at the Gram Sabha level.

7. Thus, it is clear from the Forest Dwellers Act, that if any person or a class of persons come within the definition of forest dwelling scheduled tribes defined u/s 2(c), their rights in the forest are required to be protected. But for the Act to apply to a group, certain preconditions are required to be satisfied. Either such forest dwellers were forced to relocate due to State intervention or they must be traditional forest dwellers residing in the forest for generations.

8. The court must now examine whether the Petitioners qualify to be considered as forest dwelling scheduled tribes u/s 2(c) of the Act. The pleaded case of the Petitioners in WP(C) 217(K)/2009 is that they are not original inhabitants of Intangki forest area within Peren Sub-Division (now district) but are recent migrants from Pughoboto sub-division of Zunheboto district. Since no State intervention is attributed for their migration, I feel that no benefit can be claimed by them under the Forest Dwellers Act. Beneficial provisions are also unavailable to them because the Petitioners or their forefathers were not original inhabitants of the Intangki forest area.

9. The Forest Protection Act has been enacted to confer certain rights on legitimate forest dwellers and the beneficial provisions of the Act can't be claimed by any person or group, who are no better than illegal encroachers of reserve forest land. Even for landless persons, right of settlement can't be considered in reserve forests which are required to be protected and this Court is of the considered opinion that encouraging such claims would adversely impact the obligation to protect our forests for the future generations.

10. Furthermore, since the Forest Dwellers Act vests rights over land, no automatic application of the Forest Dwellers Act to the State of Nagaland is permissible in view of the special provisions made under Article 371A(a)(iv) of the Constitution as any Parliamentary enactment, in respect of ownership and transfer of land and its resources for its application in Nagaland, has to be ratified by the Nagaland Legislative Assembly through a Resolution recorded for such application.

11. Insofar as the eviction operation(s), there is some substance in the Petitioners allegations that they were not provided any opportunity before they were evicted. But considering the ground reality and the determination of the encroachers to regroup and reoccupy even after the 27 admitted eviction operation(s), and addition of fresh encroachers, the State has been only partially

successful in eviction of encroachment. But nevertheless u/s 3 of the Forest (Conservation) Act, absolute bar on de-reservation of forest or use of forest land for non-forest purpose is placed. Admittedly the land over which the Petitioners seek to establish their village fall within a notified national forest area. Therefore, this Court finds no legal right for the Petitioners to settle down and put the Intangki forest land, to non-forest use for their habitation.

12. It is apparent from the annexed map and the survey report that the Petitioners have not confined their occupation to the Hazadisa area permitted to be occupied on 22.4.1988 for establishment of the Inavi village. The Hazadisa area is located at a distance of 6/7 k.m. from the Intangki forest and, therefore, the said permission of the Home Commissioner does not in my view, confer any legitimacy on the Petitioners possession of the notified Intangki National Park lands.

13. The State has a legal obligation to ensure protection of all forest area specially the notified National Park area and balancing the private claim of the Petitioners vis-a-vis the larger public interest, I see no justification to give any direction to the State, for consideration of the Petitioners representations, seeking recognition for their village attempted to be set up, within the Intangki forest area.

14. Although the jurisdiction of the Revenue Authorities of Dhansiripar Sub-Division to make recommendation in favour of the writ Petitioners has been questioned by the learned Addl. Advocate General as the occupied area falls within a different (Peren" Sub-Division, since it is already held that the Petitioners have no legal right to claim recognition of their village in a notified forest area, I see no reason to pronounce on the authority of the Dhansiri (not Peren) Sub-Division authorities to recommend the Petitioners case.

15. Accordingly it is declared that the State is under an obligation to remove illegal encroachment from the Intangki Reserve Forest area. But it must also be made clear that eviction should be carried out only after affording a hearing to the affected persons as provided u/s 34A of the Wild Life (Protection) Act, 1972. The State must also ensure that the cleared forest land is not subjected to fresh/ further encroachments.

16. Since this Court has held that the writ Petitioners are not eligible to be protected under the Forest Dwellers Act, I find no merit in these writ petitions and the same are accordingly dismissed. Interim order if any, also stands recalled. No costs.