
(2016) 05 GAU CK 0064
In the Gauhati High Court
Case No : WP(C) No.423(AP) of 2012

Joram Tapu

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Arunachal Pradesh (Land Records and Settlement) Act, 2000 — Section 86

Citation : (2016) 5 GauLR 364

Hon'ble Judges : Dr. (Mrs.) Indira Shah, J.

Bench : Single Bench

Advocate : Mr. Tamar Gadi and Mr. D. Loyi, Advocates, for the Petitioner; Ms. Geeta Deka and Mr. Kento Jini, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. (Mrs.) Indira Shah, J.—Heard Mr. Tamar Gadi, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Geeta Deka, learned Senior Government Advocate, appearing on behalf of State respondent Nos. 1, 2, 3, 5 and 6. However, none has appeared on behalf of respondent No. 4.

2. The petition, herein, had obtained 8 Nos. of Land Possession Certificates (LPCs) from the office of the Deputy Commissioner, Lower Subansiri District, Ziro, Arunachal Pradesh, in respect of-an area measuring approximately 383182.87 sq. mtrs. of land at Mido Pob area of Joram village under the administrative circle of Vachuli. in Lower Subansiri District of Arunachal Pradesh.

3. According to the petitioner, he had inherited the said plot of land from his deceased father. The Deputy Commissioner, Ziro, received some complaints from some private parties and constituted an Enquiry Committee and in view of the reports submitted by the said Enquiry Committee, another Committee for verification of the LPCs issued in favour of the petitioner, was constituted. The subsequent Enquiry Committee submitted a report that out of 8 Nos. of LPCs, the petitioner had voluntarily agreed to surrender 7 Nos. of LPCs issued in his favour.

4. It is alleged by the petitioner that the Enquiry Committee with an ulterior motive had stated that the Land Possession Certificates (LPCs) obtained by the petitioner falls under the Pine Plantation area of Yachull Forest Range under Hapoli Forest Division. The said area falls under the Community of the Mai and Joram villages and they opined that all 8 nos. of the Land Possession Certificates (LPCs) issued in favour of the petitioner, may be cancelled by the authorities concerned.

5. It is further alleged by the petitioner that the complainants were also the members of the Enquiry Committee. Therefore, the second Inquiry Report prepared by the Second Enquiry Committee, is liable to be interfered with, by this court.

6. The Deputy Commissioner, Ziro, without giving any opportunity of hearing to the petitioner, has passed the impugned order, whereby the Land Possession Certificates (LPCs) issued in favour of the petitioner, have been cancelled.

7. The contention of the petitioner is that the Land Possession Certificates (LPCs) were issued in his favour following due process of law. On the basis of complaint, an enquiry was conducted and the First Enquiry Committee, vide its report dated 11.5.2011, stated that the Land Possession Certificates (LPCs) were legally issued in favour of the petitioner. The Second Enquiry Committee, however, submitted report against the petitioner and in the Second Enquiry Committee, complainants were also members of the said Committee.

8. The State respondent No. 3, in its counter-affidavit, has stated that the Deputy Commissioner, Ziro, formed a Board consisting of 9 members headed by Sri Tamar Murtem, Extra-Assistant Commissioner, as Chairman to conduct spot verification of lands in connection with 8 Nos. of Land Possession Certificates (LPCs) issued in favour of the petitioner at Mido Pob area. A copy of the Circular with regard to constitution of the Board was issued to the petitioner and the Board members.

9. On 20.10.2011, the petitioner was present in the discussion of the meeting and he put his signature in the list of members present. He duly attended the proceeding of the hearing before the Board and voluntarily agreed to surrender 7 Nos. of Land Possession Certificates (LPCs) issued in his favour on the following grounds :

(i) That the area falls under the Pine Plantation area of Yachuli Forest Range under Hapoli Forest Division

(ii) That the area falls under the Community land of Mai and Joram villages and

(iii) By respecting the sentiments of the villagers and the public interest.

However, the petitioner requested the Committee to consider and verify" the Land Possession Certificates (LPCs) numbering LMZ/LPC/Y-6/ 2008/ 1336 dated 9.5.2008 measuring 48060.00 sq. mtrs, located at Mido Pob area. The

Committee accepted the request as well as the proposal of the petitioner. There was spot verification on 21.10.2011 and it was found that the area falls under the Pine Plantation area of Yachuli Forest Range under Hapoli Forest Division. The area also falls under the Community land of Mai and Joram villages. The extent of land as per the boundary description was more than 48060.00 sq. mtrs. and in view of the above facts, the Committee members opined that the above-mentioned Land Possession Certificates (LPCs), may be cancelled.

10. According to the State respondent No, 3, the land, in question, is a Community land of Mai and Joram villages and it is not an ancestral property of the petitioner. He was illegally occupying the laird, in question, and applied for the Land Possession Certificate (LPC). He somehow managed to obtain the No Objection Certificate from the concerned persons. He produced the NOC issued by the Head GB, ZPM, GPM of Peil and Joram villages but the land, in question, was the Community land of Mai and Joram villages and not of Peil and Joram villages.

11. It has been further stated that the verification committee headed by the Additional Deputy Commissioner, Yachuli, did not make any physical spot verification and on the subsequent inquiry, it was found that the officials from Land Management Branch, Government of Arunachal Pradesh, did not attend the said verification, There was no bar that the complainants cannot be members of the Board to re-verify the matter. The second Enquiry Committee heard both the complainant and the LPC holder.

12. As per the Enquiry Committee report dated 11.5.2011, the Committee conducted an enquiry by making spot verification on 2.5.2011 and it found that the Land Possession Certificates (LPCs) possessed by the petitioner Sri Joram Topu does not fall under the boundary of Ziro-I or under any forest area of Ziro-I and Ziro-II administrative circles. It was further observed that it seems to be the community land of Peil and Joram villages under Hapoli Circle but the status of the said land was unused. The intention of the Land Possession Certificates(LPCs) possessor, is found to use the land, in question, for various purposes of agriculture and horticulture and other developmental activities in that unused land. The Divisional Forest Officer, Hapoli, had issued NOC in respect of the Land Possession Certificates(LPCs) issued to the petitioner and then the Ziro Deputy Commissioner, legally issued the Land Possession Certificates (LPCs) in favour of the petitioner.

13. The second Enquiry Committee conveyed a meeting on 4.10.2011 to discuss and fix suitable date for spot verification in respect of the 8 nos. of Land Possession Certificates (LPCs) issued to the petitioner.

14. It was also decided to call for the petitioner in tine next meeting to obtain his views. The second Enquiry Committee report says that on 20.10.2011, the petitioner was present in the meeting and he voluntarily agreed to surrender the 7 nos. of Land Possession Certificates (LPCs) issued to him for the reasons that

the area falls under the Pine Plantation area of Yachuli Forest Range under Hapoli Forest Division and that the area falls under the community land of Mai and Joram villages and respecting the sentiments of the villagers.

15. Thus, there is a sharp contradiction between the first Enquiry Committee report and the seeded Enquiry Committee report. The first Enquiry Committee report says that the area does not fall under the Forest Range or Forest Division. The land, in question, was the Community land of Peil and Joram villages under the Hapoli Circle. The second "Enquiry Committee neither perused the official records nor recorded any evidence. The committee concluded its report and findings based on admission of the petitioner, the petitioner had disputed that he ever agreed to surrender 7 nos. of Land Possession Certificates (LPCs) issued to him or he had admitted that the area falls under the Pine Plantation area of Yachuli Forest Range under Hapoli Forest Division or it is a community land of Mai and Joram villages.

16. As per section 12 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000, the Deputy Commissioner may allot land belonging to the Government for agricultural purposes or for construction of dwelling houses as may be made in this behalf under this Act.

Section 13 of the Act requires that land revenue to be paid to the Government in respect of the land applied.

Chapter 4 of the Act speaks about survey and settlement of land revenue.

Chapter 5 Section 38 of the Act mandates that the Survey Officer has to prepare a record of rights for each village showing the area of each survey number and other particulars.

Chapter 8 of the Act deals with appeals and revisions.

As per Section 83, air appeal/revision shall lie to the Deputy Commissioner if such an order is passed by the officer sub-ordinate to g the Deputy Commissioner; Appeal lies to the Secretary if the order is passed by the Deputy Commissioner and to the Director of Land Settlement and Records if the order is passed by Survey and Settlement Officer.

Section 84 deals with period of limitation of the appeal. As per section 84, no appeal lies after the expiry of 30 days from the date of the order.

17. The petitioner, herein, has claimed himself to be land owner holding the right and title of ownership of the land, by rights, whereas the respondents have claimed the land, in question, as a community land.

18. Sub-clause (3) of section 86 says that no order passed by the Revenue Officer or Deputy Commissioner, shall be reviewed except on the following grounds :

(i) Discovery of new and important matter of evidence;

- (ii) Some mistakes or error apparent on the face of the record, or
- (iii) Any other sufficient reason.

19. Herein, in this case, it appears that the private Respondent No. 7 has alleged that the land allotted to the petitioner belonged to them and, therefore, it may be a case of discovery of new and important matter of evidence. However, it is seen "that no such evidence was recorded by the Deputy Commissioner or by the Board constituted in this behalf.

Moreover, proviso to section 95 says that if in a dispute between the parties, a question of title is involved, a Civil Suit may be brought for adjudication of such question and the Civil Court shall have the jurisdiction to decide the dispute to which the Government is not a party relating to any right or entry which is recorded in the record of rights.

20. In the present case, the rights of the petitioner was recorded in the record of rights and there is a dispute between the petitioner and the private respondent with regard to title of land, in question, and, therefore, the civil court was the appropriate forum to adjudicate the matter, at hand.

21. Once the Land Possession Certificates (LPCs) were granted in favour of the petitioner after observing all the procedures laid down in the Act, and it was re-affirmed by the first Enquiry Committee, the findings of the second Enquiry Committee, as discussed earlier, which is not based on evidence and any reason, and based on the report of the second Enquiry Committee, the Impugned order of cancellation of the LPCs issued by the Deputy Commissioner, in favour of the petitioner, is, liable to be set aside and quashed.

22. In view of the above, is hereby set aside and quashed. However, the private respondents are at liberty to approach the appropriate forum for redressal of their grievances, if any.

23. With the above directions, the writ petition stands disposed of, however, without costs.