
(2020) 03 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (c) No. 222 Of 2016

Jowel Thang Hmar

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 19-03-2020

Acts Referred:

Manipur Land Revenue And Land Reforms Act, 1960 — Section 2(j)

Citation : (2020) 03 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Th. Khagemba, Lenin Hijam

Final Decision : Allowed

Judgement

[1] Heard Shri Th. Khagemba, learned Advocate appearing for the petitioner and Shri Lenin Hijam, learned Addl. AG appearing for respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the order dated 20/01/2016 as being violatve of the principles of natural justice.

[3.1] According to the petitioner, he is the Chief of Jairolpokpi village after he having inherited from his father in the year 2008 and in respect thereof, the Executive Magistrate, Jiribam, Imphal East issued an order dated 21/02/2008 in Misc. Case No.2 of 2008 in the Court of Executive Magistrate, Jiribam. Thereafter, the SDC, Jiribam issued a residential certificate in favour of the petitioner who is the rightful owner of the village, all landed property, standing crops, trees, etc and he has been paying Hill House Tax for the last so many years.

[3.2] The land of the petitioner was illegally allotted to the Department of Police by the Government of Manipur for construction of IRB/MR Bn. HQ and Subsidiary Police Training Centre at Jiribam. When his father opposed the construction, he was illegally arrested, detained and tortured by the police personnel, Jiribam. The construction of the Manipur Police Training Centre was commenced in the

year 2005-06 and his father died due to harsh acts of the respondents. The land of the petitioner was forcibly occupied by the respondents and when the petitioner objected to, he too was put in the lock up. Being aggrieved by the action of the State Government, the petitioner submitted a representation to the then Hon'ble Minister, Revenue, Forest & Law (Local MLA, Jiribam A/C) with a prayer to award compensation for the land acquired by the respondents for the purpose of construction of the Manipur Police Training Centre.

[3.3] The Addl. Deputy Commissioner, Jiribam addressed a letter dated 23/12/2009 to the Deputy Commissioner, Imphal East stating that the Jairolpokpi village is a Hill House Tax paying tribal village inherited by the Hmar Community. The village has 72 (seventy-two) hill house tax families who would be given share of the compensation. The land of the petitioner was taken away without following due process of law.

[3.4] The petitioner filed a writ petition being WP(C) No.342 of 2012 in which an affidavit-in-opposition was filed enclosing therewith an allotment order dated 29/05/2008 issued by the Principal Secretary (Revenue), Government of Manipur in favour of the Department of Police, Government of Manipur. The said allotment was never made known to the petitioner, until the State Government filed it along with their counter affidavit. The petitioner filed a rejoinder affidavit thereto. After having heard the learned counsels appearing for the parties, on 18/12/2014 the petitioner was allowed to withdraw the writ petition with a liberty to file fresh a writ petition considering the fact that the State Government had relied upon the document dated 29/05/2008 issued by the Revenue Department. Thereafter, the petitioner filed another WP(C) No.737 of 2015 challenging the validity and correctness of the allotment order dated 29/05/2008. Alternatively, a prayer was made that the compensation should be paid in lieu of the said land. During the pendency of the said writ petition, the petitioner was served with a show cause notice dated 15/12/2015 which was pasted on the wall of his house on 22/12/2015. On 23/12/2015, the petitioner submitted an application to the Deputy Commissioner, Imphal East praying for furnishing copies of the documents which were referred to in the show cause notice. Since the copies thereof were not furnished to him, the petitioner filed an application being MC(WP(C)) No.16 of 2016 on 19/1/2016 praying for impleadment of the Deputy Commissioner, Imphal East which was allowed on 28/01/2016.

[3.5] The Deputy Commissioner issued an order on 20/01/2016 cancelling the earlier order dated 21/02/2008 issued by the Executive Magistrate, Jiribam and all subsequent actions taken up thereto. A copy of the said order was furnished to the counsel appearing for the petitioner on 16/03/2016, when the said writ petition being WP(C) No.737 of 2017 was listed for consideration. One of the grounds which was not mentioned in the show cause notice, was added in the order to the effect that the provisions of the Manipur Hill Areas (Acquisition of Chiefs' Rights) Act, 1966 were not extended to the allotted land for the reason that the allotted land is not a hill area under the provisions of Section 2 (j) of

MLR & LR Act, 1960.

[3.6] Being aggrieved by the said order dated 20/01/2016, the instant writ petition has been filed by the petitioner on the inter-alia grounds that since the order was passed by the Executive Magistrate, Jiribam, the Deputy Commissioner, Imphal East was not the competent authority to cancel it. There is no provision in the MLR & LR Act, 1960 thereby empowering the appellate authority for taking suo motu cognizance to set aside the judicial order passed by the subordinate Court. The Deputy Commissioner, Imphal East ought not to have passed the said order as the subject matter relating to the issuance of the show cause notice was sub judice before the Hon'ble High Court.

[3.7] An affidavit-in-opposition has been filed on behalf of the respondent Nos.1, 2 & 3 stating that the Jairolpokpi village is not a hill village under the Manipur Hill Area (House Tax) Act, 1966 but a revenue village under the MLR & LR Act, 1960. There is no question of Chiefship as alleged by the petitioner in respect of the valley revenue village under the gazette. The order dated 21/02/2008 issued by the SDO, Executive Magistrate, Imphal East was not tenable on two grounds-one, the SDO/Executive Magistrate is not the competent authority to declare Chief of the village and two, Jairolpokpi village is a revenue village and therefore, there is no provision for declaration of a Chief for Jairolpokpi village under any Act. The land in question is a State land used previously by the Forest Department as a rubber plantation firm and the villagers for their livelihood. As per the notification dated 22/02/1962 issued by the Chief Commissioner, Manipur, Jairolpokpi village is a revenue village. The Hill House Tax is payable only in respect of hill areas duly notified by the State Government. In the absence of any notification notifying the valley village as hill areas, the collection of hill house tax is illegal and could not have been collected by the State Government.

[4] The subject in issue relates to the validity and correctness of the order dated 20-01-2016 issued by the Deputy Commissioner, Imphal East. It has been submitted by the counsel appearing for the petitioner that the petitioner was declared as the chief of the Jairolpokpi village by the Executive Magistrate vide its order dated 21-02-2008 and without it being challenged by anyone, the Deputy Commissioner vide its order dated 20-01-2016 suo motu cancelled it without any authority. The Jairolpokpi village is a hill house tax paying village for which the petitioner being the chief of the village, has been paying hill house tax. The land belonging to him, has been forcefully occupied by the State Government and therefore, he is entitled to compensation. On the other hand, the stand of the State Government is that the Jairolpokpi village is a revenue village in terms of the Notification dated 22-02-1962 issued by the then Chief Commissioner and it being a Government land, it was allotted to the Police Department vide order dated 29-05-2008 for construction of IRB/ MR Bn. HQ and Subsidiary Police Training Centre.

[5] The allotment order dated 29-05-2008 is being challenged in WP(C) No.737

of 2015 and moreover, since the Notification dated 22-02-1962 is not the subject in issue herein, this Court cannot go into the legality and correctness thereof and make any observation thereon. Therefore, the limited question that arises for consideration by this Court is as to whether the cancellation of the order dated 21-02-2008 by the Deputy Commissioner vide its order dated 20-01-2016 is legally valid. It is an undeniable fact that the Deputy Commissioner is superior to Sub- Divisional Officer who has passed the order dated 21-02-2008 by exercising its magisterial power. There is no any material on record to show that the said order dated 21-02-2008 has been challenged by any person before the Deputy Commissioner as an appellate authority or as the District Magistrate. The main ground on which the said order dated 21-02-2008 was cancelled by the Deputy Commissioner, was that the Executive Magistrate was not competent to issue the order and that the areas is not a hill area under the provisions of Section 2(j) of the Manipur Land Revenue and Land Reforms Act, 1961. As has been stated hereinabove, the issue relating to the application of the Manipur Land Revenue and Land Reforms Act, 1961 and the validity and correctness of the allotment order dated 29-05-2008, is to be considered by this Court in WP(C) No.737 of 2015 and not in the present case. In regard to the short issue involved herein, it is nowhere disclosed in the order dated 20-01-2016 as to the source of power exercised by the Deputy Commissioner while issuing it. All action shall be taken by the State Government or for that matter, by its subordinate officers, in accordance with law and in other words, any action taken by the State Government without it being backed by a law, is bad. This is what has exactly happened in the present case. The Deputy Commissioner, although it being a senior officer, cannot on its own cancel the order passed by his subordinate officer in exercise of its magisterial power. The Deputy Commissioner appears to have its magisterial power as an appellate authority which can exercise its power when an appeal is preferred before it, for which certain procedure may have been laid down in the statute or rules made thereunder. The Deputy Commissioner appears to have failed to follow the procedure as prescribed in law and therefore, its action is bad in law.

[6] For the reasons stated hereinabove, the instant writ petition is allowed and consequently, the order dated 20-01-2016 passed by the Deputy Commissioner, Imphal East is quashed and set aside with no order as to costs. However, it is made clear that this Court has expressed no opinion as regards the validity and correctness of the allotment order dated 29-05-2008 issued in a purported exercise of power conferred under the Manipur Land Revenue and Land Reforms Act, 1960.