

(2005) 11 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (C) No. 1035 of 2003

Koijam Ongbi Ibembhal Devi

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Manipur Land Revenue and Land Reform Rules, 1961 — Rule 18
Manipur Land Revenue and Land Reforms Act, 1960 — Section 11(3), 11(4), 15, 52, 81(1)

Citation : (2009) 2 GLR 451 : (2006) GLT 332 Supp

Hon'ble Judges : M.B.K. Singh, J

Bench : Single Bench

Advocate : A. Nilamani Singh and A. Bimol Singh, for the Appellant; Ch. Bidyamani, C. Komol and N. Joychandra, for the Respondent

Judgement

M.B.K. Singh, J.—Heard Mr. A. Nilamani Singh, learned senior counsel assisted by Mr. A. Bimol, learned Counsel appearing on behalf of the Petitioner, Mr. C. Komol, learned senior Counsel, Mr. N. Joychandra, learned advocate appearing on behalf of the private Respondents as well as Mrs. Ch. Bidyamani Devi, learned Addl Govt. Advocate appearing on behalf of the Respondents 1 to 5.

2. Being aggrieved at the refusal of the Revenue Tribunal, Manipur vide order dated 30.6.2003 in the Revenue Revision Case No. 24 of 2003, to interfere with the order being No. 1/43/SDO/KB/EVIC/2003 dated 21.4.2003, passed by the Sub-Divisional Officer, Keirao Bitra, this writ petition has been filed praying mainly for issuing a writ in the nature of certiorari for quashing the above said two orders and also the proceeding which is said to have been made before the Sub-Deputy Collector, Irilbung, on the basis of the above said order of the Sub-Divisional Officer, Keirao Bitra.

3. There is no dispute in respect of the following facts:

Mutum Dhananjay Singh, Secretary, Nongpok Ningthou Development Committee, Keirao Bitra, who is the Respondent No. 6 in this writ petition; filed an application

to the Sub-Deputy Collector, Keirao Bitra, Imphal East requesting for demarcation of the land under Dag No. 8 and 9 (Southern-Western side of Yairipok Road) of Village No. 57 Keirao Bitra. The Sub-Deputy Collector, Irilbung sent the said application to the Sub-Divisional Officer, Keirao Bitra on 17.4.2003 for taking necessary action purportedly along with the list of 10(ten) persons said to be encroachers. While sending the said application to the Sub-Divisional Officer, Keirao Bitra, for doing the needful, the Sub-Deputy Collector, Irilbung, reported in his forwarding letter to the effect that 10(ten) persons given in the list were found encroaching upon the Government khas lands. The writ Petitioner's deceased husband, namely, Koijam Shyamkishor Singh was shown in the list as one of the encroachers of the land under Dag No. 8. Nothing is mentioned in the said forwarding letter if any demarcation has been done or not in respect of the said land under Dag No. 8 and of Village No. 57 Keirao Bitra after giving due notice to the concerned persons found in possession of the land and if any of the said persons raised any question of title in his or her favour in respect of any portion of the land. It is not clarified in the said forwarding letter as to on what basis he was submitting the list of 10(ten) persons as encroachers of Government khas lands.

Purportedly after receiving the said forwarding letter along with its enclosures, the Sub-Divisional Officer, Keirao Bitra issued the impugned order being No. 1/43/SDO/KB/KVIC/2003 dated 21.4.2003 directing the Sub-Deputy Collector, Irilbung, and his staff to conduct the demarcation as prayed for and to cause the encroachers evicted within the date mentioned. The impugned order, a copy of which is at Annexure-A/5 of the writ petition, is as follows:

Government of Manipur Office of the Sub-Divisional Officer, Keirao Bitra

ORDER

Keirao Bitra, the 21st April, 2003.

No. 1/43/SDO/KB/EVJC/2003 : Whereas an application was filed by Shri Mutum Dhananjay Singh, Secy., Nongpok Ningthou-Panthoibi Development Committee to the Sub-Deputy Collector, Irilbung requesting for demarcation of Government Khas land under C.S. Dag Nos. 8 and 9 within 57-Keirao village of this sub-division for the construction of Panthoibi Keithel.

(2) Whereas a report was submitted by the SDC/Irilbung to the undersigned indicating that there was 10(ten) persons who had been encroaching open the Govt. Khas Land as mentioned in Para-1 above.

In view of the above circumstances, I, the undersigned, hereby order SDC/Irilbung and his staff to conduct the demarcation as prayed for and to cause the encroachers evicted within 3rd instant.

Sd/- (Th. Ibopishak Singh) Sub-Divisional Officer, Keirao Bitra

4. Apprehending that if the impugned order passed by the Sub-Divisional Officer,

Keirao Bitra was to be given effect to, her and her family members' interest" would be affected, the writ Petitioner challenged the legality and propriety of the order before the Revenue Tribunal, Manipur. According to the writ Petitioner, a piece of agricultural land measuring 226 acres covered by patta No. 57/331, comprising CS Dag No. 8 of Village No. 57 Keirao Bitra, Imphal East lying on the contiguous north of the agricultural lands under patta No. 57/33 1(01d)/48/430 (New) IET comprising CS Dag No. 13/216 Village No. 57 Keirao Bitra IET of 1963-64 survey, had been in adverse possession of her husband Koijam Shyamkishor Singh after purchasing it from its owner, Abdul Haque Mia sometimes in the year 1960 and after the death of her husband, she and her family members have been in adverse possession of the same land as its owners.

5. The Revenue Tribunal, Manipur, after hearing both sides through their respective counsel and after perusal of the records, dismissed the revision vide order passed in Revenue Case No. 24 of 2003 on 30.6.2003. In the opinion of the learned Presiding Officer, Revenue Tribunal, Manipur, the impugned order was passed by the Sub-Divisional Officer, Keirao Bitra in the course of his official procedure as submitted by the concerned Sub-Deputy Collector, Irilbung. further according to the learned Presiding Officer, Revenue Tribunal, Manipur, the impugned order was only a direction to the Sub-Deputy Collector, Irilbung, and his staff to conduct the demarcation of the land under Dag Nos. 8 and 9, Village No. 57 Keirao Bitra, alleged to be Government Khas lands and as such, it would not be reasonable to interfere with it.

6. On perusal of the impugned order issued by the learned Sub-Divisional Officer, Keirao Bitra, it is ascertained that the directions given to the Sub-Deputy Collector, Irilbung, and his staff was to conduct demarcation of the lands under CS Dag Nos. 8 and 9 as well as to cause eviction of the encroachers from the Government Khas land. The learned Presiding Officer, Revenue Tribunal, Manipur was in error when she held that it was a direction to conduct demarcation of the said land. The learned Presiding Officer, Revenue Tribunal, Manipur completely missed the direction given in the impugned order for causing eviction of encroachers from the said Government Khas land.

7. There is no dispute that the Sub-Deputy Collector, Irilbung, is empowered to exercise the powers of demarcation u/s 52 of the Manipur Land Reforms and Land Revenue Act, 1960, vide order of the Governor of Manipur being No. 25/8/75-R dated 1st August, 1981 published in the Manipur Gazette No. 21 dated 19.8.1981. At the same time, the, Sub-Deputy Collector, Irilbung is a revenue officer and such an officer, while exercising the powers under the Manipur Land Revenue and Land Reforms Act, 1960 or any other law for the time being in force to inquire into or decide any question arising for determination between the Government and any persons or between the parties to any proceeding, shall be a Revenue court as per provisions of Section 81(1) of the Manipur Land Revenue and Land Reforms Act, 1960. Accordingly, when the said application made by the said Mutum. Dhananjoy Singh requesting for

demarcation of the said land under Dag Nos. 8 and 9 was received, the Sub-Deputy Collector, Irilbung, was supposed to proceed in accordance, with the provisions of Section 52 of the Manipur Land Revenue and Land Reforms Act, 1960 read with the relevant procedure specified in Chapter VIII of the Manipur Land Revenue and Land Reforms Act, 1960 and Schedule 3 of the Manipur Land Revenue and Land Reforms Rules, 1961. The above said procedures nowhere state that when a Sub-Deputy Collector receives an application for demarcation, he is to forward the application or report to the Sub-Divisional Officer of the area. Since the Sub-Deputy Collector, Irilbung was having jurisdiction to deal with the said application for demarcation, he ought to have dealt with it in accordance with the relevant law. By not dealing with it as required under law, the learned Sub-Deputy Collector, Irilbung, failed to exercise his jurisdiction and by forwarding it to the Sub-Divisional Officer, Keirao Bitra, he committed illegality in his proceeding with reference to it.

8. It is to be noted that since the settlement of a boundary under Chapter VI of the Manipur Land Revenue and Land Reforms Act, 1960 shall be determinative (a) of the proper position of the boundary lines or boundary marks and (b) of the rights of the land holders on either side or the boundary fixed in respect of the land adjudged to appertain or not to appertain, to their respective holdings, in the absence of any provisions to the contrary, it will be necessary on the part of the concerned revenue court dealing with the application for demarcation of certain lands to give notice to all persons whose rights or interest are likely to be affected. Any demarcation made without giving due notice to the concern persons will be in violation of the principles of natural justice and as such, it will be illegal and void. If the said land under Dag Nos. 8 and 9 is to be demarcated, the alleged encroachers are to be given due notice before making demarcation and if any of the encroachers is no more, his or her successor-in-interest is to be given notice about it.

9. It is already seen that it was illegal on the part of the learned Sub-Deputy Collector, Irilbung, to forward the said application for demarcation, despite having jurisdiction to deal with it, to the Sub-Divisional Officer, Keirao Bitra for taking necessary action. Even though, the Sub-Divisional Officer, Keirao Bitra was having jurisdiction to deal the application for demarcation, he was not having jurisdiction to order for causing eviction of any encroacher. By issuing the impugned order dated 21.4.2003 directing the Sub-Deputy Collector, Irilbung, to cause eviction of encroachers within the specified date, the learned Sub-Divisional Officer, Keirao Bitra also acted beyond his jurisdiction and committed illegality. Eviction of unauthorized occupiers of any land belonging to Government has to be done by the competent authority in accordance with the relevant procedures prescribed by the relevant law and such eviction is not allowed to be done on direction made by the Sub-Divisional Officer of the area.

10. An occupier of any land belonging to Government without lawful authority may be summarily evicted therefrom by the competent authority under the

provisions of Section 15 of the Manipur Land Revenue and Land Reforms Act, 1960 by following the procedures prescribed by Rule 18 of the Manipur Land Revenue and Land Reforms Rules, 1961. Notice is required to be given to the concerned unauthorized occupiers of the Government land and if an objection is filed within the period specified in the notice, a summary enquiry is required to be held in the manner laid down in Schedule 3. It is to be noted that the said provisions for summary enquiry can be resorted against those persons who are in unauthorized occupation of any Government land. If there is a bona fide dispute regarding title of the Government to any land, Government cannot take unilateral and final decision in its own favour that the land belongs to it and on the basis of such decision, take recourse to summary remedy provided by the Act for evicting the person who is in possession of the land under bona fide claim or title. The summary remedy prescribed by the Act and Rules framed thereunder is not the kind of legal process which is suited to adjudication of complicated questions of title. It is also to be noted that as per provisions of Section 11(3) of the Manipur Land Revenue and Land Reforms Act, 1960 where any property or any right in or over any property as claimed by or on behalf of the Government or by any persons as against Government and the claim is disputed, such dispute shall be decided by the Deputy Commissioner whose order shall, subject to provisions of the Act, be final. As per Section 11(4) of the Act, any persons aggrieved by an order made under Sub-section (3) or in appeal or any revision therefrom, may institute a civil suit to contest the order within a period of six months from the date of such order, and the decision of the civil court shall be binding on the parties.

11. Keeping the above said provisions of law, it is ascertained that if there is bona fide dispute regarding title of the Government to any land, a final decision about the dispute will have to be given by a competent civil court.

12. In the present case, it has not yet been decided by the competent authority if the portion of the said land under CS Dag No. 8 said to be under the possession of the writ Petitioner is a Government land or not. In fact, the writ Petitioner has not also been given notice about any demarcation to be made in respect of the said land. No competent authority has yet decided that the writ Petitioner has been in unauthorized occupation of any portion of the Government land. There cannot be any summary eviction of the writ Petitioner dehors the relevant law from the land under her possession.

13. Apart from the above said findings, it is already seen that the learned Sub-Deputy Collector, Irilbung, and the learned Sub-Divisional Officer, Keirao Bitra acted illegally and without jurisdiction in respect of the said application filed by the Respondent No. 6. The learned Sub-Deputy Collector, Irilbung, instead of dealing with the application in respect of which he was having jurisdiction, referred the matter for demarcation illegally without jurisdiction to the learned Sub-Divisional Officer, Keirao Bitra. The learned Sub-Divisional Officer, Keirao Bitra also acted illegally and without jurisdiction by passing the impugned order

dated 21.4.2003 for making demarcation as well as for causing eviction of the said encroachers within the stipulated time on the basis of the reports submitted by the Sub-Deputy Collector, Irilbung, By not interfering with the illegal impugned order, the learned Presiding Officer, Revenue Tribunal, Manipur also failed to exercise his/her jurisdiction properly and thereby injustice was caused to the writ Petitioner. I am of the opinion that there has been errors of jurisdiction on the parts of the learned Sub-Deputy Collector, Irilbung, learned Sub-Divisional Officer, Keirao Bitra and the Presiding Officer, Revenue Tribunal, Manipur while dealing with the matter before them.

14. A Constitution Bench of Seven Judges in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, laid down the following proposition of law as well settled and beyond dispute:

(1) "Certiorari" will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) "Certiorari" will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of "certiorari" acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or Tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to re-hear the case on the evidence, and substitute its own findings in "certiorari". These propositions are well settled and are not in dispute.

15. Keeping in view the above said proposition of law, the impugned order issued by the Sub-Divisional Officer, Keirao Bitra on 21.4.2003 as well as the order of the learned Presiding Officer, Revenue Tribunal, Manipur passed on 30.6.2003 in Revenue Revision Case No. 24 of 2003 are hereby quashed and set aside. The learned Sub-Deputy Collector, Irilbung, may proceed with the said application filed by the Respondent No. 6 for demarcation of the said land under CS Dag Nos. 8 and 9 afresh strictly in accordance with the relevant law, disregarding the direction given by the learned Sub-Divisional Officer, Keirao Bitra vide impugned order which has been quashed by this Court and also without considering the report made by him to the Sub-Divisional Officer, Keirao Bitra.

16. With the above directions, this writ petition stands disposed of.