
(2013) 04 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 87 of 2012

Lalchawivela and Others

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 3 GLD 110 : (2014) 2 GLT 529

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : J.C. Lalnunsanga, Mr. B. Lalramenga and Mr. Lalhruaitluanga, for the Appellant; Lalsawirema, G.A., Mizoram, for the Respondent

Judgement

Ujjal Bhuyan, J.—By way of this petition under Article 226 of the Constitution of India, petitioners have challenged the legality and validity of the notification dated 31.10.2012 issued by the Secretary to the Government of Mizoram, Local Administration Department whereby the Government directed all the residents to leave Saikhumphai on or before November, 2012 and declaring that Saikhumphai shall be a vacant and deserted place from 01.12.2012. Petitioners have further prayed for a direction to the respondents to allow them to continue living in Saikhumphai considering their long stay in that place. Petitioners, who are 98 in numbers, have stated that they have been permanently residing in Saikhumphai in the district of Champhai since last several years. In fact, occupation of Saikhumphai started in the year 1963. Saikhumphai falls within the jurisdiction of Vaphai Village Council. Residents of Saikhumphai were allowed to settle there by the local authority of Vaphai exercising power conferred u/s 3 of Lushai Hills District (House Sites) Act, 1953. Settlement within Saikhumphai was done as per allotment of sites by the authority of Vaphai village.

2. When insurgency broke out in Mizoram in the year 1966, the villages around Vaphai were grouped together at Vaphai village. When the insurgency came to an end, the inhabitants of Saikhumphai returned to Saikhumphai with the permission of Vaphai Village Council.

3. Petitioners have contended that not only have they constructed their residential houses at Saikhumphai, they have also cultivated various crops and fruit bearing trees. There are about 60 private households having 300 members in Saikhumphai. Petitioners have been paying land revenue to the Government of Mizoram and are also included in the electoral roll of 25-East Tuipui (ST) Constituency.

4. A joint meeting of Vaphai Village Council, representatives of the inhabitants of Saikhumphai and the local unit of Young Mizo Association (YMA) was held on 28.12.2007, wherein the boundary of Saikhumphai was demarcated.

5. Over the years, many buildings have been constructed at Saikhumphai, both by the Government as well as by nongovernmental organizations. Besides educational institutions, Anganwadi centres have been set up. Public Health Engineering Department, Government of Mizoram has also constructed water supply scheme at Saikhumphai. A playground has been developed and maintained by the Rural Development Department, Government of Mizoram at Saikhumphai. Besides the above, there are three church buildings at Saikhumphai, belonging to the Baptist Church of Mizoram, Presbyterian Church of India and Mizoram United Pentecostal Church.

6. There is a Joint Action Committee in Vaphai village which has been pressing the authorities for setting up of an International Business Centre at Saikhumphai to facilitate border trade between India and Myanmar. For establishment of such centre, the Government was moved for shifting of the inhabitants of Saikhumphai to other places within Vaphai village. In this connection, a meeting was held in the office chamber of the Minister, Local Administration Department, Government of Mizoram on 23.09.2011, wherein it was decided to evict the inhabitants of Saikhumphai at the earliest. It was also decided to dismantle the school buildings and Anganwadi Centres at Saikhumphai and for the purpose of shifting of the inhabitants, it was decided to submit a proposal to the Planning Department for releasing an amount of Rs. 20 lakhs.

7. Petitioners also came to know that the Village Council and the Joint Action Committee of Vaphai village were pressing the Government very hard for expediting the shifting of the settlers of Saikhumphai to Vaphai village and that they had submitted ultimatum to the Government to complete the shifting by 31.10.2012. In this connection, Director, Local Administration Department, Mizoram wrote to the Deputy Commissioner, Champhai District vide letter No. 12.09.2012 mentioning the need for carrying out immediate shifting of Saikhumphai settlers to Vaphai.

8. In the last week of October, 2012, petitioners came to know that some of the youngsters of Vaphai village were called upon through the public address system to evict the petitioners and other inhabitants from Saikhumphai. Youngsters from the neighbouring villages were also invited to take part in the eviction of the inhabitants of Saikhumphai. Petitioners reported the matter to the Champhai

Police Station. Police personnel tried to restrain the villagers of Vaphai from taking law into their own hands which resulted in a physical confrontation leading to sustaining of injuries by some of the police personnel. However, in spite of the presence of the police, several houses at Saikhumphai were demolished by the mob. The mob also warned the other inhabitants of Saikhumphai, including the petitioners, to vacate Saikhumphai immediately, failing which their households would be forcibly demolished.

9. Though the petitioners could come to know that the Government in the Local Administration Department had issued a notification on 31.10.2012 ordering vacation of Saikhumphai, no copy of such notification was served on the petitioners or on any resident of Saikhumphai. Though the petitioners requested the concerned authority for a copy of such notification, the same was not furnished to the petitioners. Ultimately, they had to submit an application through their lawyer under the Right to Information Act, 2005 for a copy of such notification. Only thereafter, a copy of notification dated 31.10.2012 was furnished to the petitioners, which has been impugned in the present proceeding.

10. Petitioners have contended that they and their ancestors were allowed to settle in Saikhumphai by the Village Council of Vaphai since 1963. For long years now, they have been residing there. The residents of Saikhumphai are law abiding citizens and they have not caused annoyance or disturbance to anyone. Impugned notification has been issued u/s 26 of the Lushai Hills District (Village Councils) Act, 1953 without serving any notice on the petitioners or any other inhabitants of Saikhumphai either individually or jointly. Even a copy of the impugned notification was not furnished to them. They had to obtain a copy of the same by invoking the provisions of Right to Information Act, 2005. There is thus violation of the principles of natural justice, which has vitiated the impugned notification.

11. This Court by order dated 22.11.2012 issued notice and directed that the impugned order should not be carried out in the meanwhile.

12. State respondents i.e. respondent Nos. 1 to 5 have filed a common affidavit. Stand taken is that petitioners are not permanent settlers of Saikhumphai. They have no land holdings and are encroachers of Government land. Permission to any person or persons to settle in a place can be given only by the Government under subsection (1) of Section 26 of the Lushai Hills District (Village Councils) Act, 1953. Therefore, permission given by the Village Council of Vaphai to the inhabitants of Saikhumphai to settle down there was without any authority. Demarcation of boundary of Saikhumphai does not confer ownership of land on the petitioners. Setting up of schools and Anganwadi centres cannot also regularize such settlement when the initial settlement itself was unauthorized. Similar would be the position with regard to enrolment in the electoral roll. Due to the settlement at Saikhumphai, it has led to presence of illegal migrants from Myanmar leading to law and order situation. Government after due consideration decided to resettle the unauthorized settlers of Saikhumphai at Vaphai village. In

fact, resettlement of Saikhumphai villagers at Vaphai village was considered as far back as on 23.09.2011. Saikhumphai settlement has no approval of the competent authority to function as a sub-village. Respondents have asserted that impugned notification dated 31.10.2012 was issued as per law. Question of serving eviction notice on the unauthorized occupants of Saikhumphai, including the petitioners, did not arise as the intention of the Government is not to evict them but to resettle them at Vaphai village by providing them alternative house sites with financial and material assistance.

13. Respondent No. 6, who was subsequently added as a respondent on orders of the Court, has also filed an affidavit. It is stated that only for the purpose of cultivation, people used to go down from Vaphai village to Saikhumphai and to facilitate such cultivation, they used to erect huts. After harvesting was over, they used to come back to the native Vaphai village. Respondent No. 6 has denied existence of Saikhumphai as a village since 1963. Allotment of house site at Saikhumphai is null and void since no sub village has been established in accordance with law.

14. Petitioners have filed an additional affidavit wherein it is stated that inspite of the stay order passed by this Court, some people of Vaphai village attacked the petitioners in the month of December, 2012 while they were preparing for Christmas celebrations. Several houses belonging to the petitioners and others were damaged and demolished. Petitioners were also threatened that if they rebuilt their houses, those would be burnt down. Petitioners and their family members suffered immensely during the cold winter and also felt very insecure. Though the police had registered a criminal case in this regard, no action has been taken. Secretary of Joint Action Committee, Vaphai sent letters to the petitioners on 04.02.2013 asking them to withdraw the present case and threatening them with forcible eviction irrespective of the outcome of the writ petition. Petitioners have further placed on record the minutes of a meeting held on 24.05.2011 presided over by the Deputy Commissioner, Champhai. The issue relating to relocation of the residents of Saikhumphai to Vaphai was discussed but it was decided that the residents of Saikhumphai were not to be relocated. It was resolved that the issue should be amicably settled by the parties. Since Saikhumphai is under the jurisdiction of Vaphai Village Council, residents of Saikhumphai are to abide by the orders of the Vaphai Village Council but at the same time, Vaphai Village Council should also not take any unlawful action against the residents of Saikhumphai.

15. Heard Mr. J.C. Lalnunsanga, learned counsel for the petitioners and Mr. Lalsawirema, learned Government Advocate, Mizoram.

16. Learned counsel for the petitioners has referred to the averments made in the writ petition and submitted that the Government instead of upholding the rule of law has succumbed to the unlawful demands of the Vaphai Village Council for forcible eviction of the residents of Saikhumphai notwithstanding the fact that they and their ancestors have been residing at Saikhumphai since 1963 on

allotment being granted by the Vaphai Village Council itself. Attacking the impugned notification, learned counsel submits that the same is in violation of Section 26(3) of the Lushai Hills District (Village Councils) Act, 1953 which provides for serving of three months prior notice before any eviction or closure of any sub village. None of the petitioners or any other inhabitants of Saikhumphai were served with any notice before issuing the impugned notification dated 31.10.2012. The said notification entails adverse civil consequence for the petitioners and, therefore, it was incumbent on the part of the respondents to have put the petitioners on notice and to have given them a fair hearing before issuing the impugned notification. He, therefore, prays for quashing of the impugned notification and for a further direction to the respondents not to disturb the settlement of the petitioners at Saikhumphai.

17. Opposing the submissions made on behalf of the petitioners, Mr. Lalsawirema, learned Government Advocate, Mizoram submits that petitioners have been residing at Saikhumphai without any authority. Referring to the provisions of Lushai Hills District (House Sites) Act, 1953, he submits that under sub-section (1) of Section 3 thereof, a Village Council is competent to allot sites within its jurisdiction for residential and other non-agricultural purposes. However, under sub-section (3), when such a site is allotted, the Village Council or the Executive Committee is required to issue patta. Under sub-section (5), no person shall occupy any site without obtaining a patta. Learned Government Advocate, Mizoram has also referred to Section 4 of the Mizo District (Land and Revenue) Act, 1956 to contend that no person shall acquire any right over land by length of possession or otherwise, unless such land had been recorded and registered in the Deputy Commissioner's office or in the District Council's office. He submits that nothing has been placed on record by the petitioners to show that they have been provided patta by the Village Council or that their lands have been recorded and registered either in the office of the Deputy Commissioner or in the office of the District Council. He further submits that petitioners have no legal right to question the validity of the impugned notification by contending that their settlement at Saikhumphai is without any lawful authority. In this connection, learned Government Advocate, Mizoram has placed reliance on paragraph 37 of the judgment of the Hon'ble Supreme Court in the case of State of Orissa and Another Vs. Mamata Mohanty, He therefore submits that Court may not interfere in the present case as such interference may run contrary to the statutory provisions indicated above. In this connection, he has placed reliance on paragraph 12 of the judgment of the Hon'ble Supreme Court in the case of E.S.P. Rajaram and others v. Union of India and others, reported in (2001) 2 SCC 186. Learned State Government has also referred to the decision of the Apex Court in Union of India (UOI) and Another Vs. P.K. Roy and Others,

18. Submissions made have been considered.

19. Short point for consideration is the validity or otherwise of the assailment of the impugned notification dated 31.10.2012.

20. The translated version of the impugned notification dated 31.10.2012 reads as under:--

No. B 14016/39/12-LAD/VC

GOVERNMENT OF MIZORAM

LOCAL ADMINISTRATION DEPARTMENT

NOTIFICATION

Dated Aizawl, the 31st October, 2012.

Some persons had established sub-village within Vaphai Village Council on the bank of Tiau River without the prior approval and permission of the Government.

It has been reported that some illegal business activities against the Government have been done due to the residence of some persons.

It is decided by the Government after careful perusal that 41 families who are included in the Electoral Roll shall vacate as the said sub-village has been established without the approval of the Government.

House sites are being allotted at Vaphai village for those 41 families.

The expenses for shifting amounting Rs 17 lakh, 4 bundles each for a family household are being arranged and two silpaulin each for a family are being applied.

Due to the complaints of the neighbouring village and the reason stated above, it is hereby ordered by the Government on the strength of Section 26(2) of the Lushai Hills District (Village Councils) Act, 1953 that all the residents of Saikhumphai shall leave Saikhumphai on or before November, 2012.

It is hereby declared that Saikhumphai shall be a vacant and deserted place from 1st December, 2012 by the power vested in Section 26(4) of the same Act.

Sd/- (BIAKTLUANGA) Secretary to the Govt. of Mizoram Local Administration Department.

21. It is thus seen that the impugned notification was issued u/s 26(2) and Section 26(4) of the Lushai Hills District (Village Councils) Act, 1953.

22. The Lushai Hills District (Village Councils) Act, 1953 is an Act to provide for the establishment of Village Councils etc. and for other matters relating to village administration. It was enacted by the then Lushai Hills District Council under paragraph 3(1)(e) and (f) of the Sixth Schedule to the Constitution of India, which thereafter, received the assent of the Governor. Section 26 of the Lushai Hills District (Village Councils) Act, 1953 (for short "Village Councils Act") is the relevant provision. Section 26 has been amended by the Lushai Hills District (Village Councils) (Amendment) Act, 1999. Section 26 of the Village Councils Act, as amended, reads as under:--

26. SUB-VILLAGE OR THLAWHBAWK

(1) The Government may, by order, set-up at any suitable place a sub-Village or a Thlawhbawk and permit any person or persons to settle in such a place for temporary settlement, with such terms and conditions as it may lay down in the order for such settlement.

(2) No person shall establish any sub-Village or a Thlawhbawk, other than the sub-Village or Thlawhbawk set up by the Government under sub-section (1).

(3) If the Government is of the opinion that a situation has arisen demanding stoppage or closing of any sub-Village or Thlawhbawk or any sort of settlement at any place, including any sub-Village or Thlawhbawk already opened under sub-section (1), it may, by order, evict the occupants of such sub- Village, Thlawhbawk or settlement after service of a notice on such person or persons individually to vacate the place within a period of three months from the date such notice is served upon such person or persons, as the case may be.

(4) In the event of a site of a sub-Village or a Thlawhbawk becoming vacant as a result of mass migration of the occupants from the place, the Government may, by order, declare such place as vacant and deserted. Thereafter, nobody shall make any sort of settlement in that place without getting fresh permission from the Government for such settlement and the Government may, by order, evict any person making settlement in a deserted or vacant place so declared under this sub-section after service on such person or persons individually of a notice to vacate the place within a period of one month as may be specified in the order.

(5) If any person fails to comply with the vacation order given under sub-section (3) or sub-section (4) of this section after expiry of the time specified in the order, the Government or any officer authorized in its behalf may impose a fine which may extend to one hundred rupees per day to each family for the unauthorized occupation so long as the occupation continues.

(6) In the event of prolonged unauthorized occupation beyond six months in the case of sub-section (3) and three months in the case of sub-section (4) of this section, the Government may resort to physical eviction of the defaulting occupants from the place.

(7) The order of the Government passed under sub-section (5) and sub-section (6) and of the authorized officer passed under sub-section (5) above shall be deemed to be a decree of a competent civil Court for the purpose of evicting unauthorized occupant from the area to which this section applies.

23. A careful reading of the said provision would indicate that the Government is competent to set up a sub-village and permit any person or persons to settle in such a place and that no person shall establish any sub-village other than the sub-village set up by the Government. As per sub-section (3), if the Government is of the opinion that a situation has arisen requiring stoppage or closing of any sub-village or any sort of settlement at any place, the Government may, by

order, evict the occupants of such sub-village or settlement after service of notice on such person or persons individually to vacate the place within a period of 3 (three) months from the date of service of such notice. Under sub-section (4), in the event of a site of a sub-village becoming vacant as a result of mass migration of the occupants from the place, the Government may, by order, declare such place as vacant and deserted. Once such a declaration is made, no settlement is permissible in that place without obtaining fresh permission from the Government.

24. Three things are clearly discernible from a careful perusal of the above provision. Firstly, before any eviction is carried out, the Government must form an opinion that a situation has arisen requiring stoppage or closure of any sub-village or any settlement at any place. Secondly, the person sought to be evicted has to be personally served notice of eviction giving a period of 3 (three) months to vacate the place. Thirdly, a place can be declared as vacant and deserted only in the event of a site becoming vacant as a result of mass migration of the occupants from that place. In the present case, respondents have not been able to show or place anything on record that Government had formed an opinion that a situation has arisen which requires closure of Saikhumphai settlement. Such opinion has to be recorded in the form of a satisfaction note which will reflect or indicate the opinion of the Government and which will prevent the possibility of any arbitrary or high-handed action. Moreover, the State has also not been able to show that notices as required under sub-section (3) of Section 26 of the Village Councils Act were served on the petitioners. As a matter of fact, respondents in their affidavit have contended that no such notice is required to be served as petitioners are not being evicted but are only being resettled at Vaphai. Further, the declaration of Saikhumphai as a vacant and deserted place w.e.f. 01.12.2012 is contrary to the mandate of sub-section (4) of Section 2b of the Village Councils Act in as much as such a declaration can be made only if a site becomes vacant as a result of mass migration of the occupants from that site. Nothing of that sort has happened in this case. On the contrary, what is sought to be done is to forcibly relocate the settlers from Saikhumphai to Vaphai, which tantamounts to eviction. Thus, the condition precedent for making a declaration under sub-section (4) of Section 26 of the Village Councils Act is absent in the present case.

25. The decisions cited by the learned State counsel are distinguishable on facts. The settlement at Saikhumphai cannot be said to be wholly unauthorized as the respondents have themselves admitted that settlers were allotted sites at Saikhumphai u/s 3 of the Lushai Hills District (House Sites) Act, 1953. If the Village Council or the Executive Committee does not issue patta thereafter, the settlers cannot be entirely blamed for that.

26. For the aforesaid reasons, the impugned notification dated 31.10.2012 cannot be sustained.

27. The apprehension expressed by the respondents that because of the

settlement at Saikhumphai, illegal migrants/foreigners from Myanmar can come and take shelter there does not cut much ice in as much as it is the duty of the concerned authority to ensure that foreigners do not illegally enter into and stay back in India.

28. The grievance expressed by the petitioners that they have been subjected to threats and intimidation at the hands of some people of Vaphai village needs to be taken note of seriously by the district administration. Nobody should be allowed to take law into their own hands. If any resettlement or relocation is required to be done, the same has to be carried out strictly in accordance with law and by adopting a humane approach. If private groups are allowed to take law into their own hands, it will be a complete negation of the rule of Law and there will be chaos in the society. The Deputy Commissioner, Champhai shall ensure that there is no breach of law and order in the area and nobody takes law into their own hands.

29. In view of what has been discussed above, writ petition is allowed. Impugned notification dated 31.10.2012 is hereby set aside and quashed. Regarding damage/destruction of property at Saikhumphai, Deputy Commissioner, Champhai shall enquire into the matter and after due verification, provide adequate financial and material assistance to the affected persons to rebuild their houses and other properties. This shall be done within a period of 2 (two) months from today. Cost of Rs. 20,000.00 to be paid to the petitioners by respondent Nos. 2 and 3 within the aforesaid period of 2 (two) months.