

(2008) 11 GAU CK 0062

In the Gauhati High Court

Case No : Writ Petition (C) No. 117 (K) of 2006

Limongo Ezung

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 GLR 379 : (2009) 2 GLT 544

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : A. Zhimomi, Yangerwati and N. Mozhui, for the Appellant; Lucy, R. Iralu, V. Theyo, K.L. Solo, Moajungla and L. Belho, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. N. Mozhui, learned Counsel for the Petitioner. Also heard Mrs. Lucy, learned Govt. advocate for Respondents 1 and 2 and Mr. R. Iralu, learned Counsel for the private Respondent No. 3.

2. The Petitioner has challenged the legality of the impugned order dated 18.5.2006 passed by the DC, Kohima canceling the allotment order issued by the DC vide order No. REV/ALLOT-A/2000 dated 7.6.2005 allotting plot of land measuring 1430, sq. ft. at PR Hill, Kohima in favour of the Petitioner. The brief facts leading to the filing of this writ petition are that the Petitioner was allotted a plot of land situated at PR Hill by an order dated 23.7.1986 and had been possessing the same by constructing two semi pucca structures thereon. Sometime in the year 2003, the Cabinet decided to construct a Town Hall at Kohima and in its meeting held on 14.3.2003, it was decided to allot the cite on which Government Quarter No. PR/1 situated for the said purpose. When work was undertaken for the purpose of Town Hall, it was found that the cite in question was not sufficient and as such the then Hon'ble Chief Minister himself requested the Petitioner to spare the aforesaid plot of land being adjacent to the proposed Town Hall with an assurance for providing an alternative plot of land/

cite. Accordingly the Petitioner gave his plot of land to the Government and the Government also allotted him an alternative cite on which Government Quarter PR/2 is situated. Necessary formalities were completed and approval of the Cabinet was also obtained and the formal exchange of plot between the Petitioner and the Government was done on 17.8.2004. The Petitioner deposited an amount of Rs. 44,900, as land revenue for settlement of the aforesaid alternative plot by Treasury Challan and thereafter, the Petitioner was issued allotment order in respect of the said land on 31.5.2005 (Annexure-K) and also land patta being Patta No. (NEW) 5482 in respect of Plot No. 3934 on 20.9.2005 (Annexure-L to the writ petition). The Petitioner accordingly took over possession of the aforesaid plot No. 3934. But the Petitioner was served with the impugned order dated 18.5.2006 signed by the DC, Kohima (Annexure-N) canceling the allotment of the aforesaid plot of land and directing him to produce the original copy of the allotment order and patta to his office within 15 days from the date of issue of the aforesaid order.

3. Mr. N. Mozhui, learned Counsel for the Petitioner submits that no reason has been assigned in the impugned order dated 18.5.2006 as to why the allotment of land has been cancelled and the aforesaid impugned order has been passed behind his back without any notice and opportunity of hearing. Such cancellation order, according to Mozhui, learned Counsel for the Petitioner is arbitrary, unauthorized and illegal and the same must be set aside.

4. Mrs. Lucy, learned Government advocate on the basis of counter affidavit filed by the Respondents 1 and 2 submits that the cite in possession falls within the 1934-35 cadastral Survey Map of Kohima Town and has been inherited by the State Government from the Government of British India through the Government of Assam and therefore, the said land falls within the Government land. Moreover, according to Mrs. Lucy, the matter involves disputed questions of fact and title which are to be agitated before the civil court of competent jurisdiction and cannot be decided by a writ court in exercise of power under Article 226 of the Constitution of India. The impugned order was passed, as submitted by Mrs. Lucy, on the basis of written complaint dated 16.12.2005 addressed to the Chief Minister of Nagaland, Kohima from one Shri Keneingunyu Sekhose, President of the T. Khel Union (Annexure-1 to the counter affidavit of Respondents 1 and 2).

5. Mr. R. Iralu, learned Counsel appearing on behalf of Respondent No. 3 submits that the plot of land in question is a community/Khel land and the same was never acquired by the Government since the land is not acquired at any point of time by the Government. According to Mr. Iralu, learned Counsel for the private Respondent, the Khel is the owner of the aforesaid plot of land and the allotment, if any, made to any party including the Petitioner cannot be a valid one and the same is liable to be cancelled and accordingly the Respondent authorities have rightly cancelled the allotment made in favour of the Petitioner by issuing the impugned orders. The Respondent authorities has offered to arrange alternative plot of land in favour of the Petitioner and as such there is no

reason for the Petitioner for being aggrieved by the impugned cancellation order.

6. In reply to the submission of Mr. R. Iralu, learned Counsel for Respondent No. 3, it is submitted by Mr. Mozhui, learned Counsel for the Petitioner that the Respondent No. 3 at no point of time during or before the process of allotment of plot of land in question and even at the time of issuance of allotment order and land patta made any complaint before the Respondent authorities claiming that it is a community land and it was not acquired by the Government. According to Mr. Mozhui, the land in question was acquired by the Government and the same was allotted to the Petitioner in exchange of the land given by him to the Government on the request of the then Chief Minister himself.

7. No record has been produced by the learned Govt. advocate although it was so ordered by this Court vide order dated 24.9.2008. There is no dispute that the Govt. allotted the plot of land in question to the Petitioner in exchange of the land/plot given by the Petitioner on the request of the then Chief Minister for the purpose of construction of Town Hall. There is no denial of the fact that the Petitioner was allotted with an alternative plot i.e., plot No. PR/2 and vide allotment order dated 31.5.2005 and patta, i.e., Patta No. (NEW) 5482. It is also an indisputable fact that the allotment was made in respect of the aforesaid plot of land in favour of the Petitioner as per the Cabinet decision.

8. There is nothing on record to show that any decision was taken by the cabinet for canceling of the aforesaid allotment of land in favour of the Petitioner. The impugned cancellation order has been made by the DC, Kohima on the basis of a written complaint received from the Respondent No. 3 purportedly on the basis of Government order dated 5.4.2006 (Annexure-M to the writ petition). But from the aforesaid Annexure-M dated 5.4.2006 it does not appear that the decision to cancel the allotment of land was taken or approved by the State Cabinet. It is also apparent that before issuing the impugned cancellation order, no notice was given to the Petitioner and no opportunity of hearing was given to him. In my considered opinion, since the allotment of alternative land was made to the Petitioner by way of taking Cabinet decision, such decision cannot be altered or cancelled by an administrative order without obtaining the decision/approval of the Cabinet and, therefore, the impugned order dated 5.4.2006 issued by the Deputy Secretary to the Govt. of Nagaland, Land Revenue Department (Annexure-M) and order dated 18.5.2006 issued by the DC, Kohima (Annexure-N) cannot be held to be valid.

9. In view of the admitted position that the alternative land was allotted to the Petitioner by way of Cabinet decision and the said allotment has been cancelled by the aforesaid impugned orders without any approval or decision of the State Cabinet and also without giving any notice affording opportunity of hearing, the same cannot stand the scrutiny of law. The impugned orders dated 5.4.2006 and 18.5.2006 are therefore, held arbitrary, unauthorized and illegal and the same are liable to be quashed. Accordingly, the same are quashed.

Petition stands allowed.