

(2000) 07 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition No. 63 of 1999

M. Thangi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Pawi (later renamed as Lai) Autonomous District Council (Land) Act, 1979 — Section 4

Citation : (2000) 3 GLT 138

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Mr. C. Lalramzauva, Mr. A.R. Malhotra and Ms H. Dawngliani, for the Appellant; Mr. T. Vaiphei, AAG and Mr. P.N. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

1. I have heard Mr. C. Lalramzauva. learned counsel assisted by Mr. A.R. Malhotra. learned counsel for the petitioner, Mr. P.N. Choudhury. learned Additional Senior Central Standing Counsel for the respondents No. 1. 2 & 3 and Mr. T. Vaiphei, learned Assistant Advocate General for the respondent No. 4.

2. The petitioner's case in brief is that she started cultivation in the land in question in 1975. obtained a Pass in 1982, then L.S.C. No. PC/LS 10/83, and ultimately in supersession thereof the L.S.C. No. PC/LS-54/89 dated 19.9.1989 (Annexure-1). The L.S.C. (Land Settlement Certificate) has been issued by the Lai Autonomous District Council u/s 4 of the Pawi (later renamed as Lai) Autonomous District Council (Land) Act, 1979. But since 1982 the petitioner No. 3 O.C., 71 RCC (Officer Commanding, 71 Road Construction Company) C/o 99 APO has been in illegal occupation of the said land without her permission causing damage of crops and fruit bearing trees thereon without paying any compensation and rent to her for such occupation.

3. Being aggrieved, the petitioner filed Civil Rule No. 59/95, and this Court disposed of the same by an Order dated 30.8.1995 (Annexure-II) directing -

"If as evered in this petition, private land of the petitioner has been occupied by BRTF or for that matter any department of the Government, the petitioner has ever right to claim compensation... the petitioner should approach the Deputy Commissioner. Saiha, immediately so that the Deputy Commissioner may verify the complaint of the petitioner and make necessary assessment and thereupon BRTF can be called upon to make compensation/rent etc. to the petitioner".

4. Pursuant to the above, the petitioner approached the Deputy Commissioner, who in turn, required the Competent Authority senior Revenue Officer, Lai Autonomous District Council, to verify the complaint and make assessment vide letter dated 23.8.1996. Accordingly, the senior Revenue Officer, after spot verification of the petitioner's land, made assessment and submitted to the Deputy Commissioner verification report dated 27.9.1996 (Annexure-III) along with a statement assessing compensation at Rs.26,42,350. The Deputy Commissioner transmitted the same to the respondent No. 3 for necessary action vide letter dated 13.2.1997 (Annexure-IV).

5. It appears from para six of the writ petition that earlier the land in question was leased out to 71 RCC represented by the respondent No.3, but later such lease has been declared "null and void" and Land Settlement issued to the petitioner has been declared valid observing that she "has right to claim compensation of that land" vide the Order dated 15.4.1997 (Annexure-V) issued by the executive Member, i/c Revenue etc. of the District Council with a copy of the respondent No.3 for information and necessary action. The Deputy Commissioner also forwarded a copy of this order dated 15.4.1997 (Annexure-V) to the respondent No. 3 vide letter dated 5.11.1997 (Annexure-VI) stating therein that:

"the compensation claimed by Pi M. Thangi, C/o K. Thanchhunga, Council Veng, Lawngtlai is found to be genuine" and

requested the respondent No. 3 to take necessary action early.

6. Unable to receive any payment from respondent No. 3 in spite of assessment made as aforementioned and request made by the Deputy Commissioner to take early action in the matter, the petitioner approached this Court for the second time praying for issuance of an appropriate Writ directing the respondents to pay her compensation and rental charges as assessed vide Annexure-III with interest thereon @ 15% p.a. from the date of the assessment 27.9.1996 and further directing the respondents for assessment and payment of rental charges for period of occupation not covered by the assessment in Annexure-III.

7. The proforma respondent No. 4 the Deputy Commissioner. Saiha filed no affidavit in opposition. In the affidavit in opposition filed on behalf of the respondents No. 1, 2 & 3, their liability to pay compensation and rent to the petitioner has been denied. It is stated therein that the records bear that the respondent No.3 was granted permission by the Village Council in 1981. No record whatsoever in support thereof have, however, been produced. It is

claimed that the land in question was leased out to the respondent No.3 vide an order dated 17.7.1985 (Annexure-VII) issued by the Executive Member, Pawi (later renamed Lai) District Council. Respondent No. 3 vide his letter dated 27.11.1997 (Annexure-VIII) addressed to Executive Member of the District Council said that since the land was leased out as aforesaid,

"no compensation can be entertained by this department for the said land".

8. The above stand taken by the respondent No. 3, however, does not hold water in view of the order dated 15.4.1997 (Annexure-V) issued by the Executive Member, i/e Revenue etc. of the District Council. The relevant portion thereof reads as under:-

"Therefore, the Lal Autonomous District Council is please to declare that the land lease issued to 71 RCC was null and void. Pi M. Thangi Land Settlement is stand and valid and has right to claim compensation on that land".

9. The Order dated 17.7.1995 (Annexure-VIII to the affidavit in opposition) leasing out the land in question to the respondent No. 3 thus stood void abinito and not from the date of issue of the Order dated 15.4.1997 (Annexure-V), as if the said land had never been leased out to the respondent No. 3 by the District Council and the said land has all along remained private land of the petitioner by virtue of the Land Settlement Certificate issued by the District Council under Section-4 of the Pawi Autonomous District (Agricultural Land) Act, 1979. Such Land Settlement Certificate in favour of the petitioner and the order dated 15.4.1997 (Annexure-V) declaring the lease of the said land to the respondent No.3 as null and void have never been set aside by a Court of law or by any Competent Authority.

10. In view of the above, in respect of the land in question, the respondents are liable to pay compensation for causing damage to standing crops etc. thereon and rent for occupation thereof as assessed by the senior Revenue Officer of the District Council following this Court's order dated 30.8.1995 (Annexure-II) in the earlier Civil Rule No. 59 of 1995, the rates therein having been based on Deputy Commissioner's order ride Memo. No. 14011/1/ 90 dated 23.8.1992 and order No. 29/87 dated 1.7.1987 of the District Council ride Annexure-III.

11. In the result, in respect of the land in question the respondent are directed to pay to the petitioner the compensation of (Rs. 26,42,350 - Rs. 16,80,000 = Rs. 9,62,350) Rs. 9,62,350 (Rupees nine lakhs sixty-two thousand three hundred and fifty) only as assessed ride Annexure-III to the writ petition with interest thereon (r) 6% p.a. from 27.9.1996 i.e., the date of assessment within a period of six months from the date of receipt of this judgment and order.

12. So far ground rent is concerned, the respondents are directed to approach the competent authority with a notice to the petitioner for fixation of rent in accordance with law within a period of three months from the date of receipt of this judgment and order, and after such fixation shall make payment of rent to

the petitioner in respect of the land in question from the date of occupation till they continue in such occupation, and the arrear rent shall be paid within a period of three months from the date of fixation of the rent as aforesaid.

13. This Writ Petition is allowed to the extent indicated above. No costs.