
(2006) 11 GAU CK 0101
In the Gauhati High Court
Case No : W.A. No. 67 of 2006

Ngmaithem Angahal Singh

APPELLANT

Vs

Salam Bira @ Kora Singh and Others

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Manipur Land Revenue and Land Reform Rules, 1961 — Rule 10, 11, 12, 13, 18

Manipur Land Revenue and Land Reforms Act, 1960 — Section 15, 2, 4, 93, 93(1)

Citation : (2006) GLT 277 Supp

Hon'ble Judges : U.B. Saha, J; I.A. Ansari, J

Bench : Division Bench

Advocate : H.N.K. Singh, for the Appellant; A. Nilmani Singh, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The principal Respondent herein submitted an application to the Deputy Commissioner, Imphal West, Manipur, praying for necessary order u/s 15 of the Manipur Land Revenue and Land Reform Act, 1960 (in short, "the Act") read with Rule 18 of the Manipur Land Revenue & Land Reform Rules, 1960 (in short "the Rules"), their case being, in brief, thus: The applicants are cultivators and residents of Heigrujam Village Part-II. A sizeable number of catties are tended by the applicants and Ors. of their ilk, in the locality, for the purpose of using the cattle in their cultivation. The land, described in the schedule to the application, is a reserved land for pasturage for the catties of the residents of the said village. In the month of July, 2004, the Opposite party trespassed into the said land and started growing paddy thereon. The Opposite party, therefore, need to be evicted from the said land and they shall be made to pay penalty for illegally occupying the land and, further, reasonable force be provided to the applicants to enable them to use the said land as a grazing ground for the catties in their locality.

2. Having invited objections to the prayer made by the applicants, the Deputy

Commissioner, Imphal West District, passed an order, on 20.10.1995, wherein, while having held that the land, in question, was a land reserved for being used as a grazing ground and the OPs had been cultivating the same despite objections raised by the applicants, the Deputy Commissioner, Imphal West, Manipur, directed both the parties to apply for allotment of the land for being used as a field for cultivation. The conclusion reached by the Deputy Commissioner, Imphal West District, Manipur, and the direction given by him are reproduced hereinbelow:

Heard the 1d. Counsel of both the parties. After perusal the documents furnished by them and also from the enquiry report furnished by the S.D.C/Konhoujam it is clear that the land under Dag No. 1001 is still recorded as grazing ground. In this connection, it is necessary to examine the provision u/s 15 of the M.L.R. & L.R. Act 1960. It shows that "Any person who occupies or continues to occupy any land belonging to Government without lawful authority shall be regarded as a trespasser and may be summarily evicted there from by the competent authority. ..." The Deputy Commissioners has the power to set apart any Government land for grazing ground, forest reserves etc. also to reserve any such land when not required in keeping the said land already set apart. Also I have gone through the report of S.D.C/Konhoujam and it is reported that Dag No. 1001 is found to have been in the possession of the O.Ps. since 1980 till date and it is also supported by the documents filed by the O.Ps. The Pradhan of that village and local clubs also confirmed the possession of the O.Ps. One last point which is striking to my mind is that why my predecessors or authorities concerned having jurisdiction in the present dispute never take any action about the disputed land.

Hence, I am of the opinion that both the parties may apply for allotting the said land to the concerned authority for cultivating the area in the interest of the villagers. Accordingly, the petition of the Petitioners is hereby rejected.

3. Aggrieved by the directions given by order, dated 20.10.2005, aforementioned to both the parties to apply for allotment of the land for cultivation, the applicants came to this Court with an application made, under Article 226 of the Constitution of India, seeking, inter alia, issuance of appropriate writ or writs setting aside and quashing the order, dated 20.10.2005, aforementioned and commanding the Deputy Commissioner, Imphal West, to take necessary steps in the matter, in accordance with law, for evicting the Opposite party therefrom. Having heard the learned Counsel for the parties, the learned single Judge passed an order on 02.11.2006, wherein it was observed and directed as follows:

In the above view of the matter, the order dated 20.10.2005, ex facie, suffers from patent illegalities which needs correction at the hands of the Court. Consequently, the order dated 20.10.2005 is hereby interfered with and the learned Dy. Commissioner, Imphal West District is directed to take further action as may now be warranted in law in the light of the findings recorded in the present order. This will be done by the learned Dy. Commissioner as

expeditiously as possible, and, in any case, within a period of 45 days from the date of receipt of a certified copy of this order.

4. It is the order, dated 02.11.2006, aforementioned, which stands impugned, in the present appeal, by the opposite party to the said proceedings.

5. We have heard Mr. H. NK Singh, learned Sr. counsel, for the Appellant, and Mr. A. Nilmani Singh, learned Sr. Counsel, appearing on behalf of the principal Respondents. We have also heard Mr. A. Jagatchandra, learned Government Advocate, appearing for the Respondent Nos.-4 and 5.

6. Appearing on behalf of the Appellant, Mr. H. Nk Singh, learned Sr. counsel, submits that in the case at hand, even if the learned single Judge had found that the land, in question, was a land into which the Appellant had trespassed into, the remedy, at best, lied in making an order directing the Deputy Commissioner, Imphal West District, to take steps for eviction of the opposite party the said land in terms of the provisions of Section 15 of the Act and an order, which is passed or can be passed u/s 15 is an order appealable u/s 93 of the Act. Hence, in the present case, submits Mr. H.N.K. Singh, the learned single Judge ought not to have entertained the writ petition and passed the directions, which stands impugned in this appeal; rather, the learned single Judge, contends Mr. H. NK Singh, ought to have directed the applicants-Respondents herein to file appeal in terms of the provisions of Section 93 of the Act.

7. Resisting the submissions made on behalf of the Appellant, Mr. A. Nilmani Singh, learned Sr. counsel, has submitted that the application made by the principal Respondents herein called for an order of eviction to be passed by the Deputy Commissioner in terms of Section 15 of the Act and since the learned Deputy Commissioner had not exercised the powers, which stood vested in him u/s 15 and had not evicted the Appellant herein and other unlawful occupiers of the said land, the principal Respondents had no option, but to file a writ petition, for, in terms of Section 93(1)(i)(c) of the Act, an appeal from an order of the Deputy Commissioner lies to a Tribunal and a Tribunal, u/s 2(w) of the Act, means an officer appointed by the State Government to be the Tribunal for the purpose of the Act. This Tribunal, according to Mr. A. Nilmani, is not competent to decide appeals against orders of the Deputy Commissioners inasmuch as a Deputy Commissioner is a Revenue Officer u/s 4 of the Act and an appeal u/s 93(1)(i)(c) lies with the Revenue Commissioner, who too is a Revenue Officer. A revenue Officer cannot, therefore, according to Mr. A. Nilmani, be appointed or allowed to function as a Tribunal under the Act. In these circumstances, the applicant Respondent herein, according to Mr. Nilmani, had no option, but to approach this Court with the help of an application made under Article 226 of the Constitution. In the alternative, submits Mr. . Nilmani, since the learned single Judge has chosen to exercise jurisdiction under Article 226, this Court, in appeal, should not interfere with such exercise of jurisdiction, particularly, when there was no challenge posed to the maintainability of the writ petition, before the learned single Judge, on the ground that there exists an alternative remedy and that the

writ petition should not be entertained. In support of these submissions, Mr. Nilmani relies on the decision in Kanaksingh Raisingh Rav Vs. State of Gujarat, Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., and U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh,

8. Before we enter into the merit of the rival submissions, made before us on behalf of the parties, we consider it imperative to point that Rule 9 contains the provisions of survey and demarcation of pasturage and requires the Deputy Commissioner to publish a notice inviting objection, if any, to his intention to set apart the land for the purpose of pasturage. Rule 10 requires the Deputy Commissioner to hear the objection, if any, raised and Rule 11 permits him to dispose of the objection as many be deemed fit. While Rule 12 empowers the Deputy Commissioner to make a declaration of pasturage after disposing of the objection raised, if any, Rule 13 permits the use of the land as pasturage for cattles of the village or villages for which the land has been set apart following such a declaration. Rule 14 lays down that cancellation or modification of declaration of pasturage shall be made by adopting the same very procedure as are applicable for making declaration of pasturage. Rule 9 to 13 are, therefore, required to be followed mutatis mutandis for the purpose of deserving a land, which has been kept reserved for being used as pasturage for cattles.

9. Bearing in mind what has been indicated above, when we come to Section 15, we notice that Section 15 reads as under:

Section 15. Unauthorised occupation of land. (1) Any person who occupies or continues to occupy any land belonging to Govt. without lawful authority shall be regarded as a trespasser and liable to a monthly penalty equal to the annual land revenue assessable on the land till he vacates the land or is evicted therefrom under the provisions of Sub-section (2) or under any law; and such penalty shall be recoverable as an arrear of land revenue.

(2) A trespasser on any land to which the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 (Manipur Act No. 4 of 1979) is not applicable may be summarily evicted therefrom by the competent authority and any building or other construction erected or anything deposited on such land, if not removed within such reasonable time as such authority may from time to time fix for the purpose, shall be liable to be forfeited to the Govt. and to be disposed of in such manner as the competent authority may direct:

Provided that the competent authority may, in lieu of ordering the forfeiture of any such building or other construction, order the demolition of the whole or any part thereof.

10. From a carefully reading of Section 15, it clearly transpires that a person, who occupies or continues to occupy any land belonging to Government without lawful authority, shall be regarded as a trespasser and he may be summarily evicted therefrom by the authority concerned. There is no dispute before us that the Deputy Commissioner of a District is a competent authority, u/s 15, to evict a

trespasser from a Government land in his district.

11. We, now, turn to Section 93, which contains the provisions for appeal. Section 93 is reproduced herein below:

93.(1) Save as otherwise expressly provided, an appeal shall lie from every original order passed under this Act:

(a) if such an order is passed by an officer subordinate to the sub-divisional officer, to the sub-divisional officer:

(b) If such an order is passed by the sub-divisional officer, to the Deputy Commissioner;

(c) If such an order is passed by the Deputy Commissioner, to the % (Tribunal)

(d) if such an order is passed by an Assistant Survey and Settlement Officer, to the Survey and Settlement Officer or to a Revenue Officer notified by the Administrator in the Official Gazette to be the appellate authority: and

(e) if such an order is passed by a Survey and Settlement Officer, to the Director of Settlement and Land Records or to a Revenue Officer notified by the (State Govt.) in the Official Gazette to be the appellate authority.

(2) A second appeal lie against any order passed in first appeal:

(a) if such an order is passed under Clause (a) of Sub-section (1), to the deputy Commissioner;

(b) if such an order is passed under Clause (b) of Sub-section (1), to the % (Tribunal);

(c) if such an order is passed under Clause (d) of Sub-section (1), to the director of settlement and land records or to a revenue officer notified by the Administrator in the Official Gazette to be the second appellate authority; and

(d) if such an order is passed under Clause (e) of Sub-section (1), to the (Tribunal),

12. A careful reading of Sub-section (1) of Section 93 shows that every original order, passed by a Deputy Commissioner, is appealable to the Tribunal. There can be, no doubt, that an order directing eviction of a trespasser from a Government land would be an original order and such an order shall be appealable, under Clause (c) of Sub-section (1) of Section 93, to a Tribunal. Section 2 defines a "Tribunal" to mean any officer appointed by the State Government to be the Tribunal for the purpose of the Act. There is nothing, in this definition of the word, "Tribunal", to indicate that a Revenue Officer cannot be appointed by the State Government to function as a Tribunal for the purpose of the Act. We are, therefore, unable to agree with the submission, made on behalf of the principal Respondents, that a revenue officer, if appointed by the State Government to function as a Tribunal for the purpose of the Act, shall be

incompetent under the law to deal with an appeal, which may arise from an original order passed by a Deputy Commissioner u/s 15 of the Act.

13. Having settled that an order directing eviction of a person from a Government land or refusing to pass an order evicting a person from a Government land is appealable u/s 93(1)(c), we, now, advert to the facts of the present case.

14. In the case at hand, it has been the case of the applicants- writ Petitioners, even before the learned Deputy Commissioner, that the said land was a land reserved for being used as pasturage. It was also the case of the applicants- writ Petitioners, that they had been using the said land as pasturage. However, while it was the case of the applicants-writ Petitioners, before the learned Deputy Commissioner, that the opposite party (one of whom is an Appellant before this Court) are trespassers into the land, they having trespassed into the land in the month of July 2004, the case of the Appellant herein was that they had been cultivating the said land since the year 1980. Having heard the parties, the learned Deputy Commissioner, as the order, dated 20.10.06, aforementioned reflects, came to the conclusion that the land, in question, was a land reserved for being used as a grazing ground. The learned Deputy Commissioner also came to the conclusion that the land had been in the use of the applicants-writ Petitioners since the year 1990 as a grazing ground.

15. Thus, when the land was, admittedly, a land reserved for the purpose of being used as a grazing ground and the Appellant and his associates were found to be in unlawful occupation thereof, the Appellant and his associates were nothing, but unauthorised occupiers of the said Government land. In such circumstances remedy really lied in directing eviction of these unlawful occupiers. Instead of issuing such a direction, what the learned Deputy Commissioner did was to direct both the parties to make application for allotment of the land. This direction was beyond the powers of a Deputy Commissioner in as much as the scheme of the Act, as discussed above, is that so long as a land remains reserved, in terms of Section 13 as pasturage, no allotment of land can be made in favour of anyone without cancelling the declaration of pasturage under Rule 14. Without having, therefore, cancelled the declaration of the said land as pasturage, no direction to the parties for making application for allotment of the land could have been made. The present one is, thus, a glaringly noticeable case of omission to exercise the powers, which lawfully stood vested in the Deputy Commissioner. Since the order, dated 20.10.2005, aforementioned is an order refusing to exercise jurisdiction, which lawfully vested in the authority, the order was an order appealable u/s 93(1)(c) of the Act. However, instead of preferring an appeal to the Tribunal u/s 93(1)(c), the writ Petitioners-principal Respondents herein came to this Court and the learned single Judge passed the order, which stands impugned in this appeal.

16. The question, therefore, is as to whether this Court shall, now, interfere with the order, dated 02.11.2006, aforementioned on the ground that an equally

efficacious alternative remedy was available to the writ Petitioners in the form of a statutory right of appeal u/s 93(1)(c) of the Act. Availability of an alternative remedy is, ordinarily, treated as a bar to the exercise of jurisdiction under Article 226 of the Constitution. This bar is, however, not an absolute bar; hence, availability of an alternative remedy " may not always be treated as a ground for refusing to exercise jurisdiction. We may point out that notwithstanding the existence of an alternative remedy, a writ Court may exercise its discretionary jurisdiction of judicial review in, broadly speaking, five classes of cases, namely, when the Court, Tribunal or the authority lacks jurisdiction or when the writ Petitioner seeks, notwithstanding such alternative remedy, enforcement of fundamental rights or if there has been violation of principles of natural justice or whether the vires of the very enactment, whereunder the action has been taken, is questioned or where there is abuse of process of law. In the case of L.K. Verma Vs. H.M.T. Ltd. and Another, the Apex Court observed:

20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition inter alia on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review inter alia in cases where the Court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar.

17. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, the Apex Court held:

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

18. Having held, as indicated hereinabove, that when there is an alternative remedy available, a writ petition shall not be, ordinarily, entertained except in the circumstances as we have indicated hereinabove, we are, now faced with a situation, wherein the High Court has chosen to exercise jurisdiction under Article 226. Should such exercise of jurisdiction by the High Court be interfered with is

the question, which we have to, now, consider.

19. While considering above aspect of the case, what needs to be noted is that when the writ petition, in the present case, was taken up by the learned single Judge, no challenge was posed to the maintainability of the writ petition on the ground that there was an alternative remedy available. In fact, no reference was made by either party to Section 93 of the Act. This apart, the Deputy Commissioner's findings in the order, dated 20.10.2005, that Appellant herein and his associates were unlawful occupiers were not under challenge in the writ petition. The findings, contained in the order, dated 20.10.2005, were, therefore, never in dispute. It was in such a situation that the order, dated 02.11.2006, was passed by the learned single judge.

20. Thus, when admitted position, in the case, is that the land, in question, belongs to the government, that the land was reserved as pasturage and is still kept reserved as pasturage so far as the revenue records of the Government are concerned and that the Appellant herein and his associates are not lawful or authorized occupiers of the land and when, under such a situation, the learned single Judge has directed the Deputy Commissioner to pass appropriate order in accordance with law, we find that even if the appeal were preferred, the Tribunal could not have passed an order other than what the learned single Judge has directed. In such circumstances, we are of the view that though, ordinarily, an order passed u/s 15 of the Act or an order refusing to exercise jurisdiction u/s 15 of the Act can be challenged only by way of appeal u/s 93(1)(c), we, in the face of the facts of the present case and also keeping in view the fact that the Appellant never challenged the maintainability of the writ petition before the learned single Judge, hold, as an exceptional case, that the impugned order, dated 02.11.2006, does not call for any interference by this Court. In *L.K. Cerma* (supra), which Mr. Nilmani relies upon, the Apex Court has held that once a writ petition has been entertained and decided on merit, the appellate Court, except in rare cases, would not interfere with the finding only on the ground of existence of an alternative remedy. When we find that in the face of the undisputed and unchallenged conclusions reached by the learned Deputy Commissioner, even the Tribunal could not have directed, other than what the learned single Judge has directed, no fruitful purpose would be served by driving the parties to the Tribunal with an appeal.

21. In the peculiar facts and circumstances of the present case, therefore, we do not interfere with the order, dated 02.11.2006, aforementioned and dismiss the appeal.

22. Before parting with the appeal, we may, however, hasten to make it clear that ordinarily and except when materials for exercise of powers under Article 226 of the Constitution are specifically present, no order passed by a Deputy Commissioner or by any revenue officer, under the Act or the Rules made thereunder, shall, if appealable, can be entertained by way of writ petition under Article 226 of the Constitution of India.

23. No costs.