
(2014) 07 MEG CK 0018
In the Meghalaya High Court
Case No : WP(C) No. 373/2013

Niva Marak

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(f)
Meghalaya Public Premises (Eviction of Unauthorised Occupants) Act, 1980 — Section 3, 3(1), 4, 4(1)

Citation : (2014) 5 GLT 170

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

T. Nandakumar Singh, J.—Heard Ms. S.G. Momin, learned counsel for the petitioners and Mr. N.D. Chullai, learned Sr. GA assisted by Mr. K.P. Bhattacharjee, learned counsel for the respondents.

2. **FACTUAL BACKGROUND:**—The petitioners had received an impugned Notice dated 06.12.2013 issued by the Superintendent Tura Civil Hospital, West Garo Hills, Tura asking the petitioners to dismantle their houses and vacate the land occupied by them as the land is required for construction of a sewage disposal tank for the Hospital in the interest of public health within a period of 14 (fourteen) days from the date of issue of the said notice. Being aggrieved by this notice, the petitioners filed the present writ petition.

3. It is stated in the writ petition that the petitioners are residing for generations by constructing their houses in the land-in-question. It is also further stated that as per the customary practices of Garo people, lands are divided spatially, which are known as Akhing. The Nokma being the manager of the Akhing, he manages and allots plots of lands to the residents residing within the Akhing. The said right of the Nokma is also recognized by the Garo Hills Autonomous District Council which is a creation of Sixth Schedule to the Constitution of India. The

rights of the petitioners to the land-in-question, where the petitioners alleged to have been constructed their houses and resided therein for generations are based on the allotment/certificate issued by one Smti. Enilla Ch. Marak, Nokma. It is also the further case of the petitioners that the said land is a part of the Akhing and accordingly, Smti. Enilla Ch. Marak being the Nokma of the said Akhing issued the said allotment/certificate order. Copy of the said allotment/certificate order is annexed at Annexure-I to the writ petition. On perusal of the Annexure-1 to the writ petition, it is clear that the said allotment/certificate is an undated one.

4. The further case of the petitioners in the writ petition for challenging the said impugned notice dated 06.12.2013 was that the Superintendent Tura Civil Hospital, West Garo Hills, Tura is not the competent authority for issuing the impugned Notice dated 06.12.2013 asking the petitioners to vacate the said land. For evicting the petitioners from the said land-in-question, the respondents have to follow the procedures prescribed for eviction under the "Meghalaya Public Premises (Evictions of Unauthorized Occupants) Act, 1980 (for short "the said Act of 1980").

5. The State respondents had filed their affidavit-in-opposition wherein, it is clearly stated that the petitioners are the illegal occupants and encroachers of the hospital land settled in favour of the Tura Civil Hospital. Para 5 of the affidavit-in-opposition filed by the respondents read as follows:-

5. That in reply to para 2 of the writ petition, the respondent while denying the contention of the petitioners as false and baseless, states that the petitioners are not residing within Danakgre Akhing land of West Garo Hills. They are in fact the illegal occupants and encroachers of Hospital land settled in favour of the Tura Civil Hospital, Tura by the Garo Hills Autonomous District Council (GHADC). The said land measuring an area of B 142-K 1-L 13, covered by Dag No. 7 of Tura De-reserved Forest was handed over by the GHADC in the month of August 1973 to the then Civil Surgeon of Tura vide Possession Certificate dated August, 1973 for the purpose of construction of 100 bedded Civil Hospital. Subsequently, an additional plot of land measuring an area of B 8-K 2-L 6, covered by Dag No. 18 of Tura De-reserved Forest was also handed over vide letter No. GDC-REV/346/70/128-32 dated 22.4.1977 to the Civil Hospital Tura for use and expansion of the Hospital. Therefore, in total, the Tura Civil Hospital has in its possession 150 Bighas-3 Kattas and 19 Lesas of Tura De-reserved Forest Land. Mention may be made that the aforesaid land had all along been Reserved Forest and the same was subsequently de-reserved for the purpose of constructing the abovementioned 100 bedded Civil Hospital for the benefit of the people of Garo Hills as a whole. Hence, it is vehemently denied that the Akhing Nokma under GHADC has any right over the said plot of land and more so when the land in question has been transferred to the Government.

It is further submitted that the Nokma Document vide Annexure-I of the writ petition is false as it has been allegedly issued by Smti. Enilla Ch. Marak, Nokma

Danakgre Akhing, who became the Nokma only in the month of April, 2011. As per Garo Customary Law, (L) Watre Ch. Marak, mother of Smti. Enilla Ch. Marak, ought to have issued the Nokma document as (L) Watre Ch. Marak was recorded Nokma of Danakgre Akhing till her death in 2011. It is pertinent to mention herein that when the Government of Meghalaya acquired more than 750 Bighas of land for the purpose of building Government Offices during the year 1972-73, it was (L) Watre Ch. Marak and her husband Najing Nokma who parted with the Akhing land and for which they received due compensation on behalf of the Chambugong Maharis. It is therefore, reiterated that the contention of the petitioners is false and baseless and hence is liable to be rejected.

(Copy of the Possession Certificate, letter dated 19.4.1977 and Handing Over Possession of Land dated 22.04.1977 is enclosed as Annexure-I).

6. The case of the respondents in their affidavit-in-opposition is clear from para 5 of the affidavit-in-opposition, which had been quoted above. According, to the State respondents, the land measuring an area of B 142-K 1-L 13 covered by Dag No. 7 of Tura De-reserved Forest was handed over by the GHADC in the month of August, 1973 to the then Civil Surgeon of Tura Civil Hospital vide Possession Certificate dated August, 1973 for the purpose of construction of 100 bedded Civil Hospital. Subsequently, an additional plot of land measuring an area of B 8-K2-L 6, covered by Dag No. 18 of Tura De-reserved Forest was also handed over vide letter No. GDC-REV/346/70/128-32 dated 22.04.1977 to the Civil Hospital Tura. When the Govt. acquired the said land for the purpose of building Govt. Hospital during the year 1972-73, one (L) Watre Ch. Marak and her husband Najing Nokma, who parted with the Akhing land had received due compensation on behalf of Chambugong Maharis. Smti. Enilla Ch. Marak became Nokma only in the month of April, 2011. As per the Garo Customary Law (L) Watre Ch. Marak, mother of Smti. Enilla Ch. Marak became the Nokma and continued to be the recorded Nokma of Danakgre Akhing till her death in 2011.

7. Therefore, it is the case of the State respondents that when the said land was handed over to the then Civil Surgeon, Civil Hospital, Tura in the month of August, 1973, the said Smti. Enilla Ch. Marak was not a Nokma of Danakgre Akhing and (L) Watre Ch. Marak was the recorded Nokma of Danakgre Akhing and (L) Watre Ch. Marak and her husband Najing Nokma had already received due compensation. The State respondents in their affidavit-in-opposition further stated that the respondent No. 3 received a letter dated 05.04.2013 from the office of the Meghalaya State Pollution Control Board, Shillong, with regard to the management of bio-medical waste at Tura Civil Hospital, directing the Tura Civil Hospital to comply with the provision of BMW (Management & Handling) Rules, 1998. For easy reference, the said letter dated 05.04.2013 from the Member Secretary, Meghalaya State Pollution Control Board is quoted hereunder:-

MEGHALAYA STATE POLLUTION CONTROL BOARD

"ARDEN" LUMPYNGNGAD,

SHILLONG-793014

No. MPCB/BMW-3/2013-2014/122 Dt.: Shillong the 5th April, 2013

To,

The Medical Superintendent,

I/C Tura Civil Hospital, Tura

West Garo Hills District.

Sub: Management of bio-medical waste at Tura Civil Hospital.

Sir,

With reference to the above, this is to inform that during an inspection of Tura Civil Hospital carried out on 26/02/2013 by the Board's official and it was found that the implementation of the provision of the BMW (Management & Handling) Rule, 1998 has not been followed.

In this regard you are hereby directed to take corrective measures for full implementation of the provision of the BMW (Management & Handling) Rule, 1998:

? The hospital should segregate its bio-medical waste as per the system prescribed in scheduled II (enclosed) of the BMW Rules, 1998.

? Considering the likelihood of mixing of bio-medical waste it is strongly recommended that proper colour codes and labeling to be followed for identification of the different bio-medical waste. It is also mandatory for the colour codes and labels to be prominently visible and unwashable.

? Proper care should be taken to avoid mixing of biomedical waste with non-bio-medical waste.

? To construct a sharps pit for disposal of Category-4 (Sharp waste).

? Shredder should be procured for shredding of BMW (Syringes, Tubing's, Catheters, I.V. Bottles, etc.) to reduce the volume of waste.

? Autoclaving of wastes should be practice before disposal for which specific autoclave shall have to be provided for the purpose.

? To stop the burning of bio-medical waste immediately and to follow the standard of deep burial as prescribed in scheduled-V.

? To prevent spreading of infections/water borne diseases it is recommended that the Category 8 (Liquid Waste) is disinfected prior to disposal to discharge to municipal drains.

? The incinerator installed in Tura Civil Hospital, Tura is not in operation. Therefore, you are directed to take up the matter with Director of Health

Services (MI), Meghalaya, Shillong for early commissioning and operation of the said incinerator so as to ensure treatment and disposal of incinerable bio-medical waste in accordance to the standards prescribed under the Biomedical Waste (Management & Handling) Rules, 1998.

You are requested to submit an action taken report to the Board at the earliest.

Yours faithfully,

Sd/-

Member Secretary Meghalaya State Pollution Control Board, Shillong.

8. Tura Civil Hospital is required to take up immediate steps for compliance with the requirement as provided under BMW (Management & Handling) Rules, 1998 by constructing a sharps pit for disposal and other structures for management of bio-medical waste at Tura Civil Hospital and for such compliance, the petitioners who are the unauthorized occupants of the land of the Tura Civil Hospital are required to be vacated and accordingly, the Superintendent, Tura Civil Hospital issued the impugned letter dated 06.12.2013.

9. Mr. N.D. Chullai, learned Sr. GA appearing for the respondents submits at the Bar that the main ground for challenging the impugned letter dated 06.12.2013 in the writ petition is that the Superintendent, Tura Civil Hospital is not the competent authority and the Deputy Commissioner is the competent authority; and issue notice for eviction by the authorities under the said Act of 1980 in the given case, it would be an empty formality inasmuch as, the petitioners are the unauthorized occupants of the land of Tura Civil Hospital. u/s 2(f) of the said Act of 1980 "Public Premises" means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of, a corporate authority. u/s 3(1) of the said Act of 1980 provides that the Deputy Commissioner is the authority to issue notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made for evicting the unauthorized occupants of public premises. Section 4(1) of the said Act of 1980 further provides that after considering the show cause statement submitted by the unauthorized occupants in pursuance of a notice u/s 3 of the said Act, 1980 and allowing them to produce any evidence in support of their claims satisfied that the public premises are in unauthorized occupation, the Deputy Commissioner may pass an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, by such date, not being earlier than fifteen days from the date of its service as may be specified in the order. Since there is a prescribed procedure for evicting the unauthorized occupants under the special Act i.e. the Meghalaya Public Premises (Eviction of Unauthorized Occupants) Act, 1980, the respondents should have followed the procedures prescribed in the said Act of 1980 for evicting the petitioners, if according to the State respondents, they are the unauthorized occupants.

10. Accordingly, this writ petition is disposed of by directing the Deputy Commissioner, West Garo Hills District, Tura to take up appropriate steps as provided under the said Act of 1980 for evicting the petitioners. It is also made clear that the petitioners should not be evicted without giving reasonable opportunity of being heard as provided u/s 4 of the said Act of 1980. Since the matter involves public interest, there should not be any delay on the part of the Deputy Commissioner, West Garo Hills District, Tura in taking up necessary steps as provided under the said Act of 1980 and the Deputy Commissioner, West Garo Hills District, Tura shall complete the whole exercise within a period of two months from the date of receipt of a certified copy of this judgment and order. The respondent No. 1 is directed to furnish a copy of this judgment and order for necessary compliance to the Deputy Commissioner, West Garo Hills District, Tura.

11. With the above observations and directions, this writ petition is disposed of.