

(2016) 07 GAU CK 0088

In the Gauhati High Court

Case No : Writ Petition (C) No. 74 of 2016 and W.P. (C) No. 5993 of 2014

Peoples's Right To Information & Development
Implementation Society of Mizoram

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLT 699

Hon'ble Judges : Ajit Singh, CJ. and Michael Zothankhuma, J.

Bench : Division Bench

Advocate : Mr. Lalramtiamia, Advocate, for the Petitioner; Mr. Aldrin Lallawmzuala, Addl. AG and Ms. Zairemsangpuii, CGC, for the Respondents

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J. - Heard Mr. Lalramtiamia, learned counsel for the petitioner. Also heard Ms. Zairemsangpuii and Mr. Aldrin Lallawmzuala, learned Addl. Advocate General, Mizoram for the respondents.

2. The writ petitioner, which is an NGO, has filed the present Public Interest Litigation praying that a direction should be issued to the respondents to pay compensation under the Land Acquisition Act to the Schedule Tribes of the State of Mizoram whose lands are covered by Village Council Passes and whose lands have been taken away by the Government. The petitioner also prays for a direction to the respondents to formalize and make a rehabilitation scheme for the homeless Schedule Tribes. The further prayer of the petitioner is that the discrimination made under the Land Revenue Act between Pass holder and Land Settlement Certificate holder should be struck down, as it is arbitrary and discriminatory. The petitioner also prays that the State should assess the value of the lands of the Village Council passes which are given under the Hills District Act, 1955 or under The Mizoram (Land Revenue Act), 1956 when those lands are acquired, as no compensation is given on the value of the land on acquisition.

3. The petitioner's counsel submits that thousands of Schedule Tribes of Mizoram living in small huts do agricultural work on the land given to them on the basis of Village Council Passes. The petitioner's counsel submits that the lands covered by Passes, are being taken away by the State Government without any rehabilitation scheme and without any compensation being paid to the Pass holders as per the land Acquisition Act, 1894 (L.A. Act, 1894 in short). The petitioner's counsel submits that while Land Settlement Certificate holders are given compensation for acquisition of their lands, the Pass holders are not given any compensation for their lands on the same being acquired.

4. The petitioner's counsel submits that as per Section 2 (11) of the Mizo District (Land and Revenue) Act, 1956:

"Pass-holders means a person who has the temporary right of use and occupancy over a specified plot of land for a specified period under such terms as the Administrator may prescribe in the pass he holds".

5. The petitioner's counsel submits that as per Section 7 of the Mizo District (Land and Revenue) Act, 1956 (herein after refer to as the 1956 Act) the settlement holders have heritable and transferable right over the land. The petitioner's counsel submits that this discrimination in depriving Village Council Pass holders of payment of compensation at the time of taking away of their lands by the Government is arbitrary, discriminatory and unfair. He submits that Pass holders cannot be denied their lawful rights at the time of payment of compensation as they cannot fend for themselves if their lands are taken away. The petitioner's counsel submits that on taking away of lands covered by Passes, the respondents ought to have framed a scheme for the thousands of Schedule Tribes residing in the State of Mizoram. The petitioner's counsel submits that due to the compulsory acquisition of land for fencing of the Indo Bangladesh Border and for the purpose of construction of road, Pass holders have lost their livelihood and in the process, the State Government has also denied them their right under the Constitution and the L.A. Act, 1894, by not paying them any compensation for the loss of their lands.

6. The respondents counsels on the other hand submit that what has been challenged in the present writ petition is the Lushai Hills District (House site) Act, 1953 (hereinafter I refer to as the 1953 Act) and the 1956 Act. However, the New Act, i.e. the Mizoram (Land Revenue) Act, 2013, has repealed the above two Acts and there being no challenge to the Mizoram (Land Revenue) Act, 2013, the present writ petition should be dismissed.

7. The respondents counsels also submit that payment of compensation for acquisition of land had been made as per the prevailing land laws applicable to the State of Mizoram and compensation was paid only to those who were entitled to receive compensation. The respondents counsels submit that Village Councils are competent to allot sites within its jurisdiction for residential and non agricultural purposes only. They submit that as the pass holders only have

temporary right of use for their lands, there was no error committed by the State Government in not paying compensation to the pass holders as they do not have any right or title over the said lands on the basis of the passes. The respondents counsels also submit that the petition should be dismissed as no right of the petitioner has been effected. The respondent counsels also submit that there has been no assessment of land valuation for agricultural lands covered by Village Council passes as such Passes are void. They are paid compensation only for the crops on humanitarian grounds.

8. We have heard the learned counsels for the parties.

9. In the present case, the petitioner has prayed that Pass holders should be given compensation when their lands are acquired by the Government.

10. Section 3 of the Lushai Hills District (House Site) Act, 1953 is as follows:

"3. Allotment of sites:-

1) Subject to the provisions of sub-section (2) of this section, a Village Council shall be competent to allot sites within its jurisdiction for residential and other non-agricultural purposes with the exception of shops and stalls which include hotels and other business houses of the same nature.

Notwithstanding anything contained in this act, the Administrator shall have the power to intervene in all cases of disputes over any sites within the village, and the decision of the Administrator shall be final.

Provided that the Administrator may, at any time by notification, declare that any village or a particular locality is a protected area where allotment of sites shall be done by Village Council only with the previous approval of the Administrator.

2) The Administrator or any person or body authorised in that behalf by the Administrator shall allot sites for residential and other non-agricultural purposes in Aizawl, Lunglei, Demagiri, Sairang, Kolasib, Champhai and N. Vanlaiphai and also sites for shops and stalls which may include hotels and other business houses of the like nature in places other than the said stations.

3) The Village Council, when site is allotted under sub-section (1) and the Administrator or any other person or body, authorised in that behalf by the Administrator when the site is allotted under sub-section (2) shall issue a patta and may incorporate therein in writing such conditions as may be reasonable in the interest of general public or a scheduled Tribe.

4) The authority issuing the patta on being satisfied on proof that any such condition or conditions incorporated in the Patta have been violated may cancel the Patta.

Provided that such authority instead of cancelling the Patta may impose a fine, when such authority is a Village Council, not exceeding Rs. 50/- and when the authority is the Administrator or any other person or body authorised in that

behalf by the Administrator, not exceeding Rs. 100/-

5) No person shall occupy any site without obtaining a Patta from a competent authority as prescribed in sub-section (1) or sub-section (2) as the case may be

6) The Village Council when the site is allotted under sub-section (1) the Administrator or any other person or body authorised in that behalf by the Administrator when it is allotted under sub-section (2) may evict any person having in occupation of unauthorized site after service on such unauthorized occupant of a notice to vacate the site within a period of not less than 7 days.

7) On failure of such unauthorized occupant to vacate the site within the time fixed in the notice Village Council or Administrator or any other person or body authorised by the Administrator in that behalf, may order for demolition of the building or impose a fine not exceeding Rs. 5/- per day for the unauthorized occupation after the service of the notice.

8) The order of the Administrator of a Village Council as the case may be, passed under clauses (6) and (7) above shall be deemed to be a decree of a competent civil Court to which this Act applies."

11. Reading of the above Section 3 of the 1953 Act shows that the Village Council has the power to allot sites within its jurisdiction only for residential and other non agricultural purposes. Thus it logically follows that for acquisition of lands or taking way of kinds covered by Village Council Passes issued for the residential and non agricultural purposes by the Government, the Pass holders are entitled to be given compensation. However, as a Pass holder only has temporary right of use and occupancy over the land for a sped Red period under such terms as may be prescribed, the Pass holders do not have any right for payment of compensation of the land after the period of validity expires.

Further Section 5 of the Act, 1956 states as follows:

"5. Rights of Pass-holder-

A pass-holder shall have no right in the soil beyond a right of user for the period for which it is given and shall have no right of transfer, or of inheritance beyond the period of the pass or of subletting."

This incongruity is easily clarified by the fact that Section 3 of the Act, 1953 states that the Village Council is competent to allot sites within its jurisdiction for residential and other non-agricultural purposes by way of a Patta, as reflected in Sub Section 3 of Section 3. The definition of Patta and Patta holders is given in the Mizo District (Agricultural Land) Rules, 1971 as follows:

[5) "Patta" means a prescribed land settlement document settling the Agricultural land under the Act and under these Rules, whereby an individual or society has entered into an agreement with the District Council to pay land revenue, taxes, cesses and rates legally assessed or imposed in respect of the land from time to time.

6) "Patta-Holder" means a holder or Patta, who has entered into an engagement with the District Council to pay land revenue, taxes, cesses and rates legally assessed or imposed in respect of the land from time to time thereby acquired the Patta-holder's right under Section 7 of the Act.]

Section 7 of the Mizo District (Agricultural Land) Act, 1963 states as follows:

7. Rights over Land:-

1) The Patta-holder shall have heritable and transferable right of use on, or of sub-letting in his land subject to:-

a) The Payment of all revenues and taxes from time to time, legally assessed or imposed in respect of the land.

b) Such terms and conditions as are imposed by rules made under this Act.

2) No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied, unless registered and Patta obtained in accordance with provision of this Act."

Section 7 of the Act, 1956 is exactly similar to Section 7 of the Mizo District (Agricultural Land) Act, 1963 and its states as follows:

"7. Settlement-holder's right over land:

"The settlement-holder shall have heritable and transferable right of use on or of sub-let-ting in his land subject to:-

a) The payment of all revenue and taxes from time to time legally assessed or imposed in respect of the land

b) Such terms and conditions as are expressed in his settlement lease, and the rules made thereunder."

Thus from reading of the various clauses above, it can be seen that the allotment of sites by the Village Council for the purpose of residential and other non-agricultural purposes should be by way of a Patta. Just because the word Pass is used in the Pass issued by the Village Council does not mean that a Patta has not been issued. The word Pass should be read as Patta and cannot be read as a Pass. In the case of *N. Mani v. Sangeetha Theatre & Ors.* reported in (2004) 12 SCC 278, the Apex Court has held that if an authority has a power under the law, merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provisions of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law

In the case of *Union of India & Anr. v. Tulsiram Patel* reported in (1985) 3 SCC 298, the Apex Court has held that the source of power must exist for its exercise. Thus, a perusal of the land laws existing prior to the coming into the force of the Mizoram Land Revenue Act, 2013 having clearly shown that the

Village Council can allot sites for residential and other non-agricultural purposes by issuing a Patta, the use of the word Pass instead of Patta does not invalidate the said land holding. However, the land laws do not allow for the allotment of sites for agricultural purposes by the Village Council, either by way of a Pass or a Patta.

12. In the present writ petition, the petitioner has not given a list of persons who have been deprived of their alleged legitimate rights to receive compensation on their lands being taken away by the Government. The petitioner has also not specified when the lands of the Village Council Pass holders have been acquired/taken away by the Government. The petitioner has however annexed copies of 4 (four) Village Council Passes. On a perusal of the said passes issued by the Village Council, it is not clear whether the said passes have been issued for agricultural passes or for residential purposes, in view of the fact that the heading of the Pass states as follows "Huan/Inhmun Pass", which, when translated means Garden/House Pass. This aspect of whether the Pass is for agricultural or for residential purposes has to be clarified by the Pass Holders and the authority which issued the said Pass. In any event, the petitioner has not made any averment that the holders of the said 4 (four) Passes have instructed the petitioner to take up their grievances on their behalf. There is also no averment to show that the lands covered by the 4 (four) Passes were a part of any acquisition process or that the Pass holders have any grievance. There is nothing to show that the lands covered by the Village Council Passes for residential & non-agricultural purposes had been taken away by the Government without payment of compensation or that they have become land less persons, who need a rehabilitation package. Though, the petitioner has filed this petition claiming that hundreds of thousands of tribals in the State of Mizoram have suffered due to the taking away of their lands, no specific person or particulars have been mentioned in the writ petition. The law prior to the 2013 Act is to the effect that on acquisition of land covered by Village Council Passes, the Passes issued by the Village Council for agricultural purposes are void and the Passes issued for residential and non-agricultural purposes are valid, for which compensation should be given. However, the petitioner has not made any differentiation between Passes issued by the Village Council for agricultural and residential purposes. The petitioner has also not brought out any example of a Village Council Pass Holder (for residential purpose) being deprived of compensation, on acquisition of his land.

13. Though the petitioner has made a blanket challenge to the 1953 Act and the 1956 Act, the petitioner has not made any challenge to the Mizoram Land (Revenue) Act, 2013, (herein after refer to as the 2013 Act, which has repealed the 1953 Act and the 1956 Act. Section 26 & 27 of the 2013 Act states as follows:

"26. Status of a Pass-holder

Every person belonging to any of the following classes shall be called a Pass-holder and shall have all the rights as specified in the pass and shall be subject

to all the liabilities conferred or imposed upon him by or under this Act, namely:-

(a) Every person who, at the commencement of the Act, holds any non-agricultural land from the Government under a valid Pass granted by the competent authority, and his successor-in-interest; and

(b) Every person who acquires the right of a Pass-holder under or in accordance with the provisions of this Act and the rules made thereunder.

27. Rights of a Pass-holder

A Pass-holder shall have no right in the land held by him beyond the rights of use and occupancy for such period and under such terms and conditions as may be specified in the Pass and shall have no right of transfer, inheritance, or of sub-letting beyond the period so specified. Provided that where no period has been specified in the existing Pass, the validity of such Pass shall, unless renewed, be deemed to have continued as a valid Pass for a period not exceeding five years from the date of commencement of this Act."

The allotment of House Sites in Villages and Rural areas is provided for in Section 39 of the 2013, Act. The allotment of land for permanent cultivation i.e. for agricultural and allied purposes is provided for Section 41 of the 2013 Act. In respect of the question of the right of persons to have agricultural land prior to the coming into force of the 2013 Act, the provisions of the Mizo District (Agricultural Land) Act, 1963 and the Lushai Hills District (Jhumming) Regulation, 1954 which were/are applicable in the State of Mizoram provides for allotment of land for agricultural purposes. It is not the case of the petitioner that the people in the villages were denied allotment of land as per the above land laws applicable for agricultural land. Also agricultural land holders can have heritable and transferable rights over their land, while some agricultural land holdings under a Village Council Pass is void. The Government can issue Passes for agricultural land. However, as provided for in the land laws, the said Pass holder have no rights in the land beyond the right of use and occupancy for such period as may be determined.

14. Coming back to the case in hand, this Court cannot embark on a roving enquiry as to who are the effected persons who were legitimately denied compensation for acquisition of their lands, especially when there are no particulars furnished by the petitioner.

15. The question of maintainability of the present Public Interest Litigation has to also to be considered. In the case of *S.P. Gupta v. Union of India & Anr.* reported in 1981 (Supple) SCC 87, the Apex Court held at para 24 & 25 as follows:

"24. But we must be careful to see that the member of the public, who approaches the Court in cases of this kind is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political

objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the Courts to further their aims". These are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.

25. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

16. In the present case, no effected person or class of persons, who are alleged to be primarily injured, as a result of non payment of compensation, have made any grievance to the effect that they have not received their due compensation or that they need to be rehabilitated. The petitioner is also not directly affected and he has not been able to show that the State has acted arbitrarily. Also the land laws which he has challenged has been repealed by the 2013 Act.

17. In view of the reasons stated above, we do not find any merit in the writ petition. Accordingly, the same is dismissed.