
(2014) 09 GAU CK 0040
In the Gauhati High Court
Case No : W.P. (C) No. 86 (K) 2011

Phutovi Chishi

APPELLANT

Vs

The State of Nagaland

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : AIR 2015 Guw 6 : (2015) 1 GLT 392

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : A. Zhimomi, I. Longjem, N. Mozhui, S.M. Ozukum, Joshua, Noel Swu, Tokivi, Aloto and K. Newmai, Advocates for the Appellant; Lucy, Addl. Sr. G.A, Advocates for the Respondent

Judgement

Lanusungkum Jamir, J.—Heard Mr. I. Longjem, learned counsel for the petitioners. Also heard Mrs. Lucy, learned Addl. Sr. Government Advocate appearing for the State respondents. This writ petition is directed against the impugned individual Eviction orders all dated 1-4-2011 issued upon the petitioners by the Deputy Commissioner, Dimapur, Nagaland and the order dated 20-4-2011 whereby the mutation granted to the petitioners were cancelled with effect from the date of the issue of the order.

2. Mr. I. Longjem, learned counsel for the petitioners submits that the present suit land was under the occupation of one Smti. Jilaswar, prior to the formation of the Statehood of Nagaland. After formation of the State of Nagaland, an order dated 27-1-1977 was issued allowing settlement of the said plot of land measuring about 25B-04K-5Ls in favour of the said Smti. Jilaswar. Sometime in the year 1978, the Department of Public Health Engineering decided to set up a water supply project and requested the said Smti. Jilaswar to permit usage of a portion of her land for the same. The said request was consented to by Smti. Jilaswar. However, the project was abandoned and therefore the portion of land allowed to the PHED was taken back of Smti. Jilaswar. In 1981, the present petitioners occupied the land of the said Smti. Jilaswar as tenants by way of

payment of rent in the suit land covered by Dag No. 344.

3. Thereafter Smti. Jilaswar sold the suit land to the petitioners by way of executing a Sale-Deed in the year 1990. The said sale-deed was executed between Smti. Jilaswar and the petitioners in the name and style of Women Tillers Purana Bazar. Meanwhile, the Department of PHED again revived the water supply project in the year 1998. The concerned Minister therefore requested the petitioners for allowing the PHED department to set up the water supply project and accordingly on the basis of meeting held on 1-5-1998, it was agreed to allow some portion of their land adjoining the actual Raj Pukhuri for the use of the project. Again, the project could not take off and therefore the project was abandoned and the entire plant and machinery were also taken away and therefore, the petitioners reclaimed the lands given by them for the project.

4. The petitioners were served with a common notice dated 30-4-2008 by the Executive Engineer, (PHED) directing them to dismantle the building erected by the petitioners within 15 days from the date of issue of the notice on the ground that such construction were made within Government land. The petitioners submitted their reply to the notice dated 30-4-2008. After the reply to the notice dated 30-4-2008, the officials of PHED had furnished the petitioners with a copy of Patta No. 1160, Dag Nos. 344/1727 and 345. The petitioners came to learn that the land under Dag No. 344 originally settled in favour of Smti. Jilaswar in the year 1977 was converted to the patta produced by the officials of PHED. Subsequently, separate show cause notice dated 3-7-2008 were issued to the petitioners by the Deputy Commissioner, Dimapur to show cause as to why they should not be evicted from illegal occupation of land under Dag No. 344/345 at Raj Pukhuri, Purana Bazar, Dimapur within 15 days. A joint reply was given by the petitioners to the show cause which was received by the Deputy Commissioner, Dimapur on 22-7-2008. Thereafter, no steps were taken by the respondents and the petitioners therefore considered the matter to be settled.

5. The petitioner in order to secure their land applied for mutation of their respective land and accordingly they were given their respective jamabandis which was issued by the competent authority (annexed to the writ petition as Annexure-I). However, the department of Land Revenue by a letter dated 28-2-2011 directed the Deputy Commissioner, Dimapur to cancel the orders of land allotment made by the Department in the High School area of Purana Bazar, Raj Pukhuri in Dimapur as the same was without the formal approval of the State Land Acquisition Authority (SLAA). Therefore in pursuance to the letter dated 28-2-2011 the Deputy Commissioner, Dimapur cancelled the mutation granted to the petitioners.

6. Mr. I. Longjem, learned counsel for the petitioners submits that the petitioners are in possession of the present suit land as early as 1990. The order dated 27-1-1977 by which Smti. Jilaswar was allowed settlement of land measuring 25B-04K-5Ls covered by Dag No. 344 has not been revoked till date. Further the petitioners were given mutation over the plot of land occupied by the petitioners

in the year 2010. While conducting the mutation and also issuing of Jamabandi no question were raised from any quarters and it was the respondents who had issued the same. He also submits that any semblance of right over the disputed land by the State respondents could accrue only from the year 2008 i.e. when the jamabandi was issued in favour of the PHE Department. This was much latter after the sale-deed was executed between the petitioners and Smti. Jilaswar in the year 1990. He also submits that as the purported Jamabandi was issued to the PHED only on 9-9-2008, the notice dated 30-4-2008 directing the petitioners to dismantle their building and the show cause notice dated 3-7-2008 were all done without any authority as by then the authorities had no claim or title over the land. Under such circumstances, the learned counsel submits that instead of cancelling the mutation granted in favour of the petitioners by order dated 20-4-2011, the State respondents should have filed an appropriate suit before the appropriate forum. In support of his case, he has placed reliance in the case of Government of Andhra Pradesh v. Valluri Kesava Rao, reported in (1982) 2 SCC 134 at paras 8 & 9 : AIR 1982 SC 1081, paras 7 & 8) therein. He has also drawn the attention of this Court to the case of Legal Heirs of Late Chittaranjan Das and Others Vs. Chairman, Assam Board and Others, . In the facts and circumstance of the case, he submits that the order dated 20-4-2011 and the eviction order dated 1-4-2011 be set aside and quashed.

7. Mrs. Lucy, learned Addl. Sr. Government Advocate appearing on behalf of the State respondents submits that the State respondents has no record of the order dated 27-1-1977 by which the suit land in question was settled in favour of Smti. Jilaswar. She also submits that the department of PHED had never requested Smti. Jilaswar for permission to use her land for setting up of water projects and that the land had all long belonged to the PHE department. It is only recently that the petitioners had started encroaching upon the Government's land which was allotted to the PHE department. She also submits that on 7-11-1984 a high level meeting was held wherein it was decided to give the ownership of Rajpukhuri and Padampukhuri ponds to the PHE department for water supply to Dimapur City. On the basis of such decision, the Deputy Commissioner, Kohima has directed the Revenue Officer, Dimapur to put up boundaries, in consultation with the Additional Chief Engineer (PHE) in order to avoid encroachment by individuals by order dated 6-12-1984. Thereafter, the said suit land under Dag. No. 344 of Rajpukhuri banks was hands over to the Additional Chief Engineer (PHE) department by order dated 28-1-1985. She urther submits that none of the petitioners including Smti. Jilaswar was residing on the bank of Rajpukhuri under Dag. No. 344 when the pond and its bank was surveyed and handed over to the PHE department for water supply project in the year 1985. Further submission is made by the learned Addl. Sr. Government Advocate that the present suit land belongs to the PHE department however, the concerned department had not been impleaded as a party respondent in the present writ petition and therefore the present writ petition should be dismissed on this count alone.

8. Drawing attention of this Court to order dated 6-12-1984, she submits that pursuant to the decision taken on 7-11-1984, the ownership of Rajpukhuri and Padamupukhuri ponds were given to the Additional Chief Engineer. PHE department for water supply development works to the provided to Dimapur City by the Order dated 6-12-1984. The said order was followed by the order dated 28-1-1985 whereby the tanks of both the Padampukhuri and Rajpukhuri was handed over to the PHE department. At the relevant point of time, no separate patta was issued to the concerned Department as there was no separate patta system and the land owned by the Government Department was recorded as Government land. However, there was heavy encroachments upon Government land and therefore to solve the issue, a notification dated 21-5-2005 was issued directing that all Government Department should have patta in respect of Government land. In pursuance to the said notification dated 21-5-2005, the Executive Engineer (PHE) Urban Dimapur was allotted an area measuring 25B-04K-02Ls under Dag No. 344 and 80B-02K-00L under Dag No. 345 by order dated 9-9-2008.

9. She also submits that mutation done in favour of the petitioners was made without following any process and also without the approval of the competent authority. It is also submitted that the 24 mutations in favour of the petitioners are not available in the office of the Deputy Commissioner, Dimapur which clearly indicates that the petitioners have managed to obtain the jamabandis through the back-door. The petitioners have illegally encroached upon the public land on the pretext that they have purchased the said plot of land from Smti. Jilaswar and therefore the eviction order as well as cancellation of the mutation granted to the petitioners have been rightly done and therefore the present petition is liable to be dismissed.

10. I have considered the submission of the learned counsel for the parties.

The ground taken by the State respondents at paragraph 4 of the counter-affidavit that the order dated 27-1-1977 by which the disputed land measuring 25B-04K-5Ls was allotted to Smti. Jilaswar being not on records is contradicted by Annexure-O annexed to the affidavit-in-reply filed by the petitioners. Annexure-O thereto is a copy of the Order dated 7-11-1984 which was attested by the Extra Assistant Commissioner, Office of the Deputy Commissioner, Dimapur District, Nagaland on 12-4-2012. The affidavit-in-opposition was sown on 7-3-2012 and the attestation by the EAC concerned of Dimpaur district was done on 12-4-2012. Therefore, this Court is not in a position to accept the contention of the State respondents that the order dated 27-1-1977 settling the suit land in favour of Smti. Jilaswar does not exist on official records.

11. The order dated 27-1-1977 allowing settlement of the disputed land in favour of Smti. Jilaswar has not been nullified till date nor has the sale-deed executed between the petitioners and Smti. Jilaswar on 17-9-1990 been put to challenge by the State respondents.

12. The separate jamabandis issued to the petitioners on 12th August 2010 appears to have been issued by the competent authority after following the mutation process. Therefore, after the Eviction Notice dated 1-4-2011 the cancellation of the mutation granted to the petitioners by the order dated 20-4-2011 could not have been done without first hearing the petitioners.

A detailed perusal of the impugned cancellation order dated 20-4-2011 also indicates that such cancellation was not done on the basis of the Eviction order dated 20-4-2011 but it was on the basis of the letter dated 28-2-2011 written by the Department of Land Revenue. This being the position, this Court is of the considered opinion that the order dated 20-4-2011 could not have been issued without first issuing a show cause notice to the petitioners on the basis of the letter dated 28-2-2011.

This Court also humbly subscribes to the decision of the Hon'ble Supreme Court in the case of Valluri Kesava Rao (AIR 1982 SC 1081, paras 7 & 8) (supra). The relevant portion of which is quoted herein below:--

"8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land "for which he is liable to pay assessment under Section 3". Section 3, in turn, refers to unauthorized occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation..... inter alia, since Nawab Habibuddin was found to have encroached on the

property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin" cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Meharunnissa Begum v. State of A.P.* which was affirmed by a Division. It is not a duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary Courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, *prima facie*, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law."

13. This Court is therefore of the considered opinion that the aforesaid decision of the Apex Court covers the present case. In the facts and circumstances of the case, the impugned eviction order dated 1-4-2011 and the impugned cancellation order dated 20-4-2011 are both set aside and quashed. The State respondents are however given the liberty to approach the appropriate forum by way of filing an appropriate petition to claim their right and title over the dispute land, if so advised.

14. With the above observations and directions, this writ petition is allowed. No costs.