
(2019) 09 MAN CK 0030

In the Manipur High Court

Case No : Public Interest Litigation No. 40 Of 2017

P.S.Henry Paotei And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 09 MAN CK 0030

Hon'ble Judges : Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

Bench : Division Bench

Advocate : B.R.Sharma, M.Rarry, Julius Riamei

Final Decision : Disposed Of

Judgement

R.S., CJ

[1] Heard Mr. B.R.Sharma, learned counsel for the petitioner. Heard also Mr.M.Rarry, learned Addl.AG for the State respondents and Mr. Julius Riamei, learned counsel for the private respondents.

[2] The prayers in this PIL are as follows:-

"i) Quash the order bearing No. DC (SPT) 11/26 (R) Dt. 7th Nov, 2015 issued by the District Magistrat, Senapati District, Manipur at Annexure-A/10;

ii) direct the Respondents to stop further constructions/works within the allotted land for the construction of the Mini-stadium at Senapati and also to dismantle the already constructed structures/buildings.

iii) direct the CBI (Central Bureau of Investigation) for investigating into the issuance of the illegal Order dated 07.11. 20156 at Annexure-A/10;

iv) Pass any other appropriate order or orders deem fit for the end of justice."

[3] The impugned order dated 7th November, 2015 is extracted for better appreciation of the case.

Annexure-A/10

GOVERNMENT OF MANIPUR

OFFICE OF THE DEPUTY COMMISSIONER

SENAPATI DISTRICT, MANIPUR

ORDERS

Senapati, the 7th of November, 2015

No. DC(SPT) 11/26(R)/ : Whereas the Deputy Commissioner, Senapati executed a Deed of Donation with the Taphou Naga Villagers on 23rd May, 1998 thereby allotting a piece of land measuring 0.45 acres on the North and North-Eastern edge of the Mini Stadium Ground, Senapati for construction of Model Shopping Complex to Taphou Naga Village in lieu of the present plot of Circuit House.

2 Whereas as it is imperative that the exact measurement of land as allotted in the Deed of Donation executed on 23rd May, 1998 is maintained and the area allotted is exactly 0.45 acres. Further, for public health and safety reasons it is also hereby directed that all the shops in the model shopping complex shall not built more than two floors and any extra structure above two floors are to be dismantled immediately.

3. Whereas it is also pertinent to mention here that the Government of Manipur vide letter No. 23/27/97-R dated 28th April, 1998 from the Assistant Revenue Commissioner, Govt. of Manipur have accorded approval of the above Deed of Donation subject to the condition that the area of 0.45 acres allotted do not have any Government structures and that the said land will not adversely affected the District H.Q. and the spirit of the approval has been maintained.

4. Whereas as per the existing agreement, the area of 0.45 acres would cover most of the ground portion in the North and North-Eastern direction thereby defeating the very purpose and utility of the establishment of the mini stadium ground. It is also reasonable that the model shopping complex should be established at the periphery of the ground. An adjustment made in such a manner so as to construct the model shopping complex in the periphery/ boundary of the ground without affecting the area of land allotted would be beneficial for the Government as well as the General Public.

5. In view of the above mentioned circumstances , the District Administration, Senapati hereby allots a strip of land measuring 0.45 acres in the north, north-eastern and eastern edge of the Mini Stadium ground. Senapati for establishment of Model Shopping Complex. The schedule of the land so allotted is given below:

North D.C. Office Road

South: Approach Road

East: N.H.1/D.M. Road

West: CJM Court/ Hort& Soil Office.

The authenticated copy of the trace map is enclosed for future reference.

Sd/-

(Jacintha Lazarus)

District Magistrate, Senapati District."

[4] On 15.11.2017, the following order was passed:-

"15-11-2017

Heard Mr. B.R Sharma, learned counsel for the petitioner.

Issue notice returnable within two weeks.

Mr. Sukumar, learned GA assisting Mr. N. Kumarjit, learned AG accepts notice on behalf of the respondent Nos. 1 to 4.

Petitioner is to take steps for service of notice upon the remaining respondent Nos. 6, 7 & 8 by speed post. As regards respondent No. 5 who has been impleaded in person, impleading respondent No. 5 in person is not necessary at this stage since there is no personal bias or fraud alleged against her. Accordingly, the same stands struck off as the respondent No. 5 can be impleaded later on, if necessary.

Mr. B.R Sharma, learned counsel for the petitioner submits that the land in issue where the Deputy Commissioner had allotted by the impugned order for construction of Model Shopping Complex to Taphou Naga Village is part of the Mini Stadium land which was allotted in the year 1993 for the purpose of construction of Mini Stadium, and accordingly submits that let there be no construction of the Model Shopping Complex within the land allotted for construction of a Mini Stadium and accordingly sought for stay of the construction going on.

This interim prayer will be considered on the next returnable date upon receipt of instruction by the learned AG in this regard.

Accordingly, list the matter on 1st December, 2017."

[5] List of dates given by the petitioners are extracted as under:-

"Sl. No

Dates

Events/Orders

1.

18.11.1976

DC North Manipur District allotted land for the Construction of Mini Stadium at Senapati

2.

15.6.1993

Govt. of Manipur allotted land for the Construction of Mini Stadium at Senapati

3.

16.4.2010

DYASO requested DC Senapati for demarcation of the allotted land for the Construction of Mini Stadium at Senapati

4.

4.16.6.2010

Representation for the protection of allotted land For the Construction of Mini Stadium at Senapati

5.

20.7.2011

DC Senapati ordered for stopping the construction at the allotted land for the construction of Mini Stadium at Senapati

6.

4.02.2013

Session Court upheld the order of DC

7.

07.11.2015

DC Senapati allowed further construction at the allotted land for the Construction of Mini

Stadium at Senapati

Sd/-

(Miss Sainem Leivon), Advocate"

[6] In the synopsis, it is stated by the petitioners as follows:-

"This is an application in the form of Public Interest Litigation (PIL) under Article 226 of the Constitution of India Praying for:-

(i) Quashing the order bearing No. DC(SPT)11/26(R) Dt. 7th Nov, 2015 issued by the District Magistrate, Senapati District, Manipur at

Annexure-A/10;

(ii) directing the Respondents to stop further constructions/ works within the allotted land for the construction of the Mini-stadium at Senapati and also to dismantle the already constructed structures/buildings.

(iii) Directing the CBI (Central Bureau of Investigation) for investigating into the issuance of the illegal Order dated 07.11.2015 at ANNEXURE-A/10.

Grounds:-

(a) That the said impugned order dated 7-11-2015 was issued in violation of the allotment order dated 15th June 1993 at Annexure-A/2, wherein 5.25 acres inclusive of the encroached land at the eastern boundary site of Mini-stadium till the then NH-39 which is now NH-02 was allotted for the site of the said Mini-Stadium.

(b) The said impugned order dated 7-11-2015 is being issued in violation of the order dated 20th July 2011 at annexure-A/6 which ordered the ongoing construction along the Eastern stretch of the Mini-stadium ground, Senapati, to be stopped with immediate effect.

(c) As the Public has a grave suspicion on the Respondent No. 5 of abusing her position as a Public Servant in order to obtain for herself or any other person any valuable thing or pecuniary advantage for passing the impugned order.

Sd/-

(Miss Sainem Leivon), Advocate"

[7] In para "x" of the writ petition, the stand of the petitioners is in relation to the impugned proceedings dated 7.11.2015 and it reads as follows:-

" The impugned order dated 7th November, 2015 passed by the District Magistrate, Senapati:-

That, the DM Senapati District vide order No.DC(SPT) 11/26 (R) dated 7th November, 2015 (which impugned in this petition), has allowed the constructions on the whole eastern stretch of the Mini-stadium ground (site) by allotting a strip of land measuring an areas of 0.45 acres in the North Eastern and eastern edge of the Mini-stadium ground in the name of establishing Model Shopping Complex. The said DM, who is also made a Respondent in this petition as Respondent No.5 passed the said order dated 7th November, 2015 though in the name of establishing Model shopping Complex has directly violated the allotment order dated 15th June, 1993 at annexure-A/2 and also the order dated 20th July, 2011 at annexure-A/6 just to favor the private Respondents and their agents so that they can continue to construct building/structure which is against the public interest.

A true copy of the above mentioned order dated 7.11.2015 is hereby annexed and marked as Annexure-A/10.

Hence, the present petition in the interest of the public."

The intention appears to be to protect the land allotted for Mini stadium and to ensure that no other construction is put up in the land given for construction of mini-stadium.

[8] Mr. Julius Riamei, learned counsel for the respondents No.6, 7 and 8 pleads that land was given by village authority to the Government without any condition for public purposes including development of mini-stadium. He pleads that the village people originally gifted some of the village lands on 19.12.1969 orally to the Deputy Commissioner, Manipur North District (now called Senapati District). Since there was no formal deed of donation, this donation of land by the village was confirmed by Deed of Donation dated 23rd May, 1998, Annexure-R/2. The same is extracted as under:-

"DEED OF DONATION

The Senapati (Locally known as Taphou) District Head Quarter land was dominated by Shri. Kh. Tailo Khullakpa and Shri. Abeng G.B. Taphou Naga Village on behalf of the villagers on 19.12.1969 in the public interest. But no formal deed of donation was executed between the land donor i.e. village elders and the then Deputy Commissioner, Manipur North District (Now called Senapati District). 26 years had past. None existence of a formal deed of donation and schedule of land verbally donated had caused some changes and confusion in the boundary.

To avoid such confusion in the future, this deed of donation is executed on this the 23rd day of May Nineteen Hundred and Ninety Eight Anno Domini between Taphou Naga Villagers, represented by Shri Kh. Tailo, k. Abeng and A. John Khullakpa, G.B. and secretary, respectively on one part and Deputy Commissioner, Senapati on behalf of the Governor of Manipur on the other part. The present part of circuit house is reportedly encroached by the Government over the land of Taphou Naga Village. To compensate it, a piece of land measuring 0.45 acres in the north and north eastern edge of Mini Stadium ground, bounded by NH-39 in the east, Mini Stadium Ground in the West, D.C. Road in the North and Government land in the South is spared and allotted for construction of Model Shopping Complex- 19545 sq. ft. to Taphou Naga Village.

BOUNDARY SCHEDULE OF LAND

North : Private land

South: Village land

East : NH- 39

West : Zaikharii stream excluding paddy field to circuit house.

From the Senapati Police Station it goes to Zaikharii stream and goes along Zaikharii stream excluding the paddy field on the river bank up to Electricity Divisional office to DCs Bunglow, T.V. Station and Circuit house streatching

towards south eastern direction along the foot path (LUI KAPAJAM PUIDI) to forest Range along office and to NH-39 and goes/ NH-39 towards North to P.W.D. Colony Road up to footpath leading to agricultural office stretching towards North to statistic office compound and down to NH-39 and join with the starting point excluding a stripe 25' X 160' between two retaining walls at Toll Tax Gate and a piece of land measuring 0.45 acres at north and north eastern edge of Mini Stadium Ground.

Now, therefore, this Deed of donation witnesses as follows:-

1. In recognising the Taphou Naga Village as land donor village The Deputy Commissioner, Senapati would request the Government for giving priority to Taphou Naga Villagers in appointment of Grade III and IV employees.
2. The Deputy Commissioner, Senapati shall give adequate opportunity to the Taphou Naga Village in getting Welfare and developmental schemes.
3. A plot measuring 150' X 100' is allotted for construction of Maram Naga Baptist Association Church at bounded by:

North: Fishery Office

South: Guest House

East: D.I.C. Compound

West: D.C. Bungalow Road

4. This land is newly named as Senapati District H.Q. Taphou.
5. The land donors will not demand compensation of this land.

We put our signature on this the 23rd day of May Nineteen hundred ninety eight Anno Domini as approved by Government vide letter No. 23/27/97-R, dated Imphal, the 28th April, 1998.

1. (Kh. Tailo) Khullakpa

2. (K. Abeng) Sd/

G.B. (K.K. Chhetry)

3. (A. John)

Deputy Commissioner,

Secretary Senapati District, Manipur.

[9] This Deed of Donation was challenged in another Public Interest Litigation being W.P(PIL) NO. 2 of 2011 and by order dated 18.04.2011, Annexure-R/1 at page No.6, the PIL was dismissed. The said order reads as under:-

"18.4.2011

This so called public interest litigation has been filed seeking demolition of some alleged encroachment on a site earmarked for construction of a stadium.

Learned counsel for the petitioners does not dispute the fact that a stadium is required in the area and that it would serve public interest if the stadium is constructed.

If there are any encroachments, the State Government is capable of dealing with the encroachments independently. The petitioners should correspond with the State Government indentifying the encroachers and the nature of encroachment. We cannot, in writ jurisdiction, direct the removal of the encroachments without even knowing who are the encroachers, the extent of the encroachments and the nature of encroachments.

The petitioners have also prayed for cancellation /cancellation/revocation of the of Deed of Donation executed on 23.5.1998 whereby the villagers had donated lands to the State Government. In writ jurisdiction, we cannot cancel the Deed of Donation. If the petitioners have any grievance, they may approach the appropriate forum, if so advised.

We decline to interfere in the so called public interest litigation.

Dismissed."

[10] The present impugned order passed by the District Magistrate/ Deputy Commissioner, Senapati District, is a follow up of the Deed of Donation dated 23.5.1998 which was unsuccessfully challenged in W.P(PIL) NO. 2 of 2011 as above and therefore, the petitioners have no cause to challenge the present proceeding.

[11] Be that as it may, according to Mr.Julius Riamei, the allotment of land is for construction of mini-stadium. The land in which the shopping complex is being constructed is the land in exclusion of land allotted for construction of mini-stadium.

Mr. M.Rarry, learned Addl. AG appearing for the State respondents confirms to the construction of the shopping complex, is for the benefits of villages. It will not affect the mini-stadium in any manner. We record the statement of learned Addl.Advocate General.

[12] We find in the above factual matrix, no case to set aside the impugned order. If there is any dispute on the demarcation of the land allotted for the mini-stadium and the land earmarked for construction of shopping complex, that issue has to be resolved by the District Magistrate/Deputy Commissioner concerned by or on spot enquiry.

[13] If there is no resolution of the dispute at the District Level and if any party is aggrieved, the aggrieved party can always approach the higher forum i.e. Commissioner (Revenue) for appropriate relief.

The issues raised by the petitioners is in the realm of factual dispute and is strongly objected to by the private respondents and the Government, we are not inclined to entertain this Public Interest Litigation or to set aside the impugned order.

[14] Observing as above, the PIL stands disposed of.