
(2015) 11 GAU CK 0025
In the Gauhati High Court
Case No : WP(C) No. 454(AP) of 2009

Rai Mohan Chakma

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLR 697

Hon'ble Judges : Dr. (Mrs.) Indira Shah, J.

Bench : Single Bench

Advocate : Ms. G. Deka and Mr. P.D. Nair, Advocates, for the Respondent; Mr. R. Chakraborty, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Dr. (Mrs.) Indira Shah, J. - Heard Mr. R. Chakraborty, learned counsel appearing on behalf of the petitioners and Ms. C.J. Deka, learned senior Government advocate appearing on behalf of State respondent Nos. 1 to 5 as well as Mr. R.D. Nair, learned counsel appearing on behalf of private respondent Nos. 6 to 9.

2. The petitioners, herein, are the descendants of displaced Chakmas, who migrated from East Pakistan (Now Bangladesh) in 1964, settled down in the State of Assam and then shifted to NEFA which now called Arunachal Pradesh. They have settled here since last about two and half decades and have raised their families in the State.

3. The contention of the petitioners is that the land wherein the Chakma settlers were rehabilitated comprised of 80 hectares of farm land situated at Village M"Pen under Miao Sub-Division, District Changlang. The writ petitioners developed the land and have been cultivating the land since 1969. They have built their houses, buildings and place of worship, etc.

4. The State Government also drew a scheme known as "Chakma Resettlement Scheme" and as such 5 zones were notified for rehabilitation of the Chakma

settlers. Miao rehabilitation site under Tirap, NEFA is one of the 5 zones.

5. The petitioners case is that in the year 1979, the father-in-law (since deceased) of respondent No. 6 attempted to encroach upon the land in possession of the petitioners. Then, both the parties entered upon an agreement whereby late husband of respondent No. 6 agreed not to raise any claim over any land surrounding a plot of land measuring about 4 puras, i.e., 5.25 acres.

6. The petitioners are aggrieved by the issuance of 11 numbers of Land Possession Certificate ("LPC") issued by the District Administration in 2005 and 2007 in favour of private respondents without issuing notices thereof to the writ petitioners. According to the petitioners, they have been in continuous possession of the land measuring 80 hectares of M"Pen Village since 1964 as settlers. The land in question according to petitioners originally belonged to some members of Ahom Community who were shifted to some other place and then the land was earmarked for refugees.

7. Respondent Nos. 1 to 5 in their affidavit-in-opposition have contended that the settlement area of Chakma at M"Pen village is concentrated between Dihing River and on the left side of Miao, Vijay Nagar Road. As per the official record, the Chakma settlement area are towards the Northern side of Miao Vijay Nagar Road and the land allotted to private respondents are towards the Southern side of Miao Vijaynagar Road at the distance of 3 to 8 km from Miao on the opposite side of Chakma Settlement area.

8. The contention of the private respondents are that the disputed land is on the southern side of motor-able road and is at a distance of 4 to 7 km from Miao. The petitioners have been encroaching the ancestral land of the private respondents and reserved forest area. Initially 66 families were allowed to temporarily settle down in M"Pen village but due to increase of their population, the chakma people have encroached upon the land of private respondents and the reserved forest area. According to the State respondents proper survey of the area was conducted in the year 2005 and at the time of survey nobody raised any claims or objections. As per the private respondents population of Chakmas have been increased to 1 lakh from 6308 and, hence, they have started encroachment beyond the area earmarked for their settlement. The LPC in favour of private respondents were issued after spot verification and observing due process of law. The land in question had never been in possession of the petitioners.

9. Learned counsels for respondents at the threshold have submitted that the writ petition is not maintainable since it involves disputed question of facts and is civil in nature. It is further submitted that the writ petitioners have placed reliance on a purported agreement whose signatories have to be identified. The agreement does not contain any schedule to identify the land. Moreover, the said undated agreement is not executed in accordance with law and is not a registered instrument. The said agreement is also not valid on being bereft of

any consideration.

10. Learned counsel appearing on behalf of the petitioners placing reliance in the case of K.K. Kochunni v. State of Madras, AIR 1959 SC 725; Rashid Ahmed v. Municipal Board, Kairana, 1950 SCR 566; Romesh Thappar v. State of Madras, 1950 SCK 594; Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1; K.S. Rashid & Sons v. Income-tax Investigation Commission, AIR 1954 SC 207; Harbanslal Sahania v. Indian Oil Corporation Ltd (2003) 2 SCC 107; U.P. State Spinning Co. Ltd v. R.S. Pandey and Anr., (2005) 8 SCC 264. In the cited cases, it has been held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court has to consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioners seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

11. No doubt this writ petition involves disputed question of facts as to ownership of land, its possession and identification of land which cannot be efficaciously determined by this court. The contention of the petitioners are that no physical spot verification by the authority have been conducted before issuance of land possession certificate in favour of private respondents nor any notice to the petitioners were served prior to issuance of Land Possession Certificate. The impugned LPC were issued in between 2005 to 2007. There was a proceeding under section 145, Cr.PC, between the parties whereby possession of land in question was declared in favour of private respondents. The order passed by Lower Court was challenged and this High Court in Crl. Rev. Petition. No. 15(AP) of 2010 held that the unsuccessful party, must get relief only in a civil court by filing suit. But instead of filing any civil suit the petitioners have again approached this court. In the case of Kalidas Chakma and Ors. v. State of Arunachal Pradesh, (2013) 2 GLR 549, the Division Bench of this High Court, where this court was also sitting as Judge there was an attempt of encroachment of petitioners land by private, respondents and it was held that the grievance being in nature of civil dispute, remedy of the petitioners may be to approach the civil court.

12. The grievance of the petitioners in this case is also civil in nature and, therefore, the petitioners are at liberty to seek remedy accordingly.

13. In view of the above observation and discussions, this petition stands dismissed, without prejudice to the remedy of the petitioners in accordance with law.