

(2016) 10 GAU CK 0013
In the Gauhati High Court
Case No : WP(C) No. 141 of 2016

Sh. A.H. Lalbiaktluanga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

Lushai Hills District (House Site) Act, 1953 — Section 3

Citation : (2017) 1 GauLT 99

Hon'ble Judges : Mr. Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Johny L. Tochwawng and Mr. B. Lalthlamuana, Advocates, for the Petitioner; Mr. A.K. Rokhum, Addl. Adv. General Mizoram, for the Respondents Nos. 1-4; Mr. Ali Hussain, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Mr. Michael Zothankhuma, J. (Oral) - Heard Mr. Benjamin Lalthlamuana, counsel for the petitioner. Also heard Mr. Samuel Vanlalhriata Chhangte, learned Government Advocate as well as Mr. Ali Hussain, counsel for the respondent No. 5.

2. The petitioner's counsel submits that the petitioner is the owner of land covered by Garden Pass No. 858 of 2004 issued by the Village Council. The petitioner's counsel submits that the petitioner's land was badly damaged due to construction of new Railway Line from Bairabi to Sairang and compensation was neither assessed nor paid to him.

3. The petitioner's counsel prays that a direction should be issued to the respondents to assess and pay compensation for damage to the crops and to acquire the land belonging to the petitioner, which was damaged by the respondents, in accordance with the Land Acquisition Act, 1894.

4. Mr. Samuel Vanlalhriata Chhangte, Government Advocate submits that the question of validity of the petitioner's land pass would also have to be gone into.

He also submits that the present matter should be dismissed as there are factual disputes. Learned counsel for the State respondents also submits that no specific particulars have been made by petitioner to show the actual damage or the amount of damage caused to the petitioner's land, by the alleged construction of the Railway Line. He also submits that no relief under the Land Acquisition Act, 1894 can be given as the said Act has been repealed.

5. Mr. Ali Hussain, counsel for the respondent No. 5 submits that the petitioner has no right to make any claim in view of the fact that a Village Council does not have the competence to issue a Garden Pass. He also submits that besides the above points, the petitioner has not made the Contractor, who constructed the Railway Line, a party to the proceedings. The counsel for the respondent No. 5 submits that the Railway Line is being constructed by the Contractors appointed by the Railway Authority and accordingly, the writ petition should be dismissed for non-joinder of the necessary parties.

6. I have heard the learned counsel for the parties.

7. The question of validity of the petitioner's land, which is covered by Garden Pass No. 858 of 2004 would have to be considered in light of Section 3 of the Lushai Hills District (House Site) Act, 1953. 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 authorized 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, authorized 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 authorized 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 authorized 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 authorized 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."

8. A perusal of Section 3 of the Lushai Hills District (House Site) Act, 1953, shows that a Village Council is not competent to allot sites within its jurisdiction for agricultural purpose. It is competent to allot sites within its jurisdiction only for residential and other non-agricultural purposes. The issuance of a Garden Pass by the Village Council makes it amply clear that the site has been issued only for agricultural purposes. However, the object and meaning of Section 3 goes to show that the allotment of a site would have to have a connection with the allotment for a residential purpose.

9. The Division Bench of this Court in WP(C) No. 74/2016 (AB), "People's Right to Information and Development Implementing Society of Mizoram (PRISM) v. The State of Mizoram and Another", has held that the land laws in Mizoram do not allow for the allotment of site for agricultural purpose by the Village Council, either by way of a Pass or a Patta.

10. In the case of Sh. C. Lalremtluanga & Ors. v. State of Mizoram & 2 Ors, WP(C) No. 80/2015, this Court has held that Section 3 of the Lushai Hills District (House Site) Act, 1953 does not empower a Village Council to allot sites for Garden Pass for agricultural purposes, as the same is not traceable to any power in the land laws prevailing in Mizoram.

11. The Judgment and Order passed in WP(C) No. 80/2015 was challenged by way of WA No. 200/2015. The Division Bench of this Court disposed of WA No. 200/2015 by stating that, as the writ petitioners/appellants in WA No. 200/2015 were seeking enhanced compensation fixed by the Reference Court, as required under Section 28 (a) of the Land Acquisition Act, 1894, the question of application of Section 3 of the Lushai Hills District (House Site) Act, 1953 does not arise.

12. A reading of the Order dated 8.10.2015 passed in WA No. 200/2015, implies that the Division Bench has held that the question of application of Section 3 of the Lushai Hills District (House Site) Act, 1953, cannot be gone into when the land owners seek enhancement of their compensation amount by the Reference Court under Section 28(a) of the Land Acquisition Act, 1894. Thus, the Division Bench in WA No. 200/2015 has not disturbed the finding of the Single Bench in WP(C) No. 80/2015, with regard to the law laid down that Village Council's are not competent to allot land for agricultural purposes. The import of the Division Bench Order dated 8.10.2015 in WA No. 200/2015 is to the effect that, once land covered by Village Council Passes have been included in an Award made under Land Acquisition Act, 1894, the question of whether they are valid or not, cannot be gone into at a subsequent stage.

13. In the present case, it is not disputed that the petitioner's land has not been included in the Award made under the Land Acquisition Act, 1894. It is also not disputed that the petitioner is claiming compensation on the basis of a Garden Pass issued by a Village Council.

14. In view of the finding of the Single Bench of this Court in WP(C) No. 80/2015 and the Division Bench of this Court in WP(C) No. 74/2016 (AB), that the land laws of Mizoram do not allow for allotment of sites for agricultural purposes by the Village Council, the issuance of a Garden Pass to the petitioner is void and cannot be acted upon.

15. It may also be stated here that as per the Mizoram (Land and Revenue) Act, 2013, which has repealed the Lushai Hills District (House Site) Act, 1953, a Village Council has the power to allot sites only for house site purposes and not for any other purpose.

16. There are also disputed questions of facts in the present writ petition, which cannot be decided in a writ proceeding. Besides the law, as it stands today, it will not be proper for this Court to call for any roving enquiry, as there is no locus standi for the petitioner to file a writ petition on the basis of an invalid pass.

17. Accordingly, the writ petition is dismissed.