
(2016) 04 GAU CK 0010
In the Gauhati High Court
Case No : W.P(C) No. 235 (AP) of 2014

Sojee Meyor

APPELLANT

Vs

State of Arunachal Pradesh & Others

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Citation : (2016) 2 GauLT 1202

Hon'ble Judges : Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : D.K. Deori, Advocate, for the Appellant; T.T. Tara. Addl.AG, P. Pangu, GA, B Pathak, CGSC, P. Taffo, ASG, for the Respondent

Final Decision : Disposed Off

Judgement

Rumi Kumari Phukan, J.—Heard Mr. D. K. Deori, learned counsel appearing on behalf of the petitioner. Also heard Mr. T. T. Tara, learned Addl. Advocate General assisted by Ms. P. Pangu, learned Govt. Advocate appearing on behalf of the State, Mr. B. Pathak, learned CGSC, for respondent No. 5 and 7 to 10 as well as Mr. P. Taffo, learned ASG for respondent No. 6.

2. Present application has been filed under Article 226/227 Constitution of India for a direction to the respondent to award compensation on preliminary notification Memo No. LM-91/07/1083 dated 13.09.2007 and another preliminary notification LRE-5436/ 90/40462-63 dated 17.09.91 for acquiring of land at Walong and Kibithoo under Anjaw District with further direction to the respondents to pay the rental charge for occupying the private land of petitioner by defence personnel since 1962.

3. Case in nutshell-According to the petitioner, he is occupying his ancestor land since the days of his predecessors and the army/defence has occupied the private land of the petitioner at Walong under Anjaw District, Arunachal Pradesh in the year 1962 during the war between Indian and China temporarily for construction of Army camp with assurance that they will get the rent after the

war got over. But even after the war got over Army/defence refused to vacate the land as promised rather they kept extending the camp area from time to time. The father of the petitioner Lt. Kring Meyor made an application to the Circle Officer claiming compensation against the area occupied by the Army/defence, in the year 1963 which yielded no result. After the demise of the petitioner's father, mother of the petitioner Lt. Tenchi Meyor in the year 1990 made similar prayer to the Deputy Commissioner, Tezu, Lohit District for payment of compensation and resettlement of the land occupied by the Army without acquiring the land as per the provision of Land Acquisition Act. Despite submission of various applications for payment of compensation the authorities had failed to make payment of compensation neither they have paid any rent/hiring charges for occupying the private land of the petitioner. The Govt. Of Arunachal Pradesh for the first time had issued preliminary notification in the year 2007 for acquisition of the land at Walong and Kibithoo for Union of India. Thereafter, no final notification or award was made to the owner of the land within the time specified under the Land Acquisition Act. In such backdrop, the petitioner has come forward with the petition before this Court with the following prayers:-

(a) To direct the respondents to award the compensation on preliminary notifications dated 17.01.1991 and 14.09.2007 issued for acquiring land at Walong and Kibithoo as till date no final notifications were issued and award made to the owner of the land on the basis of afore stated preliminary notification.

(b) To direct the respondents for payment of rent/hiring charges for illegally occupying the private land at Walong and Kibithoo by respondents in violation of the Land Acquisition Law and Constitution of India.

(c) To direct the respondents to settle the ownership dispute between various clan/clans/Sub-Clans and communities over the land under occupation of Army and Civil Authorities and land to be acquired.

(d) To direct the respondents to initiate fresh land acquisition proceeding under the land acquisition law and to make payment of compensation for acquiring the private land by respondents at Walong and Kibithoo to the owners of the land.

(e) To direct the respondents from restraining and further occupying the private land and construction of permanent structure on the private land till the time fresh acquisition and compensation is paid for acquiring the land to the owners of the land as per the provisions of the Land Acquisition Act.

4. In support of his claim, the Petitioner, has annexed various documents showing communication between the petitioner and the District Administration, Army/Defence Personnel's and also other communication made to President of India apprising his grievances. Referring to a communication made by Deputy Director General Defence Estate, Govt, of India, Ministry OF Defence dated 24.12.2012 vide Annexure-P/16 in the internal Page-67, it is contended by the

petitioner that it is sufficient to support the case of the petitioner about the possession of land. The aforesaid letter is reproduced below:-

No. 201 /MISC/Jorhat/ACQ/EC/DE,

Government of India,

Ministry of Defence;

[Dte General of Defence Estates (ACQ-I)],

Raksha Sampada Bhawan, Ulaan Baatar Road,

Delhi CANTT-110010.

Dated 24 Dec, 2012

To

Shri Sojee Meyor,

S/o Kring Kring Meyor Vill Namti, Circle Walong,

Distt Anjaw, Arunachal Pradesh,

Sub: Lands under occupation of Army at Walong & Kibithoo, Dist Anjaw.

Reference your letter dated 04.06.2012, addresses to Hon^{ble} President of India and copy thereof endorsed to this Dte General, amongst others.

2. The matter was referred to Principal Director, Defence Estates, Eastern Command, Kolkata and Defence Estates Officer, Jorhat Circle for examination and submission of report. Pr. Director, DE, EC has reported that 1,872 acres of land at Walong and Kibithoo in Distt Anjaw is under occupation of Army and your land appears to be a part of the said land.

3. DEO, Jorhat has been advised by the PD, DE, EC to request the Local Military Authorities for convening a Board of Officers to ascertain in the factual ground position. They may also propose for acquisition of land under their occupation after completion of required procedures. Meanwhile the occupation may be regularised by way of hiring.

(Inderjeet Kaur)

Dy Director General (ACQ-I)

For Director General Defence Estates.

5. From various others communication made by the District Administration to the Defence Estate Officer, Jorhat Circle in response to the query made by Ministry of Home Affairs regarding status of the land, on the petition so made by the petitioner, the Deputy Commissioner, Anjaw District has replied to the said authority as well as to the Director of fund Management as regard the prayer for compensation as against the land acquired by Army/CRPF at Walong that the

land under the occupation of Army/C RP1 at Walong Township is not formally allotted/regularized due to want of proper cadastral survey. Further, no land compensation can be paid to the land owners till date due to ownership dispute between Meyor and Mishmi Communities and various claim made by clans and/sub clans by those communities, have been forwarded to the committee constituted vide order No. AMJ/LR/10-11/3741-810 dated 22.11.2010. The acquisition process 1894 due to ownership's dispute. Further, acquisition process of land under occupation of Army within Walong and Kibithoo can be initiated only after ownership dispute is settled. It has been apprised by the Deputy Commissioner that on receipt of report from the Committee formal acquisition process will be initiated for the area under occupation of Army at various locations in Anjaw District, vide letter No. AMJ-LM-005/207 (Part)/7366-67 dated 11.11.2011 and No. ALM-005/07 (Part)3779/-230 dated 12.12.2012 and ANJ/LR/10-11 dated 22.11.2010 (Constitution of Committee for the purpose of adjudication of claims and objection pertaining to ownership of land in the District of Anjaw).

6. It is worth mentioning here in the letter issued by the petitioner himself (at internal Page-35 of his petition), he has informed the Defence Estate Officer that he has no documents of ownership and Map etc., to ascertain his ownership over the land, as such ownership is decided on the basis of occupation since long time and tradition of occupation is the touchstone of ownership. The petitioner, however, repeatedly pursued the matter with the Deputy Commissioner, Anjaw District for redressal of his grievances vide Annexure-P/ 11 (internal Page-44), wherein, he has raised various claims against the land occupied by Defence/CRPF personnel's using his land for quarry site, for installation of BSNL Tower etc.

7. The State respondent represented the respondent No. 4 has filed their affidavit and the Union of India/respondent No. 5 and other respondent Nos. 7 to 10 have also given their counter affidavit respectively. The State in his affidavit basically contended that there is no exact around Walom Township and there is no written assurance by the Army authorities in the Office of the Deputy Commissioner to vacate the land after the war was over. Though, preliminary notification under Section 4 (1) for acquisition of Land at Walong and Kibithoo was issued on 07.09.2007 but the same could not be finalised due to receipt of several complaints/ claims of the ownership of the land against the aforesaid circles from various communities/clans/sub clans for which a standing committee was constituted on 22.11.2010 to ascertain the actual ownership of the land and settlement of dispute of land which could not be finalised till date due to the ownership dispute between the Meyor and Mishmi Communities. As such it has been submitted that further acquisition process of land can be initiated only after ownership of dispute is settled.

8. The stand of the other respondents is almost similar to the case of State respondents. It has been contended in their counter affidavit that certain land at Walong and Kibithoo in Arunachal Pradesh was under occupation of Army prior to

1962, however, there was no exact records of the same as, no permanent structure was set up therein. The case for acquisition of land in the aforesaid Circles Walong and Kibithoo was taken up by the District Administration, Lohit District (now Anjaw District) but there being no documents regarding ownership of land, the land is deemed to be Govt. Land and no acquisition proceeding could be initiated. As per instruction contain in the Govt. Of India, Ministry" of Defence vide reference letter No. 11011/1/2010/D (Lands) dated 08.03.2010, before acquiring of land for Army it is mandatory" to obtain approval in principle from Raksha Mantri and only thereafter acquisition of any piece of land can be started, which has not been complied in this case while issuing preliminary notification for acquisition of land as stated above so it dehors the procedure. On the other hand, as the declaration under Section 6 was not published within one year from the date of the notification 07.09.2007, the land acquisition proceeding has lapsed by operation of law in view of Section 6(1) proviso-(II) of Land Acquisition Act. As such no claim can be made on the basis of said notification.

9. Further, it has been contended that the various correspondences and representations filed by the petitioner has not conferred any right upon him as the basic issue of ownership of the land is still to be determined. The question of acquiring the land will arise only when it is established that the land occupied by the Army is land under undisputed private ownership. Moreover, the petitioner do not clarify or establish any land right of the petitioner to claim land acquisition compensation. It is clear evident that the question of ownership of land in Walong and Kibithoo is not yet clear and the State respondents are yet to justify the same. Unless there is concrete documentary evidence relating to ownership of land by private individuals, the Government is not required to acquire its own interest over the land. In absence of any private ownership, the land falls in the category of Government Land which need not be acquired.

10. Considered the submission of the learned counsel for the petitioner who has basically relied upon the continuous occupation of the petitioner over the disputed land and has referred about the communications so made by the petitioner with the District Administration as well as the higher authorities as has mentioned above and has urged this Court to take notice of the letter so issued by the Deputy Director General, Defence Estates, Govt, of India, Ministry of Defence which support his occupation. But after going through the aforesaid letter as mentioned above the same cannot be accepted as conclusive proof of occupation by the petitioner as there was a simple opinion that:

"PR Director, DE, EC, has reported that 1.872 acres of land at Walong and Kibithoo in the District of Anjaw is under occupation of Army and your land appears to be a part of said land".

11. Further, by way of his own pleadings, various communications, the petitioner him-self admitted that there is dispute over the kind he occupied for which he has urged the respondent authority to settle the dispute and in his prayer portion also he has urged this Court for direction to the respondents to settle the

ownership dispute within various clans & sub clans and thereafter to initiate fresh acquisition proceedings. In fact, this is the case of the respondents that due to serious objection raised by different clans as regard the ownership of the aforesaid land claim by the petitioner same could not be adjudicated till now even after constitution of committee. For this reasons the respondent authority is also not in a position to go for further acquisition proceeding. In their reply the respondent authorities has asserted the same facts that save and except the claim by the petitioner, there is no piece of documentary evidence to support the Possession of the petitioner over the disputed land.

12. It is to be noted that the petitioner him-self has failed to mention as to the area they occupied and has given a vague assertion that they are occupying the land where the Army continued to stay since the time of war between India and China. So the petitioner failed to assert his legal right which sought to be enforced by way of writ jurisdiction. Scope of review under writ jurisdiction is limited until and unless there is infringement of any fundamental/legal rights of a citizen, scope of judicial review cannot be invoked. The petitioner, herein, failed to make out a case so as to call for any interference in the matter in absence of proof of ownership. However, it is considered that respondent authority has not properly addressed the issued relied by the petitioner.

13. The preliminary notification so issued by the respondent authorities in the year 2007 is no more operative as it has already been lapsed, as no declaration under Section 6 of the Land Acquisition Act has been made. The learned counsel Mr. B. Pathak by referring to the observation so made by the Supreme Court in (2013) 7 SCC 554, Jayamma & Ors. v. Deputy Commissioner, Hassan District & Others, it has been submitted that the Court should not compel the Land Acquisition collector to pass award in respect of the proceeding which has already lapsed. Such submission is liable to be sustained in the given backdrop of the case.

14. In the present case, the Land Acquisition process already came to a halt immediately after publication of notification under Section 4(1) of the Land Acquisition Act as soon as several objections raised before the respondent authority by different communities for which committee was also constituted to decide the dispute of ownership over the disputed land to which the petitioner is also a claimant. Obviously, in such situation claim of the petitioner so made as regards the grant of compensation cannot be considered and allowed.

15. In view of the matters on record and findings and discussions above, the writ petition stands disposed of, with a direction to the respondent authority to adjudicate the claim of the petitioner over the disputed land through the committee which was constituted far back in the year 2010 so as to address the grievances raised by the petitioner as per law, as it appears that after constitution of the Committee, the respondent authority has not acted upon the issues raised before them whereas the petitioner is running after his claim over the disputed property" before the respondent authority. District Administration as

well as the Defence authority is under an obligation to adjudicate such claim of the petitioner conjointly, while, admittedly Defence authority has occupied certain areas of land so mentioned by the petitioner. Accordingly, respondent authority is directed to decide the matter as expeditiously as possible, if necessary, by constituting new committee, preferably within a period of 6 (six) months from the date of this order. The respondent authority may Proceed for acquisition of land after deciding the ownership of tire disputed property in due course.