
(2007) 05 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8(K) 0/2002 and 3(K) of 2003

Tilikhu Village

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 34A, 34A, 51, 51

Citation : (2007) 4 GLR 494

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : Kakheto Sema, Y.Longkumar, Advocates appearing for Parties

Judgement

1. Heard Mr. Kakheto Sema, learned counsel for the petitioner, and Ms.Y. Longkumar, learned Government Advocate, appearing on behalf of the State respondents. None has appeared on behalf of the private respondents.

2. Both these writ petitions have been heard, on the request made by the learned counsel for the parties, analogously, for, both these writ petitions are inextricably linked with each other and the disposal of any of these two writ petitions would have a bearing on the outcome of the remaining writ petition.

3. The material facts giving rise to these two writ petitions may, in brief, be set out as follows :

By a notice, dated 18.5.2001, issued by the Deputy Commissioner, Dimapur, the writ petitioners were directed to show cause as to why action should not be taken against them or their village, namely, Thilikhu Village, on the reports received by the Deputy Commissioner, Dimapur, alleging, inter alia, that some of the inhabitants of the writ petitioners' village had been carrying out cultivation and other illegal activities inside the notified area of Rangapahar Wildlife Sanctuary. Following the said notice to show cause, an order was issued, on 22.5.2001, by the Deputy Commissioner, Dimapur, imposing a fine of Rs. 50,000 on the writ petitioners Village Council, namely, Thilikhu Village Council, and with

further direction to deposit the said fine, within a month, with the office of the Deputy Commissioner, Dimapur. Aggrieved by the imposition of fine, the petitioners have come to this court, with the help of an application made under article 226 of the Constitution of India, seeking to get, inter alia, set aside and quashed the order, dated 22.5.2001, aforementioned, whereby the fine, as indicated hereinabove, had been imposed. This writ petition gave rise to WP(C) No. 8(K)/2002.

4. While the said writ petition was still pending, another order was issued, on 3.12.2002, by the Deputy Commissioner, Dimapur, directing Thilikhu villagers to be evicted from the land, which had been in their possession, on the ground that the land belonged to, and fell within, the area of the said Rangapahar Wildlife Sanctuary. Contending that the direction for eviction was illegal, for, the land, which had been in the occupation of Thilikhu Village, was not a part of the said sanctuary, the petitioners, with the help of an application made under article 226 of the Constitution of India, approached this court. This writ petition gave rise to WP(C) No. 3(K)/2003.

5. While, however, both the writ petitions aforementioned were pending, an agreement was reached between the two tribal groups of villagers and in terms of the settlement, so reached between the two contesting villages, namely, Thilikhu village and Toulazouma village, the Deputy Commissioner, Dimapur, has forwarded a letter, dated 11.10.2006, to the Additional Chief Secretary and Commissioner to the Government of Nagaland, Kohima, for further necessary action. It is in these circumstances that these two writ petitions have been taken up for hearing.

6. While considering the present writ petitions, what needs to be noted is that it is not in dispute before this court that entry of a person other than one, who is permitted by section 27 of the Wildlife (Protection) Act, 1972, is an offence punishable under section 51 of the said Act. Section 51, however, comes into play only when a person is found guilty of an offence committed by him. In other words, a person can be punished, in terms of section 51, only upon his conviction and such conviction is legally possible only when a court of competent jurisdiction takes cognizance of an offence punishable under section 51 and tries the offender. In the present case, no court of law took cognizance of any offence allegedly committed by the petitioners. This apart, the Deputy Commissioner of a district, while acting as an executive officer, is not the authority vested with the power to impose penalty as prescribed by section 51. Viewed, thus, it is clear that the order, dated 22.5.2001, whereby fine was imposed on Thilikhu Village Council is without jurisdiction. Similarly, there is also no dispute that the power to remove or evict an encroacher from a sanctuary is given to an officer not below the rank of Assistant Conservator of Forest under section 34(A) of the said Act. Though a District Collector has the power to declare an area as a sanctuary, the power to remove encroachment from a sanctuary belongs to the authorized officials of the Forest Department. Once an area has been declared to be a

sanctuary, the Deputy Collector ceases to have any authority or power to evict an encroacher from the sanctuary. Considered, thus, it is apparent that the impugned order, dated 3.12.2002, directing eviction of the petitioners, i.e., Thilikhu villagers, is beyond the jurisdiction of the Deputy Commissioner, Dimapur.

7. What is, now, of immense importance to note is that there had been a dispute between the villagers of the two villages, namely, Thilikhu village and Toulazouma village with regard to the right of possession and use of the land, which the State respondents claim to be a part of the said sanctuary. In view, however, of the fact that a settlement has, now, been reached between the inhabitants of the said villages and the Government is in seisin of the matter, further right of use of the land, in question, by the villagers of the said two villages shall be governed by such decision as may be taken by the State Government in terms of such provisions of law as may be relevant and applicable to the facts of the present case.

8. Considering, therefore, the matter in its entirety and in the interest of justice, the two impugned orders, dated 22.5.2001 and 3.12.2002, are hereby set aside and quashed. The parties to the writ petitions are, however, directed to maintain status quo, as on today, until the time the Government takes, a decision on the letter, dated 11.10.2006, aforementioned and pass appropriate order(s) thereon. Any of the parties, which may feel aggrieved by the decision, which may be taken by the State Government, or by the order(s), which may be passed by the State Government, with regard the subjectmatter of the dispute, shall be at liberty to take recourse to such provisions of law as may be permissible.

9. With the above observations and directions, both these writ petitions shall stand disposed of. The interim orders, passed in both these writ petitions, shall accordingly stand modified.

10. No order as to cost.