
(2001) 09 GAU CK 0045

In the Gauhati High Court

Case No : Writ Petition (C) No. 1689 of 1999 27 (K) of 2000

Vita Angami

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Citation : (2001) 3 GLT 266

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

**Advocate : S. Dutta, N.K. Luikham, S. Bharali and N. Menwar, for the Appellant;
L.S. Jamir, Addl. Sr. Govt. Advocate, for the Respondent**

Final Decision : Allowed

Judgement

B. Lamare, J.—Heard Mr. S. Dutta, learned counsel for the petitioner and Mr. L.S. Jamir, learned Addl. Sr. Govt. Advocate for the respondents. None appears for the respondents 7 to 12 although as per order dated 27.4.2000 passed by this Court, public notice has been issued by publishing in the local Newspapers twice, as such, notices upon the said respondents are deemed to have been served. The respondents 13 to 24 entered appearance but did not file any Affidavit nor contest the case in the later stage.

2. The case in short compass is that, the petitioner claims to be the owner of the land measuring 250 x 225 sq.ft. under Dag No. 25, Block No. 7 in Dimapur. The land was purchased by the petitioner in the year 1968 from late Gaigrum, Gaon Bura, one of the earliest settlers in Dimapur. Since then, the petitioner has been peacefully in possession of the land and also paid house-taxes, GB census fees etc. In support of which, the petitioner has also filed the said receipts as Annexures-M&N of the writ petition. In the year 1987, there was a devastating fire in which all the houses were burned down, and the petitioner had spent a lot for reconstruction of the houses. In support of his claim over the land, the petitioner had also annexed a certificate issued by the Chairman, Market Committee, West Yard Evening Market, Dimapur and also a certificate from the

Chairman, Social Welfare Committee of West Yard Railway Market, Annexures-O&P to the writ petition.

3. On 25.7.1996, the petitioner submitted an application along with all his document including Sale Deed, tax receipts and sketch map to the respondent No. 5 praying for regularisation of the land in his name in the official records of the Deputy Commissioner, Dimapur. On the body of the said application, the respondent No. 5 has made a remark that "there is no complication about the plot. However recheck it and issue Jamabandi in favour of the applicant". The said application is annexed as Annexure-K/1 to the writ petition and it is reproduced below :

"To

The Additional Deputy Commissioner, Dimapur, Nagaland.

Sub : Prayer for regularisation of land

Sir,

Most respectfully, I beg to state that, since 1968, I bought a piece of land (Panikheti) from late Gaigrum of West of Manipuri bosti. Dimapur and had been cultivating it till 1988, later on when population increased around the area, cultivation could not be carried out that I converted the area into residential site by filling the area with earth and developed it to certain extent.

Several houses have been constructed on it and enclosed them with permanent fencing which are standing prominently.

I, therefore, pray to your good Office to kindly look into the genuineness of this poor case and regularise it in my name for Official record. For which act of kindness I shall ever remained grateful to you.

Enclosed :-

1. Photostat copy of dully Yours faithfully, filled up form which was submitted earlier, Sd/- 2. Declaration of Gaigrum (VITA ANGAMI) 3. Receipt of Tax paid to Naga West Yard Bazar Counsel Dimapur - being Tax Dimapur; Nagaland." Of Railway land. There is no complication about the plot. However, recheck it and issue Jamabandi in favour of the appellant. Sd/- 28.7.1996 D.C. Kohima.

4. The petitioner thereafter, submitted another petition dated 22.8.1997 for regularisation of the said plot of land in his name. The respondent No. 5 considered the application of the petitioner and decided to seek approval of the Secretary, Land Revenue. While the said prayer of the petitioner for regularisation of the land in his name was pending before the respondents, the petitioner came to know that allotment over the said land was made to 18 (eighteen) persons, i.e. respondent No. 7 to 24. The said allotment was made as per order contained in the Memorandum No. REV-17/87-D/10192-95 dated 20.1.1995. The said allotment was also made on the basis of the Survey Report

of the Surveyor Grade-I, Office of the Deputy Commissioner, Dimapur dated 24.7.1990 Annexure-S to the Writ petition compliance with the order No. REV-17/87-D dated 5.7.1993. It is the said orders dated 5.7.1993 and dated 20.1.1995 Annexures-P&S to the writ petition which are assailed herein.

5. As observed earlier, the private respondents did not contest the case in spite of receipt of notices/publication of notices in the local Newspapers. The State respondents also did not file any Affidavit, perhaps due to the reasons which will be enumerated herein below.

6. Heard learned counsels for the parties and also perused the records.

7. Mr. S. Dutta, learned counsel for the petitioner contends that the allotment of land to the private individuals is totally against the policy of the Government which ban the allotment of land to the private individuals. In support of his contention, Mr. Dutta draws the attention of the Court to the various orders issued by the Government from time to time since 15.9.1992 till 8.7.1998 repeatedly stressing on the unauthorised allotment of land to the private persons against the policy of the State Government banning such allotment. In spite of the said orders/office memorandums issued to the concerned authorities allotments were made regardless of the ban and that too without obtaining the approval of the Government in accordance with law, contends the learned counsel Mr. Dutta. Learned counsel further contends that the allotment of the land to the private respondents was also made without obtaining approval from the competent authority i.e. State Government, and as such, the allotment is totally illegal and liable to be quashed. In support of this contention, Mr. Dutta draws attention of the Court to the order dated 1.7.1998 passed by Deputy Commissioner, Dimapur, in which it is stated that the allotment as per order dated 20.1.1995 arising out of the order dated 5.7.1993 Annexures-S&R to the writ petition have been done after the ban was imposed by the State Government. According to the said order of the Deputy Commissioner, Dimapur, respondent No. 4, there was also no record to show that approval of the State Government was obtained before issuing the allotment order.

8. Mr. L.S. Jamir, learned Addl. Sr. Government Advocate in all his fairness submitted that the ban imposed by the Government has to be followed by the Deputy Commissioner and Addl. Deputy Commissioner, and that allotment of any land has to be made after obtaining the approval of the State Government. The learned Government Advocate however, contends that the regularisation of the land of the petitioner depends on the competent authority for regularisation of Government land occupied by the private individuals in Dimapur.

9. In the instant case, it is not disputed that the land is Government land, and that any allotment of the land made by the Deputy Commissioner/Addl. Deputy Commissioner can be made only after obtaining approval of the State Government. The claim of the petitioner that he has been in possession of the land since 1968 is also not controverted as no Affidavit was filed by the

respondents. It is a settled law that, averments made in the writ petition by the petitioner and not controverted by respondents shall be deemed to have been admitted by the respondents.

10. In view of the above admitted position, the question arose to be decided is, whether the allotment of the land to the private respondents is done within the power of Deputy Commissioner/Addl. Deputy Commissioner, and whether any allotment can be made during the ban period. The answer to these questions is very clear that the respondent No. 5 while issuing the allotment orders has not obtained the permission of the State Government. It is also observed that, from the records there is no such approval. The exercise of power of allotments made by the respondent No. 5 is therefore, contrary to the provisions of the Assam Land Revenue Regulation Act, 1886 as adopted in the State. The exercise of power must have some source of law, and if any power is exercised not authorised by law the same is totally without jurisdiction. In the case of *Union of India and Another Vs. Tulsiram Patel and Others*, the Apex Court in para 126 of the judgment had laid down the law as under:

"There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it."

11. From the materials available on records it is amply clear that the State Government had issued Office Memorandums/orders on different dates ranging from 15.9.1992 to 8.7.1998 reminding the concerned authorities about the ban imposed by the State Government on allotment of land to private individuals. The allotment of land in the instant case was made on 5.7.1993 and 20.1.1995 which falls within the ban period. Therefore, the allotment is totally against the policy of the State Government and that too without any approval from the competent authority, the State Government.

12. In view of the discussion and observations made above. I am of the view that the said allotment was totally without jurisdiction/ authority, and against the Government policy banning allotment of land to the private individuals, the impugned orders dated 5.7.1993 and 20.1.1995 Annexures-S&R to the writ petition, therefore, cannot stand the test of law, and the same are hereby set aside and quashed.

13. As regards the regularisation of the said land in the name of the petitioner, it is not disputed that the petitioner had been in occupation over the land from 1968, and that his prayer for regularisation was also recommended by the respondent No. 5, after taking into consideration the various documents produced by the petitioner. It is therefore, directed that the respondents shall consider the case of the petitioner for regularisation of land in his name in accordance with the rules and regulations of the State Government.

14. The writ petition is allowed to the extent indicated above, and the rule is made absolute.

Considering the facts and circumstances of the case, there will be no order as to costs.