
(2015) 10 MAN CK 0007
In the Manipur High Court
Case No : PIL No. 17 of 2013

XXX

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2016) 1 GLT 7

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Ng. Kumar, Amicus Curiae, for the Appellant; L. Sharat Sharma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

N. Kotiswar Singh, J—The present Public Interest Litigation petition has been filed seeking for a direction to the Respondents No. 1 to 3 to take necessary steps under the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 and the Rules framed thereunder, for evicting the respondents No. 4 to 6 and their men and privies from the Government land and also for a direction to the State respondents to verify the unauthorised encroachers in the Government land in the campus of the Chief Medical Officer (CMO), Ukhrul and Chief Judicial Magistrate (CJM), Ukhrul and direct the respondent No. 3 (the Deputy Commissioner, Ukhrul) to take up necessary actions under the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 and the Rules framed thereunder.

2. It is the case of the petitioner that the respondents No. 4 (Union Baptist Church), 5 and 6 and their men and privies had unauthorisedly occupied a piece of State Government land measuring about 400 feet in length (approx) and 150 feet in breadth (approx) in Ukhrul town and started constructing pucca building and fencing around the campus. Because of the aforesaid unauthorised construction, the Deputy Commissioner had issued a notice dated 23.12.2008 to the respondent No. 5 under the Manipur Public Premises (Eviction of

Unauthorised Occupants) Act, 1978 requiring him to remove the construction made in the Government land within 7 days. On failure to do so by the respondent No. 5, the Deputy Commissioner vide his letter dated 2.1.2009 directed the SDO, Ukhrul to ensure removal of the physical structure at the earliest. The respondents No. 4 to 6 along with some other members of the Union Baptist Church, Ukhrul challenged the said notice/letter before the Gauhati High Court, Imphal Bench in W.P.(C) No. 18 of 2009 which was allowed by the Hon'ble High Court vide order dated 15.1.2009 on the ground that the aforesaid notice & direction were issued without following the procedure provided under the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978. However, the Hon'ble Court also made it clear that the Deputy Commissioner/Competent Authority shall be at liberty to take appropriate course of action as provided under law. The submission of the petitioner is that in terms of the aforesaid observation made, the Deputy Commissioner ought to have taken appropriate actions for evicting the unauthorised encroachers by following the provisions of the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 which the authority failed to do, because of which the present PIL petition has been filed. In addition, it has been also alleged that there has been unauthorised encroachments in the Government lands in the campus of CMO, Ukhrul and CJM, Ukhrul for which necessary action ought to be taken up for eviction of the unauthorised encroachers.

3. The petition has been contested by the respondents 4, 5 and 6 by filing an affidavit-in-opposition in which it has been stated that there has been a dispute between the Hundung Village and the Ukhrul Village in respect of certain piece of land lying between these two villages since the year 1922-23 which led to passing of an order dated 28.10.1922 by the then SDO/NE Area in Misc. Case No. 75/NE of 1922-23. The aforesaid order dated 28.10.1922 being of some importance is reproduced hereinbelow:--

"ORDER

Held a L.E. into the case. The cause of dispute is that the men of Hundung state that the boundary between their village and Ukhrul is at about the 421/2 milestone along the bridle path. On the west it is along a stream called by them the Lavai Khong, on the east it keeps along a ridge and later drops to the Choithar boundary. The Ukhrul people state that the boundary is between the 421/2 and 42 milestone along the bridle path. On the west it keeps along a path, with stones every few yards along a ridge called Khaiva and drops to the wet rice cultivation. On the east it drops along a small stream which flows into the stream that is the boundary between Ukhrul and Choithar. The land is in dispute that is the land between these 2 alleged boundaries is mostly long grass and it is only here and there that it cannot be cultivated. There has never been any trouble so far and it is only because the Kamjong road was made last year that it has started. The road has been opened out the county and quite a number of millet fields were on last year along it by Ukhrul. The Hundung people wanted lousal

from the Ukhurul as they allege it is their land. The Ukhurul people stated that they have always cultivated the land and refused to pay lousal. These are 2 large villages with numerous wet rice cultivations and the land in dispute is of no value, except that some poor people cut millet jhums in it and also cut firewood.

I therefore consider that there is no cause to fix a boundary between the 2 villages. In the first place it would be very difficult to tell which party was right and if a new boundary had to be made considerable trouble would be caused in fixing on a proper one. If the litigants were kukis and the land was fertile, I would most certainly fix a boundary in the centre of the two which each party now allege is the boundary as they are not kukis. I see no need to do this.

ORDER

The land in dispute will in future be a kind of neutral zone in which either party can jhum or cut firewood. Ukhurul will not encroach further than the boundary which they allege is the right one and Hundung will observe the same conditions in regard to the boundary which they allege is the right one. The village of Ukhurul will also have to repair the Yaingangpokpi bridle path to their alleged boundary and also the Kamjong bridle path to the same.

Sd/- L.L. Peter SDO(N.E.) Area, 28.10.1922."

4. Perusal of the aforesaid order dated 28.10.1922 would show that the authorities decided to declare the said disputed land between Ukhurul and Hundung villages as a neutral zone, in which, either party can do jhum cultivation or cut firewood with the direction that neither the Ukhurul nor the Hundung village will encroach further than the boundary which they allege is right one. Later, in the year 1979, the Government of Manipur issued an order by which the said Neutral Zone Land was declared as a Government khas land vide order dated 19.01.1979 which was published in the Manipur Gazette on 25.05.1987. The aforesaid Gazette notification dated 25.05.1987 was challenged by some villagers in a series of writ petitions filed before the Gauhati High Court, Imphal Bench in Civil Rule No. 270 of 1983 and others, which were allowed by the Hon"ble High Court vide order dated 26.06.1995 by quashing the said notification on the ground that the notification lacks legislative authority. While allowing the writ petitions, in view of the pending case before the Court of the learned Munsiff, Ukhurul between the Ukhurul and Hundung villages relating to the said neutral zone, being O.S. No. 12 of 1985, the Hon"ble High Court directed the learned Munsiff, Ukhurul to proceed with the said suit for disposal. As per the pleadings in this petition, the disputed suit land/suit land had been described as follows:--

"Descriptions of the suit-land

The southernmost part of Phungrei area, popularly called as Neutral Zone after the name given by the S.D.O./Ukhurul, Mr. L.L. Peter in his Order dated 28-10-1922, situate as a sort of buffer-land between the Ukhurul village and the

Hundung village, and having the following boundaries:--

North:-- Seipet kong and Lamla kong and then Ukhrul Village inhabited area (Khunpham).

South:-- Ngaphar kong and then Hundung Village land.

East:-- Thaiye kong and then Choither Village land, and

West:-- Pahei kong (stream)."

5. The private respondents further stated that the aforesaid suit was initially decreed in favour of the plaintiffs who were representing Ukhrul Village vide judgment and decree dated 21.08.2004 which, however, was set aside by the Addl. District Judge, Manipur East in the appeal preferred against the said judgment in Civil Appeal No. 16/2004/1/2006 which remanded the case for retrial from the stage of DW hearing. It has been stated that the said suit is now pending before the Court of Civil Judge (Jr. Divn.), Imphal East.

It is also the case of the private respondents that the provisions of the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 will not be applicable over the said piece of land as it is not a Government land and moreover, the issue relating to the said land is sub-judice, being a matter of litigation between villages of Ukhrul and Hundung in a civil Court as mentioned above.

It has been also further stated that the land under occupation of the Union Baptist Church, Ukhrul (respondent No. 4) was donated by the former Headman of Ukhrul village on 7.7.2001 and since the said land also lies within the Neutral Zone, no eviction could be initiated.

6. The respondent No. 3 in his affidavit-in-opposition has stated that encroachers are encroaching the land known as Ukhrul Neutral Zone area including the land of the Chief Medical Officer, Ukhrul and Chief Judicial Magistrate, Ukhrul and there has been series of litigations at the instance of the encroachers since early 1980s and they had obtained restraint orders from the Courts from time to time because of which all attempts to evict encroachers had been rendered fruitless.

7. In response to these, while the petitioner has admitted about the pendency of the Original Suit No. 6 of 2012 before the Court of Civil Judge(Junior Division), Imphal East, it has been stated that the land on which the Union Baptist Church (respondent No. 4) had been constructed is outside the Schedule of the land of the Ukhrul Neutral Zone as described in the aforesaid Original Suit No. 12 of 1985 pending before the Civil Court. It had been alleged by the petitioner that the said Church had been built by dismantling the Cluster Type Training Centre (CTTC) of District Industries Centre, Ukhrul in 2006. The land on which the CTCC was built was allotted to the erstwhile District Industries Officer, East District, Ukhrul (now District Industries Centre, Ukhrul) as a site for construction of office buildings and staff quarters for the weaving and tailoring centre at Phungrei vide

Government land allotment order No. 10/82/77/REV. dated 11.05.1978 issued by the Deputy Commissioner, Ukhrul.

It is the case of the petitioner that since the aforesaid allotment order dated 11.5.1978 was not challenged by anybody before any Court or forum, it cannot be said that the land on which the Union Baptist Church has been constructed which was meant for the construction for the CTTC does not form part of the Neutral Zone area. It had been also stated that when the Gauhati High Court passed the order on 15.01.2009 in W.P.(C) No. 18 of 2009 setting aside the eviction order dated 23.01.2008 and communication dated 2.01.2009, the said order & communication were quashed by the Hon"ble High Court because of the reason that the procedure provided in the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 were not followed and the High Court specifically made it clear that the Deputy Commissioner/competent authority shall be at liberty to take appropriate course of action as provided under law.

8. We have heard the learned counsel for the parties and perused the materials on record.

9. From the pleadings and submissions made before this Court, it transpires that there is a dispute relating to certain piece of land which is commonly known as Neutral Zone relating to which a civil suit is pending before the Court of Civil Judge (Jr. Divn.), Manipur East, being Original Suit No. 12 of 1985. If any of the structure or encroachment in land relating to which the petitioner is seeking eviction falls within the suit land which is the subject matter of litigation in the aforesaid suit, it would not be appropriate for this Court to pass any order as the rights and liabilities of the parties qua the land would have to be determined by the trial court and eviction, if any, can be effected only after ascertaining the rights and liabilities in terms of the decree that may be passed by the trial Court. In the present case, though the petitioner has alleged that the land in issue allegedly encroached by the Respondents No. 4 to 6 in this petition is outside the suit land in the suit pending before the Civil Judge, it has been contended by the private respondents that the land is very much within the suit land. Accordingly, in view of the aforesaid disputed question of fact, this Court, therefore, can not pass any effective order as regards the relief claimed by the petitioner for eviction without ascertaining the status of the land as well as the respective right of the parties over the said land.

However, as regards encroachment in other public premises, and such other premises where there is no pending litigation against the State Government or State authority, this Court can direct the authorities, particularly, respondent No. 1 to 3 to take appropriate actions in accordance with law to cause eviction of the unauthorised occupants or encroachments in respect of public premises which lie outside the suit land or where there is no pending litigation with the State Government, which we do so. In other words, in respect of those public premises which are undisputedly outside the suit land and hence outside the scope of the suit pending before the Civil Judge i.e., O.S. No. 12 of 1985 or any other public

premises where there is no pending suit against the State Government, the authorities are directed to initiate and take necessary actions for eviction of the unauthorised occupants or encroachers, if any, from those public premises. In this regard, one may refer to Section 2(e) of the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978 which defines "public premises" to mean any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Government and also any premises belonging to, or vested, in a local authority. The aforesaid Section 2(e) is reproduced hereinbelow:--

"2. Definitions. In this Act, unless the context otherwise requires-

(a).....

(b).....

(c).....

(d).....

(e) "public premises" means

(i) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Government

(ii) any premises belonging to, or vested, in a local authority.

(f).....

(g)..... "

10. From the above definition clause 2(e) what is very clear is that for the purpose of invoking the provisions of the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978, the land in issue need not necessarily belong to the State Government. It is sufficient, if the land is taken on lease or requisitioned by, or on behalf of the Government or if it belongs to a local authority. For example, any land though not belonging to the State Government but a private land, if taken on lease or requisitioned by the State Government, will be covered by the definition of "public premises" for the purpose of the Manipur Public Premises (Eviction of Unauthorised Occupants) Act, 1978. Therefore, if there are unauthorised occupants or encroachment in respect of any such "public premises" coming within the definition and meaning of Section 2(e) of the aforesaid Act, the respondents No. 1, 2 and 3 would be entitled to initiate and take action in accordance with the provisions of the said Act for evicting such unauthorised occupants or encroachers, which we direct the respondents No. 1, 2 and 3 to do so.

11. With the aforesaid observation and direction, the petition is disposed of.