
(2000) 07 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 603 of 1997

Yamkhomang Haokip

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2003) 3 GLR 409

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : R.K. Sanajaoba and K. Bipin Chandra Sharma, for the Appellant;
Bidhyamoni Devi, Addl. GA, for the Respondent

Judgement

N.S. Singh, J.—In this writ petition, the writ petitioner sought for a direction to the respondents not to disturb/evict the petitioner and his co-villagers whose identity and particulars are reflected/given in Annexure A/1 to the writ petition from the land/place as described in Annexure-A/2 to the writ petition, coupled with a prayer for quashing the impugned eviction notice/ order bearing No. 1/2 ylws/97-98, dated 14.5.1997 issued by the Assistant Conservator of Forests", YLWS - Moreh, the respondent No. 4 herein by contending inter alia, that the writ petitioner is a Secretary of the village authority of Mongjang Village, a Kuki village situate near Indo Myanmar Border having 36 hill-house Tax paying householders and he has been authorised to file the present writ petition and to represent the villagers of the said village and also to swear affidavit for and on their behalf by its village authority and that, in the year 1993, the Armed underground outfits N.S.C.N. attacked the Petitioner's village and burnt down their residential buildings and caused untold miseries and losses to the villagers and the innocent villagers were disarrayed and fear-stricken and, lastly, the villagers had to flee from their hearth and home and to take shelter at Ward No. 7. (Seven) at Moreh Town and, thereafter, on the application made by the Chief of Mongjang Village, the Sub-Divisional Officer (TPL), Moreh permitted the villagers of Mongjang village to resettle at place about 4-6 Kms. away from

Moreh Town on the National High Way No. 39, a government khas land vide, office memorandum bearing No. SDO (TPD/3-14/90 dated 31.1.1995 and the said area/place was earlier recognised as a village vide office letter/order bearing No. 127/SO/Chief/ 76-Vol. 1 dated 24.5.1983 as requested by the Chief of the village (Shri Doujapao Haokip) and the particulars of the said new site/village were given and reflected in the said memorandum dated 31.1.1995 which are as follows:

North : RAC Camp i.e. 6 Kms South : Kondong Lairembi (Laipham) or 4 Kms East : Lairak River/Laiching Hills and West : Khojai rok river / Mantum Hills ;

and the petitioners and his co-villagers have now settled at this new site. It is also the case of the petitioner that the Assistant Conservator of Forests" YLWS-Moreh, the 4th respondent herein issued impugned Eviction Notice dated 14th May, 1997 (Annexure A/3) to the Chief of H. Mongjang Village by stating that the Chief of the village had encroached a portion of the land on WH 39, 6 Km from Moreh to establish village under the name and style of H. Mongjang village and the said Chief has been further informed by the 4th respondent that no person shall disturb or damage, or destroy in any manner, the habitat in a sanctuary, except under and in accordance with a permit granted by Chief Wild-Life Warden and, accordingly, the said Chief was informed to dismantle all the structure created thereon within 30 days from the date of receipt of the said notice, failing which the Department will initiate eviction process.

2. Mr. K. Bipinchandra Sharma, learned counsel appearing for the petitioner argued that the impugned eviction notice as in Annexure A/3 amounts to deprivation of life and is violative of Article 21 of the Constitution of India and, apart from it, the land possessed by the petitioner and his co-villagers is not part of reserved forest/wild-life sanctuary and the said notice does not contain any specific area from where the petitioner and his co-villagers are meant to be evicted as no boundaries of the land from where the proposed eviction process is to be initiated are given and, in fact, the said notice is vague. The learned counsel went on to contend that due ethnic clashes as mentioned above amongst the Nagas and Kukis, the poor villagers had to take shelter at safer zones for new settlement for preservation and protection of life and this phenomenon is now a reality which is sufficient for judicial recognition and, for this purpose, the normal law and the Rules have to be read and interpreted or even moulded in the light of this abnormal situation in view of the fact that the laws and the rules are meant to safeguard and to preserve and not to sabotage the societal interests. It is also submitted that the appropriate order and direction may be made from the end of this Court directing the respondents to allow the petitioner and his co-villagers to settle at the aforementioned place and not to evict them and also to protect them.

3. At the hearing, Mrs. Bidhyamani Devi, learned Addl. Govt. Advocate for the State respondents submitted that the land in question falls within the land of WH 39, 6 Kms. which is a part of sanctuary and, as such, the 4th respondent rightly

issued the impugned eviction notice. The present petitioner and his co-villagers have no right to settle or take shelter in the said land unless the land is allotted to them by the competent authority or permitted by the Chief Wild Life Warden for their stay thereat and, there is no infirmity or illegality in the impugned eviction notice Mrs. Bidhyamani Devi contended.

4. A bare persual of the office memorandum bearing No. SDO(TPL)/3-14/90 dated 31.1.1995 as in Annexure A/2 shows that the people of H. Mongjang village has been allowed to resettle in the said area as village which was earlier recognised as requested by the Chief of the Village in other words, by virtue of the said office memorandum, the petitioner and his co-villagers have settled at this place. The said office memorandum is important and relevant in the instant case and, accordingly, the same is quoted below :

"No. SDO(TPL) 3-14/90 Govt. of Manipur Office of the Sub-Divisional Officer, (TPL) Moreh.

OFFICE MEMORANDUM

This is to certify that H. Mongjang Village of this Sub-Division had been deserted during the last ethnic crisis and temporarily settled at Moreh Ward No. 7 (seven). Thereafter, the chief of the Village has applied to this office for resettlement at WH. No. 39 in between 4-6 Kms. from Moreh, or between Kondong Lairembi (Laiphom) and RAC Camp, for security convenience in future, as per Land Schedule given below under the resettlement programme for the villagers (displaced villagers). On enquiry it is reported by the concerned Lambu, that the proposed site for resettlement of the Villagers is a dereserved Land, not within the Forest reserved area. Further, it has been confirmed that, the proposed site for resettlement of the village is a Govt. Khas Land. No Objection Certificate of the neighbouring recognised Villagers had been furnished to this Office in support of the claim for resettlement of the village in the proposed site.

Therefore, the people of H. Mongjang may be allowed to resettle in the area as a Village which was earlier recognised vide Orders No. 127/SDO/ Chief 78-Vol. 1 dt. 24th May, 1983 as requested by the Chief of the Village (Shri Doujapao Haokip).

The schedule of land for the proposed village is as under :-

North : RAC Camp i.e. 6 Kms South : Kondong Lairembi (Laiphom) or 4 Kms
East : Lairak River/Laiching Hills West : Khojai rok river / Mantum Hills (Y. Neta Singh) Sub-Divisional Officer, (TPL) Moreh, CDL. Dist. Manipur

Memo No. SDO (TPD/3-14/90. Copy to : 1. Deputy Commissiner, Chandel. 2. DFO, Chandel. 3. Asstt. SS Officer Moreh. 4. Guard File. (Y. Neta Singh) Sub-Divisional Officer, (TPL) Moreh, CDL. Dist. Manipur"

5. It is not disputed that due to ethnic clashes mentioned above, the petitioner and his co-villagers had to flee from their original village to a secure place and

initially they took shelter at Ward No. 7 at Moreh Town and thereafter, at the place mentioned above (the land described in the aforementioned office memorandum). The only question/issue which arises in the said case is as to whether the said land is a portion of a sanctuary declared by the State Government as required u/s 18 of the Wild Life (Protection) Act, 1972 and whether the eviction notice was issued upon the Chief of the village in accordance with law or not. From the available materials on record, this Court is not in a position to ascertain as to whether the land described in the office memorandum dated 31.1.1995 is a portion of the sanctuary even though, the State respondents produced a related notification dated 21.3.1989 as in Annexure D/1 to the counter affidavit pertaining to the declaration of a particular area as Wild Life Sanctuary and, even though, the learned Additional Govt. Advocate contended that the land in question is a portion of the sanctuary. The impugned eviction notice does not speak that the land described in the office memorandum is a portion of the said sanctuary but simply stated that the Chief of H. Mongjang Village has encroached a portion of land of WH 39, 6 Kms. Moreh to establish a village and no boundary of the land from where the proposed eviction process should be initiated is given or reflected in the impugned eviction notice. In my consideration view, the impugned notice is vague notice and it is not tenable in the eye of law. It is true that the respondents can take follow up action for eviction of the persons from the area falling within the declared sanctuary in accordance with the provisions as contained in Chapter IV of the Wild Life (Protection) Act, 1972 but none of these things have been found to be followed by the respondents in issuing of passing the impugned eviction notice for initiating eviction process against the present petitioner and his co-villagers and as such the impugned eviction notice is not sustainable in law and, accordingly, it deserves to be quashed hence, it is quashed. In this regard, a reference can be made to a decision of this Court rendered in Jaladhar Chakma and Vs. The Deputy Commissioner, Aizawl, Mizoram and Others, Annexure D/1 to counter affidavit of the respondents in a notification dated 21.3.1989 bearing No. 60/6/86 issued by the Commissioner (Forest), Govt. of Manipur by invoking the powers conferred upon the authority u/s 18 read with section 19 of the Wild Life (Protection) Act, 1972 but it is not a notification as required u/s 2(22) of the Act which envisages that "notification" means a notification published in the official Gazette. In the instant case, the State respondents could not produce the related notification published as required u/s 2(22) of the Act and, apart from it, there is no even a whisper in the counter affidavit that the said notification as seen in the document marked as Annexure - D/1 was published in the Official Gazette and with this reason this court quashed the impugned eviction notice however, this finding and observation shall not stand on the way of the respondents/authority concerned to make further enquiry in the matter and follow prescribed procedural standard in taking up the matter in accordance with law.

6. It is true that the Sub-Divisional Officer (TPL) Moreh, Chandel District, Manipur has no power and jurisdiction to allow the people of H. Mongjang Village

to resettle in the area/place under reference in question however, the said Sub-Divisional Officer has issued the related office memorandum dated 31.1.1995 has in Annexure A/2 to the writ petition and the people of H. Mongjang village have been allowed to resettle in the said area and now, they have settled at the said place.

7. Now this Court is to see and examine as to whether the present petitioner and his co-villagers have a right to take shelter at the said place or not. According to me, they have such right for the following reasons :

The right to shelter was accepted as a part of the right to life as laid down by the Apex Court in *Francis Coralie Mullin, Petitioner v. The Administrator, Union Territory of Delhi and Ors.*, Respondents reported in AIR 1981 SC 746 and in the said case the Apex Court held thus :

"The fundamental right to life which is the most precious human right and which forms the arc of all other right must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.

Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. In *Kharak Singh Vs. The State of U.P. and Others*, J. In *Munn v. Illinois* (1877) 94 US 113 to emphasise the quality of life covered by Article 21 : *Sunil Batra Vs. Delhi Administration and Others etc.*, By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world." And this passage was again accepted as laying down the correct law by the Constitution Bench of this Court in the first *Sunil Batra Vs. Delhi Administration and Others etc.*, Every limb or faculty through which life is enjoyed is thus protected by Article 21 and a fortiori, this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article 21 may be total or partial, neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by Article 21 whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. It is therefore clear that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily would be within the inhibition of Article 21.

But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more.

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely. The bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."

It is the Constitution Bench decision in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, which has put life and vigour to this requirement, because in that case, the right to dwell on pavement or in slums were accepted as a part of the right conferred by Article 21, which, as would be seen later, takes within its fold the right to livelihood as the persons whom *Olga Tellis* represented in that case were staying at pavements or in slums so as to enable them to earn their livelihood in places nearby, the Court came forward to protect them and desired providing of alternative accommodation for some categories of people.

In view of the existing facts and circumstances of the case, this Court requires the State respondents to examine the present matter by giving preference to it as the matter involves the right to life and this Court hopes and trusts that the State respondents shall protect the petitioner and his co-villagers by providing them their accommodation at the present place or to provide alternative accommodation at a suitable site so as to enable these poor villagers to earn their livelihood and that their present occupation and possession over the land shall not be disturbed until the matter is settled by the competent authority so that a common man may think that a human problem has been solved by the State respondents. This Court further requires the State respondents to keep in their mind the differences between the need of an animal and human being for shelter, as for the animal, it is the bare protection of the body and for good food; and for - a human being a suitable accommodation or shelter which would allow him to go in other aspects - physically, mentally and intellectually with good food, clothing for survival on this earth. At this stage, I hereby recall some words of "Rigveda" as Rigveda II recites :

"Grant us a 100 autumns that we may see the manifold world. May we attain the long lives which have been ordained as from yore."

Again *Arthava-Veda* I further recites :

"May we be enable to see the sun for a long time."

According to me, human life is so adorable, and beautiful. I always murmure, how adorable the human life is; how adorable the lives curs !

In my firm view, these poor villagers might have confronted themselves when they were alone about the suffering and agonies they have had since the day when they left their original village till today. Hence, it is under the wisdom and domain of the State respondents/competent authority to examine and consider the case of these poor villagers sympathetically thus, protecting their right to life with human dignity and bare necessities of life.

For the reasons, observations and discussions made above, this writ petition is disposed of but, no order as to costs.