

(2000) 08 GAU CK 0032
In the Gauhati High Court
Case No : Writ Appeal No. 366 of 1997

Yanu Nalo

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 21-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLT 251

Hon'ble Judges : Brijesh Kumar, C.J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B.K. Das and P.K. Roy, for the Appellant; N.N. Saikia and G. Deka, for the Respondent

Judgement

A.K. Patnaik, J.—Heard Mr. B.K. Das. learned Counsel for the Appellant and Mr. N.N. Saikia. learned Advocate General. Arunachal Pradesh.

2. This is an appeal against the judgment and order dated 9.5.97 passed by the learned Single Judge in Civil Rule No. 992/97.

3. The facts, briefly, are that on 10.2.97 the Appellant submitted an application before the Deputy Commissioner. Upper Subansiri District, Daporijo. Government of Arunachal Pradesh stating therein that a plot of land has been in her occupation since mid 70s and that strong bamboos had been grown all around the land and orange tree, pears trees, pineapple plantation and banana trees had also been grown on the said land. In the said application dated 10.2.97 the Appellant further stated that her father and other family members are residing on the land and that they are bonafide natives of Upper Subansiri District and have equal rights to own land for residential and other purposes. In the said application the Appellant made a request to the Deputy Commissioner to sympathize the Appellant and her family members and grant allotment of the land. Thereafter, the Deputy Commissioner, Upper Subansiri District, Daporijo issued a memorandum dated 18.2.97 stating therein that the Appellant had been in unauthorised occupation of the land measuring 4404 sq. Mtrs. (1.09) Acres)

near SIB Complex and that the Deputy Commissioner proposed to resume the land for construction of buildings for District Institute of Education and Training. Since the Appellant had asked for regularisation of the plot in her name on the ground that the plot had been under her occupation for the last 22 years, she was directed by the said memorandum dated 18.2.97 to deposit a sum of Rs. 4,98,092.00 for regularisation of the said plot in terms of Government order No. LR-47/84 dated 25.10.94. It was further stated in the said memorandum dated 18.2.97 that if the amount was not deposited within the time stipulated in the said memorandum and the manner specified therein, only 1,000 Sq. Mtrs. would be considered for regularisation on payment of penalty at the prescribed rate and their rest of the area would be resumed for Government construction. Aggrieved by the said memorandum dated 18.2.97, the Appellant filed a writ petition bearing Civil Rule No. 992/97 under Article 226 of the Constitution with a prayer to set aside the said memorandum dated 18.2.97 and for a direction to the Respondents to allot and/or regularise the said plot of land measuring 4404 Sq. Mtrs. possessed by the Appellant near SIB Complex at Daporijo, Arunachal Pradesh. By the impugned judgment and order dated 9.5.97 the learned Single Judge declined to decide anything with regard to the matter and left it open to the authority to decide the matter in accordance with law by considering all aspects of the matter and further observed that the Appellant may make a representation before the authority. In the said judgment and order, however, it was made clear that the authority will have the right to resume the land and/or ask the Appellant to vacate the land, if necessity arises. Aggrieved by the said judgment and order dated 9.5.97 of the learned Single Judge in Civil Rule No. 992/97, the Appellant has preferred this writ appeal.

4. Mr. Das, learned Counsel for the Appellant submitted that in the State of Arunachal Pradesh the land does not belong to the Government, but belongs to the community and that the aforesaid land in question was given to the Appellant by the community and, therefore the Government had no authority or right whatsoever to ask for any consideration for allotment of the said land in favour of the Appellant. To a query from the Court as to why the Appellant submitted the application dated 10.2.97 before the Deputy Commissioner, Upper Subansiri District, Daporijo for granting allotment of the aforesaid land if the Government was not the owner of the said land, Mr. Das submitted that it will be clear from the said application dated 10.2.97 that the claim of the Appellant was that she has been in possession of the said land for quite some time and has been tilling the said land and had grown orange trees, pears trees, pine-apple plantation, etc. and that on account of lack of proper knowledge of law relating to rights to land, the Appellant had, by mistake, requested the Deputy Commissioner to grant allotment of the land in her favour.

5. Mr. Saikia, learned Advocate General, Arunachal Pradesh, on the other hand submitted that the Government is the owner of the land in question and that the claim of the Appellant that she had grown trees on the land is not factually correct. That apart, it will be clear from the memorandum dated 18.2.97 issued

by the Deputy Commissioner that a scheme had been formulated by the Government in its order No. LR-47/84 dated 25.10.94 for regularisation and allotment of land in favour of those persons who are in occupation of the same and it is in pursuance of the said scheme of the Government that the Deputy Commissioner Upper Subansiri District, Daporijo had issued the memorandum dated 18.2.97 directing the Appellant to deposit a sum of Rs. 4,98,092.00 and further stating that the land in question will be resumed if the deposit is not made. "

6. It appears to us that although the Appellant had filed the application dated 10.2.97 before the Deputy Commissioner for grant of allotment of the land, she has now raised the contention before us that the land in question does not belong to the Government and it cannot be allotted by the Government to the Appellant and in fact the Appellant has been in occupation of the land after the same has been given to her by the community which is the owner of the land. These are questions of title to the land and can be established not before this Court in the writ proceedings, but in a Civil suit before the appropriate forum. Mr. Das, however, submitted that the Appellant is prepared to pursue her remedy against the memorandum dated 18.2.97 issued by the Deputy Commissioner, Upper Subansiri District, but the impugned judgment and order of the learned Single Judge dated 9.5.97 may stand in the way of the Appellant in getting the matter adjudicated in Civil Suit. In particular he submitted that in the impugned judgment and order dated 9.5.97 the learned Single Judge has observed that the authority will have the right to resume the land and ask the Appellant to vacate the land, if necessary arises and the authority may take advantage of the said observation of the learned Single Judge in the impugned judgment and order and resume the land in question with the plea that they have been so allowed by the learned Single Judge by the impugned judgment and order dated 9.5.97.

7. Since the Appellant now intends to pursue her remedy in the civil suit before the appropriate forum, we dispose of this writ appeal with the observation that the Appellant may file a suit before the appropriate forum within 3 (three) months from today and along with the said suit, may also file an appropriate application for temporary injunction. For the said period of 3 months, the Appellant shall not be evicted from the land in question, nor the land will be resumed by the Respondents. The observations of the learned Single Judge in the impugned judgment and order dated 9.5.97 will not stand in the way of the forum before whom the Civil Suit is filed to grant appropriate remedy as is available to the Appellant under the law. We make it clear that the Civil Suit will be decided by the appropriate forum on its own merits. In accordance with law.