

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 388 of 2023

1. Shri Sarangthem Ibopishak Singh, aged about 75 years, S/o (L) S Ningthemton Singh, a resident of Singjamei Chingamakha Heirangoithong Aheibarn/Jaganatha Achouba Leirak, P.O. and P.S. Singjamei, Imphal West District, Manipur.
2. Shri Sarangthem Basanta Singh, aged about 45 years, S/o, Sarangthem Iboton Singh of Singjamei Chingamakha Heirangoithong, Imphal West, Manipur.
3. Shri Sarangthem Keiremba Singh, aged about 34 years, S/o (L) S Bheigya Singh, a resident of Singjamei Chingamakha Heirangoithong Aheibam/Jaganatha Achouba Leirak, P.O. and P.S. Singjamei, Imphal West District, Manipur.

...Petitioners

-Versus-

1. Shri Sarangthem Ramchoron Singh, aged about 68 years, S/o (L) S Pishak Singh, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.
2. Shri Sarangthem Tikendrajit Meitei, aged about 48 years, S/o (L) S Lalji Meitei, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.

3. Shri Sarangthem Dhiren Singh, aged about 57 years, S/o. S.Pishak Singh, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.
4. Shri Sarangthem Ranjan Singh, aged about 53 years, S/o (L) S Lalji Meitei, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.
5. Shri Sarangthem Dorendro Singh, aged about 51 years, S/o (L) S Lalji Meitei, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.
6. Shri Sarangthem Jiten Singh, aged about 43 years, S/o (L) S Lalji Meitei, a resident of Singjamei Chingamakha Chanam Pukhri Mapal, P.O. & P.S. Singjamei, Imphal West District, Manipur.

.. Respondents

7. Shri Sarangthem Hemanta Singh, aged about 47 years, S/o, Sarangthem Iboton Singh of Singjamei Chingamakha Aheibam/Jaganatha Achouba Leirak, Imphal West, Manipur.
8. Shri Sarangthem Sushil Singh, aged about 42 years, S/o (L) S Bheigya Singh, a resident of Singjamei Chingamakha Heirangoithong Aheibam/Jaganatha Achouba Leirak, P.O. and P.S. Singjamei, Imphal West District, Manipur.

..Proforma Respondents.

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Petitioners :: Mr. N. Ibotombi, Sr. Adv.,

For the Respondents :: Mr. Th. James, Adv.

Date of Hearing and
reserving Judgment & Order :: 27.04.2023

Date of Judgment & Order :: 04.05.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. N. Ibotombi, learned senior counsel for the petitioners and Mr.Th. James Singh, learned counsel for the respondents 1 and 2.

2. This writ petition has been filed by the petitioners challenging the order dated 10.4.2023 passed by the Sub-Divisional Officer, Lamphel, Imphal West in Eviction Case No.38 of 2019 in connection with the Demarcation Case No.99/SDC/IW(C) of 2016 and to direct the respondents to conduct a fresh demarcation.

3. The case of the petitioners is that the petitioners and the proforma respondents are absolute owners of the homestead lands, namely (a) land covered in C.S. Dag No.586 having an area of 0.04890 acre by the third respondent and the second proforma respondent; (b) land covered in C.S. Dag No.590 having an area of 0.0363 acre by the first petitioner and

(c) land covered in C.S. Dag No.589 having an area of 0.0353 acre by the second petitioner and the proforma first respondent. According to the petitioners, a demarcation was took place on 20.6.2017 based on the map survey year, 1960. When a Memorandum dated 29.9.2017 was issued by the SDO, Imphal West (Central), an objection was made by the first petitioner and the second proforma respondent on 16.10.2017 against the said Memorandum dated 29.9.2017 stating that physical demarcation must be based on the survey year 1990, but the demarcation was done based on the survey year 1960 and also some distance were not properly measured and, therefore, a fresh physical demarcation on the basis of survey year 1990 is to be conducted. However, final peg was given in the absence of the petitioners and on 17.10.2019, an eviction notice was issued. According to the petitioners, final peg lies six feet inside the land of the petitioners and the same affects the dwelling house of the first petitioner. Without doing the physical demarcation properly, the final eviction order was passed on 10.4.2023 by the SDO, Imphal West in Eviction Case No.38 of 2019. Challenging the same, the petitioners have filed the present writ petition.

4. Assailing the impugned order dated 10.4.2023 passed by the Sub Divisional Officer, Lamphel, Imphal West in Eviction Case No.38 of 2019, the learned counsel for the

petitioners submitted that the SDO has passed the impugned order for eviction without following due process of law thereby depriving the life and personal liberty of the Constitution of India, as no prior notice was served on the petitioners before passing the impugned eviction order.

5. The learned senior counsel further submitted that a bare perusal of the impugned order shows that the said order was passed not only without following the due process of law, but also without doing correct demarcation. No copy of the order has been served to the would be evicted parties which is evidence from the order dated 10.4.2023. He would submit that the natural justice demands that it would be the affected parties be at least given advance notice of eviction to be carried out. Aggrieved by order dated 10.4.2023, the petitioners have submitted an application dated 21.4.2023 to the SDC, Imphal West (Central) for conducting fresh re-demarcation with reference to Demarcation Case No.99/SDC/LW(C) of 2016. The petitioners have also filed CRP No.26 of 2023 and the same was subsequently withdrawn with liberty to file afresh petition.

6. Before going to consider the merits of the impugned order dated 10.4.2023, let us first consider the maintainability of the writ petition challenging the order dated 10.4.2023 passed in

Eviction Case No.38 of 2019, which has been filed by the respondents 1 and 2 herein for settlement of boundary by evicting the land holders who are in wrongful possession of the homestead land covered by C.S. Dag No.132 and 133 (old) situated at Revenue Village No.99, Ningthoujam Leikai/IWT.

7. On a perusal of the impugned order dated 10.4.2023, it is seen that the Eviction Case No.38 of 2019 has been filed against the petitioners herein and others. Further perusal of the impugned order reveals that vide order dated 16.1.2023, the SDO ordered eviction of the respondents therein, particularly the petitioners 1 and 3 herein from the suit land covered in C.S.Dag No.132 and 1333 (old) situated at Revenue Village No.99, Ningthoujam Leikai/KWT in accordance with the final pegs given on 26.6.2019 in Demarcation Case No.99/SDC/IT(C) of 2016 to be executed by the Sub-Deputy Collector, Imphal West (Central) by 9.30 A.M. of 30th January, 2023. The impugned order further records that the petitioners herein have filed Revenue Revision Case No.9 of 2023 before the Revenue Tribunal and initially, the Revenue Tribunal stayed the order dated 16.1.2023. The said interim order was vacated by the order dated 17.2.2023 and disposed of the Revenue Case No.9 of 2023 as infructuous. Observing so, the SDO directed the Sub-Deputy Collector, Imphal West (Central) to execute the

eviction order dated 16.1.2023 by evicting the petitioners, particularly the petitioners 1 and 3 herein from the suit land of the respondents 1 and 2 herein on 29.4.2023 at 9.30 A.M. The Officer-in-Charge, Singjamei PS was also directed to provide adequate security for the eviction.

8. Admittedly, the eviction proceedings initiated by the respondents 1 and 2 against the petitioners and others in respect of the land in C.S. Dag No.132 and 133 (old) situated at Revenue Village No.99, Ningthoujam Leikai/IWT, is a private *lis* and in the private *lis* initiated by the respondents 1 and 2 before the SDO, Lamphel, the said authority after considering the respective cases put forth by the parties, ordered eviction of the petitioners herein from the suit land. When the petitioners challenge the eviction order passed by the SDO, Lamphel, they ought to have arrayed the SDO as party respondent in the writ petition. The fact remains that the SDO, Lamphel has not been arrayed as respondent in the instant writ petition. Behind the back of the SDO whose order is under challenge, no direction can be passed.

9. As could be seen, aggrieved by the order dated 16.1.2023 passed by the SDO earlier the petitioners have approached the Revenue Tribunal, Manipur. Now assailing the

impugned order of the SDO, the petitioners have invoked the jurisdiction under Article 226 of the Constitution of India. Exercising the jurisdiction under Article 226 of the Constitution of India the correctness of the order of the SDO, Lamphel cannot be decided. Article 226 of the Constitution of India gives High Courts the ability to issue instructions, orders, and writs to any person or authority, including the Government.

10. As stated supra, without the authority who had passed the order having been arrayed as a party respondent in the writ petition, the High Court cannot decide the correctness of the impugned order. Since as against the impugned order passed by the SDO, a revision would lie, as filed earlier by the petitioners, the petitioners cannot challenge the impugned order under Article 226 of the Constitution of India that too without impleading the authority who had passed the impugned order.

11. As could be seen, the petitioners have earlier filed CRP (CRP Art.227) No.26 of 2023 before this Court and subsequently, by the order dated 21.4.2023, the CRP No.26 of 2023 has been withdrawn by the petitioners with liberty to file a fresh one, if so advised, which does not mean that they have right to challenge the impugned order under Article 226 of the Constitution of India when the order under challenge has been

passed by the SDO directing the Sub-Deputy Collector, Imphal West (Central) to execute the eviction order dated 16.1.2023. Therefore, the writ petition filed by the petitioners assailing the order dated 10.4.2023 straightway invoking the jurisdiction under Article 226 of the Constitution that too without impleading the authority who had passed the impugned order is not maintainable.

12. Coming to the merits of the impugned order, the same was passed after the dismissal of the Revenue Revision Case No.9 of 2023 which was preferred against the order dated 16.1.2023 passed by the SDO, Lamphel in Eviction Case No.38 of 2019. If really, the petitioners are aggrieved by the order passed by the Revenue Tribunal in Revenue Revision Case No.9 of 2023, they ought to have assailed the same in the manner known to law. However, the petitioners have failed to do so. Having failed to do so, now the petitioners cannot assail the impugned order by way of this writ petition. That apart, exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot test the correctness of the impugned order dated 10.4.2023. Moreover, the petitioners have failed to convince this Court to entertain the writ petition.

13. For all the reasons stated above,

- a) the writ petition is dismissed as not maintainable.
- b) The Registry is hereby directed strictly that if the litigant has not impleaded the State authorities as party Respondent, the Registry should not number the writ petition.
- c) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil