

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

WP(C) No.623 of 2022

Shri H. Aleng, aged about 65 years, S/o Late H. Wungnaoshang, Headman, Langthungching Village, Kangchup Geljag Sub-Division, Kangpokpi District, Manipur & another

...Petitioner

-Versus-

1. The Union of India, represented by the Secretary, Tribal Affairs, Ministry of Tribal Affairs, Government of India, Shastri Bhavan, A-Wing, Dr. Rajendra Prasad Road, N Delhi-110 001
2. The State of Manipur represented by the Chief Secretary, Government of Manipur, Manipur Secretariat, Babupara, Imphal West, Manipur-795001
3. The Additional Chief Secretary (Forest), Government of Manipur, Manipur Secretariat, Babupara, Imphal West, Manipur-795001
4. The Additional Chief Secretary (TA & Hills), Government of Manipur, Manipur Secretariat, Babupara, Imphal West, Manipur-795001

5. The Principal Chief Conservation of Forest, Government of Manipur, Sanjenthong, Imphal East, P.O & P.S Porompat, Manipur-795001
6. The Divisional Forest Officer, Central Forest Division, Mantripukhri, Imphal East, Manipur-795003
7. The Deputy Commissioner, Kangpokpi District /Chairperson, District Level Committee, Kangpokpi District, Manipur-795129

...Respondents

WP(C) No.624 of 2022

Shri Jangpou Dangmei, aged about 65 years, S/o Late Ganbongchung Dangmei, Chairman of Ramgailong Village, Kangchup Geljang Sub-Division, Kangpokpi District, Manipur.

...Petitioner

-Versus-

1. The Union of India, represented by the Secretary, Tribal Affairs, Ministry of Tribal Affairs, Government of India, Shastri Bhavan, A-Wing, Dr. Rajendra Prasad Road, N Delhi-110 001
2. The State of Manipur represented by the Chief Secretary, Government of Manipur, Manipur

Secretariat, Babupara, Imphal West, Manipur-795001

3. The Additional Chief Secretary (Forest), Government of Manipur, Manipur Secretariat, Babupara, Imphal West, Manipur-795001
4. The Additional Chief Secretary (TA & Hills), Government of Manipur, Manipur Secretariat, Babupara, Imphal West, Manipur-795001
5. The Principal Chief Conservation of Forest, Government of Manipur, Sanjenthong, Imphal East, P.O & P.S Porompat, Manipur-795001
6. The Divisional Forest Officer, Central Forest Division, Mantripukhri, Imphal East, Manipur-795003
7. The Deputy Commissioner, Kangpokpi District /Chairperson, District Level Committee, Kangpokpi District, Manipur-795129

...Respondents

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners
In both writ petitions :: Mr. Phungyo Zingkhei, Adv.

For the Respondents Nos.

2 to 7 in both writ petitions :: Mr. Lenin Hijam, AG
Mr. Dimalkumar, Adv.
For the respondent No. 1
in both writ petitions :: Mr. Vijayanand Sharma,
Sr.PCCG
Date of Hearing and
reserving Judgment & Order :: 04.11.2022
Date of Judgment & Order :: **10.01.2023**

JUDGMENT AND ORDER
(CAV)

W.P.(C) No.623 of 2022 has been filed by the petitioners for issuance of a writ of mandamus directing the seventh respondent/Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi District to consider and dispose of the claim forwarded by the Sub-Divisional Officer, Kangpokpi District vide letter dated 5.1.2021 and to consider and dispose of the representation of the petitioner dated 22.9.2021.

2. W.P.(C) No.624 of 2022 has been filed by the petitioner for issuance of a writ of mandamus directing the seventh respondent/Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi District to consider and dispose of the claim made by the petitioner's villagers and to direct the respondents to consider and dispose of the representation dated 22.9.2021.

3. Since the relief sought and the point for consideration in the writ petitions is similar, both the writ petitions were heard together and are being disposed of by this common order.

4. The first petitioner in W.P.(C) No.623 of 2022 is stated to be a Headman of Lanthungching Village, Kangchup Geljang Sub-Division, Kangpokpi District, Manipur and according to him, he inherited the post of Headman from his father Late H. Wungnaoshang, who is the founder of the village and the first Headman. The petitioner in W.P.(C) No.624 of 2022 is stated to be a Chairman of Ramgailong Village, Kangchup Geljang Sub-Division, Kangpokpi District, Manipur and Rangailong Village was established by his father and being the founder of the village he become the first Khullakpa.

5. Brief facts are as follows:

Lanthungching Village and Ramgailong Village were registered with C. Phailen and hill house tax was paid in the name of C. Phailen vide order dated 8.2.1988. Schedule boundary of C.Phailen including Lanthungching and Rangailong villages were demarcated by the Assistant Settlement Officer (Forest) in Objection Case No.9 of 1990.

Accordingly, the schedule boundary land of Langthungching and Rangailong were demarcated in Hill Misc. Case No.2/SDC/KCP of 1992 and Hill Misc. Case No.3/SDC/KCP of 1992 dated 19.8.1992. After conducting election to the Village Authority, both villages became a full-fledged hill house tax paying villages under KangchupGeljang Sub-Division, Kangpokpi District, Manipur recorded in Touzi Book of Record as Village Nos.93 and 129 respectively maintained by the competent authority.

5.1. The villagers are Scheduled Tribe forest dwellers, who depend on the forest land for bona fide livelihood needs and they did their cultivation in the existing Langol Housing Complex area and above the hill for livelihood. The village history reveal that the two villages are now more than 50 years old and the villagers in the two villages have also participated in the election to 51-Saitu Assembly Constituency and are enjoying NREGS, IAY, Ration Card under NFSA. Anganwadi Centre, Community Hall and Government Primary School have also been constructed under Kangpokpi.

5.2. Since the petitioners are all forest dwelling Scheduled Tribals, they primarily reside in the village of forest

area and they comes under the provisions of the Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 [for short, "*the Act of 2006*"] and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules, 2008 (for short, "*the Rules of 2008*"). Thus, the villagers have forest right as laid down in Section 4(1) of the Act of 2006.

5.3. Before the enactment of the Act of 2006, the question of conferring title ship to the villagers was started by the Government of Manipur to issue patta for the villagers. In this connection, the Conservator of Forest, vide letter dated 16.7.1975, addressed to the Secretary (Forest) requested to allow the settlement and the Sub-Divisional Officer, Sadar Hills, West Kangpokpi addressed a letter dated 25.7.1980 to the Chief Conservator of Forest requesting for issuance of no objection certificate to allow the settlement and, by another letter dated 22.2.1986, the Under Secretary, Government of Manipur written to the Chief Conservator of Forest requested for grant of patta and not to evict them, as they are living for nearly 20 years. The Under Secretary (Forest), Government of Manipur, vide letter dated 16.4.1990, addressed to the Principal

Chief Conservator of Forest requested for demarcation of C. Phailen village.

5.4. In the follow up action, the Assistant Conservator of Forest, by the letter dated 30.5.2000 written to the Range Officer, Sadar West regarding demarcation between the Langol Reserve Forest and Langol Ramgailong and Langthungching Villages and requested to cause a detailed enquiry and submit a report. On 13.2.2006, the Sub-Deputy Collector (Headquarters), Kangpokpi, Sadar Hill had submitted hill house tax in respect of Langthungching and Ramgailong villages to the District Forest Officer, Central Forest Division, Government of Manipur. On 11.8.2010, the Deputy Secretary (Forest & Environment), Government of Manipur addressed a communication to the Chief Conservator of Forest requesting for necessary verification to issue allotment order by excluding from the purview of plan of eviction. While so, the Forest Department, from time to time, issued eviction notices to the villagers to vacate from the encroached land in the Langol Reserve Forest.

5.5. Challenging the eviction notices, the father of the first petitioner in W.P.(C) No.623 of 2022 and the other villagers

have filed writ petitions before the Guwahati High Court and while disposing of the writ petitions, the Guwahati High Court directed the respondents therein not to evict the petitioners from their village. On 25.7.2022, the Divisional Forest Officer, Central Forest Division, Manipur had issued a show cause notice of eviction to the second petitioner in W.P.(C) No.623 of 2022.

5.6. The Government of India, Ministry of Environment, Forest & Climate Change made sincere efforts to recognize the traditional right of the tribal population on the forest land. The Inspector General of Forest, Government of India addressed a communication to all the Chief Secretary of the State and Union Territories for regularization of the rights of the tribal on the forest land and stepping up of process for conversion of forest villages into revenue villages and also requested not to resort to eviction of forest dwellers, including tribal other than ineligible encroachers of forest land till complete survey is done for identification of such people and their traditional rights on forest land.

5.7. In pursuance of the letter dated 9.5.2019 of the Additional Chief Secretary (TA & Hills), the Deputy Commissioner, Kangpokpi, vide letter dated 17.5.2019,

intimated the Additional Chief Secretary (TA & Hills), Government of Manipur that the process for determining of forest right claim in respect of Lanthungching and Ramgailong Villages have been initiated by forming Forest Right Committees. On 29.8.2019, the Deputy Commissioner submitted details of claims of the two villages to the Additional Chief Secretary (TA & Hills).

5.8. While joint verification process was going on, the Divisional Forest Officer has sent a communication dated 22.7.2019 to the Chairman, Langthungching Village Authority and requested to submit copies of (i) recognition of Village Authority by the Government; (ii) Village Authority/Grama Sabha meeting resolution constituting Forest Right Committee with list of attendance; (iii) Copies of claims in prescribed format with all required documents. After completion of the joint verification, a final report was prepared, which was approved by the Grama Sabha and forwarded to the Chairperson, Sub-Divisional Level Committee and on 11.2.2020, the Sub-Divisional Level Committee convened a meeting and approved 67 claims in respect of Rangailong village and 91 claim in respect of Langthungching village. The Minutes of Meeting of Sub-Divisional Level Committee along with 158 claim forms,

consolidated report, resolution passed by the respective Grama Sabha, proceedings of the joint verification team were forwarded to the Deputy Commissioner, Kangpokpi District. However, the Deputy Commissioner did not convene the meeting of the District Level Committee to consider the resolution and findings submitted by the Sub-Divisional Level Committee. The petitioners have also submitted reminders on 22.9.2021 requesting again to convene meeting of the District Level Committee so as to consider the claim of the villagers as per the rules. Despite the petitioners personally approached the Deputy Commissioner, no action has been taken till date.

5.9. According to the petitioners, in similarly situated case, being W.P.(C) No.457 of 2022, the petitioners claimed status of the Act of 2006 and the said writ petition was disposed of by this Court on 27.6.2022 directing the respondents to consider the representation of the petitioner within a period of two months from the date of receipt of copy of the order. Therefore, the petitioners seek similar relief and direction on the respondents not to initiate any eviction process until their claim is considered and settled. Hence, these writ petitions.

6. In W.P.(C) No.623 of 2022, the first respondent/Union of India filed affidavit-in-opposition stating that the petitioners have not sought any relief against the first respondent and the representation dated 22.9.2021 was addressed to the State respondent and the show cause notice dated 25.7.2022 has not been issued by the first respondent. As per the Act of 2006 and the rules made thereunder, the administrations of the State Governments/UTs are responsible for implementation of various provisions of the Act. It is stated that Section 6 of the Act of 2006 lays down the authorities and procedure for vesting of forest rights. Grama Sabha shall receive and verify the claims through the Forest Rights Committee and after passing a resolution forward the same to the Sub-Divisional Level Committee and the District Level Committee to consider and finally approve the records of forest rights prepared by the Sub-Divisional Level Committee. No petition shall be preferred directly to the District Level Committee against the resolution of the Grama Sabha. Section 6(7) of the Act of 2006 empowers the State Government to constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forests rights and to submit to the nodal agency such reports and returns as may be

called for by the agency. Since there is no prayer made against the first respondent, the first respondent prayed for dismissal of the writ petition.

7. Respondents 3, 5 and 6 filed affidavit-in-opposition stating that some of the officials, without their jurisdiction, had tried to include Langol Reserved Forest under Senapati District while recognising villages illegally and on 8.2.1988, the Deputy Commissioner of Senapati District recognized a group of encroachers at Laithungching area of Langol Reserved Forest as C. Phailen without jurisdiction. C. Phailen village as described by the boundary schedule is located inside the boundaries of Langol Reserved Forest and also C. Phailen village was made by encroachment in Langol Reserved Forest and the Deputy Commissioner of Senapati had not taken any approval from the Central Government. Laithungching and Ramgailong were part of the then C. Phailen village immediately before the recognition of C. Phailen by the Deputy Commissioner, Senapati was cancelled and made null and void by the Revenue Department in the year 2000. The boundary schedule as reflected in the order of recognition of the then C. Phailen village covers the area presently occupied by Lanthungching and Ramgailong villages. Lanthungching and

Ramgailong were constituted by encroachers within the Langol Reserved Forest and these localities fall within the jurisdiction of the present Imphal West District. This is due to the fact that Langol Hill range or the Langol Reserved Forest was transferred to the Imphal (Central) District in the year 1984. The Act of 2006 was not enacted for regularization of encroachers, but to recognize and vests forest rights to those forest dwelling Scheduled Tribes and other traditional forest dwellers to whom historical injustices were meted out due to declaration of a Reserved Forest or Protected Forest etc. in their ancestral land.

7.1. It is stated that the petitioners are not primary residents in Langol Reserved Forest land and the petitioners and other villagers are encroachers as identified by the Committee. No settlements were present in the area where Lanthungching and Ramgailong stand at present. The petitioners and their villagers have encroached upon Langol Reserved Forest land much later after the declaration of Langol Hill Range as Reserved Forest. Langol Hill Range has never been included in the District Map of the then Senapati District or the present Kangpokpi District. The petitioners/encroachers while trying to manipulate the Government records in their favour went to pay hill house tax and the officials have also

accepted to receive in connivance not considering the fact that Langol Hill Range is within the boundary of Imphal (Central) District during that time. Langol Reserved Forest area presently occupied by the villagers of Lanthungching and Ramgailong are not within the jurisdiction of Deputy Commissioner, Kangpokpi, as Langol Hill Range was transferred to the erstwhile Imphal Central District (now Imphal West) in the year 1984. The Forest Rights Committee formed in respect of Ramgailong and Lanthungching cannot be valid, as they are formed by a group of encroachers and the Village Authorities, which are not recognized by competent authorities.

7.2. It is stated that the District headquarters of Imphal West is barely at an aerial distance of 2 km from the area occupied by Lanthungching and Ramgailong. However, the District headquarters of Kangpokpi District is about 45 km from Langol Reserved Forest. Again, Langol Reserved Forest falls under the jurisdiction of Divisional Forest Officer, Central Forest Division and, as such, all matters relating to recognition and vesting of forest rights under the Forest Rights Act, 2006 in respect of Langol Reserved Forest is being taken care of by the Central Forest Division, Government of Manipur. The submission of relevant documents to the Sub-Divisional Level

Committee made by the Grama Sabha after verification in the field by Forest Rights Committee is as per the provisions of Rule 11(5) of the Forest Rights Rules, 2007. However, the members of Grama Sabha or the Forest Rights Committee are all encroachers within Longol Reserved Forest and not primary residents at the time of declaration of Longol Hill Range into a Reserved Forest. The petitioners have come from elsewhere and have resided in the area because of its proximity to Imphal City. There are huge numbers of encroachments in Longol Reserved Forest today and the number is increasing gradually. New constructions in the name and religion such as Churches have also been constructed. This is against the direction of the Apex Court in its order dated 29.9.2009 passed in SLP No.8519 of 2006. During Covid-19 times, two new Churches were constructed in Ramgailong village. Since Reserved Forest are public properties, construction of Churches in Ramgailong village is against the decision of the Apex Court. Hence, prayed for dismissal of the writ petition.

8. Mr. Phungyo Zingkhei, learned counsel for the petitioners submitted that the petitioners and other villagers are Scheduled Tribe forest dwellers, who depend on the forest land for their livelihood and they primarily resides in the village of

forest area as defined under Section 2(c), 2(p), 3 1(a) of the Act of 2006 and Rule 2(1)(b) of the Rules of 20008. Even before enactment of the Act of 2006, the question of conferring title to the villagers was started by the Government of Manipur to issue patta for the villagers of Lanthungching and Ramgailong villages.

9. Learned counsel for the petitioners would submit that when the Forest Department issued eviction notices to the villagers to vacate them from the encroached land in Langol Reserve Forest, the first petitioner's father and other villagers have filed writ petitions before the Guwahati High Court and those writ petitions were disposed of by directing the official respondents not to evict the villagers from the encroached area. The Ministry of Environment, Forest & Climate Change, Government of India has also made an efforts to recognize the traditional right of the tribal population on the forest land and by letter dated 3.2.2004 requested all the Chief Secretary of the States/UTs to draw up a time bound programme for converting forest villages into revenue villages so as to enable the people living in the villages can enjoy the fruits of development. In fact, on 7.11.2005, the Inspector General of Forest requested the Chief Secretary/Administrator of all the States/UTs not to resort

to evict forest dwellers, including tribals other than ineligible encroachers of forest land till complete survey of identification/verification of such people is done and their traditional rights on forest land.

10. Drawing the attention of this Court to the decision of the Apex Court in the case of *Wild Life First and others v. Union of India and other, W.P.(C) No.109 of 2008, decided on 28.2.2019*, the learned counsel for the petitioners submitted that the Apex Court ordered to put on hold the eviction of forest dwellers till all details which are to be provided by the State Governments in terms of category wise are furnished. Pursuant to the order of the Apex Court, on 9.5.2019, the Additional Chief Secretary (TA & Hills), Government of Manipur sent a letter to the Deputy Commissioner, Kangpokpi/Imphal West/Imphal East Districts to initiate the process of verification claim through Grama Sabha for determining the nature and the extent of individual and community forest rights of Forest Dwelling Schedule Tribe and Other Traditional Forest Dwellers by receiving claims and preparing map delineating the area of each recommended claim and the same was directed to completed so as to enable them to an affidavit before the Apex Court.

11. The learned counsel further submitted that in compliance of the letter dated 9.5.2019, the Deputy Commissioner, Kangpokpi intimated to the Additional Chief Secretary (TA & Hills) that process for determining of forest right claim in respect of Lanthungching and Ramgailong villages have been initiated by forming Forest Right Committees. On 26.8.2019, the petitioners have submitted an information regarding the progress of the Forest Right Claim of the villagers to the Deputy Commissioner, Kangpokpi and, on 29.8.2019, the Deputy Commissioner, Kangpokpi had also submitted details of the claims made by the two villages to the Additional Chief Secretary (TA & Hills).

12. The learned counsel next submitted that while the process for joint verification was going on, in contradiction to the provisions of the Act of 2006 and the Rules framed thereunder, on 22.7.2019, the Divisional Forest Officer, Central Forest Division addressed a communication to the Chairman of Langthungching Village Authority requesting to submit certain documents. However, the petitioners have sent a reply to the Divisional Forest Officer stating that the joint verification process was going on satisfactorily and as soon as verification is completed, the Grama Sabha will submit the final report with

required documents. On 16.12.2019, the process of joint verification of forest right claim was completed and after completion of joint verification, the Forest Right Committee prepared a final report which was approved by the then Grama Sabha and forwarded the same to the Chairperson, Sub-Divisional Level Committee altogether 158 claims along with final verification report, consolidation claim report, maps, resolution passed by the Grama Sabha and proceedings of the Inspection team.

13. The learned counsel then submitted that on 11.12.2020, the Sub-Divisional Level Committee convened a meeting and approved 91 claims in respect of Langthungching village and 67 claims in respect of Ramgailong village and the Minutes of Meeting of the Sub-Divisional Level Committee along with other documents were forwarded to the Deputy Commissioner, Kangpokpi as per Rule 6(j) of the Rules of 2008 on 5.1.2021 by the Sub-Divisional Level Committee. However, the Deputy Commissioner, Kangpokpi has not convened any meeting of the District Level Committee to consider the resolution and the findings of the Sub-Divisional Level Committee and the same is pending for the past 2 years. In this regard, on 22.9.2021, the petitioners requested the Deputy

Commissioner of Kangpokpi to convene the meeting so as to consider the claim of the villagers as per the rules. The petitioners are also personally appeared before the Deputy Commissioner and requested to convene District Level Committee meeting. Despite the receipt of the petitioners' written request dated 22.9.2021, no action has been taken till date. Thus, a prayer has been made to direct the Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi to consider and dispose of the claims forwarded by the Sub Divisional Officer, Kangpokpi dated 5.1.2021 and also direction on the respondents to consider and dispose of the representation of the petitioners dated 22.9.2021.

14. Refuting the submissions made by learned counsel for the petitioners, the learned Advocate-General appearing for the respondent State, *inter alia*, submitted that Langthungching and Ramgailong villages as described by the boundary schedule is located inside the boundaries of Langol Reserved Forest and that C.Phailen village was made by encroachment in Longol Reserved Forest and the forest area claimed by the petitioners is within Langol Reserved Forest and also Langol Reserved Forest is within the jurisdiction of Imphal West District since 1984. In fact, the recognition of C. Phailen

village by the then Deputy Commissioner, Senapati as a village within Langol Reserved Forest was cancelled by the Government of Manipur in the year 2000 and that the villages in the name of Lanthungching and Ramgailong recognized again by the Deputy Commissioner, Senapati in the year 2003 within the same boundary of erstwhile C. Phailenvillage is without jurisdiction and in fact, he has no authority as per the provisions of the Indian Forest Act, 1927 to recognize the two villages which are within the boundary of Langol Reserved Forest and has failed to consider that the area was already transferred to the erstwhile Imphal Central District.

15. Mr. Lenin Hijam, the learned Advocate-General further submitted that as Lanthungching and Ramgailing fall within the boundary of Langol Reserved Forest which is also proved by the fact that the petitioners have applied for forest rights under the Forest Rights Act, they should have made the said submissions to the Deputy Commissioner, Imphal West District. The District headquarters of Imphal West is barely at an aerial distance of 2 km from the area occupied by Langthunchign and Ramgailong. However, the District headquarters of Kangpokpi District is about 45 km from Langol Reserved Forest and since Langol Reserved Forest falls under

the jurisdiction of Divisional Forest Officer, Central Forest Division, all matters relating to the recognition and vesting of forest rights under the Forest Rights Act in respect of Langol Reserved Forest is being taken care of by Central Forest Division, Government of Manipur.

16. The learned Advocate-General urged that the members of the Grama Sabha or the Forest Rights Committee are all encroachers within the Langol Reserved Forest and not the primary residents at the time declaration of Langol Hill Range into a Reserved Forest. According to the learned Advocate-General none of the petitioners were present in Lgangol Reserved Forest area where they called Lanthungching and Ramgailong during the time of declaration of the Reserved Forest in the year 1938.

17. Drawing the attention of this Court to the order dated 24.9.2011 passed in *Writ Appeal No.25(K)/2010 (Naga United/Invi Village and others v. The State of Nagaland and others)*, the learned Advocate-General submitted that in the said order, the Kohima Bench of Guwahati High Court gave Statement of Objects and Reasons for enacting the Forest Dwellers Act and that the statute was enacted to do away with

the historical injustice subjected to the different forest dwelling Scheduled Tribes and other Traditional Forest Dwellers by the State Government in manners such as not recognizing the ancestral rights of the forest dwellers over forest land during the time of notification of forest area into a Reserved Forest, Protected Forest, National Park, Sanctuary or alike. After such notifications, the forest dwellers both from the Scheduled Tribes community and Traditional Forest Dwellers continued to possess their ancestral forest land. However, they are subjected to evictions or their peaceful possession are often disturbed under the existing laws such as the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972.

18. The learned Advocate-General then submitted that for a claim of forest right to be made under the Act, an individual/community need to be *(i) belonging to a Schedule Tribe/Tribe Community as listed by the State Government; (ii) should have primarily resided in the forest area and (iii) should be dependent on the forest or forest land for bona fide livelihood needs*. Since the petitioners and their villagers are not primary residents in Langol Reserved Forest and they are encroachers, they are not entitled the forest rights under the Act of 2006. Thus, a prayer has been made to dismiss the writ petitions.

19. This Court also heard the submission of the learned Central Government Standing Counsel, who submitted that since the petitioners have not prayed any relief against the Union of India and primarily the relief sought in these writ petitions is against the respondent State/Forest Department, the writ petitions are liable to be dismissed.

20. This Court considered the rival submissions and also perused the materials available on record.

21. The grievance of the petitioners is that they are Scheduled Tribe Forest Dwellers and are settled for more than 50 years within Langol Reserved Forest and their rights are also recognised and vest under the Act of 2006. The claim of the petitioners was already approved by the Sub-Divisional Level Committee in its meeting held on 11.12.2020 and forwarded to the Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi on 5.1.2021. However, the same has not been considered by the Deputy Commissioner of Kakgokpi. While so, the authorities of the respondent State are trying to evict them from the forest land by issuing show cause notice. It is also the grievance of the petitioners that in similar situation when the Divisional Forest Officer, Thoubal

Forest Division, Manipur issued show cause notices for eviction, the same has been challenged in W.P.(C) No.457 of 2022 and this Court by the order dated 27.6.2022 entertained the writ petition and directed the respondents therein to consider and dispose of the representation of the petitioners therein within two months from the date of receipt of a copy of this order and pending consideration of the representation, this Court directed the respondents therein not to initiate any eviction process against the petitioners and other similarly situated persons numbering 441 without the leave of the Court. Highlighting the aforesaid order dated 27.6.2022, the petitioners prayed for a direction on the respondent State to consider the representation of the petitioners and dispose of the same.

22. On the other hand, it is the case of the respondent State that Langol Reserved Forest has been in existence since 1938 and at the time of declaring Langol Hills as Reserved Forest, Manipur was an independent princely sovereign State. In spite of Langol Reserved Forest being in the middle or central portion of the valley, which is more appropriately included in Imphal (Central District) was taken to be a part of the then Senapati District while some officials were trying to recognize the localities constituted by encroachers within Langol

Reserved Forest and the first of such kind of recognition of village being C.Phailen village whose recognition was eventually cancelled by the competent authorities of the Government of Manipur on the ground of illegality. The Langol Reserved Forest or Langol Hill Range has never been mentioned to be a part of the erstwhile Senapati District. In the year 1988, the then Deputy Commissioner of Senapati District recognized a group of encroachers at the Lanthungching and Ramgailong of Langol Reserved Forest as C.Phailen without jurisdiction. The Deputy Commissioner, Senapati did not have jurisdiction on two grounds, namely Lanthungching and Ramgailong were outside the jurisdiction of Senapati District as Langol Hill Range was within Imphal District (now Imphal West) District and secondly, the forest land recognized as C.Phailen during the time was within Lngol Reserved Forest protected under the Indian Forest Act, 1927 and Forest Conservation Act, 1980.

23. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted by the Parliament in the year 2006 and came into force on 31.12.2007 and the Scheduled Tribes and Other Traditional

Forest Dwellers (Recognition of Forest Rights), Rules, 2007 made thereunder came into force on 1.1.2008.

24. Section 4(5) of the Act of 2006 provides – Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other Traditional Forest Dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete. Section 6 of the Act lays down the authorities and procedure for vesting of forest rights. As per the said provision, Grama Sabha shall receive, consolidate and verify the claims through the Forest Rights Committee and after passing a resolution forward the same to Sub Divisional Level Committee, which should examine the resolution passed by the Grama Sabha and prepare the record of Forest Rights and the same should be considered and approved by the District Level Committee. Section 6(7) empowers the State Government to constitute a State Level Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency, which is the authority authorised by the Central Government.

25. The recognition of Lanthungching and Ramgailong villages of Langol Reserved Forest as C.Phailen

and the jurisdiction in which those areas lie are disputed by the respondent State. The respondent State contended that the boundary schedule as reflected in the order of recognition of the then C.Phailen village covers the area presently occupied by the so called Lanthungching and Ramgailong villages. On the other hand, the petitioners submit that Langthungching and Ramgailong villages are a full-fledged hill house tax pay villages under Kangchup Geljang Sub Division, Kangpokpi District and the villagers of the said two villages are Scheduled Tribe Forest Dwellers who depend on the forest land for bona fide livelihood and they primarily resides in the said villages of forest area. The records reveal that almost all the tribal villages nearby Langol Reserved Forest namely Pantilong, Nagaching, Aenon, Tharon, Tarung, Guigailong, Ramgailong, Lanthungching and Khundi (Lainingkhun) villages were established since the ancient days and were also recognised by the British and they have been paying hill house tax to the State Government for the use of land forest under Hill Areas (Hill House Tax) Act, 1966.

26. The respondents contended that the petitioners and their villagers are encroachers and the petitioners or their forefathers were not residing in the area when Langol Reserved Forest came into force in the year 1938. No settlement were

present in the area where Langthungching and Ramgailong villages stand at present. The respondents also contended that the members of Grama Sabha or the Forest Rights Committee are all encroachers within Langol Reserved Forest and not primary residents at the time of declaration of Langol Hill Range into a Reserved Forest.

27. Whether the petitioners and their villagers are eligible to occupy the forest land in question and whether they are encroachers of the forest land are to be decided by the respondent authorities as per the revenue documents. The respondent State contended that the Deputy Commissioner, Senapati has not obtained any approval from the Central Government before recognising a group of encroachments in C. Phailen. The aforesaid point cannot be decided by this Court exercising writ jurisdiction.

28. As could be seen from the records, earlier when the villagers of Langthungching and Rangailong approached the Guwahati High Court by way of writ petitions, the Guwahati High Court directed not to evict the petitioners therein from the land. In one of the writ petitions, being W.P.(C) No.847 of 2004,

decided on 29.11.2004, the Guwahati High Court ordered as under:

“Petitioners claim that they have been residing in their village C. Phailen @ Laimanai for the last more than 30 years and they have also been paying hill house tax regularly. However, the petitioners’ apprehension is that the respondents are likely to evict them as the respondents have done in respect of neighbouring village.

I have perused the documents and considered the matter. There is still dispute about the question if the village of the petitioners’ lies within the Langol Reserve Forest area or not. In this connection, the petitioners are to approach the appropriate competent authority for adjudications of the dispute. It has also been brought to my notice that this court also made a direction in that regard in Civil Rule No.1292/94 on 10.3.2000.

Having regard to all the relevant consideration, this writ petition is disposed of with the direction that the petitioners are not be evicted from their village without due process of law.

In the facts and circumstances of the case, the petitioners are also directed to approach the concerned competent authority for settlement of the said dispute mentioned above within a reasonable time.”

29. At this juncture, it is pertinent to note that the petitioners are seeking direction on the seventh respondent/Deputy Commissioner to consider and dispose of the claims forwarded by the Sub-Divisional Level Committee. The respondents disputed the very convening of the meeting by the Sub-Divisional Level Committee and its onward submission of the claims to the Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi. It is the case of the respondents that the Grama Sabha and the Forest Rights Committee were formed by a group of encroachers and that the Sub-Divisional Level Committee, without following proper procedure such as collating and reconciliation of Government records, have proposed forest rights to all the individual claimants flatly and that there has not been application of mind to sort the eligible and ineligible.

30. The primary contention of the respondent State is that the petitioners and their fellow villagers are not the original

settlers in Langol Reserved Forest area and, as such, they do not belong to the category of the Forest Dwelling Scheduled Tribes, which is mandatory requirement to be eligible to avail forest rights under the Forest Rights Act, 2006.

31. This Court is of the view that it is for the concerned authority to decide whether the petitioners and their villagers belong to the category of the Forest Dwelling Scheduled Tribes and are eligible to avail forest rights and the Court cannot decide the same exercising the extraordinary jurisdiction under Article 226 of the Constitution of India.

32. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In order to obtain a writ or order in the nature of mandamus, the petitioner has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.

33. Writ of mandamus cannot be issued merely for the sake of asking. One must establish the right first and then he

must seek for the prayer to enforce the said right. Since the rights of the petitioners in the forest land in question is in dispute, the mandamus as sought for by the petitioners cannot be granted. As stated supra, it is for the respondent authorities to consider the claim of the petitioners as per law.

34. Since disputed questions are involved in these writ petitions, exercising writ jurisdiction, such disputed questions cannot be decided. Though the petitioners pray for a direction on the Deputy Commissioner/Chairperson, District Level Committee, Kangpokpi to consider and dispose of the claims forwarded by the Sub-Divisional Level Committee, Kangpokpi, the same cannot be considered and/or granted by this Court in these writ petitions for the reason that the right of the petitioners in occupying the forest land in question has been disputed by the respondent State. As stated supra, it is for the respondent authorities to decide and act in accordance with law and the Court cannot interfere in it.

35. All privileges and rights to be recognized and vested under the Forest Rights Act, 2006 shall be only in favour of Forest Dwelling Scheduled Tribes and not the encroachers. Moreover, the claim of the villagers are to be considered by the

authorities in accordance with law and the High Court cannot issue any positive direction to consider the claim of the petitioners/villagers of the two villages in question.

36. The learned Advocate-General also contended that settlement of rights under the Act of 2006 if allowed to be taken up to identify, eligible and ineligible claimants, should be taken up by the Sub- Divisional Committee headed by the Sub Divisional Officer, Lamphel and the District Level Committee, Imphal West District, as the whole of Langol Reserved Forest was transferred to the Imphal (Central) District in the year 1984. Admittedly, the aforesaid submission has not been disputed by the petitioners.

37. Apart from the argument aforesaid, the learned Advocate-General has also raised the following queries in these matters:

- (a) How can two small points in the middle of large expanded agricultural fields and settlement areas of Imphal West District be a part of Kangpokpi District.
- (b) How can a group of encroachers as confirmed by the Committee of Officers

form the Forest Rights Committee under the Act of 2006 as the same shall be illegal.

- (c) How will the Sub-Divisional Level Committee and the District Legal Committee of Kangpokpi implement the Forest Rights Act, 2006 in an area which is under the territorial jurisdiction of Imphal West District.

38. According to the learned Advocate-General, the initiation of determining the forest rights at Lanthungching and Ramgailong shall not be tenable on the ground that Langol Reserved Forest area presently occupied by the aforesaid two villages are not within the jurisdiction of the Deputy Commissioner, Kangpokpi, as Langol Hill Range was transferred to the erstwhile Imphal Central District (now Imphal West). Again, the Forest Rights Committee formed in respect of Lanthungching and Ramgailong cannot be valid, as they are formed by a group of encroachers and the Village Authorities of these two villages and the same has not been recognized by the competent authorities. The said arguments of the learned

Advocate-General has not been controverted by the petitioners. Moreover, such dispute cannot be decided in the present writ petitions, which are filed for issuance of a mandamus to direct the seventh respondent/Deputy Commissioner to consider and dispose of the claim of the petitioners/villagers in a time bound manner. Anyhow, as stated supra, it is for the concerned authority of the respondent State to decide the aforesaid questions of fact.

39. It is well settled that normally the High Court does not adjudicate highly disputed questions of fact in proceedings under Article 226 of the Constitution of India. In these writ petitions, this Court had not proceeded to adjudicate such highly disputed questions of facts involved.

40. It is trite that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution of India merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a writ petition under Article 226 of the Constitution of India, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound

judicial principles. When a writ petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a writ petition. Rejection of a writ petition will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction or for analogous reasons.

41. The order dated 27.6.2022 passed in W.P.(C) No.457 of 2022 relied upon by the petitioners in support of their case is not applicable to the facts and circumstances of the instant writ petitions. On a perusal of the order, it is seen that the learned Advocate-General, during the course of arguments, submitted that the writ petition may be disposed of by issuing innocuous direction to the concerned authorities of the Government to consider the representation dated 16.6.2022 submitted by the petitioners and dispose of the same by issuing speaking order within a period of two months and pending

consideration of the representation, no eviction process will be initiated against the petitioners. Here, in the instant writ petitions, the learned Advocate-General strongly opposes the prayer made by the petitioners. As stated supra, since disputed questions of fact involved in the present writ petitions, a direction on the respondent authorities to consider the representations of the petitioners dated 22.9.2021 cannot be granted.

42. For the foregoing reasons, this Court is of the view that there is no merit in the writ petitions. Accordingly, the writ petitions are dismissed. There will be no order as to costs.

JUDGE

FR/NFR

Sushil