

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.229/2021 with
MC(WPC)No.41/2022
Cont.Cas(C)No.13/2023

Date of Order: 20.07.2023

The Shillong Recreation Ground Vs. State of Meghalaya & ors
Trust & ors

State of Meghalaya Vs. J.M. Pariat & anr

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Appearance in WP (C) No.229/2021:

For the Petitioners

: Mr. D.K. Mishra, Sr.Adv with
Mr. P. Nongbri, Adv

For the Respondents

: Mrs. N.G. Shylla, Sr.GA with
Mrs. S. Laloo, GA
Ms. S. Shyam, GA
Mr. S. Panthi, Adv

Appearance in Cont.Cas(C)No.13/2023:

For the Petitioner

: Mrs. N.G. Shylla, Sr.GA with
Mrs. S. Laloo, GA
Ms. S. Shyam, GA

For the Respondents

: Mr. D.K. Mishra, Sr.Adv with
Mr. P. Nongbri, Adv

i) Whether approved for reporting in Yes
Law journals etc.:

ii) Whether approved for publication Yes/No
in press:

JUDGMENT: (Oral)

This writ petition has, quite unfortunately, remained pending for nearly two years without any basis whatsoever. However, since the merits of the matter may have previously been gone into and there is also a contempt application which has been filed, an indication was given by this Court in the order of June 9, 2023 that this was not an appropriate challenge to be entertained in respect of a show-cause notice under Article 226 of the Constitution.

2. Indeed, the third paragraph of the order dated June 9, 2023 provided as follows:

“Ordinarily, the writ court exercises self-restraint in not entertaining a challenge to a show-cause notice since the mere issuance of a show-cause notice does not cause any prejudice to the recipient of the notice; the noticee is simply required to respond to the notice. Since all material facts indicated in the present proceedings can be disclosed in response to the notice, it is unlikely that this challenge will be permitted to continue.”

3. On behalf of the writ petitioners three principal grounds have been taken after establishing the fundamental premise that it is not as if a writ petition would never be maintainable against a show-cause notice but only that a writ court exercises self-restraint in some cases in not jumping the gun and requiring the noticee to show cause and for the initial determination to be completed before the relevant authority.

4. The first ground which is urged is that the impugned notice dated July 9, 2021 is without jurisdiction. By such notice, the Commissioner and Secretary to the State government in its Revenue and Disaster Management Department invoked the authority under Article 296 of the Constitution to claim that the land and property as described in the schedule thereto had fallen vacant since the death of its erstwhile owner on June 16, 1904 and “for want of lawful owner ... vested with the State of Meghalaya by operation of Article 296 of the Constitution of India.” The public notice permitted, in its second paragraph, any person having any claim over the schedule properties “to file appropriate application with documentary evidence” before the relevant executive functionary.

5. According to the writ petitioners, since the death of the erstwhile owner is indicated in the impugned notice itself to be in the year 1904, Article 296 of the Constitution would have no applicability since such provision could not have had retrospective effect. In such regard, provisions of the Government of India Act, 1853, the Government of India Act, 1858, the Government of India Act, 1915 and, finally, the Government of India Act, 1935 are placed.

6. The second ground raised is that there are several civil suits pending to which the writ petitioners are parties and the issue as to the title to the properties covered by the schedule to the impugned notice is pending. An ancillary ground is raised that a department of the State has obtained lease of the schedule property from the petitioners and, as such, the State is estopped from questioning the title of the lessors.

7. The final ground which is canvassed is that since the notice has been issued by an executive functionary, who possesses no jurisdiction to adjudicate on title, in view of the principle enunciated in the judgment reported at (2017) 16 SCC 418 (*Kutchi Lal Rameshwar Ashram Trust v. Collector, Haridwar*), the impugned notice should be found to be completely without jurisdiction and a meaningless exercise.

8. For a start, even for this petition to have been entertained, a prima facie view as to the title of the petitioners would have to be taken for the petitioners to be found to possess the locus standi to be aggrieved by the impugned notice and entitled to challenge the same. Secondly, as to whether the pending suits cover the properties indicated in the schedule to the impugned notice, it would be a question of fact and the writ court in exercise of its authority under Article 226 of the Constitution would not be easily minded to enter into disputed questions

of facts. More importantly, all that the notice requires is for any person having any claim to the schedule properties to assert and indicate the nature of the claim.

9. It would be premature, particularly at this stage, to hold that the notice is without jurisdiction or to presume that the executive functionary who has issued the notice will embark on an adjudication pertaining to the title of any property. It is equally possible that upon an assertion being made by a person and such person demonstrating a prima facie title, the executive functionary would no longer continue with the matter and require the title to be decided by a civil court in accordance with law.

10. There is no dispute with the proposition that the title to any property has to be adjudicated by a civil court unless the authority of such civil court has been taken away by any appropriate law, whether expressly or by unavoidable necessary implication. That is elementary. It is equally trite to record that, ordinarily, the highest of executive functionaries would not possess the jurisdiction to go into any title dispute as that would involve the receipt and evaluation of evidence and would fall exclusively within the domain of a civil court.

11. Ordinarily, when a show-cause notice is assailed, an exalted test has to be met, just like a challenge to a first information report or an application for the rejection of a plaint. The impugned notice has to be demonstrably and palpably bad, or else it would scarcely excite the writ court and the noticee would be required to respond to the notice and incorporate all grounds in its response for the same to be considered by the author of the notice or the appropriate authority concerned. However, there are exceptions to this rule of self-restraint exercised by a writ court and, as loosely indicated in the previous order, such exceptions would be when there is a gross violation of the principles of natural justice or an ex facie erroneous assumption of jurisdiction or, by the Wednesbury test or the doctrine of proportionality, when it appears to the meanest mind that the notice is so grossly unreasonable that no prudent person could have issued the same.

12. In the present case, none of the exceptions applies. In any event, the writ petitioners cannot demonstrate that they would suffer any prejudice if they respond to the notice and await the outcome of the reply that they may issue. It will not do for the writ petitioners to claim that the concerned official has embarked on an adjudication pertaining to title

without even responding to the show-cause notice and without indicating any modicum of title to the properties in question.

13. Though it is not necessary to comprehensively answer the issue raised as to the apparent retrospective operation of Article 296 of the Constitution or the propriety of the impugned notice on such ground, it appears that all that the notice seeks to suggest is that as on the date of the issuance thereof, the State of Meghalaya perceived that there was no rightful owner of the property. Accordingly, the State of Meghalaya has invited any person having any right to the schedule properties to assert such right for the further course of action to be decided thereupon. It would be presumptuous on the part of the court to either allow a passerby to challenge the notice without establishing locus standi or even to presume that the rightful owner, even if he demonstrates a prima facie right, would have to suffer an adjudication of title before an executive functionary.

14. As to the civil suits pending, if, indeed, the schedule properties are the subject-matter of such suits, it was always open to the writ petitioners to approach the appropriate civil court for an interlocutory injunction in respect of the impugned notice. In the writ petitioners not having adopted such course of action, the submission that the pending

suits cover the schedule properties does not hold any water. Further, as to whether the writ petitioners had any right or title to grant lease of all or some of the properties is, again, a disputed question of fact that cannot be conveniently addressed in this jurisdiction on the basis of affidavit evidence.

15. Accordingly, without prejudice to the rights and contentions of the writ petitioners, the present petition is dismissed with liberty to the petitioners to respond to the impugned notice within 30 days from date. In the event the writ petitioners reply to the notice or seek to assert title in respect of the schedule properties, the matter will be looked into by the respondents notwithstanding that the response or the reply has been filed long after the period indicated in the notice has expired. It is also hoped that following the response of the writ petitioners to the impugned notice, the appropriate authority will act in accordance with law.

16. WP (C) No.229 of 2021 is dismissed without prejudice to the petitioners' rights to raise all grounds available in accordance with law in the reply to the show-cause notice or before the appropriate authorities or any other available forum.

17. In the event the response is filed within the time permitted, the appropriate authority will deal with the same with utmost expedition

and, preferably, within six months from the date of receipt of the response.

18. MC (WPC) No.41 of 2022 is disposed of.

19. In view of the above order, the contempt proceedings are dropped, again, without prejudice to the rights and contentions of the parties.

20. There will be no order as to costs.

Meghalaya
20.07.2023
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(Sanjib Banerjee)
Chief Justice