

GAHC040006562023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA/18/2023

Dondup Jamchen
S/o Chime Dorjee Village Gelling, PO/PS Tuting, District Upper Siang, Arunachal Pradesh.

VERSUS

THE UNION OF INDIA and 9 Ors.
Through Cabinet Secretary to the Govt. of India, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi 110004 2:The Defence Secretary
Age: 0
Occupation :

3:The Director General Defence Estates
Age: 0
Occupation :

4:The Principal Director
Age: 0
Occupation :

5:The Defence Estates Officer
Age: 0
Occupation :

6:The Commanding Officer
Age: 0
Occupation :

7:The Chief Secretary

Age: 0

Occupation :

8:The Secretary

Age: 0

Occupation :

9:The Director

Age: 0

Occupation :

10:The Deputy Commissioner

Age: 0

Occupation

Advocate for the Petitioner : Nikita Danggen

Advocate for the Respondent : Marto Kato

BEFORE
HONBLE MR. JUSTICE NANI TAGIA
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 31.07.2023

(NaniTagia, J)

Heard Mr. O. Duggong, learned counsel for the appellant. Also heard Mr. M. Kato, learned DSGI representing the opposite parties No. 1 to 7 and Mr. D. Kamduk, learned standing counsel for the Land Management Department for the opposite parties No. 8 & 9.

The appellant, claiming to be the owner of a plot of land measuring around 2.034 acres at Botong, Gelling Circle, under the Tuting Sub-Division

of the Upper Siang District approached this Court by filing a writ petition being No. WP(C)493(AP)2019 seeking a direction for payment of compensation from the respondent authorities contending that the said land was handed over to the Indian Army in the year 2014 on being approached by the Army authorities.

The appellant/writ petitioner in the writ petition contended that though the aforesaid land has been in the possession of the Indian Army since 2014, the said land has not been acquired as per the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (In short, Act of 2013) and therefore, sought direction from this Court to the Army authorities to acquire the said land. It was also contended in the writ petition that the Army authorities had a discussion with the petitioner, whereafter the petitioner had signed a Willingness Certificate dated 25.01.2021 whereby, the petitioner had expressed the willingness to give the aforesaid plot of land for a period of Five years and Eleven months w.e.f. 01.02.2015 to 31.12.2020. The appellant/petitioner in the writ petition further contended that he has learnt from the Army authorities that they are likely to take the land for long term lease of ninety-nine years and, therefore, the land can be acquired under the Act of 2013 and adequate compensation be paid to the petitioner.

On the other hand, the Union of India had contended in the writ petition that the land is located adjacent to the LAC with China and therefore it is neither viable nor feasible to permanently acquire the land and the only option left is to take the land on lease, which the Army authorities are inclined to do so.

Upon the rival contention raised by the contesting parties as above, the writ petition was disposed of vide Order, dated 14.06.2022 by directing the respondent authorities to pay the arrear rent as per the Willingness Certificate dated 25.01.2021, within a period of 45 days and so far as the negotiations for coming to an agreement for further rent is concerned, the same may be held within a period of 45 days on a date to be fixed by the Deputy Commissioner, Upper Siang District by informing the Stakeholders. It was further provided that the rate fixed will have a clause for periodical enhancement in view of the escalation in prices.

Aggrieved by the Order passed by the learned Single Judge vide Order, dated 14.06.2022 in WP(C)493(AP)2019, Mr. Duggong, learned counsel for the appellant submits that the Army authorities may be directed to acquire the aforementioned land, which is under their possession since the year 2014. He has further contended that the appellant/petitioner's land cannot be taken away by the Army authorities without following the due process of law, namely the Act of 2013.

Mr. Duggong, learned counsel for the applicant in support of his contentions has relied on the following decisions:

- I. (2020) 2 SCC 569 rendered in Vidhya Devi Vrs. State of Himachal Pradesh and Ors.
- II. State of Mizoram Vrs. Zokailiana Khiangte and Ors. rendered in WA/2/2004 in WP(C)102/2000.
- III. (2011) 15 SCC 383 rendered in Syed Maqbool Ali Vrs. State of Uttar Pradesh and Anr.

Mr. Kato, learned DSGI has reiterated the contentions raised in the writ

petition.

Upon hearing the above rival contentions and having perused the materials placed on record, we find that the land measuring around 2.034 acres at Botong, Gelling Circle, under the Tuting Sub-Division of the Upper Siang District came under the possession of the Indian Army in the year 2014 after the petitioner was approached by the Army authorities pursuant to a talk between the parties.

We have also noticed that it was the appellant himself who had given the possession of the land in the year 2014 and also willingly signed the Willingness Certificate dated 25.01.2021, whereby; the appellant/petitioner had expressed the willingness to give the aforesaid plot of land for a period of Five years and Eleven months w.e.f. 01.02.2015 to 31.12.2020 to the Army authorities.

In view of the above, we do not find any forcible taking over of the land of the appellant/petitioner by the respondent authorities. The respondent authorities by filing a counter-affidavit had made it clear that the land located is adjacent to the LAC with China and therefore it is neither viable nor feasible to permanently acquire the land and the only option left is to take the land on lease by the Army authorities.

In the light of the clear indication given by the Army authorities that neither the aforesaid land is viable or feasible to be acquired nor the Army authorities have any intention to acquire the said land, we are of the view that no direction can be given to the Army authorities to acquire the land of the petitioner.

Under the circumstances, we are of the view that no interference is called for to the impugned Order, dated 14.06.2022, passed by the learned Single Judge in WP(C)493(AP)2019.

Appeal stands dismissed being found to be devoid of merit.

JUDGE

JUDGE

Comparing Assistant