



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

Case No. : WP(C)/310/2023

Tagam Ruti
S/o Late Tachak Ruti,
A Permanent Resident of Liru Village, Likabali, PO/PS Likabali, District Lower
Siang, Arunachal Pradesh.

VERSUS

THE STATE OF AP and 2 Ors.
Represented by the Secretary, General Administration, Govt. of Arunachal Pradesh,
Itanagar. 2:the Office of the Deputy Commissioner
Age: 0
Occupation :

3:the District Medical Officer
Age: 0
Occupation

Advocate for the Petitioner : Karyom Dabi

Advocate for the Respondent : GA (AP)

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. T. Y. Bhutia, Adv
For the Respondent : Mr. I. Riram,
Addl. Sr. Govt. Adv.
Arunachal Pradesh.
Mr. T. Tagum,
Standing Counsel, Health Deptt.
Date of hearing : 16.11.2023
Date of judgment : 16.11.2023

JUDGMENT & ORDER (ORAL)

1. Heard Ms. T. Y. Bhutia, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate for the respondent Nos. 1 and 2 and Mr. T. Tagum, learned Standing Counsel for the Health Department representing the respondent No. 3.
2. The present writ petition is filed by the petitioner on the ground that his residential house in Liru Village, Likabali, Lower Siang District, Arunachal Pradesh has been demolished pursuant to impugned notices dated 17.04.2023, 19.05.2023 and by order dated 31.05.2023, passed by the Deputy Commissioner, Lower Siang District, Likabali, without considering the submission made by him through his reply dated 24.04.2023 and without providing the petitioner any opportunity of fair hearing, which is in violation of the provision of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 (in short, the Act, 2003).
3. The basic case of the petitioner is that the first notice dated 17.04.2023 was issued by one Extra Assistant Commissioner on behalf of the Deputy Commissioner, Lower Siang District, Likabali and subsequent notice dated 19.05.2023 was issued by the Deputy

Commissioner, Lower Siang District, himself and the order of eviction dated 31.05.2023, was also issued by the Deputy Commissioner, Lower Siang District, himself which is not permitted under the Act, 2003 inasmuch as from the notice dated 19.05.2023, it is clear that entire action has been taken on the basis of the Act, 2003.

4. Referring to the Sections 3 and 4(i) of the Act, 2003, Ms. Bhutia, learned counsel for the petitioner contends that only an Estate Officer is empowered to issue notice and the Deputy Commissioner is the Appellate Authority under Section 12 of the Act, 2003. Therefore, the entire action is without jurisdiction and, is liable to be set aside.
5. It is the further case urged by Ms. Bhutia, learned counsel for the petitioner that in view of the fact that the eviction notices were issued, an action was taken pursuant to such notice by Deputy Commissioner, the same disentitled the Deputy Commissioner to entertain an appeal and makes the petitioner remediless inasmuch as the Deputy Commissioner, under Section 12 of the Act, 2003, himself is the appellate authority. That being the position, the petitioner having no alternative efficacious remedy had to approached this Court by filing this writ petition under Article 226 of the Constitution of India.
6. Ms. Bhutia, learned counsel for the petitioner further submits that even if assuming that the Deputy Commissioner is having any power, the mandate to be followed under Section 4(i) of the Act, 2003, has neither been followed nor the notices does reflect any reason to evict the petitioner. The procedure required to be followed under Section 5(i) of the Act, 2003, while considering the claim of the petitioner has not also been complied with inasmuch as the petitioner had filed his objection on 24.04.2023 and the eviction order does not reflect any finding required to be recorded under Section 5(i) of the Act, 2003.
7. Mr. I. Riram, learned Additional Senior Government Advocate representing the State respondents fairly and candidly submits that in terms of the Section 3 of the Act, 2003, the State of Arunachal Pradesh has already notified Estate Officer in the rank of Additional Deputy Commissioner in different districts. However, in the case in hand, as there was no Estate Officer in the district, therefore, in a compelling circumstances, the Extra Assistant Commissioner, issued the notice. However, they concede that the Deputy Commissioner in the scheme of the Act, 2003, shall have no power either to issue notice or to issue an eviction order in exercise of power as an Estate Officer inasmuch as the

Deputy Commissioner is the Appellate Authority under Section 12 of the Act, 2003.

8. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.
9. Section 3(i) of the Act, 2003 mandates that Estate Officer is to be appointed for the purpose of the Act, 2003 by notification published in Official Gazette. In the case in hand, an official gazette dated 29.04.2003 issued in exercise of power under Section 3 of the Act, 2003 is produced, which reflects appointment of Additional Deputy Commissioners of as many as 20 districts as Estate Officers. However, pursuant to such notification, the present district namely Lower Siang District was culled out from two districts namely East Siang District and West Siang District. The notification shows that the Additional Deputy Commissioner, East Siang District and the Additional Deputy Commissioner, West Siang District were notified in the aforesaid gazette on 29.04.2003 as the Estate Officer under the Act, 2003.
10. It is submitted by the learned counsel for the State respondents that subsequent to creation of new districts, no notification has been issued so far relating to the Lower Siang Districts, which is culled out from West Siang District and East Siang District.
11. From the aforesaid, it is clear that no Estate Officer has been appointed in the district in question i.e. Lower Siang District as required under Section 3 (i) of the Act, 2003. That being the position, neither the Extra Assistant Commissioner, who issued the first notice dated 17.04.2023 and the Deputy Commissioner, who issued the notices dated 19.05.2023 and passed the order dated 31.05.2023 in exercise of power under the Act, 2003, was not an authorized person to issue such notice under the scheme of the Act, 2003, they being not appointed as an Estate Officer under the Act, 2003 inasmuch as Section 4(i) of the Act, 2003, specifically mandates that notice is to be issued by the Estate Officer.
12. Even the State under the Scheme of the Act, 2003, is not having any power to notify Deputy Commissioner as Estate Officer as the Deputy Commissioner is already mandated as Appellate Authority under Section 12 of the Act, 2003. At the same time, the Deputy Commissioner being the Statutory Appellate Authority under the Act, 2003, is not having any jurisdiction either to issue notice or issue eviction order as Estate Officer.
13. Section 12(i) of the Act, 2003 designates the Deputy Commissioner as an appellate

authority to take appeal from every order of the Estate Officer made in respect of any public premises under Sections 5 and 7 or Section 8 or Section 10 of the Act, 2003. That being the position, the learned counsel for the petitioner is correct in arguing that the petitioner has been made remediless of seeking even the remedy of appeal.

14. Section 5(i) of the Act, 2003, also lays down that the Estate Officer must satisfy that the person whom, they are seeking to evict is an unauthorised occupant over a government land/property. However, the order does not disclose any such satisfaction arrived at by the Deputy Commissioner while issuing the order of eviction dated 31.05.2023 inasmuch as there is not even one reflection or whisper as regards the stand taken by the petitioner, whereas the final notice dated 19.05.2023 clearly reveals that notice has been issued under the Act, 2003.
15. That being the position, this Court is of the view that the entire proceeding initiated against the petitioner as well as the eviction executed under the order of Deputy Commissioner is without any sanction and authority under law and without jurisdiction. Accordingly, the notices dated 17.04.2023 & 19.05.2023 and order of eviction dated 31.05.2023 are set aside and quashed being issued/passed without jurisdiction.
16. However, it is on record that in the meantime, after the eviction, the department of Health has continued with the construction of the hospital over the disputed plot of land, which the petitioner claims to be the owner.
17. As the construction of a hospital by the State respondent is carried out in public interest, restoration of possession of the petitioner by stalling the ongoing construction of the hospital, in the considered opinion of this Court, is against public interest and at the same time, in the event, it is held that if the petitioner is the owner of the aforesaid land, he can very well be compensated. Such determination also can't be made by this Court in exercise of it's power under Article 226 of the Constitution of India, more particularly, where the ownership of the petitioner is disputed by the respondents.
18. Therefore, as prayed for by the learned counsel for the petitioner, the petitioner is given a liberty to approach appropriate forum for declaration of his right, title and ownership over the property and to seek compensation and any other relief available under law to the petitioner.
19. While parting with the record it is made clear that in the event, the petitioner approaches before the appropriate forum seeking remedy as discussed hereinabove,

observations made in this proceeding shall not be considered as any comment on merit of the title of the petitioner as well as on the claim of the respondent State.

20. Accordingly, with the aforesaid observation, the writ petition stands allowed.
21. The manner in which the Deputy Commissioner had issued the notices and carried out the eviction is not permissible at all in a system governed by rule of law and under the Scheme of the Act, 2003. Such action on the part of the respondent No. 2 compelled the petitioner to approach this Court. That being the position, in the considered opinion of this Court, the petitioner is to be remedied with cost. Accordingly, a cost of Rs.1,00,000.00/- (rupees one lac) is imposed as cost upon the respondent No.2. Same be paid to the petitioner within a period of 30 days from the date of receipt of a certified copy of this order to be furnished before the respondent No.2 by the petitioner. A compliance report be furnished before Registry of this Court within 30 days thereafter by the respondent No.2

JUDGE

Comparing Assistant