

GAHC040009452021



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

Case No. : WP(C) 313/2021

1:Jummi Basar
S/o Lt. Karjum Basar, Resident of Kadi Village, P.O/P.S Basar, Leparada District,
Arunachal Pradesh

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar

2:The Deputy Commissioner
Basar
Leparada District
Arunachal Pradesh

3:The Additional Deputy Commissioner
Basar
Leparada District
Arunachal Pradesh

4:Lihen Basar
S/o Lt. Jumli Basar
Resident of Kadi Village
P.O/P.S Basar
Leparada District
Arunachal Pradesh

Advocate for the Petitioner : Ninnong Ratan

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE S.K.MEDHI**

ORDER

15.05.2023

Heard Shri N Ratan, learned counsel for the petitioner. Also heard Ms. G Ete, learned State Counsel, AP appearing for the respondent nos. 1, 2 and 3. Respondent no. 4 is represented by Shri D Kamduk, learned counsel.

2. Considering the subject matter and as agreed to by the parties, the present writ petition is taken up for disposal at the admission stage.

3. The petitioner has put to challenge orders dated 22.05.2017 and 23.08.2021 issued by the respondent authorities as well as Land Possession Certificate (LPC) order dated 27.07.2017 issued in favour of the private respondent no. 4.

4. To appreciate the issue to be decided, the bare facts of the case may be narrated as follows.

5. The respondent no. 4 is the nephew of the petitioner. As per the projection made in this writ petition, a property dispute had arisen between the petitioner and the father of the respondent no. 4, who was the brother of the petitioner. The said dispute was resolved by the Keba which was conducted on 21.01.2009. As per the said decision, the land was divided and the land in question, namely, KAMYA RIKE which head towards Shri Yomkar Basar's land boundary had fallen in the share of the petitioner.

6. The matter having rested thus, the petitioner was surprised to learn that the

respondent no. 4 had applied for LPC over the land which was allotted to him and accordingly, he had made an application before the authorities. The authorities, accordingly issued notice dated 19.09.2016. On 26.09.2016, the petitioner had filed objection to the said issue of grant of LPC and accordingly, a notice was issued by the ADC, West Siang, fixing 24.05.2017 as the date for setting up the Keba. The said notice was modified by another notice dated 22.05.2017 by which certain changes were made in the constitution of the Keba.

7. While the meeting was fixed on 24.05.2017, the petitioner alleges that the impugned order was passed on 22.05.2017 by the ADC, West Siang whereby, the earlier decision of the Keba was upheld. The order also conveyed that the objection of the petitioner was unsustainable.

8. Shri Ratan, learned counsel for the petitioner has submitted that when the meeting of the Keba was fixed on 24.05.2017, it is failed to be understood as to how the impugned order could have been issued on 22.05.2017. He further submits that there was also a Will by the mother of the petitioner regarding the land in question which was given to the petitioner. He, accordingly submits that when the possession of the land in question is with the petitioner, no Land Possession Certificate could have been issued to the respondent no. 4 and accordingly, interference of this Court has been sought for.

9. Per *contra*, Ms. Ete, learned State Counsel submits that there is no infirmity in the impugned order, as the same was passed after hearing all the affected parties and after issuance of notice. She submits that the principles of natural justice were duly adhered to while passing the impugned order dated 22.05.2017 by the authorities. On the issue of the date of the order being 22.05.2017, by drawing the attention of this Court to the averments made in the affidavit-in-opposition filed on 28.04.2022, more

specifically, those made in paragraph 12, learned State Counsel has submitted that there was a clerical/typographical error of the date which should have been 27.07.2017 instead of 22.05.2017. Ms. Ete, learned State Counsel has also produced the records of the case in original.

10. Shri Kamduk, learned counsel for the respondent no. 4, apart from disputing the projection made by the petitioner, has submitted that the petitioner has approached this Court without clean hand and there is no candid disclosure of the facts which are relevant to the issue. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 4 on 13.12.2021, Shri Kamduk submits that apart from the Keba meeting held on 21.01.2009, there was another Keba which was held on 22.07.2014. This fact has been wholly suppressed in the writ petition and also not being denied in the affidavit-in-reply filed by the petitioner. By drawing the attention of this Court to the said Keba decision dated 22.07.2014 which has been annexed as Annexure-2 to the affidavit-in-opposition, the learned counsel submits that the present land was all along given to the respondent no. 4. He further submits that the land which was within the share of the petitioner was sold to three other purchasers and the petitioner was permitted to reside in a dwelling house over the land belonging to the respondent no. 4. Shri Kamduk, learned counsel further submits that no appeal was preferred by the petitioner against the said Keba decision. With regard to the date of the impugned order, the learned counsel for the respondent no. 4 has endorsed the submission of the learned State Counsel and has submitted that it was a mere typographical error. He further submits that the LPC was issued after hearing all the parties and by taking into consideration the objections raised and therefore, there is no substance or merits in this writ petition which is liable to be dismissed.

11. Rejoining his submissions, Shri Ratan, learned counsel for the petitioner has

submitted that though a Keba was held in the year 2014, he was not apprised of any decision taken, as no order was, ever communicated to him. He submits that on 19.08.2014 he had made an application to the ADC, Basar expressing disagreement which was not taken into consideration.

12. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed, including the original records, have been duly perused.

13. The issue which has been raised in this writ petition arises from the initial Keba decision held on 21.01.2009 by which the disputes between the parties were resolved. The subsequent Keba decision held on 22.07.2014 is also of immense relevance which, however, was not mentioned in the writ petition. The said decision took into consideration the facts and circumstances from which it appears that the land in question is within the share of the respondent no. 4. Even, if the benefit of doubt is given to the petitioner on the allegation of suppression of material facts, at least, a mention should have been made regarding holding of such Keba, in the meantime, in the year 2014 and simply because an averment has been made in the reply-affidavit that no copy of the decision was furnished to the petitioner, the same shall not be an excuse and obliterate the actual fact that indeed, a Keba was held on 22.07.2014.

14. This Court has also seen that the application for issuance of LPC is based on the said Keba decision which was never put to challenge, as no appeal was preferred against the same.

15. A perusal of the records would show that the parties were duly given an opportunity of hearing and in fact, procedures were also followed seeking no-objection from the Head Gaon Burah as well as from the neighbours. This Court has also found

that before the decision was taken, notices were issued and the parties were heard and there was fully adherence to the principles of natural justice. The explanation given by the petitioner that the order of Keba held in the year 2014 was not furnished to him does not appear to be a reasonable one and is not acceptable, as it is inconceivable that a party which is interested in a dispute would not take any interest in knowing the outcome of the decision for all the years.

16. This Court, on perusal of the records, does not find any such infirmity which requires a judicial intervention. It is also a settled law that in exercise of the powers of judicial review, it is the decision making process which is to be examined and not the decision itself. The Hon'ble Supreme Court has also laid down that it is not the soundness of the decision but the lawfulness of the decision which can be the subject matter of adjudication.

17. In view of the aforesaid facts and circumstances, this Court is of the view that no case for interference is able to be made out by the petitioner and accordingly, the writ petition stands dismissed.

18. The records are returned back to Ms. Ete, learned State Counsel.

JUDGE

Comparing Assistant