

GAHC040009502023



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

Case No. : WP(C)/329/2023

Walung Youngkuk and 4 Ors.
S/o Lt. Kamtang Youngkuk,
R/o Village Typong, PO/PS Jairampur, Changlang District, Arunachal Pradesh.
Contact No. 9612422841. Email Nil 2: Lunnong Youngkuk
Age:
Occupation :

3: Latun Youngkuk
Age:
Occupation :

4: Tupa Youngkuk
Age:
Occupation :

5: Nuney Tayang
Age:
Occupation

VERSUS

THE UNION OF INDIA and 8 Ors.
Represented by the Home Secretary, Ministry of Home Affairs, Govt. of India, North
Block, New Delhi 110001 2:the Director General of Assam Rifles
Age: 0
Occupation :

3:THE STATE OF AP
Age: 0

Occupation :

4:the Secretary

Age: 0

Occupation :

5:the Director

Age: 0

Occupation :

6:the Deputy Commissioner

Age: 0

Occupation :

7:the Addl. Deputy Commissioner

Age: 0

Occupation :

8:the District Land Revenue and Settlement Officer

Age: 0

Occupation :

9:the Commandant

Age: 0

Occupation

Advocate for the Petitioner : Rajesh Sonar

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 19.07.2023

Heard Mr. R. Sonar, learned counsel for the petitioners. Also heard Mr. N. Ratan, learned Addl. Advocate General representing the State respondent Nos. 3, 6, 7 & 8 and Mr. D. Kamduk, learned standing counsel for the Land Management Department representing the respondent Nos. 4 & 5.

None has appeared for the remaining respondents.

2. This writ petition has been filed with the following prayers:-

A. A writ in the nature of certiorari and/or any other appropriate Writ, Order or direction of like nature should not be issued towards setting aside and quashing the following:

I. Impugned Office Order No. LR-18/86 dated 04.10.2000 and the Land Allotment Passbook No. C/LR-258/13/20 dated 23.10.2013, by which the respondent authority has allotted a plot of land admeasuring 342 acres, located at Jairampur area, to the Assam Rifles;

II. Impugned land allotment Order No. LM-129/2011/1873 dated 23.03.2017, by which the respondent authority has allotted additional land admeasuring 77 acres, located at Jairampur to the Assam Rifles;

III. Impugned Office Memorandum No. C/JUD/JAIL-01/2015 dated 26.10.2021, issued by the Deputy Commissioner, Changlang, *inter-alia*, holding that the writ petitioners ownership right over the land in question has expired under Section 25 of the Limitation Act; and/or

IV. Impugned Office Memorandum No. LMD-13011(13)92/2021/501 dated 16.06.2022, issued by the Director of Land Management, Government of Arunachal Pradesh, Itanagar, directing the Deputy Commissioner, Changlang, to adjudicate

and determine the ownership of the land in question.

V. Impugned Office Memorandum No. WP(C)66/2021 dated 29.12.2022, issued by the Deputy Commissioner, Changlang, by which the claim of the writ petitioners has been rejected and the ownership of the land in question has been declared in favour of the Government.

B. A writ in the nature of mandamus and/or any other appropriate Writ, order or direction of like nature should not be issued commanding the respondent authorities:

I. To initiate the land acquisition process for the acquisition of the land in question, if required for public purpose, in accordance with the provision of the governing Land Acquisition Act, 2013 and the Rules framed thereunder; And/or

II. To immediately pay the compensation amount as well as other financial benefits qua the land in question which are payable to the writ petitioners in accordance with the provision of the governing Land Acquisition Act, 2013 and the Rules framed thereunder; And/or

III. To vacate and restore the possession of the land in question to the writ petitioners if the State does not require the land for public purpose; and/or

3. Contending that the land measuring 342 acres and 77 acres allotted to the Assam Rifles by the Deputy Commissioner, Changlang by allotment Orders dated 23.10.2013 and 23.03.2017, respectively, as mentioned hereinabove is the land of the petitioners, which was allowed to be temporarily occupied by the Assam Rifles in the year 1952 by the Great Grand Father of the petitioners, the learned counsel for the petitioners, Mr. Sonar has submitted that the said land could not have been allotted to the Assam Rifles by the Deputy Commissioner, Changlang vide Orders of allotment mentioned hereinabove without the said land of the petitioners having been acquired by the Government in accordance to the law relating

to the acquisition of land.

4. In support of his contention that no land of the petitioners or of any person can be taken away by the Government without acquiring it in accordance with law, the learned counsel for the petitioners have relied on the following decisions rendered by the Hon'ble Supreme Court as well as by this Court:-

- (i) Vidhya Devi Vrs. State of Himachal Pradesh & Ors., (2020) 2 SCC 569,
- (ii) C. Wungam Vrs. Union of India, 2016 SCC Online Mani 133;
- (iii) Judgment & Order, dated 09.03.2005 in WP(C) No. 197(AP)2001, Panya, Dego, Bogdo, Rigo, Along Township Boundary Committee Vrs. State of Arunachal Pradesh & Ors.

5. The relationship of the petitioners with the land in question has been described in Paragraph Nos. 5, 6 & 12 of the writ petition as under:-

“5. That, the writ petitioners Nos. 1 to 4 are the rustic/illiterate villagers and farmers who are wholly dependent on the cultivation to sustain their family. The writ petitioner No. 2 is presently serving as the Gaon Burah of Taipong village, Jairampur. They are the great grandchildren of Lt. Taibum Youngkuk as their deceased father Lt. Kamtang Youngkuk, was the son of Lt. Nongkhum Youngkuk, who was the son of Lt. Taibum Youngkuk. The above named great grandfather, namely, Lt. Taibum Youngkuk was the Gaon Burah of Khatangyang village.”

“6. That, the deceased Lt. Taibum Youngkuk and his family were originally settled at Khatangyang village, which presently falls under Jairampur town area, and he served as the Head Gaon Burah of the said village. He was the lawful owner and was in possession of the plot of land measuring around 450 Acres located at Jairampur area, which is presently under the possession of the Assam Rifles. He had inherited the said land from his ancestors who were the original

inhabitants of the area and the occupants and lawful owner of the said land. The family members of the deceased Lt. Taibum Youngkuk had been in exclusive and peaceful possession of the said land at the time when the Assam Rifles was temporarily allowed to occupy the said private land in question in 1952. Hence, in view of above, and by virtue of local customary law of succession and inheritance of the Tangsa Tribe, the writ petitioners No. 1 to 4 are the lawful owners of the said land in question and this fact is well-known to all the people of the locality. In this regard, some senior citizens, Panchayat Members, Gaon Buras and the villagers of the locality have jointly issued a certificate declaring that the deceased forefathers of the writ petitioners No. 1 to 4 were the original owner of the land in question located at Jairampur, where the Assam Rifles Headquarter has been established.”

“12. That, the writ petitioners, to their utter daze and astonishment, belatedly came to know that the State Government is claiming the land in question as the Government land and has allotted the land measuring 342 acres vide impugned Government Land Allotment Order No./APPROVAL No. LR-18/86 dated 04.10.2000, bearing Land Allotment Passbook No. C/LR-258/13/20 dated 23.10.2013, and another land measuring 77 acres, vide impugned Office Order No. LM-128/2011 dated 10.03.2017 to the Assam Rifles. The land in question has been allotted on lease basis and the State Government has been receiving the huge amount annually as the lease rent.”

6. On perusal of Paragraph Nos. 5, 6 & 12 of the writ petition, it appears that the petitioners claim themselves to be a descendant of Lt. Taibum Youngkuk and states that the land measuring around 450 acres located at Jairampur area was under the exclusive possession of Lt. Taibum Youngkuk, who had temporarily allowed to occupy the said land to the Assam Rifles in the year 1952. The petitioners claiming to be the descendants of Lt. Taibum Youngkuk have now contended that, of late they have come to know that the same land has now been allotted to the Assam Rifles by two allotment

Orders as mentioned hereinabove dated 23.10.2013 and 10.03.2017, issued by the Deputy Commissioner, Changlang, which, according to the petitioners, the Deputy Commissioner, Changlang could not have done so as the said land belonged to the petitioners and unless the land of the petitioners is acquired by the Government by following the due process of law, the same could not have been allotted to the Assam Rifles by the aforesaid two allotment Orders.

7. In the above backdrop of the facts, the petitioners have further prayed that the respondent authorities may now be directed to initiate the land acquisition process for acquiring the aforesaid land in accordance with “*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*” (hereinafter referred to as Act of 2013) and the Rules framed thereunder, if required for public purpose and thereafter pay the compensation to the petitioners as per the provision of the Act of 2013.

8. As have been discussed hereinabove, apart from the petitioners contention that 450 acres of land, located at Jairampur area was temporarily allowed to be occupied by the Assam Rifles in the year 1952 by their Great Grand Father Lt. Taibum Youngkuk, there are no materials on record to indicate and come to a conclusive finding by this Court as to whether the petitioners are the real owner of the said 450 acres of land, located at Jairampur area, now under the occupation of the Assam Rifles.

9. In the absence of any conclusive finding recorded by this Court to the effect that the real owner of the 450 acres of land, located at Jairampur area is the petitioners, there cannot be any direction to the respondent authorities

to acquire the land of the petitioners in accordance with the Land Acquisition Act of 2013. Nor can the petitioners claim, as a matter of right, to pay compensation to the petitioners in accordance with the Act of 2013 unless insofar as 450 acres of land located at Jairampur, now under the occupation of the Assam Rifles, is established that the said land belongs to the petitioners.

10. Under the circumstances, I am of the considered view that the issues raised in the instant writ petition, essentially, is regarding the ownership of 450 acres of land located at Jairampur area, now under the occupation of the Assam Rifles. In that view of the matter, this Court is of the further view that the ownership right of the 450 acres of land located at Jairampur, now under the occupation of the Assam Rifles, can only be determined by the Civil Court of Competent jurisdiction in accordance with law. Therefore, this Court of the view that no case has been made out by the petitioners insofar as the **Prayer No. A. I & II** and **Prayer No. B. I, II & III** in the writ petition.

11. However, vide **Prayer No. A. III, IV & IV**, the petitioners have also put to challenge the Letter dated 26.10.2021, written to the Director, Land Management, Govt. of Arunachal Pradesh by the Deputy Commissioner, Changlang vide No. C/JUD/JAIL-01/2015; the Letter dated 16.06.2022, written to the Deputy Commissioner, Changlang by the Director, Land Management, Govt. of Arunachal Pradesh, vide No. LMD-13011(13)92/2021/501 and the Letter dated 29.12.2022, written to the Director, Land Management, Govt. of Arunachal Pradesh by the DLRSO, For Deputy Commissioner, Changlang District. All the three aforesaid Letters are

reproduced herein below for ready reference:-

I.

Dated Changlang, the 26th Oct, 2021.

To,

The Director, Land Management,
Govt. of Arunachal Pradesh,
Itanagar.

Sub: WP(C)66/2021 filed by Sh. Nuney Tayang-reg.

Sir,

With reference to subject cited above, it is to inform you that a petition has been filed by Sh. Nuney Tayang before the Hon'ble Gauhati High Court, Itanagar Bench, Naharlagun for formal land acquisition proceedings and compensation under the provision of "The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act' 2013 over the land measuring around 450 acres allotted to Assam Rifles at Jairampur under Changlang District.

The Gauhati High Court in the matter passed an order dtd. 05/03/2021 directing the Addl. Dy. Commissioner, Jairampur to consider and dispose of the representation submitted by the petitioner in accordance with law (Copy enclosed).

In compliance with the Order of the Hon'ble Gauhati High Court, Itanagar Permanent Bench the Addl. Dy. Commissioner, Jairampur examined and heard all the interested parties and passed speaking order vide No. JRP/LR-57/19-20 Dtd. 23/04/2021 with following observations and findings (Copy enclosed)

1. The land measuring 342 acres has been allotted to the Assam Rifles vide Govt. land allotment order No. LR-18/86 Dtd. 04/10/2000 and land allotment passbook issued on 22/10/2013. The Assam Rifles has been paying the annual land revenue of the land measuring 342 acres regularly. Thereafter, during the year 2017 plots of land measuring 77 acres also been allotted to the Assam Rifles vide Govt. order No. LM-128/2011/1873 Dtd. 10/03/2017.

The available records reveals that Assam Rifles existed at Jairampur even before the creation of the State of Arunachal Pradesh since the existence of Jairampur cantonment area for 7 Assam Rifles had been clearly mentioned in the notification of the Governor of Assam vide No. FCR.115/62 Dtd. 11/06/1965 in exercise of power conferred under Section 17 of Assam Forest Regulation 1891(VII

of 1891) for declaration of Honkap Forest Reserve. The declaration of Honkap Forest Reserve by the notification of the Governor of Assam vide No. FCR.115/62 Dtd. 1106/1965 proves that the Honkap village and Kovin village existed prior to the creation of the State of Arunachal Pradesh. However, documentary evidence of existence of Khatanyung village inhabited by Yongkuk families (interested parties) is not in the records except for some correspondence letter written in Assamese submitted by the petitioner.

2. It reveals from records at District level that the land allotted to the Assam Rifles was neither acquired by the Govt. of Arunachal Pradesh nor any gift deed agreement was executed with Assam Rifles by any Tribes residing in the District. However, further examination of records is required to conclusively establish the process undertaken by then Govt. of Assam to allot the land to Assam Rifles.

3. On the above facts and the submission made by the petitioner and the interested parties, the Addl. Deputy Commissioner, Jairampur in its speaking order No. JRP/LR-57/19-20 Dt. 23/04/2021 passed that his office has not been empowered nor have the jurisdiction to dispose as per the contents of representation under the provisions of "The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act' 2013" and forwarded all relevant documents to the undersigned for disposal of the representation submitted by the petitioner Sh. Nuney Tayang.

Accordingly, a board was constituted to evaluate the arguments of the petitioner and all relevant documents/records/speaking order passed by the Additional Deputy Commissioner, Jairampur in connection with WP(C)66/2021 filed by Sh. Nuney Tayang & Ors.

On perusal of the reports/findings of the board members, it is found that Assam Rifles is in occupation of the area from around 1952. The formal land allotment to them was done by the Government of Arunachal Pradesh much later, initially 342 acres of land was allotted to them by Department of Land Management vide order No. LR-18/86 Dtd. 04/10/2000 and subsequently 77 acres was also allotted to the Assam Rifles by the State Government communicated vide letter No. LM-128/2011 Dtd. 10/03/2021 and the Assam Rifles authority are paying Rs. 1,384 Cr to Govt. of Arunachal Pradesh as ALR. However, there is no record available at disposal how the land was acquired by the Government for establishment of cantonment for Assam Rifles. There is no record of any gift deed by any native of the District or any records of land acquisition procedures under Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947 or Land Acquisition Act, 1894/LARR Act 2013 as claimed by the petitioner.

The Board also opined that whether due process for establishment for cantonment for Assam Rifles was followed or not is not clear as major documents and file pertaining to this case dates back to 1965 and before.

Prima facie, the case does not hold merit due to the following reasons;

- (i) As per limitation Act, 1963, u/s 25, 30 years period to claim ownership by possession by petitioner has long expired and land allotted to Assam Rifles in 1952 is being challenged after 69 years.
- (ii) Petitioner has cited the order of Hon'ble High Court of Manipur in matter of Shri. C. Wungam @ Wungreingam-Versus-Union of India, 2016 (0) Supreme (Manipur) but it does not apply here. In Manipur case land was possessed by Assam Rifles in 2004 without consent of State Govt. and within 4 years it was challenged by villagers.
- (iii) Claimants are unable to give any conclusive evidence of possession of said land prior to allotment to Assam Rifles and merely reference of village in Political Officer, Sadiya Frontier would be insufficient. Prior to inviting claims and objection also some basic proof of ownership is required.
- (iv) Assam Rifles has been paying annual lease rent of Rs. 1,384 Cr. which means compensation, if any will have to be paid by the State Govt. as they are after possession leasing out land to Assam Rifles. Lessee is not bound to pay compensation, if absolute land ownership is not provided by Govt.

Considering above, I am forwarding herewith the copy of speaking order passed by the ADC, Jairampur dated 23/04/2021 along with the findings of the board and relevant documents/records for favor of your information and providing legal opinion.

Enclosed: As stated above.

Yours faithfully,
Deputy Commissioner,
Changlang (A.P)

II.

Dated, Itanagar the 16/06/2022

To,

The Deputy Commissioner,
Changlang District, Changlang,

Sub: Adjudication of land under the possession of Assam Rifles at Jairampur, Changlang District.

Ref: WP(C) No. 66/2021 filed by Shri Nuney Tayang-Vrs-The Union of India.

Sir,

With reference to the subject cited above, you are requested to adjudicate the matter on priority and determine the ownership of the land in question giving the petitioner opportunity of being heard in terms of Section 9(1) of APLSR Act 2000 as directed by Hon'ble Court in its order in WP(C)66/2021 dated 05.03.2021.

A report in this regard may be submitted to this end after adjudication of the matter.

Yours faithfully,
Director of Land Management,
Govt. of Arunachal Pradesh
Itanagar.

III.

Dated, Changlang the 29/12/2022

To,

The Director, Land Management,
Govt. of Arunachal Pradesh,
Itanagar.

Sub: Adjudication of land under the possession of Assam Rifles at Jairampur.
(WP(C) No. 66/2021 by Sh. Nuney Tayang)

Ref: Your letter No. LMD-13011(13)92/2021 dated Itanagar the 16/06/2022.

Sir,

With reference to the subject cited above, I am directed to submit herewith the following correspondences and the following points for your kind perusal and examination.

1. Letter No. JRP/LR-57/2019-20/11357-58 dated 02/12/2022 from ADC, Jairampur.
2. Order No. JRP/LR-57/19-20 dated 23/04/2021 issued by ADC, Jairampur.
3. Letter No. WP(C)61/2021 dated Changlang the 26/10/2021 to the Director (LM), Govt. of A.P. Itanagar by the DC, Changlang.

(A) Drawing your kind attention to the letter mentioned at Sl. No. 3, the Deputy Commissioner, Changlang constituted a Board to evaluate the arguments of the petitioner and all relevant documentary/records speaking order prepared by ADD, Jairampur in connection with WP(C) No. 66/2021 filed by Sr. Nuney Tayang & Others. Accordingly, the copy of speaking order passed by ADC, Jairampur dated 23/04/2021 with findings of the Board and relevant documents/records were submitted to your good office for favor of your information and providing legal opinion.

(B) While declaration of township, the consent of fringe villages are duly taken which speaks for the fact that the villagers have given their consents at the first hand. Moreover, the subject land has been lawfully allotted to the Assam Rifles vide Govt. Order No. LR-18/86 dated 04/10/2000 and No. LM-128/2011 dated 10/03/2021 as per relevant provision of The Arunachal Pradesh (Land Settlement & Records) Act, 2000 and revenue has been appropriated as per norms.

(C) Therefore, the questions of ownership in this case prima facie appears to be in favor of government owing to the subject land being consented by villagers at two instances; Firstly, at the time of the declaration of reserve forest and secondly, at the time of declaration of township.

Therefore, the title and position of the said land as per the findings of the Board and physical verification indicates toward govt. ownership. Any further confusion over the ownership may be legally decided through Hon'ble Civil Court if deemed fit.

This is for your kind information and further necessary action please.

Enclosed: As mentioned above.

DLRSO, For Deputy Commissioner,
Changlang District,
Changlang.

12. From perusal of the contents of the aforesaid three letters, it appears that each of the authorities, who had written the letter have made some observation in relation to the rights of the parties in so far as 450 acres of land located at Jairampur is concerned, now under the occupation of the Assam Rifles.

13. Since the author of each of the above three letters are the Executive

Officers of the Government and therefore, not competent to make any such observation upon the right of the parties insofar as the Civil rights of the property is concerned, the letter dated 26.10.2021, written to the Director, Land Management, Govt. of Arunachal Pradesh by the Deputy Commissioner, Changlang vide No. C/JUD/JAIL-01/2015; the Letter dated 16.06.2022, written to the Deputy Commissioner, Changlang by the Director, Land Management, Govt. of Arunachal Pradesh, vide No. LMD-13011(13)92/2021/501 and the Letter dated 29.12.2022, written to the Director, Land Management, Govt. of Arunachal Pradesh by the DLRSO, For Deputy Commissioner, Changlang District are hereby set aside and quashed.

The writ petition is disposed of in terms above.

JUDGE

Comparing Assistant