

GAHC040013742022



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

Case No. : CRP 46/2022

1:Gyamar Takar @ Bharat
S/o Lt. Gyamar Tajik,
Resident of Yupia I, PO/PS Doimukh, District Papum Pare, Arunachal Pradesh,
Mobile No. 9774872420

VERSUS

1:Tana Lania and Anr.
General Secretary, Hyper Habia Catchment Area Welfare Committee, Head Quarter
Gumpia, Doimukh, District Papum Pare,
Represented by resident of Doimukh, PO and PS Doimukh, Papum Pare District, A.P,
Mobile No. 9436020250

2:Tana Gumh Tara
(President) Hyber Habia Catchment Area Welfare Committee
Head Quarter Gumpia
Doimukh
District Papum Pare
represented by resident of Doimukh
PO and PS Doimukh
Papum Pare District
A

Advocate for the Petitioner : Chorpok Modi

Advocate for the Respondent : Tayum Son

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 14.03.2023

Heard Mr. C. Modi, learned counsel for the revision petitioner. Also heard Mr. T. Son, learned counsel for the respondent Nos. 1 and 2.

2. The present revision petition is filed assailing an order dated 26th of September, 2022 passed by the Sub-Divisional Officer, Papum Pare District, Doimukh, Arunachal Pradesh.
3. The litigational background of the present petition can be summarised as follows:-

I. The petitioner herein preferred a writ petition being WP(C)/91(AP)/2021 assailing an order dated 11.03.2021 of the Sub Divisional Officer, Papum Pare District, Doimukh, whereby a direction was issued for spot verification of certain land in Totup-Hapa and adjoining areas for the purpose of declaring the same as "community land".

II. The claim of the present petitioner was that in the aforesaid proposed verification of land for the purpose of declaring community land, the private land of the petitioner has also been included.

III. The basic claim of the petitioner over a portion of proposed community land was that by virtue of a deed of Case Settlement dated 21.07.2019, which was also counter signed by the Executive Magistrate, Papum Pare District, Doimukh, the petitioner was conferred with the settlement of the land in question by 9 (nine) gaoh burah's of different

villages of the area and therefore, the petitioner objected the inclusion of the aforesaid land in the verification process.

IV. This Court initially granted an interim protection in favour of the petitioner. However, the respondent No. 1, namely Hyper-Habia Catchment Areas Welfare Committee preferred an application, which was registered as I.A.(C)/02/2022 for modification of the interim order. This Court disposed of the said I.A. under its order dated 26.08.2022. The Court in the aforesaid I.A. came to the conclusion that the dispute raised cannot be decided in a writ petition. Accordingly, the Court directed the Sub Divisional Officer, Papum Pare District, Doimukh, to consider the claim of the petitioner based on the deed of case settlement dated 21.07.2019. It was further provided that if upon such consideration, it is concluded that private land of the petitioner is also included in the proposed community land, appropriate orders be passed. It was further provided that if after such examination, a conclusion is arrived that no private land for the petitioner is included, the Sub Divisional Officer to proceed ahead as per the order dated 18.03.2021. In the aforesaid terms, the writ petition was disposed of and the interim order was modified to that effect.

V. Thereafter, the petitioner submitted his written statement in respect of the Totup Hapa disputed land before the Sub Divisional Officer. The whole claim of the petitioner as reflected in the said written statement is based on the deed of Case Settlement entered on 21.07.2019 and his claim is that he has been occupying and possessing the land in question since last 16 years without any break.

VI. It is also his case as projected in the written statement that while he was peacefully possessing the land, the villagers of the 16-Tigdo village to

Yupia gave credential certificate to him on 21.07.2019, whereby it was declared that disputed land in question belongs to the petitioner which has been used for agriculture activities since 2004.

VII. It is his further claim that the Deputy Commissioner of Papum Pare District, Yupia also issued Land Possession Certificate (LPC) in respect of land to some of the adjacent land holder, and accordingly, the petitioner had also applied for issuance of LPC for aforesaid plot of land to the Deputy Commissioner, Papum Pare District, Yupia.

VIII. Be that as it may, pursuant to order of this Court dated 26.08.2022, the Sub Divisional Officer, Papum Pare District, Doimukh, issued an order dated 05.09.2022, asking the petitioner, the respondent Nos. 1 and 2, different gaon burahs, senior public leader to appear before the Sub Divisional Officer, Papum Pare District, Doimukh on 14.09.2022 and accordingly, as many as 11 persons including gaon burahs, Ex-Zilla Parishad member, the petitioner along with the respondents had appeared before the Sub Divisional Officer, Papum Pare District, Doimukh and pleaded their respective cases.

4. Thereafter, after hearing the parties, the Sub Divisional Officer, Papum Pare District, Doimukh, concluded the following facts:-

I. The petitioner has occupied some portion of land at Totup Hapa since the year 2004, when he found it to be vacant land and constructed house and later he cultivated, did horticulture, agriculture etc.

II. In the year 2017, one FIR dated 17.02.2017, was lodged against the petitioner for deforestation and trying to occupy community land at Totup Hapa area. Thereafter, the petitioner submitted four nos. of LPC

application.

- III. Before the LPC application could be processed, a joint complaint dated 25.09.2019 was filed by the Hyer- Habia Catchment Areas Welfare Committee to the Deputy Commissioner, Yupia for illegally mapping Totup Happa and adjoining areas and applying for LPC.
- IV. In the meantime, pursuant to the FIR dated 17.02.2017, a settlement was made which was termed as Case Settlement dated 21.07.2019 between some of the gaon burahs and the petitioner and those gaon burahs had given mandate regarding ownership of 1,47,000/- sq mtrs of land in the Totup Hapa area in favour of the petitioner and by virtue of case settlement dated 21.07.2019, the petitioner claims the said land in Totup Hapa to be private land.
- V. The same gaon burah who signed the Case Settlement deed on 21.07.2019 had subsequently withdrawn their respective signatures and consent through declaration dated 08.10.2019 stating that their signatures were obtained by misleading and fraudulently and further declared that Totup Hapa and its adjoining area shall be village community land of Midpu I & II, Tigdo and Yupia village.
- VI. The DFO, Banderdewa issued a letter on 10.06.2020, clarifying that the Totup Hapa and adjoining area fall under USF. Thereafter, the Sub Divisional Officer, Doimukh, under its order dated 15.10.2019, has prohibited the petitioner to start any activities in the said area on the basis of various complaint.
- VII. A joint inspection of Totup Hapa and its adjoining area, with all stake holders was done on 11.11.2019, in terms of an order dated 06.10.2019

of the Deputy Commissioner, Yupia. The report of such committee unanimously urged upon the Government to recognize and declare Totup Hapa as village community forest land. Thereafter, the order dated 18.03.2021 was issued for verification of the land at Totup Hapa area for the purpose of declaration and issuance of notification as community land.

5. With the aforesaid background facts, the Sub Divisional Officer, Doimukh concluded the following:-

I. The petitioner could not produce any tangible evidence which could prove the matter beyond reasonable doubt that the land in dispute is his private land, as he has neither inherited the land from his ancestor nor any actual land owner had gifted this land to him. Accordingly, the final conclusion was that the petitioner has failed to establish that the land at Totup Hapa as his private land.

II. While coming to such conclusion, the Sub Divisional Officer, Doimukh, also had taken note of the settlement by the gaon burah and withdrawal of their settlement.

6. In the aforesaid backdrop, the learned counsel for the petitioner submits the following:-

I. The Magistrate has committed serious error of law by not exercising his power entrusted by this Court under its order dated 26.08.2022 passed in I.A(C)/2/2022 inasmuch as this Court has directed to decide the issue regarding his ownership of the land on the basis of Case Settlement dated 21.07.2019 but the learned Magistrate has gone beyond his jurisdiction and acted like as a Civil Court and decided the title of the petitioner and

come to a conclusion that the petitioner cannot claim the right over the land on the basis of the Case Settlement dated 21.07.2019. Therefore, according to the learned counsel for the petitioner, such order is liable to be interfered with and matter be remanded back to the Magistrate for fresh determination.

II. The Sub Divisional Officer, Doimukh has rejected the documents and claim of the petitioner and thereby passed the impugned order which not only violates the order passed by this Court but also violated the provision of Arunachal Pradesh Civil Court Acts, 2021.

III. The order of this Court is very specific that since the disputed land was decided in the form of the customary law as Mel Settlement, the SDO was to consider the facts that whether the land for the proposal for community land is included the land of the petitioner as per the settlement agreement dated 21.07.2019.

IV The petitioner has produced the document before the authority which has not been challenged/ appealed by the any of the aggrieved party. But the SDO has concluded in favour of the objector/respondent, who did not submit any document in support of their claim other than the proposal for community land.

V. If the land of the petitioner under the said agreement falls within the proposed community land, the SDO ought to refer back the matter before the appropriate forum to decide the title issue.

VI. Since the matter was already decided in the form of Mel, the further action against the decision is to prefer an appeal before the concerned authority as per Assam Frontier (Regulation of Justice and Administration)

Act, 1945. Thus the SDO has no power to reject or accept the matter pertaining to the title issue. The SDO has failed to appreciate the facts that the disputed land of the petitioner is under the occupation of the petitioner since 2004 and the respondent in the banner of Hyer Habia Catchment Welfare Committee which was established in 2014 and who initiated the proposed community land by 2019.

VII. The SDO Doimukh has not authorized to hear the other villages but the authority has called all the parties who are interested against the petitioner and on the basis of their statement, the SDO, Doimukh had passed the impugned order by skipping the procedural law.

VIII. The SDO, Doimukh has no authority to discuss the issue of the title on the basis of the procedural law that the SDO, Doimukh neither the right to hear the title appeal nor the authority to hear the matter, which was already decided in the village level unless, the SDO, Doimukh is specifically endorsed for that propose.

IX. During the time of the hearing neither of the respondents could establish that the land in question belongs to them nor they could establish that the land of petitioner falls within the proposed community land. Thus there is a infirmity in the impugned order under the abovementioned reason the same is liable to be set aside and quash.

X. The land in question is under the petitioner since 2004 which is undisputed and the theory and proposal of the community land was born in 2019 and as such the possession of the petitioner may not be deprived by the infirmity order passed by the SDO, Doimukh who has no authority to decide the title issues.

7. Per contra, Mr. T. Son, learned counsel for the respondents submits that the present case is not maintainable under Article 227 of the Constitution of India inasmuch as a Magistrate exercising its power of verification cannot be treated as a Court or Tribunal subordinate to the High Court so as to exercise its jurisdiction under Article 227 of the Constitution of India and therefore, the petition is liable to be dismissed in limine on that ground with cost.

The learned counsel for the respondents further submits that the issue involves disputed question of fact. The petitioner claims that the land was settled with him by some of the gaonburahs, however, even if such settlement was made, subsequently the same gaonburahs withdrew their settlement. Therefore, such disputed questions i.e. whether the settlement was done property and whether it was withdrawn are disputed questions, which can only be determined through leading proper evidence etc., which cannot be done in a proceeding either by a writ court or an in exercise of power under Article 227 of the Constitution of India. Therefore, such finding should not be interfered with.

8. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties.
9. The whole gamute of the case of the petitioner is that the land at Tatup Hapa was settled with the petitioner through a Deed Case Settlement dated 21.07.2019. It is the case of the petitioner that he has been enjoying and possessing the land since 2004 and the question of settlement came when there was some dispute regarding the possession and accordingly, the gaon burahs are competent to settle such land. By virtue of such settlement, the land has become private land. Therefore,

such land cannot be brought under community land.

10. Such claim has been refuted by the respondents on the ground that the persons/gaon burahs who entered into such deed of case settlement, has subsequently withdrew their consent to such settlement. Therefore, in view of aforesaid claims and counter claims, this Court cannot determine either the authenticity of the settlement deed or subsequent withdrawal, in a proceeding under Articles 227 or 226 of the Constitution of India. Similar view was also expressed by this Court in the order dated 26.08.2022.

The finding of facts by the Sub Divisional Officer, Doimukh, can be tested before an appropriate forum where the parties can lead evidence and can cross-examine the witnesses so as to establish their claims and counter claims.

11. The other grounds urged by the learned counsel for the petitioner, revolves around the merit of claim of the petitioner over the disputed land. Such dispute cannot be determined in a petition like the present one. If the actions of the respondents have created any threat or cloud over the claim filed by the petitioner, he can very well approach the Customary Court or a Civil Court to establish his claim and proof his title. Decision impugned shall always be subject to final determination competent Court.
12. Further the impugned order cannot be treated as a decision of a "Mel" or decision of any competent authority under Assam Frontier (Regulation of Justice and Administration) Act, 1945, inasmuch as the Sub Divisional Officer, Doimukh had exercised his power under the order of this Court dated 26.08.2022 and not as a Customary Court or appellate authority.

13. This Court also cannot find fault with the procedure adopted by Sub Divisional Officer, Doimukh in conducting the enquiry inasmuch as the decision was arrived at after giving reasonable opportunity of hearing to all the interested parties.
14. In that view of the matter, this Court is not inclined to entertain the present revision petition under Article 227 of the Constitution of India inasmuch as in a petition under Article 226 of the Constitution of India or Article 227 of the Constitution of India disputed questions of fact cannot be determined.
15. Accordingly, the present revision petition stands dismissed. However, while parting with the record, it is clarified that this Court has not decided the merit of the decision of the Sub Divisional Officer, Papum Pare District, Doimukh or merit of the claim of the petitioner and the respondents over the disputed land and the petitioner shall be at liberty to challenge the same before the appropriate forum and claim title as per law and as discussed hereinabove.

JUDGE

Comparing Assistant