

GAHC040015002022



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

Case No. : WP(C)/481/2022

Taking Talom

S/o Late Tabang Talom,

Residing at D Sector, Naharlagun, PO/PS Naharlagun, District Papum
Pare, Arunachal Pradesh.

Mobile No. 9436254463

VERSUS

THE STATE OF AP and 4 Ors.

Represented by the Secretary (Land Management), Govt. of Arunachal
Pradesh, Itanagar.

2:The Director (Land Management) Govt. of Arunachal Pradesh
Itanagar.

3:The Deputy Commissioner cum District Magistrate Itanagar Capital
Complex Govt. of Arunachal Pradesh Itanagar.

4:Gichik Tapor S/o Lt. Gichik Tagung Gohpur Zoo Valley PO Itanagar
PS Chimpu District Papum Pare Arunachal Pradesh 791111 Phone No.

8974392624

5:Taram Kungi C/o Shri Gichik Tapor S/o Lt. Gichik Tagung Gohpur Zoo
Valley PO Itanagar PS Chimpu District Papum Pare Aruanchal Pradesh

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NELSON SAILO

ORDER

Date : 24-08-2023

Heard Mr. T. T. Tara, the learned counsel for the petitioner, Mr. D. Kamduk, the learned Standing Counsel for respondent Nos. 1 and 2 and Ms R. Basar, the learned Government counsel appearing for the respondents No.3. No one appears for respondent Nos. 4 and 5 despite notice. Having regard to the nature of controversy involved, the writ petition is taken up for disposal at admission stage.

2. By filing this writ petition, the petitioner has challenged the order dated 28.11.2022 (Annexure-9) passed by the Deputy Commissioner, Itanagar Capital Complex directing the petitioner to appear on the date fixed with supporting documents relating to the complaint filed against him. The Deputy Commissioner has also directed that till the disposal of the case, the land allotment of the

petitioner should not be renewed.

3. The facts of the case in brief is that the petitioner was allotted a certain plot of land measuring 100 Sqmtrs at D-Sector (Zonal-A) Naharlagon for residential purpose under Naharlagon township vide Land Allotment Order dated 21.06.2019 with certain terms and conditions contained in the said allotment. The petitioner has also been given the Government Land Allotment Passbook No. N/G-15/225/2019 wherein, the details of the allotment and the collection of land revenue from the allottee has been reflected. The respondent No.4 on 05.09.2022 filed an FIR before the Officer-in-Charge of the Naharlagon Police Station alleging that the petitioner has illegally occupied the premises of the Government quarter and should be proceeded against as per the law. The Officer-in-Charge of the Naharlagon Police Station on receipt of the FIR on 05.09.2022 summoned the petitioner, who then produced his Land Allotment Order. The Officer-in-Charge being satisfied with the same did not register a case.

4. The respondent No.4, thereafter, filed a complaint before the Deputy Commissioner, Itanagar Capital Complex on 09.09.2022 complaining that the petitioner had illegally taken possession of the Government quarter land and therefore, legal action should be taken

against him. The Deputy Commissioner upon receipt of the complaint, forwarded the same to the Extra-Assistant Commissioner, Nahalargun for examination and for taking necessary action as per the provision of law vide communication dated 16.09.2022.

5. Upon receipt of the complaint, the Extra-Assistant Commissioner, Naharlagun issued two hearing notices dated 03.10.2022 and 14.10.2022 asking the petitioner to present himself along with the relevant documents for hearing. The petitioner not only presented himself for hearing but also filed a written objection against the complaint. The Extra-Assistant Commissioner had also directed the S. K (Supervisor) to verify on the spot and submit that verification report. Accordingly, the surveyor concerned on 10.02.2022 submitted his verification report stating that he had physically verified the Government quarter allotted to the petitioner and found that there was some extension of a room in the quarter by way of erecting a brick wall. As for the quarter premises, the same was lying vacant and no structures were found erected within the quarter premises.

6. The Extra-Assistant Commissioner upon hearing the petitioner and on perusal of the verification report, passed the order dated 02.11.2022, which was to the effect that the petitioner was in

possession of the land on the strength of land allotment made in his favour vide order No. DC/LM-07/2019 dated 21.06.2019 and the Office of the Extra-Assistant Commissioner-cum-Estate Officer did have the jurisdiction to cancel the land allotment and the complaint was accordingly disposed of.

7. The respondent No.4 however, not being satisfied with the order passed by the Extra-Assistant Commissioner, filed two more complaints on 07.11.2022 and 10.11.2022 before the Deputy Commissioner, Itanagar Capital region/ Complex. The Deputy Commissioner then issued the order dated 18.11.2022 forming a committee comprising of one chairman and two other members to verify the status of encroachment alleged to have made by the petitioner. The constituted committee conducted spot verification on 24.11.2022 and made its report on 25.11.2022. As per the report, the Government quarter concerned was in peaceful occupation of the petitioner and during their visit to the place, the petitioner was not in station. The committee observed that there was no dismantlement of the Government quarter in question and the allotted land measuring 100 Sqmtrs did not have any construction on it. The report also included a photograph of the land. The Deputy Commissioner thereafter, passed the impugned order on 28.11.2022. Aggrieved the petitioner is before this court.

8. Mr. T. T. Tara, the learned counsel for the petitioner submits that the petitioner was issued the Land Allotment Order dated 21.06.2019 with the approval of the Government of the Arunachal Pradesh after following all formalities required in this regard. Therefore, the petitioner is in lawful possession of the land allotted to him. He submits that following the complaints made by the respondent No.4 and 5, verification on the spot was conducted and the petitioner was also summoned for hearing. It was only after such process was undertaken that the Extra-Assistant Commissioner-cum-Estate Officer passed the order dated 02.11.2022 with a finding that the petitioner was in possession of the plot of land on the strength of the Land Allotment Order dated 21.06.2019. Therefore, the allegation that the petitioner is a land grabber as contended by the private respondents is not correct and misconceived.

9. The learned counsel submits that the order dated 02.11.2022 passed by the Extra-Assistant Commissioner-cum-Estate Officer is the final order and if the party concerned is aggrieved with the same, recourse has to be taken as per the procedure prescribed under law. Therefore, the Deputy Commissioner in absence of an appeal as per law could not have taken the responsibility upon itself to examine the legality or otherwise of the order passed by the

Extra-Assistant Commissioner-cum-Estate Officer. He also submits that since the land was allotted to the petitioner with an approval of the Government, the Deputy Commissioner can only refer the matter to the Government. The learned counsel thus, submits that the order dated 28.11.2022 being wholly unauthorised and illegal and same should be set aside.

10. Mr. D. Kamduk, the learned counsel appearing for the respondent Nos.1 and 2 submits that the respondents he represent have not filed counter-affidavit but having regard to the fact that the petitioner was allotted land as per the Land Allotment Order dated 21.06.2019, Court may consider the same and pass appropriate order as it deems fit and proper.

11. Ms R. Basar, the learned State counsel referring to the affidavit-in-opposition filed by the respondent No.3 submits that respondent No.3 had only issued the order dated 28.11.2022 asking the petitioner to be present for hearing him and for examination of the records he possessed, including the Land Allotment Order. Therefore, there is no reason for the petitioner to not cooperate with the steps taken by the Deputy Commissioner. She therefore, submits that writ petition being without merit should be dismissed.

12. I have heard the submissions made by the learned counsels

for the parties and I have perused the materials available on record. The complaint against the petitioner as can be seen is that he is in unauthorised occupation of a certain plot of land near the quarter allotted to him and for which, the private respondents filed an FIR before the Officer-in-Charge Naharlagun Police Station. However, since the petitioner produced the Land Allotment Order dated 21.06.2019 issued to him, the police did not register a case. The private respondent thereafter approached the Deputy Commissioner with a similar complaint on 09.11.2022 and the Deputy Commissioner endorsed the matter to Extra-Assistant Commissioner-cum-Estate Officer, Naharlagun on 16.09.2022 to look into the matter and take necessary action as per law. Upon hearing the petitioner and upon directing the surveyor concerned to have a spot verification, the Extra-Assistant Commissioner-cum-Estate Officer passed the order dated 02.11.2022 to the effect that the petitioner was in possession of a plot of land in question on the strength of land allotted to him vide order No. DC/LM-07/2019 dated 21.06.2019. However, not being satisfied with the order, the private respondent again filed two complaints before the Deputy Commissioner on 07.11.2022 and 10.11.2022 and pursuant to which, the Deputy Commissioner formed 3 (three) member committee, who then visited the spot on 24.11.2022 and made a report that the petitioner was in peaceful possession of the quarter allotted to him

and that there was no construction found in the allotted land. Despite the same, the Deputy Commissioner had issued the impugned order dated 28.11.2022 directing the petitioner to be present before him along with his written statement and supporting documents and that till the disposal of the complaint, the land allotment of the petitioner should not be renewed.

13. It may be seen that the Land Allotment Order dated 21.06.2019 was issued by the Deputy Commissioner under the signature of District Land Revenue and Settlement Officer, Itanagar Capital Complex with the approval of the Government of Arunachal Pradesh conveyed prior vide order No. LM-294/2019/2163 dated 03.03.2019. The two verifications done pursuant to the complaint submitted by the private respondents and under the direction of the Deputy Commissioner himself found the petitioner to be possession of the plot of land in question on strength of Land Allotment Order issued to him. Therefore, the same cannot be termed as an illegal occupation.

14. From two verification reports, including the order of the Extra-Assistant Commissioner-cum-Estate Officer, there is also no indication that the allotment of the land to the petitioner is doubtful and in violation of the provision of allotment. Since, the same has been issued with the approval of the Government of Arunachal

Pradesh, it would only be incumbent upon the Deputy Commissioner to refer the matter to the Government for consideration, if such occasion arises. The Deputy Commissioner has also taken up the matter although no appeal as stipulated either under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003 or the Arunachal Pradesh (Land Settlement and Records) Act, 2000 has been filed. The order of the Deputy Commissioner debarring the renewal of the Land Allotment Order of the petitioner is also not traceable to any particular provision of law.

15. Therefore, upon due consideration, this Court find that the impugned order dated 28.11.2022 cannot be sustained and accordingly, the same is hereby, set aside. The writ petition is accordingly, disposed of. Interim order, if any, shall stand merged with this order.

JUDGE

Comparing Assistant