

GAHC030001302022



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

Case No. : WP(C)/38/2022

Thanzuali and 3 Ors.
Saron Veng, Aizawl, Mizoram

2: Zosangzuala

3: Sangzikpuui

4: Sangthuam

VERSUS

State of Mizoram and 4 Ors.
R/b Chief Secretary to the govt. of Mizoram2:Secretary to the Govt. of Mizoram

3:The Director

4:The Settlement Officer

5:Sh K.Lallianzauv

Advocate for the Petitioner : Mr Vanlalnghaka

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte (Addl. AG/GA) for R1-4

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing & Judgment : 06.09.2023

J U D G M E N T

Heard Mr. Vanlalnghaka, learned counsel for the petitioners, Ms. Mary L Khiangte, learned Government Advocate appearing for respondent Nos. 1 to 4 and Mr. Samuel Vanlalhriata Chhangte, learned counsel for the respondent No. 5.

[2.] By filing this writ petition, the petitioners have prayed for setting aside and quashing the cancellation Order dated 05.02.2021 (Annexure-5) by which the House Pass that was issued to them have been cancelled by the respondent No. 4. The petitioners have also prayed for a direction to the respondents to conduct spot verification on their land and on the land of the respondent No. 5 to ascertain their respective land holdings.

[3.] Brief facts essential for disposal of the writ petition may be noticed at the outset. According to the petitioners, they were issued House Pass by the competent authority i.e., the respondent No. 4 under Section 26 & 36 of the Mizoram (Land Revenue) Act, 2013 (Act of 2013) read with Rule 14 & 15 of the Mizoram (Land Revenue) Rules, 2013 (Rules of 2013) with the approval of the Govt. of Mizoram dated 01.09.2017. The respective land of the petitioners are all located at Falkland, Aizawl, Mizoram. The petitioners contend that without any prior notice and without giving any opportunity to them, the respondent No. 4 had issued the cancellation Order dated 05.02.2021 and therefore, the impugned cancellation order being bad in law should be set aside. The petitioners, as already mentioned herein above, have also prayed for conducting a spot verification to ascertain the respective land holdings of the rival

parties.

[4.] Mr. Vanlalnghaka, learned counsel for the petitioners submits that apart from the respondent authorities not having given prior notice to the petitioners, the respondent No. 5 had executed a no objection letter on 29.04.2016 (Annexure-7) which is to the effect that the respondent No. 5 has no objection to the issuance of House Passes to persons who have constructed their residential building without House Passes within the lower portion of his land at Falkland. The said no objection which is in the form of an agreement was executed in the presence of the Chairman, Local Council, Falkland apart from two other witnesses. Therefore, even for this reason, the cancellation order dated 05.02.2021 cannot be sustained and should be set aside.

[5.] Mr. Samuel Vanlalhriata Chhange, learned counsel for the respondent No. 5 referring to the affidavit-in-opposition filed by the respondent No. 5 on 30.11.2022 submits that the respondent No. 3 had issued a notification on 25.07.2019 notifying the petitioners that a meeting will be held in the Office Chamber of the respondent No. 3 on 30.07.2019 and that the petitioners should come with all their land documents in connection with the land held by them. Further, the Local Council of Falkland was also informed to approach the office on the date fixed. In terms of the said notification, a meeting was subsequently convened on 09.08.2019 wherein, the petitioner No. 1 was present and that she represented the other 3 (three) House Pass holders who are the petitioner Nos. 2 to 4 in the present writ petition. The petitioner No. 1 had also given her signature in the attendance sheet on 09.08.2019. The learned counsel submits that what transpired in the meeting held on 09.08.2019 can be appreciated from the meeting minutes which is annexed by the State respondents as Annexure-V to their counter affidavit. He submits that from the meeting minutes, it can be clearly seen that the petitioner No. 1 and the representatives of the Local Council, Falkland had attended the meeting and the petitioner No. 1 stated that the 4

(four) House Passes were obtained by them on the strength of a permit given by the Village Council, Zemabawk in the year 1970. However, upon careful examining the permit, the meeting concluded with a view that the same was a fabricated one and that the land occupied by the petitioners were located within plot No. 44 to 70 which has been earmarked for respondent No. 5 in terms of the order dated 26.11.2014 passed by the High Court in CMA No. 203/2014 arising out of RFA No. 35/2013. Therefore, the meeting concluded with the view that the House Passes of the petitioners were liable for cancellation.

[6.] The learned counsel further submits that pursuant to the said meeting, the petitioners were given show-cause notice on 18.02.2020 asking them to submit their stand in writing within 15 days from the date of the issuance of the notice by the respondent No. 3. However, despite the notice, the petitioners failed to submit any reply and accordingly, the cancellation order dated 05.02.2021 was issued. As such, the learned counsel submits that it is not a case where notice was not issued to the petitioners prior to the cancellation of their House Pass as contended by them. He submits that since the area of the House Pass allotted to the petitioners in terms of their respective House Passes clearly falls within the plot No. 44 to 70 which has been allotted to the respondent No. 5 in terms of the order of the High Court pursuant to the agreement arrived at by the rival parties concerned in RFA No. 35/2013, there is no question of having a verification as sought by the petitioners. He, therefore, submits that the writ petition may be dismissed.

[7.] Ms. Mary L Khiangte learned Government Advocate adopts the argument made by Mr. Samuel Vanlalhriata Chhangte, learned counsel for the respondent No. 5. She submits that it is clear from the pleadings and documents annexed in the counter affidavit of the State respondents as well as the private respondent No. 5 that the petitioners were given show-cause notice prior to issuance of the cancellation order. The petitioners have failed to respond not only to the show-cause but also to the

State's counter affidavit and therefore, they cannot have any grievance at this stage.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[9.] The first ground of challenge on the cancellation order dated 05.02.2021 by the petitioners is that they were not given show-cause notice and that no opportunity was given to them for clarifying their stand or for making a defence against the intent of the respondents to cancel their respective House Pass. However, the fact remains that as per the documents annexed by the respondent No. 5 as well as the State respondents, a notification dated 25.07.2019 was issued by the respondent No. 3 wherein the names of the petitioners appeared at Serial Nos. 1 to 4. As per the notification, they were required to approach the respondent No. 3 in his office chamber on 30.07.2019 with all their land documents. The Local Council of Falkland were also informed to make themselves available on that day. Although the meeting appears to have not been held on 30.07.2019 as scheduled but eventually a meeting was held on 09.08.2019. The minutes of the meeting held on 09.08.2019 has been annexed by the State respondents in their counter affidavit as already noticed herein above. What transpired in the meeting is that in the presence of all the stake holders, it was opined that the claim of the petitioners that they were allotted House Pass on the strength of the permit given by the Village Council, Zemabawk in the year 1970 was not acceptable and the same was found to be a fake one. It was further observed that in view of the settlement arrived at on the land in question by the parties concerned in RFA No. 35/2013 and which was accepted by the High Court, the land of the petitioners having fallen within plot No. 44 to 70 of the land earmarked for the respondent No. 5, their House Pass were liable to be cancelled. Pursuant to the meeting minutes, a show-cause notice was then issued to the petitioners on 18.02.2020 abstracting the observations and findings of the meeting which was held on 09.08.2019. The petitioners were asked to submit in writing within a period of 15

days from the date of the communication as to why their Passes should not be cancelled and further, if no reply was received from them, they will have no right to raise any objection on the action to be taken by the Department concerned. Pursuant thereto, the respondent No. 3 instructed the respondent No. 4 to issue the cancellation order and accordingly, the respondent No. 4 on 05.02.2021 issued the impugned cancellation order cancelling the House Passes of the petitioners by way of a common order. Against the counter affidavit, the petitioners have not filed any rejoinder or reply affidavit. It is however the submission of the learned counsel for the petitioner that since the petitioners have already taken the stand that they have not been issued a show-cause notice prior to cancellation of their House Pass, such stand is being reiterated.

[10.] The learned counsel further draws the attention of this Court to the signature appended in the attendance sheet on the date of the meeting i.e., 09.08.2019 wherein it is maintained by the respondents that the petitioner No. 1 had participated and put her signature. The learned counsel submits that by comparing the signature in the attendance sheet claimed to be that of the petitioner No. 1 with the signature given by the petitioner No. 1 in the undertaking appended to her House Pass, it can be seen that there is a clear distinction. Therefore, he submits that the claim of the respondents that the petitioner No. 1 had participated in the meeting held on 09.08.2019 by giving her signature in the attendance sheet is doubtful and cannot be accepted. However, the fact remains that the petitioners have not disputed the signature by filing a rejoinder affidavit and moreover, this Court cannot go into such an aspect without there being an expert opinion. From the materials available on record, it is seen that prior to issuance of the cancellation order on 05.02.2021, the petitioners appeared to have been summoned by the respondent No. 3 on 25.07.2019 asking them to appear before him on 30.07.2019 with their land documents. Subsequently on 09.08.2019, the petitioner No. 1 appeared while representing the rest of the petitioners. The Local Council of Falkland along with two other members

appears to have participated in the meeting on 09.08.2019 which can be seen from the meeting minutes itself. What followed after the meeting is that the petitioners were given notice and thereafter, the impugned order of cancellation of House Pass was issued. Therefore, the claim of the petitioners that they were not given opportunity prior to cancellation of their House Pass or that they were not given any notice before hand cannot be accepted.

[11.] In respect of the second prayer made by the petitioners i.e., for having a spot verification, the fact remains that if the spot verification indeed is warranted, the petitioners at the relevant time could have requested the respondent authorities for the same in view of the fact that they were represented by the petitioner No. 1 in the meeting which was held on 09.08.2019. There is also no such demand from the petitioners prior to approaching this Court through the instant writ petition for conducting a spot verification. On the other hand, the impugned order itself provides that the House Pass issued to the petitioners fall within the plot Nos. 44 to 70 which has been earmarked for the respondent No. 5, as per the agreement reached between the parties concerned and which was accepted by this Court while disposing of the RFA No. 35/2013. Under such circumstance, Court is of the considered view that the demand for having a spot verification cannot be accepted.

[12.] In respect of the claim of the petitioners that the respondent No. 5 had given no objection to the issuance of House Pass to the petitioners, the fact remains that the respondent No. 5 has clearly disputed this aspect of the matter in the affidavit filed by him on 30.11.2022 at paragraph No. 7 of the said affidavit by stating that the purpose of the letter titled "To whom it may concern" was for the families who resided beyond 50 ft of his land and as mentioned in the said annexure. The same is not meant for the petitioners who otherwise have illegally claimed certain portion of his land. Such being the claim and the counter claim, this Court in exercise of writ jurisdiction under Article 226 cannot go into this aspect of the matter. Therefore, if

the petitioners would like to agitate this issue, it is for them to approach the competent forum as may be permissible in law.

[13.] In view of above and upon due consideration, I do not find merit in the writ petition and the same is dismissed. No cost.

JUDGE

Comparing Assistant