

GAHC030004672022



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

Case No. : WP(C)/113/2022

P.C. Lalthlamuana
S/o Lalngaia(L) and Lalrinthangi(L)
R/o Zemabawk North, Aizawl, Mizoram.

VERSUS

Mizoram State Commission for Women r/b the Chairperson and Anr.
Aizawl, Mizoram.

2:Vanlalruatsang

Advocate for the Petitioner : Mr Vanlalnghaka

Advocate for the Respondent : Mr. J H Ramneihmawia for R2

JUDGMENT / ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

20.06.2023

Heard Mr. Vanlalnghaka, learned counsel for the petitioner, Mr. T Lalnunsiamia, learned counsel for the respondent No. 1 and Mr. J H Ramneihmawia, learned counsel for the respondent No. 2.

[2.] By filing this writ petition, the petitioner has challenged the Order dated 18.07.2022 (Annexure-7) passed by the Mizoram State Commission for Women, Aizawl, Mizoram in Complaint No. 18/2022. By the said order, the Women's Commission had directed the petitioner to withdraw himself from any claim on the landed property covered by LSC No. CAD-1496/2012 within a period of 30 days from the date of the order. The petitioner has also been directed to hand over the original LSC No. CAD-1496/2012 to the Office of the Women's Commission within a period of 30 days from the date of the order. Further, it was also directed that as soon as the petitioner vacates the landed property in question or upon expiry of 30 days (whichever is earlier), the respondent No. 2 shall occupy the said property.

[3.] Brief facts of the case as projected is that the petitioner is one of the five children of one Shri. Lalngaia (L) and Smt. Lalrinthangi (L). Shri. Lalngaia expired on 17.01.2018 while Smt. Lalrinthangi expired on 30.11.2016 leaving behind the landed property in question. The respondent No. 2 is the daughter of Shri. Lalmuanzuala (L), who is the youngest amongst the five children of Shri. Lalngaia and Smt. Lalrinthangi. Shri. Lalmuanzuala expired on 30.11.2001 and after his death respondent No. 2 was taken care by the petitioner. The respondent No. 2 had also married twice and from the house of the petitioner. The petitioner served in the Assam Regiment as Havildar and after he retired, he joined Defence Security Corps and was serving in different States till he retired from service on 30.11.2020. Since all his sisters are married and maintaining separate household and as the father of the respondent No. 2 who was

his younger brother having expired on 30.11.2001, the petitioner took care of the respondent No. 2 as well as his mother Smt. Lalrinthangi.

[4.] According to the petitioner, the respondent No. 2, without his knowledge applied for Heirship Certificate for the landed property in question through Heirship Certificate Application No. 1135/2020 and the same was accordingly issued to her on 25.11.2020 by the Senior Civil Judge-III, Aizawl vide Memo No. 511 SCJ(A)-III/2020. Unaware about the issuance of Heirship Certificate in favour of the respondent No. 2, the petitioner himself applied for the Heirship Certificate in respect of the same property left behind by his mother and the same was registered as Heirship Certificate No. 333/2021. The petitioner was accordingly issued Heirship Certificate by the same Court on 23.02.2021 vide Memo No. 159/SCJ(A)-IV/2021. The respondent No. 2 aggrieved with the issuance of Heirship Certificate to the petitioner, filed a review petition before the Court of Senior Civil Judge, which was registered as Review Petition No. 18/2022. The application was accompanied by a separate application for condonation of delay bearing No. CMA No. 221/2022. The delay in filing the review petition was condoned and vide Order dated 17.06.2022, the review petition was allowed and the Heirship Certificate No. 333/2021 issued to the petitioner was set aside.

[5.] After the Heirship Certificate of the petitioner was cancelled/set aside by the review Court, the respondent No. 2 submitted a complaint before the Women's Commission (respondent No. 1) and Complaint No. 18/2022 was registered. By

entertaining the complainant petition, the respondent No. 1 then passed the impugned order dated 18.07.2022, the contents of which have already been reflected in the preceding paragraphs.

[6.] Mr. Vanlalnghaka, learned counsel for the petitioner submits that the respondent No. 1 purportedly has passed the impugned order in exercise of its powers under Section 10(2)(b)(i) of the Mizoram State Commission for Women Act, 2004 (Act of 2004). The learned counsel submits that a bare perusal of the said provision only indicates that such power exists or can be exercised when women are being deprived of their rights. However, in the instant case, it can be clearly seen that there is a dispute between two individuals over a certain property. Therefore, the Women's Commission in exercise of Section 10(2)(b)(i) of the Act of 2004 could not have passed the impugned order directing the petitioner to deposit the original LSC of the property in question and to stay away from the property within the time specified in the order. The learned counsel submits that even if the respondent No. 2 claims her right over the property in question on the strength of the Heirship Certificate, there are other legal recourse which can be taken but not in the nature of a complaint before the Women's Commission. He, therefore, submits that the impugned order may be set aside.

[7.] Mr. T Lalnunsiam, learned counsel for the respondent No. 1, on the other hand, submits that the respondent No. 2 has acquired her right of the property in question in terms of the Heirship Certificate that was given to her by the Civil Court.

The Heirship Certificate granted to the petitioner was cancelled through the order passed in review petition and therefore, the petitioner has no right over the property in question. The respondent No. 2 approached the respondent No. 1 with a complaint and claim over the property in question from the basis of the Heirship Certificate issued to her by the Civil Court and the Women's Commission in view of the Heirship Certificate being issued in favour of the respondent No. 2 has asked the petitioner to stay away from the property in question and to hand over the original LSC to the respondent No. 2 within a time frame. Since the right of the women has been infringed, therefore the respondent No. 1 being empowered to look into such complaint in terms of Section 10(1)(d)(i) has passed the impugned order. Referring to Section 10(2) of the Act of 2004, the learned counsel submits that the Commission, while investigating in any matter referred to in Clause (a) or sub-clause (i) of Clause (b) of sub-Section (1), has all the power of a Civil Court, filed a suit under the existing law which includes summoning an enforcement of attendance, requiring the discovery and production of any document and receiving of evidence on affidavit, etc. Therefore, the respondent No. 1 has only acted within its power and jurisdiction while issuing the impugned order dated 18.07.2022. The writ petition therefore being without merit should be dismissed.

[8.] Mr. J H Ramneihmawia, learned counsel for respondent No. 2 adopting the argument of Mr. T Lalnunsiana submits that the respondent No. 2 during the lifetime of Smt. Lalrinthangi, who is her grandmother, had taken care of her and that she was

also staying with her during her lifetime. As such, the respondent No. 2 has every right over the property in question. To legalize her claim over the property in question, the respondent No. 2 applied for Heirship Certificate before the competent Civil Court and accordingly, the respondent No. 2 was issued Heirship Certificate No. 1135/2020 on 25.11.2020. Despite allowing the Heirship Certificate to her, the petitioner also applied for Heirship Certificate over the same property before the Civil Court and the same was granted to him vide Heirship Certificate No. 333/2021 on 23.02.2021. Upon coming to learn of the same, the respondent No. 2 filed Review Petition No. 18/2022 which was also accompanied by an application for condonation of delay. The delay was condoned and the review petition was allowed vide Order dated 17.06.2022 by which the Heirship Certificate granted to the petitioner was set aside. Since the Heirship Certificate given to the petitioner has been set aside, the petitioner has no right over the property in question and he has no right to continue to stay in the said property. Since the petitioner refused to handed over the property in question to respondent No. 2, the respondent having no alternative approached the Women's Commission and the Women's Commission, upon considering the complaint of the respondent No. 2, issued the impugned Order dated 18.07.2022. He, therefore, submits that the Order dated 18.07.2022 having been passed after considering the fact that the respondent No. 2 has Heirship Certificate in her favour which was issued by the competent Civil Court, the same should not be interfered with. He thus submits that the writ petition being devoid of merit should be dismissed.

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

[10.] As already noticed herein above, two Heirship Certificates were issued on the same property in question. The first Heirship Certificate i.e., Heirship Certificate No. 1135/2020 was issued to the respondent No. 2 while Heirship Certificate No. 333/2021 was issued to the petitioner subsequently on 23.02.2021. The respondent No. 2 preferred Review Petition No. 18/2022 seeking review of the Heirship Certificate issued to the writ petitioner. After the delay in filing the review petition was condoned, the review Court vide Order dated 17.06.2022 set aside the Heirship Certificate issued to the petitioner. From a perusal of the Order dated 17.06.2022 of the review Court and also from a perusal of the Order dated 19.05.2022 of the review Court condoning the delay in filing the review petition, it is noticed that the opposite party/writ petitioner was not present. The order also does not reflect that notice was issued to the opposite party/writ petitioner. It therefore appears that without hearing the opposite party/petitioner, the review Court had not only condoned the delay in filing the review petition but also allowed the review petition by setting aside the Heirship Certificate issued to the petitioner. Be that as it may, the issue which otherwise arises for consideration in the present proceeding is as to whether the respondent No. 1 could have issued the impugned Order dated 18.07.2022. Reliance has been placed upon Section 10(1)(b)(i) of the Act of 2004 for issuing the impugned order. The said provision may be abstracted hereunder for ready perusal:-

“CHAPTER-III

FUNCTIONS OF COMMISSION

(1) Subject to the provisions of this Act, the Commission shall perform all or any of the following functions, namely:-

a) to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws and recommend steps to be taken by the State Government for effective implementation of such safeguards;

b) to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation;

c) to take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

d) to look into complaints and take suo moto notice of matters relating to-

(i) deprivation or women's rights;”

[11.] From the above abstract, what can be seen is that the Commission can look into a complaint or take *suo moto* notice of matters relating to deprivation of women's rights. However, in the present case, the respondent No. 2 is no doubt a women but the claim that has been made is in respect of a certain landed property with building standing thereon, which is said to have belonged to Late Smt. Lalrinthangi i.e., the grandmother of the respondent No. 2 and the mother of the writ petitioner. On the basis of the applications made, the Civil Court had granted two

separate Heirship Certificate for the said property i.e., one to the respondent No. 2 and the other to the petitioner. Heirship Certificate was firstly granted to the respondent No. 2 and subsequently, to the writ petitioner separately for the same property. Upon the filing of a review petition by the respondent No. 2 against the Heirship Certificate granted to the petitioner, the same was allowed and the Heirship Certificate granted to the writ petitioner came to be cancelled. On the strength of the Heirship Certificate granted to the respondent No. 2, the respondent No. 2 has made a claim over the said property and she approached the respondent No. 1 by filing a complaint. However, as already stated earlier, a perusal of the nature of the complaint would go to show that the dispute is over the property left behind by Smt. Lalrinthangi and the same is a property dispute and a dispute of a civil nature. A right over the property is said to have been acquired by the respondent No. 2 by virtue of the Heirship Certificate granted to her by the Civil Court. However, the same by itself may not be sufficient to enable her to take possession of the property in question. For that purpose, a recourse to a legal process as permissible in law will have to be taken. Therefore, the issue is not in the nature of deprivation of women's right but rather involves a rival claim between two parties over the property in question. The same will have to be dealt with by a competent Court in an appropriate proceeding as permissible in law.

[12.] It may further be noticed that as per Section 10(3)(a) of the Act of 2004, on any investigation mentioned in clause (a) or sub-clauses (i) and (ii) of clause (d) of

sub-section (1) being completed, the Commission while taking up the matter with the State Government or the appropriate authority under clause (c) or clause (d) of sub-section (1), may recommend to the State Government or the appropriate authority, as the case may be, to institute legal proceeding or prosecution in the matter and may also recommend to the State Government or to the appropriate authority to appoint a counsel or a special prosecutor for the conduct of any such legal proceedings or prosecution, and the State Government on being satisfied may appoint a counsel or a special prosecution. Therefore, this provision also goes to show that the Commission does not make its own decision but can make appropriate recommendations to the State Government or the appropriate authority for further action. As already stated, in the present case, the matter relates to a claim over the property by the rival parties and therefore, the same will have to be adjudicated before the appropriate forum through appropriate proceedings.

[13.] In view of above, the impugned Order dated 18.07.2022 passed by the respondent No. 1 is found to be unsustainable in law and accordingly, the same is set aside. It is left open to the parties to approach the appropriate forum through appropriate proceeding to mitigate their grievances in respect of the property in question.

JUDGE

Comparing Assistant