

GAHC020003932022



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

Case No. : WP(C)/146/2022

SHRI. R. LONGSHITHUNG YANTHAN
S/O RHAMOMO, LAKHUTI VILLAGE,
P.STATION - BHANDARI, WOKHA, NAGALAND,

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA

2:THE COMMISSIONER OF NAGALAND

NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER

WOKHA
NAGALAND

4:THE ADDITIONAL DEPUTY COMMISSIONER

BHANDARI
WOKHA
NAGALAN

Advocate for the Petitioner : S. TEMJEN

Advocate for the Respondent : E. Thiba Phom, Government Advocate,
Nagaland

Date of judgment : 13.10.2023

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT AND ORDER

Date :13.10.2023

(Mridul Kumar Kalita, J)

1. Heard Mr. S. Temjen, learned counsel for the petitioner. Also heard Mr. E. Thiba Phom, learned Senior Government Advocate.

2. This writ petition under Article 226 of Constitution of India has been filed by the petitioner Shri R. Longshithung Yanthan praying for issuance of a writ in the nature of certiorari/mandamus or any other appropriate writ or order or direction of like nature against the respondents.

3. The facts relevant for consideration of the instant writ petition, as averred in the writ petition, in brief, are as follows:

(i) That the petitioner was allotted the plot of land located at Tchupokphen Colony Bhandari Town measuring an area of 80 feet X 80 feet, by site permit no. 38 dated 16.10.1978, issued by the office of Additional Deputy Commissioner, Bhandari, Nagaland and that since the date of allocation the petitioner has been possessing the said land without any

interruption from any corner.

(ii) That adjacent to the petitioner's land there was an approach road for public since long time, however, on 04.08.2021, four intruders blocked the said road and the petitioner was forcefully asked to give away a portion of his land without following due process of law.

(iii) It is also alleged that one Mhonchumo Patton has encroached the land which was allocated to the present petitioner by the aforementioned site permit and over which petitioner was having peaceful possession since a very long time. It is also alleged that in the process the Retaining RCC wall of the petitioner's land was also damaged.

4. Being aggrieved by the illegal activities of the intruders who encroached into the land of the petitioner, he submitted a representation on 06.08.2021 before the Additional Deputy Commissioner, Bhandari, Wokha, Nagaland requesting the Additional Deputy Commissioner to take necessary action in view of the encroachment made by four persons named in the said representation.

5. Learned counsel for the petitioner has submitted that after filing representation on 06.08.2021, the petitioner had filed four more representations, the last one on 15.06.2022, however, the respondent authorities have taken no steps to prevent the illegal activities of the encroachers neither they have disposed of the representation filed by present petitioner.

6. Learned counsel for the petitioner has also submitted that even if the land of the petitioner is required by the state authorities for

construction of road, the land should have been acquired as per due process of law and before such acquisition notice ought to have been given to the present petitioner.

7. It is also submitted by learned counsel for the petitioner that only after filing of the present writ petition, one site verification was done by the respondent authorities in the absence of the present petitioner and his site permit which was issued to him way back in 1978 was also seized by the respondent authorities.

8. The learned counsel for the petitioner has submitted that his main grievance is non-consideration of the representation filed by him before the respondent no.4. Hence, it is prayed that necessary directions may be issued in view of the non-consideration of the representations filed by the present petitioner.

9. On the other hand, Mr. E. Thiba Phom, learned Senior Government Advocate appearing for the State respondents has submitted that the present writ petition is not maintainable for non-joinder of necessary parties as the petitioner has not made the persons who have allegedly encroached into the land of the petitioner of this writ petition.

10. It is also submitted by the learned Senior Government Advocate that after receipt of the representation dated 06.08.2021, the respondent authority had entrusted the Head Dobashi, Bhandari to conduct a spot verification on 08.08.2021 and after said spot verification it was found that in fact it is the petitioner who have illegally occupied and encroached the government land to the extent of 69 feet X 80 feet and to support his contention the learned Senior Government Advocate has referred to the annexure-2 to the affidavit-in-opposition filed by the respondent which is

the spot verification report submitted by Mr. T. John Kikon, Head DB to the Additional Deputy Commissioner, Bhandari on 08.08.2021.

11. I have considered the submissions made by the learned counsel for the parties and have gone through the pleadings supported by affidavit of the respective parties.

12. It appears that the main grievance of the petitioner is regarding alleged encroachment made into his land by some private persons including one Mhonchumo Patton who has also allegedly constructed a sort of house inside the said area.

13. Though the respondent no. 4 is the Administrative Head of the district where the disputed property of the petitioner is situated, however, he is not the appropriate authority to resolve a civil dispute wherein allegation is pertaining to illegal encroachment into the private land of the petitioner. The petitioner ought to have approached appropriate civil court having the jurisdiction to resolve the civil disputes between private parties in that area.

14. Moreover, it also appears that the respondent no. 4, after receipt of the representation from the present petitioner, had directed one Mr. T. John Kikon, Head DB to conduct a spot verification and on such spot verification it was found that it is in fact the present petitioner who had illegally encroached the government land beyond what was allocated to him by the site permit no. 38 dated 16.10.1978.

15. As the main grievance of the present petitioner is against private persons for alleged illegal encroachment into his land and as there is also counter allegation of illegal encroachment by the petitioner himself, this case involves disputed questions of fact which may only be adjudicated

upon after adducing of evidence by the contesting parties. Moreover, as effective alternative remedy, as discussed herein before, is available to the petitioner to readdress his grievance, this Court is of considered opinion that this is not an appropriate case for invoking writ jurisdiction of this Court under Article 226 of the Constitution of India.

16. In view of above, the said petition is hereby disposed of with an observation that the petitioner may approach appropriate alternative forum for seeking redressal of his grievance.

JUDGE

Comparing Assistant