

GAHC020006172021



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

Case No. : C. REVN/11/2021

UNITY VILLAGE COUNCIL AND ANR
REPRESENTED BY THE CHAIRMAN, SHRI HETOKA AWOMI,
S/O KHATОВI AWOMI, R/O UNITY VILLAGE, DIMAPUR, NAGALAND

2: I. ABENJAN
S/O LATE IMYU AO, SECRETARY, UNITY VILLAGE COUNCIL,
RESIDENCE OF 5TH MILE UNITY VILLAGE, DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE COMMISSIONER OF NAGALAND,
NAGALAND KOHIMA

2) THE LABOR COMMISSIONER
DEPARTMENT OF LABOR, NAGALAND KOHIMA

3) THE DEPUTY COMMISSIONER
DIMAPUR NAGALAND

4) THE EAC (SADAR)
DIMAPUR NAGALAND

5) THE DEPUTY COMMISSIONER,
CHUMUKEDIMA, NAGALAND

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 05-12-2023

Heard Mr. Joshua Sheqi, learned counsel for the petitioners and Ms. Livika, learned State counsel representing the State respondents.

2. The instant application under Article 227 of the Constitution is filed challenging the Land Holding Certificate dated 24.06.2016 issued by the Deputy Commissioner, Dimapur, as well as the Order dated 20.11.2021 issued by the Extra Assistant Commissioner (Sadar)/Assistant to the Deputy Commissioner, whereby the petitioner village was forbidden from interfering with the possession of the Labour Department and the restoration of possession to the Labour Department.

3. Upon hearing the learned counsels appearing on behalf of the parties, it appears that the petitioners herein claim rights over the land on the basis of the land being a village land and as such had sought for the possession of the said land. However, vide Order dated 21.11.2021, the Extra Assistant Commissioner (Sadar) held that the petitioner village had failed to produce any cogent and reliable evidence/documents to substantiate their claim. It was also opined that the Labour Department have been in lawful possession of the land since the year 1993 by running a Labour Welfare Centre at the said plot of land. This Court, having perused the said impugned Order dated 21.11.2021, and the challenge so made thereto by way of the instant proceedings is of the opinion that for deciding as to whether the petitioner village has rights over the land in question and therefore entitled to possession, can only be gone into in a proceeding where evidence can be led as regards the rights of the petitioner village and the corresponding rights of the Government of Nagaland over the said land to remain in possession. The impugned Order dated 21.11.2021, however cannot be said to be an order thereby declaring the rights amongst the parties. Further to that, the impugned Order mainly decided that the Labour Department has a

right to remain in possession on the ground that they have been in possession since 1993. It further appears that the said impugned Order was passed on the basis of a application filed by the petitioner village for reclaiming/possession wherein the authority concerned could have either accepted or rejected the said application but could not have, in the opinion of this Court, pass directions to unlock the gate on or before 22.11.2021 for the purpose of the Labour Department to enjoy the possession.

4. This Court had also heard the learned State counsel, Ms. Livika appearing on behalf of the Government of Nagaland who submits that at present the Labour Department of the Government of Nagaland is in possession of the land. She also submits that the petitioner village should not interfere with the possession of the Labour Department.

5. Taking into account the above facts, it is the further opinion of this Court that if the petitioner wants to regain possession of the land the same has to be done in a manner acceptable under law by filing a suit before the appropriate forum thereby seeking appropriate declarations as regards ownership over the land as well as for seeking recovery of possession. Mr. Joshua Sheqi, learned counsel appearing on behalf of the petitioner submits that he would duly advise the petitioners to do the needful.

6. Taking into account the above, this Court dispose the instant writ petition by holding that the impugned Order dated 21.11.2021 cannot be an order declaring the rights of the parties *inter se* in as much as the said impugned Order was passed in the manner conceived under law.

7. This Court, however, finds it relevant to take note that the Labour Department, Government of Nagaland, is presently in occupation of the land and under such circumstances the right of Labour Department to enjoy the possession cannot be restricted by any person/authority without due process. Under such circumstances the petitioner, if so aggrieved by the possession of the Labour Department may approach the appropriate Court seeking declaration as regards the ownership rights of the petitioners over the land, for recovery of possession as well

as temporary and permanent injunction.

8. Before parting with the record, this Court also finds it relevant to note the submission of Mr. Joshua Sheqi, the learned counsel for the petitioners herein who submits that the petitioners have also challenged the impugned Land Holding Certificate dated 24.06.2016 issued in favour of the Labour Welfare Office, Department of Labour, Government of Nagaland. As already stated hereinabove, for setting aside the Land Holding Certificate, it would require entering into the arena of disputed question of facts as well as also looking into detail evidence as regards the rights of the petitioners' village over the land in question. Under such circumstances *sans* the petitioner village proving its rights over the land, the question of setting aside the Land Holding Certificate does not arise. The petitioners, however, is granted the liberty to challenge the Land Holding Certificate if so advised in such appropriate proceedings wherein the petitioners seeks declaration, recovery of possession and injunction for which this Court had granted liberty herein above.

8. With the above the instant petition stands disposed.

Sd/-
JUDGE

Comparing Assistant