

GAHC020007292023



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

Case No. : WP(C)/324/2023

SHRI T. AKUMBA YIMCHUNGER S/O
R. TOHANBA YIMCHUNGER
R/O H.NO. C-109, WARD-16
NEW MINISTERS HILL, KOHIMA NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER
KOHIMA NAGALAND

3:THE DEPUTY COMMISSIONER AND DISTRICT MAGISTATE
NAGALAND KOHIMA

4:THE REVENUE-CUM-SETTLEMENT OFFICER
KOHIMA NAGALAND

5:THE LAND RECORDS AND SURVEY OFFICE
KOHIMA NAGALAND

Linked Case: **WP(C)/325/2023**

SHRI. P SHOKUM YIMCHUNGER
S/O R. PUNGKIU
R/OP H.NO. 127 C, WARD -16
NEW MINISTERS HILL KOHIMA NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE COMMISSIONER
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KOHIMA NAGALAND

5:THE LAND RECORDS AND SURVEY OFFICE
KOHIMA NAGALAND

For the Petitioner(s) : Nuksungtila, Aphrenuo, Mhabeni

For the Respondent(s) : Mr. E. Thiba Phom, Government Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 12-12-2023

1. Both the writ petitions are taken up together for disposal taking into account that vide an order dated 17.11.2023 passed by the Deputy Commissioner-cum-District Magistrate, Kohima, both the writ petitioners were directed to vacate the land and deliver the possession to the Department within 14 days from the date of receipt of the said order and failure to do so would invite eviction using necessary force.

2. From the records, it appears that the Petitioners in both the writ petitions claim that they are the owners of the lands in question. However, it is the case of the Petitioners that the Deputy Commissioner-cum-District Magistrate, Kohima has initiated the proceedings under the Nagaland

Eviction of Person in Unauthorized Occupation of Public Land Act, 1971 (for short "the Act of 1971") against the Petitioners which was totally misconceived inasmuch as the lands in question would not come within the ambit of Section 2(h) of the Act of 1971.

3. The learned counsel appearing on behalf of both the Petitioners submitted that pursuant to a notice issued under Section 5 of the said Act of 1971, the Petitioners have duly submitted their replies along with documents evidencing that they are the owner of the lands. However without carrying out any enquiry properly and without assigning any reasons, the impugned order dated 17.11.2023 was passed by the Deputy Commissioner-cum-District Magistrate, Kohima.

4. I have also heard Mr. E. Thiba Phom, the learned Government Advocate who submitted that the Petitioners have effective, efficacious and alternative remedy provided under the Act of 1971 by which the Petitioners can file an appeal before the Commissioner of the State of Nagaland. Further to that, the learned Government Advocate also submitted that as to whether the Petitioners have ownership over the land in question are the question which cannot be decided by this Court under Article 226 of the Constitution as it would require adjudication of facts on the basis of evidence. He further submitted that if the Petitioners are aggrieved by the impugned order, all these facts can be agitated before the Commissioner, State of Nagaland.

5. Ms. Aphrenuo, the learned counsel appearing on behalf of both the Petitioners rejoining to her earlier submissions submitted that the impugned order would show that the Petitioners have been afforded 14

days time and the period is coming to an end today and as such the relief(s) so sought for by the Petitioners are imminent and urgent.

6. This Court having perused the materials on record and taking into account the submissions made by the learned counsels for both the parties is of the opinion that as to whether the Petitioners have any right over the land or for that matter, the Petitioners have a bonafide claim over the land are questions which requires to be adjudicated on merits by taking into account evidence which this Court would not be in a position to do so. Further to that, as to whether the lands in question are public lands within the meaning of Section 2(h) of the Act of 1971 are required to be enquired into and proved in a forum wherein the adjudication of facts can be done. This Court is of the opinion that all these points which have been urged by the learned counsel for both the Petitioners can very well be urged before the Commissioner, State of Nagaland which is the Appellate Authority against any order passed under Sections 6 and 7 of the Act of 1971 more so when such authority can very well look into the question of facts.

7. Be that as it may, this Court cannot also be unmindful of the fact that the period stipulated in the eviction order dated 17.11.2023 is ending today and as such the Petitioners are required to be given certain protections.

8. In view of the above, this Court therefore disposes of both the writ petitions by this common order thereby granting the liberty to the Petitioners to approach the Commissioner, State of Nagaland in terms with Section 12 of the Act of 1971 within 15 days from today. The Petitioners

herein shall be at liberty to urge all such grounds which have been taken in the writ petitions before the Commissioner, State of Nagaland. This Court for the ends of justice further directs the parties herein to maintain status quo as regards the possession for a period of 15 days from today. The Petitioners herein would also be at liberty to file appropriate application seeking stay of operation of the impugned orders as envisaged under Section 12(iii) of the Act of 1971.

9. With above observations and directions, both the writ petitions stands disposed of.

JUDGE

Comparing Assistant