

GAHC040001042019



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

CRP No. 08 (AP)/2019

- 1. The Deputy Commissioner,**
District Lower Subansiri, Ziro
Arunachal Pradesh.
- 2. The Superintendent of Police,**
District Lower Subansiri, Ziro
Arunachal Pradesh.
- 3. The Estate Officer,**
District Lower Subansiri, Ziro
Arunachal Pradesh.
- 4. The Land Revenue & Settlement Officer,**
District Lower Subansiri, Ziro
Arunachal Pradesh.

...PETITIONERS

-VERSUS-

Smti Kago Yassung, aged 70 years
D/o Lt. Kago Tabin, Village Hija,
P.O./P.S. Ziro, District Lower Subansiri,
Arunachal Pradesh.

....RESPONDENT

Advocate for the petitioners : Mr. S. Tapin, Sr. G.A., A.P.

Advocate for the respondent : Mr. K. Taja

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Judgment & Order : 30.01.2024

JUDGMENT & ORDER

Heard Mr. S. Tapin, learned Senior Government Advocate for the State/petitioners. Also heard Mr. K. Taja, learned counsel for the respondent.

2. This is an application under Section 115 of the Code of Civil Procedure against the order dated 18.02.2019, passed by the learned Civil Judge (Senior Division) Lower Subansiri District, Ziro in Misc. Case No. 50/2018, arising out of Money Suit No. 02/2016.

3. The contention of the State/petitioners is that in the year 1952, the land called "Ziro Putu" was donated by the local people of Ziro for the purpose of establishing the government establishment and since then, the same has been under the possession and use of the government. In regards to ownership of the said land, the dispute arose in the year 2000 which led to a litigation between Old Ziro Bazar Committee and Taso Kago and Lalyang clan. Finally, vide order dated 18.10.2002, the said land has been declared to be a government land and the claims of the Old Ziro Bazar Committee and Tazo Kago and Lalyang

clan were rejected. But, in the year 2013, the plaintiff/respondent Smti Kago Yassung encroached over the said government land by way of erecting Ordinary Bamboo Type structures within the premises of switchyard area (Ziro Putu). Accordingly, the Show Cause Notice dated 29.08.2013 was issued to her as to why her structures shall not be demolished. But, in spite of receiving the Show Cause Notice, she did not submit her reply and therefore, another Notice dated 16.01.2014 was issued directing her to appear before the Additional Deputy Commissioner cum Estate Officer, Ziro on 31.01.2014. But, on failure to satisfy on the part of the respondent over her encroachment, a Final Order dated 24.01.2014 was issued by Additional Deputy Commissioner cum Estate Officer directing Smti Kago Yassung/respondent, along with other similarly situated persons, to remove their structures within 31.12.2014. But, in spite of the said order, she did not remove her structure and hence, the eviction was carried out by the Additional Deputy Commissioner cum Estate Officer on 13.07.2015. But the plaintiff/respondent neither preferred any appeal against the order dated 24.11.2014 and thus, the eviction order attained finality. However, after eviction, the plaintiff/respondent filed a Money Suit, being Money Suit No. 02/2016, before the learned Civil Judge (Senior Division), Lower Subansiri District, Ziro claiming compensation for illegal eviction against her properties.

4. The State defendants appeared accordingly and filed their Written Statement, wherein the State defendants denied the compensation claimed by the plaintiff and raised the issue of maintainability of the suit as the same is barred under Sections 19 & 20 of Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 (hereinafter referred to as "Act of 2003"). But the maintainability issue was not heard by the learned Civil Judge and

accordingly, the State defendants had to file a Misc. Case No. 50/2018 in the said Money Suit No. 02/2016, wherein the present petitioners/defendants sought for dismissal of the suit on the ground of maintainability. Accordingly, the said Misc. Case No. 50/2018 was heard by the learned Civil Judge and after hearing both the parties, the same was rejected vide impugned dated 18.02.2019, wherein the learned Court below failed to consider the ground of maintainability raised by the State defendants and rejected the same by travelling beyond the pleadings.

5. It is submitted by the learned Senior Government Advocate, Mr. S. Tapin, appearing for the State/petitioners, that the State of Arunachal Pradesh enacted a law being the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 to deal with the eviction of unauthorised occupants over the government land. The issue of encroachment and eviction thereon has to be decided by the Estate Officer appointed under Section 3 of the Act of 2003 and the Deputy Commissioner is the Appellate Authority from the order of the Estate Officer. Under the said Act of 2003, all the Additional Deputy Commissioners of the Districts were appointed as Estate Officer vide Order dated 29.03.2003 for their respective jurisdiction. Vide another Notification dated 10.08.2005, the SDOs/EACs, holding the charge of Sub Division/Circle dealing with the land related matter, were also appointed as Estate Officer for their respective jurisdiction.

6. The learned Senior Government Advocate further submitted that vide Notification dated 02.02.2009, the Old Ziro, Lower Subansiri District was created as an Administrative Centre and thereby a Circle was created for Old Ziro area.

Though the Notification was issued on 02.02.2009, but the same was never implemented by the State government and no Circle Officer was appointed. However, subsequently, an another Notification dated 25.03.2013 was issued, whereby the Old Ziro Circle was upgraded as SDO (Sub Divisional Officer) and the administrative jurisdiction of SDO headquarter were kept same as to that of the circle headquarter and subsequently, vide Order dated 18.09.2015, one Shri Mokar Riba, EAC, Lower Subansiri District was allotted with additional charge of SDO, Ziro Sub Division. Thus, the Circle Officer was never appointed and the Sub Division Officer was also appointed only on 18.09.2015. But the eviction proceeding was drawn in the year 2013 and the eviction order was finally passed on 24.11.2014 by the Estate Officer, Lower Subansiri District, Ziro. Therefore, at the relevant point of time, the matter of eviction was under the jurisdiction of Estate Officer of Lower Subansiri District as per Notification dated 29.04.2003. But the learned Court below did not consider this aspect of the case and passed the impugned order in a whimsical manner which is not tenable under the law and facts.

7. Accordingly, on being aggrieved and dissatisfied with the order passed by the learned Court below in Misc. Case No. 50/2018, the present petition has been filed by the State authorities to set aside and quash the said impugned order dated 18.02.2019, passed by the learned Civil Judge (Senior Division), Lower Subansiri District, Ziro in Misc. Case No. 50/2018.

8. The learned Senior Government Advocate further submitted that the order of eviction was passed on 24.11.2014 by the Estate officer, which was never challenged by the respondent/plaintiff and thus, it attained finality and the

jurisdiction and authority of the Estate Officer was never in dispute as the subsequent upgradation of Sub Divisional Office was given effect only on 18.09.2015 after the appointment of one Sub Divisional Officer with additional charge. Further it is submitted that the *bona fide* action taken by the Estate Officer under the Act of 2003 cannot be challenged as the same is barred under the said Act of 2003. It is further submitted that as per Sections 19 & 20 of the Act of 2003, there is a bar on the jurisdiction of the Court to entertain any suit or proceeding in respect of any eviction order passed against any unauthorised occupant and no appeal or any legal proceeding shall also lie against the State Government if any eviction is done under the good faith or as per legal procedure.

9. Sections 19 & 20 of the Act of 2003 provides as under:-

- “19. No court shall have jurisdiction to entertain any suit or proceeding in respect of—*
- (i) the eviction of any person who is in unauthorized occupation of any public premises, or*
 - (ii) the removal of any building, structure or fixture or goods, cattle or other animals from any public premises under Section 6, or*
 - (iii) the demolition of any building or other structure made or ordered to be made under Section 7, or*
 - (iv) the sealing of any erection or work or of any public premises under Section 8, or*
 - (v) the arrears of rent payable under sub-section (i) of section 10 or damages payable under sub-section (ii) or interest payable under section (iii) of that section, or*
 - (vi) the recovery of—*
 - a) costs of removal of any building structure or fixture or goods, cattle or other animals under Section 6, or*
 - b) expenses of demolition under Section 7, or*
 - c) costs awarded to the state government or corporation under sub-section (v) of Section 12 ; or*
 - d) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the state government or the corporation.*

20. No suit, prosecution or other legal proceeding shall lie against the State Government or the appellate officer or the Estate Officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder."

10. Accordingly, it is submitted that the State Government/ petitioners are protected under the Act of 2003. More so, the respondent/plaintiff never approached any appellate forum against the order of eviction which was passed in the year 2014 if the respondent was illegally evicted and thus, the order of eviction reached its finality and in the same time, the State Government is also protected under Sections 19 & 20 of the Act of 2003. But the learned Court below did not consider all these aspects of the case and passed the order arbitrarily rejecting the prayer of the present petitioners/State Government wherein the State has raised the issue of maintainability.

11. The learned counsel, Mr. K. Taja, appearing on behalf of the respondent, has submitted that the learned Court below had rightly passed the order rejecting the prayer of the petitioners/State Government, wherein they raised the issue of maintainability. It is submitted by him that the present Civil Revision Petition is liable to be dismissed for the reason that the house of the respondent was located at Kundo area and it is not the part of the public premises or government under the Ziro Putu of Old Ziro Circle. And, thus, the action taken by the Estate Officer under the provision of the Act of 2003 is illegal and arbitrary and also misused the provision of law as the Act of 2003 is not applicable in any private land or properties. The Estate Officer wrongly evicted the house and property of her private land without serving any Show Cause Notice in regard to eviction as she never received any notice from the authorities. In that context, she also applied for RTI regarding the service of

notice and as per the report of the RTI, the notice was never served on the respondent/plaintiff. Rather, the State Authorities have falsely submitted that the present respondent had put her signature on the Show Cause Notice which is not true as the respondent, being an illiterate person, cannot even put her signature and she used to put her thumb impression in any document. More so, from the report of the RTI, it clearly reveals that the Show Cause Notice was never received by her prior to her eviction from the land.

12. Further, the Estate Officer of Ziro has no jurisdiction to exercise eviction in Old Ziro Sub Division and as per Notification dated 20.07.2005, all the SDOs, EACs & COs are the Estate Officer in their respective Administrative Sub Division/Circle. That apart, as per Notification dated 02.02.2009, the CO Headquarter of Old Ziro is the Estate Officer of Old Ziro and the same was upgraded to SDO Headquarter vide Order dated 25.03.2013. But the eviction was carried out on 13.07.2015 by the Estate Officer, Hapoli/Ziro. Thus, the Estate Officer, Hapoli has exceeded his jurisdiction and has acted illegally in evicting the respondent as the CO Headquarter/SDO of Old Ziro is the Estate Officer of Old Ziro and not the Estate Officer/ADC, Hapoli. And, for this ground alone, the present Civil Revision Petition is liable to be dismissed and the learned Court below rightly rejected the prayer of the petitioners/State Government, wherein they raised the issue of maintainability and also the issue of protection under the provision of Act of 2003.

13. The learned counsel for the respondent further submitted that as per the report of the RTI, the notice was never served on the present respondent. More so, the signatures, which was obtained in the Show Cause Notice, are also

forged and from the bare eye also, it can be seen that the signatures in both the Notices are also different. And, in the same time, from the report of the RTI, it is evident that the Notice was never served on the respondent intimating her regarding the eviction order. He further submitted that even if for the argument's sake, it is admitted that no Officer was appointed in Old Ziro area, in that case also, there should have any standing order authorising him as Estate Officer to Old Ziro which was upgraded subsequently.

14. Accordingly, he submitted that the eviction was carried out most arbitrarily and even without notifying her, the Order of eviction was carried out and for which, she filed the Money Suit claiming compensation for illegal eviction and thus, the learned Court rightly passed the order rejecting the prayer of the State Government/petitioners, wherein they raised the issue of maintainability as well as protection of the Government under the proviso of Sections 19 & 20 of the Act of 2003 and hence, the present revision petition is not at all maintainable and is liable to be dismissed.

15. After hearing the submissions made by the learned counsels for both sides, I have perused all the relevant documents as well as the impugned order dated 18.02.2019, passed by the learned Civil Judge (Senior Division), Lower Subansiri District, Ziro, Arunachal Pradesh in Misc. Case No. 50/2018, arising out of Money Suit No. 02/2016.

16. The petitioners/State authorities have preferred the present Civil Revision Petition against the order of learned Court below dated 18.02.2019, passed in Misc. Case No. 50/2018, and it is contended that the learned Court below most

arbitrarily passed the order without considering the provision of Act of 2003, wherein, the State authorities are protected under the provision of Act of 2003. As per the State petitioners, the land in question is a government land which was donated by the people of Ziro Putu area in the year 1952 and since then, it is under the possession of the government. But, in the year 2013, the present respondent illegally encroached some portion of the government land and erected some temporary structures over there and for which, an order for eviction had to be passed by the Government Authorities in that regard and also served 2 (two) Show Cause Notices to the respondent. But, in spite of receiving those Notices, the respondent never appeared before the Estate Officer and accordingly, the eviction was carried out in the year 2014. And, even after the eviction order, she did not prefer any appeal and thus, the order of eviction reached its finality. Subsequently, the respondent authorities filed a Misc. Case seeking compensation against the eviction claiming it to be illegal, which is not at all maintainable.

17. On the other hand, it is the claim of the respondent that her land falls under the Ziro Kundo area and it is not the part of the Ziro Putu area which the State Government/petitioners are claiming as the government land. Her land is completely a private land which falls near the Ziro Putu area and most arbitrarily and unauthorisedly, she was evicted from her private land even without serving any Notice before the order of eviction was carried out and for which, she had to file a Money Suit against the illegal eviction claiming compensation, which is still pending before the learned Civil Judge for disposal.

18. Thus, it is seen that it is not disputed at present that the Ziro Putu area

was donated to the government and it is considered to be the government land. But the question arises as to whether the land of the present respondent, which falls under the Ziro Kundo area, is the private land or the government land. As per the submissions made by the learned counsel for the respondent, the private land of the respondent is near to the Ziro Putu area, but it is not covered under the government land as claimed by the State authorities. So, this issue has to be decided by the proper Court of forum as to whether the land claimed by the respondent is a government land or the private land.

19. Coming to the Eviction Notice issued to the respondent, it is seen that 2 (two) numbers of Show Cause Notices were annexed along with the present petition, wherein it is seen that the notices were served on the present respondent. However, it cannot be denied that the signatures put on the 2 (two) Notices are seem to be different. In the same time, it is also the claim of the respondent that after the illegal eviction, she also applied RTI, wherein it is reported that the notices for eviction were never served on her, which is annexed by the respondent in her affidavit-in-opposition. Thus, this is another aspect to be decided as to whether the eviction notice was properly served on the respondent and as to whether even after receiving the notice, she did not appear before the Estate Officer.

20. It is also the claim of the State Authorities/petitioners that the eviction order was passed in the year 2014, but the present respondent never filed any appeal against the said order of eviction if it was illegally passed. And, in pursuant to the order of eviction, the eviction was carried out on 13.07.2015 and one year later, the respondent approached the learned Civil Judge claiming

compensation alleging the eviction as illegal and arbitrary. As there is no appeal against the order of eviction dated 24.11.2014, it has already reached finality and at this stage, the respondent cannot approach any forum with the prayer for compensation and hence, the Money Suit, which is pending before the learned Civil Judge, is liable to be dismissed on the ground of non-maintainability. But, from the Orders and Notifications of the government, it is seen that all the SDOs/EACs/COs were empowered to hold the charge of Estate Officer and the Old Ziro Headquarter was notified on 02.02.2009 and the same was upgraded to SDO in the year 2013. It is the submission of the learned Senior Government Advocate that even after upgradation, the same was remain unimplemented till 18.09.2015 when there was an appointment of SDO, who was allotted the charge of Ziro Sub Division. But, from the annexures, it is seen that the upgradation was done in the year 2013 and there is no specific mention of standing order that the SDOs or COs of the Ziro/Hapoli will also be empowered to carry out the charges of SDO of Old Ziro, which is upgraded. Further, it is seen that the order of eviction was passed in the year 2014 by the ADC Hapoli/Ziro, but there is no specific notification in that regard empowering the ADC Ziro/Hapoli to be the in-charge of SDO/CO of the upgraded Ziro Sub Division.

21. Thus, from the entire submissions made by the learned counsels for both sides and also from the relevant documents produced before the Court, it is seen that there are 2-3 issues which is still disputed as to whether the land in question is a government land or private land; whether the notice of eviction was properly served to the respondent; and/or whether the Estate Officer cum Additional Deputy Commissioner, Headquarter Hapoli/Ziro, has exceeded his

jurisdiction while passing the order or carried out the eviction in the year 2015.

22. As per Sections 19 & 20 of the Act of 2003, the State Authorities are protected and no Court shall have the jurisdiction to entertain such proceeding if the eviction order is carried out lawfully. But it has to be decided by the proper Court of forum as to whether the order of eviction was lawful or it was arbitrarily carried out and hence, I find that these issues can be raised before the learned Court below wherein the respondent, as plaintiff, filed a Money Suit No. 02/2016 seeking compensation claiming her eviction as illegal.

23. In view of above, in the considered opinion of this Court, it is not felt justified to dismiss the Money Suit No. 02/2016 on the ground of maintainability at this stage and therefore, I do not find any merit in this Civil Revision Petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant