



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP(C)53(AP)2018

Shri Kaling Saro, S/o Late Tanon Saro,
Permanent Resident of Jomlo Mongku village,
PO/PS Rumgong, Siang District,
Arunachal Pradesh.

.....Petitioner

– ***VERSUS*** –

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Secretary Land Management, Govt. of Arunachal Pradesh Itanagar.
3. The Secretary, Health Family Welfare Govt. of Arunachal Pradesh, Itanagar.
4. The Director Health And Family Welfare Govt. of Arunachal Pradesh Naharlagun.
5. The Deputy Commissioner, Siang District, Pangin, Arunachal Pradesh.
6. The District Medical Officer, Siang District, Pangin, Govt. of Arunachal Pradesh.
7. The Circle Officer, Jomlo Mobuk Siang District, Arunachal Pradesh

..... Respondents.

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Advocate for petitioners : N. Danggen, O. Perme, O. Duggong,

T. Tatak, D. Taggu, Y. Karga

Advocate for Respondents : P. Pangu (G.A)

T. Tagum(SC)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Judgment & Order (Oral)

05.09.2024

Heard Ms. N. Danggen, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Govt. Advocate, for the State respondents No.1, 5 and 7 as well as Mr. T. Tagum, learned Standing Counsel, Department of Health Services, for respondents No. 3, 4 and 6.

2. Challenge made in this writ petition is to the order dated 04.08.2017, passed by the Circle Officer, Jomlo Mobuk, Siang District, whereby the complaint filed by the petitioner alleging illegal construction of permanent structure over the land of the petitioner by one Shri Tapir Tamut is held to be unfounded. The petitioner prays for a direction to the respondent authorities to acquire the land by following the due process of law and pay compensation or to vacate the land.

3. The petitioner claims to be the absolute owner of the land measuring 500 Sq.Mtr. situated at Patum (Domong) at Jomlo Mongku village, which is under

the occupation of the Department of Health Services, Govt. of Arunachal Pradesh, where Primary Health Sub Centre is established. It is contended that the land in question, was given to the Department for establishment of temporary Primary Health Sub Centre by the father of the petitioner.

4. It is contended that on 13.01.2000, the father of the petitioner had approached the Director of Health Services, Govt. of Arunachal Pradesh, by way of complaint that since the land was allowed for temporary construction of the Primary Health Sub Centre, no further construction or repair shall be made as he has already developed the area into a horticulture garden since the year 1986-87. Thereafter, the petitioner has also approached the respondent Department, on various occasions, praying consideration for appointment of his wife in the Department in lieu of compensation or to acquire the land and to pay compensation to the petitioner.

5. Ms. Danggen, learned counsel for the petitioner, submits that there is no dispute that the land in question belongs to the petitioner. Although the Department was temporarily allowed to use the land for establishment of Primary Health Sub Centre, the land has never been donated nor any acquisition proceedings have been initiated by the respondent authorities. She submits that since the ownership is not in dispute and there is no acquisition of the said land, the petitioner cannot be deprived of his property without following the due process of law. She further submits that the respondent authorities being the welfare State cannot claim adverse possession over the property of a citizen. Therefore, she submits that the respondent authorities may be directed to acquire the land by paying the appropriate compensation or return the same to

the petitioner. She has further submitted that the respondent authorities may be directed to pay lump sum compensation to the petitioner for past illegal occupation of the land by the Department.

6. In support of her submissions, Ms. Danggen, learned counsel has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Vidya Devi Vs. the State of Himachal Pradesh***, reported in ***2020 (2) SCC 569***.

7. Mr. Tagum, learned Standing Counsel, Department of Health Services, on the other hand, by referring to the Kebang decisions dated 19.03.1996, 03.06.1997 and 07.03.2004, submits that the father of the petitioner has donated the land in question for establishment of Primary Health Sub Centre. On such donation, the Department has established the Primary Health Sub Centre. He submits that in the Kebang decision dated 19.03.1996, it had decided that the land of the school area belongs to Shri Tanong Saro, the father of the petitioner; and the area where the school, RWD Department/Unit hospital are established, the father of the petitioner cannot claim the said as his personal area. However, in the event, if the land in question is vacated, the same shall be returned to the father of the petitioner and the same has been reiterated in the kebang decision of 1997. On 07.03.2004, another meeting was conducted, wherein it has been clearly decided that no private individual shall be allowed to construct any house for any purpose as it belongs to the community and have been donated for medical complex.

8. Mr. Tagum, learned Standing Counsel, submits that the father of the petitioner was also the signatory of the above 2 (two) Kebang decisions out of 3

(three) Kebang decisions. He submits that neither the father of the petitioner nor the petitioner has challenged the Kebang decisions at any point of time. Therefore, the Kebang decisions have attained its finality. He submits that once the land is donated, there is no question of acquisition or payment of any compensation and as such, the petitioner cannot claim the land in question as his father has donated the land for establishment of Primary Health Sub Centre, which is still being utilized for the purpose it was donated, in the interest of public at large.

9. Ms. Pangu, learned Govt. Advocate submits that she adopts and subscribes the submissions made by the learned Standing Counsel, Department of Health Services.

10. Due consideration has been extended to the submissions advanced by the learned counsel for the parties and have considered the materials available on record.

11. It is not disputed that the land originally belongs to the father of the petitioner, which was allowed to be used for establishment of Primary Health Sub Centre. By various Kebang decisions, it appears that the land in question shall be utilized for the purpose of establishment of Primary Health Sub Centre, which is being utilized as on date.

12. It appears that the father of the petitioner has filed a complaint before the Director, Health Services, in the year 2000 claiming back the land, on the ground that he has already developed the land for horticulture garden and to

not repair the structure of the Primary Health Sub-Centre. The petitioner, thereafter, on various occasions, has approached the respondent authorities for appointment of his wife in government service in lieu of compensation for the land in question or to acquire the land and to pay the compensation to the petitioner as the ownership of the land is not disputed.

13. On careful consideration of the Kebang decisions (Supra), it is seen that the land in question belongs to the father of the petitioner and same was given to the Health Department for establishment of Primary Health Sub Centre for the people of Jomlo Mobuk circle. In 2(two) out of 3(three) Kebang decisions, the father of the petitioner had participated, which indicates his agreement to the decisions of the Kebang. In stricto sensu, it cannot be said that the land in question was donated by the father of the petitioner for establishment of Primary Health Sub Centre but was allowed to be used temporarily. An act of participation and subscribing to the Kebang Decisions may lead to presumption of donation but such presumption cannot be ground for depriving the person of his property.

14. Ordinarily, since the father of the petitioner has participated and subscribed to the Kebang decisions, the claim for compensation of the land in question or to return it to the petitioner may not be appropriate to accept as the father of the petitioner has given the land to be utilized for the purpose of establishment of Primary Health Sub Centre which is for the interest of the people of the area at large. However, since the father of the petitioner had made a complaint not to repair the structure of the Primary Health Sub Centre, on the ground that he has developed the area for horticultural purpose and the

petitioner too approach the respondent authorities claiming compensation including seeking appointment of his wife in lieu of compensation or to revert back the land, no document is produced disclosing donation of the land legally and when the title and ownership is not disputed, I am of the considered view that petitioner cannot be deprived of his property without due process of law which would entail infringement of right to property.

15. In the case of ***Vidya Devi*** (Supra), the Hon'ble Supreme Court has considered the constitutional right under Article 300A which provides that no person shall be deprived of his property save by authority of or procedure established by law. It has held that to forcibly dispossess a person of his private property, without following the due process of law, would be violative of human right and also the constitutional right under Article 300-A of the constitution. In a democratic polity governed by rule of law, the State could not have deprived a citizen of their property without the sanction of law. The State being a welfare State governed by rule of law cannot arrogate to itself a status beyond what is provided by the constitution.

16. Although, facts of the case in ***Vidya Devi*** (Supra), is different from the present case, the proposition of law would be applicable. In that case, the authority has taken over the land without due process of law and a plea was taken by the State that since it has been in continuous possession of the land for over 42 years, it would tantamount to adverse possession. In that context, the Hon'ble Supreme Court has held that it is surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to adverse possession. The State being a welfare State, cannot be permitted to take the plea of adverse

possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens.

17. In the present case, though the father of the petitioner has allowed temporarily the land for establishment of Primary Health Sub Centre at Patum (Domong), Jomlo Mongku village, which is for the interest of the people in his area, there is nothing on record to show that same was transferred absolutely in favour of the Department except the plea of donation sought to be derived from the Kebang decisions. No doubt, the land was allowed to be utilized but on temporary basis. The father of the petitioner filed an objection not to further repair the structure of Health Sub Centre and thereafter, the petitioner has approached the authorities for compensation either in the form of appointment of his wife in the Govt. service or to pay land compensation or to return the land to the petitioner. There is no dispute to the title and ownership of the petitioner over the land in question.

18. In view of the aforesaid facts and circumstances of the present case, I am of the considered view that the petitioner has been deprived of his property. Thus, I am of the view that the petitioner is entitled to compensation of the land as the land of the petitioner has neither been acquired by following due process of law nor transferred by way of donation in accordance with law.

19. In view of the above, the respondent authorities are directed to acquire the land in question and pay compensation to petitioner in accordance with law,

if the land in question is required by the State, and/ or to revert back the land to the petitioner. The exercise as directed hereinabove shall be done within a period not later than 3 (three) months from the receipt of the copy of this order.

20. In the result, the writ petition stands allowed and disposed of in terms above. However, parties to bear their own costs.

JUDGE

Comparing Assistant