

GAHC040011342022



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

Case No. : WP(C)/329/2022

1:Nyasam Jongsam S/o Late Khomhang Jongsam,
Permanent Resident of Rangkatu Village,
PO and PS Changlang, Changlang District,
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP

Represented by the Secretary, Department of Land Management, Govt. of Arunachal Pradesh, Itanagar.

2:The Director Department of Land Management Govt. of Arunachal Pradesh
Itanagar.

3:The Deputy Commissioner Changlang District Changlang Arunachal Pradesh.

4:The Additional Deputy Commissioner cum Estate Officer Changlang District
Changlang Arunachal Pradesh

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 163/2022

1:Nyasam Jongsam S/o Late Khomhang Jongsam
Permanent Resident of Rangkatu Village

PO and PS Changlang Changlang District Arunachal Pradesh.

2: Ogam Tabing S/o Late Bitem Tabing Village Jarku

PO and PS Pasighat West Siang District Arunachal Pradesh. Pin 791102

VERSUS

1:THE STATE OF AP and 3 Ors. Represented by the Secretary Department of Land Management Govt. of Arunachal Pradesh Itanagar

2:The Director Department of Land Management Govt. of Arunachal Pradesh Itanagar

3:The Deputy Commissioner Changlang District Changlang AP

4:The Additional Deputy Commissioner cum Estate Officer Changlang Changlang District Arunachal Pradesh.

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : GA (AP)

Linked Case : WP(C)/163/2022

Nyasam Jongsam

Age: 45

Occupation :

Address:S/o Late KhomhangJongsam

Permanent Resident of Rangkatu Village

PO and PS Changlang

Changlang District

Arunachal Pradesh.

2: Ogam Tabing

Age: 30

Occupation :

Address:S/o Late Bitem Tabing

Village Jarku
PO and PS Pasighat
West Siang District
Arunachal Pradesh. Pin 791102
VERSUS

THE STATE OF AP and 3 Ors.

Age: 0

Occupation :

Address:Represented by the Secretary Department of Land Management
Govt. of Arunachal Pradesh

Itanagar

2:The Director

Age: 0

Occupation :

Address:Department of Land Management
Govt. of Arunachal Pradesh

Itanagar

3:The Deputy Commissioner

Age: 0

Occupation :

Address:Changlang
District Changlang

AP

4:The Additional Deputy Commissioner cum Estate Officer

Age: 0

Occupation :

Address:Changlang
Changlang District
Arunachal Pradesh.

Advocate for : Sunil Mow

Advocate for : GA (AP) appearing for THE STATE OF AP and 3 Ors.: Advocate ,

,

, appearing for 2,

3,

4, respectively.

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 03.09.2024

Heard Ms. S. Tsomo, learned counsel for the petitioner. Also heard Mr. D. Kamduk, learned Standing Counsel, Land Management Department, representing respondent No.1; Ms. R. Basar, learned Government Advocate, respondents No 3. and 4 as well as Mr. B. Picha, learned Standing Counsel, Rural Development, for the respondents No.5 and 6.

2. Having regard to the same factual background and the issue raised, these two writ petitions are taken-up for disposal by this common order.

3. The petitioner is aggrieved by the Notices dated 08.03.2022, 12.04.2022, issued by the Additional Deputy Commissioner-cum-Estate Officer, Changlang, whereby the petitioner has been directed to vacate and demolish the illegal structure(s) within 15(fifteen) days from the date of issue of the notice. The petitioner is also aggrieved by the Notice dated 16.09.2022, issued by the Additional Deputy Commissioner-cum-Estate Officer, Changlang, whereby the petitioner is directed to vacate the government plot illegally occupied, by removing all the illegal structures within 7(seven) days from the date of issue of the order, failing which, the eviction drive would be carried out. Although the various proceedings including the Notices by the Estate Officer as well as the Deputy Commissioner, Changlang District have been put to challenge in both the writ petitions, the notice of eviction dated 16.09.2022 issued afresh by the Additional Deputy Commissioner-cum-Estate Officer, Changlang, after various proceedings of eviction notices and upon disposal of the appeal of the petitioner is the order which has essentially been put to challenge.

4. The case, in a nutshell, projected by the petitioner is that he is in possession of a plot of land, measuring appx. 500 Sq.Mtr. since the year 2000 in the Changlang Township, Changlang District, Arunachal Pradesh. The petitioner submitted an application for allotment of the said plot of land to the Deputy Commissioner, Changlang on 22.11.2011. According to the petitioner, he has applied for temporary/provisional land allotment for the said plot of land as per *the Arunachal Pradesh (Land Settlement and Records) Act, 2000 and the Rules, 2012* made thereunder ("*Act and Rules of 2000*" in short), particularly, Section 12 and Rule 134 of the said Act and Rules. However, the respondent authorities did not consider the case of the petitioner.

5. It is the contention of the petitioner that vide Notification dated 24.05.2012, the Government has directed all the Deputy Commissioners of all the districts in the State to consider the regularization of all the government occupied lands by the private individuals. The Deputy Commissioners and other concerned officers were directed to adhere to the instructions and ensure that the regularization work is done in a time bound manner as per the *Act and Rules of 2000*.

6. It is contended that since the petitioner is in occupation of the government land since the year 2000, by virtue of the Notification dated 24.05.2012, his occupied land is to be regularized. However, instead of considering the case of the petitioner in terms of the Notification on various applications for regularization of the said land, the Additional Deputy Commissioner-cum-Estate Officer has issued the impugned Notices for eviction from time to time. The petitioner, in terms of the *Arunachal Pradesh Premises (Eviction of Unauthorized Occupants) Act, 2003* (for short "*Act of 2003*"), being

aggrieved of the illegal action of the Estate Officer by issuance of repeated notices/orders for eviction, has filed an appeal under Section 12 of the *Act of 2003* against the action/orders of the Estate Officer. Even during the pendency of the appeal, when further notices were issued, the petitioner had to approach this Court by way of a writ petition being WP(C) 99/2022. This Court, having found that the petitioner has filed an appeal under Section 12 of the *Act of 2003* and the same has not been disposed of by the authority concerned, on 15.03.2022 has disposed of the writ petition (supra), with the consent of the parties, with a direction to dispose of the appeal filed by the petitioner within a period of 1(one) month by a speaking order and in accordance with law. Accordingly, in compliance of the order of this Court dated 15.03.2022, the Deputy Commissioner, Changlang has disposed of the appeal of the petitioner by dismissing the same, on the ground that the construction undertaken by the petitioner is a clear case of encroachment over the government land/premises. Consequently, the Estate Officer was directed to proceed for removal of such encroachment by the petitioner as per the Act of 2003. Thereafter, the impugned Eviction Order dated 16.09.2022, has been passed by the Additional Deputy Commissioner-cum-Estate Officer, whereby the petitioner has been directed to vacate the government plot of land illegally occupied by him by removing all the illegal structures within 7(seven) days from the date of issue of the order, failing which eviction shall be carried out.

7. Ms. Tsomo, learned counsel for the petitioner, submits that the petitioner has occupied the said government land since the year 2000. The Government has taken a policy decision to regularize such possession/occupation of the government land by the private individuals. Vide letter dated 24.05.2012, the commissioner, Land Management, Govt. Arunachal Pradesh, directed all the

Deputy Commissioners/Addl. Deputy Commissioners in the State to adhere to such policy and to regularize the occupation of the government land by the private individuals in a time bound manner. However, the Deputy Commissioner, Changlang, has failed to adhere and act in terms of the government decision. A right has been accrued to the petitioner for regularization of his occupied government land in question as the State has taken a policy decision to that effect.

8. She submits that the respondent authorities, particularly, the Deputy Commissioner and the Additional Deputy Commissioner-cum-Estate Officer, Changlang District, instead of complying with the Government directives which has been issued in terms of the policy decision, resorted to initiate illegal orders of eviction one after another, which compelled the petitioner to approach this Court to protect the right of the petitioner for regularization of his occupied plot of land within Changlang Township. Therefore, she submits that impugned action of eviction orders and other consequential orders as well as impugned ultimate order of eviction dated 16.09.2022 passed by the Estate Officer and the Deputy Commissioner, Changlang District, may be set aside and quashed and a direction may be issued to the Deputy Commissioner, Changlang to consider the case of the petitioner and regularize the occupied plot of land of the petitioner in question, in terms of the Government policy as directed to the Deputy Commissioner vide letter dated 24.05.2012.

9. Per contra, Ms. Basar, learned Govt. Advocate appearing for the respondents No.3 and 4, submits that the petitioner has encroached the government land which has been already allotted to the Department of DRDA as fortified by Chitta Register available in the record. There is no dispute that the

petitioner has occupied the land illegally. Though the petitioner has submitted some applications, however same are not in a proper format for allotment of land. Since the petitioner has encroached over the government land, he has no right to claim for allotment of the said land. She submits that on 02.05.2012, the State cabinet has taken a serious view of the large number of cases of occupation of the government land by private individuals, State and Central Government establishment in all districts as well as in the capital complex, therefore, a decision was taken for regularization all plots occupied by the private individuals, the State and Central establishment in a time bound manner in all districts including the capital complex after proper survey and verification as per existing Acts and Rules and realization of land premium and lease rent from the date of occupation. It was also decided to revert back all the government land remaining unused under the occupation to the State government. The above policy was taken as there were large numbers of cases of occupation of the government land by private individuals. She submits that, there is nothing on record to show that the case of the petitioner is feasible for regularization in terms of the above Cabinet decision as the same was taken as a onetime measure to protect the government land.

10. Ms. Basar, learned Govt. Advocate, submits that record reveals that the land occupied by the petitioner is allotted to the DRDA, therefore, as a matter of right, the petitioner cannot claim for regularization of the said plot of land merely on the basis of the Cabinet decision, a policy decision which was taken in the interest of protecting the government land vis-a-vis the occupation by the private individuals on genuine ground over the government land as a onetime

measure. She submits that the action of the Deputy Commissioner as well as the Estate Officer in passing the impugned orders is in accordance with law as, undisputedly, the petitioner is illegally occupying the government land by constructing structure over the said land. Therefore, she submits that no relief can be granted to the petitioner.

11. Mr. Picha, learned Standing Counsel, for the respondents No.5 and 6, submits that as per Chitta Register, it reflects that an area appx. 855 Sq.Mtrs have been allotted to the DRDA for quarters. However, there is nothing on record to show that the present plot of land under the occupation of the petitioner falls under the said allotted area of the Department. The Department has communicated to the Deputy Commissioner from time to time for proper demarcation and clarification of the land allotted to the Department. However, no demarcation has been carried out as on date. He submits that the Department is not clear as to whether the land occupied by the petitioner falls under the allotted area of the Department or not.

12. Mr. Kamduk, learned Standing Counsel for the Land Management Department, submits that the policy of the State upon a decision by the State Cabinet dated 05.02.2012 was a onetime measure considering the rampant encroachment and occupation of the government land by private individuals. Therefore, the policy which was taken for a particular period as a onetime measure considering the public interest vis-a-vis the occupation/encroachment of the private individuals over the government land cannot be a basis for any individuals to claim for regularization of the illegal occupation over the government land.

13. Due consideration has been extended to the submissions advanced by the learned counsel for the parties and also perused the materials available on record.

14. Uncontrovertibly, the petitioner is in occupation of plot of land measuring appx. 500 Sq. Mtr., which is a government land. The petitioner has filed an application for regularization of the said plot of land, though it is not in a proper format.

15. The State cabinet on 02.05.2012, has taken a decision upon taking serious view of large numbers of case of occupation of the government land by the private individuals, for regularization of all the government land under occupation of private individuals, State and Central Government establishments. Pursuant thereto, the Commissioner (Land Management), Govt. of Arunachal Pradesh vide letter dated 24.05.2012 addressed to all the Deputy Commissioners and the Additional Deputy Commissioners in the State for regularization of all plots of land occupied by private individuals, the State and Central Government establishments in a time bound manner in all districts including the capital complex after proper survey and verification as per existing Acts and Rules. It is also provided that all the Deputy Commissioners/Additional Deputy Commissioners/Land Revenue and Settlement Officer to adhere to the instructions and ensure that the regularization work is done in a time bound manner as per the *Act and Rules*.

16. It is apposite to refer to the letter dated 24.05.2012 which is reproduced herein under:

"GOVERNMENT OF ARUNACHAL PRADESH DEPARTMENT OF LAND

MANAGEMENT ITANAGAR

Memo No. L.M. 102/2010

Dated Itanagar the 24th May, 2012

To,

All Deputy Commissioners Addl. Deputy Commissioners.

Arunachal Pradesh

Sub: Regularization of all Govt. land under occupation of private individuals, state and Central Govt. establishment and Cabinet decision thereof.

Sir,

A Large number of cases of occupation of Govt. land by private individuals, state and central Govt. establishment in all districts as well as in capital complex have come to the notice of the govt. The matter was reviewed by the cabinet in its meeting held on 2nd May, 2012, The cabinet have taken serious view of such a situation and directed to take following actions immediately:

1. Regularization of plots occupied by private individuals, state and central Govt. establishment in a time bound manner in all districts including capital complex after proper survey and verification as per existing Acts and Rules and realization of land premium and lease rent from the date of occupation.

2. All Govt. Land remaining unused under the occupation of central govt. agencies, corporation, central para military forces and state govt. department located in various places in the districts and outside the state be reverted back to the state Govt. which shall be taken over by the land management department.

Therefore, all Deputy Commissioners/Addl. Commissioners /Land Revenue and settlement officers are requested to adhere to above instructions and ensure that regularization work is done in a time bound manner as per the Arunachal Pradesh (Land Settlement and Records) Acts, 2000 under section 12(2).

Yours faithfully

Sd-(T. Taloh) IAS

Commissioner (Land Management)

Govt. of Arunachal Pradesh Itanagar

Memo No. L.M- 102/2010/3780

Dated Itanagar the 24th May, 2012"

17. Bare perusal of the above letter, as noted above, goes to show that the State has decided to regularize the government land occupied by the private individuals, State and Central Government establishments in a time bound manner as per the existing Act and Rules. The decision appears to have been taken as a onetime measure as there were rampant encroachment and occupation of the government land by the private individuals, State and Central establishment in all the districts as well as in the capital complex.

18. Having considered that the State had a policy in 2012, may be as a onetime measure, the authorities ought to have adhered to the policy of the State at the relevant point of time. In the present case, nothing is discernible from the record that the respondent authorities have made any endeavor to consider the case of the petitioner as per the policy of the State pursuant to the State Cabinet decision dated 02.05.2012, which was circulated vide dated 24.05.2012. At the same time, the petitioner has not been able to demonstrate any right over the said plot of land on which the petitioner is stated to be in occupation for regularization as proper survey and verification on the feasibility is required, more so, the land in question, admittedly, is a government land. It is purely the prerogative of the government whether to allot the government to any private individual or establishment or not.

19. It is noted that the allotment of the government land is governed by certain sets of procedures, which is provided under the Act and Rules. In my considered view, no individual can claim any indefeasible right for allotment of

the government land, merely on the ground that he has occupied the government land since so many years. The policy of the State, as noted above, appears to be a onetime measure to tide up the rampant encroachment/illegal occupation considering the fact situation at the relevant point of time, therefore, same cannot be a ground for an individual to claim for regularization/allotment on the basis of such policy.

20. Though the learned counsel for the petitioner has made her best effort to demonstrate that the land in question, occupied by the petitioner since the year 2000 deserves to be considered for allotment, either as a *bona fide* citizen or in terms of the policy decision of the State, such effort by the learned counsel is duly considered but only for rejection as the petitioner cannot have any indefeasible right to claim for allotment/regularization of the government land.

21. On detail consideration of the various proceedings of notices of eviction and the consequential orders of the Appellate Authority, I find that no serious infraction of required provisions of the Act and Rules have been committed by the State respondents. Thus, I am of the view that there is no ground to interfere with the proceedings undertaken by the State respondents including the impugned ultimate order dated 16.09.2022, as it appears to have followed the required provisions of the Act and Rules.

22. In view of the above discussions and conclusion made hereinabove, I am of the considered view that no interference is called for, on the impugned order of eviction proceedings by the respondent authorities as the same has been apparently issued in accordance with the provisions of the Act and Rules. Thus, no relief can be granted to the petitioner.

23. Consequently, these writ petitions stands dismissed. However, the

dismissal of the writ petitions shall not preclude the Deputy Commissioner, to consider the case of the petitioner, taking into the consideration of the fact that the case of the petitioner appears to have been not considered, when the policy of the State was in vogue.

24. Needless to observed that the consideration of the case of petitioner shall be strictly in accordance with law.

25. Both the writ petitions are dismissed and disposed of, accordingly.

JUDGE

Comparing Assistant