

GAHC040007062024



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

Case No. : WP(C)/218/2024

Dadi Rimo and 2 Ors
Son of Late Matung Rimo, resident of Shantipur Colony, PO and PS Seppa, East
Kameng District, Arunachal Pradesh 2: Nelson Rimo
Age:
Occupation :

3: Smti Nyakap Rimo
Age:
Occupation

VERSUS

The State of AP and 2 Ors
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar 2: The
Deputy Commissioner
Age: 0
Occupation :

3: The Additional Deputy Commissioner cum Estate Officer
Age: 0
Occupation

Advocate for the Petitioner : G Riba

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 03.06.2024

Heard Mr. G. Riba, learned counsel for the petitioners. Also heard Ms. G. Ete, learned Additional Senior Government Advocate for the State respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed challenging the impugned Vacation Order No. ESTATE(FPO)-01/2023-24, dated 21.05.2024, issued by the Additional Deputy Commissioner-cum-Estate Officer, Seppa whereby, the petitioner No. 1 has been directed to vacate from the public premises within 10(ten) days from the issue of the notice dated 21.05.2024 without considering the show cause reply by the petitioners dated 27.02.2024, 13.05.2024 and the representation dated 27.05.2024.

3. It is submitted by Mr. G. Riba, learned counsel for the petitioners, that the petitioners were not given any opportunity of hearing although they have filed their written reply to the show cause notice of the authority concerned. It is further submitted that the plot of land measuring 60 Sq.m., situated outside of the RCC boundary wall of Mini Secretariat, Seppa, was under the occupation of the father of the petitioner No. 1 for more than 30(thirty) years and after his death also, the petitioners are occupying the said plot of land by constructing the commercial rooms. Further, in the year 1990, the father of the petitioner No. 1 applied for allotment of the said plot of land, but due to illiteracy and

ignorance, he could not follow up the land allotment file. However, after the death of father of the petitioner No. 1, the petitioner No. 2 moved the application for the allotment of the land, but it was informed by the authority concern that the filed has been misplaced and not traceable. The petitioner No. 2 subsequently applied for fresh land allotment in the year 2020 by paying the requisite amount through treasury challan and also obtained NOC from the Department of Urban Development & Housing, Seppa, but the allotment process is still pending before the authority concern and the same is not yet disposed of. The petitioner No. 2 is also paying the requisite revenue on time in terms of electricity bill for the commercial building which is under his possession and the petitioner No. 3 also obtained the Trade license on 08.12.2014 and also paying the requisite revenue thereof. Thus, the 4(four) rooms in the said plot of land, which is constructed in the year 2002, was under the possession of the petitioners since 1992 and since then it was using for commercial purpose. But on 15.02.2024, the petitioner No. 1 received a notice from the respondent authorities and in response to that, he also submitted his written reply apprising the respondent authorities pertaining to pendency of the allotment process in the name of the petitioner No. 2. Moreover, till date the respondent authorities did not issue any legal notice to the petitioner No. 2 which is mandatorily required under the statutory provision of law. Further it is submitted that despite the submission of written reply dated 27.02.2024 & 13.05.2024 by the petitioner Nos. 1 & 2, respectively, the respondent No. 3 kept issuing the show cause notice in the form of vacation notice dated 21.05.2024 to the petitioner No. 1 for vacation of the alleged premises on or before 30.05.2024.

4. The learned counsel for the petitioner further submitted that the said commercial building lies outside the RCC boundary wall of the Mini Secretariat,

Seppa and the same does not create any hinderance to the right of way of the concerned dweller inasmuch as the same is a subject matter of private property of the petitioners, especially the petitioner No. 2 as on today.

5. Moreso, in the facts and circumstances involved in this case, the notice should have been issued under Section 7 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupant) Act, 2003 (hereinafter referred to as 'Act of 2003') instead of Section 5 of the said Act of 2003. Therefore, the entire procedure is hit by jurisdictional and procedural lapses and the same is abuse of the process of law. The authority concerned also did not comply with the proviso of Section 4 (i) (ii) (b) of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003.

6. The learned counsel for the petitioner further submitted that in spite of the response to the show cause notice by the petitioners, they were not given any chance of hearing and the order of vacation has been passed in spite of the fact that the allotment proceeding is still pending before the authority concerned and hence, the order of vacation is illegal, arbitrary and lack of procedural mechanism. Hence, the present writ petition has been filed to set aside the order of vacation and further allowing the petitioners to approach the competent Civil Court for final adjudication or redressal of their grievances.

7. In support of his submissions, the learned counsel for the petitioner also relied on a decision of this Court passed in **B. Z. Mara Vs. State of Arunachal Pradesh (2019 4 GLT 50)**.

8. In this context, Ms. G. Ete, learned Additional Government Advocate, has submitted that it is not disputed that the land in question is a government land

and is also a commercial plot of land which has been occupied by the petitioners forcibly. Prior to the order of the vacation, the show cause notice was issued to the petitioners and in response to the same, they have also filed their written objection and after complying all due procedure, the order of vacation has been passed against the petitioners, who were illegally possessing the government/commercial land which is adjacent to the Mini Secretariat, Seppa. Further it is submitted that as there is no dispute that the land in question is a government land, no formal notice is also required to be issued to the petitioners as they are considered to be the unauthorized occupant of the government land. She further submitted that after exhausting the provision under Section 4 of the Act of 2003, the vacation order was passed by the Estate Officer complying the provision under Section 5 of the said Act of 2003 and thus, there is no illegality committed by the Estate Officer/respondent authority while issuing vacation notice to the petitioners. Accordingly, she raised objection and submitted that the petition is liable to be dismissed.

9. I have given my anxious consideration to the rival contentions made by the learned counsels for both sides.

10. It is seen that the petitioners are claiming their right over the disputed plot of land since 1992 and it is stated that the father of the petitioner No. 1 was also under the occupation of the said plot of land since 1992 and thus, they are possessing the said land by erecting some commercial structures on the land since 2002. More so, during the lifetime of the father of the petitioner No. 1, he applied for allotment of the land in the year 1990, but due to illiteracy and ignorance, the matter was not followed up and subsequently the petitioner No. 2 also moved an application for allotment of the land in the year 2020. But,

during the pendency of the said process of allotment, the petitioners received a show cause notice and in response to the said show cause notice, they have also filed their written reply. However, without giving any opportunity of hearing, the respondent authority issued the vacation order dated 21.05.2024, which the petitioners have claimed as illegal and arbitrary. But, on the other hand, it is the stand of the government authorities that the notice was duly served on the petitioners and the written reply is also considered and thereafter only, complying the provision of Section 4 of the Act of 2003, the vacation order was passed by the Estate Officer complying Section 5 of the Act of 2003.

11. It is an admitted fact that the land in question is a government land which is claimed to be under the possession of the petitioners for more than 30 years, though till date there is no allotment order received from the respondent authority by the petitioners. However, it cannot be denied that the order of vacation was issued during the pendency of the allotment proceeding and it may not be justified if the petitioners were vacated from the said land during the pendency of the allotment proceeding, which has been filed by the petitioner in the year 2020 seeking allotment of the said plot of land which they are using as a commercial land for more than 30 years.

12. In view of above and also considering the entire aspects of the case, I hereby dispose of the present writ petition at the motion stage itself by directing the respondent authorities, more particularly, the respondent No. 3, not to carry out the Vacation Order dated 21.05.2024 till disposal of the allotment proceeding and, in the event, if the allotment order goes against the present petitioners, the respondent authorities will be at liberty to carry out the Vacation Order dated 21.05.2024. The authority concerned is also hereby directed to

pass the final order on the prayer for allotment made by the petitioners in accordance with law.

13. In terms of above, this writ petition stands disposed of.

JUDGE

Comparing Assistant