



Case No. : WP(C)/80/2019

VERSUS

3:THE DIRECTOR
Age: 0
Occupation

BEFORE

Date of hearing and judgement : 19/03/2024

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. G. Tarak, learned counsel for the writ petitioners. Also heard Mr. P. Taffo, learned Standing Counsel, Housing, Govt. of Arunachal Pradesh, appearing for the

respondent nos. 1 & 2 and Mr. A. Kashyap, learned counsel appearing for the respondent no. 3.

2. By filing this writ petition, the petitioners have assailed the order dated 03/09/2018 issued by the Secretary (Housing), Government of Arunachal Pradesh, Itanagar, taking over possession and ownership rights of the land measuring 9.12 acres with built up structure in favour of the department of Housing, Government of Arunachal Pradesh.

3. The facts of the case, in a nutshell, are that the writ petitioners herein claim to be the owners in possession in respect of a large plot of land measuring about 45 acres based on Land Possession Certificates (LPCs) issued by the Deputy Commissioner, Papumpare district on 11/08/2008. The LPCs are annexed to the writ petition and mentions the area of land along with proper description and boundary of the land claimed by the petitioners.

4. As the land owner, the petitioner no.1 had executed an agreement dated 17/02/2010 with the respondent no. 3 for construction of 3000 affordable houses over the aforesaid plot of land. As per the agreement, the petitioner no. 1 was to receive a sum of Rs. 12 lakhs per acre of land as premium for the land which was to be shared by the respondent no. 3 and the Housing department in the ratio of Rs. 10 lakhs per acre by the respondent no. 3 and Rs. 2 lakhs per acre by the respondent no. 1. Based on such agreement, the State Urban Development Agency (SUDA) had entered into a separate agreement dated 03/10/2010 with the respondent no. 3 herein for execution of the project at Lower Jollang (Paga Tarak) on a Public-Private Partnership (PPP) model.

5. It appears that the construction work had commenced and some of the intending purchasers had also deposited initial amount for purchasing the housing units in the project. However, at that stage, certain dispute arose pertaining to the land, as a result of which, execution of the project got derailed. Situated thus, the respondent no.1 had issued the impugned order dated 03/09/2018, the operative part of which is reproduced herein below for ready reference :-

“Now, therefore, consequent upon making the full and final payment, the possession and ownership rights of the land measuring 9.12 acres along with built up structures stands transferred to the name of department of housing, Govt. of Arunachal Pradesh.”

6. The impugned order has been assailed by the petitioners' counsel primarily on 3

(three) grounds. Firstly, that the impugned order is without jurisdiction, inasmuch as, the Secretary, Housing, Govt. of Arunachal Pradesh, does not have the power and authority to unilaterally cancel the LPC and/ or transfer the ownership right and possession of the land in favour of the Housing Department by issuing the impugned order. Secondly, the impugned order has been issued in utter violation of the principles of natural justice and thirdly, there is no privity of contract between the Housing Department and the writ petitioners and therefore, merely based on the agreement entered into by the SUDA with the respondent no.3, no action of taking over possession of the land, could have been initiated by the Department.

7. Mr. P. Taffo, learned Standing Counsel, Housing Department, Arunachal Pradesh has vehemently opposed the prayer made in the writ petition by contending that the plot of land was always under the possession of the Housing Department and, therefore, the impugned order did not change the title and possession over the land. In fact, submits Mr. Taffo, since the department was all along possessing the land, the impugned order dated 03/09/2018, according to him, was a redundant exercise and ought to have been avoided by the department. The learned departmental counsel has, however, failed to address argument on the plea that the respondent no.1 did not have the power to cancel the LPC and/ or to take over possession of the land unilaterally or pertaining to the grievance of the petitioners that the impugned order has been issued in violation of the principles of natural justice.

8. Mr. A. Kashyap, learned counsel for the respondent no. 3 has argued that it is the petitioner no.1 who has acted in utter violation of the contract agreement, inasmuch as, instead of handing over the entire plot of land measuring 45 acres, only an area of land measuring 9.12 acres had been handed over to his client for execution of the project, thus, creating major hurdles in completion of the project as per the original DPR, despite having received a sum of Rs. 93.10 lakhs from the respondent no. 3. The learned counsel for the respondent no. 3 has further submitted that there is a serious contractual dispute by and between the petitioner no. 1 and the respondent no. 3, as a result of which, a separate petition being Arbitration Petition No. 05 (AP)/ seeking an order from the Court for appointment of an Arbitrator, has been filed by his client and the same is pending disposal before this Court. Mr. Kashyap, has therefore, argued that the petitioners having acted in contravention of the terms and condition of the agreement, there is no infirmity in the action of the departmental authorities in taking over possession of the land measuring 9.12 acres,

moreso, since the petitioner no. 1 has received more than Rs. 93.10 lakhs from his client and a further amount of Rs. 20 lakhs from the SUDA, as the agreed price of the land measuring 9.12 acres. Mr. Kashyap has further argued that the petitioners had taken money from different parties with regard to the same plot of land. However, the petitioners' counsel has strongly refuted such allegation brought against his clients by the learned counsel appearing for the respondent no. 3.

9. I have considered the submissions made at the Bar and have carefully gone through the materials available on record.

10. As noted above, the plot of land measuring 45 acres appears to have been allotted to the petitioner based on the LPCs issued by the Deputy Commissioner, Papumpare District. Under the law, the Deputy Commissioner of the district is the competent authority either to issue LPC or to cancel the same. Mr. Taffo has not been able to invite the attention of this Court to any statutory provision which permits the Secretary (Housing) of the Government of Arunachal Pradesh to take over possession of the land and/ or transfer the ownership rights in contravention of the LPC standing in the name of the petitioners. Moreover, it is the admitted position of fact that the impugned order dated 03/09/2018 has been issued without serving any prior notice upon the petitioners. If that be so, this Court is left with no manner of doubt that by the impugned order dated 03/09/2018 neither the right nor the possession of the petitioners could have been taken away in respect of the 9.12 acres of land held by them based on the LPCs issued by the Deputy Commissioner, Papumpare District, that too without serving any prior notice. Therefore, the impugned order dated 03/09/2018 *qua* the writ petitioners, is held to be illegal and is accordingly quashed.

11. Notwithstanding this order, it is made clear that if the departmental authorities are of the view that the petitioners have acted in a manner which is illegal or prejudicial to the interest of the department, it would be open for them to initiate appropriate action against the petitioners, in accordance with law, by serving prior notice upon them, if so advised.

12. With the above observation, the writ petition stands disposed of.
There shall be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant