



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

Case No. : WP(C)/258/2023

1. Tashi Pujen and Anr.
S/o Lt. Tabin Pujen,
Resident of Village Yorkodom, PO Monigong and PS Tato, District Shi Yomi,
Arunachal Pradesh.

2. Shri Tagam Jenpen,
S/o Late Tapon Jenpen,
Resident of Village - Namasibo,
P.O. - Monigong
P.S. - Tato, Shi-Yomi District,
Arunachal Pradesh.

VERSUS

THE UNION OF INDIA and 8 Ors.
Represented by the Secretary, Ministry of Home Affairs, Govt. of India, North Block,
New Delhi 110001

2:the Director General
Age: 0
Occupation :
Assam Rifles
Directorate General Assam Rifles
Laitkor
Shillong 10

3:the Director General
Age: 0
Occupation :
Indo Tibetan Border Police
Block 02
CGO Complex
Lodhi Road

New Delhi 3

4:The Inspector General (ITBP)

Age: 0

Occupation :

North Eastern Frontier

AP Old Secretariat Building

Contt Area

G.S. Road

Shillong 1 Meghalaya.

5:the Inspector General (ITBP)

Age: 0

Occupation :

Khating Hill

Itanagar near Police Headquarter

Arunachal Pradesh.

6:THE STATE OF AP

Age: 0

Occupation :

Represented by its Secretary

Department of Land and Revenue

Govt. of Arunachal Pradesh

Itanagar 791111

7:the Deputy Commissioner

Age: 0

Occupation :

West Siang (now Shi Yomi) District

Aalo

Arunachal Pradesh.

8:the District Land and Revenue Settlement Officer

Age: 0

Occupation :

West Siang District

Aalo

Arunachal Pradesh.

9:the Commandant

Age: 0

Occupation :

20th BN ITBP

99/APO West Siang District

Aalo

Arunachal Pradesh

For the Petitioner(s) : Mr. D. Mazumdar, Sr. Adv.,
Mr. S.K. Deori.
For the Respondent(s) : Mr. M. Kato, DSGI.

Date of Hearing : 21.12.2023
Date of Judgment : 21.03.2024.

Before
Hon'ble Mr. Justice ROBIN PHUKAN

JUDGMENT AND ORDER (CAV)

Heard Mr. D. Mazumdar, learned Senior Counsel assisted by Mr. S.K. Deori, learned counsel for the petitioners and Mr. M. Kato, learned Deputy Solicitor General of India for the respondent Nos. 1 – 5 & 9. None appears for the rest of the respondents.

2. In this petition, under Article 226 of the Constitution of India, the petitioners namely, Shri Tashi Pujen and Shri Tagam Jenpen, have prayed for issuing the direction to the respondent authorities to disburse the land compensation/rent amount for the land in question, for the period from 1962 to till date.

3. The background facts leading to filing of the present petition is adumbrated herein below :-

“The petitioners are the representative of their respective clans i.e. Jendu Clam and Jenpen Clan. They have handed over the possession of their

land to 11th Assam Rifle (AR) in the year 1962, on being approached by the Ministry of Home Affairs for acquiring their land for the purpose of setting up of their camps and border outposts, to protect the country from the Chinese troops, who have mounted attack upon India in the year 1962. Pursuant to the said request of the Ministry of Home Affairs, a plot of land measuring 205 acres at Manigong and 105 acres at Tadadege were handed over to 11th AR for the defence purpose in the year 1962. While the land was handed over to the AR no formal procedure for acquiring the land was followed and no compensation was also paid to the affected land owners. Though the 11th AR continued their possession since the year 1962, but the formal delivery of possession was taken place only on 03.10.1989, by executing an agreement in presence of the land owners, after obtaining NOC from the land owners/GBs/ASMS of Saje tribe and they did not pay any compensation to the petitioners/owners for the land they took possession nor they paid any rent for their continued possession and usage of the land, which they have initially promised to the land owners. Thereafter, the Ministry of Home Affairs changed their strategy and adopted the policy of 'One Border One Force' and accordingly, as per direction of Ministry of Home Affairs the land of the petitioners/owners were handed over to the 20th Bn./ITBP, who have been deployed their and since then ITBP has been possessing the land till today without paying any compensation/rent, which the petitioners/land owners are legally entitle to. Thereafter, on 19.07.2022, counsel for the petitioners have issued one legal notice under Section 80 of the C.P.C. to the Secretary of Ministry of Defence and 10 others and thereafter, the Commandant of 20th Bn./ITBP has disclosed through its reply dated 25.09.2022, that they have

submitted a proposal for paying compensation for 10 acres of land in Tadadege and 15 acres of land at Manigong, which are under the occupation of the ITBP. But the petitioners/land owners are entitled to compensation/rent for the entire land measuring 205 acres at Manigong and 105 acres at Tadadege, which were formally handed over to the 11th AR for defence purpose on 20.10.1989, for the period from 1962, till the ITBP acquired 10 acres and 15 acres of land in the aforesaid areas.”

4. The respondent No. 7, the Deputy Commissioner of West Siang, Aalo, Arunachal Pradesh and the respondent No. 8, the District land & Revenue Settlement Officer, West Siang, Aalo, Arunachal Pradesh, have filed their affidavit-in-opposition, wherein it is stated that strict proof is required to substantiate the claim of the petitioners and in view of the letter of the respondent No. 9, dated 25.09.2022, the petitioners/owners are not entitle for any compensation as prayed in the writ petition.

5. It is to be noted here that respondent No.1, 2, 3, 4, 5 & 9 have failed to file their affidavit-in-opposition inspite of getting sufficient opportunities.

6. Mr. Mazumdar, learned counsel for the petitioners submits that the petitioners have handed over the possession of their land to 11th AR in the year 1962, on being approached by the Ministry of Home Affairs for acquiring the land for the purpose of setting up their camps and border outposts, to protect the country from the Chinese aggression in the year 1962 and the petitioners have handed over the land measuring 205 acres at Manigong and 105 acres at Tadadege to the 11th AR in the year 1962, but no formal procedure was followed for the same and thereafter, the AR continued their possession till

formal delivery of possession on 03.10.1989, wherein an agreement was executed in presence of land owners, after obtaining NOC from the land owners, but they did not pay any compensation to the petitioners/land owners for the land they took possession nor they paid any rent for their continued possession and usage of land, which they initially promised to the land owners. Thereafter, due to policy of the Ministry of Home Affairs the land in occupation of the AR were handed over to 20th Bn./ITBP and they are possessing the land without any compensation/rent. Mr. Mazumdar further submits that the counsel of the petitioners have issued one notice to the respondents dated 19.07.2022, under Section 80(1)(A) and (C) of the C.P.C., demanding rent amount for a period of 61 years, and pursuant to the said notice the respondent ITBP authority has submitted a reply denying the averments made in the notice, under Section 80(1)(A) and (C) of the C.P.C. Mr. Mazumdar also submits that the petitioners have also preferred one writ petition, being W.P.(C) No. 08/2021, wherein this Court was pleased to issue direction for paying compensation to the land owners, after taking a decision regarding the area of land, being occupied by the Director General of ITBP and while disposing of the said petition it appears that the compensation to be paid for acquiring the land, would not include any rent that they may be entitled to earlier period for occupation from 1962-63 onwards, however, liberty was granted to the petitioners to file afresh application and accordingly, the petitioners have approached this Court by filing the present petition, claiming rent/compensation for occupying their land by the erstwhile 11th AR and presently 20th Bn./ITBP and therefore, Mr. Mazumdar submits that the respondent authorities may be directed to ascertain the rent from 1962-63 onwards, till today, in consultation of District land and Revenue Officer and the other authorities to pay the same.

7. On the other hand, Mr. Kato, learned DSGI for the respondent Nos. 1 - 5 & 9 submits that the stand of the respondent Nos. 1 - 5 & 9, is duly reflected in the reply to the Advocate's notice, of the petitioner. Mr. Kato further submits that there is no merit in the petition and therefore, it is contended to dismiss the petition. However, Mr. Kato submits that the affidavit-in-opposition has not yet been filed by the respondent Nos. 1 - 5 & 9.

8. Though none has appeared on behalf of the respondent Nos. 7 & 8, yet, we taken note of the stand taken by them in the affidavit-in-opposition on 29.11.2022. It is stated therein that the respondent No. 9 has taken contrary stand in its reply dated 25.09.2022, to the notice under Section 80(1)(A) and (C) of the C.P.C. dated 12.10.2022, issued by the counsel for the petitioners and since there is no allegation against the respondent Nos. 7 & 8, being made by the petitioners in their petition, the adjudication has to be made between the petitioners and the respondent No. 9, as to whether the petitioners are entitled to any rent/compensation or not.

9. In view of the submissions so made by the learned counsel for both the parties, the issues to be decided by this Court are formulated as under :-

(i) Whether a plot of land measuring 205 acres at Manigong and 105 acres at Tadadege was handed over to the 11th AR for the defence purpose in the year 1962?

(ii) If so, whether the petitioners are entitled to any compensation/rent for their land being occupied earlier by the AR and presently by the ITBP?

10. I have carefully gone through the petition and the documents placed on

record. And it appears that there is no written agreement of occupation of land of the petitioners/owners by the Ministry of Home Affairs in the year 1962. It is however not in dispute that in the year 2004, as per "One Border One Force" policy of the Ministry of Home Affairs the troops of AR were withdrawn from Manigong and Tadadege and troops of ITBP were put in place and since then the land of Manigong and Tadadege are being occupied by the ITBP.

11. The petitioners have relied upon as many as 25 numbers of document to substantiate their claim and the relevant documents are discussed herein below :-

(i) Annexure No.1, a letter of the Circle Officer of Manigong, dated 06.09.1989, in respect of land acquisition for defence purpose, which indicates that the land is to be measured and an agreement is to be signed and fixing 11.09.1989, for measuring the land, near Manigong Head Quarter and fixing on 14.09.1989, for measuring land at Tadadege and requesting the GB/Public Leaders to remain present.

(ii) Annexure No.2, (at page No. 44 of the petition) an agreement on land for 11th AR for defence purpose, whereby Saji Tribes of Manigong Circle have agreed to give a plot of land measuring 205.273 acres at Manigong to AR for defence purpose.

(iii) Annexure No.2, (at page No. 46 of the petition) an agreement on land for 11th AR for defence purpose, whereby Saji Tribes of Manigong Circle agreed to give a plot of land measuring 105.268 acres to AR for establishing defence position.

(iv) Annexure No. 3, one NOC on land acquisition issued by the Circle Officer Manigong, indicating that the land owner of Saje Tribes have no objection to spare a plot of land measuring 205.273 acres of land near Manigong H.Q. and 105.268 acres of land at Tadadege for defence purpose as per deed.

(v) Annexure No.4, a certificate of formal delivery of possession of a plot of land measuring 205.273 acres at Manigong and a plot of land measuring 105.268 acres of land at Tadadege to 11th AR on 20.10.1989.

(vi) Annexure No.5, Handing/Taking of land at Along, Lekha and COBs indicating 80 acres of land at Manigong being occupied by AR since 1962 and 105 acres of land at Tadadege being occupied by the AR since 1962.

(vii) Annexure No.6, a letter dated 15.12.2008, of Deputy Commandant of 20th Bn./ITBP regarding permanent transfer of land to ITBP at Tadadege measuring 105 acres being occupied by AR in the year 1962.

(viii) Annexure No.6 (at page No. 57), a letter dated 15.12.2008, of Deputy Commandant of 20th Bn./ITBP regarding permanent transfer of land to ITBP at Tadadege measuring 100 acres being occupied by AR in the year 1962.

(ix) Annexure No.7, a letter, dated 20.04.2009, addressed to the Deputy Commissioner, West Siang, Aloo, regarding land at BOP Manigong and allotment of 80 acres to ITBP which is under the occupation of AR for more than last 50 years.

(x) Annexure No.8, a letter dated 04.09.2014, of Deputy Commissioner, West Siang, Aloo, to the Commandant of 20th Bn./ITBP for acquisition of land and payment of hiring charges, indicating that the land owners have agreed to hiring charge @ Rs. 4/- per Sq.M for the land at Manigong (33 acres) and Tadadege 426862 Sq.M.

(xi) Annexure No.10, a letter, dated 04.08.2015, of Second-in-Command of 20th Bn./ITBP to the Deputy Commissioner, West Siang, Aloo, for establishing BOP at Manigong – 33.205 acres and at Tadadege – 105.476 acres along with some other plans.

(xii) Annexure No.24, a Notice under section 80 (1)(a)(c) CPC addressed to the Secretary, Ministry of Defence, Govt. of India, New Delhi and 10 others, claiming lease rent amount for occupying the land of the petitioners for 62 years.

(xiii) Annexure No.25, reply to the notice under section 80 CPC by Commandant 20th Bn, ITBP, Aalo, west Siang District, wherein the contentions, so made in the notice have been seriously disputed.

12. A careful perusal of the documents, so placed on record, specially Annexure No. 5 & 6, gives some indication about the land belonging to the petitioners, being occupied by AR/ITBP since 1962. Besides, Annexure No. 3 & 4 also gives some indication about the areas of land, measuring 205.273 acres of land near Manigong H.Q. and 105.268 acres of land at Tadadege are being occupied by AR/ITBP. But, all these facts are being denied in the Annexure No. 25 by the Commandant 20th Bn, ITBP, Aalo, West Siang District, who is the respondent No.9 here in this petition.

13. Thus, it appears that the present writ petition involves serious disputed questions of facts and these are :-

- (i) Since when the land in question are in occupation of the Assam Rifle/ITBP ?
- (ii) What is the actual areas under the occupation of the said Forces ?

14. These are serious disputed question of facts which requires consideration of evidence and the same are not on record. In view of inadequacy of materials, which are being placed on record, this Court is unable to arrive at a concrete finding since when the land in question was under occupation of the erstwhile AR, and presently, the ITBP and what is the actual area under occupation of the erstwhile AR, and presently, the ITBP. And in such circumstances the court will not normally entertain in the exercise of its jurisdiction under [Article 226](#) of the Constitution of India.

15. However, in the case of **Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda and Ors. [1969 (3) SCC 769]** while dealing with a situation of disputed questions of fact in a writ petition Hon'ble Supreme Court held as under:

"The High Court observed that they will not determine disputed question of fact in a writ petition. But, what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under [Article 226](#) merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under [Article 226](#) the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their

determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.”

16. Here in this case, even entertaining the petition, this court is of the view that there is inadequacy of materials, to arrive at a just finding on this issue No. (i).

17. Now coming to the issue No. (ii), this Court, having considered the submissions of learned counsel for both the parties and also considering the documents place on record, is unable to arrive at a finding that since when the petitioners are entitled to any rent/compensation for the land being occupied by the erstwhile AR and presently ITBP, since no concrete finding could be arrived at on the issue No.(i). But, the fact remains that some area of land of the petitioners are being occupied, presently by the ITBP and earlier by AR in Manigong and Tadadege. And further it appears from the reply to the notice under Section 80 of the C.P.C. that the said areas are surveyed and measured by the revenue authority and the land that are being occupied by ITBP is found to be 15 acres at Manigong and 10 acres at Tadadege .

18. Under the facts and circumstances discussed herein above, this Court is inclined to dispose of this petition with following directions :-

- (i)** The respondent Nos. 7 & 8 shall conduct a joint survey with the ITBP official in Manigong and Tadadege, in presence of the petitioners, to

ascertain the actual area of land being occupied presently by ITBP and earlier by AR and further to ascertain since when the land of the petitioners were being occupied in Manigong and Tadadege.

(ii) Thereafter, to ascertain the rent/compensation which the petitioners are entitled to, for the land being occupied by the erstwhile AR and now ITBP.

(iii) This exercise has to be carried out within a period of 6 (six) months from the date of receipt of a certified copy of this judgment and order dated.

19. The petitioners shall obtain a certified copy of this judgment and order and place the same before the respondent Nos. 7, 8 & 9 and on receipt of which the respondent Nos. 7, 8 & 9 shall carry out the exercise, in presence of the petitioners, as indicated above.

20. In the result, this petition stands allowed to the extent indicated above. The parties have to bear their own cost.

JUDGE

Comparing Assistant