

GAHC040008512019

2024:GAU-AP:829



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

Case No. : WP(C)/9/2019

SHRI TANAM NACHO
S/O LT. TAPO NACHO, VILL.- NACHO, PO/PS NACHO, DIST. UPPER
SUBANSIRI, AP. MOBILE NO. 9774090274

2: SHRI TANGA NCHO
Age:
Occupation :
S/O LT. TAKO NACHO
VILLAGE NACHO
PO/PS NACHO
DIST. UPPER SUBANSIRI
AP.

3: SHRI TAYA MRA
Age:
Occupation :
S/O TAKAP MRA
VILLAGE LIMEKING
PO LIMEKING
PS NACHO
DIST. UPPER SUBANSIRI
AP

VERSUS

THE STATE OF A.P.
REPRESENTED BY THE COMMISSIONER, LAND MANAGEMENT DEPTT.
GOVT. OF AP, ITANAGAR.

2:THE DIRECTOR
Age: 0
Occupation :
LAND MANAGEMENT
GOVT. OF AP

ITANAGAR.

3:THE DEPUTY COMMISSIONER

Age: 0

Occupation :

UPPER SUBANSIRI DIST. GOVT. OF AP
DAPORIJO.

4:THE UNION OF INDIA

Age: 0

Occupation :

THROUGH THE MINISTRY OF DEFENSE
GOVT. OF INDIA
NEW DELHI.

5:THE COMMANDANT

Age: 0

Occupation :

10TH BN ITBP
KIMIN
PAPUM PARE DIST. AP

Advocate for the Petitioner : T Kumar, MrT Bayor,N Gamdik,MrT Ete,D Doilyang,P K Gour

Advocate for the Respondent : MrM Kato, DSGI
Mr. R.H. Nabam, Addl. Advocate General, AP.

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 12-09-2024

Heard Mr. T. Bayor, learned counsel for the petitioners. Also heard Mr. R.H. Nabam, learned Addl. Advocate General, Arunachal Pradesh for the respondent Nos.1, 2 & 3 and Mr. M. Kato, learned Dy. S.G.I. for the respondent Nos.4 & 5.

2. The challenge made in this Writ Petition is to the order dated 12.12.2018, passed by the Deputy Commissioner, Upper Subansiri District, Daporijo,

whereby, the claim of ownership of the petitioners over the land measuring about 8644.75 Sq. Mtrs., situated at Nacho and 14304.00 Sq. Mtrs., situated at Limeking, has been rejected as the petitioners have failed to adduce sufficient evidence/documents to prove their case of ownership which are presently under the possession of the ITBP, the respondent No.5. It is further held that the lands in question are of strategic importance and are connected to the National security.

3. The case, in brief, is that the petitioners claim that they are the owners of the land measuring about 3 (three) Acres, situated at Nacho and 4 (four) Acres situated at Limeking, in the Upper Subansiri District, which they have inherited from their forefathers from time immemorial. It is contended that without their knowledge, the State Government has illegally allotted the said land to the respondent No.5 i.e. the Commandant, ITBP vide order dated 08.02.2012, for construction of residential and non-residential buildings for thirty (30) years lease period, subject to payment of land revenue.

4. The petitioners, being aggrieved, approached this Court by filing Writ Petitions being WP(C) No.79/2016 and WP(C) No.80/2016. This Court, vide order dated 13.11.2017, disposed of both the Writ Petitions, directing the Respondent, particularly, the respondent No.3, i.e. the Deputy Commissioner, Upper Subansiri District, Daporijo to ascertain the ownership claim of the petitioners over the land measuring about 3 (three) Acres and 4 (four) Acres, situated at Nacho and Limeking, which has been allotted to the respondent No.5, by giving a chance to the petitioners of proving their claim and if they can do so, initiate necessary land acquisition process under the relevant Land Acquisition Law, so that the petitioners could get the compensation amount, they are entitled to.

5. Pursuant to the order of this Court dated 13.11.2017, the Deputy Commissioner, Upper Subansiri District, vide impugned order dated 12.12.2018 had decided the disputes against the petitioners and held the allotment of the said land to the respondent No.5, to be valid by dismissing the claims of the petitioners of the land in question. Hence, this Writ Petition.

6. Mr. T. Bayor, learned counsel for the petitioners submits that the Deputy Commissioner has failed to take into consideration of the direction of this Court vide order dated 13.11.2017, whereby this Court has clearly directed to ascertain the ownership claim of the petitioners over the land in question and to proceed to acquire the land and pay compensation to the petitioners. He submits that the Deputy Commissioner has not considered the matter in its right perspective, in as much as, the Deputy Commissioner has misdirected himself to ascertain as to whether the certificate issued by the Anchal Samiti Members (ASMs) and the other village authorities have the power to issue such ownership certificates to the petitioners. He submits that in the State of Arunachal Pradesh, the land is owned by way of inheritance and to that effect, the village authorities/Panchayati Raj Members used to issue certificate to show the proof of their ownership. There cannot be any other documents of land ownership, except the Land Possession Certificate, that may be issued by the respective Deputy Commissioners. Although, the petitioners have not obtained the Land Possession Certificate, there would not be any dispute as regards the ownership as obtaining of Land Possession Certificate is not mandatory. The land ownership in the State of Arunachal Pradesh is by way of inheritance recognised by the community traditionally to which the certificates issued by the ASMs or village authorities are sufficient proof of such ownership.

7. Mr. T. Bayor, learned counsel, further submitted that the Deputy

Commissioner has mis-directed himself by directing the officer of the Land Management Branch of his office, to ascertain as to whether the ASM/Head Gaon Burhas (HGBs) have the authority to issue the land ownership certificate to the petitioners. He further submits that by holding that the ASMs/HGBs do not have the authority to issue such land ownership certificate under the law, the Deputy Commissioner erred in law. He submits that the certificate issued by the ASMs/HGBs are not on being authorised to issue the land ownership certificate under the law but only as proof that the petitioners are the owner of the land in question.

8. Mr. T. Bayor, learned counsel, submits that the Deputy Commissioner has erred in law by holding that every piece of land falling within the State of Arunachal Pradesh belongs to the Government. He submits that in the State of Arunachal Pradesh, the lands are own either by individual or community land holding by way of inheritance. Therefore, he submits that the impugned order dated 12.12.2018 may be set aside and quashed and a direction may be issued to the respondent authorities to acquire the land of the petitioners and pay compensation appropriately, in accordance with the applicable law.

9. Mr. R.H. Nabam, learned Addl. Advocate General, Arunachal Pradesh, on the other hand, submits that the land in question have been voluntarily donated by the general public of the area in the year 1991 and 1997, for establishment of Administrative Head Quarter and by submitting a memorandum, they have requested to maintain the proper demarcation and also to award contract and supply works, appointment as Political Interpreters, Peons and Chowkidars, etc. as compensation in lieu of the said land. He submits that the land in question had been in occupation by the Assam Rifles since 1946 and no claim having been raised during such period, otherwise also, the doctrine of adverse

possession would be applied and by operation of law, the land in question become the Govt. land. The land in question having been donated to the Government by the general public of the area and otherwise also, by operation of law, become a Govt. land, therefore, the Govt. has allotted land to the Respondent No.5 for construction of residential and non-residential buildings for thirty (30) years lease period. Supporting the impugned order dated 12.12.2018, passed by the Deputy Commissioner, Upper Subansiri District, he submits that the petitioner have been given ample opportunity to establish their ownership over the land in question. However, the petitioners have failed to establish their ownership over the land in question. Therefore, the Deputy Commissioner has rightly rejected the claim of the petitioners by fair adjudication pursuant to the direction of this Court. Therefore, the present petition has no merit and is liable to be dismissed.

10. Mr. M. Kato, learned Dy. S.G.I. for the respondent Nos.4 & 5, submits that the respondent Nos.4 & 5 would have nothing to do with the dispute of title and ownership of the land and the claim of the petitioners. However, after following proper procedure of adjudication by giving opportunity to the petitioners as well as the respondent Nos.4 & 5, the Deputy Commissioner, Upper Subansiri District has rightly adjudicated the matter and rejected the claim of the petitioners, as the petitioners could not produce any materials to show that they are the owners of the land in question. The land has been allotted to the respondent Nos.4 & 5 on lease basis for construction of residential and non-residential buildings. On such allotment, the respondent Nos.4 & 5 had already deposited the lease rent to the State Government. He submits that the respondent Nos.4 & 5 have been allotted the land having a strategic importance and is connected to the National security. Due to present litigation, the strategic importance and

the national security are being undermined and the activities which are required to be undertaken are being hampered as the respondents 4 and 5 are not able to utilise the land. He submits that since the Deputy Commissioner, after fair consideration of the claims and objections of the parties has decided the matter and the petitioners having failed to show any document and other supporting evidence, either before the Deputy Commissioner or before this Court to prove ownership and title of the land in their favour, the Writ Petition may be dismissed and the respondent Nos.4 & 5 may be allowed to use the land, considering the strategic importance and the national security of the country.

11. I have considered the submissions advanced by learned counsel for the parties and also the materials available on record.

12. The petitioners have approached this Court challenging the allotment order dated 08.12.2012, whereby the land measuring about 8644.75 Sq. Mtr., situated at Nacho and 14304.00 Sq. Mtr., situated at Limeking in the Upper Subansiri District have been allotted to the respondent No.5, for construction of residential and non-residential buildings for thirty (30) years on lease, subject to payment of land revenue, claiming ownership. This Court vide order dated 13.11.2017, disposed of both the Writ Petitions (supra), with a direction to the Deputy Commissioner, Upper Subansiri District at Daporijo to ascertain the ownership claim of the petitioners over the land in question, by giving a chance to the petitioners of proving their claim and if the petitioners could do so, initiate necessary land acquisition process under the relevant Land Acquisition Law, so that the petitioners could get the compensation, to which they are entitled to. This Court also held that the ownership claim of the land in question by the petitioners is not disputed by the State respondents. Therefore, the fact that the petitioners did not claim compensation earlier, when the Assam Rifles

occupied the same, could not disentitle the petitioners from claiming compensation, if their ownership claim is substantiated by them.

13. Pursuant to the aforesaid direction of this Court, the Deputy Commissioner has heard the petitioners as well as the respondent No.5, who were represented by their respective counsels. On consideration of the respective submissions and the evidence put forward by the petitioners, the Deputy Commissioner has held that the petitioners could not adduce sufficient evidence or documents to prove their case and thereby rejected the claim of the petitioners by holding the allotment of the land to the respondent No.5 valid.

14. On perusal and careful consideration of the impugned order dated 12.12.2018, it appears that primarily, the Deputy Commissioner has proceeded to determine the claim of the petitioners over the land in question as to whether the claim of the ownership by the petitioners is supported by any document. To ascertain, it appears that the Deputy Commissioner has directed the DLRSO of his Land Management Branch Office to ascertain the ground on which the ASMs/HGBs have issued the land ownership certificate to the petitioners. The ASMs and HGBs were summoned and directed to produce documents as to whether they are authorised to issue land ownership certificate. However, there is nothing on record to show that any statements of ASMs and HGBs were recorded by the Deputy Commissioner as evidence to ascertain the claim of ownership of the petitioners. It is seen that the DLRSO has informed that there is no provision/guideline available in the Land Management Branch for issuance of land ownership certificate by the ASMs, HGBs and GBs. The HGBs and GBs of the village are only empowered to issue No Objection Certificate for issuance of Land Possession Certificate. The Deputy Commissioner appears to have simply relied on the statement of the DLRSO that the ASMs, HGBs and GBs does not

have the authority to issue the land ownership certificate, therefore, held that the certificate issued by the ASMs, HGBs and GBs cannot be accepted as a documents to establish the ownership claim by the petitioners. As noted hereinabove, there is nothing on record to show that any statement was recorded by the Deputy Commissioner as to ascertain the claim of ownership of the petitioners.

15. The Deputy Commissioner has held that under the Land Acquisition Act, 1894, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Bengal Eastern Frontier Regulation, 1873, the Balipara/Tirap /Sadiya Frontier Tract Jhum Land Regulation, 1947 or the Arunachal Pradesh (Land Settlement and Records) Act, 2000, no any right of ownership on mere possession of any piece of land within the territory of Arunachal Pradesh nor any provision for getting ownership of land from anyone except the competent authority, as provided by the law, is provided.

16. Having considered the above findings, I am of the view that the Deputy Commissioner has not considered the issue in a manner it ought to have been, as the above Acts, except the Arunachal Pradesh (Land Settlement and Records) Act, 2000, does not provide for settlement of right, title or ownership of land by individual or community. The Land Acquisition Act, 1894 (now repealed) and the Rights to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Balipara/Tirap/ Sadiya Frontier Tract Jhum Land Regulation, 1947, regulates the land acquisition proceedings and payment of compensation, if the private land is required for public purpose. The Bengal Eastern Frontier Regulation, 1873, confers right of tribals in the State of Arunachal Pradesh by protecting their right over the land

in the State.

17. The Arunachal Pradesh (Land Settlement and Records) Act, 2000 which has been enacted to provide a comprehensive law for land revenue administration for the whole of the State of Arunachal Pradesh incorporating customary rights on the land and certain measures of land reforms. The "Government Land" is defined under the Act as the land acquired by the Government under Land Acquisition Act or through donation of the public for establishment of Administrative Headquarter, Government institutions and facilities under various wings of the Government or such land as defined under Section 9 of the Act.

18. Section 9 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000 provides that all lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the beds of rivers, streams, nallahs, lakes and tanks, and all canals and water courses and all standing and flowing water and rights in or over the same or appertaining thereto, which are not the property of any person or community are declared to be the property of the Government.

19. Bare reading of the above provisions clearly reflects that to be a Government land, the land has to be either acquired by the Government under the applicable Land Acquisition Law or through donation by the public for establishment of Administrative Headquarter, Government institutions, etc. The right and title over the land would be on the Government, which are not the property of any person or community. In other words, all other lands which are not the property of any individual or community, are the property of the Government.

20. In view of the above provisions clearly enshrined in the Statute, the Deputy Commissioner has, in my view, erroneously held that every piece of land falling within the State of Arunachal Pradesh belongs to the Government, which is in the teeth of the provisions of the Arunachal Pradesh (Land Settlement and Records) Act, 2000.

21. Having regard to the submissions of learned Additional Advocate General of the State that the land in question is Government land, as the General Public has donated to the Government, by relying on the letter dated 05.05.1991, by eight (8) persons addressed to the Extra Assistant Commissioner, does not show that the land has been donated. Rather, the letter clearly reflects certain demands on having knowledge that survey is being conducted to demarcate the Town Planning in Nacho. Therefore, in any circumstances, the letter submitted by the eight (8) persons to the Extra Assistant Commissioner, Nacho which has been heavily bank upon by the learned Addl. Advocate General, cannot be considered as donation of the land at Nacho.

22. The submissions of learned Additional Advocate General to the effect that the land has been under the occupation since 1946, by the Assam Rifles and no claims and objections have been raised during such period for many years, therefore, the petitioner could not have claimed ownership over the land in question as the same attracts doctrine of adverse possession and by the operation of law, lands have become the Government land, apart from donation, to which I am of the considered view that same cannot be accepted as it is settled position of law that the State as a welfare State, cannot perfect its right and title over the private land of the citizens, by claiming the doctrine of adverse possession.

23. In that context, the case of **Vidya Devi vs. State of Himachal Pradesh and**

others, reported in **(2020) 2 SCC 569**, may be profitably relied upon. The Hon'ble Supreme Court has held that to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. In a democratic polity governed by the 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, 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 the 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.

24. In the present case, although the petitioners have not obtained the Land Possession Certificate to establish the right, title and ownership of the said land, one cannot be oblivious to that fact that traditionally the citizens in this part of the country, owns the land individually or community as private property by way of inheritance, of course, subject to the recognition by the community of the right and title over that particular plot of land. The citizens in the State have the right of private/individual or community ownership of the land, even if there is no land documents, provided it is recognised by the community. Thus, the findings of the Deputy Commissioner simply based on the authority of ASMs and HGBs & GBs to issue land ownership certificate to the petitioners without consideration of the larger issue of traditional and customary rights prevalent in the State of Arunachal Pradesh, are unsustainable.

25. The petitioners' claim, in my considered view, cannot be thrown out at the threshold, without considering the right, title and ownership, which has been recognised traditionally. The Deputy Commissioner appears to have failed to

consider the aspect of the precious traditional and customary rights enjoyed by the citizens in the State like Arunachal Pradesh, which is exception to the other parts of the country. The Deputy Commissioner appears to have proceeded to determine only on the aspect of technicality, as to whether the petitioners could show any valid document. The consideration appears to have been purely on the basis of the certificates issued by the ASMs and HGBs as to their authority and in my view, has misconstrued the same.

26. Although the ASMs and HGBs may not have the authority to issue the land ownership certificate and such certificates does not confer any right, title or ownership, it would be a basis for consideration to ascertain or substantiate the claim of ownership as the right, title or ownership, is recognised traditionally which is an accepted customary practice. The Deputy Commissioner, in my view, has also wrongly proceeded by not taking the oral evidence of the village authorities including the ASMs, who could depose as to whether the petitioners' claims are correct or not, as it gains significance, in view of the recognition of the individual or community ownership of land which is prevalent and accepted custom and tradition in the State of Arunachal Pradesh.

27. In view of the forgoing discussions and having considered the matter in its entirety, I am of the view that the Deputy Commissioner, Upper Subansiri, Daporijo, has failed to determine the claims of the petitioners in its right perspective. Thus, the impugned order dated 12.12.2018, is not sustainable. Consequently, the impugned order dated 12.12.2018, is hereby set aside and quashed. However, no declaration of ownership of the land in question in favour of the petitioners can be made as the right, title and ownership would require proper determination by a competent civil court in accordance with law including the tradition and customary practice and this court while exercising the

Writ Jurisdiction under Article 226 of the Constitution, would loathe to decide the disputed question of facts. Accordingly, the petitioners are at liberty to avail the remedy and to approach the appropriate Civil Court.

28. Accordingly, the petitioners are granted liberty to file appropriate Title Suit before the jurisdictional Civil Court within a period of thirty (30) days' from today. Till the filing of the Title Suit, by the petitioners, the parties are directed to maintain status quo. It is made clear that on the expiry of thirty (30) days, the order to maintain status quo by parties hereinabove shall automatically stands vacated as it would be within the jurisdiction of the Jurisdictional Civil Court to pass order on its own merit.

29. The Writ Petition stands disposed of, accordingly. However, parties to bear their own costs.

JUDGE

Comparing Assistant