

GAHC040010102022



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

Case No. : WP(C)/290/2022

Nannu Pertin
S/o Shri Togok Pertin,
Resident of Bolung Village, PO and PS Roing, Lower Dibang Valley District,
Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Through the Secretary cum PCCF, Department of Forest and Environment, Govt. of
Arunachal Pradesh, Itanagar. 2:The Divisional Forest Officer
Age: 0
Occupation

Advocate for the Petitioner : Tony Pertin
Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

12.08.2024

1. Heard T. Pertin, learned counsel for the petitioner. Also heard Ms. G. Ete, learned Senior Government Advocate for the State of Arunachal Pradesh representing the respondent Nos. 1 and 2.
2. The present writ petition is filed by the petitioner challenging the legality and validity of an ejectment notice dated 18.08.2022 issued by the Divisional Forest Officer, Dibang Forest Division, Roing in purported exercise of power under

Section 3(3)(i) of the Arunachal Pradesh Forest (Ejectment of Unauthorized Persons from Reserve Forests) Rules, 2013 (hereinafter referred to as the Rules, 2013).

3. The basic contention of the petitioner is that it is an admitted position by the respondents that the land from where the petitioner is sought to be evicted has not yet been declared as Anchal Reserve Forest in terms of Section 3(1) of the Arunachal Pradesh Anchal Forest Reserve [Constitution and Maintenance] Act, 1975 (hereinafter referred to as the Act, 1975) and therefore, according to the learned counsel for the petitioner, such notice is liable to be set aside being issued without having any sanction and authority under law.
4. It is the further contention of the petitioner that the notice under Section 3(3)(i) of the Rules, 2013 could not be issued as the land in question did not fall under the Reserve Forest.
5. On the other hand, Ms. Ete, the learned State counsel representing the Forest Department, submits that the disputed area is an Anchal Reserve Forest, Meka as plantation area was carried out long before the establishment of Dibang Forest Division since 1970-71 and the plantation was created and maintained by Lohit Forest Division, Tezu. Therefore, when the Dibang Forest Division was created, the said plantation was handed over to the present Division and creation and maintenance of plantation was done by the Division and therefore, it cannot be said that this is not come within the Anchal Reserve Forest or that the Divisional Forest Officer will have no jurisdiction to issue such notice.
6. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
7. The Rules, 2013 was enacted in exercise of powers conferred under sub

section (C) of Section 72 of the Assam Forest Regulation (7 of 1891) as applied to Arunachal Pradesh.

8. A procedure has been prescribed under Rule 3 of the Rules, 2013 whereby the Divisional Forest Officer is made competent to eject any person who has entered into unauthorized occupation of land in a Reserved Forest or order him to vacate such unauthorized occupation forthwith.
9. Sub Rule 2 (ii) of the said Rules 2013 also prescribes of a procedure for issuance of notice and such procedure also includes a chance of the aggrieved party to reply to the show cause notice and to adduce evidence in support of such contention.
10. Sub Rule 3(i) of Rule 3 of the Rules, 2013 empowers the Divisional Forest Officer to consider the reply shown by the aggrieved person in pursuance of notice issued and evidence produced by such person in support of the same and after personal hearing if any, given, if the Divisional Forest Officer is satisfied that the land in Reserved Forests are in unauthorized occupation, the Divisional Forest Officer may make an order of ejectment.
11. In the considered opinion of this Court, the issues raised by the petitioner i.e. want of jurisdiction of the Divisional Forest Officer as well as that the land do not fall under Reserved Forest can also be considered by the Divisional Forest Officer, himself while exercising power under Sub Rule 3(i) of Rule 3 of the Rules, 2013 inasmuch as the claim of the petitioner has been disputed by the respondent/State in the present writ petition by filing affidavit.
12. The Sub Rule (iv) of Rule 3 of the Rules, 2013, provides that no Civil Court shall exercise jurisdiction in this regard and no provision of appeal also provided in this regard against the decision of the Divisional Forest Officer. That being the position, if anybody is aggrieved by a decision of the Divisional Forest Officer, cannot be made remediless and in a given case, a person aggrieved shall be at

liberty to approach this Court by filing a writ petition.

13. That being the position, this Court after considering the nature of dispute and the pleadings of the parties, is of the view that the matter should be relegated to the Divisional Forest Officer, giving a chance to the petitioner to file show cause reply and to produce evidence, if any, in his support and thereafter, the Divisional Forest Officer in exercise of power under Rule 3(3)(i) of the Rule, 2013, after giving opportunity to the petitioner to lead evidence and personal hearing, shall pass a speaking order.
14. At this stage, the learned counsel for the petitioner submits that the petitioner had already filed a show cause reply. If that be so, the petitioner is also given a liberty to make any additional reply and to lead evidence, if so advised.
15. It is also made clear that the Divisional Forest Officer, shall also consider whether the disputed land is declared as Reserved Forest or as an Anchal Reserved Forest in accordance with law and after having such satisfaction, consider the claim of the petitioner.
16. The entire exercise be carried out within in a period of three months from the date of receipt of the additional show cause reply along with the certified copy of this order to be furnished by the learned counsel for the petitioner.
17. Till such determination is made, the status of possession as regard the disputed property shall be maintained.
18. Accordingly, the present writ petition is disposed of with the aforesaid observation.

JUDGE

Comparing Assistant