

GAHC040011422022



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

Case No. : WP(C)/335/2022

Bengia Talo
S/o Lt. Bengia Talum,
Pappu Nallah, PO Naharlagun, PS Papu Hill, Papum Pare District, Arunachal Pradesh. Mob 9862638933

VERSUS

THE STATE OF AP and 6 Ors.
To be represented through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Deputy Commissioner cum Revenue Officer
Age: 0
Occupation :
Capital Complex Itanagar
Govt. of Arunachal Pradesh.

3:The Director
Age: 0
Occupation :
of Land Management
Capital Complex Itanagar
Govt. of AP

4:Aying Perme
Age: 0
Occupation :
Extra Assistant Commissioner
Capital Complex Itanagar
Govt. of AP

5:The Art of Living Society
Age: 0

Occupation :

Jully

Itanagar to be represented by Sri Brahmachar Ravider (Ashram In Charge)

PO and PS Itanagar

Papum Pare District (AP)

6:Nabam Tamar

Age: 0

Occupation :

S/o Lt. Nabam Talo of Village Jullang

PO/PS Itanagar

Papum Pare District (AP)

7:Nabam Yaja

Age: 0

Occupation :

W/o Lt. Nabam Talo of Village Jullang

PO/PS Itanagar

Papum Pare District (AP)

Advocate for the Petitioner : M Nibo,

Advocate for the Respondent : GA (AP), Dugmar Kamduk, SC (Land Management), Nikita Danggen, Oken Duggong, P Siga, Y Dagiam, K Chotten, Honi Tana Tara, G Riba, T Tsering, H Richo, T Don, G Basar

-BEFORE-

HON'BLE MR. JUSTICE KALYAN RAI SURANA

25.09.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Nibo, learned counsel for the petitioner; Ms. P. Sangeeta, learned State counsel for respondent Nos. 1 & 2; Mr. D. Kamduk, learned Standing counsel for the Land Management respondent No. 3; Ms. N. Danggen, learned counsel for respondent No. 5 and Mr. G. Riba, learned counsel for respondent Nos. 6 & 7.

2. It is noted that the respondent No. 4, though impleaded by name is

the Extra Assistant Commissioner, Capital Complex, Itanagar. As we do not find anything in this writ petition alleging malice against the respondent No. 4, the respondent No. 4 has acted in his official capacity to pass order and to implement the directions by the Deputy Commissioner. Accordingly, we request the learned State counsel to appear for respondent No. 4.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has made three fold prayers; (1) for quashing the order dated 16.06.2022 passed in the proceeding of the Art of Living Society-vs-Shri Bengia Talo and 2 others and eviction order dated 09.08.2022; (2) cancellation of LPC dated 21.09.2011 and LPC dated 22.09.2011 issued in favor of the Art of Living Society, Jullang, Itanagar (respondent No.5); and (3) the authority who issued the LPC referred above and the Magistrate who put the signature gift deed dated 23.04.2008 may be directed for necessary action as per the procedure provided under the law.

4. The case of the petitioner is that he is possessing a land measuring 600 Sq. mtrs since the year, 1990. Pursuant to the order dated 25.01.2021, in a proceeding under Section 145 Cr.P.C., the petitioner has submitted a reply on 01.02.2021. By order dated 08.02.2021, the Addl. District Magistrate, Itanagar Capital Complex in the proceeding of CEO/JUD-2282/2021/6527-31, issued under Section 145 Cr.P.C., directed the parties to maintain status-quo and the land was ordered to be inspected. In connection with the said proceeding, the respondent No.5 society had submitted a letter dated 17.02.2022.

5. Nothing has been stated in this writ petition as to what had happened to the said proceeding. However, the Deputy Commissioner, Capital

Complex, Itanagar issued a summons dated 05.05.2022, whereby petitioner was directed to appear in the proceeding and accordingly, on 09.05.2022, the petitioner appeared before the said authority and while the case was fixed on 19.05.2022, as an interim measure, all parties were directed to maintain status-quo by the Deputy Commissioner-cum-District Magistrate, Capital Complex, Itanagar. Thereafter, in the proceedings of DC-ICC-17013/13/2022 between the respondent No. 5 and the petitioner and 2 others, the Deputy Commissioner, Capital Complex, Itanagar had held that the petitioner and the other respondents in the said proceeding were occupying their respective plot of land without any authority of law and they have respectively occupied plots under the boundary of 2 LPC's which was LPC land of respondent No. 5 was without any authority of law and illegal and accordingly, the petitioner, namely, Bengia Talo and another person, namely, Lindum Tabong were directed to vacate the LPC land of the respondent No. 5 society on or before 07.08.2022, failing which eviction shall be carried out and restore to respondent No. 5 without any notice.

6. Thereafter, by an order dated 09.08.2022, the Deputy Commissioner, Capital Complex, Itanagar directed the concerned EAC to carry eviction of the encroachment done by the petitioner and the respondent No. 5 within 2 weeks.

7. The learned counsel for the petitioner has raised objection to the gift deed executed by respondent Nos. 6 & 7, by which respondent No. 5 was handed over plot of land mentioned hereinabove was illegal and could not devolve any property on the respondent No. 5. Firstly, because the said gift deed did not contain the signature of the donee and therefore, it is

not an agreement. Secondly, it is submitted that respondent No. 5 society does not have any authority to own a land in the State of Arunachal Pradesh.

8. The said grounds of challenge though should have been raised before the Civil Court, has been agitated in a writ petition. Nonetheless, the said 2 (two) grounds are not found to be of any merit. Firstly, a deed of gift cannot be held to be invalid merely because it is only executed by the donee. From the copy of gift deed which is annexed with the writ petition, it is noted that in the second page of gift deed, on behalf of respondent No. 5 society, the gift was accepted. Secondly, the learned counsel for respondent No. 5 has referred to the certificate of registration of respondent No. 5 society under the Societies Registration Act, 1860 as notified by the Societies Registration (Extension to Arunachal Pradesh) Act, 1978. Therefore, the respondent No. 5 society has been able to demonstrate that the society is registered under the law of Arunachal Pradesh. Thus, nothing is brought on record by the petitioner to show that a society registered in the State of Arunachal Pradesh is legally debarred to hold any property.

9. Referring to the provisions of the Bengal Eastern Frontier Regulation, 1973, it is submitted that under Regulation 7, it is provided that it would not be lawful for any person, not being a native to hold interest in any land in the State of Arunachal Pradesh. On that ground, there exist no merit in this writ petition because of the fact that the respondent No. 5 society is registered within the State of Arunachal Pradesh

10. It is recorded in the order dated 16.06.2022 that the counsel for the petitioner had admitted the fact that the petitioner had occupied a plot of

land without authority of law and prayed for at least 2 months time period for self vacation of the occupied land since the Monsoon/ rainy season is running. In that regard, it is submitted that in the writ petition, the petitioner has disowned the said observation of admitting to vacate the land. However, it is seen that the said statement is made in paragraph-10 of the writ petition, which is verified in the accompanying affidavit as a matter of record. But, there is no record to sustain the statement made paragraph-10 of the writ petition.

11. In Paragraph-10 (i) of the writ petition, it is stated that such statement was never stated before the said authority. The said statement is also not acceptable because of the fact that in the order dated 16.06.2022, it is specifically mentioned that such statement was made by the learned counsel. Therefore, the statement made by the learned counsel representing the petitioner, which even in this writ petition, has not denied that the learned counsel for the petitioner was not authorized to make such statement. Therefore, challenge to that part of the order dated 16.06.2022, is not found to be sustainable.

12. The next ground of challenge in the impugned order is that the under the Arunachal Pradesh (Land Settlement and Records) Act, 2000 and Arunachal Pradesh (Land Settlement and Records) Rules, 2012, the respondent No. 5 society is not entitled to hold land. In this regard, the learned Standing counsel for the Land Management Department has demonstrated that in the present case in hand it is not a government land which was allotted to the respondent No. 5 society. It is accepted that if the society is registered in the State of Arunachal Pradesh, there is no bar to allot land by the Government of Arunachal Pradesh. Moreover, it is

submitted by the learned Standing counsel for the Land Management Department for respondent Nos. 1 & 2 that in the present case in hand no land is allotted to respondent No. 5 society but the land is transferred by way of donation by respondent Nos. 6 and 7. Therefore, the applicability of the said Acts and Rules would not be on the said private land. Therefore, as the facts of this case is that the respondent No.5 society has handed over the land by way of gift deed by the respondent Nos. 6 and 7, the said Arunachal Pradesh (Land Settlement and Records) Act, 2000 and Arunachal Pradesh (Land Settlement and Records) Rules, 2012 cannot constitute a bar for the respondent No.5 society to hold the land.

13. The learned counsel for the petitioner has also questioned the LPC issued in favor of respondent No.5 society. In this regard, the learned counsel for respondent No.5 society has submitted that normally LPC is issued by the Deputy Commissioner and therefore, all applications for cancellation of LPC is entertained by the Deputy Commissioner. She submits that a writ Court should be slow in entertaining challenge of LPC for which disputed question of fact would be required to be examined. Accordingly, notwithstanding that this Court had already dealt with some aspects of land being owned by the respondent No. 5 relating to the right of a society registered in the State to own land and some observation has been made on the gift deed, but in order to maintain the judicial discipline of the forum when LPC can be assailed, the prayer No.2 made in this writ petition is referred to be entertained.

14. The last submission of the learned counsel for the petitioner is that the Deputy Commissioner, Capital Complex, Itanagar is not authorized to pass an order for eviction from a private land. In this connection, the

learned Standing counsel for the Land Management Department has referred to the provisions of Section 82 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000 read with Section 79 of the said Act which empowers the authority to exercise power under the said Act to be Revenue Courts. In connection with the submission made by the learned Standing counsel for the Land Management Department, the Court is of the considered opinion that in order to evict a person from land otherwise than in exercise of revenue jurisdiction, such power must be specifically vested.

15. Be that, as it may, there is no substantive provisions under the said Act of 2000 which empowers the Deputy Commissioner to act as a Civil Court to entertain proceedings for eviction. In this regard, it may be mentioned that the learned Standing counsel for the Land Management Department has stated that under Section 79 of the said Act, the Deputy Commissioner is vested with the power to enquire any question decided arising out for determination between the Government and any person parties to a proceeding shall be a revenue Court. The considered opinion of the Court, that it is an essential empowerment because the Deputy is a revenue Court in exercise of power as revenue Court, the said authority is required to pass order with regard to demarcation of land and also to ascertain the possession of land as the said authority is required to maintain the land records. Therefore, mere power for redressal of the dispute between the parties cannot be construed to confer power to evict. There is no specific empowerment either under Section 79 or under Section 82 of the said Act of 2000. The Court is of the considered opinion that in so far as the dispute are concerned, the revenue Court has the

power to decide as to whether there was any encroachment. However, the revenue Court is not vested with the power under the said Act. However, this issue is left to be decided in a more appropriate case.

16. Accordingly, the Court is inclined to hold that the impugned order dated 16.06.2022, by which an eviction order against the petitioner is ordered is not sustainable. However, insofar as the other findings recorded in the said order is concerned, the same does not want any interference. Therefore, upto the part when the Deputy Commissioner, Capital Complex, Itanagar, has held that the petitioner is illegally occupying the land of the respondent No. 5 society, the same is lawful. For that apart, the impugned order is sustained. Only the part where directions has been issued for eviction of the petitioner, as contained in the order dated 16.06.2022 and 09.08.2022, the same is held to be not in accordance with law. Therefore, in respect of the said part alone of the order is set aside.

17. Insofar as the other part of the impugned order, whereby the Deputy Commissioner, Capital Complex, Itanagar has directed the petitioner to maintain status-quo is affirmed. Accordingly, on violation of the status-quo by the petitioner, it would be open to the Deputy Commissioner, Capital Complex, Itanagar to take cognizance of such violation, if any, and to enforce that part of the order.

18. In view of the discussions as made above, the writ petition stands partly allowed as indicated above.

19. There shall be no order as to cost(s).

JUDGE

Comparing Assistant