



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

Case No. : WP(C)/360/2018

SHRI EZEKIEL TAYANG AND 4 ORS.
GEKU TOWN LAND OWNER COMMITTEE, S/O SHRI ATI TAYANG, VILLAGE
GEKU, DIST. UPPER SIANG, AP. MOBILE NO. 7628061641 2: SHRI JOM
PANGGENG

Age:

Occupation :

3: SHRI APAK EJING

Age:

Occupation :

4: SHRI KUT EJING

Age:

Occupation :

5: SHRI OYEM PANYANG

Age:

Occupation

VERSUS

THE STATE OF A.P. AND 5 ORS.
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR.

2:THE SECRETARY /COMMISSIONER

Age: 0

Occupation :

3:THE DIRECTOR CUM EX OFFICIO JOINT SECRETARY

Age: 0

Occupation :

4:THE DEPUTY COMMISSIONER

Age: 0

Occupation :

5:THE EXTRA ASSISTANT COMMISSIONER

Age: 0

Occupation :

6:SMTY MUMNE BOKO MODI

Age: 0

Occupation

Advocate for the Petitioner : MrD Tali

Advocate for the Respondent : MR.B Taka

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 06-06-2024

Heard Mr. T. Tapak, learned counsel for the petitioners. Also heard Mr. D. Kamduk, learned Standing Counsel, Land Management for the respondent Nos. 2 and 3, Ms. K. Wangmo, learned State counsel for the respondent nos. 1, 4 and 5 and Mr. A. Apang, learned Senior Counsel assisted by Mr. K. Meena, learned counsel for the respondent no. 6.

2. The petitioners, five in numbers, claims to be the members of the Geku Town Land Owner Committee, have filed this writ petition challenging the notification dated 06.02.2007 issued by the Secretary Land Management, Govt. of Arunachal Pradesh, by which, an area of 152.63 acres has sought to be acquired for the establishment of Geku Township, under Upper Siang District, Arunachal Pradesh. The petitioners have also challenged the land allotment given to the private individuals by the respondent authority in Geku Township, on the ground that the petitioners are the owner of the land within the Geku Township. The further grievance of the petitioner is for proper demarcation of the Geku Township area as well as for acquisition of the land of the petitioners.

3. The case of the petitioners, in brief, shorn of unnecessary details, is that

the respondent authority vide preliminary notification dated 06.02.2007 has issued for acquisition of an area of 152.63 acres for upgradation of Geku Township. Thereafter, the land acquisition proceedings got lapsed, as the said proceeding has not proceeded further by bringing the same to its logical conclusion.

4. It is contended that the respondent authority has randomly started proposals for allotment of the land within the Geku Township to the private individuals including private respondent No. 6, which includes the land of the petitioners without there being any acquisition as well as proper demarcation of the area.

5. The petitioners having come to know such action of proposal for allotment to the private individuals without there being any proper acquisition as well as the demarcation of the land, filed an application under Right to Information Act, 2005 on 23.09.2016. On receipt of the documents from the respondent authorities, they filed series of representations to the concerned authorities from time to time. However, according to the petitioner as on date, the representation of the petitioners have not been considered and dispose of. Hence this writ petition.

6. Mr. T. Tapak, learned counsel for the petitioners, submits that the petitioners are executive members of the Geku Town Land Owners Committee (private unregistered association) who are the land owners at Geku under Upper Siang District, Arunachal Pradesh. Their ownerships, titles and possessions are recognised traditionally as per the customs and usages of Adis.

7. Mr. T. Tapak, learned counsel, submits that the petitioners are aggrieved with the arbitrary exercise of official power by allotting land to the private individuals including private respondent No. 6, of the land of the petitioners without any proper demarcation and acquisition of the land for establishment of

administrative headquarter at Geku by the respondent authority. Being aggrieved with such arbitrary action of the state respondents, they have filed series of representations/ complaints for necessary action.

8. He submits that, sensing the various public complaints against the arbitrary expansion of Govt. land over the traditionally hold private land, the respondent authorities issued a preliminary Notification dated 06.02.2007 under Land Acquisition Act, 1894 for formal acquisition of the said land measuring 152.63 acres for the establishment of Geku Township. However, the said land acquisition process could not be completed and the land acquisition process has already lapsed. In the due course of time, the state respondents have illegally issued land allotment orders to some private individuals including private respondent No. 6, within the private land of the petitioners even before formal acquisition and demarcation. The said land allotments have been given merely on individual request/ application in contravention of the due process of law. Therefore, he submits that the respondent authorities may be directed to acquire the land of the petitioners and demarcate the land of Geku Township as well as to cancelled the land allotment orders issued to the private individuals including private respondent No. 6.

9. Mr. T. Tapak, learned counsel for the petitioners has relied on the following judgments of the Gauhati High Court:-

I).SarungbamJoykumar Singh &Ors. Vs. State of Manipur &Ors, reported in 2006 (3) GLT 310

II). Lohitya Pal Das Vs. State of Assam & Ors, reported in 2010 (5) GLT 560.

10. Per contra, Ms. K. Wangmo, learned State counsel for the respondent nos. 1, 4 and 5, while referring to the affidavit-in-opposition filed by the State respondents, submits that the land, wherein, the Geku Township has been established is in pursuant to the donation by the entire village community of

Geku Circle for the said purpose. The Government has established many assets including Govt. offices and institutions. The land was donated by the people way back in 2008 vide Deed of Donation dated 26.02.2008 duly signed by the Gaon Burahs and Panchayat members of the Geku area representing entire village people/community of the area. There was no objection or complaint from petitioners. However, few individuals, other than the petitioners, made some objections which was resolved by the Gaonburahs and Panchayat members of the Geku area. She submits that the petitioner is a self-claimed committee which has no legal recognition. The petitioners have failed to establish the ownership and title over the land. Assuming while not admitting, if they are the owners of some portion of the land, they ought to have claimed the same at the time of donation. She submits that except for bald assertion that they are the land owners, holding the same traditionally, there is nothing to show that they are the owners of the land.

11. Ms. K. Wangmo, learned State counsel, submits that the Geku township is established within the area earmarked for its establishment. The formal notification of the area could not be completed due to non-settlement of claims and objections raised by one 'Padun' clan for certain portion of the land and not in totality against the preliminary notification issued vide no. LM-46/2003 dated 06.02.2007 u/s 4 of the Land Acquisition Act' 1894. The said proceeding had not proceeded further on account of the donation of the land by the people of the area and the issues having been resolved by the Gaon Burahs and Panchayat members. Accordingly, allotment of land has been done within this earmarked area by following due procedures/norms, of which the allotment of the private respondent mentioned herein is one instant case. There is no illegality and it is well within the power of the Govt. to do so as the Geku township is Govt. land as per the provision of section 2 (h) of The Arunachal

Pradesh (Land Settlement And Records) Act 2000 in terms of it's definition of Government Land' as a 'deemed' donation has been made for its establishment.

12. Ms. K. Wangmo, learned State counsel, submits that due to the continuous shifting of town/camp, the govt. could not complete the land acquisition process. The setting up of the EAC, HQ at Geku at the present site has been done with the expressed consent of the public and no complaint against its establishment was received till the complaint from the petitioners is received now after a gap of almost 30-40 years.

13. Ms. K. Wangmo, learned State counsel, submits that allegation that the Govt. is making land allotment recommendations for individuals/institutions in private land randomly and indiscriminately is not true. Although the land acquisition process with respect to the said headquarter is not completed in totality, it is a fact that the present area where the township is established has been donated by the public of Geku area.

14. Ms. K. Wangmo, learned State counsel, submits that the land in question allotted to the private respondent has already been surveyed/demarcated and its map has been prepared on 03.05.2006. The allotment to individuals/institutions has been made within this earmarked area for establishment of Geku circle HQ against which is a deemed donation made by the public of Geku area. Although formal land acquisition under the erstwhile Land Acquisition Act 1894 has lapsed, it still can be considered as Govt. land as per the provision of section 2 (h) of The Arunachal Pradesh (Land Settlement And Records) Act' 2000 in terms of it's definition of 'Government Land'. Objection against the area within the heart of Geku township known as 'Slang Posuk' or 'Siang Tedum' only was raised by the Padun clan against the preliminary notification under section 4 of L.A Act 1894. Subsequently, objection against claim of the 'Padun' clan was raised by the people of Geku area stating that the entire area for establishment of Geku township was donated by the

people of Geku village and same has been resolved.

15. Ms. K. Wangmo, learned State counsel state that the hearing of claims and objections u/s 5 of the Act could not be settled. Hence, the final notification could not be issued. However, it still can be considered as Govt. land as per the provision of section 2 (h) of The Arunachal Pradesh (Land Settlement And Records) Act' 2000 in terms of It's definition of 'Government Land' as the land in question is a 'deemed donation'. This fact is evident from the letter dated 18th March 2011 submitted by the HGB, Shri Obet Panggeng and twenty eight (28) others of Geku area and also from another letter dated 28/03/2011 from Shri A. Taku, President, Panggi Welfare Society wherein they have stated that the land for establishment for Geku circle HQ has been donated by the public for its establishment. Therefore, she submits that the writ petition has no merit and same may be dismissed.

16. Mr. A. Apang, learned Senior Counsel appearing for the respondent no. 6, submits that the Govt has allotted land to the respondent no. 6 an area measuring 326 sq. mtrs. only in accordance with the provisions of applicable rules and norms. Accordingly, she is in possession of the same as per the allotment order.

17. The learned senior counsel Mr. Apang, while raising the maintainability of the writ petition, submits that the petitioners could not establish their ownership or title over the land. The claims of the petitioners as the owner of the land, where the Geku Township has been established, at best, would be a purely disputed questions of fact. Moreover, Geku administrative headquarter was established 30-40 years back and finally the land was donated way back in 2008, and the petitioners evidently started the claiming in the year 2016. Therefore, the writ petition is hit by delay and laches and as such is not maintainable.

18. Mr. Apang, learned Sr. Counsel, further submits that in the Deed of Donation, one of the signatories, at serial No. 7, namely, Shri Onak Ejing (GB), is the father of the petitioner No. 4. The father of the petitioner No. 4 along with other Gaonburahs and Panchayat members representing the entire village people/community have donated the land and now, the son seeks to claim the land which was donated long back by the people of Geku area that too without showing any right of ownership of any particular land or area. In that case, the grandson and the great grandson so on so forth would claim the same in future. Therefore, such claim cannot be entertained and the writ deserves dismissal and as such same may be dismissed.

19. Mr. D. Kamduk, learned Standing Counsel, Land Management Department, while adopting the submissions of the learned counsel for the other respondents, submits that the writ petition is deserve to be dismissed as the same is not maintainable as the issue involved is purely disputed questions of fact. The petitioners have miserably failed to demonstrate that they are the owners of the land.

20. I have considered the submissions of the learned counsel for the parties and perused the materials available on record.

21. Uncontrovertibly, the Administrative headquarter of Geku in Uppers Siang District was established long back within the area earmarked for its establishment. There is no formal acquisition of the land.

22. It is noticed that a preliminary notification was issued by the Govt. of Arunachal Pradesh on 06.02.2007 under Section 4 of Land Acquisition Act, 1894. There is no record to show that the petitioners have made any claim and objection at the appropriate time as person interested or as owners of land.

23. It transpires that Administrative Headquarter at Geku was established on the area/land measuring 152.63 acres donated to the Government for

upgradation of Extra Assistant Commissioner, Headquarter to Sub-Divisional Officer, Headquarter in the interest of public vide Deed of Donation on 26.02.2008 by the people of the area represented by the Gaonburahs and Panchayat members under the Geku circle in the district of Upper Siang. One of the signatories in the Deed of Donation is one Shri Onak Ejing, GB, who is the father of the petitioner no. 4. Since, the Geku town has been established as a Sub-Divisional Officer Headquarter, in the interest of public within the area of 152.63 acres donated by the people of the area, no claim can be made by offspring of the person who have donated the land. Needless to observed that once a land is donated, right and title of the donors gets extinguished unless some explicit terms and conditions are incorporated at the time of the donation of the land.

24. As noted above, the Government has issued a preliminary notification vide order dated 06.02.2007, the same has not been brought to logical conclusion. It is the categorical stand of the State that the said preliminary notification was in fact issued for the purpose of legalising the land donated by the people of the area. Such issuance of notification, though having not been brought to logical conclusion as the land has been donated by the people of the area, would not give any right to any person much less the petitioners herein, to based their claims for acquisition of the land unless it is clearly established that the petitioners are the owners of the land. The petitioners could not establish the right over the land. The only basis of the claim is that the Geku township has been established without acquisition of the land and proper demarcation. The petitioners have made weak attempt to claim that some portion of the land falls under the area where the Geku township is established without their being any semblance of materials. Therefore, such claims cannot be entertained and accepted. In my view, not bringing the proposed acquisition by the State authorities to legalise the donated land for establishment of the Geku township

is inconsequential as it is clearly established that the area of land 152.63 acres have been donated by the people of the Geku Circle.

25. Having regard to the grievance of the petitioners on allotment to the private individuals without their being any proper demarcation of the township and acquisition of the land as per the law, wherein, some of the land of the petitioners falls within those allotted land is also considered for rejection, inasmuch as, it is shown that the allotment of private individuals of the Government land is in accordance with the applicable rules and notifications of the State Government. Moreso, the petitioners have miserably failed to establish their ownership and title over the land and no specific schedule of area is shown except attempted bald assertion made by the learned counsel for the petitioners at the time of hearing of this petition.

26. The petitioners have failed to establish their ownership and title over any specific area of land except bald assertion that their lands have been occupied by the Government by force and no acquisition proceeding has been followed before taking over the land. As noted above, since the area of 152.63 acres have been duly donated by the people of area, question of acquisition would not arise. One could have understood, if the private land of the petitioners are taken without due process of law. In the considered view of this Court, in the State like Arunachal Pradesh, when the lands were donated to the Government for establishment of Headquarters and other Government institutions and offices, no one should be allowed to claim any right over the donated land by way of vague claims without their being any basis, else it will create a chaos in the State as the maximum of the land where Headquarters, towns and other Government establishment have been established are all on the basis of the donation of land by the people of the area under peculiar situation at the relevant point of time, as the State was under nascent stage.

27. Having considered the matters in its entirety, the issues formulated by the learned counsel for the petitioners are answered as follows:-

a) The State Govt. has initially issued preliminary notification for acquisition of the land, it has not proceeded further, however, in view of the donation of land by the people of the area, no acquisition is required.

b) Petitioners have failed to establish that they have any land within the notified area.

c) Except petitioner no. 4 whose father was one of the signatories in the Deed of donation, there is nothing on record to show that the petitioners have donated their land. However, since the people of the area donated the specific area measuring 152.63 acres of land represented by the Gaon Burahs and Panchayat members, whether the petitioners have individually donated or not is immaterial.

d) Records reveals that the area where Geku township is established has been duly notified, therefore, demarcation of area is implicit.

e). The petitioner obviously will have remedy under the law provided they can establish their right and title of the land but definitely not under writ jurisdiction.

28. In view of the above and having considered the paramountcy of the public interest, I am of the view that no claims can be entertained by this Court in exercise the extra ordinary jurisdiction of this court as issue involved, at the highest, would be purely disputed questions of fact. Moreso, same is hit by delay and laches as the petitioners evidently started their claims only in the year 2016 whereas the donation was in the year 2008 and the Geku township was established 30-40 years back.

29. The case laws relied on by the learned for the petitioners have been perused. In the case of **Sarungbam Joykumar Singh** (Supra), the issues for

consideration were as to whether the objections raised by the appellants objecting the acquisition of land on various grounds have been properly considered by the Govt. and whether any decision has been taken by the Govt. on the objections as well as nature , scope and enquiry under section 5A of the Land Acquisition Act, 1894. The appellants were the true and absolute owners of the lands. The case of **Lohitya Pal Das** (Supra), was that land measuring 10 lechas belonging to the petitioner has been utilized by the Public Works Department without formal acquisition and payment of compensation. Accordingly, on its attending facts, the orders were rendered. In the present case, the petitioners have failed to establish any right or title over any specific area of land except for bald assertion. Thus, the above case laws are not at all applicable.

30. In view of the discussions made herein above, in my considered view, since the petitioners have failed to establish any right or title over the any specific area of land within the Geku township area, no claim can be entertained and no direction for cancellation of the land allotment given to the private individuals can also be issued. Thus, the petitioners are not entitled to any relief. There is no merit in this present petition.

31. Accordingly, writ petition stands dismissed. However, no order as to costs.

However, it is made clear that dismissal of this writ petition shall not be bar to the petitioners to recourse to any other remedy as may be permissible under the law.

JUDGE

Comparing Assistant