

GAHC040011542018

2024:GAU-AP:1129



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

Case No. : WP(C)/229/2018

ITANAGAR CLUB
A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT,
1860 EXTENSION TO AP ACT, 1978 THROUGH ITS SECRETARY SHRI DOYA
BOJE

VERSUS

THE STATE OF A.P.
THROUGH THE SECRETARY ,
LAND MANAGEMENT,
GOVT. OF AP,
ITANAGAR.

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

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

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

ITANAGAR.

5:THE DEPUTY COMMISSIONER

Age: 0

Occupation :

ITANAGAR CAPITAL COMPLEX

ITANAGAR

PAPUM PARE DIST. AP.

6:THE BHARATIYA JANTA PARTY BJP

Age: 0

Occupation :

THROUGH ITS PRESIDENT OF SHRI TAPIR GAO

OPPOSITE ARUNADAYA HIGHER SECONDARY SCHOOL

VIVEK VIHAR

ITANAGAR

PO ITANAGAR

PAPUM PARE DIST.A P.

7:PRESIDENT

AP WADO KAI KARATE DO ASSOCIATION

Age: 0

Occupation :

D SECTOR

ITANAGAR

PO/PS ITANAGAR

DIST. PAPUM PARE

AP. PIN 791111

Advocate for the Petitioner : Abhai Kumar Singh, Geli Taye,D Ado,Kemo Lollen,N Rama,N Tania,T Tsering,Ninnong Ratan,K Loya,Tamo Taggu,Duge Soki

Advocate for the Respondent : Dugmar Kamduk, GA (AP),SC(Land Management)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (ORAL)

Date : 04-12-2024

Heard Mr. K. Lollen, learned counsel for the petitioner. Also heard Mr. D. Kamduk, learned standing counsel for the Land Management Department

appearing for respondent No. 1 to 4 and Ms. P. Pangu, learned Government Advocate appearing for the respondent No. 5.

2. The petitioner society by way of instituting the present proceeding has assailed the action on the part of the respondent authorities in not issuing formal order of land allotment to the petitioner society and also the subsequent action of cancellation of the approval so granted by the competent authority for effecting such allotment in favour of the petitioner society. The petitioners have also challenged the land allotment orders issued in respect of the respondent Nos. 6 & 7 herein which is contended to have been so made from the plot of land which was initially approved to be so allotted to the petitioner society.

3. As projected in the writ petition, the petitioner society was initially established with the name "Officers Club". Thereafter, it was registered on 03.06.1985 under the Societies Registration Act, 1860 in the same and style of "Officers Club". It is contended that the members of the society having resolved to change the name of the "Officers Club" as "Itanagar Club", a request came to be made before the Registrar of the Societies, Arunachal Pradesh for change of the name of the society, by maintaining its initial registration. The same was accepted and the name of the petitioner society was permitted to be so changed as "Itanagar Club". The petitioners, thereafter, submitted applications praying for allotment of land measuring 4000 Sq.Mtrs, located at D-Sector, Itanagar in its favour. The said application was considered by the jurisdictional Deputy Commissioner and thereafter, recommendation for allotment of the said plot of land came to be so made in favour of the petitioner society and the proposal was forwarded to the competent authority. The matter on being processed, the then District Land Advisory Board proceeded to grant its approval and thereafter, it is contended that the Government had also granted its

approval for allotment of the said plot of land in favour of the petitioner society. Vide communication dated 28.06.2012, the Director of Land Management Department proceeded to convey the approval of the Government for allotment of plots of land as mentioned in Annexures-A & B of the said communication to the allottees, which included the petitioner society and the jurisdictional Deputy Commissioner was required to issue the formal land allotment order, subject to the terms and conditions as set out in the said communication. The name of the petitioner society figures at serial No. 3 of Annexure-B to the said communication dated 18.06.2012 and the allotment of land so approved to be made to the petitioner society was indicated therein to be of 4000 Sq.Mtrs. at D-Sector, Itanagar.

4. It is the contention of the petitioner society that in spite of the said development and the approval being granted, no formal land allotment order came to be issued in favour of the petitioner society and the petitioner society proceeded to submit representations before the jurisdictional Deputy Commissioner praying for issuance of formal land allotment order in its favour in respect of the land so approved by the competent authorities.

5. The representation submitted by the petitioners in the matter not having evoked any response, the petitioner had approached this Court by way of instituting WP(C)No.599(AP)2017 and this Court vide order, dated 02.08.2017, was pleased to dispose of the said writ petition requiring the jurisdictional Deputy Commissioner to dispose of the representation submitted by the petitioner society by way of a speaking and reasoned order.

6. It is the further contention of the petitioner society that the said representation, however, was not disposed of and on coming to learn that the respondent authorities were contemplating to settle a portion of land which was

already approved for settlement with the petitioner society, with the respondent No. 6 the petitioners preferred RTI application to receive information in the matter.

7. The RTI information so received, revealed that the Government had already approved for allotment of Government land to the respondent No. 6 for construction of its State Head Office at Itanagar. It was also revealed that the land so allotted to the respondent No. 6 measuring 2500 Sq.Mtrs. was so done out of the 4000 Sq. Mtrs. of land already approved for allotment to the petitioner society.

8. The petitioners have further contended that with regard to the feasibility of the applications so submitted by the petitioner society and others including the respondent Nos. 6 & 7, a committee came to be constituted. It is on record that the committee in its report dated 25.09.2017 had opined that the land approved for settlement with the petitioner society and the respondent No. 6 fell within the notified area of the Itanagar Wild Life Sanctuary. In spite of the said development taking place in the matter and also it coming on record that the land proposed to be allotted to the petitioner society fell within the notified area of the Itanagar Wild Life Sanctuary, the Director, Land Management Department, Government of Arunachal Pradesh vide communication dated 27.01.2018 proceeded convey the approval of the Government for allotment of 2500 Sq. Mtrs. of land at D-Sector, near Tennis Court, I.G. Park, Itanagar to the respondent No. 6 for construction of its State Headquarter. The said land so allotted is projected to have been so made out of the 4000 Sq.Mtrs. of land proposed to be so allotted to the petitioner society. Further, the Director, Land Management Department, Government of Arunachal Pradesh vide communication dated 10.12.2018 proceed to convey the approval of the

Government for allotment of 600 Sq.Mtrs. of land at D-Sector, near I.G. Park, Itanagar for establishment of its office. In terms of the approval so granted in the matter by the Government, the jurisdictional Deputy Commissioner vide land allotment order dated 24.04.2018 proceeded to allot 2500 Sq.Mtrs. of land to the respondent No. 6 and vide land allotment order dated 19.12.2018 proceeded to allot 600 Sq.Mtrs. of land to the respondent No. 7.

9. It is the above allotment so made in respect of respondent Nos. 6 & 7 along with the cancellation of approval for allotment of land so made in respect of the petitioner society that is under challenge in the present proceedings.

10. At the outset, it is to be noted that this Court vide order, dated 21.05.2018, while issuing notice in the matter was pleased to stay the effect and operation of the land allotment orders so issued in favour of the respondent Nos. 6 & 7. The said interim order has been continued and are in existence as on today.

11. The learned counsels appearing for the parties have reiterated the facts as noticed herein above.

12. Mr. K. Lollen, learned counsel for the petitioner has, in addition, submitted that the allotment of land so made in favour of the respondent Nos. 6 & 7 were so made out of the land that was initially approved for allotment in favour of the petitioner society vide the communication dated 28.06.2012, issued by the Director, Land Management Department, Government of Arunachal Pradesh.

13. Ms. P. Pangu, learned Government Advocate by referring to the affidavit filed in the matter has contended that the approval as granted for allotment of 4000 Sq.Mtrs of land at D-Sector, Itanagar in favour of the petitioner society was subsequently cancelled along with other similar allotments/approvals of land so made, inasmuch as, the land in question fell within the area of the

Itanagar Wild Life Sanctuary. It was further contended that the allotments of land as made in respect of the respondent Nos. 6 & 7 was also so made without authority and hence, the approval for such allotment and allotment itself was also held to be void ab initio.

14. It is further contended by the learned Government Advocate that in view of the pendency of the present proceedings and interim directions passed herein, the authorities have not proceeded further to take consequential steps in pursuance to the conclusion already arrived at that the allotments of land so made in respect of the respondent Nos. 6 & 7 and the approvals granted thereto were void ab initio.

15. I have heard the learned counsel for the parties and also perused the materials available on record.

16. The materials brought on record clearly indicates that initially the Government had approved for allotment of Government land to the petitioner society. However, the jurisdictional Deputy Commissioner had not issued the land allotment order to the petitioner society in pursuance to the communication, dated 28.06.2012, issued by the Director of Land Management Department.

17. The materials brought on record would go to reveal that the approval for allotment of land was so made in favour of the petitioner society came to be cancelled on the ground that the land so proposed to be allotted fell within the notified area of Itanagar Wild Life Sanctuary. However, it is seen that out of the parcel of land proposed to be allotted to the petitioner society, 2500 Sq. Mtrs. of land came to be approved for allotment of land to the respondent No. 6 by the Government which as conveyed to the jurisdictional Deputy Commissioner by

the Director, Land Management Department vide the communication dated 27.01.2018. Likewise, 600 Sq.Mtrs. of land out of the land initially approved to be settled with the petitioner society came to be approved for allotment to the respondent No. 7 Association. The Director of Land Management Department had vide communication dated 10.12.2018 conveyed the Government approval in this connection to the jurisdictional Deputy Commissioner, requiring him to issue land allotment orders. Accordingly, the jurisdictional Deputy Commissioner vide the land allotment order dated 24.04.2018 and the land allotment order dated 19.12.2018 proceeded to allot lands as per the approval given by the Government in favour of the respondent Nos. 6 & 7, herein, respectively.

18. The State respondents have filed affidavit in the present proceeding and therein have taken a categorical stand that with regard to the land so approved for allotment to the petitioner society and the land actually allotted to the respondent Nos. 6 & 7, all fell within the notified area of the Itanagar Wild Life Sanctuary. The materials brought on record by the respondents in their affidavit, further goes to highlight that the Itanagar Wild Life Sanctuary was notified, vide notification dated 14.06.1978 and the same has not been de-notified thereafter. The status of the land so allotted to the respondent Nos. 6 & 7 is forest land falling within the notified area of the Itanagar Wild Life Sanctuary area.

19. The materials brought on record in the affidavit-in-opposition filed by the respondents goes to reveal that the Itanagar Reserved Forest was notified vide the notification dated 20.02.1978 and thereafter the area falling under Itanagar Reserved Forest was so notified as a Sanctuary vide order dated 14.06.1978. The said position continues to hold the field till date and it is the categorical contention of the respondents that the notification of the Itanagar Reserved Forest as well as that of the Wild Life Sanctuary has not been de-notified by the

competent authority. It is further an admitted position, basing on the stand taken by the respondents in the matter, the land approved to be allotted to the petitioner society as well as the land allotted to the respondent Nos. 6 & 7 vide the communications dated 27.01.2018 and 24.04.2018 falls within the notified area of the Itanagar Reserved Forest and thereafter, the Itanagar Wild Life Sanctuary.

20. It is also a settled position of law that non forestry activity cannot be permitted to carried out in a notified forest area until the said forest area is de-notified by following the procedure prescribed by the Government of India. In the case in hand, the land involved, admittedly, falls within the reserved forest and the same would not be permissible to be so allotted to any organisations/individuals.

21. The contentions raised by the respondents in their affidavits being relevant is quoted herein below:

A. The respondent Nos. 1, 2 & 3 by filing a joint affidavit had contended as follows;

“.....That in the instant case, 4000 sqm of land allotted to the petitioner was overlapping with the 63.3 acres of land already allotted to Forest Department, which is a clear violation of the condition mentioned at Serial No. (iii) of the Convey Letter dated 28.06.2012. The deponent also begs to state that since there was overlapping of the land allotted to the petitioner with the land allotted to the Forest Department, an NOC was necessary on the part of the petitioner to be obtained from the Forest Department, prior to issue of formal land allotment order in the favour of the petitioner. The deponent further begs to state that as per the report of the committee, which was formed vide Govt. order No. LM-88/2017/2173, at Sl. No. II recommended that the irregularities committed in allotting the land to petitioner without obtaining NOC from the

Forest Department may be rectified by either cancelling the land allotment or by obtaining NOC from the Forest Department. The deponent begs to submit that till the required time for obtaining the NOC, the petitioner has not submitted the NOC from the Forest Department to rectify the irregularity. It is further submitted that at Sl. No. (i) of the Convey Letter dated 28.06.2012 it is clearly stated after clearance of dues and payment of premium and annual lease rent either from the date of recommendations or from the date of occupation of land, whichever is earlier, formal land allotment order may be awarded. The petitioner has not shown or submitted any documents on records so as to show the revenue status pertaining to the land in question, that annual lease rent has been cleared by the petitioner. Hence, the approval granted by the Government was liable to be cancelled.”

B. The respondent No. 5 in his affidavit had raised the following contentions;

“.....The area in question, i.e., plot of land measuring 4,000 Sq mtrs situated near Tennis Court, D-Sector, Itanagar falls under the Wild Life Sanctuary and hence, the issue of formal land allotment in favour of the writ petition was not warranted legally. Your deponent vide order No. DC/LM/LPC-297/15, dated. 07.12.2021 has withdrawn all the recommendations for land allotments and LPCs issued to any individuals/group of individuals in respect of the reserve Forest and Itanagar Wild Life Sanctuary and also the LPC and also the LPC issued by the office of Deputy Commissioner, ICC, within the Durpong Reserve Forest and Itanagar Wild Life Sanctuary were cancelled within immediate effect vide order dated 07.02.2021. The communication No. LM 132/Land/2010/8917, dated 28.06.2012 made by the Director, Land Management, Govt. of Arunachal Pradesh, Itanagar to the then Deputy Commissioner, ICC conveyed the approval of the government for allotment of 4000 Sq. mtrs in favour of the petitioner and the continuation Memo No. LM-88/2017/2925, dated. 27.01.2018 by Joint Director i/c Director of Land Management, Govt. of Arunachal Pradesh communicated to the Deputy Commissioner, Itanagar Capital Complex. The

government approval for allotment in favour of the Bharatiya Janata Party herein the respondent No.6 and the act of allotment given to the Bhartiya Janata Party, Arunachal Pradesh a plot measuring 2500 Sq. mtrs. for construction of State BJP Head Office in the said area vide impugned allotment order No. DC/CC-LRB-07/2016, dated. 24.04.2018 was without authority and hence, the approval as well as the allotment is void ad initio.

C. This Court vide order dated 25.07.2024 by referring to the queries raised by this Court in the present proceeding vide orders dated 30.05.2024 and 04.06.2024 required the respondents to file an additional affidavit. Accordingly, additional affidavit was so filed on 20.08.2024 by and on behalf of the Deputy commissioner, Itanagar raising the following contentions;

“....3. That this affidavit is being filed to bring on records the instructions received from Respondent No.5 as to whether any follow up action has been taken with regard to cancellation of the allotments made in favour of the petitioner as well as the respondents. No.6 and 7.

4. That the answering respondent begs to state that vide order No. DC/12011/65/2018, dated. 13.08.2018 had constituted a committee with the following members:

- | | |
|-----------------------------|----------|
| i) The EAC, ICC (Jud.) | Chairman |
| ii) The EAC, IOCC (Welfare) | Member |
| iii) The DDMO, ICC | Member |
| iv) The DRR&SO, ICC | Member |

to verify the plot of land proposed for allotment of the Wado Kai Karate Do Association and to ascertain the site feasibility, herein the respondent No.7(Wado Kai Karete Do Association).

4. That the answering respondent begs to state that the above constituted

committee had submitted their recommendation among others as the proposed plot is sub-judiced at High Court, Itanagar Permanent Bench, Naharlagun as the President, Itanagar Club has filed Writ petition No.WP(C)No.229(AP)2018 against the land allotted to BJP, A.P. Considering the records and facts above, the board hereby recommends that before considering any further allotment of the land to any organization including Wado Kai Karate Do Association, ICC, or to any other party for allotment in the said plot of land at I.G park, Itanagar, NOC should be obtained from the Forest Department, Government of Arunachal Pradesh and await till the outcome of the writ petition filed by the President, Itanagar Club vide WP©No.229(AP)2018 to avoid legal complicacies in future.

5. That the answering respondent begs to state that in paragraph-4 of the affidavit-in-opposition submitted and filed by the respondent No.5, it was submitted that : the area in question, i.e., plot of land measuring 4,000 Sq. mtrs. situated near Tennis Court, D-Sector, Itanagar falls under the Wild Life Sanctuary and hence, the issue of formal land allotment in favour of the writ petition was not warranted legally. Your deponent vide order No. DC/LM/LPC-297/15, dated. 07.12.2021 has withdrawn all the recommendations for land allotments and LPCs issued to any individuals/group of individuals in respect of the reserve Forest and Itanagar Wild Life Sanctuary and also the LPC and also the LPC issued by the office of Deputy Commissioner, ICC, within the Durpang Reserve Forest and Itanagar Wild Life Sanctuary were cancelled within immediate effect vide order dated 07.12.2021. The communication No. LM 132/Land/2010/8917, dated 28.06.2012 made by the Director, LM, Govt. of Arunachal Pradesh, Itanagar to the then Deputy Commissioner, ICC conveyed the approval of the government for allotment of 4000 Sq. mtrs in favour of the petitioner and the continuation Memo No. LM-88/2017/2825, dated. 27.01.2018 by Joint Director i/c Director of Land Management, Govt. of Arunachal Pradesh communicated to the Deputy Commissioner, ICC. The government approval for allotment in favour of the Bharatiya Janata Party herein the respondent No.6 and the act of allotment given to the Bhartiya Janata Party, Arunachal Pradesh a

plot measuring 2500 Sq. mtrs. for construction of State BJP Head Office in the said area vide impugned allotment order No. DC/CC-LRB-07/2016, dated. 24.04.2018 was without authority and hence, the approval as well as the allotment is void ad initio and the same is reiterated.

6. That in view of the Hon'ble High court's order dated 21.05.2018 the process of allotment to respondent No.7 (Wado Kai karate Do Association) or any other party in the said plot at I.G. park has been suspended till the outcome/disposal of the present writ petition, WP(C)No.229(AP)2018.

7. That the status quo as to the allotment given to the respondent No.6 (Bhartiya Janta Party) vide allotment No. DC/CC-LRB-07/2016, dated. 24.04.2018 is maintained till date and no order for suspension or revocation of the aforesaid allotment has been initiated from the office of your deponent."

22. On perusal of the stand as taken by the respondent authorities in their affidavit as well as in the additional affidavit so filed on 20.08.2024, it is clear that the allotment of land so made in favour of the respondent No. 6 as well as respondent No. 7 has been held by the respondents to be void ad initio. It has also been held that the approval so granted for issuance of land allotment orders in favour of the respondent Nos. 6 & 7 were also void ad initio. Accordingly, this Court had vide order dated 02.12.2024 required the respondents to place on record the consequential order that were required to be passed in terms of the stand so taken by the respondents in the additional affidavit dated 20.08.2024.

23. In response to the order dated 02.12.2024, Ms. P. Pangu has placed on record a communication dated 03.12.2024 received by her from the Office of the Deputy Commissioner, Capital Complex, Itanagar, wherein it was contended that issuance of land allotment orders in favour of the respondent Nos. 6 & 7 being sub-judice in the present proceedings before this Court, the land

allotment orders were kept in abeyance till further orders/directions are received from this Court in the present proceedings.

24. A perusal of the stand taken by the respondents in their affidavits noticed, herein above, and the same having brought on record the fact that the land approved to be allotted to the petitioner society herein, admittedly falling within the notified area of the Itanagar Wild Life Sanctuary, the requisite NOC for the allotment of the such land not being received in the manner prescribed by law and further, the Itanagar Wild Life Sanctuary not having been de-notified by the Government of India, the cancellation of the approval so granted for allotment of 4000 Sq.Mtrs. at D-Sector, near Tennis Court, I.G. Park, Itanagar would not call for any interference.

25. In view of the above discussion, it being an admitted position that the land so approved for allotment to the respondent Nos. 6 & 7 vide the communications dated 27.01.2018 and 10.12.2018, respectively as well as the allotments made in pursuance thereof in favour of the respondent Nos. 6 & 7 vide the land allotment orders, dated 24.04.2018 and 10.12.2018, respectively, having been demonstrated to have been so allotted out of 4000 Sq. Mtrs of land initially approved for allotment to the petitioner society, the said land also falling within the notified area of the Itanagar Wild Life Sanctuary and the respondent authorities in their affidavit having projected such allotment to be void ab natio, the said land allotment orders issued in favour of the respondent Nos. 6 & 7 cannot be sustained and accordingly the same are set aside.

26. In view of the above position, the land allotment orders made in respect of the respondent Nos. 6 & 7 having been interfered with and it also been held that the cancellation of approval for allotment of land to the petitioner society would not call for any interference, this Court hereby directs that the

respondent authorities shall not allot the land falling within the notified area of the Itanagar Wild Life Sanctuary without complying with the process as required to be so complied in this connection as per the provisions of law governing the field.

27. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant