

GAHC040012782024



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

Case No. : IA(C)/178/2024

Nyasam Jongsam
Son of Late Khomhang Jongsam, permanent resident of village Rangkatu, Changlang,
District Changlang, Arunachal Pradesh.

VERSUS

The State of AP and 3 Ors
represented by the Secretary, Land Management, Govt of Arunachal Pradesh,
Itanagar. 2:The Deputy Commissioner
Age: 0
Occupation :
Changlang District
Changlang
Arunachal Pradesh.

3:The ADC cum Estate Officer
Age: 0
Occupation :
Changlang District
Changlang
Arunachal Pradesh.

4:The District Medical Officer
Age: 0
Occupation :
Changlang District
Changlang
Arunachal Pradesh

Advocate for the Petitioner : Gojum Nyodu,

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

Linked Case : IA(C)/166/2024

The State of AP and 3 Ors

Age: 0

Occupation :

Address:represented by the Secretary

Land Management

Govt of Arunachal Pradesh

Itanagar

2: The Deputy Commissioner

Age: 0

Occupation :

Address:Changlang District

Changlang

Arunachal Pradesh.

3: The ADC cum Estate Officer

Age: 0

Occupation :

Address:Changlang District

Arunachal Pradesh.

4: The District Medical Officer

Age: 0

Occupation :

Address:Changlang District

Arunachal Pradesh.

VERSUS

Nyasam Jongsam

Age: 0

Occupation :

Address:Son of Late Khomhang Jongsam

permanent resident of Village Rangkatu

Changlang

District Changlang

Arunachal Pradesh

Advocate for : GA (AP)

Advocate for : Domo Boje appearing for Nyasam Jongsam: Advocate appearing for respectively.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 26-09-2024

Heard Mr. S. Tapin, learned Senior Govt. advocate for the applicant in I.A.(C) 166(AP)/2024 and Mr. D. Boje, learned counsel for the opposite party.

2. The applicants are the respondent nos. 1 to 4 in the writ petition and the opposite party is the writ petitioner. The opposite party is the applicant in I.A.(C) 178(AP)/2024.

3. In this order applicants would mean respondent nos. 1 to 4 in the connected writ petition and opposite party would mean writ petitioner in the writ petition.

4. This interlocutory application has been filed for alteration/ modification of the order dated 26.07.2024, passed by this Court in WP(C) 292(AP)/2024. By order dated 16.09.2024, on the prayer made by the learned counsel for the opposite parties, the matter was adjourned on 16.07.2024 and it was ordered that the matter be listed on 23.10.2024. The matter came to be listed on 24.09.2024 and the interim order passed earlier was extended. Accordingly, the matter was again listed today.

5. The opposite party is an encroacher of a part of a Government land which is earmarked for the proposed new district hospital building at Changlang under Rural Infrastructure Development Fund (RIDF-XXVI) Scheme at a project cost of Rs.1662.37 lakh.

6. The case of the applicants is that a joint inspection was carried out on 19.07.2023 by a team of officers led by ADC, Changlang and found that the

opposite parties has constructed a SPT house over the proposed approach road. Under such circumstances, an eviction proceeding was instituted under the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003. The opposite party filed his written objection and upon consideration of the same, by an order dated 19.09.2023, the opposite party was directed to vacate the Government land.

7. The appeal filed by the opposite party was heard and rejected by order dated 10.10.2023, which was assailed by the opposite party by filing WP(C) 516(AP)/2023 and this Court by order dated 26.06.2024, disposed of the writ petition by directing the Deputy Commissioner to hear the opposite party and pass appropriate orders. Thereafter, upon hearing the opposite party, the appeal was dismissed by a speaking order. The said order is assailed in the connected writ petition.

8. Although the learned counsel for the opposite party has stressfully submitted that the opposite party was in occupation of the land since the year 2009, but there is nothing on record to show that the opposite party is in occupation of the said land from February, 2009.

9. The learned counsel for the opposite party has submitted that he had applied for land allotment in February, 2009, but no such record could be produced rather, the opposite party has only produced a copy of an application dated 20.04.2021 along with a rough sketch map. In the said regard, the stand of the applicants is that as the land is required for public purpose for a District Hospital, there was no reason to consider the said application.

10. The learned counsel for the opposite party has submitted that as he an active politics, the applicants have only targeted the opposite party whereas

there are hundreds of other illegal settlers in Government land. This does not appear to be justifiable ground for a political person to encroach upon a Government land in which an infrastructure of hospital has already been set up. Merely because someone has encroached government land would not confer any indefeasible right upon the opposite party to encroach a hospital land.

11. The personal right, if any, of the opposite party must give away to greater public interest. If the opposite party is actually a public-spirited person, he should raise his voice in furtherance of public interest and to ensure that the hospital land is encroachment free.

12. The last point which was submitted by the learned counsel for the opposite party is that if no interim order is there in the connected writ petition, the respondent authorities would throw him out. In that regard, it is again reiterated that private interest of the opposite party must give away to greater public interest. Therefore, as the opposite party has not been able to show any document to even prima facie that encroachment of the Government land was done in the February 2009, a mere oral statement in the absence of any document or any other proof of the date on which his right of adverse possession, if any, had commenced, the Court is of the considered opinion that equity, in this case, does not lie in favour of the opposite party.

13. Moreover, an infrastructure project of hospital must be allowed to proceed as health services are more important than the right, if any, of the opposite party to continue to encroach a government hospital land. Therefore, as the opposite party has not been able to disclose any prima facie case in his favour, the opposite party has no right to have a stay continued in his favour. The balance of convenience tilts more in favour of the applicants than the opposite party as the encroached land is hampering a public healthcare project.

14. Therefore, as the opposite party is encroaching a government land for which he has applied for land allotment only in the year 2021, cannot be a ground to extend the interim order any further to protect encroachment of hospital land by the opposite party, even if it results in the writ petition becoming infructuous.

15. Therefore, the Court is of the considered opinion that the applicants have been able to make out a case that the continuance of interim order passed by this Court on 26.07.2024 in the connected WP(C) 292(AP)/2024 is not in public interest and rather, this continuance of stay against eviction is coming in the way of construction of a district hospital project at Changlang.

16. In light of the discussions above, the I.A.(C) 166(AP)/2024 is allowed. The interim stay order passed by this Court on 26.07.2024 in the connected WP(C) 292(AP)/2024 stands vacated.

17. As a result, I.A.(C) 178(AP)/2024 filed by the opposite party for extension of the said interim order dated 26.07.2024 is dismissed without issuance of notice.

JUDGE

Comparing Assistant