

GAHC040013252022



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

Case No. : WP(C)/413/2022

Likha Ompu
W/o Shri Likha Sera.
a Resident of D Sector Nirjuli, PO and PS Nirjuli, District Papum Pare, Arunachal Pradesh.
Mob 8119976446

VERSUS

THE STATE OF AP and 5 Ors.
To be represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2:The Director
Age: 0
Occupation :

3:The Deputy Commissioner
Age: 0
Occupation :

4:The District Land Revenue and Settlement Officer
Age: 0
Occupation :

5:The Director Animal Husbandary Veterinary and Diary Development
Age: 0
Occupation :

6:The District Veterinary Officer Yupia
Age: 0
Occupation :

Advocate for the Petitioner : Regum Nabam

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

12.08.2024

1. Heard Mr. R. Nabam, learned counsel for the petitioner. Also heard Mr. Y. Riram, learned Junior Government Advocate for the respondent Nos. 1, 3 and 4, Mr. D. Kamduk, learned Standing Counsel for the Land Management Department, representing the respondent No. 2 and Mr. L. Perme, learned counsel for the respondent Nos. 5 and 6.
2. The writ petitioner has projected a case that the petitioner obtained a Land Possession Certificate vide LPC No. DC/LM/LPC-222/2002 dated 17th December, 2002 against a plot of land measuring about 23850 Sq.mtrs situated at Karmajuli under Doimukh Cicle, District Papum Pare (hereinafter referred to as subject land).
3. According to the petitioner, she lost the said original Land Possession Certificate (in short as LPC) during the year 2020 and she had lodged an FIR before the Nirjuli Police Station for the same. Accordingly, Nirjuli Police Station issued a Lost Certificate on 20.08.2020.
4. On the basis of such certificate, the petitioner applied for duplicate LPC against her lost original LPC, however, the issuing authority instead of issuing the duplicate LPC, had issued a new LPC vide No. DC/LM/LPC-222/02 dated 06.10.2020.
5. According to the petitioner, the Deputy Commissioner, Yupia, without prior

notice or speaking order, had cancelled the said LPC and therefore, the petitioner filed a representation before the Deputy Commissioner, however, such representation has not yet been disposed of till date. Hence this writ petition is filed.

6. Per contra, Mr. L. Perme, learned counsel for the respondent Nos. 5 and 6, who also claims to be in possession over the subject land has taken a stand that the petitioner had suppressed vital material facts not only before the Deputy Commissioner but also before this Court that pursuant to an agreement dated 02.01.2003, the subject land was transferred to the respondent Nos. 5 and 6 i.e. Animal Husbandry and Veterinary Department, Government of Arunachal Pradesh and therefore, the writ petition should be dismissed for the suppression of such vital material facts.
7. It is his further contention that, now by virtue of the transfer the subject land belongs to the respondent Nos. 5 and 6, Department, and therefore, the Deputy Commissioner has rightly cancelled the LPC of the petitioner.
8. The respondent No. 3 i.e. Deputy Commissioner has also filed an affidavit through the District Land Revenue and Settlement Officer. In the said affidavit, it is contented that the Deputy Commissioner had received a letter dated 09.09.2021 from the respondent Nos. 5 and 6, for eviction of the encroachers from the subject land wherein the Carcass Utilization Plant of the Department was situated and the same were completely dismantled, damaged and encroached by some individuals. Thereafter yet another letter was received by the Deputy Commissioner from the Department on 21.10.2021 in this regard.
9. In the aforesaid backdrop, an enquiry and spot verification was done by the Deputy Commissioner through the Revenue staff, which suggests that the land of the petitioner was demarcated on 11.03.2022 by a team comprising of Director, Animal Husbandry and Veterinary Department, Government of Arunachal

Pradesh, Gaon Burah, Land staff and all the nearby LPC owner. According to the said report, the land of the petitioner measuring 23,850 Sq.mtrs was demarcated on ground by iron angle bar on all the four side. The report further suggests that during the verification, it was found that numerous encroachments had taken place. One Sri Tadar Logu had constructed an RCC building and his LPC was overlapping.

10. On the basis of two contentions, i.e. (i) that the land in question was transferred to the respondent Nos. 5 and 6 and (ii) that there was encroachment, the LPC of the petitioner was cancelled purportedly after obtaining approval from the authority.
11. In the aforesaid background, it is seen that the petitioner was not issued any notice prior to cancellation of the LPC. At the same time, the report itself suggests that the land of the petitioner was demarcated.
12. The fact of existence of the agreement of sale, which is being relied on by the respondent Nos. 5 and 6, though was a necessary fact which requires disclosure, however, on the backdrop of the argument of the learned counsel for the petitioner that such document is not having any value in the eye of law inasmuch as such document cannot be an instrument of transfer for the reason that such deed was not properly stamped and registered and not a sale deed, this Court is of the view that such fact is not a material fact, suppression of which can lead to dismissal of this present writ petition.
13. Therefore, in the aforesaid backdrop, more particularly, for the reason that the claim of the respondent/department i.e. respondent Nos. 5 and 6, is based on an unregistered agreement for sale, this Court is of the view that the Deputy Commission was duty bound to give a reasonable opportunity of hearing to the petitioner before cancellation of her LPC.
14. It is stated at the bar that the Deputy Commission is the competent authority

for issuance of LPC. Though procedure is already there for issuance of LPC, however, there is no procedure laid down so far cancellation of LPC.

15. That being the position, the principle of natural justice must follow while cancelling a LPC inasmuch as cancellation of such LPC shall lead to curtailment or deprivation of a valuable right under Article 300 A of the Constitution of India as well as under Article 21 of the Constitution of India. That being the position, this Court is left with no option but to set aside the decision of the Deputy Commissioner to cancelling the LPC.
16. Accordingly, the present writ petition is allowed to the aforesaid effect.
17. Now, the Deputy Commissioner shall be at liberty to issue a fresh notice to the petitioner, if he still desires to proceed with the cancellation of the LPC and in the event, such notice is issued, the petitioner be given reasonable opportunity of hearing. While taking such decision, the Deputy Commissioner shall give an opportunity of hearing to the respondent Nos. 5 and 6.
18. While parting with this record, it is made clear that this Court has not made any comment on the validity of the agreement in question and the resultant right of the parties inasmuch as the validity and entitlement of right thereof, can be determined by competent Civil Court not by a Court exercising its power of judicial review.
19. Accordingly, this writ petition stands disposed of.

JUDGE

Comparing Assistant