

GAHC040014552023



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

Case No. : WP(C)/516/2023

Nyasam Jongsam
S/o Lt. Khomhang Jongsam,
permanent resident of village Rangkatu,
Changlang,
District Changlang
Arunachal Pradesh.

VERSUS

The State of AP and Anr
represented by the secretary Land Management,
Govt of Arunachal Pradesh,
Itangar.

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 :
(DMO) Changlang District
Changlang

Arunchal Pradesh

Advocate for the Petitioner : Mr. Domo Boje

Advocate for the Respondent : Ito Riram, Addl.Sr.GA (AP)
Mr. Dugmar Kamduk, SC, Land Management Department
Mr. Tagum Taba, SC, Health Department

**BEFORE
HONBLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

Date : 26-06-2024

Heard Mr. Domo Boje, learned counsel for the petitioner and Mr. Dugmar Kamduk, learned standing counsel for the Land Management Department representing respondent No. 1. Also heard Mr. Ito Riram, learned Additional Senior Government Advocate appearing for respondent Nos. 2 & 3 and Mr. Taba Tagum, learned standing counsel for the Health Department representing respondent No. 4.

2. Petitioner stated that the Deputy Commissioner, Changlang, being the appellate authority under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003 by an *ex-parte* order dated 10.10.2023 rejected his appeal being No. C/JUD/MISC (APPEAL) No. 03/2023 in an arbitrary manner, without hearing him and uphold the Order No. C/LR/ENC/ CLG-7/NJ/2383-87 dated 19.09.2023 passed by the Estate Officer-cum-Additional Deputy Commissioner, Changlang, upholding that he is in illegal and unauthorized occupation of Government land over the newly constructed Hospital at Changlang, observing that there is an outmost public importance and urgency requiring an approach road to the newly constructed Hospital at

Changlang and directed the said Additional Deputy Commissioner-cum-Estate Officer, Changlang to proceed with the removal of the encroachment in accordance with the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003 (hereinafter referred to as the 2003 Act).

3. Being, aggrieved with the said ex-parte order dated 10.10.2023 passed by the Deputy Commissioner, Changlang the petitioner filed this writ petition praying amongst others (i) to set aside and quashed the impugned order dated 10.10.2023 passed by the Deputy Commissioner, Changlang and (ii) to direct rehearing of the matter by another Executive Magistrate for proper hearing and adjudication of the case with interim prayer to stay the operation of the said eviction order dated 10.10.2023.

4. The Court on 13.10.2023 while issuing notice to the respondents, in the interim stayed the operation of the impugned Order No. C/JUD/MISC (APPEAL) No. 03/2023 dated 10.10.2023 passed by the Deputy Commissioner, Changlang, which is still in force.

5. The Deputy Commissioner, Changlang, respondent No. 2 and the Estate Officer, Changlang, respondent No. 3 have filed a detailed affidavit on 08.02.2024, serving copy of the same on the counsel for the petitioner, to which the petitioner did not file any rejoinder.

6. Mr. Kamduk, learned standing counsel for the Land Management Department submitted that as the Deputy Commissioner, Changlang as well as the Estate Officer, Changlang have already filed their affidavit in the matter, the respondent No. 1, the Secretary, Land Management shall support the case of the respondent Nos. 2 & 3.

7. Mr. Tagum, learned standing counsel for the Health Department submitted that though in the present proceeding the District Medical Officer, Changlang is the respondent No. 4, but being the standing counsel of the department he has not been served with a copy of the writ petition and he shall also support the stand the respondent Nos. 2 & 3.

8. For construction of approach road to the new District Hospital Building at Changlang, while making joint site inspection with the officials from the District Administration, Public Works Department (PWD), District Land Revenue & Settlement Office (DLRSO) etc. it was found that the petitioner is in illegal and unauthorised occupation of government land comprising an area of 154 Square metres (11 Metres x 14 Metres) making illegal construction over it without any authority, prior approval and written permission from the competent authority.

9. After such joint inspection of the site, finding that the petitioner is in illegal and unauthorised occupation of public premises, defined in Rule 2(iv) of said 2003 Act, the Estate Officer, Changlang Headquarter, District Changlang, on 10.08.2023, issued notice in writing to the petitioner under Section 4(i) of said 2003 Act, giving him an opportunity to show cause as to why he should not be evicted from said illegal and unauthorized occupation of Government land specifying that his said illegal construction over unauthorized occupation of Government land is near the ongoing new District hospital construction site at Changlang.

10. Petitioner submitted his reply to the said show cause and failed to place any due and valid allotment order for occupation of said government land and also failed to place any due permission regarding his construction over the said land. After hearing the petitioner, the Estate Officer, Changlang vide No.

C/LR/ENC/CLG-7/ NJ/8483-87 dated 19.09.2023, passed an order under Section 5 (i) of said 2003 Act, directing the petitioner to vacate the said Government land under his illegal and unauthorized occupation within a period of 15 days from the date of issue of the said order, intimating him further that, in the event of his failure to comply with the said order, the Estate Officer, Changlang will evict him and his person from the said illegal and unauthorized government land and shall take possession of the public premises by engaging necessary employees and force.

11. Against the said order of the Estate Officer, Changlang dated 19.09.2023, the petitioner on 03.10.2023 preferred an appeal under Section 12 of the 2003 Act before the Deputy Commissioner, Changlang, which was registered as No. C/JUD/MISC (APPEAL) No. 03/2023 and the Deputy Commissioner, Changlang by order dated 03.10.2023 fixed the said appeal for hearing on 06.10.2023, directing to maintain status quo till then.

12. On 06.10.2023, the petitioner being appellant and his counsel failed to appear in the said hearing on the ground of ill health of his counsel and sought for adjournment of the hearing, which was considered and granted by the Deputy Commissioner, Changlang and by order dated 06.10.2023 fixed the hearing on 10.10.2023 at 11:00 hours directing the petitioner to remain present either in person or through a legal counsel.

13. As fixed on 06.10.2023, the Deputy Commissioner, Changlang on 10.10.2023 due to administrative reasons could not hear the said appeal at 11:00 hours and with due intimation to the petitioner by passing necessary order refixed his said appeal on 10.10.2023 itself at 15:00 hours. The petitioner himself received the said order on 10.10.2023.

14. When the matter was taken up for adjudication by the Deputy Commissioner, Changlang, i.e., the appellate authority at 15:00 hours on 10.10.2023, neither the petitioner nor his counsel appeared in the matter before the said authority and rather submitted an application seeking further time up to 24.10.2023.

15. However, considering his earlier order dated 06.10.2023 and about giving due intimation to the petitioner on 10.10.2023 regarding refixation of hearing of the appeal on 10.10.2023 at 15:00 hours and further considering that the requirement of an approach road to the newly constructed Hospital at Changlang being outmost public importance and urgency, where public health delivery being affected owing to non-availability of approach road and considering that further delay in disposal of the appeal may jeopardised the public health on account of delay in starting of hospital building, the Deputy Commissioner, Changlang rejected to grant opportunity of subsequent hearing to the petitioner and accordingly took up the hearing of the appeal on 10.10.2023 itself in the absence of the petitioner.

16. The appellate authority, i.e. Deputy Commissioner, Changlang, after considering the written submission of the Estate Officer, Changlang; the report submitted by the DLRSO, Changlang and considering & examining the facts and reports, finding that the Estate Officer has duly followed the procedure prescribed in said 2003 Act, by the impugned order dated 10.10.2023 rejected the said appeal of the petitioner filed under Section 12 of the 2003 Act and directed the Estate Officer-cum-Additional Deputy Commissioner to proceed with the removal of the encroachment in accordance with the provisions of said 2003 Act.

17. After hearing the submissions of the learned counsels appearing for the parties and considering the matter in its entirety, the Court is of the view that as the order No. C/JUD/MISC (APPEAL) No. 03/2023 dated 10.10.2023 was passed by the Deputy Commissioner, Changlang, concerned appellate authority under the 2003 Act, without hearing the petitioner, the Court is of the opinion that the petitioner should be given an opportunity of hearing, either in person or through his counsel, by the said appellate authority, i.e., the Deputy Commissioner, Changlang, under the said 2003 Act, since on 10.10.2023 hearing of the appeal of the petitioner was deferred to 15:00 from 11:00 hours because of administrative reasons of the Deputy Commissioner, during which neither the petitioner nor his counsel was present, though the petitioner was duly intimated. But the Deputy Commissioner, Changlang in its affidavit did not state the time as to when the petitioner was informed regarding postponing of the hearing on 10.10.2023 nor it is available in the copy of the petitioner's receipt dated 10.10.2023 relating to such deferring of hearing.

18. Considering the above the Order No. C/JUD/MISC (APPEAL) No. 03/2023 dated 10.10.2023 passed by the Deputy Commissioner, Changlang, i.e., appellate authority rejecting the appeal of the petitioner dated 03.10.2023 that was filed by him under Section 12 of said 2003 Act against the Order No. C/LR/ENC/CLG-7/NJ/8483-87 dated 19.09.2023 passed by the Estate Officer, Changlang under Section 5 (i) of said 2003 Act is set aside and quashed, remanding back the said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 of the petitioner to the appellate authority, Deputy Commissioner, Changlang, directing the said appellate authority to dispose of the appeal of the petitioner No. C/JUD/MISC (APPEAL) No. 03/2023, giving the petitioner an opportunity of hearing.

19. The petitioner, either personally or through his counsel, along with a certified copy of this order, shall now appear before the Deputy Commissioner, Changlang, the appellate authority in said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 on **23.07.2024** at **11:00 hours**.

20. Since this order has been passed in presence of the counsel for the petitioner, therefore, the Deputy Commissioner, Changlang need not issue any fresh notice to the petitioner relating to his appearance in said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 on 23.07.2024 at 11:00 hours before the said authority.

21. After giving an opportunity of hearing to the petitioner, the Deputy Commissioner, Changlang shall now disposed of the said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 of the petitioner in accordance with the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003 at the earliest, within three weeks from 22.07.2023, but not later than 14th August, 2024.

22. Till disposal of the said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 of the petitioner, within the said specified time, the order No. C/LR/ENC/CLG-7/NJ/8483-87 dated 19.09.2023 passed by the Estate Officer, Changlang shall remain suspended.

23. Needless to say, failure on the part of the petitioner, either to appear personally or through his counsel, before the Deputy Commissioner, Changlang, in appeal No. C/JUD/MISC (APPEAL) No. 03/2023 on 23.07.2024 at 11:00 hours, as directed above, the Deputy Commissioner, Changlang, concerned appellate authority, shall be at liberty to pass fresh order in the said appeal No. C/JUD/MISC (APPEAL) No. 03/2023 as per the said 2023 Act.

- 24.** The Registry shall furnish a copy of this order, forthwith, to the Deputy Commissioner, Changlang for his necessary compliance.
- 25.** The interim order dated 13.10.2023 passed earlier in this petition stands merged with this order.
- 26.** With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant