

GAHC040015332024

2024:GAU-AP:1160



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

Case No. : WP(C)/525/2024

Lobsang Tsering
Son of Tomrin, permanent resident of Yuthembu, PO and PS Jang, District Tawang,
Arunachal Pradesh.

VERSUS

The State of Arunachal Pradesh
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar 791111

2:The Deputy Commissioner
Itanagar Capital Complex
Itanagar
Papum Pare District
Arunachal Pradesh 791111

3:The Superintendent of Police
Itanagar Capital Complex
Itanagar
District Papum Pare
Arunachal Pradesh 79111

Advocate for the Petitioner : Binter Picha, Taying Nega, Tao Tarin, Jumgam Jini

Advocate for the Respondent : GA (AP), SC Police Deptt., Gegum Lollen

Linked Case : WP(C)/314/2023

Lobsang Tsering

Address:S/o Tomrin
Permanent resident of Yuthebu
P.O and P.S Jang
District Tawang
Arunachal Pradesh. Ph No. 9402222638

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Itanagar
District Papum Pare
Arunachal Pradesh 791111

Advocate for : Binter Picha
Advocate for : GA (AP) appearing for THE STATE OF AP and 2 Ors: Advocate ,

, appearing for 2,

3, respectively.

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGEMENT AND ORDER (ORAL)

18.12.2024

Heard Mr. B. Picha, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents.

2. Both the writ petitions have been instituted by the petitioner challenging the Notice dated 16.06.2023, Order dated 26.06.2023 and Order dated 30.06.2023, issued by the Superintendent of Police-cum-Estate Officer, Capital, Itanagar, whereby the petitioner has been issued notice to appear before the authority to show cause for an unauthorized occupation of public premises land at State Reserve Police Line (SRPL) Complex near Police Oil Depot, Chimpu, and to submit relevant documents of the said plot of land and consequential order to remove the erected boundary wall and the residential building from the said public premises, else the Section 7(i) of the *Arunachal Pradesh Public Premises (Eviction of Un-authorized Occupants) Act, 2003* shall be invoked.

3. The petitioner is a practicing Advocate and the case projected by the him is that he is in occupation of land measuring 180 Sq.Mtr.(approx.) located at SRPL Colony, Chimpu, since last 6 years and has applied for allotment of the said land before the Deputy Commissioner, Itanagar, Capital Complex. It is contended that during the pendency for consideration of the land allotment of the petitioner, the Superintendent of Police, Capital, Itanagar without any authority of law has initiated eviction proceedings against the petitioner under Section 4 of the *Arunachal Pradesh Public Premises (Eviction of Un-authorized Occupants) Act, 2003* (hereinafter refer to as 'the Public Premises Act 2003' in short).

4. It is contended that after occupation and possession of the said land he has constructed boundary wall and residential building and has applied for electricity connection from the Department of Power, Govt. of Arunachal Pradesh and accordingly, the Department of Power, has provided electricity connection in the name of the petitioner.

5. The petitioner contends that in the month of July, 2021, the officials of the Deputy Commissioner, Itanagar, Capital Complex has visited the locality for physical verification of the area and after inspection, the officials have instructed the inhabitants of the locality to apply for allotment of the land within 3 (three) months. Accordingly, since the petitioner is in peaceful possession of the said land for the last 6 (six) years, on 05.08.2021, he applied for allotment of the land which is pending before the Deputy Commissioner, Itanagar, Capital Complex.

6. By the impugned Notice dated 16.06.2023, the Superintendent of Police, Capital, Itanagar has initiated eviction process against the petitioner to show cause as to why he should not be evicted from the un-authorized occupation of the said land and also directed the petitioner to appear before him. The petitioner has filed his reply clearly stating the genuine grounds of occupation of the said land. Thereafter, vide impugned order dated 26.06.2023, the Superintendent of Police, Capital, Itanagar, has passed an order directing the petitioner to submit all relevant documents of the said plot of land within 3(three) days. Being aggrieved, the petitioner filed a writ petition being WP(C)314(AP)/2023, wherein this Court vide order dated 30.06.2023 while issuing notice, directed to maintain *status quo* in respect of the land in question with a direction to the petitioner not to carry out any kind of construction over the said land. The Superintendent of Police, Capital, Itanagar, on the same day

i.e., 30.06.2023, passed another impugned order, whereby it is held that the petitioner has failed to produce any documents to prove authorized occupation of the said land and having purportedly found not satisfactory, directed the petitioner to remove the erected boundary wall and the residential building from the said public premises. Being aggrieved, the subsequent writ petition being WP(C) No. 525/2024 against the impugned Order dated 30.06.2023. Hence, both these writ petitions.

7. Mr. B. Picha, learned counsel for the petitioner submits that the Superintendent of Police has no authority to issue notice or pass any order under the Public Premises Act, 2003 as he is not conferred with the power of Estate Officer as required under the provisions of the Public Premises Act, 2003. He submits that since the petitioner has submitted an application for allotment of the land before the competent authority as he is in possession and occupation of the said land for the last 6 (six) years, the authority could not have resorted to the impugned action of eviction. The initiation of eviction and its consequential impugned order(s) despite pendency of application for allotment would amount to pre-emptive the right for fair consideration inasmuch as once the eviction is carried out and the structure demolished, the application for allotment would be rendered redundant. Therefore, the impugned notice and the consequential order(s) are liable to be set aside and quashed.

8. E converso, Mr. S. Tapin, learned Senior Govt. Advocate, submits that in exercise of power under Section 3 of the Public Premises Act, 2003, the Superintendent of Police, Commandant of AAPBn and IRBn and the Principal, PTC, have been appointed as Estate Officer for protection of departmental premises/land/assets under occupation/possession of the Police Department, Govt. of Arunachal in their respective jurisdictions. The land in question, falls

under allotted land of the Police Department, therefore, the petitioner having found to be an un-authorized occupant, the Superintendent of Police has proceeded in accordance with law by initiating the eviction process by providing him ample opportunity, right from the issuance of show cause notice to final impugned order(s), directing him to remove the illegal structures and vacate the land in terms of the aforesaid Act. Therefore, the petitioner has no right over the land in question, a land allotted to the Police Department, as such, the writ petitions are liable to be dismissed.

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

10. Admittedly the land occupied by the petitioner at State Reserve Police Line (SRPL) Colony, Chimpu falls under the allotted area of the Police Department. Undisputably, the Superintendent of Police has been appointed as Estate Officer in exercise of power under Section 3 of the Public Premises Act, 2003.

11. The petitioner submitted his reply to the impugned show cause notice 16.06.2023 and after consideration and having found that the petitioner did not submit any relevant documents in support of his claim, order dated 26.06.2023 was issued directing the petitioner to submit all relevant documents of the said plot.

12. The petitioner submitted his reply to the impugned order dated 26.06.2023, perusal of which shows that he has admitted the fact that he had occupied the said land in year 2015 and applied for its allotment in 2021 and thereafter started construction without there being any allotment order. It is noticed that no document worth consideration has been submitted before the respondent authorities except a copy of Token no. 2590 issued from the office

of the Deputy Commissioner, Capital complex, indicating submission of an application for the land allotment. As noted above, records revealed that the land claimed by the petitioner falls under the allotted area of the Police Department which is at SRPL Colony, Chimpu.

13. As per the Notification dated 30.06.2016 by the Government of Arunachal Pradesh, all the Superintendent of Police have been appointed as Estate Officer in their respective jurisdictions under section-3 of the Public Premises Act, 2003. Therefore, the Superintendent of Police -cum-Estate officer has the power and authority to initiate eviction process and may remove or cause to be removed the building or other structures from the public premises. On having found that the petitioner is under unauthorised occupation of the said plot of land by constructing boundary wall and residential building over the said plot of land, impugned actions have been initiated and petitioner has directed to remove the erected boundary wall and the residential building from the said public premises to which this court finds no illegality on the part of respondent authorities.

14. Although, the learned counsel for the petitioner has made an attempt to dispute while referring to the allotment order and the map annexed therein to the effect that the map has been prepared after the filing of the present writ petitions and accordingly, is a manufactured one, admitted position is that the land under occupation of the petitioner has been allotted to the Police Department and there is no challenge to the allotment of the said land to the Police Department. The allotment order having not been put to challenge, the presumption would be that the said allotment is a legal one.

15. On anxious consideration of the submissions of the learned counsel for the parties and having perused the materials on record, I am of the view that since the land in question has been allotted to the Police Department, the petitioner is

unauthorisedly occupying the land. Mere pendency of application for consideration of land allotment would not give right to challenge the impugned initiation of eviction process and the consequential impugned order(s). As noted herein above, the primary challenge of having no authority conferred on the Superintendent of Police, Capital, Itanagar is also fallacious as the Superintendent of Police, admittedly, has been appointed as Estate Officer under Section 3 of the Public Premises Act, 2003.

16. Having considered above, I am of the view that the petitioner is not entitled for any relief as the grounds of challenge of the impugned notice and consequential impugned orders falls flat. Thus, present writ petitions lacks merit. Therefore, impugned action for eviction and consequential impugned order(s) dated 16.06.2023; 26.06.2023 and 30.06.2023, issued by the Superintendent of Police-cum-Estate Officer, Capital, Itanagar warrants no interference.

17. Consequently, the writ petitions are rejected and dismissed. No order as to cost (s).

However, considering that the petitioner is in possession of the land in question by constructing boundary wall and residential building, it is provided that dismissal of the writ petitions shall not be a bar for the competent authority to consider the case of the petitioner in accordance with the law.

JUDGE

Comparing Assistant