

GAHC040016242023

2024:GAU-AP:883



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

Case No. : Crl.Petn./221/2023

Sohilum Manyu
S/o Lt. L. Manyu, Digaru Tri-Junction, Sunpura Circle, Tezu, District Lohit, A.P
Contact No. 9862245200

VERSUS

The State of AP and Anr.
Represented through Public Prosecutor

2:The Divisional Forest Officer
Age: 0
Occupation :
Govt. of Arunachal Pradesh
Lohit Forest Division
Tezu
P.O and P.S Tezu
District Tezu
Arunachal Pradesh

Advocate for the Petitioner : K. Taja, K. Tagyang, N. Talin, J. Taipodia, C. Tate

Advocate for the Respondent : P P of AP, GA (AP)

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (Oral)

Date : 27-09-2024

Heard Mr. K. Taja, learned counsel for the petitioner. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the respondent No. 1 and Ms. G.

Ete, learned Additional Senior Government Advocate for the respondent No. 2.

2. By filing this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner has prayed for quashing of the Complaint Case No. 04/2023, *under section 26 of the Indian Forest Act, 1927, under sections 24(a), (b) and 25 (a) (d) and (f) of the Assam Forest Regulation, 1891 and under section 3A of the Forest (Conservation) Act, 1980* pending before the Court of the learned Chief Judicial Magistrate, Tezu.

3. The criminal proceedings emanate from Offence Report dated 16.02.2023, submitted by the Beat Forest Officer, Digaru Forest Beat, Digaru, District Lohit, wherein it is alleged that the petitioner has encroached the Reserve Forest land by constructing M.O.B.I. type building-cum-three storey RCC building and Fish Pond inside the Digaru Reserve Forest. The Offence Report is reproduced hereinbelow:

“ Offence Report

1). Name of the Offender: Mr. Sohillum Manyu

2). Brief of the Offence: Encroachment of forest land and construction of M.O.B.T. Type building 3 (Three) Stories R.C.C building and fish pond inside the Digaru R.F

3). Section of law applicable: U/s 5 and 26 of Indian Forest Act-1927, sec-24 (a), (b) and section 25 (a) (d) and (f) of Assam Forest Regulation Act 1891 and U/s 2 of forest conservation Act-1980.

A Brief of the Offence/Chargesheet.

Prosecution story of the case/Forest Offence is that the undersigned had found the M.O.B.T. type hotel, 3(three) stories RCC building and fish pond exist near the Digaru-ALubari tri-junction had constructed illegally by encroaching the forest and destroying forest property. Mr. Sohillum Manyu is one of the encroachers and had encroached 3(three) plots of land and constructed the above mentioned M.O.B.T. type 3(three) stories RCC building and fish pond illegally and for which the offence report had already been drawn earlier vide this office offence report no. DG/23 of 2016-17 dated 22/02/17 against the

aforesaid accused person. And accordingly report has been made by the undersigned before the higher authority regarding the illegal activities upon which notice have been served u/s 5 and 26 of Indian Forest Act-1927 and sec-24(a)(d) and (f) of Assam Forest Regulation Act- 1891 directing the accused person to vacate the forest land immediately failing to which the proper action will be initiated as per law against the accused person, (copy enclosed) on dated 13/1/2023 through the divisional Forst Officer, Lohit Forest Division, Tezu. After duly receipt of the notice, the accused did not complied with the notice for vacation.

Therefore, the prima facie case of forest offence is well established against the accused person. Now, here I am sending again this offence to report before the Hon'ble court to trial the case under section 24(a), (b) and 25 (a) (d) and (f) of Assam Forest Regulation Act- 1891 (Regulation-7 of 189 as amended up to date and u/s 2 of Forest Conservation Act-1980 against the above accused person. The G.P.S reading of the location is (1) N= 27° 53' 09.3' E=096° 01'40.T"

(2) N=27°53' 15.3" E= 096° 01' 39.6"

4. The contention of the petitioner is that he is a resident of Digaru village, with village code 266370 as per the 2011 census. There are many people residing in the village and the land on which the petitioner is residing is his ancestral land as his forefathers have been living there since generations for more than 50 (fifty) years. It is contended that the land on which the petitioner and other co-villagers are residing does not fall under any reserve forest area as the people are living in the Digaru village since ages. The petitioner is living for generations and carrying out various activities for survival on the said land as he is having a valid trading license which was issued way back in 1976 by the Deputy Commissioner, Lohit, Tezu. He is also having other trading license and documents, which clearly establish that Digaru is a village and the petitioner and his forefathers have been living there, for generations.

5. It is projected that on 09.07.2005, a meeting was conducted, which was attended by various panchayat members and other members of the locality,

whereby, it has been acknowledged that the petitioner is the sole and absolute owner of the land, therefore, the land in question actually belongs to the petitioner. In the year 2003, the grandfather of the petitioner was served with a notice of eviction, however, considering that the family of the petitioner is in possession of the said land since generations, for more than 50 (fifty) years and acknowledging the rightful possession of his grandfather, no further proceedings were conducted. Therefore, it is contended by the petitioner that he cannot be evicted from his private land and no criminal case can be instituted against him for any activities carried out on the said land as the petitioner is the absolute owner of the said land.

6. Petitioner contended that the respondent authorities, despite knowledge of the fact that the petitioner is the actual owner of the said land, had issued an illegal eviction notices and has filed a complaint case before the learned Chief Judicial Magistrate, Tezu, by misusing their power. The complaint case has been registered as Complaint Case No. 04/2023, under Sections 24(a), (b) and 25 (a) (d) and (f) of the Assam Forest Regulation, 1891, and under section 3A of Forest (Conservation) Act, 1980, which is pending trial before the learned Chief Judicial Magistrate, Tezu.

7. Mr. K. Taja, learned counsel for the petitioner submits that the petitioner has not violated any provisions of law. The plot of land on which the petitioner is residing is his ancestral land and the land is under possession of his ancestors without any disturbance since time immemorial and has been inherited by the petitioner. The family of the petitioner is living there since 1970 which is more than 50 (fifty) years and have been using the land for various activities without there being any objection from any quarter.

8. He submits that the government has recognised the Digaru village, thereby,

has established Primary School in the village, which clearly shows that the land in question is not a Reserve forest area but a village consisting of many people residing thereon.

9. Mr. K. Taja, learned counsel, while referring to the provisions of the Indian Forest Act, 1927, the Assam Forest Regulation, 1891 and the Forest (Conservation) Act, 1980, submits that no penal provision under the aforesaid Act and Regulation attracts against the petitioner. Therefore, the complaint case cannot be maintained as the land in question is a village land and the particular plot on which the petitioner is living with his family is a private land, which is under the possession and occupation of his forefathers for generations. He further submits that there is no notification of Digaru Forest Reserve, which declared that the area on which the petitioner is living is a government notified Reserve Forest area. He submits that the State cannot prosecute the people living in the village under the guise of alleged encroachment over the reserve forest area and the petitioner has been singled out, which clearly establish the abuse of official power by adopting the method of pick and choose, without any lawful justification.

10. Mr. K. Taja, learned counsel, further referring to the provisions of *the Scheduled Tribe and Others Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, submits that the law recognises the right of the traditional forest dwellers and as the petitioner belongs to the Mishmi tribe and being a traditional forest dweller, he cannot be prosecuted. The rights conferred under above Act cannot be denied to the petitioner, and therefore, cannot illegally prosecute him without settling the rights of the petitioner. Therefore, he submits that the complaint case and its consequential proceedings is liable to be set aside and quashed.

11. On the other hand, Ms. G. Ete, learned Additional Senior Government Advocate, while referring to the affidavit-in-opposition filed on behalf of the respondent No. 2, submits that the case filed under section 26 of Indian Forest Act-1927, sections 24 (a)(b) and 25(a)(d) (f) of the Assam Forest Regulation, 1891, and Section 3A of the Forest (Conservation) Act, 1980 through Offence Report No DG/61/OR/11-18 of 2022-23 Dated 16.02.2023 is valid and in accordance with law. The construction of M.O.B.I. type building-cum-three storey RCC Building and fish pond inside a notified Reserve Forest (Digaru Reserve Forest) is blatant violation of section 26 of Indian Forest Act-1927, sections and 24 (a)(b) and 25(a)(d)(f) of the Assam Forest Regulation, 1891, and Section 3A of the Forest (Conservation) Act, 1980 and therefore, the petitioner is liable to be prosecuted and punishable under above provisions of law.

12. Ms. G. Ete, learned Additional Senior Government Advocate, submits that since the area in question is a part of Reserve Forest, it is not permissible to encroach upon in any form and for the reasons thereof, the petitioner was served with notice to vacate the Reserve Forest land within a specific period. The petitioner could not submit any valid documentary proof that the land was under his continuous occupation prior to 25.10.1980 (the date of enactment of Forest (Conservation) Act-1980 or 1971 (the date on which Digaru Reserved Forest came into existence).

13. Ms. G. Ete, learned Additional Senior Government Advocate submits that the claim of the petitioner that the land on which the petitioner is residing is a Village land is not true. In fact, the present site was Ferry Ghat prior to the construction of Bridge over River Lohit and no settlement exists there except few makeshift structures to sell Tea, Rice etc. to the passengers crossing the

river and temporary sheds of the Boatman and cattle rearers. These structures used to be got removed during monsoon as river banks gets inundated. Consequent upon the construction of bridge and road, the area got developed and sudden surge of encroachment for business activities came up. All such encroachments including the petitioner are being dealt with firmly and cases relating to Forest land encroachment are lodged before the Hon'ble Court of the Chief Judicial Magistrate cum Civil Judge (Sr Division), Tezu against several individuals including the present petitioner. The Trading License submitted by the petitioner do not supports his claim regarding possession of the land. The License was issued to do business and not to occupy Reserve Forest Land. Allotment of Reserve Forest land without prior approval of the Govt. of India is not permissible. Collection of Minor Mineral with valid permit and authorization is regular business of forest department and it does not endorse the occupation of Reserve Forest land. The Electricity Bill also do not establish any right of ownership of Reserve Forest Land.

14. Ms. G. Ete, learned Additional Senior Government Advocate submits that the petitioner himself admits that the land was encroached upon by his grandfather for which he was served with eviction notice way back in 2003. It is, thus, established that the petitioner is a habitual offender in grabbing Reserve Forest Land for his personal use which is not permissible under relevant law in force.

15. Ms. G. Ete, learned Additional Senior Government Advocate submits that the Panchayat Member or anybody has not been empowered to declare ownership right of Reserve Forest land to any individual/organization etc. The Govt. of India reserves the right to transfer ownership rights of Reserve Forest land under section 2 of the Forest (Conservation) Act,1980.

16. Ms. G. Ete, learned Additional Senior Government Advocate submits that the plot of land in question is a part of Digaru Reserve Forest notified on 08.06.1971 and re notified on 06.04.1998. Therefore, the petitioner has no right to claim over the said land and the petitioner is an encroacher of the reserve forest. The petitioner is an encroacher in the eyes of Law and lawful actions has been initiated against him for getting the Govt. land vacated from his illegal possession to preserve and protect the forest land. There are total 10 numbers of cases pending before the Chief Judicial Magistrate, Tezu, including the petitioner's case.

17. She submits that if the petitioner is entitled to benefits under the provisions of *the Scheduled Tribe and Others Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, it is obligated on the part of the petitioner to approach the proper forum. Until any right is granted under the said Act, the status of the land under unauthorised occupation will be treated as encroachment as per the provisions of law. Therefore, no ground has been established by the petitioner for quashing of the proceedings of the Complaint Case No. 04/2023 and as such, the present petition may be dismissed.

18. Due consideration has been extended to the submissions advanced by the learned counsels for the parties and also perused the materials available on record.

19. Admittedly, in exercise of power conferred by Section 17 of the Assam Forest Regulation, 1891, read with Section 3 of the North East Frontier Agency (Construction of reference to State Government) Regulation, 1965, the Government of Arunachal Pradesh, Department of Environment and Forests vide notification dated 08.06.1971, published in the official gazette, has notified the Digaru Reserve Forest, wherein, an area of 184.00 Sq. Km has been

declared as Digaru Reserve Forest under Lohit District, Arunachal Pradesh. Thereafter, vide notification dated 06.04.1998, after having detected some errors in the said notification dated 08.06.1971, has re notified and amended the boundary description of Digaru Reserve Forest with the approval of the Government of India, Ministry of Environment and Forest and declared the area as Digaru Reserve Forest with an approximate area of 204.45 Sq. Km at Lohit District, with clear description of boundary.

20. As noted above, the Beat Forest Officer, Digaru Forest Beat, Digaru, District Lohit, vide dated 16.02.2023, has submitted an Offence Report drawn against the illegal encroachment of forest land under Digaru Reserve Forest, by following the required procedures of law, wherein the petitioner is found to have encroached the Reserve Forest land.

21. Perusal of the offence report, goes to show that *prima facie* case of forest offences against the accused persons including the present petitioner, under Sections 25 (a)(d)(f) and Section 24(a)(b) of the Assam Forest Regulation, 1891 and Section 3(A) of Forest (Conservation) Act, 1980, is established.

22. The Divisional Forest Officer issued eviction notices to the petitioner directing the petitioner to vacate the unauthorised occupation of the forest land and remove all his properties by providing stipulated period, failing which, all the properties standing on the forest land will be confiscated and will be treated as government property for which no compensation shall be entertained as per the provisions of law.

23. On consideration of the materials placed on record, it is noticed that except for the claim of ownership of the land in question as village land and placing some documents stated to have been issued like trading license and electricity

bill, there is nothing on record to show that the land is a private land. Nothing is placed on record as to whether the village has been declared by the government in accordance with the relevant notifications.

24. The notifications declaring the area of Digaru as Digaru Reserve Forest area, in the year 1971 and renotified in 1998, have not been put to challenge by the petitioner. Once the area is declared as reserve forest by following the procedure laid down in the relevant provisions of law, the person who is in occupation of the said area would be treated as an encroacher. The activities taken up by the person, who has encroached on the reserve forest, is liable to be prosecuted under the relevant provisions of law.

25. In the present case, as noted above, nothing is discernible from the record that the land in question does not fall under the Digaru Reserve Forest area. Although the petitioner claims that his forefathers and himself have been living there since generations for more than 50 (fifty) years, no document worth consideration has been brought before this Court. Thus, I am of the considered view that the petitioner has failed to establish any right over the land. The proceedings initiated against the petitioner by the concerned authorities appears germane and in accordance with due procedure of law.

26. In view of what has been discussed hereinabove, this Court finds no ground warranting quashment of the proceedings of the Complaint Case No. 04/2023, under section 26 of the Indian Forest Act, 1927, section 24(a)(b) & 25 (a)(d)(f) of the Assam Forest Regulation, 1891 and Section 3A of the Forest (Conservation) Act, 1980, pending before the Court of the learned Chief Judicial Magistrate, Tezu.

27. Consequently, the criminal petition stands dismissed, being devoid of merit.

However, dismissal of the present petition shall not preclude the petitioner from availing appropriate remedy as may be permissible under law and any observation made herein above shall not affect the trial on merit of the complaint case pending before the learned Chief Judicial Magistrate as the guilt or otherwise of the petitioner would be a matter of trial.

JUDGE

Comparing Assistant