

GAHC030001402021



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

Case No. : WA/2/2021

Sh S. Hrangzuala
Chanmari Lawngtlai

VERSUS

Union of India and 8 Ors
New Delhi

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1 - R5

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

J U D G M E N T & O R D E R

24.04.2024

(Nelson Sailo, J)

Heard Mr. C. Lalfakzuala, learned counsel for the appellant, Ms. Zairemsangpuii, learned CGC who appears for the respondent Nos. 1 to 5, Mr. Lalpianfela Chawngthu, learned counsel who appears for the respondent Nos. 6, 7

& 8 and Mrs. H. Lalmalsawmi, learned Govt. Advocate who appears for the respondent No. 9.

[2.] This is an appeal filed by the appellant/writ petitioner (hereafter referred to as the writ petitioner) against the Order dated 25.02.2021 passed by the learned Single Judge in WP(C) No. 124/2019, by which the writ petition was dismissed on account of delay and laches. The learned Single Judge was also of the view that since disputed questions of fact is involved, it is a case which cannot be decided by a Writ Court but by a Civil Court.

[3.] By filing the writ petition, the writ petitioner prayed for a direction for payment of rental compensation along with interest for occupation of his land by the Border Roads Task Force (BRTF) since the year 1974 and also, to direct them to acquire the land if they are going to use the land permanently. According to the writ petitioner, land was initially allotted to him vide Pass No. P.S Poultry L.S 9/1972 dated 10.10.1972 by the Lai Autonomous District Council (LADC) covering an area of 50,100 Sq.m in Chawnhu village area on Lunglei to Tuipang road, Lawngtlai District. The Pass was thereafter converted into LS 12/1997 on 03.04.1997. The respondent Nos. 1 to 5 illegally occupied his land by constructing Quarters, Camp etc. in the year 1974 without the consent and permission of the petitioner and without paying any compensation. Thereafter, the Executive Committee of the LADC donated a plot of land to the respondent Nos. 1 to 5 measuring 11.46 acres

for construction of Camp by way of a Lease. The plot of land given to the respondent Nos. 1 to 5 was initially for five (5) years with effect from January, 1978 and thereafter, renewed from time to time.

[4.] The further case of the petitioner is that the Senior Revenue Officer of LADC informed the respondent No. 5 vide letter dated 05.11.1988 that occupation of the land by the BRTF could not be considered beyond 1999 as Land Passes were already allotted to the local people. The Lease allotted to the respondent No. 5 was last extended for another five (5) years with effect from 01.02.2015 to 01.02.2020. According to the petitioner, he submitted letters dated 29.08.1997, 19.08.1999 and 05.01.2020 to the respondent No. 5 requesting the latter to pay him rental charges for occupation of the land and also for vacating the land. As there was no response from the respondent No. 5, the petitioner approached this Court through his writ petition. However, the learned counsel Single Judge after hearing the parties dismissed the writ petition in the manner as already stated herein above.

[5.] Mr. C. Lalfakzuala, learned counsel for the appellant submits that the learned counsel Single Judge committed an error in overlooking the fact that the temporary Land Donation Certificate of the respondent No. 5 does not contain the boundary description whereas, the land boundary of the petitioner is well defined in his land Pass i.e., LS 12/1997 dated 03.04.1997. He submits that in the Land Pass of the petitioner i.e., LS 12/1997, it has clearly been mentioned that it superseded PS

Poultry LS 9/1972 dated 10.10.1972 and therefore, there cannot be any doubt to the fact that the boundary description will be the same.

[6.] The learned counsel further submits that the learned Single Judge erred in law in fact for having failed to see that the Land Pass of the petitioner is senior to the land allotted to the respondent No. 5 and also for having failed to see that the respondent Nos. 1 to 5 had encroached upon the land of the petitioner due to the unauthorized expansion of the BRTF Quarters within the petitioner's land.

[7.] The learned counsel further submits that against the averments made in the writ petition, the respondent Nos. 1 to 5 had only made evasive denials and as such, the same cannot be considered as disputed questions of fact and thus to reject the case of the petitioner. In fact, the same can be settled and decided on a mere perusal of the land pass of the petitioner and the respondent No. 5.

[8.] The learned counsel also submits that the learned Single Judge committed error in coming to a conclusion that the writ petition suffers from delay and laches and that there was a delay of about 45 years. He submits that the petitioner had time and again approached the respondent Nos. 1 to 5 since the year 1997 by submitting letters and also by personally approaching them. Since there is a continuing wrong committed against the petitioner coupled with the fact that there is violation of the Fundamental Rights of the petitioner provided under Article 21 and Article 300-A of the Constitution of India, the writ petition could not have been

dismissed on account of delay and laches. The learned counsel thus submits that the impugned Order dated 25.02.2021 cannot be sustained in law and therefore, the same should be set aside. In support of his submission, the learned counsel relies upon the following authorities:-

- (1) Tukaram Kana Joshi & Ors. Through Power-Of-Attorney Holder -Vs- Maharashtra Industrial Development Corporation & Ors. (2013) 1 SCC 353.*
- (2) Judgment dated 20.01.2023 passed by the Supreme Court of India in Civil Appeal No. 2023 (Manubhai Sendhabhai Bharwad & Anr. -Vs- Oil and Natural Gas Corporation Ltd. & Ors.)*
- (3) H.D. Vora -Vs- State of Maharashtra & Ors. (1984) 2 SCC 337.*
- (4) Popatrao Vyankatrao Patil -Vs- State of Maharashtra & Ors. (2020) 19 SCC 241 and*
- (5) Order dated 10.02.2023 passed by a coordinate Bench of this Court in WP(C) No. 16/2013 (Union of India & Anr. -Vs- Zokailiana & Ors.).*

[9.] Ms. Zairemsangpuii, learned CGC on the other hand submits that there is nothing wrong with the impugned Order and that the learned Single Judge has rightly dismissed the writ petition on account of delay and laches and also in view of there being disputed questions of fact. Reiterating the stand taken by the respondent Nos. 1 to 5 in their affidavit-in-opposition filed before the Writ Court, the learned CGC submits that the respondent No. 5 was issued Land Donation Certificate at 81.30 kms on Lunglei to Tuipang road for an area of 11.46 acres of

land on 21.01.1981 by the LADC for a period of five (5) years from January, 1978 to 31.12.1982. The same was renewed from time to time by the LADC and the last renewal was up to 01.02.2020. She submits that the respondent Nos. 1 to 5 repeatedly approached the authorities in the LADC for renewal of the Land Donation Certificate. However, in the year 1998, the Senior Revenue Officer, LADC vide letter dated 05.11.1998 requested the concerned Department to negotiate with the petitioner since Land Passes for the land occupied by the respondent Nos. 1 to 5 had been issued to private individuals. She submits that on the other hand, the respondent Nos. 1 to 5 had been allotted Land Donation Certificate with effect from January, 1978 on 21.01.1981 and therefore, considering the Land Pass issued to the petitioner vide LS 12/1997 dated 03.04.1997, there is no question of forcible occupation of the land of the petitioner by the respondent Nos. 1 to 5. The learned CGC submits that assuming but not admitting that the respondent No. 5 has been occupying the land of the petitioner since the year 1974, the petitioner has been sleeping over his rights since the last 45 years and therefore, even on this ground, the writ petitioner is not maintainable on account of delay and laches. As such, the writ petition was rightly dismissed by the learned Single Judge. The learned CGC submits that as regards payment of Rs. 10 lakhs to the petitioner as rental compensation for the year 2020 to 2022, the same was solely on account of the pressure exerted by the petitioner and his counsel on one-hand and the refusal on the part of the LADC to renew the Land Donation Certificate beyond 01.02.2020 on

the other. The learned CGC thus submits that there being serious disputed questions of fact apart from delay and laches on the part of the petitioner, no interference is called for on the impugned Order passed by the learned Single Judge.

[10.] Mr. Lalpianfela Chawngthu, learned counsel for the respondent Nos. 6, 7 & 8 relies upon the affidavit-in-opposition filed by the respondent Nos. 6, 7 & 8 in the writ petition and submits that the LADC allotted temporary Land Donation Certificate to the respondent No. 5 with effect from January, 1978 and that it is not known to them that the respondent Nos. 1 to 5 occupied the land of the petitioner from the year 1974. He submits that the land, which was temporarily allotted to the respondent Nos. 1 to 5 did not include the land belonging to the petitioner and that both the lands are adjacent to each other. He submits that according to the LADC, it was due to the unauthorized expansion of the BRTF Quarters within the petitioner's land that the disputes between the petitioner and the respondent Nos. 1 to 5 had arisen. The land allotted by the LADC to the respondent Nos. 1 to 5 otherwise does not include the land of the petitioner and as such, the LADC has no fault or liability in the event of any encroachment that may have been made by the respondent Nos. 1 to 5 upon the petitioner's land.

[11.] In the above background, the learned Single Judge was of the view that the LADC had taken the stand that the land of the petitioner and the land of the

respondent Nos. 1 to 5 do not overlap each other and further, it is the stand of the respondent Nos. 1 to 5 that they are only occupying 11.46 acres of land allotted to them by the LADC and nothing beyond that. The petitioner on the other hand claims that the respondent Nos. 1 to 5 have been occupying his land un-authorizely and without his permission since the year 1974 by constructing buildings, quarters etc. Therefore, going by the claim made by the petitioner, the cause of action arose in the year 1974 but the petitioner has filed his writ petition only in the year 2019. Therefore, delay and laches is clearly attributable to the petitioner in seeking appropriate relief from the Court. The learned counsel for the appellant has sought to impress upon this Court that since the respondent Nos. 1 to 5 had paid rental compensation of Rs. 10 lakhs for the year 2020 to 2022, the same is clear admission on their part that they are occupying the land of the petitioner. However, from the materials available on record, there is no basis for payment of the said amount and admittedly, it appears to be as per the negotiation between the parties concerned. How much of the land of the petitioner is overlapped by the area of the land issued to the respondent Nos. 1 to 5 through the Land Donation Certificate or even the other way around is not discernible. Further, as already noticed, according to the LADC, the land allotted to the petitioner and the land allotted to the respondent Nos. 1 to 5 do not overlap each other and that they are only adjacent to each other. While such is the situation, they also maintain that it may be due to the unauthorized expansion of the BRTF Quarters within the petitioner's land that

the dispute may have arisen. The same however is only a presumption and which will have to be ascertained by leading evidence before a competent Court.

[12.] The case of *Popatrao Vyankatrao Patil* (supra) relied upon by the counsel for the appellant is a case pertaining to Government contract and tenders. The Apex Court in the given facts and circumstances of that case held that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under [Article 226](#) of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. In the instant case, the respondent Nos. 1 to 5 claim occupation of the land that they have occupied on the strength of the Land Donation Certificate issued on 21.01.1981 effective from January, 1978 while the petitioner claims ownership of the same land or a part of the said land on the strength of LS 12/1997, which is preceded by P.S Poultry LS 9/1972. The consistent stand of the LADC is that the Land Donation Certificate issued to the respondent Nos. 1 to 5 do not overlap with the land of the petitioner and that they are only adjacent to each other. Therefore, in order to decide the dispute, it cannot be said that elaborate evidence is not required to be adduced. Rather, the respective land Passes of the parties concerned and the official records of the LADC will be required to be examined to get to the bottom of the matter. Therefore, the authority relied upon does not render

assistance to the appellant.

[13.] The case of *H.D. Vora* (supra) relied upon by the counsel for the appellant pertains to land acquisition and requisition. The Apex Court in the given facts of that case held that there is vast difference between the concept of requisition and the concept of acquisition. The concept of acquisition is permanent and final and there is transfer of title from the original holder to the acquiring authority. But in the concept of requisition, the same involves mere taking of domain or control over property without acquiring rights of ownership and by its very nature, it must be of temporary duration. In the present case, the respondent Nos. 1 to 5 have been issued temporary Land Donation Certificate for a certain period of time, which is renewable from time to time by the competent authority. While the respondent Nos. 1 to 5 claim occupation of the land in question on the basis of the allotment made, the petitioner claims unauthorized occupation of his land and for rental compensation to be paid. While such is the case of the petitioner, the LADC maintain that the land allotted to the petitioner and the land allotted to the respondent Nos. 1 to 5 by way of Land Donation Certificate do not overlap each other. Therefore, the facts involved in the present case is found to be not similar to the case of *H.B. Vora* (supra) relied upon by the counsel for the appellant. Similarly, the case of *Manubhai Sendhabhai Bharwad & Anr.* (supra) relied upon by the counsel for the appellant being a case of temporary requisition, which exceeded

the duration permissible under Section 35 of the Land Acquisition Act, 1894 is not the issue involved in the instant case and as such, the same will have no application to the present case as well.

[14.] In the case of *Tukaram Kana Joshi &Ors.* (supra) relied upon by the counsel for the appellant, the facts and circumstances involved in that case was that although the land was notified for acquisition under Section 4 of the Land Acquisition Act, 1894 for industrial development project but no subsequent step in the acquisition proceeding was taken up and the same lapsed. Despite this, physical possession of the land was taken over. Subsequently, a fresh notification was issued under Section 4 of the L.A Act but again, the same lapsed without any further process. The writ petition filed challenging the inaction of the respondents was dismissed by the High Court on the grounds of delay and laches. The Apex Court under the circumstance held that delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief but other facets is that the Court is required to exercise judicial discretion and the same depends on the facts and circumstances of the case. The Apex Court further held that delay and laches is one of the facets to deny exercise of discretion but it is not an absolute impediment and that there can be mitigating factors such as, continuity of cause of action, if the whole thing shocks the judicial conscience, third party rights are not involved etc. In the present case, even if a liberal view is to be taken as observed

by the Apex Court, what still remains is that there are serious disputed questions of fact and also inconsistent stand taken by the LADC.

[15.] Under the circumstance and upon due consideration, we find no ground to interfere with the impugned Order. The Writ Appeal is found to be without any merit and the same is dismissed.

JUDGE

JUDGE

Comparing Assistant