

GAHC020000102021



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

Case No. : WP(C)/1/2021

N HENRY ZELIANG
S/O LATE N.C. ZELIANG,
P.O. JALUKIE TOWN, JALUKIE HQ, PEREN, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE REVENUE
DEPARTMENT, GOVT. OF NAGALAND

2:CANARA BANK

A BODY CORPORATE CONSTITUTED UNDER BANKING
COMPANIES ACT
1970 HAVING ITS HEAD OFFICE AT 112
JC ROAD
BANGALURU 560002 AND HAVING ONE OF ITS REGIONAL OFFICE
AT GUWAHATI AND BRANCH OFFICE AT DIMAPUR
NAGALAND
REPRESENTED BY ITS MANAGER

3:ALO MERO

S/O LHIPENI MERO
KEVIJAU COLONY
WARD NO.16
DIMAPUR
NAGALAND

4:HUKAVI S MURRU

R/O DAROGAPATHAR

DIMAPUR
NAGALAND

5:TENYIPHE - I VILLAGE COUNCIL

REPRESENTED BY ITS COUNCIL CHAIRMAN
DIMAPUR
NAGALAND

6:DEPUTY COMMISSIONER
DIMAPUR
NAGALAN

Advocate for the Petitioner : S. DUTTA, SR. ADV

Advocate for the Respondent : GOVT ADV NL

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. S. Dutta,
Senior Advocate.
Mr. Pfosekho Pfotte,
Advocate.

For the Respondents: Ms. A. Ayemi,
Government Advocate, Nagaland
(Respondent Nos.1 & 6).
Mr. Kamei Alin Rongmei,
Advocate for Respondent No.2.

Date of Hearing : 29.04.2024.

Date of Judgment : 30.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Dutta, learned senior counsel assisted by Mr. Mr. Pfosekho Pfotte, learned counsel appearing for the petitioner. Also heard Ms. A. Ayemi, learned Government Advocate, State of Nagaland representing Respondent Nos.1 and 6. Mr. Kamei Alin Rongmei, learned counsel represents Respondent No.2 (Canara Bank).

2. This is an application under Article 226 of the Constitution of India challenging the order dated 20.10.2020 passed by the Recovery Officer, Debts Recovery Tribunal, Guwahati (for short, referred to as "the DRT") ordering that the Tribunal will take physical possession of the attached/mortgaged property owned by Certificate Debtors by evicting them and all other occupants from the property.

3. In the year 2013, the Respondent No.3, Alo Mero took a Housing Loan of ₹39,000,00/- (rupees Thirty-Nine Lakhs) from the Respondent No.2, Canara Bank. The loan was procured by mortgaging a plot of land measuring 1 Katha, 1 Lecha situated at Tenyiphe-1 Village (N.C Area) having specific four boundaries. Thereafter, Alo Mero defaulted in repayment of Bank loan. Ultimately, the loan account was declared as Non-Performing Asset (NPA).

4. As a natural consequence, the Bank authority filed an Original Application No.445/2016 against Alo Mero before the Debts Recovery Tribunal, Guwahati seeking a Recovery Certificate in favour of the Bank for an amount of ₹43,75,518/- along with interest at the rate of 10% per annum.

5. In the DRT, Guwahati, Alo Mero did not contest the application. Therefore, the DRT also allowed the prayer of the respondent Bank.

6. Pursuant to the order passed by the DRT, on 20.10.2020, the Recovery Officer, DRT, Guwahati issued an eviction notice.

7. The present petitioner submits that on the basis of a sale deed dated 02.09.2017, he had purchased the aforesaid plot of land and he has been in occupation of the land since then.

8. The petitioner further submits that he never borrowed any money from the respondent Bank. Therefore, the order of eviction issued by the Recovery Officer, is not binding upon him.

9. The learned senior counsel Mr. Dutta submits that Alo Mero (Respondent No.3) deposited an order dated 16th August, 2013 issued by the Deputy

Commissioner, Dimapur for creating an equitable mortgage. Mr. Dutta pointed out that there was no mortgage, according to Section 58(f) of the Transfer of Property Act, 1882.

10. Today, Ms. Ayemi, learned Government Advocate, Nagaland representing Respondent Nos.1 and 6, submits a document issued by the Revenue-cum-Resettlement Officer, Dimapur stating that no such order dated 16th August, 2013 was passed by the Deputy Commissioner, Dimapur.

11. Mr. Dutta submits that Alo Mero (Respondent No.3) procured the land from the Bank by depositing a fake order allegedly passed by the Deputy Commissioner, Dimapur. According to Mr. Dutta, there was no mortgage by deposit of title deed.

12. The learned counsel Mr. Rongmei appearing for the respondent Bank submits that in the State of Nagaland, this type of mortgage is permitted by the Nagaland Land Revenue Regulations (Amendment) Act, 2002.

13. After hearing the learned counsel of both sides, I find that the instant writ petition revolves around two questions. The first question is whether the present petitioner, who has occupied a plot of land and never borrowed any money from any Bank, is liable to be evicted from his land because Alo Mero, the Respondent No.3 had secured a loan from the Bank by mortgaging the aforesaid plot of land, which is under occupation of the present petitioner?.

14. The second question is as to whether the High Court is entitled to exercise its jurisdiction under Article 226 of the Constitution of India because instead of approaching this Court, the petitioner could have moved the Debts Recovery Appellate Tribunal?

15. It is a settled position of law, that when there is a provision for going to an appellate authority, the High Court is not entitled to exercise its jurisdiction under Article 226 of the Constitution of India.

16. Therefore, the present petitioner Shri. N Henry Zeliang is advised to

approach the Debts Recovery Appellate Tribunal challenging the order dated 20.10.2020 passed by the Recovery Officer, Debts Recovery Tribunal, Guwahati in Original Application No.445/2016.

17. Till disposal of the said appeal by the Debts Recovery Appellate Tribunal, the impugned order dated 20.10.2020 passed by the Recovery Officer, Debts Recovery Tribunal, Guwahati in Original Application No.445/2016, shall remain stayed.

With the aforesaid direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant