

GAHC020001902018



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

Case No. : WP(C)/88/2018

PIHO KITS
DIMAPUR

VERSUS

THE STATE OF NAGALAND AND 3 ORS
KOHIMA

2:THE COMMISSIONER NAGALAND
KOHIMA
NAGALAND

3:DEPUTY COMMISSIONER
DIMAPUR NAGALAND
DIMAPUR NAGALAND

4:REV. N. TZUDIR
S/O PANGJUNGLEMBBA TZUDIR
DUNCAN BOSTI
DIMAPUR
NAGALAND.(ON BEHALF OF DABA

Advocate for the Petitioner : H. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

Date of hearing and judgment : 28.05.2024

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER (ORAL)

An Order dated 18.11.2017 passed by the Deputy Commissioner Dimapur, is the subject matter of challenge in this writ petition instituted under Article 226 of the Constitution of India. By the said Order, while declaring the possession of the private respondent over the land in question, the Deputy Commissioner had also made certain observations with regard to the ownership of the land.

2. The facts projected in the petition is that in the year 1984 a proposal was made for settlement of lands to various persons including the father of the petitioner. Pursuant to the said proposal, an Allotment Order was issued on 18.12.1985 in favour of the father of the petitioner allotting 1 *katha* 5 *lessa* of land. The said Allotment Order had 7 (seven) number of conditions including the condition to take over possession within 6 (six) months. It is averred that on fulfillment of the conditions, the possession was taken over by the father. The father of the petitioner, in his lifetime had executed a gift deed in favour of the petitioner and on his passing away, the *jamabandi* was issued in the name of the petitioner in the year 2015. The payment of land revenue had also been done by the petitioner. In this regard, revenue receipts have been annexed in this petition.

3. Since the petitioner had detected that some activities were carried out on the land by unknown persons, he had submitted an application to the Deputy Commissioner on 29.02.2016. However, no action was taken on the said representation. On the other hand, the respondent No. 4 had

also submitted an application on 22.07.2016 claiming ownership with a statement that the petitioner had come in to the land in the month of June, 2016. The Deputy Commissioner *vide* the initial Order dated 27.07.2016 had passed a temporary Order of Restraint on the land in question followed by show cause notices dated 19.12.2016. On receiving the response from the rival parties, the matter was considered leading to passing of the impugned Order dated 18.11.2017. By the said Order the Deputy Commissioner had come to a finding that the respondent No. 4 had purchased the suit land and there is no doubt with regard to the ownership over the suit land.

4. I have heard Ms. Bagmita Sharma, learned counsel for the petitioner. I have also heard Ms. Inaholi, learned State counsel whereas the respondent No. 4 is represented by Mr. Supu Jamir, learned counsel.

5. The learned counsel for the petitioner has submitted that the father of the petitioner was duly allotted the land in question *vide* the Order dated 18.12.1985 pursuant to which he had taken possession. In this regard, the pleadings made in paragraph 8 have been pressed into service. It has also been contended that upon gifting the land to the petitioner by his father out of natural love and affection the name of the petitioner was duly mutated and *jamabandi* was accordingly issued in the year 2015. The learned counsel has also drawn the attention of this Court to the revenue receipts to claim that the land revenue were duly paid by the petitioner. It is contended that while the petitioner had approached the Deputy Commissioner on 29.02.2016, no action was taken whereas in the application filed by the respondent No. 4 later, on 22.07.2016, cognizance was taken. The learned counsel for the petitioner has assailed

the Order dated 18.11.2017 on the ground that apart from a wrong appreciation of the materials on the record leading to perverse findings, the observations made on the aspect of the ownership of the land is wholly beyond the jurisdiction of the Deputy Commissioner.

6. Ms. Inaholi, the learned State counsel on the other hand has submitted that a bare reading of the Order dated 18.11.2017 would indicate that the Order is a reasoned one which had been passed by taking into consideration all the relevant factors. It is submitted that the conditions of the Allotment Order dated 18.12.1985 were also taken into consideration and a finding was arrived at with regard to condition No. 1 and condition No. 7.

7. The learned counsel for respondent No. 4, while endorsing and supporting the views expressed by the learned State counsel has strenuously argued that though the Allotment Order was in favour of the father of the petitioner, he had never fulfilled the conditions, more specifically condition No. 1. He has submitted that the land was not taken possession within the stipulated time and the same would also be evident from the application of the petitioner dated 29.02.2016. It is submitted that the respondent No. 4 had duly purchased the land from the lawful owner and because of the present restrain order, the construction is at a halt. He accordingly submits that the writ petition should be dismissed and the interim order be vacated.

8. As regards the issue of the jurisdiction of the Deputy Commissioner to pass orders on the aspect of ownership, the learned counsel has submitted that such observations is permissible as it is based on the materials on record.

9. The rival submissions have been duly considered.

10. The Allotment Order dated 18.12.1985 in favour of the father of the petitioner is not in dispute and neither the said Allotment Order has been the subject matter of challenge in any earlier proceeding. The name of the petitioner has also been mutated and *jamabandi* issued in his name in the year 2015 which pre-supposes that a verification of the possession of the petitioner was made. The revenue receipts pertaining to payment of land revenue have also been perused. In view of the above, this Court is of the opinion that the petitioner has materials to show and contest the aspect of possession.

11. On the other hand, the respondent No. 4 in his affidavit-in-opposition has also made categorical statement of purchase of the land in question by registered deed from the lawful vendor. There are, however, certain materials placed on record in the writ petition regarding the respondent No. 4 possessing excess land.

12. Be that as it may, the exercise which has been carried out by the Deputy Commissioner, Dimapur, is akin to a proceeding under Section 145 of the Code of Criminal Procedure. The jurisdiction and power of the Deputy Commissioner in a proceeding of such nature is only to make suitable directions and orders regarding the possession only and the said power cannot be extended to decide the question of ownership which is strictly within the ambit of a civil court.

13. There are materials placed on record from both the rival parties claiming possession as well as ownership. This Court, in exercise of powers under Article 226 cannot go into the factual aspects, however, it clearly appears that in the impugned Order dated 18.11.2017, the Deputy

Commissioner, Dimapur, has exceeded his jurisdiction in making observation on the aspect of ownership of the suit land.

14. In view of the above, the said Order is not sustainable in law and accordingly set aside.

15. However, the question of ownership being a disputed question between the petitioner and the respondent No. 4, this Court gives opportunity to either of the parties to approach the appropriate civil court for a suitable declaration on the aforesaid aspect for which a maximum period of a month is given.

16. The parties may also pray for any temporary injunction regarding the possession aspect. Since this Court while entertaining this petition had passed an interim order which is operating, it is observed that till this period of a month, the said interim order would be in operation whereafter the aspect of injunction would be considered and decided by the appropriate civil court in accordance with law.

17. The writ petition accordingly stands disposed of.

Sd/-
JUDGE

Comparing Assistant