

GAHC020002142019



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

Case No. : FA/1/2019

THE UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY MINISTRY OF HOME AFFAIRS, NEW
DELHI

2: THE DIRECTOR GENERAL OF ASSAM RIFLES
HEAD QUARTER
SHILLONG
MEGHALAYA
C/O 99 APO

3: THE INSPECTOR GENERAL OF ASSAM RIFLES(NORTH)
N/L
KOHIMA

4: THE COMMANDANT 44TH ASSAM RIFLES
MOKOKCHUNG
N/L
MOKOKCHUNG
N/

VERSUS

ABENLA IMKONG
R/O SANGTAMLA WARD, MOKOKCHUNG, N/L

Advocate for the Petitioner : W R NGULLIE

Advocate for the Respondent : TAKA MASA, SR. ADV

Date of hearing : 03.06.2024

Date of Judgment : 02.09.2024

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

JUDGMENT & ORDER (CAV)

Heard Mr. W.R. Ngullie, learned counsel for the appellants. Also heard Mr. Taka Masa, learned Sr. counsel assisted by Mr. Arenlong, learned counsel for the respondent.

2. This appeal filed under section 96 of the Civil Procedure Code (CPC), 1908 is directed against the impugned judgment and decree dated 29.9.2018 passed by the Court of the Principal District & Sessions Judge, Mokokchung, Nagaland in Civil Suit No.01/2018. By the said impugned decree, the suit land located at Sangemla Ward, Mokokchung Town has been declared in favour of the plaintiff/respondent herein and the appellant has been stopped from any activities on the decreed land and ordered that the plaintiff/respondent to hold, enjoy and possess the said land without any hindrance from the defendant/appellant herein.

3. The present appellants are the defendants No.1 & 2 in the title suit No.01/2018 before the trial court filed by the respondent/Plaintiff. The respondent, as plaintiff, preferred a suit for declaration of rights, title, interest, recovery of possession and perpetual injunction and eviction against the defendants/ appellants herein under Rule 24 of the Administration of Justice and Police in Nagaland r/w Order IV, Rule 1 of

the Code of Civil Procedure pertains to a plot of land located at Sangtemla ward Mokokchung town.

4. For the sake of convenience, the parties in the appeal are referred to, as per their status in the suit in trial court as plaintiff/respondent herein and defendants/appellants.

5. As per the plaint, averment and the contention of the plaintiff/respondent herein in the suit is that:

- (a) The plaintiff owned and possessed a plot of land located at Sangtemla ward at Mokokchung town, Nagaland having schedule of land as under: North- Measuring 100 ft demarcated by road to circuit house; South- measuring 100 ft demarcated with the land of Late P. Shilu Ao; East-measuring 73 ft and demarcated by the building occupied by Office of the S.I.B; West-measuring 65 ft and demarcated with AMC.
- (b) That, the Under Secretary to the Government of Nagaland, Land and Revenue Department by letter dated 15-07-1978 conveyed to the Deputy Commissioner, Mokokchung Nagaland the approval of the Government for allotment of the present suit land in favour of Shri L. Sosang, Mokokchung Nagaland (herein after to be referred as previous owner)
- (c) Thereafter, the Deputy commissioner, Mokokchung Nagaland by an order dated 18-10-1978 issued a land settlement order of the said land in question in the name of Shri L. Sosang Jamir (previous owner). Thereafter, Shri L. Sosang Jamir (previous owner) was permitted to hold a residential permit No.2045 in his name issued from the office of the Municipal

Council Mokokchung, Nagaland dated 29-03-1979.

- (d) Subsequently, the disputed plot of land was purchased by the present plaintiff from Shri Imnaangshi & 7 others of Tzuwar clan of Ungma village (Original Land Owner) for consideration amount of Rs.1,00,000/-only by executing a Sale Agreement dated 06-08-2014.
- (e) Thereafter, Shri L. Sosang Jamir (previous owner) by letter dated 25-03-15, intimated to the Deputy Commissioner, Mokokchung Nagaland that the residential permit No.2045 which was issued in his name is being transferred in favour of Smti. Abenla Imkong (Plaintiff).
- (f) That in view of the said transferred dated 25-03-2015 made by the Deputy Commissioner, Mokokchung, Nagaland that the plaintiff has become the absolute and rightful owner of the suit land and accordingly, on dated 16-05-2015, the Sub Divisional Officer (Civil) Mokokchung Nagaland allowed the transfer of residential permit No.2045 in the name of Smti. Abenla Imkong.
- (g) That the sketch map in respect of the schedule of the suit land has drawn up by the Land Record and Survey Officer (LRSO) Mokokchung, Nagaland dated 04-05-2015 and the same has been subsequently approved by the State authority.
- (h) That since an old building existed in the said allotted land, the Sub Divisional Officer (Civil), Mokokchung Nagaland issued notice and on 23.02.2017 had directed the defendant/appellant herein for dismantling the same and to

vacate the site on or before 12-03-2017. However, as the defendant /appellant did not take any action to dismantle the old building as directed. Therefore, the appellant also served a notice upon the defendant/appellant to dismantle the dilapidated building at the site and to vacate the suit land.

6. The defendant/appellant contested the case by filing written statement and contended that the land under the possession and occupation of the army (Assam Rifles) in the district of Mokokchung spread over 3 pockets known as TAC Hills which is pocket-I (1.8 acres), pocket-II (4.3 acres) and pocket-III (2.10 acres) respectively. The suit land in question falls under TAC Hill pocket-I wherein the Unit building exist which is well within the demarcated fence of the Assam Rifles and the same is under peaceful occupation and possession since 1889 without any hindrance until 10th April 2016 when Shri I. Imkong wrote a letter to the defendant/appellant.

7. It is further contended that a joint survey of the land was carried out on 23.9.2013 and the suit land in question has been marked as army occupied land. By the said joint survey report it has been specifically certified that: -(i) The land which Mr. I. Imkong is claiming is held in TAC Hill Pocket-I of an area 0.19 acres (approximately) out of 1.8. acres; (ii) That the area is properly fenced and no encroachment noticed till date; (iii) There are three structures in the said land one Mandir (temple), 2(two) temporary residential building.

8. The defendant had also raised some preliminary objections regarding barred under Limitation Act and maintainability of the suit. The defendant also contended that the area which was under the occupation

was also called the British Area or the DC Hill area and the same has also been recognized by local populace. In Mokokchung Land Record Compilation (1890-1990- published by the Mokokchung Town Settlers Union Mokokchung, the area under the occupation of the defendant/appellant herein is clearly shown as British Area. Therefore, the Settlement Order dated 18.10.1978 issued by the Deputy Commissioner, Mokokchung is illegal and liable to be quashed and set aside.

9. Basing on the above pleadings of the parties, the learned trial Court framed 8 Issues: -

1. *Whether the suit land was allotted to Mr. L. Sosang Jamir vide Land Settlement Order dated 18-10-1978?*
2. *Whether issuing Residential Permit No.2045 issued by the Municipal Council Mokokchung to Mr. L. Sosang Jamir?*
3. *Whether, the plaintiff has purchased the suit land from Shri Imnaangshi Tatar & 7 others of Tsuwar clan of Ungma village vide Sale Deed dated 06th August, 2014?*
4. *Whether the defendant No.01 & 02 (UOI) were in continuous possession and occupation of the suit land since 1889?*
5. *Whether the letter dated 15th July 1978 issued by the Revenue Department as well as the Land Settlement Order dated 18th October 1978 issued by the Deputy Commissioner, Mokokchung in favour of Mr. Sosang Jamir?*
6. *Whether the Sketch Map in respect of the suit land prepared by the Land record & Survey Officer (LRSO) Mokokchung dated 04-05-2015 approved by the State authority?*
7. *Whether the defendant No.03 & 04 are competent to allot the said plot of land in favour of the plaintiff?*
8. *Whether the defendant (UOI) have raised any objection against the Settlement Order dated 18th October 1978?*
9. *Whether the SDO (C) Mokokchung directed defendant No.02 to dismantle the old building and to vacate from the suit land on or before 21-03-2017?*
10. *Whether the plaintiff served Legal Notice dated 01-06-2017 to the defendant (UOI)*
11. *Whether the plaintiff is entitled to any decree/reliefs?"*

10. During trial, the plaintiff examined 3 witnesses including herself as

PW-1 and exhibited the 16 documents including the Ext-1-approval of the government for allotment of the said plot of land in favour of Shri Y. Sosang Jamir (previous owner); Ext.2-Land settlement order in favour of Shri Y. Sosang Jamir; Ext.4-Sale deed by which the plaintiff purchased the said land from original land owner's clan member as per Naga custom; Ext.5-transfer of suit land to Abenla Imkong (plaintiff) by L. Sosang Jamir (previous owner); Ext. 6-Survey map of Abenla Imkong (plaintiff); Ext.7-Transfer of Residential permit from L. Sosang Jamir to the Abenla Imkong(Plaintiff); Ext.2- Residential permit issued in the name of Abenla Imkong (plaintiff) and documents of renewal of the same etc. The defendants No.1 & 2 filed written statement, exhibited 2 documents including survey map of Nagaland showing the detail of their occupied land and map showing 100 years of Mokokchung land record compilation, but did not produce any witness. And the defendants No.3 & 4 had examined one witness as DW-1 and exhibited documents including order of dismantling of structure at the site of plaintiff, letter written to SDO by Quarter master for Commandant against forceful dismantling etc.

11. On completion of trial, the learned trial Court decided the issues No.1, 2, 3, 4 and 11 in favour of the plaintiff/respondent herein. So far as the issues No.5, 7, 8, 9 and 10 are concerned, the learned court has discussed the contention of the parties. The conditions are either admitted or not denied by the defendants in their written statements, however, no finding has been recorded. Be that as it may, in conclusion while dealing with the issue No.12, the learned trial Court after analyzing the oral and documentary evidences, has decreed the suit in favour of the plaintiff on 29.9.2018 and declared that the plaintiff/respondent herein is the

legitimate owner of the suit land located at Sangtemla ward Mokokchung town having schedule of the land; North-measuring 100 ft demarcated with the land of Late P. Shilu Ao; East-measuring 7.3 ft and demarcated by the building occupied by the Office of the S.I.B; West- measuring 65 ft and demarcated with AMC; and directed the defendants/appellants herein to stopped from any activities on the land so decreed and the plaintiff/respondent herein to hold, enjoy and possess the said land without any hindrance from the defendants and their agents/representatives.

12. Being highly aggrieved, the appellants have preferred this appeal amongst others on the following grounds: -

- (i) That the impugned judgment and decree is bad in law as well as in fact as the learned trial Court gave its own findings without considering and appreciating the documents exhibited in the case.
- (ii) That the learned trial Court took erroneous view while deciding the Issue No.1 pertaining to the Land Settlement Order dated 15.7.1978 which was approved by the Government on 18.10.1978 in favour and in the name of Mr. L. Sosang Jamir by the Revenue Department as well as the Land Settlement order dated 18.10.1978 issued by the Deputy Commissioner, Mokokchung as the same was issued without affording opportunity to the present appellants.
- (iii) That the learned trial Court on Issue No. 2 and 3 pertaining to residential permit No. 2045 issued by the office of the Mokokchung Municipal Council on 29.3.1979 in the name of

Abenla Imkong, the plaintiff/respondent herein as witness No.1 deposed in her cross-examination and admitted that the residential permit No. 2045 was issued in her name by the Municipal council, Mokokchung dated 29.3.1979. Whereas Shri L. Sosang Jamir (previous owner) had approached the Deputy Commissioner Mokokchung for transfer of the residential permit No.2045 in the name of the plaintiff on 25.3.2015; and in view of the said letter, the office of the Deputy Commissioner, Mokokchung through the SDFO (C) had transferred the residential permit in the name of the plaintiff on 16.5.2015. However, the learned trial Court had erroneously decided in favour of the plaintiff/respondent herein by misreading the evidence on record and misconstrued the evidence as such, the impugned judgment and decree is perverse and liable to be quashed and set aside.

(iv) The learned trial Court has erred in deciding the Issue No.4 pertaining to continuous possession and occupation of the suit land by the appellants in the district of Mokokchung spreading over 3 pockets known as TAC Hills, pocket-I (1.8 acres), pocket-II (4.3 acres) and pocket-III (2.10 acres) respectively. And the suit land in question falls under TAC Hills, Pocket-III wherein the Unit building exist which is well within the demarcated fence of the Assam Rifles since 1889 without any hindrance until 10.4.2016 when Shri. Imkong has written a letter to the appellant No.4.

(v) The learned trial Court has erred in deciding Issue No.6

pertaining to the sketch map in respect of the suit land prepared by the Land Record & Survey (LRSO), Mokokchung dated 04.5.2015 approved by the State authority. That the sketch map in respect of the schedule of the suit land has clearly been drawn by the Land Record & Survey (LRSO), Mokokchung Nagaland dated 04.5.2015 and the same has been subsequently approved by the State authority. But the same has not been considered.

13. Thus, the case of the appellant in brief is that the suit land in question is under the possession and occupation of the appellants in the district of Mokokchung spread over 3 pockets known as TAC Hill which is; Pocket-I (1.8 acres). Pocket-II (4.3 acres) and Pocket III (2.10 acres) respectively. The suit land falls under TAC Hills Pocket-III wherein the unit building exist which is well within the demarcated fence of the Assam Rifles and the same was under their peaceful occupation and possession since 1889 without any hindrance.

14. The further contention of the appellant is that a joint survey of the suit land was carried out on 23.9.2013 and the report marked the suit land is an Army occupied land and certified: (i) That the land which Mr. I. Imkong is claiming falls in TAC Hill Pocket-III of an area 0.19 acres (approximately) out of 2.10 acres; (ii) that the area is properly fenced and no encroachment noticed till date; and (iii) that there are three structures in the said land one Mandir (Temple), two temporary residential building.

15. The contention of the appellant is that the suit land falls within the area occupied by the appellants and they were not informed about the letter dated 15.7.1978 issued by the Revenue Department and about the

Land Settlement order dated 18.10.1978 issued by the Deputy Commissioner, Mokokchung in favour of Mr. L. Sosang Jamir (previous owner).

16. Further, it is contended that the land under the occupation of the appellants at Mokokchung was also called the British Area and more popularly, the DC Hills area. And that in the Mokokchung Land Record Compilation (1890-1990) published by the Mokokchung Town Settlers Union Mokokchung, the area under the occupation of the appellant has been clearly shown as "British Area".

17. The further contention of the appellants is that at no point of time, the suit land in question was owned and occupied by Mr. L. Sosang Jamir, in as much as the said suit land is under the peaceful occupation of the appellants for several decades and therefore, selling the suit land by executing a sale deed dated 6.8.2014 by unauthorized persons amounts to illegal transactions.

18. The learned counsel for the appellant submitted that the Assam Rifles (erstwhile Chachar Levy) was in physical possession of the suit land prior to the formation of the State of Nagaland in the year 1963 and by virtue of the State of Nagaland Act, 1962, the land vested with the Central Government remains with the Union Government (Assam Rifles). And whereas the State of Nagaland Act, 1962 "Part V. Section 24(1) provides that any land that was under occupation/vested with the Central Government before the creation of the State of Nagaland shall be vested/remained with the Union of India herein referred to as the Assam Rifles/appellants.

19. The learned counsel for the appellant submitted that the learned

trial Court has clearly committed manifest errors by adjudicating the case and the entire trial has been completed without affording sufficient opportunity to the appellants and therefore, for the reasons and grounds stated above, the impugned judgment and order is liable to be set aside. Hence, prays for quashing and setting aside the impugned judgment and decree dated 29.9.2018.

20. Per contra, the learned counsel for the respondent while defending the impugned judgment and order has reiterated the contention made in the plaint before the trial Court and made the following submissions: -

(i) That on 15.7.1978, the Government of Nagaland has approved for allotment of the present suit land in favour of Shri L. Sosang (Advocate) Mokokchung. Thereafter, the Deputy Commissioner, Mokokchung Nagaland by an order dated 18.10.1978 made a settlement of the said land in question in the name of Shri L. Sosang Jamir. Then, the Deputy Commissioner issued Residential Permit No.2045 dated 29.3.1979 in favour of Shri L. Sosang Jamir (previous owner). It is submitted that the above approval order; the Settlement Order; and the Residential Permit issued in the name of Shri L. Sosang Jamir (previous) has not been challenged before any authority or Court of law till date by the appellant and as such, it has attained its finality.

(ii) It is submitted that subsequently the said land was first purchased by the plaintiff/respondent herein from Shri. Imnaangshi and 7 others of Tzuwar clan of Ungma village for an amount of Rs.1,00,000/- only by executing sale agreement dated 06.8.2014. This was done so; as even if the land is allotted by the government,

the same has to be purchased from the original clan land owner as per the custom in the state of Nagaland. Thereafter, by a gift deed dated 23.3.2015, the said land has been gifted to the present respondent/plaintiff Abenla Imkong by Shri L. Sosang Jamir (previous owner). Thereafter, the previous land owner Shri L. Sosang Jamir by letter dated 25.3.2015 addressed to the Deputy Commissioner, Mokokchung intimated about the transfer of his land to Mrs. Abenla Imkong/respondent herein. Hence, by virtue of the said transfer of land made by Shri L. Sosang Jamir the plaintiff became the absolute and rightful owner of the suit land.

(iii) That the Survey Officer Land Record then conducted a survey of the suit land and submitted the survey report before the Deputy Commissioner, Mokokchung which was subsequently approved by the State authorities.

(iv) That the Deputy Commissioner, Mokokchung by an order dated 16.5.2015 transferred the residential permit No. 2045 which was standing in the name of Shri L. Sosang Jamir(previous owner) to Smti. Abenla Imkong plaintiff/respondent herein. The said sale agreement dated 06.8.2014; transferred of the suit land through gift deed dated 25.3.2015; survey map prepared dated 4.5.2015; and the transfer of the residential permit from Shri L. Sosang Jamir to Smti. Abenla Imkong dated 16.5.2015 has also not been controverted or challenged by the appellant before any authority or in the Court of law till date. And therefore, it has also attained finality.

(v) That since the plaintiff is the rightful owner of the said land,

the SDO (Civil) Mokokchung, Nagaland had repeatedly issued notice and directed the plaintiff/Commanding Officer, 44 Assam Rifles Mokokchung to dismantle the old building and to vacate the site on or before 21.3.2017.

(vi) However, instead of complying with the said notice issued by the authority, the Commanding Officer of 44 Assam Rifles/appellant herein in the month of March 2017 had forcefully obstructed and restrained the development works going on at the suit land and further harassed the labours engaged in the construction work. Thereafter, the respondent served legal notice upon the appellants wherein it was expressly mentioned to vacate the suit land within a period of 60 days from the date of issue of the notice dated 01.6.2017. Thereafter on 24.8.2018, a Civil Suit was filed by the plaintiff/respondent herein before the Principal District & Sessions Judge, Mokokchung which was registered as Civil Suit No.1/2018 and after appreciation of evidences and hearing the parties the case has been decreed in favour of the plaintiff/ respondent herein.

21. With regard to the residential permit issued to the plaintiff/respondent bearing Permit No. 2045 dated 29.3.1979, the learned counsel for the respondent clarified that it is dated 29.3.1979 only by referring vide DC order No.LR-18/Pt/04-05/2006-2011/103 dated 16.5.2015 and by doing so, the authority has done no any illegality.

22. It is further submitted that the respondent/plaintiff has been paying a revenue to the Government for the said land since allotment. And that the appellant has neither acquisitioned the said land nor has challenged the allotment order of the deed of sale and also no relief has been sought.

Further, no prayer has been made for cancellation of the allotment order in their appeal. And while supporting the impugned judgment and order, the learned counsel for the respondent further submitted that there is also no valid ground for the appeal as the plaintiff participated the trial by filling written statement and cross examined the witnesses. It is further submitted that sufficient opportunity was afforded to the defendant/appellant to establish their case; however, they miserably failed to establish their case in the trial Court. Hence, prays for dismissal of the present appeal.

23. In support of his submission, the learned counsel for the respondent relied upon the decision of the Hon'ble Supreme Court in the case of **Krishnadevi Malchand Kamathia** reported in **(2011) 3 SCC 363** whereby it is held that an order has to be challenged before the Court. The efficacy of the order will remain stand unless it is challenged and set aside by the Court. The relevant paragraph 16 to 19 is quoted here below:

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"16. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) &Ors., AIR 1996 SC 906; Tayabhai M. Bagasarwalla&Anr. v. Hind Rubber Industries Pvt. Ltd. etc, AIR 1997 SC 1240; M. Meenakshi &Ors. v. Metadin Agarwal (dead) by L.Rs. &Ors. (2006) 7 SCC 470; and Sneh Gupta v. Devi Sarup &Ors., (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

17. In State of Punjab &Ors. v. Gurdev Singh, Ashok Kumar, AIR 1991 SC 2219, this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Ellore Rural District Council, [1956] 1 All ER 855 wherein Lord Radcliffe observed:-

"An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the

necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

18. In Sultan Sadik v. Sanjay Raj Subba &Ors., AIR 2004 SC 1377, this Court took a similar view observing that once an order is declared non-est by the Court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

24. Heard the submission advanced by both the learned counsel for the parties and considered the document on records including the impugned judgment and decree.

25. From and out of the pleadings of the parties, following crucial factors emerges for considerations:

26. Firstly, whether the land in question was under physical possession of the appellant at the time of issuance of land settlement order in favour of L. Sosang Jamir. If yes, under what right and authority? The contention of the appellants is that the land occupied by them is under the possession of the army (Assam Rifles) in the district of Mokokchung spread over 3 pockets known as TAC Hills which is pocket-I (1.8 acres), pocket-II (4.3 acres) and pocket-III (2.10 acres) respectively. The suit land in question falls under TAC Hill pocket-I, wherein the Unit building exists which is well within the demarcated fence of the Assam Rifles and the same was occupied by them and under

peaceful possession since 1889 without any hindrance. However, admittedly, the appellant does not have an allotment order or land settlement order issued in their favour. Admittedly, the said land has also not been acquisitioned by them. The defendant/appellant failed to show or produce any authentic document issued by any competent authority showing their right to claim or possess the said land except that the said land was under their long possession with old structures being constructed on it by them.

27. The contention of the appellant is that the area which was under their occupation was also called the British Area and more particularly, the DC Hill area and the same has also been recognized by local populace. In Mokokchung Land Record Compilation (1890-1990) published by the Mokokchung Town Settlers Union Mokokchung, the area under the occupation of the defendant/appellant herein is clearly shown as British Area and they have been possessing the said land even before the establishment of the state of Nagaland. Further, it is contended that the Settlement Order dated 18.10.1978 issued by the Deputy Commissioner, Mokokchung was without any information to them. In this regard the learned counsel for the respondent submitted that the survey map produced by the appellant showing the land occupied by the Assam Rifles are compiled and published by Mokokchung Town Settlers are not an authentic in as much as the same was published on the occasion of 100 years of Mokokchung by private parties and not by the Government authority.

28. From the above it appears that the appellants are under occupation of vast land including the present land in question since long. However,

they failed to produce any documentary evidence showing their right of ownership over the said land more particularly the present suit land. The record also do not shows that the appellant had shown before the trial Court that the land in question was under their physical possession when the land settlement order was issued in the name of the L. Sosang Jamir on 18.10.1978 except that there existed an old and dilapidated building. Thus, though the plaintiffs were under occupation of the suit land, but they had no any ownership documents over the same. And since, the appellants were not authorized owners to possess the suit land, it was thus, allotted to Shri L. Sosang Jamir on 18.10.1978 on the approval of the Government of Nagaland.

29. Secondly, whether the land settlement order was issued by the Deputy Commissioner, Mokokchung in the name of Shri Sosang Jamir? If yes, whether, the Deputy Commissioner, Mokokchung is the competent authority to issue land settlement order dated 18.10.1978 in favour of L. Sosang Jamir? And what right the plaintiff/respondent herein has over the said land? From the documents on record, it appears that by a letter No.LR/2-9/76 dated 15.07.1978, the Under Secretary to the Government of Nagaland addressed to the Deputy Commissioner, Mokokchung, Nagaland has conveyed the approval of the Government for allotment of a plot of land measuring an area of 100 and 120 in length and 75 and 65 in breadth in favour of Shri L. Sosang Jamir, Advocate at Mokokchung Town. Thereafter, the Deputy commissioner, Mokokchung Nagaland by an order dated 18-10-1978 issued the land settlement order in the name of Shri L. Sosang Jamir for construction of a residential quarter. It is not disputed that the

Deputy Commissioner or the District Magistrate is the competent authority in the state of Nagaland to issue land settlement order in the district. In the instant case, it appears that the Deputy Commissioner, Mokokchung has issued the said land settlement order in favour of Shri L. Sosang Jamir in compliance of the approval conveyed to him by the Under Secretary to the Government of Nagaland. Hence, no any illegality could be shown in the issuance of the said land settlement order dated 18.10.1978 by the Deputy Commissioner except that no any notice or information was given to the appellant before issuance of the land settlement order in favour of Shri L. Sosang Jamir. However, in view of the fact, that the appellant was not the authorized owner of the said land, the Deputy Commissioner was not required to inform the appellant before issuance of the land settlement order in favour of Shri L. Sosang Jamir.

30. Thereafter, Shri L. Sosang Jamir (previous owner) by a gift deed dated 23.3.2015, the said land was gifted to the present respondent/plaintiff Abenla Imkong and by letter dated 25.3.2015 addressed to the Deputy Commissioner, Mokokchung Shri L. Sosang Jamir (Previous owner) had intimated about the transfer of his land to Mrs. Abenla Imkong, the respondent herein. The record also reveals that the plaintiff/respondent had also purchased the said land from the original land owner as per the Naga Custom; got the survey map prepared and also got the residential permit transferred from Shri L. Sosang Jamir to her which has not been controverted or challenged before any authority or Court of law till date. And since, the said land settlement order and the subsequent orders transferring the said land in the name of the plaintiff/respondent are not controverted or challenged before any

authority; the plaintiff/respondent herein becoming the rightful owner of the suit land by virtue of the said transfer remains undisputed. This point is decided accordingly.

31. The another point to be considered is whether, the appellant has raised any objection or challenged the land settlement order dated 18.10.1978 issued by the Deputy Commissioner, Mokokchung in favour of L.Sosang Jamir and subsequent orders issued in favour of the plaintiff/respondent before any authority?

As per the record the land settlement order was issued way back in the year 1978 but the appellant did not raise any objection against the said settlement order. Thereafter, the said land was purchased by the present respondent from the original land owner clan in the year 2015 and then it was gifted and transferred from the original allottee (previous owner) to the present respondent. However, the land settlement order issued in favour of Shri L.Sosung Jamir has not been challenged by the appellant before the issuing/ appellate authority nor have they challenged the same before any other authority or court till date. In their written statement before the trial court, the defendant/appellant only stated that while issuing the land settlement order, they were not informed by the authority. However, even after coming to know about the fact that the land settlement order has been issued in favour of Shri. L. Sosang Jamir (previous owner) also the appellant did not raise any objection nor had challenged the allotment order before any authority or Court of law. This shows that they were not aggrieved by the said land settlement order.

32. Thereafter, the land was gifted and transferred by Shri L. Sosang Jamir to the plaintiff who then had purchased the land from the original

land owner as per the Naga customs and got the surveyed map prepared in her name. Thereafter, the residential permit was also transferred from L. Sosang Jamir to the plaintiff based on the land settlement issued on 29.03.1979. It appears that during trial, the respondent had not contradicted or properly cross examined regarding the above documents despite of being given adequate opportunity. The respondent has also not put to challenge any of the above documents before any competent authority or Court of law till date. The learned counsel for the respondent submitted that since the appellant has not challenged the above order, as such, the same has attained its finality. And unless the very basic order which affects its interest is challenged, then even if the person is aggrieved, there is no scope of granting any relief.

33. There is also no any reason assigned for not challenging those documents affecting their interests over the land in question. When the averments as defendant in title suit before the trial Court and as appellant before this Court do not establish the reason for not challenging the initial allotment and further to that, the evidence also does not contradicted the said allotment order and the subsequent transfer of the residential permit, survey map etc. and the same having found in favour of the respondent/ plaintiff, the finding of the trial Court that the plaintiff is the legitimate owner of the suit land located at Sangtanla ward, Mokokchung Town having schedule of land mentioned thereon, requires to be upheld.

34. Thus, for the reason stated above, I do not find any infirmity in the finding of the trial Court in this regard and therefore, no interference is required to the judgment and decree of the trial Court.

35. In view of the above, the appeal stands dismissed. No cost.

36. Return the TCR immediately.

JUDGE

Comparing Assistant