

GAHC020002912023



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

Case No. : C. REVN/3/2023

SHRI. HENJAKAI SINGSON
S/O LATE HELJANG SINGSON, G.B. SIRHIMA VILLAGE, R/O
SIRHIMA VILLAGE, CHUMOUKEDIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
DEPARTMENT OF INDUSTRIES AND COMMERCE NAGALAND
KOHIMA

2:THE DIRECTOR
DIRECTORATE OF INDUSTRIES AND COMMERCE NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER
DIMAPUR NAGALAND

4:N.F. RAILWAYS
REPRESENTED BY GENERAL MANAGER
MALIGAON
GUWAHATI
ASSAM

5:THE DEPUTY COMMISSIONER
CHUMOUKEDIMA NAGALAN

Advocates :

For the Petitioner : Mr. P.B. Paul.

For the Respondents : Mr. J. Sheqi,
Mr. K. Angami.
Mr. Y.P. Gupta

Date of Hearing : 18.03.2024.

Delivery of Judgment & order : 27.03.2024.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

Heard Mr. P.B. Paul, learned counsel for the petitioner; Mr. J. Sheqi, learned counsel for the respondent Nos. 1 & 2; Mr. K. Angami, learned counsel for the proforma respondent No. 1; and Mr. Y.P. Gupta, learned Central Government Counsel for the proforma respondent No. 2.

2. In this petition, under Section 115 of the C.P.C. read with Article 227 of the Constitution of India, the petitioner namely, Shri Henjakai Singson, has challenged the impugned order dated 23.06.2023, passed by the learned Principal District & Sessions Judge, Dimapur, Nagaland, in First Appeal No. 01/2022.

3. It is to be noted here that vide impugned order dated 23.06.2023, the learned Principal District & Sessions Judge, Dimapur, Nagaland, has set aside

the order dated 08.04.2022, passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland, in I.A.(Crl.) No. 238/2021, whereby the learned Civil Judge (Senior Division), Dimapur, Nagaland, has passed temporay injunction, restraining the proforma respondent No. 1 from releasing/disbursing the compensation amount to the petitioner, in respect of the land covered by the conditional sale deed, vide Registration No. 27, dated 11.03.1986, (Annexure – 1).

4. The background fact leading to filing of the present petition is adumbrated herein below:-

“The father of the petitioner namely, Late Heljang Singson, during his lifetime, being the owner of a plot of land measuring 50 acres, executed a conditional sale deed on 25.09.1985, vide Registration No. 27, dated 11.03.1986, situated at Shirima village, Dimapur, Nagaland, in favour of the respondent No. 2, for establishment of a citronella production firm. In the said sale deed one condition in Clause No. 6 was incorporated that in the event of the department fails to continue with the said project and if abandoned, the said land shall be returned to the land owner. Thereafter, the respondent No. 2, out of the 50 acres of land which had been procured for citronella firming, abandoned a stretch in favor of the proforma respondent No. 1 for construction of new railway line (B.G. Project). Thereafter, the petitioner demanded the respondent No. 2 to hounour the terms of the sale deed, especially the Clause No. 6 and return the abandoned land. Thereafter, the proforma respondent No. 1 had surveyed the land and assessed the compensation of the land earmarked the same for diverting the project to respondent No. 2. Then having came to know

about the same the petitioner on 18.07.2018, submitted a representation to the proforma respondent No. 2 and brought the condition so incorporated in the conditional sale deed, to the knowledge of the proforma respondent No. 2 and requested the proforma respondent No. 2 to release the land compensation, in respect of the land earmarked by the proforma respondent No. 1, as and when the compensation is released by the proforma respondent. Then having not received any response from the respondent No. 3, the petitioner has filed a reminder on 25.03.2019, and as the proforma respondent No. 3 has failed to act upon the said representation, the petitioner has instituted a Civil Suit, before the court of learned Civil Judge (Senior Division), Dimapur, Nagaland, being Title Suit No. 03/2021, along with one Interlocutory Application (Civil) No. 238/2021, under Order 39, Rule 1 & 2, read with Section 151 of the C.P.C. for injunction, restraining the respondents from releasing/disbursing the compensation, in respect of the plot of land covered by the conditional sale deed dated 11.03.1986. Thereafter, hearing learned counsel for both the parties, the learned Civil Judge (Senior Division), Dimapur, Nagaland, has granted temporary injunction, restraining the respondents from releasing/disbursing the compensation, in respect of the plot of land covered by the conditional sale deed."

Thereafter, being aggrieved the respondent No. 2 had preferred an appeal before the learned Principal District Judge, Dimapur, Nagaland, being First Appeal No. 01/2022. Thereafter, hearing both the parties, the learned Principal District Judge, Dimapur, Nagaland, had allowed the said appeal by setting aside the order dated 08.04.2022, passed by the learned Civil Judge (Senior Division),

Dimapur, Nagaland, in I.A.(Civil.) No. 238/2021, arising out of Title Suit No. 03/2021.

5. Being aggrieved, the petitioner has approached this Court by filing the present petition for setting aside the impugned order dated 08.04.2022, on the following grounds :-

(i) That, the learned Principal District Judge, Dimapur, Nagaland, has failed to take into consideration of the distinct fact that the land was conveyed against conditional sale, as agreed by the parties that on abandonment of the agreed project by the department, the land would be returned to the land owner.

(ii) That, the learned Principal District Judge, Dimapur, Nagaland, has failed to appreciate that the case of the petitioner is covered under Section 32 of the Indian Contract Act, i.e. contingent contract and not a voidable contract.

(iii) That, the learned Principal District Judge, Dimapur, Nagaland, has failed to take into consideration that the vacation of the injunction order passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland, tantamount to the disposal of the main suit in the interlocutory matter.

(iv) That, the learned Principal District Judge, Dimapur, Nagaland, has failed to take into consideration that the land was sold by the vendor to the department for citronella project, by executing a conditional sale deed and as per Clause No. 6 of the said deed, in the event of the department divert the project or abandone the same, the land would be returned to the land owner.

(v) That, the learned Principal District Judge, Dimapur, Nagaland,

has failed to take into consideration that the learned Civil Judge (Senior Division), Dimapur, Nagaland, has passed the injunction order judiciously, after taking into account the golden principle of granting injunction under Order 39 Rule 1 & 2 of the C.P.C. and without assigning the reason the order of the learned Civil Judge (Senior Division), Dimapur, Nagaland, has been vacated by the learned Principal District Judge, Dimapur, Nagaland, which is improper and illegal.

(vi) That, the learned Principal District Judge, Dimapur, Nagaland, has acted arbitrarily and it is the petitioner who shall suffer irreparable loss in the event of vacation of the injunction order.

(vii) That, the learned Principal District Judge, Dimapur, Nagaland, has failed to take into consideration that the transfer of property act is not applicable in the instance case, since the same has not been adopted by the State of Nagaland, any law which has not been adopted by the State as required by the under Article 371(A) of the Constitution of India cannot be applied and as such, the order dated 23.06.2023, is highly illegal and liable to be set aside.

6. Mr. Paul, learned counsel for the petitioner, despite reiterating the grounds mentioned herein above, also submits that in view of the conditional sale deed (Annexure – 1), the land was sold by the father of the petitioner to the respondent No. 2, is covered under Section 32 of the Indian Contract Act and also in view of the Clause No. 6 of the said deed, the land has to be returned to the petitioner and the same has been violated by the respondent No. 2. Mr. Paul further submits that the Transfer of Property Act is not applicable in the State of Nagaland, in view of Article 371(A) of the

Constitution of India and even the spirit is also not applicable. Mr. Paul also submits that the land in question is a village land and it is not a cadastral land and it is covered by Section 15(g) of the Nagaland Village Council Act, 1978. Mr. Paul also submits that the learned Principal District Judge, Dimapur, Nagaland, has failed to consider that 3 golden principles of the granting temporary injunction and set aside the reasoned order, passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland, without assigning any valid reason and therefore, it is contended to allow the petition.

6.1. Mr. Paul, learned counsel for the petitioner, has also referred following case laws in support of his submission :-

- (i) **Panchanan Dhara and Ors. vs. Monmatha Nath Maity (*dead, through LRS*) and Anr.**, reported in **(2006) 5 SCC 340**;
- (ii) **Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.**, reported in **(2003) 5 SCC 705**; and
- (iii) **Provash Chandra Dalui and Anr. vs. Biswanath Banerjee and Anr.**, reported in **(1989) Supp 1 SCC 487**.

7. Per contra, Mr. Sheqi, learned counsel for the respondent Nos. 1 & 2 submits that the right title and interest over the land has already been transferred to the respondent Nos. 1 & 2, by the father of the petitioner, vide Annexure – 1 and that the Clause No. 6 incorporated therein, prohibits absolute transfer of the land which is invalid. Mr. Sheqi further submits that though the Transfer of Property Act is not applicable in the State of Nagaland, in view of Article 371(A) of the Constitution of India, yet, the spirit

of the same is applicable and that none of the conditions which are required to be fulfilled for granting temporary injunction, is established by the petitioner before the learned Civil Judge (Senior Division), Dimapur, Nagaland, as no prima facie case is made out in favour of the petitioner. Mr. Sheqi also submits that the land in question was under the possession of the respondent No. 2 and as such, the balance of convenience is in favour of the respondent No. 2 and the third condition i.e. the irreparable loss is also in favour of the respondent Nos. 1 & 2, as they are the owner of the land and that the learned Principal District Judge, Dimapur, Nagaland, has considered all these aspects and rightly set aside the temporary injunction order, so granted in favour of the petitioner and therefore, it is contended to dismiss the petition.

7.1. Mr. Sheqi, learned counsel for the respondent Nos. 1 & 2 has referred 3 case laws in respect of his submission :-

- (i) **Hindustan Petroleum Corporation Ltd. vs. Sriman Narayan and Anr.**, reported in **(2002) 5 SCC 760**;
- (ii) **Westarly Dkhar and Ors. vs. Sehekaya Lyngdoh**, reported in **(2015) 4 SCC 292**; and
- (iii) **Sridhar and Anr. vs. N. Revanna and Ors.**, reported in **(2020) 11 SCC 221**.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also gone through the case laws referred by learned counsel for both the parties.

9. A careful perusal of the Annexure – 1, the conditional sale deed, indicates that the same was executed between the father of the petitioner and the respondent No. 2 on 25.09.1985, and registered on 11.03.1986, vide registered Deed No. 27. Further, it appears from the said sale deed that a plot of land measuring 50 acres was sold to the respondent No. 2, on payment of a Rs. 1,00,000/-. It also appears from the said sale deed that one condition is incorporated, in Clause No. 6, wherein it is stated that “***in the event of department fails to continue the project and if abandoned, the said land shall be returned to the land owner.***” Also it appears that the respondent No. 2 had purchased the said plot of land for citronella farming and continued with such cultivation. Thereafter, same stretch of the said plot of land was acquired by the proforma respondent No. 1 for implementation of B.G. Railway line in Nagaland on 07.05.2014, by exercising the power under Section 6(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965 (Annexure – 3 of the affidavit-in-opposition). It also appears from the Annexure – C of the affidavit-in-opposition that a sum of Rs. 1,37,92,142/- have been fixed for acquiring the aforesaid land of the respondent No. 2. Further it appears from the documents placed on record that vide order dated 08.04.2022, passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland, in I.A.(Crl.) No. 238/2021, arising out of Title Suit No. 03/2021, has granted temporary injunction order, prohibiting the proforma respondent No. 2 in releasing the compensation amount, in favour of the respondent No. 2 and thereafter, the respondent Nos. 1 & 2 has preferred an appeal being First Appeal No. 01/2022, whereby the learned Principal District Judge, Dimapur, Nagaland, vide order dated 23.06.2023, has set aside the order dated 08.04.2022, passed by the learned Civil Judge (Senior Division), Dimapur, Nagaland, in I.A.(Crl.) No. 238/2021.

10. It is not in dispute that the land in question, which was in the possession of the respondent No. 2, was acquired by the proforma respondent No. 1 for implementation of B.G. Railway line from Dhansiri to Zubza, in Nagaland, under Section 6(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965.

11. Now, what left to be seen is while the land in question has been acquired by the proforma respondent No. 1 from the respondent No. 2, who was continuing with the project of citronella cultivation, can it be said that the respondent No. 2 had abandoned the project or failed to continue the said project. The answer, to the opinion of this Court, is got to be emphatic 'No', inasmuch as the Deputy Commissioner, i.e. the proforma respondent No. 1 has acquired the land in question for implementation of B.G. Railway line from Dhansiri to Zubza, in Nagaland, under Section 6(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965.

12. As the project of citronella cultivation was neither abandoned by the respondent Nos. 1 & 2, nor it failed to continue with the said project, it cannot be said that they (the respondent Nos. 1 & 2) had violated the Clause No. 6 of the Annexure – 1, when the proforma respondent No. 1 has acquired the land in question, under Section 6(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965, for public purpose i.e. implementation of B.G. Railway line from Dhansiri to Zubza, in Nagaland.

13. It is to be noted here that this Court vide order dated 15.12.2023, had already taken a view that if it is the case of acquisition of land, then the suit would not be maintainable and in such eventuality the petitioner herein, who

was the plaintiff, would have to take recourse of the Section 6 of the Nagaland Land (Requisition and Acquisition) Act, 1965, and directed the proforma respondent No. 1 to file an affidavit to that effect. And accordingly, an affidavit dated 23.01.2024, has been filed before this Court, bringing on record, the Land Acquisition Notification, Annexure – 1 and calculation of compensation amount, Annexure – 2, and it is categorically stated in the said affidavit that the land in question, in possession of the respondent No. 2, is acquired for implementation of B.G. Railway line from Dhansiri to Zubza, in Nagaland, by exercising the power under Section 6(1) of the Nagaland Land (Requisition and Acquisition) Act, 1965 and the notification Annexure – A1 was issued on 07.05.2024, and the land in question, which was under the possession of the respondent No. 2 for citronella cultivation is still exist and part of the said plot of land acquired by the Government of Nagaland for public purpose.

14. The learned Principal District Judge, Dimapur, Nagaland, in the impugned order dated 23.06.2023, had categorically held that parting with a plot of land to the new railway line cannot by any stretch of imagination tantamount to abandonment of land and as out of necessity for the large interest of the State, the said is land is required and as there is no abandonment of land, Clause No. 6 of the sale deed, dated 25.09.1985, cannot be enforced and as such, the balance of convenience shift towards the appellant and that no irreparable loss would be caused to the O.P. No. 1, i.e. the petitioner. Accordingly, the learned court below has allowed the appeal by setting aside the injunction order.

15. The reason, so assigned by the learned Principal District Judge, Dimapur, for setting aside the impugned order dated 08.04.2023, so passed

by the learned Civil Judge (Senior Division) Dimapur, appears to be justified in the given facts and circumstances on the record and the same requires no interference of this court. It is to be noted here that the land in question was in possession of the respondent Nos. 1 & 2 and still there exist citronella cultivation and as such, the balance of convenience is in favour of the respondent Nos. 1 & 2 and no prima facie case appears to be made out in favour of the petitioner and no irreparable loss will also be caused to him, as the land has already been sold and right, title and interest have already been transferred in favour of the respondent Nos. 1 & 2. Besides, in view of section 10 of the Transfer of Property Act, any condition or limitation absolutely restraining the transferee from parting with or disposing of his interest in the property, the condition of limitation is void, as held by Hon'ble Supreme Court in the case of **Sridhar and Anr.(supra)**. It is to be noted here that though Transfer of Property Act is not applicable in the state of Nagaland, its spirit is applicable.

16. I have considered the submissions of learned counsel for both the parties and I find sufficient force in the submission of Mr. Sheqi, learned counsel for the respondent Nos. 1 & 2. It is a fact that the Transfer of Property Act is not adopted by the State of Nagaland, in view of the Article 371(A) of the Constitution of India, but, the fact remains that the spirit of the same is applicable. The case laws referred by Mr. Sheqi, learned counsel for the respondent Nos. 1 & 2 also strengthened his submission.

17. I have also considered the submission of Mr. Paul, learned counsel for the petitioner and also gone through the case laws referred by him and I find that the same are not applicable in all force to the facts and circumstances in the case in hand and therefore, detailed discussion of the same is skipped for

the sake of brevity.

18. In the result, I find no merit in the petition and accordingly, the same stands **dismissed**.

JUDGE

Comparing Assistant