

GAHC020000342020

2025:GAU-NL:103



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

Case No. : FA/3/2020

UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI- 110001

2: DIRECTOR GENERAL OF ASSAM RIFLES
HEAD QUARTER
SHILLONG
MEGHALAYA

C/O 99 APO

3: INSPECTOR GENERAL OF ASSAM RIFLES (NORTH)
NAGALAND
KOHIMA

4: COMMANDANT
35 ASSAM RIFLES

MON
NAGALAN

VERSUS

H. CHINGTICK KONYAK
S/O LATE. HAMJE KONYAK,
R/O BAMJONG COLONY NAGINIMORA,
DISTRICT MON, NAGALAND

Advocate for the Petitioner : YANGER WATI,

Advocate for the Respondent : B. N. SARMAH, IMTIWAPANG

**BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

Date of Hearing : 10.03.2025

Date of Judgment : 18.03.2025

JUDGMENT & ORDER (CAV)

Heard Mr. Yangerwati, learned CGC for the appellants and Mr. B.N. Sarmah, learned counsel for the sole respondent.

1. This is an appeal against the Impugned Judgment order and decree dated 20.11.2018 passed by the learned District Judge Mon in Civil suit No 01/2013. The appellants in the present case are the Director General of Assam Rifle (North), Inspector General of Assam Rifles (North) represented by the Commandant 35 Assam Rifle, Mon Nagaland.
2. The facts leading to the filing of this appeal according to the appellant is that, in the year 1960 the then 13 Assam Rifles were stationed at Mon, and since, there was no adequate land and infrastructure to accommodate the 13 Assam Rifles, the Assam Rifles had approached the State Government to allocate adequate land for setting up their headquarters at Mon District. On the basis of this request the State Government had approached the Kongan Village for allotment of land to the Assam Rifles.
3. The Kongan Village agreed to give 50 acres of land to the Assam Rifles and accordingly, an agreement dated 19.11.1960 was duly entered into

between the Kongan Village, the State government and the Assam Rifles for acquisition of 50 acres of land. An agreement was executed between the Kongan Village and the Assam Rifles on 27.10.1978 in the presence of the District Administration and the said plot of land under the occupation of the Assam Rifles measuring 50 acres was acquired by way of outright purchase at the rate of Rs. 2000/- per acre and in addition, a compensation of Rs. 1,00,000/- (one lakh) was also paid to the land owners, Kongan Village by the Assam Rifles. The agreement dated 19.11.1960 and 27.11.1978 are Annexures 4 and 5 in the appeal Memo.

4. It is also stated by the appellant that prior to 1978 the plaintiff/respondent might have had an understanding with the 13 Assam Rifles for running a civil Canteen within the area under occupations of the appellant/Assam Rifles. However, after 27.10.1978 when the land was purchased by the appellant/Assam Rifles the occupation of the plot by the plaintiff/respondent without any written agreement was stated to be illegal and therefore objected to by the appellant/Assam Rifles. It is the stand of the appellant that the land where the plaintiff/respondent is running the canteen falls within the surveyed land which has already been purchased by the appellants/Assam Rifles and the plaintiff/respondent has been illegally running the said canteen, and as such, a vacation Order dated 26.07.2013 was issued by the appellants/Assam Rifles to the plaintiff. The appellant/Assam Rifles also wrote a letter to the Additional Deputy Commissioner Naginimora dated 04.08.2013 requesting for necessary steps to evict the plaintiff/respondent from the suit land.

5. Being aggrieved by the vacation letter dated 26.07.2013 and the letter

dated 04.08.2013 the plaintiff/respondent preferred the Civil Suit no. 1 of 2013 praying for declaration of right and title and for permanent injunction over the land and also praying for setting aside the order/letter dated 26.07.2013 and 04.08.2013.

6. The learned District Judge, Mon by the Judgment dated 20.11.2018 decreed the suit in favor of the plaintiff/respondent and quashed the two letters dated 26.07.2013 and 04.08.2013 as being issued without any authority and a cost of Rs. 10,000/- was imposed upon the defendant/appellants.

7. The appellant/Assam Rifles has, therefore, come before this Court against the Impugned Judgment and decree dated 20.11.2018 on the following grounds :

i) That the learned court below has failed to appreciate the fact that the disputed land was acquired by the State Government and therefore, the suit should have been dismissed for non-joinder of necessary party i.e. the State Government as the land was acquired by the State Government and given to the Assam Rifles.

ii) That the learned Court below did not accept the depositions of DW 3, 4 and 5 who are the highest authority and officials of the Kongan Village when they had clearly deposed that "Mr. Chingtick Konyak is running a shop on lease to Mr. Mahesh Agarwal within the 50 acres of acquired land already sold to the Assam Rifles by the Kongan villagers".

8. Learned CGC submits that without impleading the State Government and without proper demarcation of the land the learned court below could not have come to the conclusion that the land of the plaintiff/respondent is within the encroached land of 26.42 acres. Learned counsel has also submitted that he had filed an application before the trial court alleging non-joinder of parties and had prayed for framing of issues of this ground. However, the learned court below had rejected the application and the issue was also not framed. He further submits that only the Land Records and Survey Officer of the Government of Nagaland can say whether the plaintiff/respondent's land is within the acquired 50 acres or outside of it. Therefore, it is prayed that the matter may be remanded back to the learned court below with a direction to implead the State Government so that the matter can be adjudicated properly in the interest of justice.

9. Learned counsel for the respondent/plaintiff, Shri. B.N. Sarmah opposing the arguments of the appellant/Assam Rifles has submitted that no issue was framed before the court below regarding impleadment of necessary party and therefore, the State being a party was not discussed. He has therefore, stated that the issue of non-joinder of party is a new issue/ground which has been raised at this appellate stage, and therefore, such a new plea cannot be allowed at this stage.

10. Learned counsel states that the plaintiff/respondent has no dispute with regard to the acquisition of 50 acres of land by the appellants. However, there is an additional 26.42 acres of land, including the plaintiff/respondents land which the appellants have encroached and there is a clear admission regarding this by the appellant in their deposition-in

affidavit filed before the trial court.

11. He has also referred to the deposition of the PWs 1, 2 and 3, in the trial court records and also the depositions of the DW 1, 2 and 3 in order to support his contentions, that the land of plaintiff/respondent is clearly bifurcated by a 30 feet road as a boundary between the 50 acres of land held by the appellant where upon the appellant has even erected a boundary. He has stated that the plaintiff witness as well as defense witness in their examination in Chief had deposed that the land in dispute is within the west side of the rear corner of the road which is clearly bifurcated by a 30 feet breadth road connecting from Naginimora-Wakching road towards Dikhu River on one side and the other side being bounded by Naginimora-Wakching road and also the Dikhu River. He has stated that this deposition has not been rebutted by the appellants/defendant before the court below. In fact, learned counsel for the plaintiff/respondent has submitted that in the original agreement executed on 19.11.1960 there is a specific condition that the appellant/Assam Rifles cannot encroach/acquire any land in the West side of the road in future. He states that prior to the year 1978 in the rear corner of the boundary road he constructed a pucca house and has been running a canteen for his livelihood. Till 2013 he was peacefully running the canteen and it was only in the year 2013 that the appellants/Assam Rifles issued the two letters dated 26.07.2013 and 04.08.2013 (exhibit P-7 and P-8 in the TCR). He therefore submits that he is the absolute owner of the suit land and the appellant/defendants could not have issued the impugned vacation letter dated 26.07.2013 and the letter to the ADC Naginimora dated 04.08.2013.

12. Learned counsel, Shri. B.N. Sarmah further submitted that the present dispute arose only after the encroachment of 26.42 acres of land by the appellant/Assam Rifles. It is the case of the plaintiff/respondent that the entire land in dispute along with the 50 acres of land acquired by the appellant, belonged to the Kongan Village and its villagers including the plaintiff/respondent's father late Hamje Konyak.

13. The learned counsel, Shri. B.N. Sarmah has relied on the case of ***Kasturi-Vs-Iyyamperumal and Ors, (2005) 6 SCC 73*** at Para-13, and the case of ***Ved Mitra-vrs-Dharma Deo Verma and Ors, 2007(3) GLT 191*** at paragraph 6, 7, 8 and 10, to support his contention that necessary parties are those persons against whom some relief is sought and whose presence before the court would be necessary in order to enable the court to adjudicate and settle all the questions involved in the suit although no relief in the suit was claimed against such person. He states that the plaintiff cannot be compelled to sue a person against whom he does not claim any relief. He, therefore, submits that there is no dispute between the parties with regard to the 50 acres of land acquired by the appellant/ Assam Rifle under the initiatives of the Government and as such the Government is not a necessary party. And that the dispute is between the appellant and the plaintiff/respondent and not with the State government.

14. In view of the above submissions, the learned counsel for the plaintiff/respondent prays that the present appeal may be dismissed and the impugned judgment and decree dated 20.11.2018 may be upheld.

15. Upon hearing the parties this Court has observed that the issue of acquisition of 50 acres of land by the appellants from the Kongan village with the assistance of the State government is an admitted fact. The issue in dispute is whether the land of the plaintiff/respondent is within the 50 acres owned by the appellants or on the alleged encroached area of 26.42 acres.

16. Admittedly, there is also a survey sketch map which was exhibited by the plaintiff/respondent as Exhibit P/5 by which the Land Records and Survey Officer vide letter dated 20.02.2012 found that the appellants were occupying an excess land measuring 25 acres. There is also a sketch map showing the area purchased by the appellants attached to the agreement of 19.11.1960 (Annexure-4).

17. DW-3 is the Angh of Kongan village. His deposition-in-affidavit states that, *"as per the interim agreement dated 27th Oct 1978 and the Survey map issued by LRSO of DC Mon, it is clearly shows that **Mr Chintick Konyak is running a shop on lease to Mr Mahesh Agarwal within the 50 acres of acquired land already sold to Assam Rifles by the Kongan villagers**"*. In his cross-examination DW-3 stated that the land of the plaintiff falls on the west side of Naginimora-Wakching road. DW-5 is the chairman of the Kongan village. He also deposed that Chingtick Konyak is running a shop on lease to Mr. Mahesh Agarwal within the 50 acres of acquired land already sold to Assam Rifles by the Kongan villagers. And in cross examination that the land of the plaintiff falls on the west side of Naginimora Wakching road. DW 4 is the Head GB of Kongan village. He deposed that Chingtick Konyak is running a shop on lease to

Mr. Mahesh Agarwal within the 50 acres of acquired land already sold to Assam Rifles by the Kongan villagers. On being cross examined he stated that the land of the plaintiff is within the west side of Naginimora-Wakching Road.

18. What emerges from the trial court records is that the evidence adduced is not sufficient to establish the claim of the plaintiff/respondent. The appellant/defendant has admitted that some area has been encroached, however, the area is not specified and demarcated or surveyed. DW-4 also deposed in his cross-examination that 50 acres was given to the Assam Rifles without measurement. This Court is of the view therefore that without any demarcation or survey the area encroached and the acquired land area cannot be differentiated/identified. More so when the plaintiff/respondent exhibited the Sketch map as Exhibit P/5 and the agreement dated 19.11.60 along with map as Exhibit P/2 and has relied on these documents but the said Exhibits were not proved in accordance with law especially when the LRSO or Surveyor who made the map was not examined as a witness. Thus, the learned trial Court could not have arrived at a finding in favour of the plaintiff basing on the available evidence that his land is within the encroached area and not within the acquired 50 acres.

19. The appellants/defendants had submitted before the trial court for the inclusion of impleadment of necessary parties as one of the suggested issues but the same was not framed. The appellant/defendant filed an I.A praying for amendment of issues. But this prayer was also not considered by the trial court.

20. In the case of ***Kasturi-Vs-Iyyamperumal and Ors, (2005) 6 SCC 73*** relied upon by the plaintiff/respondent, the Hon'ble Apex court stated that necessary parties are those persons against whom some relief is sought and whose presence before the court would be necessary in order to enable the court to adjudicate and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Learned counsel for the plaintiff/respondent had argued that the State Government was not impleaded as party in the Suit as no relief was claimed against them and that the dispute was only between the plaintiff and the appellant/Assam rifles. However, it is clear from the cited judgment of Kasturi vrs Iyyamperumal (supra) that even if no relief is sought against the state government their presence is necessary in order to enable the court to effectually and completely adjudicate all the questions involved in the suit.

21. In view of the discussion and observations made in the preceding paragraphs the judgment & Order and decree dated 20.11.2018 passed by the learned District Judge Mon in Civil suit No 01/2013 are quashed and set aside. The matter is remanded back to the court of learned District Judge, Mon, Nagaland. The learned trial court shall allow the plaintiff to implead the Government of Nagaland and the department involved with the acquisition of land for the Assam Rifles and the conduct of the Survey, as parties to the Suit; allow additional evidence to be adduced by the parties and arrive at a finding in accordance with law. Interim order, if any, stands merged with this order.

22. The Appeal is disposed accordingly.

The Registry is directed to send back the trial court records.

JUDGE

Comparing Assistant