GAHC040014362024

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

Case No. : WP(C)/483/2024

Tasing Mosu
Son of Late Tamin Mosu, resident of DST Colony, Daporijo, PO and PS Daporijo, Upper Subansiri District, Arunachal Pradesh.

VERSUS

The State of AP and 2 Ors
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar. 2:The Deputy Commissioner
Age: 0
Occupation :
Upper Subansiri District
PO and PS Daporijo
Arunachal Pradesh.

3:The Additional Deputy Commissioner cum Estate Officer
Age: 0
Occupation :
Upper Subansiri District
PO and PS Daporijo
Arunachal Pradesh

Advocate for the Petitioner : Duge Soki,

Advocate for the Respondent : GA (AP),

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 02.11.2026

Heard Mr. D. Soki, learned counsel for the petitioner. Also heard Ms G. Ete, learned Additional Senior Government Advocate for the State

respondents.

2. By instituting this writ petition, the petitioner has put to challenge the order No. DRJ/JUD-02/2024 dated 07.10.2024 passed by the Deputy Commissioner, Upper Subansiri District, by which, the appeal of the petitioner against the order of the Estate Officer under Section 12 of the Arunachal Pradesh Public Premises (Eviction of unauthorized Occupants) Act, 2003 (herein after referred to as Act of 2003) is purportedly disposed of.

3. The facts of the case in brief are that the petitioner is a Government employee working as Technical Assistant under the District Rural Development Agency. He was allotted a Government quarter which claims to be in dilapidated condition and unsafe for human dwelling, for which, he started construction of a building in the same premise after collapse of the said allotted quarter.

4. On 21.08.2024, a notice was issued to the petitioner by the Estate Officer under the Act of 2003. Thereafter, by the proceedings dated 12.09.2024, the Estate Officer had issued a direction to the petitioner to remove the structures constructed by the petitioner within 15(fifteen) days.

5. The petitioner filed statutory appeal before the Deputy Commissioner, Upper Subansiri District against the order dated 12.09.2024 under Section 12 of the Act of 2003. When the appeal was not being taken up by the appellate authority rather made over to the Estate Officer, the petitioner

had approached this Court vide writ petition being WP(C) No.433(AP)/2024. The said writ petition was disposed of on having become infructuous due to passing of the present impugned order dated 07.10.2024 and the petitioner again filed this present writ petition.

6. Mr. D. Soki, learned counsel for the petitioner submits that since the appeal of the petitioner was made over to the Additional Deputy Commissioner-cum-Estate Officer who had issued an order of eviction, the writ petition being WP(C) No.433(AP)/2024 was filed and this court while issuing notice had given a liberty to the Deputy Commissioner to dispose of the appeal and to maintain status quo with regard to the possession of the quarter in question by the petitioner. He submits that since the appeal of the petitioner was returned to him, he filed a fresh appeal before the Deputy Commissioner. Although, notice was issued to appear for hearing of the appeal which has already been returned, no hearing took place in the absence of appeal petition. However, vide the impugned order, the Deputy Commissioner has shown to have disposed of the appeal without hearing the petitioner as no opportunity of hearing was given to the petitioner.

7. Ms. G. Ete, learned Additional Senior Government Advocate, on the other hand, submits that the Deputy Commissioner, in fact, has heard the petitioner as is evident from the notice issued to the petitioner in the appeal on 01.10.2024 fixing the date of hearing on 07.10.2024. It is only after providing an opportunity of hearing to the petitioner, the impugned order was passed and therefore, there is no illegality and as such no interference is called for.

8. Considered the submissions of the learned counsel for the parties and also perused the materials available on record.

9. It is seen that the petitioner had approached this Court vide writ petition being WP(C) No.433(AP)/2024 when the statutory appeal of the petitioner was made over to the Deputy Commissioner-cum-Estate Officer, who had issued an eviction order against the petitioner. This Court vide order dated 25.09.2024 while issuing notice had observed that pendency of the writ petition shall not be a bar for the Deputy Commissioner, Upper Subansiri District to examine the appeal as per the provision of Section 12 of the Act of 2003. The statutory appeal of the petitioner being returned or made over to the authority, who is not competent to take up the appeal as per the law, the petitioner appears to have filed a fresh appeal before the Deputy Commissioner. During the pendency of the WP(C) No.433(AP)/2024, the impugned order dated 07.10.2024 came to be passed.

10. It is the case of the petitioner that the Deputy Commissioner had passed the impugned order dated 07.10.2024 without providing any opportunity of hearing as no hearing was conducted by the Deputy Commissioner, Upper Subansiri District.

11. This Court on 12.02.2025, after perusal of the record found that there is nothing on record to substantiate the submission of the learned State counsel that the appeal was disposed of after giving personal hearing to the petitioner rather from the record it appears that no proceeding of hearing of the appeal was recorded by the Deputy

Commissioner, Upper Subansiri District. It has also been observed that since the petitioner is an occupant of Government quarter, he would not have any indefeasible right, either to dismantle any part of the quarter or to renovate the same or even continue to occupy the same without the permission of the department concerned and to such extent, no right can be recognised by the Court in favour of the petitioner to indefinitely continue to occupy the quarter either in an existing form or subsequent to its dismantling. It has further observed that once the Court has passed an order directing the Deputy Commissioner to dispose of the appeal after giving an opportunity of being heard to the petitioner, the said direction ought to have been followed in letter and spirit, failing which, the action of the authorities would be exposed to being struck down by the Court on the ground of being arbitrary and illegal.

12. On the perusal of the record, including the above observation made by the coordinate Bench of this Court, it clearly reflects that no hearing was conducted by the Deputy Commissioner, Upper Subansiri District on the appeal of the petitioner although notice appears to have been issued for such hearing. In such circumstances, there would not be any other option then to remand the matter to the Deputy Commissioner, Upper Subansiri District to dispose of the appeal after providing an opportunity of hearing to the petitioner as no determination can be made as regards the right of the petitioner to continue construction or occupy the quarter in question by this Court. Thus, it would be appropriate to direct the Deputy Commissioner to dispose of the appeal dated 16.10.2024 filed by the petitioner by providing an opportunity of hearing to him within a period of

3(three) weeks from the date of receipt of certified copy of this order. It is directed accordingly. It is made clear that this Court has not expressed any opinion as regard the right of the petitioner to continue possession of the quarter or to construct any structure over the premise of the quarter in question. Consequently, the order dated 07.10.2024 passed by the Deputy Commissioner, Upper Subansiri, stands set aside.

13. Writ petition stands disposed of in term of the above.

JUDGE

Comparing Assistant