

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

ITANAGAR BENCH

W.P. (c)529(AP)2013

Tapa Nungnu
S/o Late Tagiam Nungnu
Bokpin Colony, Daporijo
PO & PS Daporijo
Upper Subansiri District.

.... Petitioners

-Versus-

1. The State of Arunachal Pradesh through the chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Deputy Commissioner, Daporijo, Upper Subansiri District, Daporijo, Arunachal Pradesh.
3. The Deputy Director, Department of Urban Development & Housing Division, Daporijo, Upper Subansiri District.

..... Respondents

By Advocates:

For the petitioner : Mr. Xavier Gyati
Mr. T. Atung
Mr. B. Konia
Mr. N. Veo

For the respondents : Mr. Nanne Lowang, Sr. Govt. Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 02.05.2017

Date of Judgment: 02.05.2017

JUDGMENT & ORDER(ORAL)

Heard Mr. Xavier Gyati, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Nanne Lowang, learned Senior Government Advocate, for the State Respondents.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned order, dated 04.11.2013, passed by the respondent Deputy Commissioner, Upper Subansiri District, Daporijo, while disposing of the representations submitted by the petitioners on 01.10.2012 and 03.01.2013.

3. The facts of the case, in brief, is that, the petitioner along with 41 others, being aggrieved by non-consideration of their representations, dated 01.10.2012 and 03.01.2013, by the Deputy Commissioner, Upper Subansiri District, Daporijo; had approached this Court by way of filing the writ petition being WP(c) 31(AP)2013 thereby praying for a direction for shifting of the present burial-cum-cremation ground from their Colony viz. Bokpin Colony,, in order to prevent environmental pollution as well as to prevent from spreading various diseases which may affect their children in near future. This Court, vide order, dated 09.04.2013, disposed of the said writ petition, by directing the respondent authorities to take initiative to amicably settle the dispute and dispose of the representations aforesaid, by taking the petitioners into confidence and if necessary, by giving them an opportunity of hearing.

4. However, it is the case of the petitioner that the Deputy Commissioner, Upper Subansiri District, Daporijo, had disposed of the petitioners' representations, dated 01.10.2012 and 03.01.2013, without giving any notice or taking into confidence any of the petitioners. The petitioner contends that the Respondent No. 2 viz. Deputy Commissioner, Upper Subansiri District, Daporijo, had stated in his impugned order, dated 04.11.2013, that he had constituted the Board and the said Board had rejected the proposal of one of the petitioners for exchange of his own plot of land for burial-cum-cremation purpose as the said plot of land is a hilly and small area and is unsuitable for burial-cum-cremation ground. In this connection, the petitioner further contends that one Sri Tapa Nyonkar, by his representation dated 01.10.2012, addressed to the Deputy Commissioner, Upper Subansiri District, Daporijo, had proposed to exchange his private land, located at a distance of 3 kilometres away from the Daporijo township with the present burial ground in order to balance the development as well as to give remedy to the grievances of local

residents. The said plot of land measures 26205 sq. mtrs. whereas the present burial ground measures 18940 sq. mtrs. only. Upon receipt of the same, the Deputy Commissioner, Upper Subansiri District, Daporijo, directed the Land Revenue & Settlement Officer, Daporijo, to examine the matter. After doing the needful, the said Land Revenue & Settlement Officer, thereafter, wrote letters to the Deputy Commissioner, Daporijo, as well as Deputy Director, Department of Urban Development & Housing, Government of Arunachal Pradesh, Daporijo, for their comments and suggestions. Accordingly, the Respondent No. 3 viz. Deputy Director, Department of Urban Development & Housing, Government of Arunachal Pradesh, Daporijo, had written communication, dated 21.11.2013, stating that even though the proposed exchange site is feasible in all respects, it is not possible due to legal complications in Government procedure. The said Sri Nyonkar had allowed many outsiders who are residing at Daporijo to bury their dead bodies as well as cremating them at the proposed exchange site since many years back.

5. It is the further case of the petitioner that in the present burial-cum-cremation ground, none had been buried or cremated so far because of massive opposition by the local residents.

6. As against the contention of the petitioner, by referring to the affidavit-in-opposition filed by the State Respondents No. 1 & 2, Mr. Lowang, learned Senior Government Advocate, contends that the matter, at hand, was processed at different levels and ultimately, the Deputy Commissioner, Daporijo, vide order, dated 23.11.1998, recommended the disputed plot of land for burning ghat as well as cremation ground and the Director of Land Management, Government of Arunachal Pradesh, Itanagar, had also approved the same vide order dated 25.04.1999. However, upon passing of this Court's order, dated 09.04.2013, in WP(c) 31(AP)2013, so preferred by the petitioner and others raising illegalities in recommending the disputed plot of land for burial-cum-cremation ground, the respondent authorities had issued necessary summons for their participation in hearing. Upon their failure to attend such hearings, on two occasions, the Deputy Commissioner, Upper Subansiri District, Daporijo, had passed the order, dated 04.11.2013, which is a reasoned and proper order, benefiting all.

7. Be that as it may, Mr. Lowang, learned Senior Government Advocate, does not raise objection to the submission made by Mr. Xavier Gyati, learned counsel for the petitioner, that this writ petition may be disposed of, by directing the respondent Deputy Commissioner, Upper Subansiri District, Daporijo, to consider and dispose of the petitioners' representations, dated 01.10.2012 and 03.01.2013, afresh.

8. In view of the above, this writ petition is hereby disposed of by directing the Respondent No. 2 viz. Deputy Commissioner, Upper Subansiri District, Daporijo, to consider and dispose of the petitioners' representations, dated 01.10.2012 and 03.01.2013, afresh, in accordance with law, and by giving an opportunity of hearing to the present petitioner.

9. As the matter involves public interest, therefore, the entire matter shall be disposed of by the authority concerned, in the manner indicated above, within a period of 1(one) month from the date of receipt of a certified copy of this order.

10. For better appreciation of the matter, at hand, the petitioner is at liberty to submit a fresh representation before the Respondent No. 2 viz. Deputy Commissioner, Upper Subansiri District, Daporijo, incorporating all the related facts and grievances on the said subject-matter as highlighted by them in earlier representations, dated 01.10.2012 and 03.01.2013, within a period of 7(seven) days, from today, if so advised. In the event of such an application being received by the Respondent No. 2, the same shall be considered and disposed of by the said authority, as has been directed by this Court, in the foregoing paragraph.

11. Resultantly, the impugned order, dated 04.11.2013, passed by the respondent Deputy Commissioner, Upper Subansiri District, Daporijo, stands set aside and quashed.

JUDGE

Bikash

