



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNCHAL PRADESH)
ITANAGAR PERMANENT BENCH.

WP (C) 735 (AP) 2017

Appeal From
Writ Petition (Civil)

Appellant
Petitioner.

Shri Techi Hemu

---VERSUS---

Respondent
Opposite Party

State of A.P.S 21031

Counsel for the Appellant

Petitioner A. Kashyap
P. Prasad
S. K. Deori
K. Dabi
Somila

Counsel for the Respondent

Opposite Party CIA (AP)
D. Prasad E. Prasad
V. Jyoti M. G. G. G.
D. Tamul H. K. K.
M. D. D.

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

-AND-

IN THE MATTER OF

Shri Tech Hemu,

S/O Sotack Tachang, Village,

Niti Darlong, P.O -Seijosa, P.S. :

Seijosa, Distirct:East Kameng, Arunachal

Pradesh. +91 9436817985

.....Petitioner

Versus

1. State Of Arunachal Pradesh,
Represented by Secretary, Department
Of Land Management, Government Of
Arunachal Pradesh.

2. The Deputy Commissioner, East
Kameng District, Government Of
Arunachal Pradesh, Seppa.

3. The Additional Deputy
Commissioner, East Kameng District,
Government Of Arunachal Pradesh,
Seijosa.

.....RESPONDENTS

IN THE MATTER OF:

* Impugnance to the order dated 8/1/18 passed in W/O 219 AP/2017 the name of the following persons impleaded as respondents No 1 to 22 as follows.

8

- 1. Dongro Pao S/o Lt Sago Pao
Village: Niti Darlong P.O/P.S Sagalee, Dist: East Kameng, Arunachal Pradesh
- 2. Smt. Megari Leij W/o Shri Ram Leij, Village Darlong, P.O/P.S Sagalee, Dist: East Kameng, Arunachal Pradesh.
- 3. Shri Gagung Nabam S/o Lt. Sarbang Nabam, Village: Moboso-I P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh.
- 4. Miss Anya Nabam D/o SHri Takam Nabam Village : Seijosa P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh.
- 5. Smt. Yari Nabam W/o Takam Nabam(GB) Village: Moboso-I P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh.
- 6. Smt. Johny Nabam W/o Lt. Jorjo Nabam Village: Moboso-I P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh.
- 7. Shri Dinesh Nyare S/o Shri Jelly Nyare Village:Sejosa P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh
- 8. Shri Nehru Hissang S/o Lata Hissang Village:Sejoisa P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh
- 9. Shri John Tok S/o Lt. Rari Tok Village: Sejoisa P.O/P.S Seijosa, Dist: East Kameng, Arunachal Pradesh

13. Smt. Kochin Nabam W/o Lt. Tajum Nabam
Village: Niti Darlong P.O/P.S Seijosa, Dist: East
Kameng, Arunachal Pradesh.
14. Shri Nissan Nabam S/o Lt. Tajum Nabam
Village: Niti Darlong P.O/P.S Seijosa, Dist: East
Kameng, Arunachal Pradesh
15. Smt. Nato Nabam W/o Shri Talo Nabam
Village: Niti Darlong P.O/P.S Seijosa, Dist: East
Kameng, Arunachal Pradesh.
16. Shri Basang Wage S/o Techi wage Village: Niti
Darlong P.O/P.S Seijosa, Dist: East Kameng,
Arunachal Pradesh Ms. Kochik Nabam
17. Shri Harku Nabam S/o Lt. Taku Nabam Village:
Seijosa P.O/P.S Seijosa, Dist: East Kameng,
Arunachal Pradesh
18. Smt. Mengum Kino W/o Shri Latung Kino Village:
Niti Darlong P.O/P.S Seijosa, Dist: East Kameng,
Arunachal Pradesh Ms. Nato Nabam
19. Smt. Bina Chiri W/o Shri Deokan Chiri Village:
Niti Darlong P.O/P.S Seijosa, Dist: East Kameng,
Arunachal Pradesh
20. Smt. Mala Kino w/o Shir Mabe Kino Village:
Darlong P.O/P.S Seijosa, Dist: East Kameng,
Arunachal Pradesh
21. Shri Ram Leij S/o Lt. Tana Leij
Village: Darlong P.O/P.S Seijosa,

2(2)

Dist: East Kameng, Arunachal
Pradesh

22. Shri Takam Nabam S/o Shri Taluk
Nabam Village: Seijosa P.O/P.S
Seijosa, Dist: East Kameng,
Arunachal Pradesh s Mala Kino.

Respondent 0.

WP (C) 735 (AP) 2017

::BEFORE::

THE HON'BLE MR JUSTICE AJIT BORTHAKUR
JUDGMENT & ORDER (ORAL)

04.09.2018

Heard Mr. A. Kashyap, learned counsel appearing for the petitioner and Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing for the State respondents.

2. By this application under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned order, dated 25.10.2017, passed by the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa, Arunachal Pradesh, whereby, prohibitory order of Status quo has been passed against both the parties to the instant proceeding over the disputed land till the dispute is resolved through a local Keba.

3. The petitioner has, *inter-alia*, contended that he is the owner of a plot of land measuring 24.10 hectares since the year 1978, situated at Darlong village on the strength of Land Possession Certificate (for short, 'LPC') and Non Encumbrance Certificate (for short, 'NEC') issued by the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa, on 02.11.2010. The petitioner's ownership over the disputed land was also recognized by the concerned authority including the Head Gaon Burah, Gaon Burah and the elderly people of the village. However, the petitioner is now aggrieved by the impugned prohibitory order, dated 25.10.2017, issued by the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa, whereby the petitioner has been directed to stop his work of jungle clearance with immediate effect and to maintain status-quo by both the parties. The petitioner has further contended that a joint verification report was submitted by a committee under the Chairmanship of Sri Kento Riba/ the Addl. Deputy Commissioner, East Kameng District, Seijosa on 11.04.2017 in respect of a land area measuring 25,000 Sq. Mtrs offered by the petitioner for installation of 132/33 KV Sub-station at Niti-Darlong village under Seijosa Circle of East Kameng District, under the comprehensive scheme, wherein, it was, *inter-alia*, observed that there was no standing properties like

plantation/ permanent or temporary structures and any standing crops/ hortigarden found existing in the aforesaid proposed site acknowledging therein also the ownership of the petitioner over the said land area. However, some people have made attempts to encroach the aforesaid land area of the petitioner giving rise to filing of a complaint against the petitioner by the respondents.

4. The petitioner has contended that based on the above complaint filed by the respondents' side, the respondent No. 3/the Addl. Deputy Commissioner, East Kameng District, Seijosa issued the impugned prohibitory order, dated 25.10.2017, addressed to the petitioner without affording an opportunity of being heard to him and thereby violated the principles of natural justice, arbitrarily depriving him of free entry to his own landed property.

5. The respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa averred in his affidavit-in-opposition and Mr. D. Soki, learned Addl. Sr. Govt. Advocate appearing on behalf of the State respondent Nos. 1, 2 & 3, *inter-alia*, submits that on receipt of the said complaint from the private respondent Nos. 4 to 22, the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa having given an opportunity of being heard to the complainants and on being prima facie satisfied that there was sufficient ground for immediate prevention of breach of peace in the locality arising out of the aforesaid land dispute, issued the impugned ex-parte prohibitory order directing both the parties to the instant proceeding to maintain status quo as on that day, i.e. 25.10.2017, leaving the dispute to be decided in a local Keba. Although, in the aforesaid ex-parte prohibitory order, Section 144 Cr.P.C. was not specifically referred to but the contents thereof apparently indicated that the same was passed in an emergent situation of anticipated breach of public peace and tranquility arising out of the dispute.

6. Mr. Soki further submits that the Officer-in-Charge, Seijosa Police Station, executed the said prohibitory order and in his report stated endorsed that there was every likelihood of breach of peace by both the parties and therefore, recommended for drawing up a proceeding under Section 145 Cr.P.C. vide the report, dated 28.10.2017. Mr. Soki submits that the

impugned prohibitory order does not suffer from any legal infirmity by reason of omission to mention the relevant provision of the Cr.P.C. and in this regard, he relies upon the ratio of the judgment rendered by a constitutional bench of the Hon'ble Supreme Court in the case of *Hukumchand Mills Ltd.-vs-State of Madhya Pradesh*, reported in *AIR 1964 SC 1329*. Mr. Soki also further submits that no order passed under Section 144 Cr.P.C. remains in force for more than 2 (two) months from the making of the order and as such, the instant writ petition has become infructuous by reason of lapse of the aforesaid prohibitory order, which was not further extended and so sought for a direction granting opportunity to the State to act upon the Police report, dated 28.10.2017, aforementioned, and accordingly, to draw up a proceeding under Section 145 Cr.P.C. as the basic dispute between the parties relates to actual possession over the disputed land.

7. Mr. A. Kashyap, learned counsel for the petitioner submits that the dispute in question is purely private in nature involving the right, title and interest of the parties and as such, the dispute in question is beyond the jurisdiction of the learned Executive Magistrate to adjudicate it, which is a dispute of purely civil in nature.

8. Drawing attention to the direction of this Court contained in the impugned order, dated 07.11.2017, Mr. Kashyap, learned counsel for the petitioner submits that the State respondents have not furnished the list of persons in favor of whom the LPCs were issued over the disputed land, in respect of which the petitioner was also issued with the LPC and NEC by the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa, but the said direction has not been deliberately complied with till date.

9. Mr. Kashyap further submits that the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa himself issued a certificate, dated 02.11.2010, certifying the disputed land as a private owned plot of land of the petitioner measuring 24.10 hectares situated at Niti-Darlong since the year 1978 by giving the description of the boundary thereof and his possession of the said plot of land was further confirmed by the 'No Objection Certificate' (for short, 'NOC')/ affidavit submitted by the Head Gaon

Burah, Darlong and the Gaon Burah of Niti-Darlong and also issued NEC, dated 02.11.2010, in his favor.

10. Mr. Kashyap further submits that the private land of the petitioner has been in a process of acquisition for installation of 132/33 KV Sub-station at Seijosa, East Kameng District, Seijosa, which is still pending consideration before the authority and therefore, neither any prohibitory order under Section 144 nor a proceeding under Section 145 Cr.P.C. is maintainable in respect of the petitioner's said plot of land.

11. Be it mentioned, here that, Section 144 Cr.P.C., enjoins upon the Executive Magistrate a duty to prevent the breach of public peace, life, health and the like in any case and empowers him to pass even ex-parte order in an emergency where the situation is such that the apprehended injury cannot be prevented, if an enquiry as to the rights were to be undertaken before making the prohibitory order, therefore, there is no bar upon the Magistrate to interfere even with the lawful exercise of legal rights in such a case of emergency. Since constitutional validity of the prohibitory order issued under Section 144 Cr.P.C. rests on its temporary character and since Sub-section 4 of Section 144 Cr.P.C. clearly lays down that the order shall not remain in force for more than 2 (two) months, subject to the State Government's power to extend it up-to the period of 6 (six) months and it follows that any order which is in force beyond the period of 2 (two) months is invalid. After expiry of the aforesaid validity period of prohibitory order, the recourse that remains open lies in a proceeding under Section 145 Cr.P.C..

12. In the instant proceeding, the petitioner has challenged the legality and validity of the impugned prohibitory order, noted above, issued by the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa, Arunachal Pradesh.

13. The aforesaid prohibitory order reads as hereinbelow extracted:-

"GOVERNMENT OF ARUNACHAL PRADESH
OF THE ADDITIONAL DEPUTY COMMISSIONER
EAST KAMENG DISTRICT:: SEIJOSA(A.P)

Dated Seijosa, the 25th Oct' 2017

Shri Techi Hemu, Ex-MLA
Darlong

PROHIBITORY ORDER

Whereas a complaint has been received from Shri Dungro Pao and 18 others that their land has been illegally encroached upon by Shri Techu Hemu, Ex-MLA.

AND

Whereas LPC in respect of Shri Dungro Pao and Smti Megari Leij has been enclosed along with the complaint letter to substantiate their claim.

AND

Whereas Shri Techu Hemu, Ex-MLA is reported to be cleaning the jungle in the said land which according to the complaint letter and the possession of multiple LPC's in the same plot is a matter of dispute.

NOW

Therefore, Shri Techu Hemu, Ex-MLA is hereby directed to stop his work of jungle clearance immediately and maintain status-quo till the dispute is resolved. Further, the matter will be taken up through a local Kejang shortly after the Bye-Elections as this office is preoccupied with election related works.

Officer-in-charge, Police Station, Seijosa will execute this order and submit a report of action taken thereof.

(T.R. Tapu) APCS
Addl. Deputy Commissioner,
Seijosa

Memo No. SJA/JUD-05/15-16

Dated Seijosa, the 25th Oct' 2017".

14. The above impugned order apparently appears to have been issued ex-parte under Section 144 Cr.P.C., on subjective satisfaction of the respondent No. 3/ the Addl. Deputy Commissioner, East Kameng District, Seijosa to the effect that the parties to the instant proceeding are in dispute over the possession of the land in question.

15. As held in *Hukumchand Mills Ltd. (Supra)*, it has been categorically stated that "it is well settled that merely a wrong reference to the power under which certain actions are taken by Government would not per se vitiate the actions done if they can be justified under some other power under which the Government could lawfully do these acts", and as such, Mr. Soki submits, omission to refer to the provision of law under which the impugned order, dated 25.10.2017, was issued does not vitiate the action of the issuing authority/ the respondent No. 3 i.e. the Addl. Deputy Commissioner, East Kameng District, Seijosa.

16. Turning to the report of the Officer-in-Charge of Seijosa Police Station under Section 145 Cr.P.C., dated 28.10.2017, It may pertinently, *inter-*

alia, be mentioned that whenever an Executive Magistrate is satisfied from a Police report or other information that a dispute concerning land or water etc. is likely to cause breach of peace within the local limit of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, requiring the parties to attend his Court on a date fixed by such Magistrate and to put in written statement in support of their respective claims to the subject matter in dispute. The Magistrate, then, without reference to the merits or claim of any party, will consider the statements of the parties, hear the parties, receive their evidence, and take further evidence, if necessary, and decide the question and which of the parties was at the time of the order to be mentioned was not in possession. If, it appears to the Magistrate that any party within 2 (two) months next before the date of such order was forcibly and wrongfully dispossessed, he may declare such party as in possession of the property in dispute.

17. The aforesaid Police report under Section 145 Cr.P.C., dated 28.10.2017, being not under challenge in the instant proceeding, this Court is not inclined to pass any order regarding liberty to draw up a proceeding under Section 145 Cr.P.C. as submitted ~~FOR~~ by the learned Addl. Sr. Govt. Advocate appearing for the State respondents.

18. In view of the above, the writ petition stands dismissed being infructuous.

19. The petitioner is, however, at liberty to approach the appropriate forum, for redressal of his grievances, if any.

With the above directions and observations, this petition stands disposed of.

JUDGE

12/10/17