

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:  
MIZORAM AND ARUNACHAL PRADESH)  
ITANAGAR PERMANENT BENCH

Appeal From  
Writ Petition (Civil)

CRP: No.....21..... (AP) 2010

Shri Pagjum Aho

Appellant  
Petitioner.

-Versus-

Smti. Dongam Bagra

Respondent  
Opposite Party.

Counsel for the Appellant Mr. R. Saikia  
Petitioner. Mr. M. Basar  
Ms. D. Yoka

Counsel for the Respondent Mr. K. Ete  
Opposite Party. Mr. N. Ratan  
Mr. M. Kato  
Mr. D. Padu  
Mr. K. Tasso  
Mr. G. Kato  
Ms. S. Appa

| Noting by Officer or Advocate | Serial No. | Date | Office note, reports, orders or proceeding with signature |
|-------------------------------|------------|------|---|
| (1)                           | (2)        | (3)  | (4)   |
|                               |            |      |   |

IN THE MATTER OF:

Sri Pagjum Ado, son of Late Repak Ado,  
resident of Jimar village , P.o & P.s Aalo,  
West Siang District Arunachal Pradesh.

.....Appellant

-Vrs-

Smti. Dongam Bagra, wife of Late Nyaki  
Bagra, resident of Jimar village , P.o & P.s  
Aalo, West Siang District Arunachal Pradesh.

.....Respondent

**BEFORE  
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

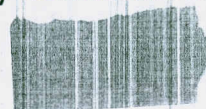
**25.1.2011**

The petitioner (hereinafter referred to as the 'Ado') who has been awarded 236 Sq. mtrs. Plot in the *Jimar* land owned by the respondent (hereinafter referred to as the 'Bagra') by the judgment and order dated 4.2.2010 (Annexure-XII) of the Deputy Commissioner, West Siang district, challenges the consequential order of the Deputy Commissioner passed on 18<sup>th</sup> August 2010 (Annexure-1), whereby *Ado* is ordered to shift to the allotted plot of 236 Sq. metres. by abandoning the temporary structure hitherto under his occupation in the *Jimar* land of the *Bagra*.

**2.1** Mr. R. Saikia, learned Counsel submits that since the petitioner and his father had constructed a temporary structure in the 'B' area in the *Jimar* land, he should be permitted to retain possession of the said area already under his possession with the temporary structure and now he should be allowed to take possession of the additional 236 Sq. mtrs. plot in area 'A' of the respondent's land, in pursuant to the Deputy Commissioner's judgment and order dated 4.2.2010.

**2.2** The learned Counsel also contends that the order passed by the Deputy Commissioner on 18<sup>th</sup> August 2010 is in the nature of Execution Proceeding and the formalities of the Order XXI Rule 10 of the CPC were not complied with, before the dismantling order was passed by the Deputy Commissioner and accordingly the same is liable to be interfered with by the Court.

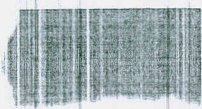
**3.1** Representing the respondent, Mr. Ete contends that the Deputy Commissioner's judgment and order dated 4<sup>th</sup> February 2010 was a culmination of a long drawn land dispute between the *Ado's* and *Bagra's* and since the plot measuring 236 Sq. mtrs. was allotted to the petitioner by the Deputy Commissioner in pursuant to the consent given in FAO 10(AP)/2006, the petitioner cannot claim for additional land, beyond what was ordered in favour of the petitioner, by the Deputy Commissioner on 4<sup>th</sup> February 2010.



**3.2** Referring to the judgment dated 3<sup>rd</sup> December 2008 in FAO 10(AP)/2006, Mr. Ete contends that only because *Ado* was in long occupation of a small plot of *Jimar* land owned by the *Bagra* the High Court directed determination of the actual area which the petitioner would be entitled to occupy within the *Jimar* land of the respondent and now that the plot size to be occupied by the petitioner has been determined, the petitioner can't claim any right to retain the earlier occupied *Jimar* land of the respondent.

**4.** A reading of the earlier order passed by this Court in the earlier proceeding on 3<sup>rd</sup> December 2008 makes it very clear that only because the petitioner was in occupation of a small plot in the *Jimar* land of the respondent, his right to occupy certain area in the land of the respondent was recognized by the Court. By recognizing the said right of the petitioner, on the consent of the parties the Deputy Commissioner was ordered to determine the actual quantum of land, *Ado* would be entitled to occupy in the *Jimar* land undoubtedly owned by the *Bagra*. In this Court's consent order, it was not recorded anywhere by the Court the area to be allotted to the *Ado* would be an additional area, beyond the actually occupied area. The order of the Court was clear and the Deputy Commissioner was required to decide on to quantum of land, which the petitioner (*Ado*) would be entitled to occupy in the *Jimar* land of the respondent.

**5.** In pursuant to the consent order of the Court, the Deputy Commissioner by his judgment and order dated 4<sup>th</sup> December 2010 has declared that the petitioner is entitled to 236 Sq. mtrs of land in the area marked as 'A' in the sketch map and the respondent has been directed to allow the petitioner his right of way to the earmarked land. This 236 Sq. mtrs plot was not earlier occupied by the petitioner but is being earmarked now for his occupation, in lieu of his earlier occupation. When the petitioner's right on the extent of *Jimar* land to be occupied to him has been determined by the Deputy Commissioner and having regard to the judgment of this Court rendered on 3<sup>rd</sup> December 2008 in FAO 10 (AP)/2006, I feel that the petitioner is not entitled to any additional land, beyond the 236 Sq. mtrs earmarked for him.



6. On the technical plea raised by the petitioner that the procedures of Order XXI Rule 10 C.P.C. was not followed in passing the impugned order of 30<sup>th</sup> August 2010, it is seen from the application made by the petitioner before Deputy the Commissioner on 30<sup>th</sup> August 2008 (Annexure-IV to the Counter affidavit) that he did not raise any objection to the said order of the Deputy Commissioner but simply prayed that he may be granted some time to vacate his presently occupied land and to make construction in the newly earmarked area measuring 236 Sq. mtrs. Under such circumstances, it is clear that this technical plea of the petitioner should not come in the way of according finality to the long drawn land dispute. In any case, the petitioner and the respondent are both indigenous Arunachal Tribesmen and only the spirit of CPC would apply in a proceeding between such indigenous parties.

7. For the foregoing reasons I see no infirmity in the impugned direction of the Deputy Commissioner recorded on 18<sup>th</sup> August 2010 as the earmarking of the *Jimar* land into plot 'A' and plot 'B' was only for the convenience of the Revenue Authorities and such earmarking of the *Jimar* land which admittedly is owned by the respondent, does not entitle the petitioner to retain possession of his earlier occupation, in addition to the newly earmarked 236 Sq. mtrs. plot as the latter was given to the petitioner only because, he was in occupation of a small parcel of *Jimar* land of the respondent. With his newly earmarked plot, the petitioner shall not have any right to retain the possession of his earlier occupied plot and must vacate the same. It is declared accordingly.

8. In view of the above declaration, this Court does not find any reason to interfere with the impugned order dated 18<sup>th</sup> August 2010 and accordingly this petition stands dismissed.

  
**JUDGE**

  
*Datta*