

GAHC040000632014



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

Case No. : PIL 15/2014

1:SHRI IMAR TAIPODIA
FORMER ACTING PRESIDENT OF LYVA, S/O SHRI NEI TAIPODIA, VILLAGE
LIRU, PO/PS LIKABALI, WEST SIANG DIST. AP

2: SHRI SENGO TAIPODIA

S/O SHRI DOHEN TAIPODIA
PERMANENT RESIDENT OF VILLAGE LIRU
PO/PS LIKABALI
WEST SIANG DIST.A P

3: SHRI MARMO KARLO

S/O LT. T. KARLO
A PERMANENT RESIDENT OF VILLAGE JIPU
PO/PS LIKABALI
WEST SIANG DIST. A

VERSUS

1:THE STATE OF A.P.
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR

2:THE DEPUTY COMMISSIONER
AALO
WEST SIANG DIST. AP

3:THE ADDITIONAL DEPUTY COMMISSIONER
BASAR
PO/PS BASAR
WEST SIANG DIST. AP

4:THE SUB-DIVISIONAL OFFICER SDO -CUM- CHAIRMAN

SDLAAB
DEPTT. OF GENERAL ADMINISTRATION
LIKABALI
WEST SIANG DIST. AP

5:THE SECRETARY/COMMISSIONER
DEPTT. OF PUBLIC WORKS DEPTT. GOVT. OF AP
ITANAGAR

6:THE CHIEF ENGINEER CZ
DEPTT. OF PUBLIC WORKS DEPTT
GOVT. OF AP
ITANAGAR

7:THE SUPERINTENDENT ENGINEER
DEPTT. OF PWD
GOVT. OF AP
BASAR
WEST SIANG DIST.A P

8:THE EXECUTIVE ENGINEER
DEPTT. OF PWD
GENSI DIVISION
WEST SIANG DIST.A P

9:THE SECRETARY/COMMISSIONER
DEPTT. OF LAND MANAGEMENT
GOVT. OF AP
ITANAGAR

10:THE DIRECTOR
DEPTT. OF LAND MANAGEMENT
GOVT. OF AP
ITANAGAR

11:SMTI. DAJUM KENA
W/O SHRI JOMDE KENA
PERMANENT RESIDENT OF GENSI
PO/PS GENSI
DIST. WEST SIANG
A P

12:SHRI JUMDO KENA
S/O SHRI GAJOM KENA
PERMANENT RESIDENT OF GENSI
PO/PS GENSI
DIST. WEST SIANG
AP

13:SHRI JOMDE KENA
MLA
THE THEN PARLIAMENTARY SECRETARY TOURISM/DEPUTY SPEAKER
27 THE ASSEMBLY CONSTITUENCY
LIKABALI
PO/PS LIKABALI
WEST SIANG DIST.A

Advocate for the Petitioner : Mr R Saikia

Advocate for the Respondent : GA

BEFORE

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA

HON'BLE MR. JUSTICE HITESH KUMAR SARMA

JUDGEMENT AND ORDER (ORAL)

03.12.2019

(P.K. Deka, J)

Heard Mr. R Saikia, learned counsel for the petitioner. Also heard Ms. G Ete, learned Addl. Sr. Govt. Advocate for respondent Nos. 1 to 8, Mr. N Ratan, the learned counsel for the respondent Nos. 11 and 12 and Mr. D Kamduk, learned counsel for the respondent Nos. 9 and 10.

2. The petitioners being aggrieved of illegal allotment of existing Government land under possession of Public Works Department, Government of Arunachal Pradesh to Ms. Dajum Kena (respondent No. 11) W/O Late Jomde Kena the then MLA and the then Parliamentary Secretary (respondent No. 13 and on his death being struck off vide order dated 30.1.2019) (Tourism)/ Deputy Speaker of the 28th Assembly Constituency, Likabali, District West Siang, Arunachal Pradesh by the Director, Department of Land Management, Government of Arunachal Pradesh (respondent No. 10) on the grounds-

- i. That the Sub-Divisional Land Allotment Advisory Board (SDLAAB) Likabali illegally recommended vide resolution dated 13.09.2010 for allotment of Government land along with building under the Chief Engineer (EZ), Department of Public Work (PWD), Government of Arunachal Pradesh (respondent No. 6.) in

favour of the respondent No. 11;

ii. The maximum ceiling limit for allotment of land for commercial purpose to any private individual being 200 sq. meters and there being violation of the said ceiling limit by the respondent No. 10 approving allotment of land measuring 1200 sq. meters vide letter No. LR-106/90(VOL-I) /1342 dated 23.11.2010 for commercial purpose in favour of the respondent No. 11;

iii. NOC vide No. CEAP (EZ)/E-I/PF-215/2010-11/634 dated 28.10.2010 issued by the Chief Engineer (EZ) PWD, Itanagar in respect of the said PWD land which was withdrawn by the same Chief Engineer (EZ) vide NO. CEAP (EZ)/ WG-6/2010-11 dated 01.11.2010;

iv. Non taking of action by the Department of Land Management for withdrawal of the allotment letter dated 23.11.2010 issued by the Director, Department of Land Management (respondent No. 10), by virtue of which the respondent No. 11 occupied entire stretch of total PWD land measuring 3404.90 sq. meters and forcibly constructing new boundary wall;

v. Violation of the office memorandum of the Government of Arunachal Pradesh vide No. OM-74/2005 dated 15.12.2005 published in the official Gazette dated 19.12.2005 prescribing uniform procedure for disposal of unserviceable, stores / items including vehicles of the Government etc.;

3. The brief facts as stated in the petition are that Likabali is the entry point for three districts and as such the Department of Public Work, Government of Arunachal Pradesh occupied land measuring 3404.90 sq. meters and constructed building structures, staff quarters, store building etc. with a view for storing materials for transmission to the three districts. On 13.09.2010 the respondent No. 11 applied in prescribed application form for allotment of the said PWD land at Likabali measuring 1200 sq. meters out of the total land measuring 3404.90 sq. meters for commercial purposes. The said application form clearly mentioned about the existence of the Government RCC building with barbed wire security fencing over the said land. On receipt of the said application, the Lat Mandal and other staff instantly prepared sketch map of the proposed land to be allotted on 13.09.2010 itself and the then Sub-Divisional Officer (SDO), Likabali approved the said sketch map on 13.09.2010 itself. The said SDO, Likabali on the same day also constituted SDLAAB by appointing six number of Officials headed by the SDO himself and three number of non Officials and convened the SDLAAB meeting vide No. LKB/REV-100/09-10/1122-25

dated 13.09.2010 and recommended for allotment of the said Government land in favour of the respondent No. 11. The said SDLAAB observed that the Government building of PWD constructed in the 1980 found damaged due to flood in 1992. The said land was not allotted to any individual and is free from any encumbrance. Hence area measuring 1200 sq. meters for commercial plot was recommended for allotment to the respondent No. 11. It would not be out of place to mention herein that in the said SDLAAB meeting dated 13.09.2010 one of the non official members was Jomde Kena, the then local MLA and the husband of the respondent No. 11. After the recommendation, the SDO, Likabali forwarded the same to the respondent No. 10 on 13.09.2010 itself. The entire process of recommending the Government land for allotment to the respondent No. 11 was done on the same date i.e. on 13.09.2010.

4. On receipt of the recommendation of the SDLAAB dated 13.09.2010 the respondent No. 10 vide letter No. LR-106/90(Vol-1)/1156 dated 13.09.2010 communicated to the Chief Engineer (EZ) PWD, respondent No. 6 about the said recommendation of the SDLAAB and the existence of the dilapidated PWD building and no objection of the Assistant Engineer, PWD, Likabali recorded in the SDLAAB minutes wherein the said Assistant Engineer is one of the members. The respondent No. 10 intimated the Chief Engineer as to whether the Department was interested over the plot of land and the complaint letter of the petitioners addressed to the Commissioner, Land Management. Initially there was no reply, however, on insistence by the respondent No. 10, the Chief Engineer (respondent No. 6) issued NOC supporting the recommendation of the SDLAAB dated 13.09.2010. Later on, the Chief Engineer had a discussion with the Chief Secretary and the Commissioner, Land Management and having come to know that the said Government land with existing building was under the use of Public Health Engineering Department, the Chief Engineer on 31.10.2010 visited the land and the NOC dated 28.10.2010 supporting the recommendation of the SDLAAB was withdrawn and to that effect the respondent No. 10 acknowledged on 01.11.2010. But even then there was no action of the respondent No. 10 for cancellation of the allotment.

5. The Commissioner, PWD issued an order dated 20.09.2013 thereby according the Government approval for right off sanction of 6 (six) numbers of SPT PWD Divisional Go-down / Store building at Likabali and a subsequent condemnation salvage value / reserved price not below Rs. 17,21,200/- subject to the condition that the condemnation of scrap materials shall be done through public auction as per codal formalities as per GFR with wide publication in News Paper to the best advantage of the Government.

6. The husband of the respondent No. 11 being the local MLA and the Deputy Speaker at that relevant point of time submitted UO note dated 01.10.2013 stating that the scraps of SPT Go-down / Store Building of PWD at Likabali to be auctioned in the name Sri Jumdo Kena the younger brother of the said local MLA adding Rs. 10,000/- above the reserved price. It is stated by the petitioners that there is violation of the Office Memorandum dated 15.12.2005 as referred hereinabove.

7. On the aforesaid facts and circumstances Mr. Saikia submits that the whole process of allotment of the land under occupation of the PWD is illegal and an example of the high handedness of the politician flouting the good governance as required to be followed under the Constitution of India. There was no transparency in the auction process nor compliance of the Rules for land allotment for which the impugned allotment order is liable to be set aside. Mr. Ratan on the other hand submits that in the true sense the petitioners had no locus standi to file this PIL. It is because of political rivalry against the husband of the respondent No. 11, the petitioners filed this PIL. If at all there is any dispute the same is private one inasmuch as the petitioners were the polling agent of the rival political candidate of the said Constituency wherefrom the husband of the respondent No. 11 was elected as the MLA of the Likabali Constituency. In support of his contention Mr. Ratan relies on ***Gurpal Singh Vs. State of Punjab & Ors reported in 2005 (5) SCC 136*** and submits that while dealing with public interest litigation the judiciary has to be extremely careful to see that behind the veil of public interest an ugly private malice is not hiding. The information should show gravity and seriousness involved. The court has to be satisfied the prima-facie correctness or nature of information given by the petitioners. Mr. Ratan also informed this Court that the respondent No. 11 proposed to the Deputy Commissioner, Lower Siang district, Likabali to hand over the allotted land for the purpose of establishment of a College at Likabali for which the Government is in search of land. Ms. Ete on the other hand, submitted that as per her information the Deputy Commissioner, Lower Siang District vide letter dated 24.09.2019 informed that the request of the respondent No. 11 for establishment of College was not accepted.

8. We have given due consideration to the submissions of the learned counsel. The scope and object of public interest litigation is settled by the Hon'ble Apex Court in catena of decisions. The conduct of Government action which are relatable to the Constitutional or statutory rights of the people forming the society is the grievance covered by such petition. The Court while exercising its jurisdiction and the relief to be granted must look to the future conduct of Government action

and order / direct the Government for corrective measures to be undertaken. The relief to be granted by a writ court while disposing of Public Interest Litigation petition cannot be a compensatory one. It does not mean settling dispute between individual parties.

9. From the petition it has surfaced before this court that an application was filed for allotment of plot of land by the respondent No. 11 on 13.09.2010 and was so hurriedly processed that immediately after the application for allotment was received by the SDO Likabali, the Land Revenue Staff prepared the relevant sketch map circumscribing and identifying the area measuring 1200 sq. meters land having its approval by the said SDO on that day itself. Not only that the required SDLAAB meeting was convened by the SDO Likabali being the Chairman of the said Committee along with other members after constituting the said committee and the recommendation for allotment by the said Board which is mandatory was also issued on 13.09.2010 itself. The said recommendation of the SDLAAB was sent to the respondent No. 10, Director Land Management on 13.09.2010 itself.

10. The Chief Engineer, PWD though apprised about the existence of the Departmental building issued the NOC favouring the recommendation of the SDLAAB. It would not be out of place to mention herein that the Assistant Engineer, PWD, Likabali is one of the members in the said SDLAAB. The NOC was dated 28.10.2010. The said NOC was subsequently withdrawn vide order dated 01.11.2010.

11. The affidavit-in-opposition is filed by the respondent No. 11 dated 05.08.2015 wherein it is the stand taken that the Chief Engineer, PWD was forced to issue the cancellation of the earlier NOC dated 28.10.2010 on being pressurised by the petitioners in order to avoid complaint against him in respect of encroachment of land of the PWD inspection bungalow at Likabali. It is further stated that the petitioners lodged complaint against the Chief Engineer before the SDO Likabali against the said encroachment and once the earlier NOC was cancelled the matter was not pursued by the petitioners. The said statement was made from the knowledge of the respondent No. 11 without any documentary proof. The respondent Nos. 3 and 4 also filed the affidavit-in-opposition and stated that the respondent No. 11 submitted her application for allotment of land on 5.7.2010 and the SDLAAB conducted the meeting as well as spot verification on 13.09.2010 and after finding the said land feasible the SDLAAB issued NOC. It is further stated that the survey report by the land revenue officials was submitted on 13.09.2010 which was co-incident. Asserting the fact that the said land was allotted to respondent No. 11 and not beyond that, the respondent Nos. 3 and 4 wanted to project that there was no illegality in the process of allotment

of the land to the respondent No. 11. The respondent Nos. 5,6,7 and 8 admitted the fact that the respondent No. 12, the brother of the deceased MLA submitted an application for purchasing the scrap items @ 10% above the reserved price. The respondent No. 13 (the deceased husband of respondent No. 11) issued UO note in favour of respondent No. 12 adding Rs. 10,000/- above the reserved price so that no loss would be incurred to the State exchequer following which the respondent No. 12 deposited an amount of Rs. 17,21,200/-.

12. From the aforesaid acts and deeds of the Government Officials it can very well be concluded that the action on the part of the Government Officials were influenced by the deceased husband of the respondent No. 11 inasmuch as the Government failed to produce the original records of the said allotment process though there was an observation made vide order dated 23.7.18 that failure to produce the relevant records may compel the court to take very serious view of the matter in respect of the respondents concerned. Few photocopies were produced later on but the originals were not produced before the court. The action of the Government for allotment of the said Government land cannot be held to be transparent inasmuch as admittedly the Government Department of Public Works developed the land in order to use it for the benefits of the public and raised construction at the cost of public exchequer. The subsequent act of the officials of the PWD in accepting the application for purchasing of the scrap items without going for auction and that too on the issuance of the UO note in favour of the respondent No. 12 by his elder brother, respondent No. 13 adding Rs. 10,000/- above reserved price is clear violation and the act of unholy collusion of the Government Officials is also established. The pace in which the process of allotment was completed is another aspect to be considered which establishes the nexus of the SDO, Likabali, Assistant Engineer, PWD, Likabali and the Chief Engineer (EZ) PWD for furtherance of the act of causing loss to the State exchequer.

13. The submission of Mr. Ratan in respect of the locus standi of the petitioner we are of the considered view that as there are no sufficient explanations against the acts of the officials this court cannot blink its eyes letting off the action of the officials to go unnoticed. The performance of the Government officials while carrying out the official duties must inspire confidence of the common people. But this is a case wherein the acts of the officials taken into consideration belies the faith of the common people. We cannot accept the pace in which the land allotment process took place as a good sign for the society wherein the prime mover for generating such pace was by none other than the representative of the public elected democratically utilising such pace for

his own selfish benefits. From the aforesaid discussions we are constrained to hold that the recommendation dated 13.09.2010 for allotment of Government land to the respondent No. 11 as illegal and to that effect the respondents are directed to take necessary action for its cancellation and recover the possession from the respondent No.11.

14. The Government of Arunachal Pradesh, Department of Land Management in exercise of the power conferred U/s 99 of Arunachal Pradesh (Land Settlement and Record) Act, 2000 vide notification dated 03.12.2012 framed the Arunachal Pradesh (Land Settlement and Record) Rules 2012 Part X of the said Rules prescribe allotment of land and the eligibility of the persons for allotment of land U/s 12 of Arunachal Pradesh (Land settlement and Record) Act, 2000. We direct the Government and its concerned Officials to follow the prescribed procedure and the eligibility for allotment/ settlement of Government land as per the Arunachal Pradesh (Land Settlement and Record) Rules 2012 or subsequent amendment which may require on the basis of changes in the existing Land Policy of the Government of Arunachal Pradesh so that there is transparency in the allotment process without there being any act of high handedness in the said process of allotment from any quarter so that the benefit of the said Rules reaches the common people. Accordingly this petition is disposed of with direction hereinabove to the Government of Arunachal Pradesh.

JUDGE

JUDGE

Comparing Assistant