

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH.

CIVIL REVISION PETITION No. 05 (AP) 2011

Shri Teli Raja
Son of Late Teli Penka,
resident of Ganga,
PO-RK Mission & PS-Itanagar in the
District of Papum Pare,
Arunachal Pradesh.

.....Petitioner.

By Advocates:
Mr. R. Saikia,
Mr. D. Kamduk,
Mr. T. Zirdo

-Versus-

Shri Bamang Takio,
Son of Late Bamang Tama,
resident of Sangram,
PO & PS- Sangram,
Arunachal Pradesh.

.....Respondent.

By Advocates:
Mr. Toning Pertin
Mr. K. Ete, Addl. AG.

BEFORE
HON'BLE Dr. (MRS.) JUSTICE INDIRA SHAH

Date of hearing : 15.03.2012

Date of Judgment & Order : 03.04.2012

JUDGMENT & ORDER

I have heard Mr. R. Saikia, learned counsel appearing on behalf of the petitioner and Mr. Tanning Pertin, learned counsel appearing on behalf of the respondent. Also heard Mr. K. Ete, learned Advocate General of the State of Arunachal Pradesh.

2. The petitioner got allotment of the plot of land measuring 1200 Sq. Metres at Chandranagar in the year 1982 in lieu of his land at Ganga Village. As the allotted land at Chandranagar was at the verge of erosion being situated on the bank of river, the petitioner applied for alternate allotment. The concerned authority allotted a plot of land at Gophur Tinali in lieu of the land at Chandranagar. Since the allotment on 14-07-1997, he was in occupation of the same. Later in the year 2000, the respondent encroached 2 metres of the land which led the petitioner to lodge complaint against the respondent. A proceeding under 145 Cr.P.C. was initiated, the land was declared in possession of the petitioner and the respondent was directed to vacate the land.

3. Thereafter, several complaints were lodged and the respondent continued encroachment & disturbance. He was repeatedly served with eviction notice. The respondent also filed counter complaint claiming the land. Acting on the complaint filed by the respondent on 02-11-2010, the Deputy Commissioner summoned both the parties, constituted a board to find out the duration of occupation of the parties on the disputed land and ultimately passed the impugned order dated 01-03-2011 holding that the petitioner actually was not in possession of the land while applying for allotment. He further directed the concerned Land Management Department to initiate necessary action to cancel the allotment of the said land.

4. The respondent claimed that the disputed land was in his occupation since 1981-82 without any disturbance. He has not only erected his dwelling house but the bodies of his two wives and children were buried there. According to respondent, this revision is devoid of merit.

5. Learned counsel for the petitioner submits that the Deputy Commissioner had no jurisdiction to adjudicate the Civil Suit after the separation of judiciary in the State of Arunachal Pradesh vide Notification No. JUD/DSC-37/2010 dated 08-06-2010. Moreover, the Deputy Commissioner did not follow the procedure laid down in the Code of Civil Procedure. The suit was decided without giving any opportunity to the petitioner to file written statement. No issue was framed, no evidence was recorded and therefore, the order impugned is liable to be set aside.

6. Assam Frontier (Administration of Justice) Regulation, 1945 empowers the Deputy Commissioners to try the civil disputes. The said Act is not repealed, learned counsel for the respondent submitted. Moreover, the allotment of land and its cancellation is administrative work. The party aggrieved by such order can approach the Civil Court; learned counsel for the respondent submitted.

7. By the enactment of The Central Laws (Extension to Arunachal Pradesh) Act, 2007, the provisions of Civil Procedure Code have been extended to Arunachal Pradesh.

8. As per notification dated 16th March, 2006, the judiciary from the Executive was separated in the State of Arunachal Pradesh by declaring 5(five) Sessions Divisions and initially two courts of District and Sessions Judge have been established vide notification dated 17th December, 2007. Vide notification dated 8th June, 2010, two Grade-I officers have been appointed and by the same notification, all Deputy Commissioners were requested not to take up the trial of cases both civil and criminal including institution till the Assam Frontier (Administration of Justice) Regulation, 1945, is suitably amended.

9. No doubt from the aforesaid developments, the Deputy Commissioners' Jurisdiction to try civil and criminal cases have now been vested with the Judicial Officers. The fact remains that the dispute between the parties arose prior to separation of Judiciary from the

Executive although the impugned order was passed after the separation of Judiciary. Moreover, even after the separation of Judiciary, the Assam Frontier (Administration of Justice) Regulation, 1945 has neither been repealed nor amended which confers power upon the Deputy Commissioner to settle the Civil and Criminal disputes.

10. Now it is also to be determined whether the Deputy Commissioner's order directing the Land Management Department to initiate necessary action to cancel the allotment of land can be termed as Civil Suit. Admittedly, settlement of land is within the perview of Deputy Commissioner so also its cancellation.

11. Under Section 12 of the Arunachal Pradesh (Land Settlement & Records) Act, 2000, the Deputy Commissioner may allot land belonging to the Government for agricultural purpose or for construction of dwelling houses. The land, in question, was allotted to the petitioner in the year 1997. The objection against the allotment or the encroachment of the land occurred in the year 2000.

12. Section 39 of the said Act says that a record of his rights has to be published when it is prepared and after its publication, the Survey Officer may receive and consider any objection. After considering all objections, the Survey Officer shall call the records for final publication. Sub-clause 3 of Section 39 provides that every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct. Section 44 prescribes that there shall be maintained for every village a registry of mutations in such form as prescribed. Section 95 says that no suit or proceeding shall, unless otherwise expressly provided for in this Act or in any other law for the time being in force, lie or be instituted in any civil court with respect to any matter arising under any provision of this Act; provided that if in a dispute between parties a question of title is involved, a civil suit may be brought for the adjudication of such question; provided further that the Civil Court shall have jurisdiction to decide any dispute to which the Government is not a party relating to any right or entry which is recorded in the record of rights.

13. Proviso to Section 95 says that if any dispute between the parties, a question of title is involved, a civil suit of such question may be brought for adjudication of such question. Under Section 82 of the Act, the Revenue Officer has the power to transfer or to deliver possession of land or to evict a person from the land. The petitioner has been claiming his right, title and interest over the disputed land and he can approach the civil court to establish his right, title and interest over the disputed land. The order passed by the Deputy Commissioner is in capacity as Revenue Officer. Whether the respondent was actually in possession of the land when the land was in favour of the petitioner and therefore, it is the question of fact. Therefore, he may approach the appropriate forum for establish his right, title & interest etc.

14. With the above observations and directions, this Civil Revision Petition stands disposed of.

JUDGE