

IN THE GAUHATI HIGH COURT

**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

WP(C) NO. 174 (AP) OF 2014

PETITIONER:

SHRI NANU TELI,
S/O. LATE TARIN TELI,
PERMANENT RESIDENT OF VILLAGE NIRJULI-I,
POST OFFICE & POLICE STATION – NIRJULI,
DISTRICT– PAPUM PARE , ARUNACHAL PRADESH.

By Advocates :

Mr. D. Batt,
Mr. N. Bakhang,
Mr. G. Tadi,
Mr. M. Pussang,
Mr. M. Tamar,
Mr. T. Chunga.

RESPONDENTS :

1. STATE OF ARUNACHAL PRADESH,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF ARUNACHAL PRADESH,
ITANAGAR.
2. THE SECRETARY,
LAND MANAGEMENT DEPARTMENT,
GOVERNMENT OF ARUNACHAL PRADESH,
ITANAGAR.
3. THE DEPUTY COMMISSIONER,
ITANAGAR CAPITAL COMPLEX,
ARUNACHAL PRADESH.

4. THE CHIEF ESTATE OFFICER-CUM-
ADDITIONAL DISTRICT MAGISTRATE,
ITANAGAR CAPITAL COMPLEX,
ARUNACHAL PRADESH.

By Advocates :

Government Advocate,
Arunachal Pradesh,
For respondent Nos. 1 & 3..

Mr. K. Jini,
Standing Counsel,
Land Management,
For respondent No. 2.

Mr. S. Mili,
Standing Counsel,
Chief estate Officer-cum-ADM.
For respondent No. 4.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

DATE OF JUDGMENT AND ORDER : 21st OF APRIL, 2017.

JUDGMENT AND ORDER

Heard Mr. Mudang Batt, learned counsel for the petitioner and Ms. Geeta Deka, learned Additional Senior Government Advocate for the State respondent Nos. 1 and 3. Also heard Mr. Kento Jini, Standing Counsel, Land Management for the respondent No. 2 and Mr. Sonadhar Mili, Standing Counsel, for the Chief Estate Officer, Itanagar Capital Complex.

2] The petitioner herein is aggrieved by the order dated 06.05.2014 by which the respondent No. 4, the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar came to the finding that the encroachment of the petitioner over the Government land is not protected from

eviction from the premises of the Government quarter. As such this writ petition has been filed for setting aside and to quash the said order dated 06.05.2014 and not to evict the petitioner from the structure that he constructed without further notice.

3] It is stated by the petitioner that in the year 1999, he occupied the Government land involved in the case measuring an area of 8 X 20 =160 square meters that was lying abandoned outside the brick boundary wall of a Government Quarter situated at "D"-Sector, Naharlagun, constructed RCC building with four shop rooms at present and is occupying and possessing the same since then.

4] The petitioner also stated that the land, in question, being Government waste land, as per the policy of the Government, he is required to apply for the land allotment in the prescribe form and procedure as is prevailing during the 11th period and accordingly on 07.09.2012 he submitted an application before the Deputy Commissioner, Itanagar Capital Complex, accompanied by required Treasury Challan, Sketch Map and Schedule Titled Certificate for allotment of said land in his name and accordingly, the Deputy Commissioner, Itanagar Capital Complex, processed his said application in File No. DC/ICC/LM-750/2002 for consideration and further, for that purpose the revenue staff of the Deputy Commissioner concerned made verification of the land and submitted a detailed survey report. It is submitted that the said report reveals that the land, in question, is free from all encumbrances and is feasible for commercial plot and the same may be recommended for allotment in favour of the petitioner.

5] The petitioner also submitted that since large scale illegal encroachment of Government land is there in the Itanagar Capital Complex and the encroachers have applied for regularisation of such land under the occupation, the State Government took a policy decision to regularise such encroachers by imposing misuse charge @ Rs. 5/- per square meter and the Chief Secretary of the State, by a communication dated 21.03.2014, conveyed the said decision of the Government to the concerned Secretaries of its Departments including, Land Management, Law, Finance and also the Deputy Commissioner, Itanagar Capital Complex as well as the Chief Estate Officer-

cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar for the information and to initiate necessary action.

6] It is stated that the petitioner was expecting that the Government will regularise his occupation and possession over the land, in question, but on 15.05.2014 the petitioner received a copy of the impugned eviction order dated 06.05.2014, issued by the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar stating that the he, along with his structures over the said land, shall be evicted on 26.05.2014, which is in gross violation of the above noted policy of the State Government.

7] The petitioner submitted that from the perusal of the impugned eviction order dated 06.05.2014, it appears that the Chief Estate Officer considered the land, in question, as public premises and sealed the shutters of the four shops over it, indicating clearly that he has taken cognizance under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 (hereinafter referred to as said 2003 Act) and performed his duties under the said Act. The petitioner urged that the impugned eviction order dated 06.05.2014 of the Chief Estate Officer is without following the provisions and the procedure prescribed under said 2003 Act and if the said order is allowed to be complied with than he will suffer irreparable loss as he had constructed an RCC building including four shop rooms over the land, in question, under his possession by his hard earned money. It is also stated by the petitioner that he is occupying the land, in question, since more than fifteen years and constructed the RCC building over it before the issuance of the impugned order dated 06.05.2014 and in possession of the said land without any complain. He also stated that he did not receive any show cause notice with regard to any such encroachment of Government land, which is located 5.50 meters outside the brick boundary wall of the Government Quarter keeping minimum set-back area from the said Quarter as per Govt. Notification dated 06-02-2009, issued by the Director of Land Management and that he constructed the RCC building by developing the said Govt. wasteland. According to the petitioner the action of the respondents is in clear violation of the protection guaranteed under Articles 14, 21 and 300 of the constitution of India. The petitioner also submitted that he has not constructed the said RCC building by encroaching any public Road or

any Government Land and he constructed the said building within the area that he occupied by developing the same and by constructing the RCC building over the said land and he did not receive any notice or complain from any quarter.

8] As such the petitioner submitted that the impugned order of conviction dated 06.05.2014 issued by the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar should be set aside and quashed.

9] While issuing notice to the respondents, this Court by order dated 22.05.2014, stayed the execution of the impugned order dated 06-02-2009, which is still in force. On 06-06-2014, the Court directed for the joint spot verification of the land, in question, directing the petitioner not to alter and/or develop and/or alienate the same under any circumstances. The respondents filed their affidavit in the matter rejecting the claims of the petitioner and enclosed the spot verification report therewith and contested the matter. The respondents have also placed the records in original.

10] Appearing for the State respondents Ms. G. Deka, learned Additional Senior Govt. Advocate submitted that the State Government is taking all steps to stop the menace of such un-authorized encroachment and occupation of Government land in the State. She also stated that the impugned eviction order dated 06.05.2014 has been rightly passed by the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar to evict the petitioner, who is an un-authorized occupant of Government land as well as to remove such un-authorized construction made by the petitioner over the said Government land.

11] The respondents have also placed a copy of the Order No. HMB (B)-67/2014/1506-15 dated 06-09-2014, issued by the State Government in its Home Department publishing the said order in the local dailies at Itanagar, which reads as follows:

GOVERNMENT OF ARUNACHAL PRADESH
HOME DEPARTMENT
CIVIL SECRETARIAT :: ITANAGAR

No. HMB (B)-67/2014/1506-15

Dated Itanagar the 06th September, 2014.

ORDER

Consequent upon the meeting held on 07/05/2014 in the Office Chamber of the Chief Secretary, the Governor of Arunachal Pradesh is pleased to accord approval on the following:

1. Installation of Toll free phone number-'1090' in the Office of the Chief Estate Officer, Capital Complex, Mowb-II, Itanagar for crime stoppage for the purpose of preventing crime against public premises/encroachment In Capital Complex and for prevention and detection of encroachment and damages of Government land and parties in Capital Complex.

2. All the Head of the Departments and all the concern stakeholders as well as all officers and officials should report any type of detection of crime against the Government land and property to the Office of the Chief Estate Officer on the above mentioned toll free/helpline number. It is also warned that concealing of any such information by any Government offices and officials shall be treated as disobedience to the authorities and liable to be punished under appropriate law.

3. The Chief Estate Officer-cum-Additional District Magistrate of Capital Complex should take cognizance of all such reliable information and ensure prompt action without any delay with the Police Personnel attached with him.

4. The Director General of Police shall provide an additional Unit of IRBN with Chief Estate Officer-cum-Additional District Magistrate for the prevention of Crime against the Government land and property and removal of un-authorized occupants as per the provision under Section 133 CrPC and other relevant law which immediate effect.

5. The District Magistrate, Itanagar Capital Complex and Superintendent of Police (City), Itanagar should extend all necessary support and co-ordination to the Chief Estate Officer for the enforcement of prevention of offence against the land and property of State Government In Capital Complex.

Sd/- Ramesh Negi
Chief Secretary,
Government of Arunachal Pradesh.

12] Mr. K: Jini, learned Standing Counsel, the Land Management Department relying on the affidavit filed of the respondent No. 2, Secretary, Land management, submitted that the petitioner is an un-authorized occupant of Government land involved in the case and the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar has rightly passed the impugned order of eviction and removal dated 06.05.2014.

13] It is seen from the report dated 04-07-2014 that after issuing prior notice, the Secretary to the Government of Arunachal Pradesh and Land Revenue Commissioner-cum-Appellate Authority along with the respondent No. 4, the Chief Estate Officer-cum-Additional District Magistrate, Itanagar Capital Complex, Itanagar physically inspected the land, in question, on 03-07-2014 in presence of the petitioner, which is located at "D" Sector, Nahariagun and it was found that – (i) the RCC building constructed by the petitioner over the said land

is between the Sector Road and the Government Quarter, (ii) the distance of said building from the Right of Way (ROW) of the Sector is not found as per the Government Notification for Sector Road and (iii) the building has been constructed within the lawn of the Government Quarter and Premises. The report also clarified that the petitioner could not produce any land allotment papers except mere making a statement that we have applied for land allotment before the DC Office, Capital Complex and that the District Land Revenue and Settlement Officer (DLRSO), Itanagar confirmed that no land allotment was given to the petitioner on the said encroached Government land. During such inspection, it has been found that the petitioner has constructed the RCC building over the land without any valid land allotment papers, which is found to be illegal and the RCC building so constructed by the petitioner over the said land can be evicted and/or removed. It is also stated that eviction of 22 (twenty two) such unauthorised encroachment of Government Quarters at "D" Sector, Naharlagun are pending including that of the petitioner where the Chief Estate Officer, Itanagar Capital Complex, Itanagar has passed necessary orders.

14] During the course of argument, the respondents have also placed a copy of the Notification dated 13-03-2006, issued by the State Government in the Directorate of Town Planning before the Court to show that the road width/Right of Way (ROW) of the Roads of Naharlagun (i) connecting the High Court Bench at "D" Sector to main road via RCS Office and (ii) connecting Polo Park to Type-IV residential colony at "D" Sector are 18 (eighteen) meters, informing the Deputy Commissioner of Papum Pare District for its strict enforcement.

15] Though the petitioner in his affidavit-in-reply reiterated that he is occupying the said abandoned land outside the brick boundary wall of the Government Quarter leaving required setback area, by investing his hard earned money developed the same and constructed the RCC building over it. He also stated that the respondent No. 2 in the said verification report did not give his actual finding like accurate distance between Government quarter and his RCC building etc.

16] The main contention of the petitioner is that he was not served with notice under the provisions of the of the Arunachal Pradesh Public Premises

(Eviction of Unauthorised Occupants) Act, 2003 prior to the issuance of the impugned order of eviction dated 06.05.2014 of the Chief Estate Officer.

17] Section 2 of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 relates to Definitions clause. Section 2(iii) of the said 2003 Act defines Premises and it reads as follows:--

*2(iii) **Premises** means any land or any building or part of a building and includes:-*

- (a) the houses, gardens, grounds and the building or part of a building; and*
- (b) any fittings affixed to such building or part of a building for more beneficial enjoyment thereof;*

Again Section 2(iv) defines Public Premises and it reads as –

*2(iv) **Public Premises** means any land or structure belonging to:*

- (a) The state Government, and*
- (b) Any other Corporation or Public Sector undertakings owned or sponsored and controlled by the State Government;*

Further Section 2(vii) defines Unauthorised Occupation and it reads as follows:-

*2(vii) **Unauthorized Occupation**, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.*

18] Section 4 of said 2003 Act provides that the Estate Officer is required to issue notice to show cause to such unauthorised occupants of public premises before issuing an order of eviction, which reads as follows:-

4. Issue of notice to show cause against order of eviction.

(i) If the Estate Officer is of opinion that any person is in unauthorized occupation on any public premises and that he should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(ii) The notice shall-

- (a) specify the grounds on which the order of eviction is proposed to be made; and*

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the public premises-

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date issued thereof; and

(ii) to appear before Estate Officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown and also for personal hearing, if such hearing is desired.

(iii) The Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(iv) Where the Estate Officer known or has reasons to believe that any person is in occupation of the public premises, then without prejudice to the provisions of sub-section (iii) he shall cause a copy of the notice to be served on very such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

19] Section 5 of said 2003 Act provides that after following the provisions of Section 4 of the said Act if the Estate Officer is satisfied that public premises are in unauthorised occupation he make an order of eviction. Section 5 of said 2003 Act reads as follows:-

5. Eviction of unauthorized occupants

(i) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-section (ii) of section 4, the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(ii) If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of its publication under sub-section (i) whichever is later, the Estate Officer or any other officer duly authorized by the Estate Officer in his behalf may evict that person from, and take possession of, the public premises and, may, for that purpose, use such force as may be necessary.

20] Section 6 of said 2003 Act relates to power of the Estate Officer to remove unauthorised construction over such public premises and it is read as follows:-

6. Power to remove unauthorized constructions etc.

(i) No person shall

(a) erect or place or raise any building or any movable or immovable structure or fixture,

(b) display or spread any goods,

(c) bring or keep any cattle or other animals on, or against or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

(ii) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (i), the Estate Officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove or to show cause why he shall not remove such building or other structure or fixture, from the public premises within such period not being less than seven days, as he may specify in the notice, and on the omission or refusal of such person either to show cause, or to remove such building or other structures or fixtures from the public premises, or where the cause shown is not, in the opinion of the Estate Officer sufficient, the Estate Officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(iii) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (i) by any person, the Estate Officer may, by order, remove or caused to be removed without notice such structure, fixture, goods, cattle or other animals as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.

21] Section 7 of said 2003 Act relates to power of the Estate Officer to order of demolition of unauthorised construction over such public premises and it is read as follows:-

7. Order of demolition of unauthorized construction.

(i) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such premises under an authority (whether by way of grant or any other mode of transfer), and

such erection of building or execution of work is in contravention of, or not authorized by such authority, then, the Estate Officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid may make an order for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection of work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order:

Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice of not less than seven days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(ii) Where the erection or work has not been completed, the Estate Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (i) or at any other time, direct the person at whose instance the erection or the work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made may be preferred under section 12.

(iii) The Estate Officer shall cause every order made under sub-section (i) or as the case may be under sub-section (ii), to be affixed on the outer door, or some other conspicuous part of the public premises.

(iv) Where no appeal has been preferred against the order of demolition made by the Estate Officer under the sub-section (i) or where an order of demolition made by the Estate Officer under that sub-section has been confirmed on appeal where with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the Estate Officer or any other officer duly authorized by the Estate Officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(v) Where an erection or work has been demolished, the Estate Officer may by order, require the person concerned to pay the expenses of such demolition within such time, and in such number of installments, as may be specified in the order.

22] Section 8 of said 2003 Act relates to the power of the Estate Officer to seal unauthorised constructions either before or after making an order under Section 7 of said 2003 Act and it reads as follows:-

8. Power of seal unauthorized constructions.

(i) It shall be lawful for the Estate Officer at any time, before or after making an order of demolition under section (7), to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been completed in such manner as may be prescribed, for the purpose of carrying out the provisions of this Act,

or for preventing any dispute as to the nature and extent of such erection or work.

(ii) Where any erection or work or any premises in which any erection or work is being carried on has, or have been sealed the Estate Officer, may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(iii) No person shall remove such seal except:

(a) under an order made by the Estate Officer under sub-section (ii), or

(b) under an order of the appellate officer made in an appeal under this Act.

23] Section 12 of said 2003 Act provides for an appeal from every order of the Estate Officer made in respect of public premises relates to power of the Estate Officer to order of demolition of unauthorised construction over such public premises and it is read as follows:-

12. Appeal

(i) An appeal shall lie from every order of the Estate Officer made in respect of any public premises under section 5 or section 7 or section 8 or section 10 to an appellate officer who shall be the Deputy Commissioner of the District in which the public premises are situated.

(ii) An appeal under sub section (i) shall be preferred

(a) in the case of an appeal from an order under section 5 within thirty days from the date of publication of the order under sub-section (i) of that section;

(b) in the case of an appeal from an order under section 7 or section 10 within thirty days from the date on which the order is communicated to the appellant:

Provided that the appellate officer may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time; and

(c) in the case of an appeal from an order under section 8 within thirty days from the date of such order;

(iii) where an appeal is preferred from an order of the Estate Officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 7 for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for

not proceeding with such construction, erection or work pending the disposal of the appeal.

(iv) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(v) The costs of any appeal under this section shall be in the discretion of the appellate officer.

24] The petitioner in the writ petition itself admitted that since the year 1999 he occupied the Government land measuring an area of 8 X 20 =160 square meters that was lying abandoned outside the brick boundary wall of the Government Quarter, situated at "D"-Sector, Naharlagun and constructed a RCC building consisting of four shop rooms over the said land by investing his money and is occupying and possessing the same since then and that he applied for allotment of said land to him only in September, 2012 before the concerned Deputy Commissioner, which was processed in the file for that purpose. But, it has been confirmed from the Joint Verification Report dated 04-07-2014 of the Secretary to the Government of Arunachal Pradesh and Land Revenue Commissioner-cum-Appellate Authority, the respondent No. 2, that the said Government land, which is a public premises, involved in the present case, encroached by the petitioner and constructed illegal structures over it, without any authority; no land allotment order had been issued to the petitioner by the authority concerned and this fact has also been confirmed by the District Land Revenue and Settlement Officer, Itanagar.

25] Record produced by the respondents reveals that the Director of Housing, Government of Arunachal Pradesh on 23-05-2012 and 07-07-2013 informed the Deputy Commissioner, Itanagar Capital Complex and the Under Secretary (Vigilance), Government of Arunachal Pradesh regarding encroachment of Government Quarters by Government Officials and private individuals within the Itanagar Capital Complex and requested the authority to take necessary action and enclosed therewith the list of such encroachers, forwarding such copies to the Director of Land Management and the Chief Estate Officer, Itanagar Capital Complex for their information and necessary action. The Chief Estate Officer, Itanagar Capital Complex, Mowb-II, vide No. CEO/ICC/Jud-901/2013/1080-1141 dated 13-07-2013 issued Show cause Notice to the petitioner under Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 for eviction from his

unauthorised occupation of the land involved in the case. On receipt of such Show Cause Notice, petitioner appeared before the Chief Estate Officer, Itanagar Capital Complex and during the process of the adjudication of the said matter and on physical verification, it was found that the petitioner constructed his said RCC building within the premises of the Government Quarter and the Right of Way of "D" Sector Road, Naharlagun, near The Judges Bungalow. In the said matter, it was also found that the Right of Way of (ROW)/Road Width of the approach road to Barapani Market connecting Polo Colony, D-Sector and NH-52-A via Directorate of Accounts should be 24 meters as per the Government Notification dated 13-03-2006 and the petitioner while making such illegal construction over the said public premise, he also did not maintain the said distance as required in terms of said Notification dated 13-03-2006 and that the entire act of the petitioner found to be in clear violation. As such the Chief Estate Officer, Itanagar Capital Complex, after hearing the petitioner and after taking into consideration of all the relevant documents, by his order dated 23-07-2013, passed in said Case No. CEO/ICC/Jud-901/2013, directed the petitioner herein to remove the illegal structure, which is involved in the present case, from the premises of the Government Quarter and the Right of Way, within one month from the date of issue of the said order, observing that failure on his part to comply with the same, he along with said structure shall be evicted by the said Court, without any further notice, at his own cost and accordingly disposed of the said case.

26] In the present case from the perusal of the impugned order dated 06-05-2014 of the Chief Estate Officer, Itanagar Capital Complex it can be seen that the petitioner again started illegal construction in said premises of the Government Quarter, involved in the present case, for which there is already an existing eviction order dated 23-07-2013, noted above, which was allotted to the Chief Engineer, PWD, located at "D"-Sector, Naharlagun, which information had been confirmed by the Circle Officer-cum-Executive Magistrate, Naharlagun and the Eviction Assistant of the Office. As the labourers were found working in the unauthorised illegal construction at the site, they were arrested by the Magistrate, some temporary structures were removed and the shutters were sealed by the Estate Office. The impugned order dated 06-05-2014 also reveals that such unauthorised construction by the petitioner was stopped earlier by the

Chief Estate Officer over the said land. From the said order dated 06-05-2014 it can be seen that the petitioner admitted before the Chief Estate Officer that he does not have any order of allotment from the authority concerned with regard to the land, in question, and that his construction over the said land is illegal. As it was found that the petitioner's encroachment and unauthorised illegal construction on the public premise of the Government Quarter, in question, is not protected from being evicted as per the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003, the Chief Estate Officer, Itanagar Capital Complex, by the impugned order dated 06-05-2014, directed for removal of the structure without further notice and the Superintendent of Police of the Capital Complex was directed to provide necessary security arrangement during the time of eviction from the said land, which was scheduled on 26-05-2014.

27] In this petition, the petitioner suppressed the material fact before the Court with regard to same parcel of land and the structure of RCC building over it, involved in the present case, a proceeding under the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003, was initiated against him in Case No. CEO/ICC/Jud-901/2013, wherein he was served with a Show Cause Notice dated 13-07-2013 under Section 4 of the said 2003 Act for his such unauthorised occupation of public premises and for making illegal construction of RCC building over the same, and after hearing him, the Chief Estate Officer, Itanagar Capital Complex, by his order dated 23-07-2013, passed in said Case No. CEO/ICC/Jud-901/2013, directed the petitioner herein to remove the said illegal structure from the Government Quarter and the Right of Way within one month from the date of issue of the said order with the observation that the petitioner's failure to comply with the same, the said structure shall be evicted by the said Court itself, without any further notice, which shall be at the cost of the petitioner. In the present case the impugned order dated 06-05-2014 has also been passed in the same Case No. CEO/ICC/Jud-901/2013(pt)/436, where the earlier order was passed by the Chief Estate Officer on 23-07-2013.

28] It is to be noted herein that the petitioner did not prefer any appeal as provide under Section 12 of the said 2003 Act before the concerned appellate

authority against the said order of the Estate Officer dated 23-07-2013 and by efflux of time said order of the Estate officer has become final.

29] It is not the case of the petitioner that he did not receive the Show Cause Notice dated 13-07-2013 under Section 4 of the said 2003 Act in said eviction Case No. CEO/ICC/Jud-901/2013, initiated by the respondent No. 4, the Chief Estate Officer of Itanagar capital Complex, it is also not the case of the petitioner that he did not appear before the said Chief Estate Officer, Itanagar Capital Complex on 23-07-2014 in terms of said Show Cause Notice dated 13-07-2013. It is also not disputed by the petitioner that in said eviction Case No. CEO/ICC/Jud-901/2013, he was found to be an unauthorised occupant of public premises of the Government Quarter as well as the Right of Way of "D" Sector Road, Naharlagun, near the Judges Bungalow, where he being an unauthorised occupant, unauthorisedly and illegally constructed the RCC building. The petitioner being a private individual failed to explain as to how he had occupied the public premises of a Government Quarter without any valid authorization of the respondents, more particularly from the Directorate of Housing of the Government of Arunachal Pradesh. It is also not the case of the petitioner that he had acquired title over the land involved in the case by adverse possession over the land situated "D"-Sector, Naharlagun.

30] The record clearly reveals that the petitioner is fully aware of the earlier eviction proceedings and also the eviction order dated 23-07-2013; but he suppressed this fact from the Court. The earlier eviction order drawn against the petitioner has attained finality, as he did not file nor made an attempt to file Appeal against the said order of eviction dated 23-07-2013, passed by the Chief Estate Officer, Itanagar Capital Complex. It is true that Section 4 of the 2003 Act requires issuance of notice to those in unauthorised occupation of public premises before the eviction order is passed against such unauthorised occupants. But in the present case, since the proceeding of eviction under the said 2003 Act against the unauthorised occupant, the petitioner herein was already drawn, which had attained finality as noted above, where by the order dated 23-07-2013, the Chief Estate Officer, Itanagar Capital Complex had directed the petitioner, the unauthorised occupant, to remove said illegal structure from the premises of the Government Quarter and the concerned Right

of Way within one month time from the date of issue of said order, clarifying that failure on his part to comply with the same, the said structure shall be removed by the said Court, without any further notice, that too, at the cost of said unauthorised occupant.

31] From the facts above it is observed that the petitioner has filed this writ petition only to escape eviction as he had the knowledge of the earlier eviction order dated 23-07-2013. Since, the petitioner who has the full knowledge regarding his earlier eviction order dated 23-07-2013 from the public premises, in question, being an unauthorised occupant and for his involvement of unauthorised and illegal construction of RCC building over the said public premises, pertaining to which an eviction order under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 is already in force; therefore, the petitioner cannot be said to be entitled to fresh notice under the said 2003 Act, prior to eviction from the same very public premises, for his continuance as an unauthorised occupant over the same public premise. Therefore, the petitioner, who being an unauthorised occupant over the land involved in the present case, cannot be allowed to maintain this writ petition on his own behalf to elongate the said eviction proceedings. The Court is of the opinion that show cause notice as contemplated under Section 4 of the said 2003 Act cannot be restored to protect the interest of such unauthorised occupants, who continued to remain in unauthorised occupation and possession of the public premises, after eviction proceeding has been initiated against him and which has attained finality.

32] As noted above, the petitioner has initiated this proceeding only to delay his eviction from the public premises involved in the present case and to frustrate the requirement of said premises, which was allotted to the Chief Engineer, PWD, located at "D"-Sector, Naharlagun. Moreover, this petition is also not maintainable as, for the same public premise; the eviction order passed earlier against the petitioner has attained finality. Further, for suppression of vital fact from the Court regarding the earlier eviction order dated 23-07 2013, this petition needs to be dismissed.

33] The Hon'ble Supreme Court in the case of *Vijay Syal -Vs- State of Punjab*, reported in (2003) 9 SCC 401 have held that –

"In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice."

34] In the case of *K.D. Sharma -Vs- SAIL*, (2008) 12 SCC 481, the Hon'ble Supreme Court have settled that –

"The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts.

Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to

protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

35] It is seen from the above that in the present case the petitioner has not approached the Court with clean hands by disclosing all facts and he had chosen to state the facts in the manner that suits him by giving the impression before the writ court that doctrine of natural justice and fundamental principles of fair procedure have not been followed before issuing the impugned eviction order dated 06-05-2014, as if the respondent No. 4, the Chief Estate Officer did not issue any notice or provide any information to him while initiating the said eviction process under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003. But the true facts reveal otherwise. For the reason of suppression of material facts alone, the petitioner is not entitled the equitable relief as sought for in this petition. However, in the case in hand, merits of the case has also been considered and the petitioner failed to make out any case requiring interference of this Court to exercise the Writ jurisdiction with the actions of the respondents and the impugned order of eviction and removal passed by the Chief Estate officer, Itanagar Capital Complex.

36] For the aforesaid reasons, this writ petition is dismissed. Consequently, the interim order dated 22-05-2014 operating in the present petition stands vacated and it ceases to exist. There shall be no order as to costs.

JUDGE

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