



THE GAUHATI HIGH COURT

(The High Court of Assam: Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

W.P.(C) No. 216(AP)/2016

Shri Tapu Ekke, S/o Lt. T. Ekke,
R/o Chandranagar Itanagar near Police colony,
Riverbank, Itanagar, P.O. & P.S. – Itanagar
District- Papumpare, Arunachal Pradesh

.....Petitioner

-Vs-

1. The State of Arunachal Pradesh represented by
the Secretary, Land Management,
Government of Arunachal Pradesh, Itanagar

2. The Director,
Land Management,
Government of Arunachal Pradesh, Itanagar.

3. The Deputy Commissioner
Capital Complex, Itanagar
Arunachal Pradesh, Itanagar

4. The District Land Revenue & Settlement Officer
Capital Complex, Itanagar
Arunachal Pradesh, Itanagar

5. The Chief Estate Officer-cum-Addl. District
Magistrate
Itanagar Capital Complex, Itanagar

6. Shri Tasing Ekke,
Constable, Security Cell, PHQ
Chimpu, P.O. & P.S. – Itanagar
District – Papum-Pare, Arunachal Pradesh

..... Respondents

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM

For the petitioner : Mr. L. Perme, Advocate
For the respondents : Ms A. Mize, Govt. Advocate
Mr. K. Jini, Advocate
Mr. T. Rigio, Advocate
Date of hearing and judgement : 09-05-2017

Judgement and Order (Oral)

Heard Mr. L. Perme, learned counsel for the petitioner. Also heard Ms. A. Mize, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing for the respondent Nos. 1, 3, 4 and 5, Mr. K. Jini, learned counsel for the respondent No. 2 whereas Mr. T. Rigio, learned counsel appears for private respondent No. 6.

2. The brief facts, giving rise to the filing of the present writ petition, are that on 19-03-2014, the respondent No. 5, i.e. the Chief Estate Officer-cum-Addl. District Magistrate, Itanagar Capital Complex, Itanagar had issued a notice to the writ petitioner under Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 (hereinafter referred to as the Act of 2003) calling upon him to appear in person and to answer all materials question connected to the matter along with the evidence. The ground on which the notice was issued has been indicated as "unauthorised occupation and construction of structure within the occupied plot of Tasing Ekke at Itanagar".

3. On receipt of notice, the writ petitioner had filed a reply on 25-03-2014, *inter alia*, stating that the plot of land in question has been under his occupation since 1997 wherein he had constructed a dwelling house and since then has been living with his family members without any obstacle from any quarters. In his reply, the petitioner has also stated that Sri Tasing Ekke, i.e. respondent No. 6, who is a constable of Security Cell, is making an attempt to occupy the said plot of land. On the basis of the reply submitted

by the writ petitioner a hearing was conducted and thereafter, by order dated 21-07-2014, the respondent No. 5 had directed the respondent No. 2 to takeover possession of the land and the construction standing within the disputed land, by removing the building of the party concerned.

4. Aggrieved by the order dated 21-07-2014 the petitioner had approached this Court by filing W.P.(C) No. 244(AP)/2014 which was disposed of by the learned Single Judge by order dated 07-09-2015 on the ground of availability of alternative remedy, thereby directing the petitioner to prefer a statutory appeal before the competent authority. Accordingly, the petitioner preferred an appeal under Section 12 of the Act of 2003 before the Deputy Commissioner, Itanagar Capital Complex, Itanagar. i.e. respondent No. 3. But, the respondent No. 3 had passed order dated 25-02-2016 dismissing the appeal holding the same as not maintainable. The aforesaid order was apparently based on the ground that the impugned order dated 21-07-2014 was issued under Section 145/107 Cr.P.C. and hence, appeal under Section 12 of the Act of 2003 would not be maintainable. Aggrieved, the petitioner is before this Court.

5. It is not in dispute that the notice dated 19-03-2014 was issued on the basis of a complaint lodged by the respondent No. 6 before the Chief Estate Officer-cum-ADM, Itanagar Capital Complex. The categorical stand of the respondent No. 6 is that the land in question was purchased by him from one Smti. Yania Nilling on 26-12-2007. Claiming the land to be a private land, the respondent No. 6 had made an attempt to evict the writ petitioner

from the occupation of the plot of land and the building standing thereon. Although, the notice dated 19-03-2014 has been evidently issued under Section 4 of the Act of 2003, yet, the same does not indicate in any manner that the premise in question was a public premise. A perusal of the order dated 21-07-2014 further goes to show that the respondent No. 5 has exercised the jurisdiction both as Estate Officer under Section 4 of the Act of 2003 as well as Magistrate, under Section 145/107 Cr.P.C. and thereby entertained a private land dispute between the writ petitioner and the respondent No. 6 which ultimately culminated into a direction issued to the respondent No. 2 to takeover possession of the land.

6. From the materials available on record, I do not find anything to show that the plot of land in question was a Government land. In view of the categorical stand by the respondent No. 6, it is evident that he is claiming the plot of land as his purchased land. Under such circumstances, it is not understood as to how the respondent No. 5 could have issued a notice by invoking the provision of Section 4 of the Act of 2003. The learned State Counsel has also failed to furnish any satisfactory reply to the aforesaid question.

7. Section 145 Cr.P.C. gives the power to a Magistrate to pass an order where dispute concerning land or water is likely to cause breach of peace. Under Section 145 Cr.P.C. the Magistrate can call for a police report and on recording satisfaction on to the likelihood of breach of peace, can pass an order declaring which of the parties was in possession of the land within two

months next before the date of his order. Section 107 of Cr.P.C. deals with security for keeping peace in other cases. Neither of these provisions permits the Magistrate to issue a direction for handing over possession of the land to a third party or to remove the structure standing thereupon. But from the operative part of the impugned order, it is apparent that the Chief Estate Officer, i.e. respondent No. 5 had not only issued a direction to the respondent No. 2 to takeover possession of the property but also to demolish the construction standing thereupon, which, in the opinion of this Court, is beyond the jurisdiction conferred by Section 145/ 107 Cr.P.C. Therefore, the power exercised by the respondent No. 5 is not traceable either to the provisions of the Act of 2003 or to Sections 145/107 of the Cr.P.C. In such view of the matter, the order 21-04-2014 is held to be un-sustainable in the eye of law and is hereby set aside.

8. As regards the order dated 25-02-2016 passed by the respondent No. 3, in view of the observation made hereinabove, this Court need not go into the question of legality and validity of the said order.

9. For the reasons stated hereinabove, this writ petition must succeed and is hereby allowed.

It would, however, be open to the parties to pursue appropriate remedy in the matter as may be available to them under the law.

Writ petition is, accordingly, disposed of.

No order as to cost.

▼ **JUDGE**

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