

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP(C) 114 (AP)/2013

1. Smti B. Z. MARA

W/o Shri Tayom Mara, presently resident of Niti Vihar,
Itanagar, District Papumpare, Arunachal Pradesh.

.....petitioner.

-VERSUS-

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,

Itanagar Capital Complex, Itanagar. District Papumpare,
Arunachal Pradesh.

4. The Chief Estate Officer-Cum-ADM,

Itanagar Capital Complex, Mowb-II. District Papumpare,
Arunachal Pradesh.

.....respondents.

**BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocate for the Petitioners : Shri R. Saikia, Shri T. Zirido, Shir M. Bagra,
Shri R. Bori, Shri K. Lollen, Ms. C. D. Thongchi

Advocate for the Respondents : Ms. L. Hage, the State Counsel
Shri D. Kamduk, S.C. Land Management Department

Date of hearing and Judgment : **22.05.2019**

JUDGEMENT & ORDER(ORAL)

- 1.** Heard Shri R. Saikia, learned counsel for the petitioner. Also heard Ms. L. Hage, learned State counsel for the respondent Nos. 3 & 4 and Shri D. Kamduk, learned standing counsel for Land Management appearing on behalf of respondent Nos. 1 & 2.
- 2.** The writ jurisdiction of this Court has been sought to be invoked by the petitioner by challenging the notice dated 25.03.2013 and an order dated 04.04.2013, passed by the Deputy Commissioner, Itanagar, Capital Complex. By the first notice, direction were given to show cause as to why a plot of land measuring about 15 square meter over which the petitioner is in occupation should not be evicted and by the subsequent order, the petitioner has been directed to vacate the aforesaid plot of land.
- 3.** The facts of the case as projected in the writ petition can be put in a nutshell in the following manner.
 - i.** The petitioner who is a retired government servant is before this Court with the challenge mentioned above. According to the petitioner, an area of 477 square meter of land was duly allotted to her and as per the pass book issued in her favour, 300 square meters was for residential purpose and 177 square

meters for commercial purpose. Accordingly, construction were made by the petitioner and in that process, an extra area of 15 square meter was utilize by the petitioner as the said plot was under her occupation since long.

ii. When the aforesaid fact was revealed, the petitioner had submitted a representation dated 05.07.2011 to the authorities to extend the allotment made to her by 15 square meters. Such consideration was to be made in accordance with the policy of the Government notified vide communication dated 24.05.2012.

iii. It is the case of the petitioner that pursuant to such application, a verification was done and a report was prepared by the surveyor after physical verification and such verification report appears to be in favour of the petitioner. For such consideration of the application for allotment, detail sketch map of the area in question was also prepared. As per the petitioner, the additional plot of 15 square meters apart from being contiguous to the land allotted to him was not causing any hindrance to the right of way or easemantary right of any other person.

iv. While the process for consideration for allotment of the excess 15 square meter of land was pending, the petitioner was surprised to receive a notice dated 25.03.2013, issued by the Deputy Commissioner, Itanagar, Capital Complex. By the said notice, it was alleged that construction were made over a plot of land which was yet to be allotted to the petitioner and the construction were adversely affecting the aesthetic beauty of the place. Accordingly, the petitioner was directed to show cause as to why action for eviction should not be taken.

v. It is the case of the petitioner that she had submitted reply to the show cause notice wherein reference was made to the pending process of allotment of 15 square meter of land pursuant to which survey was made and report submitted. The allegations of cutting pine trees was also denied and it was further prayed that the process for allotment of 15 square meter of land be finalized.

vi. However, the order dated 04.04.2013 was passed by the Chief Estate Officer-Cum-ADM, directing the petitioner to remove the unauthorized structure

within 10 days failing which eviction would be carry out at her cost. It is at this stage that the petitioner had approached this Court.

4. This Court vide order dated 11.04.2013 had passed an order of status quo and it was also clarified that the petitioner shall not undertake any activities of construction, extension of house, cutting of tress etc.

5. Shri R. Saikia, learned counsel for the petitioner submits that when the process of consideration for allotment of 15 square meters of land which was under her possession was pending; the authorities could not have taken recourse to the impugned action of eviction. The same would rather amount to pre-empting the right for fair consideration inasmuch as, once the eviction is done and structure demolished, the application for allotment should be rendered redundant and otiose. It is further submitted that under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupant) Act, 2003, the Deputy Commissioner is the appellate authority and that being so, the show cause notice is not contemplated by the aforesaid Act to be issued by the appellate authority. The same not only amounts to jurisdictional failure but would also cause immense prejudice to the affected person.

6. Shri Saikia further submits that once the show cause notice is issued by the appellate authority, there is hardly any scope for the authorized person namely, Chief Estate Officer to make independent application of mind and in that process, the entire exercise would be reduced to a mechanical one. Further, the statutory rights of prefer an appeal would also be redundant as the views of the appellate authority were already exposed and were against the petitioner who was the applicant.

7. Shri Saikia, by relying on the counter affidavit of the respondent No. 4 more specifically paragraph 9 thereof, wherein statements have been made which are on the face of erroneous and not supported by the records of the case. Lastly, Shri Saikia submits that none of the authorities have even mentioned about the fate of the pending application for allotment of the 15 square meter of land.

8. Ms. L. Hage, learned Jr. Govt. Advocate however, submits that the show cause notice followed by the order had been issued in accordance with the Act of 2013 and there is no infirmity in the same. The object of initiating impugned action is in the interest of public service and therefore, this Court should be loath in interfering with such action.

9. Endorsing the submission of the learned State counsel, Shri D. Kamduk, the Standing counsel of the Land Management Department would contend that the action of the petitioner in encroaching excess land itself being illegal, no fault can be attributed to the process to get the encroached land free. It is further been submitted that the petitioner should have confined to the allotted land of 477 square meter and had no authority to occupy the 15 square meter of excess land which is an admitted position. He therefore, submits that no interference should be made by this Court against order dated 04.04.2013.

10. The rival contentions of the learned counsels have been duly considered.

11. As indicated above, pursuant to the interim order passed by this Court, the petitioner continues to be in possession of the excess 15 square meter of land over which there are constructions. The point for determination which would arise in this case is that when the application for allotment of a particular land is pending consideration, whether a parallel proceeding for evicting the petitioner from the same plot of land is justified? It appears that pursuant to the application of the petitioner for allotment of the 15 square meters the authorities had taken certain conscious measures in the process of consideration of the said application. Not only a physical verification was done and report submitted but a sketch map of the entire area was also prepared and the same was pending consideration. Without taking a final decision on the prayer of the petitioner for such allotment, this Court is of the opinion that it cannot be held either to be reasonable or justified to issue a notice for eviction followed by an actual order to vacate.

12. This Court is in agreement with the submission made on behalf of the petitioner that if the impugned order comes into operation, the process of consideration of her prayer for allotment would not only be infructuous but the

petitioner will also suffer legal prejudice, inasmuch as, the land in question has been stated to be under his occupation for the last more than 11(eleven) years. Therefore, without taking a final decision on the prayer for allotment, the impugned action cannot be held to be justified and accordingly, the same is interfered with. Consequent upon the above discussion, this writ petition is allowed by setting aside the impugned order dated 04.04.2013 and the process initiated vide the notice dated 25.03.2013. It is also directed that final order be passed on the prayer for allotment made by the petitioner by the appropriate authority in accordance with law.

13. The writ petition is accordingly **disposed of**.

JUDGE

J.Bam