

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

WP(C) 28 (AP)/2015

1. Shri. Tam Silup, S/o Shri Tam Nyajung, resident of Hepingso village, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 09402047838., Email id: Nil.
2. Shri. Tam Tadik, S/o Shri Tam Nyajung, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9191626551., Email id: Nil.
3. Shri. Nabam Solo, S/o Shri Nabam Killing, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9191725876., Email id: Nil.
4. Shri. Nabam Takang, S/o Shri Nabam Mazi, village: hepingso, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. nil., Email id: Nil.
5. Shri. Nabam Tarang, S/o Shri Nabam Killing, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9436000084., Email id: Nil.
6. Shri. Nabam Tah, S/o Shri Nabam mazi, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9191627309., Email id: Nil.
7. Shri. Chera Kacha, S/o Shri Chera Robu, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9402771714., Email id: Nil.
8. Shri. Nabam Tata, S/o Shri Nabam Tada, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9402711548., Email id: Nil.

9. Shri. Teli Pingka, S/o Shri Tali Karu, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9436699160., Email id: Nil.

10. Shri. Nabam Tame, S/o Shri Nabam Tada, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 8256996108., Email id: Nil.

11. Shri. Nabam joshi, S/o Shri Nabam Tada, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9436642029., Email id: Nil.

12. Shri. Chera Yadan, W/o Shri Chera Robu, village: Langding, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. nil., Email id: Nil.

13. Shri. Nabam Killing, S/o Late. Nabam Mangming, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 03602901655.

14. Shri. Teli Tato, S/o Shri Teli Tapu, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. 9402046539., Email id: Nil.

15. Shri. Techu Baking, S/o Late Techu Rangdia, village: Hepingso, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

16. Shri. Chera Tania, S/o Late Chera Robu, village: Hepingso, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

17. Shri. Tam Nyajung, S/o Late Tam Sonu, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

18. Shri. Techu Tade, S/o Late Teli Tazik, village: Langdang, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

19. Smt. Nabam Yaro, W/o Late Nabam Tam, village: Langding, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

20. Smt. Chera Messam, W/o Chera Robu, village: Langding, PO/PS: Sagalee, District: Papum Pare, Arunachal Pradesh. Contact no. Nil., Email id: Nil.

.....**Petitioners.**

By Advocates:

**Mr. N. Ratan,
Mr. K. Loya,
Mr. D. Ete,
Mr. J. Lollen,
Mr. R. Ngomle
Mr. T. Taggu**

-Versus-

1. The Additional Deputy Commissioner, Sagalee, Papum Pare District, Arunachal Pradesh.
2. The Circle Officer, Leporiang, Sagalee Circle, District: Papumpare, Arunachal Pradesh.
3. Shri Nabam Nera, S/o Late Nabam Mazi, Village: Langdang, PO: Lerporiang, PS: Sgalee, Papumpare District, Arunachal Pradesh.
4. Shri Nabam Tagia, S/o Late Nabam Tada, Village: Langdang, PO/PS: Sgalee, Papumpare District, Arunachal Pradesh.
5. Shri H.N. Taba, ASM, S/o Late Nabam Mazi, Village: Langdang, PO/PS: Sgalee, Papumpare District, Arunachal Pradesh.

.....**Respondents.**

By Advocates:

**Ms. G. Deka, Sr. GA for respondent Nos. 1 & 2.
Mr. R. Sonar, for resp. no.3
Mr. L. Tenzin, for resp nos.4 & 5**

BEFORE
THE HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 05-06-2015 & 14-07-2015.

Date of Judgment & Order: 17-07-2015

JUDGMENT & ORDER (CAV)

Vide order dated 13-07-2015, on the prayer of the petitioners, the name of the writ petitioners No.4, 6,10,11,15 and 18 has been deleted from the array of the petitioners of this case.

2. The brief facts of the case is that the petitioners are the actual owners of land located in the periphery of pare River starting from the quarry site of one Shri, Nabam Tagia to the pond called "Tahu pegu Saley". They have their respective WRC fields just on the periphery of the pare river and their ownership stretches even on the quarry up to the pare river. The said ownership over the respective WRC fields and the quarry up to the pare river was always recognized and was never disputed by anyone.

3. Suddenly in the last part of 2012, quarrying activities started for the construction of the Trans Arunachal Highway project by one Sushee Infra private Limited and when the petitioner stopped such activities, the ADC, Sagalee issued a Circular dated 03.03.2013, directing the villagers to not do any hindrance on the quarry activities as an LPC dated 23.08.2012 was already issued in favour of the respondent no.3. Then only the petitioners came to know about the illegal LPC issued to the respondent No 3 for land measuring 50,000 square metres which included/covered even the petitioners land.

4. When the petitioners proposed to make complaint for cancellation of the said LPC, the respondent no. 4 and 5, who are close relatives of the respondent no. 3, requested them not to make any complaint and they would amicably settle the matter with the respondent no. 3. Despite best efforts, the matter could not be settled and time was also running out. Therefore, the petitioners filed a complaint dated 02.01.2014 before the ADC, Sagalee. The said

compliant was not taken up by the ADC, Sagalee and therefore the petitioners made a complaint dated nil July' 2014 to the Deputy Commissioner, Papumpare District, Yupia, highlighting all the facts and grounds that he LPC was issued without any public notice and in total violations of guidelines.

5. The aforesaid complaint was endorsed back to the ADC, Sagalee. However, the same was never taken up, but the quarrying activities were totally stopped. Suddenly on dated 27.01.2015 the respondent no. 3, again started quarrying activities engaging huge number of men and machineries. On enquiry, the petitioners came to know that the impugned order dated 22.01.2014 was passed by the ADC, Sagalee, refusing to entertain the complaint on the ground that the complaint attracts Civil Procedure Code and since Judiciary has been separated from the executive, it falls outside his Jurisdiction.

6. There is a guidelines dated 19.12.1988 issued by the Government presiding the procedures for issuing LPC to individuals land owners which provides for prior notice for inspection, notice for written objection, declaration by neighbours, declaration by village authorities etc. and also for obtaining NOC from the Divisional Forest Officer of the Jurisdiction. However, the impugned LPC dated 23.08.2012 was issued to the respondent no. 3 without following the guidelines by totally concealing it from the general public and in a secret manner. And as such no public notice was issued and therefore the petitioner could not make any written objections.

7. It is the case of the petitioners that since their complaint endorsed before the Additional Deputy Commissioner, Sagalee by the Deputy Commissioner, Yupia, no quarrying activities was carried out by them but on 27-01-2015, the respondent no.3 again started the quarrying activities by involving huge numbers of men and machineries. Then, the petitioners came to know that the Additional Deputy Commissioner, Sagalee has refused to entertain the complaint of the petitioners and rejected the same vide order dated 22-12-2014 without giving them any opportunity of hearing. Hence this writ petition has been filed by the petitioners praying for setting aside and quashing of the impugned order dated 22.12.2014 passed by the Additional Deputy Commissioner, Sagalee, as being illegal and arbitrary and also prayed for quashing of the LPC dated

23.08.2012 issued in favour of the respondent No.3 as being issued illegally and in total violation of the guidelines.

8. Mr. G. Deka, learned State Counsel has submitted that no illegality or ambiguity has been committed by the respondent No.1 in issuing the LPC in favour of the respondent No.3 as the ADC, Sagalee is empowered/authorized to issued the same being an independent charge in terms of the Notification No. LR-31/84 (Pt) dated 3rd August, 2010.

9. The respondent No.3, by filing the affidavit-in-opposition, has inter alia stated that the Government has further framed rules known as the Arunachal Pradesh (Land Settlement and Records) Rules, 2013, under the said Act, which has been duly published by way of notification dated 03-12-2012 in the Arunachal Pradesh Gazette. Under the Act, those in actual possession/occupation of land, other than government land, are given Land Possession Certificate (LPC, in short), which is considered to be the authentic record for possession of land. Under Section 4 of the Act, among others, the Deputy Commissioner and Additional Deputy Commissioner of a district are designated as revenue authority. The Act also provides for appeal and revision provisions under Sections 83 and 84, as a remedial action against any order passed by the revenue officers pertaining to land and revenue matters, which includes issuance of cancellation of LPC. The subsequent dismissal of the compliant of the petitioners vide order dated 22-12-2014, which was impugned in the writ petition, by the Additional Deputy Commissioner, Sagalee has been done in exercise of power conferred by or under the Act in the capacity of the Revenue Officer. The Additional Deputy Commissioner, Sagalee, after considering all the relevant materials on records and after verification and comment report dated 04-12-2015 submitted by the Circle Officer, Leoriang, has fairly and judiciously rejected the prayer of the petitioners.

10. The learned counsel for the respondent No.3 has further submitted that the disputed question of fact pertaining to title over the land in question cannot be adjudated under Article 226 of the Constitution. The dispute, in question, pertains to civil in nature and the proper forum would be competent court of civil judge having the jurisdiction over the matter to decide. Moreover,

the LPC is not a document providing title over the land the same can always be questioned before the appropriate forum. Therefore, the petitioners ought to have approached the competent civil court for declaration of the title over the land in question not in the form of present writ petition and on this count; this writ petition is not maintainable.

11. Mr. L. Tenzin, learned counsel appearing on behalf of the respondent Nos. 4 and 5 has submitted that when the petitioners came to know about the issue of LPC to the respondent No.3, the petitioners proposed to make a complaint for cancellation of the same but the respondent Nos.4 and 5, being the close relatives of the respondent No.3 requested the petitioners not to make any complaint as they will amicably settle the matter between the petitioners and the respondent No.3. But despite best efforts the settlement could not be made.

12. This Court while issuing notice on 09-02-2015, directing the parties to maintain the status quo in respect of the land of the petitioners. Subsequently, the petitioners filed a Misc. Case No. 19 (AP) 2015 in WP(C) 28 (AP) 2015 praying for modification of the interim order dated 09-02-2015 in the said writ petition by further directing that no activities should be carried on the land, in question, as on addition to the earlier status quo order. This Court, while dismissing the said misc. case vide order dated 04-03-2015, passed the following orders-

" I have gone through the petition filed by the petitioners and what transpires from the records is that there is a circular vide Annexure-1 dated 13-03-2013 whereby Addl. Deputy Commissioner, Papum Pare District, Sagalee has notified that quarry operation will be carried out on the said land in question and the respondent No.3 has notified to be the owner of the said land and has declared that villagers of the locality should not give hindrance to the collection of sand and stone from the quarry.

Again from the paragraph-4 of the petition, it appears that "Trans Arunachal Highway" construction is going on and quarry activities is also being carried out for supply of necessary materials for the said purpose. Mr. Sonar, learned counsel for the respondent No.3 has submitted that since the construction

work in question is currently going on, therefore, if , at this stage, interim stay with regard to the work in question is passed then it will hamper the public interest apart from the interest of private respondent No.3.

In view of the above position that and also taking into account fact that the petitioner has challenged the process of obtaining the LPC's by the respondent No.3 fraudulently, at this belated stage, therefore, this Court declines to pass any order for interim stay on the activity carried out which may have impact of suspension of the construction work of National Highway which is made for larger interest of the State.

The misc. case accordingly stands dismissed."

13. I have considered the rival submissions of the parties at length and also gone through the official record, so produced from the Office of the ADC vide file no. ADC/SGI/JUD-02(Pt)/2013. According to the learned counsel for the respondents, the case of the petitioner is covered by the provisions of Arunachal Pradesh (Land Settlement and Records) Act, 2000 and Rules, 2012 and the petitioner has remedy to prefer an appeal/revision under Sections 83 & 84 of the said Act. So, the present writ petition is not maintainable and this Court cannot decide the matter as the remedy lies upon the appellate authority. It is also contended that where there is an efficacious remedy is applicable, the exercise of jurisdiction is not warranted except exceptional circumstances.

14. In this context, the decisions reported in **2005(Suppl) GLT 613 (Dugi Tajik Vs. Chief Secretary, Govt. of A.P. and Others)** and **(2012) 11 SCC 651 (Union of India & Anr. Vs. Guwahati Carbon Limited)**, have been relied upon by the learned counsel appearing on behalf of the respondent No.3. Basing upon the aforesaid decisions, the learned counsel for the respondent No.3 has submitted that the Deputy Commissioner is the ultimate authority to issue LPC and even if there is any irregularity crept into while issuing such Land Possession Certificate (LPC), the High Court would not normally exercise its jurisdiction and the petitioner has a remedy in the form of a right of appeal under the statute. It is also contended that the construction of 'Trans Arunachal Highway' is going on by collecting the sand and stone etc. from the quarry of the respondent No.3, so, in any order for cancellation of such LPC, at this stage, will

adversely affect the public interest with regard to the on going construction of 'Trans Arunachal Highway'.

15. On the other hand, the learned counsel for the petitioner vehemently objected to the course of affairs so conducted by the authority concerned while issuing LPC. It has been pointed out that Arunachal Pradesh (Land Settlement and Records) Act, 2000 and Rules, 2012 is not applicable as has been urged by the learned counsel for the respondent no.3 because the Act is silent as regard the issuance of LPC but it is applicable in the Land Revenue Administration for the whole of the State of Arunachal Pradesh. Consequent upon, there is no question for availing remedy under the said Act.

16. The matter relating to issuance of LPC, regulated by O.M. No.LR-31/84 of 19th December, 1988 (Annexure-5 to the writ petition), which reads as follows:-

"GOVERNMENT OF ARUNACHAL PRADESH
LAND RECORDS DEPARTMENT

OFFICE MEMORANDUM

NO. LR-31/84 Dated 19th Dec/88.

Sub: Issue of possession Certificate procedure thereof.

The Government has been considering to evolve a proper and simple procedure for issue of possession certificate to the owners of private land in various places of Arunachal Pradesh. Such certificate is considered most essential by an individual for obtaining financial assistance from various institutions such as nationalized Banks. A.P. State Co-operative Apex Bank, Tea Board, Coffee Board, Rubber Board, Industrial Development Bank of India Etc.

In view of the above, the Government has decided to adopt the following procedures for issue of possession certificates in favour of the land owners, as and when desire...

- A. The land owners, who desires to obtain possession Certificate in support of his land, he/they shall submit an application in the form prescribed at Annexure 'A' along with the following materials/documents to the administrative authority of the area, where the land is located:-
- (i). Certificate from the Forest Department mentioning the land in question does not fall under reserved forest area.
 - (ii). Certificate from the village council/village headman/Vice president Anchal Samity that he land is actually owned by him and it is not a joint property as well as land is free from all encumbrances.
 - (iii). Sketch map of the land in triplicate (not to scale) duly countersigned by the Vice president Anchal Samity/village council/village Headman.

- B. On receipt of the above application the Administrative authority of the locality shall arrange to inspect and measure the land in question with survey team for which he shall issue a notice as per form prescribed at Annexure 'B' with a copy to the following persons of the locality:-
- (i). Gaun Burah.
 - (ii). Gram Panchayat Member.
 - (iii). Anchal Samity Member.
 - (iv). Applicant.
 - (v). Persons holding land in
 - (a) North
 - (b) South
 - (c) East
 - (d) West
- C. On completion of above inspection, the Administrative authority shall arrange to issue a notice for 'No Objection' from the public of the locality as per form prescribed at Annexure 'c'.
- D. On completion of above course of actions, if it is established without any doubt, that he applicant concerned is sole owner of the land, the administrative authority shall recommend the case to the concerned DC as per form prescribed at Annexure 'D' for issue of Possession Certificate.
- E. The DC on receipt of the recommendation from the administrative authority shall examine the case and if it is found in order he shall recommend the case to the Govt. for approval and after obtaining the approval they shall arrange issue of possession certificate as per annexure 'E'.
- A wide circulation of the contents of this office Memorandum shall be made all over the areas falling under his jurisdiction for information of people.
- This issue in partial modification of Government's O.M.NO. LR-31/84 dated 05-10-1987.

Sd/- O.M. Tangu,
Secretary (Revenue & Settlement)
Government of Arunachal Pradesh
Itanagar."

17. The subsequent Notification No. LR-31/84 (Pt) dated 3rd August, 2010 (Annexure-6 to the writ petition) which reads as under:-

"GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF LAND MANAGEMENT
ITANAGAR

NOTIFICATION

Dated Itanagar the 3rd Aug' 2010.

NO.L.R-31/84(Pt)::

In partial modification of Office memorandum No.LR-31/84(Pt) dated 16th March, 1999, all ADCs holding independent charges in the State are empowered to issue Land Possession Certificate upto 5(five) hectares for any purpose, including cultivation, to the indigenous inhabitants of Arunachal Pradesh in accordance with the existing procedures and instructions. All cases for issue of LPC upto 5(five) hectares shall be examined and decided by the ADCs (Independent) at their level without forwarding them to the Government in terms

of the procedures prescribed under the Office memorandum LR-31/84 of 19th December, 1988. Land Possession Certificate upto 5(five) hectares shall be issued by the ADCs (independent) on the strength of "No Objection Certificate" to be issued by the Divisional Forest Officers of concerned jurisdiction and also an fulfillment of other conditions.

Further, wherever the ADCs (Independent) have been already exercising this power under any order issued by the Govt. earlier in relation to their powers and functions, exercise of such a power shall be deemed to have been consistent with this Notification.

Sd/-T. Taloh, IAS
Commissioner (Land Management)
Govt. of Arunachal Pradesh
Itanagar."

18. According to the learned counsel for the petitioner, no procedure was followed properly while issuing the LPC to the respondent No.3 and no notice was served upon the petitioner as well as the neighbouring persons, the respondent authority has acted illegally behind the back of the petitioner in issuing the LPC, so, it can be held as an illegal procedure and the same is liable to be set aside. It has been urged by the learned counsel for the petitioner that the submissions of the learned counsel for the respondents lack substance.

19. Mr. N. Ratan, learned counsel for the petitioner, relying on the cases of **Nivedita Sharma Vs. Cellular Operators Association of India and Others**, reported in **(2011) 14 SCC 337** and **Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal**, reported in **(2014) 1 SCC 603**, has submitted that where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the *ultra vires* of the statute, under challenge. The learned counsel for the petitioner has also relied upon the decision of the Apex Court reported in **(2003) 2 SCC 107 (Harbanslal Sahnia and Another Vs. Indian Oil Corporation and Others)**, wherein, it has been held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingences; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. I have gone through the same and it is found that the Hon'ble Apex Court has held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge.

21. After going through the official file so produced by the respondent authority regarding issuance of LPC, it is found that 'no objection certificate' from the Forest Department was not obtained by the respondent No.3 while applying the LPC. On the other hand, notice was not properly served upon the boundary owners/persons so as to receive no objection from the persons of the locality and notice was not even duly filled up and no date etc has been mentioned and it was not published. It is apparent that there are discrepancies in issuance of LPC, which is not issued as per the procedure, guidelines/notification framed by the State of Arunachal Pradesh as mentioned above. In view of the matter on record, it can be found that while issuing LPC, the authority has not followed the due procedure but the same cannot be attributed that the Act has been conducted fully without jurisdiction or vires of the statute under challenge. At the best, it can be held that there were gross irregularities while issuing the LPC to the respondent No.3.

22. The learned Sr. Govt. Advocate, Ms. Deka, has also fairly conceded about the irregularity reflected in the official file while issuing the LPC, the Court can remanded the matter back to the Deputy Commissioner, Papum Pare District, Yupia to decide the matter afresh.

23. After going through the materials on record, it is to be noted that LPC was issued in the year 2012 and the petitioner has challenged the same only in the year 2015 and in the meantime, the construction of 'Trans Arunachal Highway' is going on. The Court is also required to look into the matter of public interest as well. It may be recalled here that complaint, so lodged by the petitioner, before the Deputy Commissioner as appellate authority, was again endorsed to the ADC, Sagalee, who did not entertain the complaint of the

petitioner in the proper and perspective manner and has summarily rejected the same vide order dated 22-12-2014. The matter is liable to be interfered with as the appellate authority has not acted in due manner. Accordingly, the order of the ADC dated 22-12-2014 is hereby set aside.

24. The matter is remanded back to the Deputy Commissioner, Papum Pare District, Yupia for deciding the matter afresh by giving opportunity of hearing to both the parties as per due procedure of law, guidelines/notification as framed by the State of Arunachal Pradesh. The parties shall appear before the Deputy Commissioner, Papum Pare District, Yupia, on or before 31st July, 2015 and thereafter, the Deputy Commissioner, Papum Pare District, Yupia, shall complete the whole exercise and shall pass an appropriate order in accordance with law and principles of natural justice within a period preferably 3(three) months thereafter. However, the authority will make necessary arrangement for continuation of the construction work of 'Trans Arunachal Highway project' during the period of final settlement of the LPC, in question, by the appellate authority.

25. Return the official record forthwith. A copy of this judgment and order be sent to the Deputy Commissioner, Papum Pare District, Yupia as well as the Additional Deputy Commissioner, Sagalee for doing needful in the matter.

JUDGE

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