(2008) 02 GAU CK 0041

Gauhati High Court

Case No: None

Romoni Kr. Chakma and Others		APPELLANT
	Vs	
State of Arunachal Pradesh and Others		RESPONDENT

Date of Decision: Feb. 27, 2008

Acts Referred:

- Assam Forest Regulations, 1891 - Section 25(d)(e), 25(d)(f)

Citation: (2008) 4 GLT 48 : (2008) 4 GLT 148

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Judgement

B.K. Sharma, J.

All the writ petitions pertain to eviction notices issued against the petitioners who are the Chakma refugees who had come from Chittagong Hill tracts of erstwhile East Pakistan, now Bangladesh. Since the writ petitions are based on more or less same set of facts and the issue raised is also the same, they have been heard together and are being disposed of by this common judgment and order.

2. As per the statements made in the writ petitions, the petitioners are the Chakma refugees who came to India as refugees from the erstwhile East Pakistan. It is their case that after their initial shelter in different places in India, eventually they were rehabilitated in the then North East Frontier Agency (NEFA), now Arunachal Pradesh. They have also mentioned about Miao refugee camp in which they took shelter in the year 1964.

3. Further statements made in the writ petition is that as per the request made by various departments of the State, they started plantation in different areas of the Districts of Arunachal Pradesh. According to them they were assured of permanent settlement in the area in which they carried out plantation works. The petitioners have stated about their plight of refugees and as to how they have been subjected to time to time attack by the

inhabitants/tribes of the State. In such a situation, they had no other alternative than to shift to the area called Madhukanallah and Sukhranallah.

4. The area under occupation of the petitioners is stated to be located between the demarcating land of forest plantation of Diyung Forest Range in the villages of Jyotshnapur and Sumpoi in Diyung Circle. According to the petitioners substantial part of area falls within Khajm resettlement area which was earmarked by the Government for rehabilitation of Chakmas with financial assistance from the Govt. of India. The petitioners have further stated that their families have been residing in the aforesaid area since 1966 and have been doing works of plantation etc. as forest workers. It is also stated that the forest villages of Chitrapur in Miao Sub-Division, Miao Namsik Range was established by the families of the Chakmas. The petitioners have also referred to the purported agreement bearing No. DYN/1 dated 05.12.85 with the Manager of Diyung Project Range on the basis of which the petitioner carried out Jhum cultivation/ plantation in the area.

5. The petitioners have referred to some incidents of 1980,1989,1991 and 1994 etc. in which, according to the petitioners, they were subjected to reprehensive measures by the State Govt. with the aid of local tribals.

6. The aforesaid incidents resulted in a proceeding before the Apex Court in W.P.(C) No. 720/95 (National Human Right Commission v. State of Arunachal Pradesh and Ors.). In the proceeding, the Apex Court issued the following directions:

(i) The State of Arunachal Pradesh shall ensure that the life and property of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organized groups shall be repelled.

(ii) Except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein.

(iii) While the application of any individual Chakma for granting of citizenship is pending consideration, the State of Arunachal Pradesh shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf.

7. The petitioners have also referred to paragraph-10 of the judgment which has been reported in National Human Rights Commission Vs. State of Arunachal Pradesh and Another, :

10. We may now refer to the stance of the Union of India, the second respondent, on the issue. It has been pointed out that, in 1964, pursuant to extensive discussions between the : Government of India and the NEFA administration, it was decided to send the Chakmas for the purposes of their resettlement to the territory of the present day Arunachal Pradesh. The Chakmas have been residing in Arunachal Pradesh for more than three decades, having developed close social religious and economic ties. To uproot

them at this stage would be both impracticable and inhuman. Our attention has been drawn to a Joint Statement issued by the Prime Ministers of India and Bangladesh at New Delhi in February 1972, pursuant to which the Union Government had conveyed to all the States concerned, its decision to confer citizenship on the Chakmas, in accordance with Section 5(1)(a) of the Act.The second respondent further states that the children of the Chakmas, who were born in India prior to the amendment of the Act in 1987, would have legitimate claims to citizenship. According to the Union of India, the first respondent has been expressing reservations on this account. By not forwarding the applications submitted by the Chakmas alongwith their reports for grant of citizenship as required by Rule 9 of the Citizenship Rules, 1955, the officers of the first respondent are preventing the Union of India from considering the issue of citizenship of the Chakmas. We are further informed that the Union of India is actively considering the issue of citizenship and has recommended to the first respondent that it take all necessary steps for providing security to the Chakmas. To his end, central para-military forces have been made available for deployment in the strife-ridden areas. The Union Government favours a dialogue between the State Government, the Chakmas and all concerned within the State to amicably resolve the issue of granting citizenship to the Chakmas while also redressing the genuine grievances of the citizens of Arunachal Pradesh.

8. According to the petitioners, inspite of the directions issued by the Apex Court for safety of lives and properties of Chakma refugees, the State administration has failed to act upon the same. In this connection, the petitioners have referred to 14th Lok Sabha election. During the said election, the likelihood of around 1000 Chakmas exercising their votes after being granted Indian citizenship, generated widespread resentment amongst the local tribal of the State. It is their further stand that on extraneous political consideration move was again initiated to uproot and evict many Chakma families from various areas where they made their settlement since mid 1960.

9. The petitioners have pleaded that such attitude and approach on the part of the State administration resulted in issuance of the impugned notices dated 22.05.04 by the Divisional Forest Officer, Nampong Forest Division, Jairampur to the petitioners. In the notices issued against each of the petitioners, it was alleged that the area wherein the concerned petitioners are settled is under Diyung reserved forest and the petitioners by making the settlement therein have committed a forest offence u/s 25(d), (e) and (f) of the Assam Forest Regulations, 1891. The contravention of the provisions of Forest Conservation Act, 1980 was also alleged. The notices also mentioned about the order dated 23.11.01 passed by the Apex Court in I.A. No. 703 in W.P.(C) No. 202/95 which according to the petitioners is beyond the context.

10. By the impugned notices, the petitioners have been called upon to vacate the land in their possession within 7 days of issuance of the notices under threat of their forceful eviction and confiscation/demolition of their hut/cultivable area etc.

11. It is the aforesaid notices which have been questioned in the writ petitions. The notices have been issued u/s 72 of the Assam Forest Regulation, 1891. According to the petitioners, the use of Section 72 of the Regulation is misplaced as the same vest the authority only with the power to make rule to provide ejectment of any person who has entered into unauthorized occupation of Reserve Forest and for disposal of any crops raised, or any building, or other construction erected without authority in Forest Reserves. Thus, according to the petitioners, notices having not been issued in any valid exercise of power, same are liable to be set aside and quashed.

12. Further case of the petitioners is that, the area under their occupation is not part of Diyung Forest. They have stated that the area is a plain area and is full of crops and plantation carried out by the Chakma settlers and no single tree could be seen in the area.

13. From the above it will be seen that the contentions raised by the petitioners in the writ petitions are two folds, i.e. the area under their occupation is not within the Reserve Forest and that the manner and method in which the eviction notices have been issued are not having any sanction behind their being no source of power.

14. According to the petitioners, although the period which was stipulated in the impugned notices had expired at the time of filing of the writ petitions, but they had not been evicted from their respective land. They have mentioned about making an endeavour by the officials of the respondents to carry out forcible eviction, but they could not do so as the petitioners resisted the same. With such stand, the petitioners approached this Court by filing these writ petitions.

15. The respondents have filed their counter affidavit resisting the claim of the petitioners. It is their categorical stand in the affidavit that the petitioners suppressed the material facts in moving the writ petitions and obtaining the stay order. The affidavits filed in the writ petitions state about eviction of the petitioners from the Reserved Forest land on 04.06.04 by dismantling the house illegally raised by the petitioners. Categorical stand of the respondents is that the eviction operation was carried out with 35 numbers of police personnel including the Officer-in-Charge, Diyung Police Station alongwith lady police constable. The team also included 8 numbers of forest officials and 5 numbers of elephants. Specific stand in the affidavit is that the eviction operation was carried out and completed at 3 P.M. on 04.06.04. In this connection, the respondents have annexed Annexures-A and B reports of the Forest Officials dated 04.06.04 and 06.07.04.

16. As per the affidavit, the Diyung Reserved Forest was notified to be so by order dated 28.04.70. As regards the reference of the petitioners to the aforesaid case before the Apex Court, the respondents have stated that such reference is misplaced and has got nothing to do with the eviction of the petitioners on the ground of their unauthorized occupation of reserved forest land.

17. The respondents dealing with the transition period of settlement of Chakma refugees, have stated that the Chakma and Hajong refugees were on transit from 1964-1966 and they were kept in various refugee camps with relief materials till 1974. Subsequently some of them were/are resettled in Diyung area outside the Reserved Forest area from 1975 onward. The settlement process was continued upto 1980 and confined to 6 blocks for which 3615.37 acre of land outside the reserved forest area were earmarked. The respondents have denied of making any proposal for settlement of Chakma refugees in Diyung Forest Reserve. According to them, it is a simple case of encroachment of the petitioners into the Diyung Reserved Forest. The respondents have denied the existence of agreement about which the petitioners have made a mention in the writ petitions. It is their stand that even if any such agreement was executed by the Range Manager as stated by the petitioners, same was without any jurisdiction and authority. The respondents have also stated about time to time eviction of unauthorized occupants from forest land and as to how even after evictions, efforts were being made to enter into forest land.

18. I have heard Mr. P.K. Tiwari and Mr. S.S. Dey, learned Counsel for the petitioners. I have also heard Mr. U. Bhuyan, learned Counsel representing the State respondents and Mr. H. Rahman, learned Additional Solicitor General of India representing the Union of India In their elaborate and exclusive arguments, learned Counsel for the parties referred to various decisions of this Court as well as of the Apex Court. Upon a reference to the aforesaid decision of the Apex Court in which the Apex Court expressed its concern on the plight of Chakma refugees, learned Counsel for the petitioners submitted that the petitioners are required to be protected from the onslaught of State administration.

19. As noticed above, petitioners'' two fold arguments are that, they are not in occupation of any forest land and that the impugned notices could not have been issued u/s 72 (c) of the Assam Forest Regulation, 1891 as the same does not give any power and jurisdiction to the authority who has issued the impugned notices. Basically it is on these two grounds, the petitions are projected in the background of the plight of chakma refugees upon their migration from theirnative place of Chittagong Hill tracts of erstwhile East Pakistan, now Bangladesh.

20. Mr. U. Bhuyan, learned State Counsel on the other hand submitted that the petitioners have projected the writ petitions with misplaced sympathy. His whole and only argument is that the petitioners being unauthorized encroachers and occupants of Reserved Forest land, irrespective of their claim of citizenship etc., they are liable to be evicted from such land.

21. In the aforesaid backdrop of the case and arguments advanced, it is really not necessary to refer to the decisions on which the learned Counsel for the parties have placed reliance. Suffice is to say, that the decisions are focused on the principles of natural justice, consequence of non-mentioning of any schedule of the land in the evicting notices, consequence of mentioning of wrong provisions of law, if the source of power is

otherwise established, consequence of suppression of material facts, duties and obligations of the State and the Union of India to protect the lives and properties of the citizens within the constitutional scheme etc. The principles involved are well settled and need not be reiterated particularly when the entire issue centers around the aforesaid two contentions raised on behalf of the petitioners.

22. Section 72(c) of the Assam-Forest Regulation, 1891 empowers the State Govt. to provide for ejectment of any person who has entered into unauthorized occupation in a Forest Reserve and for the disposal of any crops raised or other construction erected without authority in Forest Reserves. Mr. Bhuyan, learned State counsel submitted that the Assam Forest Regulation, 1891 has been adopted by the State of Arunachal Pradesh. In this connection, he has produced the copy of the Arunachal Pradesh Code, Vol-I which depicts certain amendments made by the State Govt. to the aforesaid Regulation. As per the said amendments, the provisions of the Regulation extend to the entire State. Upon such adoption of the Regulation, the provision of Section 72(c) also comes into operation in the State of Arunachal Pradesh.

23. Mr. Bhuyan, learned State counsel has also produced a copy of the particular Rule for eviction from Reserved Forest under which the DFO is empowered to eject any person from Reserved Forest land for unauthorized occupation. The Rule also empowers the DFO to confiscate and to destroy the crops raised in such land. According to the learned Counsel for the petitioners, the particular Rule having not been notified in the official gazette of the State of Arunachal Pradesh, the said Rule does not have any application and cannot be enforced.

24. There is no manner of doubt that the State of Arunachal Pradesh is vested with the power and jurisdiction u/s 72 of the Regulation. Section 72 empowers the State Govt. to make rule. As per Section 72(c), the State Govt. may make rules to provide for ejectment of any person who has entered into unauthorized occupation in a Forest Reserve and for the disposal of any crops raised or other construction erected without authority in Forest Reserves.

25. If the petitioners have encroached upon Reserved Forest land, it cannot be said that the State administration is powerless to evict the petitioners from such land irrespective of adoption of the aforesaid Regulation of 1891 laying down the procedure of eviction. If the source of power is otherwise detectable, it cannot be said that the procedure of eviction having not been laid down, the State administration cannot evict any encroachers from the forest land. It is in this context, Mr. Bhuyan, learned State counsel upon reference to the Forest Conservation Act, 1980, submitted that irrespective of the controversy raised in respect of Section 72(c) of the Regulation and the rules framed thereunder and adoption of the same by the State of Arunachal Pradesh, the State Govt. is duty bound to preserve the forest.

26. Section 2 of the aforesaid Act puts restriction on dereservation of forest or use of land for non-forest purpose. No State Govt. or other authority can order, except with the power and approval of the Central Govt. that any forest land or any portion thereon maybe used for any non-forest purpose. The State administration is duty bound to preserve forest land and it cannot permit non-forest activities within the Reserved Forest land. If the petitioners are unauthorized occupants in the Reserved Forest, it is the solemn duty and obligation of the State administration to free the forest land from the encroachers and the unauthorized occupants.

27. Once it is held that the State administration is authorized to issue notices to the petitioners and/or to clear the unauthorized occupation of the Reserved Forest land, the next question comes up for consideration is that as to whether the petitioners are in occupation of the Reserved Forest land. As against the claim of the petitioners that they are not in occupation of the Reserved Forest land, but are in occupation of the plain areas outside the forest land, it is the stand of the respondents that the petitioners are in occupation of the forest land. This involves ascertainment of the factual aspects of the matter. The respondents in their affidavit have categorically stated that pursuant to the impugned notices, the petitioners have been evicted from the forest land. According to them, the petitioners while filing and moving the writ petitions, suppressed the fact of their eviction from the forest land. The petitioners have not denied the eviction operation by filing any affidavit in reply. Thus, the stand of the respondents go utirefuted. However, during the course of hearing of the writ petitions, it was argued that irrespective of the eviction drive, the petitioners are in occupation of the land and they are protected by the interim orders passed by this Court.

28. If the petitioners have already been evicted from the land, there is no question of putting them back to their respective land without ascertaining the fact as to whether the petitioners are in occupation of the Reserve Forest land or other land. The impugned notices speak of unauthorized occupation of the petitioners. Admittedly the impugned notices did not specify any schedule of the land. Allegation made in the notices are that the petitioners involved therein have encroached upon Diyung Reserved Forest land covered by notification No. FOR/120/ 68 dated 28.04.70. Thus, what has been contended in the notices is that the petitioners have encroached upon the Reserved Forest land in the Diyung Reserved Forest. However, no boundary and/or any schedule of the land under individual occupation of the petitioners has been specified in the notices. In the writ petitions, the petitioners have mentioned about clearing of forest land etc. for their settlement and habitation which could be said to be an admission on their part that they are unauthorized occupants of forest land.

29. Since the second issue relating to the plea of the petitioners that they are not in unauthorized occupation of the forest land, involves disputed questions of fact and the authorities are the best judge to find out the real position. It is not possible for the writ Court to give a finding in favour of the petitioners. However, in absence of any schedule appended to the impugned notices, it is also not possible to specify the particular area of

land under occupation of the petitioners. Of course, if they are in occupation of the Reserve Forest land, irrespective of any specification of the individual share of the land under their occupation, they can be evicted from the land.

30. In the aforesaid backdrop of the case, I am of the considered opinion that ends of justice would be met if an opportunity is given to the petitioners to have their say in the matter in response to the impugned notices. If the petitioners respond to the impugned notices by filing their objections before the authority who has issued the notices within one month from today, the said authority shall consider the same and pass appropriate order strictly in accordance with law regarding evicting of the unauthorized occupation of the Reserved Forest land. It is hereby clarified that if the petitioners do not file any objection within the stipulated period, the authorities will be at liberty to proceed with the matter in accordance with law. However, in the event of filing of objection, same shall be dealt with consistently with the observations made above. Till such time, status quo as on today shall be maintained.

31. The writ petitions are answered in the above manner, while not interfering with the impugned notice.

32. There shall be no order as to costs.