

(2011) 03 GAU CK 0039

Gauhati High Court (Shillong Bench)

Case No: Writ Petition (C) No. 257 (SH) of 2010

Balchakram Megong Baldak

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision: March 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21, 226
- Land Acquisition Act, 1894 - Section 4, 6

Citation: (2011) 2 GLT 298

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

Bench: Single Bench

Advocate: A.M. Mazumdar, R. Islam, H.R. Nath, J. Marak and P. Thapa, for the Appellant; N.D. Chullai, Sr. GA, P.L. Sebastian, D. Deb, S.G. Momin and S. Islam, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Sharma, J.

The Petitioner in the name and style of the Balchakram Megong Baldak Development Committee, Tura, West Garo Hills District, Meghalaya, a registered society stated to be representing the interest of 53 of its members (Documents annexed to registration certificate Sub-closes 48), has filed this writ petition challenging eviction proceeding initiated against them which has been given finality by the impugned orders. According to the Petitioner, its members numbering 53 have been residing in Balchakram locality under Dakopgre village at Tura along with their family members totalling 300 people since the year 1973. The Deputy Commissioner of the district by his eviction notice dated 8.6.2007 issued under the Meghalaya Public Premises (Eviction of Unauthorised Occupants) Act, 1980 informed the members of the Petitioner that they are illegal occupants of Government land which was acquired way-back in 1975. In response to the said eviction notice, the members of the Petitioner submitted relevant documents to prove their authority to occupy the land. However, the Deputy Commissioner by his impugned order dated

2.3.2010 (Annexure-VII to the writ petition) ordered for eviction of the encroachers u/s 4 of the Meghalaya Public Premises (Unauthorised Occupants) Act, 1980.

2. Being aggrieved, the Petitioner filed an appeal being Revenue Appeal No. MBR/RA.4/2010 in the Meghalaya Board of Revenue, Shillong. However, the appeal has also been dismissed by order dated 20.7.2010 and hence, this writ petition.

3. It will be pertinent to mention at this stage that on an earlier occasion also, the Petitioner had approached this Court by filing a writ petition being WP(C) No. 153(SH) 2009 praying for a direction to the Respondents not to evict its members from the land in question. The writ petition was disposed of by Annexure-I order dated 4.9.2009 annexed to the writ petition directing the Respondents to bring the proceeding that was already initiated under the aforesaid Act to a logical conclusion after considering the representations of the Petitioner and such other documents, which they might wish to furnish before the Deputy Commissioner. It was also provided that once a decision is taken in that regard, the Respondents would be at liberty to take steps for execution of the centrally sponsored scheme of Integrated Housing and Slum Development Programme. It will also be pertinent to mention here that in the said proceeding, the State had filed Misc Case No. 365(SH)/2009 seeking vacation of the interim order on the ground of urgency in the matter. It was submitted that the land in question is required for construction of new office and residential complex as per the schemes sponsored by the Central Government. Even in this proceeding, Mr. N.D. Chullai, learned State Counsel showing urgency in the matter submitted that unless the matter is given finality, the amount in question may lapse resulting in failure to implement the centrally sponsored scheme.

4. In paragraph 12 of the writ petition it has been stated thus:

That the Petitioner states that thereafter on the intervention of this Honourable Court in the writ petition filed by the Petitioner, the Respondent allowed the Petitioner to file their respective representations.

5. On persual of the aforesaid paragraph, nothing is discernible as to what was the writ petition and what was the order passed by this Court. It is only in the counter affidavit filed by the Respondents, the aforesaid order dated 04.09.2009 passed in the earlier writ petition being W.P.(C) No. 153(SH)/2009 has come on record. It is felt that the Petitioner, instead of making such vague statement ought to have brought on record the said earlier order passed by this Court.

6. The instant writ petition was entertained by order dated 30.8.2010. There is also an interim order operating in favour of the Petitioner.

7. Another aspect of the matter which needs mention is that the Petitioner also simultaneously instituted a title suit being T.S. No. 10/2010 on the same cause of action with the prayer for a decree for declaration of right, title, interest and possession over the land in question. The plaint having been returned, the

Petitioner filed FAO No. 1(SH)/2011 in this Court which was taken up for admission-hearing on 16.3.2011. During the course of hearing, it was pointed out by the learned Counsel for the Respondents that the instant writ petition pertaining to the same cause of action is also in the hearing list. On being asked, the learned Counsel for the Petitioner referring to the objection raised by the learned Counsel for the Respondents about the maintainability of the suit on the same cause of action and during the pendency of the instant writ petition, the learned Counsel for the Petitioner although argued otherwise at some length, but eventually prayed for permitting to withdraw the appeal and the same was allowed by order dated 16.3.2011.

8. The Respondents have filed their counter affidavit denying the plea of the Petitioner. As regards the plea of the Petitioner that 5(five) of its members have been issued with pattas by the Garo Hills Autonomous District Council, it has been stated that such pattas have been issued only in the year 2003, 2004 and 2006 whereas the acquisition of 746 bighas of land including the land under occupation of the members of the Petitioner took place in 1975 and that those pattas cannot confer any right on the said members. It has also been brought on record that the said pattas have been cancelled. However, as submitted by the learned Standing Counsel, GHADC, the particular pattas have been restored as the cancellation was without complying the principles of natural justice and that fresh proceeding for cancellation of the pattas has been initiated.

9. Irrespective of the aforesaid position, it has been stated in the counter affidavit that the Integrated Housing and Slum Development Programme, a flagship programme of the Union Government to integrate the urban poor in the city planning and development by ensuring the provision of housing, urban infrastructure and transport services to the weaker sections of the community has been launched with the central fund. It has also been stated that the said project is aimed precisely at poor families like the members of the Petitioner, most of whom would be the beneficiaries of the project. It has also been stated that the Petitioner should not oppose such welfare scheme. The Respondents have also brought on record the undertaking furnished by the members of the Petitioner vide Annexure-3 undertaking dated 30.8.2010 that the reprieve extended by the district administration is accepted under protest till 14.9.2010. The undertaking also records agreement of the members of the Petitioner to pay the Government according to area of the land occupied and that such payment would be made in instalments.

10. The Petitioner has filed rejoinder affidavit reiterating the stand taken in the writ petition. Their basic plea is that the land in question being not a Government land and that they having occupied the land for the last several years deriving possessory right from the authorities of the Aking land, they cannot be evicted from the said land.

11. The Respondent No. 5 is stated to be the Nokma of Balchakram, Tura. She in her affidavit, has supported the case of the Petitioner. According to her, the members of the Petitioner came to occupy the land as per her oral approval granted in the year 1970. According to her, she being the Nokma is entitled to confer possessory right of the Aking land.

12. I have heard Mr. R. Islam, learned Counsel for the Petitioner as well as Mr. N.D. Chullai, learned Sr. Government Advocate, Meghalaya. I have also heard Mr. P.L. Sebastian, learned Counsel appearing for the Respondents No. 2 and 3 as well as Mr. D. Deb, learned Counsel appearing for the Respondent No. 4. Mr. S. Islam, learned Counsel representing the Respondent No. 5 has also made his argument. I have also considered the entire materials on record and have given my anxious consideration to the submissions advanced and the said materials.

13. As to how the case emanated at the level of the Deputy Commissioner has been noted above. In the earlier writ petition referred to above, the Petitioner prayed for a direction to the Respondents not to evict them from the land in question. However, when it was brought to the notice of the Court that already an eviction proceeding has been initiated, the writ petition was disposed of with the following direction:

Accordingly, I direct the Respondent authorities to bring the proceeding initiated under the Eviction Act to a logical conclusion after considering the representation of the Petitioners and such other documents which they may wish to furnish before the Deputy Commissioner. Once a decision is taken in this regard, the Respondents may thereafter proceed to take steps for execution of the Centrally Sponsored Scheme of Integrated Housing and Slum Development Programme.

14. After disposal of the writ petition in the above manner, the eviction proceeding initiated against the members of the Petitioner proceeded in accordance with law and the learned Deputy Commissioner (Rev), West Garo Hills passed the impugned Annexure-VII order dated 2.3.2010. The eviction proceeding was initiated in Eviction Case No. TVG 7/2009. On perusal of the said order, it is seen that the Deputy Commissioner framed the following issues for determination:

- 1) Whether the contention of the aggrieved party has any locus-standi with regard to the claim ?
- 2) Whether there is any technical infirmity with regard to the Notification u/s 4 and Declaration u/s 6 of the L.A. Act issued by the Revenue Department, Government of Meghalaya pertaining to plot "C" ?
- 3) Whether the patta issued by the GHADC, Tura and Nokma document issued by the Nokma of Danakgre has any legal validity in so far as Government land is concerned ?

15. While answering the above issues, the Deputy Commissioner also referred to 9(nine) documents submitted by the ADC(Rev), Tura and 21 (twenty one) documents submitted by the aggrieved party.

16. Upon a reference to the said documents submitted by the aggrieved party, what is seen is that all the documents are of 2003 except two documents which are of 2006. Such documents do not relate back to 1970 from which year, the Petitioner claims to be in occupation of the land in question.

The Deputy Commissioner while examining the issues one by one, duly took note of the contention of the Petitioner that there exists a khas or Airing land in the southern and western boundaries of Plot "C" claiming that they are not unauthorised occupants of Government land. It was in the records available, the copy of land plan map for 746 bighas showing all the plots which were acquired from Najing Sangma, Aking Nokma of the particular village. Referring to the particular acquisition proceeding, the Deputy Commissioner also referred to the various documents pertaining to such acquisition. The Deputy Commissioner also examined the aggrieved party with reference to documentary evidence available on record. For a ready reference, the finding recorded by the Deputy Commissioner is reproduced below:

I now examine the issues one by one:

1. The contention of the aggrieved party stating that there exists a khas or Aking land in the southern and western boundary of plot "C" claiming that they are not unauthorised occupants of Government land is examined and verified. The records available before me are copy of land plan map for 746 Bighas showing all the plots which were acquired from Najing Sangma, Aking Nokma of Danakgre besides other documents which are mentioned below:

1. Copy of letter No. GA.196/74/71 dated 20.3.75 from the Under Secretary to the Government of Meghalaya, General Administration Dept, Meghalaya, Shillong (regarding sanction of Rs. 4,71,845/- for Land acquisition).

2. Copy of Estimate for Land Acquisition in Form 5.

3. Copy of Notification u/s 4 of the L.A. Act vide No. RDA.92/73/111, dated 19.4.1975 (showing the area to be acquired measuring more or less 746 bighas).

4. Copy of the Gazette of Meghalaya, dated 26.4.1975 carrying the above Notification.

5. Copy of Declaration u/s 6 of the L.A. Act vide No. RDA.92/73/141, dated 17.6.1975.

6. Copy of the Gazette of Meghalaya dated 21.6.1975 carrying the above declaration.

7. Copy of the payment register with thumb impressions of Shri Najing Sangma, Nokma of Danakgre and his wife Smti. Watre Marak showing that compensation

was paid.

For the aggrieved party the Nokma documents issued were examined which are of very recent years and which falls well within plot No. "C" of Government acquired land. Apart from these the aggrieved party suffers from the valid documentary evidence and the basis of argument of the aggrieved party is just a mere verbal contention.

2. Contention No. 2 of the aggrieved party has been examined with reference to the documentary evidence available in the records. Notification u/s 4 of the LA Act was issued vide No. RDA.92/73/111, dated 19.4.1975. This notification was published in the Gazette of Meghalaya, dated 26.4.1975. Declaration u/s 6 of the LA Act was issued vide No. RDA.92/73/141, dated 17.6.1975. This declaration was published in the Gazette of Meghalaya, dated 21.6.1975. The above clearly covers the entire area of 746 bighas. The area occupied by the aggrieved party (encroachers) is also a part of Plot "C" and as such Notification u/s 4 and Declaration u/s 6 of the LA Act are legally sound.

Contention No. 3 of the aggrieved party of having legal patta and Nokma documents for the land in question is also examined. The land pattas were issued in the year 2003, 2004 and 2006 whereas land acquisition process was initiated in the year 1975 and payment made after completion of all the formalities in the year 1978. As such, any patta issued after 1978 is null and void. In support of this observation, the GHADC, Tura has duly cancelled 5(five) Nos. of pattas vide Order No. 1265, dated 14.12.2009. With regard to Nokma document, all the documents submitted were issued in the year 2003 and 2004 without mentioning even the area of land which clearly indicates the superficiality of the documents. Further, the said Nokma has also issued Nokma document even for the land in Karkutta which appears to be in East Garo Hills District.

In view of the above detailed examination, I am of the opinion that in spite of being given a reasonable opportunity to file their grievances in support of their claim, the aggrieved party (encroachers) has miserably failed to adduce a justification in support of their claim.

Now, therefore, after satisfying myself that the aggrieved party (encroachers) having no locus standi in their claim and in the interest of development of the general public hereby set aside the claims of the aggrieved party and I find it fit to pass an Order for eviction of the encroachers u/s 4 of the Meghalaya Public Premises (Eviction of Unauthorised Occupants) Act, 1980.

However, on humanitarian grounds, the encroachers are hereby directed to vacate the said premises within a period of 45(forty five) days from the date of issue of this Order failing which eviction will be carried out with the use of force as may be reasonably necessary.

17. Being aggrieved by the aforesaid order, the Petitioner preferred the aforesaid Revenue Appeal No. MBR./RA.4 of 2010. The Board of Revenue vide its impugned order dated 20.7.2010 has also dismissed the appeal. On perusal of the appellate order, it is seen that the said order is with well informed reason. In its detailed order, the Board of Revenue recording the submission of the parties, while dismissing the appeal held thus:

After hearing all the submissions made by the Learned Counsels for the Appellant as also of all the Respondents and after careful perusal of the records i.e. the maps and Gazette notifications produced by the Learned Counsels for Respondents No. 2 & 3, it could be observed that no conclusive proof or justification could be adduced by the Appellants that they are in possession of the land even prior to its acquisition by the Government. The fact that the land in question is surrounded by Government land only proves that the land in question is part of the Government acquired land. Further, the land measuring 746 bighas in question was acquired by Government as could be substantiated by publication of the Gazette Notification u/s 4 of the Land Acquisition Act, 1894 and by completion of entire land acquisition proceedings on payment of compensation in 1978 and thus the Appellants have no locus standi for their claim on the acquired land. Further, the Appellants and the Nokma did not raise any objection in respect of plots "C" and "D" during the entire land acquisition proceedings. Also the Appellants could not rebut any of the claim/documents put forward by the Respondents No. 2 & 3. Their claim of occupation/possession of the land in question prior to its acquisition is also not substantiated by the records. The Periodic Pattas and the Nokma's documents were obtained in 2003 only and all other documents such as ration card, EPIC etc. were also obtained in 2003 or later year. The Periodic Pattas and the Nokma's documents have no validity in the eyes of law as the GHADC has submitted that the land in question was part of land acquired by the Government of Meghalaya.

The documents relied upon by the Deputy Commissioner, Tura while passing the impugned order of 2.3.2010 were also placed before the Board. The Nokma's contention of not receiving any compensation in respect of Plots "C" and "D" does not hold good as acquisition of those lands with proper boundaries was notified in Gazette of Meghalaya in 1975 and the acquisition proceedings were completed in 1978. As such there was no protest from anyone including the Appellants except now in the form of written statement of Nokma i.e. Respondent No. 5. That Government has acquired the land at Matchakolgre under Danakgre A"king is an un-rebutted fact and the Appellants could not establish that the so called locality as the name "Balchakram" does not fall under acquired land Plot "C". The claim of possessing documents like EPIC, ration Card, PRC also has no merit as possession of such documents does not confer on them the right, title or interest on the Government land.

Considering the above facts and submissions, it is observed that the Appellants have failed to establish that they are not illegal occupants of Government land. On the other hand, the documentary evidences produced by the Respondents No. 2 and 3 enclosing therewith land acquisition maps and notifications prove that the land in question was acquired by the Government and the Appellant's members are in illegal occupation and as such they are liable to be evicted from the acquired land. The Board is of the opinion that the land in question is Government land and accordingly the eviction order dated 2.3.2010 Dassed by Respondent No. 2, Deputy Commissioner, Tura in pursuance to the provision of the Meghalaya Public Premises (Eviction of Unauthorised Occupants) Act, 1980 is upheld. The appeal is dismissed.

Sd-/ (B.K. Dev Verma) Chairman	Sd-/ (N.S. Samant) Member	Sd-/ (S. Dykes) Member
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18. As regards the issuance of pattas to five members of the Petitioner, it was noticed that such pattas were issued on the documents furnished by the Respondent No. 5. However, when it was found that the Respondent No. 5 has no more control on the land and in fact, the land was acquired way back in 1975, pattas were cancelled. Moreover, in appreciation of the facts involved in the proceeding and on perusal of the relevant records, such as, maps, Gazette notification etc. the Board of Revenue found that the Petitioner could not adduce any evidence that they are in possession of the land even prior to its acquisition wayback in 1975. Admittedly, the land is surrounded by Government land. Further, it was found that there was no dispute that the land measuring 746 bighas including the land under occupation of the Petitioner was acquired by the Government in 1975/1978. No objection was raised either by the Petitioner or by the Nokma. As recorded above, certain documents produced by the Petitioner are of recent origin i.e. 2003/2006 and moreover, the said documents do not have any evidentiary value to substantiate the claim of the Petitioner that the members are in occupation of khas land and not Government land.

19. Both the authorities i.e. the Deputy Commissioner and the Board of Revenue having arrived at their respective concurrent findings based on appreciation of fact and the materials available on record, this Court exercising its power of judicial review under Article 226 of the Constitution of India, cannot sit on appeal over such finding. Such finding cannot be said to be perverse and/or based on no evidence at all. Further, this Court exercising its writ jurisdiction cannot convert itself into a Court of appeal and indulge in re-appreciation or evaluation of evidence.

20. The decision in [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others](#), on which the learned Counsel for the Petitioner has placed reliance is of no

help to the case of the Petitioner. That was a case relating to hut and pavement dwellers. In the given facts and circumstances, it was the desire of the Court in reference to Article 21 of the Constitution that the said dwellers be provided with alternative accommodation in case of their eviction. The said decision does not have universal application in all kinds of unauthorised occupation of Government land. Moreover, the particular scheme which is being implemented will also take care of those members of the Petitioner, who are entitled to the benefits under the said scheme aimed at providing accommodation to the poor and needy families.

21. As noted above, the Petitioner successively initiated legal proceedings only to delay their eviction and frustrate the project for which the land is required. As stated in the counter affidavit filed by the Respondents, the particular project is for the benefit of poor people like the members of the Petitioner and in fact, the said members will be the beneficiaries of the project. It is expected that the Respondents would make adequate provision for the members of the Petitioner under the scheme as per their entitlement.

22. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. Consequently, the interim order operating in the writ petition ceases to exist. There shall be no order as to costs.