

(2007) 11 GAU CK 0026

Gauhati High Court (Imphal Bench)

Case No: Writ Petition (Civil) No. 1050 of 2004

Hijam Tikendrajit Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision: Nov. 7, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226, 226

Citation: (2008) 2 GLR 569

Hon'ble Judges: U.B.Saha, J

Bench: Single Bench

Advocate: Kiranjit Singh , S.Nepolean, Advocates appearing for Parties

Judgement

1. By filing this writ petition, the petitioner prays for cancelling and/or quashing and setting aside the order dated 14.12.2004 (Annexure 10 to the writ petition), whereby and whereunder the respondent Director of Settlement cancelled the Patta No. 906(New), 787(old) of 59 Oinam Thingel Village which covers 0.2104 hectare of land Dag No, 1248/1511 (New), 556/945(old) stands in the name of petitioner and also for a direction not to allot the land mentioned in the aforesaid Dags to the Chief Engineer (Power), Electricity Department and not to use the said land for construction of 33/11 K.V. SubStation.

2. Factual matrix as required for decision of this petition is as follows:

The writ petitioner, whom a plot of land measuring 0.52 acres under patta No.877 (old) 906 (new) covered by CS Dag No. 556/94(old) 1248/1511 (new) of Oinam Thingel Village No. 59, Imphal West SubDivision situated at Singjamei Makha Kakwa, Imphal West Distt. Manipur, was allotted for doing business of Oil Pump as an agent of the Indian Oil Corporation Ltd.(Assam Oil Depot) vide letter dated 14.1.1983. As the said order of allotment was going to be cancelled by the State, the petitioner preferred writ petition being C.R. No. 142/91 for a direction not to cancel the said order of allotment issued in favour of him but during pendency of the aforesaid C.R.

No. 142/91 the respondents cancelled the order of allotment, then the petitioner preferred writ petition, which was registered being C.R. No. 374/91 challenging the order of cancellation of allotment, the aforesaid Civil Rules were finally heard by a learned Single Judge of this court on 22.8.1997 and upon hearing of the loomed counsel of the parties; this court upheld the action of the State Government and dismissed the writ petitions supra. Against the said judgment, the petitioner preferred two separate writ appeals, which were registered as W.A. No.175 of 1997 and W.A. No. 176 of 1997. A Division Bench of this court on 27.2.2003 disposed of the aforesaid writ appeals upholding the order of the learned Single Judge with an observation that in case the land which forms the subjectmatter of the allotment in favour of the appellant is, at any point of time, dereserved by the Government for the purpose of allotment and in case the appellant applies for the said purpose, his case would be considered along with others and also the said Division Bench of this court expected that the State respondent while deciding as to whom the allotment is to be provided to take note of the fact that the petitioner had been once allotted this land for the purpose of opening oil pump and he made substantial investment over the land as claimed by him. After the decision of this court in the aforesaid appeals, the state respondents came with an order on 14.12.2004 (Annexure 10) whereby and whereunder the Director (Settlement and Land records) Manipur cancelled the aforesaid patta and name of the petitioner as pattadar from the Jamabandi. Being aggrieved by the aforesaid order dated 14.12.2004 (Annexure 10) petitioner preferred the instant writ petition for cancellation of the said order along with other prayers as stated supra.

3. The state respondents also filed counter affidavit to resist the prayer of the petitioner and therein it is stated that this is the second round of litigation by the petitioner regarding the same land. Earlier the petitioner filed two writ petitions challenging the order of cancellation of allotment and the learned Single Judge of this court has already dismissed the writ petition filed by the petitioner upholding the action of the State respondents and thereafter being aggrieved by the said order of the learned Single Judge, the petitioner preferred writ appeals aforementioned, which were also disposed of upholding the order of the learned Single Judge with an observation that while the State authority will dereserve the land, then if the petitioner applies, his case may also be considered keeping in mind that earlier the same land was allotted to him to open oil pump. In their counter, it is also stated that after allotment of the land and preparing of a patta, it was discovered that the entire land in question had already been reserved as "Laipham" and also for cremation ground and grazing ground for the surrounding villagers vide resolution No. 59 dated 11.5.1949 of the Manipur State Council and for which the said allotment order No. 217 3/83R which was issued in favour of the petitioner was cancelled as having been passed without jurisdiction by the issuing authority due to mistake and the authority has the power to correct the mistake and for which the impugned order was passed.

4. Heard Mr. Kiranjit, learned counsel for the petitioner as well as Mr. Nepolean, learned Addl. G.A. appearing for the respondents.

4.1. Mr. Kiranjit, learned counsel for the petitioner submits that after the disposal of the appeal, the petitioner has a right to approach the authority for consideration of his case when the Government is going to dereserve the land in question for the purpose of allotment to the Chief Engineer (Power) for construction of 33/11 K.V. Station and in the instant case, the Government also without providing any opportunity to the petitioner cancelled the patta recorded in his name. The whole action of the Government is arbitrary, unfair, illegal and violative of article 14 of Constitution as no opportunity was afforded to the petitioner before such cancellation for which itself the court should set aside the cancellation of the patta and name of petitionerpattadar mentioned in the Jamabandi vide order dated 14.12.2004 (Annexure A/10 to the writ petition), he contended.

5. Mr. Nepolean, learned Addl. G.A. while resisting the submission of Mr. Kiranjit, submits that this second writ petition by the same person on the same subjectmatter does not lie while the earlier writ petition had already been dismissed by the learned Single Judge of this court and upheld by the Division Bench in the appeal. If such petition is allowed and acted upon by the court, then it would result in giving encouragement to an unsuccessful litigant to abuse the process of court. In support of his aforesaid contention he made reliance on paragraph 20 of the case of State of U.P. & Anr. v. Labh Chand AIR 1994 SC 754. He also relied on the case of State of Karnataka & Anr. v. All India Manufacturers Orgn. & Ors. (2006) 4 SCC 683 to support his earlier contention and also tries to establish that the instant case is barred by principles of resjudicata. He further submits that the Government was free after the judgment of the Division Bench even to dereserve the land in question for utilization of the same for the public purpose. Question of consideration of petitioner's case only would come when the same would be allotted to other person for commercial or any other purpose and cancellation of Jamabandi (Annexure A/10) recorded in favour of the petitioner was also right as the same was done following the consequences of the decisions of the learned Single Judge as well as of the Division Bench of this court in the writ appeal. It is an admitted position that the order of allotment issued in favour of the petitioner was cancelled and the said order of cancellation was upheld by this Court in Original and appellate forum and thereafter the land belongs to the Government whether said land is reserved or dereserve, he contended. He again contended that cancellation of patta and the name of the petitioner as pattadar is the consequence of the result of the earlier writ petition of the petitioner.

6. Mr. Kiranjit, further, submits that during pendency of the writ petition as well as the writ appeals, the petitioner deposited all the revenues as required under law for retaining the land in question which was allotted to him.

7. It will be better to reproduce the paragraph 20 of the case of Labh Chand (supra) and paragraph 32 of All India Manufacturers Organization & Ors. (supra):

"20. When a Judge of Single Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition if an earlier writ petition of the same person on the same matter had been dismissed already by another Single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of nonavailing of alternate remedy. Second writ petition cannot be, so entertained not because the learned Single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognized power. Besides, if a learned Single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned Single Judge or a Division Bench of the same, it would encourage on unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to a scrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under article 226 of the Constitution in that any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there should be no finality for an order of the court refusing to entertain a writ petition. It is why, the Rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject matter respecting which the first writ petition of the same person was dismissed by the same court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of nonexhaustion of alternate remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of courts."

"32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause) and second, public policy that there ought to be an end to the same litigation. It is well settled that section 11 of the Civil Procedure Code, 1908 ("CPC") is not the foundation of the principle of res judicata, but merely statutory reorganization thereof and hence, the section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11, CPC recognizes this principle and forbids a court from trying any suit or issue, which is res judicata, recognizing both "cause of action estoppel" and "issue

estoppel". There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of, principle, can be applied to public interest litigations and second, whether the issues and findings in Smashekar Keddy constitute res judicata for the present litigation."

8. This court has given an anxious consideration to the submission of the learned counsel appearing for the parties as well as to the relevant records available before it. On consideration of the records, it appears that admittedly the petitioner earlier filed a writ petition challenging the cancellation order of allotment of land issued in favour of him for opening oil pump and the said writ petitions being C.R. Nos. 142/91 and C.R. 374/91 were dismissed by the learned Single Judge by a common judgment and thereafter Division Bench of this court also disposed of the writ appeals preferred by the petitioner with observation as stated hereinabove. It is also admitted position that by filing rejoinder affidavit the petitioner did not controvert the contention of the state respondents in their counter affidavit, *inter alia*, that after completion of formalities of allotment, patta was prepared in favour of the petitioner and later on it was discovered that the entire land under Dag No. 556 had already been reserved as "Laipham" and also for cremation and grazing ground for the surrounding villagers of Kakwa by resolution No. 59 dated 11.5.1949 of the Manipur State Council. For non filing of rejoinder affidavit allows this court to presume that the petitioner accepted the contentions of the respondents. However, as it appears in paragraph 19 of the writ petition that the petitioner contended therein, *inter alia*, that the land in question was never utilized as cremation ground/grazing ground for the surrounding villagers of Kakwa and which is denied by the respondents, hence, the said fact is a disputed question of fact, the court should not go to decide the said disputed fact in the instant case. In this case question arises for decision is whether after the decision of the earlier writ court upholding the order of cancellation of allotment and the order of Division Bench as stated above, the petitioner has any right over the land in question and whether the cancellation order of patta and the name of petitioner as pattadar mentioned in the Jamabandi is proper or not. According to this court after the decision of the earlier writ court and the appellate court, the petitioner has no right over the land in question except the right to consider as and when the said land is dereserved for the purpose of allotment to any other individual or any organization for private purpose. But in the instant case, it appears from the records as annexed in the Misc. Case No. 64 of 2007 that the land was dereserved for the purpose of construction of one 33/11 Kv SubStation for which the objection had been invited by the authority and no objection has been given by the villagers for such construction except the petitioner, the petitioner allegedly filed an objection as evident from the Annexure B/1 to the affidavit in opposition filed in the aforesaid misc. case. The cancellation of the patta and the name of the pattadar in the Jamabandi vide Annexure 10 is the consequence of the earlier writ petition and the decision of the appellate court. Hence, it was not necessary for the State respondents to issue any

prior notice to the petitioner before cancellation of the patta and the name of the pattadar as mentioned in the Jamabandi.

9. After the first round of litigation, it is settled that the land in question belongs to Government whether the said land is reserved or not. When the land belongs to Government it is the Government who is to decide how to utilize its land, undoubtedly by following the law covering the field, court cannot interfere with such policy decision of the Government taken for the interest of the public at large, as by this time it is settled that private interest cannot override public interest. In various decisions the Apex Court also held that when a bonfires (sic) mistake is committed by an authority, then the said authority has the power to rectify/correct the same. In the instant case the recording officer of the Government committed mistake while recording the land in question in the name of the petitioner as pattadar and therefore it has also the power to correct the said mistake. But in the instant case the Government has no right to allot the land in question in favour of any individual or private organization without considering the case of the petitioner, who has already invested sufficient amount for development of the said land. So this court observed that authority should consider his case subject to the objection (B/1 in the Misc. Case 64/07) is filed by the petitioner to the authority and if it is filed, then the authority shall consider the same before starting construction of the proposed power substation. The interim order passed by this court on 31.12.2004, though lost its force on the returnable date, same stands vacated so that there may not be any confusion between the parties regarding the said interim order. This court has also gone through the decision, of the Apex Court in State of UP v. Labh Chand and All India Manufacturers Organization (supra). According to this court those decision has no direct bearing on the subjectmatter involved in this case as in this case the petitioner challenges the cancellation of patta and name of pattadar in the Jamanbandi vide (Annexure A/10) which was not the subjectmatter in the earlier writ petition. Therefore, the ratio of the decision of Labh Chand (supra) and All India Manufacturers Organization (supra) so far doctrine of res judicata has no application as the Annexure 10 was not the subject in the earlier writ petition. Hence, the principle of res judicata has no application. It is always open to a citizen to approach the court for a new cause of action which, in fact, the petitioner does in this case.

10. In view of the aforesaid position, the writ petition is devoid of merit, accordingly, the writ petition is dismissed. However, dismissal of the writ petition will not be a bar for the authority to consider the objection of the petitioner (Annexure B to the affidavit in opposition in the misc. case) if a representation to this effect is being filed to the authority by the petitioner before construction of the power substation.