

**(2012) 03 GAU CK 0044**

**Gauhati High Court**

**Case No:** WA No. 67 of 2011

Shri Ginzakham Vaiphei @  
Ginkham Vaiphei

APPELLANT

Vs

The State of Manipur, The  
Secretary/Commissioner  
(Revenue), Government of  
Manipur, The Deputy  
Commissioner, Churachandpur,  
Government of Manipur and The  
Sub-Divisional Officer,  
Churachandpur, Manipur

RESPONDENT

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**Date of Decision:** March 7, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Manipur Land Revenue and Land Reform Rules, 1961 - Rule 18
- Manipur Land Revenue and Land Reforms Act, 1960 - Section 15

**Hon'ble Judges:** Tinlianthang Vaiphei, J; P.K. Musahary, J

**Bench:** Division Bench

**Advocate:** Ng. Kumar, for the Appellant; H. Raghumani, GA, for the Respondent

**Final Decision:** Allowed

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**Judgement**

T. Vaiphei, J.

Heard Mr. Ng. Kumar, learned counsel for the appellant and also Mr. Raghumani, learned State Counsel.

2. This writ appeal is directed against the judgment and order dated 08.12.2011 passed by the learned single Judge in WP(C) No. 767 of 2011 declining to interfere with the order dated 21.10.2011 passed by the Deputy Commissioner/Estate Officer, Churachandpur for evicting the petitioner from the disputed land. It appears that the appellant, apprehending eviction from the land occupied by him, approached

the learned Civil Judge, (Jr.Divn) Churachandpur in O.S.No. 10/2011 for declaration of his title to the land in question and for issuing temporary injunction to restrain the respondent No. 3 from carrying out the eviction process. The learned Civil Judge, by the order dated 23.08.2011 in Judl.Misc Case No. 18 of 2011 issued temporary injunction restraining the respondents from carrying out eviction process. Aggrieved by this, respondent No. 3 preferred Misc Civil Appeal No. 6 of 2011 from the order dated 23.08.2011 before the learned District Judge, Manipur West, which by the order dated 19.10.2011 stayed the injunction order of the learned Civil Judge (Jr.Divn), passed in Judl Misc Case No. 18 of 2011. Taking cue from this order, the respondent No. 3 thereafter issued the eviction notice requiring the appellant to dismantle his structures/building constructed on the land occupied by him immediately, failing which, he would be liable to pay penalty to the extent of 6 times the annual revenue of the land. The respondents accordingly resumed eviction/dismantling process of the appellant's land. This prompted the appellant to file WP(C) No. 767 of 2011 before this Court challenging the eviction notice dated 21.10.2011 with a prayer for directing the respondents to restore possession of the disputed land to him. The learned single Judge, as noted earlier, declined to interfere with the order of the respondent No. 3 and disposed of the writ petition by directing the learned District Judge, Manipur West to dispose of the Misc Civil Appeal No. 6 of 2011 within two weeks. Liberty was however granted therein to the appellant to agitate the points urged by him in the writ petition before the learned District Judge, Manipur West. Aggrieved by this, this writ appeal has been preferred by the appellant.

3. Mr.Ng.Kumar, learned counsel for the appellant submits that the learned single Judge has completely overlooked the provisions of Section 15 of the MLR & LR Act ("the Act" for short) read with Rule 18 of the MLR & LR, Rules, 1961 ("the Rules" for short) in declining to interfere with the impugned order issued by the respondent No. 3. According to the learned counsel, the respondent No. 3 was obliged under the law to observe the concept of principles of natural justice as enshrined in Section 15 of the Act read with Rule 18 of the Rules, which render the impugned order illegal. It is also contended by the learned counsel for the appellant that whether the appellant is the owner of the disputed land is yet to be adjudicated upon by competent civil court of jurisdiction and the eviction order passed by the respondent No. 3 despite the pendency of civil case will nullify any decree which may be obtained by him if the suit succeeds. In any view of the matter, argued the learned counsel, the impugned order cannot be sustained in law, and is liable to be quashed. On the other hand, Mr.Raghumani, learned State counsel forcefully defends the impugned order and submits that the order of the learned single Judge is innocuous in nature and has in no way caused prejudice to the appellant and that the point urged by him before this court can be more effectively argued by him before the civil court, which is now seized with the matter. Having not exhausted the alternative statutory remedy, he must be told off at the gate for ventilating his

grievance before this court by bypassing the alternative remedy provided for by law. He also submits that once the eviction process has been carried out and the appellant ousted from his possession, the question of restoring possession of the land to the appellant does not arise. He, therefore submits, that the writ appeal is bereft of merit and is liable to be dismissed.

4. We have given our anxious considerations to the contentions raised by the learned counsel appearing for the rival parties. In our judgment, the sole question which falls for consideration is whether the respondent No. 3 has complied with the safeguards laid down by Section 15 of the Act read with Rule 18 of the Rules in launching the eviction proceedings and in evicting the appellant from the disputed land. u/s 15 of the Act, there is no doubt that power is given to respondent No. 3 to evict unauthorized occupant/trespasser summarily. However, Rule 18 imposes obligation upon respondent No. 3 to issue notice to the alleged trespasser requiring him to show cause, within the period specified in the notice as to why he should not be evicted from the disputed land. A conjoint reading of the two provisions, amply makes it clear that prior notice is the sine qua non for issuing eviction order and that it is implicit in the nature of things to give an adequate opportunity to the alleged trespasser to effectively present his case or defend his case so that the right conferred therein is not rendered illusory. In other words, if sufficient time is not given, the spirit of Rule 18 will be violated. On going through the impugned order issued by respondent No. 3, we have no hesitation to hold that the provisions of Section 15 read with Rule 18 of the Rules have been violated by the respondent No. 3 while issuing the eviction notice and carrying out eviction order. This is illegal and cannot be sustained in law. We are fortified in our view by the decision of the Division Bench of this Court in [Samir Ranjan Barman and Another Vs. District Magistrate and Collector and Others](#), in which it has been held that the power u/s 15 of the Act is summary in nature, but the exercise thereof has to comply with the requirement of Rule 18. The next question which falls for consideration is whether the appellant, who is now admittedly ousted from possession, can be allowed to reoccupy the disputed land. This legal point has also been settled by the same judgment in para 65 and 66 as under:

65. In the instant case nothing has been stated regarding the buildings in the impugned eviction order. On the other hand, it is found that possession has been taken over with Police help in an electric speed without giving any opportunity to petitioner No. 1 to show cause that he was not liable to be evicted. There is not even semblance of an order passed under any provision of law regarding taking over vacant possession of the buildings from the petitioners.

We have already found that the eviction proceedings and the orders therein are illegal and without jurisdiction. That being the position, if the respondents are not directed to restore possession of the land and buildings in question to the petitioners, it would be on our part, an unjust and unreasonable refusal to exercise

jurisdiction and discretion vested in the High Court by the Article 226 of the Constitution.

In view of the facts and circumstances of the case and settled positions of law as discussed hereinabove, and for the ends of justice and the dignity of the individual in a welfare State like ours where Rule of Law reigns supreme, there is no other alternative but to issue a direction for restoration of possession of the land in question and the buildings and structures thereon.

Hence we do not find any substance in the last submission of the learned counsel for the Respondents that even if the eviction proceedings and the impugned orders therein are found to be illegal and without jurisdiction, there cannot be any order of restitution.

66. In the circumstances the impugned eviction proceedings in Eviction Case No. 33/75 and the impugned orders of eviction passed therein including the orders dated 6.10.75, 7.11.75 and 10.11.75 are quashed. We further direct that the Respondents shall restore possession of the land and buildings in question to the petitioners within two weeks from today.

In the result this petition is allowed and the Rule is made absolute. The Respondents shall pay costs of this petition to the petitioners, which we assess at Rs.200/-

5. Resultantly, this writ appeal is allowed. The impugned judgment and order dated 08.12.2011 passed by the learned single Judge in WP(C) No. 767 and order dated 21.10.2011, in respect of the appellant, issued by the respondent No. 3 are hereby set aside. The respondent No. 3 is directed to restore possession of the disputed land to the appellant within two weeks from the date of receipt of this order.

Copy of this order be furnished to the learned State counsel in the course of the day.