

(1989) 09 GAU CK 0012

Gauhati High Court

Case No: Civil Rule No. 172 of 1982/258/83

M.K.Lakshmikanta Singh

APPELLANT

Vs

Irengbam Tompok Singh

RESPONDENT

Date of Decision: Sept. 13, 1989

Acts Referred:

- Constitution of India, 1950 - Article 363, 363, 363A, 363A

Citation: (1991) 1 GLJ 310

Hon'ble Judges: S.N.Phukan, J and M.Sharma, J

Bench: Division Bench

Advocate: Promod Singh, Priyananda Singh, Advocates appearing for Parties

Judgement

S.N. Phukan, J.

1.By this petition under Article 226 of the Constitution, the petitioner who is second son of His Highness Maharaja late Bodhchandra Singh erstwhile King of Manipur has approached us praying inter alia for an appropriate writ or direction restraining the respondents from continuing their acts of demolition and eviction of the petitioner from the land which was the Palace Compound of the erstwhile Maharaja.

2. By the agreement Hated 1st September, 1949 between the Governor General of India and His Highness Maharaja the State of Manipur was coded to the Dominion Government of India with full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State of Manipur. The said Merger Agreement is an Annexure A1 to the petition. Article IV inter alia provided that Maharaja would be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of the agreement and Maharaja was to furnish an inventory of all such private properties. The said article also provided that in case of disputes as to whether any item of property was the private property or State property it was to be referred and decided by a Judicial Officer qualified to be appointed as a High Court Judge and

decision would be final and binding on both the parties. The inventory was furnished and the decision of Government of India was communicated by the D.O. letter dated 11th November, 1952 vide Annexure A2. Annexure A2 is the inventory of the private properties of the Maharaj which includes "Imphal Rajbari New Building His Highness Palace Compound". The late Maharaja was enjoying all private properties including the Palace Compound and the disputed land is within the said Palace Compound. On the death of Maharaja his eldest son succeeded to the Gaddi and all private properties including the Palace Compound were inherited by all the sons of late Maharaja including the present petitioner. In fact there is no dispute that all the sons of late Maharaja are in possession of the Palace Compound. It has been pleaded by the petitioner that the Government recognised petitioner and his brothers as the owners of the Palace Compound. In support it has been stated that a plot of land measuring 3.50 acres out of the Palace Compound was acquired and compensation was also paid to the elder brother of the petitioner. According to the petitioner another notification was also issued under section 4 of the Land Acquisition Act, 1894 in respect of another plot in the Palace Compound. State Government also used to take permission from the Ex ruler for holding public meetings or other functions inside the Palace Compound. Main allegation of the petitioner is that in spite of the these facts the Deputy Commissioner (Central) Manipur illegally and without jurisdiction started an eviction proceeding under the provisions of the Manipur Public Premises (Eviction of unauthorised Occupants) Act which was registered as Special Eviction Case No. 2 of 1981. The Deputy Commissioner passed an order on 13.3.81 directing the petitioner to remove structure etc. from the disputed land within the Palace Compound. Against the said order an appeal has been filed before the learned Revenue Commissioner which is pending and the learned Revenue Commissioner has also stayed the order of the Deputy Commissioner. According to the petitioner, on 20.2.82 at about 9.30 A.M. respondent Nos.) to 3 came to the Palace Compound with security personnel and a Bulldozer and started destroying the standing structures, fencing etc. in spite of protests and thereby causing damage to the petitioner worth Rs.60,000/-. In para 16 of the petition malafide has been alleged against respondent No.1 and according to petitioner in view of personal grudge of respondent No.1 as stated in the said para the above eviction proceeding was started.

2A. Only one affidavit has been filed on behalf of respondent No. 4, i.e. State of Manipur and the said affidavit has been sworn by the Under Secretary, Revenue, Government of Manipur. State Government has taken a peculiar stand. According to the State Government, Manipur was not an independent princely State prior to the Independence of our country and that the then Maharaja had no private properties. The Palace Compound was on Government land and on the said land the British Government constructed the Palace. It is further stated by the Government that the Palace Compound never belonged to any Ruler of Manipur and it was allowed to be used by the Maharaja so long he was the King. State Government has pleaded that

the private properties included in the inventory under the Agreement of the Merger was for restricted purpose. In other words these properties could be used by Maharaja so long he was the Ruler, It has been denied that the sons of late Maharaja inherited the Palace Compound. After Constitution was amended by inserting Article 363A and with the abolition of the "Gaddi" and derecognition of the Ruler, the privileges enjoyed by the Ruler under the Agreement of Merger lapsed and the present Palace Compound became the absolute property of the State w.e.f. 28.12.71 by escheat or lapse or as bona vacantia under Article 296 of the Constitution. As the petitioner and his brothers are in unauthorised occupation of Government land they are liable to be evicted under the law. Regarding earlier acquisition of the part of the Palace Compound by the State Government and payment of compensation it has been stated that it was due to over sight and mistake of fact and law. Regarding the statement of the petitioner that the Assistant Survey and Settlement Officer, Imphal in Misc. Case No. 14 of 1973/AS & SO/IE (Muni) by order dated 18.6.73 allowed mutation of the names of the petitioner and his brothers in the revenue record in respect of Palace Compound, it has been stated that the said order was passed without jurisdiction and as such void abinitio. Regarding permission taken for use of the Palace Compound by the Government, it has been stated that no such permission was taken but as a courtesy the Exruler was informed. The allegation that on 20.2.82 the respondents went to the Palace Compound and destroyed structures etc., as stated in para 15 of the affidavit, has not been denied but it has been stated that it was under the authority of law. According to the State the damage due to the above eviction was only Rs.500/. A general denial has been made that the eviction proceeding was initiated on the instigation and due to personal grudge of respondent No.1. It has further been stated that President of the Temple Shri Shri Govindajee is appointed in accordance with the relevant Act and the Rules and as such the allegations in para 16 are baseless.

3. We have heard Mr. Priyananda Singly learned counsel for the petitioner and Mr.Y.Imo Singh learned Advocate General for the respondents.

4. The first contention of Mr. Y. Imo Singh, learned Advocate General is that in view of the bar contained in Article "> 6 3 of the Constitution this Court cannot enter into the present dispute as it arises out of the Merger Agreement between the parties. In order to appreciate his submissions we have stated full facts of the case. According to the learned Advocate General as the Palace Compound was the private property of the Maharaja, in view of Article 363A by which recognition granted to Rulers of Indian States and privy purses were abolished, this properly has reverted back to the State of Maniur. Taking help of the D.O. letter dated 11th November, 1952 at Annexure A2 the learned Advocate general has tried to make a distinction between private property and persona, property of the erstwhile Maharaja. In support of his contention learned Advocate General has placed reliance in various decisions of the Apex Court.

5. We have considered the facts of the case and also the submissions of the learned Advocate General and we are of the opinion that in the case in hand there is no dispute arising out of any provision of the Merger Agreement. What the petitioner has claimed is title over the Palace Compound on the basis of the Merger Agreement and for that purpose we can look into the said Agreement. There is no dispute that under the Merger Agreement (Annexure A/12 & 2/1) the Palace Compound became the private property of the late Maharaja. In the first para of Article IV of the Agreement it is clearly stated that late Maharaja shall be entitled to the full ownership, use and enjoyment of all private properties belonging to him on date of the Agreement. In the said paragraph it is clearly stated that private properties are different from State properties. In para 5 of the letter dated 11th November, 1952 (vide Annexure A2), it is clearly stated that in respect of private properties State shall have no claim. That this property, namely, Palace Compound was owned, possessed and enjoyed by late Maharaja as private property since 1949 is not disputed. So the claim of the present petitioner, who is the second son of late Maharaja that he along with his brothers became the owner of the said Palace Compound has got force and for this finding no interpretation of the Merger Agreement is necessary.

6. The main contention of learned Advocate General is that the Palace Compound was not personal property of late Maharaja but it was his private property and as a private property it was part of the estate of Ex Maharaja. According to the learned Advocate General as under Article 563A of the Constitution recognition of the Rulers of Indian States was withdrawn all the private properties of Ex Maharaja reverted back to the State Government. We are unable to accept the contention of the learned Advocate General. We say so as in the Merger Agreement it was specifically stated that private properties shall not be treated as a State property and the State shall have no claim vide Annexures A1 and A2. That apart the language of Article 363A is clear and only recognition of the Rulers was withdrawn and their privy purse was abolished. This Article did not deprive the Rulers of their private properties. If we accept the contention of the learned Advocate General we shall be doing violence to the language of the said Article.

7. A specific allegation of malafide and personal grudge against respondent Nos. 1, 2 and 3 has been made in the present petition

8. In para 9 of the petition it has been specifically stated that Assistant Survey and Settlement Officer, Municipality in Misc. Case No. 14 of 1973/ ASSO/IE (Muni) the names of the petitioner and his brothers were duly mutated in respect of the land in question in the revenue record. In the counter filed on behalf of the respondent No.4 it is stated in paragraph 12 that the said order was void ab initio being one passed without jurisdiction and also without impleading the State as a party. It is further stated that Assistant Survey and Settlement Officer was not conferred with jurisdiction to mutate name in place of the State in respect of the State land. We fail

to understand how such a stand can be taken when the competent Revenue Court has passed the order in view of the circumstances of the present case. If the State was aggrieved by the said order, proper action course would have been to approach higher authority and to get the order set aside.

9. As the appeal is pending before the learned Revenue Commissioner and the order of the Deputy Commissioner has been stayed, we direct the learned Commissioner to dispose of the appeal and in doing so he shall be guided by observations made by us in this judgment. However in the event the appeal is dismissed the learned Revenue Commissioner shall give sufficient time to the petitioner to approach higher authority and shall pass necessary direction so that during the said period the petitioner shall not be evicted.

10. It is settled law that even State cannot take possession of any property belonging to the State if it is in unauthorised occupation of some other persons without taking action under the provisions of law. In other words State cannot use police power to dispossess person from any property. We, therefore, further direct that if the appeal is decided against the State the petitioner shall not be evicted by the State without taking action under the law.

In result petition is allowed with the above direction and the rule is made absolute. We are of the opinion that this is the fit case to award ctst and accordingly we award cost of Rs.2,000/ against the respondents.