

(1990) 04 GAU CK 0011

Gauhati High Court**Case No:** Civil Rule Nos. 66 (SH) and 180 (SH) of 1989

Quinton Memoriral Hall Trust

APPELLANT

Vs

Special Commissioner and
Special Secretary To The
Government of MeghalayaRESPONDENT

Date of Decision: April 30, 1990**Acts Referred:**

- Land Acquisition Act, 1894 - Section 11A, 11A

Citation: (1991) 2 GLJ 308**Hon'ble Judges:** S.K.Homchaudhuri, J and Y.Ibotombi Singh, J**Bench:** Division Bench**Advocate:** L.R.Das, B.M.Mahanta, B.Dutta, Advocates appearing for Parties

Judgement

S.K. Homchaudhuri,J.

Both the writ petitions concern the same property. In Civil Rule No. 66 (SH, of 1989, acquisition of the property in question, belonging to the petitioner, by the Govt under Act 1 of 1894 has been challenged and in Civil Rule No. 180 (SH) of 1989, resumption of the same property, belonging to the petitioner, by the Govt on the ground and determination of lease has been challenged. Both the petitions were, therefore, heard together on 30.11 89. In the course of hearing, one important question cropped up, namely, if the Govt insisted on sustaining the acquisition proceeding challenged in Civil Rule No. 66 (SH) of 1989, the subsequent resumption proceeding of the same property, challenged in Civil Rule No. 180 (SH) of 1989, was apparently unwarranted and if on the other hand, Govt insisted on sustaining subsequent resumption proceeding, the earlier acquisition proceeding could not coexist. The learned Senior Govt Advocate, Meghalaya prayed for some time to receive instruction from the Govt in that regard. The records of the proceedings although called for, has not been submitted. As such, hearing of both the petitions

could not be completed on 30.11.89 and remained part heard. One month's time was granted to the learned Senior Govt Advocate to receive necessary instruction and submit records. By the same order, parties were also allowed to exchange their affidavits, if any, in the meantime. This Bench could not be constituted just after expiry of one month. After constitution of the Bench on and from 25.4.90, the petitions were posted for hearing as "part heard" case on that date. But due to personal difficulties of the learned Senior Govt Advocate as well as Mrs. B. Dutta, learned Govt Advocate, Meghalaya, hearing was adjourned to 30.4.90. However, none of the Govt Advocates has appeared today and neither the records nor any affidavit in opposition on behalf of the respondents has been filed. This Bench is constituted for the period upto 30.4.90 and there is no likelihood of constitution of this Bench in near future. Under the circumstances hearing is concluded on the basis of the materials placed before us. The Govt Advocate has however, caused filing of 3 letters in response to our observation made by order dated 30.11.89 which are (i) Photo copy of letter No. RDS. 37/89/40 dated 6.9.89 of the Govt of Meghalaya, Revenue Department by which the Govt intimated the Deputy Commissioner, Shillong that the acquisition proceeding impugned in Civil Rule No. 66 (SH) of 1989 had lapsed and asked the Deputy Commissioner to instruct the Govt Advocate accordingly, (ii) Photo copy of the letter No L.14/5 (40) 85/85 dated 13.9.89 of the Deputy Commissioner, Shillong forwarding the photo copy of the aforesaid Govt letter dated 6.9.89 to the Govt Advocate, and (iii) letter of Deputy Commissioner, Shillong dated 12.8.89 to the Govt Advocate (in original) forwarding the copies of the aforesaid letters dated 6.9.89 and 13.9.89.

The petitioner's contention is that the petitioner is a Trust known as "Quinton Memorial Trust" and is the lawful owner and has been possessing the property known as "Quinton Hall Property" comprising of an area of land measuring more or less of 39,320 sq. ft with buildings (Hall) etc standing thereon situated in Quinton Road, Jail Road Ward, Shillong. The land measuring more or less 39,320 sq. ft. was taken on lease by the Trust with permanent, heritable and transferable right of use and occupation in the nineties of the last century. The lease was extended and Khiraj Patta in favour of the petitioner in respect of the land issued periodically and the last patta was issued in 1975 bearing Patta No. 126. The public of Shillong are the beneficiaries of the property held by the petitioner. The existing "Quinton Memorial Hall" owned by the Trust, was constructed on the said land in 1901 for social and cultural benefit of the public of Shillong. According to the petitioner, the hall carries testimony of immense religious and historic significance. The foundation of the Hall was laid by Capt .D.Herbert, ICS, the Deputy Commissioner, Khasi and Jaintia Hills on 16.9.1900 and that on completion of the construction, the hall was inaugurated by Swami Vivekananda in 1901 AD. It is the only public hall in this North Eastern part of the country where Swami Vivekananda, Rabindranath Tagore, Acharyya Prafulla Chandra Roy. Dr. Annie Basant and many other luminaries of international fame addressed the public of Shillong. The hall having come under unauthorised and

illegal occupation of a firm, namely, M/s Ram Chandra Lachminarayan, the petitioner filed an ejectment suit in 1956 and the same was decreed for ejectment of the said firm from the hall on 6.8.59. The litigation continued, and ultimately by the decision of a Division Bench of this Court on 30.8.65 in Latters Patent Appeal No.5 of 1964 the decree for ejectment was affirmed and the firm was directed to vacate the hall within one month from the date of judgment. The firm not having complied with the direction of this Court, execution of the decree in Title Execution Case No. 1 (K) of 1966 was initiated. The judgment debtor firm by making objections under section 47 CPC stalled the execution of the decree for long 23 years, till by judgment dated 30.6.89, in Civil Revision No.7 (SH) of 1984, this Court held that the decree was executable and directed the executing Court to proceed with the execution of the decree immediately since the decree holder was deprived of the fruits of the decree for 23 years.

In the meantime, during the pendency of the Civil Revision No.7 (SH) of 1984, the respondent No.1 issued a notification under section 4 of the L.A.Act published in "the Shillong Times" of its issue dated 9.11.85, declaring that the petitioner's property was likely to be needed for public purpose. After the said notification, the petitioner filed objection under section 5A of the L.A.Act to the proposed acquisition of the property. Thereafter, the respondent No.2 heard the objection on 28.11.85 but did not intimate the decision, if any, made on the objection against the proposed acquisition to the petitioner. In the meantime, the respondent No.2 issued notification under section 9 of the L.A.Act. The petitioner has impugned the said acquisition proceeding in Civil Rule No. 66 (SH) of 1989 and this Court by order dated 21.6.89 issued a Rule to show cause as to why the proceeding should not be quashed. The acquisition proceeding was challenged on the ground that without disposing of the objection under section 5A of the L.A.Act further proceeding was illegal and without jurisdiction. Besides, no award having been made within two years from the date of notification dated 9.11.85, under section 11A of the L.A.Act, the acquisition proceeding lapsed after expiry of two years.

The petitioner's further case is that the "Trust" was created for the social and cultural benefit of the public of Shillong in general and to do welfare works for the poor and underprivileged population of this part of the country. The petitioner having felt that the objectives of the "Trust" could more effectively be carried out by the "Ramkrishna Mission", the donors and the trustees in a formal meeting held on 28.4.82 proposed to entrust the entire property to the Ramkrishna Mission, Shillong. The Ramkrishna Mission also welcomed the proposal and finally the donors and the trustees, in their meeting held on 15.12.88, decided to handover the possession of the property to the Ramkrishna Mission after getting the khas possession of the Quinton Memorial Hall in execution of the decree passed in Title Suit No.2 (SH) of 1956.

In the writ petition Civil Rule No.66 (SH) of 1989, the Ramkrishna Mission has been impleaded as respondent No.4. An affidavit has been filed on behalf of the Ramkrishna Mission in which the contentions of the petitioner in the writ petition are admitted. It has also corroborated that the constructed Quinton Memorial Hall was inaugurated by Swami Vivekananda in April, 1901, and the hallowed memory of Swamiji is inseparably connected with the august hall. It is also admitted that the Ramkrishna Mission accepted the offer of the petitioner to take occupation of the said property including the hall by letter dated 30.1.89. The Ramkrishna Mission has further stated that they have made out a scheme for utilisation of the property namely, to establish a cultural institution on the line of the one at Calcutta with a research wing for Tribal culture and language with particular reference to the North East and Meghalaya after the name of Swami Vivekananda and to extend its centre for Social Welfare activities in which the Mission is engaged. It has further been stated that the Mission is working for the development of the tribal population in the North East, particularly in Meghalaya since the first quarter of this Century and that as early as in 1924, the Mission opened their centre at Sheila village near Cherrapunji and gradually extended their activities to other places including Shillong. The Ramkrishna Mission established a school in Cherrapunji (Meghalaya) in 1929, which is one of the best High School in North East India. The Mission has also established one technical School at Cherrapunji and there are as many as 47 schools, Primary, "Middle and High in the North East, established and run by the Mission. It has also established Hostels for tribal students at Shillong, Cherrapunji and Tribal Girls' Hostel at Sohbarpunji and all of them are functioning well. The Mission has also established Charitable Dispensary at Shillong entirely managed by the Ramkrishna Mission and also with its mobile unit, regular mobile Medical services being rendered to the people in the rural areas of Meghalaya. It is submitted by the learned counsel for the respondent No.4 (the Ramkrishna Mission) that the Cherrapunji High School, established and run by the Ramkrishna Mission has produced many illustrious sons of Meghalaya amongst that the Prof. G.G. Swell, M.P. and ExDeputy Speaker Lok Sabha, Mr.B.B. Lyngdoh, the Chief Minister of Meghalaya, Prof.R S. Lyngdoh, Ex Speaker Meghalaya Legislative Assembly and at present Professor of NEHU, Mr. Dilip Singh, IAS, Additional Chief Secretary, Meghalaya who had their school education in the said school. The Ramkrishna Mission also approached the then Deputy Chief Minister, Meghalaya by representation dated 10.5.88 and 15th April, 1989 for dropping the acquisition proceedings so that it might utilise the land for fulfilling the proposed scheme for welfare of the tribal population of the North East, particularly Meghalaya. The contribution of the Ramkrishna Mission in the development of the under privileged poor population of India particularly the tribals is well known. There is no gain saying to mention that the Ramkrishna Mission has been rendering immense service in the field of education relief works, Medical treatment and social and cultural activities to the masses particularly in North Eastern Region. All these

services are for the welfare and benefits of the public. As such, it is reasonably expected that a Govt of Welfare State would not only refrain from creating obstruction to such welfare activities, but would render all facilities and cooperation for fruition of the schemes of the Mission in that regard for welfare of the masses particularly the tribals and under privileged.

Admittedly, no award of compensation under section 11 of the L.A. Act have been made by the Collector in respect of the acquisition of petitioner's property within two years from publication of the notification dated 9.11.85. As such, entire proceeding lapsed as per the provision of section 11A of the Act 1 of 1894. This is also the stand taken by the Govt as revealed from the Govt letter dated 6.9.89. The acquisition proceeding having lapsed, the said proceeding impugned in Civil Rule No.66 (SH) of 1989 is quashed.

In Civil Rule No.180 (SH) of 1989, the undisputed facts are that the land in question was leased out to the petitioner in the nineties of last century and the petitioner has been occupying the same for more than 90 years as lessee. Pattas were issued periodically and last Periodic Patta No. 126 was also issued in 1975 in favour of the petitioner in respect of the land. The periodic lease was extended from time to time and last extension was made in 1968 which expired on 1978. But as per terms of the lease it is clear that the right of the petitioner for use and occupation of leasehold land is permanent, heritable and transferable. No clause has been stipulated in the patta which provides that the Govt reserved the right to resume the land after expiry of the periodic lease.

It is submitted by the learned counsel for the petitioner that the land pertaining to Police Bazar, Jail Road and European Ward areas in Shillong Municipal Board in which the property in question situates are known as normal area of Shillong and hundreds of persons own plots of land in that area as lessees under the Govt and have their residential and commercial houses/building thereon and the lease in respect of parcels of land of the normal area in occupation of these person are extended, from time to time and most of them are patta holders. Such pattas are akin to Periodic Patta issued in the State of Assam. The lease granted to petitioner and others in respect of different plots of land are perpetual of period of lease and pattas are for the purpose of reassessment of rent/revenue and nothing else. As such the question of resumption of the leasehold land after the expiry of lease for the period could not and did not arise. The learned counsel further submits that the lease granted to the petitioner is not a "grant" within the meaning of the provisions of Govt Grant Act. Besides, the Govt by a general notification published in 1984 (Annexure 7 to the writ petition) issued by the respondent No.2, all lease holders of Govt land within Shillong town were informed of the decision of the Govt. for resettling the different kinds of leaseholdings and the terms of lease would be 30 years from the date of expiry of the lease.

The petitioner has also stated on oath in his writ petition that after the decision of this Court in Civil Revision No.7 (SH) of 1984, holding the decree of ejectment was executable against M/s Ramchandra Lakshminarayan from the "Quinton Memorial Hall" the executory proceeding in Title Execution Case No. 1 (H) of 1966 was again started and the Executing Court issued writ for delivery of possession of the decretal premises to the decreeholder after evicting the judgment debtor and other persons under the judgment debtor and the decree was executed on 5.7.89 and the judgment debtor and other persons occupying the decretal premises as licensees were evicted from the decretal premises with their properties on the decretal premises, and except the projector machine, which were identified by one Shankar Lai Singhania on behalf of the judgment debtor firm. The said machineries could not be removed immediately for want of technical hands and the same were kept under lock and key under the charge of one H.Dhar of Jail Road, Shillong on the definite undertaking by the said S.L.Singhania that the said machines would be removed within a period of 7 days from that date. The report of the bailiff is annexed as Annexure 4 to the writ petition runs as follows

" Court of the District Judge, Shillong

Title Ex. Case No. I(H) of 1966 I No.376 dtd 4.7.89

Bailiff Report

To

The District Judge,

Shillong

Sir,

We the bailiff of the Court begs to report that as per order and schedule, we have given vacant possession of the suit premises with the help of the Police, which was under occupancy of the M/s Ramchandra Lachminarayan. The Quinton Memorial Hall covered by Patta No.88 measuring 91 acres of land where the judgment debtors were running a Cinema Hall under the firm name "Singhania Takes" forming a part of the Quinton Memorial property and its compound and handed over to the Decree Holder "Quinton Memorial Hall" represented by Jagadindra Nath Choudhury today in presence of the following witnesses who put their respective signatures below.

Nothing was attached from the suit premises. We have removed all persons and their properties from the suit premises except the machineries Projector Room, namely

1) K.6. 19 Machine 1 pair.

2) Amplifiers 3 Nos.

3) Rectifiers 3 Nos.

4) Voltage Stabilizers 3 Nos.

5) Main Switch 11 Nos.

which were identified by Shri Sankarlal Singhania, on behalf of the J.D. firm.

These said machineries could not be removed immediately for want of Technical hand and as such these have been kept under lock and key under the zimma of Shri H.Dhar of Jail Road, Shillong on his definite undertaking by the said Shri S.L. Singhania that machine shall be removed within 7 (seven) days from today under intimation to the Court failing which I shall remove them.

Both the parties were present at the time of execution and received their respective copy of this order.

Signature of the decree holder Signature of the judgment " who has received vacant/khas debtor who has vacated possession of the suit premises the suit premises.

Sd/ ..."

However, after the decree was executed and khas possession of decretal premises was handed over by the Baillif around 4.30 P.M. of 5.7.89, the ExtraAssistant Commissioner, Revenue Department, Govt of Meghalaya, Shillong came to the spot and planted one wooden board (playcard) right in front of the Hall which read "Quinton Memorial Hall Estate, Meghalaya Govt property"" and served the Secretary of the petitioner with a copy of letter dated 5.7.89 (Annexure 5 to the writ petition)" at about 4.55 P.M. of the same day which runs as follows :

"No. L.14/13 (4) 89/5 Shillong the 5th July, 1989

To

The Secretary,

Quinton Hall Memorial Trust,

Jail Road, Shillong

Subject : Determination of the lease of Quinton Hall property

Sir,

I have the honour to say that the lease of the Quinton Hall Property to you has stood determined with effect from the 1st June, 1989, as per Government's notification No. RDS. 59/84/130 dated 10.5.89 (copy enclosed) and the property has since vested in Government, I am to request that you will take all action necessary to meet the undersigned on 11th July 1989 at 11 A.M. to complete the formalities connected with the said property.

You may also file your claim for compensation which will be determined and paid according to the law.

Yours faithfully,

(M.R. Mawlong)

Deputy Commissioner,

East Khasi Hills, Shillong."

In the said letter a Govt notification dated 10.5.89, was enclosed by which the Govt determined the lease in respect of land, the Quinton Memorial Hall and other land owned and held by the petitioner with effect from 1.6.89. After service of the said letter dated 5.7.89, possession of the property was taken by the Govt on 5.7.89 itself and the petitioner was thereby dispossessed and deprived of the property. The learned counsel for the petitioner submits that the impugned order is ex facie, arbitrary, illegal, without any authority of law and malafide. Admittedly, no notice was issued to the petitioner to show cause as to why the lease which has been continued for more than 90 years should not be determined. The learned counsel submits that from the materials on records it is clear that the Govt's position is that of landlord, i.e. the Govt is the lessor and the petitioner is lessee, and this lease is not a "grant" within the meaning of the provision of Govt Grant Act. The lease is governed by the provisions of T.P. Act. The term of the lease and the periodic patta issued having specifically conferred permanent, heritable and transferable right of use and occupation of the leasehold land, the lease is perpetual and the Govt can only deprive the petitioner of the land by acquisition in accordance with law. The Govt cannot resume the possession of the land and oust the petitioner therefrom by executive fiat on the plea that the lease stands terminated and the land vests in the Govt. The petitioner further submits that taking possession of the property soon after execution of the decree and delivery of possession to the petitioner by the Baillif, is malafide for the sole benefit of the judgment debtor firm, owner of which is a man of influence and resources, inasmuch as, judgment debtor applied for settlement of land held by the petitioner and that application has still been pending, the acquisition proceeding initiated for acquisition of the property without indicating the purpose for which the property was needed, the ultimate lapse of the proceedings and the hot haste in which the Govt took possession of the property arbitrarily without any authority of law by executive fiat soon after eviction of the judgment debtor with its licensees from the Quinton Memorial Hall on 5.7.89 itself, clearly establish the ulterior purpose to serve the interest of the judgment debtor firm. From the facts and circumstances appearing in the case, this contention of the petitioner can not be held to be without any basis. But we do not like to embark on the questions since a proceeding under the Contempt of Court Act is pending against the respondents on the allegation. We simply observe that all these do not disclose a healthy and happy state of affairs.

We have considered the submissions made on behalf of the petitioner and have perused the materials on records. As already observed the allegation made in the writ petition have not been controverted by the respondents by filing affidavit in opposition, although even after the petition was heard in part on 30.11.89, time of one month was granted. No records of the proceedings have also been filed by the Govt. We find that the submissions made on behalf of the petitioner have sufficient force. On perusal of the Patta No. 126, we find that the land was leased to the petitioner with permanent, heritable, transferable right of use and occupation. The petitioner has been admittedly using and occupying the land for more than 90 years continuously with the permanent right of use and occupation of the lease hold land. The periodic lease and patta have been issued from time to time. On the aforesaid facts and circumstances, petitioner's contention that the lease of the land is perpetual cannot be ruled out. However, this view of ours is tentative. Petitioner's contention that lease of land granted to the petitioner is not a "grant" within the meaning of the provisions of Govt Grant Act, but a lease and the provisions of T.P. Act govern the lease, has considerable force. A Division Bench of the Calcutta High Court in the case of Secretary of State vs. Lai Mohan Choudhury reported in AIR 1935 Calcutta 746 held that lease of a Khas MohaP by the Govt to the concerned individual was not a "grant" within the meaning of "Queen Grant" (New Govt Grant Act) and the provisions of T.P. Act were applicable to the lease. The position of the Govt was nothing but landlord. In the instant case, not only the lease, but a patta incorporating the term of permanent, heritable and transferable right of the petitioner for use and occupation of the leasehold land was also granted. As such, the petitioner, the lessee could only be evicted in the due process of law i.e. by instituting civil suit by the Govt. and not by the executive fiat as has been done in the instant case. If this sort of arbitrary action of resumption of the land on arbitrary determination of lease is allowed to continue, hundreds of similar lessees of Shillong in Police Bazar, Jail Road, European Wards of Shillong Municipal Board who have built their residential and commercial houses/buildings in that area would be thrown to the lap to the executive whims. Besides, no show cause notice was issued to the petitioner to show cause before passing the impugned order and notifications was passed/issued which has visited the petitioner with the civil consequences. As such the impugned order and notification dated 10.5.89 and 5.7.89 have also been passed/issued in violation of the fundamental principles of natural justice and on that count alone the same are illegal, ab initio, void and liable to be set aside.

For the aforesaid reasons, we have no hesitation to hold that the impugned notification dated 10.5.89 purporting to determine the lease of the land held by the petitioner as lessee and patta holder under the Govt and the order dated 5.7.89 by which the Govt resumed possession of the lease hold land from the petitioner by force are ex facie arbitrary, without any authority of law and are illegal, without jurisdiction, void ab initio and are liable to be set aside and quashed.

The impugned notification No.RDS. 59/84/138 dated 10.5.89 issued by, the Govt. of Meghalaya, Revenue Department and the impugned order dated 5.7.89 issued by the respondent No. 2 under Memo No.L.14/13 (4) 89/5 (Annexure 5 to the writ petition) purporting to resumption of possession of the land leased out to the petitioner under Patta No. 126 dated 27.8.75, are therefore quashed. The respondents in general and the respondent No. 2 in particular, are directed to restore possession of the land measuring 39,310 sq.ft. which the petitioner was holding as lessee under Patta No. 126 dated 27.8.75 within a period of 10 (ten) days from receipt of this order, to the Secretary of the petitioner, namely, Quinton Memorial Hall Trust, Jail Road, Shillong.

Since we are satisfied from the report of the Baillif that the judgment debtor, namely, M/s Ram Chandr.i Lakshmiarayan and all other persons occupying the decretal premises as were evicted in execution of the decree on 5.7.89 in Title Execution Case No. 1 (H) 66 and khas possession thereof free from any encroachment was handed over to the petitioner who was the decree holder, we direct that the possession of the aforesaid property should be restored to the petitioner by evicting any person/persons might have encroached thereupon after the possession was resumed by the Govt in the afternoon of 5th July, 1989.

In the result, the petitions are allowed with cost of Rs.500/,