

Mr. Zafar Alam Vs Shillong Cantonment Board

Court: MEGHALAYA HIGH COURT

Date of Decision: Aug. 10, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 168 AIC 659 : (2017) 2 NEJ 308

Hon'ble Judges: Shri. Dinesh Maheshwari, CJ.

Bench: Single Bench

Advocate: Shri. S. Chakrawarty, Senior Advocate with Ms. M. Mahanta, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri. Dinesh Maheshwari, C.J.(Oral) - By way of this writ petition, the petitioners, said to be having right and interest in holding No. 44JB,

Ward No. VI, Shillong Cantonment at Jhalupara, Shillong, seek to challenge the order of mutation of the lease holding rights in the property in

question in favour of the respondent No. 2 and his family members.

2. After having heard the learned counsel for the petitioners and having perused the material placed on record, this Court is clearly of the view that

this matter is not to be entertained in the writ jurisdiction for pendency of Title Suit No. 2 (H) of 2012 in the Court of Munsiff, Shillong concerning

the claim of the petitioners for the property in question; and for availability of efficacious alternative remedy to the petitioners.

3. As the petitioners are proposed to be relegated to the alternative remedy, dilatation on all the factual aspects is not necessary. Only a brief

reference to the background aspects would suffice.

4. The relevant background aspects are that the petitioners claim to be in possession of the property in question as tenants for last over 40 years.

The case of the petitioners is that after they expressed desire to purchase the property in question, the rights holder Sk. Shakheel Ahmed, (who is

defendant No. 1 in the title suit aforesaid), after negotiations, agreed to sell the same to them for a sum of Rs. 42,00,000/- (Rupees forty two

lakhs). According to the petitioners, part payment was also made against the proposed sale but later on, they came to know that the defendants

No. 1 to 9 of the said title suit executed and got registered a Gift Deed dated 28.02.2012 in favour of the other defendants. Thus, the petitioners

have filed the said title suit (No. 2 (H) of 2012) seeking declaration against the validity of the aforesaid Gift Deed dated 28.02.2012 and other

reliefs. Though a copy of the plaint has not been annexed with this petition, but in response to the queries, learned counsel for the petitioners has

placed a copy thereof for perusal before the Court. The reliefs claimed therein being relevant for the present purpose, could be noticed as under:

That Plaintiff, therefore, prays for a Decree for

(i). A declaration that the purported Deed of Gift dated 28.02.2012 has not been executed in accordance with Law and is as such invalid and

cannot be enforced or given effect to.

(ii). A declaration that the Defendants No. 1 to 9 accepted valuable and adequate consideration for executing the purported Deed of Gift dated

28.02.2012 which invalidates the purported Gift.

(iii). A declaration that the purported Deed of Gift dated 28.02.2012 is also invalid in view of failure of the Defendant No. 1 to 9 to divest

themselves of the ownership and dominion of the suit property which is also the subject matter of the gift.

(iv). A further declaration that no mutation can be granted on the basis of the invalid Deed of Gift dated 28.02.2012 by the Pro Forma defendant

No. 19.

(v). A further declaration that the Defendants No. 10 to 18, their legal heirs, agents, workers, assigns, executors, employees, legal representatives

etc have no authority whatsoever in interfering with or disturbing the Plaintiffs' possession, occupation, use and enjoyment of the suit property.

(ix). A perpetual injunction restraining the Defendants No. 10 to 18 their legal heirs, agents, workers, assigns, executors, employees, legal

representatives etc from interfering with, disturbing, forcibly evicting or dispossessing the Plaintiffs from the suit or any part thereof except without

resorting to the due process of law.

(x). A permanent injunction restraining the Defendants No. 10 to 18, their legal heirs, agents, workers, assigns, executors, employees, legal

representatives etc interfering with or disturbing in any manner the Plaintiff's occupation, possession, use and enjoyment of the suit property or any

part thereof or causing injury to the Plaintiffs in relation to suit property or any part thereof.

(xi). Full cost of the suit.

5. The petitioners also filed an application seeking temporary injunction in the said suit, but the same was rejected by the learned Munisiff, Shillong

on 08.11.2012; and an appeal filed by the petitioners was dismissed by the District Judge, Shillong on 21.08.2014; and further, the application for

review was also dismissed by the District Judge, Shillong on 24.05.2016.

6. Seeking to question the orders aforesaid, the petitioners have preferred a civil revision petition (CR (P) No. 15 of 2016) in this Court that

remains pending. The said revision petition was considered on 09.06.2016 when it was, inter alia, indicated that the mutation in respect of the

property in question had already been effected on that date before the matter was taken up by the Court. This Court declined to grant any interim

relief in the matter while observing as under:

It is pertinent to mention here that the petitioners have not claimed for relief of injunction restraining respondents from carrying out mutation in

favour of respondents No. 10 to 18 which is claimed in present Misc. Case No. 07/2016. Moreover, since learned counsel for respondents 10 to

18 states that mutation has already been completed in Shillong Cantonment Board today, no interim orders are passed.

7. The petitioners have now filed this writ petition seeking to challenge the said mutation order dated 09.06.2016. It is, inter alia, contended by the

learned counsel for the petitioners that the order impugned has been passed in gross violation of the principles of natural justice and without

adequate opportunity of hearing to the petitioners, who had submitted their objections against the mutation in question. It is also submitted that as

per the information available with the petitioners, the Shillong Cantonment Board itself had kept in abeyance the proceedings for mutation in

respect of a number of holdings including the property in question, because of the pendency litigation; and there was no reason or justification that

suddenly, the mutation order was passed in relation to the property in question. It is also submitted that some of the occupants of the property have

obtained electricity connection on the basis of the mutation in question and such acts and actions are likely to cause serious prejudice to the

petitioners and would be of direct infringement of their right, title and possession.

8. Having given thoughtful consideration to the submissions made, as indicated at the outset, this Court is not inclined to entertain this writ petition.

9. It is apparent on the face of record that the mutation in question has been carried out on the basis of the Gift Deed dated 28.02.2012 which is,

of course, a matter of dispute and has been challenged by the petitioners in Title Suit No. 2 (H) of 2012 that remains pending in the Court of

Munsiff, Shillong. The prayer for temporary injunction in the said suit was declined by the Trial Court as also by the Appellate Court. The revision

petition against the order declining the prayer for temporary injunction is, of course, pending in this Court but, as noticed, this Court has declined

any interim relief to the petitioners. In the given status of record, at this stage and juncture, the process of mutation by the Shillong Cantonment

Board on the basis of an existing document of transfer of property cannot be said to be illegal, unauthorized, or unjustified.

10. So far the question of opportunity of hearing is concerned, it is noticed from the impugned order dated 09.06.2016 that a public notice inviting

objection was indeed issued by the Board; and the Board has consciously taken note of the objection filed by the petitioners as also pendency of

the said civil suit and the orders passed therein. In the totality of circumstances, this Court is unable to find any such case of violation of principles

of natural justice that may call for interference in the writ jurisdiction.

11. Significant it is to notice that even while passing the order of mutation, the Board has taken care to state that such mutation by itself does not

confer any right, title or interest and has also provided that mutation will remain subject to the outcome of the revision petition pending in this Court

as also Title Suit No. 2 (H) of 2012 pending in the Court of Munsiff, Shillong. It is clearly provided in the order impugned that,-

The Board deliberated and taking into account the legal opinion by the CBLA, Cantonment Board Shillong and the indemnity bond given by the

donees unanimously resolved and approved mutation pertaining to holding No. 44 JB, Sy. NO. 135/105 within the notified civil area of Shillong

Cantonment in the names of (i) Azaz Ahmed Khan, (ii) Dr. Md. Meraj Khan, (iii) SARTAJ KHAN, (iv) Sakina Khatton, (v) Md. Asif Khan, (vi)

Md. Khalid Khan, (vii) Sheikh Arsad Ali, (viii) Sheikh Akbar Ali, (ix) Sheikh Mohammad Amin from that of 1 Shakeel Ahmed 2. Abdul Rashid.

3. Bilquish Begum 4. Rukksana Begum 5. Aisa Begum 6. Khanda, Begum 7. Shabina Begum alias Sabiha Begum, 8 Shahida Begum 9. Sultana

Begum who has gifted their lease hold right vide Deed of Gift 28.2.2012 registered on 29.2.2012 at the Office of the Sub Registrar Shillong, as the

same does not confer any right, title or interest with condition that the mutation shall be subject to the outcome of the said cases (CRP/15/2016

Mr. Zafar Alam v. Sk Shakeel Ahmed along with M.C (CRP) 7 of 2016 and Title suit No. 2 (H) of 2012 and the parties shall be bound by the

Judgment passed there upon by the court.

12. Thus, even while passing the impugned order of mutation, the Cantonment Board appears to have taken care to safeguard all the related rights

and interests.

13. Apart from the above, the vital and fundamental aspect of the matter remains that in the said civil suit, a foundation is already laid against the

mutation that was proposed at the time of filing of the suit; and the petitioners (the plaintiffs therein) have specifically claimed a declaration to the

effect that no mutation be made on the basis of the Gift Deed in question (relief Clause (iv)). It goes without saying that the petitioners, when

seeking to question the order of mutation, can put forth their challenge in accordance with law and in appropriate proceedings; and for that matter,

they may seek amendment of the plaint of the said civil suit too.

14. This Court would hasten to make it clear that the observations in this order are essentially for the purpose of pointing out that the matter is not

a fit one to be entertained in the writ jurisdiction; and that when the said document of transfer i.e., Gift Deed dated 28.02.2012 is the subject

matter of challenge in the title suit, all the related rights of the parties shall be governed by the final decision of the said Suit.

15. Hence, exercise of writ jurisdiction is declined in this matter; and the petition is dismissed subject, of course, to the observations foregoing.