

CRP 3/2011

BEFORE:

HON'BLE MR JUSTICE K MERUNO
JUDGMENT AND ORDER(CAV)

Heard Mr. Tadu Tamang, learned counsel for the civil revision petitioner. Also heard Mr. Subu Tapin, learned counsel for Respondent No. 1 and Ms. Geeta Deka, learned Addl. Senior Government Advocate for Respondents No. 2 and 3.

2. Mr. Tadu Tamang, learned counsel for the Civil Revision Petitioners, altogether 15 in numbers and residents of Abotani Colony, Itanagar, have made a complaint against Respondent No. 1, who have forcibly encroached upon the Government land, which was being used by the petitioners and other residents of Abotani Colony, Itanagar, as a common passage, for a long time. On the basis of the said complaint, a Notice under Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, was issued upon the Respondent No. 1, by the Estate Officer, Capital Complex, Itanagar. The said Respondent No. 1, however, never responded to the said Notice, but, he being an influential person and also being a police officer, presently, holding the post of Officer-in-Charge, Itanagar Police Station, no further actions were being initiated against him by the Estate Officer. The petitioners then approached this High Court in WP(c) 457(AP)2010 for a direction to the said Estate Officer to dispose of the proceedings drawn against the Respondent No. 1. This Court vide its order dated 07.12.2010 disposed of the said writ petition with the direction to the Estate Officer to dispose of the matter and also enforce the order passed by him and also to stop the construction. However, the Estate Officer neither complied with the orders passed by this Court nor dispose of the said proceedings but kept the proceedings pending, whereby the said Respondent No. 1, in the intervening period, completed his construction. The petitioners, thereafter, witnessing the delay and illegal actions of the Estate Officer and Respondent No. 1, had to again approach this High Court in a contempt proceeding. The contempt petition, was, however, closed by this Court on the basis of a back dated order purported to have been passed by the Estate Officer under Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, by disposing of the proceeding, in question. In the aforesaid facts and circumstances, the petitioners filed a Civil Suit before the learned court below. The learned court below on the basis of 2 preliminary issues raised by the Respondent No. 1/Defendant, disposed of the said Civil Suit, vide order dated 15.02.2011. Being highly aggrieved by order dated 15.02.2011, the petitioners are approaching this High Court by way of filing this Civil Revision Petition. The main grievance of the petitioners is not with the first preliminary issue of res-judicata but with regard to the second preliminary issue pertaining to jurisdiction, which the court below, has, on misconception of provisions of Sections 12 and 19 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, held that the appeal provision has been provided under the said Act and that a civil court has also no jurisdiction to entertain the suit.

3. The Respondent No. 1 has contested this case of the petitioners by filing a detailed and lengthy affidavit-in-opposition consisting of 10 pages. The sum and substance of the affidavit-in-opposition is that the Estate Officer has passed a final order under the provisions of Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, and which Act has provided an appeal under Section 12 of the said Act and without availing the provision of Section 12 of the said Act, a civil suit cannot be filed rather a Civil Court cannot have jurisdiction. Further, under Section 19 of the Act, there is a bar to entertain any suit pertaining to eviction under the provisions of the said Act. Summing up the arguments on behalf of Respondent No. 1, Mr. Subu Tapin, learned counsel, further submits that the learned court below after hearing the parties at length on the two preliminary issues framed and upon perusal of the provision

s of law, as laid down under Sections 12 and 19 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, has rightly rejected and dismissed the civil suit filed by the petitioners and in doing so, the learned court below has not committed any irregularity, illegality or jurisdictional error in dismissing the civil suit of the petitioners and as such, the learned counsel prays that this Hon'ble Court may not interfere with the order dated 15.02.2011 passed by the court below.

4. After hearing both the learned counsels appearing for their respective parties at length, on perusal of their pleadings and the documents relied upon by them as well as Sections 12 and 19 of

the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, this Court is of the confirmed opinion that the only question before this Court is with regard to Sections 12 and 19 of the said Act and whether the court below has misconstrued and misinterpreted the said Sections in its true perspective and in accordance with law or not, in this case. To answer this question, it is seen that, admittedly, the petitioners filed a complaint with the authorities concerned to the extent that the Respondent No. 1 has encroached upon the public approach road by making construction thereon. Pursuant to the said complaint, Notice under Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, was issued upon the Respondent No. 1, who submitted his reply denying all the allegations levelled against him. The Estate Officer, thereafter, conducted a spot verification along with the map. During the spot visit, the petitioners were also present and heard by the Estate Officer, as revealed from the order dated 09.12.2010. The said order dated 09.12.2010 further revealed that the Estate Officer, after verifying the spot and examination of the allotment documents, came to the conclusive opinion that the Respondent No. 1 has not encroached upon any public premises, and therefore, the show-cause Notice issued against him under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, was withdrawn and the application of the petitioners was also rejected on the said ground. It is crystal clear from the order dated 09.12.2010 that the public premises has not been encroached upon by Respondent No. 1, and therefore, the said show-cause Notice was withdrawn and the complaint of encroachment on public premises by Respondent No. 1, also came to an end. When the question of encroachment under the said Act has been established that no encroachment has been made and there is no other matter pending between the parties, under the said Act, the question of filing any appeal under Section 12 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, therefore, does not arise. Further also, the provisions of Section 19 of the Act, is also not applicable to the present case in view of sub-Section 1 of Section 19 of the said Act which stipulates that \no Court shall have jurisdiction to entertain any suit or proceedings in respect of - (i) the eviction of any person who has any unauthorized occupation of any public premises;\ since vide order dated 09.12.2010, the Estate Officer has concluded that there is no encroachment under the said Act, therefore, no suit or proceeding in respect of eviction of any person, as contained and stipulated under Sub-section 1 of Section 19, is pending under the said Act, as such, there is no bar for a Civil Court to entertain any civil suit. It may also be pertinent to note herein that the said order dated 09.12.2010 is not under challenge in this Civil Revision Petition.

5. After giving my anxious considerations in the whole matter in its total perspective and in view of what have been stated above, this Court is of the confirmed opinion that the learned court below has misconstrued and misinterpreted the provisions of Sections 12 and 19 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003 and therefore, the findings of the court below with regard to second preliminary issue regarding jurisdiction contained in its order dated 15.02.2011 is hereby quashed and set aside. With regard to first issue as provided under Section 11 of the Code of Civil Procedure

e, 1908, and the findings of the court below that the suit can be tried and decided on merit, the same is also upheld by this Court and in this view of the matter, this matter is remanded back to the court below and the matter be decided on its own merit in accordance with law. This Civil Revision Petition is allowed to the extent indicated above and in the facts and circumstances of the case, no order as to costs is ordered or passed.

6. With the above observations and directions, this civil revision petition stands disposed of.

JUDGE

Bikash