

THE HIGH COURT OF MEGHALAYA

WP(C) No. 78 of 2013

Shri. Banaphrang Malngiang, Resident of Kench's Trace, Shillong, East Khasi Hills District, Meghalaya.

....Petitioner

-Versus-

1. The State of Meghalaya, through the Principal Secretary, Revenue & Disaster Management Department, Government of Meghalaya, Shillong.
2. The Deputy Commissioner, East Khasi Hills District, Shillong.
3. The Additional Deputy Commissioner (Revenue), East Khasi Hills District, Shilling.
4. The Additional Director of Surveys, Government of Meghalaya, Lower Lachumiere, Shillong.
5. Smti. Pershaya Gill Tariang, Resident of Kench's Trace, Shillong, East Khasi Hills District, Meghalaya.

....Respondents

Mr. H.S. Thangkhiew, Sr. Advocate, Mr. L.Khyriem, Advocate, Mr. P.Nongbri, Advocate, Mr. N.Mozika, Advocate, Mr. L.Byrsat, Advocate, Mr. P.N.Nongbri, Advocate, Mr. N.F.Kharshiing, Advocate, Ms. A.Thangkhiew, Advocate, Mr. W.Jyrwa, Advocate, Mr. C.Khyriem, Advocate, present for the petitioner.

Mr. N.D.Chullai, Sr. Govt. Advocate and Mrs. S.Bhattacharjee, Govt. Advocate present for respondents No. 1 to 4.

Mr. K.Paul, Advocate for respondent No. 5.

Date of Judgment and Order 23rd October, 2013.

JUDGEMENT AND ORDER

HON'BLE PRAFULLA. C. PANT, CHIEF JUSTICE.

Heard.

By means of the writ petition, the writ petitioner has sought writ in the nature of mandamus directing the survey authority of the State of Meghalaya to demarcate the disputed footpath in plot No. KT/Q (388) in Kench's Trace, Shillong. The writ petitioner has further sought mandamus directing the respondents No. 3 and 4 to restore the possession of the footpath leading to the petitioner's property which is alleged to have been encroached by respondent No. 5.

2. It is pleaded by the writ petitioner that he is the owner of plot No. KT/Q (388) situated in Kench's Trace, Shillong. The access to the said property is through a 4 feet wide footpath on the eastern side leading to the PWD road. It is further alleged by the writ petitioner that respondent No. 5 has encroached upon the footpath in question. It is also pleaded that the respondent No. 3 was approached for demarcation, by the writ petitioner under the Assam Land and Revenue Regulation 1886, but no demarcation could be done.

3. Respondents have filed their counter affidavits stating that the dispute relating to the footpath land between the petitioner and respondent No. 5 (private respondent) cannot be examined by this Court in its writ jurisdiction. It is also stated in the counter affidavit filed on behalf of respondents No. 1 to 4 that the respondent No. 5 did not cooperate with the demarcation.

4. As far as the relief relating to delivery of possession of the land in question from respondent No. 5 (private party) is concerned, the factual dispute regarding encroachment by a private party cannot be examined by this Court in its writ

jurisdiction, and the writ petitioner has an alternative and appropriate remedy to file suit before the Civil Court for the same.

5. At this stage, the learned counsel for the writ petitioner states that he does not press on relief No. 2 i.e. restoration of possession of the land in question from respondent No. 5 (private party), and also submitted that a direction may be issued to the concerned Revenue authority to demarcate the plot under Assam land and Revenue Regulation, 1886 applicable to the State of Meghalaya.

6. From the papers and records, it appears that earlier also the writ petitioner had moved to the authority concerned for demarcation of the plot which could not be done allegedly for the reason that respondent No. 5 did not cooperate.

7. Having heard the learned counsel for the parties, and for the reasons discussed above, this writ petition is disposed of with the following directions:

- (i) As far as relief No. 1 mentioned in the writ petition is concerned, it is directed that respondent No. 4 may get the demarcation done after giving notice to the parties concerned within a reasonable time preferably within 3(three) months of the plot No. KT/Q (388) in Kench's Trace, Shillong under the Assam Land and Revenue Regulation, 1886, if the writ petitioner makes fresh application for the same within a period of 15(fifteen) days from today
- (ii) As far as relief No. 2 is concerned, the writ petition is dismissed with the observation that the writ petitioner is at liberty to seek remedy available to him under the law before the Civil Court.

CHIEF JUSTICE

S.Rynjah