

# THE HIGH COURT OF MEGHALAYA SHILLONG

**WP(C) No. 213/2015**

Shri Rana Bhusan Deb  
S/o (L) Ramesh Chandra Deb  
R/o Upper Jail Road, Shillong,  
District East Khasi Hills,  
Meghalaya

**::: Petitioner**

-V-

1. State of Meghalaya represented by  
the Secretary of the Urban Development  
to the Government of Meghalaya.

2. The Secretary  
Meghalaya Urban Development Authority,  
East Khasi Hills District  
Shillong, Meghalaya.

3. The Deputy Commissioner,  
East Khasi Hills District,  
Shillong, Meghalaya.

4. The Chief Executive Officer,  
Shillong Municipal Board  
East Khasi Hills District  
Shillong, Meghalaya.

5. The Chairman  
Meghalaya Board of Revenue  
Shillong, Meghalaya

**::: Respondents**

**BEFORE**

**THE HON'BLE MR. JUSTICE UMA NATH SINGH,  
CHIEF JUSTICE**

**THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Petitioner : Mr.B. Deb, Adv

For the Respondents : Mr. N.D.Chullai, Sr. GA  
Mr. S.S.Gupta, Adv

Date of hearing : **26.08.2015**

Date of Judgment & Order : **26.08.2015**

## **Judgment and Order (Oral)**

***(UN Singh, CJ)***

We have heard learned counsel for the petitioner. It appears from the order dated 07.12.1985 passed by the then Deputy Commissioner that the petitioner happened to be occupant of the land since 1950 and for that reason, Shillong Municipal Board was back by the letter dated 12.04.1969 (Annexure P-I) decided to consider the request of the petitioner for settlement of land measuring 176 sq.ft. at lower Jail Road Bazar, Shillong, on the following terms and conditions:

### ***“TERMS AND CONDITIONS***

***1) The rent of the plot has been assessed at Rs. 24.00 p.m. payable in advance in the last week of every month.***

***2) The assessed premium (salami) of Rs. 200.00 together with the entire arrear rent amounting to Rs. 864.00 calculated up to 31<sup>st</sup> March 1969 from the date of occupation subject to maximum period to 3 years, is payable immediately.***

***3) Your present temporary shed shall be dismantled and reconstructed at your cost according to the design and specification approved by the Board and all projection and hanging structures over the streamlet behind your shed should be removed within three months from the 15<sup>th</sup> of April 1969, and the site kept decent; neat and clean.***

***4) Your stall shall be not less than 6 ft. away from the surfaced edge or the main road; this 6 ft. breadth and the entire length of the land in your occupation in front of your stall shall be metal led and cement plastered according to standard specification at your cost.***

***5) If you agree to the above terms please contact the undersigned as early as possible but in no case later than 15 days from the date of this letter with the entire amount noted above. After receipt of the full amount a lease, on usual terms, which will have effect from the 1<sup>st</sup> April 1969 will be issued.***

***6) In case you do not fulfill the above conditions and come to terms within two weeks from the date of this letter you will continue to be treated as a trespasser on the aforesaid plot of land and legal action pending against you shall be proceeded with.***

***7) The stall, under no circumstance shall be used for residential purpose.***

***Chairman  
Shillong Municipal Board."***

2. Subsequently, by the Lease Deed dated 31.03.1970 (Annexure P-3), the petitioner through predecessor-in-interest was allowed to occupy and construct a shop stall measuring 11 ft. x 18 ft. on the land on question namely, Plot No. 18. The Lease Deed is also reproduced for ready reference:

**"LEASE**

***The Shillong Municipal Board grants upto you, the lease and authorizes you to occupy a plot of land measuring 11" x 18" = 176 sq. ft and being numbered as Plot No. : 18 in the record of the Shillong Municipal Board, situated at Lower Jail Road Bazar area and popularly known as Polo Bazar and also authorizes you to construct a shop stall at your own expense according to the plan and specifications of the Shillong Municipal Board and to carry on business thereon for a period of one year commencing from the date of the execution of the Kabuliyat and to observe comply with and strictly fulfill the terms and conditions prescribed by the Shillong Municipal Board as may from time to time be amended by the Board at a meeting and appearing herein below:-***

- 1) That the lessee shall pay Rs. 24/- (Rupees twenty four) only monthly in advance in the first week of each month from the date of the execution of the Kabuliyat for the use and occupation of the aforesaid plot of land and the stall built thereon.***
- 2) That the overall control and superintendence of the said plot of land and the stall thereon shall remain vested in the Board whose duly authorized officer shall at all reasonable hours be entitled to***

*inspect the said stall about its bonafide user, its condition and cleanliness.*

*3) That the lessee shall not be entitled to allow any other person to occupy the premises in his stead or to use any part thereof to transfer, sub-let, sell, Mortgage or encumber it in any other way.*

*4) That the lessee shall have no interest in the said plot of land nor he be deemed to have exclusive possession thereof. Lease shall not be hereditary but on production of a succession certificate the Board may consider cases individually.*

*5) That the Shillong Municipality Board reserves the right to extend the period of lease.*

*Sd-"*

3. It would also appear from the order of the then Deputy Commissioner that the Shillong Municipal Board was not a competent authority, therefore, the matter was referred to the government for clarification and the government clarified that the Shillong Municipal Board has no right and authority to settle the land with private parties, even if the government land is situated within the municipal limit. Thus, according to the Deputy Commissioner, the petitioner was found to be an encroacher and thus the Deputy Commissioner has the power to issue eviction notice. Hence, the eviction notice dated 27.04.1976 (Annexure P-5), was issued. The said notice is given below:

***"THE DEPUTY COMMISSIONER::KHASI HILLS***

***DISTRICT:: SHILLONG***

***NOTICE***

***No. Ec. 9/76/2***

***Dated Shillong, the 27<sup>th</sup> April 1976***

***Whereas it has been brought to the notice of the undersigned that Shri/Smti Ramesh Ch. Deb and 18 others have raised structures on Govt. land located at Polo Bazar, Shillong more specifically described in the***

*Scheduled below without any permission from the competent authority, thereby causing encroachment.*

*The owners/occupants of the said structures are hereby required under Sub-Rule 3(a) of the Settlement Rules 18 of the Meghalaya Land and Revenue Regulation (Application and Amendment) Act, 1972 to remove the said structures immediately and to vacate the land specified in this notice within 15 days from the date of publication of the notice, failing which necessary steps will be taken to evict the persons/occupants without any further notice. Any buildings, houses, fences, etc. which have not been removed in accordance with this notice shall be confiscated to the Government.*

**SCHEDULE OF THE LAND ENCROACHED**  
**(BLOCK 'A (2)')**

**LOCATION : POLO BAZAR, SHILLONG MEGHALAYA**

**BOUNDARIES:-**

**NORTH :- Road leading to Ganesh Das Hospital.**

**EAST :- P.W.D. Road leading to Oakland and path to Jail Road.**

**WEST :- Natural Drain**

**SOUTH :- Natural Drain**

**Sd/-**  
**Deputy Commissioner,**  
**Khasi Hills District, Shillong."**

4. However, the Deputy Commissioner took a considerate view in the background that the petitioner had stayed over the land for about 25 years and there was a scope to have a bonafide belief that he has obtained permission and allotment from the competent authority and that the authorities were sitting in silence. It was therefore, held by the Deputy Commissioner that the said plot No. 18 measuring 176 sq.ft. in Polo Bazar be settled with Rana Bhusan Deb, petitioner herein. Now the petitioner appears to be aggrieved by the notice under Section 30-B of the Town and Country Planning Act, 2004 (as amended) dated 29.07.2015. The said letter is also given herein below:

**“MEGHALAYA URBAN DEVELOPMENT AUTHORITY  
SHILLONG**

*No. MUDA.BP/2454/2014-15/180*

*Dated Shillong, th2 19<sup>th</sup> July, 2015*

**To,**

**Shri Rana Bhusan Deb  
Polo**

**Subject: NOTICE UNDER Section 30-B of the Town and Country Planning Act, 2004 (As amended).**

**WHEREAS it is found from your reply dated 8 - 4 - 15 to Meghalaya Urban Development Authority Notice No. MUDA.BP/2454/2014-15/G- /6 dated 31 - 3 - 15 that you have not obtained permission for construction of your building/structure located at Polo from the competent authority.**

**WHEREAS construction of building/structure in Municipal Areas without a written permission/sanction from the Chief Executive Officer, Shillong Municipal Board, Shillong/Meghalaya Urban Development Authority, Shillong is illegal.**

**WHEREAS such illegal construction without proper planning/approval/permission from the competent Authority has created nuisance and caused pollution to the surrounding including Wahumkhrah/Umshyrpi river.**

**In exercise of Section 30 - B of the Town and Country Planning Act, 2014 (As Amended), you are hereby directed to dismantle the illegal building/structure constructed by you at Polo on or before 29<sup>th</sup> August, 2015, failing which necessary action as per law shall be taken against you.**

**Given under my hand and seal on the 29<sup>th</sup> day of July, 2015.**

**Herein fail not.**

**Secretary  
Meghalaya Urban Development  
Authority, Shillong.”**

5. It appears that, as the petitioner failed to obtain permission for construction of building structure on Plot No. 18, Polo Market from the competent authority and is operating from a temporary structure which creates nuisance and causes pollution to surrounding including Wahumkhrah/Umshyrpi rivers, he has been directed to dismantle that structure on or before 29.08.2015, failing which necessary action is to be taken in accordance with law. Needless to say, that when the offer to stay on the land in question was given vide Annexure P-I, dated 12.04.1969 there was a condition (condition No. 3) therein that the existing temporary shed was to be dismantled and reconstructed at the cost of the petitioner as per the design and specifications approved by the Municipal Board and the structure and all projections and hanging structures over the streamlet behind the shed were to be removed, and the premises is to be maintained decent, neat and clean. As the petitioner appears to have failed to comply with the condition, despite having stayed for such a long period, we do not find any infirmity in the notice issued by the Meghalaya Urban Development Authority, Shillong. However, as the petitioner is said to suffer from paralysis and lacks awareness to promptly take recourse to law and that in 1976 the then Deputy Commissioner, despite holding him to be an encroacher took a lenient view, we are inclined to extend the time period up to 15.09.2015. We may also remind that in similar matters being WP(C) No. 200/2010, WP(C) No. 201/2010, WP(C) No. 202/2010, WP(C) No. 210/2010, WP(C) No. 211/2010, WP(C) No. 213/2010, WP(C) No. 214/2010, WP(C) No. 164/2012, WP(C) No. 165/2012, WP(C) No. 135/2013, WP(C) No. 136/2013, WP(C) No. 137/2013, WP(C) No. 138/2013, WP(C) No. 139/2013, WP(C) No. 140/2013, WP(C) No. 141/2013, WP(C) No. 142/2013, WP(C) No. 143/2013, WP(C) No. 144/2013, WP(C) No. 145/2013, WP(C) No. 146/2013, WP(C) No. 147/2013, WP(C) No. 148/2013, WP(C) No. 149/2013, WP(C) No. 150/2013, WP(C) No. 151/2013, WP(C) No. 152/2013, WP(C) No. 153/2013 and WP(C) No. 154/2013, under the order of one of us (**Hon'ble Mr. TNK Singh, J.**) sitting single, similarly situated shops in Polo and Jail

Road markets have been dismantled and demolished. It also appears that the Special Leave Petitions filed against those orders were also dismissed by the Supreme Court. Thus, in view of the aforesaid facts, we direct the petitioner as well as the authorities to act promptly to demolish the structure and follow the procedure for grant of permission in accordance with law. The writ petition is disposed of with the foregoing directions and observations.

**JUDGE**

**CHIEF JUSTICE**

*Sylvana*