

Heard Mr. C. Modi, learned counsel appearing for the petitioner in both the writ petitions.

Also heard Mr. D. Soki, learned Addl. Sr. Govt. Advocate for the state respondent Nos. 1, 2, 3 & 4 and Mr. T. Garam, learned counsel appearing for respondent No. 5.

2. The challenge in WP(C)689(AP)2017 is the order dated 18.09.2017 passed by the Extra Assistant Commissioner Cum-Estate Officer(EAC/EO), Capital Complex Itanagar in case No. EAC/ITA/EO/APPP E-ACT,2003/2017(RPT)02. By the said order, the petitioner was directed to demolish the wall erected by him on the footpath/Colon road, leading towards the Community Hall and Government Primary School, Hill top, on or before 25.09.2017. It was further directed that on expiry of the deadline, the Estate Officer, Itanagar would carry out the eviction of the said wall constructed by the petitioner at his own cost. However, the petitioner was granted liberty to go for an appeal. Hence, the petitioner has prayed for quashing of the said order and for prohibiting the State respondents to evict the petitioner's RCC compound wall. Thereafter, the petitioner preferred an appeal before the Deputy Commissioner, Capital Complex, Itanagar which was registered as D.C/ICC/JUD-107/2017 and the said Deputy Commissioner, by order dated 06.11.17, ordered that the petitioner herein shall cause self eviction on his unauthorized structure within 15 days and on his failure, the structure would be evicted by the EAC cum EO Itanagar. However, the petitioner was granted liberty to move an application for demarcation of his plot of land only after restoring status quo ante, post demolition of his freshly raised wall and the next date of hearing was fixed on 15.12.2017.

3. The said order dated 15.12.2017 is the subject matter of challenge in WP(C)778(AP)17. This Court by order dated 29.11.2017, passed an interim order to the effect that if the petitioner has to demolish his structure within the stipulated period and thereafter participate in the hearing, the hearing would be rendered infructuous and therefore, as an interim measure, the order dated 16.11.2017, whereby the petitioner was directed to demolish unauthorized construction, was stayed.

4. The learned counsel for the petitioner by referring to the statements made in the writ petitions has referred to the photographs enclosed in to his additional affidavit and it is projected that the photographs would go to show that no road existed on the land in question and therefore, there was no evidence of encroachment by the petitioner on unauthorized occupation of the public path.

5. It is further submitted that the relevant documents produced by him were not carefully perused by the appellate authority and he was not given the proper opportunity of hearing. It is also submitted that as per the case projected by him before the appellate authority, it was the Doordarshan Kendra who had constructed massive wall and therefore, if there was any blockade to the approach road, it was not caused by the petitioner.

6. It is further submitted that allegation made by the private respondent No. 5 was merely to harass the petitioner because there was no land which could be accessed by the imaginary approach road. It is further submitted that Dokum Colony, where the allegation of encroachment is made, has a Welfare Committee of residents and there was no complaint from any quarter, except from the private respondent No. 5, who was pursuing the matter for his own private interest and there was no public interest involved. Therefore, the said committee had not made any allegation of encroachment by the petitioner, as such, there was no real grievance for which the State should be prosecuting him and to direct the petitioner for eviction under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003. It is submitted that the petitioner has materials to show that he is not guilty of any encroachment and therefore, he may be permitted to participate in the fresh hearing under the said Act before being evicted from

m his plot of land. It is further submitted that in so far as the private respondent No. 5 is concerned, the petitioner has already lodged a criminal complaint, before the competent authority for committing forgery and therefore, as the respondent No.5 is guilty of committing of forgery, no action should be taken against the petitioner on the basis of complaint made by the said respondent.

7. The learned State counsel as well as the learned counsel for the private No. 5 have made their submissions at length. Having perused the materials available on record, it is noted that in the Land Allotment Passbook, the issuing authority has mentioned that the area of land allocated to the petitioner measures 20x25= 500 Sq meters, which is located at ESS Sector Itanagar/Dokum Colony, and the said land is said to be bounded as follows- North: Internal Road, South: Plot of Nguri Bijohn, East: Approach/Katcha and in the West: Sloping/Green area self occupied. However, in paragraph 2 of WP(C)778(AP)2017, the petitioner has described the allotted plot of land to be bounded in North: slope area, South: slope area, East: Slope area, West: Private Plot. Therefore, this description of land is not in consonance with the description of the boundary given in the land passbook.

8. On perusal of the order dated 16.11.2017, the appellate authority, has taken note of the description of the boundary given in the Land Allotment Passbook and therefore, by holding that based on the demarcation made by the Land Management Branch assuming that the Doordarshan Kendra wall is correct then the approach footpath road needed to be there and it was further held that as per the sketch map, there was a provision of footpath of 3m breadth in front side by maintaining a distance of 4m from the centre of the footpath to the plot of the petitioner and on the back side, keeping footpath of 2m breadth by maintaining a distance of 1.5m from the centre of the footpath to the petitioner's plot, the learned Deputy Commissioner had arrived at a finding that the plea of Doordarshan Kendra encroaching the land was not authentic and the plea was only intended to delay the process of law and accordingly, the learned appellate authority held that the petitioner should be evicted from the unauthorized land.

9. It is submitted by the learned State counsel, that the State respondents in paragraph 11 of their affidavit-in-opposition filed in WP(C)778(AP)2017, had mentioned that although speaking orders were passed for following due process of law by issuing the eviction orders, the next date was fixed by the Court only for ensuring compliance of the eviction orders.

10. According to this Court, the explanation is quite plausible and acceptable. Under the circumstances, having perused the contents of the writ petition, this Court does not find a positive statement by the petitioner that he has not occupied any land in excess of the land allotted to him as per the Land Allotment Passbook. Therefore, this court is of the considered opinion that the writ petitioner has not approached this Court disclosing the correct state of facts, rather, it is seen that by giving an incorrect description of the allotted land, the petitioner has sought to project a false picture before this Court in this petition as if in the periphery of the land allotted to him, there was no approach road. This is found to be a case of not only suppression of material facts but it also amounts to presentation of the writ petition on the basis of incorrect facts. Therefore, the Court finds that the petitioner is guilty of making a false statement before this Court because description of land given in paragraph 2 of WP(C)778(AP)2017 is contrary to the land description given in his Land Allotment Passbook. This Court exercising the extraordinary jurisdiction of the writ Court cannot sit on an appeal in the order dated 16.11.2017, passed by the learned appellate authority. On judicious reading of the order dated 16.11.2017, no lacuna is found in the decision making process as well as procedure adopted by the said authority in arriving at his considered decision.

11. Under these circumstances, having found that the approach road mentioned in North and South boundary is not visually seen in the photograph filed by the petitioner which is annexed with the affidavit-in-reply as well as having found the petitioner as guilty of making false statement, it is held that the petitioner has no merit in this case, as such this writ petition stands dismissed. The interim order passed earlier on 29.11.2017 in WP(C)778(AP)2017, as extended

from time to time, stands vacated. Similarly, the prohibitory order dated 04.10.2017 in WP(C)689(AP)2017, as extended from time to time, also stands vacated. The parties are left to bear their own costs.