

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 392 of 2017

Date of Order: 31.01.2020

Smti. Karmit Sari

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Barua, Adv.

For the Respondent(s) : Mr. H. Abraham, GA for R No. 1-4.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

Oral:

1. The case of the petitioner is that a portion of the petitioner's land situated at "Sah Psein" Mukhla, West Jaintia Hills District, Meghalaya has been forcibly occupied by the State Respondents and alleging that the taking over the land of the petitioner by the State Govt. being highly illegal, a prayer has been made in the writ petition for a direction to issue to the State Respondents to revert the possession of the land occupied in "Sah Psein" Mukhla, West Jaintia Hills District to the petitioner and also to direct the State Govt. to follow the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in acquiring the land of the petitioner.

2. I have heard Mr. A. Barua, learned counsel for the petitioner and Mr. H. Abraham, learned GA for the respondents No. 1 to 4.

3. Mr. A. Barua, learned counsel for the petitioner submits that the petitioner is aggrieved by the action of the respondents by which the land of the petitioner has been occupied by way of encroachment without payment of any compensation, on the premise that the land was part of the land acquired in the year 2011 for the 3rd Battalion of the Meghalaya Police. Learned counsel for the petitioner asserts that the ownership of the land of the petitioner being ancestral is substantiated by a certificate issued by the Headman of Mukhla Nongrim, Thadlaskein, West Jaintia Hills District, Meghalaya dated 06.07.2017 and 08.12.2017, showing the continuous possession of the petitioner. Learned counsel submits that objections had been raised to the fencing work that was being carried out in the said acquired land and the Respondents No. 3 and 4 had also issued letters to the Mukhla Dorbar Pyllun, Mukhla to be present on the 06.08.2014 and 29.08.2014 regarding the objection raised by the petitioner and letters were issued to the son of the petitioner but the issue stood unresolved at that level.

4. Learned counsel submits that however the basic grievance is that the land of the petitioner which is adjacent to Plot No. 6 of the acquired land has been taken over without due process of law. He further submits that to establish this fact, he had approached the Jaintia Hills Autonomous District Council, Jowai for issuance of a land holding certificate, to enable the petitioner to confirm the location and ownership of the land, but though the survey was sought to be conducted on the petitioner's application by the Revenue Authority of the District Council, the same could not be concluded as the respondents 3 and 4 resisted the same.

5. Learned counsel submits that in this regard Misc. Case No. 241 of 2019 was filed praying for necessary orders to direct the respondent No. 4 not to obstruct the survey of the land to be carried out by the Jaintia Hills Autonomous District Council, Jowai. He further submits that in view of the stalemate situation nothing could proceed till date and unless the Court interferes and issues appropriate directions, the petitioner will not be able to establish her rights nor identify the land which the petitioner claims has been wrongfully taken possession of without compensation being paid.

6. Mr. H. Abraham, learned GA for the respondent in reply to the submissions made by the learned counsel for the petitioner submits that the entire acquisition process which had been initiated by the Deputy Commissioner, West Jaintia Hills, Jowai on the request of the requiring department had been carried as per due process of law.

7. Learned counsel submits that a joint spot inspection was conducted by the Deputy Commissioner, Jowai on 08.02.2011, in the presence of all the concerned authorities including Shri. Shirin Sari, power attorney holder of all the land owners who represented them during the field inspection. He submits thereafter in pursuance to the said exercise, survey was conducted by the Office of the Directorate of Land Records and Survey Meghalaya in the presence of the Assistant Commandant, 3rd M.L.P Battalion as per the boundaries of the plot, which were indicated by Shri. Shirin Sari who was the power attorney holder. Learned counsel then to substantiate his submissions in this regard draws the attention of this Court to the Map which is annexed at Annexure – 1, showing the factum of survey and demarcation of the entire plot in question.

8. Mr. H. Abraham, learned GA for the respondent then submits that the petitioner in the absence of any cogent proof or document to establish her claim that her land had been encroached upon by the respondents, cannot be favoured with any relief, inasmuch as, the relief sought is not based on any concrete right that the petitioner alleges to possess. With regard, to the dispute as raised by the petitioner concerning to Plot No. 10 which the learned counsel for the petitioner submitted was not part of the total 9 Plots acquired, learned counsel has read out para 11 of the affidaivit-in-opposition which has adequately explained the same.

9. He further submits that the question of re-surveying of the land unilaterally, as sought to be done by the petitioner does not arise and the petitioner also cannot pray for the same, without first establishing her right. In conclusion he submits that the case being without any merit and involving disputed question of the facts, the same should be dismissed.

10. I have heard learned counsels for the parties, considered their submissions and examined the materials on record. The basic grievance of the

petitioner is that over and above the acquired plot or plots of land which has been demarcated by the authorities and agreed to by the attorney holder, a portion of her land has also been wrongly included for which no compensation has been afforded. From what can be discerned from the submissions as made, the prayer of the writ petitioner are for directions for payment of adequate compensation for the alleged piece of land which has been occupied by the respondents without payment of compensation.

11. On examination of records, it is seen that this Court by order dated 29.12.2017 had issued notice to the respondents and also passed interim directions specifically with regard to Plot No. 10, of the acquired land directing the respondents not to enter the same or construct any boundary wall till the next date. However, it is also noted, that after the order being renewed for two or three occasions, the same had stood lapsed after 29.06. 2018 when this court no longer renewed the same nor was any prayer made by the petitioner for renewal.

12. It is also noted, in the proceedings that this Court had on the prayer of the petitioner commencing from 26.03.2019 afforded numerous opportunities for filing of an affidavit to bring on record the documents issued by a competent authority to establish the fact that indeed, the allegation as made by the petitioner were correct and that a portion of her land which does not fall within the acquired part is being illegally occupied by the respondents. The said documents were never produced and when this Court allowed the learned counsel for the petitioner again some more time to furnish the same, Misc. case No. 241 of 2019 came to be filed by the petitioner, seeking directions from this Court to direct the respondent No. 4, not to cause any obstruction in the process of land survey to be carried out by the officials of Jaintia Hills Autonomous District Council, Jowai to determine the land of the petitioner.

13. On examination of the facts and circumstances of the case as they are situated in the back drop of the prayers made by the petitioner in the main petition and in the Miscellaneous applications, it is noted that though, ample opportunity has been afforded to the petitioner to produce material to establish her case, the same could not be fulfilled and the instant matter has been lingering on.

14. It is also relevant to note that in the averments and arguments the learned counsel for the petitioner has raised the issue of Plot No. 10 and submitted that interim orders were operating against the respondents, in view of the order dated 29.12.2017 as referred to earlier, but in the final arguments has submitted that it is not Plot No. 10 but the dispute concerns Plot No. 6 of the acquired land. These averments have created a cloud of doubt over the actual claims of the petitioner if any and it is not possible for this court to enter into or adjudicate especially in a proceeding under Article 226 of the Constitution of India.

15. The very fact as to whether any part of the petitioner land had been illegally occupied by the respondents also could not be conclusively established by the petitioner as she has failed to produce any materials before the court to support this contention. The petitioner instead has been seeking to get a survey conducted by the Jaintia Hills District Council to somehow maintain her claim before this court and not render it useless. In her inability to provide any cogent proof or a reliable document, the petitioner instead has sought other reliefs and directions as to direct the Respondent No. 4, not to cause obstruction to a survey when in fact this Court had never ordered for any survey or re survey of the plot and the same was initiated by the petitioner herself. Apart from these aspects, the very nature of the claim of the petitioner being based on disputed questions of facts which hit at the very foundation of her case, the same cannot be gone into in a writ proceeding.

16. For the foregoing facts and circumstances and view of the contrary stand of the petitioner and the disputed question of the facts that has been raised, this petition deserves no further consideration and accordingly stands dismissed.

17. No order as to costs.

Judge

Meghalaya
31.01.2020
"D.Thabak-PS"