

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA**  
**MIZORAM AND ARUNACHAL PRADESH)**  
**ITANAGAR PERMANENT BENCH**  
**NAHARLAGUN**

Appeal from  
Writ Petition (Civil)

WPC) No...58... (AP) 2011

Shri Jagm Jaru.

Appellant  
Petitioner

-Versus-

The State of AP & Ors.

Respondent  
Opposite Party

Counsel for the Appellant  
Petitioner

M. Perlin.  
T. Loriale.  
R. Sabi.  
J. Zering.  
C. Gunsga

Counsel for the Respondent  
Opposite Party

GA (AP),  
MR K. Jini Leaned SC (LM)  
MR G. Twak  
" J. Likha  
" L. Ram } Respondent No-6

Noting by Officer or Advocate	Serial No.	Date	Office,note,reports,orders or Proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF :-

1. Shri Tagru Taru  
S/o Tagru Talo  
Vill:- Gamba,  
PO: -Tali,

Kurung Kumey, District

Arunachal Pradesh and

Presently residing at Barapani

Naharlagun. PO:- Naharlagun.

District:- Papum pare

Arunachal Pradesh

2. Shri. Hibu Chey,

S/o Shri Hibu Dolley

Village:- Hong, PO:- Ziro

Lower Subansiri District

And presently residing at Barapani

Naharlagun District:- Papum pare.

Petitioners

Common cause of action

-Versus-

1. State of Arunachal Pradesh represented through Chief Secretary Govt. of Arunachal Pradesh, Itanagar.

2. The land department represented through secretary of land management Govt. of Arunachal Pradesh, Itanagar.

3. Director of land management, Govt. of Arunachal Pradesh

4. Director of Tourism, Govt. of Arunachal Pradesh, Itanagar.

5. Deputy Commissioner, capital complex, Naharlagun.

\* Impleaded as Respondent NO. 6  
V.O.D 08.05.2014 passed  
in MC(WP) 46/2014.

\* 6. Shri. Malin Tanya Tarch, R/o Takar Colony  
Naharlagun, PO & PS: Naharlagun, Papumpare Dist, AP

FIR

**WP (C) 58 (AP) 2011**

**:::BEFORE:::**

**HON'BLE (MR) JUSTICE A M BUJOR BARUA**

**24.01.2017**

Heard Mr. M. Pertin, learned senior counsel appearing for the petitioners and also heard Ms. A. Mize, learned Additional Senior Government Advocate appearing for the State respondent Nos. 1, 2 & 4, 5.

Notice has been served and none appears on behalf of the respondent No. 6, although the office note dated 12.06.2014, shows that Mr. G. Tarak, had entered appearance on behalf of the respondent No. 6 and they had filed their affidavit-in-opposition.

Be that as it may be, this Court while passing this order do not propose to pass any adverse order against the respondent No. 6. It is deemed appropriate that the matter can be proceeded in the absence of the learned counsel for the respondent No. 6.

The petitioner was allotted a plot of land measuring 500 sq mtr by the order of the Director of Land Management, Government of Arunachal Pradesh, Itanagar dated 22.06.2006. It is stated that the approval was granted to 78(seventy eight) other different private individuals in the Capital Complex for a lease for a period of 30(thirty) years subject to the payment of land premium and annual lease rent as fixed by the Government.

It is stated that amongst the aforesaid 78(seventy eight) private individuals, the petitioner is also one of them who was allotted 500 sq mtr of land. After allotment of land, the petitioner was issued Land Allotment Pass Book bearing No.NLG-10/286/2006, dated 19.02.2006.

Accordingly, the petitioner has been paying the required land revenue and premium for the plot of land allotted to him and photocopies of the land payment receipt are available in page 26 of the

writ petition. It is stated that accordingly, the petitioner continued to pay the land revenue to the year 2011.

In the meantime, the petitioner came to know that his allotted land was being encroached by the respondent No. 6 of the Rural Department and had constructed a house in the land of the petitioner by claiming himself to be a staff of the Tourism Department. Upon protest, the respondent No. 6 informed the petitioner that the land which has been allotted in favour of the petitioner had already been cancelled by the Government.

Accordingly, the petitioner obtained the necessary information and came to know that the land that was allotted to them on 22.06.2006 had been cancelled by the order of the Directorate of Land Management dated 30.07.2007.

In the aforesaid circumstances, this petition had been filed with a prayer that the impugned order of cancellation dated 30.07.2007, be set aside and a direction be given for allotment of an alternative plot of land.

Ms. A. Mize, learned counsel appearing for the respondent authorities on the other hand, submits that the land which was allotted to the petitioner in the year 2006 was in fact already allotted to the Tourism Department in the year 1995. The said land having been allotted to the Tourism department in the year 1995, the same plot of land could not have been allotted to the petitioner in the year 2006. Hence, it is submitted that the same is sufficient enough to justify the cancellation of the allotment made in favour of the petitioner. It is submitted that the aforesaid cancellation was made by the Land Management Department upon the complaint received from the Director of Tourism that the land that was earlier allotted in their favour had been allotted to the petitioner.

But on the other hand, Mr. M. Pertin, learned senior counsel appearing for the petitioner submits that although the impugned order

of cancellation dated 30.07.2007, may have been passed, but the same was made behind the back of the petitioner and without serving him with any copy of the same and nor the petitioner was given any opportunity of being heard before the impugned order of cancellation was passed.

It is the contention of Mr. M. Pertin, learned senior counsel appearing for the petitioner that having been duly allotted with a plot of land and the petitioner having been paying land revenue and premium, legal right had accrued to the petitioner to continue with his allotment. In the event, the department is of the view that the said allotment is to be cancelled, if the petitioner is entitled at least to notify and then an opportunity of hearing.

Submissions have also been made that against the impugned order of cancellation a provision of appeal is available under Section 83 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000.

On the other hand, Mr. M. Pertin learned senior counsel appearing for the petitioner submits that while the allotment of land was made in favour of the petitioner along with several other persons, but similar cancellations had not been made against the allotment made in respect of those other persons. In this respect, Mr. Pertin submits that the petitioner has been discriminated.

Ms. Mize, learned counsel appearing for the State respondents in this aspect submits that at the time of the cancellation of allotment out of the two other persons who were given allotment along with the petitioner, the allotment in respect of one of person had also been cancelled along with the petitioner.

Further, as regard the submission of the learned counsel for the respondents that against the impugned order of cancellation an appeal is maintainable under Section 83 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000, it is noticed that under Section 83 an appeal is maintainable from every original order passed by an

Officer sub-ordinate to the Deputy Commissioner; by the Deputy Commissioner to the Government represented by the concerned Secretary; by the Assistant Survey and Settlement Officer to the Survey and Settlement Officer; and by the Survey and Settlement Officer, to the Director of Settlement & Land Records.

In the instant case, the impugned order of cancellation having been issued upon by the Secretary (Land Management, Government of Arunachal Pradesh), no appeal can be preferred as provided under Section 83 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000. In such view of the matter, the submission of the learned counsel for the respondents that an alternative remedy by way of an appeal under Section 83 of the said Arunachal Pradesh (Land Settlement and Records) Act, 2000 is available, cannot be accepted.

In any view of the matter, as transpires from the facts and circumstances, the impugned order of cancellation dated 30.07.2007 was issued behind the back of the petitioner by cancelling the order which was made in his favour. Further, even the said order of cancellation dated 30.07.2007, had not been communicated to the petitioner and the petitioner had no knowledge of the same at least till 2011, a period up to which he continued to pay the land revenue.

It is a settled position of law that if any administrative order is passed, but kept in the file and not duly communicated to the concerned persons against whom such order is being passed, such order has no effect in the eyes of law. In such view of the matter also the impugned order dated 30.07.2007 has no effect in the eye of law, although such order may appear in the records.

Considering both aspects of the matter that firstly, no opportunity of hearing was given to the petitioner before passing the impugned order of 30.07.2007 and the same was passed behind his back and secondly, to the effect that the said order was never communicated to the petitioner, this Court is of the considered view,

that the impugned order dated 30.07.2007 is not sustainable in its present form.

Be that as it may be, if the respondent authorities are of the view that the allotment of the land was incorrectly made to the petitioner in the year 2006 and the same requires to be cancelled or revoked, it may be done by the concerned department by giving appropriate notice and opportunity of hearing to the petitioner.

Further, if the petitioner has any grievances against any encroachment being made by the private respondent No. 6, the petitioner would be at liberty to proceed against the said respondent No. 6 as per law.

In terms of the above, this writ petition stands disposed of.

A copy of this order be furnished to Ms. A. Mize, learned counsel appearing for the state respondents for doing the needful.

**JUDGE**

Cha Gang