

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

WPA/188/2025

Smt Kurshid Begum

Vs.

The Andaman and Nicobar Administration and others

Ms. G. Mini

... for the petitioner

Ms. Babita Das

... for the respondents

April 08, 2025
[SR]
Item No.4

As prayed for, leave is granted to the learned advocate on record of the petitioner to implead the Tehsildar, Sri Vijaya Puram, South Andaman as a party respondent to the present writ petition. Let necessary correction in the cause title of the writ petition be, accordingly, effected. As Ms. Babita Das, learned advocate appearing for the Administration can also appear for the added respondent, fresh service upon the added respondent is dispensed with.

The present writ petition has been preferred, *inter alia*, praying for issuance of necessary direction upon the respondents to issue a No Dues/Non-encumbrance certificate pertaining to the land at Survey No.666/1/2, holding No.170, comprising of 0.0579 hectares (hereinafter referred to as the said land).

Ms. G. Gini, learned advocate appearing for the petitioner submits that the petitioner is the joint recorded tenant in respect of the said land. She wanted to execute a gift deed pertaining to her undivided share of the said land and accordingly, she applied for No Dues/Non-encumbrance certificate. Considering such prayer, initially a No Dues/Non-

encumbrance certificate was issued by the respondent no.3 on 11th October, 2023. The same was valid for a period of 11th October, 2023 to 10th April, 2024. However, due to unavoidable circumstances, the gift deed could not be executed within a period of validity of the said certificate and as such, she submitted a further representation for such certificate. In response thereto, by a letter dated 10th February, 2025, the Assistant Commissioner communicated that a field inspection was conducted and it was found that approximately 690 sq.mtrs of land is in possession of the recorded tenant, which exceeds the area mentioned in the record of rights and as such, the said land is not free from encumbrances.

She submits that no such field inspection was conducted upon prior notice to the petitioner and the allegation that she did not participate in the said inspection is absolutely unfounded.

When the matter last appeared for hearing on 4th April, 2025, this Court directed Ms. Babita Das, learned advocate appearing for the respondents to avail necessary instruction.

Today, Ms. Das, upon instruction, submits that the field inspection, as referred to in the memo dated 10th February, 2025 was conducted in presence of the petitioner and other interested persons. However, the petitioner did not sign the minutes.

Drawing attention of this Court to Regulation 159 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 (hereinafter referred to as 1966 Regulations) and Rule 168 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Rules, 1968 (hereinafter referred to

as 1968 Rules), she submits that No Dues /Non-encumbrance certificate cannot not be granted, if the applicant is in possession of any area of land in excess of the area which was actually allotted. The said actual area needs to be demarcated, upon conducting appropriate inspection. In the event the recorded tenant is found to be in occupation of any excess land, no such certificate can be issued unless the tenant vacates the excess land.

She further submits that it would explicit from the memo dated 11th October, 2023 that earlier the certificate was issued for sale permission and sale deed and not for the execution of gift deed, as prayed for, by the petitioner in the present writ petition.

In reply, Ms. G. Gini submits that prior to issuance of the earlier certificate no objection was raised by the authorities and as such presently, they cannot they cannot insist for compliance of any fresh condition.

I have heard the learned advocates appearing for the respective parties and considered the materials on record.

The petitioner herein is a senior citizen, aged about 75 years and she has approached the authorities for expeditious disposal of her claim. However, she has to comply the necessary formalities, as prescribed under the said Regulations and the Rules.

In view thereof, I am of the opinion that no useful purpose will be served by keeping the writ petition pending any further and the issue needs to be regulated to the competent authority.

Accordingly, this Court directs that the added respondent no.3 to conduct a field inspection and demarcate the said land upon prior notice to the petitioner and all other interested persons and submit a report to that effect before the respondent no.2, as expeditiously as possible, preferably within a period of four weeks from the date of communication of this order.

Upon receipt of such inspection report, the respondent no.2 shall take a final decision towards issuance of No Dues/Non-encumbrance certificate in respect of the said land and communicate the final decision to the petitioner within a period of four weeks thereafter.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, shall be supplied to the parties as expeditiously as possible, upon compliance of all formalities.

(Tapabrata Chakraborty, J.)