

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(C.R.P. ART.227) No.21 of 2021

1. MV. Abdul Nasir, aged about 18 years S/o (L) Md. Ranjan, Minuthong Hapta, PO & PS Porompat in Imphal East District, Manipur.
2. Gulsana, aged about 16 years, D/o (L) Md. Ranjan, Minuthong Hapta, PO & PS Porompat in Imphal East District, Manipur.
3. Madinatun, aged about 14 years, D/o (L) Md. Ranjan, Minuthong Hapta, PO & PS Porompat in Imphal East District, Manipur.

...Petitioners

– Versus –

1. Mst. Pitru Begum, aged about 70 years, a resident of Mana Ingkhol, Minuthong Hapta, PO & PS Porompat in Imphal East District, Manipur-795005.
2. Md. Raheijuddin Sheikh, S/o Md Minhajuddin by occupation, Govt. Employee, a resident of Sangaiyumpham, Puleipokpi, Mairan Khong, PO & PS Thoubal, Thoubal District, Manipur.
3. Mst. Ibemcha, aged about 45 years W/o(L) Md. Ranjan, a resident of Mana Ingkhol, Minuthong Hapta PO & PS Porompat in Imphal East District, Manipur-795005.

.... Respondents.

**BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the Petitioners : Mr. N. Ibotombi, Sr. Adv. assisted by
Ms. Babina, Adv.

For the Respondents : Mr. Mr. FA Khalid, Adv. assisted by Ms.
Unisha Rashnee for R1,
Mr. Liaquat, Adv. for R2.

Date of Hearing : 27.07.2023

Date of Judgment & Order : 22.12.2023

**JUDGMENT & ORDER
(CAV)**

[1] Heard Mr. N. Ibotombi, learned senior counsel assisted by Ms. Babina, learned counsel for the petitioner, Mr. FA Khalid, learned counsel assisted by Ms. Unisha Rashnee, learned counsel on behalf of the respondent No.1 and Mr. Liaquat Ali, learned counsel for the respondent No.2.

[2] This Civil Revision petition has been filed seeking the prayers as follows:

- (a) *Admit the present Petition.*
- (b) *Quash and set aside the impugned judgment and order dated 22-02-2021 passed by the Ld. Rev. Tribunal, Manipur in Rev. Revision Case No.4 of 2020.*
- (c) *Consequent to the quashing and setting aside of the impugned judgment and order dated 22-02-2021 passed by the Ld. Rev. Tribunal, Manipur in Rev. Revision Case No.4 of 2020, the Mutation Orders dated 11-03-2005 passed by the Ld. AS & SO, Imphal East in Mutation order Case No.25/AS & SO/IE/1(Annexure A/3) and the second mutation order dated 26-10-2019 passed by the AS & SO-III in Rev. Misc. (C) No.288/AS & SO-III (Annexure*

A/10) be quashed and set aside. Further, the partition order dated 26-12-2013 passed by the Ld. SDO, Porompat, Imphal East in Partition Case No. 608 of 2013/SDO(P)IE (Annexure A/6) be also be quashed and set aside;

(d) Allow the Petitioner to raise more points at the time of hearing of the present Petition.

[3] Facts and circumstances narrated in the case are that the petitioners' paternal great grandmother namely Mst. Shamshu Nesha was allotted a piece of homestead land at Mana Ingkhol, Minuthong, Hapta Makha Leikai, Imphal East by the State Government vide allotment Order No. DC(C)/8/717/Rev./79(P) dated 27.06.1979 which has been referred hereto as the Original Land. The Petitioner's above named great grandmother had 2(two) sons, the first one was called Md. Basir Ali and the second one was called Md. Manao. The elder son, Md. Basir Ali predeceased her mother but left behind a daughter and a son namely Md. Ranjan who is the father of the present Petitioners. The second son of Mst. Shamshu Nesha, i.e, Md. Manao died as a bachelor living no heir. Since the petitioners' grandfather predeceased his own mother while his younger brother died as a bachelor, the only male heir of Mst. Shamshu Nesha was her only grandson, i.e, Md. Ranjan, the father of the present petitioners. Accordingly, the petitioners' great grandmother Mst. Shamshu Nesha gifted the Original Land to her only grandson, i.e, the Petitioners' father namely (L) Md. Ranjan. The Original Land gifted to the Petitioner's father is referred to as the Parent Land.

[4] In the meantime, the above-mentioned petitioners' great grandmother, i.e, Ms. Shamshu Nesha due to her advancing age as well as the deteriorating health condition, hired one woman i.e, the Principal Respondent No.1 to take care and look after her needs and to attend to her call and the Principal Respondent No.1 was made to stay with the Petitioners' great grandmother at the "Parent Land". Prior to the petitioners' great grandmother gifting the parent land to the petitioners' father, a portion of the Original Land was sold off to one Md. Jahiruddin Hazi by the petitioners' great grandmother in consultation with the petitioners' father so as to enable them to construct a housing structure from the proceed of the sale over the Parent Land so as to use both for commercial as well as residential purposes. Since most of the transfer at that time was made verbally or through some katcha agreement, the aforementioned buyer, namely Md. Jahiruddin was also recorded as a Co-pattadar of the Original Land until separated. Later on, making the petitioners' father the sole owner of the Parent Land and the petitioners' father Md. Ranjan's name was entered in the land records of the original land on being gifted the same by the petitioners' great grandmother and his name along with the aforementioned Md. Jahiruddin Hazi were recorded as co-pattadars of the Original Land until separated and thereafter become the absolute owner and title holder of the parent Land.

[5] In the meantime, the Principal Respondent No.1 got married and left the Parent land for her own matrimonial house. Thereafter she bore a son, but after sometime she divorced her husband and having nowhere to go she came to the Petitioners' house and requested the petitioners' father to give her

shelter until she could make her own arrangement. Having pity upon the wretched situation of the Principal Respondent No.1 and also taking a sympathetic consideration of the fact that the Principal Respondent No.1 had taken care of her late grandmother at some point of time, the petitioners' father permitted the Principal Respondent No.1 to stay temporarily for some time in the Parent Land on the condition that she would make her own arrangement as soon as possible. Under such terms and conditions, the Principal Respondent No.1 was allowed to stay in the Parent Land for which she was allotted a room in the upper floor of the housing structure built over the Parent Land for her residential purposes while a monthly rent derived from one of the many rooms out by the petitioners' father on the Parent Land was allowed to be temporarily used by the Principal Respondent No.1 for her livelihood. The petitioners' father Md. Ranjan expired sometime around the year 2003-2004 leaving behind his wife, the Proforma Respondent No.3 and his 3(three) children, i.e, the present Petitioners. At that relevant time, the Petitioners were all minors. The mutation order entering the name of the Principal Respondent No.1, Proforma Respondent No.3 and the Petitioners were passed on 11.03.2005 by the Asst. Survey & Settlement Officer, I/E-I, Manipur in Mutation Case No.25/AS&SO/IE-I and the Proforma Respondent No.3 had categorically given her objection for partition before the SDO, Porompat in this regard when her appearance was called by the Ld. SDO, Porompat, Imphal East in connection with the partition case. However, the Ld. SDO, Porompat, Imphal East passed an Order on 26.12.2013 in Partition Case No.608 of 2013/SDO(P)/IE allowing the partition of the Parent Land by separating a portion of 0.01525 acres in the South

Eastern Corner of the Parent Land in favour of the Principal Respondent No.1 out of the total 0.0305 acres while keeping the remaining portion of 0.01525 acres of the Parent Land as share of the Proforma Respondent No.3 and the present Petitioners. Though the present Petitioners were arrayed as Opposite Party in the partition case but since they were minor, they had no information or idea whatsoever of the partition case and once again the Proforma Respondent no.3 was also taken for a ride. Further, no procedure as provided under the Act was followed. The partitioned/carved out portion which now stands recorded separately in the name of the Principal Respondent No.1 referred to as the Suitland/disputed land. After the Petitioners attained the age of majority, they started realizing the fraud committed by the Principal Respondent No.1 upon the Petitioners and their family and also sensing a sinister design by the principal RespondentNo.1 to sell and dispose of the Suitland while being aggrieved by the Mutation of the principal Respondent No.1 in the Suitland as per the Order dated 11.03-2005 passed by the Ld. AS & SO, Imphal East-I, Manipur in Mutation Case No.25/AS&SO/IE-I, the petitioners' mother i.e, the Proforma Respondent No.3 instituted an objection application before the AS & SO-III, Manipur with regard to any transaction upon the Suitland.

[6] Mr. N. Ibotombi, learned senior counsel appearing for the petitioners submits that this Civil Revision Petition has been filed on the grounds that the Ld. Rev. Tribunal, Manipur has failed to exercise its jurisdiction by not interfering with the first impugned mutation order dated 11.03.2005 in spite of being fully aware that due process as provided and required in the

Manipur Land Revenue and Land Reforms Act, 1960 was not followed and the primary task of the Ld. Rev. Tribunal, Manipur was to see as to whether the mutation process was done in accordance with the provisions of the Acts and Rules. If it is shown to the Ld. Rev. Tribunal, Manipur, as in the present case, that the mutation process was not done as per the Acts & Rules as laid down, the Ld. Rev. Tribunal, Manipur ought to exercise its jurisdiction by interfering such incorrect procedure which in fact amounts to an illegal proceeding. However, the Ld. Rev. Tribunal, Manipur failed to do so and has thus abandoned its jurisdiction.

[7] The learned senior counsel for the petitioners has further argued that this Revision Petition was primarily filed to correct the illegality committed by the Court below which had incorporated the name of the Principal Respondent No.1 vide Mutation Order dated 11.03.2005 without following the prescribed procedure. When it was clearly pointed to the Ld. Rev. Tribunal, Manipur that the Principal Respondent No.1 had fraudulently entered her name in the Suitland/disputed land without any basis behind the back of the entitled legal heirs and also without notice to interested parties, the Ld. Rev. Tribunal, Manipur ought to have interfered with such fraudulent mutation order and instead ordered that the mutation order be done afresh in terms of the provision of law. However, the Ld. Rev. Tribunal, Manipur by observing that the issue involved rights and titles of the parties, took an easy way out and utterly failed to exercise its own responsibilities and duties and it was the specific case of the Petitioner that the subsequent order dated 26.10.2019 by which the name of the Principal Respondent No.2 came to be entered and recorded as the

Pattadar of the Suitland/disputed land on being transferred by way of sale by Principal Respondent No.1 cannot be sustained as it was done during a pending litigation over the said property being expressly hit/barred by Section 52 of TPA 1882. But this specific objection and point raised by the Petitioners was not only been ignored, but also not dealt with in any manner by the Ld. Rev. Tribunal, Manipur and the petitioners have made specific prayer for quashing the impugned mutation order dated 26.10.2019 on the basis of a pending litigation between the parties. Surprisingly, the Ld. Rev. Tribunal, Manipur while suspending the subsequent mutation order dated 26.10.2019 as interim measure till the disposal of the main Case, did not pass any order on merit at the time of final disposal of the Main Revision Petition.

[8] Mr. FA Khalid, learned counsel appearing for respondent No.1 submits that she is the daughter of late Shamsun Nesha, the original owner. Learned counsel further states that after hearing both parties at length and after careful examination of the related case records of Mut. Case No. 25/AS & SO/IE-1, the Ld. Revenue Tribunal found that in passing the order dated 11.03.2005 in the said Mutation Case, Section 46 of the MLR & LR Act, 1960 was followed in letter and spirit. So, the said Order of Mutation dated 11.03.2005 was not interfered and the Ld. Revenue Tribunal also observed that the petitioner's father, before his death, had gifted half of the land in favour of the Principal Respondent No.1 and as such, the Principal Respondent No.1 along with the members of the petitioners' family jointly applied for mutation and was accordingly done after completion of the formalities as prescribed by Section 46 of MLR & LR Act, 1960. In fact, under Section 46 of MLR & LR Act,

1960, the AS & SO has no power to enquire about title or interest. The AS & SO/IE-1 passed the Mutation Order dated 11.03.2005 on the basis of the joint application as there was no objection from any angle. Moreover, the disputed land had already been partitioned and separate Jamabandis of the respective shares of the principal Respondent No. 1 and the petitioners' family had been prepared ever since 2013 without any claim and objection. Hence, the impugned Order dated 11.03.2005 passed by the AS & SO/IE-1 in his Mut. Case No. 25/AS & SO/IE-1 does not suffer any infirmity. Vide order dated 26.12.2013 in Partition Case No. 609 of 2013/SDO(P)IE, her share was separated and partitioned without any complaint.

[9] The learned counsel for the respondent No.1 further points out that the Ld. Revenue Tribunal, Manipur cannot decide the question of right and title under Section 46 of MLR & LR Act, 1960 but to see whether the impugned Order was passed by following the formalities under the provision of Section 46 and the scope of revision is very narrow and the power of revision can be exercised only when the impugned Order suffers from illegality, impropriety and error in jurisdiction. However, the petitioners failed to indicate any such illegality or error of jurisdiction committed by the Ld. Revenue Tribunal, Manipur in passing the impugned judgment and Order dated 22.02.2021. He has further stated that the interference under Art. 227 of the Constitution is limited to want of jurisdiction, error of law, perverse findings and gross violation of natural justice as per settled law of the land. The petitioners have failed to point out any want of jurisdiction or error of law or gross violation of natural justice. It may be noted that jurisdiction under Art. 227 is to be exercised only to correct error of

jurisdiction and the like but not to upset pure findings of facts which falls in the domain of an appellate court as decided in *Khimji Vidhu –Vs- premier High School reported in AIR 2000 SC 3495; (1999) 9 SCC 246*. Hence, the impugned judgment and order is not deserved to be revised. It is also pointed out that the petitioners filed a suit being OS No. 2 of 2021 with respect to the same suit land in the court of learned Civil judge, Senior Division, Imphal East and this fact has been concealed by the petitioner.

[10] Mr. Liaquat Ali, learned counsel for the respondent No.2 submits that respondent No.2 purchased the disputed land from the respondent No.1 by executing a sale deed dated 11.10.2019 and his name was mutated vide order dated 26.10.2019 passed by learned Assistant Survey & Settlement Officer-III in Misc. Case No. 288/AS&SO/III/25.10.2019. It is submitted that there is no irregularity in the mutation proceedings and hence, the learned Tribunal did not interfere with the same. It is also pointed out that there was no stay or prohibition in transferring the land from respondent No.1 to him. It is pointed out that the petitioners have concealed the filing of civil suit being OS No. 2 of 2021 with respect to the same suit land in the court of learned Civil judge, Senior Division, Imphal East and have approached this Court with unclean hands. It is prayed that this Court may dismiss the petition filed under Article 227 of the Constitution, as the petitioners have miserably failed to show any patent illegality in the impugned order.

[11] This Court has considered the submissions made on behalf of the parties and perused the materials on record. The petitioners do not make any

statement on pendency of civil suit with regard to the same property during the course of hearing. However, this fact will not affect to decide the merit of the present case. Earlier mutation proceedings were done on the basis of available record and any entry in the land record has to be corrected in pursuance of a decree passed by a civil court as provided under Rule 90 of the MLR&LR Rules, 1960. Hence, the correctness of mutation and partition proceedings done as per existing record can be examined by the Tribunal in appropriate proceedings. While conducting a mutation proceeding, the competent authority has to followed the provisions of Section 46 of MLR&LR Act, 1960 and Rules 83, 84 & 85 and Schedule III appended to MLR&LR Rules 1961. This will be clear by referring to few decisions by this Court.

[12] In the case of **Andy Mangsatabam and Ors. vs. Annie Mangsatabam and Ors. (04.07.2022 - Manipur) : MANU/MN/0094/2022**, this Court discussed in details the procedures to be adopted in a mutation as provided under Section 46 of the Act and Rules of 1961. It has been emphasized that resorting to publication in newspaper of notice to the interested parties at the first instance cannot be done.

[13] In a recent case of **Thokchom Tembi Devi vs. Kangjam Inaobi Chanu (27.07.2023 - Manipur) : MANU/MN/0136/2023**, this Court analyses the concept of mutation and its proceedings as per the Manipur Land Revenue & Land Reforms Act, 1960 and Rules of 1961. It has been held that Section 46 of the Act and the Rules stipulate that there has to be a proper acquisition of title over the land, notice has to be issued to the interested party and the

acquisition should not be in contravention to any law and only after complying these conditions, application for mutation may be allowed thereby entering the name of the new applicant in place of the earlier owner.

[14] While interpreting the provision of Section 159 of MLR & LR Act, this Court held in the case of **Shamurailatpam Premananda Sharma v. Ayekpam Lokeshwor Singh reported as 2015 (4) GLT (MN) 584: MANU/MN/0147/2014 @ Para 19** that the jurisdiction of civil court is barred under Section 159 of the Act in disputes relating to determination of boundary as such jurisdiction is conferred to revenue officers under Section 52 of MLR & LR Act.

[15] In the case of **Sapam Ongbi Loidang Devi and Ors. vs. Takhelkumbam Ongbi Rajkumari Monosana Devi and Ors. (05.03.2004 - GUHC) : MANU/GH/0331/2004: AIR 2005 Gau 101 @ Para 26**, a Single Judge of Gauhati High Court held that the jurisdiction of civil court in respect to decide the rights and title and eviction suit base on title is not ousted by Section 159 of MLR & LR Act and the bar is with respect to any matter provided under the Act. Relevant portion of Para 26 is reproduced to have a clear idea.

“26. Moreover, the bar imposed by Section 159 is with respect to any matter arising under and provided for by that Act and it has never ousted the inherent jurisdiction of Civil Court in deciding the rights and title and eviction suit consequent to the declaration of title will, therefore, be competent to be entertained by Civil Court. ...”

[16] In the recent case of **Thangjam Yaima Singh v. Soram Ibohal Singh reported as 2023 SCC Online 198 @ Para 32: MANU/MN/0128/2023**,

this Court held that the bar under Section 159 MLR&LR Act, 1960 is with respect to any matter provided under the Act, such as, demarcation, partition, eviction, etc., when the dispute does not involve question of title of the suit land. However, the first proviso to Section 159 of the Act provides that only civil court is competent to decide the question of title.

[17] From the above referred decisions, it is clear that the bar of civil court under Section 159 of MLR&LR Act, 1960 is with respect to any matter as provided under the Act, but it does not affect the jurisdiction of civil court to decide the dispute in title of the land and its consequential reliefs. In other words, the jurisdiction of civil court is barred to examine any matter under the Act, where the title of the land-in-question is not involved. Admittedly, mutation is provided under section 46 of the Act and partition under Chapter-V-A of the Act and the jurisdiction of civil court to examine such a proceeding is barred by Section 159 of the Act. Only revenue court under Section 93 or the Deputy Commissioner/Revenue Tribunal under Section 95 of the MLR&LR Act, 1960 are competent to examine the correctness of such an order or proceeding initiated under Section 46 of the Act and Chapter-V-A of the Act. As stipulated under Rule 90 of MLR&LR Rule, the revenue record is to be corrected by the Deputy Commissioner in pursuance to a decree passed by a competent civil court in a suit involving title dispute of the land.

[18] In the present case, the revenue revision case filed by the petitioners herein before the learned Revenue Tribunal, Manipur under Section 95 of the MLR&LR Act, 1960 is for challenging two mutation orders dated

11.03.2005 and 26.10.2019. The petitioners vehemently submitted that these orders were passed without following the procedures prescribed by Section 46 of the Act and Rules of 1961. It is specifically pleaded that in the first impugned order, out of 5 applicants only 2 signed in the joint application for mutation and there is no indication that proforma respondent No.3 signed on behalf of her minor children (the petitioners herein). In view of the above referred decisions referred in para 12 to 16, it can be concluded that Revenue Tribunal has jurisdiction to entertain the revision petition filed before it under Section 95 of the Act challenging the two mutation orders. In first para of Page 7 of the impugned order dated 22.02.2021, learned Tribunal observed that the provision of Section 46 of the Act was not complied. However, the learned Tribunal did not exercise its jurisdiction to examine the alleged non-compliance of statutory requirements in the two mutation orders only on the presumption that its jurisdiction is barred by Section 159 of the Act. This Court is of the considered view that learned Tribunal has wrongly abdicated its jurisdiction under Section 95 of the Act by presuming dispute in title. It may be noted that Rule 84 casts a duty on the competent authority dealing with mutation to satisfy itself that the acquisition of title is not in contravention of the Act. In other word, the competent authority can enquire the right or title of a person claiming mutation, but it cannot examine the validity of the deed/title of such person in view of first proviso to Section 159 of the Act. In such case, only civil court will be competent to decide the question of title. In the circumstances, it is held that Revenue Tribunal has jurisdiction to decide the revision petition filed before it by the petitioners under Section 95 of the Act.

[19] Accordingly, the impugned order dated 22.02.2021 in Revenue Revision Case No. 4 of 2020 passed by the learned Revenue Tribunal, Manipur at Lamphelpat is set aside and the matter is remanded back to decide on merit. Misc. applications, if any, are also accordingly disposed of. No cost.

[20] It is clarified that this Court does not express any opinion on the merit of the case except for deciding whether the Tribunal has jurisdiction to examine the correctness of the mutation orders under challenge. Parties are directed to appear before the learned Tribunal on **30.01.2024** for further proceedings.

[21] Send a copy of this order to the learned Revenue Tribunal, Manipur for information.

JUDGE

FR/NFR
John Kom

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