

IN THE HIGH COURT OF MANIPUR

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W.P.(C) No. 551 of 2021

Shri Th. Changkhonlung John, aged about 64 years, Chief/Khullakpa of Chaiba (Charungkhon) Village, P.O. & P.S. Bishnupur, Kangvai Sub-Division, Churachandpur District, Manipur-795126.

... Petitioner

-Versus -

1. The State of Manipur represented by Additional Chief Secretary (TA & Hills), Government of Manipur, New Secretariat, North Block, Babupara, PO & PS Imphal West, Imphal West District, Manipur-795001.
2. The Deputy Commissioner, Churachandpur District, PO & PS Churachandpur HQ, Manipur-795128.
3. Shri Dongkhopao Haokip, S/o Late Paokholam Haokip, R/o New Kungpi Village, P.O & P.S. Loktak Project, Kangvai District, Manipur.

... Respondents

W.P.(C) No. 947 of 2018

1. Shri. Ph. Khuigailung, aged about 70 years Chief/ Headman of Kokadan Khullen Village, P.O. & P.S. Loktak, Henglep Sub-Division, Churachandpur District, Manipur-975124.
2. Shri P.G. Gaithaothui, aged 60 years, Chief/Headman of Majuron Kabui Village, P.O. & P.S. Loktak, Henglep Sub-Division, Churachandpur, Manipur-795124.

... Petitioners

-Versus -

1. State of Manipur represented by Secretary (TA & Hills), Government of Manipur, New Secretariat, North Block, Babupara, PO & PS Imphal West, Imphal West District, Manipur-795001.
2. The Deputy Commissioner, Churachandpur District, PO & PS Churachandpur HQ, Manipur-795128.

3. Shri Dongkhopao Haokip aged about 66 years, S/o Late Paokholam Haokip, R/o New Kungpi Village, P.O & P.S. Loktak Project, Kangvai Sub-Division, Churachandpur District, Manipur-795124.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioners : Mr. D. Julius Riamei, Adv.
For the respondents : Mr. A. Vashum, GA.& Mr.
Th. Henba, Adv.
Date of Hearing : **19.10.2022**
Date of Judgment & Order : **10.01.2023**

Judgment & Order

[1] Heard Mr. D. Julius Riamei, learned counsel appearing for the petitioners, Mr. A. Vashum, learned Government Advocate appearing for the respondents No. 1 & 2 and Mr. Th. Henba, learned counsel appearing for the respondent No. 3.

[2] The present writ petitions had been filed challenging the legality and validity of the order dated 25.01.2008 issued by the Principal Secretary (Hills), Government of Manipur recognising New Kungpi Village as a full fledged hill house tax paying village as well as the land ownership certificate dated 30.01.2017 issued by the Deputy Commissioner, Churachandpur coupled with a prayer for quashing and setting aside the impugned orders and the impugned certificate.

The present writ petitions are being disposed of by this common judgment and order since the issue raised in the present writ petitions are the same. According to the petitioners, they are the Chief/Headman/Khullakpa of Chaiba (Charungkhoh), Majuron Kabui Village and Kokadan Khullen Village, Kangvai Sub-Division, Churachandpur District, Manipur. The said villages of the petitioners are all old villages having clear cut boundaries and recorded in the list of villages in the Scheduled of the Manipur State Hills Peoples (Administration) Regulation, 1947 and the villages have been paying hills house tax since time immemorial till date. The villagers are the owners and possessing and enjoying the lands under the said village for hundred of years.

[3] According to the petitioner, it has been brought to their knowledge that the Principal Secretary (Hills), Government of Manipur issued an order dated 25.01.2008 according approval to the recognition of New Kungpi Village as a full fledged hills house tax paying village and that the Deputy Commissioner, Churachandpur issued a land ownership certificate dated 30.01.2017 to the effect that the respondent No. 3 is the Chief of the said New Kungpi Village. The boundaries of the New Kungpi Village as discribed in the said order dated 25.01.2008 and the certificate dated 30.01.2017 are as under:-

North – Laimaton Ching
Sought – Leimatak river
East – Moisillui (river)
Westn- Lep Chang Dung/Lui/River

The case of the petitioners is that the boundaries of the New Kungpi Village as are given in the aforesaid order dated 25.01.2008 and the land ownership certificate dated 30.01.2017 is overlapping the village boundaries of the petitioners' villages. It is also the case of the petitioners that on the basis of the said order dated 25.01.2008 and land ownership certificate dated 30.01.2017, the respondent No. 3 and his men started to interfere with the peaceful possession and enjoyment of the village lands of the petitioners' villages. Having been aggrieved, the petitioners filed the present writ petitions challenging the aforesaid order dated 25.01.2008 and land ownership certificate dated 30.01.2017.

[4] Mr. D. Julius Riamei, learned counsel appearing for the petitioners submitted that the impugned order dated 25.01.2008 had been issued by the Secretariat Hill Department purportedly in exercise of the powers conferred under section 3(2) of the Manipur (Village Authorities in Hills Areas) Act 1956, however, there is no provisions under section 3(2) of the said Act for recognition of a new hill village. It has also been submitted by the learned counsel ,that under the Office Memorandum dated 26.08.2008 issued by the Principal Secretary (Revenue), Government of Manipur, it has been declared that any orders issued under section 3(2) of the Manipur (Village Authorities in Hill Areas) Act, 1956 with regard to recognition of hill village shall be void ab-initio. Under the said Office Memorandum, it has also been declared that orders relating to creation and/or recognition of villages shall be issued by the Revenue Department,

as provided by the Business of the Government of Manipur (Allocation) Rules, 1999. In view of the above, the learned counsel for the petitioners submitted that the impugned order dated 25.01.2008 is null and void ab-initio since the Principal Secretary (Hills), Government of Manipur, who issued the impugned order has no power and jurisdiction to issue the impugned order.

It has also been submitted by the learned counsel appearing for the petitioners that the same issue raised in the present writ petition had already been decided by this Court by rendering a judgment and order in the case of **“Shri Z. Shimthar&Ors. Vs. State of Manipur & Ors.”** reported in 2016 SCC OnLine Mani 192. The relevant portions of the said judgment and order are as under:-

“8. The question which does arise as to whether, Principal Secretary (TA & Hills) does have the authority to pass order in the matter relating to amalgamation or bifurcation of the village.

“9. In order to have answer to it I need not to go far away than to Office Memorandum dated 26.08.2008 published in the Extraordinary Manipur Gazette (Annexure A/15), relevant part of which reads as follows:-

*“.....
No. 16/2/MISC/2008-Com (Rev): As provided by the Business of the Government of Manipur (Allocation) Rules, 1999, issued by the Confidential and Cabinet Department vide Notification No. 3/1/77-Com (PI) dated 10th August, 1999, all matters relating to the creation of Districts, Sub-Divisions, Tehsils, Villages and alteration of boundaries thereof are allocated to the Revenue Department.*

It has been brought to the notice of the Government, however, that orders are being issued under Section 3(2) of Manipur (Village Authorities Hill Areas) Act, 1956, regarding recognition of hill villages in Manipur, in spite of the fact that such provisions of the Act deals only with declaration that a village shall have an elected Village Authority. In other words, any

orders issued under the provisions of the Act referred to above in regard to recognition of hill villages shall be void ab-initio.

In the above backdrop, it has been decided to issue instructions that orders relating to creation and/or recognition of villages shall be issued by the Revenue Department as provided by the Business of the Government of Manipur (Allocation) Rules, 1999.”

“10. *Thus, it does appear that a clear stipulation is there that in the matter relating to creation and/or recognition of villages, competent authority to take decision is the Revenue Department and, thereby, the order impugned dated 30.11.2013 (Annexure A/13) passed by the Principal Secretary (TA & Hills), Government of Manipur who does not have power to pass such order being illegal is hereby quashed. Consequently, the order which was passed on 10.12.2014 (annexure A/14) by the same authority which is subject matter of challenge in WP(C) No. 668 of 2016 is also quashed.”*

[5] The learned counsel appearing for the petitioners further submitted that the Deputy Commissioner, Churachandpur has no authority and jurisdiction under any statute or law to declare the respondent No. 3 as Chief of New Kungpi Village and that as the land ownership certificate dated 30.01.2017 issued by the Deputy Commissioner, Churachandpur was based on the null and void ab-initio order dated 25.01.2008 issued by the Principal Secretary (Hills), Government of Manipur, the impugned land ownership certificate dated 30.01.2017 is also liable to be quashed and set aside as being null and void ab-initio.

[6] The stand taken by the Official respondents in the affidavit-in-opposition filed on behalf of the respondent No. 1 is that the Deputy Commissioner, Churachandpur forwarded a proposal dated 04.12.2008 for recognition of a new village and that on receiving the said proposal, the Government allowed the recognition of New Kungpi Village as a full

fledged hill house tax paying village in exercise of the powers conferred under section 3(2) of the Manipur (Village Authorities In Hill Areas) Act, 1956. It has also been stated in the said affidavit-in-opposition that the Deputy Commissioner, Churachandpur issued the impugned land ownership certificate on the basis of the report submitted by the SDO, Kangvai vide letter dated 02.12.2016.

[7] Mr. Th. Henba, learned counsel appearing for the respondent No. 3 submitted that the petitioners have no locus-standi to challenge the impugned orders as they are not aggrieved persons. It has been contended that the petitioners are only raising boundary dispute about the villages and as the land of the villages are not surveyed area, such dispute can be decided only by Civil Court and not in a writ proceedings. It has also been submitted by the learned counsel that there is also gross unexplained delay and lapses on the part of the petitioner in filing the present writ petitions. In view of the above, it has been submitted by the learned counsel that the present writ petitions are not maintainable and liable to be dismissed outright. In support of his contention, the learned counsel relied on the judgment rendered by the Hon'ble Apex Court in the case of **“JasbhaiMotibhai Desai Vs. Roshan, Haji Bashir Ahmad”** reported in (1976) (1) SCC 671, wherein it has been held as under:-

“12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an “aggrieved person” and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and

is a “stranger”, the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.”

“37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) ‘person aggrieved’; (ii) ‘stranger’; (iii) busybody or meddle-some interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity ; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

“38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones ; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category or ‘persons aggrieved’. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be ‘persons aggrieved’.

[8] I have heard the rival contention of the learned counsel appearing for the parties at length and also carefully examined the material available on record. It is an admitted fact that the impugned order dated 25.01.2008 had been issued by the Principal Secretary (Hill), Government of Manipur, purportedly in exercise of the powers conferred under section 3(2) of the Manipur (Village Authorities in Hills Areas) Act, 1956 recognising New Kungpi Village as a full fledged hill house tax paying village. Since the impugned order have been passed under section 3(2) of the said Act, it

will be appropriate to examine the provisions of the said Act, which are reproduced hereinunder:-

“3. Constitution of Village Authorities :-

“(1) For every village having twenty or more tax-paying houses there shall be a village Authority consisting of –

- (a) five members, where the number of taxpaying houses in the village is not less than twenty but is not more than sixty;*
- (b) seven members, where the number of taxpaying houses in the village is more than sixty but is not more than one hundred;*
- (c) ten members, where the number of tax paying houses in the village is more than one hundred but it's not more than one hundred and fifty;*
- (d) twelve members, where the number of taxpaying houses in the village is more than one hundred and fifty.”*

“2. The Chief Commissioners may, having regard to the general interests of the people of any village as also to the demand, if any, from the people of that village for an elected Village authority, declare, by notification in the Official Gazette, that the village shall have an elected Village Authority, and there upon the members of the Village Authority of that village shall be elected in accordance with the provisions of this Act and the rules made thereunder.

“(3) Where no declaration under sub-section (2) has been made in relation to any village, the members of the Village Authority of that village shall be nominated by the Chief Commissioner.

“(4) Where there is a Chief or Khulakpa in a village, he shall be the ex-officio chairman of the Village Authority of that village; and where there is no such Chief or Khulakpa in the village, the Chairman of the Village Authority of that village shall be elected by the members of the Village Authority from among themselves.”

[9] On careful examination of the above provisions of the said Act, this Court is of the considered view that there is absolutely no provisions for recognition of a new village, rather the provisions under section 3(2) of the said Act only provides for declaration of constituting a village authority.

The said provisions did not conferred any power and jurisdiction to the Secretariat Hill Department for recognition of a new hill village. Accordingly, this Court finds considerable force in the submission advanced by the learned counsel appearing for the petitioners that the impugned order dated 25.01.2008 had been issued by the Principal Secretary (Hills), Government of Manipur without having any authority and jurisdiction and that the impugned order is null and void ab-initio. In this regard, we can gainfully relied to the judgment passed by the Hon'ble Apex Court in the case of **“Deepak Agro Foods Vs. State of Rajasthan” reported in (2008) 7 SCC 748** wherein, it has been held as under:-

“17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, nonest and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh V. Chaman Paswan.) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity-it is an illegality, capable of being cured in a duly constituted legal proceedings.”

“19. In Rafique Bibi V. Sayed Waliuddin explaining the distinction between null and void decree and illegal decree, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed in executable.”

[10] Moreover, under the Office Memorandum dated 26.08.2008 issued by the Principal Secretary (Revenue), Government of Manipur, it has been declared that any order issued under the provisions of section 3(2) of the Manipur (Village Authorities in Hill Areas) Act, 1956 with regard to recognition of hill villages in Manipur shall be void ab-initio. For ready reference, the contents of the said office memorandum is reproduced hereunder:-

“GOVERNMENT OF MANIPUR
SECRETARIAT: REVENUE DEPARTMENT

OFFICE MEMORANDUM
Imphal, the 26th August, 2008.

**Subject:- Instructions regarding creation or recognition
of villages.**

No. 16/2/MISC/2008-Com(Rev): As provided by the Business of the Government of Manipur (Allocation) Rules, 1999, issued by the Confidential and Cabinet Department vide Notification No.3/1/77-Con(PI) dated 10th August, 1999, all matters relating to the creation of Districts, Sub-Divisions, Tehsils, Villages and alteration of boundaries thereof are allocated to the Revenue Department.

It has been brought to the notice of the Government, however, that orders are being issued under Section 3(2) of Manipur (Village Authorities Hill Areas) Act, 1956, regarding recognition of hill villages in Manipur, in spite of the fact that such provision of the Act deals only with declaration that a village shall have an elected Village Authority. In other words, any orders issued under the provisions of the Act referred to above in regard to recognition of hill villages shall be void ab-initio.

In the above backdrop, it has been decided to issue instructions that orders relating to creation and/or recognition of villages shall be issued by the Revenue Department, as provided by the Business of the Government of Manipur (Allocation) Rules, 1999.

*P. SHARAT Chandra
Principal Secretary (Revenue),
Government of Manipur.”*

[11] The respondents have not been able to point out any provisions of law enabling the Deputy Commissioner, Churachandpur for declaring the respondent No. 3 as Chief of New Kungpi Village and as the impugned land ownership certificate have been issued by the Deputy Commissioner, Churachandpur basically in terms of the impugned order dated 25.01.2008, this court did not find any reason or ground for upholding the same.

[12] On a conjoined reading of the provisions of section 3(2) of the Manipur (Village Authorities In Hill Areas) Act, 1956, the Office Memorandum dated 26.08.2008 issued by the Secretariat, Revenue Department and the judgment and order passed by this Court in the case of Shri Z. Shimthar (Supra), this Court is of the considered view that the impugned order dated 25.01.2008 and the impugned land ownership dated 30.01.2017 have been issued without any jurisdiction or authority and accordingly, the said impugned order dated 25.01.2008 and impugned land ownership certificate dated 30.01.2017 are hereby declared as null and void ab-initio.

[13] As the impugned orders are found to be void ab-initio, the question of maintainability of the present writ petitions on the ground of delay and latches as well as locus-standi of the petitioners are not applicable for the simple reason that a null and void ab-initio order cannot be validated on the ground of technical defects.

In the result, the present writ petitions are allowed by quashing and setting aside the impugned order dated 25.01.2008 issued by the Principal Secretary (Hills), Government of Manipur as well as the impugned land ownership certificate dated 30.01.2017 issued by the Deputy Commissioner, Churachandpur. In view of the facts and circumstances of the present cases, there will be no order as to costs.

JUDGE

FR/NFR

Lhaineichong