

Serial No. 16
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 377 of 2019

Date of Decision: 08.05.2023

Smti Binoni Sangma

Vs. The Garo Hills Autonomous
District Council & Ors.

Coram:

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

Appearance:

For the Petitioner(s) : Mr. K.S. Kynjing Sr. Adv. with
Ms. A.D. Syiem, Adv.
Ms. B. Rapsang, Adv.

For the Respondent(s) : Mr. S. Dey, Adv. (For R. 1-3)
Mr. P.T. Sangma, Adv. (For R 4&5)

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. This writ petition is directed against the order dated 05.07.2019 passed in GHADC-REV/Appeal No. 9/A/C of 2018 by the respondent No. 2 (Chief Executive Member, Garo Hills Autonomous

District Council, West Garo Hills, Tura). The grievance of the writ petitioner is that by the impugned order, a case which had been decided is sought to be re-opened by the respondents, which would lead to reviving the proceedings, which had been finally concluded as far back in 1935.

2. A brief narration of the facts is that there existed an Akhing known as Marakapara Akhing, which originally belonged to one (L) Ranji Mechik of Nengmenji clan and (L) Asin Marak of Mrong clan. From the facts as placed, it appears that a huge debt was incurred by the son of the aforementioned persons, one Shri Arong Sangma, who mortgaged the said Akhing, taking to the brink of it being alienated. Thereafter, this matter came to be adjudicated by the Deputy Commissioner, Garo Hills in a Political Case being Political Case No. 12 of 1935, wherein the said Arong Sangma of Marakapara Akhing, was arrayed as the opposite party. When the matter was pending before the Deputy Commissioner's Court, the question of succession to the said Akhing also arose, inasmuch as, 2(two) daughters who were to be successors in interest namely; one Smti Gari Mechik and one Smti Rensi Mechik, were married to persons belonging to the Chambugong clan, which was not approved by the Chachis and Mahari, thereby leaving the said Akhing without valid successors.

3. With regard to the said loan amount which had been taken by Arong Sangma, one Shri Manseng Marak, who was married to Jade Mechik the Nokma of the adjacent Akhing i.e. Kharijora Akhing re-paid the said amount. As such, in the situation where the 2(two) successor daughters were married to persons belonging to another clan namely; Chambugong clan, which did not find favour with the Chachis and Mahari, and in view of the fact that the land was saved by Shri Manseng Marak, from being alienated, the Chachis and Mahari were in favor of giving over the said Marakapara Akhing to Shri Manseng Marak, who was the Nokma of the adjacent Akhing namely Kharijora Akhing. Thereafter, the Deputy Commissioner vide the order dated 31.07.1935, merged the 2 Akhings, and ordered for preparation of accurate boundaries showing merger of Marakapara Akhing and Kharijora Akhing.

4. Mr. K.S. Kynjing, learned Senior counsel assisted by Ms. B. Rapsang, learned counsel for the petitioner submits that with the adjudication of the matter in view of the lack of a successor, and to preserve the Akhing, the Chachis and Maharis were in favour of the said merger, which was duly noted and recorded, and made an order of the Court by the order dated 31.07.1935, by the then Deputy Commissioner. The learned Senior counsel has referred to the order in

question and submits that, the same being a final adjudication, the matter was set at rest.

5. The learned Senior counsel further submits that though this was the settled position as regard the Akhing, however on 10.05.1961, one Shri Jangding Marak and Smti Jangde Mechik filed an application before the Executive Member, i/c Revenue, GHADC for recovery of Marakapara Akhing, which they alleged was under the custody of Shri Manseng Marak, Nokma. The Court of the Executive Member, i/c Revenue, he submits then by the order dated 05.06.1961 dismissed the said application, since it was a settled matter and that no appeal had ever been preferred against the order dated 31.07.1935.

6. The learned Senior counsel then submits that thereafter a further attempt was made by one Shri Mollen Marak, who again re-agitated the issue, which matter came to be dismissed on 13.09.2018, by the Executive Member, i/c Land & Revenue. Against the said order he submits, an appeal was preferred, which was disposed of with a direction to the Executive Member, i/c Land & Revenue to re-appreciate the entire matter by taking evidence and examining witnesses. The learned Senior counsel submits that this matter is squarely covered by the principles of res judicata, apart of the antiquity of the order, from which the respective rights of the parties

have been settled. As such, he contends the impugned order suffered from grave irregularities and was bad in law.

7. Mr. S. Dey, learned Standing counsel for the GHADC (respondents Nos. 1 to 3) submits that the basis on which the merger was effected was not as per the Garo Customary law and practice, inasmuch as, firstly a Nokma possesses no right, customary or otherwise, to mortgage the Akhing for personal gain, and secondly even that, there is no question of the rights of the 2 successor daughters being extinguished just because they have been married outside the clan, from which the Nokmas were to be selected.

8. Mr. P.T. Sangma, learned counsel for the private respondents Nos. 4 and 5, has submitted that leaving aside whatever proceedings that had occurred, prior to the pending matter before the Chief Executive Member, the case should have reached its logical conclusion, to determine the rights of the contesting parties. He contends that the objections of the petitioner at this stage is premature, because the orders are yet to be final orders, in the present proceedings. Apart from tracing the history of the Marakapara Akhing, to try to impress the Court that the issue is still alive, he prayed that the matter be remanded back for adjudication as per law, and in the light of the fundamental principles of judicial procedure as prescribed in the case of Dore Sangma.

9. Heard the learned counsels for the parties.

10. It is firstly noted that this matter is not before this Court today on the interpretation of customs and as to whether the arrangement arrived at by the first order dated 31.07.1935, has been based on the particular correct custom. Within a limited compass, in the considered view of this Court, the challenge of the petitioner is based only on the fact that a matter that has been settled for over 80 years, and where the competing rights and claims have been decided and apportioned, cannot be allowed to be dug up and re-agitated at the whims and caprices of the respondents, time and again.

11. This Court has examined the order dated 31.07.1935, and the relevant portion thereof are reproduced hereinbelow:-

“The Chachis and Maharis except for Mingre Mechik and Manji Mechik and her daughters all wish to give Marakhapara Akhing to Manseng Marak who has married Jadi Mechik. Jade is Nengminja clan and Manseng is of Mrong clan and is already Nokma of Kharijora village holding it for Nengminja clan.

Consequently as Ranji is dead without heir and Mengri and Wan have married into other clans than mrong which is looked on as Nengminja (Women’s) clan’s mating clan for custody of Nengminja clan’s property by right of marriage I give the Akhing of Marakhapara to property by right of marriage I give the Akhing of Marakhapara to Jadi Mechik who is of Nengminja clan and who grand daughter of Dongre Mechik younger sister of Ginse Mechik of Nengminja clan as desired by all the Chachis and Maharies of Nengminja clan. M’dar to prepare lineage and Rev. Office to correct boundary papers.”

12. A perusal of the extract quoted above, shows the finality in the proceedings, inasmuch as, it has been categorically held that the Akhing of Marakapara was given to Jadi Mechik, who was of the Nengminja clan, to preserve the Akhing land.

13. As submitted by the learned Senior counsel for the petitioner the matter was sought to be re-agitated again in the year 1961, but the same was rejected in view of the final order dated 31.07.1935. Thereafter, another attempt in 2018 was rejected vide the order dated 13.09.2018 by the Executive Member, i/c Land and Revenue holding that the prayer had been earlier rejected by order dated 05.06.1961, was also barred by the principles of res judicata.

14. On a plain reading of the impugned order, however, passed on an appeal preferred against the order dated 13.09.2018, the same, has in a manner re-opened the dispute by directing that the matter be re-appreciated, and evidence of witnesses be recorded for a final decision.

15. Looking into the entire sequence of the events, though maybe valid arguments may have been raised with regard to the interpretation and application of the Customary laws, at the time when the matter was heard by the Deputy Commissioner, the undisputable fact however, that cannot be ignored is that, categorical findings had been arrived at, and that no appeal had ever been preferred therefrom.

The antiquity of the order, being of 13.07.1935 vintage, attains great significance, inasmuch as, at this late stage there can be no question of the same being re-appreciated or re-examined to arrive at any other conclusion, that what has been decided therein.

16. The subsequent challenges made in 1961 and in 2018 have also been disposed of by the successive Executive Members i/c Land and Revenue in the correct manner, but the impugned order by allowing re-examination of the issue which has long been settled is squarely hit by the principles of res judicata. The submissions of the learned counsel for the respondents that due process and fair trial should be allowed is therefore of no relevant consequence, when looking at the facts and circumstances of the entire case.

17. In this view of the matter, the impugned order stands set aside and quashed and the writ petition stands allowed, and is accordingly disposed of.

18. No order as to costs.

JUDGE

Meghalaya
08.05.2023
"V. Lyndem-PS"