



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRP 12/2022

1. SRI PAYING TAKU
VILLAGE : YAGLUNG,
P.O./P.S.: PALIN,
KRA DAADI DISTRICT,
ARUNACHAL PRADESH.

2. SRI DOILUM TAKU
VILLAGE : BANGTE,
P.O/P.S: PALIN,
DISTRICT : KRA DAADI,
ARUNACHAL PRADESH.

..... **Petitioners**

VERSUS

1. SRI TUNAR MOBING
VILLAGE : BANGTE,
P.O/P.S: PALIN,
DISTRICT : KRA DAADI,
ARUNACHAL PRADESH.

2. SRI TUNAR ISSAC
VILLAGE : PALIN,
P.O/P.S: PALIN,
DISTRICT : KRA DAADI,
ARUNACHAL PRADESH.

..... **Respondents**

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioners : Mr. B. Picha, Advocate
Advocate for the Respondents : Mr. K. Tama, Advocate
Date of Hearing : 13.12.2022
Date of Judgment : 02.05.2023

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. B. Picha, learned counsel for the petitioners. Also heard Mr. K. Tama, learned counsel for respondents.
- 2.** The petitioners have filed a Civil Revision Petition under Article 227 of the Constitution of India.
- 3.** The case of the petitioners Sri Paying Taku and Sri Doilum Taku is that they were affected by the impugned Mel decision dated 04.04.2022, and the petitioners being representatives of the Taku Clan have filed this instant Civil Revision Petition. The respondent Nos. 1 & 2 Sri Tunar Mobing and Sri Tunar Issac are representatives of Tunar Clan.
- 4.** The land of three villages namely, Bangta, Bangchi and Yaglung belong to the Taku Clan. On finding rampant encroachment by some individuals into the community land of the village and to prevent such illegal encroachment, more particularly by respondent No. 1, the Taku Land Control Committee, consisting of six villages issued a public notice to all concerned to refrain from such illegal activities. Instead of complying with the general public notice, the respondent No. 1 with twisted facts filed a complaint dated 25.01.2017 before the Deputy Commissioner, Kra Daadi district, for issuance of prohibitory order.

5. The Respondent No. 1 in order to garner support from his community shaped his issue into a clan based issue. Pursuant to the complaint filed by the respondent No. 1, the Deputy Commissioner, Kra Daadi district made endeavours to settle the dispute through arbitration, which was of no avail, and the Deputy Commissioner was impelled to direct the parties to maintain status-quo.

6. Vide Order dated 04.04.2017, the Deputy Commissioner also constituted village authorities for amicable settlement of the dispute but no settlement could be arrived at. Pursuant thereto the district administration issued several prohibitory orders under Section 145 Cr.PC to maintain status-quo.

7. Despite the fact that the matter relating to the land dispute was pending before the Deputy Commissioner, the All Gaon Burah & Burish Association, New Palin, Kra Daadi district by claiming of having received a written complaint in connection with the aforesaid land dispute between the warring factions, took cognizance of the case vide order dated 01.03.2022 and constituted Arbitrators / Judge to supervise settlement of the dispute by appointing five Head Gaon Burahs and Gaon Burishs from different villages of Palin Circle and a Mel was fixed on 09.03.2022.

8. It is averred that there is no provision for authority of All Gaon Burah & Burish Association under the Assam Frontier (Administration of Justice) Regulation, 1945, (AFR for short) and the forum itself is *Coram non judice*. It is averred that the village authority is regularised under AFR, 1945 and the appellate authority to the decision of the village authority lies to the Additional Deputy Commissioner or the Deputy Commissioner of concerned district.

9. On 02.03.2022 the petitioners have filed an application objecting the appointment of Sri Khyoda Bunki (GB) as Arbitrator / Judge to the proceedings stating that the above GB is also

a witness in the Money Suit No. 12/2017 filed by Tuner Mobing (Respondent No. 1) in the Court of the Civil Judge (Senior Division), Ziro. Vide impugned Mel order dated 15.03.2022, the All Gaon Burah & Burish Association (the Association for short) formed new Arbitrators for settlement of dispute and fixed the sitting of the Mel on the same day, i.e. on 15.03.2022. However, the dissenting parties did not arrive at the settlement. Subsequently due to non-consensus between both the parties the Mel decided not to adjudicate upon the dispute but to their astonishment, after the petitioners left the Mel proceedings, the Mel in a clandestine manner passed the impugned decision on 04.04.2022, whereby the Mel decided that the respondents' clan is the absolute owner of 24 land under Bangchi and Bangte village jurisdiction. It is contended that the Association initiating Mel proceedings is illegal and arbitrary as the Association has not been recognised by the AFR, 1945. Such Association has no authority to appoint village authority from different villages of Palin circle to adjudicate upon the dispute between both the parties. Initially it was decided by the Association that the parties have declined to amicably settle the dispute and thereafter the impugned Mel decision dated 04.04.2022 declaring the respondents as absolute owners of 24 land was passed beyond jurisdiction. The petitioners have prayed to quash the entire Mel proceedings and its impugned orders dated 01.03.2022, 15.03.2022 and 04.04.2022 by declaring the same as *void ab initio*.

10. It is submitted that if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. It is submitted that when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and not before an authority without jurisdiction; and where an Act creates an obligation and enforces the performance in a specified manner, "*performance cannot be forced in any*

other manner". It is submitted that Section 36 of the Regulation envisages that civil dispute shall be administered by the Deputy Commissioner, Assistant Commissioner, and the village authority and so on and so forth.

11. It is also submitted that the village authorities had the jurisdiction to try the suits when both the parties are indigenous and had been living within their jurisdiction, however, there is no provision of reference of All Gaon Burah and Burish Association to preside over the dispute.

12. An affidavit-in-opposition was filed by the respondent No. 2 for both the respondent No. 1 and respondent No. 2. It is averred that this revision petition is not maintainable because this petition stems out of a sole ground i.e. "*the All Gaon Burah and Burish Association, New Palin is not a competent Court or a village authority*", whereas the Arunachal Pradesh Civil Court Act, 2021 (the Act of 2021 for short) came into force w.e.f. 12.04.2021, which has defined and declared the village authority as lowest Civil Court in a hierarchy of Civil Courts. The relevant Sections are:-

- i. Section 2 (b) and (d) of the Act of 2021 read with Section 5 of the AFR Act, 1945, define village authority as Civil Court;
- ii. Section 3 of the Act 2021, classifies a village authority / Customary Court as lowest Civil Court in hierarchy; and
- iii. Section 24 of the Regulation 1945, provides that the parties aggrieved with the decision of village authority may appeal before the District Court within 30 (thirty) days, read together with Section 15(3) (of the Act of 2021) says that "*provided further that, from the date of commencement of this Act, in case an appeal is preferred against the judgment of Customary Court/ village authority in the Court of District*

Judge or in the Court of Additional District Judge as the case may be, the Court of District Judge or the Court of Additional District Judge, may dispose of the same or proceed with the case de novo". So stating, it is averred that the entire contention made in this petition is mis-conceived in law.

13. The impugned order of the Mel passed by the village authority under the banner/Office of the All Gaon Burah and Burish Association is a judgment and the same is appealable before the District Court and this petition is not maintainable and is liable to be dismissed forthwith.

14. It is averred that the petitioners have agreed to contest the case before the village authority/Customary Court/lowest Civil Court under the banner of the All Gaon Burah and Burish Association and had written many letters seeking extension of hearing dates. The petitioners have actively participated during the case proceeding but now when the decision is against them, the petitioners have rejected the authority. Thus the petition is barred by estoppel.

15. The respondents have vehemently denied that the land of three villages Bangte, Bangchi and Yoglung belong to the community of Taku clan and so there is no question of illegal encroachment. It is contended that the Taku clan migrated into the afore-mentioned land of Tunar clan after they were given shelter by the Tunar clan and now they are trying to encroach into the land provided as shelter to them. It is averred that the land of the villages Bangte, Bangchi and Yoglung village belongs to the Tunar clan but the Taku clan formed "Taku Land Control Committee" and being a clan with a larger population, they are forcefully encroaching and occupying the land of the Tunar clan, who had to lodge a complaint dated 25.01.2017 before the Deputy Commissioner, Kra Daadi District. The respondents have contended that the petitioners are suppressing certain facts like:-

i. On 28.4.2017, when the Mel was fixed for hearing between both the warring groups by

the Deputy Commissioner, the Taku clan, instead of participating in the Mel had rampantly damaged the Agri-Horti gardens of Tunar clan which impelled the Tunar clan to lodge an FIR dated 28.04.2017 and charge-sheet has been laid and trial is pending in the Court of the JMFC, Koloriang; and

- ii. The earlier case pending before the Deputy Commissioner, Kra, Daadi, Palin has become infructuous due to the enforcement of Act of 2021. The Tunar clan had to lodge a fresh complaint before the village authority due to the repeated encroachment and oppression by the petitioners' clan, and accordingly, Mel order dated 01.03.2022 was issued by the village authority by constituting 5 (five) HGB and GB of Palin Circle as judge of both the petitioners' clan and answering respondents' clan and both the clans have actively participated in the Mel.

16. It is denied that the Association is a *Coram non judice*. It is mis-conceived by the petitioners when they stress that the appellate authority against the village authority is the Additional Deputy Commissioner or Deputy Commissioner.

17. The non-consensus between the dissenting clans as stated in para 8 of the petition has been vehemently denied by the respondents. On the contrary, it is alleged that the petitioners adopted tacit tactics in their attempt to interrupt the Mel. The petitioners have participated in the proceedings and even affixed their signatures in the Rules for Mel/ Court proceedings dated 15.03.2022 but when the village authority started taking evidence from the boundary owners, the petitioners started resisting the respondents as they had speculated that they would lose their case. Thus, the petitioners are bound by the decision and even if they are aggrieved they have a remedy of appeal, which renders this petition void and not maintainable in law.

18. The respondents have claimed that the Act of 2021 has declared the village authority /

Customary Court as Civil Court and as such, the village authorities have started adjudicating disputes and such an authority is bound to give decisions in a case unlike, in cases under the AFR of 1945, wherein it is provided that if the parties are not in consensus to settle the dispute through arbitration, it cannot decide the disputes.

19. It is reiterated that once the adjudication commences, the village authority has to give its decision as per the Act of 2021, unless the suit is withdrawn.

20. The respondents have vehemently denied that the village authority has initiated court proceedings without authority. It is contended that the petitioners after participating in the Court proceedings voluntarily, cannot pray for quashing the entire proceedings by holding it as *void ab initio*.

21. This Court was pleased to stay and suspend the impugned order dated 04.04.2022 and thereafter, the petitioners taking advantage of the stay order has rampantly destroyed the respondents' property by removing trees, burning the trees and by erecting fences over the Tunar clan's land.

22. The respondents and other members of the Tunar clan have filed a complaint dated 28.04.2022 before the Deputy Commissioner, Kra Daadi district and also a complaint with the Officer in charge of Palin Police Station, but no action was taken against the petitioners. The petitioners relied on the decisions of the Hon'ble Supreme Court in –

- i.** Sneh Gupta v. Devi Sarup and Others (2009) 6 SCC 194;
- ii.** Dr. Jagmittar Sain Bhagat & Others v. Director, Health Services, Haryana and Others (2013) 10 SCC 136; and
- iii.** Maluk Yongan v. Danli Yomcha & Others 2016 (3) GLT 344.

23. I have given my anxious considerations to the submissions at the Bar with

circumspection. The petitioner No. 1 is the President whilst the petitioner No. 2 is the General Secretary of the Taku Welfare Society. The Annexure-1 series are the copies of complaints to the Deputy Commissioner and the orders passed by the Deputy Commissioner of Kra Daadi district.

24. The Annexure-1 series and Annexure-2 clearly reveal that there were several complaints regarding the alleged encroachment of land by the respondents which finally led to the passing of the order dated 01.03.2022 whereby five persons were nominated as Arbitrators/Judges to supervise the amicable settlement of the land dispute relating to Bangta, Bangchi and Yaglung village. The order was passed by the Association and the petitioners were compelled to attend the proceedings initiated by the Association, but the petitioners had objection regarding appointment of Sri Khyoda Bunki (GB) as Arbitrator as he is also a witness in money suit Case No. 12/2017 filed by the respondent No. 1. The petitioners have speculated bias and favouritism towards the respondents by the Arbitrator Khyoda Bunki. Then vide impugned Mel order dated 15.03.2022 a new Arbitrator was appointed for settlement of the land dispute. This order is marked as Annexure-4 and has been appended to the petition.

25. The petitioners have submitted that -

- i.** Section 36 of AFR, 1945 envisages that Civil dispute shall be administered by the Deputy Commissioner, Assistant Commissioner and the village authority.
- ii.** By virtue of Section 37 of the Regulation, the Deputy Commissioner may try suits of any value and the Assistant Commissioner may try suits not exceeding Rs. 50,000/- in value.
- iii.** Section 38 empowers the Deputy Commissioner as well as the Assistant Commissioner

to entertain civil dispute of nature in which both the parties are indigenous and to endeavour them to submit to arbitration by a Panchayat.

- iv.** A detailed description has been given under Section 38 as to how the arbitration Panchayat has to be conducted.
- v.** Section 40 of AFR, 1945 reads as “ *The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the Union Territory of Arunachal Pradesh and live within their jurisdiction and which are not submitted to arbitration under the provisions of Section 38. All other suits which are not submitted to arbitration under the provisions of Section 39 shall be tried by the Deputy Commissioner or an Assistant Commissioner.*”

26. It has been projected by the petitioners that there is no provision of reference to All Gaon Burah and Burish Association to preside over the dispute.

27. The respondents have been harping on the validity of the decision of the Mel. It is denied that the All Gaon Burah and Burish Association is not a competent Court or a village authority, stressing on the Arunachal Pradesh Civil Court Act of 2021, which came into force w.e.f. 12.04.2021 and has declared the village authority as lowest Civil Court in hierarchy of Civil Courts.

The relevant Sections are –

- i. Section 2(b) and (c) of the Act of 2021, read with Section 5 of the AFR 1945, which defines village authority as Civil Court;
- ii. Section 3 of the Act of 2021, which classifies the village authority, Customary Court as lowest Civil Court in hierarchy; and
- iii. Section 24 of the AFR of 1945 provides that the parties aggrieved by the decision

of the village authority may appeal before the District Court within 30 (thirty) days [as amended by the Act of 2021 to AFR of 1945 w.e.f. 12.04.2021] read together with Section 15(3) of the Act of 2021 which says “*provided further that, from the date of commencement of this Act, in case an appeal is preferred against the judgment of Customary Court/village authority in the Court of District Judge or in the Court of Additional District Judge as the case may be, the Court of District Judge or the Court of Additional District Judge, may dispose of the same or proceed with the case de novo*”.

28. It has been emphasised by the learned counsel for the respondents that this petition is not maintainable. The proper forum was the District Court at Ziro, which has territorial jurisdiction over Kra Daadi district.

29. It is argued that the petitioners had agreed to contend the case with village authority / Customary Court as lowest Civil Court under the banner of All Gaon Burah and Burish Association, New Palin. The Annexure-3 series of this case clearly unfolds that the Gaon Burah and Burish Association is a competent Court and the petitioners have actively participated during the case proceedings. The respondents have also relied on the Annexure-3 series. It is averred by the respondents that the Annexure-3 series clearly depicts an active participation of the petitioners before the village authority under the banner of the All Gaon Burah and Burish Association and the Annexure-3 series includes the orders of the Deputy Commissioner and also the charge sheet against one of the members of the petitioners’ clan Taku Takum. The respondents have vehemently denied that the All Gaon Burah and Burish Association, New Palin is not a Court or forum. The respondents have stressed that the Association is not a *Coram non judice*.

30. The earlier case pending before the Deputy Commissioner, Kra Daadi, Palin has become

infructuous due to the enforcement of the Act of 2021. A fresh complaint was lodged by the Tunar clan before the village authority due to the alleged encroachment and illegal occupation by the petitioners' clan and accordingly Mel order dated 01.03.2022 was issued by the village authority by constituting 5 (five) HGB and GB of Palin Circle as Judge of both the petitioners' clan and the respondents' clan and both the clans have actively participated in the Mel. The earlier order of the Deputy Commissioner dated 04.04.2017 is tagged along with the Annexure 1 series of the petition and Annexure-3 series of the affidavit-in-opposition by the respondents. The petitioner has relied on the decision of the Hon'ble Supreme Court in *Dr. Jagmittar Sain Bhagat's case (supra)*, wherein it has been held that –

“7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply.”

31. The petitioner has also relied on the decision of the Hon'ble Supreme Court in *Sneh Gupta's case (supra)*, wherein it has been observed that –

“53. There cannot be any doubt that even if any order is void or voidable, the same must be set aside, as has been held by this Court in *M. Meenakshi v. Metadin Agarwal and Sultan Sadik v. Sanjay Raj Subba*.

54. It is not a case where the Court lacked inherent jurisdiction. It had jurisdiction with regard to subject-matter of appeal.

55. In *Rajasthan SRTC v. Zakir Hussain* this Court held:

“21. It is a well settled principle of law as laid down by this Court that if the court has no jurisdiction, the jurisdiction cannot be conferred by any order of court. This Court in *A.R. Antulay v. R.S. Nayak*, AIR paras 40 to 42 wherein it is, inter alia, held and observed as under:

‘38.... This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction.....

39... The power to create or enlarge jurisdiction is legislative in character.... Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal

40... But the superior court can always correct its own error brought to its notice either by way of petition or *ex debito justitiae*.

The limitation, however, is a case of this nature would not begin to run from the date of knowledge.” and

32. The petitioner has relied on the decision of this Court in *Md. Isha Haque v. Azadur Rahman Hazarika & Others*, reported in (1993) 1 GLR 92, wherein it has been observed that

—

” **10.** It is a settled law that the power of superintendence conferred upon the High Court under [Article 227](#) of the Constitution is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under ordinary laws. However, this power does not vest the High Court with unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of the fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. Where any authority passes order which is manifestly wrong and without jurisdiction the High Court definitely has a power under [Article 227](#) to interfere with the order. In short, the jurisdiction under [Article 227](#) is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the finding. Therefore, it is now well settled that High Court in an appropriate case where the Subordinate Court or authority has committed manifest error of law or passed any order without any jurisdiction definitely can interfere.

11. In the present case the impugned judgment was passed decreeing the suit ex parte without considering the existence of any one of the grounds mentioned in [Sections 5\(1\)\(a\) to 5\(1\)\(f\)](#). As held by the Supreme Court such a decision is nullity and it can be challenged at any forum at any stage. In this regard I find sufficient force in the contention of Mr. Lahiri that the impugned judgment is not sustainable in law and it is liable to be quashed, may be by invoking the power under [Article 227](#) of the Constitution. Accordingly, I set aside the impugned ex parte judgment and decree dated 11-9-1987 and restore the suit to file. The learned Munsiff shall take up the case for trial.

Parties shall appear on 24th of February, 1993. On that day the petitioner-defendant shall file the written statement positively/He shall also pay a sum of Rs. 300/- as costs to the opposite party for setting aside the ex parte judgment and decree and restoration of the suit to file.

In the facts and circumstances of the case I make no order as to costs.”

33. Reverting back to this case it is held that as per Act of 2021 the lowest Civil Court is the village authority as per Section 2(b) and (c) of the Act, 2021 read with Section 5 of the AFR Act, 1945. Section 3 of the Act of 2021 classifies the village authority/Customary Court as

the lowest Civil Court in hierarchy. The petitioners have appended the proceeding drawn up by the village authority i.e. the All Gaon Buras & Burish Association. The Mel order dated 01.03.2022 is marked as Annexure-2 which clearly reveals that a written complaint was made before the All Gaon Buras and Burish Association by the Bangchi Bangte Tunar Clan v. Bangchi Bangte Taku Clan, and arbitrator/judges were nominated to supervise an amicable settlement of the case. The arbitrator/judge No. 5 was removed on objection by the Taku clan i.e. the petitioners and instead of Sri Khyoda Bunki, Tassar Charu was appointed as the judge/arbitrator to supervise the amicable settlement of the contention relating to 24 land in dispute between the Tunar clan and the Taku clan. The order dated 15.03.2022 of the Association is marked as Annexure-4 and Annexure-5 is the impugned Mel decision.

34. Vide order dated 04.04.2017, the DC made a request through letter No. KD/MEL-01-2015/927 to the village authority, namely,

- i. Shri Khoda Tabang HGB Pania
- ii. Shri Khoda Bongki GB Amji
- iii. Shri Tassar Charu GB Pungte
- iv. Shri Tassar Pinching HGB and
- v. Shir Takam Tade GB Langdang,

to take up the land dispute at their level and settle peacefully and to submit a settlement copy to the DC. This order is marked as Annexure-9 series of the petition. Arbitrator Sri Khyoda Bunki was however replaced by Sri Tassar Charu as has already been discussed in my foregoing discussions. Vide order dated 24.04.2017, in continuation of the earlier order No. KD/MEL-01/2015/ dated 04.04.2015 the Deputy Commissioner, Kra Dadi district directed the arbitrators and mediators to take up the land dispute between the dissenting clans and arrange a meeting for amicable settlement on 28th April, 2017. The above named arbitrators were appointed as competent authority by the Deputy Commissioner. The HGB and the GB

being competent authority, took up the matter of the land dispute between the warring factions i.e. the Tunar clan and the Taku clan and thereafter passed the impugned order dated 01.03.2022 under the All Gaon Burah and Burish Association. This order dated 01.03.2022 is marked as Annexure-2 and has been appended along with the petition. It is thus clear that All Gaon Burah and Burish Association is a village authority and Customary Court under Section 2(d) of the Act of 2021 read with Regulation 5 of the AFR.

35. As per proviso to Section 15(3) of the Act -

“provided further that, from the date of commencement of this Act, in case an appeal is preferred against the judgment of a Customary Court in the Court of the District Judge or in the Court of the Additional District Judge as the case may be, the Court of the District Judge or the Court of the Additional District Judge, may dispose of the same or proceed with the case *de novo*.”

36. Thus it is apparent that if one is aggrieved by an order of the village authority, appeal lies in the District Court. It is also submitted that in cases under the AFR of 1945, if the parties are not in consensus to settle the dispute through arbitration, it cannot decide the dispute whereas according to the Act of 2021, the village authority / Customary Court, is bound to give decisions in a case. As soon as the Act of 2021 came into force, the village authority / Customary Court as Civil Court have started adjudicating disputes.

37. It has also been emphasised that the All Gaon Burah and Burish Association is a Civil Court/Customary Court and as such it is not illegal or arbitrary on the part of the village authority to initiate Mel / Court proceeding and act as a forum. The letters dated 02.03.2022 marked as Annexure-3 series clearly reveals the participation of the petitioners’ clan in the proceedings initiated by the All Gaon Burah and Burish Association.

38. The letter dated 02.03.2022 to the President of all Gaon Burah & Burish Association by Doilum Taku clearly reveals that Taku Clan asked for replacement of the arbitrator Sri Khyoda Bunki, because he was a witness in the Money Suit Case No. 12/2017 filed by Tuner Mobing in the Court of Civil Judge (Senior Division), Zero district. Another letter dated 02.03.2022 in the Annexure-3 series by Doilum Taku to the President of the Association clearly reveals his appreciation for arranging a Mel for amicable settlement of the disputed land between the warring factions i.e. the Taku Clan and Tunar Clan. The Mel was arranged on 09.03.2022 vide order of the Association dated 01.03.2022. Even, in the Annexure-5, i.e. the decision of the Mel dated 04.04.2022, the presence of the petitioners clan has been recorded.

39. The seven speakers of the Taku Clan were present in the proceeding on 04.04.2022. It is apparent from the Annexure-5 that the proceedings were held from 15.03.2022 up to 04.04.2022 with intervals in between. Thus, the participation of the Taku Clan in the Mel is apparent. The petitioners have also not denied their participation in the Mel initiated by all Gaon Burah and Burish Association. It has been held by the Hon'ble Supreme Court in **Dr. Jagmittar Sain Bhagat & Ors** (supra) that:-

“If a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. In such eventuality the doctrine of waiver also does not apply.”

40. It has also been held by the Hon'ble Supreme Court case in **Sneh Gupta's** case (supra) that:-

"The power to create or enlarge jurisdiction is legislative in character....Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal.... But the superior court can always correct its own error brought to its notice either by way of

petition or ex debito justitiae."

41. Although, the petitioner has relied on the decision of the Hon'ble Supreme Court in *Dr. Jagmittar Sain Bhagat & Ors' case* (supra), yet in the instant case, the petitioners submission that the Association is not a village authority or the Civil Court has been vehemently denied by the respondents.

42. I would also like to reiterate that as per the Act of 2021, the village Authority/Association was bound to give its decision. Both the parties were in dispute and the parties had attended the Mel dated 04.04.2022. Although, the Taku clan did not agree with the decision of the Mel, a conclusive order was passed vide order dated 04.04.2022. Earlier, the petitioners' clan had accepted the Association as the village Authority or the customary Court but after the impugned order was passed on 04.04.2022, the petitioners' clan has questioned the authority of the Gaon Burah and Gaon Burish Association. There is not an iota of doubt that the complaint before the Association was lodged by the respondents clan but the documents annexed with the petition and the affidavit-in-opposition clearly reveal that the petitioners initially participated in the proceedings initiated by the Association and the proceedings which commenced from 15.03.2022 and ended on 04.04.2022, with intervals in between.

43. Now, the core question is whether the decision of the Mel dated 04.04.2022 can be quashed or set aside or any other order of proceedings of Mel dated 01.03.2022 and 15.03.2022 can be quashed and set aside. It is true that where any Authority passes order, which is manifestly erroneous and without jurisdiction, the High Court definitely has a power under Article 227 to interfere with the order. Petitioners also relied upon the decision in the case of *Md. Isha Haque (supra)*. In the case of *Md. Isha Haque*, the petitioner was aggrieved

because the Subordinate Court decreed the suit *exparte* without considering the existence of any one of the grounds mentioned in Section 5(1)(a) to 5(1) (f). However, in the case at hand, the Association decided the disputes after hearing both the parties. Moreover, the petitioners have also not substantiated their pleadings with sufficient reasons as to why the Gaon Burahs and Burish Association is not an authority or a Civil Court of lowest order to decide their disputes. No reasons were also set forth as to why they have earlier participated in the Mel proceedings under the Gaon Burah and Burish Association and later why, they have claimed that the Association is not a village Authority or the Customary Court. As already held in my foregoing discussions, the Deputy Commissioner had transferred this existing dispute between the two warring clans to the HGB and the GB for settlement. (Order No. KD/MEL-01/2015 dated 04.04.2017).

44. In view of my foregoing discussion, it is thereby held that the impugned order of the MEL dated 04.04.2023 cannot be held to be passed by the All Gaon Burah and Burish Association (AGAB) arbitrarily, in a subterfuged and clandestine manner without the participation of the petitioners. However, the petitioners can approach the appropriate forum for relief.

Petition is hereby dismissed.

No order as to costs.

JUDGE

Comparing Assistant