

GAHC040005332022



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

Case No. : CRP 20/2022

1:Kirri Dini Bogum
S/o Late Takir Dini,
Permanent Resident of Likabali, PO and PS Likabali, Lower Subansiri District,
Arunachal Pradesh.

VERSUS

1:Jamar Karlo
S/o Late Taja Karlo,
Resident of Malini Village, PO and PS Likabali, Lower Siang District, Arunachal
Pradesh.

Advocate for the Petitioner : Ms. D. Tamuk

Advocate for the Respondent : Mr. G. Bam.

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 13-06-2023

Heard Ms. D. Tamuk, learned counsel for the petitioner and Mr. G. Bam, learned counsel for the sole respondent.

2]. By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order, dated 23.03.2022, bearing No.LKB/JK/46-09/2018/75-II passed by the Deputy Commissioner, Lower Siang District,

Likabali, whereby the claims of the petitioner has been rejected by upholding the various Keba decisions including the Banggo Level Keba decision dated 30.05.2018 and on the ground of delay of 12 years.

3]. Leaving aside the unnecessary facts, the case of the petitioner in short is that in the year 2018, the petitioner on coming to know that the sole respondent has been claiming the ownership over the plot of land which belonged to the petitioner and his family and also the Keba decision dated 19.06.2006 and various other Kebas were held in respect of the petitioner's land in absence of the petitioner and his family members and without the knowledge of the petitioner's late father or any of his family member, between the sole respondent and other individuals in respect of the petitioner's plot of land inherited from his father, the petitioner had filed a complaint on 11.04.2018 before the Deputy Commissioner, Lower Siang District, Likabali against the sole respondent for illegally grabbing his plot of land. Accordingly, a Keba was conducted on 30.05.2018 to decide the ownership over the disputed land. In the said Keba, no concrete conclusion could be arrived at on the ground, that 3 local Keba had already been conducted over the same plot of land and the case had also been filed before the Hon'ble High Court with regard to the same land and the Hon'ble High Court has decided the said case in favour of the respondent's late father and the Magistrate has also countersigned and the same has risen after a period of 12 years. Accordingly, the matter was referred to the Magistrate since the Keba members were unable to take a fresh decision. Thereafter, the matter was taken up for hearing by the Deputy Commissioner, Lower Siang District, Likabali on 23.03.2022 and came to the conclusion that there already exists previous Keba decisions bearing order No. LBK/JK-01/99/344, dated 19.06.2006, JMSC Order No. LKB/CR-01/08/260, dated

01.08.2008 and the Hon'ble High Court vide order, dated 15.06.2011 passed in CRP 28 (AP) 2008 in favour of the respondent and that the claims of the petitioner cannot be admitted after a period of 12 years. Accordingly, the Keba decision, dated 30.05.2018 was up-held in view of the earlier Keba decisions, as stated above. Hence, this present petition, assailing the order dated 23.03.2022 passed by the Deputy Commissioner, Lower Siang District, Likabali.

4]. Ms. D. Tamuk, learned counsel for the petitioner submits that the Deputy Commissioner has failed to consider the so-called Keba decision dated 19.06.2006, which was between the father of the respondent and one Smti. Yai Kipa in respect of the land in which Smti. Yai Kipa was allowed to stay and the petitioner were never a party to the Keba and the Deputy Commissioner while coming to the conclusion that the same plot of land was initially disputed in between Taja Karlo and late Tado Dini and decided in the Kebang decision dated 21.07.1999 failed to consider the fact that there was no record of any Keba decision dated 21.07.1999 and in any case, the petitioner's family was never a party to the said Keba and as such, this Keba decision have no binding effect upon the petitioner. The Deputy also failed to consider the fact that the Hon'ble High Court did not decide any dispute regarding the title of the land in question and as such, the finding of the learned Deputy Commissioner that the Hon'ble High Court in CRP No. 28 (AP) 2008 had also decided the dispute is also totally misconceived and in any case, the said CRP was filed by the late father of the respondent herein against one Yomte Chisi and the petitioner's family was never a party to the said case. The Deputy Commissioner has also failed to consider the fact that the petitioner had lodged a complaint dated 11.04.2018 against the respondent herein raising a dispute that the respondent was encroaching and forcefully grabbing the land of the petitioner's family and as such, the same was

a new dispute and not an appeal against any Keba decision and while coming to the finding that the claims of the petitioner cannot be admitted after a long gap of 12 years, the Deputy Commissioner has failed to consider the fact that the petitioner was never a party to any dispute with the respondent and the cause of action in respect of the petitioner arose only in the year 2018 when it came to the knowledge of the petitioner that the respondent was illegally claiming over the petitioner's land.

5]. Ms. D. Tamuk, learned counsel for the petitioner further submits that while passing the impugned order dated 23.03.2022, issued on 08.04.2022, had relied upon various documents and purported statements of various persons but the petitioner was not allowed to rebut any of the documents or examine the persons whose purported statements were relied upon and the impugned order was passed without any proper trial making it unsustainable in law and the Keba decision dated 30.05.2018 did not decide the issue raised by the petitioner and as such, the decision of the learned Deputy Commissioner to uphold the Keba decision dated 30.05.2018 is unsustainable in law and liable to be interfered with. She further submits that the Deputy Commissioner did not consider the fact that though vide representation dated 17.06.2021, the petitioner not having the knowledge about the Deputy Commissioner's jurisdiction had requested for early disposal of the dispute, however, with the separation of judiciary and in light of various notifications issued by the Government of Arunachal Pradesh and the law laid down in the case of **Likha Serbi-vs-The State of Arunachal Pradesh**; reported in **2016 (1) GLT 580**, the Deputy Commissioner could not have decided the dispute itself and on this lone ground for want of jurisdiction, the impugned order dated 23.03.2022 signed on 06.04.2022 is liable to be set aside. The Deputy Commissioner had adjudicated and decided question of facts

and rendered a judgment without evidence tested by cross-examination and as such, the findings arrived at are not sustainable in law. Further, the Deputy Commissioner, Lower Siang District, Likabali failed to take into account that any proceedings under the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter, referred as Regulation, 1945), the Courts shall be guided by the spirit of the Code of Civil Procedure, 1908, which is a procedural law providing the parties to lead evidence on issues to prove their case and the Deputy Commissioner could not have come to a findings only on the basis of oral submissions made by the respondent. .

6]. Ms. D. Tamuk further submits that a civil proceeding will have to be proceeded with and decided in accordance with law and by following the spirit of the provisions of the Code and not on the whims of the Court and has to be decided after framing of the issues and trial permitting the parties to lead evidence on the issues and the entire object of a civil trial is to ensure that the adjudication is by the Court of law with adequate opportunity at appropriate stages. In the instant case, no opportunity was granted to the petitioner to adduce evidence or make any arguments before the impugned order was passed. She further submits that there was a *lis-inter partes* and while trying the case, the Deputy Commissioner was required to give ample opportunity to the contesting parties to establish and rebut their respective claims and the Deputy Commissioner was duty bound to act judiciously but in the present case, the matter was decided only on the basis of oral statements and without providing any opportunity to the petitioner to establish his claim. Ms. D. Tamuk, learned counsel for the petitioner finally submits that the application, dated 17.06.2021 is not an appeal against the Keba decision, dated 30.05.2018 but for adjudication of the claims of the petitioner as there was no concrete decision

arrived at by the Keba members on 30.05.2018 rather the same was referred back to the concerned Court. Therefore, the impugned order, dated 23.03.2022 passed by the Deputy Commissioner, Lower Siang District, Likabali purportedly under Section 46 of Regulation, 1945 is liable to be set aside and quashed.

7]. Per contra, Mr. G. Bam, the learned counsel for the sole respondent submits that the appeal filed by the petitioner has been decided by the Deputy Commissioner as per the provision of Section 46 of Regulation, 1945 and there is no infirmity in the impugned order dated 23.03.2022 passed by the Deputy Commissioner, Lower Siang District, Likabali.

8]. While referring to the provisions of Sub-section 3 of Section 46 of the Regulation, 1945 submits that it clearly provides that on being aggrieved by the decision of the village authorities, if an appeal is filed, the appellate authority, if necessary, shall examine the parties and if decision appears to be just, shall affirm and enforce the decision as its own. If the appellate Court sees grounds to doubt the justice of the decision, it shall try the cases *de novo* or refer to a Panchayat. In the present case, the Deputy Commissioner has examined and heard the parties and rightly came to a conclusion that there were 3 Keba decisions since 2006 to 2018 on the same plot of land and the petitioner made his claim after lapse of 12 years. Mr. G. Bam, learned counsel further submits that the matter was referred to the learned Civil Judge (Sr. Division), Pasighat by the Deputy Commissioner, Lower Siang District, Likabali. However, after the enactment of Arunachal Pradesh Civil Courts Act, 2021, the learned Civil Judge (Sr. Division), Pasighat has referred back the matter to the Deputy Commissioner, Lower Siang District, Likabali in terms of 1st proviso to Sub-Section 3 of Section 15 of the aforesaid Act. Accordingly, the Deputy Commissioner, Lower Siang District, Likabali after following the provisions of law

adjudicated the matter by passing the impugned order dated 23.03.2022. Mr. Bam further submits that while taking up the appeal, the Deputy Commissioner has properly acted upon by following the relevant provisions required for adjudication of such appeal and also after giving opportunity to the parties. To that effect Mr. Bam has taken this Court to the summon dated 21.03.2022, whereby, it is clearly mentioned the provisions of Section 46 of the Regulation, 1945 stating that the appeal of the petitioner will be heard and the petitioner has appeared without demure for which the petitioner has been estopped from contending that it was not an appeal but an application for adjudication, therefore, the submission of the petitioner deserves to be rejected and the impugned order dated 23.03.2022 passed by the Deputy Commissioner, Lower Siang District, Likabali be affirmed as the same is absolutely impregnable.

9]. Mr. G. Bam, learned counsel for the sole respondent finally submits that the case relied and referred to by the learned counsel for the petitioner *i.e. **Likha Serbi (Supra)*** has no application in the present case inasmuch as, the issues in that case is different from the present issue. Accordingly, he attempted to distinguish the case of ***Likha Serbi (Supra)***.

10]. Mr. G. Bam, the learned counsel for the sole respondent has placed reliance on the judgment of this Court in the case of ***Nabam Nikum and Others-vs-State of Arunachal Pradesh and Others***; reported in ***2016 (2) GLT 1036*** to show that the appellate authority under the Regulation, 1945 shall continue to exercise their jurisdiction in respect of appeal preferred against the decision of the village authority which is section 46 where the learned Deputy Commissioner, Lower Siang District, Likabali has exercised its jurisdiction on the appeal filed by the petitioner.

11]. Ms. D. Tamuk, learned counsel for the petitioner by way of her rejoinder

submits that assuming, while not admitting, that the application of the petitioner is treated as an appeal, even then procedure law on appeal has to be followed as has been settled by this Court in the case of ***Dana Pertin-vs-Okong Tabing***; reported in **2003 (2) GLT 361** and she has relied Paragraph Nos. 8 & 9, which are quoted hereinbelow for ready reference:-

“8...A careful analysis of the provisions of Regulation 46(3) shows that the appellate Court shall, if necessary, examine the parties and if the decision appears to be just, it shall affirm and enforce the decision on its own. In other words, the decision of the Kebang is affirmed and enforced only if the same is just when an appeal is [referred before the appellate Court under Regulation 46, it is incumbent on the part of the appellate Court to determine if the decision given by the Kebang is just. While determining whether justice has been done by the Kebang or not, the appellate Court shall not get swayed by the assumption that the popular decision is always just decision. Hence, normally, the opinion of the majority in the Kebang shall, though prevail, yet if the formation of such opinion is partisan or arises out of bias or prejudice or glaringly against the weight of the materials produced before the Kebang, then, such a decision rendered by the Kebang shall be interfered with by the appellate Court as unjust.

9. The expression “if necessary” used in Regulation 46(3) may give an impression that it is up to the appellate Court to decide if it needs to examine the parties to be able to dispose of the appeal. Though this impression may not be entirely wrong, the fact remains that the order of the appellate Court, which is a judicial order, cannot be arbitrary, irrational or unreasonable. There is a fundamental distinction between the appeal and a revision. An appeal is preferred only when the right is vested in an appellant and the appellant chooses to exercise his right, whereas revisional power may be exercised by a Court suo moto. Hence, when an appellant comes before an appellate Court with his grievances against an order, the appellate Court's decision must indicate that the grievances of the appellant were duly taken into considerations, while deciding the appeal. For the purpose of such considerations, hearing of the appellant will be, generally, indispensable and necessary. It appears that Regulation 46(3) has used the expression “if necessary, examine”. This indicates that if necessary, the appellate Court refuses to hear the appellant or omits to hear the appellant and disposes of the appeal on the basis of the Kebang decision without considering the grievances of

the appellant, then, the disposal of such an appeal will be arbitrary. In other words, if the decision of the Kebang is considered, de horse the grievance of the appellant, the appellate Court's decision will be arbitrary. There is no room for mechanical acceptance of Kebang decision by the appellate Court. Similarly, if an appeal is decided taking into account the grievances of the appellant alone and not the decision of the Kebang, such a decision will also be arbitrary. At the same time, if the appellate Court hears only the grievance the appellants and not the party in whose favour the decision of the Kebang was rendered, such an appellate decision will also be arbitrary. In short, though it is, no doubt, true that in each and every appeal, hearing of an appellate may not be necessary under the Regulation, yet such appeals would be in rarest of rare cases. Normally, therefore, the appellate decision shall be reached dispassionately upon hearing the parties concerned and upon due consideration of materials available before the appellate Court. Such materials will obviously include the decision of the Kebang".

12]. Ms. Tamuk, learned counsel for the petitioner, while rebutting the reliance by Mr. G. Bam, learned counsel for the sole respondent in the case of ***Nabam Nikum (Supra)*** submits that it was a case while the authorities were directed to amend the regulation and the jurisdiction of the appellate authority under the Regulation, 1945 was deemed to have been saved. Now after the enactment of Arunachal Pradesh Civil Courts Act, 2021 and its amendment, 2022, the Deputy Commissioner has no jurisdiction either appellate or original, therefore, reliance placed by Mr. G. Bam is misconceived and misplaced.

13]. I have given my anxious consideration to the submissions advanced by the learned counsel for the parties and have also perused the materials placed on record.

14]. On a careful reading of the complaint, dated 11.04.2018 filed by the petitioner, it clearly reveals that the petitioner is aggrieved of the respondents in claiming the disputed land on the basis of various Keba decisions started in the

year, 1999 till 2018 and it is for adjudication of the land which the petitioner claims that the same has been grabbed by the sole respondent. On such approach, the Deputy Commissioner has referred the matter to the village authority pursuant thereto which, a Banggo Level Keba was conducted on 30.05.2018, wherein, the Keba decided that the 3 times local Keba have been conducted for the same plot of land and High Court and the Magistrate also countersigned and the same has arisen after lapse of 12 years. Accordingly, Keba arrived at a conclusion that no fresh decision could be taken. Therefore, it appears that the Banggo Level Keba could not come to a concrete decision either confirming the earlier Keba decision or taking a final decision but simply referred the matter to the learned Magistrate. On such reference by the Banggo Level Keba to the Deputy Commissioner, the petitioner approach the Deputy Commissioner again for adjudication of the matter by an application dated 17.06.2021 which this Court finds that the same cannot be treated as an appeal inasmuch as, no final or conclusive findings/decision was taken by the Banggo Level Keba on 30.05.2018.

15]. On scrutiny of the various Keba decisions ranging from the year, 2006 to 2018 except the Banggo Level Keba dated 30.05.2018, this Court finds that the petitioner or his family members were never a party to the said Keba in all those Keba proceedings and decisions, for which, this Court is in agreement with the submission of the learned counsel for the petitioner that the same could not have binding effect on the petitioner. This Court takes note of the order, dated 15.06.2011 passed in CRP 28 (AP) 2008 which ultimately was closed having been become infructuous. The said CRP was filed by Late father of the sole respondent against one Mr. Yomte Chisi. Although, no effective order was passed, however, even if there is an effective order, the same also cannot have

binding effect on the petitioner.

16]. Adverting to the impugned order dated 23.03.2022, a bare perusal of the order goes to show that the Deputy Commissioner has passed the order without following the provisions of law as required to be followed inasmuch as in a civil proceedings, the Deputy Commissioner ought to have given an opportunity to lead evidence to the parties which has not been done by the Deputy Commissioner. Of course, before the hearing, a summon was issued indicating that the appeal will be heard by fixing the date on 23.03.2022, however, mere mentioning of provision without resorting to the procedural law in a civil proceedings may not suffice. Not affording an opportunity to rebut the claims of the parties by allowing them to lead evidence either oral or documentary shall negate the very foundation requirements of not only the provisions but also lead to miscarriage of justice.

17]. As observed in the case of *Dana Pertin (Supra)*, even in the case of an appeal, it is incumbent on the part of the appellate Court to determine if the decision given by the Keba is just. While determining whether justice has been done by the Keba or not, the appellate Court shall not get swayed by the assumption that the popular decision is always a just decision. Normally, the opinion of majority in Keba shall though prevail, yet, if the formation of such opinion arises out of bias and prejudice or clearly against the weight of the materials produced before the Keba, such a decision rendered by the Keba shall be interfered by the appellate Court as unjust. It, further, held that the expressions "if necessary" used in Regulation 46 (3) may give an impression that it is up to the appellate Court to decide if needs to examine the parties to be able to dispose of the appeal. Though, this impression may not be entirely

wrong, the fact remains that the order of the appellate Court, which is a judicial order, cannot be arbitrary, irrational or unreasonable. It, further, held that if an appellate Court refuses to hear the appellant or omits to hear the appellant and disposes of the appeal on the basis of the Keba decision without considering the grievances of the appellant, then, the disposal of such an appeal will be arbitrary. In other words, if the decision of the Keba is considered, de hors the grievance of the appellant, the appellate Court's decision will be arbitrary. There is no room for mechanical acceptance of Keba decision by the appellate Court.

18]. Although, this Court is of the considered opinion that the application for adjudication of the claims of the petitioner would not have been treated as an appeal, even if it is to be treated as an appeal, the appellate Court is duty bound to follow the requirements of law, as discussed in the foregoing paragraphs.

19]. In view of what have been discussed above, this Court is of the considered view that the impugned order dated 23.03.2022 passed by the Deputy Commissioner, Lower Siang District, Likabali has been passed without affording any opportunity to lead evidence is antithesis to the very foundation procedures of a civil proceeding. Therefore, the impugned order dated 23.03.2022 is not sustainable in the eye of law and accordingly, the same is interfered with by setting aside the impugned order, dated 23.03.2022, passed by the Deputy Commissioner, Lower Siang District, Likabali.

20]. In the result, this Civil Revision Petition is allowed and disposed of. However, normally this Court would have remanded back the matter to the Deputy Commissioner, Lower Siang District, Likabali but in view of the Arunachal Pradesh Civil Courts Act, 2021 and its amendment, 2022, being in force, the

parties are at liberty to approach the appropriate forum by filing an appropriate application/suit, if so advised. On such application, the appropriate forum may adjudicate the matter on its own merit, afresh.

JUDGE

Comparing Assistant