

GAHC040005462022



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

Case No. : CRP 22/2022

1:Moi Riba
S/o Late DakmoRiba,
Permanent Resident of Gogar Village, Likabali, PO and PS Likabali, Lower Siang
District, Arunachal Pradesh.
Phone No. 07530865626

VERSUS

1:Rilin Ngulom and Anr.
S/o Late Tori Ngulom,
Resident of Gogar Village, Likabali, PO and PS Likabali, Lower Siang District,
Arunachal Pradesh.

2:Bajum Karlo
S/o
resident of Gogar Village
PO and PS Likabali
Lower Siang District
Arunachal Pradesh

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : L Lombi

Linked Case : Cont.Cas(C) 25/2022

1:Moi Riba
S/o Late Dakmo Riba

Permanent Resident of Gogar Village
PO and PS Likabali
Lower Siang District
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Resident of Gogar Village
Likabali
PO PS Likabali
Lower Siang District
Arunachal Pradesh.

2:Bajum Karlo
S/o Late Marba Karlo

Resident of Gogar Village
Likabali
PO/PS Likabali
Lower Siang District
Arunachal Pradesh.

Advocate for the Petitioner : Dicky Panging
Advocate for the Respondent :

Linked Case : IA(C) 119/2022

1:Moi Riba
S/o Late Dakmo Riba

Permanent Resident of Gogar Village
PO and PS Likabali
Lower Siang District. Arunachal Pradesh.

VERSUS

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Resident of Gogar Village
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PO PS Likabali
Lower Siang District.
Arunachal Pradesh.

Advocate for the Petitioner : Dicky Panging
Advocate for the Respondent : L Lombi

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 02-05-2023

Heard Ms. D. Tamuk, learned counsel for the revision petitioner and also heard Ms. L. Lombi, learned counsel appearing for the respondent Nos. 1 and 2.

2. By filing this application under Article 227 of the Constitution of India, the petitioner challenged the impugned order No. LKB/JK/46-09/2018/78-III dated 11.04.2022 passed by the Circle Officer, Likabali, Lower Siang District for the Deputy Commissioner, Likabali, Lower Siang District, Arunachal Pradesh whereby the Keba decision dated 10.04.2021 was set aside and the Keba decision dated 08.12.2021 was upheld.

3. Bereft of unnecessary facts, the case of the petitioner in nut shell is that the petitioner has made a complaint vide letter dated 22.02.2021 before the Deputy Commissioner, Lower Siang District, Likabali against the respondents for illegally encroaching upon the land of the petitioner for which keba was

conducted on 10.04.2021 wherein it was decided in favour of the petitioner regarding the disputed land. Aggrieved by the Keba dated 10.04.2021, the respondent No. 1 filed an appeal on 20.04.2021 before the Deputy Commissioner, Lower Siang, Likabali. The Deputy Commissioner endorsed the matter to the Circle Officer (Keba) with a remark " it should go to the regular court". Despite the remark by the Deputy Commissioner, Lower Siang, Likabali, the Circle Officer (Keba) took cognizance of the appeal dated 20.04.2021 filed by the respondent No. 1 and passed the impugned order dated 11.04.2022. In the impugned order, the Circle Officer (Keba) held as follows:

"Thus it is needless on the part of the village authority to conduct the impugned keba dated 10/04/2021 when the dispute over the same plot of land was settled by the keba dated 08/12/2001. It is thus needless to go detail into the impugned keba decision of 10/04/2021. Therefore, in the interest of justice, the decision of the impugned keba dated 10/04/2021 is quashed and set aside and the decision of the keba dated 10/04/2021 is quashed and set aside and the decision of the keba dated 08/12/2001 is upheld.

The PL Likabali is directed to demarcate the boundary of the land as per the decision of the keba dated 08/12/2001 within one week in presence of the land owners. District Land Revenue & Settlement Officer Likabli is directed to depute suitable staff to assist the PI, Officer-in-Charge Police Station Likabali is directed to depute Police security during the land demarcation."

4. Being aggrieved, this Civil Revision has been filed by the petitioner assailing the impugned order dated 11.04.2022.

5. Ms. D. Tamuk, learned counsel for the petitioner submits that the Arunachal Pradesh Civil Courts Act, 2021 came into force on 12.04.2021. With

the coming into force of 2021 Act, various provisions of the Assam Frontier (Administration of Justice) Regulation, 1945 had been deleted under Section 46 which conferred jurisdiction on the Deputy Commissioners and the Circle Officers who were the Ex-Officio Assistant Commissioners to take cognizance of any appeal filed against the decision of the village authorities. Referring to the second proviso of Section 15 of the Arunachal Pradesh Civil Courts Act, 2021, Ms. D. Tamuk submits that this provision stipulates that from the date of commencement of the act, the appeal from the judgment of customary court lies to the court of the District Judge or the court of Additional District Judge. Despite such provision having been in force, the Circle Officer, Lower Siang, Likabali took cognizance of the appeal dated 20.04.2021 and passed the impugned order dated 11.04.2022 without having jurisdiction.

6. Ms. D . Tamuk, learned counsel submits that there can be no conferment of jurisdiction apart from the statute in as much as after the Arunachal Pradesh Civil Courts Act, 2021 came into force, Section 46 of Assam Frontier (Administration of Justice) Regulation, 1945 which conferred jurisdiction on the Deputy Commissioners and the Circle Officers who are the Ex-Officio Assistant Commissioners to take cognizance of any appeal filed against the decision of the village authorities had been deleted. Therefore, the Circle Officer could not have acted beyond its jurisdiction by taking up of the appeal dated 20.04.2021 filed by the respondent No. 1 against the Keba dated 10.04.2021. She further submits that the issue regarding conferment of jurisdiction to non-existent forums has been already decided by this Hon'ble Court in the case of Smt. Maluk Yomggam vs. Damli Yomcha and Anr reported in 2016(3) GLT 344 wherein this Hon'ble Court has held that there can be no conferment of jurisdiction apart from the statute.

7. The learned counsel for the petitioner further submits that even assuming while not admitting that the Circle Officer, Lower Siang, Likabali, had the jurisdiction to take cognizance of the appeal, the Circle Officer vide impugned order dated 11.04.2022 had reversed the Keba dated 10.04.2021 and once the Circle Officer was not in agreement with the Keba decision dated 10.04.2021, the only course of action open for the Circle Officer was to try the case de-novo, which could mean there should have been a retrial of the issue, however, in the present case, the Circle Officer without providing any opportunity to the petitioner to adduce any evidence and to cross-examine the respondents and the witnesses produced by the respondents has passed the impugned order dated 11.04.2022 which is not sustainable in the eyes of law. Therefore, the impugned order dated 11.04.2022 is liable to be set aside and quashed.

8. Ms. Labi Lomi, learned counsel for the respondents fairly submits that in view of the enactment of the Arunachal Pradesh Civil Courts Act, 2021 wherein under second proviso to Section 15 which provides that from the date of commencement of the Act, in case an appeal is preferred against the judgment of the Customary Courts in the court of District Judge or Additional District Judge as the case may be, the court of District Judge or the Additional District Judge may dispose of the same or proceed with the case de novo.

9. In view of the above, the Circle Officer, Lower Siang, Likabali had no jurisdiction to take cognizance of the appeal dated 20.04.2021 and pass the impugned order dated 11.04.2022.

10. I have considered the submissions advanced by the learned counsel

for the parties.

11. Section 15 of the Arunachal Pradesh Civil Courts Act, 2021 provides for the provisions of appeal under the Act which are reproduced herein below:

"(i) Appeals from the decree or order passed by a Court of District Judge and Courts of an Additional District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.

(ii) Appeals from the decrees and orders passed by a Court of Civil Judge (Senior Division) in original suits and proceedings of civil nature, shall when such appeals are allowed by law, lie to the Court of the District Judge of that district or in the Court of Additional District Judge where such Court exists or the High Court as the case may be.

(iii) Appeals from the decree or order passed by a Court of Civil Judge (Junior Division) in original suits or proceedings of a civil nature, shall when such appeals are allowed by law, lie to the Court of Civil Judge (Senior Division) of the district.

Provided that any appeal or civil suits pending in the courts of Deputy Commissioner shall be disposed of by the concerned Deputy Commissioner(s) under the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945 as expeditiously as possible but not later than one year from the date of coming into force of this Act.

Provided further that, from the date of commencement of this Act, in case an appeal is preferred against the judgment of Customary Court 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."

12. First proviso to Section 15 provides that any appeal or civil suits

pending in the courts of Deputy Commissioner shall be disposed of by the concerned Deputy Commissioner(s) under the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945 as expeditiously as possible but not later than one year from the date of enforcement of the Act. Second proviso stipulates that from the date of commencement of this Act, in case an appeal is preferred against the judgment of Customary Court 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.

13. This Court took note of the fact that the appeal was filed against the Keba decision by respondent no. 1 on 20.04.2021 and the Arunachal Pradesh Civil Courts Act, 2021 came into force on 12.04.2021. In terms of the first proviso of Section 15, it cannot be said that there was an appeal of civil dispute pending in the court of Deputy Commissioner as the appeal was filed after coming into force of Arunachal Pradesh Civil Courts Act, 2021. Admittedly, since the appeal was filed on 20.04.2021, the provisions of second proviso of Section 15 will invariably apply. Therefore, the appeal dated 20.04.2021 could not have been filed before the Deputy Commissioner, Lower Siang District, Likabali not to talk of being taken up by the Circle Officer, Lower Siang District, Likabali.

14. It is noticed that the village authority has been recognized as Customary court under the Act and defines that the Customary court means court of traditional council or authority of a village indigenous by the State by whatsoever name called includes the court of village authority under Section 5 of Assam Frontier (Administration of Justice) Regulation, 1945.

15. On careful consideration of the provisions referred to above as provided under the Arunachal Pradesh Civil Courts Act, 2021, this Court is of the considered opinion that the Circle Officer, Lower Siang, Likabali has acted beyond jurisdiction in taking up the appeal dated 20.04.2021 and passed the impugned order dated 11.04.2022.

16. In view of the above, the impugned order dated 11.04.2022 is hereby set aside and quashed, however, parties are at liberty to approach the appropriate forum.

17. Accordingly, CRP is allowed.

JUDGE

Comparing Assistant