

GAHC040012062021



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

Case No. : CRP 23/2021

1: Anong Lego and 10 Ors.

S/o Late Marku Lego,

Village Ayeng, P.O/P.S Mebo, District East Siang, Arunachal Pradesh, Mobile No.
9862691759

2: Kaling Lego

S/o Late Marku Lego

Village Ayeng

P.O/P.S Mebo

District East Siang

Arunachal Pradesh

3: Kato Lego

S/o Late Tati Lego

Village Ayeng

P.O/P.S Mebo

District East Siang

Arunachal Pradesh

4: Anil Lego

S/o Late Tati Lego

Village Ayeng

P.O/P.S Mebo

District East Siang

Arunachal Pradesh

5: Damin Lego
S/o Late Koddan Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

6: Dalen Lego
S/o Late Koddan Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

7: Mannang Lego
S/o Late Marku Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

8: Minpang Lego
S/o Shri Damin Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

9: Minni Lego
S/o Shri Damin Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

10: Kotem Lego
S/o Shri Anil Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

11: Miti Tayeng (Lego)
W/o Shri Kaling Lego

Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

VERSUS

1:Naklom Modi and 5 Ors.
Village Ayeng,
P.O/P.S Mebo, District East Siang, Arunachal Pradesh

2:Yuk @ Bomrin Tayeng
Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

3:Dippang Borang
Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

4:Gosik Lego
Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

5:Ojing Perme
Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

6: Tinam Modi
Village Ayeng
P.O/P.S Mebo
District East Siang
Arunachal Pradesh

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : Chorpok Modi

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 08-06-2023

Heard Mr. L. Perme, learned counsel for the petitioners and also heard Mr. C. Modi, learned counsel for respondents Nos. 1 to 6.

2. The present petition has been instituted by the petitioners (11 in numbers) against the order dated 15.11.2021 passed by the Appellate Authority-cum-Additional Deputy Commissioner, Mebo, in Case No. Mo/LK-04/2015 whereby the claims made by Shri Kaling Lego (petitioner No. 2) in respect of the land at Sirang area of Ayeng Village, has been rejected and declared the land measuring 42,833 sq.mtrs to be belonging to the private respondent Nos. 1 to 6. The said order has been passed on the appeal filed by the petitioners against the Keba decisions 09.06.2019 and 18.10.2020, on the basis of the Report of the Board dated 14.06.2021. The petitioners also prayed for setting aside of the two Keba decisions 09.06.2019 and 18.10.2020.

3. The brief facts leading to the institution of the present proceeding is that there was a land dispute between the Kobang clan of Ayeng village represented by the petitioners and the respondents No. 1 to 4 which is situated

on the bank of Sirang river/area of Ayeng village. The dispute was deliberated by the Kebang on 09.06.2019 which culminated into a decision which are as follows:

"1) The persons who are claiming ownership of the land adjoining to the Sirang Robung (stream) are Shri Naklom Modi, Shri Yuk Tayeng, Shri Dippang Borang and Shri Gosik Lego. They are claiming the land under the impression that the land is barren land and belong to nobody.

2) Shri. Minpang Lego, represented on behalf of Kobang clan of Ayeng Village claim that starting from Eastern part of Sirang Robung(old pathway of the stream) upto where now stream is flowing are land of the Kobang clan.

3) The Sirang Arik of the Kobang Clan of Ayeng Village was certified by land bordering parties namely:- Shri Mutgan Tayeng, Shri Pelsem Tayeng and Shri Sikjong Yirang.

4) The members present in the house has stated that the land of Kobang clan would not supposed to reach the bank of Sirang Stream, therefore, the members present/ kebang order that Kobang Clan will spare small portion of barren land at eastern side to the other party."

4. The Kebang members, inter-alia, on finding that the land of Kobang clan was not supposed to reach the bank of Siang stream and therefore, decided that the Kobang clan to spare a small portion of barren land at the eastern side to respondent No.1 to 4.

5. Thereafter another Kebang was conducted on 18.10.2020 wherein the Kebang decision dated 09.06.2019 was affirmed by the Kebang.

6. Being aggrieved, the petitioners filed the complaint/appeal on 04.11.2020 before the Additional Deputy Commissioner, Mebo, East Siang District. On receipt of the said appeal filed by the respondents on 04.11.2020, the Additional Deputy Commissioner inter-alia decided to constitute a board to conduct an enquiry into the matter and submit a report within 15 days from the issue of the said order. The board submitted its report on 14.06.2021.

7. Based on the report of the board, Appellate Authority-cum-Additional Deputy Commissioner, Mebo, rejected the claims made by Shri. Kaling Lego (petitioner No. 2) against the land at Sirang area of Ayeng Village, and declared the land measuring 42,833 sq.mtrs to be belonging to the private respondent Nos. 1 to 6 and accordingly directed the land owners with a liberty to resume their developmental activities at will.

8. Mr. L. Perme, learned counsel for the petitioners submits that the impugned order dated 15.11.2021 has been passed without following any procedure of law and no opportunity of hearing was given. The only basis on which the order dated 15.11.2021 was passed is the ex parte spot verification report of the board which was submitted behind the back of the petitioners, therefore, the impugned order dated 15.11.2021 is not sustainable in the eyes of law.

9. Mr. L. Perme further submits that since the petitioners are the appellants before the Additional Deputy Commissioner and they ought to have been supplied with the report, if any, to the appellants and the appeal should

have been decided in accordance with law.

10. Mr. L. Perme submits that from no where the Appellate authority passed the impugned order dated 15.11.2021 conferring title to the respondent No. 5 and 6 over the land in question as no point of time the petitioners have any dispute with respondent No. 5 and 6. He further submits that impugned order is not a judgement within the meaning of Order XX of CPC, 1908. He also submits that the Kebang has no authority to direct to spare a land to respondents and as such the impugned order and Kebang decisions are perverse and illegal and same may be set aside and quashed.

11. Mr. C. Modi, learned counsel for the respondents, on the other hand, while supporting the Kebang decisions dated 09.06.2019 and 18.10.2020 and the impugned order dated 15.11.2021, submits that the claim of the petitioners that they have filed an appeal before the appropriate Appellate Authority is not correct in as much as, it is only a complaint against the members of the Customary Court as the decision had gone against him. In fact, no appeal has been filed as required under the law and by not preferring any appeal under the provision of law against the Kebang decisions aforementioned, petitioners cannot approach this Hon'ble Court by filing the present petition.

12. Mr. C. Modi, learned counsel further submits that if the impugned order dated 15.11.2021 is not a judgment and if it is an order as projected by the petitioners, then there is a separate provision under the provisions of CPC against such order and in any case no application under Article 227 of the Constitution of India will lie. While not admitting, assuming that the petitioners have filed an appeal, even then, after the coming into force of Arunachal

Pradesh Civil Courts Act, 2021 on 12.04.2021, the petitioner could have approached the Deputy Commissioner for disposal of the appeal as under the Arunachal Pradesh Civil Courts Act, 2021, stipulates that any appeal pending before the Deputy Commissioner/Additional Deputy Commissioner should be disposed of within one year from the date of coming into force of the Arunachal Pradesh Civil Courts Act, 2021. Having not done that, the petitioners are barred from approaching this Court by this present petition. Mr. C. Modi, learned counsel further submits that even if the impugned order dated 15.11.2021 is set aside by this Court, the Kebang decision dated 09.06.2019 will remain which is in favour of the respondents.

13. Mr. C. Modi, further submits that since no appeal has been preferred against the Kebang decisions dated 09.06.2019 and 18.10.2020 as per the relevant provisions of the law, the interference of the impugned order dated 15.11.2021 shall render the Appellate Court/Authority nugatory in as much as under the law, there is ample remedy to file appeal if any party is aggrieved by Kebang decision (customary court).

14. I have considered the submissions of the learned counsel for the parties and have gone through the materials available on record.

15. On the appeal of the petitioners, the Appellate Authority/Additional Deputy Commissioner has passed the impugned order dated 15.11.2021 which is reproduced herein below:

"GOVERNMENT OF ARUANCHAL PRADESH
OFFICE OF THE ADDITIONAL DEPTY COMMISSIONER
MEBO
EAST SIANG DISTRICT

NO.MO/LK-04/2015

Dated Mebo the 15th November 2021

::ORDER::

Whereas, a complaint was lodged by Mr. Anong Lego and Mr. Kaling Lego of Ayeng Village, regarding land dispute at Sirang area of Ayeng village against the Kebang decision dated 13/07/2019, 18/10/2020.

And Whereas, an interim order was issued vide No. Mo/LK-04/2020 dated 04/05/2021 prohibiting all development activities till the matter was settled. This was followed by constitution of a board for physical spot verification of the disputed areas at Sirang area.

And Whereas, the board vide its report dated 14/06/2021 has submitted that, the claims made by Mr. Kaling Lego against the said land holds no merit and land under contention measuring 42,833 sqmts belong to 1 Sh. Naklom Modi 2. Sh. Ojing Perme 3. Sh. Yuk Tayeng 4. Sh. Dippang Borang 5. Sh. Gosil Lego 6. Smti. Tinam Modi of Ayeng Village.

Therefore, it is hereby ordered that the aforementioned land owners are at liberty to resume their developmental activities at will. Aggrieved party if any, may approach the higher competent authority/Court for redressal of grievances if need be.

With this, the instant case stands disposed.

Sd/-

(Ainstein Koyu)

Addl. Dy. Commissioner

Mebo

NO.Mo/LK-04/2015

Dated Mebo the 15th November 2021

Copy to :

- 1. All concerned for information.*
- 2. HGB/GBs/Village Secretary of Ayeng Village for information;.*
- 3. Office copy.*

(Ainstein Koyu)
Addl. Dy. Commissioner
Mebo

16. On bare reading of the order dated 15.11.2021 passed by the Appellate Authority/Addl. Deputy Commissioner, it transpires that the basis of order is the report of the board which was submitted vide order dated 14.06.2021 and held that there is no merit in the claims of the petitioners, thereby declaring the disputed land in favour of the respondents, therefore, the order appears to be a cryptic one as the same has been passed without proper application of mind much less judicial mind. It is easily discernible that parties were not given an opportunity of hearing. It shows, surprisingly that Appellate authority has conferred title to the respondent No. 5 and 6 over the land in question who were never parties to the dispute. It is also noted that no semblance of any provision of the law has been followed while deciding the appeal of the petitioners which amounts to grave dereliction of duty and flagrant violation of fundamental principle of law.

17. This Court takes note of the fact that the appeal against the Kebang decision was filed on 04.11.2021. The Arunachal Pradesh Civil Courts Act, 2021 has come into force with effect from 12.04.2021 and the appeal was disposed of on 15.11.2021 by the Additional Deputy Commissioner. Therefore, the appeal could not have been filed under the provisions of the Arunachal Pradesh Civil Courts Act, 2021. However, this Court cannot lose its sight as the present petition has been filed before this Court on 09.12.2021, when the Arunachal Pradesh Civil Courts Act, 2021 was already in force. In such a situation, it is difficult to hold that the petitioners ought to have filed the appeal against the

Kebang decision under the provisions of the Arunachal Pradesh Civil Courts Act, 2021. However, since this Court finds the order dated 15.11.2021 passed by the Appellate Authority/Additional Deputy Commissioner to be a cryptic one and also flagrant violation of fundamental principle of law, there may not be, perhaps any bar in exercising jurisdiction under Article 227 of the Constitution of India in the interest of justice as this Court has power and jurisdiction to ensure that all the courts below as well as statutory or quasi-judicial tribunals act in accordance with well established principles of law.

18. This Court is not oblivious of the observation of the Hon'ble Supreme Court that the jurisdiction under Article 227 of the Constitution of India cannot be exercised like a 'Bull in a China shop' to correct all errors of order/judgement except for flagrant violation of fundamental principle of law. I may profitably refer to the observation of the Hon'ble Supreme Court in the case of **Jai Singh & Ors V. Municipal Corporation of Delhi & Anr** reported in (2010) 9 SCC 385, which is reproduced herein below:

"15. ...Undoubtedly the High Court, under this Article 227, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under [Article 226](#) of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise

of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

19. In view of what have discussed above, this Court is of the considered view that the impugned order dated 15.11.2021 passed by the Appellate Authority-cum-Additional Deputy Commissioner is not sustainable as same has been passed in grave dereliction of duty and flagrant violation of fundamental principles of law.

20. Consequently, the impugned order dated 15.11.2021 passed by the Appellate Authority-cum-Additional Deputy Commissioner is set aside and quashed. However, parties are at liberty to avail the appropriate remedy as may be permissible under the law.

21. In the result, this revision petition is allowed and disposed of.

JUDGE

Comparing Assistant