

GAHC040013102022



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

ITANAGAR PERMANENT BENCH
Writ Petition (C) No.405 (AP)/2022

DR. BIMAL RATAN

..... PETITIONER.

-Versus-

THE STATE OF ARUNACHAL PRADESH & 5 OTHERS..... RESPONDENTS.

Advocates for the petitioner: Mr. Muk Pertin
 Ms. T.Y. Bhutia;

Advocate for the respondents: Mr. T. Pertin;

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of Hearing : 12.06.2023.

Date of Judgment : 18.07.2023.

JUDGEMENT & ORDER (CAV)

Heard Mr. Muk Pertin, learned senior counsel, assisted by Ms. T. Y. Bhutia,

learned counsel for the petitioner. Also heard Mr. T. Pertin, learned counsel appearing for the respondents' No. 4, 5 & 6. It is to be mentioned here that respondents No. 1 & 2 have been struck off from array of the case, vide order dated 04.05.2023, and respondent No.3 has been struck off from array of the case, vide order dated 12.06.2023

2. In this writ proceeding, instituted under Article 227 of the Constitution of India, the petitioner, Dr. Bimal Ratan has put to challenge the Kebang Notice, dated 20.10.2022, issued to him by Customary Court of Ayeng Village and also the Kebang proceeding conducted by the said Customary Court against him.

3. The background facts, leading to filing of the present writ petition is adumbrated herein below :-

"The petitioner, as a plaintiff, has instituted one Title Suit, being T.S. No.22/2022, before the court of learned Civil Judge, (Sr. Divn.) Pasighat, against the respondent No.6, namely, Shri Pelsem Tayeng (sole defendant No.1 in the T.S.) claiming right title and interest over a plot of land, called Dumpop-Sirang land, located at Ayeng Village, under Mebo Circle of East Siang District of Arunachal Pradesh. In the said Title Suit, the learned Civil Judge has issued notice to the respondent No.6. On receipt of Notice from the Civil Court, the respondent No.6, who is the Gaonburah of Ayeng Village, has instigated private respondents No. 4 and 5 herein this petition, to claim the suit land and facilitate them to hold a Kebang at Ayeng Village on 20.10.2022, so as to frustrate the Title Suit. The petitioner then apprised the Village Authority to the effect that in respect of the same suit premises, a Civil Suit is pending before the court of Civil Judge, Pasighat.

But, ignoring his contention the Village Authority had issued Notice to him on 20.10.2022, to hold the Kebang.”

4. Being aggrieved, by the said Notice, dated 20.10.2022, of the Village Authority, the petitioner has approached this Court, by filing the present writ petition, on the ground that in connection with the same suit land one Title Suit is pending between him and the respondent No.6 before the Civil Judge, Pasighat and as such initiation of Kebang proceeding in respect of same suit land is in contravention of the provision of section 10 of the CPC, and that the respondent No. 6 being the party in the Title Suit, is an interested person in the outcome of the suit and he cannot sit as a Judge for his own cause in the Kebang proceeding, wherein also he is involved as party, which is in total violation of the principle of natural justice and also the provision of section 17(1) of the Arunachal Pradesh Civil Court Act, 2021.

5. The respondents No.3 to 6 have filed their affidavit in opposition denying the assertions made in the petition. It is stated that- the present petition, under Article 227 of the Constitution of India is not maintainable, and there is no overlapping of the authority to decide the civil cases and Kebang is one of the authority to decide civil case and Civil Judge (Junior Divn.) and Civil Judge (Sr. Divn.) and the courts of District Judges are the appellate forum from Kebang decisions. It is also stated that the land in question in the Title Suit No.22/2022, and in the Kebang and also in this writ proceeding are same, and that before initiation of the Title suit, being TS. No.22/2022, the Kebang of Ayeng Village is seized of the matter as the land dispute between the respondent No. 6 and the family of Lt. Ranga Borang was going on since long and Kebang proceeding was first initiated on 07.05.2019, to resolve the said dispute, whereas, the Title

Suit No.22/2022 was instituted on 29.08.2022. Therefore, it is contended to dismiss this petition

6. Mr. Muk Pertin, the learned senior counsel for the petitioner submits that the respondent No.6 is the Gaonburah of Ayeng Village and being the Gaonburah he is the member of the Village Authority and as he is a party in the Title Suit and Kebang proceeding, he is person interested, and he cannot be the Judge of his own cause in view of the provision of section 17(1) of the Arunachal Pradesh Civil Court Act 2021, and also against the principle of natural justice. Mr. Pertin further submits that as Title Suit is pending between the petitioner and the respondent No.6 before the Civil Judge, Pasighat, initiation of Kebang proceeding, in respect of same suit land is in contravention of the provision of section 10 of the CPC, and therefore, Mr. Pertin has contended to set aside and quash the impugned Kebang Notice dated 20.10.2022, as it was being initiated and issued in total contravention of not only the statutory provision but also against the principle of natural justice.

7. Whereas, Mr. T. Pertin, the learned counsel for the respondents No. 3 to 6, submits that the petition under Article 227 of the Constitution of India is not maintainable and that disputed question of fact is involved in this petition, and therefore, it is contended to dismiss the same.

8. In view of the assertions made in the pleadings of the parties and also in view of the submissions of their learned Advocates, the issues, that has arisen for adjudication of this court is formulated as under:-

- (i) Whether in view of pendency of Title Suit between the petitioner and the respondent No.6 before the learned Civil Judge, Pasighat, initiation of Kebang proceeding in respect of same suit land is in contravention

of the provision of section 10 of the CPC. ?

- (ii) Whether in view of pendency of Title Suit between the petitioner and the respondent No.6 before the Civil Judge, Pasighat, and Kebang proceeding before the Village Authority, Ayeng Village, the respondent No.6, being the Gaonburah of Ayeng Village, and being the member of the Village Authority, is an interested person and on such count he cannot be the Judge of his own cause in view of the provision of section 17(1) of the Arunachal Pradesh Civil Court Act 2021, and the same is also against the principle of natural justice?

9. I have carefully gone through the pleadings of the parties and the documents placed on record. Also, I have gone through the relevant provision of law.

10. It is not in dispute that the respondent No.6 of the present petition is the sole respondent in Title Suit No.22/2022. And subsequently respondents' No. 4 and 5 have been impleaded in the said suit. It is also not in dispute that the Title Suit No.22/2022 and the Kebang proceeding was initiated in respect of the same plot of land and the parties involved are also same in both the proceedings. In their affidavit in opposition respondents' No. 4, 5, and 6 have clearly admitted the same in paragraph No. 20. In view of above admitted position it has to be seen whether section 10 of the Code of Civil Procedure is attracted here or not.

11. Section 10 CPC deals with the doctrine of Res-Sub Judice and it provides that :- "No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit

between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court”.

12. The purpose of the doctrine of 'Res Sub judice' is to prevent a multiplicity of the proceedings and to refrain two conflicting decisions. The doctrine bars the parallel trial of the suit where the matter is pending to adjudicate in the former suit. **The main essentials of Section 10 are as follows:-**

- (i) There must be two suits, one previously instituted and the other subsequently instituted.**
- (ii) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.**
- (iii) Both the suits must be between the same parties or their representatives.**
- (iv) The previously instituted suit must be pending in the same court in which subsequent suit is brought or in any other court in India or in any court beyond the limit of India established or continued by the Central Government or before the Supreme Court.**
- (v) The court in which the previous suit is instituted must have jurisdiction to grant the relief claimed in the subsequent suit.**
- (vi) Such parties must be litigating under the same title in both the suit.**

And as soon as above conditions are satisfied, a court cannot proceed with the subsequently instituted suit, since the provisions contained in Section 10 are mandatory and no discretion is left with the court.(See- Manohor Lal vs. Seth Hiralal, reported in AIR 1962 SC 527). The test for applicability of section 10 is whether the decision in a previously instituted suit would operate as res-judicata in the subsequent suit. If it is so then the provision would attract.

13. In the instant case, indisputably, the respondent No.6 is a party in the Title Suit pending before the Court of learned Civil Judge (Sr. Divn.), Pasighat. He is also a party in the Kebang proceeding pending before the Village Authority of Ayeng Village, along with the petitioner of this writ proceeding. The respondents' No. 4, 5, and 6 have also clearly admitted the same in paragraph No. 20 of their counter affidavit. Thus, the condition precedents, required for attracting Section 10 of the CPC having been fulfilled, this court is of the clear opinion that the doctrine of Res Sub-Judice is clearly attracted herein this case. The Issue No.1, so formulated herein above, stands answered accordingly.

14. Now, advertent to the issue No. (ii), I find that section 17 of the Arunachal Pradesh Civil Court Act 2021 provides as under:-

Judges not to try suits in which they are interested etc. :

- (1) No Judicial Officer or authority of customary court shall try any suit to, or in which he/ she is a party or personally interested.
- (2) No Judicial Officer or authority of customary court shall try any appeal against any decree or order passed by him/her in any other capacity.
- (3) When any such suit, proceedings or appeal comes before any such

Judicial Officer he shall report the circumstances to the court to which he/she is immediately subordinate. The said superior court shall thereupon dispose of the case in the manner prescribed section 24 of the Code.

15. In the case in hand, indisputably, the respondent No.6 is a party in the Title Suit, pending before the Court of learned Civil Judge, (Sr. Divn.) Pasighat. He is also a party in the case pending before the Kebang, along with the petitioner of this writ proceeding. As he is a party in the proceeding before the Kebang and also in the Title Suit No.22/2022, he is an interested person. That being so, in view of the provision of section 17 (1) of the Arunachal Pradesh Civil Court Act 2021, he cannot decide the case pending before the Kebang. But, from the Kebang Notice dated 20.10.2022, (**Annexure-1**) of the petition, it appears that he is a signatory of the said Notice, along with three other Gaonburahs. By virtue of being Gaonburah, he is the member of the Kebang (Village Authority). Thus, he cannot presides over the Kebang being an interested person. Mr. M. Pertin, the learned senior counsel for the petitioner has rightly pointed this out during his argument and I find sufficient force in the same, and accordingly, I am inclined to record concurrence to the same.

Though a stand is being taken in the counter affidavit by the respondents' No.4, 5 and 6 that the Kebang ceding was initiated h earlier than the Title Suit, yet, it appears that it was instituted against the present petitioner only after institution of the Title Suit No. /2022 by the petitioner and Notice (Annexure-1) was issued to only on 20.10.2022.

16. Besides, the action of the respondent is also against the principle of natural justice. It is to be noted that basically the principles of natural justice

are :-

1. [Nemo judex in causa sua](#) (rule against bias)
2. [Audi alteram partem](#) (rule of fair hearing)

In the case in hand the applicable principle is :- *Nemo judex in causa sua* (rule against bias): The meaning of this principle is that 'no one should be a judge in his/her own cause.' Simply, it means that whenever any administrative or judicial, or quasi-judicial body exercises their power to perform their respective duties, they must act impartially. They should not have any interest in the matter. They should be impartial and neutral in adjudicating every matter and dispute which appears before them.

17. Thus, if a Judge, while discharging his/her judicial duty, has found that he/she has an interest out of a matter or he/she is involved in a case which he/she is deciding, this principle disqualifies him/her to decide that particular case. This is because, when a person becomes involved in any matter or that person has some personal interest out of that particular matter, it is ordinarily not possible for the person to decide the matter impartially and it is natural that the decision will be biased. Same is the position for administrative authorities also.

18. Whenever any authority is suspected to be biased in determining any case before them, that decision will not have any effect and will be treated as void. Thus this principle plays a significant role to prevent the authorities from acting partially in any matter and uphold the credibility of the institutions. These bias may be of following types:- (i) Personal bias (ii) Pecuniary bias and (iii) Subject

matter bias. And any judgment derived from any such cases will be null and void. (See - [Gullampally Nageswara Rao vs. A.P.S.R.T.C.](#) reported in **1959 AIR 308**).

19. In view of the discussion and finding, recorded here in above, the question No.(ii), so formulated herein above, has to be answered in affirmative. And accordingly, the same stands answered.

20. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The impugned Kebang Notice, dated 20.10.2022, and the Kebang proceeding, against the present petitioner, stands set aside and quashed, as they failed to withstand the legal scrutiny.

21. In terms of above this writ petition stands disposed of, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant