

GAHC040013402019



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

Case No. : WP(C)/427/2019

TAMI PALENG
S/O LT. TAGE PALENG, R/O KAYING, PO/PS KAYING, SIANG DISTT, AP

VERSUS

THE STATE OF AP AND 3 ORS.
REPRESENTED BY SECRETARY/ COMMISSIONER GENERAL
ADMINISTRATION, GOVT OF AP, ITANAGAR(AP) 2:THE DC
Age: 0
Occupation :

3:THE EAC
Age: 0
Occupation :

4:TAYI RIBA
Age: 0
Occupation

Advocate for the Petitioner : Kemo Lollen

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 22.08.2023

Heard Mr. K. Bogo, learned counsel for the petitioner. Also heard Mr. N. Ratan, learned Additional Advocate General appears for the respondent Nos. 1, 2 & 3; and Mr. D. Kamduk, learned counsel appears for the respondent No. 4.

By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the Order dated 04.11.2019 (annexure-11) passed by the Extra Assistant Commissioner, Siang District, Kaying, directing the petitioner and the respondent No. 5 to nominate 5(five) members each as arbitrators on or before 11.11.2019 for hearing of kebang of Lobung area land dispute case Kaying. The learned counsel for the petitioner submits that the land dispute between the petitioner and the respondent No. 4 was settled by way of Keba decision as way back as on 15.10.2002. The respondent No. 4 however still aggrieved to that decision approached by the Deputy Commissioner concerned who again referred the matter for a fresh Keba decision. Accordingly, the Kebang decision was made on 23.12.2004 which also was in favour of the petitioner. However, the respondent No. 4 being aggrieved filed the Title Appeal No. 10/2014. While the Deputy Commissioner was in the process of considering the appeal, in view of the establishment of the Fast Track

Court at Basar, the case was transferred to the said Fast Track Court. The Fast Track Court then vide order dated 28.02.2011 directed the respondent to submit a memorandum of appeal in support of his contention. Against the said order, the petitioner came before this Court by filing CRP No. 09/2011. CRP. No. 09/2011 was disposed of vide order dated 16.03.2012 by remanding the matter back to the Fast Track Court for adjudication. On remand, the matter was listed on a number of occasions but the respondent No. 4 having failed to appear despite the summons issued to him, the Fast Track Court vide order dated 15.09.2014 dismissed the appeal for non-prosecution. According to the petitioner, since the 2(two) Keba decision was in favour of the petitioner the Extra Assistant Commissioner, Siang District, Kaying could not have issued the impugned order dated 04.11.2019 asking the petitioner and the respondent No. 4 to nominate 5(five) members each as arbitrators for hearing the dispute between the parties. The learned counsel submits that this dispute having already been resolved in favour of the petitioner the impugned order dated 04.11.2019 cannot be sustained and should be set aside.

Mr. D. Kamduk, learned counsel for the respondent No. 4, on the other hand submits that against the dismissal order dated 15.09.2014 for non-prosecution, the respondent No. 4 filed an application for restoration of the appeal i.e., Misc. No. 03/2015 before the Fast Track Court at Basar and the learned Court below by way of a verbal order restored the appeal. Upon such restoration the matter was referred to the Deputy Commissioner for consideration. The submission of the learned counsel to the extent of filing Misc. No. 03/2015 can be accepted but the passing of a verbal order and that too by Judicial Officer cannot be accepted. In order words, restoration of the appeal by

the verbal order has no legal sanctity in the eye of law. Therefore, it has to be considered and understood that the appeal has not been restored.

The learned Additional Advocate General submits that the impugned order dated 04.11.2019 apparently has been issued by the Extra Assistant Commissioner, Siang District, Kaying, in view of the complaint submitted by 5(five) individuals who claim that they have purchased land from the petitioner. Since the respondent No. 4 has objected to the claim over the land in question, the Extra Assistant Commissioner appears to have issued the impugned order dated 04.11.2019.

Be that as it may, the materials available on record goes to shows that the dispute over the land in question between the petitioner and the respondent No. 4 has been settled by 2(two) Keba decisions dated 15.10.2002 and 23.12.2004. Be it stated herein that at the relevant time it was the respective father of the petitioner and the respondent No. 4 who were contesting the issue/dispute. The said decision has never been set aside in view of the fact that the Title Appeal No. 10/2014 was dismissed by the Fast Track Court (Additional District & Sessions Judge, Basar) vide order dated 15.09.2014. Thereafter, the same has not been restored.

As such upon due consideration and after hearing the submissions of the learned counsels for the parties, the impugned order dated 04.11.2019 is found to be not sustainable and the same is set aside. It is however left open to the respondent No. 4 to pursue the matter before the appropriate forum as may be permissible in the law.

With the above observation, the writ petition stands disposed of.

JUDGE

Comparing Assistant