

GAHC020000682017



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

Case No. : WP(C)/164/2017

ALEMTEMSHI JAMIR AND 3 ORS.
S/O LATE N.I JAMIR,
RESIDENT OF DON BOSCO SCHOOL AREA,
DR. BILLY GRAHAM ROAD,
KOHIMA, NAGALAND

2: METSUBO JAMIR
S/O LATE N.I JAMIR
RESIDENT OF NEW MINISTER HILL AREA
KOHIMA NAGALAND.

3: IMLISUNGKUM JAMIR
S/O LATE N.I JAMIR
RESIDENT OF UPPER CHANMARI KOHIMA NAGALAND.

4: YASHILA JAMIR
W/O LATE N.I. JAMIR
RESIDENT OF CHEKIYE VILLAGE
NEAR NH-39 3RD MILE DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND AND 6 ORS.
THROUGH THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF NAGALAND, HOME DEPARTMENT,
NAGALAND, KOHIMA.

2:THE DEPUTY COMMISSIONER DIMAPUR NAGALAND.

3:THE EXTRA ASSISTANT COMMISSIONER CHUMUKEDIMA
DISTRICT-DIMAPUR NAGALAND.

4:THE HEAD DOBASHI DOBASHI'S COURT
CHUMUKEDIMA DISTRICT-DIMAPUR NAGALAND

5:KEDHORII KHOTSII
THE SECRETARY TO THE SO CALLED KENIE SOCIETY
CHUMUKEDIMA TOWN DISTRICT-DIMAPUR NAGALAND
FOR HIMSELF AS WELL AS REPRESENTING THE SAID SOCIETY. C/O
SHRI. THEJAVIZO NAKHRO
EXTRA ASSISTANT COMMISSIONER CHUMUKEDIMA
DISTRICT-DIMAPUR NAGALAND

6:DUOLHOU KHOU ANGAMI
S/O NGUCHA PUNYU.
C/O SHRI. THEJAVIZO NAKHRO
EXTRA ASSISTANT COMMISSIONER CHUMUKEDIMA
DISTRICT-DIMAPUR NAGALAND.

7:IMTILA
W/O DR. L.TAKA
RESIDENT OF AOYIMKUM VILLAGE
DISTRICT-DIMAPUR NAGALAND

Advocate for the Petitioner : Mr. Tali Ao,
Mr. Limawapang,
Mr. Tongpangkumba,
Mr. Sashimongba, Advs

Advocate for the State Respondents : Ms. V. Suokhrie, Addl. Adv. General

Advocate for the respondent No. 5 & 6 : Ms Asenla, Adv.

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ODER (ORAL)

Date : 19-06-2023

Heard Mr. Limawapang, learned counsel for the petitioners and Ms. V. Suokhrie, learned Addl. Advocate General for the State respondents. Also heard Ms. Asenla, learned counsel for the respondent No. 5 & 6.

2. The issue which arises for the consideration of this Court is whether the Dobashi court can sit in appeal over the verdict/decision rendered by the village council even if the appeal is referred to, by the Deputy Commissioner/Addl. Deputy

Commissioner/Assistant to the Deputy Commissioner.

3. The facts of the case in brief are as follows;

(i) The Diphupar village council, Dimapur, by the order dated 07/02/2017, resolved a land dispute case between the present petitioners and the respondent No. 5 & 6 in case No. 1059 dated 07/01/2017.

(ii) That against the decision dated 07/02/2017 rendered by the Diphupar village council, Dimapur, the respondent No.5 filed the complaint dated 27/05/2017 to the Extra Assistant Commissioner (in short EAC) Chumukedima, Dimapur, Nagaland.

(iii) The EAC Chumukedima, accordingly issued the order dated 30/05/2017 endorsing the case to the Dobashi court, Chumukedima for adjudicating the dispute. The EAC Chumukedima also issued the order dated 01/06/2017 restraining the Diphupar village council from executing the order dated 07/02/2017.

(iv) The Head Dobashi, Chumukedima accordingly registered the dispute between the petitioner and the respondent No.5 as Pol-Case-1/2017-18 and issued the notice dated 01/06/2017 notifying the parties about the registration of the case.

(v) Consequent thereto, the petitioner, submitted the representation dated 16/06/2017 to the EAC Chumukedima, conveying that neither the EAC Chumukedima nor the Dobashi court Chumukedima can assume jurisdiction to entertain, hear and decide the case which has already been adjudicated by the Diphupar village council on 07/02/2017 in case No. 1059 dated 07/01/2017.

(vi) That pursuant to the representation submitted by the petitioner, the Deputy Commissioner, Dimapur, Nagaland, wrote the letter dated 21/07/2017 to the EAC Chumukedima inter-alia conveying that the Dobashi (DB) court has the appellate jurisdiction over the decision of the

village council provided that the case is referred to by the Deputy Commissioner or by any of the Assistant to the Deputy Commissioner under the provisions of the Nagaland Village and Tribal Councils Act, 1978 and under the relevant rules for the Administration of Justice and Police in Nagaland , 1937.

(vii) The Head DB, in the office of the EAC Chumukedima, thereafter issued the summon dated 28/07/2017 asking the petitioner to appear in person, before the Dobashi court on 09/08/2017 along with all the relevant documents for the scrutiny of the court. Another summons was also issued to the petitioner on 03/08/2017 asking the petitioner to appear before the DB's court on 18/08/2017.

(viii) That being aggrieved by the action resorted to, against the petitioner, by the official respondents more particularly, the respondent No. 2, 3 & 4, the petitioner has filed the present petition inter-alia for setting aside and quashing the proceedings pending before the Dobashi court Chumukedima in Pol-Case No. 1/2017-18 and for further order(s)/direction(s) prohibiting the Dobashi court Chumukedima from exercising the appellate jurisdiction against the decision/verdict dated 07/02/2017 passed by the Diphupar village council in Case No. 1059.

(ix) In the affidavit-in-opposition filed on behalf of the official respondent No. 1, 2 & 3, the State has annexed the copy of the order dated 04/07/2017 passed by a Co-ordinate Bench of this Court in Civil Revision Petition No. 9(K)/2017 (Toulazouma village council -vs- Shri. Traonu Poumai) wherein, the Co-ordinate Bench in that case after considering section-22 of the Nagaland Village Area Councils Act, 1978 and Rule-23 A of the Rules for Administration of Justice and Police in Nagaland, 1937 (as amended upto date) has held that the EAC Chumukedima is an Assistant to the Deputy Commissioner and the court of DB Chumukedima, on endorsement of the case by the EAC Chumukedima, can exercise appellate jurisdiction over the decision of the

village council. The Civil Review Petition No. 12(K)/2017 was thereafter filed for review of the order dated 04/07/2017 passed in Civil Revision Petition No. 9(K)/2017 but was dismissed by the judgment dated 25/01/2019. Relying on the order dated 04/07/2017 passed by the Co-ordinate Bench in Civil Revision Petition No. 9(K)/2017, the State has taken a stand that the Dobashi court has the appellate jurisdiction to try cases over the decision rendered by the village council if the case is endorsed/referred by the Deputy Commissioner or by the Assistant to the Deputy Commissioner.

(x) The present case was heard on 21/02/2019. This Court after referring to Rule 23 A, Rule 24 and Rule 31 of the Rules for Administration of Justice and Police in Nagaland, 1937 and as amended from time to time has held that the Dobashi court can hear and decide such civil case which may be referred to it by the Deputy Commissioner or the Addl. Deputy Commissioner or the Assistant to the Deputy Commissioner as the case may be, but such civil cases referred must be original in nature and not an appellate matter against the decision of a forum of co-ordinate/equal jurisdiction. This Court was also of the view that there cannot be a reference for deciding any appeal by the Dobashi against an order of other authorities who have been placed at par with the Dobashi under Rule 31 of the Rules, 1937.

(xi) Since this Court, in the present case, had differed with the order passed by the Co-ordinate Bench of this Court in Civil Revision Petition No. 9(K)/2017 which held that the Dobashi court had the jurisdiction to hear the appeal against the order passed by the village council court, the present case was referred to be placed before the Hon'ble Chief Justice for constituting an appropriate larger Bench for deciding the following issues;

- a) As to whether any decision passed by the village council court can be heard in appeal by the Dobashi court even if the

same is referred to it by the Deputy Commissioner/Addl. Deputy Commissioner/Assistant to the Deputy Commissioner under Rule 23 A of the Rules for Administration of Justice and Police in Nagaland, 1937 and,

- b) As to whether the office of the Extra Assistant Commissioner can be equated with the office of the Assistant to the Deputy Commissioner, as has been held, by the Co-ordinate Bench in Civil Revision Petition No. 9(K)/2017 for the purpose of considering appeals or directing reference against an order passed by the Mouzadar, Goanbura, Chief Headman of Khel, Dobashi or other village authority, since an appeal against this authorities would lie only before the Deputy Commissioner or his Assistant as provided under Rule 31 of the Rules for Administration of Justice and Police in Nagaland, 1937.

(xii) Subsequent to the order passed by the Hon'ble Chief Justice to place the matter before the available Division Bench at Kohima, the question of reference, was heard by the Hon'ble Division Bench and by the judgment & order dated 04/12/2020 answered the reference by holding as follows;

- (a) Dobashis cannot be empowered as appellate court by the exercise of the powers under Rule 23 A. Rule 31 debars DC/ADC's and his Assistants from such authority.
- (b) Office of the EAC can be empowered as Assistant to DC under 1937 Rule 1(C) provided the Government declares so.

(xiii) Besides the conclusion arrived at, the Hon'ble Division Bench in the judgment & order dated 04/12/2020 has also made the following observations to arrive at the conclusions/findings;

- (a) Rule 31 of the Rules 1937 does not empower the Deputy Commissioner or his Assistant to refer appeal cases to the

Dobashi court from the decision of the village council.

- (b) The Act of the Extra Assistant Commissioner, Chumukedima, directing the Dobashi court Chumukedima, to hear appeal against the order passed by Diphupar village council is violative of the provisions of appeal provided under Rule 31 of the Rules 1937.
- (c) Rule 24 of the Rules 1937 (as amended) provides that the Dobashi court and the village court have concurrent jurisdiction. It is therefore not the intention of the legislature to empower the Dobashi court with the appellate jurisdiction over the decision of the village council court.
- (d) Rule 23 A of the Rules 1937 (as amended) is only a supervisory power invested upon the Deputy Commissioner/Addl. Deputy Commissioner/Assistant to the Deputy Commissioner to refer civil cases to the Dobashi but is not referable to matters of appeal.

4. In the present case, no record/material has been placed before this Court, to substantiate that the Extra Assistant Commissioner (EAC) Chumukedima has been appointed as the Assistant to the Deputy Commissioner by the competent authority in exercise of the power under Rule 1(C) of the Rules, 1937. This issue is however no longer relevant for deciding the present case in view of the findings of the Hon'ble Division Bench that the DC/ADC and Assistant to the Deputy Commissioner while referring civil cases to the Dobashi under Rule 23 A of the rules cannot empower the Dobashi's with appellate jurisdiction as it will be in contravention of the provisions of Rule 31 of the rules. In other words, even assuming that the EAC Chumukedima has been appointed as Assistant to the Deputy Commissioner under the rules he will have no authority to confer appellate power to the DB court Chumukedima to entertain and hear appeals from the decision of the Diphupar village council since the exercise of such powers will be in contravention of the provisions of Rule 31 of the rules.

5. The point of reference has been elaborately dealt with by the Hon'ble Division Bench of this Court in the judgment & order dated 04/12/2020 thus answering the issues raised in the present petition.

6. In the light of the discussions made above and in view of the judgment & order dated 04/12/2020 passed by the Hon'ble Division Bench (Reference Court), the present petition is disposed by quashing and setting aside; (i) the complaint letter dated 25/07/2017 written by the respondent No.5 to the EAC Chumukedima complaining the decision against the Diphupar village council (Annexure-J to the writ petition), (ii) the order dated 30/05/2017 issued by the EAC Chumukedima endorsing the case to the Dobashi court Chumukedima (Annexure-K 1 to the writ petition), (iii) the order dated 01/06/2017 issued by the EAC Chumukedima restraining the Diphupar village council from executing its order (Annexure-K 2 to the writ petition), (iv) the letter dated 21/07/2017 written by the Deputy Commissioner, Dimapur to the EAC Chumukedima conveying that the DB court has appellate jurisdiction over the decision of the village council (Annexure-N to the writ petition), (v) the summon dated 28/07/2017 issued by the Head DB Chumukedima (Annexure-O (1) to the writ petition), (vi) summon dated 03/08/2017 issued by the Head DB Chumukedima (Annexure-O(2) to the writ petition) and, (vii) the entire proceedings which is pending before the Head DB/DB court Chumukedima in Pol-Case No. 1/2017-18.

7. The interim order passed on 17/08/2017 shall merge with the present judgment & order.

8. Writ petition allowed. No cost.

9. The respondent No. 5 & 6 is given the liberty to agitate against the order dated 07/02/2017 passed by the Diphupar village council, in the appropriate forum, in accordance with law, if so advised.

10. In view of the judgment & order dated 04/12/2020 passed by the Hon'ble Division Bench (Reference Court), this Court is of the considered view, that the order dated 04/07/2017 passed by the Co-ordinate Bench of this Court in Civil Revision Petition No. 9(K)/2017 can no longer be regarded as a good law/precedent insofar as

it relates to the question of the Dobashi court exercising appellate jurisdiction over the decision of the village council.

JUDGE

Comparing Assistant