

GAHC020002072023



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

Case No. : C. REVN/1/2023

SHRI. KEVISENYU ZATSU AND ANR
SON OF SUOLEHIE ZATSU, RESIDENT OF T. KHEL, KOHIMA
VILLAGE

2: SHRI. MEDOVILIE KHRUOMO ALIAS KENEIU KHRUOM

VERSUS

N. LAO SOLO
NORTH BLOCK, NEAR NORTH POLICE STATION, KOHIMA VILLAGE,
KOHIMA DISTRICT NAGALAND

Advocate for the Petitioner : KEKHRIENGULIE

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (CAV)

Date : 16-10-2023

Heard Mr. Kekhriengulie, learned counsel for the petitioners and Mr. R. Iralu, learned Sr. Advocate assisted by Ms. Mhabeni, learned counsel for the respondent.

2. The present petition has been filed under Article 227 of the Constitution of India read with Rule-32 of the Rules for the Administration of Justice and Police in Nagaland,

1937, to quash and set aside the judgment & order dated 10/06/2022 passed in Civil Appeal No. 02/2019, by the learned Assistant to the Deputy Commissioner, Kohima, Nagaland.

3. The facts of the case, pertains to a land dispute between the petitioner and the respondents situated at Pfhecieke, Daklane, Kohima. The dispute was adjudicated by G B's Court, Kohima Village and by the order dated 08/06/2019 directed Mr. Viketoulie Solo, the person from whom the petitioner had purchased the land, to give an alternative plot to the petitioner and on failure to do so, Mr. Viketoulie Solo was directed to repay the cost of the land to the petitioner with interest for 12 years amounting to Rs. 4,75,600/-. By the order dated 08/06/2019, the rights of the respondent over the land was affirmed.

4. Being aggrieved by the order dated 08/06/2019 passed by the G B's Court, the petitioner submitted the application dated 27/06/2019 to the Deputy Commissioner, Kohima, for reviewing the order passed by the G B's Court. The Deputy Commissioner, Kohima, referred the application to the Political Assistant to D.C (P.A to D.C) and the P.A to D.C in turn endorsed the application to the Head D B/D B's Court, Kohima, for disposal. The D B's Court registered the application as Pol. Case No. 07/2019, conducted the spot verification of the land and after hearing the parties passed the order dated 12/09/2019 reversing the order passed by the G B's Court and affirming the rights of the petitioner on the land. By the said order, the petitioner was directed to pay a sum of Rs. 50,000/- to the respondent against the cost of development undertaken by the respondent on the land in question.

5. Against the order dated 12/09/2019 passed by the D B's Court Kohima, the respondent filed the Civil Appeal No. 02/2019 before the Deputy Commissioner, Kohima, which was endorsed to the Assistant to the Deputy Commissioner, (Asst. to D.C) Kohima. The petitioner contested the appeal by filing counter affidavit and after hearing the learned counsel for the parties, the Assistant to the Deputy Commissioner, Kohima, passed the judgment & order dated 10/06/2022 quashing and setting aside the order dated 12/09/2019 passed by the D B's Court Kohima in Pol. Case No. 07/2019 inter-alia holding that as Rule-31 of the Rules for Administration of Justice

and Police in Nagaland does not empower the D B's Court to review the decision of the lower court i.e. G B's Court, the order dated 12/09/2019 passed by the D B's Court Kohima is hit by the doctrine of '*Coram Non Judice*'.

6. Being aggrieved by the judgment & order dated 10/06/2022 passed by the learned Asst. to the D.C Kohima, in Civil Appeal No.02/2019, the petitioner has filed the present Civil Revision Petition seeking for the following relief;

A. Quash and set aside the order dated 10/06/2022 passed by Assistant to DC in Civil Appeal No. 02/2019.

B. Pass any other order or further order(s) as may be deem fit in the facts and circumstances of the case.

7. Mr. Kekhriengulie, the learned counsel for the petitioners, while reaffirming the rights of the petitioners on the land in question, submits that against the order dated 08/06/2019 passed by the G B's Court, the Deputy Commissioner, Kohima, on the application submitted by the petitioners had referred the case to the D B's Court and the D B's Court after hearing the parties had passed the order dated 12/09/2019 affirming the rights of the petitioners on the disputed land. The learned counsel submits that as the respondent has without any demur participated in the proceedings before the D B's Court, the respondent cannot now turn around and attack the order dated 12/09/2019 passed by the D B's Court. It is further submitted that, since the respondent had preferred the appeal before the learned Asst. to D.C under Rule-31 of the Rules, the learned Asst. to D.C in exercise of the powers under the said rule could not have quashed and set aside the order passed by the D B's Court without hearing the case *de novo* as mandated under the rules. It is also submitted that the learned Asst. to D.C had decided the Civil Appeal without appreciating the facts of the case and without proper application of mind.

8. Mr. R. Iralu, the learned Sr. counsel for the respondent, on the other hand, submits that there is no infirmity in the judgment & order dated 10/06/2022 passed by the learned Asst. to D.C Kohima. Mr. Iralu, by referring to Rule-31 of the Rules for Administration of Justice and Police in Nagaland, 1937 submits that against the order

passed by the G B's Court, the same can be appealed only before the Deputy Commissioner or his Assistant and there is no provision under the rules for reviewing the order passed by the G B's Court, far less, empowering the D B's Court to sit in review over the decision of the G B's Court. Mr. Iralu accordingly submits that the learned Asst. to D.C had rightly quashed and set aside the order dated 12/09/2019 which was passed by the D B's Court without jurisdiction. The learned Sr. counsel further submits that when the D B's Court Kohima had no authority in law to adjudicate the Pol. Case No. 07/2019 and to pass the order dated 12/09/2019, it is immaterial and of no consequence even if the respondent had participated in the proceeding before the D B's Court Kohima and the respondent is not precluded from challenging the order passed by an authority without jurisdiction. Mr. Iralu also submits that since the present petition has been filed under Rule-32 of the Rules for Administration of Justice and Police in Nagaland, 1937, without first availing the remedy of appeal as provided by the rules, the present petition is not maintainable.

In support of his submission, the learned Sr. counsel has relied on the following cases laws;

1. **Chief Engineer, Hydel Project & Others -versus- Ravinder Nath & Others**, reported in **(2008) 2 SCC 350**.
2. **Kanwar Singh Saini -versus- High Court of Delhi**, reported in **(2012) 4 SCC 307**.
3. **Mohamed Ali -versus- V. Jaya & Others**, reported in **(2022) 10 SCC 477**.
4. **Ghokishe Chophi -versus- Yeluhe Chophi**, reported in **2002 (3) GLT 663**.
5. **Alemtemshi Jamir & Others -versus- State of Nagaland & Others**, reported in **2021 (4) GLR 248**.
6. **Sazolie Angami -versus- Shri. Lhouvitso Zhale**, **2017 (SCC) Online Gau 307**.

7. Hevuto Chishi & 2 Others -versus- State of Nagaland & 5 Others
decided in **W.P.(C) No. 210(K) of 2014.**

9. Heard the learned counsel for the parties and perused the materials on record. The learned Asst. to D.C Kohima upon adjudication of Civil Appeal No. 02/2019 had passed the judgment & order dated 10/06/2022 inter-alia holding that since the petitioner had purchased a joint property only from an individual owner, the sale is bad in law and void *ab initio*. The learned Asst. to D.C has also held that there is no provision under the rules for the D B's Court to review the order/decision of the G B's Court and therefore, the order dated 12/09/2019 passed by the D B's Court is without jurisdiction. It has also been held that the claim of the petitioner is hit by delay and laches and also barred by the principle of *res judicata*.

10. After going through the judgment & order dated 10/06/2022 passed by the learned Asst. to D.C, Kohima, this Court is of the view that it may not be necessary for this Court to discuss all the issues dealt with by the learned Asst. to D.C Kohima. The pertinent question which however arises for the consideration of this Court is whether the D B's Court had the power to review the order passed by the G B's Court or to sit in an appeal over the said decision.

11. The learned Asst. to D.C Kohima has held that under the Rules for Administration of Justice and Police in Nagaland, 1937, no provision is provided for reviewing the decision of the G.B's Court and therefore, the order dated 12/09/2019 passed by the D B's Court Kohima reviewing the order dated 08/06/2019 passed by the G B's Court Kohima Village is void and illegal. This Court has also noticed that the petitioner had filed the application dated 27/06/2019, before the Deputy Commissioner, Kohima, for reviewing the order dated 08/06/2019 passed by the G B's Court. The application was endorsed to the Political Assistant to the Deputy Commissioner (PA to D.C) Kohima, who in turn referred the case to the D B's Court for disposal. The D B's Court after hearing the parties passed the order dated 12/09/2019 affirming the rights of the petitioner on the land in question. What is however clear is that under the rules no provision has been provided to review the order passed by the G B's Court, therefore the proper recourse was for the Deputy Commissioner, Kohima,

to have returned the application to the petitioner, with an advise to present an appeal before the competent forum as provided under the rules. This correct procedure was however not taken recourse to, resulting in the D B's Court passing the order dated 12/09/2019. The order dated 12/09/2019 passed by the D B's Court is therefore borne out of a procedure which is palpably illegal and not mandated by law. Since the rules does not contain any provision for review, the D B's Court Kohima could not have assumed the power to review the order passed by the G B's Court irrespective of whether the application for review was endorsed/referred by the Deputy Commissioner, Kohima. The order dated 12/09/2019 passed by the D B's Court Kohima is therefore without jurisdiction and accordingly this Court does not find any infirmity to interfere with the judgment & order dated 10/06/2022 passed by the learned Asst. to D.C Kohima.

12. On the submission made by Mr. Kekhriengulie, the learned counsel for the petitioners that since the respondent had without any demur participated in the proceedings before the D B's Court Kohima, the respondent now cannot turn around and agitate against the order dated 12/09/2019 passed by the D B's Court. This submission has no merit. It is a well settled principle of law that a defect in the jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass an order. Conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes an order/decreed having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause and such an issue can be raised at any stage of the proceedings.

13. The Hon'ble Supreme Court in deciding on the validity of a decree/order passed by a court without jurisdiction has in the case of **Sarup Singh & Another** -versus- **Union of India & Another**, reported in **(2011) 11 SCC 198** held that;

"23. In Balvant N. Viswamitra v. Yadav Sadashiv Mule⁵ this Court stated thus: (SCC p. 712, para 9)

"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be 'null and void'. In our opinion, the law on the point is well settled. The distinction

between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

24. In *Chiranjilal Shrilal Goenka v. Jasjit Singh*⁶ this Court stated thus: (SCC pp.517-18, para 18)

"18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party."

In the case of **Jagmittar Sain Bhagat & Others -versus- Director, Health Services, Haryana & Others**, reported in **(2013) 10 SCC 136**, the Hon'ble Supreme Court held as follows;

"9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: [United Commercial Bank Ltd. v. Workmen](#)¹, [Nai Bahu v. Lala Ramnarayan](#)², [Natraj Studios \(P\) Ltd. v. Navrang Studios](#)³ and [Kondiba Dagadu Kadam](#)

*v. Savitribai Sopan Gujar*⁴.)

10. In *Sushil Kumar Mehta v. Gobind Ram Bohra*⁵ this Court, after placing reliance on a large number of its earlier judgments particularly in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*⁶, *Kiran Singh v. Chaman Paswan*⁷ and *Chandrika Misir v. Bhaiya Lal*⁸ held, that a decree without jurisdiction is a nullity. It is a coram non judge; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, “performance cannot be forced in any other manner.”

11. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing; “It is an objection going to the nullity of the order on the ground of want of jurisdiction”. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: *Setrucharlu Ramabhadraraju v. Maharaja of Jeypore*⁹, *State of Gujarat v. Rajesh Kumar Chimanlal Barot*¹⁰, *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.*¹¹ and *Carona Ltd. v. Parvathy Swaminathan & Sons*¹².”

In the case of **Ritesh Tewari & Another -versus- State of Uttar Pradesh & Others**, reported in **(2010) 10 SCC 677**, the Hon’ble Supreme Court has held as follows;

“32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (Vide *Upen Chandra Gogoi Vs. State of Assam*²⁰; *Satchidananda Misra Vs. State of Orissa*²¹ and *SBI v. Rakesh Kumar Tewari*²².)

33. In *C. Albert Morris Vs. K. Chandrasekaran*²³ this Court held that a right in law exists only and only when it has a lawful origin.

34. In *Mangal Prasad Tamoli Vs. Narvadeshwar Mishra*²⁴ this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside.”

In the case of **Rajasthan State Industrial Development & Investment Corporation -versus- Subhash Sindhi Cooperative Housing Society, Jaipur & Others**, reported in **(2013) 5 SCC 427**, the Hon’ble Supreme Court has also held that;

“18. The word “void” is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. (Vide: *Behram Khurshid Pesikaka v. State of Bombay*¹², *Pankaj Mehra v. State of Maharashtra*¹³, *Dhurandhar Prasad Singh v. Jai Prakash University*¹⁴ and *Government of Orissa v. Ashok Transport Agency*¹⁵.)”

In the case of **Chief Engineer, Hydel Project & Others** (supra), the Hon’ble Supreme Court has held that once the original decree itself had been held to be without jurisdiction and hit by the doctrine of coram non iudice, there would be no question of upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, first appellate or the second appellate stage.

In **Kanwar Singh Saini** (supra), the Hon’ble Supreme Court has held that the finding of a Court or Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no jurisdiction.

14. Secondly, the appeal from the decision of Mauzadar, Gaonbura (G B), Chief, Headman of Khels, Dobhasis (D B) etc. is provided under Rule-31 of the Rules for Administration of Justice and Police in Nagaland, 1937, which reads as follows;

“31. An appeal shall lie from the decision of the mauzadar, gaonbura, chief, headman of khels, dobhasis, or other duly recognized village authority to the tribal court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. A record shall be made of the matter in dispute and the decision of the village authorities. If necessary, the court shall examine the parties, and if the decision appears to be just,

shall affirmed and enforce it as one of its own. If the court sees reason to doubt the justice of the decision, it will try the cases denovo, or refer it to a panchayat as above.”

15. Rule-31 of the rules clearly stipulates that against the order passed by the Gaonbura (G B), Dobhasis (D B) etc. an appeal shall lie to the tribal court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. The tribal court in the State is yet to be constituted. Reading Rule-31 it can be inferred that both the G B and the D B exercise concurrent jurisdiction in trying and deciding cases and therefore, the D B's Court cannot sit as an appellate court over the decision of the G B's Court. Mr. Kekhriengulie, referring to rule-31 of the Rules submits that since the appeal was filed by the respondent before the learned Asst. to D.C under rule-31 of the Rules, if the learned Asst. to D.C had reason to doubt the justice of the decision of the D B's Court, it was imperative for the learned Asst. to D.C to have tried the case *de novo* as mandated by the rules but could not have quashed and set aside the order passed by the D B's Court without a proper trial. This Court has gone through the records of the lower court and has seen that all opportunities were afforded to the parties to exchange pleadings and it was only after hearing the learned counsel for the parties that the learned Asst. to D.C had delivered the judgment & order dated 10/06/2022. One thing which however stands out very clear is that the D B's Court was not empowered under the rules to review and/or sit in appeal over the decision of the G B's Court. Therefore, even accepting that no proper trial was held, it will be an exercise in futility for this Court to direct the learned Asst. to D.C to try the case *de novo* when the D B's Court itself lacked the inherent jurisdiction to try and decide the case appealed against.

16. It is also relevant to refer Rule -23A of the Rules for Administration of Justice and Police in Nagaland (Second Amendment) Act, 1982 (Nagaland Act No.4 of 1983) which reads as follows;

“23A- The Dobhasis hence forward shall try and decide such civil cases only as may be referred to them by the Deputy Commissioner or Additional Deputy Commissioner or Assistant to the Deputy Commissioner as the case may be.”

What Rule-23A postulates is that the Dobhasis (D B) shall try and decide only such civil cases as it is referred by the Deputy Commissioner, Additional Deputy Commissioner or Assistant to the Deputy Commissioner as the case may be. In other words, the Dobhasis, now cannot try any civil case on its own except those referred by the authorities prescribed in the rule. It is further important to note that Rule-23A has not given any power to the Deputy Commissioner, Additional Deputy Commissioner or the Assistant to the Deputy Commissioner to empower the Dobhasis to act as an appellate court/authority. Therefore, the Dobhasis while adjudicating a case on reference cannot exercise the power of an appellate court.

17. In the case of **Alemtemshi Jamir** (supra), the Hon'ble Division Bench of this Court while deliberating Rule-23A and Rule-31 of the rules has held as follows;

“20. From the above discussion we hold that Rule-31 of the Rules for Administration of Justice and Police, 1937 does not provide for appeal against the decision of the village court before the D B's Court.

23. Having discussed the point of reference, we now answer the issues of reference as under:

(1) Dobhasis cannot be empowered as appellate court by the exercise of the powers under Rule-23A. Rule-31 debars DC/ADCs and his Assistant from such authority.

(2)”

In the case of **Ghokishe Chophi** (supra), the learned co-ordinate Bench of this Court has also held that;

“6. Rule 31 of the Rules for Administration of justice and Police in Naga Hills district provides that, Appeal shall lie from the decision of the G.Bs Chief and Headman of Khel or any other duly recognised Village authorities to the Deputy Commissioner or his Assistants. There is no provision for preferring an appeal to the D.Bs Court against the decision of the Village Council/Village Court. The appeal lies with the Deputy Commissioner or his Assistants. There is also no provision under the Rules that appeal against the D.Bs Court shall lie with the Political Assistant to Deputy Commissioner of the district. The Political Assistant, in fact, is not the Court and has no authority to exercise a judicial power in the State. Therefore, the order passed by the D.Bs Court as well as Political Assistant to Deputy Commissioner are without jurisdiction and

not tenable in law."

18. Furthermore, the provision to appeal against the decision of Asst. to D.C is provided under rule-29 of the Rules for the Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984 which reads as follows;

"29. (1) An appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants and to the High Court against the original decision of the Deputy Commissioner, if the value of the suit be Rs. 500/- or over, or of right, to or possession or immoveable property :

Provided that a petition of appeal accompanied by a copy of the order appealed against and by a clear statement of the grounds of appeal be filed within 30 days from the date of decision, excluding the time required or obtaining a copy if he decision :

Provided further, that the appeal may be admitted after the aforesaid period of 30 days if the appellant satisfied the Appellate court that he has sufficient cause for not preferring the appeal within such period.

2"

Rule-29 of the Rules clearly stipulates that an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants. In the present case, against the judgment & order dated 10/06/2022 passed by the learned Asst. to Deputy Commissioner in Civil Appeal No. 02/2019, the petitioner has not taken recourse to appeal as provided under the rules but has filed the present petition under Article 227 of the Constitution of India read with Rule-32 of the Rules for the Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984. It is therefore necessary to also refer to rule-32 of the said Rules. Rule-32 of the Rules for the Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984 reads as follows;

"32. The High Court or the Deputy Commissioner may, on an application by the aggrieved party or otherwise call for the proceedings of any case decided by any officer subordinate to him and pass such order as may be deemed fit :

Provided that the party aggrieved may move such application only after availing of remedy by way of appeal, if any, provided under the Rules against such decision."

19. What Rule-32 postulates is that a person aggrieved by the proceedings of any

case which is decided by an officer sub-ordinate to the High Court or the Deputy Commissioner can approach the High Court or the Deputy Commissioner under the said rule only after having availed the remedy by way of an appeal. The petitioner, therefore, before coming to this Court under rule-32 of the Rules must first exhaust the remedy of appeal available to him under the rules. The remedy of appeal is provided under rule-29 of the Rules. Since the petitioner has not availed the remedy of appeal before the appellate court which is a pre-requisite condition, but has approached the Court under rule-32 of the Rules, the present petition, in the considered opinion of this Court, is not maintainable.

In the case of **Sazolie Angami** (supra), the learned co-ordinate Bench has held that;

“9. On cursory perusal of Rule 32 of the Rules for Administration of Justice and Police in Nagaland, (Third Amendment) Act, 1984, given above particularly the proviso, it would be seen that any one of the parties aggrieved by the proceedings before any officer subordinate to the High Court or the D.C. can approach the High Court or the D.C. under such provision, only after having availed the remedy by way of an appeal. As per Rule 31 of the same Act (Principal Act), 1937 read with Rule 2 of the Second Amendment Act, 1982, of the same Act, appeal lies against such decision of DB's court before the D.C. or his assistant, therefore, the petitioner before coming to this court under Rule 32 of the same Act, should have first exhausted the remedy available by way of appeal before the appellate court. However, since the petitioner has not exercised the remedy provided under the Act which is the pre-requisite as per proviso to the Rule 32, for approaching this court, the petition of the petitioner is not maintainable.”

20. The Hon'ble Supreme Court in the case of **Mohamed Ali** (supra) has held that the High Court shall not entertained the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. Paragraph-17, 18 & 19 of this judgment reads as follows;

“17. Even otherwise and as observed hereinabove, against the ex-parte judgment and decree, the remedy by way of an appeal before the First Appellate Court was available. Therefore, the High Court ought not to have entertained the revision application under Section 115 CPC and under Article 227 of the Constitution of India. The High Court ought not to

have entertained such a revision application challenging the ex-parte judgment and decree. Once there was a statutory alternative remedy by way of an appeal available to the defendants, the High Court ought not to have entertained a writ petition or revision application under Article 227 of the Constitution of India.

18. At this stage, the decision of this Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai. V. Tuticorin Educational Society⁴, is required to be referred to. In the said decision, it is observed and held by this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself.....”

19. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India.”

21. In the light of the discussion made above and having held that the D B's Court, under the rules, has no power to review and/or to sit in an appeal over the decision of the G B's Court, the judgment & order dated 10/06/2022 passed by the learned Asst. to Deputy Commissioner, Kohima, in Civil Appeal No. 02/2019, quashing and setting aside the order dated 12/09/2019 passed by the D B's Court in Pol. Case No. 07/2019, is upheld.

22. The Civil Revision petition is dismissed. Interim order dated 26/05/2023 accordingly stands vacated.

23. The petitioners if aggrieved by the judgment & order dated 10/06/2022 passed by the learned Asst. to Deputy Commissioner, Kohima, can avail the remedy of appeal as provided under the rules, if so advised, and in accordance with law.

24. Send back the LCR forthwith.

JUDGE

Comparing Assistant