

GAHC020003652022



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

**Case No. : C. REVN/7/2022**

SHRI. R.C. ANGAMI  
S/O LATE NIVISA CHUSI, PERMANENT R/O MEZO-BASA VILLAGE,  
KOHIMA, NAGALAND

VERSUS

SHRI. TEKUNO KHAWAKHRIE  
S/O LATE KHRUSATUNO KHAWAKHRIE, PERMANENT R/O MEZOMA  
VILLAGE, KOHIMA, NAGALAND

**Advocate for the Petitioner : ELIVIL ZAO**

**Advocate for the Respondent :**

**BEFORE**  
**HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. Akhrieu Chusi, Advocate

For the Respondent : Mr. Moa Jamir, Advocate

Date of Hearing : 01.06.2023

Date of Judgment : 02.06.2023

## JUDGMENT & ORDER

*(Mridul Kumar Kalita, J)*

**1.** Heard Mr. Akhrieu Chusi, learned counsel for the petitioner. Also heard Mr. Moa Jamir, learned counsel for the respondent.

**2.** This civil revision petition has been filed under Section 115 of the Code of Civil Procedure, 1908, by the petitioner, against impugning the order dated 30.11.2021 passed by the D.Bs Court (Dobashi Court), Sechu, Zubza, Nagaland in Pol. Case No. 3/2021.

**3.** The facts relevant for adjudication for this case, in brief, are as follows:

**(i)** That the present petitioner is a citizen of India and hails from Mezo-Basa, Village- Kohima and the sole respondent hails from Mezoma village, Kohima.

**(ii)** That the petitioner claims to be the absolute owner of a Paddy field which is situated in Dzuvsatsie, Mezoma Village, Kohima and was having the perennial right to use water in all seasons from the Canal No. 1 adjacent to his Paddy field. The respondent was also having said right for using of water from the said canal along with the plaintiff since long ago.

**(iii)** That in the year 2020, a dispute arose between the petitioner and the respondent regarding perennial right to use of water from the canal. Ultimately, the matter could not be resolved amicably, hence, the present petitioner approached the Village Council of Mezo-Basa for resolution of the dispute.

**(iv)** That on 17.07.2021, the Village Council of Mezo Basa passed an order that the *status quo* of what has been practiced in old days should be maintained.

**4.** Aggrieved by the said order dated 17.07.2021, the respondent approached D.Bs Court (Dobashi Court), Sechu, Zubza, Nagaland, which by order dated 30.11.2021 adjudicated the matter in favour of the respondent.

**5.** Being aggrieved of the said order, the present petitioner has preferred this revision mainly on following grounds:-

*“i. That the Petitioner and the Respondent are from different villages and as such when the dispute between the Petitioner and the Respondent was taken up by the Office of the Village Council Mezo-Basa, the said Village Council had no Jurisdiction as per Rule 24 of the Rules for the Administration of Justice and Police in Nagaland, 1937.*

*ii. That the Respondent herein thereafter preferred Appeal in the DBs’ Court, Sechu Zubza. However as per the Rules, the DBs’ Court has no jurisdiction to try and decide cases as an appellate Court.*

**6.** Mr. Akhrieu Chusi, learned counsel for the petitioner has submitted that as admittedly the petitioner and the respondent are from different village as such dispute between the petitioner and the respondent could not have been taken up by the Village Council of Mezo-Basa as both the parties belonged to different villages and there is a clear bar to try such matters under Rule 24(a) of the *Rules for Administration of Justice and Police in Nagalana, 1937*. It is also submitted that the respondent herein preferred an appeal in the D.Bs Court (Dobashi Court), Sechu, Zubza, Nagaland, however, said Court also could not have passed impugned

order as it does not have the appellate jurisdiction under the provisions of *Rules for Administration of Justice and Police in Nagaland, 1937*.

7. Mr. Moa Jamir, learned counsel for the respondent though agreeing to the submission made by the learned counsel for the petitioner that the dispute between the parties were not decided by the appropriate forum according to the provisions of law in force and, however, he has opposed the present revision petition on the ground that the present revision has been filed under Section 115 of the Code of Civil Procedure, 1908, whereas it ought to have been filed under New Rule- 32 of the *Rules for Administration of Justice and Police in Nagaland, 1937*.

8. I have heard the learned counsel for both the parties. I have also carefully perused the material available on record.

9. Rule- 24 of the *Rules for Administration of Justice and Police in Nagaland, 1937* is quoted herein below:-

***“Mauzadars, gaonburas, chiefs, headmen of Khels. Dobhasis or other village authorities sitting with the village elders in council are empowered to try cases without limit as to amount, but with the following reservations:***

***(a) They may not try suits in which a native of the plains or native of another village not resident in their jurisdiction is a party.***

***(b) All suits be decided in open Darbar, in the presence of the parties and at least three respectable witnesses.”***

10. On perusal of the aforesaid Rule, it appears that clause- (a) of the aforesaid rule lays down a clear bar for the Village Authority to try a suit in which the native of another village not resident in their jurisdiction is a

party. In the instant case, the respondent is not the resident of Mezo-Basa, he is the resident of Mezoma village, however, the Village Council, Mezo-Basa adjudicated the dispute between the parties without having jurisdiction to do so. This fact is admitted by the learned counsel for both sides. Further, it is also admitted by the learned counsel for both sides that the appellate jurisdiction of various authorities under the *Rules for Administration of Justice and Police in Nagalana, 1937* has been prescribed by Rule- 31 of the said Rules wherein the Dobashi Court were not bestowed with any appellate jurisdiction to try an appeal from the Village Council. The appellate forums recognized by the said Rule are the Tribal Court, wherever constituted, or otherwise the Deputy Commissioner or his Assistant. Thus, regarding this issue also there is also no dispute between the learned counsel for both sides as they are in agreement on this position of law.

**11.** As regards submission made by Mr. Moa Jamir, learned counsel for the respondent, that the petitioner has not approached this Court under New Rule-32 (1984 amendment) of the *Rules for Administration of Justice and Police in Nagalana, 1937*, let us go through the said rule which prescribes as follows:-

**“New Rule 32 (1984 Amendment)**

***“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."***

**12.** On perusal of the above Rule, it appears that the high Court has the power to look into correctness of any order passed any officer subordinate to it under the *Rules for Administration of Justice and Police in Nagaland, 1937*. Thus, though apparently a revision under Section 115 of the Code of Civil Procedure, 1908 would not lie as the impugned orders are appealable orders, however, the power of High Court to exercise its jurisdiction under New Rule- 32 (1984 amendment) of the Rules for Administration of Justice and Police in Nagaland, 1937 may be invoked by it even if the petitioner quotes wrong provision of law in the petition filed by him. In this regard, Hon'ble Supreme Court of India in **P. K. Palanisamy vs N.Arumugham & Anr** reported <https://indiankanoon.org/doc/758189/> in has observed as follows:-

***"Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity.***

***It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.***

***In Ram Sunder Ram v. Union of India & Ors. [2007 (9) SCALE 197], it was held:***

***".....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an***

***authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."***

***In N. Mani v. Sangeetha Theatres & Ors. [(2004) 12 SCC 278], it is stated:***

***"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."***

Thus, in view of above, mere quoting of wrong provisions in the petition by the petitioner would not debar this Court from invoking its power under New Rule- 32 of the *Rules for Administration of Justice and Police in Nagalana, 1937* to interfere with the orders impugned in this case wherein both the Village Council and Dobashi Court have exercised jurisdiction not vested in it by law.

**13.** As admitted by learned counsel for both the parties, the Village Council of Mezo-Basa as well as DBs Court, Sechu, Zubza have passed the impugned order without having jurisdiction to do so, the impugned order passed by both the Village Council of Mezo-Basa as well as DBs Court, Sechu, Zubza are hereby set aside. The parties are left to

approach appropriate forum having jurisdiction to adjudicate the dispute between them.

**14.** With the above observation, this Civil Revision is hereby disposed of.

**JUDGE**

**Comparing Assistant**