

GAHC020004982020



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

Case No. : C. REVN/4/2020

KHUMLA CHANG
W/O LATE A. SOMBA CHANG, R/O 3RD NAP BATTALION,
PROJECT SECTOR, TUENSANG, NAGALAND

VERSUS

THE DEPUTY COMMISSIONER AND 3 ORS
TUENSANG, NAGALAND

2) CHUMEYAN CHANG,
S/O LATE IMKIUMONG CHANG, R/O 3RD NAP SAKSI,
MAIN GATE AREA, TUENSANG, NAGALAND

3) A.I ALONG CHANG,
S/O SHRI AOLEN CHANG, R/O ST. JOHN 'B' SECTOR, TUENSANG
TUENSANG, NAGALAND

4) INDEN CHANG,
S/O LATE WANMEI CHANG, R/O VETERINARY COLONY,
HIGH SCHOOL 'B' TUENSANG,
TUENSANG, NAGALAND

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 05-12-2023

Heard Mr. Limawapang, learned counsel for the petitioner and Mr. Moa Imchen, learned Senior Government Advocate for the State respondents.

2. The instant proceedings under Section 115 of the Code of Civil Procedure, 1908 read with Rule 32 of the Rules of Administration of Justice & Police in Nagaland, 1937 (3rd Amendment) Act, 1984 is filed challenging the Order dated 20.10.2020 passed by the Political Assistant (PA) to the Deputy Commissioner, Tuensang, in respect to a land dispute case located at 3rd NAP Saksi Sector, Main Gate Area.

3. From a perusal of the materials on record it reveals that a dispute had arisen between the proforma respondent and the father of the respondent No. 2 before the *Gaonburas* Customary Court. The *Gaonburas* Customary Court vide an Order dated 27.09.2019 declared the land in favour of the proforma respondent. Thereupon the father of the respondent No. 2 filed an appeal before the Deputy Commissioner, Tuensang, Nagaland, on 30.09.2019. The records further reveal that certain summons were issued by the Political Assistant to the Deputy Commissioner and the District Head *Dobashi* Court in-charge, Tuensang, to the petitioner as well as the private respondents. Thereupon the Political Assistant to the Deputy Commissioner, Tuensang, passed the Order dated 20.10.2020 whereby the direction was given to the petitioner to repay a sum of Rs. 35,000/- (rupees thirty five thousand) to the proforma respondent No. 4 and thereby, it was decided in favour of the proforma respondent No. 4 and the respondent No. 1 in the said proceedings. It is against this Order that the petitioner has approached this Court by filing the instant proceedings.

4. Mr. Limawapang, learned counsel appearing on behalf of the petitioner submits that the Political Assistant to the Deputy Commissioner had no authority or jurisdiction to pass the said Order in view of Rule 1(c) read with Rule 23A & 31 of the Rules of Administration of Justice and Police, Nagaland, 1937 (for short the Rules of 1937). In addition to

that the learned counsel has referred to the judgment of the Division Bench of this Court in the case of **Alemtemshi Jamir and 3 Others vs. State of Nagaland & 6 Others** (WP(C)/164/2017) dated 04.12.2020.

5. Mr. Moa Imchen, learned State counsel appearing on behalf of respondent No. 1 submits that there is no infirmity in the impugned Order as regards jurisdiction and authority in view of the fact that the Political Assistant to the Deputy Commissioner is also an Assistant to the Deputy Commissioner as per the Rules of 1937 for which no interference is required to be made.

6. This Court further finds it relevant to observe that the private respondents however are not represented though their names have been duly reflected in the Causelist.

7. This Court has duly heard the learned counsels for the parties as well as perused the materials on record.

8. The only issue which arise before this Court is as to whether the impugned Order dated 20.10.2020 passed by the Political Assistant to the Deputy Commissioner, Tuensang, is required to be interfered with on the ground of jurisdiction. At this stage this Court finds it relevant to take note of the judgment of the Division Bench of this Court in **Alemtemshi Jamir** (supra) wherein the issue as to who can exercise the powers under Rule 23A of the Rules of 1937 was decided. The Division Bench of this Court in the said judgment had taken into consideration Rule 1(c) of the Rules of 1937 which defines the term "Assistant to the Deputy Commissioner" and observed that the said term has to be understood as any Officer other than the Deputy Commissioner or the ADC and appointed as Assistant to the Deputy Commissioner. It was further opined that in the Administrative hierarchy in the districts, after ADC and DC, the Officers next in line are SDOs and EACs. Further to that it was also opined that the expression "shall mean and include officers appointed as such" under Rule 1(C) must be understood as Officers below Deputy Commissioner and ADC which are referable to SDOs and EACs who are also Class-I Gazetted Officers in the administrative set up.

The only rider, as mentioned in the said judgment by the Division Bench of this Court, is that such officer must be declared as the Assistant to the Deputy Commissioner. In such circumstances in the said case the Division Bench held that the EAC can be declared as the Assistant to Deputy Commissioner in the Rules of 1937.

9. In the instant case the learned counsel appearing on behalf of the respondent failed to show any document that the Political Assistant to the Deputy Commissioner had been declared as Assistant to the Deputy Commissioner. In absence of any such document, the question of the Political Assistant to come within the ambit of the term 'Assistant to the Deputy Commissioner' does not arise.

10. In the backdrop of the above let this Court, therefore, take into consideration Rule 31 of the Rules of 1937 which provides that the provision of appeal from the decision of the *Mauzadar, Gaonbura, Headman of Khels, Dobashis* or other recognized village authority to the Tribal Court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. It has been stated at the Bar by the learned counsels appearing on behalf of the parties that the Tribal Courts are yet to be constituted in terms with Chapter 4A of the Rules of 1937 which is yet to be notified. Therefore an appeal against the authorities and more particularly against the decision of the *Gaonbura* has to be before the Deputy Commissioner or his Assistant. In the instant case, the appeal was duly filed before the Deputy Commissioner by the father of the respondent No. 2 but it was neither decided by the Deputy Commissioner or his Assistant rather it was decided by the Political Assistant to the Deputy Commissioner as would appear from the impugned Order itself.

11. At this stage, this Court further finds it relevant to refer back to the judgment of the Division Bench in the case of **Alemtemshi Jamir** (supra) wherein at paragraph No. 23 it was categorically observed that the *Dobashi* cannot be empowered as an appellate court by exercise of powers under Rule 23A and Rule 31 of the Rules of 1937 debars the Deputy Commissioner/ADC and his assistants to confer authority upon

the *Dobashi's* Court. In view of the clear mandate of law by the Division Bench of this Court in the case of **Alemtemshi Jamir** (supra) this Court, therefore, is constrained to hold that the reference so made by the Deputy Commissioner or his Assistant in the instant appeal to the District *Dobashi* Customary Court, Tuensang, was without any authority and jurisdiction. Further to that as the Political Assistant to the Deputy Commissioner is not an Assistant to the Deputy Commissioner under the Rules of 1937 he could not have decided the said appeal.

12. In that view of the matter, the instant petition stands disposed of setting aside the impugned Order dated 20.10.2020 passed by the Political Assistant to the Deputy Commissioner, Tuensang, which has been impugned in the instant proceedings. This Court, however, directs the Deputy Commissioner, Tuensang, to decide the said appeal either by himself or through his Assistant within a period of four (4) months from the date of receipt of a certified copy of the instant Order.

13. The Registry is directed to furnish a certified copy of this Order to Mr. Moa Imchen, learned State counsel appearing on behalf of respondent No. 1 so that he can communicate the same to the respondent No. 1 for effective compliance.

Sd/-
JUDGE

Comparing Assistant