

GAHC020006882021



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

Case No. : WP(C)/357/2021

Shri. Thejangulie Kachari,
Son of Lt. Bijoy Kachari,
Resident of Kevijau Colony @ Signal Basti,
Dimapur, Nagaland.
Mob No. 7640059476

-VERSUS-

1. The State of Nagaland represented by the Chief Secretary to the Government of Nagaland, Kohima.
2. The Home Commissioner, Nagaland, Kohima,
(Deleted vide order dated 02.06.2022)
3. The Deputy Commissioner, Dimapur, Nagaland.
4. Shri. Surendra Kumar Jain,
Son of Lt. Chiranjilal,
Resident of Kalibari Road, GBC. H. No. 108.
Dimapur, Nagaland
5. The Commissioner, Nagaland, Kohima.
(impleaded vide order dated 02.06.2022 passed in I.A.(C) No. 72/2022)

Advocate for the Petitioner : Ms. Z ZHIMOMI
Mr. Toshi-o Longkumer,
Ms. S. K. Achumi, Advs.

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

Advocate for the respondent No. 4 : Mr. N. Mozhui

Ms. K. Kire,

Ms. N. Rupreo,

Mr. P. Mere, Advs.

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Date : 04-04-2023

Heard Ms. Z. Zhimomi, learned counsel for the petitioner and Ms. V. Suokhrie, learned Addl. Advocate General for the State respondents. Also heard Mr. N. Mozhui, learned counsel for the respondent No.4.

2. The present writ petition has been filed by the petitioner impugning the order dated 23/11/2017 passed by the Deputy Commissioner, Dimapur, dismissing the claim made by the petitioner on the land covered by Dag No. 31, Block No. 8 in Dimapur Mouza, and directing the petitioner not to disturb the peaceful occupation of the land by the respondent No.4.

3. The case of the petitioner in brief is recited as under;

i) The petitioner is the son of late Bijoy Kachari and the grandson of late Jai Kisar Kachari. The petitioner's grandfather, Jai Kisar Kachari had three sons namely, Arun Kachari, Bijoy Kachari & Komal Kachari. The eldest son Arun Kachari expired on 29/05/1986, the second son Bijoy Kachari expired on 29/06/2012 and the third son Komal Kachari expired on 16/04/2021. It is the case of the petitioner that presently he is the only surviving heir of late Jai Kisar Kachari and therefore entitled to inherit the land/properties lawfully belonging to the family.

ii) That by the order dated 17/12/1947, issued by C.R. Pawsey, the then Deputy Commissioner, Naga Hills, Shri Jai Kisar Kachari was allowed to cultivate 10(ten) acres of land in Dag No. 1 of Urla Bengali Goan under Dimapur Mouza. On the death of Jai

Kisar Kachari, the land belonging to the deceased was inherited by his son Arun Kachari who was issued with the Patta No.6, Dag No. 31 and Dag No. 21 in Block No. 8 of Dimapur town on 01/08/1969. Dag No. 31 carried 22B-0K-0Ls of land while Dag No. 21 carried 08B-01K-05Ls of land. The present dispute pertains to the land in Dag No. 31 but not the land under Dag No. 21.

iii) That from Dag No. 31, a portion of the land measuring 350 ft. to the North, 355 ft. to the south, 340 ft. to the east and 347 ft. to the west was leased out by Arun Kachari to Shri. Pannalal Shetti, the father-in-law of the respondent No.4 by executing the lease deed dated 17/10/1971 and pursuant to which Shri Pannalal Shetti has set up the hume pipe factory on the leased land. The lease deed was however partially damaged by a devastating fire which broke out in Signal Basti/Kevijau colony on 14/04/1990.

iv) That by the sale deed dated 05/04/1980 which was registered only on 05/05/1983, Arun Kachari sold 03B-04K-09Ls of land in Dag No. 31 to the respondent No. 4. The said respondent was accordingly allotted Dag No. 31/122 for the said land.

v) That after the death of Arun Kachari, the land measuring 18B-0K-11Ls under Dag No. 31 was mutated and transferred to Smti. Theketuo Kachari w/o Arun Kachari. By the gift deed dated 12/10/1996 Smti. Theketuo Kachari, transferred 05B-0K-19Ls of land to the petitioner. The Patta No. 306, Dag No. 390/31 carrying 05B-0K-19Ls of land was accordingly issued to the petitioner.

vi) That Smti Theketuo Kachari and the petitioner thereafter applied for the demarcation of their land under Dag No. 31 and pursuant to which a spot verification of the land was conducted and the report was submitted to the Deputy Commissioner, Dimapur/respondent No.3 on 19/05/2015. The report stated that the land proposed for demarcation falls under Dag No. 19 and Dag No. 31 in Block No. 8 and is not under the

physical occupation of the applicants (i.e. Smti Theketuo Kachari/petitioner) but occupied by the respondent No.4 by running a hume pipe factory. Smti. Theketuo Kachari in the meantime expired in the month of January, 2016.

Vii) That on the insistence of the petitioner, the land was re-surveyed again on 09/07/2017 and ascertained that the land falls under Dag No. 19 and Dag No.31, in Block No. 8 of Dimapur town. Dag No. 19 carried 10B-0K-00Ls of land while Dag No. 31 carried 03B-04K-09Ls of land. The report accordingly stated that the total area of the land measuring 13B-04K-09Ls was under the occupation of the respondent No.4 by running a commercial go-down and a hume pipe factory.

viii) That the petitioner not being satisfied with the earlier spot verification of the land again submitted the application dated 04/09/2017 and 19/09/2017 to the respondent No.3 for identification/demarcation of the land under Patta No. 6, Dag No. 31 in Block No. 8 of Dimapur town contending that the land under Dag No. 31 was only given on lease to Pannalal Shetti for 99 years by executing the lease deed dated 17/10/1971 but was not permanently transferred or alienated to any third party. The land was therefore surveyed again on 26/09/2017 and it was found that the hume pipe factory is located on the land measuring 13B-02K-16Ls which falls under Dag No. 19 and Dag No. 31 in Block No. 8, Dimapur Mouza No.3.

ix) That the petitioner on 27/09/2017 published an affidavit in the local daily "Nagaland Post" declaring that any person laying unfounded claims on the land belonging to Arun Kachari under Patta No. 6 Dag No. 31 in Block No. 8, Mouza No. 3 of Dimapur town which is used as hume pipe factory by Mr. Pannalal Shetti shall be doing so at his/her risk.

x) In response to the publication, the respondent No.4 also published a public notice claiming legal ownership of the land in

question and declaring the affidavit published by the petitioner to be false. The respondent No.4 also filed the complaint dated 03/10/2017 to the respondent No.3 against the affidavit published by the petitioner and requested the respondent No.3 to issue necessary order to protect the rights of the respondent No.4 on the land in question.

xi) The Deputy Commissioner, Dimapur, accordingly issued the summon dated 15/11/2017, directing both the petitioner and the respondent No. 4 to appear before him with all original documents in support of their case and upon adjudication of the dispute dismissed the claim of the petitioner and also directed the petitioner not to disturb the peaceful occupation of the land by the respondent No.4 and his sons. It is the case of the petitioner that the respondent No.3 without referring to the documents furnished by the petitioner in support of his claim has passed the impugned order.

xii) Aggrieved by the order dated 23/11/2017 passed by the respondent No.3, the petitioner has filed the present writ petition.

4. Mr. N. Mozhui, the learned counsel for the respondent No. 4 on the other hand submits that the said respondent after obtaining the prior approval of the Government purchased 10 bighas of land from Shri. Lhomithi Sema, S/o late Pihuyu Sema in Patta No. 9, part of Dag No.19 at Block No. 8, Signal Village, Dimapur, and consequent to which the Patta No. 27, Dag No. 19/105 in Block No. 8 of Dimapur town measuring an area of 10B-00K-00Ls was issued to the respondent No.4. On the said land, the respondent No. 4 has set up the hume pipe industry which is in existence till date. Mr. N. Mozhui further submits that while constructing the boundary wall on the said land, one Arun Kachari, the uncle of the petitioner made a complaint alleging encroachment of his land by the respondent No.4. The land was accordingly surveyed and it was found that the respondent No.4 was in occupation of excess land measuring about 03B-04K-09Ls. The respondent No.4 accordingly entered into negotiation with Arun

Kachari and purchased the said land by executing the sale deed dated 05/04/1980 and subsequent to which the respondent No.4 was issued with the Patta No. 45, Dag No.31/122 in Block No. 8, Mouza No. 3 for the land measuring 03B-04K-09Ls. The respondent No. 4 thus became the lawful owner of the land measuring 13B-04K-09Ls on which he set up the hume pipe factory.

5. Mr. N. Mozhui also submits that the affidavit published by the petitioner in the Nagaland Post on 27/09/2017 was rebutted by the respondent No.4 by issuing the public notice dated 02/10/2017 stating therein that the hume pipe factory is located in his land and not as claimed/published by the petitioner. It is also submitted that the family members of Pannalal Shetti in the 10/08/2017 edition of the Nagaland Post has categorically denied that late Pannalal Shetti had taken any land on lease for setting up the hume pipe factory.

6. Mr. N. Mozhui further submits that as the petitioner was repeatedly claiming the land without any semblance of right, the respondent No. 4 submitted the representations dated 28/09/2017 & 27/10/2017 to the respondent No.3 to resolve the dispute by issuing appropriate orders in respect of the land covered by Dag No. 19 and Dag No. 31. The respondent No. 3 accordingly issued the summon dated 15/11/2017 to the parties and adjudicated the dispute and thereafter passed the impugned order dated 23/11/2017 dismissing the claim of the petitioner.

7. The learned counsel for the respondent No. 4, in conclusion, submits that the claim of the petitioner revolves on the land measuring 22 bighas in Patta No.6, Dag No. 31 which was allotted to Arun Kachari after the death of his father Jai Kisar Kachari. Out of 22 bighas of land originally carried in Dag No. 31, 03B-04K-09Ls was sold to the respondent No.4 by Arun Kachari and the remaining 18B-0K-11Ls was transferred to Theketuo Kachari w/o late Arun Kachari. Mr. N. Mozhui, refers to the revenue records which is Annexure-26 to 31 of the affidavit-in-opposition of the respondent No. 4 and submits that the record by itself demonstrates as to how the land measuring 22B-0K-00Ls under the original Dag No. 31 has been mutated and transferred to different persons by Arun Kachari and his wife Theketuo Kachari. Mr. N. Mozhui, therefore submits that there is no more land left in the original Dag No. 31 either in the

name of Arun Kachari or his wife. The petitioner therefore by filing the present writ petition impugning the order dated 23/11/2017 and laying a claim on the land under Dag No. 31, as the sole legal heir of Jai Kisar Kachari, is bereft of any right and liable to be dismissed with exemplary cost.

8. Ms. V. Suokhrie, the learned Addl. Advocate General for the respondent No. 1, 3 & 5 while subscribing to the submission made by the learned counsel for the respondent No.4, submits that the lease deed dated 17/10/1971 relied upon by the petitioner is not registered and therefore, the same cannot prove valid execution of the deed between the parties. Ms. V. Suokhrie further submits that despite the earlier spot verification since there was continuous claim and counter claim between the parties on the land in question, the respondent No. 3 again issued the order dated 27/10/2017 for conducting the spot verification on 01/11/2017 comprising the EAC (Revenue), LRSO Dimapur and his team of surveyor and the Head D.B. All concerned were also directed to be present on the spot without fail. The spot verification was accordingly conducted and the report was submitted to the respondent No.3 by the LRSO Dimapur by letter dated 21/11/2017 conveying that the land under Dag No. 19 and Dag No. 31 measuring an area of 13B-02K-16Ls is used as hume pipe factory. The report also stated that out of the 13B-02K-16Ls of land, 09B-04K-00Ls falls in Dag No. 19 while 03B-02K-16Ls falls in Dag No. 31. Consequent thereto the summon dated 15/11/2017 was issued to both the parties to appear before the respondent No.3 on 18/11/2017 along with all documents in support of their claims and upon adjudication of the case, the respondent No. 3 passed the order dated 23/11/2017 dismissing the claim of the petitioner and also directing the petitioner not to disturb the peaceful occupation of the land by the respondent No.4. The learned Addl. Advocate General also submits that the petitioner himself has admitted that the land under Dag No. 19 is not disputed.

9. Heard the learned counsel for the parties. From the argument advanced, it transpires that the dispute pertains to the land carried in Dag No. 31 originally measuring 22B-0K-0Ls of land and from which Shri. Arun Kachari sold 3B-04K-09Ls of land to the respondent No.4 on 05/04/1980. It is the case of the petitioner that he being the sole surviving heir of Jai Kisar Kachari is legally

entitled to inherit the remaining land in Dag No. 31 on which the hume pipe factory of the respondent No. 4 is located. On the other hand, it is the case of the respondent No.4 that he purchased 03B-04K-09Ls from Arun Kachari under Dag No. 31 and 10B-0K-0Ls of the land from Shri Lhomithi Sema under Patta No. 9 in part of Dag No. 19, Block No. 8, Signal Basti Dimapur, and it is on this land that he is lawfully running the hume pipe factory.

10. That in order to resolve the dispute, the spot verification of the land was carried out by the officials of the Land Record and Survey Office Dimapur on four different occasions. The first survey report is dated 19/05/2015 which is Annexure-11 & 11A to the writ petition, the second spot verification report is dated 09/07/2017 which is Annexure-13 to the writ petition, the third survey report is dated 26/09/2017 which is Annexure-17 to the writ petition and the fourth survey report is dated 21/11/2017 which is Annexure-1 series to the affidavit-in-opposition filed by the State respondent. In all the survey report, there is more or less a unanimity that the land measuring 09B-04K-00Ls under Dag No. 19 and 03B-03K-16Ls under Dag No. 31 totaling an area of 13B-02K-16Ls is under the occupation of the respondent No.4 by running the hume pipe factory.

11. The Deputy Commissioner, Dimapur, on perusal of the revenue records furnished by the parties and after referring to the spot verification conducted by the revenue officials and the argument advanced by the parties in support of their case had passed the order dated 23/11/2017 dismissing the claim made by the petitioner and also directing the petitioner not to disturb the peaceful occupation of the land by the respondent No. 4.

12. The petitioner has vehemently contested the impugned order dated 23/11/2017 by submitting that the respondent No. 3 has decided the question of right, title and interest on the disputed land in favour of the respondent No.4 which is otherwise a subject matter to be decided only by the competent Civil Court. The learned counsel accordingly submits that the order dated 23/11/2017 is bad in law and is liable to be interfered with, and set aside. This Court is unable to agree with such a submission. The respondent No.3, in the considered view of this Court, has not adjudicated on the question of right, title

and interest on the land between the parties but has only dismissed the claim of the petitioner by upholding the possession of the land by the respondent No. 4, basing on the revenue records furnished by the parties and the spot verification report. There is no dispute that to deliberate the question of right, title and interest on the land, evidence has to be first adduced by the parties to prove their case and it is only the appropriate Civil Court which has the power and the competence to decide such an issue and not the revenue court nor the High Court under Article 226 of the Constitution of India. This Court is therefore unable to accept the submission that by the impugned order dated 23/11/2017, the respondent No.3 has decided the rights of the parties on the land in question. In the case of **Khanindra Hazarika -versus- Rekha Saikia & Others**, reported in **2008(3) GLT 339**, a Co-ordinate Bench of this Court has held that for a decision and/or confirmation of the right, title and interest by way of adverse possession, it is only the Civil Court which is competent to decide the issue and not the revenue court. The submission therefore made by the petitioner that the Deputy Commissioner, Dimapur, by the impugned order dated 23/11/2017 has decided the right, title and interest on the land in favour of the respondent No. 4 is therefore incorrect and cannot be accepted.

13. Furthermore, the present case involves highly disputed questions of facts which can only be satisfactorily adjudicated by a competent Civil Court by allowing the parties to lead evidence to prove their case. The question as to whether the hume pipe factory is located on the land carried in Dag No. 31 or partly under Dag No. 31 and partly under Dag No. 19 can only be established by the parties after leading proper evidence. So also the revenue records produced by the parties in support of their case have to be first exhibited and proved by examining the author of the records. Moreover, it is not right for this Court to enter into the question as to which of the parties is the lawful owner of the disputed land. All this issues will have to be first decided by leading proper evidence before the rights of the parties are established. There is no dispute that, this Court, under Article 226 do have the jurisdiction to try issues both of fact and law and merely because in considering the petitioner's right, the question of fact may have to be determined, by itself does not deprive this

Court from examining the issues involved in the case. However, in the present case, it is perceived, that there are complex question of facts, which for their determination will require proper evidence and therefore, this Court is of the view that such complex issues involving the disputed question of facts to prove the right, title and interest on the land should be appropriately dealt with only by the competent Civil Court.

14. The Hon'ble Supreme Court in the case of **New Okhla Industrial Development Authority -versus- Kendriya Karamchari Sahkari Grih Nirman Samithi**, reported in **(2006) 9 SCC 524** has held as follows;

“12. A High Court is not deprived of its jurisdiction to entertain a petition merely because in considering the petitioner's right to relief question of fact may fall to be determined as pointed out in [Gunwant Kaur v. Municipal Committee, Bhatinda](#)³. In a petition under [Article 226](#), the High Court has jurisdiction to try issues of law and fact. Where, however, the petition raises complex question of fact, the Court should not entertain the petition. In [Mahant Moti Das v. S.P. Sahi](#)⁴ the High Court refused to go into the question as to whether trusts were public or private trusts as the question had involved investigation of complicated facts and recording of evidence. The view was upheld. Thus, if there is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence, it should not be decided in a writ proceeding (see [Union of India v. T.R. Verma](#)⁵). If disputed questions of fact arise and the High Court is of the view that those may not be appropriately tried in a writ petition, the High Court has jurisdiction to refuse to try those questions and relegate the party to his normal remedy to obtain redress in a suit.

13. In a petition under [Article 226](#), the High Court has jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact which may, for their determination, require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition.

14. Thus, a High Court is not deprived of its jurisdiction to entertain a petition under [Article 226](#) merely because in considering the petitioner's right, question of fact may fall to be determined. Ultimately, the question is one of discretion which is to be exercised in conformity with judicial principles. “

15. So also in the case of **Union of India & Another -versus- State of**

Assam & Others, reported in **(2014) 4 NEJ 30(Gau)**, the Hon'ble Division Bench of this Court has held that;

“11. In our considered opinion, the writ court (Single Judge) should not have embarked upon any factual enquiry much less roving factual enquiry into the question of ownership of the land in writ jurisdiction under Article 226/227 of the Constitution of India and nor it had jurisdiction to do so. In no case, the writ court could have returned the aforesaid finding of fact and declared the respondent No.6 to be the owner of the land in question in these proceedings.

13. It is the settled law that revenue courts while deciding the rival claims of the parties in mutation proceedings does not possess the jurisdiction to decide the ownership claims of any party on a particular land. The jurisdiction to decide the ownership issue in relation to any immovable property is with the civil court. The mutation proceedings are subject to the result of the decision of the civil court and depending upon the civil courts decision the order of mutation is passed in favour of the party in whose favoured the decision is given by the civil court.

14. In substance therefore, the revenue court could not decide the rival ownership claims of the parties over the land and had to grant liberty to the parties concern to get their claim adjudicated by the Civil Court in a civil suit. A fortiori-the writ court while deciding the writ petition arising out of such mutation proceeding also did not have jurisdiction to decide the ownership claims either way.

15. Coming now to the facts of the case, the writ court, in our view, erred in recording a finding of fact in respondent no.6's favoured on their ownership rights. Such findings could be recorded only by the Civil Court and that too with the aid of evidence, (oral/documentary) adduced by the parties if led. In other words, where there were rival claimants, then the only recourse open to the writ court was to direct the parties to approach the civil court and seek declaration of their ownership rights over the land and till the decision was not given by the civil courts, the mutation proceedings should have been stayed or/and kept in abeyance.

16. In the light of the discussion made above, this Court while not interfering with the order dated 23/11/2017 passed by the Deputy Commissioner, Dimapur,

grants liberty to the petitioner to approach the competent Civil Court for redressal of his grievances, if any, if so advised. All contentious issues raised by the parties in support of their case shall be adjudicated by the competent Civil Court in accordance with law. The Civil Court shall not be influence by any observation/findings made by this Court or by impugned order dated 23/11/2017 passed by the respondent No. 3.

17. The petitioner shall approach the competent Civil Court within 30(thirty) days from the date of passing of this judgment.

18. Writ petition disposed. No order as to cost.

Sd/-

JUDGE

Comparing Assistant