



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 100 of 2021

Date of Decision: 13.08.2024

1. Shri. Kennedy Ch. Marak
S/o (L) Jogen T. Sangma,
R/o. Gondenggiri A.king
P.O Rongram
P.S. Jengjal West Garo Hills
Meghalaya
2. Smti. Repolish Ch. Marak
W/o Jimberth T. Sangma
R/o. Gondenggiri A.king
P.O Rongram
P.S. Jengjal West Garo Hills
Meghalaya
3. Shri. Jimberth T. Sangma
S/o Shri. Morison Ch. Marak
R/o. Gondenggiri A.khing
P.O Rongram
P.S. Jengjal West Garo Hills
Meghalaya

..... Petitioner

-Versus-

1. The Garo Hills Autonomous District Council, represented by its
Secretary, Executive Committee, West Garo Hills, Tura
3. Shri. Mechail Ch. Marak
R/o. Gondenggiri A.khing
P.O Rongram, P.S. Jengjal
West Garo Hills Meghalaya.
4. The Chief Executive Member,



Garohills Autonomous District Council, Tura

5. The Executive Member,
In-Charge Land & Revenue,
Garohills Autonomous District Council, Tura

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.T. Sangma, Adv.

For the Respondent(s) : Mr. S. Dey, SC, GHADC (For R 1, 4 & 5)
Mr. S. Deb, Adv. (For R 3)

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

J U D G M E N T

1. This is an application filed under Article 226 of the Constitution of India, the petitioners being aggrieved with the judgment and order dated 05.02.2019 passed by the Executive Member, I/C Land & Revenue, Garohills Autonomous District Council (GHADC), Tura in GHADC-REF/19 A.C. of 2015 and the order dated 16.10.2020 passed by the Chief Executive Member, GHADC, Tura in GDC Rev Appeal No. 2 A/C of 2019, have now approached this Court praying for a direction by this Court to set aside and quash the abovementioned impugned orders.

2. Heard Mr. P.T. Sangma, learned counsel for the petitioners who has submitted that the petitioners are from the lineage of the last



recorded Nokma of Jamadar Amathe Akhing III-33 under Gondenggiri Akhing, the parents of the petitioner No. 2 (L) Jongen Sangma and his wife (L) Jingme Ch. Marak being such registered Nokma by virtue of the appointment order dated 08.08.1979 issued by P. Momin, Executive Member, Incharge Revenue, Garo Hills District Council, Tura.

3. The learned counsel has further submitted that after the demise of Jongen Sangma, his wife Jingme Ch. Marak had filed a petition for registration of her daughter Smti. Repolish Ch. Marak along with her husband Shri. Jimberth T. Sangma as the Nokma of the said Jamadar Amathe Akhing III-33 under Gondenggiri Akhing which fact was also admitted by the respondents.

4. The learned counsel has again submitted that the controversy between the parties arose only as regard the area of jurisdiction, the petitioners maintaining that the said Jamadar Amathe Akhing III-33 consisted of 77 bitots (hillocks) whereas the respondents have contended that the area consists of only 59 bitots.

5. This controversy apparently refers to a litigation by the parties before the Waribokgre Village Court in V/C Case No. 4 of 1969 wherein the Village Court after hearing the parties had vide order dated 04.12.1969 decided the matter in favour of Jingme Ch. Marak the predecessor of the present petitioners herein. The order of the Village Court was challenged by the respondent therein, Smti. Genjak Mechik before the Subordinate District Council Court whereby vide order dated 23.03.1971 the order of the Village Court was set aside. The petitioner then preferred an appeal before the District Council Court against the said



order dated 23.03.1971 and again vide order dated 14.12.1972 the District Council Court had set aside the order dated 23.03.1971 passed by the Subordinate District Council Court. Against this order dated 14.12.1972 the respondent Smti. Genjak Mechik as petitioner had filed a Civil Revision Petition No. 5(H) of 1976 before the Gauhati High Court and the Hon'ble High Court vide judgment dated 08.12.1977 had dismissed the said petition and in effect had upheld the order dated 14.12.1972 passed by the District Council Court.

6. On the strength of the High Court's order dated 08.12.1977, the predecessor of the petitioners filed an application before the District Council for execution of such order, accordingly, the said order dated 08.03.1979 was passed in GDC-REV No. 1 A/C of 1979-1980 whereby the predecessors of the petitioner No. 1, Jogen Sangma and his wife Jigme Mechik were declared as inheritors of the Jamadar Akhing within the Akhing land of Gongenggiri.

7. The learned counsel went on to submit that the respondent has again approached the High Court with a writ petition being Civil Rule No. 38 (SH) of 1989 challenging the order dated 08.03.1979. The High Court upon hearing the parties, have, vide order dated 28.08.1989 remanded the matter to the Executive Member, In-charge, Revenue to decide the matter afresh, however, it was also made clear that no submission be entertained in the matter already decided in Civil Revision No 5(H) of 1976.

8. As to the order dated 28.08.1989, the respondent has failed to approach the District Council Court and as such the dispute between the



parties was put to rest. The petitioner thereafter has approached the Executive Member I/C Land & Revenue vide GHADC REF/19 A.C. of 2005 with an application for registration of the name of Shri Jimberth T. Sangma and his wife Smti. Repolish Ch. Marak as the Nokma of Jamadar Amathe- III-33, the reason being that since the petitioner has inherited the said Akhing in the year 1979, the first Nokma being Smti Jingme Ch. Marak and her husband Jogen T. Sangma, therefore the said applicants, Shri Jimberth T. Sangma and his wife Smti. Repolish Ch. Marak are entitled to be appointed as the Nokma of the said Jamadar Amathe- III-33 within the Gondenghiri Akhing land.

9. On the objection of the respondent No. 3 herein, claiming that the Akhing land belongs to the Chambugong clan, the Executive Member then passed the impugned order dated 05.02.2019 holding that the appointment of Smt. Repolish Ch. Marak and her husband Shri Jimberth T. Sangma was as Jamadal Nokma for 59 bitots within Gondenghiri Akhing.

10. The learned counsel has submitted that the petitioners being aggrieved by the order dated 05.02.2019 passed by the Executive Member I/C Land & Revenue, an appeal was preferred before the Chief Executive Member being GDC Rev Appeal No 2 A/C of 2019. However, the Chief Executive Member, vide order dated 16.10.2020 had dismissed the appeal as devoid of merits. Hence this petition.

11. The learned counsel has maintained that the Executive Member in passing the impugned order dated 05.02.2019 has exceeded his jurisdiction inasmuch as the matter in favour of the petitioner through his



predecessor has been settled on the strength of the order dated 08.12.1977 passed in Civil Revision No 5(H) of 1976 as well as the order dated 28.08.1989 passed in Civil Rule No. 38(SH) of 1989 wherein the control of the petitioners over 77 bitots of land of Jamadar Amathe Akhing III-33 has been confirmed and as such the impugned order is hit by the principle of *res judicata*.

12. The final submission of the learned counsel is that the principle of natural justice has been violated since the petitioner was not given any notice when the impugned appellate order dated 16.10.2020 was passed by the Chief Executive Member.

13. In reply, Mr. S. Deb, learned counsel for the respondent No. 3 while refuting the contention and the submission made by the learned counsel for the petitioner has submitted that at the first instance this petition is not maintainable as it suffers from non-joinder of necessary parties, that is the present Nokma of the Godenggiri Akhing, Shri. Ronjith T. Sangma and Smti. Benje Ch. Marak which Akhing encompasses the land in question known as Jamadar Amathe Akhing have not been arrayed as respondents in this case, instead, Shri. Mechail Ch. Marak who is only a Chra (elder male member) of the Chubogong Clan was impleaded as respondent No. 3.

14. The learned counsel went on to submit that the petitioners cannot be said to be ignorant of this aspect of the matter since the said Nokma that is Shri. Ronjith T. Sangma and Smti. Benje Ch. Marak were very much party to the proceedings before the Executive Member who had passed the impugned order dated 05.02.2019 as well as before the Chief



Executive Member who had passed the impugned appellate order dated 16.10.2020.

15. The learned counsel has also submitted that the respondent No. 3 has filed his affidavit-in-opposition in this case and has made several factual and legal averments thereto. However, the petitioners have not filed any rejoinder to the said affidavit-in-opposition and as such, without any rebuttal to the contentions made in the said affidavit-in-opposition, the same remain uncontroverted. In this regard, the order dated 26.09.2014 passed in WA. No. 43/2011 in the case of Shri. Chellish Sangma & Anr. v. Smti. Labina Sangma & Ors., para 9 and 10 is cited in support of this contention.

16. Reverting to the facts of the case between the parties, the learned counsel has submitted that there is no dispute that Gondenggiri III-33 Akhing belongs to the Chambugong clan, the same having been established in the relevant records since the British regime with the genealogical tree, map-wareng and Ma'ambi being maintained in the GHADC. Since the year 2013 till date, the registered Nokma(s) of the said Akhing are Shri Ronjith T. Sangma and his wife Smti. Benje Ch. Marak who are the descendants of the original Nokma late Chagran Sangma and Smti Khanje Marak.

17. The learned counsel has also submitted that the father of the petitioner No. 1, (L) Jogen T. Sangma had approached the then Nokma of the said Akhing (Gondenggiri) as well as the office of the Executive Member, GHADC claiming to be the Jamadal Nokma of the Gondenggiri Akhing, however, upon scrutiny of the records, the GHADC vide order



dated 14.10.2009 had rejected the said claim. The claim of the petitioners as Jamadal Nokma of the said Akhing is therefore hit by the principle of res judicata, further submits the learned counsel.

18. The learned counsel has further contended that the petitioners have not come before this Court with clean hands, inasmuch as they have failed to mention that vide the said order dated 14.10.2009, the claim of the petitioners' predecessors as Nokmas of Gongenggiri Akhing III-33(9) have been rejected by the GHADC as baseless. There is no appeal filed against this order, the same has therefore attained finality.

19. In such a situation, the petitioners by filing the petition before the Executive Member I/C Land and Revenue, GHADC seeking to recognize Smti. Repolish Ch. Marak and Shri. Jingberth T. Sangma, the petitioners No. 2 & 3 respectively as the Jamadal Nokmas of Gondenggiri Akhing and the rejection of the prayer made therein vide the impugned order dated 05.02.2019 in GHADC- Rev/19 AC of 2015 is justified as the learned Executive Member has heard the parties after considering the petition, the written statement, the issues framed and the arguments of the parties.

20. Again, the learned counsel has submitted that on appeal by the petitioners, the learned Chief Executive Member, GHADC has duly considered the written submission filed by the parties as well as the oral argument advanced before him and on consideration of such argument, the impugned appellate order dated 16.10.2020 was passed. The challenge of the petitioners that they have not been heard by the CEM is without basis and is to be discarded, further submits the learned counsel.



21. Mr. S. Dey, learned Standing Counsel of the respondent GHADC in response to the argument of the learned counsel for the petitioners has submitted that the dispute between the parties in this case is the claim of the petitioners to be appointed as the Jamadal Nokmas of Amathe Akhing within the Gondenggriri Akhing. This claim cannot be sustained as there cannot be an Akhing within an Akhing.

22. The learned SC has further submitted that there are no records to prove that the said Jamadar Akhing has been recognized as such since there is no map or demarcation of such unrecognized Akhing. This has been clarified by the Executive Member I/C Land & Revenue in his order dated 08.03.1979.

23. The claim of the petitioners is only with regard to the ownership of 77 bitots of land within the said Gondenggriri, which however upon adjudication, it was clarified that the total land entitled to them is only 77 plot of land or 59 bitots.

24. The learned SC has also submitted that the proceedings before the Executive Member as well as the Chief Executive Member was carried out in accordance with due procedure as was mandated in the case of *Smti Dore Sangma v. The Chief Executive Member, Garo Hills District Council, Tura & Ors.* reported in (1988) 2 GLR 120, with the respective parties having been given ample opportunities to present their respective case by filing written statement and upon framing of relevant issues, the argument of the parties have been heard followed by the passing of the said impugned order. Therefore, there is no violation of the said procedure or the principle of natural justice.



25. The learned SC has also endorsed the contention of the learned counsel for the respondent No. 3 that this petition is bad for non-joinder of proper and necessary parties in the form of the present Nokmas of Gondenggiri Akhing and on this ground alone, this petition ought to be dismissed.

26. On an overall observation of the case between the parties, this Court is made to understand that the dispute between the principal parties is with regard to control of an area known to the petitioner as Jamadar Amathe (A.mate) Aking III-33 which is contained within the Gondenggiri Akhing land as admitted by the parties.

27. It is the case of the petitioners that the said Jamadar Amathe falls within the boundaries of 77 bitots (hillocks) carved out of the said larger portion of Akhing land called Gondenggiri. It is for this particular plot of land that an application was made by the predecessor of the petitioner to be appointed as Nokma of the said Jamadar Amathe Akhing III-33.

28. As is evident from the submission and contention of the parties noted herein above, the history of the dispute dates back to the case filed by the predecessors of the petitioners before the Waribokgre Village Court in Case No. 4 of 1969, the subject matter being the claim of ownership over 77 plots of Akhing land which was decreed by the Village Court in favour of the predecessors of the petitioners herein. On appeal before the Subordinate District Council Court the order of the Village Court was vacated. Being aggrieved by the order of the Subordinate District Council Court, the predecessors of the petitioners preferred an appeal before the District Council Court and the District Council Court



vide order dated 14.12.1972 set aside the order of the Subordinate District Council Court and in effect has upheld the order of the Waribokgre Village Court.

29. The opposite parties therein had then approached the High Court (Shillong Bench of the Gauhati High Court as this Court then was) with a Civil Revision Petition No. 5(H) of 1976 assailing the said order dated 14.12.1972. The Hon'ble High Court vide order dated 08.12.1977 had dismissed the petition finding no merits on the substance in the said revision petition.

30. On the strength of the said order dated 08.12.1977 the petitioners had approached the Executive Member, In-charge, Revenue, Garo Hills District Council and vide order dated 08.08.1979 in GDC-REV.No. 5 A/C of 1979-80, Shri. (L) Jogen Sangma and his wife Smti. Jingme Marak Michik were appointed as Nokma of Jamadar Akhing existed in the Gondengiri Akhing land. A certificate to this effect was issued by the Secretary, Executive Committee Garo Hills District Council on 03.02.2004 certifying that Shri. Jogen Sangma is appointed Akhing Nokma of Gondengiri Akhing III-33 (9) w.e.f. 08.08.1979.

31. Against the order dated 08.08.1979, Gonjak Marak Nokma and another approached the Gauhati High Court (Shillong Bench) with a writ application registered as Civil Rule No. 38(SH) of 1989 and the Hon'ble High Court in the Division Bench vide judgment and order dated 28.08.1989 has held that the impugned order cannot be sustained, that is the order dated 08.08.1979 and has remanded the case to the Executive Member, In charge Revenue to decide the matter afresh. It is also the



direction of the Court that the matter already decided in the Civil Suit and ultimately in Civil Revision No. 5(H)/76 cannot be agitated afresh. What could be understood of the body of the order dated 28.08.1989 is that the issue of the 77 plots of land as “Amathe” of the predecessors of the petitioners herein has been settled. What remains is the issue of declaration of the said predecessors of the petitioners as Jamadar Nokma.

32. It is this issue of recognition of Smti. Repolish Ch. Marak and her husband Shri. Jimberth T. Sangma, the petitioners No. 2 and 3 herein respectively as the Nokma of Jamadar Amathe III-33 (within Gondenggiri Akhing) which was taken up by the Executive Member In-Charge Land & Revenue GHADC in GHADC-REF/19 A.C of 2015 and upon hearing the parties and on consideration of the issues framed therein, the impugned order dated 05.02.2019 was passed rejecting the claim of the petitioners as Nokma of Jamadar Akhing since the same was not borne from the records of the office of the District Council as was indicated in the order dated 14.10.2009 passed in response to a petition dated 07.09.2009 filed by Smti. Gengak Marak, Nokma of Gondenggiri Akhing land. However, the Executive Member has come to a finding that the petitioners, that is Smti. Repolish Ch. Marak and her husband Shri. Jimberth T. Sangma are appointed as Jamadar Nokma for 59 bitots of land within Gondenggiri Akhing. It is further directed that the 59 bitots be demarcated and a map to be prepared.

33. The petitioners being aggrieved by the said order dated 05.02.2019 had approached the Chief Executive Member in GDC Rev Appeal No. 2 A/C of 2019, who after hearing the parties and on



consideration of their respective written submissions as is seen in the order dated 27.02.2020 had passed the said impugned order dated 16.10.2020.

34. At this juncture, it may not be out of place to note that the contention of the petitioners that they have not been heard before the Chief Executive Member is factually incorrect. The argument advanced in this regard is rejected.

35. On the issue of non-joinder of proper and necessary parties, it is the contention of the respondent/GHADC that the respondent No. 3 herein was not a party to the proceedings before the Executive Member or the Chief Executive Member since he is not the Nokma of the Gondenggiri Akhing whereas Shri. Ronjith T. Sangma and his wife Smti. Benje Ch. Marak are the recognised Nokma of the Gondenggiri Akhing, having not been impleaded as respondents in these proceedings, this writ petition is not maintainable on such ground. This Court on perusal of the impugned order has however noted that the name of Mechail Ch. Marak has been recorded as the respondent along with others. Nothing from the records brought before this Court is indicated that the said Nokma of the Gondenggiri Akhing was arrayed as party respondents before the Executive Member as well as the Chief Executive Member. The fact that the said Mechail Ch. Marak has not raised any objection on the issue of non-joinder of proper and necessary parties in the proceedings before the Executive Member as well as the Chief Executive Member to raise this issue at this point of time may not be proper.

36. It is well settled that proceedings before the Executive Member or



the Chief Executive Member of the District Council which are quasi-judicial in nature, the High Court would insist that such proceedings have to be conducted keeping in mind the principles laid down in the case of Smti Dore Sangma (supra). At para 20 of the same is found the following:

“20. For all these reasons, we would hold that the Revenue Member alone has jurisdiction to decide the types of disputes at hand. But then while doing so, the Revenue Member has to follow the fundamental principles of judicial procedure; these being: (1) framing of issues which has been regarded as necessary for courts to get the grip of the case. (See Vindeo vs. Ziakruool, (1983) 1 GLR (NOC) 34). (2) Opportunity to lead evidence on the issues framed—the evidence given could be recorded in full or summary of the same could be noted; and (3) hearing of the parties themselves or through their lawyers if engaged. This apart, some other accepted principles of sound judicial procedure like not allowing a document to be used in a case without the other side having been given opportunity to rebut the same should also be followed when the case is taken up by the Revenue Member in the first instance or by the Chief Executive Member on appeal.”

37. It is also fundamental that the power of judicial review of a constitutional court exercising writ jurisdiction is mainly not to dwell on the merits of the decision taken but to evaluate the decision-making process so as to ensure that there is fairness in the proceedings, more particularly that the principle of natural justice is adhered to. The High Court exercising writ jurisdiction, more often than not cannot substitute its own findings on the merits of the case under consideration which it can do so in its appellate or revisional jurisdiction.

38. On careful examination of the procedure adopted by the Executive Member and the Chief Executive Member, it is seen that due procedure has been followed as has been mandated in the case of Dore Sangma



(supra) and as such, this Court is not inclined to interfere with the findings rendered by the said Executive Member and Chief Executive Member respectively.

39. However, in keeping with judicial propriety, this Court would reiterate the decision of a Division Bench of this Court (as it then was) in the judgment and order dated 28.08.1989 passed in Civil Rule No. 38(SH) of 1989 wherein it was held “...*We however, make it clear that the Executive Member shall not entertain any submission in regards to the matter already decided in the Civil Suit and ultimately in Civil Revision No. 5(H)/76....*” which in essence has maintained the decision of the Waribokgre Village Court as regard the 77 plots as ‘Amathe’ of the predecessors of the petitioners herein.

40. There being no procedural defects in the proceedings leading to the passing of the impugned orders, this petition is accordingly found to be devoid of merits and the same is liable to be dismissed and is hereby done so.

41. Records of the Department produced before this Court to be handed over to the Standing Counsel, GHADC.

42. In view of the dismissal of this instant petition, any status quo order or such similar orders involving the parties herein in the facts and circumstances of this case stands vacated.

43. Petition disposed of. No costs.

Judge