



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 171 of 2021

Date of Decision: 04.10.2024

1. Shri. Aban Momin
Son of (L) Welson Sangma,
Resident of: Rongrekgiri,
Post Office and Police Station: Williamnagar,
District: East Garo Hills, Meghalaya
2. Smti. Jostina R. Marak,
Wife of:- Aban Momin,
Resident of: Rongrekgiri,
Post Office and Police Station: Williamnagar,
District: East Garo Hills, Meghalaya

.....Petitioners

-Vrs-

1. The Garo Hills Autonomous District Council,
Tura, represented by the Secretary, Executive Member,
Garo Hills District Council, Tura.
2. The Executive Member, I/C Land and Revenue, Garo Hills
Autonomous District Council, Tura.
3. The Chief Executive Member, Garo Hills Autonomous District
Council, Tura.
4. Smti. Nerinjinjing R. Sangma,
Wife of:- Late Withing Marak,
R/o: Rongrekgiri
Post Office and Police Station,
District: East Garo Hills, Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:



the order dated 16.10.2020 by dismissing the appeal and in effect, upheld the order of the learned Executive Member, GHADC.

3. The petitioners herein being aggrieved by the order of the learned Executive Member dated 17.12.2019 as well as the order of the learned Chief Executive Member dated 16.10.2020 have now once again approached this Court with a prayer that the orders impugned herein be set aside and quashed.

4. According to the petitioner, the background story of the case is that Rongrekgiri Akhing No. IV 56(10) in the East Garo Hills District was purchased from late Jingnang Nokma of Rongbibggiri village by the predecessor-in-interest of the Raksam Clan of the petitioners, late Sanna Sangma and late Jimra Sangma for a sum of ₹ 800/- (rupees eight hundred) on 08.01.1918.

5. Soon after the said purchase, the buyers then intimated the then Deputy Commissioner, late F.E. Jackson about the said sale transaction, who then directed the Mouzadar and Laskar to prepare a map and to erect boundary pillars, which was done so on 21.01.1918, thereby recognising the said sale transaction and the right of the Raksam clan over it.

6. In due course, late Jenang Sangma and his wife Smti. Binis Marak, Nokma had filed an application before the Executive Member Incharge Revenue, GHADC for registration of their heiress Smti. Jostina R. Marak and her husband Aban Momin as Nokma of the said Rongrekgiri Akhing and the matter was registered as GDC-Rev No. 71



A/C of 1987, whereupon, an order dated 15.04.1987 was passed allowing the same.

7. In the meantime, one Shri. Nephilson Sangma filed an application before the Executive Member Incharge Revenue, GHADC dated 13.12.1996 seeking appointment of Shri. Withing Marak and his wife Smti. Nerinjing Sangma (respondent No. 4 herein) as Nokma of the said Rongregiri Akhing, which application was registered as GDC Rev No. 82 A/C of 1996-97. The said application was allowed vide order dated 22.08.1997, being aggrieved, the petitioners herein filed an appeal before the learned Chief Executive Member, GHADC which appeal was dismissed vide order dated 23.09.2003.

8. Again, the petitioners herein not being satisfied with the said orders dated 22.08.1997 and 23.09.2003 (supra), this Court was approached with a writ petition being WP(C) No. 340(SH) of 2005 and this Court vide order dated 31.07.2006, set aside and quashed both the impugned orders aforementioned and remitted the matter to the learned Executive Member to decide the matter afresh after giving due opportunity to both the parties to adduce evidence and to make oral/documentary submission.

9. Accordingly, the learned Executive Member then started fresh proceedings and after hearing the parties and on perusal of both oral and documentary evidence produced by the parties has passed the order dated 23.07.2012 rejecting the claim of the respondent No. 4 herein and allowed the petitioners to continue as Nokma of the said Akhing land in question.



10. Yet again, the respondent No. 4 being aggrieved by the order dated 23.07.2012 (supra) preferred an appeal before the learned Chief Executive Member, who vide order dated 19.12.2013 set aside the order of the learned Executive Member.

11. It is this order dated 19.12.2013 that was challenged before this Court in WP(C) No. 26 of 2014 resulting in the passing of the said order dated 08.03.2018.

12. The learned Executive Member on receipt of the order dated 08.03.2018 had caused notices to be issued to all the parties involved and on their appearance, after filing of documents and examination of their respective witnesses, after hearing the parties, the learned Executive Member has passed the impugned order dated 17.12.2019, whereupon on being aggrieved by such, the petitioners have filed an appeal before the learned Chief Executive Member who has then passed the impugned order dated 16.10.2020 in GHADC-Rev Appeal Case No. 12 A/C 2020 whereby the order dated 17.12.2019 passed by the Executive Member was upheld. Hence this petition.

13. Mr. A.H. Hazarika, learned counsel for the petitioners has advanced his arguments by leading this Court to the history of the dispute between the parties and has submitted that since the year 1918 when late Sanna Sangma and late Jimra Sangma who were married to two sisters of the Raksam clan, the Nokmaship of Rongrekgiri No. 56(10) Akhing has always been under the control of the Raksam clan.

14. The petitioner's parents, in the year 1987 have filed the application before the Executive Member Incharge Revenue only for



registration of their names as Nokma of the said Akhing which was done so vide order dated 15.04.1987.

15. However, after a lapse of 75 years or so, the respondent No. 4 and her deceased husband Withing Marak were appointed as Joint Nokma of the said Akhing, purportedly on an application made by one Shri. Nephilson Sangma. The related order dated 22.08.1997 whereby the said application was allowed, an appeal was therefore preferred by the petitioners before the Chief Executive Member, GHADC which was not allowed, leaving the petitioner no choice but to approach this Court at the relevant point of time. In this regard, the claim of the respondent No. 4 that the said Akhing was jointly purchased by late Sanna Nokma, who paid ₹ 400/- and late Khanam Nokma of the Rongmutu clan who paid ₹ 400/- for the same cannot be substantiated by documentary evidence, further submits the learned counsel.

16. The learned counsel has submitted that the fact being that when the then Deputy Commissioner, F.E. Jackson vide his order dated 09.01.1918 has confirmed the Nokmaship of the predecessor-in-interest of the petitioners herein over the said Rongrekgiri Akhing, the members of the Rongmutu clan of the respondent No. 4 has not made or file any objection to the same, challenging the purport of such order after 75 years or so would only attract the application of the principle of res judicata, the case of Smti. Dore Sangma v. The Chief Executive Member, Garo Hills District Council, Tura and Ors. reported in (1988) 2 Gauhati Law Report 120 at para 23 was cited in support of this contention.



17. Finally, after going through a process of the dispute being adjudicated by the forum of the learned Executive Member and on appeal by the learned Chief Executive Member, the culmination of the process resulting in the passing of the last impugned order, dated 16.10.2020 by the learned Chief Executive Member was evidently based on incorrect appreciation of the factual aspect of the dispute between the parties and furthermore, was a violation of the principle of natural justice inasmuch as the petitioners were never given the opportunity to be heard by the learned Chief Executive Member while passing the impugned order dated 16.10.2020, submits the learned counsel.

18. The learned counsel has further submitted that in view of the bias attitude of the concerned Executive Member and the Chief Executive Member, this Court may be pleased to remand the matter for reconsideration by the Court of the Judge, District Council, GHADC.

19. Also heard Mr. P. Nongbri, learned counsel who has presented the version of the respondent No. 4 as far as the dispute between the parties are concerned.

20. It is the submission of the learned counsel that the Rongrekgiri Akhing was purchased in the year 1917 for an amount of ₹ 400/- each contributed equally by late Sanna Nokma of Raksam clan and Khaman Nokma of Rongmutu clan. The Deputy Commissioner of Garo Hills vide order dated 25.04.1938 has also observed that Sanna and Khaman are Nokmas of the said Rongrekgiri Akhing with the consent of the Maharis of Rongmutu and Raksam clans.



21. The learned counsel has further submitted that the present controversy arose from an application that was filed before the Executive Member Incharge Revenue and vide order dated 22.08.1997, Withing Marak and his wife, the respondent No. 4 are recognised as the joint Nokmas of Rongrekgiri Akhing representing the Rongmutu clan. Even on appeal by the petitioners herein, the appellate authority, that is, the Chief Executive Member has upheld the order dated 22.08.1997. However, the matter did not end there since the petitioners have then approached this Court by way of a writ petition and what followed is that on the strength of the relevant orders passed by this Court, finally, by order dated 08.09.2018 passed in WP(C) No. 26 of 2014 the adjudication of the dispute between the parties was once again referred to the learned Executive Member Incharge Revenue, to continue proceedings by allowing the petitioner's witnesses to be examined.

22. The learned Executive Member after observing due procedure and after finally hearing the parties has passed the impugned order dated 17.12.2019 with a finding that the said Rongrekgiri Akhing is to be controlled jointly by one Nokma from the Raksam clan and one from the Rongmutu clan. Again, on appeal, the learned Chief Executive Member vide order dated 16.10.2020 has confirmed such order. Therefore, there being no pleadings on any alleged procedural lapse, the petitioners have not been able to make out a case in their favour and as such, this petition is liable to be dismissed, submits the learned counsel.

23. Mr. S. Dey, learned Standing Counsel, GHADC on behalf of the respondents No. 1, 2 and 3 respectively in his reply has refuted the



contention and submission made by the petitioners to say that the factual situation is that when the said Rongrekgiri Akhing was purchased, half of the consideration amount was paid by the fore parents of the respondent No. 4 and throughout, this fact has not been able to be dislodged and was confirmed even in the impugned orders herein.

24. It is also submitted that there the learned Executive Member has not committed any procedural lapse in the proceedings before him and the order was passed based on sound principles of Garo Customary Law.

25. As to the contention of the petitioners that they were not heard by the learned Chief Executive Member in the appeal and the same was passed exparte, the learned SC has submitted that this statement is not correct since records would show that both parties were heard and their respective written argument was also taken into consideration while passing the said order dated 16.10.2020.

26. To the prayer of the petitioners that this Court be pleased to refer the entire matter to the court of the Judge, District Council Court for proper adjudication, the learned SC has submitted that this prayer cannot be accepted as there is already an express bar for civil court to take up matters involving Nokma issues as is seen from Section 11 of the Garo Hills Autonomous District (Social Customs and Usages) Validity (Amendment) Act, 1972.

27. In view of the submission made, the learned SC has submitted that this petition being devoid of merits, the same be dismissed as such.



28. This Court has given careful thought to the case of the parties and from the submission made as well as from the materials available on record, including the relevant records of the proceedings before the learned Executive Member and the learned Chief Executive Member, it is evident that the fact that Rongrekgiri Akhing was purchased on 09.01.1918 for a sum of ₹ 800/- (rupees eight hundred) only is not disputed, the purchasers being Sanna Nokma and Jimra Nokma. This transaction was confirmed by F.E.J, said to be the then Deputy Commissioner, F.E. Jackson. Annexure-2 of this petition being a copy of the said acknowledgment. However, another version of the said sale transaction emerged in the form of a report dated 12.12.1927, by one J.M. David filed before the then Deputy Commissioner, G.D. Walker, wherein it was said that Sana and Khaman Nokma are the Akhing Nokma of Rongrekgiri since the said land was purchased in the year 1917 from Shri. Jingnang Nokma of Rongbingiri, for an amount of ₹ 400/- (rupees four hundred) only each.

29. The dispute that ensued thereafter between the members of the Raksam clan and the Rongmutu clan is precisely on this issue, as to what exactly is the nature and mode of the said sale transaction, whether the Akhing in question was jointly purchased by Sanna and Jimra or by Sanna and Khaman.

30. In the impugned order dated 17.12.2019, the learned Executive Member has indicated that records were perused and deposition of the witnesses duly noted to come to a finding that the report dated 12.12.1927 confirmed the fact that the Akhing was jointly purchased by Sanna Nokma and Khaman Nokma who paid ₹ 400/- (rupees four



hundred) only each. However, the findings of the learned Executive Member also include an observation that the respondent No. 4 belongs to the Rongmutu clan and whatever is decided by the clan as regard to who can be its Nokma cannot be questioned by the petitioners and their clan, that is, the Raksam clan.

31. On appeal, the learned Chief Executive Member has also extensively dealt with the issues raised by the contesting parties and has also confirmed the findings of the learned Executive Member. This Court on perusal of the said order dated 16.10.2020 cannot find fault with the same as the same is a well-reasoned one.

32. On the contention of the petitioners that they were never heard by the learned Chief Executive Member on the date the related appeal came up for hearing, as was submitted by the learned SC, GHADC and also on perusal of the relevant records wherein on the said date of hearing, that is 16.10.2020 it is seen that the petitioner/appellant Aban Momin has filed his hazira on the said date, which would only indicate that he was present before the learned CEM. Therefore, such contention by the petitioners cannot be accepted by this Court.

33. In a case dealing with the issues of dispute as regard the Nokmaship of an Akhing land, this Court while refusing to go into the merits of the case of the parties as regard statement of facts and their evidentiary value, has reiterated the principle governing judicial review and in this regard has cited the case of Mohammed Hanif v. State of Assam, (1969) 2 SCC 782 wherein at para 5, extracts of which is reproduced herein, the Hon'ble Supreme Court has held as follows:-



“5. It is true that the jurisdiction of the High Court under Article 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the private rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. In other words, the jurisdiction of the High Court under Article 226 is a supervisory jurisdiction, a jurisdiction meant to supervise the work of the tribunals and public authorities and to see that they act within the limits of their respective jurisdiction. In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object to such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction....”

34. Even as the respondent No. 4 has questioned the stand of the petitioners herein, wherein no specific pleadings have been made to challenge the decision-making process of the learned EM as well as that of the learned CEM vis-à-vis the impugned orders herein, this Court on an overall analysis of the facts and circumstances of this case has found nothing wrong with the said decision-making process.

35. On the prayer of the petitioners that the matter be referred to the civil court, that is, the court of the Judge, District Council Court, Tura, this prayer is contradicted by the petitioners themselves as at para 3 of this petition, Section 11 of the Garo Autonomous District (Social Customs and Usages) Validating (Amendment) Act, 1972 was quoted to say that since no suit or proceedings falling within the purview of the Act can be entertained by a civil court, the only remedy available to the petitioners is to approach this Court under Article 226 of the Constitution. Therefore, there is no question of matters of this kind to be adjudicated by a civil court.



36. In view of the above observations, this Court hereby finds that the petitioners have not been able to make out a case to upset the concurrent findings of the learned Executive Member and the learned Chief Executive Member as is found in the impugned orders referred to hereinabove.

37. This petition is accordingly dismissed as devoid of merits.

38. The relevant records are handed over to the learned Standing Counsel, GHADC on receipt duly acknowledged.

39. Petition disposed of. No costs.

Judge