



Serial No.07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.A.No.16/2023

Reserved on: 27.05.2024
Pronounced on: 08.07.2024

Shri Minen Marak

Shri Mollen Marak

Smti. Dinji N. Sangma

..... Appellants

Vs.

1. The Garo Hills Autonomous District Council represented by its Secretary, Executive Committee, West Garo Hills District.

2. The Chief Executive Member, Garo Hills Autonomous District Council, West Garo Hills District.

3. The Executive Member, Garo Hills Autonomous District Council, West Garo Hills District, Tura.

4. Smti. Binoni Sangma

..... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W.Diengdoh, Judge

Appearance:

For the Appellants : Mr. P.T. Sangma, Adv

For the Respondents : Mr. S. Dey, Adv with
Ms. S.G. Marpna, Adv for R/1-3
Mr. K.S. Kynjing, Sr.Adv with
Mr. G. Syngkrem, Adv for R/4

i)	Whether approved for reporting in Law journals etc.:	Yes
----	--	-----

ii)	Whether approved for publication in press:	Yes
-----	--	-----



J U D G M E N T

(Made by Hon'ble, the Chief Justice)

The present Writ Appeal has been preferred, challenging the order of the learned Single Judge dated 08.05.2023 passed in WP(C) No.377 of 2019, in and by which, the Writ Petition filed by the Writ Petitioner / R4 herein was allowed.

2. The case put forth by the Writ Petitioner / R4 herein before the Writ Court was that as against the order dated 13.09.2018 passed by the Executive Member/R3, dismissing the application as barred by the principle of res judicata, R4 in the Writ Petition had preferred an appeal in GHADC.Rev/Appeal No.9 of A/C of 2018 before R2, which was allowed on 05.07.2019, remanding back the case to the Executive Member with a direction to record the statement and evidences of the witnesses of both parties and thereafter, to transmit the record to the Court of the Chief Executive Member for final adjudication and determination of the issues in controversy between the parties. Aggrieved by the order dated 05.07.2019, the Writ Petitioner/R4 herein has approached the learned Single Judge by filing the Writ Petition, the order of which is impugned in the Writ Appeal, inasmuch as learned Single Judge has allowed the Writ Petition on 08.05.2023 and set aside



the order dated 05.07.2019. Against the said order, the present Writ Appeal has been preferred.

3. The Writ Petitioner/R4 herein vehemently contended that R3, being a custodian of the Nokmaship, the right and ownership of the office of the Nokma of Marakapara Akhing had already been merged with the Kharijor Akhing since 1935 and the predecessor of the writ petitioner had been made as a Nokma of the Akhing for several decades. It was further contended that neither the appellants 1 to 3 herein nor their predecessors in interest had made any claim or objection at any point of time. It was only in the year 2005, that too, after a lapse of many decades, the 1st Appellant herein moved a petition before the respondent No.2, seeking for an order of appointment of the Appellants 2 and 3 as Nokma of the Marakapara Akhing II-15 (A), which is clearly barred by the principle of estoppel, acquiescence and waiver and as such, the claim of the appellant 1 ought not to have been entertained at all.

4. It was stated in the writ petition that since the issue relating to Marakapara had been decided and settled way back in the year 1935 in Political Case No.12/1935 by the Deputy Commissioner and that order had also attained finality and it is barred by the principle of res judicata.



5. The learned Single Judge, after hearing the parties observed that the order of 13.07.1935 attained great significance and at this belated stage, the question of re-examination of the issue already decided cannot be gone into and it is impermissible to unsettle the settled issue. Learned Single Judge also observed that the subsequent challenges made in 1961 and 2018 had also been disposed of by the successive Executive Members, in-charge Land and Revenue in right earnest and the impugned order allowing reconsideration of the issue which has long been settled is squarely hit by the principle of res judicata and on that score, the writ petition filed by the respondent No.4 herein was allowed and the order impugned in the writ petition was set aside.

6. It was the stand of the Writ Petitioner / R4 herein that the appellants herein and Marakapara village had agitated for recovery of the Marakapara Akhing by filing an application before the Executive Member, in-charge Land and Revenue vide GDC Misc.Case No.30/1960-61 and by an order dated 05.05.1961, the prayer of the appellants was not entertained. The Executive Member, in the subsequent order dated 13.09.2018 also clearly stated that the appellants have no cause of action to request appointment of Akhing Nokma, as the petition is barred by the principle of res judicata. Though the issue



had attained its finality in the year 1935, the appellants are trying to give life to a dead snake, which is barred by *res judicata* as stated above.

7. Learned counsel for the appellants submitted that the main grievance of the appellants was that several issues have been placed before the Executive Member, in-charge Land and Revenue, GHADC and without framing issues and leading evidences, no order can be passed on merits.

8. We are not inclined to accept this submission. The learned Single Judge in Paragraph No.11 of the order dated 08.05.2023 has extracted the order dated 31.07.1935, which is reproduced herein-below:

“The Chachis and Maharis except for Mingre Mechik and Manji Mechik and her daughters all wish to give Marakhapara Akhing to Manseng Marak who has married Jadi Mechik. Jade is Nengminja clan and Manseng is of Mrong clan and is already Nokma of Kharijor village holding it for Nengminja clan.

Consequently as Ranji is dead without heir and Mengri and Wan have married into other clans than mrong which is looked on as Nengminja (Women's) clan's mating clan for custody of Nengminja clan's property by right of marriage I give the Akhing of Marakhapara to property by right of marriage I give the Akhing of Marakhapara to Jadi Mechik who is of Nengminja clan and who granddaughter of Dongre Mechik younger sisiter of Ginse Mechik of Nengminja clan as desired by all the Chachis and Maharies of Nengminja clan. M'dar to prepare lineage and Rev. Office to correct boundary papers.”



9. From the above, it is very clear that the order has attained finality, which is sought to be re-agitated again in the year 1961 and the same was rejected vide order dated 05.05.1961, holding that there was a final order dated 13.07.1935. Yet another attempt subsequently made by the appellants, was rejected by the Executive Member, in-charge Land and Revenue vide order dated 13.09.2018 on the ground that it is barred by *res judicata*.

10. Learned Single Judge, after analysing the pleadings of the parties came to the conclusion that the issue had already been decided on several occasions, more so, in the year 1961 and 2018 and re-examining the same issue is hit by *res judicata*. This Court cannot allow the appellants to file petitions one after the other till they get a favourable order and thus, the conduct of the appellants is not acceptable.

11. We are reminded of the story of King Bruce and the Spider, in which, King Bruce, even after failing six times in the battlefield, tried one more time and succeeded in getting his Kingdom back, ignited by the fact that a little spider never gave up its attempt to build a web again and again after failing multiple times. Though the attempt of the appellants may be compared to King Bruce, it may be possible in a Battle to win a war, but certainly not in a legal battle, especially when



the order had attained finality and the issue agitated is hit by *res judicata*.

12. In view of the above, in our considered opinion that the order of the learned Single Judge is perfectly valid, which does not warrant any interference by this Court.

13. In the result, the Writ Appeal, being devoid of merits is accordingly dismissed. No costs.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
W.A.No.16 of 2023