



Serial No.06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 393 of 2018

Date of Order:28.10.2024

Shri. Phillony R. Marak
Widow of (L) Henry Sangma,
R/o.Gangbanga Village
P.O Barengapara, P.S. Dalu
West Garo Hills District,
Meghalaya.

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

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

3. The Executive Member, I/C
Revenue & Land, Garo Hills
Autonomous District Council,
Tura.

4.Smti. Nikme D. Sangma,
W/o.(L) Saljing Ch. Marak,
R/o. Magupara Village.
P.O. Barengapara, P.S. Dalu,
West Garo Hills District, Meghalaya.

....Petitioner.

....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

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

For the Respondent(s) : Mr. S. Dey, Adv. R: 1 – 3.

Mr. S. P. Mahanta, Sr. Adv. with

Mr. L. M. Sangma, Adv. R: 4.



ORDER (ORAL)

Heard Mr. P. T. Sangma, learned Counsel appearing for the petitioner and Mr. S. Dey, learned Counsel appearing for the respondents No.1 – 3 also Mr. S. P. Mahanta, learned Senior Counsel assisted by Mr. L. M. Sangma, learned Counsel appearing for the respondent No.4.

1. This writ petition relates to a dispute about the land known as Adugachol. While the petitioner claims that Adugachol is a separate and independent Akhing, the respondent No.4 contends that Adugachol is a village falling within Magupara Akhing.

2. The order dated 28-12-2017 passed by the Executive Member, I/C Land & Revenue, Garo Hills Autonomous District Council (GHADC), Tura in Case No.GHADC – Rev. A.C No. 35 of 2016 and the order dated 12-10-2018 passed by the Chief Executive Member in GHADC REV. APPL. No. 1 A/C of 2018 are under challenged in this writ petition. By the aforesaid orders, the Adugachol was held to be a part of Magupara Akhing.

3. Mr. P. T. Sangma, learned Counsel for the petitioner vehemently argued that Adugachol Akhing was never a part of Magupara Akhing and the same could not have been included in the Magupara Akhing by treating it as a village. It is also the contention of the learned Counsel that the Executive Member, I/C Land & Revenue, GHADC, Tura, while deciding the dispute between the parties, has not taken into consideration the established legal norms and gone ahead to decide the matter without framing any issue, examining any witness and also without considering the relevant documents on record. The learned Counsel has heavily relied on the decision reported in (1988) 2 GLR 120, *Smti. Dore Sangma & Ors.*



Versus The Chief Executive Member, Garo Hills District Council, Tura & Ors. (para – 20) and submitted that the directions made therein with regard to the framing of issues, recording of evidence and consideration of documents have been totally overlooked by the Executive Member, I/C Land & Revenue, GHADC, Tura. He submitted that non-adherence to the mandate of law led the said authority to come to a wrong finding. It is further submitted by the learned Counsel for the petitioner that the Chief Executive Member, GHADC, Tura, while deciding the appeal, has also acted mechanically and wrongly upheld the decision of the Executive Member, I/C Land & Revenue, GHADC, Tura in utter disregard of the established norms of law. The learned Counsel submits that since both the authorities of GHADC have not discharged their duty in deciding the matter strictly in accordance with law, the orders dated 28-12-2017 and 12-10-2018 are liable to be set aside and quashed.

4. Per contra, Mr. S. Dey, learned Counsel for the respondents No.1 – 3 refuted the submission of the learned Counsel for the petitioner and submitted that all the norms and procedures were followed by the GHADC authorities while deciding the matter. The learned Counsel has taken this Court to the relevant record of the GHADC and pointed out that the order dated 17-12-2014 of the Executive Member reflected that the issues were duly framed. The learned Counsel has further drawn attention of this Court to certain statements submitted by some witnesses on their respective letter heads and contended that the requisite evidences were also recorded in the matter. He further submitted that all the necessary documents were considered by the authorities of the GHADC before passing the impugned orders and, hence, the writ petition is devoid of merit and liable to be dismissed. It is also the submission of the learned Counsel that the directions contained in the order of this High Court dated 26-08-2016



passed in WP(C) No. 215 of 2016 was strictly complied with while passing the impugned orders, and, as such, the impugned orders do not suffer from any illegality requiring interference of this Court.

5. Mr. S. P. Mahanta, learned Senior Counsel appearing for the respondent No.4 submitted that the orders of the Executive Member, I/C Land & Revenue as well as the Chief Executive Member, GHADC, Tura were passed strictly in accordance with law and the said authorities have meticulously taken into consideration all the evidences and documents which were made available before them. The learned Senior Counsel has taken this Court to the order dated 28-12-2017 of the Executive Member, I/C Land & Revenue, GHADC, Tura and pointed out that the petitioner has miserably failed to produce any relevant document before the said authority. It is also the submission of the learned Senior Counsel that the decisions rendered by the authorities of the GHADC were entirely based on the evidences adduced by the parties and also the official documents available on record. The learned Senior Counsel further contended that Aduwachol was never a separate Akhing at any point of time and all along has been treated as a village falling within the Magupara Akhing. It is the submission of the learned Senior Counsel that the contention of the petitioner before this Court is devoid of any merit and the writ petition deserves to be dismissed forthwith.

6. Upon hearing the learned Counsels appearing for the parties and on perusal of the materials on record, it is evident that the learned Executive Member, I/C Land & Revenue, GHADC, Tura, during the course of adjudication, by order dated 17-12-2014 has recorded that both the parties were present and had filed suggested issues and the issues were accordingly framed. It further appears that the learned Executive Member, I/C Land & Revenue, GHADC, Tura in its order dated 28-11-2017 recorded that



witnesses of both the parties were examined by his predecessor in office. However, a perusal of the record reveals that no oral statement of any witness was recorded by the Executive Member, I/C Land & Revenue, GHADC, Tura. The statements in writing which are pointed out by the learned Counsel for the GHADC are not record of oral evidence. In fact, those are all statements in writing submitted in the form of certificate on the respective letter heads of the witnesses.

7. The decision of *Smt. Dore Sangma & Ors. (supra)* at paragraph 20 lays down 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 V. Ziakrwool, (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.

Thus, it emerges from the above that the Revenue Member has to follow fundamental principle of judicial procedure by framing issues which have been regarded necessary to get the grip of the case. The Revenue Member also has to provide opportunity to the parties to lead evidence on the issues framed.

8. In the present matter, there is nothing on record to show that parties were given opportunity to lead evidence. Although, the impugned order dated 28-11-2017 of the Executive Member, I/C Land & Revenue,



GHADC, Tura recorded that witnesses were examined, the relevant case record does not show that any witness was examined. Further, the details of the listed witnesses of the respective parties are also not traceable in the record. The statements in writing pointed out by the learned Counsel for the GHADC cannot be considered as oral evidence as those are not recorded by the Executive Member, I/C Land & Revenue, by securing the physical presence of the witnesses before him. Hence, it is clear that the Executive Member, I/C Land & Revenue, GHADC, Tura has not decided the matter by following the mandate of law laid down in the decision of *Smti. Dore Sangma and Ors. (supra)* case.

9. Further, perusal of the order dated 12-10-2018 of the Chief Executive Member, GHADC, Tura in GHADC-REV Appeal No.1 A.C. of 2018 also does not show that the appellate authority has dealt with the issues of recording of evidence in the matter. Since, it is the mandate of law that the Executive Member, I/C Land & Revenue, GHADC, Tura should decide the matter only after providing opportunity to the parties to adduce evidence, the order of the appellate authority also cannot be sustained in law.

10. For the above reasons, the order dated 28-12-2017 passed by the Executive Member, I/C Land & Revenue, GHADC, Tura in GHADC-REV Appeal No.1 A.C. of 2018 and the order dated 12-10-2018 passed by the Chief Executive Member, Garo Hills District Council, Tura are hereby set aside and quashed. Resultantly, the matter is remanded back to the Executive Member, I/C Land & Revenue, GHADC, Tura for taking a decision afresh strictly in accordance with the mandate of law laid down in *Smti. Dore Sangma and Ors. (supra)* case. Needless to say that the parties will have liberty to seek remedy available in law, in the event, if there remains any grievance consequent to the decision taken by the Executive Member, I/C Land & Revenue, GHADC, Tura.



11. It is made clear that this Court has not gone into the merits of the matter. It will be open for the Executive Member, I/C Land & Revenue, GHADC, Tura to assess the merit of the case and decide the matter in accordance with law. An endeavor shall be made by the Executive Member, I/C Land & Revenue, GHADC, Tura to dispose of the matter at the earliest.

12. With the aforesaid, this writ petition stands disposed of. No costs.

Judge

Meghalaya
28.10.2024
“Biswarup PS”