



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

Case No. : CRP/12/2023

Dr. Tojum Lollen,(Rtd. DDHS)
S/o Lt. Nyato Lollen,
R/o Sipu Puyi Colony,
P.O & P.S Aalo, District: West Siang,
Arunachal Pradesh.

VERSUS

1.Shri Dagmo Karbi,
S/o. Lt. Yomdak Karbi
R/o Village Kombo Tarsu-I,
P.O & P.S Aalo, District: West Siang,
Arunachal Pradesh

2. Shri Jumki Lollen,
S/o. Shri Kijum Lollen
R/o Village Kombo Papak,
P.O & P.S Aalo, District: West Siang,
Arunachal Pradesh

Advocate for the Petitioner : T. Jini

Advocate for the Respondents : Kemo Lollen

**BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI**

Date of hearing & Judgment: 08.02.2024

JUDGMENT & ORDER (ORAL)

Heard Ms. T. Jini, learned counsel for the petitioner and Mr. K. Lollen, learned counsel appearing for the respondents No. 1 & 2.

2. The petitioner has filed an application under Section 115 read with Section 151 of the CPC praying for quashing of the impugned Porwanas dated 07.02.2023 and 09.02.2023 and the subsequent impugned Keba decision, dated 16.02.2023, passed by the Keba under the chairmanship of Head Gaon Burah (hereinafter referred to as HGB), Kombo Tarsu.

3. The factual matrix leading to filing of this revision petition is that the petitioner belongs to Kombo Pomte village. Kombo is a village situated at West Siang District. The village is divided into four sub-villages known as Kombo Pomte, Kombo Tarsu, Kombo Papak and Raglam. Though the village is divided into four sub-divisions, there is a community land, wherein the villagers of all the sub-villages have their respective agricultural fields and as such, the agricultural area does not fall under the jurisdiction of any sub-divisions but is under Kombo as a whole. All the four sub-villages have their own respective HGB and Gaon Burahs (GB) to look after their village administrative works and Keba proceedings.

4. On 03.02.2023, the petitioner had filed a complaint before the HGB of Kombo Pomte village alleging that on 02.02.2023 respondent No. 1 has destroyed boundary fencing, of the petitioner's agricultural land which was erected by him since long time on frivolous allegation that the petitioner had

encroached upon his agricultural land. Further, it was also stated therein that the respondent No. 1 had further cut down two/three trees from petitioner's land and had also extended his boundary and encroached upon petitioner's land. Therefore, a request was made before the HGB Kombo Pomte village to consider his case after verification of the disputed land.

5. On receipt of the complaint from the petitioner, the HGB of Kombo Pomte village directed the GB-cum-Keba Secretary to verify the disputed land on 04.02.2023. Pursuant to the order of the HGB of Kombo Pomte village, two GBs verified the disputed land and submitted their report to the HGB Kombo Pomte. Thereafter, vide an order, dated 04.02.2023, a status-quo order was passed by the Keba Secretary to maintain status-quo on the disputed land until the matter was decided the Keba. Thereafter, a Porwana was issued on 06.02.2023 asking both the parties to appear before the Keba on 16.02.2023 with their respective witnesses.

6. Subsequently, the petitioner received a Porwana from the office of the HGB, Kombo Tarsu dated 07.02.2023 with a direction to appear before the Keba on 10.02.2023. It was brought to the knowledge of the petitioner that the Porwana was issued on the basis of a complaint made by the respondent No. 1 against the petitioner alleging that the petitioner had encroached upon his field and erected fence and further had excavated some of his land with JCB. Subsequently, another complaint was made by the respondent No. 2 against the petitioner alleging that the petitioner had also encroached upon his Yiko Hoi field by erecting boundary fence and eventually both these complaints were tagged together. Thereafter, the petitioner filed a representation before the HGB, Kombo Tarsu apprising about the Keba to be held on 16.02.2023 under the chairmanship of HGB, Kombo Pomte on the same disputed land and prayed to cancel the Keba that was to be held on 10.02.2023 on the ground that the

matter being sub-judice. The HGB Kombo Tarsu then issued another Porwana dated 09.02.2023 fixing the Keba to be held on 16.02.2023 at Kombo Pomte.

7. The further case of the petitioner is that on 16.02.2023 when the petitioner along with his witnesses had reached the disputed land for spot verification as per the direction of the Keba, he was surprised to know that the HGB Kombo Tarsu had also come to continue with the Keba under his chairmanship. Though several objections were made that the Keba before the HGB Kombo Pomte was to be taken into consideration since it was the Court of first instance and the case was sub-judice in his jurisdiction but the respondents were adamant with their demands of proceeding with the case under the chairmanship of HGB Kombo Tarsu.

8. According to the learned counsel for the petitioner, the entire Keba proceeding was illegally and arbitrarily conducted and concluded. Since the petitioner was in totally against the arbitrary proceeding, the petitioner refrained from accepting and signing the Keba decision.

9. Being highly aggrieved by the impugned Keba decision, dated 16.02.2023, passed under the chairmanship of the HGB Kombo Tarso, the petitioner has preferred this revision petition.

10. It is submitted by the learned counsel for the petitioner that the Keba was held on 16.02.2023 under the chairmanship of the HBG Kombo Tarso which is illegal. The law is clear that the Court of concurrent jurisdiction should prevent from simultaneously try two parallel trials, on same issues, between the same parties, in respect of the same matter which admittedly and substantially in issue in previously instituted case. And as such, the entire proceeding having been carried out in contrary to the settled principle of law. Hence, the Keba decision dated 16.02.2023 is liable to be set aside.

11. It is also the submission of learned counsel for the petitioner that law is

well settled that every litigant should come before the Court with clean hands and produce all the necessary documents. However, in the instant case, the respondents in surreptitious manner had not disclosed about the order dated 04.02.2023 issued by the GB-cum-Keba Secretary directing both the parties to maintain status-quo in the disputed land until the case is disposed of by the Keba and subsequent Porwana summoning the respondent No. 1 to attend the Keba on 16.02.2023 for settlement of the dispute.

12. It is further submitted by the learned counsel for the petitioner that the petitioner in his reply dated 08.02.2023 apprised the HGB Kombo Tarsu about the matter being sub-judice before the HGB Kombo Pomte and though it was clearly stated therein that both the cases are similar in nature, over the same disputed land and between the same parties, however, the HGB Kombo Tarsu did not pay heed to the request made by the petitioner and proceeded with the case arbitrarily. According to the learned counsel for the petitioner, the HGB Kombo Tarsu on coming to know about the status of sub-judice of the case ought to have either transferred the case to the HGB Kombo Pomte which is the Court of first instance in the instant case or cancel the prospective Keba proceeding. However, the entire Keba was concluded contrary to the settled principles of law.

13. Learned counsel for the petitioner also pointed out that the sole reason given in the Keba decision that several complaints were made against the petitioner and therefore, the statement of the respondents was found true without showing any cogent reason. In the Keba decision, the entire land of the petitioner was declared in favour of the respondents without hearing the present petitioner. The learned counsel for the petitioner prays to set aside the impugned Keba decision dated 16.02.2023 or to remand the matter before the village authority to decide the matter afresh.

14. In support of her submission, the learned counsel for the petitioner has relied on the following case law; M/s Chitivalasa Jute Mills vs. M/s Jaypee Rewa Cement, reported in 2004 (3) SCC 85.

15. Against the prayer of the petitioner, the respondents have filed their affidavit-in-opposition, stating that both the respondents and the petitioner are having agricultural as well as jhum land and properties at Hoi/Yiko area located at Kombo Tarsu village sharing common boundaries which is properly demarcated through natural boundaries and they maintained the same peacefully since long. The petitioner and his younger brother, jointly owned their landed properties having common boundaries with both the respondents. In the year 2008, the younger brother of the petitioner started encroaching upon the land of the respondent No. 1 about 200 feet by constructing drain/nallah by engaging JCB/tractor. Therefore, being aggrieved with the act of the brother of the petitioner, the father of the respondent No. 1 reported the same to the then HGB of Kombo Tarsu Mobuk-I. On receipt of the complaint, the HGB Kombo Tarsu Mobuk-I issued prohibitory order dated 11.08.2008 against the younger brother of the petitioner till the dispute was decided by the Keba members.

16. It is alleged that even after issuance of restraint order issued on 11.08.2008, the petitioner had continued in encroaching upon the land of both the respondents. On 05.02.2023, the respondent No. 1 came to know that the petitioner was carrying out land development work on encroached portion of land of the respondent No. 1, and accordingly, filed a complaint before the HGB Kombo Tarsu on 06.02.2023 against the petitioner for encroachment of his Hoi land at Yiko area. On the same day, the respondent No. 2 also filed a complaint against the petitioner before the HGB Kombo Tarsu regarding encroachment of his Hoi land at Yiko area. Accordingly, the Keba was held on 16.02.2023 under the chairmanship of HGB Kombo Tarso though the decision of the Keba was not

accepted by the present petitioner.

17. The learned counsel for the respondent Nos. 1 & 2 has submitted that the Keba proceeding and decision dated 16.02.2023 is just and fair as no provisions of law has been violated. It is further submitted by the learned counsel for the respondent Nos. 1 & 2 that pursuant to the Porwana dated 09.02.2023, the Keba was held on 16.02.2023, in presence of both the parties and other members of the Keba and after affording reasonable opportunity of being heard to all the parties along with their respective witnesses, passed the decision on 16.02.2023, on the basis of the statement of majority of witnesses and thereafter, demarcated the disputed land as per the Keba decision.

18. The learned counsel for the respondents has also pointed out that the petitioner has suppressed material facts regarding pendency of land dispute between the same parties before the HGB Kombo Tarsu wherein the HGB of Kombo Tarsu already issued prohibitory order on 11.08.2008 on the basis of complaint being filed by the deceased father of the respondent No. 1 against the brother of the present petitioner.

19. According to the learned counsel for the respondents, if the petitioner is aggrieved by the Keba being conducted under the chairmanship of the HGB Kombo Tarsu, he ought to have challenged the Porwana, dated 09.02.2023, issued by the HGB Kombo Tarsu re-fixing the date of Keba to be held of 16.02.2023. However, the petitioner pursuant to the same Porwana dated 09.02.2023, participated in the Keba proceeding on 16.02.2023 and when the Keba passed the decision against the present petitioner, he filed the instant petition challenging the Keba decision on the grounds that the matter is pending before the HGB Kombo Pomte over the same subject matter as sub-judice.

20. It is further submitted by the learned counsel for the respondents that the Keba decision, dated 16.02.2023, does not warrant any interference by this

Court and prays for dismissal of the present revision petition.

21. I have considered the submission of the learned counsel for the parties.

22. The admitted fact of the case is that the petitioner and the respondents claimed that they are the owners of the disputed land. There are no documents submitted by the petitioner or the respondents that they have owned the said land having the boundary and the area. There is no schedule of the land either in complaint petition nor in the revision petition or in the affidavit-in-opposition filed by the respondents. Apparently, the land demarcated by the members of the Keba on 16.02.2023 were on the basis of the decision taken by the members verbally but not on the basis of any documents produced by either of the parties regarding ownership of their respective lands. Though the land dispute is prevailing between the parties but it is not reflected from the documents available in the records about value of the lands.

23. As per the gazette notification vide No. Law/Legn-20/2022 of the government of Arunachal Pradesh, dated 03.08.2022, the Arunachal Pradesh Civil Courts Act, 2021 was introduced and came into force on 12.04.2021. As per the said notification, some amendments were made to the Assam Frontier (Administration of Justice) Regulation, 1945. From the notification dated 03.08.2022, it discloses that in case an appeal is preferred against the judgment of customary court, the appeal shall be preferred before the Court of the District Judge or the Additional District Judge with a power to dispose of the matter de novo.

24. In the case in hand, the petitioner has challenged the impugned Keba decision, dated 16.02.2023, alleging that the HGB Kombo Tarsu had decided the matter arbitrarily and in an illegal manner declaring the land of the petitioner in favour of the respondents. As no documents are available in the record regarding boundary or demarcation of the respective land of the petitioner and

the respondents, at this stage, it is difficult to pass any order as to who is the actual owner of the land and the decision of the Keba was right or wrong. On the basis of oral submission of the parties and the statement of the witnesses given before the village authority, the right, title and possession of the parties cannot be declared. Under this backdrop, this Court is of the view that as the Civil Courts are now functioning in the State of Arunachal Pradesh, the petitioner and the respondents are at liberty to approach before the Civil Courts claiming their rights over the disputed land and property.

25. In the result, this revision petition stands dismissed and disposed of accordingly.

26. No order as to cost.

JUDGE

Comparing Assistant