

GAHC040003552020



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

Case No. : WP(C)/117/2020

Kekpi Pijum Tasar
S/O LT. TAPI TASAR, Aged about 44 years
RESIDENT OF FOREST COLONY, DAPORIJO
UPPER SUBANSIRI District
Arunachal Pradesh. Pn. No. 7085633019

VERSUS

THE STATE OF AP
REPRESENTED BY THE SECRETARY (GENERAL ADMINISTRATION),
GOVT. OF AP, ITANAGAR

2:THE SECRETARY (GENERAL ADMINISTRATION), Government of Arunachal Pradesh, Itanagar. Age: 0 Occupation :

3:THE DEPUTY COMMISSIONER, Kamle District, Government of Arunachal Pradesh. Age: 0 Occupation :

4:THE CIRCLE OFFICER, Gepen Circle, Kamle District, Government of Arunachal Pradesh. Age: 0 Occupation :

5:SHRI PIDAM TASAR, S/o Late Tapi Tasar, resident of Forest Colony, Daporijo, Daporijo, Upper Subansir District, Arunachal Pradesh Age: 0 Occupation

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : Ms. Tsering Wangmo
Xavier Gyati
T Atung
G Tadi
L Narah
P Nibo

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 06.03.2024

Date of Judgment: 06.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Dicky Panging, learned counsel for the petitioner. Also heard Ms. Tsering Wangmo, learned Government Advocate, appearing on behalf of Respondents No. 1, 2, 3 & 4; and Mr. Xavier Gyati, learned counsel, appearing on behalf of Respondent No. 5.

2. By way of instituting the present proceedings, the petitioner has challenged the jurisdiction of the Circle Office, Gepen, in issuing the notices, dated 30.10.2019, 11.11.2019 and 21.02.2020, requiring the petitioner to appear before the village authority for resolution of the dispute pertaining to the ownership of a plot of land known as 'Bur-Yorbe' as raised by the private Respondent No. 5, herein. The petitioner has also presented a challenge to the decision, dated 28.02.2020, as passed by the purported village authority authorized by the Circle Officer, Gepen, towards resolution of the dispute between the petitioner and the Respondent No. 5 as referred to it by the Circle Officer, Gepen.

3. The brief facts requisite for the purpose of adjudication of the issue as arising in the present proceedings, is noticed hereinbelow:

The petitioner in this writ petition, has contended that his father was in continuous possession of a plot of land known as 'Bur-Yorbe' measuring 15,654 sq. mtrs., situated

at around 3 KMs. from Daporijo town. After the passing away of the petitioner's father in the year 2006, the mother of the petitioner distributed the properties of the petitioner's deceased father amongst her 3(three) sons including the Respondent No. 5 and the petitioner, herein, by way of a deed of distribution of properties executed on 02.07.2008. The plot of the land known as 'Bur-Yorbe' was contended to have been bestowed to the petitioner amongst other properties. It is the further contention of the petitioner that the mother of the petitioner had by way of an abundant caution in addition to the deed of distributions dated, 02.07.2008, executed a gift deed, dated 08.07.2008, before the Court of the Judicial Magistrate, 2nd Class, Tirbin, gifting the plot of land known as 'Bur-Yorbe' to the petitioner. It is the further contention of the petitioner that after the deed of distribution of properties, dated 02.07.2008; the petitioner and his brothers have taken-over their respective share of their properties and were in peaceful possession of the same.

4. The plot of land known as 'Bur-Yorbe' was proposed to be acquired for the construction of TAH and accordingly, a small portion of the land was also to be affected during the construction of the said TAH and the petitioner was expecting to be paid with the land compensation thereof. However, when the list of the beneficiaries to be awarded with the compensation for the affected land, came to be published, the name of the Respondent No. 5 was reflected as the beneficiary against the said plot of land known as 'Bur-Yorbe'. The petitioner, accordingly, raised objections before the Deputy Commissioner, Kamle District, and the said authority on consideration of the issues, decided that it was the petitioner who was entitled to receive the compensation amount and accordingly, the compensation amount for the said part of the land as acquired out of the parcel of the land known as 'Bur-Yorbe', was awarded to the petitioner.

5. It is the further contention of the petitioner that the Respondent No. 5 after the death of his mother in the year 2019, had initiated some complaints before the Circle Officer, Gepen, and accordingly, summon, dated 30.10.2019, was issued to the petitioner by projecting it to be re-parwana. The said re-parwana was followed by further notices, dated 11.11.2019 and 21.02.2020. The petitioner had objected to the issuance of the said parwanas/re-parwanas and it was further highlighted by the petitioner before the Circle Officer, Gepen, that the said authority did not have the jurisdiction to issue such parwanas. However, the petitioner was forced to appear before the body of the HGBs and GBs as constituted by the Circle Officer, Gepen.

The petitioner accordingly appeared in the Kebang and objected to the holding of the Kebang itself and apprised the members that the land, in question, was already gifted to him by his late mother, and as such, there can be no dispute as regards the plot of land known as 'Bur-Yorbe'. However, the Kebang without considering the objections raised by the petitioner and taking into consideration irrelevant factors, proceeded to draw up a settlement agreement. However, the petitioner did not append his signature to such settlement agreement as arrived at by the Kebang on 28.02.2020.

6. It is also the contention of the petitioner that the Circle Officer, Gepen, had exceeded his jurisdiction in constituting a body by amalgamating various village authorities appointed by the Deputy Commissioner for their respective villages under the provisions of Regulation 5(1) of the Assam Frontier (Administration of Justice) Regulation, 1945. It is the further contention of the petitioner that in the event, a dispute arises, the same is to be considered by the village authority as constituted under the provisions of 5(1) of the Assam Frontier (Administration of Justice) Regulation, 1945, by the village authority having jurisdiction over the said issue.

7. It is also contended by Mr. Panging, learned counsel for the petitioner, that the body as constituted by the Circle Officer, Gepen, for holding the kebang vide the parwanas/re-parwanas issued to the petitioner, cannot be construed to be one as constituted under the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945, in-as-much as the petitioner had not agreed to such constitution of the body consisting of village authorities of different villages.

8. Accordingly, it is the contention of Mr. Panging, learned counsel for the petitioner, that the very constitution of the body as well as the issuance of the parwanas being in clear violation of the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945; the decision as arrived at by such body, shall have no validity in the eye of law and would be required to be interfered with by this Court.

9. Per contra, Ms. Wangmo, learned Government Advocate, by relying upon the affidavit-in-opposition as filed in the matter by the Respondent No. 3 i.e. Circle Officer, Gepen, contended that the Circle Officer, Gepen, had not heard and/or held trial in the matter but he had only issued an administrative order for amicable settlement of the dispute by the body and had constituted the body to consider such disputes. It was further contended that the gift deed as relied upon by the petitioner, was since cancelled and rendered invalid by the same very authority before whom the same was executed. It was also contended that the Circle Officer, Gepen, had only played a role in having the dispute as arising between the petitioner and the private Respondent No. 5, resolved by way of mediation and accordingly, there was no violation of the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945, in the matter.

10. Mr. Gyati, learned counsel appearing on behalf of respondent No. 5, while adopting the arguments as advanced by Ms. Wangmo, learned Government Advocate, has submitted that the provisions of Regulation 46 of the Assam Frontier (Administration of Justice) Regulation, 1945, provides for an aggrieved person to file an appeal before the Deputy Commissioner and/or the petitioner, herein, could have instituted a title suit before the competent Court of civil jurisdiction and accordingly, the institution of the present proceedings by the petitioner before this Court, without availing the alternative remedy available, has been contended to be unsustainable and as such, the writ petition was contended to be not maintainable and liable to be dismissed.

11. Rejoining his submissions, Mr. Panging, learned counsel for the petitioner, has submitted that the contentions raised by the respondents that the gift deed was cancelled by the authority before whom it was executed, does not merit acceptance in-as-much as such gift deed cannot be cancelled in the manner, it was so contended to have been cancelled. Further, it was contended that the petitioner has made requisite inquiries with the authorities but could not trace out any order issued towards cancellation of the gift deed as contended to have been done by the respondents in the matter.

12. In view of the above, Mr. Panging, learned counsel for the petitioner, submits that the parwanas issued by the Circle Officer, Gepen, and the decision as arrived at in the Kebang held on 28.02.2020, being wholly illegal and without jurisdiction; the same is liable to be interfered with.

13. At this stage, it is to be noticed that Mr. Gyati, learned counsel for Respondent No. 5, in view of the deliberations that have taken place in the matter, had required this Court to grant to the Respondent No. 5, liberty to approach the concerned Civil Court of

competent jurisdiction for redressal of the grievances as raised by the Respondent No. 5 before the Circle Officer, Gepen, in the matter.

14. I have heard the learned counsel appearing for the parties and also considered the materials brought on record.

15. It is a settled position of law that the Assam Frontier (Administration of Justice) Regulation, 1945, provide for an adjudication of any dispute by the village authority exercising jurisdiction over the issue and the provisions of Regulation 44 of the Assam Frontier (Administration of Justice) Regulation, 1945, provides for the manner in which, such disputes are required to be so resolved.

16. As noticed hereinabove; the Deputy Commissioner, Kamle District, under the provisions of Regulation 5(1) of the Assam Frontier (Administration of Justice) Regulation, 1945, appoints persons as he considers to be members of the village authority for such village or villages as he may specify, and may modify or cancel any such order of appointment, and may dismiss any person so appointed. It is the person or persons appointed as a village authority pertaining to a particular village or villages, who would have the jurisdiction to consider the disputes as arising within their area of jurisdiction.

17. The Circle Officer, it seems, in the matter, on a dispute being placed before him, had proceeded to constitute a kebang consisting of Head Gaon Buras and Gaon Buras of various villages. Such constitution of the kebang by the Circle Officer by including Head Gaon Buras and Gaon Buras of different villages is not provided for under the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945, and

accordingly, has to be held that the body so constituted, being a body foreign to the purpose of the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945; the decision as arrived at by the said body in the matter, is to be held to be one so arrived at without any jurisdiction.

18. Mr. Gyati, learned counsel for Respondent No. 5, having submitted that he be granted liberty to approach the competent Court of civil jurisdiction for redressal of the grievances of the Respondent No. 5 as raised before the Circle Officer, Gepen, which has finally led to the decision of the Kebang held on 28.02.2020; this Court, without any further deliberation in the matter on the contentions as made by the parties to the proceedings, hereby issues the following directions:

- (i). The parwanas/re-parwanas, dated 30.10.2019, 11.11.2019 and 21.02.2020, are hereby set aside and quashed.
- (ii). The decision of the Kebang, dated 28.02.2020, also stands set aside and quashed.
- (iii). Consequently, the settlement order, dated 11.03.2020, as issued by the Circle Officer, Gepen, basing on the decision of the Kebang dated 28.02.2020, also stands set aside and quashed.

19. In view thereof, the parties are restored to the position as was existing prior to the issuance of the decision of the Kebang, dated 28.02.2020, and the settlement order, dated 11.03.2020, issued by the Circle Officer, Gepen, in the matter.

20. The Respondent No. 5 is granted liberty to institute appropriate proceedings before a competent Court of civil jurisdiction raising his grievances pertaining to the dispute as

involved in the present proceedings.

In the event, if any such proceeding is instituted by the petitioner, the competent Court of civil jurisdiction shall consider the same strictly in accordance with law and on its own merits.

21. With the above observations and directions, this writ petition stands disposed of. However, there shall be no order as to costs.

JUDGE

Comparing Assistant