

GAHC040003882022



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

Case No. : WP(C)/137/2022

Soleng Kri
S/o Lt Talilum Kri,
Permanent Resident of Village Danglat,
PO/PS Tezu, Lohit District, Arunachal Pradesh.

VERSUS

THE STATE OF AP and 10 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar2:The Extra
Assistant Commissioner cum Executive Magistrate
Age: 0
Occupation :

3:Munglang Kri
Age: 0
Occupation :

4:Sobian Pul
Age: 0
Occupation :

5:Bawry Manyu
Age: 0
Occupation :

6:Sorailum Chaitom
Age: 0

Occupation :

7:Babrangso Ngadong

Age: 0

Occupation :

8:Tanku Mepo

Age: 0

Occupation :

9:Khambrai

Age: 0

Occupation :

10:Bakhelu Manyu

Age: 0

Occupation :

11:Massom Manyu

Age: 0

Occupation

Advocate for the Petitioner : B. Picha

Advocate for the Respondent : GA (AP) Ms. P. Sangeeta,
Mr. D. K. Deori, for respondent Nos. 3 to 11.

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
JUDGMENT AND ORDER (ORAL)

28.05.2024

Heard Mr. B. Picha, learned counsel for the petitioner. Also heard Ms. P. Sangeeta, learned Junior Govt. Advocate for respondent Nos. 1

& 2 and Mr. D. K. Deori, learned counsel representing the respondent Nos. 3 to 11.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the Kebang Report, dated 08.11.2018 as well as the order dated 04.03.2021, passed by the Extra Assistant Commissioner-cum-Executive Magistrate, Lohit District, Wakro. The petitioner is also seeking a direction upon respondent authorities to act upon the complaint filed by the petitioner on 15.10.2018, 01.11.2018 & 05.09.2020.

3. The case of the petitioner, in brief, is that his land had been encroached by the private respondent Nos. 3 to 11. Accordingly, the petitioner had filed a complaint dated 25.09.2018 before the Village authority constituted under the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter, referred to as AFR, 1945) as well as before the Extra Assistant Commissioner, Wakro, Lohit District. The Extra Assistant Commissioner, Lohit District by an order dated 04.10.2018, constituted a Kebang constituting of a Chairman and 2 members, whose names are reflected in the said order, to conduct a local Kebang on 28.10.2018 to settle the case amicably and submit the Kebang Report to him.

4. The petitioner projects that as the Chairman of the Kebang so constituted was a close relative of the encroachers, he had filed an

application dated 15.10.2018, for changing the Chairman of the Kebang. The said prayer of the petitioner and 2 others was not acted upon. However, the Chairman of the Kebang submitted a Kebang report dated 08.11.2018 to the Extra Assistant Commissioner, Wakro, Lohit District, informing that the claim of the petitioner and 2 others was baseless and that the two complainants had surrendered that they will not claim again in future.

5. The petitioner thereafter, filed an application dated 01.11.2018, for change of Chairman of the Kebang which was not acted upon. However, after alleged fresh encroachment by the private respondents, the petitioner had submitted another complaint on 05.10.2020. In the said context, the EAC-cum-Executive Magistrate, Wakro, Lohit District by an order dated 04.03.2021, disposed of the said complaint on the ground that the dispute between the parties had already been disposed of by the Village Kebang.

6. The learned counsel for the petitioner has stated that the Kebang was required to pass a speaking order in respect of the said dispute, but in the present case in hand, the Kebang had submitted a report dated 08.11.2018 to the EAC-cum-Executive Magistrate, Wakro, Lohit District, which cannot be said to be a decision in any manner whatsoever.

7. It is submitted that the cause of delay in approaching this Court

was on account of the fact that the Kebang decision was never communicated to him and it is only when the EAC-cum-Executive Magistrate, Wakro, Lohit District, had passed the order dated 04.03.2021, that the petitioner came to know about the report submitted by the Kebang.

8. The learned counsel for the petitioner has also submitted that the Kebang report dated 08.11.2018 is a non-speaking order and therefore, was not a decision. It is also submitted by the learned counsel for the petitioner that the said Kebang report be set aside and the matter be adjudicated afresh. In support of his submission, the learned counsel for the petitioner has placed reliance on Section 44 (3) of the AFR, 1945

9. The learned Govt. Advocate has submitted that the EAC-cum-Executive Magistrate, Wakro, Lohit District had the power and authority to constitute a committee to conduct the local Kebang and therefore, in terms of the order dated 04.10.2018, issued by the said authority, the submission of the Kebang report to the Extra Assistant Commissioner was fully justified.

10. The learned counsel for the private respondents has submitted that the writ petition has been filed only to overcome the bar of limitation provided for and/ or prescribed in the AFR, 1945 for filing an appeal against the Kebang decision. By referring to the provisions of

Section 44 (2) of the AFR, 1945, it is submitted that the Kebang is not required to maintain any record or proceeding and under Sub-Section 3 of Section 44, the Kebang decision can be pronounced immediately after hearing all the parties and witnesses. It is also submitted there are provisions for filing an appeal under Section 46 of the AFR, 1945 and that an appeal can also be otherwise maintainable under the Arunachal Pradesh Civil Courts Act, 2021.

11. On perusal of the materials available on record, especially the Kebang report dated 08.11.2018, this Court is of the considered opinion that notwithstanding that the nomenclature of the Kebang decision dated 08.11.2018 is in the form of a Kebang report, nonetheless from the contents of the said report, there is no ambiguity that the said report is the conclusion of the said Kebang and therefore, it is nothing but a decision of the Kebang as it was decided in the said Kebang meeting that the claim made by 3 persons including the petitioner was baseless. It is mentioned in the said Kebang decision dated 08.11.2018 that the complainant 2 (two) Kri persons had surrendered that they will not claim again in future also indicates at least 2 of the Kri members were very much present in the Kebang Meeting.

12. We also find from the mandate of the order dated 04.10.2018, passed by the Extra Assistant Commissioner-Cum-Executive Magistrate, Wakro, Lohit District that while constituting the committee to hold a

local Kebang, the committee members were directed to conduct the local Kebang on 08.10.2018 at 1100 hrs at Tamla-Du Hall, Medo to settle the case amicably and submit the Kebang report to him. Therefore, the submission of the decision in the form of the Kebang Report is found to be in terms of the mandate of the order dated 04.10.2018. Therefore, if the petitioner has assumed the said report not to be a Kebang decision, the petitioner has done so at his own risk.

13. As the provisions for an appeal is provided under the AFR, 1945 and also under the Arunachal Pradesh Civil Courts Act, 2021, there being an alternative remedy prescribed, the writ petition is held to be not maintainable.

14. In view of the aforesaid discussions and observation, this writ petition is held to be not maintainable and the same stands dismissed.

15. It is mentioned that this writ petition was filed on 06.04.2022. Therefore, while parting with the record, it is provided in the event the petitioner avails the alternative remedy, the time spent from 06.04.2022 till the date of this order, shall be available as an explanation for the purpose of Section 14 of the Limitation Act, 1963.

JUDGE

Comparing Assistant