

GAHC020000522020



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

Case No. : C. REVN/1/2020

SANGKUMTI VILLAGE COUNCIL AND 2 ORS
REPRESENTED BY THE CHAIRMAN MR. R. IMTIBA,
S/O RESANGMONG
R/O SANGKUMTI VILLAGE,
DIST KIPHIRE, NAGALAND

2: P. PESUKIU
S/O REPANGMONG
PRESIDENT SANGKUMTI VILLAGE CITIZEN UNION

R/O SANGKUMTI VILLAGE

DIST KIPHIRE
NAGALAND

3: M. YANTSU @ YANTSUMONG
R/O SANGKUMTI VILLAGE

DIST. KIPHIRE
NAGALAN

VERSUS

MR R.KHIANTSUMONG @ KHIANTSU AND 3 ORS
R/O METONGER VILLAGE
C/O THE DEPUTY COMMISSIONER,
DIST- KIPHIRE, NAGALAND

2:S. SHIUPONGKIU
PRESIDENT
METONGER VILLAGE CITIZEN UNION

C/O THE DEPUTY COMMISSIONER

DIST- KIPHIRE
NAGALAND

3:THE DEPUTY COMMISSIONER
DISTRICT- KIPHIRE
NAGALAND

4:SHRI TOPAN K
TIKHIR
PRESIDENT
TIKHIR TRIBAL COUNCIL
HEADQUARTER KIUSAM TOWN
KIPHIRE
NAGALAN

Advocate for the Petitioners : Mr. Chingmei Konyak, Advocate
Advocate for the Respondents : Mr. I. Limatoshi, Advocate
: Ms. A. Ayemi, Govt. Advocate

Date of Hearing : **13.06.2024**
Date of Judgment : **13.06.2024**

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

The instant application under Article 227 of the Constitution read with Rule 32 of the Administration of Justice and Police in Nagaland Rules, 1937 (for short, 'the Rules of 1937') is filed challenging the order dated 18.12.2019 passed by the learned Deputy Commissioner, Kiphire, Nagaland.

2. I have heard Mr. Chingmei Konyak, the learned counsel for the petitioners and Mr. I. Limatoshi, the learned counsel appearing on behalf of the respondent Nos.1 & 2 as well as Ms. A. Ayemi, the learned Government Advocate appearing on behalf of the

respondent No.3.

3. From a perusal of the materials on record, it transpires that the petitioner No.3 herein had agreed to sell a plot of land to the respondent No.1 on 18.12.2000 and thereby signed a sale agreement between the two. The demarcation of the said land after the sale was done by the uncle one Tothong (since deceased) and the elder brother Tokhim (since deceased) of the petitioner No.3. Dispute arose thereupon on account of the said transfer in the year 2018 in view of the petitioner No.1 Village claiming that on account of a resolution passed in the year 1998, no person of the petitioner No.1 Village could sell the land to an outsider without the permission of the Village Council. In view of such dispute which arose, the petitioner No.1 Village approached the Deputy Commissioner whereupon the Additional Deputy Commissioner, Pungro, Nagaland directed the petitioner No.1 Village as well as the Metonger Village Council to honour their settlement and maintain the status-quo and normalcy and to amicably resolve the dispute vide the order dated 11.05.2018. Thereupon on 15.05.2018, a joint resolution was adopted by the petitioner No.1 Village and the Metonger Village Council and it was unanimously decided to transfer the matter to the Tikhir Tribal Council Court for decision. The Tikhir Tribal Council Court vide an order dated 09.06.2018 disposed of the said dispute observing that an amount of Rs.50,000/-, i.e. Rs.25,000/- on account of the value of the land and another amount of Rs.25,000/- on account of maintenance and firewood be paid to the respondent No.1 by the petitioner No.1 Village on or before 24.06.2018. Against

that order, an appeal was preferred under Rule 31 of the Rules of 1937 by the respondents herein.

4. Taking into account that the Tikhir Village Council was not an authority coming within the ambit of Rule 24 of the Rules of 1937, the Deputy Commissioner, Kiphire endorsed the matter for decision in terms with Rule 23A to the District Law Customary Court, Kiphire for decision. The District Customary Law Court, Kiphire vide an order dated 30.10.2018 observed that the resolution so passed by the Petitioner No.1 herein being Resolution Serial No.5 of 1998 was not informed/dispatched any letter to neighboring villages nor published in the local media. It was further observed that the Petitioner No.3 herein may not have been aware of the Petitioner No.1's resolution but after the purchase of the land by the Respondent No.1 herein in the year 2000, Late Tothong and Late Tokhim bonafide citizens and residents of the Petitioner No.1 village herein and relative of the Petitioner No.3 had verified the boundary demarcation with the Respondent No.1 herein. It was further observed that the Petitioner No.1 herein had not issued any notice to Late Tothong and Late Tokhim for violation of the Resolution bearing Serial No.5 of 1998. The District Customary Law Court further observed that the Petitioner No.1 village had adopted a resolution being at Serial No.5 in 1998 banning the sale of land under their jurisdiction and if any violated, the land will be taken by the Citizen Union but raising the issue after a lapse of 14 years was considered by the District Customary Law Court, Kiphire as invalid. It was therefore opined that the Petitioner No.1 and the Petitioner No.3 herein cannot

therefore claim ownership of the land in question. It also transpires that the District Customary Law Court had also directed that in the circumstance anybody raises any dispute, the defaulter would be penalized with Rs.25,000/-.

5. The record further reveals that thereupon the President as well as the Executive Chairman of the Petitioner No.1 village sought for a few days for consideration. Vide an order dated 08.11.2018, the District Customary Court, Kiphire observed that any individual and the party would be at liberty to prefer an appeal before any higher Court. It is also seen that thereupon the Petitioners herein preferred an appeal before the learned Deputy Commissioner, Kiphire, Nagaland and in that regard, a Receipt No.994 was issued. Taking into account that the said appeal was not taken up for disposal, a revision application was filed before this Court by the Petitioners which was registered as Civil Revision No.6/2019. This Court vide an order dated 02.12.2019 directed the Deputy Commissioner, Kiphire to take a decision on the appeal so filed by the petitioners herein within 15 days from the date of the said order and thereupon the decision be conveyed to all concerned parties. Subsequent thereto, the Deputy Commissioner, Kiphire passed the order dated 18.12.2019 which has been impugned in the instant proceedings.

6. This Court has duly taken note of the submission so made by the learned counsel for the Petitioners, the Respondent Nos. 1 and 2 as well as the learned Government Advocate appearing on behalf of the Respondent No.3.

7. The learned Government Advocate at the outset submitted that

the Petitioners ought not to have impleaded the Respondent No.3 to the instant proceedings on the ground that the order so passed was a judicial order and it was against the well settled principles of law that a Judicial Officer could not have been made a party. In that regard, she referred to the judgment of the Supreme Court in the case of ***Savitri Devi Vs. District Judge, Gorakhpur and Others*** reported in ***(1999) 2 SCC 577***.

8. Before dealing with the matter on merits, this Court would like to deal with the submission so made by Ms. A. Ayemi, the learned Government Advocate appearing on behalf of the Respondent No.3. A perusal of the impugned order reveals that the Respondent No.3 passed the said order in the capacity of a Judicial Officer. Under such circumstances, this Court is of the opinion that the Respondent No.3 ought not to have been made a party. In this regard, this Court finds it relevant to quote paragraph No.14 of the judgment referred to by the learned Government Advocate appearing on behalf of the Respondent No.3 which is reproduced herein under:

“14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not

approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice."

9. It would be seen that the Supreme Court in the above quoted paragraph had deprecated the practice of impleading Judicial Officers who passed order. Under such circumstances, taking into account that the instant matter is being taken up for final disposal, no useful purpose would be served at this stage for striking out the name of the Respondent No.3. However, this Court taking into account the said judgment passed by the Supreme Court in the case of **Savitri Devi (supra)** and the paragraph quoted hereinabove deprecates the conduct of the Petitioners to implead the Respondent No.3 who passed a judicial order and further directs the Registry to take note of the observations made by the Supreme Court in the above quoted paragraph so that at the time of registration of the case, the parties are insisted not to implead judicial officers to writ petitions or proceedings under Article 227 of the Constitution.

10. In the backdrop of the above, let this Court now consider the question as to whether the jurisdiction under Article 227 of the Constitution is required to be exercised in respect to impugned order dated 18.12.2019.

11. In the foregoing paragraphs of the instant judgment, this

Court has duly noted the dispute so involved. This Court had also taken due note of the order which was passed by the District Customary Law Court, Kiphire as well as the order which was passed by the learned Deputy Commissioner in the appeal file their against. This Court finds it apt at this stage to reproduce Rule 31 of the Rules of 1937.

“31. An appeal shall lie from the decision of the mauzadar, gaonbura, chief, headman of khels, dobhasis or other duly recognized village authority to the tribal court whenever constituted or otherwise to the Deputy Commissioner or his Assistant. A record shall be made of the matter in dispute and the decision of the village authorities. If necessary, the Court shall examine the parties, and if the decision appears to be just, shall affirm and enforce it as one of its own. If the Court sees reason to doubt the justice of the decision, it will try the cases denovo, or refer it to a panchayat as above.”

12. From a perusal of Rule 31 of the Rules of 1937, it would be seen that the Deputy Commissioner or his Assistant has the power while deciding an appeal to examine the parties and if the decision appears to be just, shall affirm and enforce it as one of its own. It is only in the circumstances when a Court sees reason to doubt the justice of the decision, it would try the cases de novo or refer it to a Panchayat as above.

13. In the instant case, a perusal of the impugned order dated 18.12.2019 would show that the learned Deputy Commissioner had also examined the parties which aspect of the matter would be clearly seen from paragraph No.7 and thereupon, had come to a decision that the order so passed by the District Customary Law

Court, Kiphire was just and accordingly affirmed the same. Paragraph No.7 of the impugned order dated 18.12.2019 would clearly show the said aspect of the matter which is reproduced herein under:

“7. The fact that the seller Shri M. Yantsu has admitted in the presence of all concerned on this day and in this court that he was the individual owner of the land and that he has sold the land willfully to Shri T. Khiantso, that neither he nor his family were aware of the said village resolution, also considering that the two villages have a shared history and kinship and has been practicing buying and selling of land between the citizens of each other without any issues, in the light of the above facts it has come to the notice of this Court that the sale of the land was done willfully, legally and in good faith between two individuals who were not aware of any resolution that debarred the sale, that the sale of land seems to have been accepted by all concerned until 10 years later when the other parties started to object the sale.”

Thus considering all above matters it is ordered that the sale of Land between Shri M. Yantsu of Sangkumiti village and Shri T. Khiantso of Metonger village on 18th December 2000 should be honored by all concerned and any attempt to object to or reverse the sale will result in the breach of trust that these two individuals had placed on each other while making the sale and a breach of human trust on each other in general.

That the firewood that was taken away by the Sangkumti villagers should be returned to Shri T. Khiantso by the persons concerned within two months of this order.

The two villages are encouraged to keep in mind their brotherhood and kinship that they have shared since time immemorial and not let such issues between individuals disrupt their general peace

and goodwill towards each other, but help and co-operate with each other to grow and develop together as brothers as in the past."

14. This Court is of the opinion that there is no jurisdictional error involved in the order passed by the learned Deputy Commissioner dated 18.12.2019 inasmuch as the District Customary Court, Kiphire held the proceedings in accordance with the Rules of 1937. The learned Deputy Commissioner, thereupon again heard the parties and upon finding the decision of the District Customary Court to be just affirmed the same. The Petitioners could not show any ground which would shock the judicial conscience of this Court to exercise the powers of supervisory jurisdiction. This Court also finds it apposite to observe herein that when the Customary Courts have decided the disputes in accordance with the prevalent customs and practices and the Deputy Commissioner had in exercise of its Appellate jurisdiction had found the decision to be just, the scope of interference is limited unless something gross or patent perversity is shown. Under such circumstances, in absence of any perversity or jurisdictional error shown, this Court is not inclined to exercise the jurisdiction under Article 227 of the Constitution.

15. Accordingly, the instant petition stands dismissed.

JUDGE

Comparing Assistant