

GAHC020002372022



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

Case No. : WP(C)/89/2022

MR HEVUTO CHISHI
R/O SUTEMI VILLAGE, ZUNHEBOTO, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE COMMISSIONER
GOVERNMENT OF NAGALAND

3:THE COMMISSIONER AND SECRETARY/SECRETARY
DEPARTMENT OF JUSTICE AND LAW
GOVERNMENT OF NAGALAND
KOHIMA NAGALAND

4:THE DEPUTY COMMISSIONER
ZUNHEBOTO
NAGALAND

5:MR. KUTU CHISHI
SUTEMI VILLAGE
AKULUTO SUB-DIVISION
ZUNHEBOTO
NAGALAND

6:SUTMI VILLAGE COUNCIL
REPRESENTED BY ITS CHAIRMAN
SUTEMI VILLAGE
AKULUTO SUB-DIVISION
ZUNHEBOTO- NAGALAN

Advocate for the Petitioner : A. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

04.06.2024

This is an application under Article 227 of the Constitution of India challenging the Judgment dated 25.04.2022 passed by the learned Court of the District Judge, Zunheboto, Nagaland, whereby the appeal filed by the respondent herein was allowed, thereby setting aside the Settlement Order dated 02.02.2012, passed by the *Dobashi* Court Akuluto under Zunheboto district on the ground that it lacked jurisdiction.

2. The issue involved in the instant proceedings is, however, on account of the further observations given in the impugned Judgment whereby liberty was granted to both the petitioner as well as the respondent to approach the Court of competent jurisdiction by filing proper suit for declaration and determination of issues relating to the claim for appointment of *Gaonburaship* (GB/Chieftainship) at Sutemi Village as per Sumi Naga customary laws and practices, if so advised. The issue involved in view of the said directions is what happens to the Order dated 04.10.2011, which was passed by the Sutemi Village Authority in as much as whether the Civil courts would have the jurisdiction to interfere with the said Order in view of a statutory

appeal provided under the Rules for Administration of Justice & Police in Nagaland, 1937 (for short, 'Rules of 1937').

3. To appreciate and understand the issue, this Court finds it relevant to trace out the history of the instant litigation leading to the filing of the instant proceedings *infra*.

4. A dispute arose between the petitioner and the respondent as regards who would ascend to the *Gaonbura*/Chiefmanship of the Sutemi Village as per the Sumi Naga Customary Law. The respondent approached the Village Council Court of Sutemi Village on 12.09.2011, seeking for declaration and restoration of his right to *Gaonburaship* of Lokobomi Group of Sutemi Village. The Sutemi Village Authority decided the said dispute by passing an Order on 04.10.2011. The said Order of the Sutemi Village Authority went against the petitioner herein. The petitioner being aggrieved preferred an appeal before the Deputy Commissioner, Zunheboto, in terms with Rule 31 of the Rules of 1937. The Deputy Commissioner, Zunheboto, endorsed the appeal for disposal to the SDO(C), Akuluto.

5. The problem arose in view of the further steps taken by the SDO(C), Akuluto, in as much as the said official, instead of exercising the powers under Rule 31 of the Rules of 1937 exercised the powers under Rule 23A of the said Rules of 1937 and thereby referred the matter to the *Dobashi* Court, Akuluto, for a decision. This resulted in an Order being passed by the *Dobashi* Court on 02.02.2012.

6. The said Order dated 02.02.2012 of the *Dobashi* Court went against the respondent herein. The respondent herein filed an appeal again before the Deputy Commissioner, Zunheboto, in terms with

Rule 31 of the Rules of 1937. The said appeal was endorsed by the concerned Deputy Commissioner to the PA to the Deputy Commissioner and on the basis thereof, a Settlement Order was passed on 07.10.2013.

7. The Order dated 07.10.2013 was put to challenge before this Court in WP(C)/210(K)/2014 by the petitioner herein. This Court, *vide* an Order dated 13.05.2016 set aside the said Settlement Order dated 07.10.2013 on the ground that the PA to the Deputy Commissioner could not have passed the said Order dated 07.10.2013. However, in doing so, the respondent herein who had filed an appeal earlier against the Order dated 02.02.2012 was granted the liberty to prefer an appeal for setting aside and quashing the Settlement Order dated 02.02.2012 passed by the *Dobashi* Court, Akuluto, Zunheboto district.

8. It is under such circumstances an appeal was preferred by the respondent herein before the Court of the District Judge, Zunheboto, which was registered and numbered as FA/1/2016. The learned District Judge, Zunheboto, Nagaland (herein after referred to as 'the learned Court below'), interfered with the Order of 02.02.2012 passed by the *Dobashi* Court on the ground that the *Dobashi* Court could not have sat on appeal against the Order of the Village Authority and accordingly set aside the same *vide* a Judgment dated 25.04.2022, which have been impugned in the instant proceedings. It is further very interesting to take note of that in doing so, the learned Court below have also taken into account that to adjudicate contentious issues of Sumi Naga Customary Laws and practices relating to appointment of *Gaonbura*/Chieftainship there would be a requirement

for determination of the customary laws and practice on the basis of evidence adduced and examination of witnesses by the Court of competent jurisdiction. It was also observed that such questions of facts for determination of practices and procedures have to be proved by the parties by leading proper evidence in support of their claims in proper judicial form. On the basis of those observations, the learned Court below granted liberty to both the petitioner as well as the respondent to approach the Court of competent jurisdiction by filing proper suit for declaration and determination of the issues relating to the claim for appointment of *Gaonburaship* (GB/Chieftainship) at Sutemi Village as per Sumi Naga customary laws and practices, if so advised.

9. The question which, however, arises in view of the above is that with the setting aside of the Order dated 02.02.2012 passed by the *Dobashi* Court, the Order dated 04.10.2011 passed by the Sutemi Village Authority comes into existence. Therefore, the issue which begs consideration before this Court is as to whether the petitioner herein would be able to challenge the said Order dated 04.10.2011, passed by the Sutemi Village Authority by way of a Civil Suit, that too, when a statutory appeal is provided under Rule 31 of the Rules of 1937 or for that matter, whether during the subsistence of the Order dated 04.10.2011 can the petitioner herein would be able to succeed in the suit to be filed pursuant to the liberty granted.

10. I have heard the learned counsels appearing on behalf of the parties and have also taken due note of their respective submissions.

11. From the facts narrated herein above, it would be seen that the

appeal being FA/1/2016 was filed by the respondent herein before the learned Court below pursuant to the liberty so granted by this Court in the Judgment dated 13.05.2016 in WP(C)/210(K)/2014. The challenge in the said appeal was only in respect to the Order dated 02.02.2012. The Order passed by the Sutemi Village Council dated 04.10.2011 was, however, not an issue before the learned Court below and in that view of the matter, the learned Court below did not take into consideration the existence of the Order dated 04.10.2011 in granting the liberty to both the parties to approach the competent Court of jurisdiction by filing appropriate suit for declaration and determination of the issues.

12. At this stage, this Court observes that the findings by the learned Court below as regards the Order dated 02.02.2012 passed by the *Dobashi* Court to the effect that the said *Dobashi* Court had no jurisdiction has been rightly passed by the learned Court below and as such, the question of interference with that portion of the Order does not arise. In fact, the petitioner herein had also not assailed that aspect of the matter. However, with the coming into existence of the Order dated 04.10.2011, passed by the Sutemi Village Court pursuant to the setting aside of the Order of the *Dobashi* Court dated 02.02.2012 and the liberty so granted had resulted in a tricky situation whereby if the Order dated 04.10.2011 is not assailed it would attain finality and in view of Rule 31 of the Rules of 1937, an appeal is maintainable against the Order dated 04.10.2011. In fact, a challenge was made by the petitioner to the Order dated 04.10.2011 before the learned Deputy Commissioner as already stated herein

above. However, the Deputy Commissioner or for that matter, his delegate ought to have exercised the powers under Rule 31 of the Rules of 1937, but the mistake happened when the SDO(C), Akuluto, had exercised the power under Rule 23A of the Rules of 1937 which was totally unwarranted. In the opinion of this Court, the Order dated 04.10.2011, passed by the Sutemi Village Authority would attain finality if not challenged. The mistake was on account of the Authorities in not deciding the Appeal filed by the petitioner against the Order dated 04.10.2011 in terms with the mandate of the Rules of 1937.

13. This Court is of the opinion that in view of the settled principle that no act on the part of the Court should prejudice the parties, the following portion of the impugned Judgment and Order, i.e. *"... However, the Appellant as well as the Respondent is hereby given liberty to approach the Court of competent jurisdiction by filing proper suit for declaration and determination of the issues relating to claim for appointment of Gaonburaship (GB/Chieftainship) at Sutemi Village as per Sumi Naga Customary laws and practices, if so advised"*, is required to be interfered with, which this Court does, thereby granting liberty to the petitioner herein to prefer an appeal against the Order dated 04.10.2011, passed by the Sutemi Village Council in terms with Rule 31 of the Rules of 1937. This Court further grants 30 (thirty) days from the date of the instant judgment to the petitioner to prefer the said Appeal.

14. Accordingly, the instant petition, therefore, stands disposed in terms of the above observations and directions.

15. Before parting with the record, this Court makes it clear that this Court had not decided on the question as to whether an appeal lies directly to the Deputy Commissioner or to the District Judge in view of the pendency of a reference before the Division Bench. Taking into account the above, this Court grants the liberty to the petitioner to file the Appeal before the concerned Deputy Commissioner in terms with Rule 31 of the Rules of 1937 and it shall be within the jurisdiction of the Deputy Commissioner to refer the matter to the District Judge of the concerned district, if so deemed fit.

Sd/-
JUDGE

Comparing Assistant