



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

Case No. : WP(C)/139/2018

BENATHUNG ODYUO
R/O ZUVOTHUNG COLONY,
WARD NO.12, WOKHA TOWN

VERSUS

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

2:THE COMMISSIONER HOME
N/L
KOHIMA

3:THE DEPUTY COMMISSIONER
KOHIMA
N/L
KOHIMA

4:THE ERALIBILL VILLAGE COUNCIL
REPRESENTED BY ITS CHAIRMAN SHRI HOKITOTISSICA
ERALIBILL VILLAGE
DIMAPUR

5:GRANTI D. SANGMA
R/O ERALIBILL VILLAGE
DIMAPUR
C/O CHAIRMAN ERALIBILL VILLAGE COUNCIL

6:RAHUL SANGMA
R/O ERALIBILL VILLAGE

DIMAPUR
C/O CHAIRMAN ERALIBILL VILLAGE COUNCIL

Advocate for the Petitioner : C. T. JAMIR, SR. ADV,
WATI JAMIR,
YALEMSEN AO,
NUKSHINARO,
CHUBATOLA,
IMKONG JAMIR

Advocate for the Respondent : Mr. K. Angami, Sr. GOVT ADV NL,

Advocate for the Respondent No.4 ; Mr. Limawapang,
Ms. Arepla Chang, Advs.

Advocate for the Respondent No. 5 & 6: Mr. A. Zhimomi,
Ms. Esther, Advs.

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ORDER (ORAL)

Date : 30-09-2024

Heard Mr. C.T Jamir, the Sr. learned counsel assisted by Mr. I. Imchen, learned counsel for the petitioner, Mr. K. Angami, learned Sr. Government Advocate for the State respondents, Mr. Limawapang, learned counsel for the respondent No. 4 and Ms. Esther, learned counsel for the respondent No. 5 & 6.

2. The limited issue raised in this writ petition is whether the Eralibill Village Council/respondent No.4 has the power to issue summon to the petitioner who is not a resident of the village, for resolving a land dispute situated within the said village.

3. The dispute between the petitioner and the respondent No. 5 & 6 relates to the transaction of the land measuring about 26 bighas covered by Patta No. 165 Dag No. 276, Patta No. 112 Dag No. 192 and Patta No. 166 Dag No. 273 under Mouza No. 3 at Eralibill Village, Dimapur. The land in question lawfully belongs to the respondent No. 5 & 6, who are mother and son. It the case of the petitioner that he has advanced an amount of Rs. 5,70,000/- (Rupees Five lakh seventy thousand) only to the respondent No.6 on 08/01/2014 and 24/06/2018 for purchasing the land measuring about 14 to

15 bighas out of 26 bighas of land belonging to the respondents. However, the respondents have failed to handover the xerox copies of the patta to the petitioner for necessary verification and is resorting to means to cause wrongful loss to the petitioner. On the other hand, the respondent No. 5 & 6 have contended that the petitioner after paying the advanced amount has refused to pay the balance amount for the land proposed to be purchased and has instead made unreasonable demand for refund of the advanced amount of Rs. 5,70,000/- with 25% interest per month and alternately is making a demand of Rs. 51,38,000/- (Rupees Fifty one lakh thirty eight thousand) as the commission from the respondents from the sale proceeds of the 3(three) plots of land belonging to the respondents.

4. Against the alleged unreasonable demand made by the petitioner, the respondent No. 5 has submitted the application dated 18/06/2018 to the respondent No.4 i.e. Village Council Chairman Eralibill Village, Dimapur, Nagaland, for resolving the demand made by the petitioner. Pursuant to the application submitted by the respondent No.5, the respondent No.4 has issued the summon order dated 16/07/2018 to the petitioner to appear personally/physically at Eralibill Village Council Court on 04/08/2018 at 10:00 A.M. It is the summon order dated 16/07/2018 which is impugned in the present writ petition.

5. Section-14 (1) & (2) of the Nagaland Village and Area Councils Act, 1978 provides as follows;

“(1) The Village Council constituted under the Law in force from time to time shall administer justice within the Village limits in accordance with the customary law and usages as accepted by the canons of justice established in Nagaland, and the law in this respect as enforced from time to time.

(2) In case of disputes between villages falling in different areas or districts, two or more Village Councils may settle a dispute in a joint session or refer it to the appropriate authority.”

6. The provision of section-14 has however been deleted by the Nagaland Village and Area Council (Amendment Act, 1985 (Nagaland Act No: 6 of 1987). This being the position of law as on date, the adjudicatory power of the Village Council to administer justice within the village limit in accordance with customary law and usages no more

vests in the village council and accordingly, the Eralibill Village Council cannot act as a court and issue the summon dated 16/07/2018 to the petitioner to adjudicate the land dispute between the petitioner and the respondent No. 5 & 6. Mr. Limawapang, learned counsel for the respondent No.4 referring to the application dated 18/06/2018, has submitted that the application filed by the respondent No.5 is not on the subject of the land dispute but on the demand for the commission made by the petitioner to the respondent No.6. However a perusal of the application dated 18/06/2018 though an application for resolving the demand made by the petitioner is intrinsically related to a land dispute between the petitioner and the respondent No. 5 & 6 and therefore, the respondent No.4 had also issued the summon dated 16/07/2018 to the petitioner for resolving a land dispute case. The submission made by Mr. Limawapang, the learned counsel for the respondent No. 4 that the present issue between the petitioner and the respondent No. 5 & 6 is not a land dispute, is therefore rejected. Mr. Limawapang, the learned counsel for the respondent No. 4 has also submitted that the power of the village council to administer justice in accordance with customary laws and usages which was deleted by the Nagaland Village and Area Council (Amendment) Act, 1985 has been brought back by a subsequent amendment. However, with the exception of the oral submission, no record has been placed, to substantiate the submission. Even otherwise, even if the submission made by the learned counsel for the respondent No.4 is accepted to be factually correct, it will still not be legally tenable for the respondent No.4 to adjudicate, the dispute in respect of a cadastral land, over which allotment has been made by the Government by issuing patta/zamabandi, in accordance with the customary laws and usages. The grievances of the parties, if any, should be addressed to the appropriate authority for proper resolution of the dispute but not by the respondent No.4.

7. Secondly, Mr. Limawapang, the learned counsel for the respondent No. 4 by referring to Rule-17, 18, 24, 24A and 26 of the Rules for Administration of Justice and Police in Nagaland, 1937, submits that in terms of the said rules, the Mauzadars, gaonburas, chiefs, head of khels, Dobhasis or other village authorities sitting with the village elders in council has been empowered to try cases in accordance with the prescribed procedures. This Court, is however of the view that, in the present case,

the provisions as contained in the Nagaland Village Council Act, 1978 shall apply and as earlier observed, since the adjudicatory power of the village council to administer justice in accordance with customary law and usages has been repealed, the village council will no longer have the power to adjudicate disputes, more-so, when the subject matter in the present case relates to a cadastral land. However, even if accepting, the contention that, under the relevant provisions of the Rules for Administration of Justice and Police in Nagaland, 1937, the village council is empowered to try cases, Rule-24 & 25 of Rules, 1937 clearly stipulates that the power of the village authorities etc. to try cases shall be only in respect of persons who are resident within their own jurisdiction and such power will not be exercised against the person who is not a resident within the jurisdiction of the village. In the present case, from the summon dated 16/07/2018 issued by the respondent No. 4, it is discernible that the petitioner is a resident of Wokha town and this has also been clearly averred by the petitioner in the writ petition. In view of the observation made above, this Court is inclined to accept the submission made by Mr. C.T. Jamir, the learned Sr. counsel for the petitioner that the respondent No.4 does not have the power to summon the petitioner who is not a resident of the Eralibill Village.

8. Section-15 of the Nagaland Village Councils Act, 1978 (Nagaland Act No.1 of 1979) provides the provisions for village administration and is reproduced below;

“Village Administration

15. (1) The Village Council shall be auxiliary to the administration and shall have full powers to deal with internal administration of the village.

(a) maintenance of law and order;

(b) in serious case offender may be arrested but such person should be handed over to the nearest Administrative Officer or Police Station without undue delay;

(c) to report to the nearest Administrative Officer occurrence of any unnatural death or serious accident;

(d) to inform the presence of strangers, vagabonds or suspects to the nearest Administrative Officer or Police Station;

(e) to enforce orders passed by the competent authority on the

village as a whole;

(f) to report outbreak of epidemics to the nearest Administrative Officer or Medical Officer;

(g) no transfer of immovable property shall be affected without the consent of the Village Council. Written record of this shall be maintained by the Village Council.”

9. From a reading of section-15 of the Nagaland Village Council Act, 1978, it is clear that the village administration shall be carried out by the village council in accordance with the provision of section-15 of the Act and not otherwise. Therefore, if the respondent No.4 has been informed, that the petitioner is criminally intimidating, harassing or threatening the respondent No. 5 & 6 by allegedly making unreasonable demands, then it is the duty of the respondent No.4 to report such instances to the nearest Administrative Officer or to the Police Station concerned for taking necessary action against the petitioner. But the respondent No.4, cannot on the complaint of the respondent No. 5 & 6, take up the responsibility upon itself and issue the summon directing the petitioner to appear before the respondent No.4 when the respondent No.4, is in fact, not empowered to issue such a summon and/or to adjudicate the dispute between the petitioner and the respondent No. 5 & 6.

10. The respondent No. 5 & 6, if aggrieved, by the alleged unlawful activities of the petitioner can always approach the competent forum/authority to have their grievances redressed in accordance with law. The same would equally apply to the petitioner.

11. In view of the discussions and the observations made above, this Court is inclined to quash and set aside the summon order No. EVC/0124/2018 dated 16/07/2018, issued to the petitioner by the Eralibill Village Council, Dimapur, Nagaland.

12. Writ petition allowed. No cost.

JUDGE

Comparing Assistant