IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 643 of 2017

A.S. Yanglung aged about 60 years S/o Late Shongpung a resident of Pushing Village, P.S. Shangshak, Ukhrul District, Manipur.

… Petitioner

-Versus-

1. The State of Manipur represented by the Principal Secretary/Commissioner/ Secretary (Hills), Government of Manipur.
2. Principal Secretary/Commissioner/ Secretary (Revenue), Government of Manipur.
3. The Deputy Commissioner, Ukhrul District, Manipur.
4. The Autonomous District Council, Ukhrul District, Manipur through the Chief Executive Officer, Autonomous District Council (ADC), Ukhrul District, Manipur.
5. The Chairman, Autonomous District Council, Ukhrul District, Manipur.
6. The Chief Executive Officer, Autonomous District Council (ADC), Ukhrul District, Manipur.
7. Shri K.S. Stephen, Headman, aged about 75 years, S/o late K.S. Nakor of Pushing Chingthank Village, Ukhrul District, Manipur.

…Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioner	::	Shri Juno Rahman, Advocate.
For the Respondents	::	Shri R.S. Raisang, Sr. Advocate & Shri Niranjan Sanasam, GA.
Date of Hearing	::	**21-01-2020**
Date of Judgment & Order	::	**27-01-2020**

JUDGMENT AND ORDER

[1] Heard Shri Juno Rahman, learned Advocate appearing for the petitioner; Shri R.S. Raisang, learned Senior Advocate appearing for the private respondent and Shri Niranjan Sanasam, learned Government Advocate appearing for the State respondents.

[2] The validity and correctness of the order dated 21-07-2017 issued by the Commissioner (Revenue), Government of Manipur and its subsequent Notification dated 22-07-2017 are under challenge in this writ petition.

[3.1] According to the petitioner, Pushing Village is an old Tangkhul Hill Village which has been in existence since time immemorial under one patta and under one headman and its name is recorded in the list of Hill villages as Sl. No.79 under Ukhrul Circle No.1 of the Manipur State Hill Peoples (Administration) Regulation, 1947. Shri A.S Wunghei, the grandfather of the petitioner was the headman of Pushing village and after his death, his eldest son, Shri Shongphung succeeded as the headman of Pushing village. After the death of Shri Shongphung, the petitioner succeeded him as the headman of Pushing village and is still continuing till date. Since the life time of Shri A.S Wunghei till today, the names of the headman of Pushing village have been recorded in the revenue records, because of which the Hill House Tax of all the villagers of Pushing village is being paid continuously by the headman of the village. The petitioner being the headman, the entire land of the Pushing village belongs to him

and in the alternative, the entire land of Pushing village belongs to all the villagers jointly in as much as the villagers have their individual ownership over the separate plots of land as house site or as agricultural lands within the local limits of the Pushing village.

[3.2] During the life time of Shri Shongphung, the father of the petitioner, while he was the headman of Pushing village, two persons namely, Shri KS Nakor and Shri Saphei (now expired) who are/were the villagers of Pushing village claimed themselves to be the Mantri and the Khullakpa of the Pushing village and instituted a suit against the Late Shri Shongphung in the Court of Sub-Divisional Officer, Ukhrul being Civil Suit No.63 of 1940-50 to evict him from the village on the ground that the Pushing village should be divided into two parts- one, Pushing Chingthak and two, Pushing Chingkha. After hearing both the parties, the learned SDO, Ukhrul vide his order dated 19-04-1950 dismissed the said suit. Thereafter, Shri KS Nakor and Shri Saphei filed another suit in the Court of SDO, Ukhrul being Civil Suit No.98 of 1950-51 against Shri Shongkhung for division of Pushing village into two separate villages but the said suit was also dismissed by the learned SDO, Ukhrul vide his order dated 26-07-1952.

[3.3] Being aggrieved by the order dated 26-07-1952 of the learned SDO, Ukhrul, Shri KS Nakor and Shri Saphei preferred an appeal in the Court of Deputy Commissioner, Manipur Hills by way of an Appeal Case No.171 of 1952 but the same was dismissed by the learned Deputy

Commissioner, Manipur Hills. Shri KS Nakor and Shri Saphei filed an application before the learned Deputy Commissioner, Manipur claiming two separate pattas of Pushing village by way of Misc. Case No.72 of 1959 but the same was also rejected vide his order dated 09-06-1960 on the ground that there could be no separate village with regard to Pushing village. Being aggrieved by the said order dated 09-06-1960, Shri KS Nakor and Shri Saphei preferred an appeal being Hill Revision Case No.7 of 1960 before the Hon'ble Chief Commissioner, Manipur but it was dismissed by him vide his order dated 03-02-1961 holding that two parts of Pushing village-one, Chingthak and two, Chingkha, always constituted one village.

[3.4] Quite surprisingly, the Deputy Commissioner, Manipur East, without having any jurisdiction passed an order dated 05-12-1978 allowing the bifurcation of the existing Pushing village into two separate villages-one, Pushing Chingthak and two, Pushing Chingkha. Being aggrieved by the said order dated 05-12-1978 of the Deputy Commissioner, Manipur East, the petitioner who succeeded as the headman of the Pushing village but due to his being a minor, filed a Civil Rule No.1 of 1979 before the Hon'ble Gauhati High Court, Imphal Bench, through his uncle Shri A.S Yarchung challenging it on the ground that the Deputy Commissioner, Imphal East has no jurisdiction to bifurcate the existing land of the petitioner's village. The Hon'ble Gauhati High Court, Imphal Bench, after hearing both the parties at length, passed the judgment and order dated 07-05-1992 setting aside the order dated 05-12-1978 of the Deputy

Commissioner, Manipur East. Even after the said order dated 07-05-1992 being passed by the Hon'ble Gauhati High Court, Imphal Bench, the Deputy Commissioner, Ukhrul issued a letter dated 12-09-2011 informing the Chief Executive Officer, Autonomous District Council, Ukhrul for taking necessary action for purpose of recognition of Pushing Chingthak as a separate revenue village by concealing the judgment and order dated 07-05-1992. The members of the Autonomous District Council, Ukhrul in a Special House Sitting on village recognition held on 16-11-2012 and presided over by the Chairman of the ADC, Ukhrul, took a proceeding recommending the Pushing Chingthak to be recognized as a separate revenue village. Consequent upon the letter dated 12-09-2011 of the Deputy Commissioner, Ukhrul; the letter dated 12-09-2011 of the Chief Executive Officer, ADC, Ukhrul and the proceedings of the ADC, Ukhrul dated 16-11-2012, the petitioner submitted a representation dated 21-11-2012 to the Deputy Commissioner, Ukhrul praying for dropping the process with regard to recognition of the Pushing Chingthak as a separate revenue village in view of the order dated 07-05-1992 passed by the Hon'ble Gauhati High Court, Imphal Bench. Instead of considering and disposing of his representation, the Chief Executive Officer, ADC, Ukhrul wrote a letter dated 20-01-2016 to the Secretary (Revenue), Government of Manipur to take further necessary action pursuant to the recommendation of the ADC, Ukhrull for recommending the Pushing Chingthak as a separate Hill House Tax Paying Village.

[3.5] Being aggrieved by the said action of the respondents, the petitioner filed a writ petition being WP(C) No.394 of 2016 praying for quashing the proceedings of the ADC, Ukhrul and the letter dated 20-01-2016 of the Chief Executive Officer, ADC, Ukhrul as the same were not maintainable in the eyes of law. This Court, after hearing both the parties, was pleased to pass an order dated 11-07-2016 directing that the petitioner be given a chance of being heard by the Secretary/ Commissioner (Revenue), Government of Manipur, when the matter for separation of the Pushing village into two villages as proposed by the ADC, Ukhrul, was taken up for consideration. In compliance with the order dated 11-07-2016, the Joint Secretary (TA & Hills), Government of Manipur wrote a letter dated 26-08-2016 to the Commissioner/ Secretary (Revenue), Government of Manipur stating that the Tribal Affairs and Hills Department was not in a position to take up any action in this regard in view of the Notification dated 16-09-2008 wherein it has been decided to issue instructions that orders relating to creation and/ or recognition of villages shall be issued by the Revenue Department, as provided by the Business of the Government of Manipur (Allocation) Rules, 2009. Thereafter, the Deputy Secretary (Revenue), Government of Manipur wrote a letter dated 22-04-2017 to the petitioner requesting him to submit his written statement of objection in connection with the recognition of Pushing Chingthak as a separate revenue village and in response thereto, the petitioner submitted his written statement dated 22-05-2017 but the respondents, without considering his written statement, issued the

impugned order dated 21-07-2017, being aggrieved by which the instant writ petition has been filed by the petitioner.

[4] Since no affidavit on behalf of the State of Manipur has been filed in the matter, its stand is not known to this Court. But an affidavit-in-opposition has been filed by the Deputy Commissioner, Ukhrul, respondent No.3 herein stating that the order dated 21-07-2017 was issued by the State Government after complying with the procedure and the norms and therefore, it has no infirmity to be liable for its quashing. It has further been stated that there was an issue of dividing Pushing village two villages - one, Pushing Chingthak and two, Pushing Chingkha for the last many years. In 1978, the then Deputy Commissioner, Ukhrul granted two separate revenue villages with distinct boundary as Pushing Chingthak and Pushing Chingkha with the approval of the State Government vide order dated 05-12-1978 and accordingly, Hill House Tax was paid separately. A petition being under Civil Rule No.1 of 1979 was filed by the petitioner against the separation of the Pushing village into two villages but it was dismissed by the Division of the Hon'ble Gauhati High Court vide its order dated 08-09-1978 and therefore, the instant writ petition is barred by the said order dated 08-09-1978. It is not known by the authority concerned as to how the subsequent order dated 07-05-1992 was passed by the Hon'ble Gauhat High Court. The respondent No.3, the Deputy Commissioner, Ukhrul was not aware of the judgment and order dated 07-05-1992, as it was not brought to his notice. In compliance with the order dated 11-07-2016 passed by this Court, the petitioner was given an

opportunity of being heard and the objection filed by him was disposed of. Since Shri K.S. Stephen applied for recognition of Pushing Chingthak as a separate village by way of a representation addressed to Secretary/ Commissioner (Revenue), Government of Manipur, an enquiry was conducted by the SDO concerned who submitted his recommendation dated 11-12-2009. A Notification dated 05-01-2010 was issued inviting claims/ objections from interested persons and it was later forwarded to the Chief Executive Officer, ADC Ukhrul vide letter dated 12-09-2011, as it is mandatory under Section 29A of the Manipur Hill Areas District Council Act, 1971 as amended in the year, 2008 (hereinafter referred to as "**the District Council Act, 1971**"). After following all the necessary procedures, the impugned order dated 21-07-2017 was issued by the competent authority. It has further been stated that it is a matter of policy decision taken by the State Government to bifurcate the Pushing village for the welfare and convenient of the villagers of the Pushing village at large and in matters relating to policy decision, the scope of interference by the Court is extremely limited. The stand taken by the private respondent is similar to that of the Deputy Commissioner, Ukhrul and therefore, the details made in his affidavit, are not referred to herein for the sake of brevity. But it has been stated by him that before India attained independence, the headmen of Pushing Chingthak and Pushing Chingkha made a compromise to live together which is reflected in the order dated 25-11-1945 passed by the SDO, Ukhrul in Misc. Case No.127 of 1944-45 showing that there were two headmen of both Pushing Chingthak and Pushing Chingkha. Moreover,

the headmen of neighbouring villages have stated on oath that the Pushing Chingthak has been in existence since the year, 1858. An enquiry was held by the Lambu who submitted his report dated 03-12-2009 to the SDO, Ukhrul stating that the Pushing Chingthak is in existence since time immemorial and that the headmen of the neighbouring villages have no objection to its recognition as a separate revenue village.

[5] It has been submitted by Shri Juno Rahman, the learned counsel appearing for the petitioner that the claim of the private respondent or for that matter, of his forefathers that Pushing Chingthak shall be recognized as a separate revenue village and in other words, Pushing village be separated into two villages-one, Pushing Chingthak and two, Pushing Chingkha, had been rejected in the past by various Courts including that of the SDO, Ukhrul; the Deputy Commissioner, Ukhrul and the Chief Commissioner, Manipur. On top of that, the Division Bench of the Hon'ble Gauhati High Court, Imphal Bench vide its judgment and order dated 07-05-1992 had quashed and set aside the recognition of the Pushing Chingthak as a separate village by the Deputy Commissioner, Ukhrul and the same had attained finality. Without the said orders/ judgment and orders being honoured and without taking them into account, a fresh process was initiated and consequently, Pushing Chingthak was recognized as a separate village which is absolutely illegal and bad in law. In support of his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in ***State of Uttaranchal Vs. Balwant Singh Chaufal & ors., (2010) 3 SCC 402*** and ***Micro Hotel Private Limited Vs.***

Hotel Torrento Limited & ors., (2012) 10 SCC 290. On the other hand, it has been submitted by Shri R.S Raisang, learned Senior Advocate that the recognition of a village is a matter of policy decision and that after following the procedure prescribed in law, Pushing Chingtkak has been recognized as a separate revenue village by the State Government and therefore, there is nothing wrong in the impugned order dated 21-07-2017 and the subsequent Notification dated 22-07-2017. Reliance has been placed by him in the decisions rendered by the Hon'ble Supreme Court in ***State of Uttar Prradesh & ors. Vs. Chaudhary Ran Beer Singh & anr., (2008) 5 SCC 550; Union of India Vs. Era Educational Trust & anr., (2000) 5 SCC 57; Delhi Development Authority Vs. Skipper Construction Company (P) Limited & anr., (1996) 4 SCC 622*** and also the decisions rendered by the Hon'ble Gauhati High Court in ***Tangam Tamut & ors. Vs. State of Arunachal Pradesh & ors, 1999 (2) GLT 294; M. Haba Vs. State of Manipur & ors., 1999 (2) GLT 594*** *and* ***Singhneimang Vaiphei Vs. State of Manipur & ors., 1997(2) GLT 279***. Shri Niranjan Sanasam, learned Government Advocate, supporting the argument of the counsel appearing for the private respondent, has relied upon the judgment and order dated 10-04-2019 passed by this Court in PIL No.45 of 2017.

[6] The fact that the recognition of a village by the State Government is a matter of policy, is not seriously disputed by the petitioner, although any specific provision of law by which such recognition is made by the State Government, is not brought to the notice of this Court. The State Government appears to have not got any law enacted laying down the

procedure for recognizing a village. In the affidavit filed on behalf of the State Government as well as the Deputy Commissioner. Ukhrul, as mentioned in the judgment and order dated 07-05-1992 of the Hon'ble Gauhati High Court, it has been stated that under Section 3(2) of the Manipur (Village Authorities in Hill Areas) Act, 1956 (hereinafter referred to as "**the Hill Areas Act, 1956**"), the State Government can create any new village authority in the interest of the villagers, to which the Hon'ble Gauhati High Court observed that unless a new village was established and clearly bifurcated, there can be no question of creating any new village authority. In the affidavit filed on behalf of the State of Manipur in WP(C) No.353 of 2018, it has been stated by the Under Secretary (TA & Hills) that Section 3(2) of the Hill Areas Act, 1956 does not provide any provision for recognition of hill village. It may be noted that Section 3(1) of the Hill Areas Act, 1956 provides that for every village having twenty or more tax-paying houses, there shall be a Village Authority and there are four kinds of villages as contemplated therein for which the number of members of the Village Authority has been specified. Before any village is recognized by the State Government, a recommendation of the District Council concerned is a must and the recommendation shall be made on the basis of a resolution passed by a simple majority of the total members of the District Council on fulfillment of the conditions as may be prescribed. The conditions which are required to be fulfilled before the recognition of a village, are not brought to the notice of this Court by the State Government. It is also not known to this Court as to whether the State

Government has laid down any guideline or any principle to be followed by the District Council at the time of considering the case of a village for recommendation. In M. Haba case (supra), as the regards the provisions of Section 3(2) of the Hill Areas Act, 1956, it has been held by a learned Single Judge, Hon'ble Gauhati High Court that once a declaration has been issued by a notification in the official gazette having regard to the general interest, a village has come into existence automatically. The contention of Shri L. Sarat Sharma, Advocate that prior to the issuance of the notification, there must be a village in existence, was rejected holding that it was misplaced and had no substance. It has further been held that by exercising power under Section 3(2) of the Manipur (Village Authorities in Hill Areas) Act, 1956, a village comes into existence and once a notification is issued in the official gazette, a village and the village authority have been automatically created under the notification. It is because of this reason, no separate provision under the Act has been provided by the legislature for recognition of the village. This observation of the learned Single Judge, Hon'ble Gauhati High Court does not appeal to this Court which has some reservation thereon. The learned Single Judge, while passing his judgment and order as aforesaid, appears to have not taken into account the judgment and order dated 07-05-1992 passed by the division bench of the same High Court namely, Hon'ble Gauhati High Court. The observation of the learned Single Judge that a village will come into existence only after a notification under Section 3(2) of the Hill Areas Act, 1956 is issued, does not appear to be correct. Section 3(2) of the Hill

Areas Act, 1956 provides for declaration that the village shall have an elected village authority. The existence of a village is a condition precedent for having an elected village authority. If there is no village, the question of declaration for having an elected village authority therein, does not arise at all. That is the reason why the State Government has initiated the process for recognizing Pushing Chingthak as a separate village and not for issuing a declaration under Section 3(2) of the Act. The view of this Court is substantiated by the provisions of Section 29A of the District Council Act, 1971 as amended in the year, 2008 which provides the requirement of a recommendation by the ADC concerned for recognizing a village. The need for a recommendation by the ADC concerned, is neither for establishment of a village nor for having an elected village authority. It is only for recognizing a village. Moreover, the recommendation of the ADC concerned is not a condition precedent for a declaration under Section 3(2) of the Hill Areas Act. In any case, there is a need of having a separate and specific provision of law empowering the State Government to recognize a village subject to the conditions as may be prescribed by the State Government which ought to be general in nature and applicable in all cases. It is the right time for the State Government to think over it and take appropriate action in this regard so as to obviate any litigation in future. As on date, the stand of the State Government is that it is a policy decision without laying down any principle to be followed by it except the recommendation of the ADC concerned. The requisite condition for recognizing a village appears to be not made known to the public and it is

always left with the discretion or the wisdom of the State Government, for which a chief of the village simply submits an application. Since the issue involved herein is not as to whether the State Government is empowered to recognize a village but the issue whether the State Government has rightly, correctly and legally recognized Pushing Chingthak as a separate revenue village in the facts and circumstances of the case, this Court will not go into the issue relating to the power of the State Government in granting recognition for a village except the observations made hereinabove.

[7] There are peculiar facts and circumstances in the present case, because of which the stand of the private respondent that the recognition of a village is a policy decision and that the interference by the court is limited, will have no much relevance. It is not a simple case where an application has been submitted for the first time by a headman for recognizing his village. The subject matter in issue relates to Pushing village which appears to have been known amongst the villagers and the villagers of the neighbouring villages for the last many years by two parts - one, Pushing Chingthak and two, Pushing Chingkha. But it may be noted that while Shri Shongphung was the headman of Pushing village, Shri KS Nakor and Shri Saphei, claiming themselves to be the Mantri and the Khullakpa of the Pushing village, instituted a suit against him in the Court of Sub-Divisional Officer, Ukhrul being Civil Suit No.63 of 1940-50 for division of the Pushing village into two parts- one, Pushing Chingthak and two, Pushing Chingkha. But the suit was dismissed by the learned SDO,

Ukhrul vide his order dated 19-04-1950. Another suit being Civil Suit No.98 of 1950-51 filed by them in the Court of SDO, Ukhrul against Shri Shongkhung for the same purpose was also dismissed by the learned SDO, Ukhrul vide his order dated 26-07-1952. They preferred an appeal in the Court of Deputy Commissioner, Manipur Hills by way of an Appeal Case No.171 of 1952 which was dismissed by the learned Deputy Commissioner, Manipur Hills. An application being Misc. Case No.72 of 1959 came to be filed by them before the learned Deputy Commissioner, Manipur claiming two separate pattas of Pushing village who rejected it vide his order dated 09-06-1960 on the ground that there could be no separate village with regard to Pushing village. Being aggrieved by the said order dated 09-06-1960, they preferred an appeal being Hill Revision Case No.7 of 1960 before the Hon'ble Chief Commissioner, Manipur who dismissed it vide his order dated 03-02-1961 holding that two parts of Pushing village-one, Chingthak and two, Chingkha, always constituted only one village. After about 17 years, the Deputy Commissioner, Manipur East, passed an order dated 05-12-1978 allowing the bifurcation of the existing Pushing village into two separate villages-one, Pushing Chingthak and two, Pushing Chingkha. The petitioner challenged it by way of a Civil Rule No.1 of 1979 before the Hon'ble Gauhati High Court, Imphal Bench wherein the High Court passed a judgment and order dated 07-05-1992 setting aside the order dated 05-12-1978 of the Deputy Commissioner, Manipur East. From the aforesaid facts and circumstances, it is clearly seen that the issue relating to the claim made by the forefathers of the

private respondent for division of Pushing village into two villages or for that matter, the recognition of the Pushing Chingthak as a separate village on the ground that it is in existence since time immemorial, has been decided by the courts including the High Court. In other words, the contention that Pushing Chingthak is in existence since time immemorial, has been rejected long back by the Courts. Therefore, the only inference that can be drawn, is that Pushing Chingthak cannot now be said to be in existence since time immemorial. There is no any material on record to show that the judgment and order dated 07-05-1992 of the Hon'ble Gauhati High Court was challenged before the Hon'ble Supreme Court and if that be so, the judgment and order of the High Court has attained finality.

[8] The learned counsel appearing for the private respondent, Shri R.S. Raisang has vehemently submitted that the Hon'ble Gauhati High Court, Imphal Bench has decided the CR No.1 of 1979 only on the technical ground to the effect that the Deputy Commissioner, Ukhrul has no jurisdiction to bifurcate the village and in other words, it has been held that the bifurcation of the Pushing village as Pushing Chingthak and Pushing Chingkha is not within the province of the Deputy Commissioner and that the very fact that the impugned order did not mention any reason, would vitiate the order itself. It has been further submitted by him that the Hon'ble Gauhati High Court had not decided the said case on merit. His submission has no force and substance for the reason that the Hon'ble Gauhati High Court has made observations on merit of the case as well, as

is evident from para 11, 13 and 16 of the judgment and order which read as under:

"11. *It has been further argued by Mr. R.K. Nokulsana Singh that two separate villages known as Pushing Chingthak and Pushing Chingkha have been in existence from time immemorial and that the Deputy Commissioner has issued separate pattas for the two villages only in recognition of existence of such villages for such a long time.*

This submission of Mr. Nokulsana Singh does not inspire confidence inasmuch as in the history of this village, in view of all the earlier decisions rendered in this behalf, for the first time, the boundary was sought to be demarcated by the impugned order only in 1978. Hence, we do not accept the submission of Mr. R.K. Nokulsana Singh and we reject it.

13. *Several averments have been made in the Government affidavit to say that there were circumstances which justified the issuance of the impugned order by the Deputy Commissioner, Ukhrul. We are simply unable to accept such averments made in the Government affidavit inasmuch as the learned Deputy Commissioner while issuing the impugned order, has not referred to any such circumstances whatsoever. If such circumstances were in existence, it was the duty of the Deputy Commissioner to say so. Therefore, we are of the view that such circumstances or materials were not available before the Deputy Commissioner at the time of passing the impugned order or else the Deputy Commissioner would have no good reasons to omit to refer to such circumstances as are stated in the Government affidavit.*

16. *Admittedly, Pushing village is an old village. Villagers of Pushing village have been living together from time immemorial. Like any other villages in the hills, there might have been some*

*mis-understanding among some sections or clans of the villagers but such ups and downs should not stand in the way of the villagers to live together under one patta. In fact, with the passage of time and advancement of education of modern days, we are of the view that the villagers of Pushing village should learn to live in harmony and in peace. Since this village has been under one patta from the inception of the village and since the villagers of this Village have been living together from time immemorial, we see no reasons why, instead of struggling to live separately, they should not strive to live in unity and in love.***"**

[9] As has been observed by this Court hereinabove, the judgment and order dated 07-05-1992 has attained finality and the issue involved therein cannot be reopened and reagitated before this Court now. Since the issue relating to division of Pushing village into two villages has been decided as shown above, the State Government ought to have kept it in mind, while considering the recognition of the Pushing Chingthak as a separate revenue village. But the State Government appears to have failed to do that. In this regard, the decisions of the Hon'ble Supreme Court relied upon by the counsel appearing for the petitioner, are relevant and in **State Uttaranchal Vs. Balawant Singh Chaufal** case (supra), the Hon'ble Supreme Court held:

"***22.*** *The State of Uttarakhand was a part of the State of U.P. a few years ago. In the State of U.P., a large number of Advocates General appointed were beyond 62 years of age at the time of their appointment. The petitioner, a local practising lawyer, ought to have bestowed some care before filing this writ petition in public interest under Article 226 of the Constitution. The controversy raised by the petitioner in this case was decided 58*

*years ago in Karkare which was approved by the Constitution Bench of the Supreme Court way back in 1962. Unfortunately, the same controversy has been repeatedly raised from time to time in various High Courts. When the controversy is no longer res integra and the same controversy is raised repeatedly, then it not only wastes the precious time of the Court and prevents the Court from deciding other deserving cases, but also has the immense potentiality of demeaning a very important constitutional office and person who has been appointed to that office.***"**

Similarly in **Micro Hotel Private Limited** case (supra), the Hon'ble Supreme Court held:

"21. *We express our strong disapproval of the manner in which the Division Bench of the High Court has virtually sat in judgment over the judgment of another coordinate Bench. We are of the view that the Division Bench of the High Court overlooked some vital facts which have considerable bearing on the outcome of this dispute, consequently, reopened a lis which has attained finality, due to non-compliance with the various directions issued by the coordinate Bench of the High Court. Failure to comply with the various directions issued by the coordinate Bench in Hotel Torrento Ltd. v. Orissa State Financial Corpn. and the order passed in Hotel Torrento Ltd. v. Orissa State Financial Corpn. was completely overlooked by the Division Bench.***"**

The facts of the said cases are not exactly identical with that of the present case. But the underlying principle laid down by the Hon'ble Supreme Court in the said cases is that when the controversy is no longer res integra, the same cannot be permitted to be raised again and again

and the High Court ought not to entertain such issue being raised before it. In the present case, the issue whether the Pushing village can be divided into two villages and in other words, whether the Pushing Chingthak can be recognized as a separate revenue village, was decided long back by various Courts upto the level of the Hon'ble Chief Commissioner, Manipur who passed his order dated 03-02-1961 holding that Pushing Chingthak and Pushing Chingkha constituted only one village. The controversy did not end here and after about 17 years, the Deputy Commissioner, Ukhrul passed an order dated 05-12-1978 bifurcating the Pushing village into two - Pushing Chingtak and Pushing Chingkha. When this order dated 05-12-1987 was challenged before the Gauhati High Court, it was quashed and set aside by it vide its order dated 07-05-1992 which has attained its finality. After about another 17 years, the private respondent submitted an application praying for recognition of the Pushing Chingthak as a separate revenue village, on the basis of which the State Government issued the order dated 21-07-2017 recognising Pushing Chingthak as a separate village. The State Government ought not to have entertained the application, as the issue had already been decided by the Courts against the forefather of the private respondent. Since the same issue being raised in the present writ petition, it ought to be allowed against the private respondent.

[10] The second point which needs to be considered by this Court is that it has been observed by the Hon'ble Gauhati High Court in its judgment and order dated 07-05-1992 that the forefathers of the private

respondents admitted before the SDO, Ukhrul that the patta was always in the name of the petitioner and that since no separate patta was given to Chingthak, the land too was not partitioned. After having slept over for some years, the private respondent submitted an application praying for recognizing Pushing Chingthak as a separate village which was forwarded by the Addl. Secretary (Revenue), Government of Manipur vide his letter dated 09-09-2009 to the Deputy Commissioner, Ukhrul. The Circle Lambu conducted an enquiry and submitted his report dated 03-12-2009 wherein it has been stated that Pushing Chingthak is in existence since time immemorial and that the neighbouring villages have no objection to its recognition. This report appears to be the only foundation for recognition of Pushing Chingthak as a separate village. The finding as recorded in the Circle Lambu's report that Pushing Chingthak is in existence since time immemorial, has already been considered and rejected by the Courts below many years ago and there appears to be no new facts or circumstances on which the application of the private respondent could have been considered by the State Government. It may be noted at this juncture that the Hon'ble Gauhati High Court, in its judgment and order dated 07-05-1992 passed in CR No.1 of 1979, had observed that although the State Government stated in its affidavit that there were circumstances which justified the recognition of Pushing Chingthak as a separate village, the same were not referred to in the order of the Deputy Commissioner, Ukhrul. The failure on the part of the State Government to demonstrate the circumstances justifying the recognition, was specifically recorded in the

judgment and order. On the basis of the report of the Circle Lambu, the SDO, Ukhrul vide his letter dated 11-12-2009 requested the Deputy Commissioner, Ukhrul to confirm it. The Deputy Commissioner, Ukhrul issued a notification dated 05-01-2010 inviting objections from any interested person and thereafter, he wrote a letter dated 12-09-2011 informing the CEO, ADC, Ukhrul for taking necessary action towards recognition of Pushing Chinthak as a separate village. The ADC, Ukhrul, in its sitting held on 16-11-2012 for village recognition, is alleged to have considered the cases of many applications in respect of many villages and after perusing the relevant documents, as observed in its proceedings, so forwarded by the concerned authority and deliberation, it recommended Pushing village and two others for recognition as separate villages. What are the relevant documents which are alleged to have been considered by the ADC, Ukhrul but have not been referred to in the proceeding, are not made known to this Court nor have they been placed on record and since the expression "**relevant documents**" is qualified by the expression "**so forwarded by the concerned authority**", the relevant documents, at the most, could have been the report of the Circle Lambu and some letters issued by the neighbouring villages having no objection and nothing else. No reason has been assigned in the recommendation which was sent to Deputy Commissioner, Ukhrul by the CEO, ADC, Ulhrul vide his letter dated 20-01-2016 which was, in turn, forwarded by the Deputy Commissioner, Ukhrul to the Commissioner (Revenue), Government of Manipur for perusal and necessary action. Thereafter, the impugned order

dated 21-07-2017 was issued by him. From the facts and circumstances as aforesaid, it is clearly seen that the impugned order dated 21-07-2017 was issued by the State Government without considering any new material placed before it and that too, without considering the fact that the Courts have rejected the theory that Pushing Chingthak is in existence since time immemorial and that it can be recognized as a separate revenue village. Moreover, any policy decision taken by the State Government without any object sought to be achieved and without any reason or material for achieving it, cannot be said to be a policy decision taken in public interest.

[11] Relying upon the decisions rendered by the Hon'ble Supreme Court, it has further submitted by the counsel appearing for the respondents that since the recognition of a village is a matter of policy decision, it shall not be interfered by this Court. On perusal thereof, it is also seen that the facts of the said cases are not similar to that of the present case. But it is true that in ***State of UP & ors. Vs. Chaudhary Ran Beer Singh*** case (supra), it has been held by the Hon'ble Supreme Court that in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the State Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. From the said decision, it is

further clear that the Court can interfere with the policy decision provided the State Government, while taking the policy decision, has infringed the fundamental right or has failed to consider all relevant aspects from different angles. The expression "**consider all relevant aspects from different angles**" will definitely mean the consideration of materials placed before it and in other words, any policy decision taken by the State Government without considering the relevant material, will be rendered bad in law. The State Government being an institution, its decision shall always be based on the relevant material, in the absence of which it will be rendered unreasonable and to be against public policy. This has happened exactly in the present case. The contention of the learned Government Advocate is similar to that of the counsel appearing for the private respondent and in other words, since it sails in the same boat, it will meet the same fate and moreover, the judgment and order dated 10-04-2019 relied upon by him, will have no application to the facts and circumstances of the present case. It may be noted that after the theory that Pushing Chingthak is in existence since time immemorial, has been wrongly or rightly rejected by the Courts whose orders had attained finality, the State Government ought not to have entertained the application of the private respondent on the basis of the same theory, as if it was still available with him. Considering the materials on record, this Court is of the view that since the impugned order dated 21-07-2017 was issued by the Commissioner (Revenue), Government of Manipur without any new

relevant material being considered by it, the same is bad in law and is liable to be quashed and set aside by this Court.

[12] For the reasons stated hereinabove, the instant writ petition stands allowed and consequently, the order dated 21-07-2017 issued by the Commissioner (Revenue), Government of Manipur and its consequential notification dated 22-07-2017 are quashed and set aside with no order as to costs.

JUDGE

FR / NFR

Indrajeet

WAIKHOM TONEN MEITEI
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