Serial No. 01-16
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 12 of 2020 with
CRP No. 13 of 2020
CRP No. 14 of 2020
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CRP No. 17 of 2020
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CRP No. 27 of 2020

सत्यमेव जयते

Date of Decision: 29.10.2020

Acting Syiem of Hima Mylliem	Vs.	Muniswell Kurkalang.
Acting Syiem of Hima Mylliem	Vs.	Fornick Kharubon
Acting Syiem of Hima Mylliem	Vs.	Hadren S. Sohlang
Acting Syiem of Hima Mylliem	Vs.	Chester Kharkongor
Acting Syiem of Hima Mylliem	Vs.	Franco Syndor
Acting Syiem of Hima Mylliem	Vs.	Kedre Singh Kharpan
Acting Syiem of Hima Mylliem	Vs.	Kolliat Mylliem Umlong
Acting Syiem of Hima Mylliem	Vs.	Bidington Kharir
Shri. K. Langstieh	Vs.	Shri. Fornick Kharubon & Anr.
Shri. K. Langstieh	Vs.	Shri. Bidington Kharir & Anr.
Shri. K. Langstieh	Vs.	Shri. Hadren S. Sohlang & Anr.
Shri. K. Langstieh	Vs.	Shri. Muniswell Kurkalang & Anr.
M. Pathawlariew & Anr.	Vs.	Chester Kharkongor & Anr.
R.F. Kharbuki	Vs.	Kolliat Mylliem Umlong & Anr.
J. Lyngdoh Nongbsap	Vs.	Kedre Singh Kharpan & Anr.
L. Rumnong Sohsla & Anr.	Vs.	Franco Syndor & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

In CRP No. 12 of 2020 with
CRP No. 13 of 2020
CRP No. 14 of 2020
CRP No. 15 of 2020
CRP No. 16 of 2020
CRP No. 17 of 2020
CRP No. 18 of 2020
CRP No. 19 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. L.Khyriem, Adv.
For the Respondent(s) : Mr. B.Bhattacharjee, Adv.

In CRP No. 20 of 2020 with
CRP No. 21 of 2020
CRP No. 22 of 2020
CRP No. 23 of 2020
CRP No. 24 of 2020
CRP No. 25 of 2020
CRP No. 26 of 2020
CRP No. 27 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. Philemon Nongbri, Adv.
For the Respondent(s) : Mr. B.Bhattacharjee, Adv. for R 1.
Mr. L. Khyriem, Adv. for R 2.

सत्यमेव जयते
HIGH COURT OF MEGHALAYA

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i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

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1. Matters has been taken up via video conferencing.

2. These batch of Civil Revision Petitions involving similar facts and issues, whereby the impugned order dated 19.06.2020 being identical, the same are proposed to be disposed of by this common judgment.

3. The learned Judge, District Council Court, Shillong in Misc. Case No. 7 of 2020 arising out of Title Suit No. 7 of 2020, on a prayer for grant of

temporary injunction under Order 39 Rule (1) and (2) of the Civil Procedure Court, made by the respondent herein, had allowed the prayer and has passed an order to the effect that ad-interim injunction was granted restraining the Opp. Party (the Petitioner in CRP 12 of 2020) or any other person or persons acting through or on his behalf, from implementing the Work Order dated 23.03.2020 for levying and collection of daily tolls from Public Latrine at Basa Kwai, Iewduh, Hima Mylliem w.e.f 01.04.2020 and which became the cause of action for the said suit before the Court of the learned Judge, District Council Court. The Opp. Party/Petitioner was directed to show cause before the Court by the next date as to why the said ad-interim order should not be made absolute.

4. Similarly, in identical cases involving collection of Toll from certain specific areas within, Iewduh, Shillong for which respective Work Order have been issued to the parties concerned, on application by the plaintiff/petitioners in Title Suit No 8, 5, 9, 6, 3, 4, & 10 of 2020 with connected Miscellaneous cases being Misc. Case No. 8, 5, 9, 6, 3, 4 & 10 of 2020, the learned Judge, District Council Court, Shillong has passed identical orders whereby, ad-interim injunction was granted restraining the concerned parties to operate the related Work Order.

5. Being highly aggrieved by the said ad-interim injunction order dated 19.06.2020, the petitioners have approached this Court by way of Civil Revision Petitions registered as CRP No. 12 to 19 of 2020 respectively.

6. In effect, the lessees operating the Work Order which enabled them to collect tolls from certain designated areas within Iewduh, Shillong being restrained from collection of such tolls by virtue of the said impugned order dated 19.06.2020 has approached this Court separately by way of Civil Revision Petitions registered as CRP No. 20 to 27 of 2020 respectively.

7. Respective applications seeking leave to file the said CRP No. 20 to 27 of 2020 was also filed by the petitioners which was registered as Misc. Case No. 13, 16, 19, 22, 25, 28, 31 & 34. On consideration of the whole issue, for

ends of justice to be met, this Court deemed it fit and proper to allow the said applications and leave for preferring the said Revision Petitions was accordingly granted.

8. It may be mentioned that the petitioners above named have approached this Court under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 read with Article 227 of the Constitution of India.

9. It may also be mentioned that the learned counsels for the petitioners as well as the learned counsels for the respondents have advanced common argument in all the related petitions herein.

10. Mr. L. Khyriem, learned counsel for the petitioners in CRP No. 12 of 2020 to CRP No. 19 of 2020 has argued mainly on the ground that the learned Judge, District Council Court, Shillong has acted illegally and without jurisdiction in passing the impugned orders.

11. It is the submission of the learned counsel that the learned Judge, District Council Court has acted beyond jurisdiction, inasmuch as, the Court being an Appellate Court as per Rule 28 and 29 of the Administration of Justice Rules, 1953 had instead taken up the matters under consideration and has assumed original jurisdiction, which is not tenable. The case of ***Westarly Dkhar & Ors v. Sehekaya Lyngdoh: (2015) 4 SCC 292*** at paragraphs 8, 9 & 10 was referred to in this regard.

12. The next contention of the learned counsel for the petitioners is that the learned Judge, District Council Court has passed the impugned orders restraining the petitioners or any person(s) working through them from implementing the Work Orders dated 23.03.2020 (the same not having been annexed with the plaint), which according to the petitioners is a non-existence Work Order, when in fact no Work Orders dated 23.03.2020 was issued and as such, the finding of the learned Judge, District Council Court that a prima facie case is made out in favour of the respondents in this regard is without

any material basis.

13. The learned Judge, District Council Court, while passing the impugned order on the reference of the respondents to the Work Orders issued to them to come into effect from 01.04.2018 to 31.03.2020, the extension of the same not being sought for by the respondents, is also without any basis as the said Work Orders has already expired by the time the respondent/plaintiff had approached the Court of the Judge, District Council Court, Shillong, submits the learned counsel for the petitioners.

14. The provision of Clause 21(1) of the Khasi Hills District Council (Establishment, Management and Control of Markets) Regulations, 1979 was also referred to by the learned counsel for the petitioners to submit that the respondents has the alternative to approach the appropriate forum for redressal of their grievance, instead of approaching the Court and on existence of an alternative forum, which was not resorted to, the orders passed by the learned Judge District Council Court is without jurisdiction.

15. Yet another objection raised by the petitioners is that proper and necessary parties, including the Khasi Hills Autonomous District Council and the Lessees have not been made parties in the suit.

16. The learned counsel for the petitioners has submitted that this Court has been approached under Clause 6 of the High Court (Jurisdiction over District Councils Courts) Order 2014 read with Article 227 of the Constitution of India seeking appropriate relief. Reliance in this respect was placed on the Order dated 28.01.2020 passed by a Division Bench of this Court in the case of ***Acting Syiem of Mylliem v. Bidington Kharir: CRP No. 19/2019*** at paragraph 17 and as to the applicability of Article 227 of the Constitution of India, in the case of (**i**) ***Ouseph Mathai & Ors v. M. Abdul Khadir***: ***(2002) 1 SCC 319*** at paragraph 4, (**ii**) ***Surya Dev Rai v. Ram Chander Rai & Ors: (2003) 6 SCC 675*** at paragraphs 4, 6, 7, 28, 29, 34 & 38, (**iii**) ***Shail (Smt) v. Manoj Kumar & Ors: (2004) 4 SCC 785*** at paragraphs 3, 34 & 38. (**iv**) ***Shalini Shyam Shetty & Anr v. Rajendra Shankar Patil: (2010) 8 SCC 329*** at paragraphs 30, 37-

43, 49(e) to 49(o), (**v**) ***Sameer Suresh Gupta v. Rahul Kumar Agarwal: (2013) 9 SCC 374*** at paragraph 6, ***Westarly Dkhar & Ors v. Sehekaya Lyngdoh***: ***(2015) 4 SCC 292*** at paragraphs 8, 9, & 10.

17. It is prayed that the impugned order dated 19.06.2020 be set aside and quashed.

18. Mr. Philemon Nongbri, learned counsel for the petitioners in CRP No. 20 to 27 of 2020 has also made a common submission in respect of all these related applications, inasmuch as, the facts would mainly differ only as to the date and the nature of the Work Orders in respect of certain area of operation.

19. It is the submission of Mr. Nongbri, that vide the impugned order dated 19.06.2020 passed by the learned Judge, District Council Court, Shillong, the petitioners herein were restrained from operating as the lessees under the alleged Work Orders, despite the fact that the petitioners were not made parties in the suit proceedings.

20. Being directly affected by the said impugned order dated 19.06.2020, the petitioners has approached this Court by way of Civil Revision Petitions under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Court) Order 2014 read with Article 227 of the Constitution of India.

21. Mr. Nongbri has also submitted that as regard the petitioners in CRP No. 21 to 27 of 2020, similar Work Orders has been allotted to them under specific terms and conditions and area of operation specified in the respective Work Orders which have been duly operated upon by the respective petitioners herein, but were restrained from continued operation by the impugned order dated 19.06.2020.

22. Echoing the submission made by Mr. L. Khyriem, learned counsel for the petitioners in CRP No.12 of 2020 to CRP No. 19 of 2020, Mr. Philemon Nongbri has submitted that there is no Work Order dated 23.03.2020 (the same not being annexed with the plaint), since the petitioner in CRP No. 20 of 2020 is the beneficiary of Work Order dated 21.01.2020 and as such, the

impugned order is patently illegal and bad in law on the ground that the petitioner was not given the opportunity of being heard.

23. Again, Mr. Nongbri has submitted that a look at the Work Order dated 15.02.2018 compared to the Work Order dated 21.01.2020 would show that the same wordings and the same process was followed by the concerned authority, i.e the Acting Syiem of Mylliem, while issuing the Work Order to the respondent herein in 2018 and also while issuing the Work Order in 2020.

24. It is also the submission of Mr. Nongbri that the learned Judge, District Council Court, Shillong has passed the impugned order without considering the fact that the respondents has no legal right or locus to make any further claim or collection of tolls from the said area on the strength of the Work Order previously issued to them which has since expired on 31.03.2020.

25. Mr. Nongbri, further submits that having no effective alternative remedy, he has therefore approached this Court under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts), Order 2014 read with Article 227 of the Constitution of India.

26. In support of his case, Mr. Nongbri has cited a number of cases and has submitted that these cases deals mainly with the applicability of Article 227 of the Constitution of India and also case laws relating to the subject matter of a situation where the affected party was not made party in the proceedings:

(i) ***Jagtu v. Suraj Mal and Ors: (2010) 13 SCC 769, para 9.***

(ii) ***Kishorsinh Ratansinh Jadeja v. Maruti Corporation & Ors: (2009) 11 SCC 229, para 37.***

(iii) ***West Bengal Housing Board v. Pramila Sanfui & Ors: (2016) 1 SCC 743, para 24.***

(iv) ***Varghese v. Fast Line Builders and Development Kerela Pvt: (2013) SCC Online Ker 24317: para 8, 10, 11 & 21.***

27. Mr. Nongbri has also submitted that along with the revision petition, an application seeking leave of this Court to prefer these set of revision petitions

was also filed by the petitioners and as such, in the light of the argument advanced, it is prayed that necessary orders may be pass in the said Misc. Case.

28. Per contra, Mr. B. Bhattarcharjee, learned counsel for all the respondents herein have strongly opposed the submission and contention of the learned counsels for the respective petitioners and has, at the outset submitted that the present revision applications filed under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 read with Article 227 of the Constitution of India are not maintainable.

29. Mr. Bhattarchajee has submitted that the impugned order is an ex parte ad-interim order passed in exercise of power under Order 39 Rule1 and 2 of the Civil Procedure Code (CPC) and as such, the same is appealable under Order 43 Rule 1(r) of the CPC and therefore, there is a clear cut bar against the maintainability of these revision applications as per Section 115 CPC.

30. As to the provision of Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014, it is submitted that the same must be exercised in conformity with the revisional power under Section 115 CPC and the High Court while exercising the same cannot go into facts like an appellate court. This proposition of law has been laid down in the case of ***Ka Drosila Dkhar v. Village Committee of Demthring & Ors: CRP No. 12(SH) of 2005***, paragraphs 6 to 10 which decision was upheld by this High Court in ***CRP No. 19 of 2019, Acting Syiem of Mylliem v. Bidington Kharir***, paragraphs 13 and 18.

31. Another limb of argument advanced by the learned counsel for the respondents is that under the provisions of the Khasi Hills Autonomous District (Administration of Justice) Rules, 1953, the Court of the Judge District Council Court is vested with both original and appellate jurisdiction. While Rule 28 confers appellate power on the District Council Court, Rule 29 clarifies that the District Council Court to be a Court of appeal subject to the provisions contained in Rule 30 and 32. Rule 30 being an enabling provision

for the Court of the Judge, District Council Court to try a civil suit by itself.

32. Rule 47 of the 1953 Rules was also referred to by the learned counsel for the respondents who submits that the procedure in the District Council Courts as far as civil matters are concerned, are guided by the spirit of the Code of Civil Procedure and as such, it was incumbent upon the petitioners to raise the issue of jurisdiction before the Trial Court below since Section 21 CPC provides for raising the plea of jurisdiction at the first instance and no appellate or revisional Court shall entertain such plea, unless it was taken up before the Trial Court. This course of action was not taken by the petitioners, but instead they have directly approached this High Court invoking its revisional jurisdiction where none exists.

33. It is also the contention of the learned counsel for the respondents that the petitioners have failed to file the written statement and show cause and have also not sought discharge/setting aside of the ex parte ad interim injunction by taking recourse to the provision of Rule 4 of Order 39 CPC and as such, by approaching this High Court by way of revision, the petitioners have abused the process of law and their petitions are accordingly liable to be dismissed.

34. Again, on the contention of the petitioners that no specific Work Order was enclosed with the plaint and that copies of the Work Order issued in favour of the petitioners was enclosed with the revision petition before this Court, the learned counsel for the respondents has submitted that the petitioners have not resorted to the provision of Order 7 Rule 11 CPC to seek rejection of the plaint and as such, this contention cannot be entertained by the High Court exercising its revisional powers within the parameters of Section 115 CPC as the documents annexed by the petitioners herein, in this set of revision petitions, which were not part of the records before the Lower Court, cannot be taken into account by the High Court, while deciding a revision petition. The authority referred to by the learned counsel for the respondents in this regard is the case of ***Acting Syiem of Hima Mylliem v. Bidington***

Kharir in CRP No. 19 of 2019 (supra) at paragraphs 16 and 17 of the same.

35. Yet another limb of argument advanced by the learned counsel for the respondents is that the contention of the petitioners that the term of lease in favour of the respondents/plaintiffs has expired since 31.03.2020 and as such, the learned Judge, District Council Court have passed the ad-interim injunction order on a non-existence Work Order cannot be accepted since the impugned order was passed mainly on the provision of Section 11 of the Khasi Hills District (Establishment, Management and Control of Markets) Regulation, 1979, which contemplates that market/toll collection shall be settled by public auction.

36. On the petitioners invoking the provisions of Article 227 of the Constitution of India along with Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014, the learned counsel for the respondents has submitted that this was done with the intention to overcome the legal hurdle put up by the ambit of scope of revisional jurisdiction, since the provision of Article 227 of the Constitution of India cannot be resorted to while there remains alternative remedy prescribed by the law in force. There cannot be a dispute with regard to the fact that the scope and jurisdiction of Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 is akin to the scope and ambit of Section 115 CPC and the same cannot be enlarged by conjoining the constitutional provision of Article 227. In this regard, reliance was placed in the case of:

(i) ***Shalini Shyam Shetty & Anr v. Rajendra Shankar Patel: (2010) 8 SCC 329, paragraphs 49 (c) (h), 64, 65, 66 & 67.***

(ii) ***Bandaru Satyanarayana v. Imandi Anasuya & Ors: (2011) 12 SCC 650, paragraphs 8 & 9.***

(iii) ***Radhey Shyam & Anr. v. Chhabi Nath & Ors: (2015) 5 SCC 423, paragraphs 26 (66).***

(iv) ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors v. Tuticorin Education Society & Ors: 2019 SCC Online SC 1292, paragraphs 13 & 14.***

(v) Dilip Kumar Singhania v. Basant Kumar Singhania: CRP No. 26 of 2017, paragraphs 17 & 18.

37. Yet again on the contention of the petitioners in CRP No. 20 to 27 of 2020 that since they are not parties to the suit and as the impugned order was passed by a Court which itself is an appellate authority, the petitioners have no other option, but to approach this Hon'ble High Court by way of this revision petition, the learned counsel for the respondents has submitted that the District Council Court by virtue of Rule 30 of the Khasi Hills Autonomous District (Administration of Justice) Rule 1953, has the authority to try a suit in addition to its appellate power. It is also further submitted that the petitioners can take recourse to the provisions of Order 1 Rule 10 (2) CPC if so aggrieved.

38. To the contention of the petitioners as regard the applicability of Section 21 of the Khasi Hills District (Establishment, Management and Control of Markets) Regulation, 1979, the learned counsel for the respondents has submitted that the said provision does not create a bar against filing a civil suit questioning the settlement of lease in these cases.

39. Finally, the learned counsel for the respondents has submitted that the filing of these revision petitions by the petitioners are nothing but an abuse of the process of law and as such, the same are liable to be dismissed and the impugned order dated 19.06.2020 passed by the learned Judge, District Council Court, Shillong be restored by vacating the stay and remanding the related matters to the learned Trial Court for further adjudication.

40. In reply, Mr. L. Khyriem, learned counsel has submitted that the CPC being applicable only in spirit, filing of an appeal under Order 43 Rule 1(r) does not arise. Again in the case of ***Westarly Dkhar & Ors (supra)*** was referred to in this regard, wherein the Hon'ble Supreme Court has reiterated that in proceedings before the District Council Courts, under the Sixth Schedule of the Constitution India, the spirit of the CPC and not the letter will apply.

41. It is also submitted that Section 15 CPC provides that every suit shall be instituted in the Court of the lowest grade competent to try it. This read with the provision of Rule 18 of the Khasi Hills Autonomous District (Administration of Justice) Rule 1953 which vests upon the subordinate District Council Court to try civil suits and criminal cases would show that the Court of the first instance is the Subordinate District Council Court and not the Court of the Judge, District Council Court.

42. Mr. Nongbri in his reply has submitted that the petitioners could not have approached this High Court by way of an appeal since Clause 3 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014, which provides for an appeal from the decision of a District Council Court in a civil suit is applicable only against a final order and where the valuation of the suit is one lakh or more, whereas, in this case, the value of the suit is ₹5000 and the impugned order was passed in a Miscellaneous Case and it is not a final order, therefore, the petitioners are left with no alternative, but to come before this Court under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014.

43. On consideration of the submissions made by the learned counsels for the parties, what can be discerned from these proceedings is that the main issue to be decided is with regard to the maintainability of the revision petitions herein, which in effect will decide the fate of the impugned order dated 19.06.2020 as to its sustainability.

44. The first point for determination is whether the petitioners can maintain an application under Clause 6 of the Meghalaya High Court (Jurisdiction over District Council Courts) Order 2014 which reads as follows:

> ***"6.*** *The High Court may on application or otherwise call for the proceedings of any civil or criminal case decided by or pending in any court in the autonomous district constituted under the provision of sub-paragraph (1) and (2) of paragraph 4 of the Sixth Scheduled to the Constitution (hereinafter called the court of the District Council) and pass such orders as it may deem fit."*

45. The scope and extent of the provision of Clause 6 of the Meghalaya High Court (Jurisdiction over District Council Courts) Order 2014 which is pari materia to Clause 6 of the Assam High Court (Jurisdiction over District Council Courts) Order 1954 has been expounded in a number of decisions.

46. In the case of ***Ka Idis Mary Kharkongor v. Ka Theirit Lyngdoh: ALR Assam and Nagaland, 92***, the Gauhati High Court while considering the scope and ambit of Rule 36 of the Civil Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, Rule, read conjointly with Clause 6 of the Assam High Court (Jurisdiction over District Council Courts) Order 1954 has held that the High Court while exercising revisional powers will be entitled to go into facts like an appellate Court.

47. On the other hand, when this same issue came up for consideration before the Hon'ble Supreme Court in the case of ***Shyam Sunder Agarwal & Co. v. Union of India: (1996) 2 SCC 132***, it was held that the revision application under Rule 36-A (Administration of Justice and Police in the Khasi and Jaintia Hills, 1937) is to be considered in conformity with Section 115 of the Code of Civil Procedure.

48. In the case of ***Ka Drosila Dkhar v. Village Committee, Demthring, Jowai Dolloiship & Ors***, vide Order dated 02.06.2008 in CRP No 12 of 2008, a Single Bench of the Gauhati High Court: Shillong Bench (as this Court then was), at paragraph 10 of the same, has observed as follows:

> ***"10.*** *Thus, on the same parity of reasoning, I hold that both the provisions of the Administration of Justice and Police in Khasi and Jaintia Hills, 1937 and the Assam High Court Order are in* ***pari materia****. Consequently, the construction placed by the Full Bench of this Court in* ***Ka Idis Mary Kharkongor*** *(supra) on the scope of the power of revision under Rule 36-A of the Administration of Justice and Police will be applicable to the Clause 6 of the Assam High Court Order. However, as noticed earlier, the decision of the Apex Court in* ***Syam Sunder Agarwal & Co.*** *(supra) is apparently in conflict with the decision of the Full Bench in this Court in* ***Ka Idis Mary Kharkongor*** *(supra). What then will be the position of law in the light of this seemingly conflicting decisions? As noted earlier, the Apex Court in* ***Shyam Sunder Agarwal case*** *(supra) has held that revisional power*

under Rule 36-A of the Assam High Court Order must be in exercise in conformity with the revisional power under Section 115 of the Code. The aforesaid observations of the Apex Court are rendered in the context of the provisions of a statute which are in pari materia with Clause 6 of the Assam High Court Order, and are certainly binding upon this Court. Secondly, in ***Kusum Ingots & Alloys Ltd. v. Union of India*** *(2004) 6 SCC 254, the Apex Court held that although in view of Section 141 CPC the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) CPC and Article 226(2) of the Constitution, being in* ***pari materia****, the decision of the Supreme Court rendered on the interpretation of Section 20 (c) CPC shall apply to the writ proceedings also. Therefore, on the authority of* ***Kusum Ingots & Alloy Ltd****., I have no hesitation in holding that the interpretation placed by the Apex Court in Shyam Sunder Agarwal & Co. On Rule 36-A of the Rules for Administration of Justice and Police in Khasi and Jaintia Hills will apply to Clause 6 of the Assam High Court Order. Consequently, it must be taken to be the law that the revisional power under Clause 6 of the Assam High Court Order must be exercised in conformity with the revisional power under Section 115 of the Code and that the High Court while exercising revisional powers under Clause 6 cannot go into the facts like an appellate Court".*

49. This Court in the case of ***Acting Syiem of Hima Mylliem v. Bidington Kharir*** in CRP No. 19 of 2019 (supra) while considering a Reference on the scope and ambit of the provision of Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 which is pari materia with Clause 6 of the Assam High Court (Jurisdiction over District Council Courts) Order 1954, has come to the conclusion that the ratio of the case of ***Ka Drosila Dkhar (supra)*** is the correct proposition of law and at paragraph 18 of the same has held as under:

> ***"18.*** *In view of the above discussions and in the light of the ratio of* ***Shyam Sunder Agarwal*** *(supra), we are inclined to hold that the learned Single Judge of this Court has correctly decided the case in* ***Ka Drosila Dkhar*** *(supra). Reference is accordingly answered. The matter may now be placed before the Single Bench for appropriate orders".*

50. Again, in the context of these proceedings, it would be relevant to reproduce paragraph 17 of the ***Acting Syiem of Hima Mylliem v. Bidington***

Kharir case, where a distinction has been made between revisional and appellate jurisdiction as follows:

> "***17.*** *Clause 6 of the Meghalaya High Court Order, provides for remedy of revision only but it does confer on the High Court power of both appellate court and revisional court. It is trite that power of the High Court while dealing with an appeal as well as revision petition emanates from two different clauses and they operate in different spheres. Conceptually revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both appellate jurisdiction and revisional jurisdiction are the creatures of statutes. An appeal is continuation of suit or original proceedings. Therefore, the power of the appellate court is coextensive with that of the trial court, but it is not so in the case of Revision Petition. Appellate jurisdiction involves rehearing on facts and law but revisional jurisdiction, except to the extent of additional powers conferred by the statute, is confined to merely correcting jurisdictional errors and therefore cannot be equated with that of a full-fledged appeal. However, the appellate court has the jurisdiction to re-appreciate the entire evidence to arrive at different finding than the one recorded by the court below on the same evidence. Revisional jurisdiction can be invoked by the Court suo motu if so permitted or at the instant of the aggrieved parties. The very expression "revisional" conveys the idea of much narrower jurisdiction than the "appeal" which is a larger jurisdiction. It is for this reason that the use of two expressions differ in their content and meaning. Clearly, revisional power is subject to restrictions and limitations attached thereto. Unless relevant statute specifically confers on the revisional authority the power to re-appreciate the evidence, it cannot do so as its powers is merely confined to correcting jurisdictional errors and examining legality, regularity and propriety, of the order impugned".*

51. Having established the fact that powers under Clause 6 of the Meghalaya High Court (Jurisdiction over District Council Courts) Order 2014 has to be exercised in conformity with Section 115 of the Code of Civil Procedure, let us now have a look at what Section 115 says:

> ***"115.*** *Revision. – [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-*
>
> *(a) to have exercised a jurisdiction not vested in it by law, or*
>
> *(b) to have failed to exercise a jurisdiction so vested, or*
>
> *(c) to acted in the exercise of its jurisdiction illegally or*

with material irregularity,
the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]"

52. Under the facts and circumstances of the matter under consideration herein, the impugned order would appear to be one which is passed in a proceeding where the order so passed would not have disposed of the suit and as such, the High Court is prevented to assume jurisdiction having been specifically barred by the proviso to sub-section 1 of section 115 of the CPC.

53. This being the case, the petitioners herein are restrained from approaching this Court with an application under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014.

54. Secondly, the next question is whether the petitioners are able to approach this Court under Article 227 of the Constitution of India. This article states as under:

"227. Power of superintendence over all courts by the High Court. *- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]*

(2) Without prejudice to the generality of the foregoing provisions, the High Court may –

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces".

55. Again, the scope and ambit of Article 227 of the Constitution of India which has conferred inter alia, the power of Superintendence on the High Court over the subordinate courts to keep them within the bounds of their authority, has been the subject matter of a number of decisions of the Hon'ble Supreme Court. The application of this power of Superintendence has been highlighted in a number of judgments of the Apex Court.

56. In the case of ***Ouseph Mathai & Ors (supra)*** cited by Mr. L. Khyriem at paragraph 4, the Apex Court has held that the power under this Article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits. Again, at paragraph 5 of the above case, the case of ***Waryam Singh v. Amarnath: AIR 1954 SC 215*** was cited wherein, it was held that the power of Superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

57. At paragraph 22 of the case of ***Surya Dev Rai (supra)***, the Hon'ble Supreme Court has explained the extent of the application of Article 227 of the Constitution of India when it was held that:

"22. *Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be*

exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional letters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar".

58. Elaborating on the principles associated with the exercise of the High Court's jurisdiction under Article 227, the Apex Court in the case of ***Shalini Shyam Shetty & Anr (supra)*** at paragraph 49 has penned down as follows:

> ***"49.*** *On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*
>
> *(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.*
>
> *(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*
>
> *(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.*
>
> *(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and the principles in Waryam Singh have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*
>
> *(e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".*
>
> *(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and*

by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual

grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality".

59. As has been observed above, the petitioners herein are precluded from approaching this court under Clause 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014 on the basis that the revisional powers under clause 6 must be exercised in conformity with the revisional power under Section 115 of the Code. However, the Apex Court speaking of the power of the High Court under 227 of the Constitution in the case of ***Surya Dev Rai (supra)*** at paragraph 34 has held as under:

> ***"34.*** *We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away – and could not have taken away – the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammeled by the amendment in Section 115 CPC, and is available to be exercised subject to rules of self – discipline and practice which are well settled".*

60. The learned counsel for the respondents has cited a number of judgments to content that the power of the High Court to exercise jurisdiction under Article 227 of the Constitution of India is limited to some extent and has to be sparingly exercised.

61. In the case of ***Shalini Shyam Shetty & Anr (supra)*** at paragraphs 49(c)(h), 64, 65, 66 & 67 (reproduced above) the Apex Court has basically held that High Courts cannot act as a court of appeal over the orders of the courts or tribunal subordinate to it. If there is an alternate statutory mode of redressal, that would also operate as a restrain on the exercise of this power. The High Courts are also cautioned not to entertained petitions under Article 227 by terming them as writ petitions. This same proposition was also propounded in the case of ***Bandaru Satyanarayan (supra)*** at paragraphs 8 & 9 of the same. Again, in the case of ***Radhey Shyam (supra)*** at paragraphs 26

(66), the same principle as above was restated.

62. This Court in the case of ***Dilip Kumar Singhania (supra),*** while dealing with the issue of exercise of jurisdiction under Article 227 by the High Court vis-a vis an alternative remedy before civil courts being available, has relied on the authority of the ratio in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors (supra)*** at paragraphs 13 & 14 of the same which essentially prohibits the exercise of power under Article 227 when an specific remedy of appeal is provided under the Code of Civil Procedure.

63. In the light of the above, having understood the scope, ambit and parameters under which the High Court can exercise jurisdiction under Article 227 of the Constitution of India, it would also be equally prudent to examine as to the circumstances under which this said jurisdiction can be employed. At paragraph 38(4) of the ***Surya Dev Rai case***, the Apex Court has held as follows:

> ***"38(4)*** *Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction".*

64. Even otherwise, if the situation demands, this Court will not hesitate to exercise the power and jurisdiction under Article 227 suo motu.

65. Now, coming to the contention of Mr. Philemon Nongbri learned counsel for the other set of petitioners, it is seen that his objection against the impugned order is mainly on the ground that the same was issued, materially affecting the petitioners herein represented by him inasmuch as they were restrained to operate under the respective Work Orders without giving them any notice and without making them parties to the suit, and as such, the impugned order is liable to be set aside only on this ground alone.

66. In the case of ***Jagtu v. Suraj Mal and Ors. (supra)***, at paragraph 9, the Hon'ble Supreme Court has held as follows:

> ***"9. In*** *view of the above, we are of the considered opinion that as the respondent-plaintiffs sought declaration of certain rights on the suit land belonging to the State of Haryana, the State of Haryana was a necessary party. There is a complete fallacy in the finding recorded by the first appellate court that the respondent-plaintiffs had not sought any relief against the State. The first appellate court failed to appreciate that declaration in respect of certain rights over the land belonging to the State was the relief sought in the suit. Thus, in the absence of the owner of the land, no such declaration could be granted. Therefore, the State of Haryana was a necessary party. The suit, therefore could not proceed for want of necessary party."*

67. Again, in the case of ***Kishorsinh Ratansinh Jadeja v. Maruti Corporation & Ors.(supra)***, the Hon'ble Supreme Court at paragraph 37 has held thus:

> ***"37.*** *In our view, while passing the interim order dated 7-5-2008, the High Court ought to have considered the effect which its order would have on the 280 transferees to whom some portion of the land had already been sold and who had commenced construction thereupon, particularly when they were not even parties in the appeal, nor were they heard before they were injuncted from continuing with the construction work. Such an order affecting third-party rights in their absence, as they were not parties to the proceedings, cannot be sustained having further regard to the manner in which the said order was passed…"*

68. Another judgment cited by Mr. Nongbri is the case of ***Varghese v. Fast Line Builders and Developers Kerela Pvt. (supra)"*** wherein, the Kerela High Court while considering a matter before it, at paragraph 10 of the same has held as follows:

> ***"10.*** *May be that the petitioner could have challenged the order of injunction by way of appeal seeking leave of the appellate court. In Manoj Kumar v. Guruvayoor Deveswom (2011 (2) KLT 1022) this Court has held that the order of injunction is per se illegal, it can be challenged in a proceeding under Article 227 of the Constitution of India by any affected person who was not made a party to the suit, without recourse to the remedy by way of appeal. I am inclined to think that petitioner is entitled to challenge Ext P3, order under Article 227 of the Constitution of India."*

69. In the light of the above, at this juncture, it would enlightening to examine the materials on record, particularly the lower court's records to ascertain relevant facts.

70. In the case of Title Suit No 7 of 2020 along with Misc. Case No 7 of 2020,what can be seen is that the respondent/plaintiff/petitioner has approached the Court of the learned Judge, District Council Court, Shillong inter alia, for declaration that the fresh Work Order dated 23rd March 2020 to take effect from 1st April 2020 issued by the Defendant(the petitioner herein) is in direct contravention of the provisions of Section 11(1) of the " Khasi Hills District(Establishment, Management and Control of Markets) Regulation, 1979". What follows is that an application under Order 39 Rule 1 & 2 read with Section 151 CPC was preferred seeking ad-interim injunction to restrain the opposite party/defendant/ petitioner herein from operation of the said Work Order dated 23.03.2020.

71. What is again observed is that the copy of the said Work Order dated 23.03.2020 was not enclosed with the plaint, rather a copy of a similar Work Order dated 15.02.2018 empowering the respondent to collect Toll with effect from 1st April 2018 to 31st March 2020 was annexed with the plaint. The respondent/plaintiff/petitioner has approached the Court only in the month of June 2020 when the alleged Work Order dated 23.03.2020 was already in force since 1st April 2020. The question of a prima facie case and balance of convenience as well as irreparable loss loses its relevance in this regard as delay and latches can be attributed to the respondents/plaintiffs/petitioners in approaching the court.

72. The respondent/plaintiff/petitioner has referred to the provision of Section 11(1) of "The Khasi Hills District (Establishment, Management and Control of Markets) Regulation, 1979" which is as follows:

> ***"11(1)*** *The right to collect taxes and market tolls shall, as far as practicable, be settled by public auction in the presence of an officer appointed by the Executive Committee. Intimation of the date of auction shall be sent by the management of the market*

concerned to the Executive Committee at least 15 days ahead of the fixed for the auction…"

However, the said provision read conjointly with Section 21(1) of the same Regulation which reads as,

> ***"21(1)** Petition of grievance against any order passed by the management or by an officer of the District Council duly authorised by the Executive Committee in this behalf under the Regulation or the Rules made thereunder or under the Executive Committee order, shall lie to the Executive Member in-charge, markets, whose decision shall be final…"*

would show that the proper forum of agitation is the Executive Committee and not the Court.

73. Another aspect of the matter to be considered is the contention of the learned Counsel for the respondents who has submitted that the petitioners could have invoke the relevant provisions of the Civil Procedure Code to file an appeal against the impugned order, to which the learned Counsel for the petitioners has countered that the spirit of the CPC being applicable, strict and technical application of the provisions of the CPC is not required.

74. The provision of Rule 47 under the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, reads as follows:

> ***"47. Procedure in civil cases –** In civil cases, the procedure of the District Council Court, [the Additional District Council Court] the Subordinate District Council Court [and the Additional Subordinate District Council Courts] shall be guided by the spirit but not bound by the letter of the [Code of Civil Procedure, 1908 as amended up to date] in all matters not covered by recognized customary laws or usages of the District.**"***

which is self-explanatory and is equally applicable to the case in hand.

75. On an overall consideration of this matter, this Court is inclined to accept the proposition put forth by Mr. Nongbri that the impugned order has been passed materially affecting the petitioners in CRP 20 to 27 2020 herein by not arraying them as petitioners in the respective suit and having been

injuncted without any opportunity of being heard, the impugned order is thus passed without jurisdiction.

76. On this ground alone, it would be evident that the impugned order cannot be sustained and is liable to be set aside and quashed.

77. Even otherwise, in view of the observations made herein above, this Court while exercising jurisdiction under Article 227 of the Constitution of India holds that the impugned orders were passed without jurisdiction and is therefore not tenable, the same is hereby set aside and quashed.

78. If so advised, the respondents may implead the proper and necessary parties for proper adjudication of the suit.

79. With the above, these batch of Civil Revision Petitions under consideration are hereby allowed and stands disposed of by this common judgment.

80. Interim order already passed in these proceedings is hereby made absolute.

81. No cost.

82. Registry is directed to send back the Lower Court case records to the concerned Court.

Judge

Meghalaya
29.10.2020
"D. Nary, PS"