

GAHC020004012024

2025:GAU-NL:368



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

Case No. : C. REVN/12/2024

TSUKRU CLAN
REPRESENTED BY SHRI ZAVIKHOL TSUKRU,
R/O PORTERLANE COLONY, KOHIMA, NAGALAND, H.NO.-216, PIN-
797001

VERSUS

THE CHAIRMAN AND 2 ORS
VISWEMA VILLAGE COUNCIL
KOHIM NAGALAND-797005
P.O.-JAKHAMA

2:THE CHAIRMAN
ZHERI KHEL PANCHAYAT
VISWEMA VILLAGE
KOHIMA NAGALAND
PIN-797005
P.O. JAKHAMA

3:TENOSWELE CLAN
R.KHEL
VISWEMA VILLAGE
KOHIMA NAGALAND
PIN-797005
P.O. JAKHAM

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, O TEMJEN JAMIR,JAWAMONG
YADEN,IMTILA PONGEN,JIWALO APON,NUNGSANG AIER,TOSHI JAMIR,ASA
RUTSA,ALIBA OZUKUM,I IMCHEN

Advocate for the Respondent : GOVT ADV NL,

BEFORE:
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner	: Mr. C.T. Jamir Mr. I. Imchen
For the Respondents	: Mr. B. Soto (R-1), Mr. A. Zho (R-2), Mr. W. Marhu (R-3)
Date of Hearing	: 04.08.2025
Date of Judgment	: 08.08.2025

JUDGMENT & ORDER(CAV)

The present application under Article 227 of the Constitution of India has been filed by the petitioner, the Tsükrü clan praying for quashing and setting aside of the impugned Orders dated 27.04.2022, 01.07.2022 and 03.07.2024 passed by the Deputy Commissioner, Kohima, Nagaland.

2. It is the case of the petitioner that the petitioner clan had inherited the disputed land as ancestral property from their forefathers measuring about 1,63,890 mtr.sq, approximately and the petitioner clan has been in occupation till date. Ownership of this disputed plot of land is being challenged by the Zheri Khel/Respondent (R-2). After a chequered history of litigation before the Zheri Khel Panchayat and the Sub Divisional Officer (Civil) Jakhama, the R-2 approached the Deputy Commissioner, Kohima by way of filing an appeal against an *ex-parte* judgment and order dated 12.03.2021 passed by the Sub-Divisional Officer (Civil), Jakhama, Kohima in Case No. JUD-4/90-2013 between the petitioner clan and the Tenoswele clan/R-3 of Viswema village. The Deputy Commissioner vide impugned Order dated 27.04.2022 disposed of the Appeal filed by the R-2 by

remanding the matter to the Viswema Village Council to try the case as per the procedure laid down in the Nagaland Village Council Act, 1978 and the Rules for Administration of Justice and Police in Nagaland, 1937 (hereinafter referred to as the Rules of 1937).

3. Thereafter, the R-2 again filed a revision petition before the Deputy Commissioner praying for setting aside of the Order dated 12.03.2021 passed by the Sub-Divisional Officer (Civil), Jakhama in case No. JUD-4/90-2023. Thereafter, by impugned Order dated 01.07.2022, the Deputy Commissioner, Kohima set aside the Order dated 12.03.2021 passed by the Sub-Divisional Officer (Civil), Jakhama.

4. Subsequently, the Village Council, Viswema held a meeting on 12.07.2022 and obtained the consent of the parties as to whether they agree to settle the case under the jurisdiction of the Village Council. All the three parties, *i.e.*, Tsükrü clan/petitioner, Tenoswele clan/R-3 and Zheri Khel/R-2 agreed to the settlement of the matter by the Village Council and thereafter, the Village Council heard the matter and delivered the Judgment dated 15.09.2022.

5. Being aggrieved by the Judgment of the Village Council, Viswema dated 15.09.2022, the petitioner submitted an appeal to the Deputy Commissioner, Kohima against the Judgment dated 15.09.2022. The Deputy Commissioner, Kohima, upon hearing the parties disposed of the Appeal under Rule 31 of the Rules of 1937 and by the impugned Judgment dated 03.07.2024, the Deputy Commissioner upheld the Judgment dated 15.09.2022 passed by the Viswema Village Council. Being

aggrieved, the petitioner is before this Court praying for exercise of the revisional jurisdiction of this Court under Article 227 of the Constitution of India to quash and set aside the Orders dated 27.04.2022, 01.07.2022 and 03.07.2024 passed by the Deputy Commissioner, Kohima, Nagaland.

6. I have heard learned senior counsel, Mr. C.T. Jamir assisted by learned counsel, Mr. I. Imchen for the petitioner, Mr. B. Soto, learned counsel for respondent no. 1 (R-1), Mr. A. Zho, learned counsel for respondent no. 2 (R-2) and Mr. W. Marhu, learned counsel for respondent no. 3 (R-3).

7. Learned senior counsel, Mr. C.T. Jamir has submitted that the impugned Order dated 27.04.2022 passed by the Deputy Commissioner Kohima is an *ex-parte* order as the petitioner was never given any notice or intimation about the pendency of the appeal petition filed by R-2. He has submitted that the impugned Order 01.07.2022 passed by the Deputy Commissioner Kohima is also an *ex-parte* order by which the right of the petitioner has been affected in as much the judgment of the Sub-Divisional Officer (Civil), Jakhama dated 12.03.2021, in case No. JUD-4/90-2023 which was set aside by the impugned Order dated 01.07.2022 was in his favour. However, without hearing the petitioner, the learned Court of the Deputy Commissioner has set aside the Order dated 12.03.2021 passed by the Sub-Divisional Officer (Civil) Jakhama.

8. Learned senior counsel, therefore, submits that the Order dated 27.04.2022 as well as the Order dated 01.07.2022 are perverse and illegal in as much as the petitioner was not given an opportunity of being heard

before passing such order. He has, therefore, submitted that the judgment of the Viswema Village Council dated 15.09.2022 being consequent to the *ex-parte* order dated 27.04.2022 passed by the Deputy Commissioner, Kohima is also perverse and illegal.

9. Learned senior counsel for the petitioner submits that the Viswema Village Council judgment dated 15.09.2022 has been passed based on irrelevant considerations and cannot stand the test of law. The petitioner in this revision petition has also taken the ground that the Deputy Commissioner, by passing the Orders dated 27.04.2022 and 01.07.2022 without giving opportunity of hearing to the petitioner has acted in violation of established principles of law. As such any consequential action followed in compliance of the order dated 27.04.2022 and 01.07.2022 is illegal and is liable to be interfered with.

10. Another ground that the petitioner has taken is that the impugned Order dated 03.07.2024 was passed without taking into consideration any of the substantial evidence produced by the petitioner during the proceedings. A judgment copy of Forest Case No. 1 dated 17.04.1978 along with a map was produced by the petitioner and also Memorandum of Understanding executed between the petitioner and the Department of Tourism, Government of Nagaland on 27.02.2014 was produced by the petitioner but the same were not considered by the Deputy Commissioner and, therefore, the impugned Order is liable to be set aside. Learned senior counsel also submits that the findings of the Deputy Commissioner in the impugned Order dated 03.07.2024 was based on the purported judgment passed by J.P. Mills in Forest Case No. 10 on 14.03.1925. But

the said judgment of J.P Mills was never produced during the hearing by the R-2 & R-3 and in fact, the existence of the very document is questionable. However, this judgment was the basis on which the impugned Order was passed. Therefore, the said judgment of 1925 has no evidentiary value to decide the case between the parties and as such the impugned order is liable to be interfered with.

11. Learned senior counsel also submits that the entire matter was heard by the Sub-Divisional Officer (Civil), Jakhama but when the Order was passed, the impugned Order dated 03.07.2024 was passed by the Deputy Commissioner, Kohima who did not hear the matter and, therefore, the impugned order is liable to be set aside.

12. Learned senior counsel therefore prays that the impugned Orders dated 27.04.2022, 01.07.2022 and 03.07.2024 passed by the learned Deputy Commissioner may be quashed and set aside and opportunity may be granted to any aggrieved party to approach the appropriate civil court for redressal of their grievances.

13. Learned counsel for R-2, Mr. A. Zho has submitted that the R-2 is a Khel in the Viswema Village under which there are nine clans and the petitioner clan is also one of them. Learned counsel submits that initially the land dispute was between the petitioner clan and one Kennao Clan. In respect of this dispute the Zheri Khel Panchayat of Viswema Village has passed an order dated 27.02.2019 directing that the disputed land belongs to the Zheri Khel and not to any particular clan and that the disputed land is the property of the Zheri khel. Learned counsel submits that this order

of 27.02.2019 still holds the field and is not assailed by the petitioner before any forum.

14. The learned counsel for the R-2 submits that a fresh complaint was lodged by the petitioner clan before the Sub-Divisional Officer (Civil), Jakhama, wherein the petitioner prayed for a settlement of land dispute between the petitioner clan and Tenoswele clan of Viswema Village. Learned counsel submits that this complaint to the Sub-Divisional Officer (Civil), Jakhama dated 12.10.2020 was a fresh suit in as much as the Tenoswele clan was not a party in the first dispute between the petitioner and the Kennao clan. Therefore, the same cannot be treated as an appeal against the order of the Zheri Khel Panchayat dated 27.02.2019 as the Sub-Divisional Officer (Civil), Jakhama is an appellate authority under the Rules of 1937 and has no original jurisdiction.

15. Learned counsel for R-2 further submits that by the impugned order dated 27.04.2022, the Deputy Commissioner, Kohima has not adjudicated the dispute and has not arrived at any finding regarding the dispute. The Deputy Commissioner has only remanded the matter to the Viswema Village Council and therefore the same cannot be treated as illegal or perverse. Learned counsel further submits that the impugned order dated 01.07.2022 was passed after hearing the parties.

16. Learned counsel for R-2 submits that the Viswema Village Council vide Judgment dated 15.09.2022 and the Deputy Commissioner by Judgment dated 03.07.2024 has arrived at similar findings on facts as well as in law and as such this Court cannot interfere in the same. To support

this contention, the learned counsel for R-2 has relied upon the case of ***Navaneethammal Versus Arjuna Chetty*** reported in ***(1996) 6 SCC 166*** and also on the case of ***Rinagaraj (Dead) Through LRs. And Another Versus Rajmani and Others*** reported in ***2025 INSC 478***. Learned counsel submits that in the above cited cases, the Supreme Court has held that interference with the concurrent findings of the learned courts below by the High Court must be avoided unless warranted by compelling reasons. He submits that in any case the High Court is not expected to re-appreciate the evidence just to replace the findings of the lower courts.

17. Learned counsel submits that the Village Council, Viswema as well as the Deputy Commissioner, Kohima have not committed any illegality in passing the impugned judgments and there is no perversity in the impugned judgments warranting the interference of this Court under Article 227 of the Constitution.

18. Learned counsel, Mr. W. Marhu, appearing for R-3 has also adopted the submissions of the R-2 and submits that the Zheri Khel consists of nine clans among which the petitioner clan is also one of them. Learned counsel for R-3 relying on his affidavit submits that the R-3 had gifted the disputed land to the R-2 and since then the R-2/Zheri Khel is in occupation of the disputed land.

19. R-1 is the Village Council, Viswema represented by learned counsel B.Soto. Learned Counsel prays that the R-1 may be deleted from the list of respondents as the Viswema Village Council is a 'court' under the Rules of 1937. This Court is also of the view that the R-1 is not a necessary party

in the present petition as it is a 'court' in terms of Rule 1(a) of the Rules of 1937 and accordingly, R-1 is dropped from the array of respondents in the present petition.

20. This Court has given due consideration to the rival submissions made by the opposing counsels. The Court has also perused the pleadings and the Trial Court Records. Upon going through the Trial Court Records, the Order sheet reveals that on 04.03.2024 the Deputy Commissioner had obtained written statements of all the parties and attendance of all the parties on 04.03.2024 is on record. On 04.03.2024 the matter was fixed for hearing on 08.03.2024. It is also found that the Deputy Commissioner had conducted the hearing on 08.03.2024 by examining the statements of all the parties. As per the records the judgment was reserved on 08.03.2024 and thereafter passed on 03.07.2024. Therefore, it can be said that the parties were heard by the Deputy Commissioner before passing the impugned Order dated 03.07.2024.

21. As far as the impugned Orders dated 27.04.2022 and 01.07.2022 are concerned, the Trial Court Record does not indicate anything as to whether all the parties were present before passing the impugned Orders. The question as to whether the parties, specifically the petitioner was present or not during the hearing before the Deputy Commissioner while passing the impugned orders dated 27.04.2022 and 01.07.2022 are disputed question of facts. Be that as it may in the judgment dated 15.09.2022 passed by the Viswema Village Council, it is reflected that the petitioner clan, the Tenoswele clan/R-3 and Zheri Khel/R-2 were all present before the Village Council and the parties had agreed to let the

Village Council adjudicate the dispute. The petitioner clan had also written to the Village Council vide letter dated 15th July 2022 expressing their willingness to present their case before the Village Council and had submitted their statements in written to the Village Council. Therefore, the question of whether impugned order dated 27.04.2022 is an *ex-parte* order or not is immaterial as the Order dated 27.04.2022 did not adjudicate on the dispute but merely remanded the matter to the Viswema Village Council. Even assuming that it is an *ex-parte* order the petitioners have waived their right to challenge the same by appearing before the Village Council.

22. This Court has also examined the impugned Order dated 01.07.2022. By the Order dated 01.07.2022 the learned Court below has set aside the order dated 12.03.2021 passed by the Sub-Divisional Officer (Civil) Jakhama in case No. JUD-4/90-2023. The order dated 01.07.2022 does not reveal that the petitioners were heard before passing the said order. The records are silent about presence of all parties before passing the order dated 01.07.2022.

23. A perusal of the Judgment dated 15.09.2022 passed by the Village Council Viswema indicates that the Village Council had placed reliance on a judgment of then Deputy Commissioner, J.P. Mills in case No. 10 decided on 14.03.1925. The said judgment was never produced before the Village Council by any of the parties. The Village Council also relied on a Gift Deed executed between the Tenoswele clan/R-3 and the Zheri Khel/R-2 which was not proved in accordance with law. The petitioner had also relied upon a judgment in Forest Case No. 1 decided on 17.04.1978 in the

hearing before the Village Council. However, the Village Council did not take the said judgment into consideration.

24. In the impugned judgment dated 03.07.2024 passed by the Deputy Commissioner, it is seen that the learned court below had simply upheld the judgment of the Village Council dated 15.09.2022 without considering the fact that that the Village Council had relied on a judgment passed by the then Deputy Commissioner, J.P. Mills in 1925 which was never exhibited and also relied on a Gift Deed executed between the Tenoswele clan and the Zheri Khel on 01.11.2019 which was not proved in accordance with law.

25. After examining the judgment of the Village Council, Viswema dated 15.09.2022 and the judgment of the Deputy Commissioner dated 03.07.2024, this Court has come to a conclusion that there are several disputed facts in the present case namely:

- (i) Judgment dated 17.04.1978 in Forest Case No. 1,
- (ii) Judgment dated 14.03.1925 passed by J.P. Mills in Case No. 10, and
- (iii) Gift Deed executed between the Zheri Khel and the Tenoswele Clan on 01.11.2019.

However, inspite of the existence of such disputed facts the Viswema Village Council as well as the learned Deputy Commissioner has decided the title over the disputed land without adducing the evidence in the procedure established by law, which is a miscarriage of justice.

26. In view of the observations made above, the impugned order dated 03.07.2024 is quashed and set aside. Having found discrepancies in the judgment of the Viswema Village Council dated 15.09.2022, the same is also set aside. It may be mentioned herein that the proceedings before the Village Council was directed to be taken up *de novo* by the Deputy Commissioner. Therefore, the consequence is that all other proceedings/orders passed between the parties in respect of the same dispute before any subordinate courts stands vitiated.

27. The aggrieved parties are at liberty to approach the appropriate civil court for deciding the title over the disputed land, if so advised.

28. Petition stands disposed. Send back the Trial Court Records expeditiously.

JUDGE

Comparing Assistant