(1999) 12 GAU CK 0020

In the Gauhati High Court

Case No : Civil Rule No. 619 of 1987

Ajeng Sangma APPELLANT

Vs

Shima Sangma RESPONDENT

Date of Decision : 05-12-1999

Acts Referred:

Citation : (2000) 1 GLJ 1

Hon'ble Judges : Brijesh Kumar, C.J. and P.G.Agarwal, J

Bench : Division Bench

Advocate : B.K.Das, B.C.Das, B.Banerjee, Advocates appearing for Parties

Judgement

1. By means of this civil rule the petitioners Ajeng Sangma and others have prayed for quashing of the order dated 11 .3.87 passed by the Chief Executive Member, Garo Hills District Council, Tura in GDC Rev Appeal No. 1 (Misc) of 1985 upholding the order dated 22.5.85 passed by the Executive Member, Incharge Revenue, Garo Hills District Council in G.DC P No. 2 of 1984. By means of the impugned orders, the petitioners have been prohibited from humming over the land in dispute holding it to be with the respondents.

2. We have heard Shri BC Das, learned counsel appearing for the petitioners. None, however appeared on behalf of the respondents though served.

3. It appears that Nokma of Manda Akhing and his other relatives filed a case with the allegations that Dokhi Akhing people encroached into Manda Akhing land. The Executive Member got the spot enquiry made through the Mouzadar. He found the complaint of Nokma of Manda Akhing to be correct. It further transpires that type Executive Member deputed Assistant Revenue Officer for spot enquiry who reported that claim of Rajeng Marak, Nokma of Manda Akhing and others was genuine. A counter claim of encroachment into Dokhi Akhing was filed against the people of Manda Akhing. It further transpires that the Executive Member visited the spot and made enquiries. He delivered the judgment dated 22.2.85 in favour of Manda Akhing Nokma and his relatives. The counter claim of

Dokhi Akhing people was dismissed as unjust. Dokhi Akhing people preferred an appeal under section 8 (2) of the Garo Hills Autonomous District(Social Customs and Usages) Validating Act, 1958 against the order passed by the Executive Member, Incharge Revenue, GDC, Tura. The order of the Executive Member, Incharge Revenue was challenged on several grounds including one that the reports of Mouzadar and the ARO as submitted in pursuance of the order of the Executive Member were not a satisfactory in view of the objections of the appellant. The Executive Member himself undertook the spot enquiry. The report of the Executive Member is also said to be unacceptable since the Executive Member did not enquire into the matter in the light of the objections taken by the petitionersappellants. The three reports are said to be contradictory. It was also complained that the Executive Member, Incharge Revenue, did not examine the witnesses though present and a request was also made for recording their statement. The order and the reports of different officers have been challenged on many other similar grounds. The Chief Executive Member observed that on perusal of the record, it was found that proper enquiry was conducted by the Mouzadar, Assistant Revenue Officer and Executive Member. It is further observed that all the three found that Dokhi Akhing people had actually encroached into Mandagiri Akhing land. Hence, finding no reason to alter the order passed by the Executive Member, the appeal .was dismissed,

4. Shri BC Das, learned counsel appearing for the petitioners has vehemently urged that the orders passed by the Executive Member as well as the Chief Executive Member in appeal are based on no evidence, nor the procedure as required under the law has been followed by the said authorities while disposing of the matter. It is submitted that parties should be allowed to adduce their evidence in support of their claim and proper issues should also be framed so that the'' District Council could better understand the controversy and narrow it down in the shape of issues and parties may be able to adduce their evidence in that light. In connection with the above contention, reliance has been placed upon a Division Bench decision of this Court reported in 1988 (2) GL J 324 (Smti Dore Sangma & others vs. The Chief Executive Member, Garo Hills District Council & others). The relevant paragraph, namely, paragraph 20 is quoted below :

"For all these reasons, we would ''hold that the'' Revenue Member alone has jurisdiction to decide the types of disputes at hand. But then while doing so, the Revenue Member has to follow the fundamental principles of judicial procedure; these being.(1) framing of issues which has been regarded as necessary for Courts to get the grip of the case. See Vindeo vs. Ziakfuse, (1983) 1 GLR (NOC) 34). (2) opportunity to lead evidence on the issues framed, the evidence given could be recorded in full or summary of the same could he noted; and (3) hearing of the parties themselves or through their lawyers, if engaged. This apart, some other accepted principles of sound judicial procedure like not allowing a document to be used in a case without the other side having been given opportunity to rebut the same should also be followed when the case is taken up by the Revenue Member in the first instance or by the Chief Executive Member on appeal."

From the law laid down by this Court as quoted above, it is clear that even though the provisions of the Code of Civil Procedure may not be strictly applicable to the proceedings, but such principles which are fundamental in nature must be followed so that a dispute may be properly and fairly adjudicated upon.

5. So far this case is concerned, learned counsel for the petitioners has submitted that the claim of the complainants is in regard to the right of jhuming over the immovable property in respect of which the petitioners also claimed such right and title as well. Therefore, it was all the more necessary that the proceedings should have been conducted in a more serious manner. It is indicated that in paragraph 1 of the complaint, it is asserted that Manda Akhing Clan holds right, title and possession over the disputed land which has been encroached upon by the present petitioners.

6. In the present case we find that the Executive Member recorded no

evidence whatsoever despite the request made in that regard by the petitioners. A perusal of Annexure IV to ,the petition which is the objection filed by the petitioners against the enquiry report of the Mouzadar makes it clear that a prayer was made before the Executive Member to make spot enquiry and record the statements of the parties and their witnesses, but no statement seems to have been recorded. This objection about nonrecording of the statements of the witnesses is also mentioned in the grounds of appeal preferred before the Chief Executive Member indicating that atleast two witnesses were very much present, but their statements were not recorded despite the request made. A perusal of the record shows that an application dated 28.5.84 was given by the petitioners to the Executive Member requesting that both the parties and their witnesses may be examined on that date. But we find that there is an application for adjournment moved on the same date by the other side. There is yet another application of the same date indicating presence of one of the witnesses of the petitioners and calling him to make the statement. Yet another application dated 13.6.84 is also on the record wherein it is mentioned that the complainant is present along with the Mahari people and the witnesses and prayer was made for examination of the witnesses on that date. .But all these requests, it appears, were not heeded to and there seems to be substance that no statements were recorded by the Executive Member, Incharge Revenue.

7. It is also evident that the whole dispute has been decided on the basis of the report of the Mouzadar and the Assistant Revenue Officer. The Executive Member also seems to have visited the spot on 1.12.84. This inspection also forms basis of the decision of the dispute. The petitioners filed detailed objections to the report of the Mouzadar and the Assistant Revenue Officer. A number of objections were taken indicating the reasons as to why the reports of the

aforesaid two officers would not be acceptable. It was also indicated that the reports of the two are contradictory. Yet another submission is that there was no occasion to a have two reportsone by Mouzadar and the other by Assistant Revenue Officer, if the first report was correct. There is no reason indicated as to which of the reports would be acceptable. On the other hand, only this much is observed that their reports support the case of the complainant. As observed earlier, apart from the reports of the Mouzadar and the Assistant Revenue Officer, the Executive Member has based his order on spot inspection made by him on 1.12.84. The order was passed on 22.2.85 that is to say, more than two and a half months after the enquiry and inspection on the spot by the Executive Member. But surprisingly there is no memo of inspection or report at all on the record. It is difficult to accept that he would be in a position to decide the matter on the basis of his inspection made two and a half months before deciding the case. In the order sheet only this much is indicated that he had gone for spot inspection on 1.12.84 and it is mentioned that c he found boundary ships as shown in the original map. It contains no facts, but final conclusion. The least that was required to be done by the Executive Member was to prepare some memo of inspection so as to provide some material for the purpose of arriving at a decision later on. It also appears that the Executive Member made some enquiries from certain people, but no memorandum of their examination or gist of their statements was prepared by him. It is thus a case where the whole case is based on two reports of Mouzadar and ARC and the inspection of the Executive Member made more than two and a half months before he decided the matter. There is no memorandum of his inspection, nor gist of statements of any person from whom enquiries may have been made by the Executive Member. The petitioners had filed detailed objections against the e reports of the ARO and the Mouzadar. It is also apparent that despite the request made by the parties, neither their statements, nor that of their witnesses were recorded by the Executive Member, Such a request was made by both, namely, the complainant as well as the petitioners. On one of the dates it was also indicated that the witnesses were in attendance, yet their statements do not seem to have been recorded at all. It is true that no such detailed procedure is prescribed, yet fairness in the trial and adequate opportunity to prove ones case are fundamental requirements as also held in the case of Smti Dore Sangma & others vs. The Chief Executive Member, Garo Hills District Council & others (supra).

8. In the context of what has been discussed in the preceding paragraphs, the facts which cannot be lost sight of are that the order passed by the Executive Member is an appealable order under section 8 (2) of theGaro Hills Autonomous District (Social Customs and Usages) Validating Act, 1958. It thus becomes all the more necessary that a proper record must be maintained by the trial Court for the purpose of examining the same by the appellate Court. In absence of any such record itwould not at all be possible for the appellate Court to test the merit of the order passed by the trial Court in context with the grounds taken by the

appellant. In the present case, as observed earlier, the Executive Member has heavily relied upon his own inspection made on 1.12.84 without there being any memo of inspection or report in that regard except that a mention in the order sheet that he had made the inspection and found the boundary dhips as shown in the original map. But surprisingly one finds that details have been indicated in the order passed by him without there being any record to that effect. The Executive Member also failed to examine the witnesses despite the request made by the parties to that effect. No gist of the statements of persons from whom enquiries have been made on the spot has been prepared. The result is that the remedy of appeal is rendered nugatory. A perusal of the order passed by the appellate authority also indicates the same. In a very cursory manner it has been observed that spot was inspected by the Mouzadar, the Assistant Revenue Officer and the Executive Member and that it he found; enough to reject the appeal. Strict or technical compliance of procedural matters may, of course, be not necessary, but certain procedure which is fundamental to adjudicatory process, irrespective of the forum, must be complied with. If the procedure adopted is such which militates against the principles of natural justice or shuns leading of evidence, or leaves no material on the basis of which appellate authority can verify the correctness of the finding recorded, such procedure would vitiate the decision making process as well as the decision. We are conscious of the fact that the matter is very old, yet we find that it will harm the interest of justice more if such procedure is allowed to be adopted by the authorities vested with the power of adjudicating the disputes. Much time seems to. have been taken in serving the respondents and substituting the heir and due to their nonappearance. It is difficult for us to uphold the orders passed by the Executive Member, Incharge Revenue, Tura and the order passed by the Chief Executive Member in appeal.

9. In the result the petition is allowed. The order dated 22.5.85 passed in GDC P No. 2 of 1984 by the Executive Member, i/c Revenue and the order dated 11.3.87 passed in GDC Rev Appeal No. 1 (Misc) of 1995 by the Chief Executive Member, Garo Hills District Council, Tura are set aside and the matter is remanded back to the Executive Member, i/c Revenue Garo Hills District Council, Tura to proceed afresh in accordance with law. The reports, however, obtained through the Mouzadar and the ARO may remain on the record alongwith objections.

