

(1984) 05 GAU CK 0005
In the Gauhati High Court
Case No : M.A. (F) No. 2 (K) of 1978

Aphu Chakasang

APPELLANT

Vs

Kumbha Angami and Another

RESPONDENT

Date of Decision : 09-05-1984

Acts Referred:

Administration of Justice and Police in the Khasi and Jaintia Hills Rules, 1937 — Rule 23

Citation : AIR 1985 Guw 4

Hon'ble Judges : T.S. Misra, C.J;K.N. Saikia, J

Bench : Division Bench

Advocate : A.R. Paul and Mazumdar, for the Appellant;

Final Decision : Allowed

Judgement

T.S. Misra, C.J.—This appeal ,is directed against the order dt. 22nd Mar. 1977 whereby the appellant was asked "to vacate the encroached area under Dag No. 30". "

2. The learned counsel for the appellant submitted that the order having been in fact passed by the S. D. C. (Sub-Deputy Collector) is without jurisdiction. The appellant also impugned the said order on merits on various other grounds.

3. We have carefully gone through the records of the case, and have; given our anxious consideration to the matter. Since this appeal is being decided on the question of jurisdiction, we do not intend to examine the merits of the Other contentions raised in the appeal.

4. The learned counsel for the appellant submitted that the dispute being governed by "Civil Rule" the S. D. C. had no jurisdiction, authority or power to decide it and pass the impugned order. We find force in this contention. Rule 23 contained in Part IV of the Rules for the Administration of Justice and Police in the Naga Hills District, 1937, reads as under :

"The administration of civil justice in the Naga Hills is entrusted to the Deputy

Commissioner, his Assistants, such tribal courts as may be constituted according to rules to be made by the Governor of Assam and the Mauzadars, gaonburas, chiefs, headmen of khels, and other chief village authorities",

Rule I of the said Rules points out that the administration of the district known as the Naga Hills is vested in such tribal authorities as may be constituted according to rules to be made by the Governor of Assam, the Deputy Commissioner, the Additional Deputy Commissioner and Assistants to the Deputy Commissioner, the Mauzadars, Gaonburas, Chiefs, Headmen of khels, subject to the exceptions, restrictions as laid down in the aforesaid rules. Sub-clause (2) of Rule 1 points out that the Deputy Commissioner, the Additional Deputy Commissioner and Assistants to the Deputy Commissioner shall be appointed by the Governor. The Governor or the Deputy Commissioner, subject to the control of the Governor, may define the jurisdiction within which Assistants to the Deputy Commissioner may exercise all or any of the powers with which they may respectively be invested under the Rules. The term "Deputy Commissioner" includes and "Additional Deputy Commissioner" as and when appointed, who shall exercise all powers of the Deputy Commissioner, vide Clause (3) of Rule 1. There is no provision in the said Rules empowering the Sub-Deputy Collector to exercise jurisdiction in civil matters, nor can he be authorised or empowered by the Deputy Commissioner or the Additional Deputy Commissioner to decide a civil dispute. The Deputy Commissioner or the Additional Deputy Commissioner may, however, decide a dispute over which they have jurisdiction and orders passed by them are appealable. In the case in hand respondent 1 raised a dispute with respect to land covered by Patta No. 5 at 7th mile on the Dimaapur-Kohima road by his petition of Feb. 1977, which was filed before the Additional Deputy Commissioner, Dimapur, Nagaland. The Additional Deputy Commissioner passed the following order on that petition on 4th Feb. 1977 : SDC "Register a land dispute case under revenue, and summon both the parties on 18-2-77". The records of the case maintained by the Court below indicate that the Sub-Deputy Collector then issued notices to the parties and also asked the Supervisor Kanungo Mandal to demarcate properly the boundary of the land of Dags Nos. 30 and 31 vide order dated 22-2-1977. It was also ordered that any encroachers should vacate the encroached land within 30 days from the date of demarcation. The Supervisor Kanungo thereafter went to the spot and submitted his report dated 3-3-1977 to the Sub-Deputy Collector that the present appellant had encroached the respondent's land covered by Dag No. 30. The Sub-Deputy Collector then issued a notice to the present appellant requiring him to vacate the encroached area under Dag No. 30 within 30 days from the date of the issue of the letter.

5. The scheme of the Rules for the Administration of Justice and Police in the Naga Hills District may now be noticed. The said Rules deal with criminal justice and civil justice. Part III of the Rules deals with criminal justice. Rule 15 provides that criminal justice shall be ordinarily administered by the Deputy Commissioner, Additional Deputy Commissioner, Assistant to the Deputy

Commissioner and by such tribal courts as may be constituted according to rules to be made by the Governor Mauzadars, Gaonburas, Chiefs Headmen of khels or other chief village authorities of the different communities. Part IV of the Rules deals with "Civil Rules". Rule 23, as pointed out hereinabove, provides that the administration of civil justice in the Naga Hills is entrusted to the authorities mentioned therein. These rules do not contain any specific provision with regard to "revenue justice". The administration of justice is dealt with under the headings "criminal justice" and civil justice. It is, therefore, quite manifest that whatever did not fall within the ambit of criminal justice was covered by the administration of civil justice for the purposes of administration of justice in Naga Hills District.

6. In the instant case, the respondent had raised a dispute about encroachment on his alleged land by the appellant. The case of the appellant, however, was that the land belonged to him and he was in rightful possession of it. The dispute obviously was, therefore, to be treated as a "civil dispute" and the rules pertaining to the administration of civil disputes were applicable to it. The Deputy Commissioner and his Assistant could hence entertain the dispute and decide it in accordance with law. The Deputy Commissioner, of course, includes Additional Deputy Commissioner. The Assistant to the Deputy Commissioner is a separate post. The Governor may appoint any person as Assistant to the Deputy Commissioner and if there is any Assistant to the Deputy Commissioner, then he shall also be competent to entertain the dispute pertaining to administration of civil justice and decide it. The Deputy Commissioner or for that matter the Additional Deputy Commissioner, however, has no jurisdiction to transfer the case filed before him to the Sub-Deputy Collector, who is certainly not Asst. to the Deputy Commissioner. The Deputy Commissioner could, no doubt, ask the Additional Deputy Commissioner or the Assistant to the Deputy Commissioner to decide the dispute.

Similarly, if a case is filed before the Additional Deputy Commissioner, he may either decide it himself or may transfer the case to the Assistant to the Deputy Commissioner. But under the provisions contained in Part IV of the Rules the Additional Deputy Commissioner has no jurisdiction, authority or power to transfer the case to the Sub-Deputy Collector to decide it. In the present case the respondent had approached the Additional Deputy Commissioner with a petition raising a dispute which was covered by administration of civil justice. The civil rules contained in Part IV were, therefore, applicable to that petition. The Additional Deputy Commissioner, however, asked the Sub-Deputy Collector to decide the case. That he could not. The Sub-Deputy Collector had no jurisdiction to decide the dispute. The adjudication made by him and the order of eviction passed by him were palpably without jurisdiction and hence not sustainable. The case has, therefore, to go back to the Additional Deputy Commissioner, Dimapur for decision in accordance with law.

7. In the result, the appeal is allowed and the impugned order passed by the Sub-

Deputy Collector is set aside. The case is remanded to the Additional Deputy Commissioner who shall decide it in accordance with law after giving full opportunity to both the parties to adduce such evidence as they may deem fit and proper in the case and after giving full hearing to them. The records of the Court below shall be sent to the Additional Deputy Commissioner, Dimapur expeditiously. The Additional Deputy Commissioner shall thereafter issue notices to both the parties for appearance before him and then proceed with the case and decide it in accordance with law. No order as to costs.