

(1982) 04 GAU CK 0008

In the Gauhati High Court

Case No : Civil Revision No. 18 (H) of 1977

Chief executive member, north cachar hills district
council.Haflong

APPELLANT

Vs

Thangsaving Changaon And Another

RESPONDENT

Date of Decision : 06-04-1982

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 155(1), 155(1)

Citation : (1982) 1 GLR 674

Hon'ble Judges : B.L.Hansaria, J

Bench : Single Bench

Advocate : S.K.Senapati, B.Sarma, Y.K.Phukan, Advocates appearing for Parties

Judgement

1. The important question raised in this revision relates to the Jurisdiction of an Assistant to the Deputy Commissioner in North Cachar Hills District (who exercises the power of a civil court there) to entertain a matter concerning boundary dispute between two villages. The two villages in this case are Laisong and Tuolpi, The Gaon Bura of Laisong filed a petition dated 2.1.69 before the Chief Executive Member (CEM) of N.C. Hills District Council, who rendered his decision on 17.4.70 in favour of Laisong, This was challenged by Tuolpi before the Assistant to the Deputy Commissioner, Haflong, who held the decision of CEM as contrary to law. On an appeal being preferred by the CEM, the same was dismissed by the learned Deputy Commissioner. The main attack in the appeal was on the question of jurisdiction of the civil court. Shri Sharma has also addressed on the same point.

2. The jurisdiction of the civil court is sought to be assailed with the aid of section 154(1) of the Assam Land and Revenue Regulation (the Regulation, for short) whose applicability to the North Cachar Hills is an admitted position.

According to Sri Sarma the case is covered by clauses (h) and (i) of the aforesaid subsection. We may read the relevant provision :

"154(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise Jurisdiction in any of the following matters :

(a) to (g) * * * * *

(h) claims to occupy or resort to lands under section 13 and 14, and disputes to the use and enjoyment of such lands between persons permitted to occupy or resort to the same;

(i) claims to have an allotment made under section 13 or section 14, and objections for making of such allotment;"

It is Section 14 which is attracted in the case according to the learned counsel. A reference to that section shows that it visualises making of rules for the allotment of land for the use of tribes of families practising jhum or migratory cultivation and for regulating and controlling the enjoyment of lands so allotted. No such rules have admittedly been framed by the District Council. "The words "The State Government" in section 14 are to be read as N. C. Hills District Council by virtue of the adoption of the regulation by the N. C. Hills Dist. Council Sri Sarma's submission is that as no rules have been made by the District Council the Executive Committee of the Council could exercise the same power by issuing administrative orders. Now also refers in this connection to Para 3(1) (a) of the Sixth Schedule to the Constitution which has conferred law making powers on the District Council. By referring to Article 162 of the Constitution it is submitted that the executive power of the Executive Committee would extend to those matters over which the District Council has powers to make laws. It is urged that in the absence of any legislation or rules on the subject, the Executive Committee could have issued Instructions or orders relating to the allotment of land for jhum cultivation and for regulating and controlling the enjoyment of lands so allotted. It may be stated that the dispute between the two villages is said to be connected with jhum cultivation. An analogy is also given in this context the same being issue of administrative orders when rules have not been made under the proviso to Article 309 of the Constitution.

3. For the case at hand, it is not necessary to express any opinion on this aspect of the matter inasmuch as there nothing to show that the Executive Committee of the District Council had issued any orders or instructions on the subject matter covered by Section 14 of the Regulation or Para 3(1) (a) of the Sixth Schedule. The order passed on 17.4.70 by the CEM cannot be regarded to be an action of the Executive Committee akin to the one visualised by aforesaid provisions. The order dated 17.4.80 is par excellence an order passed by the CEM on a boundary dispute. This is clear from the opening para of the order where the CEM has clearly stated that it was he who had carefully considered the petition, and it was he who had visited disputed land and heard both the villages. Nothing is brought to my notice by Sri Sarma by referring to any provision of law or rules that the CEM had been authorised or empowered to discharge the functions of the

Executive Committee qua the matters covered by Section 14 of the Regulation or para 3 (1)(a), of the Sixth Schedule. Nothing is also brought to my notice to show that the CEM had any other authority of law to decide a boundary dispute. On the materials placed before me, I am unable to read the decision of the CEM rendered on 17.4.70 as in exercise of powers conferred on the Executive Committee of the District Council under the provisions mentioned above, even if I were to assume that the Executive Committee could have exercised the power of the District Council regarding the matters under examination.

4. Sri Sarma has referred to U. Lokendra vs. U. Driwell, AIR 1970 Assam & Nagaland 242 in this context. Therein a timber forest was subject matter of dispute between the two States of Jirang and Nongkhlaw. the claim over the forest was founded on it being in the territory of the disputing State. As such it was held to be a dispute really regarding territorial extent of the two Siemships. The power of fixation or alteration of boundary of Siemship was held by this Court to vest in the Executive Committee by virtue of United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1951. This decision cannot assist the petitioner Inasmuch as the power of the Executive Committee there had the backing of law, which is lacking In the present case exfacie, But even if it is conceded that the Executive Committee could have exercised the power vested in the District Council, I do not read the decision of CEM rendered on 17.4.70 as an act of the Executive Committee as already stated.

5. I would, therefore, hold that the jurisdiction of the civil court was not barred because of what has been stated in clauses (h) and (i) of section 154 (1) of the Regulation. The learned Assistant to the D. C. had therefore jurisdiction to entertain the matter, so had the learned D. C. on appeal. Despite this, I find a serious infirmity in otherwise well written order of the learned D. C. the same is lack of any discussion of the dispute on merits. The learned D.C. in the ultimate para of his order has merely affirmed the decision appealed against. It may be that he did not go into the merits as the only point agitated before him related to the jurisdiction of the Civil Court. Still, as an appellate court (which is final forum on facts) it was incumbent on him to give a decision on merits of the dispute also, when he rejected the objection relating to jurisdiction.

6. Accordingly, the petition is allowed, the impugned order is set aside and the matter is remitted back to the learned appellate court to render its decision on merits of the controversy.