

(2015) 02 MEG CK 0004
In the Meghalaya High Court
Case No : Writ Petition (C) No. 35/2014

Dima A. Sangma and Others

APPELLANT

Vs

The Garo Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Citation : (2015) 02 MEG CK 0004

Hon'ble Judges : T. Nandakumar Singh, J.

Bench : Single Bench

Advocate : S.G. Momin and A. Kharumnuid, for the Appellant; S. Dey, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T. Nandakumar Singh, J.—Heard Ms. A Kharumnuid and Ms. S.G. Momin, learned counsel for the petitioners, Mr. S. Dey, learned counsel for the respondents No. 1-3 and Mr. PT Sangma, learned counsel for the respondents No. 4 and 5.

2. In the present writ petition, after perusal of the respective pleadings of the party, it is clear that there are serious disputed questions of facts, for which examination of oral and documentary evidence are necessary. The writ proceeding is not the proper forum for deciding those serious disputed questions of facts. In this background, this writ petition is taken up for disposal.

3. The case of the petitioner pleaded in the present writ petition is briefly noted. The matter in disputes between the parties is regarding the Nokmaship of Akhing land called Rangthangsora. As per the customs and traditions of the Garos, the land and property devolve in the matrilineal line and usually a female member of the clan who is called the Nokma becomes the heiress daughter. It is the case of both the parties that no doubt, under the Garo customs, the land and property devolve in matrilineal and however, the Nokma has to select one amongst her daughters as her heiress. In the present case, it is the case of the parties that late Bisan Ch. Marak was the Nokma of Akhing land called Rangthangsora. The

petitioner No. 1 is the husband of late Bisan Ch. Marak. It is the case of the petitioners that after the death of Bisan Ch. Marak, the petitioner No. 2 was offered a substituted wife to the petitioner No. 1 by the Maharis of the clan. Therefore, petitioner No. 2 is the substituted wife offered by the Maharis of the clan to the petitioner No. 1. To the contra, it is the case of the respondents No. 4 and 5 that the petitioner No. 2 was not a substituted wife offered by the Maharis to the petitioner No. 1 and also that the petitioner No. 1 had already left the house of the Nokma i.e. house of late Bisan Ch. Marak. The respondent No. 4 is the daughter of the last recorded Nokma late Bisan Ch. Marak and also the daughter of the petitioner No. 1 Shri. Dima A. Sangma. The respondent No. 5 is the husband of the respondent No. 4. In other words, the respondent No. 4 is the daughter of the petitioner No. 1 born to late Bisan Ch. Marak and the respondent No. 5 is the son-in-law of the petitioner No. 1. It is the further case of the respondents No. 4 and 5 that the petitioner No. 1 had executed a Deed of Relinquishment for relinquishing his right as Nokma of Rangthangsora Akhing and also the said Deed of Relinquishment was executed on 15.06.2010. The petitioner No. 1 had categorically denied that he executed the Deed of Relinquishment dated 15.06.2010. Issue as to whether or not the petitioner No. 1 had executed the said Deed of Relinquishment dated 15.06.2010 cannot be decided in the writ proceedings inasmuch as, the parties have to produce evidence in support of their respective case. Over and above, the alleged Deed of Relinquishment dated 15.06.2010 is required to be proved by the respondent No. 4 and 5 in the manner provided by law. Mere exhibition of the said Deed of Relinquishment dated 15.06.2010 in the proceeding before the Chief Executive Member, Garo Hills Autonomous District Council (for short "GHADC") does not mean that the Deed of Relinquishment dated 15.06.2010 had been proved in the manner provided by law. Unless and until, the Deed of Relinquishment dated 15.06.2010 is proved in the manner provided by law, it cannot be taken as documentary evidence to show that the petitioner No. 1 had relinquished his right as Nokma of Rangthangsora Akhing. In other words, the respondents No. 4 and 5 has to prove the said Deed of Relinquishment dated 15.06.2010 in the appropriate proceeding.

4. Ms. A Kharumnuid, learned counsel for the petitioners strenuously contended that the petitioner No. 1, who is an illiterate, did not even file any application to any authority for recording the names of the respondents No. 4 and 5 as Nokma of Rangthangsora Akhing land. She also further stated that on further enquiry, it had been learnt that the respondents No. 4 and 5 had fraudulently obtained thumb impression of the petitioner No. 1 on a paper which had been used subsequently by the respondents No. 4 and 5 as an application to the Executive Member, GHADC for recording the names of the respondents No. 4 and 5 as Nokma of Rangthangsora Akhing land. Therefore, this disputed question of fact cannot be decided in the present writ proceeding.

5. On perusal of the proceeding of District GHADC-REV. No. 9 A.C. of 2013 before the Executive Member, I/C Land and Revenue, GHADC and also the proceeding of

GDC-REV/Appeal No. 33 A/C of 2013 before the Chief Executive Member, GHADC, Tura, it is clear that the parties had not had opportunity of proving their respective case by producing oral and documentary evidence. As stated above, the alleged Deed of Relinquishment dated 15.06.2010 is required to be proved by the respondents No. 4 and 5 in the manner prescribed by law in the appropriate forum; and on mere production of the alleged Deed of Relinquishment dated 15.06.2010 by the respondents No. 4 and 5, the authority cannot rely on it unless and until it is proved in the manner prescribed by law.

6. In the above factual backdrop, 4 (four) important issues such as (i) whether the petitioner No. 2 is the substituted wife of the petitioner No. 1 offered by the Maharis or not? (ii) whether the petitioner No. 1 had left the house of the Nokma i.e. the house of late Bisan Ch. Marak or not? (iii) whether the petitioner No. 1 executed the alleged Deed of Relinquishment dated 15.06.2010 or not? and (iv) whether the Maharis of the concerned clan had appointed the respondents No. 4 and 5 as Nokma of Rangthangsora Akhing land or not? are required to be decided. As these issues were not decided by the Executive Member, I/C Land and Revenue, GHADC in District GHADC-REV. No. 9 A.C. of 2013 and also the Chief Executive Member, GHADC in GDC-REV/Appeal No. 33 A/C of 2013, the Executive Member, I/C Land and Revenue, GHADC is directed to decide the aforementioned issues after giving opportunity to the party to put up their case as well as allowing them to produce oral and documentary evidence to support their case. It is further made clear that the alleged Deed of Relinquishment dated 15.06.2010 is required to be proved in the manner provided by law keeping in view of the Indian Evidence Act, 1872. So as to enable the Executive Member, IC Land and Revenue to decide the above issues, the impugned order dated 13.06.2013 passed in District GHADC-REV No. 9 A.C. of 2013 and order dated 16.01.2014 of Chief Executive Member, GHADC passed in GDC-REV/Appeal No. 33 A/C of 2013 are hereby set aside and quashed. Till the Executive Member, I/C Land and Revenue, GHADC finally decided the above issues, the Secretary, Executive Committee, GHADC shall maintain and look after the Akhing land called Rangthangsora. The Executive Member, I/C Land and Revenue shall decide the case as expeditiously as possible not later than 6 (months) from the date of receipt of a certified copy of this judgment and order.

7. Parties are directed to appear before the Executive Member, I/C Land and Revenue along with the certified copy of this judgment and order on 02.03.2015 and parties shall also furnish a copy of this judgment and order to the Secretary, Executive Committee, GHADC, Tura.

8. With the above observations and directions, this writ petition is disposed of.