
(2016) 09 MAN CK 0009
In the Manipur High Court
Case No : Writ Petition (C) No. 605 of 2016

H. Mangchinkhup	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Manipur Hills Areas (Acquisition of Chief Rights) Act, 1967 — Section 6, Section 7

Citation : (2016) 5 GauLT 57

Hon'ble Judges : Mr. N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : Mr. H.S. Paonam, Senior Advocate and Mr. S. Gunabanta, Advocate, for the Petitioner; Mr. A. Rommel, Jr. G.A. and Mr. K. Modhusudon, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. N. Kotiswar Singh, J. (Oral)—Heard Mr. H.S. Paonam, learned Sr. Counsel assisted by Mr. S. Gunabanta, Advocate, for the petitioner. Also heard Mr. A. Rommel, learned G.A. for the respondents No. 1 and 2 as well as Mr. K. Modhusudon, learned counsel for the Caveator, namely, H. Mangchinkhup.

2. At the outset, considering the peculiar nature of the case involving Chiefship of Bungmual Village, Churachandpur and desirability of settling such a dispute at the earliest, the learned counsel appearing for all the parties have expressed a desire that the matter be disposed of at this stage with which this Court is also in agreement and hence, proposes to dispose of the case at this motion stage without issuing any formal notice and calling for reply from the contesting parties.

3. Since this Court is not deciding the correctness or otherwise of the finding as regards the Chiefship of the village, this Court will refer only to the relevant facts as may be necessary for disposal of this writ petition.

4. The Deputy Commissioner, Churachandpur passed an order dated 01.03.2014

by which the Deputy Commissioner upheld the decision of the Hauzel Innpi, Bungmual in appointing Shri H. Mangchinkhup, S/o (Late) H. Lianzamang, the petitioner herein for transfer of Chiefship from (Late) H. Lianthuam of Bungmual Village and allowed the same until further orders with the condition that such appointment/nomination is acceptable by the tribes concerned. It seems before the said order was passed there were two applications, one from Shri H. Tualminthang, S/o (late) Shri H. Thuamkhanmang, Chief of Bungmual village and another submitted by Shr. H. Vungzamang, Convenor of Hauzel Chief Family Council to Bungmual village conveying the decision of the Hauzel Family Council to appoint the petitioner to fill void of Chiefship upon the demise of incharge Chiefship of Bungmual village on 22.01.2014.

The claim of Shri Tualminthang was based on the law of primogeniture under the Paite Customary law by which the Chiefship is inherited by the eldest son of the Chief. On the other hand, the claim made in favour of the petitioner was based on the alleged special tribal practise among the Hauzel tribes to which the parties belong, in which the Hauzel Innpi appoints or nominates the village Chief. In support of the respective claims, evidences were produced before the Deputy Commissioner. The Deputy Commissioner, after considering the rival claims did not accept the plea of appointment of Chiefship as per the Paite Customary law of inheritance by following the law of primogeniture in which the eldest son would inherit the Chiefship, upon the death or demise of the Chief or renouncement of Chiefship. The Deputy Commissioner accepted the appointment of Chiefship by the Hauzel Family Council as a special law stated to be prevalent amongst the Hauzel tribes. Accordingly, the Deputy Commissioner passed the following order on 01.03.2014 :

"Hence, from all material facts and evidences produced before the undersigned and as mentioned above which are supported by documents, the decision of the Hauzel Innpi, Bungmual in appointing Shri H. Mangchinkhup S/o (Late) H. Lianzamang for transfer of Chiefship from Late H. Lianthuam Chief of Bungmual village is hereby upheld and allowed until further orders, with the condition that such appointment/nomination is acceptable by the tribe's concerned. The SDO/ Churachandpur shall made necessary change and entries in the relevant touzi records accordingly."

5. The impugned order was passed on 05.08.2016 by the Commissioner (TA & Hills), Government of Manipur recognising the Respondent No. 3 as the Chief of the village by accepting the Paite customary law of inheritance by the eldest son and the respondent no. 3, being a minor was allowed to function through his guardian, H. Nungkhanpau, by superseding all the previous orders in this regard. Effectively, the order passed by the Deputy Commissioner, Churachandpur on 01.03.2014 was superceded.

6. Mr. Paonam, learned senior counsel for the petitioner has raised various grounds in challenging the impugned order dated 05.08.2016. Mr. Paonam submits that while issuing the impugned order dated 05.08.2016 no opportunity

was given to the petitioner. It has been also contended that the impugned order is by way of an administrative order and not in exercise of the power of the Appellate Authority which is to be exercised by the Commissioner in the capacity of the Appellate Authority as provided under Section 7 of the Manipur Hills Areas (Acquisition of Chief Rights) Act, 1967. It has been also submitted that the respondent No. 3 who is claiming to be the Chief is presently studying in Aizawl and his purported guardian is staying in Shillong whereas his village is located in Churachandpur in Manipur, which is not permissible and such an order cannot be allowed to be continued in the interest of the village.

7. Mr. K. Modhusudon, learned counsel for the Caveator, namely, H. Mangchinkhup who is also claiming to be the guardian of the respondent No. 3 having being appointed as such by the Family Court, Churachandpur in MAT (GW) Case No. 6 of 2015, submits that an order passed by the Commissioner (TA & Hills) after considering the representations/appeal filed by H. Tualminthang, the father of the petitioner against the order dated 01.03.2014 passed by the Deputy Commissioner. Mr. Modhusudon submits that the Commissioner (TA & Hills) had passed the order on the basis of the law of primogeniture which is the accepted practise, as per the Paite Customary law of inheritance, to which all the contesting parties belong and as such, the order passed by the respondent No. 1 cannot be said to be illegal.

8. Before we proceed to decide the issue at hand it may be apposite to advert to certain legal position.

9. This Court had an occasion to deal with the dispute of a Chiefship in another case in W.P.(C) No. 491 of 2015 (Shri L. Rochung v. State of Manipur decided on 06.09.2016) in which the provisions relating to settlement of dispute about the village Chiefship was also discussed. It had been held by this Court in that petition that Section 6 of the Manipur Hills Areas (Acquisition of Chief Rights) Act, 1967 also provides a forum for resolution of a dispute relating to Chiefship by the office of the Deputy Commissioner, and Section 7 provides the first appellate forum. Sections 6 and 7 which are relevant are reproduced as follows:

"6. (1) If a question arises as to the existence of a custom of paying changseo to the chief of a village or whether a person is the chief of a village, the Deputy Commissioner shall on the question being referred to him by the Compensation Officer, or on an application made by any person interested, by order in writing decide it.

(2) Before making any order under sub-section (1), the Deputy Commissioner shall cause a notice of the substance of the question to be published in the manner specified in sub-section (3) of section 3, requiring all persons interested to file written statement in regard to the matter.

(3) The Deputy Commissioner shall, after considering the statements, if any, filed under sub-section (2), and after giving the persons interested a reasonable opportunity of being heard, record his decision.

(4) Every decision of the Deputy Commissioner shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

(5) Every decisions under this section, shall, subject to the provisions of sections 7 and 15, be final.

Explanation:- For the purposes of this Act, the expression "person interested" includes all persons claiming an interest in the compensation to be paid on account of the acquisition of the rights, title and interest of a chief in the gams in the village.

7. Any person aggrieved by the decision of the Deputy Commissioner under Section 6, may, within thirty days from the date of communication of the decision, appeal to the Chief Commissioner, who shall, after giving an opportunity to the appellant to be heard and making such further inquiry as may be necessary, pass such order as he thinks fit confirming or modifying or annulling the decision appealed against."

10. As mentioned above, Section 7 of the Act provides that any person aggrieved by the decision of the Deputy Commissioner under Section 6 may, within thirty days from the date of communication of the decision, appeal to the Chief Commissioner, who shall, after giving an opportunity to the appellant to be heard and making such further enquiry as may be necessary, pass such order as he thinks fit confirming or modifying or annulling the decision appealed against the order passed by the Deputy Commissioner under Section 6 of the Act. In other words, if any order is passed by the Deputy Commissioner deciding the claim of Chiefship after hearing the parties, an appeal would lie before the Appellate Authority, which is now stated to be the Commissioner (Hills), Government of Manipur as provided under Section 7. Thus, in the present case against the order passed by the Deputy Commissioner on 01.03.2014 an appeal would lie before the Commissioner (Hills) as provided under Section 7 of the aforesaid Act. As per Section 7 appeal would lie to the Chief Commissioner, which office is no more in existence. However, appropriate amendment does not seem to have been incorporated. It seems that the appellate power exercised by the Chief Commissioner is now exercised by the Commissioner/Secretary (TA&Hill) of the Department of Tribal Affairs and Hill). Since, this issue whether the Commissioner (TA&Hills) can exercise this appellate power, has not been raised by any of the contesting parties, this Court will also proceed with the assumption that the Commissioner/Secretary (TA&Hills) exercises the appellate power under Section 7 of the Act and the issue is, therefore, not decided on merit in this proceeding.

11. The Act provides for further appeal which lies under Section 15 of the Act to the Judicial Commissioner from every decision of the Chief Commissioner under Section 7 of the Act. Thus, there is a provision for a second appeal though it is not specifically mentioned under the Act as to the scope of the power to be

exercised by the Judicial Commissioner, which is now to be exercised by the High Court of Manipur. Since it is the only appellate authority which is a Court in formal sense of the term, this Court is of the considered opinion that it is at this forum and stage that any irregularity which is of substantial nature either in fact or law may be canvassed and which could be rectified by the Court of Judicial Commissioner. Section 15 of the Act reads as follows :

"15. An appeal shall lie to the Court of the Judicial Commissioner from every decision of ?

(a) the Chief Commissioner under Section 7; and

(b) the District Court under Section II; if filed within sixty days from the date of the communication of the decision."

12. It is to be mentioned that when the Manipur Hills Areas (Acquisition of Chief Rights) Act was passed in 1966 by the Manipur Legislative Assembly, Manipur was still a Union Territory and the Court of Judicial Commissioner used to be the Court of original and appellate jurisdiction. The Court of Judicial Commissioner was established under Section 3 of the Manipur Courts Act, 1955 and it was the highest Court of appeal, revision or reference with reference to any civil or criminal proceeding under any law for the time being in force as provided under Section 8 thereof. Under Section 10 of the Act of 1955 it had the authority of general superintendence and control of Courts in the State of Manipur and it was a Court of record having all the power of Courts including the power to punish contempt of court as provided under Section 14 of the Act of 1955 and it was also declared as High Court for certain purpose of Articles 132, 133 and 134 of the Constitution under the provisions of the Judicial Commissioners Court (Declaration as High Court) Act, 1950. The Court of Judicial Commissioner, however, was abolished when Manipur was granted statehood under the North-Eastern Areas (Reorganisation) Act, 1971 under Section 30 of the Act. By Section 28 of the North-Eastern Areas (Reorganisation) Act, 1971, the common High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura was established and under Section 29 of the Reorganisation Act the common High Court exercised its jurisdiction in respect of Manipur also which was earlier exercised by the Judicial Commissioner. Relevant portions of Sections 28, 29 and 30 of the Reorganisation Act are reproduced herein below :

"28. Common High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.-

(1) On and from the appointed day, -

(a) the High Court of Assam and Nagaland shall cease to function and is hereby abolished;

(b) there shall be a common High Court for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura to be called the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(c)

(2)

29. Jurisdiction of the common High Court.- On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, all such jurisdiction, powers and authority as under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Assam and Nagaland or the Court of the Judicial Commissioner for Manipur, or the Court of the Judicial Commissioner for Tripura, as the case may be.

30. Abolition of certain Courts.-

(1) On and from the appointed day, the Courts of the Judicial Commissioners for Manipur and Tripura shall cease to function and are hereby abolished.

(2)"

13. After the abolition of the Court of Judicial Commissioner, all the proceedings pending in the Court of Judicial Commissioner in Manipur stood transferred to the common High Court as provided under Section 40 of the Reorganisation Act which reads as follows :-

"40. Transfer of proceedings from the High Court of Assam and Nagaland and the Courts of the Judicial Commissioners to the common High Court.-

(1) All proceedings pending in the High Court of Assam and Nagaland and in the Courts of the Judicial Commissioners for Manipur and Tripura immediately before the appointed day shall, from such day, stand transferred to the common High Court.

(2) ??????????????.

(3) ??????????????."

14. Further, it was provided under Section 84 of the Reorganisation Act that Every proceeding pending immediately before the appointed day before a court (other than a High Court), tribunal, authority or officer in any area which on that day falls within a State or Union territory shall stand transferred to the corresponding court, tribunal, authority or officer in that other State or Union territory, as the case may be. Section 84 reads as follows :-

"84. Transfer of pending proceedings.-

(1) Every proceeding pending immediately before the appointed day before a court (other than a High Court), tribunal, authority or officer in any area which on that day falls within a State or Union territory shall, if it is a proceeding relating exclusively to the territories which as from that day are the territories of another State or Union territory, stand transferred to the corresponding court, tribunal, authority or officer in that other State or Union territory, as the case

may be.

(2) ??????????????..

(3) ??????????????"

15. Under Section 4 of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012 Sections 28A to 28K were inserted in the North-Eastern Areas (Reorganisation) Act, 1971. Under Section 28A, separate High Courts of Meghalaya, Manipur and Tripura were established. Section 28C provides that the High Court of Meghalaya, the High Court of Manipur and the High Court of Tripura shall have, in respect of any part of the territories included in the State of Meghalaya, the State of Manipur and the State of Tripura respectively, all such jurisdiction, powers and authority as, under the law in force immediately before the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, are exercisable in respect of that part of the said territories by the common High Court.

16. Thus, on establishment of the separate High Court of Manipur by the aforesaid amendment Act, 2012 the second appeal which earlier used to lie to the Judicial Commissioner under Section 15 would now lie before the High Court of Manipur.

17. It is, therefore, clear from the above that under the scheme of the Manipur Hill Areas (Acquisition of Chiefs Rights) Act, 1966 the Deputy Commissioner is empowered to decide the dispute about Chiefship against which an appeal would lie to the Chief Commissioner. These authorities are discharging important judicial functions in as much as dispute relating to Chiefship is also a dispute relating to title which normally is decided by the Civil Court of competent jurisdiction. However, since this jurisdiction has been also conferred to the Deputy Commissioner against whose order an appeal lies to the Chief Commissioner it does not require a serious introspection to come to the conclusion that these authorities have to follow judicial norms though they are not strictly civil courts as understood normally.

18. This Court, however, would like to put a caveat. The issue, whether, in view of now well entrenched principle of separation of judiciary from the executive, whether the Deputy Commissioner as well as the Commissioner, though they are not judicial members, could continue to exercise the judicial power of deciding disputed question of title as regards the Chiefship has not been raised in this petition and accordingly the same is left to be decided at appropriate proceeding. The discussion and observation made in this judgment is thus confined to this petition only. It is also admitted at the bar that civil courts of competent jurisdiction also continues to decide title suits relating to Chiefship of the hill villages. The Manipur Hill Areas (Acquisition of Chief Rights) Act, 1966 seem to confer additional forum for deciding dispute about chiefship.

19. Thus, it is seen that the dispute relating to claim to Chiefship can be decided by the Deputy Commissioner under the Manipur Hill Areas (Acquisition of Chief Rights) Act, 1967. Though the Deputy Commissioner has not been described as a Court, as discussed above, as required under Section 6 of the Act, this power is to be exercised by the Deputy Commissioner after giving due notice to all the persons interested to file written statement relating to the claim of Chiefship. The Deputy Commissioner, thereafter, has to consider the statements so filed by the interested persons and after giving reasonable opportunity of being heard to them will record his decision. Section 6 further stipulates that decision of the Deputy Commissioner shall contain a concise statement of the case, the points for determination, the decision thereof and reasons for such decision. In other words, such decision of the Deputy Commissioner should deal with the facts of the case, the issues raised and then give a reasoned decision, which are also the requirements of a proper valid judgment rendered by a Court of law. Section 6 also provides that every such decision of the Deputy Commissioner though final, shall be subject to provisions of Sections 7 and 15. As mentioned above, Section 7 provides for the first appeal against such decision of the Deputy Commissioner and Section 15 provides for a second appeal before the High Court. Reading of Sections 6, 7 and 15 of the Act as mentioned above would clearly indicate that while deciding the dispute of Chiefship, the Deputy Commissioner has to function more or less like a Court and it has got the trappings of the Court as far as the decision making process is concerned. Under the Civil Procedure Code, a civil court has to frame issues, give its finding on these issues with reasons for such findings as required under Order 20, Rule 5 . Similar exercise is required to be undertaken by the Deputy Commissioner as provided under Section 6 of the Act. Therefore, even if the Deputy Commissioner, while deciding the dispute about Chiefship under Section 6 of the Act, has not been declared as a Court under the Act, it definitely exercises power which is judicial in nature which it is expected to exercise in a manner akin to a court. The decision to be rendered by the Deputy Commissioner has all the trappings of judgment rendered by a Court of law which is again subjected to appeal before an appellate forum under Section 7 and further subject to a second appeal as provided under Section 15 of the Act.

20. Chiefship is a very important functionary of the village administration in as much as a village Chief plays a very vital role in the day to day life of the villages in the hills areas. For the said reason, any decision rendered by Deputy Commissioner would have far reaching repercussions in the smooth running of the village administration and hence while deciding any dispute of Chiefship, it acts as a judicial body.

21. Though it has not been specifically provided under Section 7 of the Act as to how the appellate authority has to decide the appeal, yet Section 7 emphasises that the appellate authority shall decide the appeal after giving an opportunity to the appellant and making such further enquiry as may be necessary in confirming or modifying or annulling the decision appealed against. It goes without saying that this power of appeal has to be also exercised by conforming

to the well established judicial norms as regards the power of the appellate authority. Since the appellate authority is to either confirm or vary the decision rendered by the Deputy Commissioner, the appellate authority has to consider any such appeal in the manner as expected of an appellate authority, though the same has not been specifically mentioned or described in the Act.

22. It is now well settled that if an appraisal of evidence by the trial Court suffers from material irregularity, i.e. if the decision is based on mere conjectures or it is based on inadmissible evidences or is based on irrelevant laws and facts etc., appellate court is bound to interfere with the finding of the trial court. It is also equally settled that where the trial court has considered the entire evidences on record and if its finding is based on proper appreciation of evidences, the appellate court normally would not interfere with such finding. At the same time if the appellate authority is reversing the judgment of the trial court, it is bound to consider the entire finding and give adequate reasons for differing with the view of the trial court. In this regard, one may refer to the decision of the Hon''ble Supreme Court in *Sree Jain Swetambar Terapanthi Vid(S) v. Phundan Singh and Ors.*, (1999) 2 SCC 377 in which the Hon''ble Supreme Court held as follows:

"12. It may be pointed out that it is one thing to conclude that the trial Court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding.

The High Court proceeded to set aside the order of the trial Court on the first ground ignoring the aforementioned findings of the trial Court, the order under appeal is, therefore, unsustainable."

In *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)*, (2008) 2 SCC 728, the Hon''ble Supreme Court held that,

"16. It is well settled that in the case of reversal, the first appellate court ought to give some reason for reversing the findings of the trial court whereas in the case of affirmation, the first appellate court accepts the reasons and findings of the trial court..... "

23. Similarly, one may also refer to the decision of the Hon''ble Supreme Court in *B.M. Narayana Gowda v. Shanthamma (Dead) By LRS. and Anr.*, (2011) 15 SCC 476 in which the Hon''ble Supreme Court held as follows :

"5. Learned counsel for the appellant also placed reliance on another judgment of

this Court in *H.K.N. Swami v. Irshad Basith*, (2005) 10 SCC 243, the relevant portion of the judgment i.e. para 3, reads as under : (SCC p.244)

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title. The order of the High Court is cryptic and the same is without assigning any reason."

6. Learned counsel for the appellant also placed reliance on yet another judgment of this Court in *Rama Pulp & Papers Ltd. v. Maruti N. Dhotre*, (2005) 12 SCC p.186. In this judgment, this Court observed that in first appeal the High Court has to properly consider the evidence on record or for that matter even the arguments and the grounds raised in support of their case."

24. The importance of appellate court has been reiterated in *Shasidhar and Ors. v. Ashwini Uma Mathad and Anr.*, (2015) 11 SCC 269 in which the Hon'ble Supreme Court observed in para 13 as follows :

"13. In *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179, this Court held as under: (SCC pp.188-89, para 15):

"15.....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it."

The above view has been followed by a three-Judge Bench decision of this Court in *Madhukar & Ors. v. Sangram*, (2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

14. In *H.K.N. Swami v. Irshad Basith*, (2005) 10 SCC 243, (2005) 10 SCC 243, this Court stated as under (SCC p.244, para 3)

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present

case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

15. Again in *Jagannath v. Arulappa*, (2005) 12 SCC 303, while considering the scope of Section 96 of the Code this Court observed as follows: (SCC p. 303, para 2)

"2. A court of first appeal can re appreciate the entire evidence and come to a different conclusion."

16. Again in *B.V. Nagesh & Anr. v. H.V. Sreenivasa Murthy*, (2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5)

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179, SCC p. 188, para 15 and *Madhukar v. Sangram*, (2001) 4 SCC 756, SCC p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed.

The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

25. Keeping the aforesaid principles in mind more particularly the scope of the appellate court what can be noted in the impugned order passed by the Commissioner (Hills), the appellate authority is that the finding given by the appellate authority as regards the Chiefship is contrary to and opposed to and by reversing the finding arrived at by the Deputy Commissioner. The finding by the appellate authority was not by way of affirmation of the decision of the Deputy Commissioner, in which event, perhaps a detailed consideration of the facts and laws might not have been necessary. Since the finding arrived at by the Deputy Commissioner was reversed it was incumbent upon the appellate authority to have considered again the facts, evidences and pleas which were taken into consideration by the Deputy Commissioner when the Deputy Commissioner made the decision on 01.03.2014. As discussed above, the Deputy Commissioner, considered both the claims based on law of primogeniture as prevalent among the Paite customary laws and also the special law claimed to be prevalent among the Hauzel tribes while deciding the dispute of Chiefship. The Deputy Commissioner assigned reasons for accepting the special law practised among the Hauzel tribes for deciding the Chiefship.

This Court, however, is not at all suggesting that the view of the Deputy Commissioner is infallible, and therefore, the appellate authority has to examine the correctness or otherwise of the same. While examining the correctness of the decision of the Deputy Commissioner, the appellate authority has not followed the well established norms expected of the appellate authority. Though the decisions cited above pertains to the role of an appellate court as provided under the Code of Civil Procedure, 1908 and the provisions of CPC are not specifically made applicable in the proceedings under the Manipur Hills Areas (Acquisition of Chief Rights) Act, 1967, these principles could not be ignored by the appellate authority deciding the appeal under Section 7 of the aforesaid Act. These procedural laws have become so fundamental in the dispensation of justice that these have almost attained the status of substantive laws. They are becoming non negotiable procedures and are indeed facets of Article 14 of the Constitution embodying the principles of reasonableness, non arbitrariness in the proceedings whether judicial or quasi judicial or purely administrative tribunal. Non adherence to these procedures will render the appellate order bad in law. Therefore, if the aforesaid procedural requirements are kept in mind, what this Court finds is that the appellate authority, i.e., the Commissioner (Hills) did not deal with all the relevant facts of the case though it had briefly referred to some. The rival contentions had not been adequately dealt with by the appellate authority. Most importantly, the appellate authority did not assign any reason for accepting one

principle of law for deciding Chiefship against the other. The appellate authority accepted and applied the law of primogeniture and rejected the claim based on the special custom stated to be prevalent amongst the Hauzel tribes without assigning any reason thereof. The appellate order is very cryptic, devoid of consideration of facts, reasons for differing from the decision arrived at by the Deputy Commissioner. Surprisingly, the impugned order did not even specifically refer to the decision of the Deputy Commissioner rendered on 01.03.2004 which is supposed to be subject matter of the appeal. The Commissioner (Hills) also recorded inconsistent pleas in the impugned order. In para 3 of the impugned order, it has been observed by the Commissioner (Hills) that "Whereas in the appointment of person to hold the charge of Chief while Shri. H. Lianthum was alive was decided mostly by Hauzel Innpi which is one of the clans under Paite Tribe." It has been also recorded in para 8 thereof that "Whereas as per the Paite Tribe Council Customary Law and Practices, the transfer of Chiefship is by hereditary; Mr. Tualminthang being the eldest surviving son of Shri H. Thuamkhanmang and therefore the rightful male heir to succeed as chief of Bungmual Village." From the records, it is evident that there were prevalence of two differing practices i.e. the appointment of Chief by the Village Council or the Hauzel Innpi and also the transfer of Chiefship by hereditary method based on law of primogeniture. Therefore, it was incumbent upon the appellate authority to have clearly stated in the impugned order as to the circumstances and reasons for applying the law of inheritance by following the law of primogeniture in deciding the Chiefship and for not accepting the other method which was relied upon by the Deputy Commissioner. However, no such reasons have been assigned in the impugned order. Therefore, this Court is of the view that the appellate authority has not exercised its appellate power properly. Hence, this Court would unhesitatingly hold that the impugned order suffers from material irregularity and illegality as to warrant interference by this Court.

26. This petition has been filed not under Section 15 of the Act, but under Article 226 of the Constitution of India and on that score this Court could have directed the petitioner to take recourse to the forum provided under Section 15 of the Act. However, considering the peculiar facts as disclosed in this petition, this Court is of the view that it may not be necessary to do so and can dispose of this petition in the following manner for the reasons discussed herein after.

27. Normally the scope of second appeal is limited only when it involves substantial question of law. Though nothing has been mentioned in Section 15 of the Act that an appeal would lie under it only when substantial questions of law are involved, in view of the settled position of law that if there be serious infraction of law and grave irregularity and perversity in the order of the first appellate court, it can be said that it raises substantial question of law, in the light of the provisions of Section 103 read with Section 100 of the CPC. In this regard, one may refer to what the Hon'ble Supreme Court had held in *Municipal Committee, Hoshiarpur v. Punjab SEB*, (2010) 13 SCC 216 as follows:

"28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483 : AIR 2010 SC 2685.)

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30. The issue of perversity itself is a substantial question of law and, therefore, Section 103 CPC can be held to be supplementary to Section 100 CPC, and does not supplant it altogether. Reading it otherwise, would render the provisions of Section 100 CPC redundant. It is only an issue that involves a substantial question of law that can be adjudicated upon by the High Court itself instead of remanding the case to the court below, provided there is sufficient evidence on record to adjudicate upon the said issue and other conditions mentioned therein stand fulfilled. Thus, the object of the section is to avoid remand and adjudicate the issue if the finding(s) of fact recorded by the court(s) below are found to be perverse. The court is under an obligation to give notice to all the parties concerned for adjudication of the said issue and decide the same after giving them full opportunity of hearing."

Further, in *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179 the Hon'ble Supreme Court held that improper functioning of the appellate court may give rise to substantial question of law.

"16. Reverting to the facts of the case at hand, prima facie we find that the first appellate court did not discharge the duty cast on it as a court of first appeal. The High Court having noticed failure on the part of the appellant in not discharging the statutory obligation cast on him by sub-section (3) of Section 100 of the Code, on account of the substantial question of law involved in the appeal having not been stated, much less precisely, in the memorandum of second appeal, ordinarily an opportunity to frame such question should have been afforded to the appellant unless the deficiency was brought to the notice of the appellant previously by the High Court Registry or the court and yet the appellant had persisted in his default. That was not done."

28. It is also now equally settled that the High Court exercising power under Article 226 of the Constitution does not sit as an appellate authority so as to

embark upon the exercise of appreciating evidences.

Yet, if the High Court finds that the finding arrived by the authority suffers from grave and serious material irregularity and illegality and perversity, the High Court can intervene. In the present case, this Court has found that the impugned order dated 5.8.2016 passed by the Commissioner (Hills) suffers from material irregularity, perversity in as much as the appellate authority has failed to discharge its jurisdiction by following the well established norms to be adopted by an appellate authority in exercising its authority.

29. Therefore, this Court is of the view that the scope of intervention either under Article 226 or Section 15 of the Act are similar as far as this particular case is concerned. Even if this Court assumes the role and jurisdiction of the second appellate Court, under Section 15 of the Act, this Court is of the view that the nature of intervention and end result would be the same considering the peculiar nature of the case.

Accordingly, this Court without directing the petitioner to take recourse to the forum available under Section 15 of the Act, can dispose of this petition with the direction to the appellate authority to pass a fresh order by assigning adequate reasons for the same vis-a-vis the view taken by the Deputy Commissioner, Churachandpur under order dated 1.3.2014 in the Case No. DC(CCP)/Hills/Misc/Case/2014-4 after hearing all the parties, in accordance with law.

30. Accordingly, for the reasons discussed above, the impugned order dated 05.08.2016 passed by the Commissioner (Hills) is set aside and the appellate authority is to reconsider the matter and pass an order afresh as directed above.

The order of the Deputy Commissioner passed on 01.03.2014 under No. DC(CCP)/Hills/Misc/Case/2014-6 upholding the appointment of the petitioner as a Chief of the Bungmual Village will be subject to the decision of the appellate authority.

31. In this regard, it has been submitted by Mr. K. Modhusudon, learned counsel for the Caveator that the representation submitted by the respondent No. 3 on 24th May, 2016 which is in continuation of the earlier representations dated 13.03.2014, 19.03.2014 and 14.10.2014 submitted by the father of the respondent No. 3 may be treated as an appeal preferred under Section 7 of the Act as the father of the petitioner has died in the meantime. In view of the above submission, the representation dated 24.05.2016 filed by the respondent No. 3 in continuation of the earlier representation dated 13.03.2014 filed by the father of the respondent No. 3 may be treated as an appeal as contemplated under Section 7 of the Act. Accordingly, the Appellate Authority i.e. respondent No. 1 herein will reconsider the aforesaid appeal by giving opportunity of being heard to all the parties including the petitioner and the respondent no. 3 and decide the matter afresh in the light of the observations made above. It goes without saying that the petitioner as well as the respondent No. 3/Caveator may file appropriate applications before the Appellate Authority for taking additional pleas and

producing evidences which the Appellate Authority will consider in accordance with law.

32. For the reasons discussed above, the present writ petition is allowed by setting aside the impugned order dated 05.08.2016 passed by the respondent No. 1. The respondent No. 1 is directed to decide the appeal preferred against the order dated 01.03.2014 filed by the father of the respondent No. 3 which has been pursued by the respondent No. 3 through his guardian the caveator herein afresh, as expeditiously as possible preferably within a period of 6 (six) months from today. In order to avoid any dislocation in the administration of the village, as the petitioner has been functioning as the Chief of the village since 01.03.2014, he may continue to function as the Chief of the village in terms of the order dated 01.03.2014 of the Deputy Commissioner, Churachandpur which will be subject to the final order of the Respondent No.1, the Appellate Authority.