

(1983) 06 GAU CK 0018
In the Gauhati High Court
Case No : Civil Reference No. 4 (M) of 1977

I.C. Chakravarty	Vs	APPELLANT
Khasi Hills District Council		RESPONDENT

Date of Decision : 14-06-1983

Acts Referred:

Autonomous District (Administration of Justice) Rules, 1953 — Rule 1
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1984 Guw 92

Hon'ble Judges : D. Pathak, C.J.; N.I. Singh, J.; K. Lahiri, J

Bench : Full Bench

Advocate : J.P. Bhattacharjee, -General and B.M. Mahanta, M.Z. Ahmad, for U.P.E. Swer, N.M. Lahiri, -General and A. Sarma, for the Appellant; S.C. Das and B.B. Narzary, for the Respondent

Judgement

D. Pathak, C.J.—This matter has arisen out of a reference made by the Assistant to the Deputy Commissioner, Shillong. The reference is as hereunder:

"No. KJJ/T/77/98 Dated Shillong, the

2nd April, 1977. From: Shri I. C. Chakravarty, B.A., LL.B., Assistant to Deputy Commissioner, Shillong. To : The District and Sessions Judge, Shillong.

Sir,

In view of the judgment of Hon'ble Supreme Court in Civil Appeals Nos. 1475 and 1476 reported in The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, , a confusion has arisen with regard to jurisdiction of Asstt to D. C. in the areas those have been ceded with the Shillong Municipal Authority for the purpose of Municipal Administration only, vide notification No. 44-1 dated New Delhi, the 16th January, 1934.

In case No. M. S. 153(T)/76 learned lawyer for defendant contended that this

Court got no jurisdiction as both the parties are Tribals and place Mawkhar is outside Shillong Municipality. He relied on above mentioned Hon''ble Supreme Court judgment in support of his contention.

Learned lawyer for plaintiff contended that this Court get jurisdiction. He referred to Para 20 of 6th Schedule of the Constitution of India. He referred the Proviso "For the purpose of Clauses (e) and (i) sub-para (1) of Para 3, Para 4, Para 5, sub-para (2) of Clauses (a), (b) and (d) of sub-para (3) and sub-para (4) of Para 8 and Clause (d) of sub-para (2) of Para 10 of this Schedule, no part of the area comprised within the Municipality of Shillong shall be deemed to be within the United Khasi Jaintia Hills District

He forcefully argued that the word "Shillong Municipality" used therein includes also the areas ceded with the Shillong Municipality by notification dated 16th Jan. 1934. He further contended that Hon''ble Supreme Court judgment only determined the administrative control of District Council in those areas. He contended that in view of the proviso of Para 20 of 6th Schedule Asstt. to D. C. has got the jurisdiction in the matter of administration of justice in those areas even if both the parties are Tribals, He referred to Para 6 of the judgment of Hon''ble Supreme Court to support his contention.

I have carefully analysed the contentions of both the learned lawyers. As the matter involve interpretation of provision of Constitution of India, Khasi Syiemship Administration of Justice Rule and judgment of Hon''ble Supreme Court and High Court, it will not be proper for this Court to give a decision without making a reference to our Hon''ble High Court.

Accordingly I would request your honour to refer the matter to Hon''ble High Court for opinion.

Yours Faithfully, Sd/- I. C. Chakravarty, Asstt. to D. C. Shillong."

Considering the importance of the question as regards the jurisdiction of the Court, this matter has been placed for hearing by the Special Bench and that is how this matter is heard by us.

2. The core questions with which we are concerned is whether the trial of cases in the area falling within Mawkhar including Barabazar in the town of Shillong are to be tried under the Rules of Administration of Justice and police in Autonomous District in Khasi-Jaintia Hills, 1937 or under the Autonomous District (Administration of Justice) Rules, 1953 by the, District Council Court. Before dealing with the question of controversy and the arguments advanced by the learned counsel for the parties, it would be convenient to give a brief "resume" of the constitutional background leading to the formation of the Sixth Schedule which contains in relation to administration of tribal areas in Assam.

Article 1(1) of the Constitution of India provides that "The States and territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule."

Clause (3) of Article 1 shows that the territory of India shall comprise--(a) the territories of the States; (b) the territories specified in Part D of the First Schedule; and (c), such other territories as may be acquired.

States are enumerated in the First Schedule Nine in number including the State of Assam. It is further specified therein that the territory of the State of Assam shall comprise the territories which immediately before the commencement of the Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal areas. The Khasi States and the Assam tribal areas by operation of the constitutional provisions consequently became an integral part of the State of Assam, Article 244(2) provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam; and that means the tribal areas in Assam would be governed not by the other relevant provisions of the Constitution which apply to the other constituent States of the Union of India but by the provisions contained in the Sixth "Schedule. It is seen that Article 244(2) introduced the scheme of the Sixth Schedule. These provisions mean to provide for a self-contained code in the autonomous tribal areas forming part of Assam and they deal with all the relevant topics in that behalf. The areas described in the Table appended to Para 20 of the Sixth Schedule, consisting Part A and Part B constitute the areas within the State of Assam; Sub-Para (1) of the said para so provides. Sub-Para (2) of Para 20 describes the boundaries of the items mentioned in the Table, para 1 (1) provides the tribal areas and constitutes the Autonomous District under part A of the Table, appended to Para 20 of the Sixth Schedule. Item I of the Table A constitutes Autonomous Districts of the United Khasi-Jaintia Hills district. The territorial extent of the Autonomous District of the United Khasi-Jaintia Hills District is described under sub-para (2) of Para 20 of the Sixth Schedule.

The relevant portion of Para 20 reads as follows :

"20. Tribal areas--(1) The areas specified in Parts A and B of the table be-low shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purpose of Clauses (c) and (f) of sub-para (1) of Para 3, Para 4, Para 5, Para 6, sub-para (2) Clauses (a), (b) and (d) of sub-para (3) and sub-para (4) of Para 8 and Clause (d) of sub-para (2) of Para 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District,"

On a plain reading of Clause (2) of Para 20 we find that it defines the territory of the United Khasi-Jaintia Hills District composed of the territories which before the

commencement of the Constitution were known as the Khasi States (25 in number) and the Khasi-Jaintia Hills district. But such area forming the Cantonment and Municipality of Shillong are excluded from the said district. Such other area of the Khasi States which came within the limit of the Municipality of Shillong would also be the territory of the said district.

The entire area of United Khasi-Jaintia Hills would be governed by the provisions of the Sixth Schedule. The proviso appended to Clause (2) of Para 20 cuts down operation of the Sixth Schedule in respect of some matters enumerated in the proviso wherein the jurisdiction of the District Council are ousted. The matters enumerated in the proviso are as below :

"3. Powers of the District Councils and Regional Councils to make laws--(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to-

(e) the establishment of village or town Committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

"4. Administration of justice in autonomous districts and autonomous regions--(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-para (1) of Para 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village Councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under Para 3 of this Schedule.

(2) Notwithstanding anything in the Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-para (1) of this para within such region or area, as the case may be, other than those to which the provisions of sub-para (1) of Para 3 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the

suits and cases to which the provisions of sub-para (2) of this para apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council as the case may be, may with the previous approval of the Governor make rules regulating-

(a) the constitution of village councils and courts and the powers to be exercised by them under this para;

(b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-para (1) of this para;

(c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-para (2) of this para;

(d) the enforcement of decisions and orders of such Councils and courts;

(e) all other ancillary matters for carrying out of the provisions of sub-paras (1) and (2) of this para.

"5. Conferment of powers under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.--(1) The Governor may for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council Court or officer under sub-para (1) of this para.

(3) Save as expressly provided in this para, the Code of Civil Procedure, 1908 and the Code of Criminal procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this para apply.

"6. Powers of the District Council to establish primary schools, etc.--. The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

"8. Powers to -assess and collect land revenue and impose taxes.-

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say-

(a) taxes on professions, trades, callings and employments;

(b) taxes on animals, vehicles and boats;

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulation to provide for the levy and collection of any of the taxes specified in sub-para (2) and (3) of this paragraph.

"10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals-

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may-

(a) to (c) ** ** (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council."

3. We are concerned in this case only with the administration of justice provided in Para 4 above.

As we have indicated above a bare reading of Para 20 shows what are the tribal areas. Sub-para (2) of the said paragraph defines the territorial limit of the United Khasi-Jaintia Hills District. This sub-para excludes the Cantonment and Municipality of Shillong from, the tribal areas of the said district but includes that part of the Myllem Syiemship which is within the Municipality of Shillong. This shows that when Para 20 (2) came to be incorporated in the Constitution, it was known that a certain part of the Myllem Syiemship was within the Shillong town as part of the Shillong Municipality. It further shows that if some portion of the Myllem Syiemship area in Shillong town is not part of the Shillong Municipality, then there would be no necessity of stating in the definition of the United Khasi-Jaintia Hills District in Para 20 (2) "but including so much of the area comprised within the Municipality of Shillong as formed part of the Khasi State of Myllem." The constitutional provisions mentioned above in Para 20 (2) demonstrate that some area of the Myllem Syiemship came within the ambit of the Shillong Municipality, otherwise the framers of the Constitution would, not have

mentioned this fact in the said para. The including part found in the definition in the said para was necessary to show that although the Myllem Syiemship area of the Shillong Town is part of the Shillong Municipality, the same would be a tribal area. By operation of the provision contained in the proviso to sub-para (2) of Para 20 this area of the Myllem Syiemship which are contained within the Municipal limits of Shillong are taken out of the jurisdiction of the District Council with regard to the powers vested in the District Council by the provisions contained in the said proviso, although the aforesaid Myllem Syiemship area shall remain tribal area for other purposes. The reasons behind "excluding and including definition" in Para 20 (2) are that if the Shillong Municipality and Cantonment areas were like other areas of erstwhile Assam, there was no reason to define United Khasi-Jaintia Hills District as in Para 20 (2), but in view of the historical, sociological and etymological background of the Syiemship area, the definition in Para 20 (2) was necessary.

It may be that some of the portions of the Myllem State comprised in the Shillong Municipality. But the point for our enquiry is whether the Mawkhar including Barabazar which is a part of the Myllem State comprised or merged in the Municipality of Shillong in order to attract the provision of Para 4 of the Sixth Schedule by virtue of the proviso to Para 20 (2) of the Sixth Schedule so as to oust the jurisdiction of the District Council in the matter of administration of justice.

4. Mr. N. M. Lahiri, the learned Advocate-General, Meghalaya submits that there are sufficient materials to show that Mawkhar including Barabazar was included in the Municipality of Shillong for a long time. In this connection the learned counsel refers to Draft Constitution, the debates in the Constituent Assembly as well as certain notification by which the Bengal Municipal Act as well as the Assam Municipal Act were extended to the area in question.

5. In the Draft Constitution the present Para 20 of the Constitution appeared as Para 19 which reads as under:

"19. Tribal areas.--(1) The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purpose of Clauses (e) and (f) of sub-para (1) of para 8, para 4 and para 5 and sub-para (2) Clauses (a), (b) and (d) of sub-para (3) and sub-para (4) of para 8 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the Table below in any district (other than the United Khasi-Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution :

Provided that the Tribal areas specified in Part-II of the Table below shall not include any such areas in the plans as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf.

Table Part-I 1. The United Khasi Jaintia Hills District.

2. The Garo-Hills District.

3. The Lushai Hills District.

4. The Naga Hills District.

5. The North Cachar Hills District.

Part II 1. North-East Frontier tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District.

2. The Naga Tribal Area."

At the time of deliberations of this draft provision a serious objection was raised by several members of the Constituent Assembly to the substitution sought to be made. Particularly, Pandit H. N. Kunzru, Shri Kuladhar Chaliha and Shri Rohini Kumar Choudhury objected to the introduction of the words "but including so much of the area comprised in such municipality as formed part of the Myllem State." The thrust of the objection of the members was that the whole of Shillong town of the Shillong Municipality should be treated as normal area and no part of any area should be given the status of tribal area although such parts had comprised within the Municipality of Shillong as formed part of the Khasi State of Myllem. Particularly Pandit Kunzru said that the above noted words should be deleted. Rev. J. J. M. Nichols Roy participating in the debate put forward his opinion in the following terms:

"I suppose, Sir, it may be all right. Mr. President Sir, I am very thankful to Dr. Ambedkar for the explicit way in which he has put the position before this House regarding Shillong Municipality. I think this House has understood that the Shillong Municipality is composed of two areas which were called before the British area and the Myllem State area and no Act of the provincial legislative or of Parliament could be applied to this Myllem State area unless agreed to by the Myllem State authorities; but for municipal purposes the Myllem State had given the power to the local Government and that is only for municipal purposes. The land still belongs to the Myllem State. Therefore, Sir, the power of the District Council should remain over this area; and as it is understood from the Ministry of States this Myllem State is going to be united with the District Council, this area should form part of the District Council and will be under the power of the District Council as regards land. The same condition will be kept but all the Municipal laws will apply there. At the same time Sir, according to this

proviso which Dr. Ambedkar has moved regarding the Khasi and Jaintia Hills, it is stated that the Khasi States will be included in that area. For this reason I believe that the measure that has been put before the house is very reasonable. From the standpoint of the people, the tribal people should live in that area; they would like to have the same rights and privileges which they had before but according to this proviso even the judiciary of the Myllem State will not be functioning there. Because paras 4 and 5 have already excluded the judicial power of the District Council over this area. That to my mind, Sir, is a great concession in order to pacify the feelings of the people who are not tribal people. It has been really great concession and a sacrifice also to the tribal people to allow these areas to be altogether under the power of the regular Court instead of going to the District Council Court. Sir, I do not feel very happy about this, but under the present conditions of the people of Shillong and the feelings of all classes of people. I felt that this was a compromise that was arrived at between myself and the other party."

As in the debate a serious controversy arose Dr. Ambedkar, the Chairman of the Drafting Committee had to explain the provision of para 19 of the Draft Constitution to the following effect:--

"Sir, I did not think that my amendment No. 331 substituting a new text of para 19 would cause any kind of difficulty such as the one which I now find. I did not, therefore, consider it necessary to spend much time in explaining the provisions contained in para 19. But now that so much debate has taken place of an acrimonious sort I am bound to explain the provisions as contained in the new amended para 19.

Now, the chief part of the controversy has centred round sub-para (2) of para 19. I should like to explain what this means. It means that so far as the United Khasi-Jaintia Hills District is concerned which is mentioned as entry I in Part I of the Table, that portion of the area comprised within the municipality of Shillong and which forms part of the Khasi State of Myllem shall be part and parcel of the United Khasi-Jaintia Hills District. It means that the part of the Myllem State which is included in Shillong will form part of the United Khasi-Jaintia Hills District. It is realised that this part of the Myllem State is really subject now under the new provisions of para 19 to the separate jurisdictions. It is subject to the jurisdiction of the Municipality of Shillong, because by this provision we are not altering the boundaries of the Shillong municipality. The boundaries of the Shillong municipality, as denned by the Municipal Act passed by the Assam Legislature, remains intact. According to that Act this particular part of the Myllem State is part of the municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the municipality might come in conflict. In order to overcome this conflict, I have added the proviso to Sub-clause (2). The effect of the proviso is this that for the purposes mentioned in the proviso the jurisdiction of the District Council of the United Khasi-Jaintia Hills District is ousted and to the extent that the jurisdiction of the

municipality is restricted to this purpose mentioned in the proviso the jurisdiction of the District Council will continue over this area. The idea of the proviso is to avoid conflict of jurisdiction. Some people on the other side have said that the Myllem State area should be completely excluded from the United Khasi-Jaintia Hills district and should be made exclusively part and parcel of the Shillong Municipality."

The Hon"ble Member further said:

"I do not know whether that is so. The point is this that as someone from that side said-I think my Friend Shri Rohini Kumar Chaudhury-three-fourths of the municipality is really covered by this area. There is not the slightest doubt about it that so far as marriage laws, inheritance laws and other customs and manners are concerned, the people living in this part of the Myllem State share the same laws, the same customs, the same marriage laws and ceremonies of the whole district. Consequently what will happen is this. Supposing this area were completely excluded from the United Khasi-Jaintia Hills district, the result will be that these people although they are fundamentally alike to their brethren in the rest of the part of the Myllem State with regard to marriage laws, their customs, etc etc., they will become at once subject to the general law of inheritance, general law of marriage, all general laws which the Parliament may make or which the Assam Legislature may make. I do not think that it is right that a part of the people who are homogeneous in certain matters should be severed in this manner. A part will obtain autonomy so far as their tribal life is concerned and a part will be subject to the general law to which the rest of the population is subject. It is for this reason that the Drafting Committee felt that the provisions contained in Sub-clause (2) and the proviso which accompanies it was the proper solution of this problem, namely, that for the purpose of the municipality as defined in the proviso that part of the Myllem State which is part of the municipality should remain subject to the municipality, while for purposes for which the district council is constituted that part should remain subject to the district council. There is no conflict and it helps to subserve the fundamental purpose, namely, that a homogeneous people should be subject to the same sort of laws and to the same sort of administrative system which all of them should have and have.

Now, there may be some controversy as to whether the proviso is sufficiently big enough to cover all matters that ought to be covered or whether it is too narrow. I am not prepared to express any opinion about it. The Drafting Committee has been guided in this matter by the two principal representatives, who must be credited with sufficient knowledge and information about this matter, namely the Premier of Assam and his colleague, Rev. Nichols Roy, If they in their wisdom think that some other matters ought to be included, the Drafting Committee will certainly not raise any objection because the Drafting Committee has nothing to do with this matter,"

The Hon"ble Member again said to the following effect:

"What we have done is that the people living in this part have a double right. They have a right to elect their representatives under the Shillong Municipality and they will have a right to elect their representatives in the District Councils. Beyond that, the jurisdiction is quite separate. I do not think there is any other point so far as this new para 19 is concerned."

5. From the above deliberations of the Constituent Assembly it is found, the learned counsel submits, that so far the judicial administration (paras 4 and 5) is concerned, the area of the Myllem State comprised in the Municipality of Shillong would be outside the scope of tribal area. The learned counsel has brought to our notice the following notifications in order to show that Mawkhar including Bar a bazar area came within the Municipality of Shillong. An agreement dated 15th Nov., 1878 shows the inclusion of the suburbs of Mawkhar and Laban in the boundaries of the Shillong station. The agreement reads, inter alia:

"I, Hain Manik, Siem of Myllem understanding that it is required by the Chief Commissioner of Assam that the villages of Mawkhar to the Northward and Laban to the south-westward of, and adjacent to, the station of Shillong, and within my territory, should be subjected to sanitary and municipal regulation, do hereby agree that the said villages of Mawkhar and Laban shall be included within the Municipality of Shillong; and I agree to pay on account of such villages, and on account of the residents thereof, all rates and taxes which may be provided for to be paid under the bye-laws, or which may, from time to time, be fixed, by the Commissioner of such Municipality and to do every and all things required by such Commissioner :

Provided that my proprietary and manorial rights and my authority as Siem within such villages, otherwise than necessary to be waived for the purpose of such municipality, shall not be interfered with....."

On 15-11-1910 a notification was issued u/s 8 of the Bengal Municipal Act. 1884 extending the Act to the town of Shillong from 15-11-1910 denning the boundaries of the Municipality. The boundaries given in this notification in eludes among other areas Mawkhar to Mawlai.

Notification No. 3163 I. B., dated Simla the 17th Sept. 1913 was issued by the Governor General in Council in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and all other powers enabling him in that behalf. This notification prefaced that whereas U. Ron Singh, Siem of Myllem in the Khasi and Jaintia Hills, has ceded to the British Government the jurisdiction necessary for the Municipal administration of the villages of Mawkhar, Laban, Malkisituate within the boundaries described in the schedule annexed to the notification, subject to the maintenance of all his rights and powers as Siem of Myllem therein. It reads that Sections 62 to 66-A and 85 to 367, and the fourth and fifth schedules of the Bengal Municipal Act, 1884 (Bengal Act III of 1884) as in force for the time being in the Municipality of Shillong, and

all notifications, orders, schemes, rules, forms or bye-laws made or hereafter to be made thereunder for the said Municipality shall, unless otherwise declared by the Chief Commissioner of Assam, be in force in the said villages in so far as the same may be applicable thereto. In Schedule "A" to this notification village Mawkhar has been mentioned.

Notification No. 6277-M dated 23rd Oct. 1914 defines the British portion of the Shillong Municipality. It reads:

"It is hereby notified for general information that the Chief Commissioner is pleased to declare that the boundaries of the British portion of the Shillong Municipality in the district of the Khasi and Jaintia Hills for the purpose of Act III (B. C.) of 1884 shall be as follows:--

East--Village of Laitumkhrah.

South--Village of Malki, the Government forest and village of Laban.

West--Cantonment and the village of Mawkhar.

North--The Umkhrah river from its junction with the Pendingiem stream down to Polo bridge and thence in a straight line to a pillar in the north of Ranengumkhrah and thence in another straight line to a point in the Umkhrah river where the path from Mawkhar to Mamlai crosses it."

Notification No. 953 LSG. dt. 11th April, 1928 shows the exclusion of certain portion of Laban u/s 5 (2) of the Assam Municipal Act, 1923 from the Shillong Municipality. This notification reads ;

"In accordance with the recommendation of the Municipal Board of Shillong in the district of Khasi and Jaintia Hills made at a meeting, the Government of Assam was pleased in exercise of the power vested in them by Sub-Section (2) of Section 5 of the Assam Municipal Act, 1923 (1) of 1923), to revise the boundaries of the Shillong Municipality so as to exclude from its limits the local area defined below. The excluded areas are mentioned in this notification.

Notification No. 91 LSG dt. 26th Jan. 1931 made u/s 296 (2) (i) of the Assam Municipal Act, 1923, divide the Shillong Municipality into twelve wards and defines their respective boundaries and the same includes Mawkhar and the south-east Mawkhar as wards Nos. 6 and 8.

Lastly Mr. Lahiri brings to our notice the notification No. 44-I dt. New Delhi, the 16th Jan., 1934. This notification reads as follows :

"Whereas the Siem of Myllem in Khasi and Jaintia Hills has ceded to the British Government the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923 of the villages of Mawkhar, Laitumkhrah, Mission Compound and Jaiaw, South-East Mawkhar and Garikhana, Mawprem and Jhalupara, Laban, Lumparing cum Madan Laban Malki and Hanengumkhra, situate within the boundaries described in the schedule annexed

hereto, subject to the maintenance of all other his rights and powers as Siem of Myllem therein and with the reservation that the rivers Umshirpi and Umkhra, so far as they are within the aforesaid villages, shall remain the property of the Myllem State.

In exercise of this jurisdiction and of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, and in supersession of the Notification of the Government of India in the Foreign Department No. 3163-I.B., dated the 17th Sept., 1913, and of all notifications amending the same the Governor General in Council is pleased to direct as follows:--

1. All the provisions of the Assam Municipal Act, 1923 (Assam Act I of 1923), as hereinbefore or hereinafter amended and as in force for the time being in the Municipality of Shillong, and all notifications, orders, schemes, rules, forms or bye-laws made or hereafter to be made for the said Municipality shall, subject to the exceptions hereinafter specified and unless otherwise declared by the Government of Assam, be in force in the said villages in so far as the same may be applicable thereto:

Provided that Chapter II and Sections 9, 51, 58, 59 (b), 59 (g), 65, 78, 129, 217 and 218 of the said Act shall not apply to the said villages and that Clause (b) of Sub-section (1) of Section 55 of the said Act shall not apply to the Umshirpi and Umkhra rivers so far as they are within the said villages."

This notification also gives the boundaries of the Mawkhar proper and south-east Mawkhar and Garikhana are mentioned as item No. 1 and item No. 4.

6. It is submitted by Mr. Lahiri that since 1950 the Deputy Commissioner and his Assistants are trying suits and cases arising in the administered areas of Shillong including Mawkhar and the District Council Courts have never been trying suits and cases over it. It is submitted that if any contrary decision is made upsetting this position, it will result in totally unsettling of the decisions, decrees as non est even though confirmed by the Court.

In support of his submission Mr. Lahiri particularly mentions the decision of a Special Bench of this Court in *U Owing Singh v. Ka Nosibon Jyrwa*, reported in AIR 1956 Gau 129. In this case the question that came up for consideration centred round Para 4 administration of justice, which is found mentioned in the proviso to sub-para (2) of Para 20. Sarjoo Prosad, C. J., tracing the historical background has conclusively held that so far the administration of justice is concerned, it will be within the scope of Rules for the Administration of Justice and Police in Khasi and Jaintia Hills, 1937 in which the District Council Court will have no jurisdiction.

On consideration of all the relevant legal position, the learned Chief Justice held as follows:

"These provisions make it clear even in the Siemship area appertaining to the

Shillong Municipal area, the District Council has no power to administer justice. It may be pointed out that the District Council has been constituted in respect of the United Khasi and Jaintia Hills District and the District Council has framed rules for the administration of justice in the autonomous district. Under these rules the, village court is composed of the Doloi, Sardar, Siem, Rynjah, Lyngdoh, etc.; and these courts are vested with powers to try suits of a civil nature.

The rules are dated the 8th Dec., 1953 and were promulgated with the assent of the Governor. These rules under the proviso to Para 20 sub-para 2 of the Sixth Schedule have no application to the "Administered Area" or the area of the State of Myllem falling within the Shillong Municipality. Thus the Court of the Siem and his Durbar even if functioning under these rules had no jurisdiction to try civil cases in the "Administered area".

I have pointed out earlier that after the Constitution of the District Council the transitional provisions embodied in Para 19 ceased to have effect and the provisions of Para 12 applied; as such the Acts of Parliament and those of the State Legislature would apply to the "Administered area" unless notified to the contrary. The contention of Mr. Ghose that even after the constitution of the District Council the transitional provisions continued to apply apparently ignores the existence of Para 12 of the Schedule.

It therefore appears to me that the powers of the Siem after the Constitution were continued to the Siemship Order or the Rules framed by the District Council constituting the Siem as a village court. We are thus reduced to the irresistible conclusion that the Siem and his Durbar have no jurisdiction to entertain suits of a civil nature in this area even between the Tribals. The above deduction inevitably flows from a careful analysis of the legal position; and the Additional Deputy Commissioner, in my opinion, was quite justified in his view that the property in dispute being within the Shillong Municipality was outside the jurisdiction of the Court of the Siem and his Durbar."

7. The learned counsel submits that all the above relevant materials were not before the Supreme Court while deciding the case of The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, , which was concerned with Para 6 of the Sixth Schedule. It is submitted that if the above materials would have been placed before the Supreme Court the decision would have been to the effect that the Mawkhar etc. comprised in the Municipality of Shillong. The learned counsel further submits that the Supreme Court was not concerned with the points in issue in this proceeding and the ratio decidendi of that case is not applicable in the present case. It is further submitted that the decision does not confer any jurisdiction in the District Council Courts to try suits and cases arising in Mawkhar or any other areas in Shillong Municipality which formed part of the Myllem Syiemship. Besides this, the Supreme Court decided the case on materials available on record only. It had no occasion to consider the relevant materials referred to above which clearly show that Myllem Syiemship

or at least Mawkhar etc. were included in the Shillong Municipality. The learned counsel further submits that the Supreme Court also has observed while construing the words "comprised within the Municipality of Shillong"--that part of the district in which the officers and the authorities of the Shillong Municipality continued to exercise powers and duties as before "and admittedly in Mawkhar and like areas the officers and the authorities of the Shillong Municipality throughout are exercising powers and functions of the Municipality. The learned counsel further brings to our notice the observation made in the last portion of Para 3 of the report while considering Para 20 (2) of the Sixth Schedule to the following effect:--

"Therefore, if any part of the area comprised in the United Khasi-Jaintia Hills District, were included in the Municipality of Shillong before the said District came into being, the powers conferred on the District Council, inter alia, by Para 6 of the Sixth Schedule would not be available to the Council in respect of that area."

The learned counsel also draws our attention to another observation in Para 7 of the report which reads:--

"There is also no evidence that these territories were subsequently merged in the Municipality of Shillong."

The learned counsel submits that apart from a notification dated 16th Jan. 1934, no other notifications as referred to above were available for consideration during the hearing of the case by the Supreme Court.

In conclusion the learned counsel submits that from the aforementioned notifications it would now be sufficiently clear that the areas in question comprised in the United Khasi and Jaintia Hills District, were included in the Municipality of Shillong and as such the powers conferred by Paras 4 and 5 of the Sixth Schedule to the Constitution cannot be available to the District Council.

8. Mr. J. P. Bhattacharjee, the learned counsel appearing on behalf of Syiem of Myllem as intervenor has submitted almost in the same line as has been addressed by Mr. Lahiri. He has submitted that the decision of the Supreme Court in *The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others*, is only a qualified conclusion as there was no clinching material before the Court to give clear opinion on the subject matter. The learned counsel has further submitted that at least since after the commencement of the Constitution in view of the clear provision of Para 20 (2) of the Sixth Schedule, the Syiem of Myllem has not been exercising the power of judicial administration in the Mawkhar including Barabazar area.

9. Mr. S. C. Das, the learned counsel appearing on behalf of the District Council has submitted that Mawkhar area was never merged in the Shillong Municipality, as sought to be made out by the learned Advocate General, Meghalaya. The

notifications that have been brought to the notice of the Court are clearly indicative of the fact that the Mawkhar area and some other areas were ceded by the Syiem of Myllem only for the purpose of Municipal administration and for no other purpose. It is submitted that the District Council had the jurisdiction to administer other matters except Municipal administration in view of the fact that the area in question still remains a tribal area. Adverting to the provision of Para 20 (2) of the Sixth Schedule, the learned counsel submits that some other areas of the Myllem State merged in the Municipality of Shillong. These areas comprised in Kench's Trace, Railbong. These villages were originally under the control and management of the Khasi State of Myllem. But the British Government purchased the said areas and comprised within the Municipality of Shillong as Ward No. 3 in 1931, These areas earlier formed part of the Khasi State of Myllem before the Constitution came into force and as such to protect the interest of tribal and non-tribal people residing in those areas proviso to Para 20 (2) had to be made, according to the "learned counsel. The learned counsel submits that the Syiem of Myllem still continued to exercise authority and now the District Council over all matters other than for "municipal purposes" over the Shillong administered areas including lewduh (Bara Bazar) part of Mawkhar village being part of Myllem Syiemship within the autonomous area of the Khasi Hills District Council.

It is submitted that the people residing in these areas (Shillong Administered areas) tribals and non-tribals as well have the right to elect their representatives to the Khasi Hills District Council and have been exercising till date under the provisions of the Assam (Meghalaya) Autonomous Districts (Constitution of District Councils) Rules, 1951 framed by the Governor of Assam prior to the inception of the Khasi Hills District Council which came into being only on 27-6-1952 i.e. after the framing of the said Rules. These areas are found in the constituencies Nos. 14 and 16 of the List appended to the said Rules as Appendix II.

The learned counsel has further brought to our notice the notification No. 253-IB dated Simla 7-8-1941 which was republished by the Government of Assam on 15-8-1941. This notification adds other villages namely "10 Kench's Trace and Railbong", to the schedule of boundaries described in Foreign and Political Department No. 44-I dated 16th Jan. 1934 apparently on having the said villages purchased. It is submitted that after the purchase of the said villages by the Government, they have completely merged or comprised in the Municipality of Shillong unlike villages of Mawkhar, Laban etc. which were simply allowed to be subjected to certain Municipal regulation but other rights being remaining intact within the Khasi State i.e. Myllem Syiemship. Mr. Das has submitted that the notification No. 44-1 dated New Delhi the 16th Jan.. 1934 enabled the Shillong Municipality to exercise certain municipal functions and duties in these areas of Mawkhar, Laban etc., designated by the said notification as the Shillong (Administered Area) Municipality which is a distinct part of the municipality of Shillong. It is submitted that the District Council has been exercising its authority

as vested upon by the provision of the Sixth Schedule in this area (Shillong Administered Area) as well as in certain areas of the British areas, namely, "Kench"s Trace and Railbong". The learned counsel has further submitted that after the decision of the Supreme Court in *The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others*, , there is not an iota of doubt that the Mawkhar area was never merged with the Shillong Municipality so as to exclude the jurisdiction of the administration of justice from the District Council Court. In the aforesaid case before the Supreme Court, the question for decision was as to whether the jurisdiction of the District Council of the U. K. & J. Hills extends to the area called Barabazar in village Mawkhar in Shillong. The question really centred round the exercise of jurisdiction under Para 6 of the Sixth Schedule which is also mentioned in the proviso to Para 20 (2) of the Schedule. The brief facts leading to the appeals before the Supreme Court are that the respondents had stalls in Barabazar area which were gutted by fire. They were permitted by the Syiem of Myllem to construct stalls similar to the ones they had. Subsequently they received two orders in July 19, 1965 and May 16, 1966 in respect of two respondents, asking them not to proceed with the constructions of the stalls. It was stated that the order of the Executive Committee of the District Council, U. K. & J. Hills had directed that no new construction or renovation of the stalls should be undertaken in the Barabazar unless approved by the Executive Committee and that all the constructions in progress should be stayed. Both the respondents filed writ petitions before the High Court questioning the authority of the Executive Committee of the District Council to make any order in respect of Barabazar area contending to be outside the jurisdiction of the District Council. The two writ petitions filed by the respondents were disposed of by a common judgment recording a finding that the District Council had no jurisdiction, administrative or otherwise, over the area in question and quashed the orders by which the respondents were prohibited from constructing their shops in the area. The District Council being aggrieved preferred appeals before the Supreme Court. The main question that presented itself before the Supreme Court was pertaining to the jurisdiction of the District Council in respect of matters provided in para 6 of the Sixth Schedule. Their Lordships noticed sub-para (2) of para 20 and the proviso appended thereto. On a reading of sub-para (2) of para 20 along with the proviso appended thereto, it was held that if any of the areas comprised in the U. K. and J. Hills District was included in the Municipality of Shillong, before the said District came into being, the powers conferred on the District Council, inter alia, by para 6 of the Sixth Schedule would not be available to the District Council in respect of that area. However on consideration of the notification No. 44-I dated New Delhi, the 16th Jan., 1934 and also the Khasi Seimship (Application of Laws) Order 1949, their Lordships came to the conclusion that Mawkhar which comprised Barabazar was never included in the Shillong Municipality. The Court held that the material on which the High Court relied did not justify the finding that the village Mawkhar which includes Barabazar was part of Shillong Municipality and made the

following significant observations :

"The notification dated the 16th Jan., 1934 makes it clear beyond doubt that the Siem of Myllem ceded the villages for the specified purpose of municipal administration only. It seems to us also clear that though the provisions of the Assam Municipal Act, 1923 were made applicable to the ceded villages, the villages were never included within the territorial jurisdiction of the Shillong Municipality. The notification itself directed that these villages were to be deemed as a distinct Municipality de-signaled the Shillong (Administered Areas) Municipality which shows that they were not intended to be merged in the Municipality of Shillong though the officers and authorities exercising powers or discharging duties within the Municipality of Shillong were to exercise similar powers and discharge like duties in the ceded areas according to a direction contained in the notification. Chapter-11 of the Assam Municipal Act, 1923 which, as it stood at the date of notification, empowered the Provincial Government to include within a municipality and local area in the vicinity of the same, was not made applicable to these villages. There is also no evidence that these territories were subsequently merged in the Municipality of Shillong. After the commencement of the Constitution of India, as para 19 of the Sixth Schedule provides the administration of the territories comprised in the United Khasi-Jaintia Hills district vested in the Governor until the District Council was constituted in June. 1952. It is not clear from the material on record whether the District Council took up the entire burden of administration throughout the territories from the beginning or allowed the existing arrangements to continue at some places for some time. The extract from the Bill and Demand Register of the Shillong Municipality for the year 1957-58, referred to in judgment of the High Court seems to suggest the second possibility. Even if this were so, it does not mean, that Mawkhar or South-East Mawkhar was included in the territorial jurisdiction of the Shillong Municipality."

In view of the notification dated 16th January, 1934, the Supreme Court has held that said notification preserves the distinct entity of the ceded villages and in absence of any provision effecting a merger of these territories in the Municipality of Shillong, reference in Khasi Syiemship (Application of Laws) Order 1949, 10 any part of the Khasi-Jaintia Hills District as "comprised within the Municipality of Shillong" must be read to mean that part of the District in which the officers and authorities of the Shillong Municipality continued to exercise powers and discharge duties as before. Ultimately the Supreme Court allowed the appeals of the District Council holding that the jurisdiction of the District Council of the Khasi-Jaintia Hills extends to Barabazar area which is included in Mawkhar village and as such the impugned orders issued at the instance of the appellants to the first respondent in each of the two appeals restraining them from constructing shops in the aforesaid area, are not invalid. The result of the decision of the Supreme Court is that so far para 6 of the Sixth Schedule is concerned, the proviso to para 20 (2), in which para 6 is enumerated, will have no impact in Mawkhar in which Barabazar is included and the South Mawkhar

Area.

In view of the above finding of the Supreme Court the result that flows is that in respect of matters pertaining to paragraphs enumerated in the District Council only will have full jurisdiction in the Mawkhar area. Thus there is no escape from the conclusion than to hold that paras 4 and 5 of the Sixth Schedule which are also mentioned in the proviso to para 20 (2) of the Sixth Schedule will not come within the exception engrafted to the aforesaid proviso so far Mawkhar including Barabazar area is concerned. Therefore, it is to be held that the District Council will have jurisdiction in all matters, except the Municipal administration, arising out of these areas.

10. In the result we answer the reference that the District Council Courts only will have jurisdiction for the administration of justice in Mawthar including Barabazar area.

N.L. Singh, J.

10A. I agree.

Lahiri, J.

11. The polemical question seems, on the face of it, a simple point as to the territorial jurisdiction of the Courts. Whether the suits, the causes of actions of which have arisen in area falling within Mawkhar including Bara Bazar, are triable by the Deputy Commissioner and his Assistants under the Rule for the Administration of Justice and Police, 1937, for short "the Rule of 1937", or are triable by the District Council Courts under the provisions of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice Rules 1953, for short "the Rules of 1953". Indeed there are large and wide differences in the trial system of the Courts and the substantive and procedural laws are also different. Be that as it may, in the pro-Constitutional days the suits were tried by the Courts of the Deputy Commissioner and his Assistants under "the Rules of 1937" and the Courts continued to try them even after the inauguration of the Constitution. The jurisdiction of, the Courts to try such actions, was questioned before a Special Bench of the High Court in *U. Owing Singh v. K. A. Nosibon* AIR 1956 Gau 129 : ILR (1956) 8 Gau 89 (SB). By an exhaustive and illuminating judgment Sarjoo Prasad C. J. has held that in respect of civil litigation arising within the Shillong (Administrative Areas) Municipality, the Deputy Commissioner and his Assistants have exclusive jurisdiction to try the suits under "the Rules of 1937", though territorially and for other limited purposes the area falls within the Tribal Areas styled as the United Khasi and Jaintia Hills District, to which Ram Labhya J. concurred and supplemented it by other reasons. Since the law was so settled the suits are being tried by the Deputy Commissioner and his Assistants under "the Rules of 1937."

12. It goes without saying that if the law laid down in *U. Owing Singh* (supra) is erroneous the established practice in force for about 50 years shall be

destablished which would undoubtedly cause hardship to a large section of the people living in Shillong, the capital of Meghalaya. The net result would be that the entire area comprised within the Municipality of Shillong which formed part of the Khasi State of Myllem at the commencement of the Constitution including the Shillong (Administrative Area) Municipality, which forms about 3/4th of the area of the capital of Meghalaya must be treated as the Tribal Areas under para 20 of the Sixth Schedule to the Constitution. The District Council and not the State Government shall have exclusive jurisdiction over the area. It would thereby affect the jurisdiction of the Government of Meghalaya over an important area in Meghalaya. The resultant effect might be that under the proviso to sub-para (2) of Para 20 of the Sixth Schedule to the Constitution of India the District Council should exercise all powers except those enumerated in Clauses (e) and (f) of sub-para (1) of para 3, para 4, para 5, para 6, sub-para (2) Clauses (a) (b) and (d) of sub-para (3) and sub-para (4) of Para 8 and Clause (d) of sub-para (2) of para of the Sixth Schedule in "the Municipality of Shillong", which should be "deemed to be within" the United Khasi and Jaintia Hills District. In short, the effect would be, that the whole of the Shillong (Administrative Area) Municipality should be treated as "the tribal area" and the Shillong Municipality, though not comprising within the Tribal Area, should be deemed to be within the United Khasi and Jaintia Hills Tribal Area for all purposes other than those specified in the proviso to sub-para (2) of Para 20 of the Sixth Schedule to the Constitution. Indeed it would create far-reaching and substantial changes in the fields of Legislative and Executive business of the Government of Meghalaya, apart from affecting the subsisting judicial system in the area.

13. In my opinion the present case involves construction of para 20 of the Sixth Schedule to the Constitution, the consideration of the principles of law laid down in U. Owing AIR 1956 Gau 129 (SB) (supra) and the law laid down by their Lordships in Hardeodas Jagannath Vs. State of Assam and Others, . Thereafter I propose to consider the effect of the decision in The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, . While considering the decisions I shall also consider the historical background, the growth and development of the Shillong Municipality and some relevant laws on the subject.

14. The ratio decidendi of Hardeodas Jagannath Vs. State of Assam and Others, , in my opinion, is pertinent to the question involved in the instant case. By notification dated April, 15, 1948 the Central Government extended the provisions of the Assam Sales Tax Act, 1947 with slight modifications to the Shillong (Administered Areas) including Bara Bazar. At this stage, it is not necessary to set out the exact area of the Shillong Administered Area. Suffice it to say that the lands covered by the area including Mawkhair and Bara Bazar were undoubtedly the property of the Siem of Myllem, and formed part of the State of Myllem. By notification issued under Rule 6 of the Assam Sales Tax Rules 1947 the Commissioner of Taxes, Assam, fixed May 20, 1948 as the date

by which the dealers of the Shillong Administered Areas had to apply for registration under the Assam Sales Tax Act, 1947. The Government of India extended the provisions of the Assam Sales Tax Act (to the Administered. Area in exercise of power u/s 4 of the Extra provincial Jurisdiction Act, 1947. The appellant Hardeo Das filed writ applications before the High Court questioning whether the provisions of the Assam Sales Tax Act could be legally, validly and constitutionally extended to the Shillong Administered Areas. The appellant was a partnership firm carrying on business at Nawkhar, Shillong. The High Court of Assam and Nagaland, as the High Court was known at all relevant time, dismissed his applications Hadeodas took the matters to the Supreme Court The contentions raised before the Supreme Court were as follows:--

1. Whether the provisions of the Assam Sales Tax Act, 1947 could be legally, validly and Constitutionally extended by the Central Govt. to the Shillong Administered Areas, including Bara Bazar in exercise of powers conferred by Section 4 of the Extra-Provincial Jurisdiction Act, 1947 ?

It was urged that on April 15, 1948 when the notification was issued, the Extra-Provincial Jurisdiction Act, 1947, was not applicable to the Shillong Administered Area as the Instrument of Accession by which the Administration of the State of Myllem was transferred to the Central Govt. was accepted by the Governor General of India on August 17, 1948 i. e. two days after the extension of the Act.

2. It was also urged on the basis of the provisions of the Extra-Provincial Jurisdiction Act, 1947, that "the Extra-Provincial Jurisdiction" as defined in Section 2 of "the said Act" could be exercised by the Central Govt. if by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government had for the time being in or in relation to say area outside the Provinces had exercised such jurisdiction.

It was urged that on the declaration of independence on August 15, 1947, the paramountcy lapsed and the State of Myllem became an independent State. Therefore, the Central Govt. could not exercise any Extra-Provincial Jurisdiction till the instrument of accession was signed by the Governor General.

It was, therefore, argued that, the notification dated April 15, 1948 was not validly issued and the provisions of the Act were not operative in the Shillong Administered areas. It was contended that after the declaration of independence on August 15, 1947 the paramountcy lapsed and the State of Myllem became an independent State, on August 15, 1947; there was no treaty, grant, usage, or arrangement whereby the British Crown enjoyed any rights to levy taxes on the sale of goods within the Myllem States nor had the British Crown any right to extend to that area any such Act without the express consent or approval of the Ruler of that State.

On behalf of the State it was contended that before August 15, 1947 the relations of the Crown representative with Khasi Hills States were conducted through the Governor of Assam and in practice the administration of the Hills

State was in great measure assimilated to that of the Province of Assam, partly by the application of the British Indian Laws under the Indian (Foreign Jurisdiction) Orders-in-Council and partly by administrative measures. It was contended that by virtue of the Instrument of Accession all previous existing arrangements between Khasi Hills States and the Govt. of India in the Assam Province were continued and the Central Govt. could, therefore, exercise extra-provincial jurisdiction by usage. In short, the argument of the State was that though the Instrument of Accession was accepted by the Governor General on August 17, 1948, it recognised the fact that there were certain existing arrangements regulating relations between the Government of India and the Chiefs of the Khasi Hills States. The Central Govt. could exercise extra-provincial jurisdiction by agreements usage and it could not, therefore, be said that the notification of the Central Govt. dated April 15, 1948 was invalid. The main question, therefore, arose before the Supreme Court as to whether the Dominion of India was entitled to exercise Extra-Provincial Jurisdiction over the Shillong Administered Area on April 15, 1948. Their Lordships considered that the question at issue was not merely or purely "a question of fact" but a question relating to "fact of State", which is peculiarly within the cognizance of the Central Govt. For the meaning of the expression "fact of State" their Lordships considered Halsbury's Laws of England, 3rd Edition, Vol. 7, page 285, and held that material on the record was insufficient to enable the Court to determine as to whether the Dominion of India was entitled to exercise extra-provincial jurisdiction over the Shillong Administered Area on April 15, 1948 or not. Accordingly their Lordships took resort to Section 6 of the Extra-Provincial Jurisdiction Act, 1947, which is extracted below:--

"6. (1) If any proceeding, civil or criminal, in a Court established in India or by the authority of the Central Government outside India, any question arises as to the existence or extent of any foreign jurisdiction of the Central Government the Secretary to the Government of India in the appropriate department shall, on the application of the court send to the Court the decision of the Central Government on the question and the decision shall for the purposes of the proceeding be final.

(2) The Court shall send to the said Secretary in a document under the seal of the Court or signed by a Judge of the Court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned to the Court by the Secretary and those answers shall on production thereof be conclusive evidence of the matters therein contained."

15. It may be stated here that the Central Govt. could exercise extra provincial jurisdiction as defined u/s 2 of the Act provided by treaty, agreement, grant, usage or other lawful means it had acquired jurisdiction in or in relation to areas outside the provinces of India-As the material on record was insufficient their Lordships took resort to Section 6 of the Act. Sometimes on the basis of the Sanads issued to the Chief of the Hills State in Khasi Hills the Government acquired lands belonging to the Siem of Myllem without reference to any law,

sometimes the British Crown took resort to the Govt. of India Acts and on some occasions exercised powers under the Indian (Foreign Jurisdiction) Order-in-Council and used to exercise jurisdiction in areas belonging to the Syiem of Myllem. However, when their Lordships found that the materials were insufficient two questions were referred to the State Government u/s 6 of the Extra provincial Jurisdiction Act, 1947, which are extracted hereinbelow .-

(1) Whether the Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including Bara Bazar, which also included Mawkhar, a part of the erstwhile Myllem State, on April 15, 1948;

(2) Whether the Dominion of India had extra provincial jurisdiction on April 15, 1948 to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar u/s 4 of Extra Provincial Jurisdiction Act (Act 47 of 1947)".

Both the questions are significant. The first question is as to whether the Dominion of India could exercise extra provincial jurisdiction over the Shillong Administered Area including Bara Bazar which also included Mawkhar, a part of the erstwhile Myllem State, on April 15, 1948. The question was answered by the Union of India on January 12, 1968 in the following terms;

"Minister of Home Affairs.

Replies to the questions mentioned in the order dated Sept. 21, 1967 passed by the Supreme Court of India in Civil Appeals Nos. 2403 and 2404 of 1966.

(1) The British Government in India had by treaty, grant, usage, sufferance and other means acquired jurisdiction over certain territories of the erstwhile State of Myllem. The jurisdiction was exercised under the Indian (Foreign Jurisdiction) Order-in-Council, 1902 as amended by the Indian (Foreign Jurisdiction) Order-in-Council, 1937. Mawkhar was a part of the territories of Myllem jurisdiction over which had been agreed to be given by the Siem of Myllem to the British Government. It was included in those parts of Shillong which came, in course of time, to be called the Shillong Administered Area, It has been reported that on actual survey the small area known as Bara Bazar area comes partly under Mawkhar proper and partly under South East Mawkhar and Garikhana. Bara Bazar area was thus a part of the area belonging to the erstwhile Myllem State in which the British Government in India exercised Jurisdiction under the Indian (Foreign Jurisdiction) Order-in-Council. On the withdrawal of the British Rule the jurisdiction over the territories of the erstwhile. Myllem State which has been included in the Shillong Administered Area continued to be exercised with the consent of the Siem and the jurisdiction, which was until then exercised in those areas by the British Government in India was assumed by the Dominion of India and it was retained thereafter by virtue of the Instrument of Accession signed by the Siem of Myllem and the agreement annexed thereto. The Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including the Bara Bazar which also included Mawkhar a part of the Myllem State

on April 15, 1948.

(2) The jurisdiction exercised by the British Government in India over the Shillong Administered Area was quite extensive. In exercise of that jurisdiction that Government had extended, with appropriate reservations a number of Acts Central as well as Provincial to the Shillong Administered Area e.g., the Indian Income Tax Act and the Assam Municipal Act with the consent of the Siem of Myllem where necessary. On the withdrawal of British rule the Dominion of India acquired the same jurisdiction over the Shillong Administered Area by virtue of the Instrument of Accession signed by the- Siem of Myllem and the agreement annexed thereto. The Dominion of India therefore had on April 15, 1948 extra provincial jurisdiction in terms of the Extra Provincial Jurisdiction Act, 1947 (Act 47 of 1947) to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar, Assam Saks Tax was actually extended to the Shillong. Administered Areas including Bara Bazar, after obtaining the consent of the Siem of Myllem in the Ministry of State Notification No 186-IB dated the 15th April, 1948.

Sd/- L. P. Singh Secretary to the Govt. of India New Delhi January 12, 1968".

16. On the basis of the letter, the Supreme Court concluded that the Union Govt. was entitled to exercise extra-provincial jurisdiction over the Shillong Administered Area on April 15, 1948. The reason was that prior to the date, British Government had exercised that jurisdiction (Extra Provincial Jurisdiction) under the Indian (Foreign Jurisdiction) Order-in-Council, 1937 and on withdrawal of the British Rule the jurisdiction over the territory of Myllem State continued to be exercised by the Dominion of India and the jurisdiction was retained even thereafter. Their Lordships conclusively held that the jurisdiction exercised by the British Government over the Shillong Administered Area had been extensive and in exercise of that jurisdiction a number of Acts, Central as well as Provincial, were extended to the Administered Areas including the Indian Income Tax Act, the Assam Municipal Act, with the consent of the Siem of Myllem where necessary. On the withdrawal of the British Rule the Dominion of India, as ruled by the Supreme Court, acquired the same jurisdiction which included the jurisdiction to extend the Acts to the Shillong Administered Area. Their Lordships held that u/s 6 (2) of the Extra provincial Jurisdiction Act, 1947 the answers of the Central Govt. to the questions referred by the Supreme Court were conclusive evidence of the matter therein contained. Under these circumstances, their Lordships held that the Central Govt. had extra provincial jurisdiction over the Shillong Administered Area including the Shillong (Administered Area Municipality and accordingly declared that the Central Govt. had full jurisdiction to extend the Assam Sales Tax Act to the Administered Areas including Mawkhar.

17. From the materials placed before us as well as from the materials available, I find that the British Govt. in India had by treaty, grant, usage, sufferance and by other means acquired jurisdiction over certain territories of the erstwhile State of Myllem sometimes under the Government of India Act, sometimes under the Act

of 1874 and later under the Indian (Foreign Jurisdiction) Order-in-Council, 1902 and 1937. Be that as it may the fact remains therein *Hardeodas Jagannath Vs. State of Assam and Others*, it was established that the British Govt. exercised extra-provincial jurisdiction over the Shillong Administered. Areas and after the British Rule was over the Dominion of India exercised extra-provincial jurisdiction over the Shillong Administered Area including Bara Bazar, which is included in Mawkhar, which was within the erstwhile State of Myllem. In *Hardeodas* (supra) therefore, the conclusive evidence gathered by the Constitution Bench of the Supreme Court was that the British Govt. and thereafter the Dominion of India and later the Central Govt. exercised extra-provincial jurisdiction over the area in question. Under these circumstances, in my humble opinion, the question as to whether the area was ceded to the British Govt. and/or the British Crown and/or the Dominion of India or the Central Govt. is now an academic question. It is a fait accompli. It is also relevant to refer to some of the clauses of the Sanads, which were issued to the Khasi Chiefs or Siems including the Siem of Myllem. After a Siem had been elected, the Deputy Commissioner used to grant Sanads to the Chiefs or Siems. I extract a model form of Sanads adopted in 1877 for granting to the Siems including the Siem of Myllem, which is to be found in Sir Keith Cantlies "Notes on Khasi Laws" at pages 138-140 :

"Form of Sanad adopted in 1877 for Granting to the Siems

SANAD

You.....having been elected Siem of the State of.....in the district of the Khasi and Jaintia Hills, this Sanad ratifying your election and appointing you Siem, is conferred upon you on the following conditions:--

I. You shall be subject to the orders and control of the Deputy Commissioner of the district of the Khasi and Jaintia Hills, who will decide any dispute that may arise between yourself and the Chief of any other Khasi State. You shall obey implicitly any lawful order which the Deputy Commissioner, or other officer authorised on that behalf by the Local Government may issue to you.

II. You are hereby empowered and required to adjudicate and decide all civil cases and all criminal cases, except those punishable, under the Indian Penal Code with death, transportation, or imprisonment for five years and upwards, which arise within the limits of the State in which your subjects alone are concerned. In regard to the offences above excepted, you shall submit an immediate report to the Deputy Commissioner of the Khasi and Jaintia Hills, and faithfully carry out the orders he may give concerning their disposal. And you shall refer all civil and criminal cases arising within the limits of your State, in which persons other than your own Khasi subjects may be concerned, for adjudication by the Deputy Commissioner of the Khasi and Jaintia Hills, or by any other officer appointed by him for that purpose.

III. The Local Government shall be at liberty to establish civil and military sanatoria, cantonments and posts in any part of the country under your control,

and to occupy the lands necessary for that purpose, rent-free. If Government wishes at any time to construct a railway through your territory you shall provide the land required for the purpose without compensation, save for occupied land, and shall render to the Local Government in this behalf all assistance in your power.

IV. You hereby confirm the cession to the British Government by your predecessors of all the lime, coal and other mines, metals and minerals found in the soil of your State, and of the right to hunt and capture elephants within your State, on condition that you shall receive half the profits arising from the sale, lease or other disposal of such lime, coal, or other minerals, or of such right. On the same condition, you confirm the cession to the British Government of all waste land, being lands at the time of cession unoccupied by villages, cultivation plantations, orchards, etc. which the British Government may wish to sell or lease as waste lands.

V. You shall not alienate or mortgage to any person any property of the State, movable or immovable which you possess or of which you may become possessed, as Chief of the State.

VI. You shall not without the sanction of Government lease or transfer or allow to be leased or transferred to persons, other than your own Khasi subjects, any land or lands in your jurisdiction.

VII. You shall cause such areas as may be defined by the Local Government for that purpose to be set aside for the growth of trees to supply building timber and fire-wood to the inhabitants of the State. You shall take efficient measures to secure these areas against destruction by and by jhuming.

VIII. You do hereby confirm the agreement given by your predecessor, regarding the trial by the Deputy Commissioner alone of suits for divorce and other matrimonial cases arising between Native Christians, who have been married in accordance with provisions of the Indian Christian Marriage Act XV of 1872.

IX. If you violate any of the conditions of this Sanad, or in the case of your using any oppression, or of your acting in a manner opposed to established custom, or in the event of your people, having just cause for dissatisfaction with you. You shall be liable to suffer such punishment as the Local Government, subject to the control of the Government of India, may think proper to inflict.

X. According to the conditions above enjoined, you are hereby confirmed Siem of the State of.....in the Khasis Hills. In virtue whereof this Sanad is granted to you under my hand and seal this..... day of.....19..."

The Sanad clearly shows that the Siems were subject to the orders and control of the Deputy Commissioner of the district. Their Judicial powers were very much limited and were fully controlled by the Deputy Commissioner. Even the Local Government had the liberty to establish civil and military sanatoria in any part of the country under the control of the Siem of Myllem and to occupy the lands

necessary for those purposes. Therefore, by virtue of the Sanad itself the Government could take over any land on the basis of the terms of the Sanad. By an agreement dated 7-9-1926, the Siem of Myllem consented to the application of certain laws to the six villages of the Myllem State adjoining Shillong which had been placed under the Municipal Administration of the Shillong Municipality. I extract the agreement herein below:

"Agreement by the Siem of Myllem dt. 7-9-1926

Agreement executed by U Kmuin Manik, Siem of Myllem, consenting to the application of certain Acts to the six villages of the Myllem State adjoining Shillong which have been placed under the Municipal administration of the Shillong Municipality.

On behalf of the Myllem State Durbar, I hereby agree to the extension of the following Acts to the non-British portion of the Shillong Municipality and cede to the British Government the jurisdiction necessary for the administration of the said Acts and the rules framed thereunder in the said area, provided that my proprietary and manorial rights and my authority as Siem within such area otherwise than necessary to be waived for the purpose of the said Acts and the rules framed thereunder, shall not be interfered with.

1. The Bengal Vaccination Act, 1880 (V of 1880).
2. The Bengal Births and Deaths Registration Act, 1873 (IV of 1873),
3. The Assam Municipal Act 1 of 1923 (with the exception of Sections 58, 59 (b) to 59 (g), 65, 78, 129, 216, 217, 218 and with the reservation that the rivers Umshirpi and Umkhrah so far as they are within that area should remain the property of the Myllem State).
4. The Glanders and Farcy Act, 1899 (XIII of 1899).
5. The Lepers Act, 1898 (III of 1898).
6. The Assam Medical Act (I of 1916).
7. The Indian Post. Office Act, 1898 (VI of 1898).
8. The Indian Telegraph Act, 1885 (XIII of 1865)
9. The Epidemic Diseases Act, 1897 (III of 1897).

Kmun Manik Shillong Siem of Myllem The 7th September, 1926."

18. Therefore, in the areas including Mawkhar not only the Ads were allowed to be extended to the non-British portion of the Shillong Municipality, but the Siem ceded to the British Government all the jurisdiction necessary for the administration of the said Acts and the Rules framed thereunder in the Shillong Administered Area. Of course receiving some of his personal and other rights. In due course. I shall refer to some of the notifications whereby laws were extended

to the administered area by the Government. In my opinion, therefore, long before the commencement of the Constitution of India the area known as the Shillong (Administered Area) Municipality was duly acquired by the British Crown and it exercised jurisdiction under the *Hardeodas Jagannath Vs. State of Assam and Others*, is an authority for the proposition.

19. The same conclusion was reached by the Special Bench of this court in *U Owing AIR 1956 Gau 129 (supra)* without taking report to Section 6 of the Extra Provincial Jurisdiction wherein Sarjoo Prasad, C. J. unravelled with his Lordship's painstaking care tangled mass of the relevant Rules. Legislations. Treaties, Sanads and the political practice of the Khasi Hills State and reached the conclusion that the British assumed sovereignty over the land belonging to the Siem of Myllem, kept the indigenous organisations intact, but assumed the authority and jurisdiction to administer the Hills States and in particular the administered area, with which we are concerned. After considering Major P. R. Gurdon's "The Khasis" and Keith Cant lie's "Notes on Khasi Laws" the Hon'ble Chief Justice reached the conclusion that properly speaking the Khasi Chiefs could not assert territorial limits, but their jurisdiction extended over villages and the boundaries of such localities constituted the confines of their respective rule. His Lordship held that when the British assumed sovereignty over the land in occupation of The Siem they did not disturb their ordinary powers and functions and the limit and extent of the authority of the Siems were recognised through Sanads granted by the sovereign power. His Lordship relied on the model Sanad which I have extracted hereinabove. The Sanad ratified the appointment of the Siem on his election and made him subject to the order and control of the Deputy Commissioner of the district of Khasi and Jaintia Hills. It was the Deputy Commissioner, who was competent to decide disputes which arose between one Chief and another and the Siem was bound to obey implicitly any lawful order which the Deputy Commissioner, or other officer authorised on that behalf by the Local Government might issue to him. One of the clauses of the Sanad undoubtedly empowered the Siem and required him to adjudicate and decide all civil cases and all criminal offences except those punishable under the Indian Penal Code with death, transportation for life or imprisonment for 5 years and upwards, which might arise within the limits of their States in which their subjects alone were concerned. In regard to the offences excepted above and in regard to civil or criminal cases arising within the limits of their States in which persons other than their own Khasi subjects might be concerned, the Siems were to report and refer those cases for adjudication to the Deputy Commissioner for decision. His Lordship reached the conclusion on perusal of the terms of the Sanads issued to the Siem that the latter was amenable to the control of the Deputy Commissioner and had to obey his lawful orders. Before dealing with other matters dealt with by his Lordship I feel that it is pertinent to refer what C. U. Aitchison, B.C.S., Under-Secretary to the Government of India in the Foreign Department recorded in the Treaties, Engagements and Sunnuds relating to India and neighbouring countries (Vol. I) at page 181 dealing with Khasi and Jaintia

Hills. A glance at the "Indian Political Practice" compiled by C. L. Tupper would reveal what important part did Mr. Aitchison played as Foreign Secretary to the Government of India in the 19th Century. It will be seen that the first treaty with Jaintia was concluded in 1824. As the Chief, Ram Sing, rendered no assistance to the British during the Burmese War his entire territory was taken under protection and the Chief agreed to acknowledge allegiance to the British. In 1835 when the Chief Rai Indro Sing was found to have connived at the kidnapping of four British subjects for the purpose of human sacrifice, Government confiscated his possession in the plains, and the Chief voluntarily surrendered his possessions in the hills, and accepted a pension of Rupees 500 a month. As we are not concerned with the Jaintia Hills, I propose to turn to the state of affair in inspect of the Khasi States described as "Cossiah States", There were 25 Khasi States but the principal amongst them were 5 in number, namely (1) Cherra Poonjee, (2) Khyrim, (3) Nusteng, (4) Lumgree and (5) Nuspoong. The Chiefs exercised civil and criminal jurisdiction over their own people and cases of homicide and those arising between subjects of different States were left to be decided by the British Government. With the exception of Cherra Poonjee and Khyrim the British Government had no formal agreement with the Chiefs of any of those five States but the Chiefs were always required to deliver up criminal refugees, and to obey all the mandates of the British Government. In 1859 it was decided by the British to require the execution of an Agreement on each occasion of the election of a new Chief, and in return to confer upon him a Sunnud confirming his election. In 1867 a general form was prescribed for such agreement, which is numbered as LXVII in the book. However, opportunity was taken to insert a Clause 11 (No. VIII) which had been omitted in previous engagements and the new form of Sunnud in the modified Form in 1875 is numbered as LXVIII. It may be stated here at this stage that in fact there were 24 Khasi States and the State of Myllem, which was described as "Moleem" was a part of Khyrim State. The other 20 States were considered as minor States and they also received Sunnuds from the competent authorities. Interestingly the general form of agreement with the Chiefs vide Form Nos. LXVII and LXVIII at pages 188-189 clearly show that the Chiefs were completely under the orders and control of the Deputy Commissioner of the Khasi and Jaintia Hills and had very limited judicial power. I cannot resist the temptation of quoting the Articles of Agreement executed by Bur Manick, Raja of Khyrim in the year 1830 in favour of David Scott, Agent to the Governor-General of India, I extract the Articles of Agreement hereinbelow:

"No. LXXXII.

Translation of the Articles of Agreement given to the Honourable Company by BUT Manick, Rajah of Khyrim, in the year 1830,

(Sd.) BUR MANICK, Rajah of Khyrim.

To

Davind Scott Esquire Agent to the Governor-General.

My country having been taken possession by the Honourable Company in consequence of my having made war with them, and thereby caused considerable losses, I now come forward, and placing myself under the protection of the Honourable Company, and acknowledging my submission to them, agree to the following terms as sanctioned by the Presidency Authorities:--

1st.--I cede to the Honourable Company the lands I formerly held on the south and east of the Oomeean River, and I promise not to interfere with the people residing on those lands without the orders of the Agent to the Governor-General.

2nd.--I consent to hold the remaining portion of the territory agreeably to the Sunnud of the Honourable Company as their dependents, and to conduct its affairs according to ancient customs; but I am not at liberty to pass orders in any murder case, without the permission of the Governor-General's Agent, and will report to him any case of this kind that may occur.

3rd.--When any of the Honourable Company's Troops pass through my territory, I will furnish them with such provisions as the country produces, so that they may not be put to any inconvenience, receiving payment for these supplies from Government; and I will construct bridges, &c., when ordered to do so, and am to be paid for the expenses incurred thereon.

4th.--In case of any Hill Chieftains making war with the Honourable Company, I will join the Government Troops with the fighting men of my country, but they are to receive subsistence from the Government.

5th.--I relinquish my former claim regarding the boundary of Desh Doomorooah, and agree to the Afdee Nuddee being the future boundary. I am, however, to be assigned some land near the Sonapore Market for the purpose of trading there.

6th.--I agree to pay a fine of 5,000 Rupees to the Honourable Company, on account of the expenses now and previously incurred by them in the subjugation of my country.

7th.--If Teerut Sing Rajah, who is inimical to the Honourable Company, or any other of his guilty followers, should enter my territory, I will immediately apprehend them and deliver them up, and I promise to produce all criminals who may come and take refuge in my country from any place in the Honourable Company's dominions.

To which effect I have executed this Agreement on this 15th day of January, 1830, corresponding with the 4th of Maugh, 1236. B.S."

The agreement shows that the entire country was taken over by the East India Company and the Rajah of Khyrim placed himself under the protection of the Company and acknowledged his submission to them. The Rajah surrendered his sovereignty and became dependent in almost all matters permitted the Company to do all acts referred to in the Agreement. It may be said here that after the

surrender of the sovereign powers, Khyrim State was bifurcated into two States, the States of Khyrim and the State of Moleem or the Myllem. The agreement itself shows the nature of the sovereignty of the State of Khyrim and fully supports the view expressed by the Special Bench about the nature of the sovereignty of the Khasis Chiefs. However, we are concerned with the sovereign rights of the State of Myllem and naturally we are to consider also the agreement which the Chief of Myllem had with the British. The first agreement was executed on the 10th Dec. 1863 which is extracted herein below :

"No. LXXXIII. Agreement with the Chief of Moleem.

Whereas it was stipulated in the Agreement entered into by me, Delay Sing, Rajah of Moleem, under date 19th March, 1861, with the British Government, that the right of establishing civil and military sanatoria, posts, and cantonments within my country should remain with the British Government; whereas Lieutenant--Colonel J. C. Haughton, Agent to the Governor-General, North-East Frontier, under the instructions of the said Government, has selected, for the purpose of civil and military sanatoria, &c., the land hereinafter described, I hereby renounce, with the advice and consent of my Muntrees and the heads of my people, all sovereign and personal rights therein to Her Majesty the Queen of England and the British Government. It is, however, stipulated, should the proprietors of any of the land within the limits hereinafter described be unwilling to sell or part with their land to the British Government, the said persons shall continue fully to enjoy the same without impost or taxation as heretofore, but that in all other respects the jurisdiction and sovereignty of Her Majesty the Queen of England, and of the British Government, and the officers of Government duly appointed, shall extend over the said land and over all persons residing thereon, and to all offences committed therewith :--

Boundary :--The boundary of the lands of Oo Don Sena to the south and east of the Oom Ding Poon stream which have been purchased; the boundary of the lands of Ka Stang Rapsang, south of the stream south of the Oom Ding Poon adjoining the village of Sadoo which have been purchased, the boundary of the lands of Oo Bat Khaobakee touching the Oom Ding Poon stream which have been purchased. The boundary of the lands of Ka Doke adjoining the last named which have been purchased; the boundary of the land of Sooaka adjoining the last named which have been purchased; the boundary of the Shillong lands which have been purchased, from which point the boundary will follow the north and west sides of the present Government roads till the boundary of the lands of Borjon Muntree, which have been purchased is met; it will then follow the boundary of the said Borjon's land till the boundary of the said land again meets the Government road now existing, which it will follow till the boundary of the Raj lands purchased are met. It will follow the boundary of the Raj lands till that dividing the Longdo lands of Nongseh from the Raj land and the land purchased from Oo Reang-Karpang of Nongseh, and will go between the two last on the east side of a hill by a path till the boundary stone of the Longdo of Nongseh at

the head of a water-course is met. It will then follow that water-course to the junction of it with the Oom Soorpee, leaving the hill with the Lungdo jungle of fir trees on it to the left or north and west side. The boundary will then cross the Oom Soorpee River and ascend by a ravine opposite inclining somewhat to the right hand to monumental stones (Mowshin Ram), near one of which a peg and pile of stones is placed. The boundary will then descend the hill backwards towards the point of Youdoe Hill, that is, the hill on which the Youdoe Bazar is held, to a pile of stones and a peg not far from the Government road which it crosses and not far from the Oom Soorpee River. The boundary thence turns north-east by ascending the hollow to the ridge which divides the water-flow, on which is a mark to the hollow to the north-east which it follows by the water to the Oom Kra River leaving the Youdoe Bazar hill and the village of Mao Kra on the left hand. The boundary thence turns eastward, following the base of the hills and excluding all cultivation in the plains, including within if the hill lands given to the Government by Oo Beh till the lands of Oo Dor given to the Government are met, whence the boundary, in the same way, follows the base of the hills excluding the cultivation in the plains till the River Pomding Neyam is met. Opposite a cave at the mouth of this stream, when it enters the plain, a peg and pile of stone is met. The boundary thence follows the same stream to its head in the rice lands of Oo Beh aforesaid, thence it follows the foot of the hills, leaving the village of Limera to the left or east side, and excluding the rice cultivation of Oo Beh, but including the hill land given by him to Government till it reaches the head of the said rice cultivation, where it turns sharply to the left or east between two hills till it reaches the banks of the stream Oom Ponteng Kom, the downward course of which it follows till the junction of the same water, now called Oom Soorpee, with the Oom Jussaci is reached. This river is the boundary till its source is reached from a pile of stones, near which marking the boundary of land purchased from Oo Dong Sena, the boundary crosses over south-westerly to the point where the Oom Shillong makes a bend, at that point stones have been placed opposite ten fir and five oak trees on the spur of a hill. The boundary then follows the Oom Shillong till the boundary of Oo Don Sena's land is met, which it follows the point from whence it started is reached. I agree that the Government or the possessor of the land within named, as well as the Shillong lands, shall have the joint right of turning off all water adjoining the said land for use, subject to such rules as the Government may prescribe. I promise also, as far as in me lies, to preserve the sacred groves whereon the water supply is dependent, and to punish any of my subjects found cutting the trees of the said groves and to deliver up for punishment any British subject found so offending.

(Sd). Melay Sing Rajah + His mark. "Lormiet Montang + His mark.

Shillong. The 10th December, 1863

Witness : (Sd) U. Joymonee Interpreter.

Before me, this 18th December 1863, explained in Cossiah and signed.

(Sd) J. C. Haughton.

Witnesses present not called on to sign, being unable to write.

Oo Ram, Muntree On Don Koonwur Oo Sona " Oo Jon Sirdar. Oo Jee " Purbut, Interpreter Oo Don Sena " Tama Koonwur Rajah Singh Koonwur Alot Koonwur Kunrace, of Khyrim. I, Melay Singh, having, on behalf of my self and my Muntrees, and all others concerned, ceded the Raj rights and title in the land at Shillong, known as the Shillong lands; the Raj lands south of the Oom Soorpee, known as the Kurkontong Nongseh land; the land near Youdoe, known as the Shillong Labang land; hereby renounce all right and title thereto, resigning the same to Her Majesty the Queen of England with the trees, water, and all things thereon or therein, and hereby acknowledge to have received, in full satisfaction therefore, the sum of Rupees 2,000 (Two thousand) from Lieutenant-Colonel Haughton, Governor-General's Agent, North-East.

(Sd). Melay Sing..... His mark. (Sd). Raja Rabon Singh.....His mark.

Youdoe, The 8th December, 1863.

20. The Youdoe Bazar referred in the agreement is the Bara Bazar. The agreement refers to the prior agreement executed by the chief on the 19th of March, 1861 with the British Government authorising it to establish civil and military sanitarium, posts and cantonments within the State of Myllem. The relinquishment was in favour of "Her Majesty the Queen of England and the British Government". However, on the 8th December, 1863, the Chief of Myllem ceded the Raj rights and titles in the land at Shillong known as the Shillong lands and other Raj lands south of Oom Soorpee known as Kurkontong Nongseh land, the land near Youdoe known as the Shillong Labang land. The area was renounced in favour of Her Majesty the Queen of England along with the trees, water and all things thereon or therein, on receipt of Rupees two thousand. This was the position before the Government used to issue Sunnuds to the Rajah upon his election. It is to be seen, in due course, whether the Khasi Chiefs had independent native States or had any sovereign rights. If so, what were the rights? However, there is nothing to show from any material the exact boundary of the Hill States including the State of Myllem in any of the boundaries described in various notifications. I find that all the Hill States in Khasi and Jaintia Hills were shown as included, within the Khasi and Jaintia Hills District, whenever the question of boundaries of Khasi and Jaintia Hills had to be demarcated with the adjoining areas like Assam, Sylhet, Garo Hills etc. None of the States had the right to raise or manage army or to mint coins etc. Be that as it may, let me proceed to consider what this Court decided in U. Owing AIR 1956 Gau 129 (SB) (supra). His Lordship considered the nature and extent of the power exercised by the Siem and his Durbar during the Government of India Act, 1935 and the situation which arose on the attainment of independence in August, 1947 and the effect of the Sixth Schedule to the Constitution of India. It appears to me that the Hills States were not included in the British India but they formed

part of India and made amenable to the jurisdiction of Her Majesty the Queen of England. The Hills States were governed by the Foreign Jurisdiction Act, 1890 and the Indian (Foreign Jurisdiction) Orders-in-council. But at the same time we find that on certain occasions, in the 19th Century, the Scheduled Districts Act and the Laws Local Extent Act of 1874 were used, applied and British Indian Laws were extended to the areas. I shall revert back on the subject in due course and point out the laws which were so extended by or under the Government of India Act, the Scheduled Districts Act etc. In *U Owing* (supra), his Lordship considered the provisions of Sections 2, 3, 123 and 311 of the Government of India Act 1935. Upon consideration of the aforesaid provisions and in particular the provisions of Section 311(1), Government of India Act, 1935, his Lordship held that the term "Administered Area" compendiously signified the area of the Khasi State which, although not a part of the British territory as such, fell within the ambit of the Municipality or Cantonment. u/s 6 of the Scheduled Districts Act, 1874, Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills District were made and subsequently they were published anew in the official gazette dated 29-3-1937 and extended to the whole of the British Territory of the Khasi and Jaintia Hills District except Part III thereon, which were extended only to so much of the British Territory of the Khasi and Jaintia Hills "as fell outside the limits of Shillong Municipality and Cantonment". Part III of the Rules relate to criminal justice. It was, therefore, held that the part of the rules which related to the administration of criminal justice had no application to the Municipal and Cantonment area of Shillong. However, the civil rules are applied to the Khasi and Jaintia Hills District without exception including the Municipal and Cantonment area. Rule 25 of the Rules provides that the administration of civil justice is entrusted to the Deputy Commissioner and his Assistants, Sardars and Dolois and other Chief Village authorities. Rule 26 provides that Sardars and Dolois and other Chief Village authorities might be recognised by the Deputy Commissioner by Sanad under his signature as competent to try cases without limit as to the amount, but subject to certain reservations mentioned in the said rules. Under Rule 26, the Siem of Myllem was recognised by the Deputy Commissioner under Sanads granted by the latter as competent to try civil suits. The notification of 1937 applied to the Khasi and Jaintia Hills district but did not apply to the Khasi States. Therefore, another notification No. 164-IB dated 18-8-1937 was issued, in exercise of the power conferred by the Indian (Foreign Jurisdiction) Order-in-Council, 1937, whereby the Crown Representative applied to the Khasi States "excluding the portion of the town of Shillong which was not British Territory", the enactments and Rules specified in the Schedule thereto, and. Item No. II of the Schedule is the Rules relating to the criminal justice as contained in Part III and Rules relating to civil justice as contained in Part IV of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills District. There was a similar notification of the same date numbered as 165-IB for the application of the enactments to, and for exercise of jurisdiction within, "the Shillong Administered area", that is to say, all areas outside British India in which the Municipal Board

of Shillong or the Cantonment Authority of Shillong for the time being exercised jurisdiction by virtue of any notification issued under the Indian (foreign Jurisdiction) Order-in-Council. By virtue of this notification the Rules for the civil justice were made applicable to the Shillong Administered areas but the application of the Rules was again subject to a proviso that the said Rules should apply, only to such cases as the Khasi Chiefs were not empowered to adjudicate and decide under any Sanad or Grant. His Lordship held that the first notification No. 164-IB applied to the Khasi State "excluding the portion of the town of Shillong which was not British territory" whereas the second notification No. 165 IB was in respect of "Shillong Administered areas" in which the Municipal Board of Shillong or the Cantonment exercised jurisdiction. It was, therefore, held by his Lordship that by virtue of the notifications the application of the Rules for the Administration of Justice relating to criminal as well as civil justice were made applicable to the Khasi States in general, barring the Municipal and Cantonment area, whereas the Rules relating to administration of civil justice alone were made applicable to the Municipal and Cantonment area outside the British territory and falling within the Khasi States. "His Lordship reached the conclusion that by virtue of the Rules the Deputy Commissioner could authorise by grant of Sanad to the Siem and His Darbar to decide civil disputes between the Khasis in "the administered area". The Rules "per se" did not confer any judicial power on the Siem and his Darbar. However, the Siem could exercise judicial power provided the Deputy Commissioner granted Sanad to him and his Durbar to try cases. His Lordship concluded that the Chief could exercise judicial power to try cases provided such powers were granted by the Deputy Commissioner, that the judicial power of the Chief was confined to his own subjects and that if for any reason the Sanad or the Grant lapsed the judicial power granted also lapsed along with it and the Siem and his Durbar became functus officio and could not exercise judicial power under the Rules of 1937. However, his Lordship did not leave the matter at that but proceeded to consider as to the position when the Dominion of India was created. His Lordship held that on the establishment of the Dominion of India with effect from the 15th August, 1947 His Majesty's Government ceased to have any responsibilities in respect of any of the territories which immediately before that day were included in British India. Similarly, the suzerainty of His Majesty over the Indian States also lapsed and with it, all treaties and agreements in force between His Majesty and the rulers of the Indian States lapsed, and so did all treaties and agreements in force. However, Section 7 of the Indian Independence Act provided the effect of lapse of Sanads. Grants, Treaties etc. and automatically the States merged outright with the surrounding province of Assam. It will be seen that by notification No. 365-IB dated the 3rd Nov. 1948, in exercise of powers conferred by Section 3(2) of the Extra-Provincial Jurisdiction Act, 1947, that is, the Foreign Jurisdiction Act, 1947, the Central Government delegated to the Governor of Assam "the power to make orders conferred by Section 4 of the said Act in respect of the Khasi States including the Shillong Administered Areas": vide Gazette of India, 1948 Part I, page 1514. It is thus seen that the Governor of Assam became the delegatee of

the Central Government in respect of the Khasi States including the Shillong Administered Areas on and from 3-11-1948, before the commencement of the Constitution. By Notification No. 166-IB dated 16th March. 1948, in exercise of the powers u/s 4 of the Extra Provincial Jurisdiction Act, 1947, the Central Govt. made orders for the application of the enactments to and for the exercise of the jurisdiction within the "Shillong Administered Area", that is to say, all areas outside the Province of Assam in which the Municipal Board of Shillong exercised jurisdiction by virtue of any notification under the Indian (Foreign Jurisdiction) Order-in-Council, 1902 or the Indian (Foreign Jurisdiction) Order-in-Council, 1937. The notification was published in Gazette of India, 1948, Part I page 623. However, there were certain modifications by other notifications. It is thus seen that even on March 16, 1948, in respect of the Shillong Administered Areas, wherein the Municipal Board of Shillong or the Cantonment authority of Shillong exercised jurisdiction by virtue of any notification under the Indian (Foreign Jurisdiction) Orders-in-Council, the Central Government assumed power to apply law and to administer the same. By the notification, inter alia, subject to certain provisions, the Indian Penal Code, the Criminal P. C. 1898 except the first proviso to Section 188 and the Rules relating to civil justice as contained in Section IV of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 were applied to the Shillong Administered Areas. In so far as the Criminal jurisdiction was concerned, all Courts including the High Court of Assam, which had criminal jurisdiction in the non-State Portion of the town of Shillong, was empowered to exercise like jurisdiction in the Shillong Administered Areas. The High Court of Assam was also empowered to exercise all such appellate and other jurisdiction on the civil side as it exercised under the Rules for the Administration of civil justice in respect of the Shillong Administered areas, which was previously used to be exercised by the Governor of Assam. It appears clear that the Rules for the Administration of Justice and Police were applied proprio vigore to the Shillong Administered Areas. It will also be seen that by notification No. 186-IB dated the 15th April, 1948, the Central Government in exercise of the powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947, applied to the Shillong Administered Areas including Bara Bazar, the Assam Sales Tax Act, 1947 which was an Act of the State Legislature, subject to certain modification. It is worth while to note at this stage that the validity of this notification was questioned in Hardeodas Jagannath Vs. State of Assam and Others, and the Constitution Bench of the Supreme Court held that the Central Govt. had full and complete jurisdiction over the area to apply the said Act as it had merged with the Province of Assam.

21. In U Owing AIR 1956 Gau 129 (SB) (Supra) Sarjoo Prasad, C. J. considered the effect of the laws referred above and further considered the effect of the Shillong Civil Courts and Laws Act, 1947 as well as the Khasi States (Application of Laws) Order, 1949. It is pertinent to state at this stage that on 1-6-1949 the Governor of Assam in exercise of the powers delegated to him by the Central Government u/s 3 of the Extra Provincial Jurisdiction Act passed the order in

respect of the "Shillong Administered Areas" as well as the Khasi States. In this order, the Shillong Administered Area was clearly defined but the same was modified in 1952. Considering the provisions of the Constitution and the relevant provisions of the Sixth Schedule. Sarjoo Prasad, C. J. reached the conclusion that para 20 of the Sixth Schedule to the Constitution defined the "tribal areas" within the State of Assam, as specified in Parts A and B of the table appended therein, and the United Khasi and Jaintia Hills District comprised the territories which before the commencement of the Constitution were known as the Khasi State and the Khasi and Jaintia Hills District, excluding any area comprised within the cantonment and Municipality of Shillong, but including so much of the area comprised within the Municipality of Shillong as formed part of the Khasi State of Myllem. His Lordship held that part of the Khasi State of Myllem falling within the Municipality of Shillong remained a part of the United Khasi and Jaintia Hills District, but in that context great importance was attached to the proviso added to Sub-para (2) of para 20 of the Sixth Schedule wherein the operation of Clauses (e) and (f) of sub-para. (1) of para. 3 and that of paras 4, 5 etc. were nevertheless excluded from that area. His Lordship observed as follows : --

"It means in other words that District Council does not exercise jurisdiction over the Shillong Municipal area forming part of the District; nor has it any power to administer justice in this area as contemplated by paras. 4 and 5, the operation of which is totally excluded."

His Lordship held that the Deputy Commissioner and his Assistants had exclusive jurisdiction in the area which comprised within the Municipality of Shillong but had formed part of the Khasi State of Myllem. Ram Labhaya, J. concurred and reached the same conclusion but supplemented the Judgment by various reasons. Deka, J. fully agreed with the Chief Justice, Sarjoo Prasad.

22. It follows, therefore, that since the decision in *U Owing AIR 1956 Gau 129* (SB) (supra), the Deputy Commissioner and his Assistants exercised power and jurisdiction over the area. Is it at all necessary to consider whether the Siem of Myllem ceded the villages which formed the Shillong Administered Area? Admittedly the Siem had no power to enter into any treaty or engagement with any native State or exchange territories with another State. It could not raise army. All the essential criteria of a sovereign native State are found to be absent in the case of the Chief of Siem of Myllem. Did the Siem exercise powers like Zamindars or Jagirdars? Was it a foreign territory like Japan, China or Germany? It was out and out within India but not within British India. However, I am not concerned with the Indian Political Law, which may come up for consideration in some other case. In my opinion, the Queen of England acquired the suzerainty of Khasi State. Even the Scheduled District Act and the Laws Local Extent Act, 1874 were applied in respect of the State of Siem of Myllem. Indeed, the area was not brought within the operation of the British India Laws or general laws but the laws made by the Queen of England applied to the entire area. In my opinion, the territorial extent of the British enactments meant for India were not applied

in the State, but by virtue of the terms of the Sanads and agreements as well as by the Orders-in-Council, the Queen of England and later the King of England exercised complete jurisdiction. In fact, in respect of the territory complete jurisdiction had been ceded to or otherwise acquired by the British Govt. No material showing the essential characteristics of a native State and/or sovereign State could be placed before me during the course of the argument. The designation of Chief and the designation of the territory as a state are relevant but are of little moment. The territory may be called a Jagir, a Zamindary etc. The Chief of such area may be given some title but these were not essential features to show that the Chiefs, Zamindars or Jagirdars did not surrender their sovereignty. If the Chief was bound by the treaty or political Sanad, manifestly Zamindary Sanad ceding the sovereignty of the State, it is doubtful whether they could be termed as native States. However, I leave that matter for consideration in some other case.

23. It is seen from the terms of the Sanad that the Local Government were at liberty to establish civil and military sanitararia, cantonments and posts in any part of the country: vide Clause III. The establishment of cantonment, sanitararia, posts etc. required Municipal administration, without which the area could not be made a sanitararia or post. Therefore, by virtue of the Sanad, the British Govt. could take any land. The Siem was prohibited to alienate, mortgage any property of the State, moveable or immovable, to anybody: vide Clauses V and VI. If we turn to the Articles of Agreement executed by the Rajah of Khyrim from which the Myliem Siemship was bifurcated, we find in clear term that the Rajah declared that his country had been taken possession of by the Company and the Rajah placed himself under the protection of the Company and acknowledged his submission to the Company. The agreement with the Chief of Myliem confirmed that the British Govt. had full power to establish civil and military sanitararia, posts and cantonment within the Myliem State; vide Agreement dated Dec. 10, 1863, quoted above. Therefore, it goes without saying, that the Govt. were at liberty to establish civil sanitararia in any part of the territory of the Siem of Myliem. Sanitararia are the establishments for the treatments of invalid etc.; places with good climatic and other conditions or invalids resort or Hill Stations in a hot country, especially in India to which residents periodically resort to recuperate. There cannot be sanitararia unless there are sanitary conditions prevailing in the area. There must be sanitation, that is, measures for preserving and promotion of public health etc. and the primary duty of the Municipal administration is to look after the sanitation of the area. As such, the Govt. had the power to acquire any land for establishment of civil and military sanitararia and cantonment in any part of the country under the control of the Siem of Myliem. As such, the British Govt. could take any part for the purpose of sanitararia by virtue of the agreement and/or Sanads even without the consent of the Siem of Myliem. This is the position insofar as the Municipal area of Shillong was concerned.

24. A brief history of the Shillong Station, the development of the Shillong Municipality and the application of laws within the Shillong Municipality are set

out below. As alluded, when the Chiefs of the Khasi and Jaintia Hills surrendered, made agreements, it was proposed to connect Assam with the Surma Valley by road across the Khasi Hills States. The authority of the construction of the road was obtained sometimes by force, some times by agreement and/or in terms of the Sanads. At first the headquarter of the Hills was located at Cherrapunji where the Britishers remained, till 1864, in which year a committee was set up to select a new headquarter and it recommended the drier plateau of lewduh (Barabazar) at the foot of the Shillong Range as the most appropriate site (vide the Assam District Gazettier 1906 Vol. X by Alien). The civil station of Shillong was situated between the then Khasi villages of Mawkhra and Laitumkhra which became satellites of the new administrative headquarters. In 1874, when Assam was separated from Bengal and constituted into a Chief Commissioner's Province, Shillong became the headquarter of the new province. In 1874 Lord Northbrook, the Viceroy visited Shillong and ordered that certain tracts around the town of Shillong should be reserved to protect its water supply, for fuel reserve and mainly for maintaining a "green belt" around the town. However, Shillong was officially constituted into a station on Nov. 28, 1878 under the Bengal Municipal Act of 1876 and a Station Committee consisting of 6 Members presided over by the Deputy Commissioner was formed (Assam Gazette Nov. 30, 1878, Part I page 567). It appears that the Government policy in the early 1880's was for gradual expansion of the administered area of the Committee. In 1883 the Government wanted the control of the lands in and around Shillong so that the condition of the town could be improved and the land owners agreed to it but on extravagant terms. However, some lands were acquired. Further extension of the Station Committee was made from time to time. Government desired to include Lachammire Estate into the Shillong Station, However, the Siem of Myllem expressed the plea that the people of the area were against it, but the Durbar agreed in favour of inclusion of Lachimmire within the municipal limits. In Jan. 1896 the Deputy Commissioner was instructed to include Lachammire Estate and the villages of Laban and Mawkhra within the municipal limit. However, he was instructed not to describe the boundaries of the villages as they might be extended in future, vide letter No. 216 MUCPL-81J of 9-1-1896 from the Secretary to the Chief Commissioner of Assam. The Government was also anxious to include Laitumkhra within the station limit for the improvement of the health and hygiene of the locality but the idea materialised only in 1910. In 1904 the Government purchased 87 acres of land situated in the slope of Shillong Range near Riat Laban in order to preserve the beauty of the town vide Notification No. 628-635, REV Dt. Dec. 1904. The Government desired to include within the Shillong station the new suburb of Henengumkhrah and ultimately the suburbs was included within the municipal limit, vide Shillong Station Committee Proceedings dated 18-10-1905. In this manner several villages of the Siem of Myllem were included within the Shillong Station in which the British Crown could acquire land for the Shillong Sanatorium. On Nov. 15, 1910 the Station of Shillong was converted into a Municipality vide MUNCPL-A dated Dec. 1910. As alluded, Shillong was constituted into a Station in 1878 under the Bengal

Municipal Act, 1876. However, no definite, municipal boundaries were defined or demarcated. Only in 1896 the boundaries were defined. Lachammiere and part of Jhalupara and Mawprem were included within the Station Committee on 16-4-1896. A part of the village Of Malki was included in the Station of Shillong on the same date. It will be seen that in 1904 Shillong Station was divided into five wards namely, (1) European Quarters, (2) Jail Road, (3) Laban, (4) Police Bazar, and (5) Mawkhar, the boundaries of the station were further revised in 1906 which described Mawkhar as a ward. In due course, on 15-11-1910, Shillong was converted into a municipality with defined boundary wherein Mawkhar was included within the Shillong Municipality. When the new municipality was divided into 10 wards, Mawkhar was shown in Ward No. 5 vide MUNICPL-A Dec. 1910. In 1912 it was considered that the territory of Myllem State which was included within the Shillong Municipality was not properly done, as they could be included only by the Indian (Foreign Jurisdiction) Order-in-Council, 1902. Accordingly, the villages of Mawkhar, Laban, Malki etc. were included within the Municipality of Shillong in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order-in-Council, 1902. In my opinion, in terms of the Sanad executed by the Siem and already referred in the judgment, the Government could and had undoubted power to acquire any territory of the Siem for the establishment of sanatoria or cantonment or posts. As such, the inclusion of the said villages, in my opinion, for the municipal administration was not illegal and could have been done in terms of Clause III of the Sanad. Be that as it may, under the Indian (Foreign Jurisdiction) Order-in-Council, 1902, Mawkhar and other villages belonging to the Siem of Myllem were included within the Municipality of Shillong vide LSG-A Nov. 1913. The agreement dated 9-7-1913 with the Siem of Myllem is also relevant, so also the Notification No. LSG-B dated June 1936. We find from the Notification dated Oct. 23, 1914 that the village of Mawkhar was included within the British portion of the Shillong Municipality. It is necessary to refer that a fresh agreement was obtained from the Siem of Myllem on Feb. 13, 1922 for the extension of any municipal law that might be passed by the Assam Legislative Council, to the villages of Mawkhar, Laban etc., vide A. R. Municipal 1924-25. The Government divided the Municipality into 10 wards which included Mawkhar. proper vide Shillong Municipality file No. 1/G Adm (New xi), 1910-29. In 1927 the boundaries of the Shillong Municipality were altered but Mawkhar, all the same, remained within the Shillong Municipality. In 1931 the Shillong Municipality was divided into 12 wards and Mawkher proper was in Ward No. 6 whereas south-east Mawkher and Garikhana were included in Ward No. 8 There were various projects to extend the municipal area to other areas around the Shillong Municipality but that could not be materialised, with which we are not concerned. Even in 1951 the Municipality was divided into 12 wards which included Mawkhar proper as well as south-east Mawkhar and Garikhana within the Shillong Municipality. It goes without saying that even after Meghalaya became a State the aforesaid area of Mawkhar and south-east Mawkhar were included within the Shillong Municipality. Therefore, for the establishment of sanitorium or sanitoria and to improve health and sanitary

condition of Shillong, the capital of Assam now the capital of Meghalaya, various villages were taken over by the Government and Mawkhar was included within the Municipality, at first within the Station of Shillong later within the Municipality of Shillong. The question of permission of the Siem was unnecessary in view of the terms of the Sanads. In respect of the village and other villages for the sake of formalities, they were taken within the Shillong Municipality in exercise of the power under the Indian (Foreign Jurisdiction) Order-in-Council, 1902. As such cessation of the territory by Siem does not appear to be relevant in view of the notifications bringing Mawkhar including Barabazar within the Shillong Station and later within the Shillong Municipality. I propose to refer one amongst many other notifications whereby the Government acquired territory in terms of Clause II of the Sanad. By Notification No. 344-I dated Simla 8th of June, 1932, under the authority vested in the Government by Clause II of the Sanad granted to the Siem of Myllem, the Government acquired "Braemar Estate". No consent and permission were taken nor were they necessary for such acquisition. The notification is published in Assam Gazette dated 7th Dec. 1932, Part II, Page 1559. The Indian Wireless Telegraph Act of 1933 was similarly applied to the Khasi State of Myllem under the Indian (Foreign Jurisdiction) Order-in-Council 1937 by Notification No. 237-IB dated 30-7- 1941. Similarly, Public Gambling Act, 1867 was extended to the Shillong administered areas, that is to say all areas outside British India in which the Municipal Board of Shillong or the cantonment authority of Shillong for the time being exercised jurisdiction by virtue of any notification under the said Order-in-Council. The Assam Highways Act, 1928 was applied to the Khasi States in a similar manner by notification No. 285-IB dated August 10, 1939. The Glanders and Farcy Act was applied to the portion of the road within the Khasi States by notification dated 15-12-1913. Various Indian laws were applied and extended which are found in the Assam Local Rules and Orders Volume I, pages 366, 372, 376, Correction Slip No. 495 at page 378, Correction Slip No. 390 at page 378, Correction Slip No. 461 at page 378, Correction Slip No. 102 = Assam Gazette dated 25-10-1916 at page 1588, Correction Slip No. 554 at page 378, Correction Slip No. 562 at page 378. Although it is obvious, I would like to state that Indian (Foreign Jurisdiction) Order-in-Council 1902 is an order of His Majesty, the King in Council or the Queen in Council and is not an Indian enactment. In the Manual of Local Rules and Orders Vol. II at page 539, it will be seen that the Bengal Prevention of Inoculation Act was extended to "the whole of Municipal Station of Shillong including Mawkhar and Laban" (vide notification dated 21-6-1895). The Bengal Vaccination Act was applied to the whole of Municipal Station of Shillong including Mawkhar and Laban, vide Assam Gazette June 22, 1895, Part II page 782. It will also be found in the Manual of Local Rules and Orders, Vol. III at page 108, the Bengal Municipal Act V (BC) of 1876 was extended to the Shillong Station. I propose to extract the notification dated 20th of Nov. 1878 as printed in the Manual of Local Rules and Orders by E. A. Gail, published in 1893 :

"Whereas an application was made to the Chief Commissioner for putting in force

Chapter IV of Act V (BC) of 1876 (Bengal Municipal Act) in the station of Shillong and its suburbs Laban and Mawkhar, in the district of the Khasi and Jaintia Hills; and whereas it has been reported by the Deputy Commissioner of the Khasi and Jaintia Hills that the inhabitants of the said station and its suburbs have declared themselves wholly in favour of the adoption of the said chapter therein, it is hereby ordered and declared that the application aforesaid appears to the Chief Commissioner of Assam to be wholly according to the wishes of the inhabitants of the said station and its suburbs, and that Chapter IV of the Act V (BC) of 1876 shall be henceforth in force in the said station of Shillong and its suburbs, Laban and Mawkhar, in the district of the Khasi and Jaintia Hills, for all purposes set forth in the said chapter."

25. It shows that the provisions of Bengal Municipal Act was applied to the station of Shillong as well as its suburbs including Laban and Mawkhar. If we turn to the notification issued under the Bengal Municipal Act. we find the boundaries of the Shillong Municipality in the Assam Local Rules and Orders, Vol. III, pages 125, 126, 127 and 129, and, the boundaries of Shillong included the villages of Mawkhar and Laban etc. The Correction Slips are also relevant for the purpose. Even some of the provisions of the Assam Municipal Act 1923 were applied to the Shillong Municipality vide Assam Local Rules & Orders, Vol. III page 298. The boundaries of the Shillong Municipality are to be found at page 303, and the notification printed at pages 311 and 313 of the Manual appears to be relevant for the purpose of this case. The application of the Assam Municipal Act of 1923 to the Shillong Municipality is to be found at page 313 and the boundaries or wards of the municipality can be located in Vol. II of the Manual, particularly, at pages 350 onwards. All these notifications clearly show that Mawkhar proper and south-east Mawkhar and Garikhana were included within the Shillong Municipality. On the basis of the decisions of the Supreme Court in Hardeodas Jagannath Vs. State of Assam and Others, and the Special Bench decision of this Court in U Owing AIR 1956 Gau 129 (supra), it appears that the area of Mawkhar including Barabazar was taken over by the Government for sanatorium purposes and they could take it by or under the terms of the Sanad or agreement and/or under the Indian (Foreign Jurisdiction) Orders-in-Council. It appears to me on perusal of the aforesaid judgment and the notification referred to above that the area known as the Shillong Administered Area was described to distinguish it from the original Shillong station municipality, as in respect of the area falling within "the administered area different laws were made applicable but the area to all intents and purpose was within the Shillong Municipality, subject to certain clauses which preserved certain personal and other rights of the Siem of Myllem. While considering the historical background of the Khasi States of Myllem and the Shillong administered area I have been much assisted by various books referred in the judgment. in U Owing (supra) as well as Hamlet Bareh's "Meghalaya", "Local Government in Khasi Hills" by U. Bhattacharya and the "Khasi Canvas" by J. N. Chowdhury and also V. V. Rao's "A Hundred Years of Local Self-Government in Assam". In my opinion, Hardeo Das (supra) laid down

that this very particular area, with which we are concerned in this case, had already ceded to the British Crown and it could exercise all powers under the Indian (Foreign Jurisdiction) Orders-in-Council.

26. In view of the decisions referred above, it appears that the British Government exercised extensive jurisdiction over the Shillong (Administered Area) Municipality including Mawkhar under the Indian (Foreign Jurisdiction) Orders-in-Council. The powers exercisable by the British Government were kept alive by the Extra-Provincial Jurisdiction Act or the Foreign Jurisdiction Act 1947 and it is reasonable to hold that the Dominion of India and/or the Central Government, at the commencement of the Constitution, be that in Nov. 1949 or the 26th Jan. 1950, had all powers including the power of municipal administration in respect of the area in question.

27. However, the decision in *The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others*, has, in my opinion, conclusively decided the point with which we are concerned in the instant case. The decision negatives all the conclusions reached by me.

28. It has been submitted by learned counsel for the Government of Meghalaya as well as the Siem of Myllem that the hot debates in the Constituent Assembly do support the finding reached in *Hardeodas Jagannath Vs. State of Assam and Others*, and *U Owing AIR 1956 Gau 129 (supra)*. It is also correct that this Bench cannot overrule the law laid down in *U Owing (supra)*, a Special Bench decision, consisting of three Hon'ble Judges. It is also correct that the law laid down in *Hardeo Das (supra)* and *U Owing (supra)* were neither placed nor considered in *The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others*, .Para. 20 of the Sixth Schedule specified the tribal areas "within the State of Assam". The United Khasi-Jaintia Hills District falls in Item I of Part A of the Table appended to paragraph 20. What was that district? It was created or "comprised for the first time under sub-para (2) of para. 20. It described the territorial limit of the district. It comprised the territory which, before the commencement of the Constitution, were known as (1) the Khasi States, and, (2) the Khasi and Jaintia Hills District. I find no problem in understanding the territorial limit up to this extent. However, out of the aforesaid areas certain territories were excluded from the Tribal Area, namely, any area "for the time being" comprised within the Cantonment and Municipality of Shillong. It follows that the area which comprised or fell within the limits of the Cantonment and Municipality of Shillong were excluded from the Tribal Areas. Therefore, the areas which comprised the Cantonments were excluded from the Tribal Areas, so also the "Municipality of Shillong". The Constitution-makers did not make any distinction or discrimination but clearly stated the Municipality of Shillong, which ordinarily meant and included the entire territorial limit of the Municipality of Shillong, including the Shillong (Administered Area) Municipality. There is no

debate at the bar that this is the correct meaning of the expressions used in sub-para (2) of para. 20. However, the dispute is in regard to the later portion of the sub-paragraph which included "so much of the area comprised within the Municipality of Shillong as formed part of the Khasi State of Myllem". What was included within the tribal area, although it was within the territorial limit of the Municipality of Shillong? That part of the area which "for the time being" comprised within the Municipality of Shillong but formed part of the Khasi State of Myllem. What was that area or areas? It will be seen that the local point was the area under the Municipal administration of the Shillong Municipality. If the Shillong Municipal Board had the power to administer the area or it was within the confines of the Municipality at the commencement of the Constitution, it was taken out from the tribal areas and formed a part of the State of Assam, now the State of Meghalaya. Out of the area some portions were again included in the tribal area, that is the territory which formed part of the Khasi State of Myllem, although within the limits of the Shillong Municipality. It may well be said that within the limits of the Shillong Municipality including the Shillong (Administered Area) Municipality there were plots or areas over which the Shillong Municipality did not exercise municipal administration at the commencement of the Constitution. These areas were included within the tribal areas provided the territory belonged to the Khasi State of Myllem. As such, it is quite reasonable to reach the conclusion that the portion within the limits of Shillong Municipality, the areas over which the later did not or could not exercise municipal administration were excluded from the State areas and brought within the tribal areas, provided the areas belonged to the State of Myllem. Indeed the contention has sufficient force. There may be another view which is equally possible, namely, that in respect of certain areas the Siem of Myllem reserved his territorial rights, although the Municipality exercised its administration over the rest of the village, say in the case of the rights and powers of the Siem of Myllem in respect of the rivers Umshrupi and Umkhrah etc. Although the village was taken over by the Government for municipal administration yet the territorial rights of the Siem, in respect of the spots were reserved and they could not be taken over by the Government, even for the purpose of Municipal administration. Those areas over which the Siem of Myllem reserved his rights were excluded from the territorial limits of the State (Meghalaya i.e. Assam) but formed part of the United Khasi-Jaintia Hills, the tribal area. This appears to be so if the Khasi States (Application of Laws) Order, 1949 is looked at, which is published in the Assam Gazette, June 8, 1949, Part II at page 835. It describes "Shillong Administered Area" in Clause 2(a) thus :

"2. In this order--

(a) the term "Shillong Administered Areas" means all areas outside the Province of Assam in which the Municipal Board of Shillong or the Cantonment Authority of Shillong exercised jurisdiction by virtue of notifications under the Indian (Foreign Jurisdiction) Orders-in-Council, 1902 or the Indian (Foreign Jurisdiction) Orders-in-Council, 1937, as defined in the First Schedule hereto annexed;"

The notification was issued on June 1, 1949. The Shillong (Administered Area) Municipality was that area which was outside the Province of Assam but the Municipal Board of Shillong or the Cantonment Authority of Shillong exercised jurisdiction by virtue of notifications under the Indian (Foreign Jurisdiction) Orders-in-Council, 1902 and/or 1937. The Shillong Municipal Board undoubtedly exercised jurisdiction over the Shillong (Administered Area) Municipality. In my opinion, Item 3 of a Central Act applying the Court-fees Act, 1870 and Item No. 5 Applying the Provincial Act, namely, the Assam Municipal Act, 1923 are important. The Assam Municipal Act was applied to the Shillong (Administered Area) Municipality including the village of Mawkhar subject to the rights and powers of the Siem of Myllem which had been reserved in the previous agreements. As such, the contention that only the area in respect of which the Siem of Myllem reserved his rights in the agreements etc. were only included in the tribal areas, although they comprised within the Municipality of Shillong has strong force. The contention that what was included within the United Khasi and Jaintia Hills district was the area over which the Municipal Board of Shillong exercised Municipal jurisdiction but formed part of the Khasi State of Myllem also appears to be a strong contention. Undoubtedly, the Government took possession of the area by or under the Sanad and/or by agreement and/or by the Indian (Foreign Jurisdiction) Orders-in-Council. A glance at the Khasi States (Application of Laws) Order, 1949 (unamended) clearly shows that over the administered area Municipality, the Municipal Board exercised full and complete jurisdiction. Therefore, the Shillong (Administered Area) Municipality was a Municipality over which the Municipal Board of Shillong exercised jurisdiction but certain villages including Mawkhar formed part of the Khasi State of Myllem, and, such areas were included in the tribal area for the limited purposes. However, it has been contended that sub-para. (2) of para. 20 must be read along with the proviso contained therein. The proviso applied to the area comprised within the Municipality of Shillong as formed part of the Khasi State of Myllem and made a tribal area except for the purposes mentioned in the proviso. The said area was declared to be not within the United Khasi-Jaintia Hills district by the deeming provision for the purposes mentioned therein. In reality it was in the tribal areas but for the purposes mentioned in the proviso it was within the State of Assam/Meghalaya. The contention has strong force. It had already formed part of the Municipality of Shillong and there was no desire to bring it out from the municipal jurisdiction as the areas were not only suburbs of Shillong but were duly administered by the Municipal Board of Shillong. If we scrutinise the purposes mentioned in the proviso to sub-para (2) it appears that the contention of the State of Meghalaya has a strong force. Admittedly, the Shillong (Administered Area) Municipality was within the Shillong Municipality. Many villages belonging to the Siem of Myllem were taken over for municipal administration and out of them some villages were excluded from the municipal administration, although the Municipality could take under its municipal administration the areas. Admittedly, at the commencement of the Constitution, the Shillong Municipal Board exercised jurisdiction over certain positive areas

which "comprised" the Shillong Municipality. Only the portion over which the Shillong Municipality exercised their municipal administration, at the commencement of the Constitution i.e. the 26th day of Jan. 1950 and which belonged to the Siem of Myllem attracted sub-para. (2) of para. 20 of the Sixth Schedule. In respect of the areas over which the Shillong Municipality could but did not exercise jurisdiction were not covered by sub-para (2) of para. 20. It appears that the Shillong Municipality and the Cantonment were not included within the tribal areas but only the portions over which the Shillong Municipal Board exercised its jurisdiction at the commencement of the Constitution were brought within the tribal areas provided the area belonged to the Siem of Myllem. Therefore, the Shillong Municipality was never brought within the United Khasi and Jaintia Hills District. Only the areas comprised within the Municipality but belonging to the Siem of Myllem over which the Shillong Municipality exercised jurisdiction at the commencement of the Constitution was included within the United Khasi and Jaintia Hills district. The Constitution-makers expressly stated in sub-para (2) of para. 20 of the Sixth Schedule that the areas "for the time being comprised within the Cantonment and the Municipality of Shillong" would not be included within the United Khasi and Jaintia Hills. Therefore, admittedly, the areas were taken out of the territorial limit of the United Khasi and Jaintia Hills district. It does not stand to scrutiny that the proviso to sub-para (2) of para. 20 attracts the entire Municipality of Shillong, when it was declared to be not within the United Khasi-Jaintia Hills district. It appears that the expression "no part of the area comprised within the Municipality of Shillong shall be deemed to be within the district" refers only to the, area which comprised within the Shillong Municipality but formed part of the Khasi State of Myllem. A bare perusal of the relevant notifications would clearly show that the Shillong (Administered Area) Municipality was merely named as such, it had no legal entity, no fund, no power but it existed in name just to demarcate the exact area falling within the administered area. It could not sue or be sued. The Shillong (Administered Area) Municipality continues to remain as such under the Shillong Municipality, It will be seen, on a bare perusal of the provisions contained in proviso to paragraph 20 of the Sixth Schedule, the reason why Shillong (Administered Area) Municipality was declared by the deeming provision, out of the United Khasi Jaintia Hills District for the purpose of the clauses and paras, referred in the proviso. Clauses (d) and (f) of sub-para (1) of para. 3 deals with the establishment of village or town committees or councils and their powers and also other matters relating to village or town administration including village or town police, public health, sanitation etc. How could these matters be regulated by the District Council by making laws when the Shillong (Administered Area) Municipality continued to remain within the jurisdiction of the Shillong Municipality? There could not be two authorities to control the municipal administration, one the Municipality of Shillong and the other the District Council. Similarly para 4 deals with the administration of justice. We have seen that in respect of the administered areas there were different Courts and laws, different procedure for the administration of justice. Similarly, para 5 deals

with the conferment of powers under the CPC and Criminal Procedure Code on the regional and district council and on certain Courts and officers for the trial of certain suits, cases and offences. The Constitution-makers, it appears, did not desire to de-establish or destroy the established practice obtaining within the administered area or the administered areas Municipality, where the established laws and procedures were being obtained by persons living in the capital of the State, at all relevant time. Para 6 deals with the powers of the District Council to establish primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and water ways and the manner in which the primary education is to be imparted in the primary schools within the jurisdiction. Over all these matters the Shillong Municipality exercised powers and jurisdiction. How is it possible to manage markets, cattle pounds, roads, water ways etc. by two different authorities? Similarly, sub-para (2), Cls. (a), (b) and (d) of sub- para (3) and sub-para (4) of para. 8 deal with the powers to levy and collect taxes on profession, trades, callings and employments, taxes on animals, vehicles and boats, taxes for the maintenance of schools, dispensaries or roads. Could they be exercised both by the District Council as well as by the Municipality? Surely not, and that is why for the purpose mentioned in the proviso, it was declared by the Constitution-makers that the area shall not be deemed to be within the District of United Khasi-Jaintia Hills. Similarly, Clause (d) of sub-para (2) of para. 10 deals with the powers of the District Council to make regulations for the control of money-lending and trading by non-tribals. It prescribes that no person who is not a member of the Scheduled Tribes, resident in the district, shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council. The powers referred to above which were all along exercised by the Municipality and the Government, within the administered area, were not entrusted to the District Council and for that limited purpose as well the area was deemed to be not within the United Khasi-Jaintia Hills District. On this basis, it has been contended that in respect of the area which formed part of the Khasi State of Myllem. the District Council could not exercise any of these powers referred in the proviso to sub-para (2) of para. 20. The contention has strong force. Indeed, the debates in the Constituent Assembly do support the contention of the Government of Meghalaya. It has been contended that although the area was included within the United Khasi-Jaintia Hills District yet the Constitution-makers did not desire that the District Council should exercise the powers referred, in the proviso to sub-para. (2) of paragraph 20 of the Sixth Schedule to the Constitution as a number of schools including High Schools, churches, hospitals, bazars and various other institutions were being maintained by the Shillong Municipality and/or the State Government at the commencement of the Constitution. It has further been contended that the Shillong (Administered Area) Municipality hums with trade and business activities and is the primary place of trade and business of the capital. It contains one of the largest bazars in Meghalaya nay in the eastern region. It has been contended that the people living in the area always consider themselves to be part and parcel of the capital of the State. These were the basic reasons for which the

Constitution-makers did not include the area within the tribal areas or within the United Khasi and Jaintia Hills District for the purposes referred in the proviso to sub-para. (2) of para. 20 of the Sixth Schedule. In view of the historical background of the area the laws laid down by this Court as well as the Supreme Court coupled with the structure of the provision contained in sub-para (2) of para. 20 of the Sixth Schedule to the Constitution including the proviso, the contention of the learned counsel for the State appears to be substantial. However, Mr. S. C. Das, learned counsel for the District Council Has also strongly contended that the entire area comprised within the Municipality of Shillong which formed part of the Khasi State of Myllem, whether ceded or not, was expressly included within the Khasi and Jaintia Hills District. The Shillong Municipality including the Shillong (Administered Area) Municipality, after the Constitution came into force, became an integral part of the United Khasi and Jaintia Hills District and the District Council has had jurisdiction over the area in "question. Mr. Das submits that the proviso is an independent proviso whereby the entire Shillong Municipal area was brought within the United Khasi-Jaintia Hills District and in respect thereto the provisions of the proviso were made applicable. Learned counsel submits that in respect of the entire area of the municipality of Shillong the District Council has had jurisdiction except those enumerated in the proviso.

29. However, the strongest contention of Mr. Das, learned counsel is that the very question came up before their Lordships in The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, , and the present question has been set at rest by the conclusive decision of the Supreme Court. Indeed, it is the last say of their Lordships and a direct decision on the question with which we are concerned in the instant case. The question came up as to whether the jurisdiction of the District Council of the U. K. J. Hills extended to Barabazar in Mawkhar in Shillong and their Lordships answered the question in favour of the District Council and upon consideration of the Sixth Schedule to the Constitution, in particular, para. 20 including the proviso to sub-para (2) of para. 20. Their Lordships considered the Notification No. 44-I dated New Delhi the 16th Jan, 1934 and held that the Siem of Myllem had ceded to the British Govt. only the jurisdiction necessary for municipal administration in accordance with the Assam Municipal Act, 1923 subject to the exceptions and the village included in the Municipality designated as the Shillong (Administered Area) Municipality. Their Lordships held that Bara Bazar was never included in the Shillong Municipality area nor had the Siem of Myllem ceded the territory to the British Government and the Shillong (Administered Area) Municipality never merged in the Municipality of Shillong. No material was produced to show that the territory including Mawkhar merged in the Municipality of Shillong. As such, their Lordships held that Mawkhar i.e. the south-east Mawkhar was never included in the territorial jurisdiction of the Shillong Municipality. The Notification of 1934 preserved the distinct entity of the ceded villages including Mawkhar and in the

absence of merger of these territories in the Municipality of Shillong, reference in the Khasi Siemships (Application of Laws) Order, 1949 to any part of KhasiJaintia Hills District as "comprised within the Municipality of Shillong" should be read to mean that part of the District in which the officers and the authorities of the Shillong Municipality continued . to exercise powers and discharge duties as before. In the result, their Lordships held that the jurisdiction of the District Council extended to the Bara Bazar areas. This conclusively determines the question that Bara Bazar falls within the jurisdiction of the District Council.

30. On behalf of the State of Meghalaya it has been urged that The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, is not binding on the State and/or the Siem of Myllem as they were not parties to the proceedings. It has also been contended that the Supreme Court had conclusively determined in Hardeodas Jagannath Vs. State of Assam and Others, that the area in question was not merely ceded for the municipal administration but the British Crown exercised jurisdiction in the area under the Indian (Foreign Jurisdiction) Orders-in-Council and had "extra-provincial jurisdiction" in the area including Bara Bazar and in due course the power was transferred to the Dominion of India and the Central Government long before the commencement of the Constitution. As such, the area was taken over or ruled by the British Government not merely for the municipal administration of the area but it could and did exercise all powers and functions including the jurisdiction to extend various laws in the administered areas. As such, the question of merger of the Shillong (Administered Area) Municipality with the Shillong Municipality was not relevant for the construction of sub-para (2) of para 20 of the Sixth Schedule to the Constitution of India. The crucial question was whether the area comprised within the Municipality of Shillong, that is to say whether the area was included within the Municipality of Shillong and administered by it. There is no dispute that the area was included within the Shillong Municipality. In sub-para (2) of para 20 of the Sixth Schedule the term used was "comprised" and not "ceded". The meaning of the term "comprised" according to its plain meaning means -- "included", "contained", "embraced", "covered" etc. As such, the inclusion of any territory within the Municipality of Shillong was enough to bring the area within the purview of sub-para. (2) of para 20 of the Sixth Schedule to the Constitution. The question whether it had ceded to the Government was unnecessary. In fact, under the terms of the Sanads the British Government had complete jurisdiction to acquire land belonging to the Siem of Myllem for civil or military sanatoria. As such, the land had already been acquired and taken over reserving certain rights of the Siem of Myllem. The areas formed the words of the Shillong Municipality, and, as such, the areas were included or comprised within the Municipality. The agreements with the Siem of Myllem and the terms of the Sanad clearly show total absence of the sovereignty of the Siem of Myllem. The British Government could do almost anything within the territorial limit of the Siem of Myllem and it goes without saying that the area with which

we are concerned was taken over and designated as "the administered area" as it is the British Government who administered the area and the Siem of Myllem had no jurisdiction in the area apart from claiming certain rights preserved in his favour. The Notification No. 164-IB dated 18-8-1937, Notification No. 165-IB, the provisions of the Extra-Provincial Jurisdiction Act or the Foreign Jurisdiction Act, the Notification No. 365-IB dated 3-11-1948, Notification No. 166-IB dated 16-3-1948 and the Notification No. 186-IB dated 15th April, 1948 and other Notifications referred to earlier do show that the area was taken over by the British Government and/or the area was ceded to the British Government, and later the Dominion of India and the Central Government acquired the rights of the British Government in respect of the area in question. That the attention of their Lordships were not drawn to Hardeo Das (supra) and U Owing (supra), the relevant notifications prior to 1934 and subsequent thereto were not brought to the notice of their Lordships. It was also contended that unfortunately their Lordships' attention was not drawn to the correct definition of the "Shillong (Administered Area)" as referred in the Khasi Siemships (Application of Laws) Order, 1949. The definition which was placed was, as amended in the year 1952. It is true that their Lordships' attention was not drawn to the decision of Hardeo Das (supra) wherein the Constitution Bench held that the very Mawkhar including Bara Bazar had long ceded to the British Government and it was administered by them under the Indian (Foreign Jurisdiction) Orders-in-Council. It is also true that the debates in the Constituent Assembly were not placed before their Lordships. It is also true that it was not brought to the notice of their Lordships that the name of the Shillong (Administered Area) Municipality was not designated as the Siem of Myllem Municipality but it was designated as the Administered Area Municipality. It is also true that it was not brought to the notice of their Lordships that the Shillong (Administered Area) Municipality had no legal entity whatsoever, it had no fund, it could not sue nor be sued, nor could it appoint any employee. However, it is difficult for me to assume that the decision was rendered by their Lordships without considering these material factors. Those were certainly considered but were not treated to be relevant for the purpose of the decision. I can express this much and no further that the Constitution-makers stated that the areas for the time being comprised within the Cantonment and the Municipality of Shillong were excluded from the United Khasi and Jaintia Hills District but out of that area falling within the Municipality of Shillong belonging to State of Myllem to be within U. K. J. Hills District, for all purposes other than those referred in the proviso. But the said view is not correct as their Lordships held that the area if ceded to the British Government only attracted the provisions of sub-para (2) of para 20 of the Sixth Schedule. There is strong force in the contention that the area which was included within the Municipality of Shillong at the commencement of the Constitution, whether ceded or not but merely comprised within it should not be deemed to be within the U. K. J. Hills district for the purposes of the clauses, sub-para, and paras, referred to in the proviso to sub-para (2) of para. 20 of the Sixth Schedule. Indeed the proviso seems to refer to that area which comprised within the

Municipality of Shillong. By the deeming provision and for limited purposes referred to in the proviso, the Constitution-makers directed that the said area should not be treated as part of the U. K. J. Hills District for the purposes set out in the proviso. The contention that the long-standing practice of trial of suits and cases in a particular manner shall be de-established, the Government of Meghalaya shall have to surrender their jurisdiction over the Shillong Municipality to the District Council may have force but it cannot deviate me to declare that I am bound by the law laid down by their Lordships in The District Council, United Khasi-Jaintia Hills, Shillong and Another Vs. Ka Drepsila Lyngdoh of Syllai-u-Lor, Myllem, Myllem Seimship United Khasi-Jaintia Hills and Others, .

31. It may be that by virtue of the notification issued earlier, Mawkhar was included within the Municipality of Shillong; although it continued to remain within the Municipality of Shillong as part and parcel thereof, yet in view of the decision in K. D. Iyngdeh (supra) I hold that the jurisdiction of the District Council extends over Mawkhar or south-east Mawkhar including Bara Bazar area. As such, I hold that the District Council Courts have jurisdiction to try suits, the causes of action of which arise within the said area. This was the view expressed by me and to-day I give my reasons for the decision.

32. Before parting, I would observed that the question involved in this case are of vital importance. A number of notifications, books and journals were cited at the Bar. I prepared a rough sketch of the judgment while hearing the matter and asked the Bench Clerk to furnish me with the materials immediately on conclusion of the hearing to enable me to go through the matters for writing out the judgment. Notwithstanding my persuasions and request, I could not get them. The "office furnished me with the notifications, books and" journals on 24-9-1983 --reports, list of the books and the books supplied are marked "X" to be retained in the records. Fortunately, I had in my own library some of the requisite notifications, reports, books from which I could partly prepare the judgment. On receipt of the notifications on 24-9-1983. I could conclude and make the judgment ready within 10 days. This judgment could have been prepared within 10/15 days from the date of receipt of the books, journals and notifications and only for want of the materials there was delay in expressing my views in the instant case. Undoubtedly it is a case of great public importance involving interpretation of the Constitution and I had to be careful, cautious and circumspect to verify the notifications, laws and journals.