
(2014) 11 MEG CK 0005
In the Meghalaya High Court
Case No : WP(C) No. 376 of 2013

Iostarson Sunn Madan Laban

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 300 A

Citation : (2014) 11 MEG CK 0005

Hon'ble Judges : Sudip Ranjan Sen, J

Bench : Single Bench

Judgement

Sudip Ranjan Sen, J.—The petitioner's case in nut shell is that, the Raid Laban area of Shillong comprises of various localities, namely, Laban, Madan Laban, Riat Laban, Upper and Lower Lumparing, Riat Laban Kynjat Phutbol, Lawsotun, Oxford Hills, Rilbong, Bishnupur and Kench's Trace and each of these constituent localities has its own traditional customary administrative organization termed as the "Dorbar Shnong" headed by the "Rangbah Shnong" or Headman who is assisted by the General Secretary, other Office bearers and the executive members. However, these constituent localities and Dorbar Shnongs of Raid Laban area, have all along been joined together in a form of federation termed as the Raid Laban Dorbar, that is the petitioner above named. This system has all along been customarily and traditionally practiced and followed by the people of the said constituent localities of the Raid Laban area, so much so that the petitioner is now one of the traditional authorities enjoying the sanction of customary law. Thus, the petitioner is a juristic person, within the meaning of the term "person" as used in the Part III of the Constitution of India and entitled to the various fundamental rights, particularly the Right to Equality provided in the Article- 14 of the Constitution of India as conferred upon "persons". The petitioner is also entitled to the constitutional rights to property, as provided under the Article- 300 A of the Constitution of India and the other legal rights available. Being a juristic person sanctioned by the long standing customary practices which have acquired the force of law, the petitioner is also eligible and

entitled to seek redressal by filing this instant petition invoking the jurisdiction under Article 226 of the Constitution of India of this Hon'ble High Court. The township of Shillong was itself established only in the last part of the nineteenth century and as such the existence of the petitioner above named for many decades now, has imparted the requisite qualification on "ancience" for grant of recognition as law to the customary practice of the people of the localities of Raid Laban area of administering that area through the petitioner, as a federation of the various Dorbar Shnongs. This concept of having a federation of Dorbar Shnongs for convenience of administration is well known in Khasi customary law and to the proforma respondent No. 5 and No. 6 and such federations are generally referred to as "Dorbar Pyllun". Various governmental agencies authorities including the proforma respondent No. 5 and No. 6 have been regularly granting due recognition to the petitioner, and, as instances thereof, the petitioner states that by the Memo No. L.14/6/23/68/11 dated 28.04.1969 under the hand of the then Deputy Commissioner, United Khasi Jaintia Hills District, the petitioner's authority in connection with the protected forest area of Raid Laban, was recognized duly and second the Chief Conservator of Forests, Meghalaya had signed the agreement dated 01.08.1981, with the petitioner for the protection of the forests of the Raid Laban area, and forwarded the same for registration to the Inspector General of Registration, Government of Meghalaya, by the Memo No.MFG.35/2/71-78A dated 20th October, 1981. Letter from the proforma respondent No. 5 and No. 6 have also been received regularly and instances are available in the plaint of the Title Suit No. 2 of 2013 and the annexure thereto which are being referred to hereinafter. The existing forests of Raid Laban area serve as the catchment area for rainwater ensuring availability of water in the Raid Laban area and Shillong generally and protecting the same of vital/ importance. Indeed this type of common needs have necessitated the establishment and functioning of the petitioner as a federation of the Dorbar Shnongs of Raid Laban. In the Raid Laban area, there is a community tract of land known as "Umjasai" which has all along been managed and controlled by the petitioner for the general welfare of the people of Raid Laban. In that said land tract "Umjasai" the petitioner has allotted various plots for different community works, including allotments to churches and localities for being used as graveyards. To set the records of such allotment right, the petitioner has also executed and registered a Deed of Declaration dated 18.11.2010 providing the requisite details. Lawsohtun is one of the constituent localities of the petitioner and this locality has its own customary administrative organization or "Dorbar Shnong", which is the respondent No. 4 above named and which has been a constituent of the petitioner. Recently the Defendant No. 4 began to claim as its exclusive property the said tract of land known as "Umjasai", which in course of time, compelled the petitioner to institute the Title Suit No. 2 of 2013 against the respondent No. 4, seeking appropriate declaration and injunctions and the same is now pending in the Court of Smti. S.B. Laitthma, Presiding Officer, Subordinate District Council Court, KHADC, at Shillong. Alongwith the suit, the petitioner also filed an application for a temporary injunction registered as the Miscellaneous

Case No. 2 of 2013. Upon motion of the said petition for interim injunction the Hon"ble Court below was pleased to make the order dated 05.04.2013 granting an ad-interim temporary injunction restraining the respondent No. 4 above named and all persons acting through them from trespassing and illegally destroying the wall of the Lumparing Presbyterian Church graveyard and from interfering with or disrupting the funeral procession and burial ceremony of different churches at the sites of the graveyards at the said tract of land "Umjasai". The notice of the same was also duly sent to the respondent No. 4. After receiving the notices from the said Hon"ble Court below, the respondent No. 4 only filed the written statement in the said Title Suit No. 2 of 2013 but did not file any show cause in the said Miscellaneous Case No. 2 of 2013. In the written statement the respondent challenged the very maintainability of the suit on the alleged ground that the subject matter of the suit is not of a civil nature at all, and that the petitioner is not recognized as a "Raid" by the concerned authorities, among other grounds. Subsequently the respondent No. 4 grossly violated the said order of ad-interim injunction and through its agents, began to interfere with the burial of the dead in the graveyards in the said tract of land "Umjasai", and even replaced the petitioner's lock on the iron gate of the way leading thereto, whereupon the petitioner moved an application dated 07.08.2013 before the said Hon"ble Court below, who was pleased to make another order dated 07.08.2013 in the said Miscellaneous Case No. 2 of 2013, directing inter alia the concerned Officer-in-Charge of the Laban Police Station, impleaded hereinabove as the respondent No. 3, to see that the earlier order of the Court is complied with by the respondent No. 4 and to report back. Thereafter, the respondent No. 3 above named submitted the requisite report in the said Court below, which was pleased to make the order dated 06.09.2013, on the basis of that report, directing, inter alia, that the respondent No. 3 above named, the Officer-in-Charge of the Laban Police Station, shall ensure that the said entry to the "Umjasai" is kept open for use of people, and, secondly that the key of the lock on that gate is to be kept in the custody of the respondent No. 3 above named. On the same day, that is 06.09.2013, the respondent No. 4 also filed a show cause in the said Miscellaneous Case No. 2 of 2013, claiming inter-alia that the iron gate on the way leading to Umjasai had been constructed by them but without appending any documentary evidence to support their claim, whereas the humble petitioner in the said application dated 07.08.2013 had appended a voucher to show that that iron gate had been constructed by them in the year 2008 and they had also appointed a chowkidar to maintain that gate. Subsequently the respondent No. 4 above named filed the appeal numbered as the Miscellaneous Civil Appeal No. 16 of 2013, in the appellate Court of the Judge, District Council Court at Shillong, assailing the said order dated 06.09.2013 of the said Court below, and upon motion thereof the Hon"ble Court of the Judge was pleased to make the order dated 10.10.2013 admitting the appeal and also stayed the operation of the said order dated 06.09.2013 of the Hon"ble Court below, pending final disposal of the appeal. Now, more than two months have passed since the said Miscellaneous Civil Appeal No. 16 of 2013,

was admitted and the order dated 06.09.2013 of the trial Court below was stayed and there has not been any progress in the proceedings and the Civil Court are also going to have the long winter vacations very soon, whereupon, there is grave urgency in this instant matter requiring immediate intervention of this Hon"ble High Court. Hence the petitioner is constrained to file this petition."

2. Mr. S. Chakarvarty, learned counsel appearing for on behalf of the petitioners submits that, a place called Lawsotun and some other parts were under the control of Raid Laban and subsequently allowed certain lands for graveyards and one of them is Umjasai. But unfortunately, a dispute arises between Lawsotun Dorbar and Raid Laban Dorbar for which the parties approach the learned Court of the District Council and a Civil Suit is pending. The learned counsel further submits that, initially, the first Court of District Council ordered for removing the lock which was subsequently stayed by Appellate Court of District Council. As a result, people of the locality are facing difficulties as and when death occurs and prayed that respondents No. 1, 2, & 3 are to be directed to manage and regulate the graveyard called Umjasai till disposal of Civil Suit by the District Council.

3. On the other hand, Mr. CH Mawlong, learned counsel appearing for respondent No. 4 submits that, the graveyard belongs to Lawsotun and was never been a part of Raid Laban.

4. Mr. ND Chullai, learned senior counsel assisted by Mr. R Gurung, learned State counsel submits that, the Court may set aside the order dated 10.10.2013 passed by the Appellate Court to which learned counsel for respondent No. 4 has strongly objected on the ground that, the initial order dated 5.04.2013 was passed without giving him an opportunity to be heard.

5. After hearing the submissions advanced by the learned counsel for the parties, I am of the considered view that graveyards, cremation grounds etc. are being used for public utility services and it is not encouraging at all to fight over graveyards or cremation grounds as that service is required to all of us either by today or tomorrow and any differences can be solved only when we understand the principle of humanity. However, as a Writ Court, I am not in position to decide the right of the parties and since the graveyard in question for which a Civil Suit is pending, I am sure that the Civil Court will come to a right conclusion after taking evidence. Therefore, as ad-interim measure since graveyard is for public utility services, I direct the respondents No. 1, 2 & 3 to manage and regulate the graveyard in question i.e. Umjasai graveyard till decision is arrived at by the Civil Court.

6. Before I part with this case record, I observe that Civil Court should not get influence by this order but to decide the matter independently in accordance with law.

7. Registry is directed to furnish a copy of this order to the learned counsel for the parties.

8. With these observations and direction, this instant petition is allowed to that extent and the matter stands disposed of.