

(2014) 10 MEG CK 0011
In the Meghalaya High Court
Case No : WP(C) No. 83/2013

Jelwis Paslein

APPELLANT

Vs

The Jaintia Hills Autonomous District Council

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Land Acquisition Act, 1894 — Section 11A

Citation : (2014) 5 GLT 627

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—By this writ petition, the writ petitioner in whose favour the Revenue Officer, Jaintia Hills Autonomous District Council (for short "JHADC"), Jowai issued the Land Holding Certificate No. 37 of 2010 Elaka Raliang, Sumer Patorship along with a sketch map is challenging the impugned order dated 18.03.2013 passed by the Chief Executive Member, JHADC, Jowai to whom the case being No. JHADC/REV/MRC/30/2011, had been transferred for deciding the case exercising the original jurisdiction of the Revenue Officer, JHADC and under the impugned order dated 18.03.2013 Land Holding Certificate No. 37 of 2010 Elaka Raliang, Sumer Patorship dated 04.03.2010 had been cancelled and directed the Revenue Officer, JHADC, Jowai to proceed with the process for granting of LHC on the application dated 11.12.2009 of Shri. Jelwis Paslein (writ petitioner) and to complete the process inclusive survey within a period not later than six months from the date of the order.

2. Heard Mr. B Bhattacharjee, learned counsel for the petitioner, Mr. HS Thangkhiew, learned senior counsel assisted by Mr. PN Nongbri, learned counsel for the respondents No. 1-4, Mr. KS Kynjing, learned senior counsel assisted by Mr. S. Suna, learned counsel for the respondent No. 5 and Dr. ODV Ladia, learned senior counsel assisted by Mr. P Yobin, learned counsel for the respondents No. 6 & 7.

3. Factual Matrix:-The case of the petitioner leading to the filing of the present writ petition, sufficient for deciding the matter in issue in the present writ petition, is briefly noted. The petitioner is the owner in possession of a plot of land known as "Lum Khadser", which is situated at Samasi Village, Sumer Patorship, Elaka Raliang Jaintia Hills District, covered by Land Holding Certificate No. 37 of 2010. The petitioner is in continuous and peaceful possession of the said land and all along have been working over the same all these years without any disturbance from any quarter. The said land i.e. the land covered by the Land Holding Certificate No. 37 of 2010 belongs to his family and during the lifetime of his parents, the same was looked after and managed by his parents and after the death of his parents, the said land is looked after and managed by the petitioner. The said land of the petitioner is an orchard (Orange and Banana Garden) and the parents of the petitioner had also planted orange, banana, various fruits, trees, bamboo etc. in the said land. After the death of his parents, on 11.12.2009 applied for Land Holding Certificate for the said land called "Lum Khadser" on the recommendation of the Acting Pator of Samasi Patorship to the Revenue Officer, JHADC, Jowai. On receipt of the said application for Land Holding Certificate, the Revenue Officer, JHADC, Jowai issued notice dated 17.12.2009 mentioning the particulars of the said land i.e. boundary of "Lum Khadser" inviting any claim or objection from any person within 7 (seven) days from the date of issue of the notice. After issuing the said notice dated 17.12.2009 inviting any claim or objection from any person to the said application of the petitioner for issuing Land Holding Certificate, the authorities of the JHADC, Jowai more particularly, the Revenue Officer, JHADC, Jowai had carried out the inspection and survey of the said land on 23.12.2009 and report was duly submitted by the enquiry officer on 09.01.2010. After, receiving the said enquiry report dated 09.01.2010, the respondent No. 5 Revenue Officer, JHADC, Jowai again issued notice on 28.01.2010 to all concerned calling for objection, if any, within 17.02.2010 against the issuance of the Land Holding Certificate to the petitioner. It is the further case of the petitioner that before issuing the Land Holding Certificate by the respondent No. 5 Revenue Officer, all the formalities and procedures as required under the relevant law had been followed and only thereafter, the Land Holding Certificate No. 37 of 2010 dated 04.03.2010 Samasi Village, Sumer Patorship, Elaka Raliang, Jaintia Hills District along with a sketch map clearly indicating the boundaries of the land called "Lum Khadser" was issued to the petitioner. Accordingly, the JHADC, Jowai had recognized the petitioner as the owner of the said land called "Lum Khadser" under Land Holding Certificate No. 37 of 2010 dated 04.03.2010.

4. The respondents No. 6 & 7, who are well aware of the fact that the said land "Lum Khadser" under Land Holding Certificate No. 37 of 2010 is the private land of the petitioner and has been in continuous possession, occupation, use and enjoyment of the petitioner's family till date, started illegally claiming that the said land is a community land/forest land belonging to their village Mynthning Village, Jaintia Hills District, Meghalaya. On such disturbance of the petitioner's

peaceful possession of the said land called "Lum Khadser" under the Land Holding Certificate No. 37 of 2010 dated 04.03.2010, the petitioner filed a civil suit being Title Suit No. 15 of 2011 before the Judge, District Council Court, Jowai against the respondents No. 6 & 7, which was endorsed to the Court of Smt. V Kyndiah, Presiding Officer, Sub-ordinate District Council Court, Jowai. The petitioner also filed a miscellaneous application for injunction, which was registered as Misc. Case No. 14 of 2011 against the respondents No. 6 & 7. The respondents No. 6 & 7 entered appearance in the said civil suit and filed their respective written statements-cum-counter claims and the said civil suit is pending. The relief sought for in the said civil suit i.e. Title Suit No. 15 of 2011 are:-

- (i) For a declaration that the plaintiff (present petitioner) has the exclusive right, title, ownership, possession over the suit land i.e. suit land called "Lum Khadser" under Land Holding Certificate No. 37 of 2010 dated 04.03.2010;
- (ii) For a declaration that the defendants/respondents No. 6 & 7 in the present writ petition have no right whatsoever over the suit land i.e. "Lum Khadser" and has no right to enter into the suit land;
- (iii) For permanent injunction against the defendants/respondents and their workers or agents or anybody claiming under them from claiming, entering, disturbing the plaintiff (present petitioner) in his work or peaceful possession over the suit land and;
- (iv) Any other relief as the Court may deem fit and proper for which the plaintiff (present petitioner) is entitled.

In the written statement filed by the respondents No. 6 & 7, they have pleaded that the said land of the petitioner i.e. suit land called "Lum Khadser" under the Land Holding Certificate No. 37 of 2010 dated 04.03.2010 is the part of the forest land belongs to the Mynthning village and also that granting of the Land Holding Certificate to the plaintiff/writ petitioner is illegal inasmuch as, the same was issued in gross violation of the rules and regulations and further, the same was obtained by the plaintiff/petitioner in collusion with the authorities in total disregard of the records in the office of the JHADC, Jowai. It is also pleaded in the written statement that the recommendation of the Acting Pator is malafide, fraudulent and collusive act of the plaintiff/writ petitioner to illegally claim the suit land.

5. While the Title Suit No. 15 of 2011 is pending, the respondents No. 6 & 7 have filed a complaint/petition dated 01.11.2011 before the Revenue Officer, JHADC, Jowai against the petitioner for cancellation of the Land Holding Certificate No. 37 of 2010 for the said land standing in the name of the petitioner. It is the further case of the respondents No. 6 & 7 that the Executive Committee, JHADC vide order No. JHADC/FOR/94/83 dated 24.03.2008 had duly registered the suit land as forest land in the name of Mynthning village and as such, the land under the Land Holding Certificate No. 37 of 2010 is the forest land/forest of Mynthning

village. The respondents No. 6 & 7 did not file the said application dated 01.11.2011 with clean hand and suppressed the fact that the said order of the Executive Committee No. JHADC/FOR/94/83 dated 24.03.2008 had already been cancelled by a subsequent order of the Executive Committee, JHADC, Jowai dated 07.01.2010. For easy reference, the said complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 for cancellation of the Land Holding Certificate No. 37 of 2010 before the Revenue Officer, JHADC, Jowai (Annexure-13 to the writ petition) is quoted hereunder:-

"BEFORE THE REVENUE OFFICER, JAINTIA HILLS AUTONOMOUS DISTRICT COUNCIL, AT JOWAI

Revenue Case No. of 2011

1. Shri Wolbing Pasleing Headman Mynthning Mynthning Village Jaintia Hills District

2. Wis Mannar Secretary Mynthning Mynthning Village Jaintia Hills District
Complainant

-Versus-

Shri Jelwis Paslein Samasi Village, Sumer Patorship, Elaka Raliang Jaintia Hills District

.... Opposite Party

IN THE MATTER OF

Cancellation of Land Holding Certificate No. 37 of 2010 standing in the name of Shri Jelwis Paslein

The humble Complainants above named

MOST RESPECTFULLY BEG TO STATE AS FOLLOWS

1. That we are the duly elected representatives of Mynthning Village and are duly authorized to file the instant application for and on behalf of the resident of Mynthning Village.

2. That Mynthning village is the owner in possession of the forestland called "Khlaw Shnong Mynthning" and boundaries are as under:-

SCHEDULED OF THE FOREST

East : Liar Umsang

West : Khlaw Rasong

North : Pynnoh Pdeng iarong pynnoh Khaser Khlieh Umsang, Khlaw, Shnong Shyrwang
South : Lum Khloo Kseh jong ka shnong langstang, jong u Dar Salahe, Kla Dkhar, Shil Lamurong, Keing Shyrmang, Kynlung Shadap, Jaka Balang Catholic, Kril Dkhar Salmun Shadap and U Kansa Dkhar

3. That the said landed forest of the Mynthning Village was duly recognized affirm (sic) and confirm (sic) by the Jaintia Hills Autonomous District Council, Jowai.
4. That in recognition of the right, title, possession, management and control of the Mynthning Village on the aforesaid forest and in pursuance of the rules, acts and regulation the Executive Committee vide No. JHADC/For/94/83 dated 24.03.2008 has duly registered the said forest in the name of Mynthning Village. It is to be mentioned that a map was duly drawn and prepared by the concern authority.
5. That the Dorbar Shong Samasi has instituted cases before the Village Court Raliang, the Assistant Deputy Commissioner, Khliehriat and also before the Presiding Officer, Subordinate District Council Court, Jowai alleging and claiming that the aforesaid landed property belongs to Dorbar Shnong Samasi. All these cases are pending before the competent Court for adjudication and disposal.
6. That the granting of Land Holding Certificate to Shri Jelwis Paslein vide L.H.C. No. 37 of 2010 is highly illegal as at no point of time Shri Jelwis Paslein claimed the aforesaid landed property before the competent Civil Court nor at any point of time he is in possession of the said landed property.
7. That the granting of L.H.C. to Jelwis Paslein on the strength of the recommendation of the Acting Pator of Pator Sumer Patorship is contrary to the records of the aforesaid cases in as much as the Acting Pator himself has filed the above mentioned suits claiming and alleging that the landed property belongs to the Dorbar Shnong Samasi.
8. That the L.H.C. 37 of 2010 was granted without giving any notice and opportunity of hearing to the Dorbar Shnong Mynthning who is the rightful owner of the landed forest as affirm and confirm by the Executive Committee.
9. That the Land Holding Certificate was issued during the pendency of the suit and of the injunction order passed by the competent Civil Court and on this ground alone, the Land Holding Certificate is to be cancelled.
10. That from the records available it appears that the Land Holding Certificate was process and issued in a hasty manner in contravention of the Act Rules and regulation of the District Council and on this ground the Land Holding Certificate is to be set aside and quashed.
11. That further any land holding certificate on the aforesaid landed forest cannot be issued unless and until the certificate of registration issued in favor of Mynthning is either cancelled and modified and further as the subject matter in respect of the forest is subjudice before the competent Court including the Hon'ble High Court the Land Holding Certificate No. 37 of 2010 is illegal null and void and is to be set aside and quashed.
12. That the complainant came to know about the existence of the Land Holding

Certificate 37 of 2010 only on receiving summon dated 10.09.2011 from the Court as Shri Jelwis Paslein has instituted a suit being T.S. 15 of 2011 in the Court of the Subordinate District Council Court, Jowai and therefore the right, title and possession of Shri Jelwis Paslein over the forest is sub-judice in the competent Civil Court and on this ground alone the Land Holding Certificate is to be set aside and quashed.

13. That the complainant state that necessary documents and orders of the Court supporting the instant application will be produce and filed at the time of hearing.

14. That this petition is filed bonafide for the ends of justice.

Under the circumstances aforesaid, it is, therefore prayed that your authority would be pleased to admit this petition issue notice to the opposite party on causes being shown and after hearing the parties be pleased to cancel, set aside, and quashed the Land Holding Certificate No. 37 of 2010. And pass any order or orders as your honour may deem fit and proper.

And for which act of kindness Humble complainants shall ever pray.

Sd/- Shri Wolbing Pasleing Headman Mynthning Village

Sd/- Wis Mannar Secretary Mynthning Village

Dated; Shillong

The 1st November,

6. The operative portions of the subsequent order of the Executive Committee, JHADC, Jowai dated 07.01.2010 passed in Remanded High Court case No. 1 of 2009 under WP(C) No. 73 of 2008 for cancelling the earlier order of the Executive Committee, JHADC, Jowai i.e. JHADC/FOR/94/83 dated 24.03.2008 is reproduced hereunder:-

"07.01.2010

..... What emerges and what is to be decided is whether Samasi village were heard before the impugned notification was issued and whether the impugned notification is issued as per law.

From the sequence of events it is apparent on the face of the record that though Samasi village has raised serious objections the same was not addressed adequately by the Chief Forest Officer before issuing the impugned notification. The notice calling for objections issued under Rule 11 dated 24.1.2008 copies whereof were given to other villagers and not to Samasi village which is apparent from the record has vitiated the entire process of notification and registration especially taking into account the earlier objections which were not disposed off. As such there has been violation of the provision of the Acts and Rules and also the principles of natural justice.

The applicant Mynthning village as has been admitted by their show cause has clearly stated the fact that the dispute is before the competent court of law in a Title Suit between the villages instituted in 2007. This fact unfortunately was not placed by the said Mynthning village at the relevant point of time when the process of notification and registration was in progress. This to our mind amounts to suppressions of materials facts. In view of this situation and taking into account all relevant facts and on the plain regarding of the proviso to Section 6 with Section 8 which stipulates that only on completion of such proceedings such as civil proceedings etc. can registration be effected, we are of the view that the impugned notification is irregular and liable to cancelled.

As such in view of the violation of the principles of natural justice and the fact that civil suits in the competent courts of law were instituted before the issuance of the impugned notification dated 24.3.2008 the same is set aside and quashed. Any registration or notification with regard to the forest in question namely "Khlaw Mynthning" shall await the outcome of the civil proceedings and thereafter be proceeded in accordance with Rule 8 and 9 of the Rules by the Chief Forest Officer. Matter is accordingly disposed off.

Sd/- 7/1/2010

Chief Executive Member

Jaintia Hills Autonomous District Council, Jowai.

Jaintia Hills Autonomous District Council, Jowai"

Against the said judgment and order of the Executive Committee, JHADC, Jowai dated 07.01.2010, the respondents No. 6 & 7 and another had filed writ petition being WP(C) No. 8(SH)2010 before the Permanent Bench of the erstwhile Gauhati High Court, Shillong Bench. The erstwhile Gauhati High Court, Shiullong Bench by passing a reasoned judgment and order dated 27.01.2012, dismissed the writ petition filed by the respondents No. 6 & 7 and another. The operative portions of the reasoned judgment and order i.e. Paras 14, 15 & 16 of the reasoned judgment and order read as follows:-

"14. It is against the backdrop of the legal positions laid down by the Apex Court that I propose to examine the validity of the impugned order of the Executive Committee. The Executive Committee in the impugned order recorded that though the private respondents had raised serious objections against the registration of the disputed forest in favour of the petitioners, the same was not adequately addressed by the Chief Forest Officer before issuing the impugned notification. It also found that the notice for calling objections dated 24-1-2008 was never served upon the private respondents even though such notices were served upon other villagers: this omission had been done even though it was known to the Chief Forest Officer that the private respondents had been making objection to such application time and again and their earlier objections were not yet formally disposed of. According to the Executive Committee, such omissions

vitiated the impugned order of registration being violative of the principles of natural justice and of the provisions of the Rules. The Executive Committee also found that the dispute between the two villages was pending before a competent court of law in a Title Suit in 2007, which was not disclosed when the process of notification and registration was in progress, which amounted to suppression of material facts. The Executive Committee, therefore, concluded that the impugned notification dated 24-3-2008 was liable to be set aside as there was violation of principles of natural justice and as civil suits were pending before the competent court of law, which were instituted before the issuance of the impugned notification. The Executive Committee thereupon quashed the impugned notification by observing that any registration or notification with regard to the disputed forest should wait for the outcome of the civil proceedings. In my judgment, even though it could not be said with certainty, as observed elsewhere, that there was suppression of material facts, the findings of the Executive Committee that the private respondents were not given notice though notices were served upon other villages and that civil proceedings between the petitioners and the private respondents concerning the disputed forest were pending when the process of notification and registration was in progress, are, at any rate, admitted facts being based on record. Once a competent civil court is (sic) already seized with the matter, which is better equipped to deal with a dispute of this nature and once there is evidence on record to demonstrate that notice was not served upon the private respondents when other villages, which could not evidently be said to be really interested parties, were admittedly notified to file their objections against the proposed registration, the views taken by the Executive Committee that the impugned notification cannot be sustained in law and that the registration of the disputed forest should wait for the outcome of the civil proceedings, are certainly possible or rational views, and not the only possible/rational views, and if so, such views cannot be considered to be irrational views. In exercise of its writ or supervisory jurisdictions, this Court cannot substitute its view for the views of the Tribunal or executive authorities.

15. It is, however, maintained by Mrs. B. Goyal, the learned counsel for the petitioners, that once the process of registration has been completed and final publication of the disputed forest already made, the Executive Committee did not have the jurisdiction to review the notification dated 24-3-2008 issued by the Deputy Chief Forest Officer. It is her submission that review is a creature of statute and cannot be assumed by the Executive Committee, which itself is a creature of statute, and the impugned order dated 7-1-2010, which is totally bereft of jurisdiction, cannot, therefore, be sustained in law. In my judgment, this contention, though attractive at the first blush, does not stand closer scrutiny in the face of the proviso to Rule 10 of the Rules, which provides for the remedy of appeal against changes in the ownership of Private Forests and Law-Ri-Sumar by transfer or otherwise. As already found by me earlier, the registration sought for by the petitioners with respect to the disputed forest could be done

only in accordance with Rule 9 of the Rules, which is about registration of registered Private Forests and Law-Ri-Sumar. In my opinion, registration of the disputed forest on the basis of the Deed of Gift and Confirmation necessarily involves change in the ownership thereof. It is not the case of the petitioners that the disputed forest is not a part of the Private Forest and Law-Ri-Sumar, which have not been registered in accordance with Rules 3 to 9 of the Rules. Therefore, I am of the view that the Executive Committee has the power under the proviso to Rule 10 of the Rules to pass the impugned order in exercise of its appellate jurisdiction despite the use of the term "Review Petition" by the private respondents while approaching the Executive Committee. It is by now a settled law without reference to cases that wrong use or misuse of nomenclature cannot be a ground to quash an order when the power to pass such an order is always referable to a statutory provision. In the instant case, the power is provided for by the proviso to Rule 10 of the Rules. Therefore, the contention of the learned counsel for the petitioners on this count also fails.

16. In the premises set forth above, this writ petition has no merit, and is liable to be quashed, which I hereby do. However, the parties are directed to bear their costs throughout."

7. The respondents No. 6 & 7 in their complaint/petition dated 01.11.2011 did not disclose the fact that the said order of the Executive Committee being No. JHADC/FOR/94/83 dated 24.03.2008, had already been cancelled by a subsequent order of the Executive Committee, JHADC, Jowai dated 07.01.2010, and for misguiding the Court by concealment of important fact, the respondents No. 6 & 7 are deserved to be warned and not to repeat this act of dishonesty a sum of Rs. 3000/- (Rupees three thousand) only as cost is imposed to the respondents No. 6 & 7.

8. The respondent No. 5 on the basis of the said complaint/petition dated 01.11.2011, which was filed by concealing the important fact, issued notice dated 25.11.2011 to the petitioner fixing 01.12.2011 for local inspection of the said land of the petitioner under the Land Holding Certificate No. 37 of 2010. On 01.12.2011, local inspection was carried out in a very hurried manner without properly verifying the land of the petitioner which was well demarcated and reflected in the said enquiry report dated 09.01.2010, and also without hearing the petitioner. The respondent No. 5 also did not prepare the memorandum for local inspection, which he had carried out hastily without proper verification. The petitioner also filed an application dated 03.02.2012 requesting the respondent No. 5 to reject the said complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 on the grounds that the Title Suit is still pending before the competent civil court with regard to the claim and counter claim of the said land of the petitioner under the Land Holding Certificate No. 37 of 2010 dated 04.03.2010 and also the order of the Executive Committee, JHADC, Jowai being No. JHADC/FOR/94/83 dated 24.03.2008, which was heavily relied upon by the respondents No. 6 & 7 had already been cancelled by a subsequent order of the

Executive Committee, JHADC, Jowai dated 07.01.2010 which was upheld by the High Court vide judgment and order dated 27.01.2012. In spite of objection, the respondent No. 5 vide his letter dated 02.04.2012 directed the petitioner to show cause as to why his Land Holding Certificate No. 37 of 2010 should not be cancelled. On 24.04.2012, the petitioner under an application sought time for filing his show cause statement and also for furnishing him a copy of the complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7. But the respondent No. 5, without considering the said application dated 24.04.2012 and also without hearing the petitioner, passed the order dated 05.06.2012 for cancelling the Land Holding Certificate No. 37 of 2010 of the petitioner. The said order dated 05.06.2012 of the respondent No. 5 for cancelling the Land Holding Certificate No. 37 of 2010 Elaka Raliang, Sumer Patorship standing in the name of the petitioner had been passed basing on the said order of the Executive Committee, JHADC being No. JHADC/FOR/94/83 dated 24.03.2008, which had already been cancelled by a subsequent order of the Executive Committee, JHADC dated 07.01.2010, which had been affirmed by the High Court vide judgment and order dated 27.01.2012 passed in WP(C) No. (SH)8/2010. The operative portions of the said order of the respondent No. 5 dated 05.06.2012 read as follows:-

"..... 7. On the other hand, it was found out that the land claimed by Mynthning village is a Forest Land of which they have taken care off till date and the area measures about 112.50 Hectares which falls within the Forest Registration No. JHADC/FOR/94/83 dated 24.3.2008, having a proper demarcation and that the said area of the land as well as boundaries as claimed matches the Area and Boundaries set forth in the Sketch Map and Forest Registration No. JHADC/FOR/94/83 dated 24.3.2008.

8. That Mynthning village is in possession of a Forest Registration since 2008 and the L.H.C. No. 37 of 2010 issued to you for the same land after two years of issuance of the Forest Registration to Mynthning village and that the issuance of the said L.H.C. to you, on the same land claimed by the Mynthning village falling under the Forest Registration No. JHADC/FOR/94/83 dated 24.3.2008, is totally wrong.

From the above stated findings, the land for which you hold the LHC No. 37 of 2010 Elaka Raliang Sumer Patorship is a forest land of which 3/4 falls under the Forest Registration No. JHADC/FOR/94/83 dated 24.3.2008 of Mynthning village.

After proper perusal of the above facts which were discovered by this Office, before issuing any order/decision on the complaint this Office had directed you the respondent through letter No. JHADC/REV/MRC/30/2011 dated 2nd April, 2012 to show cause within 15 days why the LHC No. 37 of 2010 Elaka Raliang Sumer Patorship which you are in possession presently should not be cancelled and that after the period was over you have failed to show cause on the above mentioned complaint.

In this regard this office has received letter dated 24.4.2012 from you praying for time for 20 days more for filing of show cause which cannot be accepted since the time given to you for filing your show cause has since lapse/expired. The letter praying for time is hereby rejected by this office.

In the facts and circumstances aforesaid it has been found that you have failed to file your show cause as to why the LHC No. 37 of 2010 should not be cancelled and set aside as per the opportunity given to you, as such as empowered under the Jowai Autonomous District Regulation 1 1969 as amended by the Jaintia Hills (Management and Control over the Land and Assessment and Collection of Revenue) (Third Amendment) Regulation, 1985, it has been decided the LHC No. 37 of 2010 Elaka Sumer, Raliang Patorship, which you are in possession is hereby cancelled from today and further you are directed to demolish the house which you have constructed over the said land and to vacate the said land immediately which falls under the Forest Registration. Further you are hereby directed not to disturb the ownership of Mynthning village over the said land covered vide Forest Registration No. JHADC/FOR/94/83 dated 24.3.2008. You are also directed to hand over to this office the original HLC and Sketch Map of LHC No. 37 of 2010 Elaka Raliang Sumer Patorship within 10 days from the receive of this letter.

As such the dispute is hereby closed by this office.

Sd/- Revenue Officer, Jaintia Hills Autonomous District Council, Jowai

Memo No. JHADC/REV/MRC/30/2011 Dated Jowai the 5th June 2012

Copy to:

1. U Wolbing Paslein, Headman Mynthning Village.
2. U Wis Manner, Secretary Mynthning Village.

Sd/- Revenue Officer, Jaintia Hills Autonomous District Council, Jowai"

9. The petitioner filed writ petition being WP(C) No. (SH)210/2012 in the erstwhile Gauhati High Court, Shillong Bench against the respondents No. 6 & 7, JHADC and others challenging the said order of the respondent No. 5 Revenue Officer, JHADC, Jowai dated 05.06.2012. The High Court vide order dated 10.08.2012 passed in WP(C) No. (SH)210/2012, had directed the Revenue Officer, JHADC, Jowai to re-hear the case and take a fresh decision on merit of the said complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7. Pursuant to the order of the High Court dated 10.08.2012, the parties appeared before the Revenue Officer, JHADC, Jowai. On 20.11.2012, the parties had filed their respective written statements. The petitioner in his written statement had challenged the maintainability of the complaint/petition dated 01.11.2011 and also the jurisdiction of the Revenue Officer, JHADC, Jowai to entertain the complaint primarily on the grounds that the said order of the Executive Committee, JHADC, Jowai being No. JHADC/FOR/94/83 dated 24.03.2008 for

registration of forest in favour of the Mynthning village, basing on which the complaint/petition dated 01.11.2011 was filed by the respondents No. 6 & 7, had already been cancelled by a subsequent order of the Executive Committee, JHADC, Jowai dated 07.01.2010 passed in Remanded High Court Case No. 1/2009 under WP(C) No. 73/2008 and also that the respondents No. 6 & 7, if aggrieved by the order of the Revenue Officer, JHADC dated 04.03.2010 for issuing the Land Holding Certificate No. 37 of 2010 called "Lum Khadser" in favour of the petitioner, should file an appeal under Regulation 147 of the Assam Land & Revenue Regulation, 1886 (for short "Regulation of 1886") as adopted by the JHADC and that the Revenue Officer, JHADC has no power to review his own order inasmuch as, the power for review is a creature of statute and also that there is no material irregularity or mistake on the face of the record committed by the Revenue Officer, JHADC in passing the order dated 04.03.2010 for issuing the Land Holding Certificate No. 37 of 2010 for the said land name "Lum Khadser" in favour of the petitioner and also that the Title Suit No. 15/2011 between the parties in respect of the said land i.e. land covered by the Land Holding Certificate No. 37 of 2010 is pending before the Presiding Officer, Subordinate District Council Court, Jowai and also that the said Remanded case i.e. complaint/petition dated 01.11.2011, had been transferred to the Chief Executive Member, JHADC for decision; the Chief Executive Member, JHADC is not exercising his appellate or supervisory authority of the order of the Revenue Officer, JHADC while deciding the complaint/petition dated 01.11.2011 a fresh. The Chief Executive Member, JHADC passed the impugned judgment and order dated 18.03.2013 with a clear cut finding that "without going into the merits of the claim and counter claim of the parties relating to their right and title which is outside the jurisdiction of the Revenue authorities and which (sic such) power and jurisdiction is vested in a competent civil court and to which the party has already instituted suit and cases before the competent civil court". In spite of such finding, the Chief Executive Member, JHADC cancelled the Land Holding Certificate No. 37 of 2010 Elaka Raliang Sumer Patorship for the purported non-compliance with the mandatory provision of the rules and procedures under the Regulation of 1886. The operative portions of the impugned order dated 18.03.2013 read as follows:-

"..... I have perused the written argument and their claim and counter claim by both the parties. I have also perused the record and also conducted local inspection. It transpire and it is seen from the record that there is something behind the hasty issuance of Land Holding Certificate and it is on record that the application for LHC was filed on 11.12.2009 notice was issued on 17.12.2009 calling for objection on the application to be filed within seven days from the date of notice and then survey was conducted on 23.12.2009 before the expiry of the seven days period and report was submitted on 09.01.2010. It is also on record that no specific notice was issued to the complainant in spite of the fact as seen during the local inspection that the land claimed by the opposite party is adjacent to the land of the complainant. Such specific notice is mandatory to be issued to

all the adjacent land owners and which was not done in the instant case. Without going into the merits of the claim and counter claim of the parties relating to their right and title which is outside the jurisdiction of the Revenue authorities and which power and jurisdiction is vested in a competent civil court and to which the party has already instituted suit and cases before the competent civil court. In view of the facts and record above I come to the finding that for the interest and ends of justice to both the parties the Land Holding Certificate No. 37 Elaka Raliang, Sumer Patorship is liable to be cancel for non compliance with the mandatory provision of the rules procedures under the aforesaid regulation, which I hereby do. However, the application for issuance of Land Holding Certificate by Shri. Jelwis Paslein is to be process a fresh in accordance with the rules and regulation after adopting all the rules and procedures contain in the aforesaid Regulation 1886.

The Revenue Officer, JHADC is hereby directed to proceed with the process for granting of LHC of the application dated 11.12.2009 of Shri. Jelwis Paslein and to complete the process inclusive survey etc. within a period not later than six months from the date of this order. The LHC No. 37 Elaka Raliang, Sumer Patorship stands cancelled, with the above direction the case stands disposed off accordingly.

Sd/- Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai

Memo No. JHADC/Rev/MRC/30/2011 Dated Jowai the 18th March 2013

Copy to:-

1. U Wolbing Paslein, Headman Mynthning Village, East Jaintia Hills District.
2. U Wis Manner, Secretary Mynthning Village, East Jaintia Hills District.
3. Shri. Jelwis Paslein, Samasi village, East Jaintia Hills District.

Sd/- Revenue Officer, Jaintia Hills Autonomous District Council, Jowai"

10. The respondents No. 6 & 7 filed joint affidavit-in-opposition wherein, the respondents No. 6 & 7 stated that the said land under Land Holding Certificate No. 37 of 2010 is a part of the forest land of the Mynthning village and also that the Mynthning village is the owner and possession of the forest land known as "Khlaw Shnong Mynthning" having a well demarcated and specific boundaries. It is also stated in the joint affidavit-in-opposition filed by the respondents No. 6 & 7 that Shri. B Dkhar, Presiding Officer, Subordinate District Council Court, Jowai passed an injunction order dated 07.12.2012 in Misc. Case No. 1 of 2007 reference Title Suit No. 20 of 2012 and Title Suit No. 7 of 2007, which was renumbered as Title Suit No. 11 of 2009 and Misc. Case No. 7 of 2009 respectively restraining Shri. Proster Tangliang and another from entering, using or extracting coal from the suit land i.e. forest land of Mynthning village in favour of the Mynthning village and the said injunction order dated 07.12.2012 had been affirmed by the Judge District Council Court, Jowai vide judgment and order

dated 16.07.2013 passed in Misc. Civil Appeal No. 2 of 2013. The respondents No. 6 & 7 in their joint affidavit-in-opposition placed heavy reliance on the said injunction order dated 07.12.2012 passed by the Presiding Officer, Subordinate District Council Court, Jowai upheld by the Judge, District Council Court, Jowai vide order dated 16.07.2013 passed in Misc. Civil Appeal No. 2 of 2013 for claiming that the respondents No. 6 & 7 and Mynthning village are in possession of the said land under the Land Holding Certificate No. 37 of 2010 and it is a part of the forest land of Mynthning village. It is also admitted by both the parties that the petitioner is not one of the parties in the said suit and also in the Misc. Case No. 1 of 2007, where the said injunction order had been passed in favour of the respondents No. 6 & 7 and Mynthning village. It is the fact that the said order dated 16.07.2013 passed by the Judge District Council Court, Jowai in Misc. Civil appeal No. 2 of 2013 for upholding the injunction order dated 07.12.2012 passed in Misc. Case No. 1 of 2007 had already been set aside by the High Court vide judgment and order dated 28.11.2013 passed in CRP No. 43/2013. A copy of the said judgment and order dated 28.11.2013 passed in CRP No. 43/2013 was placed before this Court. Dr. ODV Ladia, learned senior counsel appearing for the respondents No. 6 & 7 had been comforted with the said order of this Court dated 28.11.2013 passed in CRP No. 43/2013 and he admitted that the said order dated 16.07.2013 passed by the Judge, District Council Court, Jowai in favour of the respondents No. 6 & 7 had already been set aside and further his submission is that the said order of the High Court dated 28.11.2013 was passed after filing of the affidavit-in-opposition on behalf of the respondents No. 6 & 7. If that be so, the respondents No. 6 & 7 are duty bound to bring the correct fact or subsequent events of setting aside of the said order dated 16.07.2013 passed by the Judge, District Council Court, Jowai in Misc. Civil Appeal No. 2 of 2013 by this Court (High Court). Once again, this Court depreciated the failure of the respondents No. 6 & 7 to bring the correct fact to the notice of the Court. The Apex Court in State of Orissa Vs. Nalinikanta Muduli, held that:

"6. It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned Single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it. It also does not appear that learned counsel appearing for the respondent before the High Court did not (sic) refer to the judgment of this Court. All this shows that the matter was dealt with very casually. From the judgment of the High Court it is noticed that the hearing was concluded on 13.3.2003 and the judgment was delivered on 25.4.2003. It was certainly the duty of the counsel for the respondent before the High Court to bring to the

notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was the duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment. It is not that the decision is lost in antiquity. It has been referred to in a large number of cases since it was rendered. It has been referred to recently in many cases e.g.

S.M. Datta Vs. State of Gujarat and Another, , M.C. Abraham and Another, A.K. Dhote and J.F. Salve and Another Vs. State of Maharashtra and Others, , Union of India (UOI) Vs. Prakash P. Hinduja and Another, and earlier in many oft cited decisions in State of Haryana and others Vs. Ch. Bhajan Lal and others, , Janata Dal Vs. H.S. Chowdhary and Others, , Union of India and another Vs. W.N. Chadha, and State of Bihar and Another Vs. P.P. Sharma, IAS and Another, . We can only express our anguish at the falling standards of professional conducts. Impugned judgment of the High Court is set aside."

11. In the aforesaid paras, the Court had already imposed a cost of Rs. 3000/- (Rupees three thousand) only to the respondents No. 6 & 7 for concealment of fact.

12. The Apex Court in Dalip Singh Vs. State of U.P. and Others, held that materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final". Para 1-10 and 16-24 of the SCC in Dalip Singh's case (Supra) read as follows:

1. For many centuries, Indian society cherished two basic value of life i.e.. "Satya (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the

challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In *Hari Narain Vs. Badri Das*, , this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of the fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another*, , the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

".....Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

6. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the court held that where a preliminary decree was obtained by withholding an important documents from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. Vs. State Bank of India*, , it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservations. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v. Kensington Income Tax Commissioners* (1917) 1 K.B. 486, and observed: *Prestige Lights Ltd. Vs. State Bank of India*, .

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

8. In *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, , the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

9. In *Sunil Poddar and Others Vs. Union Bank of India*, , the Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

10. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, , the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without

concealing or suppressing anything and seek appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree and Others Vs. Bhagwandas S. Patel and Others, .

* * * "

13. The Apex Court in Abhyudya Sanstha Vs. Union of India (UOI) and Others, held that petitioner must come with clean hands for obtaining interim order; and for the injury suffered by the students due to misrepresentation of fact, compensation of Rs. 1 lakh had been awarded by the Apex Court to each of the students.

14. The Apex Court in A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., held that every litigants is expected to state the truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts. It is imperative that the Judges must have complete grip of the facts before they start dealing with the case. Para 23, 24, 26, 27, 28 and 29 of the SCC in A Shanmugam"s case (Supra) read as follows:-

"23. We reiterate the immense importance and relevance of purity of pleadings. The pleadings need to be critically examined by the judicial officers or Judges both before issuing the ad interim injunction and/or framing issues.

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh Vs. State of U.P. and Others, :

"1. Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and people used to feel proud to tell the truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system."

26. As stated in the preceding paragraphs, the pleadings are the foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and authenticity of the matter pleaded.

27. The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials are introduced, then the court must carefully look into it while deciding a case and insist that those who approach the court must approach it with clean hands.

28. It was imperative that the Judges must have complete grip of the facts

before they start dealing with the case. That would avoid unnecessary delay in disposal of the cases.

29. Ensuring discovery and production of documents and a proper admission/denial is imperative for deciding civil cases in a proper perspective. In relevant cases, the courts should encourage interrogatories to be administered."

15. Under Regulation 3(a) of "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) Regulation, 1968" (for short Regulation of 1968"), all the laws for the time being in force in the State of Assam under the provision of the Assam Land and Revenue Regulation, 1886 (Regulation No. 1 of 1886), and the rules and amendments made there-under, subject to such exception or modification as may be made by the District Council from time to time shall, mutatis mutandis, apply to the District. Under Regulation 3(b) of the said Regulation of 1968, the State Government, Commissioner, Deputy Commissioner, Sub-Divisional Officer, shall be construed as reference to the Chief Executive Member, Executive Member or Officer as may be authorized by the Executive Committee. Further under Regulation 4 of "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Amendment) Regulation, 1971" (Jowai Autonomous District Regulation No. 1 of 1969) any reference in the Assam Land and Revenue Regulation, 1886 to the Board shall be construed as a reference to the Judge, Jowai District Council Court.

By the " the Jaintia Hills Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Third Amendment) Regulation, 1985", Rule 15 Chapter I of the Settlement Rules made under the provisions of the Assam Land and Revenue Regulation, 1886-Rule 15 is deleted and in its place a new Rule is inserted as:

"15. Notwithstanding anything contained in these Rules, the District Council may, after enquiry if satisfied that any land is occupied by a person in accordance with the customary practice of land holding in the District and by virtue of continuous and indisputable possession, the occupant has acquired the right of peaceful enjoyment over such land, issue a Land Holding Certificate conferring on such person the right of ownership thereof.

Provided that the manner and mode of enquiry, fees payable and the forms required for the issue of Land Holding Certificate shall be determined and prescribed by the Executive Committee."

The hierarchy of the Revenue Officers, JHADC is mentioned in Chapter VII of the Regulation of 1886. Regulations 122, 123 and 124 read as follows:-

"122. State Government.-(1) The State Government shall be the chief controlling authority.

123. Ex-officio Revenue Officers.-Every Commissioner of a Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioner shall

be a Revenue-officer for the purposes of this Regulation.

124. Appointment of other Revenue Officers.-The State Government may, for the purposes of this Regulation-

(a) appoint to each district, in addition to the officers mentioned in Section 123, as many other Revenue Officers as they think fit, and

(b) suspend or remove any officer appointed under this section.

Note.-The following officers have been appointed to be Revenue Officers in addition to the officers mentioned in Section 123-

(1) Tahsildar including Naib Tahsildars;

(2) Sub-Deputy Collectors;

(3) Mauzadar in the Assam valley;

(4) Revenue Nazirs including Naib Nazirs

(5) All officers who are authorized to receive payment or land revenue or other money realizable under the Regulation or rules issued there-under, and who have given, or are required to give, security for the due performance of their duties."

As stated above, under Regulation 4 of "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Amendment) Regulation, 1971" any reference to the Assam Land and Revenue Regulation, 1886 to the Board shall be construed as a reference to the Judge, Jowai District Council Court. Under Rule 5 of the Rules under the Assam Land and Revenue Regulation i.e. Part II of the Assam Land and Revenue Regulation, 1886, application for land shall be presented to the Deputy Commissioner or to such other officer as may be empowered by the Deputy Commissioner under Rule 3. Under Regulation 3(b) of "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Amendment) Regulation, 1968", the Commissioner, Deputy Commissioner, Sub-Divisional Officer and other authority shall be construed as reference to the Executive Committee, Chief Executive Member, Executive Member or Officer as may be authorized by the Executive Committee. The Revenue Officer, JHADC is the officer authorized by the Executive Committee to whom the application for allotment of land could be filed. This fact is not disputed by the parties. Under Rule 4 of the Rules under the Assam Land and Revenue Regulation i.e. Part II of the Assam Land and Revenue Regulation, 1886, when a Settlement Officer has been appointed under Regulation 133 of the Regulation of 1886 for any local area or class of estates, he shall exercise the powers of the Deputy Commissioner as conferred by the rules and these rules, provided that he shall not settle any land which has been expressly reserved by the Deputy Commissioner from settlement. Regulation 133 of the Regulation of 1886 and Rule 4 of the Rules under the Regulation of 1886 read as follows:-

"133. Appointment of Settlement Officers.-(1) The State Government may appoint a Settlement Officer to be in-charge of the settlement of any local area or class of estates, and as many Assistant Settlement Officers as they think fit; and all Assistant Settlement Officers so appointed shall be subordinate to the Settlement-Officer.

Note.-(1) All mauzadars in the Assam valley, and in the case of mauzadars who are minors, their Sarbarahkars, have been appointed ex-officio Assistant Settlement Officers.

Note:-(2) Mauzadars in Cachar excluding Karimganj Sub-division have been appointed ex-officio Assistant Settlement Officers.

(2) The State Government may suspend or remove any officer appointed under this Section.

Rule 4. Settlement Officer.-When a Settlement Officer has been appointed under Section 133 (sic Regulation) of the Assam Land and Revenue Regulation for any local area or class of estates, he shall exercise the powers of the Deputy Commissioner as conferred by these rules, provided that he shall not settle any land which has been expressly reserved by the Deputy Commissioner from settlement.

Provided further that the Deputy Commissioner shall continue to exercise the powers under rule 18."

Regulation 147 of the Regulation of 1886 read as follows:-

"[147. Authority to whom appeal lie.-Appeals shall lie under this Regulation as follows:-

(a) to the Board from orders, original or appellate passed by a Deputy Commissioner, Settlement Officer or Survey Officer;

(b) to the Deputy Commissioner, from orders passed by a Sub-divisional Officer, an Assistant Commissioner or Extra Assistant Commissioner;

(c) to the Settlement Officer, from orders passed by an Assistant Settlement Officer;

(d) to a Survey Officer, from orders passed by an Assistant Survey Officer:

Provided that no appeal shall lie against the following orders-

(i) orders of an Assistant Settlement Officer or Assistant Survey Officer under Sections 21 and 22;

(ii) orders of a Survey Officer or Settlement Officer;

(1) under sections 21, 22 and 24;

(2) apportioning the expense of erecting and repairing boundary-marks in

accordance with rules made under section 27;

(iii) orders of a Survey Officer, Settlement Officer or Deputy Commissioner, original or appellate imposing or confirming a fine not exceeding fifty rupees;

(iv) orders of a Deputy Commissioner under section 79 setting aside or refusing to set aside the sale;

(v) any decision given in accordance with an award of arbitrators appointed under section 143, except in the case of fraud or collusion;

(vi) orders under section 148, admitting an appeal after the period of limitation had expired;

(vii) orders expressly declared by this Regulation to be final subject to the provision of Section 151]"

16. On conjoint reading of Regulation 147 of Regulation of 1886, Regulations 3(a) and 3(b) of the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) Regulation, 1968 and Regulation 4 of the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Amendment) Regulation, 1971, it is clear that appeal against the order passed by the Revenue Officer, JHADC shall lie to the Judge District Council Court, Jowai. This Court is of the considered view that appeal lie against the order of the Revenue Officer, JHADC dated 04.03.2010 for issuing the Land Holding Certificate No. 37 of 2010 for the land known as "Lum Khadser" in favour of the petitioner under Regulation 147 of the Regulation of 1886 to the Judge District Council Court, Jowai. The respondents No. 6 & 7, if aggrieved by the said order of the Revenue Officer, JHADC dated 04.03.2010 for issuing Land Holding Certificate No. 37 of 2010 in favour of the petitioner, shall file an appeal under Regulation 147 of the Regulation of 1886 to the Judge District Council Court, Jowai. Instead of filing the appeal, the respondents No. 6 & 7 filed the complaint/petition dated 01.11.2011 against the order of the Revenue Officer, JHADC dated 04.03.2010 for issuing Land Holding Certificate No. 37 of 2010 in favour of the petitioner by concealing the important fact to the Revenue Officer, JHADC. What fact had been concealed by the respondents No. 6 & 7 in the said complaint/petition dated 01.11.2011 had been thoroughly dealt with in the aforementioned paras. The complaint/petition dated 01.11.2011 was filed mainly relying on the order of the Executive Committee, JHADC being No. JHADC/FOR/94/83 dated 24.03.2008, under which certain lands including the land under the Land Holding Certificate No. 37 of 2010 had been registered as forest land in the name of Mynthning village. It is also clear that the said order dated 24.03.2008 had already been cancelled by a subsequent order of the Executive Committee, JHADC dated 07.01.2010, which had been affirmed by the High Court vide judgment and order dated 27.01.2012 passed in WP(C) No. (SH)8/2010. As such, the said order of the Executive Committee, JHADC dated 24.03.2008 was no more in existence inasmuch as, the same had been set aside or cancelled by a subsequent order of the Executive

Committee, JHADC dated 07.01.2010 at the time of filing the complaint/petition dated 01.11.2011 by the respondents No. 6 & 7.

17. The High Court (Single Bench) vide order dated 10.08.2012 passed in WP(C) No. (SH)210/2012, which has been considered and discussed in the aforesaid paras, had sent down the case i.e. complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 to the Revenue Officer, JHADC to take fresh decision on merit. By the said order of the High Court (Single Bench) dated 10.08.2012 passed in WP(C) No. (SH)210/2012, the High Court did not decide that the Revenue Officer, JHADC has the jurisdiction to review its own order but the High Court directed the Revenue Officer, JHADC to take fresh decision on merit of the complaint/petition dated 01.11.2011 i.e. as to whether the complaint/petition dated 01.11.2011 is liable to be dismissed or is to be allowed?. After the case was remanded i.e. complaint/petition dated 01.11.2011 to the Revenue Officer, JHADC, the said complaint/petition dated 01.11.2011 was simply transferred to the Chief Executive Member, JHADC for disposal as the then incumbent of the office of the Revenue Officer was reluctant to take up the said complaint/petition dated 01.11.2011 on personal ground. As such, the Chief Executive Member, JHADC was not exercising the power and jurisdiction of the appellate or revisional authority of the order of the Revenue Officer, JHADC in the given case. Nowhere, in "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) Regulation, 1968" and subsequent amendment i.e. "the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Amendment) Regulation, 1971" and "the Jaintia Hills Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) (Third Amendment) Regulation, 1985" and "the Assam Land and Revenue Regulation, 1886" provide power for review of its own order by the Revenue Officer, JHADC. It is well settled that review is the creation of a statute.

18. The Apex Court in Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others, held that review is not a routine procedure and review does not lie even on a wrong decision. The Apex Court in Lily Thomas, Vs. Union of India and Others, held that review is not an appeal in disguise. The power to review cannot be exercised merely to substitute the point of law. Relevant portion of the judgment of the Apex Court in Lily Thomas & Ors vs. Union of India & Ors (Supra) is quoted hereunder:-

"The power of review is not an inherent power. It must be conferred by law. A review petition is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetuation shall result in a miscarriage of justice nothing would preclude the

court from rectifying the error.

The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error."

19. The Apex Court in *Union of India (UOI) Vs. Paul Manickam and Another*, held that a review application for bringing a new case which could have been mentioned earlier is not maintainable. Relevant portion at para 19 of the SCC in *Union of India Vs. Paul Manickam & Anr. (Supra)* is quoted hereunder:-

"As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition."

20. The Apex Court in *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, held that the final judgment and order cannot be reviewed on the ground that certain documents forming part of the record were not considered at the time of passing the judgment and order. Paras 3 & 4 of the SCC in *Aribam Tuleshwar Sharma's Case (Supra)* read as follows:-

"3. The Judicial Commissioner gave two reasons for reviewing his predecessors order. The first was that his predecessor had overlooked two important documents exhibits A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948, 49 and that the grants must have been made even by them. The second was that there was a patent illegality in permitting the appellant to question, in a single Writ Petition settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in *Shivdeo Singh and Others Vs. State of Punjab and Others*, there is nothing in Article 226 of the Constitution to preclude

a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

4. In the present case both the grounds on which the review was allowed were hardly grounds for review. That the two documents which were part of the record were not considered by the Court at the time of issue of a Writ under Article 226, cannot be a ground for review especially when the two documents were not even relied upon by the parties in the affidavits filed before the Court in the proceeding under Article 226. Again that several instead of one Writ Petition should have been filed is a mere question of procedure which certainly would not justify a review. We are, therefore, of the view that the Judicial Commissioner acted without jurisdiction in the allowing the review. The order of the Judicial Commissioner dated December 7, 1967 is accordingly set aside and the order dated May 25, 1965, is restored. The appeal is allowed but without costs.

21. The Chief Executive Member, JHADC, while deciding the complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 on transfer was not exercising the appellate or revisional authority of the order of the Revenue Officer, JHADC and was exercising the original jurisdiction of the Revenue Officer, JHADC to whom the said complaint/petition dated 01.11.2011 had been filed. The Revenue Officer, JHADC has no power for review and also no materials had been made out in the complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 for reviewing the earlier order of the Revenue Officer, JHADC dated 04.03.2010 for issuing Land Holding Certificate No. 37 of 2010 in favour of the petitioner. But the Chief Executive Member, JHADC on misreading the provision of Regulation of 1886, the Jowai Autonomous District (Management and Control over the Land and Assessment and Collection of Revenue) Regulation, 1968, had passed the impugned order dated 18.03.2013 in JHADC/REV/MRC/30/2011. The Chief Executive Member, JHADC in its impugned order dated 18.03.2013 had clearly made an observations that ""without going into the merits of the claim and counter claim of the parties relating to their right and title which is outside the jurisdiction of the Revenue authorities and which (sic) power and jurisdiction is vested in a competent civil court and to which the party has already instituted suit and cases before the competent civil court". But inspite of making such finding, the Chief Executive Member, JHADC cancelled the

Land Holding Certificate No. 37 of 2010 Elaka Raliang Sumer Patorship. Over and above, the Chief Executive Member, JHADC in the impugned order dated 18.03.2013 without mentioning what are the mandatory notices to be issued and what are the mandatory procedures to be followed in issuing the Land Holding Certificate had come to a cryptic finding that the mandatory procedures and notices have not been followed in issuing the Land Holding Certificate No. 37 of 2010. Over and above, the Chief Executive Member, JHADC had misread and misunderstood Rule 26 of the Rules under the Regulation of 1886. The power under Rule 26 is the general power of the Commissioner i.e. Chief Executive Member, JHADC to confirm all settlements or to cancel any settlement made in contravention of these rules, after giving the lease-holder an opportunity of being heard. In the given case, the Chief Executive Member, JHADC in exercise of his general power conferred under Rule 26 was not taking up proceeding to ascertain the settlement of the land under the Land Holding Certificate No. 37 of 2010 on his own accord by issuing notice to the petitioner. What the Chief Executive Member, JHADC did in this case was deciding the complaint/petition dated 01.11.2011 filed by the respondents No. 6 & 7 against the order dated 04.03.2010 passed by the Revenue Officer, JHADC for issuing the Land Holding Certificate No. 37 of 2010 to the petitioner in exercising his jurisdiction not as an appellate authority. There is a specific provision i.e. Regulation 147 of the Regulation of 1886 providing appeal to the Judge, District Council Court, Jowai against the order passed by the Revenue Officer, JHADC dated 04.03.2010. The Chief Executive Member, JHADC had completely lost sight of the maxim "Generalia-spicialibus-non-derogant". For this doctrine, reference may be made to the decision of the Apex Court in Maya Mathew Vs. State of Kerala and Others, . It is well settled law that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. (Ref:- Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, . The Apex Court further reiterated in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, that:

"40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."

22. For the foregoing reasons, the impugned order dated 18.03.2013 passed in JHADC/REV/MRC/30/2011 is set aside. A cost of Rs. 3000/- (Rupees three thousand) only is imposed to the respondents No. 6 & 7 for approaching the authorities in the manner mentioned in the aforesaid paras for shamelessly resorting to falsehood and unethical means for achieving their goals by concealment of fact. The respondents No. 6 & 7 shall deposit the said cost of Rs.

3000/- (Rupees three thousand) only in the fund of the High Court Bar Association, Shillong within a period of 10 days from today. However, in the peculiar circumstances of this case, parties are left to pursue the civil suits mentioned in the aforesaid paras pending before the competent civil courts for speedy disposal.

23. Writ petition is allowed with costs.