
(2007) 07 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 903 of 2003

K.G. Kalung

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Manipur (Village Authorities in Hill Areas) Act, 1956 — Section 3, 3(2)

Citation : (2010) 3 GLT 688

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : H. Nk. Singh and Kh. Babulindro, for the Appellant; H. Raghmani Singh and L. Sharat Sharma, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—Though this case is fixed for hearing, no Rule was issued, the matter is taken up for hearing as agreed upon by the parties for disposal.

2. Heard Mr. H.Nk. Singh, learned senior Counsel assisted by Mr. Kh. Babulindro, Advocate appearing for the petitions. Mr. H. Raghmani Singh, learned State Counsel appearing for the Respondents 1 and 2 and Mr. L. Sharat Sharma, learned Counsel appearing for the Respondent No. 3.

3. Present writ petition is filed by the Petitioner, who is the Chief/Khullakpa of Khonglong Part-II Kabui Village within Senapati District, Manipur, for issuing a writ of certiorari for quashing and setting aside or declaring nullity of the order dated 20.06.2003 (Annexure-A/7 to the writ petition) passed by the SDO, Saitu-Gamphazol in Hill Misc. Matter No. 3 of 2003 whereby and whereunder the said Khonglong Kabui Village had been in existence since the British period and the same had been established since the year, 1963 till date as the same has been abandoned by the villagers of Khonglong Kabui Village during the period of Khongjai War in the year, 1917. The said SDO allowed the Respondent No. 3 to establish a new village in the name and style of Namthangjang Village within the

boundary of the village of the Petitioner, namely Khonglong Part-II Kabui Village and also to allow the said Respondent as Khullakpa for the convenience of payment of revenue tax. The said village has also been bifurcated into two separate villages namely Khonglong Kabui Village and Khonglong Part-II by an order dated 27.3.2003 of the learned Civil Judge (Senior Division) in OS No. 15/98/3/2000.

4. As the father of the present Petitioner was the Chief/Khullakpa of the Khonglong Kabui Village, the Petitioner is at present acting as the Chief/Khullakpa of the said village as he inherited the same. But on all of a sudden he came to learn that the Respondent No. 3 filed an application on 28.3.03 before the Respondent No. 2 SDO Saitu-Gamphazol for recognition of the village, namely Namthangjang Village. On the basis of the said representation of the Respondent No. 3, the Respondent No. 2 also invited objection from the neighbouring villages. Accordingly, the present Petitioner has also objected the said application filed by the Respondent No. 3 as the proposed village is within the area of the Petitioner's village and as per law relating to Manipur (Village Authority in Hill Areas) Act, 1956 at least 20 tax paying house should be there in the proposed village for creation of village authority. But in the proposed village of the Respondent No. 3, there are only 10 houses. The Petitioner was also never informed of the said proceeding being undertaken by the Respondent No. 3 before the Respondent No. 2 along with some other grounds. The Respondent No. 2, SDO, Saitu-Gamphazol, without considering the objection of the Petitioner, issued the impugned order dated 20.6.03 allowing the Respondent No. 2 to establish a new Village in the name and style of Namthangjang Rongmei Village and the said Respondent was also allowed to act as a Khullakpa of the said village though the Respondent No. 2 has no jurisdiction to pass such order. Hence, the present writ petition.

5. The Respondent No. 3 has filed affidavit-in-opposition denying the allegations made in the writ petition. The Respondents 1 and 2 have not filed counter affidavit.

6. Mr. H.Nk. Singh, learned senior Counsel appearing for the Petitioner mainly attacks the impugned order dated 20.6.03 (Annexure-A/7) on the ground of jurisdiction of the SDO. The learned senior Counsel submits that the SDO has had no such authority to pass the order for establishment of a new village in the name and style of Namthanjang Rongmei Village while the said area of the proposed village is within the area of the village of the present Petitioner and the establishment of a new village is, in fact, within the jurisdiction of the State Government. He also contends that the SDO has also no power to declare the Respondent No. 3 as the Khullakpa of the proposed village for which the same is liable to be quashed. In support of his aforesaid submission he relied upon a decision of this case in the case of K. Khubam v. P. Baochalin Rongmei Naga and Anr. reported in (1983) 2 GLR 53, particularly paragraph 4 of the said report wherein, this Court said that Section 3 of the Manipur (Village Authorities in Hill

Areas) Act, 1956 (hereinafter refers to as the Act) empowers the State Government to make declaration regarding the constitution of village authority and exercise of the said power is circumscribed by certain limitation. First, the State Government must consider general interest of the village. Secondly, it may also consider the demand of the villagers for an elected village and thirdly, it must declare by notification in Official Gazette that the village shall have an elected village authority. Only on fulfillment of these conditions, members of the village acquire the right to elect the members of the village authority. Mr. H.Nk. Singh also pointed out that when this Court passed an interim order on 14.07.03 to the effect that the order dated 20.6.03 (Annexure-A/7) shall not be given effect to. After that the Respondent No. 2 issued the letter dated 15.7.03 to the Addl. D.C. (Annexure-X/2 to the affidavit-in-opposition) for recognition of the Namthanjang Rongmei Village, which, according to him, is nothing but an attempt to legalise the illegal order.

7. Per contra, Mr. L. Sharat Sharma, learned Counsel appearing for the Respondent No. 3 submits that the Respondent No. 3 has the right to make application for establishment of the proposed village and he approached the Respondent No. 2 for declaring the Namthanjang Rongmei Village in accordance with law. It is the Respondent No. 2, who has to decide how the proposed village has to be established and who should be the Khullakpa of the said village either by himself or by way of sending the same proposal for approval to the State Government. As confronted by this Court, he, however, agreed with the submission of Mr. H.Nk. Singh, learned senior Counsel that the Respondent No. 2, SDO, has no power to declare a new village or authorize a person to act as a Khullakpa of the said new or proposed village. The said power is only with the State Government unless it is authorized to any other person by the State Government in accordance with law.

Mr. Sharma also submits that the case of K. Khubam (supra) has no application in the present case as the facts of the case is different from the case in hand and in that case the question arose before the Court was relating to divide or bifurcate a Hill Village and not for establishment of a new village.

8. Mr. Raghumani, learned State Counsel appearing for the Respondents 1 and 2 fairly submits that the SDO has no power to declare a new village and also to authorize a person to act as a Khullakpa of the said village as the said power is only with the State Government as per Act of 1956. However, he submits that the SDO, Respondent No. 2 did not pass any final order. In fact, the order passed by him is subject to the approval of the State Govt. which will be evident from the Annexure-X/2 to the affidavit-in-opposition filed by the Respondent No. 3 i.e. the letter dated 15.7.07 for which the Respondent No. 3 requested the Addl. Deputy Commissioner to take up necessary action for early recognition of the Namthanjang Rongmei Village so as to streamline the village administration and revenue collection.

9. This Court has given anxious consideration to the submission of the learned

Counsel of the parties as well as to the available records as well as the law report cited by the learned Counsel for the parties. For proper appreciation of the submission of the learned Counsel of the parties, it is necessary to extract the provisions of Section 3 of the Manipur (Village Authority in Hill Areas) Act, 1956. Accordingly, the same is extracted hereinunder:

3. Constitution of Village Authorities-

(1) For every village having twenty or more tax-paying houses there shall be a Village Authority consisting of-

(a) five members, where the number of tax-paying houses in the village is not less than twenty but is not more than sixty;

(b) seven members, where the number of tax-paying houses in the village is more than sixty but is not more than one hundred;

(c) ten members, where the number of tax-paying houses in the village is more than one hundred but is not more than one hundred and fifty;

(d) twelve members, where the number of tax-paying houses in the village is more than one hundred but is not more than one hundred and fifty.

(2) The Chief Commissioner may, having regard to the general interests of the people of any village as also for the elected Village Authority, declare, by notification in the Official Gazette, that the village shall have an elected Village Authority, thereupon the members of the Village Authority of that village shall be elected in accordance with the provisions of this Act and the rules made thereunder.

(3) Where no declaration under Sub-section (2) has been made in relation to any village the members of the Village Authority of that village shall be nominated by the Chief Commissioner.

(4) Where there is a Chief or Khullakpa in a Village, he shall be the ex-officio Chairman of the Village Authority of that village; and where there is no such Chief or Khullakpa in the village, the Chairman of the Village Authority of that village shall be elected by the members of the Village Authority from among themselves.

10. A bare perusal of Section 3 of the Act, it is crystal clear that power of establishment of a village or declaring and or division of a village is with the Government and not with the SDO. In the instant case, however, it appears that such power has been exercised by the SDO in derogation of the prescribed statute for which itself the impugned order is bad in the eye of law.

11. It is an admitted position that the Petitioner is the Chief/Khullakpa of the Village Authority of the village Khonglong Part-II Kabui Village and regarding his position there is no challenge also from the part of the Respondent or anybody else and it is also evident from the records that the proposed village is within the

area of the Petitioner's village. This fact is admitted in para 12 of the affidavit-in-opposition filed by the Respondent No. 3, the relevant portion of which is quoted hereinunder for better appreciation:

12. That, with reference to para Nos. 14 and 15 of the Writ Petition my village land is included in the boundaries as given by the writ Petitioner to be his village land.

12. It would be improper on the part of this Court not to reproduce the relevant portion of the case of K. Khubam (supra) and hence the relevant portion of paragraph 4 is quoted below:

4... It will appear that the Deputy Commissioner is not competent to make a declaration u/s 3(2) of "the Act". In the instant case, a notified village u/s 3(2) has been bifurcated by the Deputy Commissioner, who has had no jurisdiction to make such a declaration. It is not a case in which by an administrative act for administrative convenience a village has been divided into plots or blocks without affecting the right of the villagers and/or the Chief of the Village. As a result of the bifurcation, two village authorities have been constituted by the Deputy Commissioner which is beyond the competence of the Deputy Commissioner under "the Act". We could not appreciate the argument of Mr. Nilmani Singh and Shri Munindra Singh, learned Counsel for the Respondents that the impugned orders were merely administrative orders. When the legislature express its intention in clear language that the State Government can only declare a village as a village authority no other person can circumvent the law by making administrative order and counter the legislative intent. We have no manner of doubt that the impugned orders could not have been passed administratively or otherwise by the Deputy Commissioner and as such, the impugned orders are liable to be set aside.

13. In para 9 of the case of K. Khubam (supra) this Court held, inter alia, "we are of the firm opinion that the State Government can withdraw the notification constituting the village authority and taking into consideration the general interest of the people, the demand of the villagers, declare two village authorities by a notification in the Official Gazette stating that each village shall have elected village authorities. Thereupon, the members of the village authorities of those villages shall be elected in accordance with the provisions of "the Act" and "the Rules" framed thereunder. If the Petitioner is Chief of one of the villages, he shall continue to remain as the ex-officio Chairman of that village." Hence, question of allowing anybody except the Petitioner as Khullakpa does not arise.

14. After going through the provisions of Sub-section (2) of Section 3 of the Act and the impugned order as well as the submission of the learned Counsel, this Court is of considered opinion that the Respondent No. 2, SDO, has no power to allow the prayer of the Respondent No. 3 for establishment of a new village in the name and style Namthanjang Rongmei Village within the village boundary of the Petitioner and to allow the Respondent No. 3 as a Khullakpa of the said

proposed village as the said power is only with the State Government and the State only, considering the general interest of the people of a particular village and on demand of the said villagers, can establish a new village, except the State no other authority has the power to allow any of the villagers or any other authority to allow establishment of a new village and also to act as a Khullakpa of the said village unless authorized by the State Government in accordance with law. But, in the instant case, in fact, the Respondent No. 2, by way of his decision allowed the Respondent No. 3 to establish a new village and to act as Khullakpa of such a village or divide the village and village authority of the Petitioner, hence, according to this Court law laid down by this Court in K. Khubam (supra) has some bearing. When a statute prescribes a particular mode or manner for doing a particular act, that act must be done in that manner alone and not at all.

15. In the instant case, Annexure-X/2 to the affidavit-in-opposition filed by Respondent No. 3, i.e. letter dated 15.7.07 it is crystal clear that the SDO, Respondent No. 2 himself was very much aware about his own authority, had he not been aware about his power he would not have requested the Addl. D.C., Kangpokpi to take up the necessary action for early recognition of the Namthanjang Rongmei Village bifurcating the village of the Petitioner. From the aforesaid action of Respondent No. 2, this Court is of the further opinion that Respondent No. 2 by way of requesting the D.C. to take up the matter for necessary action for early recognition of the proposed village while the impugned order at Annexure-A/7 to the writ petition has already been stayed frustrating the Court's order and an attempt was made by him to legalize his illegal action which cannot be permitted by a Court of law. Hence, this Court has no other option except to quash the impugned order. And, accordingly, the impugned order dated 20.6.03 (Annexure-A/7 to the writ petition) as well as any other follow up action in pursuance of the said impugned order is hereby quashed.

16. In the result, this writ petition is allowed. No costs.