

(2010) 11 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No. 282 (SH) of 2010 and Civil Revision Petition (Art. 227) No. 20 of 2009

Khamjeipou Gagmei and Another

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Evidence Act, 1872 — Section 74

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

Citation : (2011) 2 GLT 543

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S. Sachindra, for the Appellant; L. Shyamkishwor Anand and S. Rupachandra, for the Respondent

Judgement

T. Nandakumar Singh, J.—The writ petition (C) No. 282 of 2010 and C.R.P. No. 20 of 2009 between the same parties in respect of the same subject matter, i.e. Chiefship of Raengdaihiang (Sadukhoiroi) village, Henglep Sub-Division, Ghurach-andpur are heard jointly for disposal by a common judgment and order.

2. Heard Mr. S. Sachindra, learned Counsel for the writ Petitioners namely, Shri Gaipuining Gangmei and another of W.P. (C) No. 282 of 2010 (Respondents in C.R. P. No. 20 of 2009) as well as Mr. S. Rupachandra, learned Counsel for the Respondent Nos. 4, 5,7,10 and 11 in W. P. (C) No. 282 of 2010 (Petitioners in C.R. P. No. 20 of 2009) and also heard Mr. L. Shyamkishwor, learned senior counsel assisted by Mr. Anand, learned Counsel for the Respondent Nos. 1,2 and 3.

3. It is admitted case of both the parties that one Shri K. Pouchalung was the last headman/Khullakpa of the village of Raengdailuang (Sadukhoiroi) village. He died on 25.04.2008. After the death of K. Pouchalung, the writ Petitioner No. 2, namely, Shri Pouthailung Kamei and Respondent No. 4, namely Shri M. K.

Monthabipou claimed the office of the Chief/Khullakpa." Hence, there is a dispute in between the writ Petitioner No. 2, namely, Shri Pouthailung Kamei (writ Petitioner No. 2 in W.P. (C) No. 282 of 2010) as to the Chiefship of the village of Raengdailuang (Sadukhoiroi) village. Both the writ Petitioners are Respondents are not disputing that after the death of KiPouchalung last Khullakpa/Chief of the said village one villager is to be appointed as Chief/Khullakpa of the village but only dispute is as to the method and manner of appointment of the Khullakpa/Chief and by whom. J

4. It is the case of the writ Petitioners that the Chief of the village is to be elected by the villagers of the village: According to the Respondent No. 4, Chief/Khullakpa is to be elected by the Village Authority. The Respondent No. 4 filed a Civil Suit, i.e. Original Suit No. 16 of 2008 in the Court of the Civil Judge (Sr. Dim), Manipur West for declaration that the Respondent No. 4 is the Chief of Raengdailuang (Sadukhoiroi) village and consequent relief, and also an application for temporary injunction, Judicial Misc. Case No. 80 of 2008 (O.S. No. 16 of 2008). Copies of the Judicial Misc. Case No. 80 of 2008 and the plaint of the O.S. No. 16 of 2008 are available at Annexure-A/6 and Annexure-A/7 respectively to the writ petition. On perusal of the plaint it appears that the case of the Respondent No. 4 in O.S. No. 16 of 2008 is that the Chief of Raengdailuang (Sadukhoiroi) Village Authority Henglep Sub-Division, Churachandpur had issued a Notification dated 26.04.2008 that as per kamei clan the Respondent No. 4 had been declared as Headman/Khullakpa of Raengdailuang (Sadukhoiroi) Village w.e.f. 26.04.2008 and also Sub-Divisional Officer, Henglep had passed an order dated 17.06.2008 that the Respondent No. 4 was appointed as Chief of Raengdailuang (Sadukhoiroi) Village in place of his uncle late K. Pouchalung. The present writ Petitioners also filed written statement in O.S. No. 16 of 2008 that the Chief of the Raengdailuang (Sadukhoiroi) Village is to be elected by the villagers of the village and also that there is no authority called "the Chief of Raengdailuang (Sadukhoiroi) Village Authority, Churachandpur". The learned Civil Judge (Sr. Divn.), Manipur West passed an injunction order dated 29.01.2009 in Judl. Misc. Case No. 80 of 2008 basing on the said notification of the Chief of the Village Authority dated 26.04.2008 and the said order of S.D.O restraining the writ Petitioner No. 2 from functioning as the Khullakpa/Chief of the said village. Being aggrieved by the said order of the trial Court order dated 29.01.2009 passed in Judl. Misc. Case No. 80 of 2009, the present writ Petitioners preferred a Civil Misc. Appeal, i.e. Civil Misc. Appeal No. 5 of 2009 in the Court of District Judge, Manipur West. The learned District Judge, Manipur West had finally allowed the Civil Misc. Appeal No. 5 of 2009 vide the judgment and order dated 10.07.2009. The learned District Judge, Manipur West in the judgment and order dated 10.07.2009 made the findings that there is no provision under the Manipur (Village Authorities in Hill Areas) Act, 1956 for selecting, appointing or electing chief of the village authority and the Chief of the village authority.

It has no authority and power to issue the said notification dated 26.04.2008 and

also it cannot be put in evidence u/s 74 of the Indian Evidence Act. Likewise, the S.D.O., Henglep has no authority and power to issue the order dated 17.06.2008/ 18.06.2008. The Respondent No. 4 of the W.P. (C) No. 282 of 2010 again filed a revision petition, i.e. C.R. P. No. 20 of 2009 against the said judgment and Order of the learned District Judge, Manipur, West dated 10.07.2009 before this Court. This Court passed an interim order dated 17.09.2009 to the effect that status quo as on that day shall be maintained with regard to the Chiefship of Raendailuang (Sadukhoiroi) Village, Henglep Sub-Division, Churachandpur.

5. Mr. S. Sachindra, learned Counsel for the writ Petitioners contended that this Court, in a revision petition against the final judgment and order of the First Appellate Court in Misc Appeal arising out of temporary injunction has limited power to interfere the order of the First Appellate Court. u/s 115 of Code of Civil Procedure, 1908 the High Court may invoke revisional jurisdiction against an order of the subordinate Court, in which no appeal lies thereto, if such subordinate Court appears; (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

6. The Apex Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, held that the Section 115 of Code of CPC as amended by Act 46 of 1999 does not permit a revision petition being filed against an order disposing of an appeal against the order of the trial Court whether confirming, reversing or modifying the order of the injunction granted by the trial Court; and that the amendment of the Code of CPC is based on Malimath Committee's recommendations, and the Committee was of the opinion that the expression employed in Section 115 Code of CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases and the Committee did not favour denuding High Court of the power of revision but strongly felt that the power should be curtailed. According to the ratio laid down in *Surya Dev Rai* (supra), this Court has very limited power in revision petition filed against the order disposing of an appeal against the order of the trial Court whether confirming, reversing or modifying the order of injunction granted by the trial Court.

7. On perusal of the impugned judgment and order of the learned District Judge, Manipur West dated 10.07.2009 passed in Civil Misc. Appeal No. 5 of 2009, it is clear that the order passed by the learned District Judge, Manipur West had not suffered from the infirmities mentioned u/s 115 of Code of CPC for that this Court may exercise its revisional power u/s 115 of Code of CPC. Therefore, this Court is of the considered view that the C.R.P. No. 20 of 2009 has no merit.

8. As on today, it appears that the Respondent No. 4 is functioning as the

Khullakpa/Headman of the village of Raendailuang (Sadukhoiroi) Village because of the impugned order dated 23.03.2010 passed by the Deputy Commissioner, Churachandpur pursuant to the interim order of this Court dated 17.09.2009 passed in C.R.P. No. 20 of 2009.

9. The said O.S. No. 16 of 2008 filed by the present Respondent No. 4 of the W.P. (C) No. 282 of 210 in the Court of Civil Judge (Sr. Divn.), Manipur West for dealing him as Khullakpa/Headman of Raendailuang (Sadukhoiroi) Village is pending. The learned Civil Judge (Sr. Divn.), Manipur West is the competent Civil Court for deciding as to who is the Chief of Raendailuang (Sadukhoiroi) Village. While the matter is pending in the Civil Court of competent jurisdiction, the Deputy Commissioner, Churachandpur passed an order dated 23.03.2010 for declaring Respondent No. 4 as Chief of Raendailuang (Sadukhoiroi) Village pursuant to the interim order of this Court dated 17.09.2009 passed in C.R.P. No. 20 of 2009. Upon hearing the rival contentions of the parties, it appears that both the parties are trying to interpret the interim order passed by this Court dated 17.09.2009 in C.R.P. No. 20 of 2008 wherein this Court provided that status quo as on today shall be maintained regarding the Chiefship of Raendailuang (Sadukhoiroi) Village, Churachandpur in such a manner favourable to their case. On perusal of the said interim order dated 17.09.2009, the orders of the learned District Judge, Manipur West dated 10.07.2010 in Civil Misc. Appeal No. 5 of 2009 and the learned Civil Judge (Sr. Divn.) dated 29.01.2009 passed in Judl. Misc. Case No. 80 of 2009, it is very difficult to understand the words "status quo" mentioned in the interim order of this Court dated 17.09.2009. The Apex Court in *Kishore Kumar Khaitan and Another Vs. Praveen Kumar Singh*, held that it would not be appropriate for the Court to pass order directing the parties to maintain status quo without indicating what the status was. Relevant portion of the para No. 4 of the AIR in *Kishore Kumar Khaitan and Anr.* (supra) read as follows:

4. It is necessary to notice at this stage that in an original suit of this nature, it was not appropriate for the Additional District Judge to pass an order directing the parties to maintain status quo, without indicating what the status quo was. If he was satisfied that the Appellant before him had made out a prima facie case for an ad interim ex parte injunction and the balance of convenience justified in the grant of such an injunction, it was for him to have passed such an order of injunction. But simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of a litigation, especially when one Court had found no reason to grant an ex parte order of injunction and the appellate Court was dealing with only the limited question whether an ad interim order of injunction should or should not have been granted by the trial Court, since the appeal was only against the refusal of an ad interim ex parte order of injunction and the main application for injunction pending suit, was still pending before the trial Court itself. Therefore, we are prima facie of the view that Additional District Judge ought not to have passed an equivocal order like the one passed in the

circumstances of the case.

As there is no indication what is meant by status quo in the interim order of this Court dated 17.09.2009 passed in C.R.P. No. 20 of 2009, it is very difficult to understand what is meant by status quo.

10. u/s 3 of the Manipur (Village Authorities in Hill Areas) Act, 1956, in case there is no Kullakpa/Chief of the village, the Chairman of the Village Authority of that village shall be elected in accordance with the provisions of Act and rules made thereunder. Mr. L. Shyamkishwor, learned senior counsel appearing for the Respondents contended that as there is a dispute regarding the Chiefship of the Raendailuang (Sadukh-oiroi) Village and also a Civil Suit i.e. O.S. No. 16 of 2008 is pending in the Court of Civil Judge (Sr. Divn.), Manipur West, it will be difficult on the part of the Government to nominate a person for functioning as Chief of the Raendailuang (Sadukhoiroi) Village by resorting to the powers u/s 3 (3) of the Act, 1956. But one person should be allowed to function as Chief of the Raendailuang (Sadukhoiroi) Village or Chairman of the Village Authority for administration of the village in the interest of the villagers. In the present democratic form of Government, the Village Authority of the Hill Areas is also a democratic institution at grass root level, and as such proper and right procedure for appointing the Chief/Khullakpa of Raendailuang (Sadukhoiroi) Village for constitution of the Village Authority of the Raendailuang (Sadukhoiroi) Village, taking into consideration of democratic polity, would be the election by following prescribed procedure under the Manipur (Village Authorities in Hill Areas) Act, 1956 and rules framed thereunder till O.S. No. 16 of 2008 is finally decided.

11. For the foregoing reasons, the State Respondents are directed to hold election for constitution of the Village Authority of Raendailuang (Sadukhoiroi) Village till O.S. No. 16 of 2008 is finally decided by strictly following the procedure for the such election prescribed under Manipur (Village Authorities in Hill Areas) Act, 1956 and rules framed thereunder within 3 (three) months from the date of receipt of a certified copy of this order. For enabling the Government to conduct election for constitution of the Village Authority, the order passed by the Deputy Commissioner, Churachandpur dated 23.03.2010, the resolution dated 27.03.2010 of Raendailuang (Sadukhoiroi) Village and subsequent order of the Deputy Commissioner, Churachandpur dated 28.04.2008 are hereby set aside. It is made clear that any observation/finding in this judgment and Order shall not prejudice either of the parties in effectively putting up their cases i.e. O.S. No. 16 of 2008 and also the learned Civil Judge (Sr. Divn.), Manipur West shall decide the said Civil Suit without being influenced by the observations made by this Court regarding the Chief of Raendailuang (Sadukhoiroi) Village. Accordingly, the writ petition, W.P.(C) No. 282 of 2010 and C.R.P. No. 20 of 2009 are disposed of.