

(1992) 03 GAU CK 0005

In the Gauhati High Court

Case No : Misc.Appeal (First) No. 1 (K) of 1991

K.Hutoi

APPELLANT

Vs

Nikiye Sema

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Citation : (1992) 1 GLJ 421

Hon'ble Judges : H.K.Sema, J

Bench : Single Bench

Advocate : Hutoi, I.Jamir , R.Iralu, Advocates appearing for Parties

Judgement

1. By this petition the order dated 17.1.91 passed by the learned Additional Deputy Commissioner (J), Zunheboto, whereby allowing/permitting the respondents party to shift to the new proposed village site has been impugned.
2. I have heard Mr. Iralu, learned counsel for the petitioner as well as Mr. I. Jamir, learned counsel for the respondents at length.
3. During the pendency of this petition Shri Khumighi the sole respondent expired and a petition for substitution was allowed and Shri Nikiya and others are impleaded as respondents.
4. The only submission of Mr. Iralu, learned counsel for the petitioner is that the learned Additional Deputy Commissioner (J) has no jurisdiction to pass the order impugned inasmuch as no such power has been vested with the learned Additional Deputy Commissioner (J). Alternately, even assuming the learned Additional Deputy Commissioner (J) had such power, the order impugned is liable to be set aside as the same was passed without hearing the petitioner.
5. Avoiding the details, the material facts giving raised to .the present petition, may be briefly stated.
6. It is stated Lotisami Village is an old village under Zunheboto District established since several decades ago and the inmates of the village have been

living peacefully therein. However some time in the year 1989 a group of house holders would like to form a new village within the jurisdiction of the said village and called it New Lotisami Village. This move, as it appears, was vehemently objected to by the Head GB of the village, the present petitioner. As would appear from the Annexures annexed in this petition as well as in affidavits in opposition several correspondences were exchanged between the authorities. At one time the learned Deputy Commissioner, Zunheboto also recommended the respondent's case to the Commissioner for final approval of the proposal for establishment of new village. This recommendation by its letter dated 24.11.89 appears at Annexure HI of the affidavits in opposition.

7. There was another message from Commissioner, Kohima addressed to the Deputy Commissioner Zunheboto stating that Head GB of Lotisami Village opposing the establishment of new village from Latisami village and to stop unauthorised establishment of a new village without permission. This message dated 6.12.89 appears at Annexure 4 to this petition.

8. There was yet another message dated 3.1.90 from Deputy Commissioner Zunheboto to Sub Divisional Officer (C) Akuluto stating that a report has been received for establishment of a new village said to be in progress and as directed earlier, no establishment of a new village without the approval of the Government should be allowed. In the said message immediate action of the Sub Divisional Officer (C) Akuluto was solicited. These correspondences between various administrative authorities aforesaid leave no doubt that in order to establish a new village prior permission from the Government is necessary.

9. It appears that when the matter was under active consideration of the Government as to whether the establishment of new village to be allowed or not, the respondents party filed an application before the learned Additional Deputy Commissioner (J) purportedly allowing them to construct temporary, house in the proposed new village location at Latisami Village jurisdiction. The said application was registered as Misc. Application. No. 15 of 1991 as would appear from the judgment and order of the learned Additional Deputy Commissioner (J). As the said petition was not available, this Court in order to ascertain the contents repeatedly call for records from the Additional Deputy Commissioner (J) but no record was made available. This could be a classic example of an ostrich burying its face in sand and declining to see the reality.

10. The judgment and order passed by the learned Additional Deputy Commissioner (J), a short order, is reproduced below:

"Misc. Application No. 15 of 1991

ORDER

17.1 91: Shri K.Yehokhu and Shri T. Nikiye Sema file an application for permitting or allowing them to construct temporary houses in the proposed new village location at Lotisami jurisdiction.

They produced one signal address to Deputy Commissioner, Zunheboto by Commissioner to inquire the matter and settled as per Sema Customary law. They further produced verification report submitted to Deputy Commissioner, V.K.

Extra Asstt. Commissioner V.K. has written that it will be to the great advantage for villagers if all is shifted to proposed new site. The proposed new site is within Lotisami Village boundary within their own land and nothing can prevent them if Khumighi Asst. GB desires to go with his followers. Sema Customary law has no clear cut usage as regards to shifting of village but in case of split if one GB desires he is always allowed.

Although, it is an administrative subject, the Court cannot overlooked the fundamental rights of the citizens and their faith in the constitution.

It is reported that Shri Lutoi has appointed two more GBs in his village in anticipation that Khumighi group is going to be shifted. 1 Mr. Zuvikhe Sema S/o Yechekha of Chishilimi Clan and 2. Shri Tokiye Achumi S/o. Kivuxu of Achumi Clan.

It appears to me that these two group: Lutoi vs. Khumighi can never be united together for which it is better to allow Khumighi and his followers to shift to new proposed site.

Further reported that Khumighi party has been fined Rs. 3000/ by Head DB Akuluto and imprisoned four people. Such: 1. Nikiye 2. Akato 3. Khutovi and 4. Hoito.

In view of above consideration I order and permitted Shri Khumighi Asst. G. B. Shri T. Nikiye Chophi and their followers to construct houses and shift to new proposed site to enable them to settle during dry season with immediate effect.

After the arrival of Deputy Commissioner, Zunheboto they should obtain Administrative order from Deputy Commissioner, Zunheboto.

Order passed this day the 17th Jan" 91.

Sd/

Additional Deputy Commissioner (J), Zunheboto" 11. On mere perusal of the order passed by the learned Additional Deputy Commissioner (J) as reproduced above, it is amply clear that learned Additional Deputy Commissioner (J), has no jurisdiction to pass such an order. From the order it also appears that learned Additional Deputy Commissioner (J), has not only transgressed jurisdiction but has also taken many extraneous circumstances into consideration which would appear to show that the learned Additional Deputy Commissioner (J) was highly interested. He has decided many issues which ought not have decided without hearing the other side.

12. The fact of establishment or recognition of a village in Nagaland is important and a sensitive issue. Keeping in view of the delicacy of the issue the

Government of Nagaland, Home Department by Memorandum No. GAB13/17/83 dated 30th July 1987 laid down certain norms/criteria and conditions to be fulfilled before any recognition of a new village. The said condition laid down by the Government of Nagaland is reproduced below:

"MEMORANDUM Dated Kohima the 30th July '87" No. GAB13/17/83: There are many representation for recognition of newly established village from old village/ Districts. In order to have established norm/criteria to accord recognition to any village, a high level committee was constituted to decide common criteria for recognition.

No. 2. The recommendation of the committee has been approved by the Government. And therefore, henceforth only the villages which will fulfilled and satisfy the conditions laid hereunder will be recognised.

(i) A new village shall have a minimum of 25 houses holds or a population at least 100.

(ii) The location of the village shall have facilities as under:

(a) Sufficient land for expansion of the village and agriculture purposes.

(b) Water supply sources.

(c) Road communication and other facilities.

(iii) A new village shall be constituted by indigenous inhabitants only, (iv) A new village which has been constituted by members or more than one village shall be recognised only, if the concerned parent village have no objection for their constituting boundary of the state, (v) A new village which has been constituted by members of the original village in a different location but within the jurisdiction of the ancestral land of the same old village and with no objection certificate from the old village shall get recognition.

(vi) If the whole or a part of a village if shifted from a hill top to the lower ridge of the hill where supply of water, communication, cultivable land shall also be recognisel, and

(vii) the new village shall have undisputed land boundaries.

Sd/T. C. K. Lotha,

Home Commissioner to the Government of Nagaland, Kohima,"

13. The same yardstick would apply to the establishment of a new village. In other words before the permission for establishment of new village is accorded the conditions and criteria setforth above must be fulfilled. This is a condition precedent and must be fulfilled before a new village is established and or a new village get recognition. The said condition must be strictly complied with and any authority vested with the power must adhered strictly to the condition setforth before permission is accorded for establishment of a new village or a recognition

to a new village is accorded. There is a rational behind it, and unless it is adhered to or complied with strictly the purpose for which it is made would be frustrated. The purpose behind it is to ensure peaceful coexistence of the neighbouring villages and/or tribal villages, because proposed new village may be closed to some other neighbouring village or encroach upon some other neighbouring village land which would generate inter village dispute and inter tribal dispute. It is because of these reasons the Government thought it fit to lay down certain conditions and criteria under which alone the establishment of new village or recognition of new village can be accorded. This is my view is of sound public policy and must be adhered to and complied with strictly by all authorities vested with such powers.

14. The question as to whether permission be granted for recognition of new village or establishment of a new village or not, the question rest entirely within the domain of executive authority and the matter should be left exclusively for consideration of the executive authority. No doubt, an individual can always recourse to law and mitigate the grievances through a process of law only when they are aggrieved by any action taken by the executive authority. But the Court cannot usurp the power of the executive authority as in the case in band.

15. The order of the learned Additional Deputy Commissioner (J) Zunheboto in the instant case appears to be not only without jurisdiction but arbitrary and violative of the principle of natural justice which is abhorant to the concept of the Rule of law.

16. In view of what has been stated, the order dated 17.1.91 passed by the learned Additional Deputy Commissioner (J), Zunheboto is not tenable in law and the same is set aside and quashed.

17. It is submitted by Mr. I. Jamir, learned counsel for the respondents that pursuant to the permission granted by the learned Additional Deputy Commissioner (J) on 17.1.91, 24 house holds has been shifted to the new location. I leave it to the judgment and wisdom of learned Deputy Commissioner to pass any order as he deem fit and proper in the facts and circumstances of the case. Any order passed by the learned Deputy Commissioner should be in compliance of the conditions and criteria laid down by the Government of Nagaland as referred to above.

With this direction and observation the appeal is allowed. Parties are ask to bear their own costs.