
(1996) 08 GAU CK 0050
In the Gauhati High Court
Case No : Civil Rule No. 55 (K) of 1995

Khutsami Village

APPELLANT

Vs

State of Nagaland and Ors.

RESPONDENT

Date of Decision : 02-08-1996

Acts Referred:

Citation : (1997) 1 GLJ 10

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

Bench : Single Bench

Advocate : R.Iralu, Imti Longchar, B.N.Sharma, Advocates appearing for Parties

Judgement

1. The problem involved in this writ petition is with regard to the land dispute between Ighanumi Village and Khutsami Village. Ighanumi Village lies within Pughobpto SuDivision of Zunheboto District and Khutsami Village lies within Chazube Sub Division of Phek District. Therefore, the dispute is inter district dispute.

2. From the order dated 30th September, 1979 (Annexure I) to the writ petition, and the order dated 30th September, 1979 (Annexure J), it clearly appeared that several decisions have been rendered previously by various authorities. It also appeared that CR Pawsey, the then Deputy Commissioner also rendered some decisions on 18.1.1946. However, the dispute still survived between the parties, and unfortunate thing had happened sometime in 1994, in which on 1.9.1994 one late Jacoof Ighanumi Village had been murdered by Khutsami Village in connection with the land dispute. Ultimately the Deputy Commissioners, Phek as well as Zunheboto referred the matter for adjudication to the Joint Dubashis Court of Phek District and Zunheboto District. Accordingly the Joint Dubashis Court held its joint session on 14.11.1994 to 19.11.1994 and the decisions was taken on 19.11.1994 after heading both the parties purportedly in exercise of power in accordance with Naga customary usages and practices. By the aforesaid decision, the Dubashis Court demarcated the boundary as under:

"Boundary between Khutsami of Phek District and Ighanumi of Zunheboto District starting from Iphonumi, Khutsami and Ighanumi boundary upto the extend of Shekhai of Ighanumi Jhum field below PWD Road, to Pokhanyi's Khutsami Jhum land to Zachinyi of Khutsami Jhum land to Zachinyi TRC to Tsuyi River, plus individual undispute occupant TRC and Jhum land about this on the bank of Tsuyi Rwer, Chazuba Ghathashi PWD Road will be the voundary beteen Khutsami and Iyianumi. Above this road land goes to Ighanumi and below the road towards Tsuyi River land goes to Khutsami Village."

3. The Joint Dubashis Court also imposed a fine of Rs. 10,000/ against Ighanumi Village for illegally harvesting by taking the law into their own lands causing provocation to Khutsami Village that led to murder of late Jacoof Ighanumi Village. The Joint Dubashis Court also imposed a fine of Rs. 1,50,000/ against Khutsami Village for assault of Ighanumi Village and murder of late Jacob.

4. The aforesaid decision has been assailed in this Civil Rule inter alia a amongst other ground that the Joint Dubashis Court has no jurisdiction to try the suit inasmuch as it is unknown to law to constitute a Joint Dubashis Court. It is contended by Mr. BN Sarma that, Joint Dubhashis Court lacks inherent jurisdiction as the rule or law for the time being enforce does not recognise the Joint Dubashis Court. In this connection, Mr. BN Sarma referred to the constitution of Dubashis Court and submits that, one Dubashsis even in the same district will not have jurisdiction to try suit in other area. In this connection, Mr. BN Sarma referred to the Annexure 2 order dated 20th October, 1994 passed by the learned Deputy Commissioner, Phek, delegating the power to the Joint Dubashis Court of Chazuba SuDivision, and Pughoboto SuDivision. He has also referred to Annexure 2 order dated 5th November, 1994, appointing Dubhashis from various area of Zunheboto District to be the members of the c Joint Dubashis Court by learned Deputy Commissioner, Zunheboto. He has also referred to Annexure 2A order dated 4th November, 1994, appointing five Dubashis from different areas of Phek District to be a member of the Joint Dubashis Court. In this connection, Mr. BN Sarma makes a submission that Dubashis from other area will not have jurisdiction to try the suit over the subject matter which is in another jurisdiction of the Dubashis Court.

5. As against this, Mr. Iralu, learned counsel appearing for the respondent No. 13 submits that, by Nagaland ActNo.4 of 1993, the Rules of Administration of Justice and Police in Nagaland was further amended and by the aforesaid amendment inserted Rule 15AA after Rule 15A by which the Deputy Commissioner, Additional Deputy Commissioner or Assistant to Deputy Commissioner of the District is competent to refer any, criminal cases to the Dubashis and they are competent to try any criminal case referred to them by the Officer mentioned in Rule 15 AA. Learned counsel also has referred to Rule 23 (a) of the Rules, which provides that the Dubashis shall try and decide such civil cases as may be referred to them by the Deputy Commissioner, Additional Deputy Commissioner or Assistant to Deputy Commissioner. While it is true that, by the aforesaid amendment, the

Dubashis Court have been empowered to try the criminal case as well as civil cases as referred to them by the respective officer of the district, this would mean they are empowered to try cases as referred to them within their own jurisdiction. This does not mean that they can try also outside their local jurisdiction. Therefore, the constitution of Joint Dubashis Court joint Court in a case of present nature where dispute involving two villages in two districts is unknown to the law, and such joint Court shall have no jurisdiction to try either criminal or civil suit. Accordingly, impugned judgment and order dated 19.11.94 passed by Joint Dubashis Court is hereby quashed and set aside.

6. This kind of dispute is very common in Nagaland. There is a provision to take care of this kind of dispute made available under the Code. It appears the competent authority is not taking shelter of the provision of the Code. Rules for Administration of Justice and Police in Nagaland was further amended by Nagaland Act No.1 of 1987 (3rd Amendment) Act, 1984. By the aforesaid Amendment Rule 23 of the principal Rules of Civil Justice was substituted as follows:

"23. The Administration of Civil Justice in the State of Nagaland is entrusted to the Deputy Commissioner, Additional Deputy Commissioner, Assistant to the Deputy Commissioner. Customary Courts constituted under Chapter IVA of the Rules, Dubashis and other village authorities may be appointed by the State Government from time to time by notification in the Official Gazette:

Provided that the Government of Nagaland shall be empowered to invest any officer of the State Government having judicial experience with the powers of the Deputy Commissioner for the trial of any particular civil case or cases and the officer so invested with the powers of the Deputy Commissioner shall be designated as Deputy Commissioner (Judicial) and shall exercise all the powers of the Deputy Commissioner in this behalf."

7. The introduction of the proviso to the Rules by the aforesaid amendment, was intended to take care of the situation arises as in the present case. In other words to resolve inter district village or boundary dispute in which either of the District Court will have no jurisdiction to try the suit. In the present case, it appears that instead of resorting to exercising the power under proviso to Rule 23 of the Civil Justice, the Deputy Commissioners of the two districts, namely; Phek and Zunheboto resorted to practice which is unknown to the law.

8. As the kind of dispute raised in this petition is not uncommon in Nagaland and such dispute sometimes lead to unpleasant situation as is the case at hand, the present writ petition is disposed with the following directions for future guidance:

(a) Henceforth, when such dispute is raised in the district, the District authorities shall immediately refer the matter to the Home Commissioner, Government of Nagaland with a copy to the Secretary, Department of Justice and Law.

(b) On receipt of such communication from the District authority/authorities, the

competent authority shall exercise the power vested in them under proviso to Rule 23 of Civil Justice at once,

(c) Since there is already an officer of the Deputy Commissioner (Judicial), no formal investment of power of any officer of the State Government having judicial experience would be necessary, unless the compelling circumstances so demand.

(d) While exercising the power under proviso to Rule 23, the competent authority shall also indicate the headquarter of the officer which may be proximity to the subject matter of the dispute to enable the disputing parties easy access without incurring much expenditure and waste of time. This direction is however, subject to the availability of suitable accommodation/guest houses.

(e) Apart, from the provision of the Code, such direction is also based on sound public policy that, if an independent officer is entrusted to resolve the inter district boundary/land/village dispute, there is a little scope for apprehension of being bias or prejudice.

9. In the instant case, it appears from Annexure L of the writ petition that, appeal namely; Case No.POL/Appeal/10/SDM/79 has been pending before the learned Sub Divisional Magistrate, Phek for disposal. Therefore, the officer appointed under proviso to Rule 23 shall summon the case record of the aforesaid appeal from the learned Deputy Commissioner, Phek and after the receipt of the case record, and after examining the record, if the learned officer thinks that the matter can be disposed of examining the documents filed along with the appeal, it is well and good. If, however, he thinks that for proper adjudication of the dispute, a denovo trial is to be held, it is open to him to take such decision. It is also open to the officer to examine whether the present dispute is hit by principle of res judicata on examining the decision rendered earlier by various officers including Shri CR Pawsey on 18.1.1946.

10. Needless to say that officer so invested with the power shall issue summons to both the parties to appear before his Court on assuming the charge. Necessity of expeditious disposal of such cases are absolutely warranted in the interest of peace and tranquillity, apart from the ends of justice.

11. Till the dispute is resolved as directed aforesaid, the status quo as on today with regard to the possession of the disputed land shall be maintained. It appears that GR Case No.85/94 under section 302 IPC has also been registered against the accused persons. Investigating Agency is directed to pursue the investigation vigorously, complete the investigation and submit charge sheet etc in accordance with law. The aforesaid direction is confined only to civil case. The criminal case after filing the charge sheet, the Court of competent jurisdiction shall proceed with the trial separately.

With the aforesaid direction, the petition is disposed.

Copy of this order may be furnished to the Chief Secretary, Secretary,

Department of Justice and Law, for circulation to all the District Headquarters.