

(1992) 03 GAU CK 0024
In the Gauhati High Court
Case No : M.A. (F) 1 (K) 91

K.Lutoi

APPELLANT

Vs

Nikiye Sema & Ors.

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Citation : (1993) GLR 72 Supp

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

Bench : Single Bench

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

Judgement

1. By this petition the order dated 17.1.91 passed by the learned Addl. Deputy Commissioner (J) Zunhcbolom 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 Nikiye and others are impleaded as respondents.
4. The only submission of Mr. Iralu, learned counsel for the petitioner is that the learned Addl. Deputy Commissioner (J) has no jurisdiction to pass the order impugned in as much as no such power has been vested with the learned Addl. Deputy Commissioner (J). Alternately, even assuming the learned Addl. 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 materials facts giving rise to the present petition may be briefly stated .
6. It is slated Lolisami village is an old village under Zunhcboto 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 Lolisami village. This move, as it appears, was vehemently objected to by the Head G.B. of the village, the present petitioner. As would appear from the Annexure annexed in this petition as well as in affidavit in opposition several correspondences were exchanged between the authorities. At one time the learned Deputy Commissioner, Zunhcboto 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 III of the affidavit in opposition.

7. There was another message from Commissioner, Kohima addressed to the Deputy Commissioner, Zunheboto stating that Head B.B. of Lotisami village opposing the establishment of new village from Lolisami 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, Zunhcboto to SubDivisional Officer (C) Akululo slating 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 SubDivisional officer (C) Akululo was salicylic. 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 whalers the establishment of new village to be allowed or not, the respondents party filed an application before the learned Addl. Deputy Commissioner (J) purportedly allowing them to conspiracy temporary house in the proposed new village locational Lotisami village jurisdiction. The said application was registered as Misc. application No. 15/91 as would appear from the judgment and order of the learned Addl. Deputy Commissioner (J). As the said petition was not available, this court in order to acclaim the canines repeatedly call for the records from the Addl. 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 sec the reality.

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

" ORDER : Misc. Application

No. 15/91

17/1/91

Slid K. Ychokhu and Shri T. Nikiyc Sema file an application for permitting or allowing them to construct temporary houses in the proposed New village location at Litisami jurisdiction.

They produced one signal address to Deputy Commissioner, Zunhcboto by Commissioner 10 inquire the matter and settled as per Sema Customary law. They further produced verification report submitted to Deputy Commissioner, V.K. Extra Asst. 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. G.B. 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 G.B. desires he is always allowed.

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

It is reported that Shri Luioi has appointed two more G.B.'s in his village in anticipation that Khumighi group is going to be shifted. 1 Mr. Zuvikhe Sema S/o Yechckha of Chishilimi clan and 2 Shri Tokiye Achumi s/o Kivuxu of Achumi clan.

It appears to me that these two group: Lutoi vrs. 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 D.B. Akululo and imprisoned four people. Such : 1 Nikiye 2. Akato 3. Khutovi and 4 Hoi to.

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 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/

Addl. Deputy Commissioner (J)"

Zunheboto

11. On mere perusal of the order passed by the learned Addl. Deputy Commissioner (J) as reproduced above, it is amply clear that learned Addl. Deputy Commissioner (J), has no jurisdiction to pass such an order. From the order it also appears that learned Addl. Deputy Commissioner (J), has not only transgressed his jurisdiction but has also taken many extraneous circumstances into consideration which would appear to show that the learned Addl. 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 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. GAB 13/17/83/ 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 recognized.

(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 slate.

(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 is shifted from a hill top to the lower ridge of the hill where supply of water, communication, cultivable land shall also be recognised, 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 set forth 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 set forth 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 neighboring villages and/or tribal villages, because proposed new village may be closed to some other neighboring village or encroach upon some other neighboring village land which would generate inter village dispute and inter tribal dispute. It is because of these reasons the Government though 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 or executive authority and the matter should be left exclusively for consideration of the executive authority. No doubt, an individual or a group of 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 hand.

15. The order of the learned Addl. Deputy Commissioner (J) Zuhhcbolo in the instant case appears to be not only without jurisdiction but arbitrary and violative of the principle of natural justice which is abhorrent 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 Addl. Deputy Commissioner (J), Zunheboto is not tenable in law and the same is set aside and unshed.

17. It is submitted by Mr. I. Jamir, learned counsel for the respondents that pursuant to the permission granted by the learned Addl. 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 above.

With this direction and observation the appeal is allowed.

Parties are ask to bear their own costs.