

(2010) 07 GAU CK 0007

In the Gauhati High Court

Case No : Writ Petition (C) No. 321 (SH) of 2005

Krosstingland Marwein

APPELLANT

Vs

Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Khasi Hills Autonomous District (Administration of Elaka) Act, 1991 — Section 3

Citation : (2010) 4 GLT 107

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : H.S. Thangkhiew, L. Kynjein and P. Nongkri, for the Appellant; V.G.K. Kynta and H. Kharmi, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Mr. H.S. Thangkhiew, learned Counsel appearing for the Petitioner. Mr. V.G.K. Kynta, learned Standing Counsel for the Khasi Hills Autonomous District Council (hereinafter referred to as "the KHADC") appears for Respondent Nos. 1 to 4. The "Sordar" of Kynshi village (Respondent No. 6) is represented by Mr. H. Kharmi.

2. This case has a chequered history and the relevant facts may be set out at the very outset.

2.1. The Kynshi Village within the Nongkhlaw Syiemship was in existence since ancient days and because of the increase in the number of households and population of the original village, a decision was taken by the Durbar of village Kynshi on 20.5.1977 to divide the village into 4 localities for convenience of administration. One of 4 such locality is known as Bangla (Kynshi).

2.2. A communication dated 13.10.1997 written by Sordar of Kynshi village (Annexure-2) indicate that consent was also given for creation of a separate village comprising the boundary of Kynshi-Bangla locality.

2.3. However disputes subsequently arose on the bifurcation of the Kynshi-Bangla village from the parent Kynshi village and after several rounds of

litigation, a settlement was arrived at on 31.3.2005 amongst the feuding parties of Kynshi village and those espousing the creation of the Kynshi-Bangla village and it is recorded in the order of the Executive Member, In-Charge Elaka Administration of the KHADC that the status of Kynshi-Bangla village is now recognized and the complaint against the creation of the new entity made by the parent village, stood withdrawn in pursuant to the settlement amongst the parties.

2.4. Notwithstanding the aforesaid settlement, the dispute got revived through complaint made by the Sordar and other Executive Committee Members of Kynshi Village and a spot inquiry was also conducted on 18.6.2005 on the issue of creation of an independent village by the Executive Member, In-charge Elaka of the KHADC. In the report of the Spot Inquiry (Annexure-23) it was recorded that the Kynshi-Bangla locality is well demarcated with natural boundaries of hills and stream and it was opined by the Enquiry Officer that the said locality deserves to exist as a full-fledged village. But the village Sordar of Kynshi village opposed the said inquiry findings and the issue was once again taken up by the Executive Committee of the KHADC for consideration.

2.5. After considering the contentions raised by both parties and having found that there was no unanimity on the part of the Kynshi villagers for according permission and recognition to the Kynshi-Bangla locality to function as a separate full-fledged village; by the impugned order dated 21.9.05 (Annexure-25), it was decided that the claim for creation of an independent and full-fledged Kynshi-Bangla village is not acceptable. Aggrieved by the said decision, the Headman of Kynshi-Bangla village has filed the instant writ petition.

3. On behalf of the Respondent No. 6 it is submitted by Mr. H. Kharmi, learned Counsel that there was no unanimity amongst the Sordar and Durbar of Kynshi village to accord sanction for creation of Kynshi-Bangla village by bifurcating the original Kynshi village and accordingly the decision not to accord sanction for creation of new village is contended to be justified in law.

4. It may be noted that in the year 1977 when permission was accorded for demarcation of separate localities within Kynshi village there was no law regulating the procedure for formation of a new village by altering the area of an existing village. But such a law known as the Khasi Hills Autonomous District (Administration of Elaka) Act, 1991 (hereinafter referred to as "the Elaka Act") has since been enacted and was given effect from 17.5.2006.

5. Section 3 of the Elaka Act provides as under:

3. Formation of new villages and alteration of areas. Boundaries or names of existing villages. The Chief and his Durbar with the approval of the Executive Committee may, if the majority of the people of the village or villages so desires, by public notification -

(i) form a new village by separation of territory from any village or villages or by

uniting two or more villages or part of villages or by uniting any territory to a part of any village.

(ii) increase the area of any village.

(iii) diminish the area of any village.

(iv) alter the boundaries of any village.

(v) alter the name of any village.

As can be seen from the provisions made in the Elaka Act the decision on formation of a new village is to be taken by the Chief and his Durbar with the approval of the Executive Committee by taking into account the majority view of the people of the concerned village.

6. The 2 learned Counsels appearing for the contesting parties and also Mr. V.G.K. Kynta learned Standing Counsel for the KHADC jointly submits that in view of the new Act which is enacted for deciding on creation of a new village, the claim of the Kynshi-Bangla locality to have recognition and status as an independent village should now be appropriately considered under the provisions of Section 3 of the Elaka Act by the Chief and his Durbar since in the past, the claim of the Kynshi-Bangla locality and its inhabitants were not considered either in terms of the prevalent practice or in terms of the statutory enactment.

7. There is no doubt the Elaka Act was enacted to provide for administration of the Elakas in the Khasi Hills Autonomous District Under powers conferred by Clause (f) of sub-paragraph (I) of paragraph 3 of the Sixth Schedule of the Constitution, the District Council is empowered to make laws relating to inter alia, administration of villages, within its jurisdictional area. The laws made under paragraph 3 takes affect only after assent of the Governor is obtained. In this case the Elaka Act enacted in the year 1991 received the assent of the Governor on 12.5.2006 and as such from the date of assent, the Act springs to life. Since this Act provides for a mechanism and a procedure for creation of an independent village by bifurcation of an existing village, this Court is of the opinion that issue of creation of a new village from the existing Kynshi village ought to be considered under the Elaka Act instead of leaving the issue to be decided in an arbitrary and non-transparent basis as was happening in the present case.

8. For the foregoing reasons and also having regard to the agreement amongst the Counsels to have the claim of the Kynshi-Bangla locality considered u/s 3 of the Elaka Act, I am of the opinion that a direction should be issued for taking an appropriate decision on the claim for formation of an independent village, by alteration of the boundary of the existing Kynshi village in accordance with the provisions laid down in the Elaka Act. For enabling the competent authority to make the necessary consideration, the Petitioner is permitted to approach the Chief and his Durbar of Nongkhlaw Syiemship. The competent authority may thereafter decide on the claim for a full-fledged independent village by the

Kynshi-Bangla residents in accordance with the provisions laid down in Section 3 of the Elaka Act. Till an appropriate decision is taken by the Chief and his Durbar the interim arrangement on the functioning of the Kynshi-Bangla locality shall continue, subject to the final decision of the competent authority under the Elaka Act. It is ordered accordingly.

9. The writ petition is disposed of with the above direction.