
(1999) 01 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 914 of 1996

M. Haba

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 28-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 243

Manipur (Village Authorities in Hill Areas) Act, 1956 — Section 3, 3(1), 3(2)

Citation : (1999) 2 GLT 594

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

Bench : Single Bench

Advocate : L. Sharat Sharma, for the Appellant; R. Daniel, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—By this petition under Article 226 of the Constitution of India, the Petitioner has assailed the notification dated 21st Sept. 1996 issued by the Secretary (Hills) to the Government of Manipur in exercise of the powers conferred upon him by Sub-Section 2 of Section 3 of the Manipur (Village Authorities in Hill Areas) Act, 1956 (hereinafter the Act). This notification has an important bearing for proper disposal of this writ petition and reads:

Government of Manipur Secretariat: Hill Commissioner's Department
NOTIFICATION

Imphal, the 21st September, 1996 No. 9/16/96-CHA- In exercise of the power conferred upon by Sub-section (1) and (2) of Section 3 of the Manipur (Village Authorities in Hill Areas) Act, 1956 and having regard to the general interest of the people of the Village and their demand, the Governor of Manipur is pleased to declare the Liyai Kalapahar Village under Kangpokpi Sub-Division of Senapati District shall have an elected Village Authority and separate Hill Village with Shri P. Yudu as its Khullakpa and ex-officio Chairman of the Village.

2. This notification shall have effect from the date of its publication in the

Manipur Gazette.

By Order etc., Sd/- Henry K. Heni Secretary (Hills) to the Govt. of Manipur.

2. Assailing the notification aforesaid Mr L. Sharat Sharma, Id. counsel for the Petitioner raised the following contentions:

(a) before issuing the notification aforesaid, there must be a village with defined boundary, and since there was no village inexistence of the Respondent No. 3 prior to the issuance of the notification, the notification is not valid in terms of Sub-section (1) and Sub-section (2) of Section 3 of the Act.

(b) Next it is contended by the counsel for the Petitioner that die village so constituted by a notification aforesaid was within the village land of the Petitioner and therefore the notification suffers from infirmities and liable to be set aside.

3. Counter on behalf of the Respondent No. 3 has been filed through Mr. R. Daniel. In the counter the Respondent No. 3 annexes various documents as Annexures-D/1, D/2, D/3, D/4, D/5 and D/6 showing the title of the land in favour of the Respondent No. 3 passed by various competent authorities including the Court. These documents shall be referred to, at the appropriate time.

4. To appreciate the present controversy we may, at this stage, have a quick look of the provisions of Section 3 of the Act Chapter II of the Act deals with the constitution and functions of Village Authorities. Section 3 deals with constitution of Village Authorities and it reads:

3. Constitution of Village Authority

(1) For every village having twenty or more tax paying houses there shall be a village authority consisting of:

(a) five members, where the number of tax- paying houses in the village is not less than twenty but is not more than sixty;

(b) seven members, where the number of tax-paying houses in the village is more than sixty but is not more than one hundred;

(c) ten members, where the number of tax-paying houses in the village is more than one hundred but is not more than one hundred and fifty;

(d) twelve members, where the number of tax-paying houses in the village is more than one hundred and fifty.

(2) The Chief Commissioner may, having regard to the general interests of the people of any village as also for the elected village authority, declare, by notification in the official Gazette that the village shall have an elected Village Authority, thereupon the members of the Village Authority of the village shall be elected in accordance with die provisions of this Act and the rules made thereunder.

(3) Where no declaration under Sub-section (2) has been made in relation to any village the members of the Village Authority of that village shall be nominated by the Chief Commissioner.

(4) Where there is a Chief or Khulakpa in a village, he shall be the ex-officio Chairman of the Village Authority of that village; and where there is no such Chief or Khulakpa in the village, the Chairman of the Village Authority of that village shall be elected by the members of the Village Authority from among themselves.

5. For our present purpose Sub-section (2) of Section 3 is relevant. A cursory reading of Sub-section (2) of Section 3 as quoted above would clearly appear that once a declaration has been issued by a notification in the Official Gazette having regard to the general interests of the people, a village has come into existence automatically. The contention of Mr. L. Sharat Sharma that prior to the issuance of the notification, there must be a village in existence is misplaced and has no substance because if there is a village in existence prior to the declaration by a notification under Sub-section (2) of Section 3 of the Act, there was no necessity at all to issue another notification under Sub-section (2) of Section 3. By exercising power under Sub-section (2) of Section 3 a village comes into existence and once a notification is issued in the Official gazette a village and the Village Authority has been automatically created under the notification. It is because of this reason, no separate provision under the Act has been provided by the legislature for recognition of the village.

6. It is surprising that in the Act, "Village" has not been defined which in my view ought to have been there. However, village has been defined in Part IX of the Constitution of India under the heading, "Panchayats." Article 243(f) defines the village as under:

243(f)- "Village" means a village specified by the Governor by public notification to be a village for the purposes of this part and includes a group of villages so specified.

7. In the instant case the term "Chief Commissioner" appearing in Sub-section (2) of Section 3 of the Original Act has been substituted by the Commissioner and Secretary (Hills) by an amendment who exercises power of the name of the Governor. Therefore, issuing a notification in exercise of the power under Sub-section (2) of Section 3 of the Act as quoted above declaring by a notification a village is in consonance with the definition "Village" under Article 243(f) read with Sub-section (2) of Section 3 of the Act. Therefore, the contention of the learned Counsel for the Petitioner that prior to declaration by issuing a notification under Sub-section (2) of Section 3 there must be a village in existence, has no substance and cannot be accepted.

8. The next contention of Mr. Sharat Sharma that the notification creating village of the Respondent No. 3 is within the village land of the Petitioner has also no substance and cannot be accepted. As already said the Respondent No. 3 has

filed counter and annexed various documents in the counter. Annexure-D/1 is the order dated 12.2.96 passed by the SDC, Kangpokpi within whose jurisdiction the dispute lies. In the said order, the learned SDC held that the land of the Respondent No. 3 is measuring 14.10 acres covered by E.S. Dag No. 1329 as per Dag Chitha of Village No. 106 of Thanamba since 1960. The learned SDC also held that the land of the 3rd Respondent is bounded as follows:

North:- Paddy field of Smt. Chashi of Liyai Kalapahar.

South:- Christian Cemetery of Liyai Kalapahar.

East:- Paddy field of Shri Ngoulou of Liyai Kalapahar.

West:- Paddy field of Shri Ng. Daso of Liyai Kalapahar.

Annexure-D/2 and D/3 are the revenue receipts of payment of house-tax of the Respondent No. 3. Annexure-D/4 is the Dag Chitha No. 106 bearing Plot No. 1329 measuring 14.10 acres. Dag Chitha was prepared on 22.1.1996. Annexure-D/6 is the forwarding letter dated 2nd April, 1996 by the learned Addl. Dy. Commissioner, Kangpokpi to the Secy. (Hills) Govt. of Manipur for declaring Liyai Kalapahar as revenue hill village and for separate elected Village Authority. In the letter aforesaid, the learned Additional Dy. Commissioner, Kangpokpi has stated that Liyai Kalapahar village is having 50 numbers of tax-paying houses and no objection certificates also received from surrounding neighbouring villages. Prima facie, it is pursuant to the documents and recommendations made by the Addl. Dy. Commissioner, Kangpokpi by his letter dtd. 2.4.96, the impugned notification dated 21st Sept. 1996 has been issued. Therefore, it clearly appears that it is within the competence of the Respondent Govt. to have issued a declaration by a notification under Sub-section (2) of Section 3 of the Act supported by the documents required for such purposes. The Respondents are well within their powers to issue such declaration by notification in exercise of the powers under Sub-section (2) of Section 3 of the Act.

9. For the reasons aforestated, there is no merit in this writ petition and the same is dismissed. However, without costs. The interim order dated 11.10.96 stands vacated.