
(2015) 05 MEG CK 0004
In the Meghalaya High Court
Case No : Writ Petition (C) No. 360 of 2013

Ranjeng G. Sangma

APPELLANT

Vs

Garo Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Citation : (2015) 05 MEG CK 0004

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : G.S. Massar, Senior Advocate and J.M. Thangkhiew, for the Appellant; S. Dey and W.M. Sangma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sudip Ranjan Sen, J.

1. The brief story of the case in a nutshell is that:

"A controversy with regard to the demarcation of boundaries of Sikhagiri Akhing and the neighbouring Jelbongpara Akhing situated on the North bank of the Dilni river in the present South West Garo Hills District arose during the British Rule and was referred by the parties to the Panchayat for a decision. The Panchayat inquired into the matter deputing a Mouzadar to submit a report. The concerned Mouzadar submitted a report dated 13.05.1926 along with a Map outlining the territories of the rival Akhings. As per the said map the territory marked "A" was demarcated in favour of Sikhagiri Akhing and the territory marked "B" and "C" was demarcated in favour of the Jelbongpara Akhing. The Panchayat in order to settle the dispute demarcated the territories as per the Mouzadar's Report thereby distinctly creating Sikhagiri Akhing and Jelbongpara Akhing. The order of the Panchayat was not challenged by either party and the same has attained finality. Sometime thereafter a fresh map was redrawn whereby Sikhagiri Akhing was merged with Jelbongpara Akhing with result of extinguishing the existence of Sikhagiri Akhing altogether from the Map. A perusal of the new Map does not

disclose who prepared the new map, who ordered the preparation of the new map or report of any disputes with regard to the Akhings after the Mouzadar's Report of the 1926. The new Map is undated and there is no authentication thereon by any authority.

In 2006 the present petitioner during the course of his general inquiry with the office of the Revenue department of the Respondent District Council as to the documents relating to his Akhing, discovered this anomaly whereby Sikhagiri Akhing had been completely wiped out with the effect of overriding the Mouzadar's Report dated 13.05.1926.

Aggrieved, the petitioner approached the Executive Member, In-charge Revenue etc, Garo Hills Autonomous District Council in GDC. REV. No. 23 A/C of 2006, the Respondent No. 3 herein. The Respondent No. 3 proceeded to hear the matter and vide a reasoned judgment dated 22.12.2008 held that the area in the original Map marked "A" was Akhing land belonging to Sikhagiri Akhing and the areas marked "B" and "C" belonged to Jelbongpara Akhing. In effect, the new Map and its contents were set aside.

Assailing the Judgment and order dated 22.12.2008 passed by the Respondent No. 3, the Respondent No. 4 preferred an appeal being GDC-REV/Appeal No. 19 (A/C) 2009 before the Chief Executive Member, Garo Hills Autonomous District Council, Tura, the Respondent No. 2 herein.

It may be of vital importance that during the pendency of the above said appeal the Respondent No. 4 filed an application dated 04.11.2009 through its serving Nokma seeking to withdraw the Appeal. Surprisingly, without taking note of the explicit desire of the Respondent No. 4 to withdraw his appeal the learned Chief Executive Member proceeded to dispose of the matter and vide judgment dated 23.08.2013 set aside the order dated 22.12.2008 passed by the Respondent No. 3.

The impugned judgment is a completely unreasoned order and is based on an incorrect appreciation of the facts and law. It is respectfully submitted that it is this faulty appreciation of the facts that led the learned Chief Executive Member to apply the decision of Labina Sangma v. GHADC rendered by the Hon'ble Gauhati High Court, Shillong where a time barred claim over Nokmaship was dismissed as being barred by the doctrine of waiver and acquiesce and that the principle of res-judicata applied to the petitioner's case.

It is the petitioner's case that the above said decision and the principles of law an issue therein have no bearing to the present facts. More importantly, the Respondent No. 3 had exceeded his jurisdiction in interfering with the Respondent No. 4's unqualified legal right to withdraw the appeal.

Hence the present petition".

2. Mr. G.S. Massar, learned Sr. counsel assisted by Mr. J.M. Thangkhiew, learned counsel appear for and on behalf of the petitioner and submits that, initially an

appeal was moved before the Chief Executive Member, Garo Hills Autonomous District Council, Tura by one Shri Natje Ch. Marak who is the respondent No. 4 in this instant writ petition against the impugned judgment and order dated 22.12.2008 passed by the Executive Member, In-charge Land Revenue etc, Garo Hills Autonomous District Council, Tura.

3. Subsequently, the respondent No. 4 who is the appellant before the Chief Executive Member, Garo Hills Autonomous District Council, Tura had withdrawn the said appeal and filed an application for withdrawal dated 04.11.2009. But, the reason best known to the Chief Executive Member, Garo Hills Autonomous District Council, Tura after almost 4(four) years sou moto passed the impugned judgment and order dated 23.08.2013. Being aggrieved by the said impugned judgment and order, the petitioner approached this court by way of this instant writ petition.

4. Mr. G.S. Massar, learned Sr. counsel assisted by Mr. J.M. Thangkhiew, learned counsel appearing for the petitioner further submits that, since the appellant was not interested to contest the appeal, the learned Chief Executive Member, Garo Hills Autonomous District Council, Tura should not have passed the impugned judgment and order. So, it needs to be set aside.

5. Mr. S. Dey, learned counsel appearing for and on behalf of the GHADC admitted the fact that, there was an application for withdrawal dated 04.11.2009 filed by the appellant for withdrawal of the said appeal bearing No. GDC-REV/ Appeal No. 19 (A/C) 2009, but due to oversight, the Chief Executive Member, Garo Hills Autonomous District Council, Tura passed the impugned judgment and order dated 23.08.2013. The learned counsel further submits that, he has nothing to say much, besides that; the court may pass necessary order as found deemed fit and proper.

6. On the other hand, Mr. W.M. Sangma, learned counsel for the respondent No. 4 who was the appellant in the GDC-REV/Appeal No. 19 (A/C) 2009 fairly submits that, the respondent No. 4 is not at all interested to pursue the appeal. Hence, filed an application for withdrawal dated 04.11.2009.

7. After hearing the submissions advanced by the learned counsel at Bar and after going through the impugned judgment and order, the affidavits and others on record, it is clear that the impugned judgment and order dated 23.08.2013 is a sou moto in nature.

It is also noticed that the counsel for the parties were heard. I could not understand when the appellant himself was not interested to proceed with the appeal and finally file withdrawal petition, how can the court hear the counsel for the parties without disposing the withdrawal petition. It is also an admitted fact that, the withdrawal petition was filed sometime in 2009 and the impugned judgment and order was passed in 2013. There is no reason and I could not understand as to why and for what reason all of a sudden the learned Chief Executive Member, Garo Hills Autonomous District Council, Tura woke up from his

sleep and passed such judgment and order as per his own desire which has no stand in the eye of law. The court cannot compel any party or parties to contest the case or to pursue the case. It is the freedom of the party or parties whether one will proceed with the case or withdraw the matter. But, in this impugned judgment and order, under such circumstances, it appears that, the court has stepped beyond its jurisdiction without following any norms of law, which is undesirable and unappreciable. Therefore, for the reasons discussed above, I feel that, it is a fit case where the impugned judgment and order dated 23.08.2013 passed in GDC-REV/Appeal No. 19 (A/C) 2009 needs to be interfered. Accordingly, it is interfered with and the said impugned judgment and order dated 23.08.2013 is hereby set aside with the observation that the learned Chief Executive Member, Garo Hills Autonomous District Council, Tura in future will be more cautious in handling with the case.

8. Accordingly, the matter stands disposed of.

9. No order as to costs.