
(2015) 06 MEG CK 0027
In the Meghalaya High Court
Case No : W.A. No. 17 of 2012

Romeni D. Shira

APPELLANT

Vs

The Garo Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 06 MEG CK 0027

Hon'ble Judges : T. Nandakumar Singh, J;S.R. Sen, J

Bench : Division Bench

Advocate : G.S. Massar, Senior Advocate and S.G. Momin, for the Appellant; S. Dey, Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. GS Massar, learned senior counsel assisted by Ms. SG Momin, learned counsel for the appellant, Mr. S Dey, learned counsel for the respondents No. 1-3 and Mr. V.K. Jindal, learned senior counsel assisted by Ms. QB Lamare, learned counsel for the respondents No. 4 and 5.

2. This intra-court appeal is directed against the judgment and order of the learned Single Judge dated 28.05.2012 for dismissing the writ petition i.e. WP(C) No. (SH)326/2008 solely on the ground that there was a considerable delay in filing the writ petition. On perusal of the said impugned judgment and order of the learned Single Judge dated 28.05.2012, it is crystal clear that the learned Single Judge did not decide the writ petition i.e. WP(C) No. (SH)326/2008 on merit.

3. The fact of the case, sufficient for deciding the matter in issue, in the present writ appeal is briefly noted. It is the case of the appellant/writ petitioner that she is the Nokma of Akhing land i.e. Chidimit Akhing. It is also the further case of the appellant/writ petitioner that as per the social customs of Dalbot clan, the appellant/writ petitioner was appointed as Nokma of Chidimit Akhing land

belonging to the Dalbot clan on 03.12.1975. It is also alleged that behind the back and knowledge of the appellant/writ petitioner, the respondents No. 4 and 5 approached the Executive Member I/C Revenue, Garo Hills Autonomous District Council (for short "GHADC") for registration of their names as Nokma of Chidimit Akhing land; the Executive Member I/C Revenue, GHADC registered a case being GDC. Rev. Case No. 30/AC/88-89 and ultimately passed the order dated 21.12.1993 for recording the respondents No. 4 and 5 as Nokma of Chidimit Akhing land by cancelling the name of the appellant/writ petitioner. Being aggrieved by the blatant illegal order dated 21.12.1993, the appellant/writ petitioner with her (deceased) husband filed an appeal under Section 8 of the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 before the Chief Executive Member, GHADC and that appeal was registered as GDC/Rev-Appl No. 7 Misc. of 1994. It is the further case of the appellant/writ petitioner that the then Chief Executive Member, GHADC before whom the said appeal i.e. GDC/Rev-Appl No. 7 Misc. of 1994 was filed was happened to be the Executive Member I/C Revenue, GHADC, who had passed the said order dated 21.12.1993 in GDC. Rev. Case No. 30/AC/88-89. Accordingly, for that reason, the then Chief Executive Member, GHADC passed an order dated 24.01.1995 expressing his inability to take up the matter and directed the parties to approach the Hon"ble High Court. In spite of the said direction of the then Chief Executive Member, GHADC vide his order dated 24.01.1995, the appellant/writ petitioner did not approach the High Court for assailing the said order of the Executive Member I/C Revenue, GHADC dated 21.12.1993.

4. The appellant/writ petitioner after sleeping over the matter for a considerable number of years submitted an application dated 23.09.2008 to the Chief Executive Member, GHADC praying for de novo trial on the ground that the respondents No. 4 and 5 did never had their feet on the Akhing as they were raked outsiders and never performed functions of Nokma. It is also stated that the said application had been registered as GDC-REV No. 28 AC of 2008. It is also alleged that the Chief Executive Member, GHADC also passed an order on 30.09.2008 for admitting the appeal and fixed on 27.11.2008 as the next date. However, it is also alleged that on an off date i.e. 04.11.2008, the Chief Executive Member, GHADC passed an order that until and unless the said order of the Executive Member I/C Revenue, GHADC dated 21.12.1993 passed in GDC. Rev. Case No. 30/AC/88-89 had been quashed and set aside by the appropriate authority, the case of the appellant/writ petitioner for inserting her name as Nokma of Chidimit Akhing land cannot be considered. Being aggrieved by the said order of the Chief Executive Member, GHADC dated 04.11.2008, the appellant/writ petitioners filed the present writ petition i.e. WP(C) No. 326/2008. As stated above, the learned Single Judge passed the impugned judgment and order dated 28.05.2012 for dismissing the writ petition solely on the ground of delay inasmuch as, the appellant/writ petitioner knocked the door of this Court 15 years after passing the said order dated 24.01.1995 by the Chief Executive Member, GHADC directing the appellant/writ petitioner to approach the High

Court.

5. It is clear from the above fact that the appellant/writ petitioner did not have one chance of seeking remedy against the said order of the Executive Member I/C Revenue, GHADC dated 21.12.1993 passed in GDC. Rev. Case No. 30/AC/88-89. Mr. V.K. Jindal, learned senior counsel appearing for the respondents No. 4 and 5 strenuously contended that the Apex Court in a catena of cases held that even if there is no prescribed limitation for filing the writ petition, the writ petitioner should approach the Court for invoking jurisdiction under Article 226 of the Constitution of India within a reasonable period. While considering the submission of learned senior counsel Mr. V.K. Jindal, we are not oblivious of the accepted principle of law that there should be remedy against an order passed by the authority in exercise of original jurisdiction. In the present case, the appellant/writ petitioner did not have the chance to seek any remedy against the said order of the Executive Member I/C Revenue dated 21.12.1993. Therefore, we are of the considered view that if the appellant/writ petitioner is aggrieved by the said order of the Executive Member I/C Revenue dated 21.12.1993, there should be remedy. Regarding the delay in filing the writ petition, we may recall to the decision of the Apex Court in *Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*, (2013) 1 ABR 558 : AIR 2013 SC 565 : (2013) 2 CTC 222 : (2013) 1 RCR(Civil) 293 : (2012) 11 SCALE 4 : (2013) 1 SCC 353 . The Apex Court in *Tukaram Kana Joshi's* case (Supra) held that the Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. For easy reference Paras 12 and 13 of the SCC in *Tukaram Kana Joshi's* case (Supra) are quoted hereunder:--

"10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is

any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy Vs. State of Tamil Nadu, AIR 1974 SC 2271 : (1974) 29 FLR 433 : (1974) LabIC 1431 : (1975) 1 SCC 152 : (1975) 2 SCR 356 : (1974) 6 UJ 654 ; State of M.P. and Others Vs. Nandlal Jaiswal and Others, AIR 1987 SC 251 : (1986) 2 SCALE 638 : (1986) 4 SCC 566 : (1987) 1 SCR 1 ; and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, (2008) 12 JT 587 : (2009) 1 SCC 768 : (2009) 2 SCC(L&S) 119 : (2009) 2 SLJ 196 : (2009) 3 SLR 1 "

6. Mr. S Dey, learned counsel for the respondents No. 1-3 submits that it is so happened that the Executive Member I/C Revenue, GHADC, who passed the said order dated 21.12.1993 in GDC. Rev. Case No. 30/AC/88-89 is now the present Chief Executive Member, GHADC. Therefore, it is the submission of Mr. S Dey, learned counsel for the respondents No. 1-3 that the said appeal i.e. GDC/Rev-Appl No. 7 Misc. of 1994, cannot be taken up by the present Chief Executive Member, GHADC. Section 10 of the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 empowered the Executive Committee to delegate to any officer of gazetted rank of the District Council power of exercising a certain power by a special order. Mr. S Dey, learned counsel for the respondents No. 1-3 contended that the Executive Committee by exercising its power under Section 10 cannot delegate the appellate power/jurisdiction of the Chief Executive Member to any officer inasmuch as, the Chief Executive Member is the only senior most officer having the appellate power. In these peculiar facts and circumstances of this case, since the appellate jurisdiction/appellate power of the Chief Executive Member cannot be entrusted to any officer, the Executive Committee excluding the present Chief Executive Member shall take up the said appeal i.e. GDC/Rev-Appl No. 7 Misc. of 1994 for disposal. Since the matter has been pending for more than two decades, the Executive Committee shall consider and dispose of the said appeal before expiry of the terms of the present Executive Committee.

7. For enabling the Executive Committee, GHADC to take up the said appeal i.e. GDC/Rev-Appl No. 7 Misc. of 1994, the judgment and order of the learned Single Judge dated 28.05.2012 passed in WP(C) No.(SH)326/2008 is hereby set aside. It is made clear that any observation made in this order shall not stand in the way of disposing of the said appeal i.e. GDC/Rev-Appl No. 7 Misc. of 1994 independently by the Executive Committee, GHADC.

8. For the said limited extent, this writ appeal is allowed.

9. Status of Nokma, as on today, shall be maintained.