
(1991) 02 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 126 of 1985

Selkholan

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Rules for Administration of Justice and Police in Nagaland, 1937 — Rule 14

Citation : (1991) 2 GLR 241

Hon'ble Judges : W.A. Shishak, J;H.K. Sema, J

Bench : Division Bench

Advocate : N.N. Saikia and B.N. Sarma, for the Appellant;

Final Decision : Allowed

Judgement

H.K. Sema, J.—By this writ petition the Petitioner has assailed judgment and order dated 30.10.84 passed by the Addl. Deputy Commissioner, Dimapur in connection with the demolition of the church building at Maova village.

2. The relevant facts leading to filing of this writ petition may be summarised as under:

The Petitioner is cue Pastor of Maova Baptist Church and in this petition he represents the said Church which is affiliated to the Kuki Baptist Association which is an old institution and is a body for organising the various Kuki Baptist Churches in Nagaland, However, another Church called Kuki Christian Church (K. C. C.) emerged in 1982 and thereafter the Maova Baptist Church joined the K. C. C.

3. The Maova Baptist Church which was originally affiliated to Kuki Baptist Association subsequently left the fold of the K.B.A. and joined the Kuki Christian Church some time in February 1983. Petitioner was appointed as Pastor of the said Church some time in the month of December 1983. However, there arose differences between the members of the Maova Christian Church affiliated to the K.C.C. with regard to religious doctrine and thereafter the members of the Maova

Christian Church were divided into 2 groups, majority and minority groups. The minority groups consisted of about 100 church members left the fold of the Maova Christian Church (K.C.C.) and formed a separate church Maova Baptist Church (K.B.A.) and subsequently affiliated to the Kuki Baptist Associations which was the original parent body of the Church at Maova village.

4. To mitigate the demands of the members of the new Maova Baptist Church the Petitioners and other members of the church Started constructing a church building from 13.8.84 on the land belonging to the son of the Petitioner. The Respondent No. 3 (Chairman Maova village Council) however lodged complaint against the construction of the said church building and ultimately the Respondent No. 3 on 3.9.84 demolished the church building constructed by the Petitioner and other members of the Maova Baptist Church. This lead the Petitioner along with 5 other members of the Kuki Baptist Association to submit representation to the Chief Minister of Nagaland for redressing their grievances. The said representation is marked as Annexure "A" to this writ petition. It would thus appear the said representation was endorsed to the Addl. Deputy Commissioner, Dimapur for disposal. On receipt of the representation aforesaid, the learned Addl. Deputy Commissioner passed the impugned order dated 30.10.84 which is being challenged in this writ petition.

5. We have heard Shri B.N. Sarma learned Counsel for the Petitioner and also Mr. Imzang Jamir learned Sr. Government Advocate for the State.

6. At the outset we may record that we were rather handicapped in disposing this writ Petitioner as there was no affidavit-in-opposition on behalf of the Respondents. Inspite of our endeavour, no record connected With this case has also been made available to us. We are, therefore, disposing of this writ petition on the basis of the materials available on record and submission of the learned Counsel f of the respective parties.

7. The main contention of the learned Counsel for the Petitioner is that the findings arrived at by the learned Addl. Deputy Commissioner Dimapur is perverse in as much as the impugned findings are not supported by any evidence on record. Learned Counsel has taken us to the impugned judgment and order passed by the learned Addl. Deputy Commissioner Dimapur, and on perusal of the impugned order we find that there is no finding at all. Taking the impugned order in its totality, we find it difficult to discern the finding effect of the impugned order. In other words, there is no finality of the finding in the impugned judgment. In fact, on going through the entire judgment and order we find that the finding of the learned Addl. Deputy Commissioner is itself contradictory in as much as both the disputing parties has been found guilty by the flawed Addl. Deputy Commissioner by its impugned order which according to the learned Counsel for the Petitioner is unknown to the law. From the series of findings arrived at by the learned Addl. Deputy Commissioner Dimapur it would appear that from the findings itself one cuts the other.

8. The findings of the learned Addl. Deputy Commissioner in para-graph 2 of his judgment where the learned Addl. Deputy Commissioner stated that, "according to Kuki custom and individual invariable requires the formal approval from the G. B. of the village for any construction" is not supported by any evidence on record. Whether such custom exists or not in Kuki tribe, even assuming it exists, existing of such custom has to be established through evidence. In the instant case whether or not such custom exists amongst the Kuki tribe there is no evidence to this effect. We are, therefore, incline to accept the submission of the learned Counsel for the Petitioner that there is no such custom exist, which requires an individual to obtain formal approval from the G.B. of the village for any construction. This apart in our view the construction of the church building to tely stand in a different footing. We are living in secular state. Our construction provides right to freedom of religion to all its citizens. This right would include the freedom to construct the place of rituals and ceremonies which are integral part of religion. This sacred and inalienable rights of individual guaranteed by the construction cannot be restrained or taken away by the village authority unless extreme circumstances warranted, such as, construction of church building obstruct the customary importance like upkeep or maintenance of village wells etc. In our opinion, therefor, for the construction of the church building no formal approval of the village authorities is necessary. More so in the instant case, it has been admitted by the learned Addl. Deputy Commissioner himself in paragraph 2 of his judgment that the land on which the Petitioner and constructed the church building belongs to the son of the Petitioner. This being the Position, there was, in our opinion, no necessity to approach the village authority to construct the church building. We say this because in our opinion, no formal approval of the village authorities is necessary for an individual to profess a particular religion. Even assuming such formal approval is required for construction of a church building, such approval would be confined to allotment of site if the land on which the proposed church is to be constructed falls on the village land. We say this because the village authority cannot dictate the terms to its citizens to profess a particular religion under the banner of customary practice. Even the learned Addl. Deputy Commissioner himself has rightly expressed in his judgment in pa-graph 3(a) as follows: "Destruction of a church cannot be constructed as the expression or the execution of the customary practices is rather an act of criminal offence.

9. We also find that the learned Addl. Deputy Commissioner has found the Respondent No. 3 guilty and imposed a fine of Rs. 1,000/- default S.J. for 1 month which has been challenged before us.

10. For the reasons given above, we allow this petition, set the and quash the order dated 30.10.84 passed by Addl. Deputy Commissioner. We also allow the Petitioner to construct the church building at Maova at the same site which belongs to the son of the; Petitioner (the Pastor) according to the findings of the learned Addl. Deputy Commissioner Dimapur, and which has not been assailed by the Respondents.

11. Before parting with this case, our anxiety has been drawn regarding meaning, construction and ambit of Rule 14 of the Rules for administration of Justice and Police in Naga Hills district as amended vis-a-vis customary duties and the construction of the church in the village. At the time of hearing of this petition, our attention has been drawn to the decision of the learned Single Judge of this Court rendered in *Selkholan Petitioner v. State of Nagaland and Ors. Respondents* (1986) 2 GLR 73 by the learned Counsel for the Petitioner. It would thus appear the present Petitioner has also preferred criminal revision No. 72/85 before this Court for setting aside the order of the learned Addl. Deputy Commissioner Dimapur which was dismissed by the learned Single Judge of this Court for the reasons stated therein. We respectfully disagree with the observation of the learned Judge particularly in paragraph 7 and 8 of its Judgment, where the learned Judge observed that the construction of a church in the village is for public purpose and so it is the customary duty to obtain prior approval for construction etc. The learned Judge also refers to provision of Rule 14 of the Rules for administration of Justice and Police in Naga Hills District in this regard in paragraph 8 of its Judgment.

12. We may, at this stage, in order to appreciate the purpose, intent and ambit of Rule 14 of the Rules for Administration of Justice and Police in Naga Hills District usefully reproduce Rule 14 below:

All the inhabitants of the Naga Hills who are under the administrative control of the Deputy Commissioner are bound to (sic) the regular police and village authorities when required to do (sic) for the maintenance of order or the apprehension of offenders (sic) for the performance of customary duties for public purposes (sic) the repair or upkeep of roads, village foot paths, bridle path (sic) village wells, constructions work etc.) Any person failing to do so (sic) liable to fine to be adjudged by the Mauzadar, Gaonbura, Chief Head (sic) of a Khel or other Chief, Village authority, to the extent he is empowered (sic) to award in criminal cases or by the Deputy Commissioner (or the (sic) Divisional Officer, Mokokchung, so far as the Mokokchung Sub-Division (sic) is concerned, if a fine beyond the amount those officers are authorized (sic) impose is considered necessary). When the particular persons (sic) liable for failure to aid in any community cannot be ascertained (sic) the Mauzadar, Gaonbura, Chief, Headman of a Khel or Chief village (sic) authority shall be considered responsible, and it appears that the (sic) community is to blame, and that particular offenders cannot be (sic) covered, a fine may be imposed upon the community, but by the Deputy Commissioner only (or by Sub-Divisional Officer, Mokokchung so (sic) as the Mokokchung Sub-Division is concerned subject to the approval (sic) in writing of the Deputy Commissioner.

(Underlined is ours)

13. A close reading of Rule 14, shows that the Rules specified the duties of customary duties as follows:

(1) to aid the regular Police and village authorities for(sic) maintenance of an order or the apprehension of offenders(sic) (2) to repair or upkeep of roads, village root paths, (sic) paths, village wells or construction work for public pur(sic)

14. The above enumerated items have been specified as(sic) many duties under Rule 14 of the Rules, In our opinion the rev(sic) in Rule 14 has hardly anything to do with the construction of (sic) building in the village. The construction of a church in the vill(sic) does not involve any customary duties or any duties connected(sic) the performance of customary nature. We are quite aware that(sic) the construction of such a church building obstructed places(sic) customary importance like Village root path, bridle path, vill(sic) wells or village, Morongs which in for public purposes or any (sic) of customary importance, village authority may have right to(sic) a say in order to preserve and upkeep places of customary importance. This is not the case with the case in hand. As already stated the land on which the church building was constructed belongs to the son of the Petitioner. In our view the construction of the church is not for public purposes. What Rule 14 visualises for the performance of customary duties for public purposes are already specified in the Rule itself as like the repair or upkeep of roads, village foot paths, bridle paths, village wells, construction works etc, Construction of church cannot be regarded with any other "construction works" as visualised in Rule 14. Construction works visualised in Rule 14 would mean the construction of places of customary importance, it does not include the construction of the church and therefore not a customary duty. It, therefore, transpire that construction of the church without prior approval of the village authorities is not violation of customary practice. A customary duty is a duty imposed upon every inhabitants of the village by custom to perform duties of customary nature like the repair or upkeep of roads, village foot paths, bridle paths, village wells, and construction works as visualised in Rule 14 of the Rules.

15. For the reasons aforesaid, we respectfully disagree with the decision of the learned Single Judge of this Court rendered in Criminal Revision No. 72/85 in Selkholan (supra).

With this we allow the petition as Indicated above.

Parties are asked to bear their own costs.