
(2014) 03 MEG CK 0017
In the Meghalaya High Court
Case No : WA No. 2/2008

Shri. Smek Marboh and Others

APPELLANT

Vs

The Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 18, 23(1), 3(d)
United Khasi Jaintia Hills Autonomous District Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 2(a), 2(b), 2(r)(s)(t), 3(vi)

Citation : (2014) 5 GLT 670

Hon'ble Judges : Prafulla C. Pant, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—The unsuccessful writ petitioners filed the present intra-court appeal against the common judgment and order of the learned Single Judge dated 29.02.2008 wherein and where-under, the learned Single Judge held that the facts disputed by the respondents, pleaded in the writ petition, basing on which the writ petitioners (present appellants) prayed for the relief are necessary to be proved by producing documents and oral evidence and also the disputed facts cannot be decided by the Court in the summary proceeding like the one under Article 226 of the Constitution of India and also the revision petition i.e. CR(P) No. 52(SH)2004 against the order dated 14.10.2004 passed by the learned Special Judicial Officer (Reference Court) under Land Acquisition Act, 1894 for rejecting the application filed by the writ petitioners/appellants for restraining the further proceedings of the Reference Case u/s 30 of the Land Acquisition Act, 1894 (for short "the said Act of 1894") is devoid of merit and accordingly dismissed. Heard Mr. H.S. Thangkhiew, learned senior counsel assisted by Mr. L Khyriem, learned counsel for the appellants as well as Mr. V.G.K. Kynta, learned senior counsel assisted by Mr. R. Thangkhiew, learned counsel for the respondents No. 1-5. Also heard Ms. P. Yadav, learned counsel for

the respondent No. 6 and Mr. K.S. Kynjing, learned senior counsel assisted by Mr. H. Kharmih, learned counsel for the respondent No. 7.

2. The graphic facts leading to the filing of the writ petition No. 271(SH)2004 are mentioned in the impugned common judgment and order dated 29.02.2008 passed by the learned Single Judge; and accordingly, in order to avoid repetition of facts, only the bare facts sufficient for deciding the present appeal are recapitulated.

3. Six writ petitioners (present appellants) are stated to be the headmen of Lumkseh village, Mawkduk village, Mawkynring village, Kyrdeng village, Lumdiengngan village and Wahmyntait village respectively all under Khyrim Syiemship. Tynring village is a bigger village in the area, and the villages of the writ petitioners/appellants were considered to be the sub-villages in that area and that their villages were brought under the Sordar of Raid Tynring for the purpose of administration of justice. In the old days, Sordar of Tynring used to exercise authority not only over Tynring village but also other villages. By the passage of time, the villages of the writ petitioners/appellants became the full fledged villages. The Sordar is appointed by general consensus of the concerned villages with the approval of the Syiem and Dorbar to hold such post. Tynring village is just one of the 8(eight) villages in Tynring area while the Sordar/Headman is also the Headman only for this Tynring village.

4. It is categorically pleaded case of the writ petitioners/appellants that in Tynring area, there are 8(eight) villages i.e. villages of the writ petitioners/appellants and 2(two) others; and Tynring village does not cover the villages of the writ petitioners/appellants. Thus, the status of the respondent No. 7 is only the Headman of Tynring village and he is not a Sordar Raid. The respondent No. 7 has never had any role to play in the administration of the villages of the writ petitioners/appellants for the last more than 50 years and that the villages of the writ petitioners/appellants had been enjoying full ownership rights over their village lands. Under the Khasi customary law of Ri Raid system under which personal occupation of lands entitles the occupants to full ownership rights over such lands so long as utilized by such occupants.

5. The respondent No. 7 and his followers are misusing their powers especially against small villages i.e. villages of the writ petitioners/appellants by threatening them and carrying away their livestock, burning their charcoal, destroying their cultivations and indulging in other illegal acts, for which they were compelled to lodge complaints to the police from time to time. The lands belong to the Kharkongor and Mylliempdah, had been acquired for construction of the National Highway Shillong Bye-Pass. The said acquired land is the land which belongs to Kharkongor and Mylliempdah and the said National Highway Shillong Bye-Pass also passes through Lumdiengngan and Kyrdeng villages. The problem again started by the respondent No. 7 claiming the compensation for the lands acquired for the construction of National Highway Shillong Bye-Pass and that the compensation for those lands i.e. Ri Raid be paid to the respondent

No. 7. Over and above, the writ petitioners/appellants claimed that the men of the respondent No. 7 trespassed into their lands and forcibly dug and lifted precious minerals called quartz ("Mawlien") there-from and transported outside.

6. Finally the writ petitioners/appellants approached the respondent No. 2 by filing their complaint dated 23.10.2003 for restraining the respondent No. 7 from claiming himself to be Sordar Raid and also for further restraining him from claiming that village Tynring as a Raid and also to adjudicate their disputes. The respondent No. 2 by an order dated 27.10.2003, restrained the respondent No. 7 from interfering with the lands of the writ petitioners/appellants. However, the said order dated 27.10.2003 was in the nature of interim order. The said complaint dated 23.10.2003 lodged by the writ petitioners/appellants against the Sordar of Tynring village had been finally decided by the Executive Committee, Khasi Hills District Council, Shillong vide judgment and order dated 30.06.2004 with the findings that:-

...As on today there are 8 (eight) localities in Shnat Raid Tynring which inclusive of Tynring is 9 (nine). The Executive Committee is to take care when demarcating the boundaries of each locality to avoid any misunderstanding at a later stage. The Executive Committee shall make clear demarcations or lay down conditions over the creation of new localities especially with regard to their upgradation to a full fledged village. This is to be done in consultation with the Bakhraws of Raid Nongkrem and the Syiem and Durbar and when the process is completed the same is to be laid before the Durbar Pyllun (General Durbar) of Shnat Raid Tynring for approval. When the conditions are clear, any locality which fulfils the conditions will be recognized as a full fledged village without any hindrance or delay.

For the speedy development of the localities and villages the Executive Committee of Shnat Raid Tynring will not obstruct or hinder these activities if they do not affect the land of the Raid, and the locality or village should first get the approval of the Executive Committee of Shnat Raid Tynring.

For the smooth functioning and well being and benefit of all the residents of Shnat Raid Tynring the best thing is the Sordar of Shnat Raid Tynring convene the Executive Committee of Shnat Raid Tynring at the earliest to announce this arrangement and thereafter to place this matter before the Durbar Pyllun of Shnat Raid Tynring in the presence of the Bakhraws of Raid Nongkrem and the Executive Committee will then implement this new arrangement which has been laid down by the Executive Committee of the Khasi Hills after examination of the materials on record and hearing.

The complaint is accordingly closed.

7. By the findings mentioned in the said order dated 30.06.2004, the Sordar of Raid Tynring is a Sordar of Shnat Raid Tynring which includes 8 (eight) villages including those of the writ petitioners/appellants and for the benefit of all the residents of Shnat Raid Tynring, the best thing is the Sordar of Shnat Raid

Tynring to convene the Executive Committee of Shnat Raid Tynring at the earliest for the well being and benefit of all the residents of Shnat Raid Tynring and thereafter, to place the matter before the Durbar Pyllun of Shant Raid Tynring in the presence of Bakhraws of Raid Nongkrem and the Executive Committee will then implement those new arrangements which had been laid down by the Executive Committee of the Khasi Hills Autonomous District Council after examination of the materials on record and hearing. The writ petitioners/appellants being aggrieved by the said order dated 30.06.2004 filed writ petition i.e. WP (C) No. 271 (SH) 2004 for quashing the impugned order (i.e. 30.06.2004) and also for a writ of mandamus directing the respondents to allow the writ petitioners/appellants' villages to function as they had been functioning without any interference.

8. The respondent No. 7 (respondent No. 7 in the present writ appeal) filed his affidavit-in-opposition in the writ petition and wherein, the respondent No. 7 categorically denied the pleaded case of the writ petitioners/appellants. The respondent No. 7 in his affidavit-in-opposition stated that the villages of the writ petitioners/appellants are mere localities within shnat Raid Tynring under the administrative control and management of the respondent No. 7 and that the Sanad granted to the writ petitioner/appellant No. 1 was not a Sanad for a full fledged village but was one for mere locality and that it was only the respondent No. 7 who has the power to issue the Sanad to be confirmed by the respondent No. 6. It is asserted by the respondent No. 7 that the post of Shnat Raid Tynring has been in existence since the year 1903 as clarified by the Dorbar of the Elders of Raid Nongkrem on 31.12.2002 to the respondent No. 6; that the Sordar of Raid Tynring is above the Elders (Rangbah Kyntoit) of the 8 (eight) localities including the localities of the writ petitioners/appellants and the writ petitioners/appellants were never elevated to the status of Headmen of full fledged villages; they are there to only assist him and that he, being the Sordar of Shnat Raid Tynring, is the Head not only of Tynring village but also the Head of the whole Shnat Raid Tynring including the localities of the writ petitioners/appellants; he is appointed to hold such office by the respondent No. 6 and his Dorbar. According, to the respondent No. 7, he, by his letter dated 28.03.2001 has recognized the Elders of the eight localities as local Headmen and not as village Headmen and the occasional reference of these localities as villages does not alter their position as localities. The respondent No. 7 further asserts that the certificate dated 13.11.2001 issued by the respondent No. 6 has categorically mentioned that Tynring comprises of eight localities including the localities of the writ petitioners/appellants and that it is the Sordar of Tynring, and not the local Elders (Rangbah Kyntoit), who has the right over the landed property including forest, timbers etc. a practice in existence since time immemorial. The Catholic Church or any authority or individual who wish to utilize any part of the land of Shnat Raid Tynring must obtain the permission of the respondent No. 7 and his Dorbar.

9. The respondent No. 7 in his affidavit-in-opposition further pleaded that he is not against any development within Shnat Raid Tynring but all benefits such as

land compensation etc. should be paid to him and his Durbar for the benefit and welfare of the inhabitants of Shnat Raid Tynring including the writ petitioners/appellant. The Dorbar of Sordar Shnat Tynring was held on 16.10.1988 at Sohmatan Wah Makynring within Shnat Raid Tynring in which the Dorbar resolved that Sanads should be issued to the Elders of 8 (eight) localities as local Elders (Rangbah Kyntoit) and that such Sanads were to be issued with a condition that the then Elders (Rangbah Kyntoit) of those 8 (eight) localities including those of the writ petitioners/appellants should not interfere with the land ownership of the Raid and that their duty was to see that there was peace and harmony within their respective localities. It is also pleaded in his affidavit-in-opposition that he and his Durbar have got every right over quartz ("Mawlein") found within the boundary of Shnat Raid Tynring and that there is no infirmity in the impugned order dated 30.06.2004 passed by the respondent No. 2.

10. The award had been prepared for compensation of lands lying on Kyrdeng and Lumdiengngan village which were acquired for the construction of National Highway Shillong Bye-Pass but the Collector of Land Acquisition i.e. the Deputy Commissioner, Ri Bhoi District due to the disputes between the writ petitioners/appellants and the respondent No. 7, as to the persons to whom the said compensation is payable, the matter was referred to the Special Judicial Officer, Shillong (i.e. Reference Court) u/s 30 of the said Act of 1894 for "decision as to the persons to whom or any part thereof is payable"? The writ petitioners/appellants filed an application dated 14.10.2004 before the learned Special Judicial Officer, Shillong questioning the locus standi of the respondent No. 2 and also prayed that the compensation already deposited be not disbursed in favour of the respondent No. 7 and also to restrain further proceeding of the Reference Case. By the impugned order dated 14.10.2004, the Special Judicial Officer, Shillong rejected the application of the writ petitioners/appellants. Being aggrieved by the order of the learned Special Judicial Officer, Shillong dated 14.10.2004 for rejecting the prayer of the writ petitioners/appellants for restraining further proceeding of the Reference Case filed CR(P) No. 52(SH)2004.

11. The learned Single Judge in the common judgment and order dated 29.02.2008 made findings that the questions which fall for consideration are (i) whether the villages of the writ petitioners/appellants namely, (a) Lumkseh village, (b) Mawkduk village, (c) Mawkynring village, (d) Kyrdeng village, (e) Lumdiengngan village and (f) Wahmyntait village are full fledged villages or merely localities under the administrative and management of the Sordar of Raid Tynring (ii) whether the villages of the writ petitioners/appellants acquired rights and interests over the Raid Tynring and (iii) whether the amount of compensation settled u/s 11 of the said Act of 1984 for acquiring the said lands are to be paid to the writ petitioners/appellants villages or the respondent No. 7 and his Durbar and these disputed question of facts for which, both the parties required to produce documents and oral evidence in support of their respective cases, cannot be decided in a writ proceeding u/s 226 of the Constitution of India which is summary in nature and also further held that the Reference Court can decide

the terms of reference made by the Deputy Commissioner, Ri Bhoi District u/s 30 of the said Act of 1894.

12. The Raid Tynring is situated within the territorial area of the United Khasi-Jaintia Hills Autonomous District. The United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 was enacted by the United Khasi-Jaintia Hills Autonomous District. u/s 2(a) of the Act of 1959 "Chief" means a Syiem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadadar as the case may be, of any Elaka and the word "Custom" u/s 2(b) means any rule regarding the appointment of a Chief or Headmen for the Elaka which having been continuously and uniformly observed for a long time, has obtained the force of law in that Elaka.

The United Khasi-Jaintia Hills Autonomous District enacted the Act called "United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 and also framed Rules therein called "United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Rules, 1960. Section 2(r)(s)(t) and Section 3(vi) of the said United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 read as follows:-

2. Definition and interpretation:- In this Act, unless there is anything repugnant in the subject matter or context or the context otherwise requires:-

(r) "Raid" means a distinct unit within the Syiemship, Dolloiship, Lyngdohship, Sirdarship or Wahadadarship composed of one or more villages;

(s) "Syiemship" means those areas known as "Khasi State" prior to the commencement of the Constitution of India. They are twenty five in number as shown in Appendix II;

(t) "Sirdarships" means those areas in the Shillong Sub-division known as "British Sirdarship" prior to the commencement of the Constitution of India. They are thirty-one in number as shown in Appendix III....

3. Classification of Forest:- The forests to which this Act applies are classified under the following categories:-

(vi) Raid Forest:- these are forests [looked after] by the heads of the Raid under the [management] of the local administrative head. [...].

13. The compilation called "Land Relations in North East India" edited by B.B. Dutta and M.N. Karna deals precisely with the character, meaning and management of "Ri Riad Land (Community Land)" which reads as follows:-

Ri Raid Land (Community Land)

Ri Raid lands are undivided lands which belong to the community as a whole; the

private ownership is absent. The people of the community can occupy the land for cultivation as much as the family can maintain and utilize. And a citizen (a Khasi) can also construct a house in the community land-whose size should be suitable only for kitchen garden and house site only.

Every member of the village, every member of the Raid, every member of the elaka has a right of use and occupancy of the Ri Raid land of the village or of the elaka without paying land revenue for the land itself. If any payment is to be made it is for the improvements made or services rendered. A member cannot claim more land than what he can actively make use of. He cannot bar any person from occupying or using any vacant plot of land by claiming that it is within his occupation or has otherwise acquired it unless he has incontrovertible evidence of his actual use of the land. A mere fencing of earth mound (mryrsha), or of bamboo or jungle wood, or of a ditch surrounding the land, etc. without actual work within the fenced or demarcated area and a mere slip or paper from a headman or Syiem or Sirdar or even chief of elaka to the effect that the land has been settled with him shall not entitle him to lay any claim to it. If a person vacates or does not make use of the land under his actual occupation for three consecutive years, the land reverts to the community-village, raid or elaka as the case may be. There is no proprietary, heritable or transferable right on the Ri Raid land, the use and occupation of which is of purely temporary nature e.g. seasonal cultivation. A person acquires heritable and transferable rights on Ri Raid land if he has made permanent improvements on it by way of construction of a permanent building or buildings, or cultivation of permanent crops and plants like fruits trees, or converting it into wet paddy cultivation, fish ponds etc. But even in cases of this nature, a person loses a right automatically if he leaves the house or houses to rack and ruin and allow them to become refuge for bad mab, abode for poisonous snakes or beasts of prey, or if he abandons a grove or garden of permanent cultivation, a wet paddy fields, fish ponds etc to become jungle growth for periods over three years unattended to and uncared for. In such cases, it is the durbar of the village, the durbar of the Raid or the durbar of the elaka, as the case may be, who is competent to decide the period after which the property right may be treated to have reverted to the village Raid or elaka.

Any Khasi who is not a member of the village or of the Raid or of elaka cannot occupy Ri Raid land of that village or of that Raid or of that elaka. He has the right of use and occupancy which a native member of the village or Raid or elaka enjoys only when he submits himself to the jurisdiction of the village Raid or elaka and is accepted and recognized as one of it. A mynder ri (non Khasi) has no right of use and occupancy of Ri Raid land of the village or Raid or elaka. The chiefs have no authority to allow a mynder ri the right of use and occupancy of Ri Raid by way of issuing pattas, realizing land revenue or land rent from him.

The management of the Ri Raid land belonging to the community is completely within the jurisdiction of the community concerned. The community may be (a) village for village Ri Raid land, (b) a group of villages constituting the Raid for Ri

Raid land of the villages which are constituents of that Raid, (c) elaka itself for the Ri Raid land of the elaka excluding the Ri Raid lands of (a) and (b) which are constituents of the elaka.

14. The Khasi Hills Land Reforms Commission deals with as to how the rights are acquired in the Ri Raid lands by permanent cultivation and the relevant portion (of page 18) reads as follows:-

How rights are acquired in Ri Raid lands by permanent cultivation.

There is no proprietary, heritable or transferable right on the Ri Raid land, the use and occupation of which is of purely temporary nature e.g. seasonal cultivation. A person acquires heritable and transferable rights on Ri Raid land if he has made permanent improvements on it by way of construction of a permanent building or buildings, or cultivation of permanent crops and plants like fruits trees, or converting it into wet paddy cultivation, fish ponds etc. But even in cases of this nature, a person loses a right automatically if he leaves the house or houses to rack and ruin and allow them to become refuge for badmen or shelter for poisonous snakes or beasts of prey, or if he abandons a grove or garden of permanent cultivation, a wet paddy fields, fish ponds etc to become jungle growth for periods over three years unattended to, uncared for, unlooked after.

It may be of interest to know that the High Court of Assam and Nagaland, in the case of Ka Tynghu Lyngdoh vs. U Laid Kharmaid & Ors (Civil Revision Case No. 104(H) and 106(H) of 1949---- Unreported) upheld the view of the State Durbar of Khyriem on the prevailing custom regarding the acquisition by individuals of rights over Ri Raid land in that locality. The Khyriem State Durbar stated in the above case that "according to the practice on the common land of the Raid, a right of occupancy can be acquired by cultivation, enclosing the land by wall and growing pine-trees on it, or in any other way which shows that there has been labour spent on it". Justice Thandani, accepting this view held that "the customary law prevailing among the people of the area on occupation conferred good title upon them" (i.e. occupants), and that "this was precisely the view taken by the Chief Judicial Officer, Khasi States Federation.

There is a custom that whoever acquires permanent right over Ri Raid land may get his name and holding registered by Syiem. One Nodang Khongmallai, Ka Molon Mawlong and Ka Sil Shylla of village Umsait Sning, got their holdings registered in this manner. They were not required to pay any fee, or rent or land revenue to the Syiem or Syiem raid. However, it was found that non-Khasis paid some fee in cash for cultivating Ri Raid land. In the 4 villages visited by our officers all the inspected plots were found to be either under horticulture or homestead or W.R.C. or permanent paddy cultivation. So all the occupants had acquired heritable and transferable rights. No case was come across where the plot remained fallow for 3 years.

15. The writ petitioners/appellants as well as the respondent No. 7 did not plead

the materials fact in their respective pleadings (i) as to how and why the land in question is a Ri Raid lands, (ii) if so, what type of Ri Raid lands, (iii) as to how their rights are acquired in the Ri Raid lands by the writ petitioners/appellants and the villagers of their villages, and (iv) as to how the respondent No. 7 became a Sirdar or/Syiem of the Raid Tynring. For deciding these issues, the writ petitioners/appellants and the respondent No. 7 are not only required to plead materials fact but also to produce documentary and oral evidence in support of their respective cases. A writ under Article 226 of the Constitution of India is essentially different from a suit. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. But the High Court may not entertain the writ petition when the petition raises complex questions of facts, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in writ petition. The Apex Court in Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, held that:-

9. ...The object of article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under article 226, it needs to be emphasized, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under article 226. The High Court is not deprived of its jurisdiction to entertain a petition under article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (See Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others,). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.

16. The Apex Court in Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, held that:-

6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.

The Apex Court in *Mansarovar Steel Industries (P) Ltd. vs. State of U.P. & Ors*: (2005) 13 SCC 440 held that the High Court should not have decided the disputed questions of fact in the writ petition and should have come to the conclusion that there are disputed questions of fact, the High Court should have then relegated the writ petitioners or appellants to an appropriate court.

The Apex Court in *Vinay Shukla Vs. Union of India (UOI) and Others*, held that:-

4. Learned counsel has next submitted that the petitioner should be awarded damages for his illegal abduction and confinement by the authorities of the State. The allegations made by the petitioners are entirely factual in nature, which can be established only by recording oral evidence. It will be open to the petitioner to seek such legal remedy as is available to him in law for claiming damages on the ground of his alleged abduction and confinement. The writ petition is dismissed.

17. From the ratio laid down by the Apex Court in the cases discussed above, it is clear that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. But when the petition raises

complex questions of facts, which may for their determination require oral evidence to be taken and the complex disputed question of facts cannot be tried in the writ petition, the High Courts may decline to try a writ petition. Now the question for consideration in the present case, is whether the issues formulated above for deciding the rival contentions of the parties in the present writ appeal could be decided on the materials fact and documents available in the present writ appeal and we are of the considered view that the complex disputed questions of facts involved in the writ appeal cannot be decided in a writ proceeding, which is not the right forum for examination of oral and documentary evidence of the parties.

18. [Order of the Deputy Commissioner, Ri Bhoi District, u/s 30 of the Land Acquisition Act, 1894]:- Reference Court to whom the Collector of Land Acquisition made a reference for deciding the terms of reference u/s 30 of the said Act of 1894 is an creature of statue inasmuch as, the State and other authorities while acting under an Act are only creature of statue. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that:-

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statue. They must act within the four corners thereof.

19. Section 3(d) of the said Act of 1894 defines the meaning of expression "Court"; and for convenience Section 3(d) of the said Act of 1894 is quoted hereunder:-

3. Definitions:- in this Act, unless there is something repugnant in the subject or context,-

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless, the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act.

Section 30 of the said Act of 1894 reads as follows:-

30. Dispute as to apportionment:- When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

20. On conjoint reading of Section 3(d) and Section 30 of the said Act of 1894, it is clear that the Reference Court has to perform the function of the court to decide the terms of reference made by the Collector of Land Acquisition u/s 30 of the said Act of 1894 i.e. in the present case to take a decision as to the persons

to whom compensation for acquiring the said lands for construction of the National Highway Shillong Bye-Pass or any part thereof is payable. Nowhere of the Act i.e. the said Act of 1894 provides the provisions for curtailing the powers and jurisdiction of the Reference Court in performing its function to decide as to the persons to whom the compensation or any part thereof is payable.

We are of the considered view that it is the duty of the Judge to whom the Reference Court u/s 30 of the said Act of 1894 is made to decide the question of title between all the persons claiming a share in the compensation. Even, when a civil suit had been filed on the question of title, the LA Judge is not competent to stay the proceeding till the decision of the civil court which amount to refusal to exercise his jurisdiction. In this regard, the powers and jurisdiction of the LA Judge u/s 18 of the said Act of 1894 and those u/s 30 are similar but the LA Judge u/s 18 of the said Act of 1894 has the power to decide a larger number of terms of reference made u/s 18 of the said Act of 1894. The Gauhati High Court is of the same view in A.S. Khongphai Vs. The Special Judicial Officer, Shillong and Others, That case is also from the State of Meghalaya. The gist of the facts in A.S. Khongphai's case (Supra) is that the LA Judge had stayed the proceeding of reference u/s 30 of the said Act of 1894 till the question of title of the parties are decided in the civil suit by a civil court. The Gauhati High Court in that case held that the learned LA Judge cannot refuse to exercise its jurisdiction u/s 30 of the said Act of 1894 merely because of the pendency of the civil suit for deciding the title of the parties. The relevant portion of paras 3, 13 & 14 of the AIR in S. Khongphai's case (Supra) are quoted hereunder:-

3. ...The officer by his order dated 11.09.76, passed in L.A. (Misc.) Case No. 16 of 1976, rejected the application on the ground that there was pending dispute between the petitioner and the respondent No. 4 with regard to the right, title and interests of the land under reference as the petitioner and respondent No. 4 were the claimants of the said amount.

The Court (sic. Reference Court) observed that in view of the pending dispute if the amount was released as prayed, it would tantamount to a decision of the disputed right, title and interest between the parties, which was not contemplated in law, as the Court has no jurisdiction whatsoever to decide those under the proceeding. Hence this application.

13.S. 18 or 31 of the Land Acquisition Act. The jurisdiction under the Act is a special one and is strictly limited by the terms of the sections. In a reference u/s 18 the jurisdiction arises when a specific objection has been taken to the Collector's award and it is confined to consideration of that objection. Once, therefore, it is ascertained that the only objection taken is to the amount of compensation, that alone is the matter referred and the Court has no power to determine and consider anything beyond it. Similarly, when the objection taken is to the question of entitlement that alone is the matter referred and the Court

has no power to determine and consider anything beyond it. Sec. 18 clearly specifies four different grounds of objection, namely (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persons to whom it is payable and (4) to the apportionment. In the instant case the objection of the petitioner is to the quantum of compensation while that of respondent No. 4 is to the person to whom it is payable. The Court's jurisdiction is restricted only to these two objections. AIR 1930 64 (Privy Council). The Reference Court determines these disputes including the dispute as to their title to the land between the parties claiming compensation the matter will be *res judicata* and bind the parties in any later suit involving that issue AIR 1939 133 (Privy Council). The reference Court has to decide the dispute referred to it in terms of the provisions of the Act; and it may amount to refusal to exercise jurisdiction if he refers the parties to a civil court and wait to take a decision until the dispute is decided by the Civil Court. As was held in *N. Swaminatha Aiyar and Another Vs. Kuppuswami Aiyar alias Ramaswami Aiyar and Others*,

14. The court must decide the matter which is before it. Whenever a question of title arises between the rival claimants, it must under the terms of the Act be decided in that case cannot be made the subject-matter of a separate suit. It is well established that the decision on the reference under the Land Acquisition Act on a question of title operates as *res judicata* to bar persons who are parties to that decision from agitating their title in separate proceedings. *Poovamma and Others Vs. Sumathi and Others*, . Where a suit relating to title to acquired land and a petition disputing apportionment of the compensation between the same parties with common issues were disposed of by a common judgment, but two separate decrees and no appeal against the decree in suit was filed it was held that the decree in suit had become final and principles of *res judicata* bar an appeal from the decree in the petition.

21. A claimant in a land acquisition proceeding can get no share of compensation without establishing his title of the land acquired and therefore, for deciding as to whether the claimant can get a share of the compensation, the Reference Court u/s 30 of the said Act of 1894 has to decide the claim of the claimant i.e. as to whether the claimant can establish his title. The Apex Court in *Surendra Kumar Vs. Phoolchand (dead) through and another*, held that the Reference Court u/s 30 of the said Act of 1894 can even scrutinize the evidence to decide as to whether the acquired land is a property of the joint family even if there are earlier decisions of the competent civil courts in the matter of dispute regarding the family property in a partition suit. Para 6 of the SCC in *Surendra Kumar's* case (*Supra*) reads as follows:-

6. Coming to the second question it is an admitted fact that Chhogalal was the eldest member of the family and was the manager of the Joint family consisting of Chhogalal, Ramchandra and Phoolchand. The agreement to sale is stated to have been made in the year 1951 and consideration money had been paid in 1951 and 1952 and finally sale deed was executed in the year 1961. At that

point of time the present appellant was a minor and the property was therefore purchased in the name of the minor with Chhogalal as the guardian. In course of the proceedings appellant has taken the specific plea that the consideration money had been paid by his maternal grand father and that plea has been rejected by the courts below on consideration of material with the finding that the appellant has failed to establish the same. Thus there is no material to establish that consideration money for the property was paid by the appellant from out of his separate funds. It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been at required. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family. Both the courts below have scrutinized the evidence bearing in mind the aforesaid legal position and have rightly come to the conclusion that the property in question is the joint family property. We see no justification for our interference with the said concurrent findings of the two courts below. The appreciation of evidence has been rightly made bearing in mind the correct legal position. The appellant thus has utterly failed to establish that the consideration money for the property was paid out of his personal funds. In the aforesaid circumstances agreeing with the two courts below we hold that the property was the joint family property and therefore the respondents have 1/3 share each in the compensation amount. In the aforesaid premises this appeal is devoid of merits and the same is accordingly dismissed but in the circumstances without any order as to costs.

22. The Apex Court in *Arulmighu Lakshminarasimhaswamy Temple Singirigudi Vs. Union of India (UOI) and Others*, held that:-

2. On the admitted facts, the approach of both the learned single Judge and of the Division Bench in the writ petition and the W.A. No. 1358/95 indicated in the impugned order made on January 30, 1996 cannot be sustained. Notification u/s 4(1) of the Land Acquisition Act, 1894 was published on June 4, 1987 acquiring the land in question for the public purpose. After compliance of the notice under Sections 9 and 10 of the Act, and enquiring the award came to be passed by the Land Acquisition Officer on February 7, 1990. The possession thereafter was taken on October 30, 1990. The question, therefore, would be: what would be the proper procedure to be adopted, in case of dispute as to the title of the land acquired under the Act? The learned single Judge declared title of the petitioner in the writ petition and the Division Bench directed civil Court to decide the title. Both views are obviously erroneous in law. The Land Acquisition Officer has to determine the extent of the land, the persons entitled to compensation and the

compensation to be determined u/s 23(1) of the Act. If he finds that there is any dispute as to the person entitled to receive the compensation, necessarily he has to deposit the amount u/s 31 of the Act into the court to which reference would lie. On such a dispute having arisen, he has to make a reference to the court u/s 30 of the Act to decide the dispute between the competing persons who set up rival title to the compensation. Under those circumstances, the only legal course open is that a direction be issued to the Land Acquisition Officer to make a reference u/s 30 to decide the inter se title to receive the compensation either by the appellant or by the 4th respondent, as the case may be and the reference Court would decide the matter in accordance with law.

23. For the foregoing discussions, we are of the considered view that Reference Court u/s 30 of the said Act of 1894, in the present case, has the powers and jurisdiction to decide the terms of reference made by the Collector i.e. Deputy Commissioner, Ri Bhoi District u/s 30 of the said Act of 1894. In the present case, the writ petitioners/appellants are not questioning or challenging the order of the Deputy Commissioner, Ri Bhoi District u/s 30 of the said Act of 1894 for referring the disputes as to the apportionment of the compensation of the land in question acquired for the construction of the National Highway Shillong Bye-Pass to the LA Judge i.e. the Special Judicial Officer, Shillong. The present writ appeal, for the reasons discussed above, is devoid of merit and accordingly dismissed.