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**(2016) 04 MAN CK 0004**  
**In the Manipur High Court**  
**Case No : Writ Petition (C) No. 271 of 2014**

Singneimang Vaiphei

APPELLANT

Vs

State of Manipur

RESPONDENT

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**Date of Decision :** 25-04-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2017) 1 NEJ 297

**Hon'ble Judges :** Mr. Kh. Nobin Singh, J.

**Bench :** Single Bench

**Advocate :** Mr. R.K. Surjit, Advocate, for the Petitioner; Mr. H. Manglem, Mrs. Th. Sobhana, Govt Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Mr. Kh. Nobin Singh, JJ.— Heard Shri R.K. Surjit, learned counsel appearing for the petitioner, Shri H. Manglem, learned counsel appearing for the respondent No. 4 and Smt. Th. Sobhana, learned Government Advocate for the respondent Nos. 1 to 3.

2. The main issue involved herein relates to the recognition of a Chief of the Village namely, Zeru Kanan (Zeru Canan) and by the instant writ petition, the petitioner has questioned the validity and correctness of the orders dated 05-07-2012 and 17-12-2013 passed by the court of the Sub-Divisional Officer, Saikul recognising the respondent No. 4 as the Chief of the said village.

3.1 According to the petitioner, he is the Chief of the Zeru Kanan Village which is a Hill House Tax paying village and is situated within the Sadar Hills East Sub-Division, Saikul, Senapati District, Manipur. While his father namely, Singkhojang was alive, he filed an application being Hill Misc. Case No. 22 of 1974 before the Deputy Commissioner, Senapati for recognition of the said village as a separate Hill House Tax paying village. The Deputy Commissioner, after a thorough enquiry, passed an order dated 16-07-1975 granting provisional recognition of

the village and allowing the petitioner's father to pay Hill House Tax directly to the office of the SDO, Saikul with the rider that permanent recognition could be accorded provided the number of houses continued to remain above 20 houses for five years. Few months thereafter, the Government of Manipur issued a Corrigendum dated 06-10-1975 adding 33 (thirty-three) villages in Annexure-B of the Notification dated 03-09-1975 including the Zeru Kanan village. Accordingly, the petitioner's father filed an application being Hill Misc. Case No. 16 of 1982 before the Deputy Commissioner, Senapati praying for recognizing the petitioner as the Chief of the said village whereupon the Deputy Commissioner was pleased to pass an order dated 06-05-1983 expressing the inability to recognize the petitioner as the Chief of the village on the ground that there were only 15 (fifteen) houses in the village. But for the purpose of collecting Hill House Tax, the petitioner's name was approved with the direction that the number of houses be increased to 20 (twenty) if he wanted the village to be continued as recognised village. Thereafter, the petitioner managed to increase and maintain the number of houses above 20 and since then, he has been enjoying the status of a Chief of the said village paying the Hill House Tax.

3.2 Sometime in the year 2004, the petitioner allowed the respondent No. 4, being a relative, to stay in the said village although he is a resident of Phataiching Village. Because of his certain health problems, the petitioner engaged the service of the respondent No. 4 to do certain works, on his behalf, concerning the affairs of the village relating to various offices of the State Government. Taking advantage of that situation, the respondent No. 4 started claiming to be the Chief of the village on the ground that the petitioner had sold the Chiefship of the village to him. Being suspicious about the conduct and behaviour of the respondent No. 4, the petitioner made enquiries in the office of the respondent No. 3 and found that the respondent No. 4, in collusion with the officials of the respondent No. 3 and on the basis of fabricated documents and by forging the signature of the petitioner, filed an application being Hill Misc. Case No. 7 of 2005 praying for transfer of the Chiefship to him. The Sub-Divisional Officer, Sadar Hills East, without affording the petitioner an opportunity of being heard, passed an order dated 08-11-2005 allowing the prayer of the respondent No. 4 and transferring the Chiefship on the basis of a Kutcha Sale Deed which the petitioner never executed in favour of the respondent No. 4.

3.3 After the petitioner's effort for settling the matter through the Eastern Vaiphei Chief's Association having failed, he approached the court of the Sub-Divisional Officer, Saikul with an application dated 21-04-2012 praying for cancellation of its order dated 08-11-2005 by which the Chiefship was transferred to the respondent No. 4. The Sub-Divisional Officer, Sadar Hills East, Saikul, passed an order dated 17-05-2012 directing that after the perusal of the enquiry report of the SDC, Saikul and the relevant documents, its order dated 08-11-2005 and the Kutcha Sale Deed dated 22-02-2005 were cancelled and the Chiefship was restored to the petitioner with immediate effect. The respondent No. 4, being aggrieved by the said order dated 17-05-2012, filed an application

before the court of Sub-Divisional Officer, Saikul for setting aside it wherein the petitioner filed a written objection. The Sub-Divisional Officer, Sadar Hills East, Saikul, without considering the submissions made in the written objection, reviewed its order dated 17-05-2012 based only on the submissions of the respondent No. 4 and passed the order dated 05-07-2012 directing the parties to register the said Sale Deed dated 22-02-2005. Being aggrieved by the said order dated 05-07-2012, the petitioner filed an application dated 09-07-2012 before the court of the Sub-Divisional Officer, Sadar Hills East, Saikul praying for setting aside it and the same is still pending for consideration by the SDO, Saikul. While awaiting the disposal and outcome of the said application, the respondent No. 4 again started claiming himself to be the Chief of the village sometime in the last week of December 2013 and instructed the villagers to treat him as the Chief on the ground that the petitioner had ceased to be the Chief. Having felt suspicious about the acts of the respondent No. 4, the petitioner went to the office of the Sub-Divisional Officer and on enquiry, it was found that the Sub-Divisional Officer had passed the impugned order dated 17-12-2013 declaring the respondent No. 4 as the Chief of the village and the said order was passed in furtherance of its earlier order dated 05-07-2012 passed by it.

3.4 The averments made in the writ petition are denied in total by the respondent No. 4 and according to him, the petitioner's father established the said village but for want of sufficient number of houses, it was not recognised by the State Government as a village nor was the petitioner recognised as the Chief of the village and therefore, the petitioner sold the village land to him on the basis of a Kutcha Sale Deed dated 22-02-2005. He became the Chief of the Zeru Kanan village after he purchased the whole village land in 2005 from the petitioner and thereafter, the petitioner had left the village and settled at another village called Kamu Tangnnam village. On the basis of the Kutcha Sale Deed, both of them moved a joint application before the court of the Sub-Divisional Officer, Saikul who passed the order dated 08-11-2005. Thus, he became the owner of the village and started to act as the Chief of the village paying the Hills House Tax. Thereafter, the number of houses had increased to about 37. Both the petitioner and himself not being well educated, they did not take much care to get the Sale Deed registered in time and only after his repeated insistence, the petitioner executed a fresh Sale Deed on 28-12-2012 transferring the whole village land in his favour. The Sub-Divisional Officer, Saikul had no jurisdiction to pass the order dated 17-05-2012 but it passed the order dated 05-07-2012 judiciously after hearing the parties and also after perusal of all relevant documents. Although the petitioner has no locus standi to file the present writ petition, he did it with mala fide intention to cause disturbance to his smooth functioning as the Chief.

Despite number of opportunities being granted to the State respondents, they have, as usual, failed to file affidavit-in-opposition for the reason best known to them.

4. Neither the petitioner nor any of the respondents including the State respondents has brought to the knowledge of this court any provision of a statute or a law enacted by the Parliament or the State Legislature empowering an authority to declare a person as the Chief of a village and prescribing a procedure or a manner as to how a person is to be recognised as the Chief of a village. In fact, the State Government is the appropriate party in the matter so as to enlighten this court in this regard but it has miserably failed to do so and has chosen to remain as a mere spectator with no sign of interest. In Manipur (Village Authorities in Hill Areas) Act, 1956 also, there is no provision for recognising a person as the Chief of a village and only Section 3(4) provides that 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. Section 6(1) of the Manipur Hill Areas (Acquisition of Chief's Rights) Act, 1966 provides that if a question arises as to whether a person is the Chief of a village, the Deputy Commissioner shall, on question being referred to him by the Compensation Officer or on an application made by any person interested, by order in writing decide it. It is thus seen that these provisions also deal with different situations or circumstances prevailing at the time of their enactments which have nothing to do with the recognition of a person as the Chief of a village. Under Section 3(2) of the Manipur (Village Authorities in Hill Areas) Act, 1956, the State Government is competent to declare a village for having a village authority and therefore, at the most, the only that can be safely held is that the State Government is competent to recognise a person as the Chief of a village. Moreover, it is well settled that in the absence of any provision of law enacted by the State Legislature in respect of a matter enumerated in List-II, the gap can be filled by an executive action of the State Government and in other words, the State Government has the power to issue executive instructions or frame guidelines to deal with a situation arising out of a matter enumerated in List-II for which no law has yet been enacted by the State Legislature. The only requirement is that the action of the State Government shall not be contrary to any of the provisions of the Constitution of India nor shall it be arbitrary and malafide.

5. In the instant case, two orders dated 05-07-2012 and 17-12-2013 passed by the Sub-Divisional Officer, Saikul, are being questioned and challenged by the petitioner mainly on three grounds - one, the Sub-Divisional Officer, Sadar Hills East, Saikul has no power, jurisdiction and/or authority to pass the impugned orders declaring the respondent No. 4 as the Chief of Zeru Kanan village; second, the Sub-Divisional Officer, Sadar Hills East, Saikul has passed the impugned orders based on the said Sale Deed which is in dispute which cannot be adjudicated by it and third, the Sub-Divisional Officer, Saikul, while passing the impugned orders, has not followed the principles of natural justice resulting in violation of the fundamental rights. As regards the first ground and as has been

held herein above, it is the State Government which is competent to declare a person as the Chief of a village but in the present case, the State Government has not issued any order declaring the respondent No. 4 as the Chief of the Zeru Kanan village and it is the Sub-Divisional Officer, Saikul who has passed the impugned orders. There is no material on record to show that the Sub-Divisional Officer, Saikul has been authorised by the State Government to act on its behalf and to pass the impugned orders. The Sub-Divisional Officer, Saikul is an officer and is only the head of office of the Sub-division and as per the rules of business, it cannot represent the State Government unless it is authorised for that purpose by the State Government. In the absence of any provision of law enacted by the Parliament or the State Legislature empowering the Sub-Divisional Officer, Saikul or any authority being given by the State Government to recognise the respondent No. 4 as the Chief of the village, the impugned orders are not sustainable in law and are liable to be quashed and set aside.

6. Since this court having held in the preceding para that the Sub-Divisional Officer, Saikul has no authority to pass the impugned orders, there is no need, in fact, of considering the other grounds. But this court proposes to consider them also for the reason that the learned counsel appearing for the petitioner has given much emphasis on them. On perusal of the impugned order dated 05-07-2012, it is seen that the Sub-Divisional Officer, Saikul has given a finding that a Sale Deed had been executed between the petitioner and the respondent No. 4 in spite of the fact that the petitioner had denied in his written objection that he ever executed the Sale Deed. Relying upon the said disputed Sale Deed, the Sub-Divisional Officer, Saikul passed the impugned order dated 05-07-2012 reviewing its earlier order and had directed the parties to get the Sale Deed registered. It is not in dispute that the impugned order dated 05-07-2012 was passed on the premise that a said Kutcha Sale Deed had been executed between the petitioner and the respondent No. 4. It may be noted that any Sale Deed in respect of transfer of immovable property is to be duly registered and as long as it is not registered in accordance with law, it has no value and cannot be acted upon by any of the parties. Moreover, such an issue as to whether the said Sale Deed has really been executed by the petitioner or not cannot be decided by the court of the Sub-Divisional Officer, Saikul and it being purely a civil matter, it is only the civil court having jurisdiction has the power to decide it on the basis of the evidences adduced by the parties. The other impugned order dated 17-12-2013 has been passed by the Sub-Divisional Officer, Saikul declaring the respondent No. 4 as the Chief of the village on the further premise that the Chiefship has already been transferred to the respondent No. 4 vide its order dated 05-07-2012. At this juncture, it may be noted that while passing the impugned orders, the Sub-Divisional Officer, Sadar Hills East, Saikul has not examined the question as to whether the village Chiefship is transferable or not. The impugned orders passed by the Sub-Divisional Officer, Saikul on the erroneous assumption that the Chiefship is transferable, are highly unreasonable and illogical. Therefore, on this ground also, the impugned orders are not

sustainable in law.

As regards the third ground, all that the petitioner contended is that before passing the impugned orders, no opportunity of being heard was granted to him. This contentious issue as to whether the petitioner was given an opportunity of being heard cannot be correctly decided by this court for the simple reason that the impugned orders do not indicate anything about the presence of the parties in the court or they being heard by the Sub-Divisional Officer, Saikul while passing the impugned orders. The materials on record are not sufficient to arrive at a conclusion that the petitioner's contention is incorrect. Although the respondent No. 4 has denied it without any material being produced in support thereof, the Sub-Divisional Officer, Saikul being arrayed as respondent No. 3 herein has chosen not to file an affidavit rebutting the allegation made in the writ petition. Therefore, in the absence of any denial by the respondent No. 3, this court has no option but to accept the contention of the petitioner in view of the law laid down by the Hon'ble Supreme Court in a catena of decisions that when the averments made in the writ petition are not specifically denied, the same shall be deemed to have been admitted by the respondents therein.

7. On perusal of the overall materials placed on record, it appears that the Sub-Divisional Officer, Saikul has not applied its judicious mind in the disposal of the applications filed either by the petitioner or by the respondent No. 4. The Sub-Divisional Officer, Saikul being an officer discharging official and court's functions, has to decide the applications on the basis of documents and records available before it. The fact that it has passed contradictory orders based on the same documents - some in favour of the petitioner and some in favour of the respondent No. 4, is a clear indication and illustration that it has not applied his mind while passing the various orders including the impugned orders. Its finding is supposed to remain the same, since it has given the finding on the same materials.

8. For the reasons stated herein above, the instant writ petition is allowed and consequently, the impugned orders dated 05-07-2012 and 17-12-2013 are quashed and set aside with the following directions:

a) Both the petitioner and respondent No. 4 shall submit their respective representations, with supporting documents, to the Secretary/ Commissioner/ Principal Secretary (Hills), Government of Manipur within a period of two weeks from today;

b) On receipt of the said representations, the same shall be considered by the Secretary/ Commissioner/Principal Secretary (Hills), Government of Manipur in accordance with law, within a period of one month thereafter, to see whether any of them can be declared as the Chief of the Zeru Kanan village or not and an appropriate order in respect thereof shall be issued;

c) While considering the said representations, both the petitioner and the respondent No. 4 shall be given opportunity of being heard. There shall be no

order as to costs.