

(1995) 04 GAU CK 0009
In the Gauhati High Court
Case No : Writ Appeal No. 125 of 1995

U. Swindro Lyngdoh	Vs	APPELLANT
U. Dwik Syiemiong and Others		RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Khasi Hills (Establishment, Management and Control of Markets) Regulation, 1979 —
Section 2, 6(3), 8

Citation : AIR 1996 Guw 87

Hon'ble Judges : V.K. Khanna, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : N.M. Lahiri, H.S. Thangkhiew, T.T. Diengdoh, B.W. Phira, for the Appellant; M.Z. Ahmad and S.S. Nongrum, for the Respondent

Judgement

Khanna, C. J.

1. This Writ Appeal has been filed against the judgment of the learned single Judge dated 14-3-95, in Civil Rule No. 16 (SH) 94.
2. At the admission stage we have heard Mr. N. M. Lahiri, the learned counsel appearing for the petitioner/appellant, Mr. M. Z. Ahmed, the learned counsel appearing for the contesting respondent No. 2, Mr. B. B. Narzary, the learned counsel for respondents Nos. 3 and 4 and Mr. A. Mannan, the learned counsel appearing for respondent No. 1.
3. The brief facts for the purposes of adjudication of the present appeal are that Umdohlun market admittedly is being run under the provisions of Khasi Hills (Establishment, Management and Control of Markets) Regulation, 1979 (hereinafter referred to as the Regulation, 1979). According to the petitioner/appellant, on 14-2-91, he had filed an application to the Secretary, Executive Committee Khasi Hills Autonomous District Council (KHADC), Shillong, for recognising and establishing a private market at Umdohlun on behalf of the Lyngdoh Paliar 3 womb clan of Mawkyrda. The Executive Committee granted

permission to the petitioner to establish and manage the private market as an agent of the aforesaid clan and a notification to that effect was also issued. The petitioner/appellant has thus been running a market and has been giving the share of the toll money to the Executive Committee of the District Council. Respondent No. 1, U.Dwik Syiemiong who was acting as the Syiem (Rajah) of Nobosohphoh Syiemship of the Elaka, intervened and claimed a right that he was entitled to manage the market and control the same. The petitioner/appellant made a complaint before the Executive Committee of the KHADC. After, that, as there was interference in running the market by Dwik Syiemiong and there was no action by the Executive Committee of the District Council, the petitioner/appellant approached this Court by filing Civil Rule No. 16(SH) 94 praying for a writ of Mandamus restraining the respondent No. 1 from interfering in the running of the market in question. The learned single Judge under the impugned judgment has negated the contentions raised by the petitioner/appellant and has upheld the right of the respondent No. 1 to run the market and on those findings, has rejected the Writ Petition filed by the petitioner/appellant, It is this order of the learned single Judge which is under challenge in the present appeal.

4. Mr. M. Z. Ahmed, the learned counsel appeared for the contesting respondent No, 2. It may be noted here that Mr. A. Mannan, the learned counsel appearing for respondent No. 1, has also adopted the arguments raised by Mr. Ahmed. The learned counsel for respondent No. 2 has urged that the respondent No. 2 having been elected as the Senior Lyngdoh of the Clan and a written Sanad having been granted by the Clan in his favour which was approved by the District Council, was entitled to manage the entire land belonging to the Clan which would include the management of the private market which was being run on the land owned by the Clan. Mr. Ahmed has thus urged before us that the respondent No. 2 has every right after his appointment as the Senior Lyngdoh and execution of the Sanad in his favour to run and manage the private market.

5. For the purposes of adjudication of the dispute raised in the present appeal, it will be necessary to have the relevant provisions of the Regulation, 1979. Section 2(n) of the said Regulation defines "Private Market" which means a market established by and under the management of an individual or group of individuals working together or of a Firm, a Municipality, a Town Committee, a Corporation, or a Department under the Government and recognised as such by the Executive Committee. Section 4 of the Regulation gives powers to the District Council and the Executive Committee to have control over all the markets in the Khasi Hills District and they can issue such orders or directives to the owner or management concerned conducive to the betterment of the market not contradictory to the provisions of the Regulation, 1979. The provisions of Section 6 of the Regulation, 1979 are rather important as the same provide that no person shall start any new market except with the previous permission of the Executive Committee or of an Officer duly authorised by it in this behalf. Section 6(3) gives power to the Executive Committee that any person who is found starting or establishing a market in contravention of Sub-section (1) of Section 6,

shall be liable to a fine which may extend to Rupees Five hundred and/or such market shall be closed down (emphasis provided).

6. From the perusal of the aforesaid provisions, it is thus clear that as far as the lands which are owned by the Clan are concerned, they are entitled to run the private market; but the private markets can be run only after obtaining the permission of the Executive Committee of the District Council and, the entire regulatory power rests with the Executive Committee of the District Council as per the rules framed under Regulation, 1979. The provisions of Section 6(3) are indicative of the fact that the Executive Committee has got power even to penalise a "person who contravenes the provisions of the Regulation in running or establishing a private market or a new market and can even pass positive order in stopping that person from holding that market. It will also be pertinent to note the provisions of Sub-section 8(c) of the Regulation which clearly lays down that a private market shall be managed by the owner or owners thereof or by an Agent appointed by them duly recognised by the Executive Committee (Emphasis provided). "

7. The petitioner/appellant has himself alleged in the Civil Rule that he had brought to the notice of the District Council that even though permission has been granted to him by the Executive Committee to run the private market as an agent of the Clan which was owning the land over which the private market was being run, the respondent No. 1 was illegally interfering with the running of the aforesaid market on the basis that he was the Senior Lyngdoh and had a right to run and manage the market.

8. The learned counsel appearing for both the parties have frankly conceded before us that it is the Executive Committee of the District Council which is the statutory body in the Regulation, 1979, which has got adjudicatory powers under the Regulation to determine as to who is entitled to run the market. If that be so, we are of the opinion that the petitioner having made an application before the Executive Committee complaining that he is not being allowed to run the market, it was the incumbent duty of the Executive Committee to exercise its statutory power of adjudicating the matter and give a decision as to who was, according to the Regulations applicable and according to the Customary Law applicable, entitled to run the market. On the materials which have been placed by the parties in the Civil Rule, the disputed question of fact could not be adjudicated as it required leading of oral evidence and also filing of documentary evidence. Moreover, the function of adjudication of such disputes lay with the Executive Committee of the District Council which, admittedly, has the power to adjudicate on such issues.

9. For the reasons stated above, we are of the opinion that it is primarily the function of the Executive Committee of the District Council to adjudicate on such dispute and decide the disputed question on evidence led by the parties by giving opportunity to all the parties concerned. Admittedly, on the materials placed before us, the Executive Committee of the District Council has failed to discharge

its function. We are, thus, of the opinion that the Executive Committee of the District Council shall now adjudicate the dispute preferably within a period of one month from the date of filing of the certified copy of our order by the petitioner/appellant. It is being made clear that either of the parties can move an application before the Executive Committee of the District Council for making the interim arrangement for running the private market till the Executive Committee adjudicates on the dispute raised before it by the petitioner/appellant. It is also being made clear that any observation made by the learned single Judge will not affect the decision of the Executive Committee of the District Council and the Executive Committee of the District Council will give its own independent decision on the basis of the evidence led by the parties and according to the provisions of the Regulation, 1979.

10. For the reasons stated above, the findings recorded and the judgment of the learned single Judge are set aside and a writ of mandamus is issued to the Executive Committee of the District Council (respondent No. 4) to adjudicate the dispute in accordance with the observations made in this judgment.

The Writ Appeal is accordingly finally disposed of. However, looking to the entire facts and circumstances of the case, the parties shall bear their own costs.