
(2014) 07 MEG CK 0020

In the Meghalaya High Court

Case No : WA No. 9 of 2011 In WP(C) No. 403 of 2005

Umpyrchin

APPELLANT

Vs

The Jaintia Hills Autonomous

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Citation : (2014) 07 MEG CK 0020

Hon'ble Judges : T. Nandakumar Singh, J;Sudip Ranjan Sen, J

Bench : Division Bench

Judgement

T. Nandakumar Singh, J.—This Writ Appeal is directed against the Judgment & Order dated 4.02.11 passed by the learned Single Judge in WP(C) No. 403 of 2005 wherein the learned Single Judge declined to interfere with the Judgment & Order of the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai dated 16.06.05 passed in Pol. Appeal Case No. 1 of 2004 for the reason that that there is a serious disputed question of facts.

2. Heard Mr. L Lyngdoh, the learned counsel appearing for the appellant/writ petitioner. Also heard Mr. HS Thangkhiew, the learned senior counsel assisted by Mr. PN Nongbri, the learned counsel for the respondent No. 1 & 2, Mr. ND Chullai, the learned Senior GA assisted by Mr. KP Bhattacharjee, the learned GA for the respondent No. 6 & 7 as well as Mr. L Khyriem, the learned counsel for the respondent No. 4.

3. The graphic statement of facts of the writ petitioner's case is mentioned in the impugned Judgment & Order dated 4.02.11 by the learned Single Judge in WP(C) No. 403 of 2005, and accordingly the facts in detail leading to the filing of this Writ Appeal is not required to mention in this Judgment & Order.

4. It is the case of the appellant/writ petitioner in the writ petition that the village Ampyrshiang is an independent village situated outside the Narpuh Reserved Forest. The name of the appellant/writ petitioner's village Ampyrshiang is included in the extended constituencies by the Constitution of the Jaintia Hills

Autonomous District Council (Amendment) Rules, 1983. It appears from the submission of the learned counsel for the appellant/writ petitioner and the impugned Judgment & Order of the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai dated 16.06.05 passed in Pol. Appeal Case No. 1 of 2004, that the appellant/writ petitioner's village has already been included in the Assam and Meghalaya Autonomous District (Constitution of District Councils) Rules, 1951 vide the Constitution of the Jaintia Hills Autonomous District Council (Amendment) Rules, 1983.

5. It is also the further case of the appellant/writ petitioner in the writ petition that some of the important documents which are mentioned in Para-3 of the writ petition were not taken into consideration by the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai while passing the impugned order dated 16.06.05 in Pol. Appeal Case No. 1 of 2004.

6. Para-3 of the writ petition of WP(C) No. 403 of 2005 is quoted herein below:

3. That the petitioner begs to state the Respondent No. 4 (Huroi) Village is situated within the Narpuh State Reserved Forest Block-I whereas the petitioner village is outside the Reserve Forest. The fact that the petitioner village is an independent village from the following materials as hereunder:

(i) A resolution dated 15/06/1970 passed by the village dorbar of the respondent No. 5 (Lahalein Village) wherein the land, as per the boundaries described in the said resolution, where the petitioner village is situated was gifted to (L) Solomon Khonglah allowing him to set up a village. (Annexure-1).

(ii) Joint Memorandum dated 30/01/1985 presented by the five villages, i.e. Huroi, Hingaria, Lejri, Hahalein and Umpyrchin to the Minister of the Government of Meghalaya would indicate the petitioner village is an independent and autonomous village. (Annexure-2).

(iii) Due to ill health, the then Headman and founder of the petitioner village, (L) Solomon Khonglah (to whom the land was allotted/gifted for setting up of the petitioner village) vide resolution dated 15/06/1993 handed over charge of Headmanship to the present Headman, Shri. Rill Nongpluh as he had to migrate to Umkiang Village where there is better infrastructure for his medical treatment. This fact has also recently confirmed by the successor of the late founder of the village vide confirmation dated 27/08/2005 (Annexure-3 & 4).

(iv) Letter dated 17/04/2004 issued by the In-charge, Umkiang Police Patrol Post requesting the petitioner to submit the names of the Headman, Secretary, Members of the V.D.P. and the population of the petitioner village. (Annexure-5).

(v) Registration of the Youth Sport Club Border Umpyrchin Village No. SR/YSCBU-819/97 of 1997. (Annexure-6).

(vi) Letters/Orders showing receipts of financial grants from authorities of the State by the petitioner village. (Annexure-7 Series).

(vii) Notification dated 5th August, 1983- Appendix-I of the Constitution of the Jaintia Hills Autonomous District Council (Amendment) Rules, 1983 wherein the name of the petitioner appearing at Sl. No. 13-Narpuh District Council Constituency under Rymbai Dolloiship. (Annexure-8).

(viii) Letter dated 27/7/2004 from the respondent No. 7 to the respondent No. 2 reflecting that the petitioner village is outside the Narpuh Reserved Forest Block-I whereas the village of the respondent No. 6 is an encroach village in the said Reserved Forest. (Annexure-9).

(ix) Notification dated 9/3/1918 issued by the Chief Secretary to the Commissioner of Assam describing the boundaries of the Narpuh Reserved Forest obtained by the petitioner from the Respondent No. 9 vide order dated 4/8/2004 (Annexure-10).

The materials cited above would clearly indicate that the petitioner village is an independent and autonomous village ever since its creation.

7. The respondents have filed separate affidavits in the writ petition. The respondents in their respective affidavits had categorically stated that the matter in disputes between the parties is to be decided by the competent Civil Court. It is also the further case of the respondents in their affidavits-in-opposition that there are serious disputed question of facts, (i) whether the appellant/writ petitioner's village Ampyrshiang is independent or not and (ii) whether there are two villages having the same name as the appellant/writ petitioner's village Ampyrshiang.

8. The learned Single Judge while passing the impugned Judgment & Order dated 4.02.11 in WP(C) No. 403 of 2005 also made clear findings that, there are serious disputed question of facts and the writ court is not a proper forum for deciding the serious disputed question of facts. After such findings, the learned Single Judge declined to interfere the Judgment & Order of the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai dated 16.06.05 passed in Pol. Appeal Case No. 1.

9. We are given our anxious consideration to the submissions of the learned counsel appearing for the parties and their respective pleadings; the impugned Judgment & Order dated 4.02.11 passed by the learned Single Judge in WP(C) No. 403 of 2005, and are of the considered view that there are serious disputed question of facts. We are also of the considered view that the matter in disputes between the parties in the present writ appeal need to be decided by filing civil suit before the competent Civil Court.

10. From the submission of the learned counsel appearing for the respondent, it is crystal clear that the matter in disputes between the parties is to be decided by a Civil Suit before the competent authority i.e. Civil Court. In other words, the respondent had not disputed the jurisdiction of the Civil Court for deciding the disputes between the parties as far as the existence of the village is concerned.

11. For the reasons as discussed above, we cannot persuade ourselves to interfere with the Judgment & Order of the learned Single Judge dated 4.02.11 passed in WP(C) No. 403 of 2005. In the result, we direct the appellant/writ petitioner to approach the competent Civil Court by filling Civil Suit. Accordingly, this writ appeal is not entertained with the above observations and directions.

12. It is also made clear that the Civil Court in the event of filing of Civil Suit by the appellant/writ petitioner, shall not be prejudiced by the findings of the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai in the Judgment & Order dated 16.06.05 passed in Pol. Appeal Case No. 1 of 2004.