

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,**  
**TRIPURA, MIZORAM & ARUNACHAL PRADESH).**

**SHILLONG BENCH**

**W.P. (C) No. (SH) 403/2005**

Umpyrchin @ Ampyrching Village,  
BPO Umkiang, Jaintia Hills District,  
Presently residing at Nongrim Hills,  
Represented by the Secretary of the Village,  
Shri Johny Suchen

:::Petitioner

**-Versus-**

1. The Jaintia Hills Autonomous District Council,  
Jowai.
2. Executive Committee, Jaintia Hills Autonomous District Council,  
Jowai, Represented by its Secretary.
3. The Dolloi of Rymbai Elaka and his Dorbar, Rymbai,  
Jaintia Hills District.
4. Shri Ham Lamurong,  
S/o F Swer,  
R/o Huroi Village,  
Jaintia Hills District.
5. Lahalein Village,  
BPO Umkiang,  
Jaintia Hills District,  
Represented by its Headman & Secretary.
6. Principal Chief Conservator of Forest,  
Meghalaya, Shillong.
7. Divisional Forest Officer (T),  
Jaintia Hills Division, Jowai.

::: Respondents

**BEFORE**  
**THE HON'BLE MR JUSTICE T VAIPHEI**

For the Petitioner	:	Mr L Lyngdoh, Adv.
For the Respondents	:	Mr HS Thangkhiew, Sr Adv JHADC Mr S Sen, GA Mr L Khyriem, Adv
Date of Hearing	:	14.12.2010
Date of Judgment	:	04.02.2011

### **JUDGMENT AND ORDER**

The legality of the order dated 16-6-2005 passed by the Executive Committee of the Jaintia Hills Autonomous District Council, Jowai, in Political Appeal No. 1 of 2004 declining to interfere with the decision dated 15-7-2003 of the Dolloi of Rymbai Elaka, Jaintia Hills District declaring Umpyrchin @ Ampyrching village of the petitioner as the locality within the jurisdiction of Huroi village under the respondent No. 4 is called into question in this writ petition.

2. The facts of the case, as pleaded by the petitioner, may be briefly noticed at the outset. The petitioner's village is a part of Rymbai Elaka, consists of a mixed population of Pnar-Jaintia and War-Jaintia Scheduled Tribe communities and is, as such, known as Umpyrchin @ Ampyrshing. The prefix 'UM' or 'AM' as per War-Jaintia and Pnar-Jaintia dialects literally means "water" and by whatever nomenclature it is described, they refer to one and the same village. Huroi village under the Headmanship of respondent No. 4 is situated within the Narpuh State Reserve Forest Block-I whereas Umpyrchin village is situated outside the said Reserve Forest. According to the petitioner, the fact that Umpyrchin village is a separate and independent village is proved by the following:

(i) The resolution dated 15-6-1970 passed by the village Dorbar of the respondent No. 5 (Lahalein village) whereby the land with the boundaries described therein upon which situates Umpyrchin village, was gifted to the late Solomon Khonglah for setting up the village;

(ii) The joint memorandum dated 30-1-1985 presented by Huroi, Hingaria, Lejri, Lahalein and Umpyrchin village to the Minister of the Government of Meghalaya;

(iii) Due to ill-health, the said Solomon Khonglah vide the resolution dated 15-6-1993 handed over the charge of the headmanship to Shri Rill Nongpluh, the present Headman, as he had to migrate to Umkiang village to avail of better medical treatment, a fact duly confirmed by his legal heir in his declaration dated 27-8-2005;

(iv) The letter dated 17-4-2004 of 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 Umpyrchin village;

(v) Registration of the Youth Sports Club Border Umpyrchin village under the Societies Registration Act, 1983 vide the Certificate dated 18-11-1997;

(vi) Letters/orders showing receipts of financial grants from authorities of the State by the petitioner village;

(vii) The notification dated 5-8-1983 mentioning the name of Umpyrchin village at Serial No. 13-Narpuh District Council Constituency under Rymbai Dolloiship at Appendix I to the Constitution of the Jaintia Hills Autonomous District Council (Amendment) Rules, 1983;

(viii) The letter dated 27-7-2004 of the respondent 7 addressed to respondent 2 stating that the petitioner village is outside the Narpuh Reserved Forest Block-I whereas the village of respondent 6 is described as an encroacher village of the reserved forest and

(ix) The notification dated 9-3-1918 issued by the Chief Secretary to the Commissioner of Assam describing the boundaries of the Narpuh Reserve Forest obtained by the petitioner from the respondent No. 9 vide the letter dated 4-8-2004.

3. Notwithstanding the aforesaid evidence, it is further averred by the petitioner, the respondent No. 4 is bent upon taking over the village of the petitioner by falsely claiming it to be a locality within the village of Huroi village. To achieve this illegal object, various complaints have been lodged by him before the authorities and the court of law. The dispute as to whether the petitioner village is a separate and independent village or whether this village is a locality of the respondent No. 4 was placed before the respondent No. 3 for adjudication. However, as the petitioner had apprehended that the respondent No. 3 was bias, he by his letter dated 12-4-2003 approached the District Council to ventilate his grievance but to no effect. In the meantime, the respondent 3, as apprehended by him, without hearing him, passed the order dated 15-7-2003 declaring his village as a locality within the jurisdiction of the respondent No. 4. This prompted the petitioner to prefer political appeal before the District Council on 22-7-2003, but when no action was taken even after the lapse of over a year, he approached this Court in WP (C) No. 219(SH) of 2005. This Court by the order dated 16-7-2004 disposed of the writ petition by directing the District Council to hear and decide the representation of the petitioner within a period of two months from the date of receipt of the representation. The petitioner thereafter filed the appeal accompanied by the copy of the said order before the respondent No. 3. The District Council, after sleeping over the matter and on the pain of facing contempt proceeding, finally directed the petitioner to appear before them on 14-6-2005 but without allowing

him to represent his case: he was, instead, threatened, abused and insulted for having approached this Court and for filing contempt petition against them. This was followed by the impugned order purportedly on the basis of the hearing conducted by them on 14-6-2004 without giving him an opportunity of hearing or to adduce his evidence. Contending that the impugned order is mala fide, illegal, arbitrary and perverse and also betrays non-application of mind, this writ petition has been filed by him.

4. The writ petition is contested by all the respondents by filing their respective affidavits-in-opposition. In fact, the respondents 1 and 2 filed their affidavit-in-opposition as well as their additional affidavit. The respondent No. 4 and 5 filed separate affidavits-in-opposition while the respondents 6 and 7 also filed their affidavit-in-opposition. The respondent No. 4 also filed his additional affidavit. As the stance taken by all the respondents in their respective affidavits-in-opposition are virtually one and the same, suffice it to refer to the affidavit-in-opposition and the additional affidavit of the respondents No. 1 and 2. The case of the respondents 1 and 2 is that Umpyrshin is a locality of, and falls under, the administrative control of Huroi village. The land donated to the said Solomon Khonglah was for setting up of a village on the area falling within Lahalein village, and was carved out there from: this was the village set up by the said Solomon Khonglah with the name of Umpyrshin village. According to the answering respondents, the said Solomon Khonglah established Umpyrshin village on the land donated to him by Lahalein village. There are two places with an identical name of Umpyrshin village, the one forming a part of Huroi village and the other carved out of Lahalein village and donated to the said Solomon Khonglah, which is the Umpyrshin village reflected in the memorandum dated 30-1-1985 and not the village over which the petitioner claimed himself to be the Headman. When Shri Ril Nongpluh, father of the

petitioner, started claiming himself to be the Headman of Umpyrshin village, the respondent No. 4 summoned him to the meeting convened by the Durbar of Huroi village on 26-11-2000 in connection therewith, he asked for forgiveness from the Durbar and promised not to repeat the same in future. But when he did not keep his promise, the respondent No. 4 filed a complaint before the respondent No. 3, who by the order dated 5-8-2003 re-affirmed that Umpyrshin is a locality under Huroi village and that the claim of Rill Nongpluh that he is the Headman of Umpyrshin and his further claim that Umpyrshin locality is a separate village was without any basis. It is asserted by the answering respondents that adequate opportunity was given to the petitioner to present his case before the impugned order was passed by the respondent No. 3. It is denied that the petitioner was ever recognized as the Headman of the locality in terms of Section 7(i) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 ("the Act" for short) nor was the locality recognized as a separate village by any competent authority. It is contended that creation of a new village or bifurcation of a village from another is always done with the consent of the inhabitants of the parent village, which is effected by holding a general durbar wherein all concerned are allowed to air their views, and the subject put to vote thereafter, but this was never done in the case of the petitioner village. The Headman of Lahalein village i.e. respondent No.5 in his statement before respondent No.3 has categorically stated that the land mentioned in the gift deed dated 15-6-1970 clearly falls within the boundaries of Lahalein village and also rejected the claim that Shri Rill Nongpluh or his followers ever resided within the area in question: Shri Nongpluh and others are residing within the boundaries of Huroi village. It is, therefore, submitted that the writ petition is devoid of merits and is liable to be dismissed.

5. The sole question which falls for consideration is this writ petition is whether the locality under the name and style of Umpyrchin village is a separate and independent village as claimed by the petitioner. The Executive Committee of the District Council in coming to the conclusion that it is not a separate and independent village took into account the statements of Dolloi of Rymbai, Headman of Lahalein, Headman of Huroi and the Assistant Conservator of Forest, Forest Department, Government of Meghalaya, who were examined by them in the course of hearing of the political appeal. The Headman of Lahalein village stated that the land covered by the Gift Deed dated 15-6-70 on the basis whereof the petitioner claimed to have established Umpyrchin village fell within the boundary of Lahalein village, which is outside Narpuh Reserved Forest and rejected the claim that the petitioner or his followers ever resided in that land. According to the Headman, no one resided within that area of land and the area where the petitioner and others are residing falls within the boundary of Huroi village. The Headman of Huroi village also stated before the Executive Committee that the petitioner used to live and carry on his cultivation activities as one of the villagers of Huroi village and that it was only in 1985 that he shifted to Umpyrchin which happened to form a part and parcel of Huroi village and started proclaiming himself to be the Headman contrary to the custom and usages prevalent in the Elaka. This prompted him to lodge objection with the Dolloi of the Elaka (Dolloi of Rymbai), which, after making physical enquiry and after hearing of all concerned rejected the request of the petitioner for establishment of a village. This was re-affirmed by the Dolloi of Rymbai in the Executive Committee which sat on 16-7-2003, whose decision was communicated to the Administrative Officer. The Executive committee also took into account the stance taken by the State Forest Department that Huroi village fell within Narpuh Reserve Forest whereas Lahalein village is outside the Reserved Forest. It was on the basis of the findings so arrived at that the

impugned order was passed by the Executive Committee of the District Council rejecting the application of the petitioner.

6. In order to prove that the locality of the petitioner is a separate village, the petitioner produced a number of documents including Government correspondences before the Executive Committee, but he has failed to produce a single order issued by the competent authority unambiguously and categorically recognizing that his locality is a separate and independent village. The term "village" is not defined in the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959. The term "village" is defined by Section 2(iv) of Khasi Hills Autonomous District (Administration of Elaka) Act, 1991 to mean an area where a number of houses have been grouped together under one village for administrative purposes. Then, Section 3 of this Act prescribes the procedure for establishing a new village. In terms of this provision, it is the Chief and his Durbar, with the approval of the Executive Committee, which can form a new village by public notification, if the majority of the people of the village or villages so desire. This shows that there can be no unilateral establishment of the new village. The new village has to be established with the knowledge and approval of some public authorities. However, it can be said in favour of the petitioner that this Act came into force only with effect from 17-5-2006 and will have no application whatsoever to the new village which was claimed to be established way back in 1970. But the petitioner is still not yet out of the wood despite this. For, he is not able to produce any document of the appropriate authority recognizing his locality as a separate village. In this connection, we may profitably refer to the definition of the term "village" provided for under Section 2(1)(j) of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 ("the Rules" for short), which is in the following terms:



“(j) “Village” means an entire area within the jurisdiction of each of the existing sirdars or dollois listed in Appendix I annexed and such other area within the syiemships, lyngdohships, sirdarships or wadadarship listed in Appendix II annexed as recognized by the syiemship, lyngdohship, sirdarship or wadadarship as being an area within the jurisdiction of a court, whose decision is appealable to the court of the syiem, lyngdoh, sirdar or wadadar concerned and such other area as may be declared to be so by the District Council;”

7. In my opinion, the definition of the term “village” provided for in the Rules is quite instructive though it is made in the context of administration of justice. From the aforesaid definition, it is amply made clear that the formation or creation of an independent village is not an unilateral act but a bilateral act just as it takes two to a tango. In other words, a self-serving declaration by the petitioner that his village is a separate and independent village is not decisive: what is decisive is its recognition by the appropriate authorities. Nor can there be recognition by implication, which is the case of the petitioner here. He wants the District Council to treat his locality as a separate and independent village on the basis of some correspondences which did not touch upon the question as to whether his locality is a separate and independent village. Admittedly, the locality of the petitioner does not find a place in Appendix I or Appendix II annexed to the Rules. The District Council also has never declared his locality to be a separate and independent village within the meaning of Section 2(1)(j) of the Rules. Even if it is assumed for the sake of argument that the definition of the term “village” provided for in Section 2(1)(j) of the Rules cannot be held applicable in this case also, it is the bounden duty of the petitioner to demonstrate by unimpeachable evidence that there is a categorical recognition by the competent authority of his locality as a separate and independent village.

In other words, the burden of proof is upon him, but he has miserably failed to discharge this burden. As already held by me earlier, the facts and circumstances relied on by him in paragraph 3 of his writ petition fall far short of the proof required by law: they are merely conclusions or passing remarks based on assumptions where there was no occasion to decide if the locality of the petitioner is a separate and independent village. For example, the name "Umpyrchin Village", which finds a place at the Notification dated 05.08.1983, upon which heavy reliance is placed by the petitioner, in the face of dispute raised by the respondents, cannot in the absence of sufficient corroboration, persuade me to hold that this particular village is the village of the petitioner known under the name and style of Umpyrchin village, more so, when a parallel claim is made by the other respondents that there are two localities having an identical name. In this view of the matter, I have no alternative but to hold that the impugned decision of the Executive Committee does not suffer from the vice of illegality or irrationality or procedural impropriety calling for my interference.

8. The result of the foregoing discussion is that there is no merit in this writ petition, which is hereby dismissed. However, on the facts and in the circumstances of the case, I direct the parties to bear their respective costs. Interim order, if any, stands vacated.

**JUDGE**

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