

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)  
SHILLONG BENCH

W.P.(C) No. 250(SH) of 2009

Shri Pongdo Marak  
Nokma, Bangonggiri A'khing IV-56(1)  
Village Bangonggiri, PO  
Bangonggiri, PS Williamnagar,  
East Garo Hills,  
Meghalaya

::: Petitioner

-vs-

1. The State of Meghalaya  
represented by the Chief Secretary to  
the Govt. of Meghalaya,  
Shillong.

2. Commissioner & Secretary  
to the Govt. of Meghalaya  
Forest Department,  
Shillong Meghalaya.

3 The Principal Chief Conservator of Forest,  
Forest Department, Shillong,  
Meghalaya.

4. The Divisional Forest Officer,  
Garo Hills Division,  
West Garo Hills, Tura

5. Deputy Commissioner,  
East Garo Hills District,  
Williamnagar, Meghalaya.  
Respondents

:::

6. Garo Hills Autonomous District Council,  
Tura, Meghalaya

::: Prof Respdt.

W.P.(C) No. 251(SH) of 2009

Shri Deben Marak  
Nokma, Rongrenggiri A'khing IV-48  
Village Rongrenggiri i, PO  
Rongrenggiri, PS Williamnagar,  
East Garo Hills,  
Meghalaya

::: Petitioner

-vs-



West Garo Hills, Tura  
Respondents

...

4. Deputy Commissioner,  
East Garo Hills District,  
Williamnagar, Meghalaya.

5. Garo Hills Autonomous District Council,  
represented by Chief Executive  
Member, Tura

... Prof Respdt.

BEFORE  
THE HON'BLE MR JUSTICE T VAIPHEI

Advocate for the Petitioner : Ms A Paul,  
Mr K Paul, Advs

Advocate for the Respondents : Mr ND Chullai, Sr GA,  
Mr S Dey, SC GHADC

Date of hearing : 23.08.2012

Date of judgment and order : 10-9-2012

JUDGMENT AND ORDER

At the desire of all the learned counsel appearing for the rival parties, this batch of three writ petitions were, for the sake of convenience, jointly heard, and are now being disposed of by this common judgment. I shall first deal with WP(C) No. 353(SH) of 2009, which has a chequered history. In this writ petition, the petitioner is the Nokma of Doracha Akhing, East Garo Hills District. The dispute is about the boundary between Depa Doratcha Akhing on the one hand and Chimanagshi Reserve Forest of the Government of Meghalaya on the other. It may be noted that in **Misc. Case No. 568 of 1983** arising out of **Civil Rule No. 1004 of 1983**, wherein the petitioner was one of the parties, on the application filed by the State of Meghalaya against the Executive Member, In-Charge, Revenue, Garo Hills District Council, this

Court by the order dated 19-8-1988 passed the following order over the disputed boundary:

"Date

O R D E R

19-8-88

The dispute in this petition under Article 226 of the Constitution is relatable to the boundary between Depa Dorcha Akhing No. 53 and Chimbangshi Reserve Forest. As fairly agreed to by learned counsel of all sides we dispose of the application by stating that the aforesaid boundary shall be demarcated by the Deputy Commissioner of the concerned district. While doing so the Deputy Commissioner would take the aid of such officer(s) he would think necessary to carry out the job in question. This would be done in presence of both the sides. The Garo Hills District Council shall also be associated while undertaking the work.

Till the boundary is demarcated as above, status quo regarding possession of the land as existing today shall be maintained.

Sd/- S.P. Rajkhowa  
Judge

Sd/- B.L. Hansaria  
Judge"

2 On 9-6-89, this Court in the connected ***Misc. Case No. 1099/88*** passed another related order in the following manner:

"9-6-89.

O R D E R

The civil rule 1099/83 has been disposed of by this court on 19-8-88. The Deputy Commissioner has demarcated the Boundary in pursuance of the said order. Now the petitioner prays for handing over physical possession as per the demarcation made on 29-3-89/31-3-89. Heard learned Counsel Mr. S.K. Sen on behalf of the petitioner.

It is directed that the Deputy Commissioner, Williamnagar shall depute an officer to hand over physical possession of the encroach land of which the demarcation has been made on 29<sup>th</sup> and 31<sup>st</sup> March'89 under the direction of this court's order dated 19-8-88.

Let the possession be made over within a period of 3 weeks from the date of receipt of this order.

The Misc. Case is disposed of with the above order. Intimate Deputy Commissioner, Williamnagar.

Sd/- S. Haque,  
Judge.

Sd/- H.K. Sema  
Judge.”

3 On 18-9-89, yet another order was passed by this Court in the connected **Misc. Case No. 1099 of 1988**, which reads thus:

**O R D E R**

**“Date  
18-9-89.**

*An order was passed on 18-8-89 to demarcate the boundary between Chinshangshi Reserved Forest and Depa Daracha Akhing No. 53. Sri Sen states that pursuant to this order some demarcation was done on 31-3-1989 and 1-4-89. In support of the submission, the learned counsel has produced a sketch map and also states that the Field Measurement Book would bear his submission. It, however, seems that this demarcation work was undertaken by Assistant Enforcement Inspector and some other officers of the Deputy Commissioner's Officer under the supervision of the Additional Deputy Commissioner. But then the Additional Deputy Commissioner himself is not very satisfied with the aforesaid demarcation work. It has, therefore, become necessary to properly demarcate the aforesaid two lands under the supervision of the Director of Survey, Government of Meghalaya.*

*Let the Director of Survey, therefore, undertake the work, and if during the course of survey, it would be found that the survey undertaken earlier portrays the correct picture and has been duly undertaken, the Director would survey, otherwise a fresh survey would be done in the presence of all parties.*

**I have passed this order after hearing Shri Sen, the learned Counsel for the Petitioner, Shri N.M. Lahiri, Learned Advocate General, Meghalaya for the**

**State of Meghalaya who have agreed to receive this order.**

***Let the survey be done within a period of two months from today.***

***Let a copy of this order be given to the Learned Counsel of both the sides, within two days.***

***Sd/- B.L. Hansaria,  
Judge.***

***Sd/- W.A. Shishal,  
Judge.”***

(Underline for emphasis)

4. The aforesaid order was passed in presence of the then learned Advocate General of Meghalaya, who had also accepted a copy of the order, which amounts to knowledge of the order by the State-respondents, but no appeal was preferred therefrom. Resultantly, this order has attained finality. In compliance with the aforesaid order of this Court, the Director of Survey was again entrusted to conduct the survey of the disputed land: the survey report was submitted by the Additional Director of Survey on 22-12-89. In his report, the Additional Director of Survey acknowledged that the survey conducted by the staff of the Deputy Commissioner was in conformity with the text of the notification of the Akhing land. The Executive Member in-charge of Land and Revenue, Garo Hills District Council thereafter by the letter dated 25-3-1992 asked the petitioner as the Nokma of Depa Doracha Akhing to take possession of the encroached land (*sic*) of the Depa Dorcha Akhing land along the boundary of Chimabangshi Reserve Forest and also asked him to fix boundary pillars/dhips along the boundary line so as to avoid dispute in future. Perhaps, with a view to frustrate the said order of this court, on the application of the respondent No. 2, the Additional District Magistrate, Resubelpara Sub-

Division initiated a proceeding under Section 145 CrPC, which was registered as Misc. Case No. 1 of 1995 on the ground that the ground of illegal felling of trees in the disputed portion of the land between the parties i.e. State Reserved Forest and the Akhingland. By the order dated 4-3-1995, the Additional District Magistrate, Resubelpara placed the said land under attachment under Section 146 CrPC which was followed by another order dated 4-3-1995 closing the proceedings. While attaching the said land, he had observed that the said land in the meantime had been surveyed and that the Forest Department was not satisfied with the report of the survey and that it would be open to the Forest Department to approach the Court for redressal of their grievance, if necessary.

5. It further appears that long after 18 months, the Sub-Divisional Magistrate/Resubelpara by the order dated 7-9-1996 revived the proceedings of Misc. Case No. 1 of 1995 *suo motu* taking the view that the previous proceedings were irregular as the attachment order had been continued without taking any decision on the issue of actual possession. On the basis of the sequence of events preceding the initiation of the said proceedings on 23-1-1995 and the orders passed by this Court on 19-8-88 in **Civil Rule No. 1004 of 1983** as well as the subsequent orders dated 6-8-90 and 13-9-93, the learned Sub-Divisional Magistrate was of the prima facie view that the petitioner herein was in actual possession of the disputed land. Nevertheless, strangely, he gave another opportunity to the Forest Department to put in its claim of actual possession of the disputed area and required them to file an affidavit in that behalf, if any, within 15-10-1995. He also

appointed the In-charge, Dinadubi Outpost as the receiver of the disputed area till finalisation of the proceeding on 16-10-96. He passed another order on 23-9-1996 directing the In-charge, Dinadubi Outpost to immediately conduct a survey of all timber depots in/nearby the land under attachment and seize all the timbers, which, in the opinion of the Assistant Conservator of Forests (respondent 3 herein), were suspected to have originated from the disputed area. This induced the petitioner to file ***Criminal Revision No. 25(SH) of 1999*** challenging the orders dated 7-9-1996 and 23-9-1996 before this Court, which by the order dated 11-9-2003 quashed both the orders. This was followed by the order of the District Magistrate dated 20-2-2004 vacating the order dated 4-3-1995 of the Additional District Magistrate, Resubepara attaching a portion of the Depa Dorcha Akhing land. Despite this, the respondent authorities refused to hand over possession of the disputed land to the petitioner. The repeated representations made by the petitioner to the respondent authorities for possession of the land have proved futile, which prompted him to file this writ petition for appropriate directions. Even the timbers seized from the said land by the respondent No. 3 have not been released to the petitioner.

6. From the undisputed events recorded above, it is more than obvious that the petitioner has not been allowed to enjoy the fruits of the litigation initiated by him till now. Undoubtedly, none of the orders passed by this Court culminating in the order dated 11-9-2003 passed by this Court in Criminal Revision No. 25(SH) of 1999 have ever been challenged by the respondent authorities before a higher Court with the result that the direction of this Court upon them to hand over



possession of the disputed land to the petitioner and to demarcate the boundary between the State Forest Reserved and the Akhing land of the petitioner in accordance with the survey report dated 22-12-1989 submitted by the Additional Director of Survey, has remained unimplemented. In my opinion, there can be no justification for disobeying the order of this Court: the majesty of the law has to be upheld and protected at any cost. Even a slightest impression should not be created in the minds of the litigant public that the order of this Court can be treated with contempt, or flouted by the executive authorities, with impunity. The petitioner has waited over two decades to enjoy the fruits of his litigation. A number of new pleas have been raised in their affidavit-in-opposition to defeat the claim of the petitioner, but upon meticulously going through those pleas, I am of the considered opinion that all these new facts sought to be pleaded by them are matters which might or ought to have been raised in the earlier proceedings. Therefore, the new pleas sought to be raised by the respondent authorities at this belated stage are barred by the principles of constructive *res judicata*: they are, if I may say so, merely a ruse to circumvent or frustrate the rights already accrued to the petitioner in a long line of judicial decisions and by a long passage of time. The respondent authorities cannot be allowed to trample the rights already accrued to a citizen through litigation after litigation. Any attempt by the executive authorities to deny the fruits of litigation already earned by a citizen by following due process of law will result in subversion of the rule of law upon which this democratic republic was firmly established by our founding fathers with their blood, sweat

and tears. No other issue, on the facts and circumstances of the case, need be considered.

7. The offshoot of the foregoing discussion is that WP(C) No. 353(SH) of 2009 succeeds. The respondent authorities are, therefore, directed to hand over physical possession of the Akhing land to the petitioner in accordance with the survey report dated 22-12-1989 submitted by the Additional Director of Survey and release the seized timbers in favour of the petitioner without further loss of time. The entire exercise shall be completed by the respondent authorities within a period of three months from the date of receipt of this judgment. No costs.

**WP(C) No. 250(SH) of 2009:**

8. Coming to the facts of the case in WP(C) No. 250(SH) of 2009, the petitioner, who is the Nokma of Bangonggiri Akhing, is also challenging the occupation of his Akhing land by the State-respondents. According to him, Bangonggiri Akhing has been having specific village boundaries since time immemorial as settled and confirmed by the Deputy Commissioner of the erstwhile undivided Garo Hills District vide his report dated 13-3-1930: the record is still maintained by the Garo Hills District Council in its Revenue Branch at Tura. It is claimed by the petitioner that the Forest Department of Meghalaya has been encroaching upon his Akhing land from time to time, which could not be effectively resisted by the clan people and his predecessor-in-interest as they were illiterate and helpless people. The protests against such encroachments made by the petitioner from time to time were never entertained by the respondent authorities. According to the petitioner, the total area of his Akhing land

encroached upon by the Bangonggiri Reserved Forest is to the extent of about 25,000 bighas, which has caused enormous loss to the villagers and also posed a threat to the peaceful habitation of the people of Bangonggiri Akhing clan, who have been residing thereon since 1930. Ultimately, he filed a petition before the Executive Member, I/C of Land Revenue, Garo Hills Autonomous District Council, Tura on 9-7-2007 complaining the encroachment of his Akhing land by the Forest Department and requesting him to depute a Revenue Officer along with a Mouzadar of the concerned mouza to conduct enquiry and survey of the extent of the encroachment made by the Forest Department.

9. The Executive Member accordingly deputed the Hill Mouzadar to enquire and survey the disputed Akhing land jointly with the officials of the Forest Department. However, none of the officials of the Forest Department participated in the enquiry. The Hill Mouzadar thereafter proceeded with the enquiry and submitted his report dated 23-9-08 together with a detailed map bearing dated 23-9-08 before the Executive Member, I/C, Land and Revenue with the observation that "..... (I)t was found that on top of the indicated area as Reserved Forest in the Akhing map the State Forest Department has further encroached upon the Nokma Akhing land". The Executive Member thereafter passed the order dated 25-11-08 in GDC-Rev. No. 11 A/C of 2008 accepting the said report and requesting the respondent No. 1 to take necessary step to restore the encroached Akhing land to the respective Akhing Nokma. This was followed by the letter dated 30-1-2009 issued by the Secretary, Executive Committee of the District

Council informing the respondent No. 1, 2 and 5 communicating the said order and requesting them to restore the land to the petitioner. The letter was never acted upon by the said respondents. The representations made by the petitioner to the same respondents to that effect from time to time also did not achieve the desired result. It is contended by the petitioner that such inaction or action on the part of the State-respondents amounts to deprivation of his Akhing land without payment of compensation thereby infringing Article 300-A of the Constitution. This writ petition was, therefore, filed by him to direct the respondent authorities to restore possession of the Akhing land to him and to direct them to acquire the Akhing land in accordance with the provisions of the Land Acquisition Act, 1894.

10. The writ petition is opposed by the State-respondents in the Forest and Environment Department, who filed their affidavit-in-opposition. They dispute therein the status of the petitioner as the registered Nokma as also his claim that they encroached upon his Akhing land. They, however, admit that the State Forest Reserved i.e. Rongrenggiri Reserved Forest lies contiguous to the Akhing land of the petitioner. The Reserved Forest was notified as early as 19-6-1883, but the boundary description came to be amended and notified on 29-1-1932: the amendment of the boundary was notified about two years after 13-3-1990 the day when the Akhing boundary of the petitioner was settled. The boundary land corrected and amended on 29-1-1932 was continuously maintained by the State Forest Department and is, therefore, the correct boundary of the State Forest Department, for which the State Forest Department has proper scale of map of its own

Reserved Forests. The Rongrap stream (Chiring) on the Southern side of the unscaled rough map furnished by the petitioner is not the northern boundary of the Rongrenggiri Reserved Forest as per the boundary description and the map of the Rongrenggiri Reserved Forest. The claim of the petitioner on the basis of the outdated rough sketch map that was prepared prior to the amended notification of the accurate Reserved Forests boundary on 29-1-1932, cannot be entertained. The answering respondents also annexed to their affidavit some four documents, which, according to them, substantiate their contentions.

11. It is also averred by the State-respondents that in the year 1993, the Social Forestry Wing of the State Forest Department was offered a plot of land measuring about 30 hectares (2250 bighas) of land contiguous to the Rongrenggiri Forest Reserved for aiding and improving the natural regeneration of the forest in the Akhing land. The petitioner signed the agreement papers with boundary description of the said plot of land with the boundary of the Rongrenggiri Reserved Forest on the one side. The boundary between the Reserved Forest and his Akhing land was not disputed and was accepted by him on the day he signed the agreement on 4<sup>th</sup> March, 1993 for the land offered by him to the State forest Department for aiding natural regeneration as evidenced by Annexures 5 and 6 of the affidavit. The Range Forest Officer of Simsanggiri Range in whose jurisdiction the Rongrenggiri Reserved Forest is located also indicates that the notified boundary is not altered and, as such, the complaint of encroachment is unfounded as shown by the letters dated 4-5-2009 and 17-8-2009. The answering respondents state that the Range Forest

Officer of Simsanggiri has informed the Divisional Forest Officer, Garo Hills Division, Tura that no such encroachment has ever taken place and, as such, the allegation that there was an illegal encroachment by the State Forest Department on the Akhing land of the petitioner is factually incorrect and misleading. According to the answering respondents, the action of the Executive Member, I/C of Land and Revenue is without jurisdiction as he has no authority to entertain or try any suit between the petitioner and the State Forest Department, which is considered to be a non-tribal entity. These are the sum and substance of the case of the answering respondents. Without deciding this writ petition first, I shall also refer to WP(C) No. 251(SH) of 2009 as they involve a common question of facts and of law.

**WP(C) No. 251(SH) of 2009**

12. The case of the petitioner as projected in his pleadings is that he is the registered Nokma of Rongrenggiri Akhing IV-48 upon which the people of the Akhing have been residing since time immemorial and that in the year 1926, the map of the Akhing was settled and recorded by the then Deputy commissioner of the erstwhile undivided Garo Hills District. The boundary line was also settled in terms of the report dated 13-11-1926 of the then Mouzadar, which was subsequently approved by the Deputy Commissioner on 19-11-1926: the record of the boundary is maintained by the Garo Hills District Council, Revenue Branch, Tura. The allegations of the petitioner is that, as in the case of Bangoggiri Akhing land, the Forest Department of Meghalaya have been encroaching upon the Akhing land of the petitioner from time to time despite the protest made by the clan people through his

predecessor Nokma, who were illiterate and helpless. The representations made by the petitioner from the time of his predecessor-in-office having proved futile, this writ petition is now filed by him for appropriate relief. As in WP(C) No. 250(SH) of 2009, the allegations made by the petitioner are strongly denied and disputed by the State-respondents. No separate affidavit-in-opposition was filed by them: they were, however, allowed to rely on the affidavit-in-opposition filed by them in the former case to support their contentions.

13. On going through the claims and counter-claims of the petitioner and the answering respondents filed by them in both the writ petitions in juxtaposition, it becomes obvious, in the face of the serious and complicated dispute raised by them, such disputes, I am afraid, cannot be decided by this Court in a summary proceeding under Article 226 of the Constitution: the dispute so raised can be decided only by adduction of oral and documentary evidence by the rival parties and not on the basis of mere affidavits. This is so because the question as to whether the two Akhing lands in both the writ petitions are encroached upon by the answering respondents or whether the boundaries between the Akhing lands of the petitioners and Rongrenggiri Reserved forest were already settled and notified or not on 29-1-1932 as claimed by the answering respondents, are factual matters, and cannot be determined by examining the documentary evidence produced by both the rival parties. In other words, the rights asserted by the petitioners, are seriously disputed by the State-respondents in the Forest Department. It cannot be over-emphasised

that Article 226 of the Constitution is an extra-ordinary jurisdiction which can only be invoked to enforce an established right and not to establish a legal right. By clever drafting or otherwise, what is essentially a civil dispute cannot simply be converted into a public law litigation for decisions under Article 226 of the Constitution. The writ petitions are, therefore, not maintainable due to disputed question of facts. This reminds me of the observations of the Apex Court in **State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216**, which read thus: (SCC, p. 218, para 7)

*"In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such a seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."*

14. It is, however, contended by Ms. A. Paul, the learned counsel for the petitioner, that Section 11 of the Garo Hills Autonomous District (Social, Customs and Usages) Validating Act, 1958 bars the jurisdiction of a civil court to entertain any suit or proceeding in respect of any matter falling within the purview of the Act, and that both the petitioners have no remedy except by way of filing this writ petition. She vehemently contends that non-suiting the petitioners on the facts and circumstances of these cases will result in gross miscarriage of



justice. I have carefully gone through the provisions of this Act, and am not, however, persuaded to hold that the jurisdiction of a civil court to decide the boundary disputes between the two petitioners and the Forest Department of Meghalaya is barred by Section 11 of the Act. This piece of legislation is about social customs and usages such as succession to the Nokmaship in accordance with the prevalent social customs and usages, and nothing else. Therefore, this contention fails and is accordingly rejected. At this stage, I feel I owe an explanation to the petitioners for dismissing these two writ petitions while allowing the writ petition of the petitioner in WP(C) No. 353(SH) of 200. It must be noted that in WP(C) No. 353(SH) of 2009, the dispute raised therein was already finally settled by this Court in a series of cases referred to therein: those orders have now attained finality. It could, perhaps, be due to the half-hearted contests or prosecutions made by the State-respondents, for which the petitioner therein should not be blamed nor should he be allowed to suffer. The ingenuous attempt made by the State-respondents in that writ petition to ignore or circumvent the decisions of this Court or to re-open the entire matter afresh had to be, and was repelled by me in the interest of upholding the majesty of this Court so that no litigant public return home with the possible idea that the orders of this Court can be flouted or treated with contempt by the State-respondents with impunity. The alternative is the eventual destruction of the rule of law. I cannot allow myself to be presiding over the undermining of the dignity and majesty of law courts of this State, which are established by and under the Constitution of India.

15. The offshoot of the foregoing discussion is that WP(C) No. 250(SH) of 2009 and WP(C) No. 251(SH) of 2009 are not maintainable in the present form for non-exhaustion of alternative civil law remedy, and are, therefore, dismissed. However, on the facts and in the circumstances of the cases, the parties are directed to bear their respective costs.

JUDGE

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