

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

WP(C) No.8(SH)2010

1.Dorbar Shnong Mynthning,
Village, Jaintia Hills District,
Meghalaya.

2. Shri Wolbing Pasleing,
Headman, Mynthning Village,
Jaintia Hills District,
Meghalaya.

3. Shri Wis Mannar,
Secretary, Mynthning Village,
Jaintia Hills District,
Meghalaya.

: Petitioners

versus

1. The Jaintia Hills Autonomous
District Council, Jowai,
Jaintia Hills, Meghalaya.

2. The Executive Committee,
Jaintia Hills Autonomous
District Council, Jowai,
Jaintia Hills, Meghalaya.

3. The Secretary,
Executive Committee,
Jaintia Hills Autonomous District
Council, Jowai, Jaintia Hills,
Meghalaya.

4. Shri Proster Tangliang,
Headman, Samasi Village,
Sumer Patorship, Jaintia Hills
District, Meghalaya.

5. Shri Begin Paslein
Secretary, Samasi Village,
Sumer Patorship, Jaintia Hills
District, Meghalaya.

: Respondents

**B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI**

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| For the petitioner | : Miss B Goyal, Mr K Paul, Ms P Sharma, Mr S Thapa, Ms B Khyriem, Advocates |
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| For the respondents | : Mr Hosul Haque, Mr N Dutta, Sr Adv Mr L Khyriem, Advocate |
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| Date of hearing | : 01.12.2011 |
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| Date of judgment and order | : 27.01.2012 |
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JUDGMENT AND ORDER

Aggrieved by the decision dated 7-1-2010 of the Executive Committee of the Jaintia Hills Autonomous District Council in Remanded High Court Case No. 1 of 2009 setting aside the notification dated 24-3-2008 registering Khlaw Mynthning (also known as “Law-Ri-Sumar”) village of the petitioner, this writ petition has been filed for appropriate relief.

2. The brief facts of the case, as pleaded by the petitioners, are that Khlaw Mynthning village has been a part of the Mynthning village since time immemorial. The petitioners, who are the villagers of this village,

therefore, applied for registration of the said village forest with the boundaries, etc. in the name of Mynthning village in accordance with the provisions of the United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Rules, 1960 (“the Rules” for short). The Pator, Sumer Patorship of Elaka Raliang by a deed of gift and confirmation dated 28-3-2008 and by a deed of declaration dated 28-3-2008 confirmed and recognized the right to ownership and possession of the petitioners over the said Khlaw Shnong Mynthning. The Pator also recommended the registration of the aforesaid village forest in the name of Mynthning village vide his letter dated 11-8-2006 addressed to the Deputy Chief Forest Officer, JHADC. The application for registration was, however, opposed by the respondent No. 4 by filing the written objection dated 19-5-2007 before the authorities. On receipt of the said application for registration and objection, the petitioners were asked to submit the map of the area in question and other particulars in the prescribed form, which was duly complied with. The respondent Nos. 4 and 5, however, filed another objection before the Chief Forest Officer, JHADC, Jowai against the prayer for registration of the said village forest in the name of Mynthning village. The Chief Forest Officer thereafter held an inquiry in which both the parties appeared and their statements got recorded by the Forester, JHADC on 26-8-2007. Spot inquiry was also conducted. The Assistant Forest Officer thereafter submitted his enquiry report dated 12-9-2007 to the respondent authorities.

3. On the basis of the enquiry report and other materials on record, the Chief Forest Officer by his order dated 21-1-2008 rejected the objections filed by the respondent Nos. 4 and 5. The Deputy Chief Forest Officer subsequently issued the notification dated 24-1-2008 calling for objection in writing from any person interested in the registration of the village forest in the name of Mynthning village. No objection was, however, received from any quarter within the next thirty days' notice whereupon the Chief Forest Officer recommended the registration of the village forest in the name of Mynthning village to the Chief Executive Member of the District Council. The Chief Executive Member of the District Council thereafter gave his approval for registration of the village in the name of Mynthning village whereupon the Deputy Chief Forest Officer issued the notification dated 24-3-2008 declaring that the forest named "Khlaw Mynthning" was settled and registered as Khlaw Shnong of Mynthning village. Thereafter the Chief Forest Officer entered the particulars of the forest into the registrar maintained for the purpose of private forest and Law-Ri-Sumar. It is contended by the petitioners that the order of the Chief Forest Officer for final registration of private forest Law-Ri-Sumer cannot be called into question except in the competent court of law and the entry thereof can be modified only in accordance with the order and decree passed by such court.

4. It is also the case of the petitioners that the private respondents filed the review petition dated 1-4-2008 before the Chief Executive Member of the District Council against the said notification dated 24-3-

2008 for cancellation of the registration of the village forest in the name of Mynthning village. The Executive Committee entertained the review petition and surreptitiously got the Chief Forest Officer to issue the notification dated 14-4-2008 bearing No. 53 of 2008 cancelling the registration of the forest village in the name of Mynthning village and directed both the parties to maintain the status quo with regard to the disputed area until further order from the District Council after observing that the dispute pertaining to Mynthning village was the subject-matter of dispute between Mynthning village and Samasi village pending before a Court. Aggrieved by this, the petitioners filed ***WP(C) No. 73(SH) of 2008*** before this Court, which by the order dated 5-5-2008 disposed of the case by directing the respondent authorities to issue show cause to the petitioners and pass appropriate orders after hearing the parties. After the lapse of more than one year and five months, the Executive Committee issued the show cause notice to the petitioners on 6-10-2009, which they promptly did. The main contentions of the petitioners therein were that once registration has been done under the provisions of the Act, such registration could not be called in question and that the Executive Committee had no jurisdiction to entertain the review petition or to cancel/modify the registration of the village forest as Mynthning village. A preliminary objection was also raised by the petitioners subsequently. However, the Executive Committee ignored such objection and passed the impugned order by quashing the notification of registration dated 24-3-2008. This prompted the petitioners to once again approach this Court for appropriate reliefs.

5. No affidavit-in-opposition is filed by the District Council, but the writ petition is contested by them through their standing counsel. The private respondents contested the writ petition and also filed their affidavits-in-opposition. The answering respondents flatly deny that the village forest in question falls within Mynthning village, or has ever been under the continuous possession of the petitioners; they were merely permitted by the Samasi village to settle within Samasi village, which has since time immemorial been the owner in possession thereof. In the year 1987, Samasi village had recognised Mynthning village as a separate village with a Headman on the recommendation of Samasi village. However, the appointment of the Headman of village was subsequently cancelled and the village stood de-recognised, and was thereafter placed under the administrative control of Samasi village for the anti-social activities of the villagers. This was also intimated to the Chief Executive Member of the District Council. The answering respondents also assert that the Deed of Declaration dated 28-3-2007 and the Deed of Confirmation and Gift Deed dated 28-3-2007 were executed by a person who has no authority to do so and who was subsequently suspended on 24-10-2007 for such misdeeds. It is pointed out by the answering respondents that the petitioners have knowingly suppressed the fact that on 15-6-2007, they had filed Title Suit No. 7 of 2007 along with Misc. Case No. 8 of 2007 before the learned Assistant to Deputy Commissioner, Khliehriat against the private respondents concerning the same village forest. This was prior to the notification dated 24-3-2008. The suit was

subsequently transferred to the Subordinate District Council Court, Jowai where it was re-numbered as Title Suit No. 11 of 2009 and Misc. Case No. 7 of 2009. They have also deliberately suppressed the fact that Samasi village also filed Title Suit No. 10 of 2007 against the Mynthning Headman and Secretary questioning the legality of the said Deed of Gift and Confirmation dated 28-3-2007 and also the Deed of Declaration dated 28-3-2007. As the decisions on these two suits will have a direct bearing on the registration of the village forest, there is no illegality in the impugned order directing the parties to wait for the outcome of such suits. It is contended that the Chief Forest Officer, who is a statutory authority, had abdicated his authority in issuing the order dated 21-1-2008 on the instruction of higher authority, and such order, therefore, suffers from non-application of mind and is non-est in the eye of law.

6. It is also the case of the answering respondents that no opportunity of hearing had been given to them nor had they been served with a copy of the order dated 21-1-2008 before the impugned order was issued: on the contrary, individuals who did not have any semblance of rights were issued notices. This was done with the sole intention of depriving them of their legitimate right of being heard. No statutory notice under Rule 11 of the Act was ever issued to them despite their objections against the registration of the village forest right from the very beginning. According to the answering respondents, their initial objections dated 19-5-2007 and dated 21-7-2007 having involved questions of right or title with regard to boundary or ownership on village forest, it was statutorily incumbent

upon the Chief Forest Officer to refer the parties to the appropriate court of law. It is further contended by the answering respondents that as per Rule 7 of the Rules, an appeal against the order of the Chief Forest Officer shall lie to the Executive Committee whose order shall be final: they ought to have approached the Executive Committee to redress their grievance. It is pointed out that the petitioners had challenged the validity of the order dated 7-1-2010 before this Court in *WP(C) No. 8(SH) of 2010*, but their prayer for staying the order was rejected. The writ appeal filed by them in the Division Bench in *WA No. 36 of 2010* was disposed of by restraining both the parties from entering the property in dispute or otherwise from dealing with the property in dispute in any manner till disposal of the writ petition. It is contended by the answering respondents that the review petition filed by them before the Executive Committee was in substance an appeal under Rule 7 of the Rules despite the nomenclature wrongly used therein and, as such, wrong use of nomenclature cannot be a ground to invalidate an order duly passed as long as the jurisdiction is traceable to a statute. The writ petition is devoid of merits and is liable to be dismissed. These are the sum and substance of the case of the answering respondents.

7. Ms. B. Goel, the learned counsel for the petitioners, contends that once the village of the petitioners has been finally registered and finally published in accordance with Rule 8 of the Rules, such registration and publication cannot be called into question except in a competent court of law. According to the learned counsel, the review petition is also ill-

conceived and incompetent inasmuch as there is no provision under the Rules for enabling the Executive Committee to review its own order: review jurisdiction is a creature of statute and cannot be assumed by any Court or Tribunal unless specifically conferred by the legislature. She, therefore, strenuously urges this Court to quash the impugned order and restore the earlier notification registering the village of the petitioners. Md. Hosul Haque, the learned counsel for the District Council, however, supports the impugned order and submits that the impugned order has been passed by the Executive Committee in accordance with law after hearing the parties. Mr. N. Dutta, the learned senior counsel appearing for the private respondents, while defending the impugned order, maintains that the review petition filed by the private respondents was in substance, and must be treated as, an appeal under Rule 25 of the Rules. According to the learned senior counsel, the review petition was drafted by a layman and not by a legal expert and so long as the power to quash the impugned order is traceable to a statute, as is the case here, wrong or misuse of a statutory provision or nomenclature cannot be a ground for non-suiting the private respondents. He further contends that the bar imposed by Rule 9 of the Rules cannot be invoked when the impugned order of registration was issued by the Deputy Chief Forest Officer without even following the procedure laid down by Rules 3, 4, 5 and 6 of the Rules for final registration and final publication of the village of the petitioners; the impugned order of registration is thus a nullity and was rightly declared to be so by the Executive Committee. It is also submitted by the learned senior counsel that the petitioners have conveniently suppressed the

pendency of two civil suits concerning the same subject-matter and managed to obtain the impugned order of registration from the Deputy Chief Forest Officer by concealing such vital facts; the writ petition is liable to be dismissed on this ground alone also.

8. It was the noted jurist, H.M. Seervai, the learned author of the monumental book, *“A Critical Commentary on the Constitution of India”*, who once observed, “Ask the right question, you will never get the wrong answer and ask the wrong question, you will never get the right answer.” In the instant case, the first question to be determined is, whether the Executive Committee has the power to interfere with the final order of registration and final publication of the village in question? The procedures for registration of Private Forest and Law-Ri-Sumar, etc. are laid down in Rule 3, 4, 5, 6, 7, 8, 9 and 10 of the Rules, which are reproduced below:

“3. With the commencement of the Act, the Chief Forest Officer or any other officer empowered by the District Council, in this behalf, shall call upon the Syiems, Sirdars, Dolois, or any other local administrative heads to submit by a prescribed date a list of all Private Forests and Law-Ri-Sumar within the respective jurisdictions, stating the names and addresses of persons owning such forests together with the boundaries and such other particulars of the forests as may be required to be furnished.

4. On receipt of such lists, the Chief Forest Officer shall notify the owners of Private Forests and Law-Ri-Sumar to submit, by a date to be fixed, the particulars in respect of forests owned by them together with a map of the areas, as prescribed in Appendix 1 and any other particulars as the Chief Forest Officer deems necessary.

5. On receipt of the necessary particular furnished by each owner, the Chief Forest Officer shall publish the lists of all Private Forests and Law-Ri-Sumar at the offices of the District

Council as well as at the offices of Syiems, Dollois, Sirdars or any other local administrative head within whose jurisdiction such forests are situated and at such other places as he may consider necessary calling for objections or claims with regard to the ownership, area, boundaries and other particulars of such forests.

6. The Chief Forest Officer, as soon as possible, on receipt of any claim or objection shall either himself, or depute an officer not below the rank of Ranger, to enquire into such objections and claims and other particulars of the forest after due notice to the parties and pass such orders as he may think fit:

Provided that if the claims or objections involve any question or right or title with regard to the area, boundary or ownership of such forests, the parties shall be referred to the appropriate court of law, and if no such action is taken by the parties within a period of three months, the Chief Forest Officer shall proceed with the enquiry in accordance with the procedure hereafter provided.

7. An appeal against the order of the Chief Forest Officer shall lie to the Executive Committee whose order shall be final.

8. On completion of the enquiry under R. 6 or disposal of any appeal, or civil proceeding, if any, as the case may be, the Chief Forest Officer shall enter into a Register to be maintained for the purpose all the Private Forest and Law-Ri-Sumar with the particulars set forth in R. 4 of these rules and also make a final publication of such forests in the manner as prescribed in R. 5.

9. The order of the Chief Forest Officer on the final registration of Private Forests and Law-Ri-Sumar shall not be called in question except in a competent court of law, and the entry in respect of any such forest shall be modified only according to the order or decree passed by such court.

10. Any change in the ownership, area, boundaries or the particulars of Private Forests and Law-Ri-Sumar taking place by reason of transfer, inheritance, gift or otherwise shall be reported by the *registered owners* thereof or person or persons claiming right or interest on such forests by virtue of any valid transaction, to the Chief Forest Officer, within 3 months from the date of such changes taking place, and the Chief Forest Officer shall thereupon make necessary changes in respect of such forests in the Register after such enquiry as he deems necessary:

Provided that an appeal against the order of the Chief Forest Officer shall lie to the Executive Committee and its order on such appeal shall be final.”

(Italic mine)

9. On a plain reading of the provisions extracted above, it become clear that Rule 3 and Rule 10 operate in different fields. Rule 3 speaks of the procedure for registration of Private Forests and Law-Ri-Sumar apparently just after the commencement of the United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 (“the Act” for short). It mandates the Chief Forest Officer or a specially empowered officer to call upon the Syiems, Sirdars, Dolois or any other local administrative heads to submit a list of all Private Forests and Law-Ri-Sumar within their respective jurisdictions by stating the names and addresses of persons owning such forests together with the boundaries and such other particulars of the forests. In my opinion, Rule 3 is concerned with Private Forests and Law-Ri-Sumar, which have been in existence prior to the commencement of the Act and which required to be registered in accordance with Rules 3, 4, 5 and 6 of the Rules. In other words, it is with respect to Private Forests and Law-Ri-Sumar, which were already in existence prior to or at the commencement of the Act, that the provisions of Rules 3,4,5,6,7,8 and 9 were to be applied. If there be any objections or claims with regard to the ownership, area, boundaries and other particulars of such forest, the parties should be referred to the appropriate court of law, but if such reference is not made by the parties within a period of three months, the Chief Forest Officer is to proceed with the enquiry in accordance with the procedure hereinafter provided.

Rule 7 makes it clear that the party aggrieved by the decision taken by the Chief Forest Officer has the right to prefer an appeal before the Executive Committee, whose decision thereon shall be final. Under Rule 8, it is provided that on completion of the enquiry under Rule 6 or on the disposal of the any appeal or civil proceeding, the Chief Forest Officer is required to register the particulars of such private forest together with a map of the areas as prescribed in Appendix 1 and any other particulars deemed necessary by the Chief Forest Officer. Then, in terms of Rule 9, such an order of registration is made final, and cannot be called into question except in a competent court of law.

10. Coming now Rule 10 of the Rules, it is about any change in the ownership, area, boundaries or particulars of Private Forests and Law-Ri-Sumar taking place by reason of transfer, inheritance, gift or otherwise by a registered owner. Such transaction must be reported by the *registered owners* of private forests and Law-Ri-Sumar or by persons claiming right or interest on such forests to the Chief Forest Officer within three months from the date of such transactions whereafter the Chief Forest Officer is to make necessary change in respect of such forests in the Register after such enquiry as he deems necessary. Rule 3 speaks of registration of all Private Forests and Law-Ri-Sumar whereas Rule 10 refers to registered owners of Private Forests and Law-Ri-Sumar. In my opinion, the significance of the insertion of the term “registered owners” by the legislature in Rule 10 can neither be lost sight of nor held to be accidental: there is, after all, presumption that the Legislature inserted every part

thereof for a purpose and the legislative intention is that every part of the statute should have effect. Therefore, a conjoint reading of Rule 3 and Rule 10 unmistakably conveys the message that the registration of Private Forests and Law-Ri-Sumar contemplated under Rule 3 to 9 is about registration of such forests which had not been registered as such prior to or at the time of the commencement of the Act, but which should have been registered under the Rules while Rule 10 prescribes the procedure for registration of Private Forests and Law-Ri-Sumar, which have been registered after the commencement of the Rules in accordance with Rules 3 to 9. Therefore, I hold that Rules 3 to 9 pertain to registration of private forest and Law-Ri-Sumar which were not, for obvious reason, registered before the coming in force of the provisions of the Rules but which should be registered in accordance with the provisions of the Rules after the coming into force thereof, whereas Rule 10 deals with registration of changes in the ownership by transfer or otherwise of such private forest and Law-Ri-Sumar, which have been registered in accordance with the Rules after the coming into force thereof. The registration of Private Forests and Law-Ri-Sumar by the Chief Forest Officer under Rule 10 is appealable before the Executive Committee under the proviso to the rule in question, and the order on such appeal is made final. Secondly, the registration of Private Forests and Law-Ri-Sumar under Rules 3 to 9 is to be made only at the initiative of the Chief Forest Officer and not on the report of the registered owners or on the application of persons claiming their right through the registered owners. In other words, the registration of Private Forests and Law-Ri-Sumar on the report of the registered

owners or on the application of persons claiming through them is not contemplated by Rules 3 to 9. In this view of the matter, as already observed, the provisions of Rules 3 to 9 on the one hand and the provisions of Rule 10 on the other operate in different fields.

11. The first question for consideration is whether the registration of the Private Forest of the petitioners was made under Rules 3 to 9 or under Rule 10 of the Rules? The Deed of Gift and Confirmation in respect of the disputed private forest was executed by the Elaka Durbar Sumer Patorship in favour of the petitioners on 28-3-2007. Interestingly, the report for registration of their private forest by the petitioners was made by the Patorship Sumer on 11-8-2006 vide Annexure-III, that is, prior to the execution of the Deed of Gift and Confirmation, while the petitioners applied for the registration on 11-9-2006, that is also, prior to registration of such Deed. The Forest Officer vide Annexure-VI recommended the registration. On the basis of such recommendation, the Deputy Chief Forest Officer thereafter issued the notification dated 24-5-2007 calling upon interested parties to make objection against the proposed registration. However, the Samasi village through their Headman and Secretary filed their objection before the Chief Forest Officer on 21-7-2007 whereupon enquiry was held by the Assistant Forest Officer, who took the statements of the objectors and the petitioners. After hearing both the parties, the Assistant Forest Officer submitted his report and recommended the registration vide his letter dated 12-9-2007 (Annexure-XI). The Deputy Chief Forest Officer thereafter issued the impugned

notification registering the private forest of the petitioners as “Khlaw Shnong of Mynthning village”. From the aforesaid undisputed facts on record, there is no difficulty in holding that the application for registration of the private forest made on behalf of the petitioners was one filed only under Rule 10 and not under Rule 3. Consequently, I hold that the order of registration and publication was issued under Rule 10 and not under Rule 8 of the Rules. If that is so, then appeal lies against such order of registration under the proviso to Rule 10 of the Rules..

12. The next question which falls for consideration is, whether the petitioners were guilty of suppression of material facts in obtaining the impugned order of registration? From the pleadings of the parties, there can be no dispute that the petitioners filed Title Suit No. 7 of 2007 before the learned Assistant to Deputy Commissioner/Khliehriat against a villager of Samasi village for a decree of declaration of right to the disputed land, which is yet to be disposed of and that the private respondents also instituted T.S. No. 10 of 2007 before the same Court against the petitioners for declaration of their right and title to the same disputed forest. A perusal of the application filed by the petitioners dated 11-9-2006 (Annexure-IV) for registration of the disputed forest obviously did not mention, and could not have, mentioned the pendency of the two suits which were filed only in 2007. It is also worthy of notice that when such application was filed by the petitioners, the Deed of Gift and Confirmation was yet to be executed in favour of the petitioners. In my opinion, technically speaking, there cannot, under such circumstances, be

suppression of material facts. It is also interesting to note that the private respondents did not also raise this issue prior to the issuance of the impugned order of registration. Be that as it may, the petitioners are not yet out of the wood. This necessarily begets the next question for consideration, namely, whether the impugned order passed by the Executive Committee cancelling the registration of the private forest of the petitioners calls for the interference of this Court? As the impugned order was passed by the Executive Committee in exercise of its appellate power under the proviso to Rule 10 of the Rules, there can be no doubt that the Executive Committee was discharging the function of a Tribunal.

13. The law is now well-settled that most of the Tribunals are amenable to the writ or supervisory jurisdiction of the High Court under Article 226 or 227 of the Constitution of India. The scope of interference by a High Court in exercise of its jurisdictions under Articles 226 and 227 of the Constitution once again came up for consideration before the Apex Court in *Surya Devi v. Ran Chander Rai*, (2003) 6 SCC 675. The relevant conclusions of the Apex Court are found at sub-paras 3,4,5 and 6 of paragraph 38 of the judgment, which are extracted below:

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| * | “(1) | * | * | <i>Omitted</i> | * |
| * | | | | | |
| | (2) | * | * | <i>Omitted</i> | * |
| * | | | | | |

(3) *Certiorari*, under Article 226 of the Constitution, is issued for correcting errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its

jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere error of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent of the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(Underlined for emphasis)

14. It is against the backdrop of the legal positions laid down by the Apex Court that I propose to examine the validity of the impugned order of the Executive Committee. The Executive Committee in the impugned order recorded that though the private respondents had raised serious objections against the registration of the disputed forest in favour of the petitioners, the same was not adequately addressed by the Chief Forest Officer before issuing the impugned notification. It also found that the notice for calling objections dated 24-1-2008 was never served upon the private respondents even though such notices were served upon other

villagers: this omission had been done even though it was known to the Chief Forest Officer that the private respondents had been making objection to such application time and again and their earlier objections were not yet formally disposed of. According to the Executive Committee, such omissions vitiated the impugned order of registration being violative of the principles of natural justice and of the provisions of the Rules. The Executive Committee also found that the dispute between the two villages was pending before a competent court of law in a Title Suit in 2007, which was not disclosed when the process of notification and registration was in progress, which amounted to suppression of materials facts. The Executive Committee, therefore, concluded that the impugned notification dated 24-3-2008 was liable to be set aside as there was violation of principles of natural justice and as civil suits were pending before the competent court of law, which were instituted before the issuance of the impugned notification. The Executive Committee thereupon quashed the impugned notification by observing that any registration or notification with regard to the disputed forest should wait for the outcome of the civil proceedings. In my judgment, even though it could not be said with certainty, as observed elsewhere, that there was suppression of material facts, the findings of the Executive Committee that the private respondents were not given notice though notices were served upon other villages and that civil proceedings between the petitioners and the private respondents concerning the disputed forest were pending when the process of notification and registration was in progress, are, at any rate, admitted facts being based on record. Once a

competent civil court is already seized with the matter, which is better equipped to deal with a dispute of this nature and once there is evidence on record to demonstrate that notice was not served upon the private respondents when other villages, which could not evidently be said to be really interested parties, were admittedly notified to file their objections against the proposed registration, the views taken by the Executive Committee that the impugned notification cannot be sustained in law and that the registration of the disputed forest should wait for the outcome of the civil proceedings, are certainly possible or rational views, and not the only possible/rational views, and if so, such views cannot be considered to be irrational views. In exercise of its writ or supervisory jurisdictions, this Court cannot substitute its view for the views of the Tribunal or executive authorities.

15. It is, however, maintained by Mrs. B. Goyal, the learned counsel for the petitioners, that once the process of registration has been completed and final publication of the disputed forest already made, the Executive Committee did not have the jurisdiction to review the notification dated 24-3-2008 issued by the Deputy Chief Forest Officer. It is her submission that review is a creature of statute and cannot be assumed by the Executive Committee, which itself is a creature of statute, and the impugned order dated 7-1-2010, which is totally bereft of jurisdiction, cannot, therefore, be sustained in law. In my judgment, this contention, though attractive at the first blush, does not stand closer scrutiny in the face of the proviso to Rule 10 of the Rules, which provides

for the remedy of appeal against changes in the ownership of Private Forests and Law-Ri-Sumar by transfer or otherwise. As already found by me earlier, the registration sought for by the petitioners with respect to the disputed forest could be done only in accordance with Rule 9 of the Rules, which is about registration of registered Private Forests and Law-Ri-Sumar. In my opinion, registration of the disputed forest on the basis of the Deed of Gift and Confirmation necessarily involves change in the ownership thereof. It is not the case of the petitioners that the disputed forest is not a part of the Private Forest and Law-Ri-Sumar, which have not been registered in accordance with Rules 3 to 9 of the Rules. Therefore, I am of the view that the Executive Committee has the power under the proviso to Rule 10 of the Rules to pass the impugned order in exercise of its appellate jurisdiction despite the use of the term “Review Petition” by the private respondents while approaching the Executive Committee. It is by now a settled law without reference to cases that wrong use or misuse of nomenclature cannot be a ground to quash an order when the power to pass such an order is always referable to a statutory provision. In the instant case, the power is provided for by the proviso to Rule 10 of the Rules. Therefore, the contention of the learned counsel for the petitioners on this count also fails.

16. In the premises set forth above, this writ petition has no merit, and is liable to be quashed, which I hereby do. However, the parties are directed to bear their costs throughout.

JUDGE

daphira

