

THE HIGH COURT OF MEGHALAYA
AT SHILLONG.

WP(C) NO.(SH)85/2012

The Mawkhap Village duly represented by its Headman,
Shri.Piar Singh Nongsiej,
R/o Wawkhap Village,
Jyrngam Sirdarship,
West Khasi Hills District, Meghalaya. :... Petitioner

-Vs-

1. Khasi Hills Autonomous District Council, Shillong, Meghalaya.
2. Chief Executive Member, Khasi Hills Autonomous District Council, Shillong, Meghalaya.
3. The Secretary, Executive Committee, Khasi Hills Autonomous District Council, Shillong, Meghalaya.
4. The Chief Forest Officer, Khasi Hills Autonomous District Council, Shillong, Meghalaya.
5. The Revenue Officer, Khasi Hills Autonomous District Council, Shillong, Meghalaya.
6. Sirdar, Jyrngam Sirdarship, West Khasi Hills District, Meghalaya.
7. U Pius Jahnoh, Agent, Nongkam Ri Kynti, Mawsngi Village, Jyrngam Sirdarship, West Khasi Hills District, Meghalaya.

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. HL Shangreiso,
Mr. P Luikham, Advs.

For the Respondents : MR. VGK Kynta, Sr.Adv SC KHADC,
Mr. L Lyngdoh,
Mr. R Pyngrope,
Mr. HS Thangkhiew, Sr Adv.
Mr.P Nongbri, Advs

Date of hearing : **28.06.2013**

Date of Judgment & Order : **31.07.2013**

JUDGMENT AND ORDER

The present writ petition was filed as late as 2012 for quashing the impugned orders passed far back on 03.02.1996 and 19.02.1996 respectively; and in the writ petition which consists of 24 paras did not mention any plausible reasons for the delay of about 17 years in filing the present writ petition. The writ petitioner was in a deep slumber and waken up after 17 years like a Rip Van Winkle for challenging the impugned orders which were passed on 03.02.1996 and 19.02.1996 respectively. The door of the temple of justice is opened to the litigants, who are due diligent to their rights to access to justice and not to the litigants who are hopelessly lethargic and lack of bonafide in approaching to the temple of justice. The present writ petition is one filed by the writ petitioner after sleeping over his right for 17 years to seek appropriate remedy against the impugned orders dated 03.02.1996 and 19.02.1996; and as there is no explanation as to why he had been sleeping for the last 17 years, the writ petition is liable to be dismissed only on this score. The lack of bonafide of the writ petitioner in filing the present writ petition is being discussed in the later parts of the judgment.

2. Heard Mr. HL Shangreiso, learned counsel appearing for the petitioner and Mr. VGK Kynta, learned senior counsel for the respondents No.1-5, Mr.L Lyngdoh, learned counsel for the respondent No.6 and Mr. HS Thangkhiew, learned senior counsel assisted by Mr. P Nongbri, learned counsel for the respondent No.7.

3. **Factual background:-**

The land-in-question i.e. “Mawsngi” (suit land) is situated within the Sixth Schedule Areas under the Khasi Hills Autonomous District Council (for short ‘KHADC’). It is the case of both the parties that “Mawsngi” is situated in the areas under Jyrngam Sirdarship. It is stated in the writ petition that Jyrngam Sardarship comprises of villages, namely, (i) Mawsngi (ii) Tynghor (iii) Mawmareh (iv) Mawthaw Krah (v) Umthlong (vi) Mawkhap (vii) Langja (viii) Umthlu (ix) Ktieh Thawiar (x) Khylllem Sangrin (xi) Mawribah (xii) Domjarani (xiii) Nongkhlain (xiv) Nongthymai and (xv) Mawjari. The villagers of the said villages derive their source of livelihood from jhum cultivation in the Raid Forests looked after by the heads of the Raid under the management of the local administrative head. There is no private forest or recognized private land (Ri Kynti) belonging to an individual or specific clan in the areas under Jyrngam Sirdarship. Under Section 3 of the United Khasi-Jaintia Hills Autonomous District (Management & Control of Forest) Act, 1958 (for short ‘the Act of 1958’), there are classifications of forests. Section 3 of the Act of 1958 reads as follows:-

“3. Classification of Forest:- The forests to which this Act applies are classified under the following categories:-

- (i) (a) ***Private Forest:-*** These are forests belonging to an individual or clan or joints clan which are grown or inherited by him or them in recognized private lands (Ri Kynti);
- (b) ***Law-Ri-Sumar:-*** These are forests belonging to an individual clan or joint clans (which are grown (or inherited) by him or them in a village or common raj land.

(ii) Law Lyngdoh, Law Kyntang, Law Niam:- These are forests set apart on religious purpose and hitherto managed or controlled by the Lyngdoh or other person or person to whom the religious ceremonies for the particular locality or village or villagers are entrusted.

(iii) Law-adong and Law-shnong:- These are village forests hitherto reserved by the villagers themselves for conserving water, etc; for the use of the villages and managed by the Sirdar or headmen with the help of the Village Durbar.

(iv) Protected Forests:- These are areas already declared protected for the growth of trees for the benefit of the local inhabitants and also forests that may be so declared by rules under this Act.

(v) Green Block:- These are forests belonging to an individual family or clan or joint clans and raj lands already declared as Green Block by Government for aesthetic beauty and water supply of the town of Shillong and its suburbs and also forests that may be so declared by rules under this Act.

(vi) Raid Forests:- These are forest [looked after] by the heads of the Raid under the [management] of the local administrative head. [.....]

(vii) District Council Reserved Forests:- These are forests that may be so declared by the Executive Committee under this Act or the rules made thereunder.

(viii) Unclassed Forests:- These are forests hitherto known as Unclassed State Forests before the commencement of the Constitution of India directly managed and controlled by the Government including any other forest(s) not falling within any of the above classification.”

4. It is the case of the writ petitioner that the suit land “Mawsngi” is not the private land (Ri Kynti) of any clan and it is a Raid Forest. Since the “Mawsngi” is the public land, the then Sirdar of Jyrngam Sirdarship had allowed the ancestors of the writ petitioner to settle within the suit land (Mawsngi). But surprisingly, the then Agent or Manager Shri. Daniel Roy Jahnoh of the Jahnoh Clan claimed that “Mawsngi” forest which falls within the Jyrngam Sirdarship is a Ri Kynti or private land belonged to the Jahnoh Clan. On 23.01.1987, the KHADC asked its Assistant Chief Forest Officer to conduct spot enquiry. The Assistant Chief Forest Officer vide his letter dated 12.02.1987 furnished the spot

enquiry report that all the documents with Shri.Daniel Roy Jahnoh in respect of “Mawsngi” forest were only true and attested copies and there was not even a single original document in his possession. The KHADC vide order dated 07.03.1987 directed its Deputy Chief Forest Officer to make further enquiry into the claim of Jahnoh Clan that “Mawsngi” is their private land belonged to the Jahnoh Clan and accordingly, the said Officer submitted his report dated 13.03.1987 before the respondent No.1-District Council, who under Order No.DC.XIV(M)347/PF/84-87/36 dated Shillong, the 30.07.1987, rejected the said claim of the Agent or Manager Shri.Daniel Roy Jahnoh of the Jahnoh Clan and informed him that there is no Ri Kynti or private lands/forest called “Mawsngi” within the Jyrngam Sirdarship. Being aggrieved by the said order dated 30.07.1987, the said Agent or Manager Shri.Daniel Roy Jahnoh of the Jahnoh Clan i.e. the private respondent No.7 instituted Title Suit before the Court of the Assistant to Deputy Commissioner, East Khasi Hills District, Shillong and it was registered as T.S. No.45(T) of 1987. The said Title Suit was for a declaration that “Mawsngi” land is an ancestral property of the Jahnoh Clan and the said Agent Shri.Daniel Roy Jahnoh had filed the said Title Suit by virtue of authorization made by the Members of his clan vide authorization letter dated 10.01.1987 to represent on behalf of his clan i.e. the Jahnoh Clan to stake claim of the ownership of the suit land called Mawsngi. However, the said suit was dismissed on default vide order dated 04.09.1990.

5. The private respondent No.7 claiming himself as Agent of Jahnoh Clan filed an application dated 14.07.1994 before the District Council i.e. the KHADC for recognition and confirmation of the said suit land called “Mawsngi” as the private land of Jahnoh Clan within the Jyrngam Sirdarship. The Chief Forest Officer of the District Council after enquiry vide his order dated 22.12.1994, informed the respondent No.7 that since no objection came forward from any

quarter despite of notice dated 30.11.1994, the District Council accepted that the forest i.e. "Mawsngi" land is a private forest/land of the respondent No.7. The said order of the Chief Forest Officer of the District Council dated 22.12.1994 (translated into English) is at page 62 of the writ petition and it reads as follows:-

"ENGLISH TRANSLATION

OFFICE OF THE EXECUTIVE COMMITTEE,
KHASI HILLS AUTONOMOUS DISTRICT COUNCIL,
SHILLONG.

No.DC.XIV(m)347/Pt/94/7

Dated 22nd December, 1994.

To,

Shri. Pius Jahnoh,
Agent of Mawsngi,
Jahnoh Clan.

Subject:- Recognition and confirmation the "Mawsngi" forest as the private land of Smti.Kwila, Smti.Srila and the whole clan of Jahnoh Clan within the Hima Jyrngam.

Reference:- Plain dt.14.7.1994 of Shri.Pius Jahnoh.

This is to inform you that as there was no objection against your claim on "Mawsngi forest" as your private land and on your petition which was submitted to this office on the 14.7.1994 and which was notified by this office vide Memo. No.DC.XIV(M)347/75/6 dt.30.11.1976. After this office examined your petition it is found that the claim of Jahnoh clan over the Mawsngi forest is true and correct.

Therefore this office had accepted that the aforesaid forest belongs to your private forest as per these boundaries mentioned below:-

- 1. East: It start from Seet river descended through Synthi river till the junction with Umpor river.*
- 2. South: Its bounded from the junction of Synthi river and Umpor river.*
- 3. West: From the junction of Umpor river and Synthi river ascended upto Umspah.*
- 4. North: It is bounded from Swet river and Spah river and at the top of Spah river and Swet river there is a stone which was laid down by Phalsad Jirsam.*

Sd/-

Chief Forest Officer,
Khasi Hills Autonomous District Council, Shillong."

6. The said order of the Chief Forest Officer of the District Council dated 22.12.1994 is still hold good, inasmuch as, neither the present petitioner assailed it by filing appeal before the competent authority nor the Chief Forest Officer and the District Council had cancelled or modified it. On coming to know the said order dated 22.12.1994, 29 Sirdars representing 29 villages within the Jyrngam Sirdarship held the General Dorbar Meeting on 21.10.1995 and the resolutions of the meeting were conveyed to the then Sirdar of Jyrngam Sirdarship that the meeting adopted a resolution opposing the said claim of the private respondent No.7 that "Mawsngi" is their private land and that there is no private land in the areas under Jyrngam Sirdarship and "Mawsngi" is a purely public land which had been continuously used by the entire public for cultivation for various important crops like rice, ginger, tomatoes, chilly etc. The District Council passed the order, after due consideration of the available records and documentary proofs for recognizing "Mawsngi" as private land i.e. Ri Kynti land, that the status of "Mawsngi" as private land had been recognized as early as 1925 as a special category case under Jyrngam Sirdarship. This order dated 19.02.1996 is impugned in the present writ petition and reads as follows:-

*"OFFICE OF THE EXECUTIVE COMMITTEE
KHASI HILLS AUTONOMOUS DISTRICT COUNCIL,
SHILLONG.*

No.DC/RBF/XIII/1/95/24/402 dated Shillong, the 19th Feb., 1996.

O R D E R S

Subject:- In the matter of the Status of Land Tenure System at Mawsngi under Jyrngam Sirdarship.

The Executive Committee considered the long pending matter pertaining to the status of land tenure system at Mawsngi under Jyrngam Sirdarship. The Executive Committee after due consideration of available records and documentary proofs hereto

decided to recognize the original status of Mawsngi, as a RI KYNTI (Private Land), the status as existed in 1925 as a special category case under Jyrngam Sirdarship.

Further in view of the above, the Executive Committee decided to exempt Mawsngi as per schedule of boundaries below, under Jyrngam Sirdarship from the purview of order No.DC./RBF/XIII/3/86/11 dt.11.11.1985 with immediate effect.

S C H E D U L E

Boundaries of the land "Mawsngi" under Jyrngam Sirdarship:-

EAST: Along Synthi river from Swet river downward to the junction with Umpor river.

SOUTH: Junction of Synthi river and Umpor river.

WEST: From the junction of Umpor river and Synthi river upwards to Umpor river.

NORTH: Swet river and Spah river and at the source of Swet river and Spah river is a boundary stone erected by a Phalsa Jirsam.

*Sd/- D.R. Nongkynrih,
Chief Executive Member,
Khasi Hills Autonomous District Council,
Shillong."*

7. Being aggrieved by the impugned order dated 19.02.2996, the Headmen/Sordar of Tynghor village on behalf of the 15 villages, namely, (i) Mawsngi (ii) Tynghor (iii) Mawmareh (iv) Mawthaw Krah (v) Umthlong (vi) Mawkhap (vii) Langja (viii) Umthlu (ix) Ktieh Thawiar (x) Khyllem Sangrin (xi) Mawribah (xii) Domjarani (xiii) Nongkhlain (xiv) Nongthymai and (xv) Mawjari filed a writ petition i.e. Civil Rule No.1747/1996 before the Principal Seat of the erstwhile Gauhati High Court for quashing the impugned orders dated 03.02.1996 and 19.02.1996. The interest of the villagers of the Mawkhap village i.e. the village of the present petitioner had been represented by the writ petitioner in Civil Rule No.1747/1996. The copy of the writ petition i.e. Civil Rule No.1747/1996 is available at Annexure-R to the present writ petition. The gist of the case of the petitioner in Civil Rule No.1747/1996, was that there is no private

land in the areas under Jyrngam Sirdarship and also there are 15 villages names of which are already mentioned above in areas under Jyrngam Sirdarship; “Mawsngi” is a public land i.e. Raid and residents of Jyrngam Sirdarship had been cultivating within Mawsngi since time immemorial.

8. It is also the case of the writ petitioner in Civil Rule No.1747 of 1996 that the matter came to rest by Order No.DC.RBF/XIII/66/82/23/265 dated Shillong, the 31.08.1985 issued from the Office of the Executive Committee, KHADC, Shillong, that there is no private land in the Elakas mentioned in the said order dated 31.08.1985. The Civil Rule No.1747/1996 was transferred to the Permanent Bench of the erstwhile Gauhati High Court at Shillong and re-registered as WP(C)No.267(SH)2000. Subsequently, WP(C)No.267(SH)2000 was dismissed for default vide order dated 24.09.2001. But an attempt had been made to restore WP(C)No.267(SH)2000 by filing a Misc. application No.94(SH)2006 with a considerable delay of 1,666 (one thousand six hundred sixty six) days. The High Court by passing a reasoned order dated 28.01.2008, dismissed the Misc. Case No.94(SH)2006 for restoration of WP(C)No.267(SH)2000. No appeal had been filed against the said order of the High Court dated 28.01.2008 and accordingly, the order dated 28.01.2008 attained finality.

9. In the present writ petition, filed with a considerable delay of 17 years for assailing the impugned order dated 19.02.1996, it is stated that the present petitioner is authorized by the 15 villagers vide letter dated 20.03.2012 to file the present writ petition. The present petitioner is the Headman of Mawkhap village. But none of the 15 said villagers is from Mawkhap village and those 15 villagers are from four villages, namely: (i) Tynghor (ii) Umthlong (iii) Mawribah and (iv) Langja, whose behalf one Shri.Rihon Singh Janoh had filed the said Civil

Rule No.1747/1996 assailing the present impugned order dated 19.02.1996. As stated above, the said writ petition was ended on dismissal. On plain perusal of the present writ petition and earlier writ petition, it is clear that the present petitioner has no *locus standi* to file the present writ petition as there is no letter of authorization to file the present writ petition on behalf of the said 15 (fifteen) villager for assailing the impugned orders dated 03.02.1996 and 19.02.1996. This writ petition is liable to be dismissed only on this ground also.

10. The petitioner filed the present writ petition, it appears, in the interest of Jyrngam Sirdarship (respondent No.6) that there is no private land in the areas under Jyrngam sirdarship and the suit land "Mawsngi" is the Raid Land under Jyrngam Sirdarship and also that "Mawsngi" is not the private land of Jahnoh clan. Sirdar Jyrngam Sirdarship, West Khasi Hills District, Meghalaya is the respondent No.6 in the present writ petition. The respondent No.6 in his affidavit-in-opposition clearly stated that the petitioner in the present writ petition has totally misconstrued and displayed total lack of knowledge regarding the land tenure system prevailing under the Jyrngam Sirdarship. He further stated that since time immemorial within Jyrngam Sirdarship, there are two systems of land holding, quite apparently unknown to the petitioner, one being Raid Forests and lands and the other being private forests and lands. The former are within the control and management of Jyrngam Sirdarship and in so far as the latter, the management and control lies with their respective clans that own them. In so far as the private forests and lands used in cultivating thereof could only be undertaken on permission sought for from the respective clans on payment of rent, which locally known as "Sewai" to the respective clan. In so far as Mawsngi is concerned, the same was done way back in 1925 i.e.1925 Mawsngi is a private land of Jahnoh Clan. On 12.02.1980, the residents of Mawkhap village i.e. the village of the petitioner had given an undertaking that they shall not act in

any manner prejudicial to the rights of the land owners and the said undertaking was executed in presence of the then Sirdar. Paras No.3, 4 & 5 of the affidavit-in-opposition of the respondent No.6 read as follows:-

“3. That the Deponent strongly opposes the statements made in paragraph 1 of the writ petition. According to the petitioner it is represented by its Headman and as such he could espouse only the causes of itself and the causes of the residents of Mawkhap village whereas in the purported Resolution/Authorization dated 20.03.2012 none of the signatories belong to Mawkhap village. It may be mentioned herein that a previous writ being Civil Rule No.1747 (SH) of 1996 has been preferred by one Shri. Rihon Singh Jahnoh for and on behalf of the residents/villagers of Tynghor village and the same was dismissed for default vide order dated 24.09.2001. Strangely, enough in the aforesaid Resolution dated 20.03.2012, eleven of the signatories are from Tynghor village and none from the petitioner village. It is therefore submitted that the instant proceedings are one and the same as the proceedings of Civil Rule 1747 (SH) of 1996 as such the instant writ proceedings being an attempt to revive the previous writ is totally misconceived, not maintainable under law, bad for suppression of material facts and liable to be dismissed with cost.

4. That in response to the statements made in paragraph 2 of the writ petition, the Deponent states that there is no cogent or reliable evidence to suggest that there is no private forest or private land within Jyrngam Sirdarship. The petitioner herein has totally misconstrued and displayed total lack of knowledge regarding the land tenure system prevailing within Jyrngam Sirdarship. The Deponent states that since time immemorial, within Jyrngam Sirdarship there are two systems of land holding, quite apparently unknown to the petitioner, one being Raid forests and lands and the other being private forests and lands. The former are within the control and management of Jyrngam Sirdarship and in so far as the latter the management and control lies with the respective clans that own them. In so far as the Raid forests and lands all natives and inhabitants of Jyrngam Sirdarship have a right to use and cultivate on them so long they are vacant and upon such use land revenue is paid to Jyrngam Sirdarship. In so far as the private forests and lands use and cultivation thereof could only be undertaken on permission sought from the respective clans, on payment of rent, which locally know as “Sewai”, to the respective clan. The Deponent also states that in respect of private forests and lands within Jyrngam Sirdarship, the Office of Jyrngam Sirdarship has the power and authority as per age old customs, practices and norms to recognize them as such by formally entering and recording the names of the private forests and lands in the names of the respective clans who own, possess, manage and control them. In so far as “Mawsngi” is concerned the same was done way back in 1925. It may be not out of place to mention that on 12.02.1980 the residents of Mawkhap village had given an

undertaking that they shall not act in any manner prejudicial to the rights of the land owners and the said undertaking was executed in presence of the then Sirdar. As such the contention of the petitioner that there are no private lands within Jyrngam Sirdarship is absolutely false, baseless and unfounded.

(Copy of the said undertaking is enclosed and marked as Annexure-1).

5. That in response statements made in paragraph 3 of the writ petition the deponent states that none of the signatories to the authorization letter dated 20.03.2012 are inhabitants of the writ petitioner. Further, the alleged letter dated 15.10.1966 and order dated 04.09.1978 does not relate to the signatories of the purported authorization letter dated 20.03.2012. It is therefore not understood as to how the petitioner is espousing the cause of 15 farmers who are not even residents of the petitioner village. Further, the letter dated 15.10.1966 does not in anyway reflect that the then sirdar allowed some 9 individuals to cultivate within Mawsngi but rather it appears that they have been allowed to settle within Mawkhap village which is the writ petitioner village. Also, the order dated 04.09.1978 allows the inhabitants of Jyrngam Sirdarship to cultivate only within the Raid land of the Sirdarship and it does not in anyway categorically say that there are no private lands within Jyrngam Sirdarship and by no stretch of imagination the same could be construed that "Mawsngi" was declared as a Raid land and it is specifically submitted that the translation of the said order has been made in a manner to suit the case of the petitioner and not in its actual meaning and spirit. It may be mentioned herein that in the translated copy of Annexure B1, the petitioner had mentioned that Jyrngam Sirdarship is within West Khasi Hills whereas in the year 1966 Meghalaya was not bifurcated from Assam and then West Khasi Hills was not in existence but it was part of a consolidated district called "United Khasi Jaintia Hills District", and as such serious questions is raised regarding its authenticity. In any event a bare perusal of the authorization letter dated 20.03.2012 will reveal that not a single individual is from Mawkhap village and as such the locus standi of the petitioner village does not exist."

On perusal of the affidavit-in-opposition filed by the respondent No.6, it appears that the present writ petition filed by the present writ petitioner in the interest of Jyrngam Sirdarship (respondent No.6) had not been accepted by the Jyrngam Sirdarship (respondent No.6) in his affidavit-in-opposition and had stated very clearly that "Mawsngi" is a private land of Jahnoh clan and not the public land within the areas under Jyrngam Sirdarship. In such case, it is not known to this Court where the case of the writ petitioner stands.

11. Respondent No.7, Shri.Pius Jahnoh also filed the affidavit-in-opposition. In the affidavit-in-opposition, the respondent No.7 categorically denied the pleaded case of the petitioner in the writ petition. In the affidavit-in-opposition, it is stated that the earlier writ petition i.e. Civil Rule No.1747/1996, challenging the impugned orders dated 03.02.1996 and 19.02.1996, after transferring it to the Permanent Bench at Shillong, was renumbered as WP(C)No.267(SH)2000. The earlier writ petition was dismissed on 24.09.2001 for default and also the application for restoration had been dismissed by a reasoned order dated 28.01.2008. After a lapse of more than 16 years, the present writ petition is again filed challenging the same impugned orders dated 03.02.1996 and 19.02.1996 on the same set of facts by another person, the present writ petitioner from one of the villages on whose behalf the earlier writ petition i.e. Civil Rule No.1747/1996 was filed. The present petition filed by the present writ petitioner taking a refuge that he is not aware of the earlier writ petition is untenable and uncalled for. There is no reason or explanation for the delay save and except that the writ petitioner is not aware of the order for dismissing the earlier writ petition. As such, the present writ petition is liable to be dismissed without going into the merits of the writ petition. In the affidavit-in-opposition, it is stated that "Mawsngi" had been recognized and registered as a "Ri Kynti" land of Jahnoh clan under the Jyrngam Sirdarship as early as 1925. Paras 3, 4, 5 & 6 of the affidavit-in-opposition of the respondent No.7 read as follows:-

"3. That the deponent states that the instant writ petition is not maintainable in view of the fact that the impugned order dated 19.2.1996 under challenge had been firstly challenged in the year 1996 before the principal seat at Guwahati vide Civil Rule No. 1747 of 1996. The said Civil Rule No. 1747 of 1996 was then subsequently transferred to Shillong Bench and was re-numbered as WP(C)No. 267 (SH) of 2000. The aforesaid writ petition was then dismissed by this Hon'ble Court by order dated 28.1.2008.

Now after a lapse of more than 15 (years), the present writ petition challenging the same order dated 19.2.1996 on the same set of facts has been filed by another person from another village on the pretext that the writ petitioner was not aware of the dismissal order of this Hon'ble Court passed in the earlier writ petition. It is pertinent to mention herein that this Hon'ble Court had dismissed the earlier writ petition on the ground that there was a delay of 1,666 days in filing the application for restoration. The earlier writ petitioner if aggrieved ought to have preferred an appeal against the order dated 28.1.2008 passed by this Hon'ble Court but did not do so for reasons best known. The writ petitioner by taking a refuge that he is not aware of the dismissal order of this Hon'ble Court in the earlier writ petition is untenable and uncalled for. As such, on the ground of delay, the instant writ petition is liable to be dismissed without going into merits of the petition.

4. *That with regard to the statements made in paragraph 1 of the writ petition, the writ petition is not filed for the cause of the villages under Jyrngam Sirdarship but mainly for personal interest. Further, it is pertinent to mention herein that in the purported resolution dated 20.3.2012, none of the signatories belong to Mawkhap village. In fact 11 (eleven) of the signatories in the resolution are from Tynghor village and none from the petitioners village. It is pertinent to state herein that the earlier writ petition being WP(C)No. 267 (SH) of 2000 was filed by one U Rihon Singh Jahnoh for and on behalf of the residents of Tynghor village which was dismissed by this Hon'ble Court.*

5. *That the deponent denies the correctness of the statements made in paragraph 2 of the petition and the deponent states that all together there are 32 villages under Jyrngam Sirdarship. The list of villages is given under the Assam & Meghalaya Autonomous Districts (Constitution of District Council Rules, 1951). It is correct to say that Jyrngam Sirdarship is composed of 50 villages. Within Jyrngam Sirdarship, there are – (1) Ri Kynti lands i.e. private lands as well as (2) Ri Raid lands or community lands. It is incorrect to say that there are no 'Ri Kynti' lands within Jyrngam Sirdarship. Ri Kynti lands had been in existence since time immemorial like 'Mawsngi' of the Jahnoh clan, 'Nongkyndang' of the Umlang Clan, 'Nongdiengkain' of the Nongsting Clan. This has been stated by U Mat Lyngdoh and U Prang Lyngdoh in Misc. Pol Case No. 64 of 1921 before Shri David Roy, the then Sub-Deputy Collector, Khasi & Jaintia Hills, Shillong. Furthermore, on 14.3.1927, the then Deputy Commissioner, WA Cosgrave, allowed the petition of U Kid Jahnoh of the Jahnoh Clan, who is the deponent predecessor for registration of the land known as Mawsngi in Misc. Pol Case No. 32 of 1927. The ancestral land known as 'Mawsngi' since time immemorial belonged to the Jahnoh Clan as a Ri Kynti land within Jyrngam Sirdarship, Mawsngi land has been owned and under the control and management of the Jahnoh clan.*

6. *That the deponent denies the correctness of the statements made in paragraph 3 of the petition. The deponent states that the*

land known as 'Mawsngi' since time immemorial belonged to the Jahnoh clan as a Ri Kynti land within Jyrngam Sirdarship. In 1952, the ancestors of the jahnoh Clan, registered the Mawsngi land with U Rising, the then Sirdar of Jyrngam Sirdarship. This was done under the management of U Soid Lyngdoh and U Kid on behalf of the Jahnoh Clan. The then Sirdar also observed that there had been no objection to registration of the land and after he had made inquiry from the villages. Further, the authenticity and genuineness letter dated 15.10.1966 is doubtful in as much as at that relevant point of time the district of West Khasi Hills was not in existence since even the State of Meghalaya was still under State of Assam."

12. The United Khasi-Jaintia Hills Autonomous District (Management & Control of Forests) Rules, 1960 (for short 'the Rules of 1960'), was framed under Section 34 of the said Act of 1958. Chapter-1 of the Rules of 1960 dealt with registration of private forest and Law-Ri-Sumar. Under the said Rules of 1960, the Chief Forest Officer is competent to pass the order for registration/recognition of the private forests/private lands (Ri Kynti). Against such order of the Chief Forest Officer, an appeal lies to the Executive Committee, whose order shall be final. Rules 3, 4, 5, 6 & 7 read as follows:-

“3. With the commencement of the Act, the Chief Forest Officer or any other Officer especially 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-R-Sumar within their respective jurisdiction-stating the names and addresses of persons owing 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 I and any other particulars as the Chief Forest Officer deems necessary.

5. On receipt of the necessary particulars 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 Syiem, Dollois, Sirdars or any other local administrative bead 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 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 hereinafter provided.

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

In the case in hand, the Chief Forest Officer, who is the competent authority under the said Rules, 1960 under his said order dated 22.12.1994, had recognized or registered “Mawsngi” as a private land (means Ri Kynti) of Jahnoh Clan. The impugned order dated 19.02.1996, is the order of the District Council simply recognizing the original status of the “Mawsngi” as a private land of Jahnoh clan, as it is existed in 1925 as a special category case under the Jyrngam Sirdarship. As stated above, the said order of the competent authority i.e. 22.12.1994 had attained finality, inasmuch as, as on today, nobody challenged the said order nor the competent authority had reviewed or modified the same.

13. Learned counsel for the respondents in support of their contentions, that as the present writ petition had been filed with a considerable delay of 17 years without showing any plausible reasons or explanations for the delay, writ petition is liable to be dismissed, referred to the decision of the Apex Court in ***Life Insurance Corporation of India & Ors vs. Jyotish Chandra Biswas: AIR 2000 SC 3666***, wherein the Apex Court held that:-

“5. It was pointed out to us that the respondent had not raised this ground before the learned single Judge and as such no fault could be found with the order of the learned single Judge. It was further urged on behalf of the appellants that the learned single Judge was right and justified in dismissing the writ petition on the ground of delay and laches when there was absolutely no explanation whatsoever for inordinate delay of about six years in filing the writ petition; the respondent either had accepted or reconciled with the order of termination of his services by keeping quiet for a period of five years and thereafter seeking for his re-employment in the Corporation.

7. The order terminating the services of the respondent was passed on 28.1.1969. The writ petition was filed challenging the said order on 25.3.1975, almost after a period of six years. There was no explanation in the writ petition whatsoever for this inordinate delay. The respondent sought for his re-employment in the Corporation by his letter dated 9.1.1974 almost after a period of five years from the date of termination of his services. It only indicated that he accepted the order of termination of his services, if not expressly but impliedly. In the writ petition no ground was raised as to deprivation of right of appeal to the respondent against the order of the termination of his services. It is not the case of the respondent that he was denied any opportunity offending principles of natural justice. Inquiry was held pursuant to the charge sheet; witnesses were examined; and even the respondent examined three witnesses on his behalf. The Inquiry Officer looking to the evidence brought on record found the respondent guilty of the charges. It was also not shown that any prejudice was caused to him in the inquiry. The Disciplinary Authority concurring with the findings recorded by the Inquiry Officer, after giving further opportunity to the respondent, passed the order terminating the services of the respondent. These being the facts and circumstances of the case, in our opinion the learned single Judge was right in dismissing the writ petition. We find that the order of the learned single Judge is a detailed and considered one. We find it difficult to accept the observations made by the Division Bench of the High court extracted above that the order passed by the learned single Judge was laconic. When there was no explanation whatsoever given by the respondent in the writ petition for delay of about six years, the learned single Judge was right in saying so and dismissing it. When the ground that the respondent was deprived of a right to appeal was not taken before the learned single Judge either in the writ petition or in arguments, the Division Bench was not right and justified in saying that the learned single Judge did not assign any reason whatsoever in support of his judgment in this regard. We fail to understand how such a non-existing ground could be considered by the learned single Judge.

14. The learned counsel for the respondents further contended that the writ petition is liable to be dismissed as it is involved disputed question of facts. In support of their contentions, they referred to the decision of the Apex Court in ***State of Madhya Pradesh & Ors vs. M/s M.V. Vyavsaya & Co.: AIR 1997 SC 993.***

15. As the earlier writ petition i.e. WP(C)No.256(SH)2000 challenging the same impugned orders dated 03.02.1996 and 19.02.1996 had been dismissed on default as far back as 15 years ago, the present petitioner cannot file the present writ petition for the same course of action i.e. for the same impugned order dated 19.02.1996. The principles underlying Rule 9 of Order IX and Sub-Rule (1) of Rule 1 of Order XXIII of the CPC which are founded on public policy are to be adopted in respect of the writ petitions filed under Articles 226/227 of the Constitution of India also. On this point reference may be made to the decision of the Apex Court in ***Sarguja Transport Service – Versus – State Transport Appellate Tribunal, M.P., Gwalior, and Others: (1987) 1 SCC 5,*** wherein, the Apex Court held that:-

“3. Aggrieved by the above order rejecting the writ petition at the stage of admission, the petitioner has filed the above special leave petition requesting the court to grant the special leave to prefer an appeal against the order of the High Court.

4. The main question urged before this Court by the learned counsel for the petitioner is that the High Court was in error in rejecting the writ petition out of which this case arises, on the ground that the petitioner had withdrawn the earlier writ petition in which he had questioned the order passed by the Tribunal on October 4, 1985 without the permission of the High Court to file a fresh petition. It is urged by the learned counsel that since the High Court had not decided the earlier petition on merits but only had permitted the petitioner to withdraw the petition, the withdrawal of the said earlier petition could not have been treated as a bar to the subsequent writ petition.

5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, Rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by sub-rule (1) thereof, as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants 'withdraw' his suit or abandon a part of his claim. The second category was governed by sub-rule (2) thereof which provided that where the court was satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former Rule 1 of Order XXIII of the Code provided that where the plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in sub-rule (2) he would be liable to such costs as the court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word 'withdrawal' in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of Rule 1 of Order XXIII of the Code now reads thus:

Rule 1. Withdrawal of suit or abandonment of part of claim -
(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

* * *

(3) Where the court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for following the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect

of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

6. It may be noted that while in sub-rule (1) of the former Rule 1 of Order XXIII of the Code the words "withdraw his suit" had been used in sub-rule (1) of the new Rule 1 of Order XXIII of the Code, the words 'abandon his suit' are used. The new sub-rule (1) is applicable to a case where the court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. In the new sub-rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the court is empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) of the new Rule 1 of Order XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of claim without the permission referred to in sub-rule (3), he would be liable for such costs as the court might award and would also be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

*7. The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from*

abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.

9. *The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the*

Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

16. For the foregoing reasons, the present writ petition is dismissed.
The parties are to bear their respective costs.

JUDGE

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