

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) NO. 6/2012

Kalben Sangma,
S/o (L) Mangdon Momin,
Nokma of Asil Akhing No.IV-49,
East Garo Hills, Meghalaya.

:::: Petitioner

-Vs-

1. Garo Hills Autonomous District Council,
through the Secretary, Executive Committee,
Tura.
2. The Chief Executive Member,
Garo Hills Autonomous District Council, Tura.
3. Executive Member,
I/c Land & Revenue,
Garo Hills Autonomous District Council, Tura.
4. Revenue Officer,
Garo Hills Autonomous District Council, Tura.
5. Sr. Assistant Settlement Officer,
Garo Hills Autonomous District Council, Tura.
6. Shri.Jinsang Marak,
Nokma, Sokadamgiri Akhing,
Village Sokaddam,
East Garo Hills, District.
7. Rangjam Sangma, (Lt) Nokma of
Ronggribagiri Akhing, village
Rongribogiri, East Garo Hills.

:::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. P Nongbri, Adv.
For the Respondents	:	Mr. S Dey, SC, GHADC for respts.1-5 Miss. SG Momin, Adv for respt.No.6 None appears for respt.No.7
Date of hearing	:	27.09.2013
Date of Judgment & Order	:	27.09.2013

JUDGMENT AND ORDER(ORAL)

Heard Mr. P Nongbri, learned counsel for the petitioner and Mr. S Dey, learned counsel for the respondents-District Council. Also heard Miss. SG Momin, learned counsel for the respondent No.6. None appears for respondent No.7 without giving any reason.

2. This is the Fourth time the parties had approached this Court for the same subject matter or for the same disputes i.e. boundary disputes between 2(two) Akhings land namely, Asil Akhing for the petitioner and Sokaddamgiri for the private respondent No.6. In the first writ petition i.e. Civil Rule No.744/1989, this Court after hearing the learned counsel appearing for the parties including the Standing Counsel for the District Council, directed the District Council authority to follow the fundamental principles of judicial procedure laid down in ***Smti. Dore Sangma & Ors v. Chief Executive Member, Garo Hills District Council, Tura & Ors*** reported in ***(1988) 2 GLR 120***. The fundamental principles of judicial procedure in deciding the disputes between the parties are:-

(i) Framing of issues i.e. point of disputes between the parties;

(ii) Opportunity to lead evidence on the issues to the parties by oral as well as to take documentary evidence; and

(iii) Hearing of the parties themselves or through their lawyers, if engaged.

3. For deciding the disputes between the parties, the District Council Court has to see, what is the real disputes between the parties and the real disputes between the parties are to be found out by the Court after perusal of the respective pleadings of the parties i.e. application filed by the petitioner as well as the written statement filed by the opposite party/respondent. For the

settlement of the issues, the learned court, if necessary, may even hear the parties over and above perusal of their pleadings. The learned court cannot decide the case without knowing what are the real issues to be decided or without knowing the disputes between the parties. For deciding the disputes between the parties, it is the basic fundamental principles of judicial procedure that the parties should be given an opportunity to produce or to lead evidence in support of their respective cases. It is a settled law that the parties cannot be condemned unheard. If the parties are not given an opportunity to put up their respective cases, it amounts to condemning the party unheard. After allowing the parties to produce their evidences in support of their cases, the issues framed by the Court i.e. the disputes between the parties have to be decided by giving reasons.

4. In a case of boundary disputes of Akhing lands between the parties before the District Council Court, the District Council Court has to see what are the materials documents in support of their claims for the boundary. The court also should ask the parties to produce evidences in support of their claims for boundary. Only after deciding the boundary disputes between the 2(two) Akhings land by following the procedure indicated above, the authority concerned shall have to go to the spot for erecting dhip. The dhip should be erected in the presence of both the parties and both the parties should be asked to present at the spot at the time of erecting the dhip. Erection of the dhip cannot be postponed indefinitely because of none appearance of one of the parties. As such, notice should be served in the manner prescribed by law to the parties that erection of the dhip will be made on a particular date and time. Even after receiving the notice, one of the parties does not appear, it will be at his peril. The authority when erecting the dhip should be assisted by a Revenue Officer or Gazetted Officer, who have the expertise in the field of survey.

5. A memorandum should also be prepared for erection of dhip. Memorandum should be prepared by the Executive Member, Garo Hills Autonomous District Council (for short 'GHADC'), Tura with the assisted of a Revenue Officer having expertise in the field of survey. In this given case, the Assistant Settlement Officer as directed by the Executive Member, Land & Revenue had erected the dhip on three occasions and the reports submitted by the Assistant Settlement Officer after erecting the dhip are disputed by the parties but surprisingly at the time of erection of dhip on the earlier three occasions, one of the parties was absent. This may be the reasons that erection of dhip had been objected by the parties. Over and above, the report submitted by the Assistant Settlement Officer for erecting the dhip is not supported by the memorandum. The memorandum for erection of dhip should contain the particulars of the fixed points with reference of which the dhip can be found out in the spot. Mr. S Dey, learned counsel for the District Council very frankly submits that he will have a conference with the Executive Committee, GHADC, Tura for a discussion as what is meant by the "*fundamental principles of judicial procedure*" laid down in deciding the disputes or the cases regarding Akhing matters.

6. In the above factual backdrop, the District Council is directed to decide the boundary disputes between the 2(two) Akhings land i.e. *Asil Akhing for the petitioner and Sokaddamgiri for the private respondent No.6* in the manner indicated above. If necessary, the respective counsel appearing for the parties may also be allowed to present even at the time of fixing the dhip indicating the boundary between the 2(two) Akhings land. Mr. S Dey, learned counsel for the District Council also makes an assurance that the District Council shall decide the boundary disputes between the 2(two) Akhings land by following the fundamental principles of judicial procedure laid down in ***Smti. Dore Sangma & Ors v. Chief Executive Member, Garo Hills District***

Council, Tura & Ors reported in **(1988) 2 GLR 120**. This Court hopes and trusts that both the parties shall cooperate with the Executive authority in finalizing and deciding the boundary disputes between the 2(two) Akhings land. For enabling the District Council to decide the boundary disputes between the 2(two) Akhings land afresh, the said impugned letter/report dated 31.10.2011 signed by the Revenue Officer, GHADC, Tura is hereby set aside.

7. With the above observations and directions, this writ petition stands disposed of.

JUDGE

LMM