

**THE HIGH COURT OF MEGHALAYA
AT SHILLONG.**

CRP. No. 43 of 2013

1. Shri Proster Tangliang,
Resident of Samasi village,
Jaintia Hills District
 2. Shri Begin Paslein,
Resident of Samasi village,
Jaintia Hills District
- : Petitioners

-Vrs

1. Shri Wolbing Paslein
Headman Mynthning,
Mynthning village,
Jaintia Hills District
 2. Shri Wis Mannar,
Secretary Mynthning,
Mynthning village,
Jaintia Hills District
- : Respondents

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

For the Petitioners : Mr. B. Bhattacharjee, Adv

For the Respondents : Mrs. B. Goyal, Adv

Date of hearing : **28.11.2013**

Date of Judgment & Order : **28.11.2013**

JUDGMENT AND ORDER (ORAL)

The instant petition is directed against the Impugned Order dated 16.07.2013 passed by the Judge, District Council Court, Jowai in MISC. CIVIL APPEAL No. 2 of 2013.

2. The petitioner's case in a nutshell is that:

"The brief facts of the case are that the petitioners had instituted a title suit on behalf of Samasi village in Village Court, Elaka Raliang, Raliang Jaintia Hills District for declaration of ownership, right and title which was numbered as Title Suit No. 1 of 2007 along with a Miscellaneous application for injunction which was registered as Misc. Case No. 1 of 2007, the Title Suit and the Misc.

Case was subsequently renumbered as Title Suit No. 20 of 2012 and Misc. Case No. 17 of 2012. Thereafter the respondents as plaintiffs then instituted a Title Suit along with a Miscellaneous application for injunction which was registered as T.S. No. 7 of 2007 and a Misc. Case No. 8 of 2007 before the Assistant to Deputy Commissioner, Khliehriat against the petitioners the Title Suit and the Misc. Case was subsequently renumbered as Title Suit No. 11 of 2009 and Misc. Case No. 7 of 2009. The petitioners thereafter as plaintiffs then instituted another Title Suit along with a Miscellaneous application for injunction which was registered as T.S. No. 10 of 2007 and Misc. Case No. 11 of 2007 before the Assistant to Deputy Commissioner, Khliehriat the Title Suit and the Misc. Case was subsequently renumbered as Title Suit No. 6 of 2012 and Misc. Case No. 13 of 2012.

The present dispute had also traveled up to the Hon'ble Supreme Court which vide order dated 12.5.2010 passed in Special Leave to Appeal (Civil) No. 11920/2010 was pleased to transfer all the aforementioned cases to the file of the Presiding Officer Subordinate District Council Court, Jowai and further directed the three suits be proceeded with analogously.

Thereafter, both parties filed their written statement and show causes and the matter was fixed for hearing on the injunction application of both the petitioners as well as of the respondents. After oral submission the petitioners as well as the respondents filed their respective written argument and the Learned Lower Court was pleased to fix 14.9.2012 for local inspection of the suit land. Due personal unavoidable compelling circumstances the counsel for the petitioners could not attend the local inspection and has filed an adjournment application on 14.9.2012 which was duly received by the Presiding Officer prior to proceeding for the local inspection. That the counsel for the petitioners also verbally informed the Presiding Officer his inability to attend the local inspection one day prior to the date of local inspection and also informed him that the petitioner No. 2 was not well in spite of that fact the Presiding Officer decided to proceed with the local inspection on the date fixed.

The trial court vide common order dated 7.12.2012 was pleased to pass an interim injunction order restraining the petitioners from entering, using or extracting coal from the suit land and was further pleased to make the interim injunction order absolute based on the local inspection that was conducted by the trial court which was attended only by the respondents. Entire findings of the trial court in granting injunction was based on possession and the same was arrived at by the trial court based on the materials that were present/lying in the suit land without ascertaining/establishing as to who is the owner of the same and as to whether the same has been placed in the suit land legally or illegally. The trial court arrived at a perverse finding in as much as the entire observations and findings were based solely on the contention of the respondents who were only present in the local inspection and that too without establishing as to who was in actual possession of the suit land all along.

The petitioners being aggrieved by the order dated 7.12.2012 and memorandum of inspection report dated 28.9.2012, they preferred a civil revision before this Hon'ble court which was

registered as Civil Revision No. 1 of 2013. This Hon'ble court vide order dated 11.1.2013 was pleased to pass a status quo order in respect of the suit land. Thereafter this Hon'ble Court vide order dated 17.5.2013 was pleased to remand the matter to the Judge District Council Court, Jowai and to treat the Civil Revision filed by the petitioners as an appeal, further it was also directed that parties should maintain their own possession and not to disturb each other.

After the matter was remanded by this Hon'ble Court, the same was fixed on 13.6.2013 for hearing on the appeal and accordingly the matter was heard and posted for judgment and order on 4.7.2013. During the pendency of the appeal for judgment and order, the respondents filed an application before this Hon'ble Court for clarification of the order dated 17.5.2013. This Hon'ble Court by order dated 1.7.2013 was pleased to reiterate the order dated 17.5.2013 and was further pleased to direct the Judge to look into the matter and if necessary to send for inspection. By order dated 4.7.2013 the Judge, District Council, Jowai was pleased to direct Smti. V. Kyndiah, Presiding Officer, Subordinate District Council Court, Jowai to conduct a local inspection in connection with alleged trespass by the parties in the suit land and to submit the report by 9.7.2013. Accordingly on 6.7.2013 the local inspection was conducted by the Presiding Officer, Subordinate District Council Court, Jowai in presence of the parties.

The Judge District Council Court, Jowai vide order dated 16.7.2013 was pleased to dismiss the appeal of the petitioners and was further pleased to uphold the injunction order passed by the trial court. Further in the inspection report submitted Presiding Officer, Subordinate District Council Court, Jowai it has been alleged that the petitioners had encroached from the western side of the suit land whereas it is an admitted fact that the suit land is claimed by both the parties who are claiming that they are in possession of the same and both the parties are working on it.

As such, being aggrieved by the impugned order dated 16.7.2013 passed by the Judge, District Council Court, Jowai dismissing the appeal of the petitioners and the inspection report dated 9.7.2013 passed by the Presiding Officer, Subordinate District Council Court, Jowai and the petitioners have approached this Hon'ble Court praying for quashing and setting aside the impugned order dated 16.7.2013 and the inspection report dated 9.7.2013".

3. Mr. B. Bhattacharjee, learned counsel appearing for and on behalf of the petitioner submits that the Judge, District Council Court, Jowai while hearing the appeal against the injunction order passed by the Presiding Officer, Subordinate District Council Court, Jowai dated 07.12.2012 reaffirmed the order. The learned counsel further contended that from the contents of the order passed by the Presiding Officer, Subordinate District Council Court, Jowai while granting injunction, it is apparent that the court has mostly relied on local

inspection and did not mentioned clearly the materials available before him for granting such injunction.

4. Being aggrieved by the order passed by the Presiding Officer, Subordinate District Council Court, Jowai, the petitioner approached the Appellate Court Judge, District Council Court, Jowai by way of an Appeal. The learned Judge, District Council Court, Jowai also reaffirmed the order of the Presiding Officer, Subordinate District Council Court, Jowai without applying any judicial mind of his own. Therefore, he prays that the Impugned Order dated 16.07.2013 needs to be set aside.

5. On the other hand, the learned counsel, Mrs. Goyal appearing for and on behalf of the respondents argued that the learned Judge, District Council Court, Jowai has applied its mind and passed necessary order, so there is nothing wrong in the order. The learned counsel further argued that the Presiding Officer, Subordinate District Council Court, Jowai has passed the order on the basis of the pleadings available before him as well as the local inspection conducted by him, so the petition may be dismissed.

6. I have perused the Impugned Order in question and after perusal, it appears to me that the injunction order was passed by the Presiding Officer, Subordinate District Council Court, Jowai mostly based on local inspection which, in my view is not permissible in law. There is no Bar for local inspection, but it must get support from the materials on record. I also observed that in the Impugned Order, specific discussion has not been made about the 3(three) golden principles for granting injunction. Therefore, I am of the view that the matter needs to be re-considered by the Judge, District Council Court, Jowai and to pass the order taking into consideration of the materials, facts and other available facts in accordance with law.

7. For the reasons discussed above, the Impugned Order dated 16.07.2013 passed in MISC. CIVIL APPEAL No. 2 of 2013 is hereby set aside and the case is remanded back to the Court of the Judge, District Council Court, Jowai for re-consideration and to pass necessary order applying his independent mind. In the meantime, both the parties are directed to maintain their possession

as on today till the matter is finally decided by the Judge, District Council Court, Jowai.

8. With these observations and directions, the instant Civil Revision petition is allowed and stands disposed of.

JUDGE

D. Nary