

THE HIGH COURT OF MEGHALAYA

WP(C) No. 127 of 2013

Mawthungkper Village, represented by its elected Sirdar/Headman Shri Korne Jaid Kharbani, son of (L) Miei Jyndiang, aged about 80 years, resident of Mawthungkper village, Nongstoin West Khasi Hills District, Meghalaya

..... **Petitioner**

-Versus-

1. Khasi Hills Autonomous District Council, represented by its Secretary, Shillong.
2. The Nongstoin Syiemship, represented by its elected Syiem of Hima Nongstoin, West Khasi Hills District, Meghalaya.
3. The Domphektkhlam Village, represented by its alleged Acting Headman, Nongstoin, West Khasi Hills District, Meghalaya.

..... **Respondents**

Shri HL Shangreiso, Advocate, present for the writ petitioner.

Shri VGK Kynta, Sr. Advocate, present for the respondent No. 1.

Shri P Nongbri, Advocate, present for the respondent No. 2.

Shri L Lyngdoh, Advocate, present for the respondent No. 3.

Date of Judgment and Order 24th October, 2013

JUDGMENT AND ORDER

ORAL: HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE

Heard.

2. By means of this writ petition under Article 226 of the Constitution of India, the writ petitioner has sought quashing of the order dated 09.04.2013 (Annexure K to the writ petition) passed by the respondent No. 2 i.e. Syiem of Nongstoin, West Khasi Hills District, Meghalaya, whereby the said authority has created a new village known as Domphektkhlam from the village Mawthungkper.

3. Heard learned counsel for the parties and perused the affidavits of the writ petitioner and that of the respondent No. 3.

4. Brief facts of the case are that, it is pleaded by the writ petitioner that the village Mawthungkper consists of eighty houses including the houses of locality Domphetkhlam. It is further pleaded that the respondent No. 2 i.e. Nongstoin Syiemship has passed the impugned order dated 09.04.2013 separating the locality of Domphetkhlam and declaring it as a separate village without adhering to the procedure prescribed in Section 3 of the Khasi Hills Autonomous District Council (Administration of Elaka) Act, 1991. In reply to this, the respondent No. 3 i.e. Domphetkhlam Village, in its counter affidavit has pleaded that it was a part of Jaidoh village and the said village has abandoned Domphetkhlam and as such the respondent No. 2 has not erred in declaring it (Domphetkhlam) as a separate village. It is also pleaded by the respondent No. 3 that Domphetkhlam was not a part of Mawthungkper Village.

5. Before further discussion, this Court thinks just and proper to mention the relevant provision of law applicable to this matter. Section 3 of the Khasi Hills Autonomous District Council (Administration of Elaka) Act, 1991, reads as under :

“ 3. Formation of new villages and alteration of areas. Boundaries or names of existing villages :- The Chief and his Durbar with the approval of the Executive Committee may, if the majority of the people of the village or villages so desire, by public notification.-
(i) Form a new village by separation of territory from any village or villages or by uniting two or more villages or part of villages

or by uniting any territory to a part of any village.

(ii) Increase the area of any village.

(iii) Diminish the area of any village.

(iv) After the boundaries of any village.

(v) After the name of any village.”

6. The above provision of law clearly provides that though the Chief and his Durbar (in the present case respondent No. 2 Nongstoin Syiemship), is empowered to form a new village by altering the areas of existing village but for that purpose, the said authority is required to get consent of majority of the villagers before such separation.

7. It is argued before this Court on behalf of the writ petitioner that the word “Village” mentioned in the above provision does not cover mere locality of a village. It is further argued that from the impugned order dated 09.04.2013, it appears that the respondent No. 2 has considered will of eleven houses out of twenty houses of Domphetkhlam Village. It is contended that since the name of the village was Mawthungkper as such majority of the will of people of whole village (and not a part thereof) should have been considered before a new village is separated from it. It is pleaded by the learned counsel for the respondent No. 3 that this point too has not been examined by the respondent No. 2 if Domphetkhlam Village was a part of village Jaidoh or not. Said respondent has pleaded in its counter affidavit that it was part of Jaidoh village and not the part of Mawthungkper village.

8. During the arguments of the learned counsel for the parties, agreed that the respondent No. 2 i.e. Nongstoin Syiemship be

directed to re-examine the above issues and take a fresh decision in the matter.

9. Therefore, in the above circumstances, this writ petition is disposed of with the direction to the respondent No. 2 Nongstoin Syiemship to decide the issue of creation of a separation village Domphetkhlam as a separate village from the existing village Mawthungkper, keeping in mind the observation made above and the provision of law quoted in the body of this judgment. The decision may be taken by the respondent No. 2 by re-examining the issues within a period of three months from the date of the production of certified copy of this judgment by any of the parties to this writ petition. The impugned order dated 09.04.2013, passed by the respondent No. 2 hereby stands set aside. It is further observed that till such decision is taken as directed above, the administration of Domphetkhlam shall remain vested with the respondent No. 2.

CHIEF JUSTICE

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24.10.13