

THE HIGH COURT OF MEGHALAYA

WP(C) No.84/2013

1. Shri. Lowis Dkhar,
R/o Samasi Village,
Sumer Patorship, Elaka Raliang,
Jaintia Hills District, Meghalaya.

2. Shri. Drimson Chyrmang,
R/o Samasi Village,
Sumer Patorship, Elaka Raliang,
Jaintia Hills District, Meghalaya.

::: Petitioners

-Vs-

1. The Jaintia Hills Autonomous District Council.

2. The Executive Committee,
Jaintia Hills Autonomous District Council,
Jowai represented by its Secretary.

3. The Chief Executive Member,
Jaintia Hills Autonomous District Council,
Jowaj.

4. The Executive Member In-Charge Revenue, Jaintia Hills Autonomous District Council, Jowai represented by its Secretary.

5. Shri. Hatmin Giri Lyngdoh,
Revenue Officer,
Jaintia Hills Autonomous District Council,
Jowai, Meghalaya.

6. Shri. Wolbing Paslein,
Headman Mynthning, Mynthning Village,
Jaintia Hills District, Meghalaya.

7. Shri. Wis Mannar,
Secretary Mynthning, Mynthining Village
Jaintia Hills District, Meghalaya. :::: Respondents.

::: Respondents.

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Petitioners : Mr. B Bhattacharjee,
Mr. S Lynthang, Advs.

For the Respondents : Mr. HS Thangkhiew, Sr. Adv
Mr. PN Nongbri, Adv for respdt. No.1-4
Mr. KS Kynjing, Sr. Adv
Mr. S Suna, Adv for respdt.No.5
Dr. ODV Ladia, Sr. Adv.
Mr. P Yobin, Adv for respdt. No.6 & 7

Date of hearing : **29.10.2014**

Date of Judgment & Order : **04.12.2014**

JUDGMENT AND ORDER

Heard Mr. B Bhattacharjee, learned counsel for the petitioners, Mr. HS Thangkhiew, learned senior counsel assisted by Mr. PN Nongbri, learned counsel for the respondents No.1-4, Mr. KS Kynjing, learned senior counsel assisted by Mr. S Suna, learned counsel for the respondent No.5 and Dr. ODV Ladia, learned senior counsel assisted by Mr. P Yobin, learned counsel for the respondents No.6 & 7.

2. This writ petition was heard jointly with WP(C)No.83/2013 for disposal by a common judgment and order. However, for convenient of the Court only WP(C)No.83/2013 was finally disposed of by a separate judgment and order dated 29.10.2014, which shall also squarely cover the present writ petition i.e. WP(C)No.84/2013. The fact and law points involved in the present writ petition are similar with the fact of WP(C)No.83/2013 except the name of plot, number of Land Holding Certificate and number of civil suit.

3. Though, the present case is squarely covered by the judgment and order dated 29.10.2014 passed in WP(C)No.83/2013, the name of plot, number of Land Holding Certificate and number of civil suit between the parties in the present writ petition i.e. WP(C)No.84/2013 are recapitulated for better understanding of this judgment and order in the light of the judgment and order dated 29.10.2014 passed in WP(C)No.83/2013. The relief sought for in the present writ petition is similar with the relief sought for in the WP(C) No.83/2013 and the main relief sought for is quashing the impugned order dated 18.03.2013 passed by the Chief Executive Member, Jaintia Hills Autonomous District Council (for short 'JHADC'), Jowai and this impugned

order is similar with the impugned order dated 18.03.2013 in WP(C)No.83/2013, which had been set aside by this Court vide judgment and order dated 29.10.2014.

4. The petitioner No.1 was the owner in possession of a plot of land known as "Lum Jri Synriah" measuring about 6,92,000 sq.mtr situated at Samasi village, Sumer Patorship, Elaka Raliang, Jaintia Hills District. The petitioner No.1 was in continuous and peaceful possession of the said land without any disturbance from any quarter. The said land is the private land of the petitioner No.1 and during the life time of his parents, the same was looked after and managed by his parents and after the death of his parents, the same had been looked after and managed by the petitioner No.1. The said land of the petitioner No.1 is an orchard (orange and banana Garden) and the parents of the petitioner No.1 had also planted orange, banana, various fruits, trees, bamboo etc. in the said land. After the death of his parents, he on 11.12.2009 applied for Land Holding Certificate on the recommendation of the Acting Pator of Samasi Patorship in respect of the said land. Upon the application of the petitioner No.1, the respondents on 17.12.2009 issued notices calling for objection, if any, to be filed within 7 (seven) days from the date of issue of the said notice. Thereafter, inspection and survey of the said land of the petitioner No.1 was carried out by the official of the respondents on 22.12.2009 and a report was duly submitted by the enquiry officer on 09.01.2010. After perusal of the enquiry report submitted by the official of the respondents, the respondent No.5 again on 28.01.2010 issued notices to all concerned for objection, if any, within 17.02.2010 against the issuance of Land Holding Certificate to the petitioner No.1. It is the further case of the petitioner No.1 that all the formalities as required by the law had been followed before issuing the Land Holding Certificate No.51/2010 dated 04.05.2010 to the petitioner No.1.

5. It is also stated that the respondent namely the JHADC, Jowai had issued Land Holding Certificate i.e. Land Holding Certificate No.51/2010 along with a sketch map of the said land and also recognized the petitioner No.1 as absolute owner of the said land. The petitioner No.1 sold the said land to the petitioner No.2, vide Sale Deed dated 10.01.2011, who thereafter became the absolute owner of the property and took possession of the said land and started managing and controlling the said land. The respondents No.6 & 7 started illegally claiming the said land of the petitioner No.2 to be the community land/forest belongs to their village inspite of they (respondents No.6 & 7) quite aware that the said land of the petitioner No.2 is a private land which is an orchard (orange and banana Garden) and had been in continuous possession, occupation, use and enjoyment by the petitioner No.1 and his forefathers and thereafter by the petitioner No.2 and as on today, the said land is in possession of the petitioner No.2. After the respondents No.6 & 7 started claiming the said land of the petitioner No.2, he on 25.08.2011 instituted a suit before the Judge, District Council Court, Jowai, which was endorsed to Smti. V. Kyndiah, Presiding Officer, Subordinate District Council Court, Jowai and the same was numbered as Title Suit No.17 of 2011. The said Title Suit was also accompanied with a miscellaneous application for injunction which was numbered as Misc. Case No.16 of 2011. The respondents No.6 & 7 entered appearances in the suit and filed written statement-cum-counter claim and show cause. The said suit is still pending for disposal. During the pendency of the said suit, the respondents No.6 & 7 filed a complaint before the Revenue Officer, JHADC, Jowai i.e. respondent No.5 on 01.11.2011 for cancellation of the Land Holding Certificate No.51 of 2010 on the ground that the said land of the petitioner No.2 is a forest land of the respondents No.6 & 7 and also that the JHADC, Jowai vide forest registration No.JHADC/FOR/94/83 dated 24.03.2008 had duly registered the said land of the petitioner No.2 as forest

land in the name of Mynthning village. The Respondents No.6 & 7 suppressed the fact that the said registration was subsequently cancelled by the Executive Committee, JHADC, Jowai vide order dated 07.01.2010 and the same was upheld by the erstwhile Gauhati High Court, Shillong Bench vide judgment and order dated 27.01.2012. Copy of the said complaint filed by the respondents No.6 & 7 is also annexed as Annexure-13 to the writ petition and it reads as follows:-

***“BEFORE THE REVENUE OFFICER, JAINTIA HILLS AUTONOMOUS
DISTRICT COUNCIL, AT JOWAI***

Revenue Case No. _____ of 2011

*1. Shri Wolbing Pasleing
Headman Mynthning
Mynthning Village
Jaintia Hills District*

*2. Wis Mannar
Secretary Mynthning
Mynthning Village
Jaintia Hills District*

.... Complainant

-Versus-

*Shri Lowis Dkhar,
Samasi Village, Sumer Patorship,
Elaka Raliang
Jaintia Hills District*

.... Opposite Party

IN THE MATTER OF

*Cancellation of Land Holding
Certificate No. 51 of 2010 standing
in the name of Shri Lowis Dkhar.*

The humble Complainants above named

MOST RESPECTFULLY BEG TO STATE AS FOLLOWS

- 1. That we are the duly elected representatives of Mynthning Villlage and are duly authorized to file the instant application for and on behalf of the resident of Mynthning Village.*
- 2. That Mynthning village is the owner in possession of the forestland called “Khlaw Shnong Mynthning” and boundaries are as under:-*

SCHEDULED OF THE FOREST

East : Liar Umsang

West : Khlaw Rasong

North : Pynnoh Pdeng iarong pynnoh Khaser
Khlieh Umsang, Khlaw, Shnong Shyrwang

South : Lum Khloo Kseh jong ka shnong
langstang, jong u Dar Salahe, Kla Dkhar,
Shil Lamurong, Keing Shyrmang, Kynlung
Shadap, Jaka Balang Katholic, Kril Dkhar
Salmun Shadap and U Kansa Dkhar

3. That the said landed forest of the Mynthning Village was duly recognized affirm and confirm by the Jaintia Hills Autonomous District Council, Jowai.

4. That in recognition of the right, title, possession, management and control of the Mynthning Village on the aforesaid forest and in pursuance of the rules, acts and regulation the Executive Committee vide No.JHADC/For/94/83 dated 24.03.2008 has duly registered the said forest in the name of Mynthning Village. It is to be mentioned that a map was duly drawn and prepared by the concern authority.

5. That the Dorbar Shong Samasi has instituted cases before the Village Court Raliang, the Assistant Deputy Commissioner, Khliehriat and also before the Presiding Officer, Subordinate District Council Court, Jowai alleging and claiming that the aforesaid landed property belongs to Dorbar Shnong Samasi. All these cases are pending before the competent Court for adjudication and disposal.

6. That the granting of Land Holding Certificate to Shri Lowis Dkhar vide L.H.C No. 51 of 2010 is highly illegal as at no point of time Shri Lowis Dkhar claimed the aforesaid landed property before the competent Civil Court nor at any point of time he is in possession of the said landed property.

7. That the granting of L.H.C to Shri. Lowis Dkhar on the strength of the recommendation of the Acting Pator of Pator Sumer Patorship is contrary to the records of the aforesaid cases in as much as the Acting Pator himself has filed the above mentioned suits claiming and alleging that the landed property belongs to the Dorbar Shnong Samasi.

8. That the L.H.C 51 of 2010 was granted without giving any notice and opportunity of hearing to the Dorbar Shnong Mynthning who is the rightful owner of the landed forest as affirm and confirm by the Executive Committee.

9. That the Land Holding Certificate was issued during the pendency of the suit and of the injunction order passed by the competent Civil Court and on this ground alone, the Land Holding Certificate is to be cancelled.

10. That from the records available it appears that the Land Holding Certificate was process and issued in a hasty manner in contravention of the Act Rules and regulation of the District Council and on this ground the Land Holding Certificate is to be set aside and quashed.

11. That further any land holding certificate on the aforesaid landed forest cannot be issued unless and until the certificate of registration issued in favor of Mynthning is either cancelled and modified and further as the subject matter in respect of the forest is subjudice before the competent Court including the Hon'ble High Court the Land Holding Certificate No. 51 of 2010 is illegal null and void and is to be set aside and quashed.

12. That the complainant came to know about the existence of the Land Holding Certificate 51 of 2010 only on 20.09.2011 from the court as Shri. Drimson Chyrmang has instituted a suit being T.S 17 of 2011 in the Court of the Subordinate Judge District Council Court, Jowai and therefore the right, title and possession of Shri Lowis Dkhar over the forest is sub-judice in the competent Civil Court and on this ground alone the Land Holding Certificate is to be set aside and quashed.

13. That the complainant state that necessary documents and orders of the Court supporting the instant application will be produce and filed at the time of hearing.

14. That this petition is filed bonafide for the ends of justice.

Under the circumstances aforesaid, it is, therefore prayed that your authority would be pleased to admit this petition issue notice to the opposite party on causes being shown and after hearing the parties be pleased to cancel, set aside, and quashed the Land Holding Certificate No. 51 of 2010. And or pass any order or orders as your honour may deem fit and proper.

And for which act of kindness Humble complainants shall ever pray.

Sd/-
Shri Wolbing Pasleing
Headman Mynthing Village

Sd/-
Wis Mannar
Secretary Mynthning Village

Dated; Shillong
The 1st November, 2011"

6. In a manner, according to the petitioner quite contrary to the procedures laid down by the relevant laws and rules an order for cancelling the said Land Holding Certificate was passed by the respondent No.5 and both the parties approached this Court number of times in the manner similar with the fact of WP(C)No.83/2013 by filing the writ petitions and revisions. As the facts of the present case are similar with the facts of WP(C)No.83/2013, except number of the writ petition and number of civil suit, in order to avoid repetition of facts, facts are not repeatedly mentioned in the present judgment and order and also in the aforesaid paras, this Court had already held that the judgment and order dated 29.10.2014 passed in WP(C)No.83/2013, shall also squarely cover the present writ petition.

7. For the reasons mentioned in the judgment and order dated 29.10.2014 passed in WP(C)No.83/2014, the impugned order dated 18.03.2013 passed in JHADC/REV/MRC/31/2011 is set aside. However, a cost of Rs.3000/- (Rupees three thousand) only had already been imposed to the respondents No.6 & 7 in the judgment and order dated 29.10.2014 passed in WP(C) No.83/2013 for shamelessly resorting to unethical means for achieving their goals by concealment of fact, the cost is not imposed to them in the present writ petition. In the peculiar circumstances of this case, parties are left to pursue the civil suit for speedy disposal.

8. Writ petition is allowed.

JUDGE

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