

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WA No. 35 of 2012 with  
WA No. 36 of 2012

Date of Decision: 07.06.2021

---

Smti Jengme Sangma	<b>Vs.</b>	State of Meghalaya & Ors.
Shri Deben Marak	<b>Vs.</b>	State of Meghalaya & Ors.

---

**Coram:**

**Hon'ble Mr. Justice Biswanath Somadder, Chief Justice**  
**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

---

**Appearance:**

For the Petitioner(s)/Appellant(s): Mr. K. Paul, Sr. Adv. with  
Mr. S. Thapa, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with  
Mr. K.P., Bhattacharjee, GA  
Mr. S. Dey, SC GHADC

---

- |     |   |        |
|-----|---|--------|
| i)  | Whether approved for reporting in<br>Law journals etc.: | Yes/No |
| ii) | Whether approved for publication<br>in press:           | Yes/No |
- 

**By The Court :**

**JUDGMENT AND ORDER**

1. The two instant writ appeals are being taken up together for consideration; being similar in nature and arising out of a common judgment and order dated 10<sup>th</sup> September, 2012, passed by a learned Single Judge of the erstwhile jurisdictional High Court (i.e. the Gauhati High Court). Another writ appeal, being WA No. 6 of 2013, which had arisen from this same judgment and order i.e. 10<sup>th</sup> September, 2012, had been segregated earlier and taken up for consideration separately,

by this Bench and disposed of by a judgment and order dated 01<sup>st</sup> April, 2021, since, on examination, it was discovered that the proceedings therein were neither wholly identical nor similar in nature with the present two writ appeals, i.e. WA No. 35 of 2012 and WA No. 36 of 2012.

2. Before proceeding to discuss the merits of the two appeals, it is pertinent to note that in the batch of three writ petitions, which were disposed of by a learned Single Judge by a common judgment and order dated 10<sup>th</sup> September, 2012; WP(C) No. 353 (SH) of 2009 was allowed and WP (C) No. 250 (SH) of 2009 and WP (C) No. 251 (SH) of 2009 were dismissed. The appeals arising from the two writ petitions which were dismissed are now being taken up for consideration by this Court.

3. In Writ Appeal No. 35 of 2012, arising out of WP(C) No. 250 (SH) of 2009, the appellant, as Nokma of Bangonggiri Akhing, had instituted the said writ petition for restoration of the land allegedly encroached by the State respondents based on the report submitted by the Mouzadar of the Garo Hills Autonomous District Council coupled with a request made by the Executive Member, i/c Land Revenue, GHADC, dated 25.11.2008., in this regard. This writ petition, by the impugned common judgment, came to be dismissed by the learned Single Judge on the ground that the matter involved disputed questions of fact.

4. Similarly, the appellant in Writ Appeal No. 36 of 2012, arising out of WP(C) No. 251 (SH) of 2009, had instituted the writ petition as Nokma of Rongrenggiri Akhing, being aggrieved by the alleged

encroachment by the State respondents and had also based his claim on the report submitted by the Mouzadar of the Garo Hills Autonomous District Council and also on the request by the Executive Member, i/c Land Revenue, GHADC, report dated 23<sup>rd</sup> September, 2008. This writ petition along with WP(C) No. 250 (SH) of 2009 was also dismissed as being not maintainable for non-exhaustion of alternative civil law remedy.

5. Being aggrieved by the directions passed by the learned Single Judge to entertain the two writ petitions, the writ petitioners have preferred the two instant writ appeals.

6. We have heard learned counsel for the parties.

7. Mr. K. Paul, learned senior counsel assisted by Mr. S. Thapa, learned counsel for the appellants in both the appeals submits that in WA No. 35 of 2012, the predecessors-in-interest of the appellants herein are the registered Nokmas of Bangonggiri Akhing IV-56 (1). He submits that the boundaries of Bangonggiri Akhing were settled on 13<sup>th</sup> March, 1930, by the then Deputy Commissioner of Garo Hills and that this record was maintained with the Garo Hills Autonomous District Council. Learned senior counsel submits that vide representation dated 04<sup>th</sup> June, 2004, addressed to the Deputy Commissioner, East Garo Hills, the appellant had requested for verification of the map maintained by the GHADC as to their Akhing land, alleging that a portion had been encroached upon by the Forest Department and prayed therein that orders be passed directing the Forest Department to vacate the portion of encroached land. Learned senior counsel submits that there being no action taken on the representation, the appellant filed an application on

09<sup>th</sup> August, 2007 before the Executive Member, i/c Land and Revenue, GHADC, praying for an enquiry and survey by the GHADC. Vide order dated 14<sup>th</sup> April, 2008, a Mouzadar was deputed to survey the land along with the State Forest Department officials and though the survey was conducted, no representative from the Forest Department was present. This report, the learned senior counsel submits, was accepted by the Executive Member, i/c Land and Revenue and it was observed in his order dated 25<sup>th</sup> November, 2008, that the State and the Forest Department had encroached upon the Akhing land as claimed by the Nokma and that the respondent No. 2 i.e., the Secretary to the Government of Meghalaya, be requested to restore the encroached portion. It is also submitted that the order dated 25<sup>th</sup> November, 2008, has not been challenged by the State respondents and has attained finality.

8. Learned senior counsel submits that thereafter efforts were made by the appellants/writ petitioners before the respondents for restoration of the encroached land by relying upon the said order of the Executive Member, i/c Land and Revenue, but as no action was taken on their representation, the writ petitioner came by way of WP(C) No. 250 (SH) of 2009, praying for restoration of the encroached Akhing land and to stop such illegal encroachment. Learned senior counsel submits that the State respondents contested the claim of the writ petitioner by taking the plea that Bangonggiri Forest Reserve was notified way back in 19<sup>th</sup> June, 1883 by the then British Government; the boundary description of Bangonggiri had been amended and notified on 29<sup>th</sup> January, 1932 and that the said Reserved Forest is in existence and is being maintained by

the State Forest Department. Learned senior counsel submits that the authority of the Executive Member, i/c Land and Revenue, GHADC, was also challenged by the State respondents and the claim that there was encroachment, was strongly refuted.

9. The learned senior counsel submits that in the course of proceedings in the two instant appeals, a Division Bench of this Court had passed an order on 03<sup>rd</sup> November, 2014, directing the Directorate of Survey of India, Shillong, to survey the lands in question within a period of 2(two) months and to submit a report to this Court. It is submitted by the learned senior counsel that this order i.e. 03<sup>rd</sup> November, 2014, has not been challenged by the State respondents till date and as such, the same has attained finality. He further submits though the respondents in compliance of the order dated 03<sup>rd</sup> November, 2014, had facilitated the survey by the Survey of India concerning the issue in WA No. 6 of 2013, and a survey report also submitted before this Court, however, till date, no such survey has been conducted, so far as the land of the writ petitioners are concerned.

10. The learned senior counsel submits that the order dated 03<sup>rd</sup> November, 2014, having attained finality, the fundamental issue between the parties to the *lis*, being encroachment of land, the same can be set at rest by a proper survey being conducted by an independent agency. Learned senior counsel has also submitted that the principle of *res judicata* applies as between two stages in the same litigation to this extent that the Court – at an earlier stage – having decided the matter in one way, will not allow the parties to re-agitate the matter once again at a subsequent stage of the same proceedings. Learned senior counsel in

order to buttress his submission has placed reliance in the case of *Satyadhyan Ghosal & Ors. v. Smt. Deorajin Debi & Anr.*, reported in *AIR 1960 SC 941*. In conclusion, he submits that the learned Single Judge wrongly came to a finding that the writ petition is not maintainable on the ground that the petitioners had not exhausted alternative civil law remedy, but in fact had given relief to the writ petitioners in WP (C) No. 353 (SH) of 2009 by way of the common judgment and order dated 10<sup>th</sup> September, 2012. As such, he prays that the writ appeals be allowed and the judgment and order dated 10<sup>th</sup> September, 2012, so far as it relates to WP(C) No. 250 (SH) of 2009, be set aside.

11. As far as WA No. 36 of 2012, is concerned, learned senior counsel submits that the facts are identically placed as WA No. 35 of 2012 and that the Mouzadar report dated 23<sup>rd</sup> September, 2008, as in the other Akhing (Bangonggiri), clearly indicated that the State Forest Department had encroached into the Akhing land of the writ petitioner, namely, Rongrenggre. Learned senior counsel submits that similar relief is sought for as in WA No. 35 of 2012 and reiterates that the purport of the order dated 03<sup>rd</sup> November, 2014, directing for survey of the lands in question, includes the land of the writ petitioner.

12. Mr. A. Kumar, learned Advocate General, assisted by Mr. K.P. Bhattacharjee, learned GA for the State respondents, through written submissions has contended that the writ petition is not maintainable for being based on disputed question of facts and, in fact, the location of the land in question is disputed and denied apart from denial of the allegations of encroachment. It is submitted that for deciding the

disputes raised, inter-alia, the following issues (by way of illustration) would have to be determined:

- a. Whether the appellant is Nokma as claimed?
- b. Whether appellant is owner and title holder of land in question?
- c. What is the location and extent of the land owned by the appellant (if any)?
- d. Whether the documents submitted in support of the claims are genuine?
- e. Whether there is any encroachment of land?

Learned Advocate General submits that without determining each of the above issues and several other relevant issues, there can be no proper adjudication of the petitioner's claim.

13. On the issue of disputed facts, it is submitted that the writ Court shall not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right as claimed. To support this contention, reliance has been placed on the cases of *Thansingh Nathmal & Ors. Superintendent of Taxes, Dhubri & Ors.* reported in *AIR 1964 SC 1419* (para 7) and *Suganmal vs. State of Madhya Pradesh & Ors.* reported in *AIR 1965 SC 1740* (paras 6 & 9). It is further submitted by the learned Advocate General that the principles contained in the said judgments would apply to the facts of the instant case inasmuch as each of the claims of the petitioners require detailed evidence and the petitioners have not demonstrated the existence of any fundamental or legal right which can be enforced in writ proceedings. It is further submitted that in order for the Court to issue a writ in the nature of mandamus, as prayed for by the appellant,

to compel the authorities to do something, it must be shown that there exists a legal right in favour of the party seeking its enforcement. In the present case, the learned Advocate General submits that each of the claims of the appellants are disputed and the existence of any right in respect of the claimed property is denied by the respondents and that nothing has been placed by the appellants on record to establish such a right, which resulted in the writ petitions being rightly dismissed as being not maintainable. In this context, reliance has been placed by the learned Advocate General in the case of ***Sohan Lal vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529***, wherein it was held that when there are rival claims to a title of a property, a civil suit is a proper remedy rather than approaching the Court under Article 226 of the Constitution for exercising the prerogative of issuing writs. On this point, the learned Advocate General has also cited various other decisions wherein this principle has been upheld. The same, for the sake of reference, are given hereinbelow:

- i) ***Arvind Singh v. State of U.P. & Ors. [2005 SCC Online ALL 190 [para 3-4 & 10]***
- ii) ***State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216***
- iii) ***Bimal Kumar Ghosh v. Kolkata Municipal Corporation & Ors. [2017 SCC Online Cal 15709] (Para 1, 41, 42, 45)***
- iv) ***Swati Ferro Alloys (P) Ltd., v. Orissa Industrial Infrastructure Development Corpn., (2015) 4 SCC 204 (Para 16-18)***



v) *Smt. Gunwant Kaur & Ors. v. Municipal Committee, Bhatinda & Ors. [1969 (3) SCC 769] (Para 14)*

vi) *Real Estate Agencies v. State of Goa & Ors. [2012 (12) SCC 170] (Para 16-19, 24, 25)*

14. The learned Advocate General has next put up the ground that the writ petitions are not maintainable, in view of the existence of alternative efficacious civil remedy and submits that the facts pertaining to encroachment can only be decided before a Civil Court, and in this regard has drawn the attention of this Court to paragraph 13 of the impugned judgment and order dated 10<sup>th</sup> September, 2012, which reflects the clear finding of the learned Single Judge on this point. The learned Advocate General on this aspect has relied upon the following decisions:

i) *DLF Housing Construction (P) Ltd. vs. Delhi Municipal Corpn. AIR 1976 SC 386*

ii) *Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot & Ors. (1975) 2 SCR 71.*

15. The learned Advocate General also submits that the writ petitions are unsustainable on merits as there is no record to sustain any of the claims raised over the subject land and that the entire claim of the appellants are based on unverified documents and on unauthenticated sketch maps, which have been disputed specifically by the respondents. He further submits that even the surveys conducted in the course of the proceedings do not pertain to or concern the appellants' claims and as such there is no factual or legal foundation to sustain their prayer. It is further argued that even a survey cannot be the basis of the claim of the

petitioner inasmuch as it will not determine entitlement over the surveyed land and title, he submits, can only be established after an elaborate examination of evidence by way of civil proceedings. Learned Advocate General then concludes by submitting that only by way of civil proceedings can the genuineness of each of the above disputed issues be determined and that the writ petitions were, therefore, rightly dismissed as being not maintainable by the learned Single Judge.

16. Having heard learned counsel for the parties, at the outset it is to be noted that this judgment and order disposing of these two appeals can be deemed to be a continuation of the earlier adjudication of WA No. 6 of 2013, which had been disposed of by a judgment and order dated 01<sup>st</sup> April, 2021, by this Court. This observation is made in view of the fact that the earlier judgment and order dated 01<sup>st</sup> April, 2021, will have a direct bearing on the adjudication and ultimate outcome of the present two appeals. However, it is to be noted that the circumstances of WA No. 6 of 2013, stand on a completely different footing as compared to the present two writ appeals in view of the fact that it has had a long chequered history marked by multiple proceedings before the Courts, which has given the case a discernable character. To illustrate this fact, it would be apposite to refer to the judgment and order dated 01<sup>st</sup> April, 2021, wherein, in relation to WA No. 6 of 2013, it has been discussed as follows in paragraphs 1 and 2, which are reproduced hereinbelow:

***“1. This batch of three writ appeals, arise from three writ petitions i.e., WP(C) No. 353 (SH) of 2009, WP(C) No. 250 (SH) of 2009 and WP(C) No.251 (SH) of 2009, which***

were disposed of by a common judgment and order dated 10.09.2012, by the Gauhati High Court (being the erstwhile jurisdictional High Court of the State of Meghalaya). In WA No. 6 of 2013, arising from WP(C) No. 353 (SH) of 2009, which was at first dealt with by the learned Single Judge, the dispute was regarding the boundary between Depa Doratcha Akhing, a private community land and Chimabangshi Reserve Forest, which had been notified as a Reserve Forest, since 19.06.1883., as it appears, with boundaries notified on 29.01.1932. This particular dispute has already had more than its fair share of doing the rounds before this Court and from the records and materials available, the genesis of the subject matter of dispute, being Civil Rule No. 1004 of 1983, which was filed by the State against an order dated 17.08.1983 passed by the Executive Member-in-Charge, Revenue, GHADC, in connection with the land in dispute. In the said Civil Rule by order dated 19.08.1988, directions had been issued that the boundary be demarcated by the Deputy Commissioner of the concerned District and that status quo was to be maintained in the meanwhile. It is to be noted that this order was passed in Misc. Case No. 568 of 1983 arising out of Civil Rule No. 1004 of 1983. Subsequently, by order dated 09.06.1989, a direction was passed for handing-over physical possession of encroached land on the basis of the demarcation which had been made pursuant to the order dated 1988. However, in another connected Misc. Case being Misc. Case No. 1099 of 1988, an order dated 18.09.1989 was passed which is reproduced herein below: -

**“O R D E R**

***Date***

***18-9-89.***

***An order was passed on 18-8-89 to demarcate the boundary between Chinshangshi Reserved Forest and Depa Daracha Akhing No. 53. Sri Sen states that pursuant to this order some demarcation was done on 31-3-1989 and 1-4-89. In support of the submission, the learned counsel has produced a sketch map and also states that the Field Measurement Book would bear his submission. It, however, seems that this demarcation work was undertaken by Assistant Enforcement Inspector and some other officers of the Deputy Commissioner's Officer under the supervision of the Additional Deputy Commissioner. But then the Additional Deputy Commissioner himself is not very satisfied with the aforesaid demarcation work. It has, therefore, become necessary to***

*properly demarcate the aforesaid two lands under the supervision of the Director of Survey, Government of Meghalaya.*

*Let the Director of Survey, therefore, undertake the work, and if during the course of survey, it would be found that the survey undertaken earlier portrays the correct picture and has been duly undertaken, the Director would survey, otherwise a fresh survey would be done in the presence of all parties.*

*I have passed this order after hearing Shri Sen, the learned Counsel for the Petitioner, Shri N.M.Lahiri, Learned Advocate General, Meghalaya for the State of Meghalaya who have agreed to receive this order.*

*Let the survey be done within a period of two months from today.*

*Let a copy of this order be given to the Learned Counsel of both the sides, within two days.*

*Sd/- B.L.Hansaria,  
Judge*

*Sd/- W.A.Shishak  
Judge”*

*2. Thereafter, it appears that many subsequent events unfolded which involved related proceedings and even the attachment of the disputed area under Sections 145 and 146 Cr.P.C. which eventually culminated in a Criminal Revision being CrI. Rev. No. 25 (SH) of 1999 filed by the writ petitioner, wherein the orders passed in Criminal proceedings were quashed and attachment orders were also vacated. However, the stalemate continued and in spite of repeated representations, possession of the demarcated portion of the said land was never handed-over to the writ petitioner, which compelled him to file the writ petition which is WP(C) No. 353 (SH) of 2009, out of which the instant appeal (WA No. 6 of 2013) has arisen. The prayer therein, was for handing-over possession of the land, based on the orders dated 19.08.1988, 09.06.1989 and 18.09.1989 passed by the High Court in Civil Rule No. 1004 of 1983 and the survey report of the Additional Director of Survey dated 22.12.1989.”*

17. This Court upheld the order of the learned Single Judge, after considering all aspects of WA No. 6 of 2013 and after taking into account the peculiar circumstances surrounding the case, especially the

fact that a right had accrued to the appellant therein by virtue of the surveys that had been conducted in respect of the land in dispute. In the present appeals, a stark difference that appears is the foundation of the case itself, i.e. the facts as put forth in the writ petitions. Whereas, as can be seen from above, the prayer made in WP(C) No. 353 (SH) of 2009 was for handing-over possession of the land based on the orders dated 19<sup>th</sup> August, 1988, 09<sup>th</sup> June, 1989 and 18<sup>th</sup> September, 1989, passed in Civil Rule No. 1004 of 1983 and the survey report of the Additional Director of Survey, dated 22<sup>nd</sup> December, 1989, in the present two appeals, the claim of the writ petitioners is based on a report submitted by a Mouzadar of the GHADC coupled with a request made by the Executive Member, i/c Land and Revenue, GHADC, dated 25<sup>th</sup> November, 2008. The said report and proceedings before the District Council authorities have been stoutly resisted by the State respondents in their affidavit before the learned Single Judge and the authority and jurisdiction of the Executive Member, i/c Land and Revenue, has also been questioned. Further, the authenticity of the survey of the Mouzadar based on an outdated rough unscaled Akhing map was not accepted by the respondents. Situated thus, it is justifiable that the learned Single Judge dealt with the two instant matters differently and held them to be not maintainable. In this context, the finding of the learned Single Judge at paragraphs 13 & 14 of the judgment, which is of relevance, is reproduced hereinbelow:

***“13. On going through the claims and counter-claims of the petitioner and the answering respondents filed by them in both the writ petitions in juxtaposition, it become obvious, in the face of the serious and complicated dispute raised by them, such disputes, I am afraid,***

*cannot be decided by this Court in a summary proceeding under Article 226 of the Constitution: the dispute so raised can be decided only by adduction of oral and documentary evidence by the rival parties and not on the basis of mere affidavits. This is so because the question as to whether the two Akhing lands in both the writ petitions are encroached upon by the answering respondents or whether the boundaries between the Akhing lands of the petitioners and Rongrenggiri Reserved Forest were already settled and notified or not on 29-1-1932 as claimed by the answering respondents, are factual matters, and cannot be determined by examining the documentary evidence produced by both the rival parties. In other words, the rights asserted by the petitioners, are seriously disputed by the State-respondents in the Forest Department. It cannot be over-emphasised that Article 226 of the Constitution is an extra-ordinary jurisdiction which can only be invoked to enforce an established right and not to establish a legal right. By clever drafting or otherwise, what is essentially a civil dispute cannot simply be converted into a public law litigation for decisions under Article 226 of the Constitution. The writ petitions are, therefore, not maintainable due to disputed question of facts. This reminds me of the observation of the Apex Court in State of Bihar v. Jain Plastics and Chemicals Ltd., (2002) 1 SCC 216, which reads thus: (SCC, p. 218, para 7)*

*“In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such a seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.”*

*14. It is, however, contended by Ms. A. Paul, the learned counsel for the petitioner, that Section 11 of the Garo Hills Autonomous District (Social, Customs and Usages) Validating Act, 1958 bars the jurisdiction of a civil court*

*to entertain any suit or proceeding in respect of any matter falling within the purview of the Act, and that both the petitioners have no remedy except by way of filing this writ petition. She vehemently contends that non-suiting the petitioners on the facts and circumstances of these cases will result in gross miscarriage of justice. I have carefully gone through the provisions of this Act, and am not, however, persuaded to hold that the jurisdiction of a civil court to decide the boundary disputes between the two petitioners and the Forest Department of Meghalaya is barred by Section 11 of the Act. This piece of legislation is about social customs and usages such as succession to the Nokmaship in accordance with the prevalent social customs and usages, and nothing else. Therefore, this contention fails and is accordingly rejected. At this stage, I feel I owe an explanation to the petitioners for dismissing these two writ petitions while allowing the writ petition of the petitioner in WP(C) No. 353 (SH) of 2009. It must be noted that in WP(C) No. 353 (SH) of 2009, the dispute raised therein was already finally settled by this Court in a series of cases referred to therein: those orders have now attained finality. It could, perhaps, be due to the half-hearted contests or prosecutions made by the State-respondents, for which the petitioner therein should not be blamed nor should he be allowed to suffer. The ingenuous attempt made by the State-respondents in that writ petition to ignore or circumvent the decisions of this Court or to re-open the entire matter afresh had to be, and was repelled by me in the interest of upholding the majesty of this Court so that no litigant public return home with the possible idea that the orders of this Court can be flouted or treated with contempt by the State-respondents with impunity. The alternative is the eventual destruction of the rule of law. I cannot allow myself to be presiding over the undermining of the dignity and majesty of law courts of this State, which are established by and under the Constitution of India.”*

18. Coming to the pointed argument of the appellants that the order dated 03<sup>rd</sup> November, 2014, passed by this Court directing for survey of the lands of the appellants has attained finality, the fact which remains is that though the same was never assailed by the State respondents, it was partially complied with only with regard to W.A No. 6 of 2013, possibly due to the earlier proceedings, wherein surveys under the

order(s) of the Court had been conducted. As far as the present two appeals are concerned, neither was the order carried forward by the State respondents to cause survey and neither was the issue pursued by the appellants, except at this stage of final hearing of these appeals.

19. Another fact that cannot be overlooked is that the order dated 03<sup>rd</sup> November, 2014, is an interim order passed in the course of proceedings and will be naturally subject to the changed events and the situation in the different stages of adjudication of these matters, especially as to whether the same situation, as on 03<sup>rd</sup> November, 2014, still exists today. As discussed above, the facts and circumstances of these two appeals stand on a totally different footing from W.A No. 6 of 2013. The fact that the instant matter involves complex issues which cannot be fully adjudicated in a proceeding under Article 226 of the Constitution cannot be overlooked or glossed over. Reliance also cannot be placed on the ratio of the judgment rendered in W.A No. 6 of 2013, as the situation and circumstances of the appeals are significantly different. The availability of alternative efficacious remedy is another aspect which will deter this Court from entering upon a determination of questions which are based on several disputed facts in order to establish the rights of the appellants to enforce a writ in the nature of mandamus.

20. We find force in the contentions of the learned Advocate General that even a survey will not be a basis to sustain the claim of the petitioner inasmuch as the same will not determine entitlement over the surveyed land and in this respect, taking into account the totality of the circumstances, the interest of justice would be best served for all the



parties if the appellants take recourse to and avail of alternative remedy for a full and complete adjudication of all the issues.

21. The authorities placed by the respondents, being pronouncements on which this aspect of the law is settled and followed in the consideration and disposal of the instant appeals, have been duly noted and relied upon. The judgment placed by the appellants, however, will be of no assistance due to the peculiar facts and circumstances of the case, as presented in the instant appeals, rendering its ratio inapplicable.

22. For reasons aforementioned and there being no illegality in the impugned judgment, the same is upheld and the instant writ appeals, i.e., W.A No. 35 of 2012 and W.A No. 36 of 2012 stand accordingly dismissed.

23. In view of the disposal of WA Nos.35 and 36 of 2012, the connected miscellaneous applications, being MC (WA) Nos.452 and 454 of 2012, stand disposed of accordingly.

24. No order as to costs.

**(H.S. Thangkhiew)**  
**Judge**

**(Biswanath Somadder)**  
**Chief Justice**

Meghalaya  
07.06.2021  
"V. Lyndem PS"