

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 70 of 2017

Date of Decision: 28.06.2022

Smti. Bernadeth S. Sangma & Anr. Vs. G.H.A.D.C. & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. A.G. Momin, Adv.
For the Respondent(s)	:	Mr. S. Dey, Adv. for R 1-3.
		Mr. K.Ch. Gautam, Adv. for R 4.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
----	--	--------

ii)	Whether approved for publication in press:	Yes/No
-----	--	--------

JUDGMENT AND ORDER

1. This writ petition was preferred by the petitioner herein being aggrieved by the order dated 29.02.2016 passed by the respondent No. 3 and the judgment and order dated 13.02.2017 passed by the respondent No. 2 relating to a dispute between the petitioner and the respondent No. 4 herein.

2. The present dispute between the petitioner and the respondent No. 4 started with an application dated 03.11.2013 filed by one Shri Benon Ch. Marak before the Executive Member, In-charge Revenue, Garo Hills Autonomous District Council(GHADC), Tura seeking appointment of Smti

Wenlish Ch. Marak daughter of late Jingrin Sangma as Nokma of the Sangsang- Nawalgre II-16 Akhing. On receipt of notice, the predecessor-in-interest of the petitioner has filed the written statement with a preliminary objection as to the maintainability of the said application on the principles of resjudicata, waiver and acquiescence. In the meantime, the predecessor-in-interest of the petitioner expired and was duly substituted by the petitioner herein as Opposite Party.

3. It is further averred that the learned Executive Member heard the parties on the issue of maintainability, however, vide the impugned order dated 29.02.2016, the case was decided on merits in its entirety in favour of the respondent No 4.

4. Being aggrieved by the said order dated 29.02.2016, the petitioner then preferred an appeal before the learned Chief Executive Member, who after hearing the parties has upheld the same and has dismissed the appeal vide judgment and order dated 13.02.2017. Hence this petition.

5. The background story leading to the present dispute according to the petitioners is in respect of the Sangsanggiri II-16(5) Akhing. About a century back, the predecessor-in-interest of the respondent No. 4 herein, Late Jingrin Nokma had mortgaged a portion of the said Akhing the predecessor-in-interest of the petitioner, Late Asansing Mouzadar for a sum of ₹ 300/-(Rupees three hundred) only. Having failed to repay the said loan, the said Akhing was then divided into four parts by the then Deputy Commissioner, vide order dated 22.05.1920 and by such order, the land

which was mortgaged to Asansing being plot A was allotted to him. Jingrin Nokma was allotted plot B.

6. The predecessor-in-interest of the respondent No. 4 not being satisfied with the said order dated 22.05.1920 in Case No. 58 Misc. of 1919-20 has approached the Deputy Commissioner, N.E. Perry for review of the same which was rejected vide order dated 30.04.1921. Yet again, the predecessor-in-interest of the respondent No. 4 filed a complaint before the new Deputy Commissioner L.S. Bingeman who vide order dated 10.05.1923 has held that since the case was decided 2 years ago and Asansing obtained the land, the petitioner (Jingrin Nokma) must pay the Awil. As a last attempt, the predecessor-in-interest of the respondent No. 4 once again raised up the issue before Mr. G.D. Walker, the Deputy Commissioner in the year 1929, who has rejected the same holding that the order dated 22.05.1920 cannot be appealed against due to lapse of time.

7. Mr. A.G. Momin, learned counsel for the petitioners has submitted that after a lapse of 84 years, the said application was filed before the learned Executive Member, In-charge Revenue to register the name of the respondent No. 4 as Nokma of the Sansang Nawalgre II-16 Akhing, which is nonexistence.

8. It is also submitted that notice was issued upon the petitioners calling for filing of show cause against the said application dated 03.11.2013 and on the petitioner challenging the maintainability of the ground that it is hit by the principle of resjudicata, waiver and acquiescence,

although the learned Executive Member heard the parties on the issue of maintainability, yet while passing the impugned order, the case was decided on merits without framing of issues and recording of evidence of the witnesses.

9. It is further submitted that the learned Executive Member having given a go by to the proposition of law expounded in the case of *Smti Dore Sangma & Ors v. The Chief Executive Member, Garo Hills District Council, Tura & Ors: (1988) 2 GLR 120* has occasioned a miscarriage of justice which warrants the impugned orders to be set aside and quashed.

10. Mr. K.Ch. Gautam, learned counsel for the respondent No. 4 in his reply has submitted that the actual historical background of this case is that the Sangsanggiri II-16(5) Akhing belonged to the Chambugong clan since time immemorial with the first Nokma being Kilpang Nokma and Chri Mechik and the last recorded Nokma being Jingrin Sangma and Dijak Ch. Marak. On the other hand, Manoda S. Sangma and Debonsing Marak were the Nokma of Amindagre Akhing which belonged to the Singsang Giri clan.

11. It is however admitted that in the year 1920, the predecessor of late Jingrin Nokma had mortgaged his land to Late Kanjing Koch who is the father of late Asansing Marak, but the same was paid back in the year 1920 itself. However, even after repayment of the same, Late Kanjing Koch refused to return the mortgaged Akhing land to Jingrin Sangma.

12. Another contention raised by the learned counsel is that though

Late Asansing, the predecessor-in-interest of the petitioners was the Nokma of Amindagre Akhing, yet he claimed to be the Nokma of Sangsanggiri Akhing II-16(5) when it is well settled that as per the customary law and practice of the Garos, no person can become the Nokma of two Akhing. This was also held by the then Deputy Commissioner G.D. Walker vide his order dated 02.04.1929 which reads as follows:

“Asansingh may be the Nokma of Amindagiri or he may be the Nokma of Sangsanggiri but he cannot be the Nokma of both. He had better choose which A’king he wants”.

13. Even otherwise, the fact that the predecessor of the respondent No. 4, Jingrin Nokma had mortgaged his land, such mortgage is invalid since according to Garo customs and practices, Akhing land cannot be mortgaged without the consent of the mother of the house, Charchis and prominent female members of the mother’s Machong.

14. Finally, the learned counsel for the respondent No. 4 has submitted that the petitioners have failed to adduce any evidence in support of their claim of Nokmaship of Sangsanggiri II-16(5) and since they cannot bring anything on record that their predecessor-in-interest was the registered Nokma of the said Akhing, raising the issue of resjudicata and estoppel would not come to their aid. The impugned orders passed by the learned Executive Member and the learned Chief Executive Member respectively are therefore valid and the same may not be disturbed by this Court.

15. Mr. S. Dey, learned Standing counsel, GHADC in support of the

impugned orders has virtually endorsed the submission made by the learned counsel for the respondent No. 4, inasmuch as, he has reiterated that Late Asansing Marak has approached the then Deputy Commissioner for approval as Nokma of Sangsang- Nawalgre II 16(5), but vide order dated 06.04.1956, the Deputy Commissioner has rejected the claim on the ground that as per Garo customary law, no person can be the Nokma of two Akhings. The Akhing in question belongs to the respondent No. 4 clan.

16. As to the effect of the said mortgage of Late Jingrin Sangma, it is submitted that the same was done contrary to Garo customary law since there is no consent of the Chras (clan members) to the said transaction and since an Akhing land is a community land, there is no practice that such Akhing can be switched to other clan or Maharis.

17. The petitioners have also failed to raise their grievance as per law and in spite of having been given sufficient time for submitting their claim over the said Akhing land, they could not adduce evidence in support of their claim, except to produce document pertaining to the Amindagre Akhing and not for Sangsangiri- Nawalgre Akhing.

18. In conclusion, the learned Standing counsel has submitted that there is no illegality or irregularity in the impugned orders and this writ petition may be dismissed as devoid of merits.

19. This Court upon hearing the argument of the parties have given due consideration to the submissions made. The facts as detailed above may not be repeated, however what is apparent is that an application dated

03.11.2013 for registration of Smti. Wenalish Ch. Marak, the respondent No. 4 herein as the Nokma of Sangsangiri-Nawalgre II-16(5) Akhing was filed before the learned Executive Member, In-Charge, Revenue, GHADC. The petitioners herein were issued notices calling upon them to show cause against the said application.

20. Accordingly, from the records of the proceedings before the learned Executive Member, which was registered as Rev A.King Case No. 5 A.C of 2013, the matter was first taken up on 24.09.2013 with a direction to the parties to file the written statement. It is assumed that the written statement has been filed since the matter has proceeded for filing of suggested issues and the same was accordingly filed as was indicated vide order dated 28.05.2015 which reads as follows:

“28-5-2015

सत्यमेव जयते

Both the parties are present and represented. Both the parties has filed suggested issue suggested by the parties are accordingly framed.

Fix on 18-6-2015 for hearing on issues of law.”

Again, vide order dated 15.12.2015, the learned Executive Member heard the submission of both the parties from both sides and accordingly, fixed the matter for order. Eventually, the impugned order dated 29.02.2016 was passed deciding the matter in favour of the respondent No. 4 herein.

21. At this juncture, it would be prudent to consider the relevant provision of ‘The Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958’, the preamble which reads as follows:

“Whereas some doubts have arisen as to the legal force of the social customs and usages now prevalent in the District of Garo Hills.

It is therefore expedient that an Act should be made to validate these social customs and usages which are not against morality or public policy”.

What is now understood is that all disputes relating to issues regarding customs and usages in the Garo Hills, including disputes relating to or connected with any Akhing as provided under Section 8 of the said Act has to be preferred before the Revenue Member and on appeal before the Chief Executive Member of the District Council.

22. As to the procedure to be adopted by the District Council, more particularly by the learned Executive Member, Revenue, the issue is well settled by a judicial pronouncement in the case of *Smti. Dore Sangma & Ors* (supra) wherein at para 20 of the same, the Hon’ble Gauhati High Court has held as follows:

“20. For all those reasons, we would hold that the Revenue Member alone has jurisdiction to decide the types of disputes at hand. But then while doing so, the Revenue Member has to follow the fundamental principles of judicial procedure; these being: (1) framing of issues which has been regarded as necessary for courts to get the grip of the case. (2) Opportunity to lead evidence on the issues framed-the evidence given could be recorded in full or summary of the same could be noted; and (3) hearing of the parties themselves or through their lawyers if engaged. This apart, some other accepted principles of sound judicial procedure like not allowing a document to be used in a case without the other side having been given opportunity to rebut the same should also be followed when the case is taken up by the Revenue Member in the first instance or by the Chief Executive Member on appeal”.

23. Coming back to the case in hand, as noticed above, the matter between the parties before the learned Executive Member has reached to a

point where suggested issues have been forwarded by both the parties. However, nothing from the record shows that issues have been framed and further, that the lists of witnesses have been sought from the parties so as to enable the learned Executive Member to record the evidence.

24. It could be presumed that the learned Executive Member has taken up the issue of maintainability at the first instance, however the manner in which the impugned order was passed does not reveal that any point of law was considered and any conclusion arrived at as to whether the application and prayer of the respondent No. 4 as applicant therein is maintainable or not. Rather, what is evident is that the learned Executive Member has passed the impugned order and has decided the merits of the case between the parties.

25. Viewed in the light of the established procedure which was required to be followed by the learned Executive Member, it can be seen that the procedure as prescribed in the case of Smti Dore Sangma & Ors (supra) at paragraph 20 was not followed. This has vitiated the trial and has left the parties, especially the aggrieved party without any means to prove their case through evidence and documents.

26. Irrespective of the conclusion reached by the learned Executive Member as well as the learned Chief Executive Member in the impugned orders, since a procedural defect has occurred, this Court has no option, but to discard validity of the impugned orders.

27. The said impugned orders dated 29.02.2016 and 13.02.2017

respectively are hereby set aside and quashed.

28. The matter is remanded to the learned Executive Member, In-Charge, Revenue, GHADC with a direction to frame the issues and to allow the parties to adduce evidence and thereafter, to hear the parties and to pass necessary orders in accordance with law and procedure.

29. It is made clear that the learned Executive Member, In-Charge, Revenue, GHADC is not to be influenced by the impugned order which has been set at naught.

30. In view of the above, this petition is hereby disposed of. No costs.

31. Registry is directed to return the records duly produced before this Court.



Judge

Meghalaya
28.06.2022
"D. Nary, PS"