

(1993) 10 GAU CK 0004

Gauhati High Court

Case No: Misc Appeal (First) No. 1 (K) of 1993

Marinokpu Village

APPELLANT

Vs

Chubassasi AO, GB Aonokpu
Village

RESPONDENT

Date of Decision: Oct. 11, 1993

Acts Referred:

- Rules for Administration of Justice and Police in the Naga Hills District, 1937 - Rule 15A, 15A

Citation: (1994) 1 GLJ 92

Hon'ble Judges: H.K.Sema, J

Bench: Single Bench

Advocate: I.Jamir, P.G.Barua, Advocates appearing for Parties

Judgement

1. This appeal is preferred by G. Bs of Marinokpu Village (also known as Ashiringa Village) against the judgment and order dated 13.6.88 passed by the learned Additional Deputy Commissioner, Mokokchung in CS No. 1 of 1980. The learned Additional Deputy Commissioner, Mokokchung, after hearing learned counsel of both sides has rendered its judgment and order dated 13.6.88. The relevant portion of which reads as under :

"In view of the above findings, I reject the appeal petition of 1962 submitted by Marinokpu Village as it is not entertainable by law.

Nearly 26 years have gone by since Shri Khating, DC had passed his judgment and the villagers have lived with it so long. No major irritations have come to our notice from any of the parties at dispute except occasional attempt to re open the case. But to reopen the case without new facts or fresh justifications will not only be an error of law but it might bring consequential disharmony among the peace loving villagers.

And that will be in the interest of none. Time has already tested the merit of the judgment and let it stand. And let there be finality in each litigation."

2. I have heard Mr. PG Baruah, learned counsel for the appellant as well as Mr. I. Jamir, learned counsel for the respondents at length.

3. This case has a long chequered history and dates back to 13.12.60 when the then learned Deputy Commissioner, Mokokchung Shri R. Kharing demarcated the land under the dispute between the appellants" village and respondents" village in Political Case No 3 of 1960.

4. For the purpose of resolution of the present controversy, it may not be necessary to go into the entire history of the land in dispute. However, as revealed from the order dated 13.12.60 passed by the then Deputy Commissioner Mokokchung, the dispute for the first time arose between the parties in 1953. The said dispute was referred to the then Deputy Commissioner, Mokokchung District. The learned Deputy Commissioner on receipt of the dispute and after going through the records, made an spot enquiry accompanied by Assistant Commissioner II (Sardar), Circle Officer, Chungliyimsen (within whose jurisdiction the disputed land falls. Head DB Mokokchung District, Head DB Sardar, Senior DB Headquarter, and DB Chungliyimsen and demarcated the boundary by its order dated 13.12.60. The relevant portion of which reads as under :

◆After going through the pillar posts given by Mr. Adams the then SDO Mokokchung, sometime in the year 1946. I demarcated the area between the two villages as follows :

From the last boundary pillar put by Mr. Adams the then SDO, Mokokchung to the 1st dry nullah, then along the foot hills towards the North direction to the bamboo nullah, marked on the sketch map, thence following the bamboo nullah and cut through straight to tea garden border road The exact location was shown by walking through the area by the DBs and Shri Changkija, Circle Officers, Lakhuni. This settlement between these two villages has been without any prejudice to any future decision likely to be made by the Govt. of Assam and Nagaland." (emphasis supplied)

5. From the order dated 13.12.60, it appears the learned Deputy Commissioner took great pain in making spot enquiry and demarcating the boundary after physically verifying the exact location of the dispute. After going through the entire records, I found that this decision was not the subject matter of any appeal or revision before any Court decided earlier in this case.

6. Mr. PG Baruah strenuously urged before me that, against the decision aforesaid, an appeal petition has been preferred before the learned Deputy Commissioner by a petition dated 21.12.60 which is still pending for disposal. On perusal of the petition dated 21.12.60 a copy of which is available at page 76 of the original record,

the petition date I 21.12.60 refers to appeal petition dated 13th August, 1960 by the appellant's village. Therefore, the submission that petition dated 21.12.60 was filed against the judgment and order dated 13.12.60 demarcating the boundaries between the appellants and respondents village is misconceived. Secondly even if assuming that the petition dated 21.12.60 is treated as an appeal against the decision of the learned Deputy Commissioner by its order dated 13.12.60, it is admitted by both the parties and is available at pages 75 and 76 of the original record relating to Political Case No. 3 of 1960, it bears the office seal of the Deputy Commissioner showing registration No 34 dated 23rd June 1962. It is therefore clear that the petition dated 21.12.60 was presented on 23.6.62. The fact that it was presented at belated stage would show that it was an attempt to reopen the dispute which was settled between the parties by a competent authority. In other words to unsettle the settled issues.

7. It is unfortunate that this is the third time this case has traveled to this Court, may be merely for the satisfaction of cantankerous litigants. In 1980, the appellant preferred a writ petition registered as Civil Rule No. 81 of 1980. This Court, by an order dated 15.2.80 rejected the writ petition as premature. While dismissing the writ petition, this Court was of the view that the impugned order dated 13.12.60 not having appealed against, the said order has become final. This Court was further of the view that in view of the various decisions, the principle of res judicata are applicable in the area where the provision of Civil Procedure Code are not applicable. This Court further expressed a doubt as to entertainable of an application by the learned Deputy Commissioner under any provision of law applicable in Nagaland.

8. The appellant also approached this Court in MA (F) No. 27 of 1981 and Civil Revision No. 26 (H) 81 which was disposed of by a common judgment and order dated 7.1.87. The Division Bench of this Court after referring to an observation made in Civil Rule No. 81 of 1980 remanded the case to the learned Addl Deputy Commissioner, Mokokchung to decide as to whether the petition dated 21.12.60 which was filed on 23.6.62 are entertainable or not. After being remanded, the present impugned order dated 13.6.88 has been passed.

9. The order sought to be appealed against is an order dated 13.12.60 passed by the learned Deputy Commissioner, Mokokchung in Political Case No.3 of 1960. As said earlier, no revision or appeal has been preferred before any higher Court. Under Rule 34 of the Rules for Administration of Justice and Police in Naga Hills District Rules U37, (as amended) an original decision of the Deputy Commissioner is appealable before the High Court, within a period of 30 days from the date of decision, excluding the time required for obtaining a copy of the decision. It is admitted fact that no revision or appeal has been preferred before the High Court as visualised under Rule 34 of the Rules against the order dated 13.12.60 passed by the learned Deputy Commissioner. Under Rule 15A of the Rules, the Deputy

Commissioner and the Additional Deputy Commissioner exercise concurrent power, and the term Deputy Commissioner includes Additional Deputy Commissioner. Therefore, the order passed by the Deputy Commissioner or the Additional Deputy Commissioner is not revisable or appealable before the same Court.

10. This Court in Monginetong Village ?s. Deputy Commissioner, Mokokchung, 1990 (1) GLJ 507 referring to a decision of the Apex Court in Guru Mayum Sakhi G6pal Sarma vs K. Ongi Mnisijo Dev, Civil Appeal No. 559/1957 decided on 4.2.1961 (SC); Viraedo vs. Ziekrup Angami, AIR 1982 Gauhati 108 and Humtso Village vs. Yiklmm Village, AIR 1983 Gauhati 15, had held that the principle of res judicata is applicable in the Courts in Nagaland governed by the Rules.

11. Reverting to the facts of the case, the first order was passed by the Deputy Commissioner on 13.12.60. This decision was not appealed against before the competent Court. Therefore, it has attained its finality. To disturb the order dated 13.12.60 at this stage would amount to unsettle the settled issues.

12. In the result, there is no infirmity in the judgment and order dated 13.12.88 passed by the learned Additional Deputy Commissioner in CS No. I of 1980 which warranted interference by this Court.

This appeal is accordingly dismissed, however, without costs.