IN THE GAUHATI HIGH COURT
(HIGH CDURT OF ASSAM: NAGALAND: MIZORAM AND ARUNCHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal From
Writ Petition (Civil)

CRP 09 (AP) 2016

Appellant
Petitioner.

SIPU SIYOM CONTROL COMMITTEE, (SSCC)

----VERSUS----

Respondent
Opposite Party

GIDA ISHI CONTROL COMMITTEE (GICC)

Counsel for the Appellant
Petitioner.

R.SAIKIA
T.ZIRDO
K.LOLLEN
L.NOCHI
C.D.THONGCHI
R.BORI
T.BAGRA
L.BAM
L.SENDAK

Counsel for the Respondent
Opposite Party

S. Tapin } for Respondent no. 1.
H. Chada
H. Obin
H. Tare
H. Nikang

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

::BEFORE::
THE HON'BLE MR JUSTICE A.M. BUJOR BARUA

17.01.2017

Heard Mr. R. Saikia, learned counsel for the petitioner and also heard Mr. S. Tapin, learned Sr. Govt. Advocate for the State respondents.

This is an application under Article 227 of the Constitution of India read with Section 50 of the Assam Frontier (Administration of Justice) Regulation, 1945 and Section 115 of Civil Procedure Code, for setting aside the order dated 18.03.2016 passed by the Court of Addl. Deputy Commissioner, West Siang District, Aalo, by which the appeal filed by the petitioner against the Keba decision dated 08.08.2002 had been dismissed.

The facts leading to the present petition is that the petitioner, namely, Sipu Siyom Control Committee (SSCC, in short) is a community based welfare society comprising of the Dego, Panya, Bogdo & Rigo villages. It is the case of the petitioner/ SSCC that the entire Aalo town land and nearby land belongs to the ancestors of the villagers of the 4 (four) villages i.e. Dego, Panya, Bogdo & Rigo and they have donated the land comprising of the Aalo town for establishment of town area, its head quarters and other infrastructure development etc.

The disputed Mido Babi Quarry area, which is located at the bank of river Yomgo belongs to the aforesaid 4 (four) villages. It is the case of the petitioner/SSCC that the villagers of the aforesaid 4 villages have enjoyed the Mido Babi Quarry since time immemorial and the villagers of the said villages are the absolute owners of the said Quarry. Being the owner of the Quarry, they have been extracting materials like sandstone, boulder etc and they have also been enjoying

fishing rights over the said Mido Babi Quarry area since for generations without any disturbances from any of the villagers of the other villages of the Aalo town area.

The petitioner/ SSCC and the respondent/ Gida Ishi Control Committee (in short, GICC), Kabu share a common boundary at Mido Babi Quarry. It is the case of the petitioner that the entire upper portion of river Yomgo belongs to the respondent/ GICC village and from the Mido Babi Quarry onwards, the entire lower portion of the river Yomgo belongs to the petitioner/ SSCC villages. The resident of both the petitioner and the respondent villages enjoy their respective rights over their own areas without encroaching each other's land.

But in the year 2002, the villagers of the respondent/ GICC villages, all of a sudden, started claiming their right over the aforementioned land comprising of the Mido Babi Quarry and started encroaching by fishing and even tried to collect/ extracts sand etc., from said area.

Being aggrieved by such act on the part of the respondent/ GICC, the petitioner/ SSCC had submitted a representation dated 09.05.2002 before the Circle Officer (Keba) for convening a Keba to decide the dispute over the Mido Babi Quarry. Accordingly, 13 numbers of HGBs/GBs from different villages were appointed as Keba members and both the disputed parties, being the petitioner/ SSCC and the respondent/ GICC, were directed to appear before the Keba in support of their respective claims. Although, the Keba was initially fixed on 24.05.2002, but due to certain incidents it could not take place on the said date and it was again re-fixed on 29.07.2002 at Aalo Keba Dere. As the Keba could not be held on the said date also, the matter was again re-fixed on 08.08.2002, on which date, the Keba was actually held.

The Keba upon hearing the rival parties had passed the order dated 08.08.2002 which is available as Annexure-6 to the revision petition at Page-49, wherein it had been decided that the boundary is to be demarcated from the old Yomgo (river) course and the 'Hili and Hike' will be used as before.

Being aggrieved, the petitioner had preferred an appeal dated 28.08.2002 before the Deputy Commissioner, West Siang District, Aalo. In the said Appeal memo, the petitioners had inadvertently mentioned it to be an application under Section 51 of the AFR, 1945 with a prayer to invoke section 38 of the said Regulation. In the memo of Appeal, it has been stated by the petitioners that a Keba was held under the supervision of the Political Assistant (in short, PA). It was also stated that majority of the Keba members who attended the Keba were in favour of the people of Dego, Panya, Bogdo and Rigo villages but in course of the Keba proceeding the members had also requested the PA, Aalo to pass an order to visit the disputed area for spot verification, so as to arrive at an amicable settlement of the case. But the PA had refused to visit the disputed area and on the other hand, the Keba authorities on whims of the PA had arbitrarily decided the dispute against the petitioner villages. Accordingly, in the said memo of the Appeal, it was prayed that the Deputy Commissioner, West Siang District, Aalo be kind enough to invoke Section 38 of the AFR, 1945 for the ends of justice.

The aforesaid Appeal of the petitioner villages were registered as WS/JK-12/2002 PT and accordingly, an order dated 29.11.2002 was passed, whereby the respondent villagers were directed not to encroach upon the boundary as the matter was subjudiced.

In course of the proceeding of the aforesaid case No. WS/JK-12/2002 PT, an order dated 26.10.2004 was passed by the learned Addl. Deputy Commissioner, West Siang District,

whereby the counsel for the petitioner appellant was asked to file a regular petition in duplicate within 20 days from the date of the order.

Subsequent thereto, the impugned order dated 18.03.2016 was passed by the Court of the Deputy Commissioner, West Siang District, Aalo in the same Case No. WS/JK-12/2002 PT. In the impugned order dated 18.03.2016, the learned Addl. Deputy Commissioner comes to a conclusion that the records do not reveal that any notice of intention to Appeal under Section 45 (1) of the AFR, 1945 was served by the petitioners and nor any petition had been filed by the petitioner under Section 46 (3) on 28.08.2002. It has been held that the same amounts to gross procedural lapse on the part of the petitioner and the same being a procedural law, it cannot be compromised. It has also been held that the period of limitation starts running from the day of passing of judgment and no notice of intention to appeal being filed by the petitioner and neither any proper appeal petition under Section 46 being filed till 22.11.2014, there is a delay of 836 days in preferring the appeal.

Be that, as it may, the learned Addl. Deputy Commissioner, West Siang District, Aalo had decided the dispute between the parties on merit by passing its final orders, which are as follows:-

1. That the Court does not find any reason to doubt the justice of the decision. The records reveal that all the procedures of fair process of Keba were applied and exhausted during the District Level Keba.
2. That the appellant has not given any notice of his intention to Appeal against the decision passed by the village authorities of

District Level Keba, which is required to be given under Section 45 (1) of AFR, 1945.

3. That the Appeal was not filed with proper procedure as required by law and within the limitation period (the appeal was filed u/s 46 (1) AFR, 1945, after 836 days i.e. 2 years 3 months and 14 days) which makes it fatal for the maintainability of the instant Appeal.
4. That the appeal petition did not mention about any violation of question of law, mere question of fact cannot be a ground for appeal and re-open of the case. There should be finality to any case, unless some serious question of law arises.

Situated thus, it is the contention of the learned counsel for the petitioner that the findings of the learned Deputy Commissioner, West Siang District, Aalo in his impugned order dated 18.03.2016 is factually incorrect inasmuch as, the petitioner has actually filed an appeal against the decision of the Keba on 28.08.2002. On a perusal of the record that has been produced, this Court finds that the said appeal petition dated 28.08.2002 which had been filed by the petitioner and also annexed as Annexure-7 to the petition, finds place in the record.

In view of the same, this Court comes to a conclusion that the findings of the learned Addl. Deputy Commissioner, West Siang District, Aalo that no petition was filed by the petitioner on 28.08.2002 is incorrect.

On a perusal of the appeal petition dated 28.08.2002, it can be seen that in the heading subject, it has been written by the petitioner that the same is an application under Section 51 of the AFR, 1945. It is the contention of the learned counsel for the petitioner that inadvertently the petitioner mentioned

Section 51 for invoking the jurisdiction instead of Section 46 of the AFR, 1945. It is the further submission of the learned counsel that it is a settled position of law that quoting the wrong section would not vitiate an appeal or proceeding, if otherwise, appropriate provision to such petition or appeal is available under the relevant law. Accordingly, it is submitted that the relevant provision under the AFR, 1945 to prefer an appeal against the decision of village authority (Keba) finds place at Section 46 of the AFR, 1945.

Section 46 (1) of the AFR, 1945 inter-alia provides that any person aggrieved by a decision of a village authority may appeal to the Assistant Commissioner in suits not exceeding Rs.500/- in value and to the Deputy Commissioner in suits exceeding that value (which amount has been subsequently been increased to Rs.50,000/-) on the basis of the value , the appeal under Section 46 (1) of the AFR, 1945 would lie before the Deputy Commissioner.

In view of the provision of Section 46 (1) of the AFR, 1945, this Court is of the view that under the AFR, the provision to file an appeal against the decision of the Keba is available in Section 46 (1) and therefore, the wrong mentioning of the Section as Section 51 in the application dated 28.08.2002 filed by the petitioner before the Deputy Commissioner, West Siang District, has to be construed, under the law, to be an appeal filed against the decision of the Keba under Section 46 (1) of the AFR, 1945.

In view of such conclusion, this Court is of the view that the findings of the Deputy Commissioner, in the order dated 18.03.2016 that no appeal was filed by the petitioner on 28.08.2002 is factually incorrect.

It has been submitted by Mr. S. Tapin, learned counsel for the respondent/ GICC that the appeal of the petitioner dated 28.08.2002 is not an appeal in its appropriate form. Mr.

Tapin contends that under the AFR, 1945, 4 different forums are available in order to decide a dispute within the villages. Mr. Tapin, in his contention, refers to Section 36, which provides that civil justice shall be administered by the Deputy Commissioner, the Assistant Commissioner and the village authorities. Section 37 provides that the Deputy Commissioner may try suits of any value and the Assistant Commissioner may try suits not exceeding Rs.50,000/- in value. Section 38 (1) provides that the Deputy Commissioner and Addl. Deputy Commissioner shall in every case in which both parties are indigenous to the State of Arunachal Pradesh shall make endeavour to persuade them to submit to arbitration by a Panchayat. Again Section 40 of the AFR, 1945 provides that the village authorities shall try all suits without limit of value, in which both the parties are indigenous to the State of Arunachal Pradesh and live within their jurisdiction and which are not submitted to any arbitration under the provisions of Section 38. By referring to the aforesaid Sections 36, 37, 38 & 40 of the AFR, 1945 Mr. Tapin submits that the prayer in the appeal petition dated 28.08.2002 of the writ petitioners, which *inter-alia* requires that the Deputy Commissioner may be kind enough to invoke Section 38 of the AFR, 1945 had rendered the appeal petition not to be an appeal petition as required to be made under the law.

Per contra, Mr. Saikia, learned counsel for the petitioner submits that Sub-section 3 of Section 46 *inter-alia* provides that the appellate court shall, if necessary, examine the parties, and if the decision appears to be just, shall affirm and enforce the decision as its own. If the appellate court sees grounds to doubt the justice of the decision, it shall try the cases denovo or refer to a Panchayat; and in cases so referred, the provisions of Section 38 shall apply, as if the parties had agreed to submit to arbitration. It is the submission of Mr. Saikia that in view of the aforesaid provision

of Section 46 (3) of the AFR, 1945, the prayer in the appeal petition of the petitioner that the Deputy Commissioner may also refer the matter by invoking Section 38 of the Regulation, by itself would not render the appeal petition as invalid. It is the submission of Mr. Saikia, that in view of Section 46 (3), it is within the permissible limits of law to make the prayer that the Deputy Commissioner may also refer the matter to a Panchayat for arbitration under Section 38 of the AFR, 1945.

The submissions of the rival counsel are given its consideration. Section 46 (3) of the AFR, 1945, in other words, provides that the appellate court shall, if necessary, examine the parties, and if the decision appears to be just, shall affirm and enforce the decision as its own. Again if the appellate court sees grounds to doubt that justice had not been done, it shall try the cases denovo or refer to a Panchayat; and in cases so referred, the provisions of Section 38 shall apply as if the parties had agreed to submit to arbitration.

On a perusal of Section 46 (3), it can be seen that on an appeal being filed, the Deputy Commissioner has 3 options:- (1) Firstly, the Deputy Commissioner may examine the parties and if the decision appears to be just and proper, the Deputy Commissioner shall affirm and enforce the decision of the Keba as its own. (2) Secondly, if the Deputy Commissioner is of the view that the decision of the Keba do not give justice to the parties, the Deputy Commissioner shall try the cases denovo or refer to a panchayat. In the event of being so referred, the provisions of Section 38 shall apply. In other words, if the Deputy Commissioner, upon examining the parties, is of the view that the decision of the Keba needs some alteration, the Deputy Commissioner would decide the matter denovo and if necessary by taking further evidence or refer the parties for an adjudication under Section 38 of the AFR, 1945.

In view of such specific provision of Section 46 (3), the prayer made in the appeal petition that the Deputy Commissioner may also refer the matter under Section 38 of the AFR, 1945 would not render the appeal petition to be invalid.

In view of such findings of the Court, the submission raised by Mr. Tapin, learned counsel for the respondent GICC that appeal petition dated 28.08.2002 is invalid, is unacceptable.

As regards the findings of the impugned order dated 18.03.2016 that the appeal petition filed by the petitioner is barred by limitation due to a delay of 836 days in preferring the appeal before the Deputy Commissioner, it can be seen that by an order dated 26.10.2014, the learned Addl. Deputy Commissioner, West Siang District, Along had ordered that the petitioners may file a regular petition in duplicate within 20 days. It is submitted that pursuant to the said order of 26.10.2014, the petitioner had submitted another appeal petition on 22.11.2004. Accordingly, this Court is of the considered view that the said appeal petition filed on 22.11.2004, which was filed as per the order of the Addl. Deputy Commissioner, West Siang District, Aalo cannot be construed to be the relevant appeal petition, so as to arrive at a decision that there is a delay of 836 days in filing the appeal. It may also be noticed that the appeal petition dated 22.11.2004 has been proceeded that under the same Case No. WS/JK-12/2002 PT and it by itself leads to a conclusion that the appeal petition dated 22.11.2004 is not the relevant appeal petition, pursuant to which the Deputy Commissioner had proceeded. As already concluded, the Case No. WS/JK-12/2002 PT pertains to the earlier appeal petition filed by the petitioner on 28.08.2002.

In such view of the matter, this Court is unable to arrive to a conclusion that the Deputy Commissioner is correct in holding that there is a delay of 836 days in preferring the appeal.

Having arrived at such conclusion, this Court is of the view that the conclusion of the Deputy Commissioner, that the appeal petition filed by the petitioner is not maintainable as no notice of intention was given by the petitioner under Section 45 (1) nor any petition was filed under section 45 (1) on 28.08.2002 and that the appeal is barred by delay of 836 days is found to be unacceptable.

Now, coming to the final order passed by the Deputy Commissioner, it is noticed that no reasons whatsoever has been given by the Deputy Commissioner nor any reasons thereof have been discussed in the impugned order dated 18.03.2016.

As per the provisions of Section 46 (3) of the AFR, 1945, the Deputy Commissioner, by giving appropriate reasons, has either to agree with the decisions of the Keba or disagree. In the event, the Deputy Commissioner disagrees with the decision of the Keba, the other option before the Deputy Commissioner is to try the case denovo by receiving the materials and evidence from the respective parties or in the alternative may refer the dispute to a panchayat for adjudication of the same. The scheme of Section 46 (3) clearly indicates that it does not authorize the Deputy Commissioner to merely pass certain orders on his own, without there being any reasons or basis.

In view of such conclusion, the impugned order dated 18.03.2016 is hereby set aside and the Deputy Commissioner, West Siang District, Aalo is directed to proceed with the matter under Section 46 (3) of the AFR, 1945 by taking into consideration the appeal petition filed by the petitioners on

28.08.2002 to be the appropriate and valid appeal under Section 46 (1) of the AFR, 1945. It is needless to say that while proceeding with the appeal petition filed by the petitioners, the Deputy Commissioner shall strictly follow the required procedure as provided under Section 46 (3) of the AFR Act, 1945.

In terms of the above, the petition stands disposed of.

JUDGE

Talom