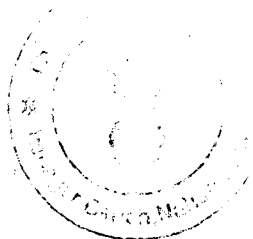


IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

CRP No. 21 (AP) of 2012



PETITIONERS:

1. Shri Achanglum Talyu,
S/o. Late Sokhey Talyu,
Permanent resident of Chipru Village,
P.O: Changlagam. P.S: Khupa,
District: Anjaw. Arunachal Pradesh.
 2. Shri Behamso Tailu,
S/o. late Chailum Tailu,
Permanent resident of Lolang Village,
P.O. and P.S: Tezu. Lohit District,
Arunachal Pradesh.
- (Common Cause of Action)

By Advocates :

Mr. N. Ratan,
Mr. M. Karto,
Mr. K. Tasso,
Mr. G. Ngomdir,
Mr. K. Loya.

- Versus -

RESPONDENTS :

1. State of Arunachal Pradesh,
Represented by Secretary,
Land Management,
Government of Arunachal Pradesh, Itanagar.
2. The Deputy Commissioner,
Anjaw District, Anjaw. Arunachal Pradesh.



3. The Additional Deputy Commissioner,
Anjaw District, Anjaw, Arunachal Pradesh.
4. Shri Achan Krong,
Political Interpreter (P.I.)
C/o. Office of the Deputy Commissioner,
Hayuliang, Anjaw District,
Arunachal Pradesh.
5. Shri Bajelum Talyu, G.B.,
S/o. Late Oling Tailu,
Permanent resident of Loiliang Village,
P.O. and P.S.: Tezu,
District, Arunachal Pradesh.
6. Shri Soyai Krong,
S/o. Shri Joleum Krong,
Permanent resident of Chirang Village,
P.O.: Hayuliang, P.S.: Khupa,
Anjaw District, Arunachal Pradesh.
(representative of all Krong Clan)

By Advocates :

Govt. Advocate, Arunachal Pradesh,
For respondent Nos. 1 to 3.

Mr. D. K. Deori,
For respondent Nos. 4 and 6.

Mr. B. L. Singh,
For respondent No. 5.

BEFORE

THE HON'BLE MR. JUSTICE M. R. PATHAK

Date of Judgment: 12th of June, 2017.

JUDGMENT AND ORDER (CAV)

Heard Mr. Marto Kato, learned counsel for the petitioner. Also heard Ms. Mama Tang, learned Government Advocate for the respondent Nos. 1 to 3, Mr. Debo Kr. Deori, learned counsel for the respondent Nos. 4 & 6 and Mr. V.L. Singh, learned counsel for the respondent No. 5.

2) The petitioners herein are the representative of all 'Talyu Clan' (also called 'Tailu' Clan) belonging to Schedule Tribe of *Mishmi* Community settled in different villages in the Districts of Anjaw and Lohit of Arunachal Pradesh. By virtue of their same forefather, the petitioners have been authorized by the members of the said 'Talyu Clan' to prefer this Revision Petition in connection with *Mompani/Teluwa* land dispute Case. The petitioners submitted that as per the customs and traditional practices, the father and grandfather of 'Talyu Clan' inherited their ancestral properties measuring about 85 acres of land at *Mompani/Teluwa* area which was originally owned by their forefathers jointly, since the time immemorial and they continued to own the said land jointly and collectively as common community land including the present petitioners. According to the petitioners, their father and grandfathers of *Talyu Clan* of *Mompani/Teluwa* area in the year 1962, before the Chinese aggression, allowed the *Krong Clan* of respondent No. 6 to occupy some portion of the land of the former in the aforesaid land, particularly at Chirang Village for their dwelling purpose on the understanding that said *Krong Clan* were allowed to settle at Chirang area of *Mompani/Teluwa* area of *Talyu Clan* as its caretaker only and that the *Krong Clan* shall not claim ownership over the said land of *Mompani/Teluwa* area of *Talyu Clan* in future and accordingly, *Krong Clan* temporarily settled in the said area as their caretaker.

3) When the Ministry of Defence, Government of India proposed to use the entire land of *Mompani/Teluwa* area for defence purpose, the *Krong Clan* of respondent No. 6, in the year 1991, started claiming ownership over the said land of *Talyu Clan*, on which the fathers and grandfathers of the petitioners including the 27 Nos. of *Talyu Clan* submitted objection petition before the Extra Assistant Commissioner (EAC, in short) of Hayuliang, claiming ownership of the said land as common land property of *Talyu Clan*. On receipt of such joint objection from the *Talyu Clan* members, the said EAC referred the said dispute to the authority of

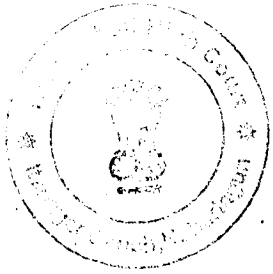
Krong Clan members, the ownership of which was already settled on behalf of *Talyu* Clan people by the *Kebang* decision dated 03.10.1981.

11) The petitioners also submitted that the matter relating to manufacturing the deed of agreement by the respondent No. 6 between him and the respondent Nos. 5 dated 24.07.2001 and 26.10.2009, regarding transferring of land of *Talyu* Clan people at *Mompani/Teluwa* area to the *Krong* Clan people by cheating and fraudulent manner is still pending for disposal.

12) For the afore said reasons, the petitioners prayed for setting aside the impugned *Kebang* decision as well as the order dated 09.11.2012 of the ADC, Hayuliang.

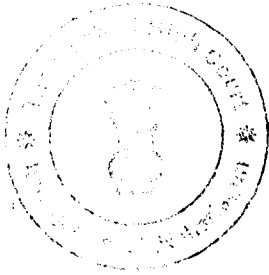
13) Regarding the claim of the petitioners, the respondent No. 6 in his affidavit filed in the matter stated that the *Talyu* Clan sold the land involved in the case to *Krong* Clan people for a sum of Rs. 100 and half Kilogram of Opium as per customary practice prevailing among the *Mishmi* Community prior to Chinese aggression and since then they are possessing and occupying 85 acres of land at *Mompani/Teluwa* area fully and independently, without any interruption. The respondent No. 6 admitted about the *Kebang* decision of 03.10.1981 and also about the lease deed executed by said Oling Tailu and Lala Tailu in favour of the Defence Department allowing them to occupy the land involved in the case by Indian Army. The said respondent No. 6 submitted that 24.07.2001, the respondent No. 5 and 2 others Jujolung Tailu and Katengium Tailu on behalf of *Talyu* Clan people made an agreement with *Krong* Clan regarding handing over the land in question at *Mompani/Teluwa/Chiang* permanently to *Krong* Clan with the, for which they made a declaration on 24.07.2001.

14) It is stated by the respondent No. 6 that after the death of his father Oling Tailu, the respondent No. 5 on 28.11.2006 obtained succession certificate from the Deputy Commissioner, Lohit District, Tezu with regard to movable and immovable properties left by his father, including the land involved in the case and thereafter, he started receiving the lease rent from the Defence Department for the said land and on 26.10.2009 by a deed of agreement executed before the Judicial Magistrate, First Class, Lohit District at Tezu, the said respondent No. 5,



as First Party, handed over 55 acres of land, which is under occupation of the Defence Department at *Mompani* area, to him, the respondent No. 6, the Second Party, stating that –

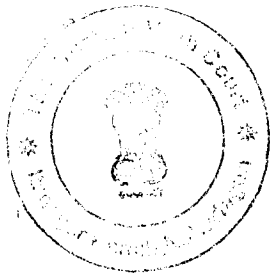
- (i) That any member of the first party will not claim and raise any kind of objection on the said land in near future, if any thing arises by the First Party's family member, the same will not effect to the Second Party.
- (ii) The entire objection on the said plot of land (land involved in the present case) belongs to the Second Party from the day of execution of the said deed and the Second Party will possess and shall have every right to develop after the said plot of land at his own accord and willing with the First Party shall have no right to instruct/direct/object to the Second Party in near future.
- (iii) That the Second Party will pay the Government Land Revenue, Tax etc. and shall possess every right as a sole owner of the said land and he is entitled to transfer the same in his name when the Government shall propose to do so in future.



15) The respondent No. 6 also admitted that that the decision of the *Kebang* held on 03.10.1981 was upheld by the EAC, Lohit Valley Hayuliang and it attained finality as no appeal was preferred against it and as per said *Keba* decision Oliang Tailu and Lala Tailu on behalf of *Talyu* Clan people, executed all transactions for the entire 85 acres of land at *Mompani/Teluwa/Chirang*, entered into an agreement with the Defence Department, for 55 acres of land *Mompani*, obtained rent from Defence Department. He also stated that later, after the death of said Oliang Tailu and Lala Tailu, the respondent No. 6, son of Oliang Tailu, started receiving such rent from Defence Department and said respondent No. 6, one, Shri Jujolum Taylo and another, Shri Katenglum Taylo on behalf of *Talyu* Clan on 24.07.2001 made a declaration that an agreement has been reached with the Krong Clan regarding handing over the land at *Mompani/Teluwa/Chirang* to *Krong* Clan permanently.

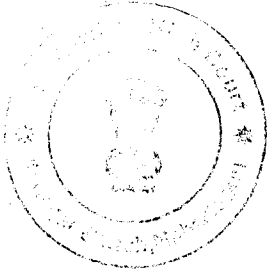
16) According to the respondent No. 6, the ADC, Hayuliang while passing the impugned *Kebang* judgment dated 09.11.2012 had taken into consideration entire facts, analysed the statements made by speakers during *Kebang* proceeding, relied the documents placed during hearing and gave his finding point wise. Supporting the impugned order dated 09.11.2012, the respondent No. 6 stated that as the respondent No. 5 is the holder of succession certificate with regard to

the land involved in the case and being empowered in that regard, by executing an agreement dated 26.10.2009, said respondent No. 5 sold the land in question in his favour and as such the respondent No. 6 submitted that said petition preferred by the petitioner should be dismissed for the aforesaid reasons.



17) Considered the arguments submitted by the parties and also the impugned order dated 09.11.2012 passed by the Additional Deputy Commissioner, Hayuliang. From the above it is seen that both the parties admitted that the decision of the *Kebang* held earlier on 03.10.1981, which was upheld by the Extra Assistant Commissioner, Lohit Valley Hayuliang has attained finality, as no one either from the *Talyu* Clan or the *Krong* Clan preferred any appeal against the said decision before any higher forum and as such by passage of time it reached the stage of conclusiveness, which is not denied by either of the parties. As such, as per the said decision of the *Kebang* dated 03.10.1981 the actual ownership of the land at *Mompani/Teluwa* including at *Chirang* village including the land involved in the present case rests with the *Talyu* Clan people only. As per the said *Keba* decision dated 03.10.1981 *Krong* Clan people can stay in the said land working as keepers of the said land only on behalf of the *Talyu* Clan people and further, the *Keba* by the said decision dated 03.10.1981 authorised that henceforth only *Shri Oling Talyu* of *Lolliang* Village and *Shri Lala Talyu* of *Chiyu* Village to do all transactions with regard to said property on behalf of all the *Talyu* Clan people. It is seen that respondents No. 4, 5 and 6 could not place any material to show that after demise of said *Shri Oling Talyu* and *Shri Lala Talyu*, the *Talyu* Clan people or any other *Keba* authorised said respondent No. 5 or any other person to be the authorised person on behalf of the *Talyu* Clan people to do all transactions with regard said property of *Talyu* Clan people at *Mompani/Teluwa/Chirang* village including the land involved in the present case. But from the impugned order dated 09.11.2012 passed by the ADC, Hayuliang it can be seen that both the *Kebang* in its meeting held on 02.11.2012, as well as in its decision and further, the said ADC by the impugned order dated 09.11.2012 interfered with the decision of the *Kebang* dated 03.10.1981, holding that *Krong* Clan has got the "benefit of doubt" with regard to the land involved in the case and further held that said *Krong* Clan have the privilege to claim the ownership of 55 Acres of land at *Mompani*, though the earlier decision of the *Kebang* dated 03.10.1981

District, Tezu only empowered the respondent No. 5 to collect the debts and did not empowered him transfer the same. The said Deputy Commissioner by the said succession certificate dated 28.11.2006 only with regard to the securities empowered him to receive interest or dividend, to negotiate or transfer or both to receive interest or dividend or and to negotiate or transfer any of them.



19) It is settled that securities includes shares, scripts, stocks, bonds, debentures, debenture stock, units of the Unit Trust of India or any other mutual fund or other marketable securities of a like nature in or of any incorporated company or other body corporate; Government securities; and rights or interests in securities; which is an inclusive one and not exhaustive and it takes within its purview not only the matters specified therein but also all other types of securities as commonly understood. Again debt means any liability in respect of any obligation to repay capital sums by way of annuity and any liability under any guarantee, and the debt charges should be construed accordingly. Further, debt, inclusive of interest, is the liability which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application. From the said Succession Certificate dated 28.11.2006 it is very much clear that the respondent No. 5 did not have any authority to consider him to be the absolute owner of said 55 Acres of plot of land at *Momyani* area given on lease to Indian Army and to sale said land to the respondent No. 6 who allegedly submitted to be the representative of the *Krong* Clan or any other in that regard, and the said certificate clearly specified that the respondent No. 5 was only granted the authority to collect the debts from the Defence Estate Officer, Jorhat as the said land had been given on lease to Indian Army. But the ADC, Anjaw District, Hayuliang, while issuing the impugned order dated 09.11.2012 did not look all these aspects.

20) From the above discussions and reasons, the Court found that the impugned order of the Additional Deputy Commissioner, Anjaw District, Hayuliang dated 09.11.2012 with regard to 55 Acres of plot of land at *Mompani* area involved in the present case passed in Case No. HIG/REV-10/Army/10-11 is hereby set aside and quashed and now, the Deputy Commissioner, Anjaw District, Anjaw shall decide the entire matter afresh in accordance with law and traditional & customary practices of *Mishmi* community by giving opportunity of hearing to the both the parties.

21) With the aforesaid observations and directions, this petition stands allowed.

22) No order as to costs.

23) Registry shall return the LCR to the Additional Deputy Commissioner, Anjaw District, Hayuliang along with a copy of this order.

JUDGE

Jtunghaki