IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA
MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal from
Writ Petition (Civil)

CRP. No. 23 (AP) 2012
CRP NO. 60/2014 (GH)

Shri Long Doruk @ Rukbo
~~Shri Orin Rukbo~~

Appellant
Petitioner

-Versus-

Shri Taking Tamut

Respondent
Opposite Party

Counsel for the Appellant
Petitioner
Mr. Tony Perfin
Mr. L. Tenzin
Mr. A.k. Singh

Counsel for the Respondent
Opposite Party
Mr. P. Taffo
Ms. N. Dangger
Ms. J. Aoji
Mr. C. Duggong

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or Proceeding with signature
(1)	(2)	(3)	(4)

Sri Long Doruk @ Rukbo, S/o Late Orin Rukbo, Kelek Mirbuk village, P.O & P.S. Pasighat, East Siang Distt. (AP).

IN THE MATTER OF:

Shri ORIN RUKBO,

S/o Lt. Boduk Rukbo,

Kelek Mirbuk village,

PO & PS: Pasighat,

East Siang District (AP).

.....Appellant.

- V E R S U S -

Shri **TAKING TAMUT,**

5 Mile (Tajum) village,

PO & PS: Pasighat,

East Siang District (AP)

.....Respondent.

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

24.01.2017

Heard Mr. T. Pertin, learned counsel for the appellant and Ms. N. Danggen, learned counsel for the sole respondent.

This Court also expresses the appreciation of the services rendered by Mr. D. Panging, learned counsel, in order to arrive to an appropriate decision regarding the issues involved in this petition.

The present application is an application for revision under Article 227 of the Constitution of India read with Section 50 of the Assam Frontier (Administration of Justice) Regulation, 1945.

The legality and the validity of the Judgment and Order dated 08.08.2011 passed by the learned Addl. District and Sessions Judge, (FTC) Western Zone, Basar in case No. BSR/TS-39/06 is under challenge in this appeal.

The core facts leading to the present revision application is that the petitioner is a resident of Kelek Mirbuk village in Pasighat in the District of East Siang, whereas the respondent is a resident of Tajum Village which is also within the same jurisdiction.

It is the case of the petitioner that on 12.06.1961 he had purchased a plot of land from Shri Yekrin Rukbo upon payment of Rs.600/- at Tajum and in addition to that, he had also purchased two other plots of land from Shri Omik Yompang @Rs.1,100/- (Rupees One thousand One hundred). Accordingly, the petitioner had taken the possession of aforesaid 3 (three) plots of land and he had occupied the same by clearing the jungle for Jhum cultivation for about 27 years

and 16 years respectively. During the aforesaid period of his occupation over the said 3 plot of lands, there was no claim or counter-claim from anyone regarding the ownership and possession of the said land.

The schedule of the land is as follows:-

"1. In the North--The plot of Piak Dai purchased and transferred to Shri Tabom Riba.

2.In the West--The Tajum to Risong Bedang.

3.In the East--The Tajum Korong and portion of the plot touches the land of Taking Tamut.

4. In the South--The land of Shri Bapen Moyong and portion of the plot touches the land of Taking Tamut".

Sometime in the year 1998, the respondent had illegally encroached the entire land of the petitioner on the plea that he had purchased the same from one, Shri. Oyi Rome, S/o Late Kodang Rome of Mongku Village and in order to settle the dispute between the petitioner and the respondent, a Kebang was held on 09.07.1988, which was attended by the Gam Burahs (in short, GBs) and elders of Balek Group who were conversant with the issue. The Kebang by its decision dated 09.07.1988 had rejected the claim of the respondent. After the Kebang decision of 09.07.1988, the respondents had for the 2nd time purchased the same plot of land from Shri Boduk Tamuk of Yapgo Village. Consequently another Kebang was held on 08.06.1992 in Case No. HT-186/91-63/92. The learned counsel for the respondent Ms. N. Danggen, submits that the Kebang that was held on 08.06.1992 is in fact the first Kebang and there was no prior Kebang held on 09.07.1988.

According to the learned counsel for the respondent, another Kebang was held on 16.04.1993 in Case No. HT-52/93. Mr. Pertin, learned counsel for the petitioner, on the other hand, states that the

subsequent Kebang of 16.04.1993 in Case No. HT-52/93 was held pursuant to a complaint raised by the petitioner before the Deputy Commissioner, Pasighat against the Kebang decision dated 08.06.1992 and the Deputy Commissioner, Pasighat referred the matter back to the Kebang for their adjudication.

Be that as it may, against the order dated 16.04.1993, an appeal under Section 46 (1) of the AFR, 1945 was filed by the petitioner which was registered as Title Suit No. 04/2000 in the Court of the Deputy Commissioner, East Siang District, Pasighat. Subsequently, the aforesaid Title Suit No. 04/2000 was transferred to the Court of Addl. District and Sessions Judge, (FTC), Basar and was re-numbered as BSRTS-39/2006. The said Title Suit on being transferred to the Court of the learned Addl. District and Sessions Judge, (FTC), Basar was finally heard and disposed of by Judgment and Order dated 08.08.2011, which is impugned in this revision petition.

On a perusal of the Judgment and Order dated 08.08.2011 passed by the learned Addl. District and Sessions Judge, (FTC), Basar, it can be seen from Paragraph-1 itself that the suit was transferred from the Court of the learned Deputy Commissioner, East Siang District, Pasighat in the stage of evidence and the parties were directed to appear before the Court. In the said Judgment in Paragraph-4 it have been recorded that against the Kebang decision dated 08.06.1992 and 16.04.1993, the petitioner (appellant, herein) had filed an appeal before the learned Deputy Commissioner, East Siang District, Pasighat on 07.06.2000 *inter alia* praying for a denovo trial as per the provision of Section 46 of the AFR, 1945 read with Section 96 of the Code of Civil Procedure, 1908.

From the plaint filed in the Court of Deputy Commissioner, East Siang District, Pasighat, which resulted in Title Suit No. 04/2000 (re-numbered as BSR /TS-39 /06) from Paragraph-9, it can be seen that there is an averment that the plaintiff had filed the petition for

non-acceptance of Kebang decision dated 08.06.1992, in which he prayed that the Kebang decision be reviewed.

From Paragraph-11 of the plaint, it can be further seen that on the basis of the complaint petition of the plaintiff i.e. the petitioner, a Kebang was held on 16.04.1993 vide case No. HT-52/93 at Kebang Hall, Pasighat under the supervision of the Political Assistant of Pasighat.

Based upon the aforesaid pleadings and the recording of the facts in the order of the learned Addl. District and Sessions Judge, (FTC), Basar and also from the plaint submitted before the Deputy Commissioner, it is submitted that the subsequent Kebang held on 16.04.1993 in Case No. HT-52/93 at Kebang Hall of Pasighat was in fact not a Kebang but it was a decision by the Panchayat, pursuant to a reference by the Deputy Commissioner under Section 46 (3). The aforesaid submission of the learned counsel for the petitioner finds sufficient force before this Court inasmuch as, against the earlier Kebang decision dated 08.06.1992 there was an appeal filed before the Deputy Commissioner under Section 46 (1), as appears from Paragraph-11 of the plaint.

Upon the said appeal being filed under Section 46 (1), three options were available before the Deputy Commissioner. The first option is to agree with the decision of the Kebang and accordingly to enforce it. The second option, is that, to disagree with the decision of the Kebang and to hold a denovo enquiry by giving adequate opportunity to the respective parties to present their materials and evidences. The third option for the Deputy Commissioner under Section 46 (3) is that he would refer the matter to a Panchayat for its adjudication. Section 46 (3) further provides that in the event the Deputy Commissioner refers the dispute to the village Panchayat for its adjudication, the procedure prescribed under Section 38 of the AFR, 1945 would apply thereafter.

In view of such provision of law, there cannot be a subsequent Kebang dated 16.04.1993 on the same dispute. Although, the decision dated 16.04.1993 has been referred as a Kebang decision, in fact, in the facts and circumstances of the case and also with reference to the provision of law, the said decision would be a decision of Panchyat on being referred by the Deputy Commissioner under Section 46 (3) of the AFR, 1945.

On a reading of Section 38 of the AFR, 1945, it can be seen that the Deputy Commissioner or the Assistant Commissioner shall in every case in which both parties are indigenous to the State of Arunachal Pradesh shall endeavour to persuade them to submit to arbitration by a Panchayat. Thereafter, sub-section 2 provides that the parties may intimate their own members of the Panchayat equal in numbers or the Deputy Commissioner may choose the members or direct the panchayat to choose, a further person as umpire. The names and addresses of the members of the panchayat and umpire and a statement of the matter shall be recorded and the Deputy Commissioner, shall direct the village authority or some other person to assemble the panchayat and the witnesses, within such time as he may specify, and also fix a date on which the decision of the panchayat shall be announced before him. Sub-section 4 further provides that the umpire shall have no vote as a member of the panchayat, but shall enter and decide the matter in dispute if the panchayat, or a majority of its members, are unable to agree on their decision before the date fixed under Sub-section (3). Sub-section 5 further provides that on the date fixed for announcement of the decision, the umpire and parties shall appear before the Court which directed the arbitration, and the court shall record the decision together with any order which it considers reasonable for the payment, or apportionment of the costs of the panchayat's proceedings. Sub-section 6 finally provides that the decision so recorded shall be enforceable as if it was a decision of the Court recording it and shall be final.

Provisions of Section 38 are as follows:-

"38 (1) The Deputy Commissioner and Assistant Commissioner shall in every case in which both parties are indigenous to the Union Teritory of Arunachal Pradesh endeavour to persuade them to submit to arbitration by a Panchayat.

2.If the parties agree, each party shall nominate an equal number of members of the panchayat, and the Deputy Commissioner or Assistant Commissioner shall either choose, or direct the panchayat to choose, a further person as umpire.

3.The names and addresses of the members of the panchayat and umpire and a statement of the matter in dispute shall be recorded and the Deputy Commissioner or Assistant Commissioner shall direct the village authority or some other person to assemble the panchayat and witnesses within such time as he may specify, and also fix a date on which the decision of the panchayat shall be announced before him.

4.The umpire shall have no vote as a member of the panchayat but shall enter on and decide the matter in dispute if the panchayat or a majority of its member are unable to agree on their decision before the date fixed under sub –section

5.On the date fixed for the announcement of the decision, `the umpire and the parties shall appear before the Court which directed the arbitration and the Court shall record the decision together with any order withch if considers reasonable for the payment or apportionment of the costs of the panchayat's procedings.

6.The decision so recorded shall be enforceable as if it was a decision of the Court recording it and shall be final.

From a perusal of the provisions of Section 38, it can be seen that the entire scheme of the procedure to be followed in case of settlement of the dispute by arbitration, is that the members of the Panchayat or the umpire as the case may be, would decide the matter in dispute. Thereafter, on the date fixed for announcement of the decision, the umpire and the parties shall appear in the Court of the Deputy Commissioner who had directed the arbitration, and the Court of the Deputy Commissioner shall record the decision of the panchyat or the umpire.

Under Sub-section 6 of Section 38, the said decision so recorded by the Deputy Commissioner shall be final.

Regarding the meaning and purport of the expression 'final', this Court by Judgment and Order dated rendered in the case of West Bengal State Weaver's Co-op Society Ltd and Others-vs-Bibha Basu Chowdhury and Others, reported in 2004 (1) GLT 177, has held in Para-32 that word "final" occurring in the relevant provision of the Act has to be interpreted keeping in view the whole scheme of the Act, the language in which the said Section has been couched, the intention of legislature, public policy and public interest. It has been held that when so considered, it is not difficult to construe that the word "final" connotes not only that no further appeal is provided under the Act, but that the Act imposes a complete bar to further proceedings arising out of the dispute, which resulted into institution of the proceeding under the Act.

The Hon'ble Supreme Court in the case of Sangram Singh-vs-Election Tribunal Kotah and another reported in AIR 1955 SC 425 in Para-11, 12 & 13 held that the provision of Section 105 of the Representation of the People Act, 1951 renders that the order sought to be final and conclusive does not take away the jurisdiction of the High Court under Article 226 of the Constitution to examine the correctness and the veracity of the judgment.

In view of the above provisions of law, this Court is of the considered opinion that the meaning and purport of expression 'shall be final' appearing in section 38 (6) of the AFR, 1945 would be that there would be no further appeal or revision against the decision of Panchayat recorded by the Deputy Commissioner under Section 38 (5), but the correctness or veracity of the said decision is always open for a judicial review under the Artilce 226 of the Constitution of India.

In view of the aforesaid conclusion, a decision of the Panchayat under Section 38 (5) as recorded by the Deputy Commissioner is final. Accordingly, the proceeding initiated and held in the Court of the Deputy Commissioner, East Siang District being Title Suit No. 04/2000 and the subsequent proceeding on transfer before the learned Addl. District and Sessions Judge, (FTC), Basar in re-numbered BSR-TS-39/2006, being essentially a proceeding against the decision of the Panchayat dated 16.04.1993, rendered under Section 38 (5) of the AFR, 1945 would therefore be without any jurisdiction and authority of law.

As already held the decision of the Panchayat dated 16.04.1993, being a decision of the village panchayat under Section 38 (5) of the AFR, 1945, no appeal under Section 46 (1) would also be maintainable and no further proceeding against such decision can be carried out by the Deputy Commissioner under Section 46 (3).

In the instant case, the Deputy Commissioner in Title Suit No. 04/2000 had proceeded in a manner by considering it to be an appeal against the decision of a Kebang dated 16.04.1993. As already held, the decision dated 16.04.1993 is not a decision of the Kebang but on the other hand it is a decision of the village panchayat under Section 38 (5), and as such the Deputy Commissioner could not have proceeded under Section 46 (3) inasmuch as, against the decision under Section 38 (5) of the AFR, 1945 no appeal or revision is maintainable.

In view of the nature of the facts as available in the records, the ends of justice would be met, if the matter is remanded back to the Deputy Commissioner to arrive at a conclusion as to whether the requirement of Section 38 (5) had been complied with or not. In the event, the Deputy Commissioner is of the view that the requirement of Section 38 (5) had not been complied with, the Deputy Commissioner shall send back the matter to the village panchayat for appropriate process to be adopted. In the event, the Deputy

Commissioner is of the view that the appropriate requirement under Section 38 (5) have been duly complied with, the order of the same shall be provided to the respective parties in order to enable them to proceed further in the manner as per the procedure of law. The requirement of Section 38 (5), as already held, is that the decision of the Panchayat or the Umpire as the case may be, is required to be recorded by the Deputy Commissioner.

In view of such findings of this Court, the subsequent Judgment passed by the learned Addl. District and Sessions Judge, FTC, Basar in Case No. BSR/TS-39/2006 dated 08.08.2011 is hereby set aside as the same is without jurisdiction and accordingly, the matter is remanded back to the Deputy Commissioner for his due consideration as indicated above.

It is made clear that the Deputy Commissioner, while considering the matter would proceed to first ascertain as to whether the decision dated 16.04.1993 had been placed before the Court of the Deputy Commissioner, for it being recorded or not. In the event, the Deputy Commissioner finds that the order had not been duly recorded, the Deputy Commissioner would take appropriate steps to record the decision. On the other hand, if the Deputy Commissioner finds that the order had already been recorded as required under Section 38 (5), the Deputy Commissioner, would provide the copy of the order to the parties so as to enable the parties to proceed further under the procedure of law.

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

JUDGE

Talem