

THE GAUHATI HIGH COURT
(The High Court of Assam : Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

WP(C) No. 333 (AP)/2013

Gombu Thinlley

.....***Petitioner***

-Versus-

The State of Arunachal Pradesh & others

.....***Respondents***

BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM

For the Petitioner	:	Mr. L. Tsering, Mr. L. Tenzin, Mr. I. Lotten, Mr. K. Eshi, Advocates.
For the respondents	:	Mr. G.Ete, Addl. Sr. Govt. Adv. for res. 1 to 4 Mr. K. Jini, Id. Adv. for res. No. 5 to 9
Date of hearing & Date of judgement	:	09/05/2017

JUDGEMENT AND ORDER

Heard Mr. L. Tsering, learned counsel for the petitioner and Ms. A. Mize, learned Additional Sr. Govt. Advocate, Arunachal Pradesh for the respondents No. 1 to 4. Also heard Mr. K. Jini, learned counsel appearing for the respondents No.5 to 9.

2. Espousing the cause of the residents of Domkho village of West Kameng district, the present petitioner has approached this Court by filing

this instant writ petition on the strength of a Power of Attorney executed by 15 villagers by making the following prayers:

"I. Issue a writ of mandamus directing the respondent authorities to implement the judgment and order dated 14.12.1988 issued vide Memo No. BR-2441/88 dated 20.12.1988 by the Additional Deputy Commissioner, Bomdila in both letter and spirit. The respondent authorities shall also ensure that the orders of status quo passed by the authorities are strictly followed by the parties on the ground/disputed site (i.e., Sherkhilema) which means, no party, shall use the disputed land for human habitation and cultivation.

II. Issue a writ of mandamus directing the Deputy Commissioner, Bomdila to constitute a Board in terms of the recommendation made by the ADCs of Dirang and Kalaktang in its Joint Inspection Report submitted vide letter No. KTR-97/88-11 dated 07.06.2011 and till settlement of the land dispute by such Board, the parties shall maintain the old age tradition of using the disputed land for grazing purpose only strictly in terms of the judgment and order dated 14.12.1988 and not for habitation and cultivation over the disputed land (i.e., Sherkhilema) in violation of the judgment and order dated 14.12.1988.

III. Pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

-AND-

During the pendency of the writ petition, the Deputy Commissioner, Bomdila may be directed to ensure that the parties (Mandlaphudung and Domkho villagers) strictly follow the judgment and order dated 14.12.1988 over the disputed land."

3. The case of the petitioner, in brief, is that there is an age old boundary dispute existing between Domkho and Mandlaphudung village, which was finally settled by the judgment and order dated 14.12.1998

passed by the Addl. Deputy Commissioner, Bomdila, West Kameng district. As per the judgment and order dated 14.12.1998, both the villagers were directed to maintain the traditional arrangement of seasonal use of the village grazing ground, which is the disputed land, or to maintain status quo. The villagers were also given liberty to arrive at a mutual settlement as regards the boundary issue by identifying possible ridges or streams. But in utter violation of the order dated 14.12.1998, the Mandlaphudung villagers have slaughtered cattles of the Domkho villagers, which were grazing in the disputed land. Such repeated violation of the traditional arrangement, as recorded in the order dated 14.12.1998, were brought to the notice of the district administration on a number of occasions in the past prompting the Deputy Commissioner of the District to order several enquiries but no effective steps for redressal of the grievance of the Domkho villagers could be taken by the authorities. Ventilating the grievances of the villagers of Domkho village, the petitioner had filed a representation dated 29.4.2011 before the respondent No.2 requesting urgent action to be taken in the matter so as to find out a permanent solution to the vexed issue. However, since no action has been taken on the said representation, the petitioner has been compelled to approach this Court by filing the present writ petition seeking a writ of mandamus.

4. Mr. Tshering, learned counsel for the petitioner submits that for the purpose of finding out a permanent solution to the boundary dispute arising between the residents of both the villages, an independent Board is required to be constituted in terms of the recommendation made by the Additional Deputy Commissioner, Dirang and Kalaktang vide letter dated 7.6.2011 and till settlement of the issue, the parties be directed to maintain status quo.

5. The respondents No. 5 to 9 have filed counter affidavit disputing the claims made in the writ petition. By strongly resisting the prayer made by the petitioner, Mr. K. Jini, learned counsel for the respondents No. 5 to 9 submits that the residents of both the villages had been living in peace and harmony since ages and the said tradition had continued even after the judgment and order dated 14.12.1998 passed by the 'Kebang', which was presided over by the Additional Deputy Commissioner, West Kameng district, Bomdila. Even thereafter, when the villagers kept on insisting for a demarcation of both the villages, the Deputy Commissioner, West Kameng district had constituted a Three Members Committee for resolution of the boundary dispute of Domkho and Mandlaphudung village. The committee which had representatives of both villages had submitted a report on 6.1.1990 making specific suggestions contained therein. After receipt of the report of the said committee, a meeting of the concerned authorities was convened on 29.1.1990, whereafter a decision was taken to draw the boundary line between the two villages. Accordingly, a sketch map has been prepared and the matter has been finally settled.

6. Mr. Jini submits that the present writ petition filed after nearly 23 years since the boundary between the two villages was finalized, is not only barred by time but the same is also based on several disputed questions of facts, which cannot be entertained in a writ proceeding. Learned counsel, therefore, prays for dismissal of the writ petition with cost.

7. Ms. A. Mize, learned Additional Sr. Govt. Advocate has supported the arguments advanced by Mr. Jini, learned counsel for the respondents No. 5 to 9.

8. I have considered the rival submissions made by the learned counsel for the parties and have also gone through the materials available on record. From the documents annexed to the writ petition, it transpires that the dispute between the two villages, viz., Domkho and Mandlaphudung has a history and there has been a number of instances in the past when the villagers have complained of undue intrusions into the disputed land. In order to find a permanent solution to the said issue, a 'Kebang' was held by the Additional Deputy Commissioner, West Kameng district, who had delivered his verdict on 20.12.1998. The relevant portion of the decision rendered by 'Kebang' is quoted here-in-below for ready reference:

"Decision

Considering all the pros and cons of the dispute and also in consonant with mutually agreed tradition the villages of Domkho and Mandlaphudung should maintain the traditionally agreed arrangement or status quo. If at all they arrive at a mutual agreement to indicate their village jurisdiction both the village may put their heads together and find out possible ridges or stream as their agreed boundary. If that is done the govt. officials and middleman can be disputed to witness such agreements. Till then, both the villages should stand where they are."

9. Even thereafter, when the dispute between the two villages could not be permanently settled, a Three Member Committee consisting of the Vice-President of Zilla Parishad of West Kameng district, Vice President of Kalaktang (AS) and the Vice President of Dirang (AS) was constituted by the respondent No.2 so as to carry out an inspection and submit a report. The aforesaid committee had conducted a detail examination of the boundary issue and submitted a report on 6.1.1990 before the respondent No.2. A meeting was thereafter, convened by the respondent No.2 on

29.1.1990, which was attended by all the official functionaries connected with the matter. In the said meeting, certain important decisions had been taken touching upon the boundary dispute existing between the two villages. The observation recorded in Paragraph-III of the Minutes of the meeting held on 29.1.1990 is deemed to be relevant and therefore, the same is being extracted here-in-below:

".....III) A meeting was thereafter fixed in my office on 29.1.90 in which the Committee Members, Extra Assistant Commissioner, Dirang, Circle Officer, Kalaktang and EAC(LR), Bomdila and Addl. D.C., Bomdila, were also invited. It was decided to accept the recommendations of the Committee broadly with some minor adjustments. The boundary line between the two villages is the ridge starting from Manedukpa and going upwards and passing through Chongmasing and Pangmelang grazing land. From Pangmelang a straight line has been drawn to join the tip ridge at the last point of Nyukru grazing land. This straight line will be demarcated by affixing boundary pillars. From Nyukru grazing point the boundary stretches towards west along the top ridge and reaches upto Sherphukawa. A sketch map has been prepared indicating the boundaries between Domkho and Mandalaphudung villages in red line. The area under Domkho village in the Sketch Map has been shown in blue colour."

10. In terms of the decision arrived at the meeting dated 29.1.1990, a sketch map was prepared and the same was circulated to all the concerned persons including the GBs/ASMs/GPMs of Domkho village and Mandalaphudung village. After receipt of the sketch map, the members of the petitioner's village had raised certain objections regarding the projection made in the sketch map. Taking note of such objections raised by the residents of Domkho village, necessary corrections were also carried out in the sketch map on 2.1.1991 in consultation with the Gaonburahs of the Kalaktang and Dirang and thereafter, the corrected

sketch map was re-issued to all concerned including the representatives of Domkho village. Since then, the boundary line between the two villages i.e. Domkho and Mandalapudung village had been finalized. The aforesaid position has remained unaltered since January, 1991. It is not in dispute that both the villages were adequately represented in the Committee constituted for conducting site visit, which had submitted the report on 6.1.1990.

11. By filing the present writ petition, the petitioner is making an attempt to re-open the said issue seeking a direction for carrying out a fresh boundary demarcation. From the materials on record, it is seen that the residents of Domkho village were well aware of the decision taken in the meeting held on 29.1.1990 and also about the sketch map drawn up by the authorities. It is not in dispute that even the corrected sketch map has been received by the villagers of Domkho village. The petitioner has neither challenged the Minutes of the meeting held on 29.1.1990 nor the sketch map prepared by the authorities. If that be so, *dehorse* any challenge made to the decision taken in the meeting held on 29.1.1990, the petitioner cannot be permitted to re-open the aforesaid issue by filing the present petition. That apart, the grounds on which the issues are sought to be re-opened are also apparently based on several disputed questions of facts that cannot be gone into in the present writ proceeding.

12. For the reasons stated here-in-above, I am of the view that the relief(s) sought for in the present writ petition cannot be granted to the petitioner. The writ petition is, therefore, dismissed.

13. Notwithstanding the order passed by this Court, it would be open to the petitioner to file appropriate representation before the respondent

No.2 for resolution of any dispute arising within the four corners of the decision taken in the meeting dated 29.1.1990 and the sketch map drawn in respect thereof. Liberty is also granted to the petitioner to approach the civil court seeking such declaratory relief, as may be available to him, under the law.

13. The writ petition is, accordingly, closed.

14. No order as to cost.

JUDGE

Mks/