

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram & Arunachal Pradesh)

ITANAGAR BENCH

CRP No.24 (AP) of 2009

1. Sri Jobom Basar, s/o late Tojo Basar,
resident of Nyigam village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
2. Sri Komar Basar, s/o late Marko Basar,
resident of Nyigam village, Basar,
PO & PS Basar, West Siang District,
Aruanchal Pradesh.
3. Sri Toi Basar, s/o late Lito Basar,
resident of Nyigam village, Basar,
PO & PS Basar, West Siang District,
Aruanchal Pradesh.
4. Sri Marto Basar, s/o late Rimar Basar,
resident of Soi village, Basar,
PO & PS Basar, West Siang District,
Aruanchal Pradesh.

...Petitioners

VERSUS

1. The State of Arunachal Pradesh
through the Chief Secretary,
Government of Arunachal Pradesh.
2. The Additional Deputy Commissioner,
Basar West Siang District,
Arunachal Pradesh.
3. The Head Gaon Burah (Village Authority)
Nyigam Village, West Siang District,
Arunachal Pradesh.
4. Sri Jumli Basar, s/o late Tojum Basar,
resident of Nyigam Village, Basar,

PO & PS Basar, West Siang District,
Arunachal Pradesh.

5. Sri Ligo Basar, s/o Reli Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
6. Sri Mimo Basar, s/o late Limi Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
7. Sri Pegi Basar, s/o Tapek Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
8. Sri Jumkar Basar, s/o late Marjum Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
9. Sri Heni Basar, s/o late Marsen Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
10. Sri Jumi Kamsi, s/o late Mijum Kamsi
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
11. Sri Eli Basar, s/o late Tai Basar,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
12. Sri Kie Kamsi, s/o late Ghokki Kamsi,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.
13. Sri Kido Kamsi, s/o late Chokki Kamsi,
resident of Nyigam Village, Basar,
PO & PS Basar, West Siang District,
Arunachal Pradesh.

14. Sri Hugyum Basar, s/o late Tahuk Basar, resident of Nyigam Village, Basar, PO & PS Basar, West Siang District, Arunachal Pradesh.
15. Sri Nyato Basar, s/o Sri Yumya Basar, resident of Nyigam Village, Basar, PO & PS Basar, West Siang District, Arunachal Pradesh.

...Respondents.

**BEFORE
THE HON'BLE MR.JUSTICE AC UPADHYAY**

For the Petitioners	::	Mr.K.Ete, Advocate.
For the Respondents	::	Mrs.G.Ete, GA & Mr.T.Pertin, Advocate.
Date of order	::	16.12.2009

**O R D E R
(Oral)**

This is an application under Article 227 of the Constitution of India praying for a direction to the Village Authority to hear and dispose of the complaints lodged by the petitioners in terms of provisions of Section 40 of the Assam Frontier (Administration of Justice) Regulation, 1945.

[2] Heard Mr.K.Ete, learned counsel for the petitioners, Ms.G.Ete, learned GA, AP for respondent Nos.1 and 2 as well as Mr.T.Pertin, learned counsel for respondent Nos.3 to 15 and.

[3] The petitioners being owners of certain plots of land in Nyigam Village under Basar, P.S., West Siang District, lodged civil complaints on 09.10.2009, 10.10.2009,

24.10.2009 and 26.10.2009, before the Head Gaon Bura of the village, for adjudication of the alleged encroachment by the respondents. The village authority of Nyigam village has the jurisdiction to try and dispose of all kinds of civil litigations when both the parties are indigenous people of the State and reside within the local jurisdiction of the village.

[4] The chief grievance of the petitioners is that even in spite of filing of formal civil complaints alleging encroachment, the Head Gaon Bura of the Village Authority of Nyigam Village, to the utter surprise of the petitioners, vide its letter dated 28.10.2009, directly refused to hear or try the complaint submitted by the petitioners stating therein that the Addl. Commissioner, Basar, had instructed the Village Authority not to hear the case of the petitioners. The letter dated 28.10.2009 addressed to the petitioners by the H.G.B, Nyigam Village reads as follows:

“ Dear complainants’ party, I received your complaints and accordingly I was planning to hear your complaints just after harvesting. But since the A.D.C Basar has instructed me not to hear your complaints, I am to inform all of you that I could not hear your complaints.”

[5] Mr.K.Ete, learned counsel for the petitioners submitted that refusal of the Village Authority to exercise its jurisdiction is violative of the legal right of the petitioners in terms of the provision of Section 40 of the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as “the Regulation” in short).

[6] On careful perusal of the provisions of Section 5 of the Regulation, it appears that the Deputy Commissioner shall appoint such person (s) as he considers

to be the members of a Village Authority, for such village or villages as he may specify and may also modify or cancel or any such order of appointment, may dismiss any person so appointed.

[7] However, in terms of sub-section (2) of sub-section 5 of the Regulation, if in any area for which no Village Authority has been constituted, as per provisions of sub-section (1) the powers and functions of Village Authority, as provided by the Regulation, shall be exercisable by the Deputy Commissioner himself or by the Assistant Commissioner authorised by him in this behalf. However, in the instant case, it is not disputed by the parties that the Village Authority has been constituted in respect of Nyigam Village under Basar, P.S.

[8] Section 36 of the Regulation reveals that the Civil Justice shall be administered by the Deputy Commissioner, the Assistant Commissioner and the Village Authorities. As per provisions of Section 40 of the Regulations, it appears that the Village Authority shall have jurisdiction to try all such suits without limit of value, in which both the parties are indigenous to the Union Territory of Arunachal Pradesh and live within the territorial jurisdiction of the village.

[9] Thus apparently, the Village Authority is the civil court of lowest jurisdiction at the village level to exercise civil powers when both the parties are indigenous and live within the jurisdiction of the Village Authority. In the present case, it is not disputed that both the parties are indigenous to the Union Territory of Arunachal Pradesh and live within the jurisdiction of the Village Authority mentioned above.

[10] Mr.T.Pertin, learned counsel for the private respondents drawing attention of this court to various executive directions issued by the District Administration of West Siang District, Basar submitted that any land/area which are generally treated as community land of villagers where they have been settling since time immemorial cannot be claimed by any individual. Thus, sale and purchase of such land is also not permissible under the rules.

[11] Mr.T.Pertin, learned counsel for the respondents submitted that Head Gaon Bura cannot be considered to be the Village Authority, therefore the letter aforesaid dated 28.10.2009 placed by the petitioners, allegedly issued by the Village Authority is not acceptable as a formal communication of a Village Authority.

[12] In reply to the above submission, Mr.K.Ete, learned counsel for the petitioners draws attention of this Court to the 'Guidelines for Appointment of Gaon Burahs/Head Gaon Burah', issued by the State Government vide No.GA(B)-87-88 dated 27.02.2001, wherein it has been reflected that the Head Gaon Burahs / Gaon Burahs shall try all suits without limit of value in which both the parties are indigenous to the State and live within the village.

[13] It will be pertinent to depict herein below the relevant part of the 'Guidelines regarding appointment,powers and functions of powers and functions of Head Gaon Burahs' to examine the powers and functions of Head Gaon Burahs exercising civil jurisdiction.

"Power (on civil justice):

The H.G.Bs/G.Bs shall try all suits without limit of value in which both the parties are indigenous to the State and live within the village.

(b) The H.G.Bs/G.Bs shall have the power to award costs, as well as compensation not exceeding Rs.50/- in case to dependants for unfounded or vexatious suits brought against them.

© The H.G.Bs/G.Bs may appoint one or more assessors to assist them in coming to a decision, and when they do so they shall record, but not bound by opening of the assessor.

(d) All suits tried by the G.Bs/G.Bs shall be decided in open, “Darbar” in the presence of the parties and at least three independent witnesses.

(e) After hearing both parties and their witnesses, if any, the G.Bs/G.Bs shall forthwith pronounce a decision.

(f)”

Thus, apparently the Head Gaon Burah of the village is required to try and dispose of the suits and litigations in open “Durbar”, in presence of the parties. However, in any view of the matter, when a formal complaint alleging civil dispute is lodged by an indigenous resident of the village before the Village Authority, alleging encroachment of the land by an indigenous resident of the locality, a duty is cast on the Village Authority to exercise jurisdiction to entertain such application and dispose it of in accordance with the procedure laid.

[14] If a quasi-judicial authority fails to exercise jurisdiction so vested in law, it would invite interference by this Court.

Similarly, it is well settled principle of law that if any court or quasi-judicial authority within the jurisdiction of the High Court fails to exercise its discretion in accordance with sound judicial principles it will be deemed to be an exercise of jurisdiction with material irregularity and in such circumstances this court would be bound to undo the injustice caused to the concerned party.

[15] As a matter of fact, in the instant case, the Head Gaon Burah as the Presiding representative of the Village Authority, by refusing to entertain the application submitted by the petitioners on merit on some technical ground has virtually refused to exercise jurisdiction vested on him.

[16] The executive instruction given by the Additional Deputy Commissioner, Basar to the Village Authority, in the capacity of Executive Magistrate, by issuing executive order, cannot take away usual power of adjudication of civil dispute by the Village Authority. Such executive orders, as a matter of fact, would amount to encroachment on the judicial system at grass root level. Therefore, apparently any such interference in the usual adjudicatory proceeding of the village authority by such executive fiat is highly illegal, arbitrary, and uncalled for.

[17] Any such Executive order of instructions whatsoever, of the Additional Deputy Commissioner, Basar, cannot interfere with the judicial power of the Village Authority, inasmuch as in terms of the provision of Section 40 of the Regulation, the Village Authority having been vested with the original jurisdiction, without any pecuniary limitation in the system of administration of justice in the

state of Arunachal Pradesh has ample jurisdiction to try all kind of civil suits. And therefore the letter dated 28.10.2009 of the Gaon Burah refusing to exercise its jurisdiction is bad in law. And accordingly, the same is liable to be interfered with by this Court for the ends of justice.

[18] In the present case, refusal of Head Gaon Burah of the Village Authority, to entertain the application/complaints merely on the instruction of the ADC, Basar, shall be deemed to be failure to exercise civil jurisdiction vested in the Village Authority.

[19] If revisional power is not exercised by this Court the interlocutory direction of the Head Gaon Burah declining to exercise his civil jurisdiction would cause injustice to the petitioners. Accordingly, in view of the above, the impugned letter dated 28.10.2009 issued by the Head Gaon Burah of Nyigam village stands quashed.

[20] In the facts and circumstances of the case, I propose to dispose of this revision petition with a direction to the Village Authority of Nyigam Village, to dispose of the application/petitions submitted by the petitioners in accordance with law by giving adequate opportunity of hearing.

Accordingly, in terms of above direction, this petition stands disposed of.

JUDGE