

Yanglung and anr. Vs. the State of Manipur and ors.

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Court : Guwahati

Decided On : May-07-1992

Judge : W.M. Shishak and N.G. Das, JJ.

Acts : Manipur (Village Authorities Hills Areas) Act, 1956 - Sections 3(2);
[Constitution of India](#) - Article 14

Appeal No. : Civil Rule No. 1 of 1979

Appellant : Yanglung and anr.

Respondent : The State of Manipur and ors.

Advocate for Def. : R.K. Nokulsana Singh, Adv.

Advocate for Pet/Ap. : T. Nandakumar Singh, Adv.

Disposition : Petition allowed

Prior history : Shishak, J. 1. In this writ application under Article 226 of the Constitution, the petitioners assail an order dated 5-12-78 passed by the Deputy Commissioner, Ukhrul, mainly on three grounds, namely, (1) that the Deputy Commissioner, Ukhrul, has no jurisdiction to bifurcate the existing land of the petitioners' village to grant two separate pattas, (2) that the impugned order was passed without assigning reasons and (3) that it was passed in violation of the principles of natural justice.

Judgement :

Shishak, J.

1. In this writ application under Article 226 of the Constitution, the petitioners assail an order dated 5-12-78 passed by the Deputy Commissioner, Ukhrul, mainly on three grounds, namely, (1) that the Deputy Commissioner, Ukhrul, has no jurisdiction to bifurcate the existing land of the petitioners' village to grant two separate pattas, (2) that the impugned order was passed without assigning reasons and (3) that it was passed in violation of the principles of natural justice.

2. The impugned order is a brief one and we may reproduce :

'No. 10/8/74 Vol-I/REV : With the approval of the Government of Manipur, East the Deputy Commissioner, Manipur East District, Ukhrul hereby grants two separate pattas for Pushing village as Pushing Ching-thak and Pushing Chingkha villages under two separate Headmen. The boundary between the two villages will be Masira Kong Lok and Rachung Kong Lok. The two headmen, hereinafter will pay Hill House Tax in respect of their respective villages separately.'

3. We may briefly narrate the facts leading to the present case. The petitioner No. 1 is the son of late Shonphung, who being the eldest son, became the headmen of Pushing village. At the time of filing of this petition in 1979, the petitioner No. 1 being a minor, was represented by the petitioner No. 2 A. S. Yarchung who is the uncle of the petitioner No. 1. At the time of hearing of this petition in 1992, obviously the petitioner No. 1 represents Pushing village in the capacity of the headman.

4. At present there are about 500 villagers in the said Pushing village and the claim of the petitioners is that the entire land of the village belongs to head man of the village in accordance with custom of founding village. However, the petitioners also plead alternatively that the land also belongs to all the villagers jointly inasmuch as the villagers have their individual ownership over the separate plots of land as house sites or as cultivable lands within the village. The head man, in custom, protects and defends the right relating to the entire village land as far as

the boundaries with the neighbouring villages are concerned.

5. During the life-time of the petitioner No. 1's father, namely late Shongphung, the respondent No. 3 and some other villagers tried to have a separate village by obtaining a separate patta. Such attempts of the respondent No. 3 to divide the village was unsuccessful.

The respondent No. 3 and one late Saphei at one time claimed themselves to be Mantri and Khullakpa respectively of Pushing village and instituted a suit against late Shongphung (father of the petitioner No. 1) in the Court of S.D.O. Ukhrul. This suit was registered as Civil Suit No. 63 of 49-50. The relief claimed in the said suit was to evict late Shongphung from the village. After hearing the parties, the learned S.D.M., Ukhrul dismissed the suit by an order dated 19-4-50. It appears that the main contention of the respondent No. 3 in this suit was that the village should be divided into two parts as 'Chingthak' and 'Chingkha'. In accordance with the findings of the learned S.D.O., the parties admitted that the patta was always in the name of the petitioner. The respondent No. 3 and late Saphei filed another suit in the court of the S.D.O., Ukhrul being Civil Suit No. 98 of 50-51 against Shongphung (father of the petitioner No. 1), during his life-time, for the division of Pushing into two villages. This suit also came to be dismissed by an order dated 26-5-52. While dismissing the said suit, the learned S.D.M. was of the view that there was no necessity of passing any fresh order inasmuch as the respondents had stated that they did not dispute over the pattadarship of the village.

6. The respondent No. 3 and late Saphei preferred an appeal in the Court of the Deputy Commissioner, Manipur being Hill Appeal Case No. 171 of 1952. The appeal was dismissed on 5-9-62 by M. N. Phukari the learned Deputy Commissioner, Manipur. We may extract the said order :

'5-9-62: Parties present and are heard. The respondent is the pattadar for the entire village of Pushing. It appears that some years ago the villagers divided into two sections and lived separately in Pushing Chingthak and Pushing Chingkha though the patta or land was not divided subsequently they agreed to live together again and did so. No separate patta was given to Chingthak and the land too was

not partitioned. In the circumstances, the appellants cannot claim a separate patta or for demarcation of the boundaries. The appeal is dismissed.

The appellant says that if the boundaries are not demarcated the Kullakpa (Respondent) may interfere with their possession and create trouble. If the Khullakpa does anything contrary to law or custom, the aggrieved party may seek redress in the proper Court.'

The learned Court of the Deputy Commissioner was against the issuance of separate pattas in village 'Chingthak' and was against the partition of the village of Pushing.

7. Once again, the respondent No. 3 and late Saphei filed another petition before the learned Deputy Commissioner, Manipur. This petition was registered as Misc. Case No. 72 of 1959. The Learned Deputy Commissioner, Manipur by an order dated 9-6-60 rejected the prayer of the respondent No. 3 and late Saphei and held that there could be no separate villages. The said order of the learned Deputy Commissioner was in the following manner :

'This is a petition filed by the petitioners praying that (i) that the petitioner be allowed to pay the hill house tax of his village directly to Government and (ii) that the Opp. party be ordered to go back to their original site wherefrom they shifted to the present place in November 1945- Both parties were summoned but the Opp. party being absent without showing cause the case was heard ex parte. From a perusal of previous orders I find that decisions have been given on both the pleas put forward by the petitioners. In his order dated 26-3-53 in Hill Appeal case No. 313 of 1952 the D.C. had ordered that the appellant (Saphei Khullakpa of Pushing Chingthak) will continue to pay his village house tax through the respondent (Shonghung Khullakpa of Pushing Chingkha). Regarding the petitioners second plea this very same plea had been the subject of civil case No. 63 of 1949-50 in the court of the S.D.O. East Ukhrul with the present petitioners as plaintiffs and the present 6pp. party as defendant. The S.D.O. East Ukhrul had by his order dated 19-4-50 had in that case rejected the plaint. These decisions do not appear to have been set aside and therefore still hold. The petitioners, it would appear, are still agitating on a subject which has already received decision. They are warned

not to raise this again. Petition discussed.

Sd/- C. H. Naire,

Deputy Commissioner, Manipur

9-6-60.

8. Being not daunted by the aforesaid orders, the respondent No. 3 and late Saphei once again preferred an appeal in the Court of the learned Chief Commissioner. It was registered as Hill Revision Case No. 7 of 1960. While dismissing the appeal, Shri J. M. Raina, IAS, the learned Chief Commissioner, Manipur by order dated 3-2-61, held that two parts of the village namely 'Chingthak' and 'Chingkha's always constituted one village. The learned Chief Commissioner was not inclined to interfere with the order dated 9-6-60 passed by the learned Deputy Commissioner. We may reproduce the order dated 3-2-61 passed by the learned Chief Commissioner :

'This matter has been decided more than once against the appellants. I do not find sufficient evidence to support the contention that the two villages were separate and treated as such. Even the order of learned Deputy Commissioner in Hill Appeal Case No. 313 of 1952 clearly laid down that the appellant No. 1 would be considered as a separate Khullakpa and in fact he however decided that he must continue to pay his village house-tax to the present respondent. This also implies that the two parts of the village always constitute one village. The initial mistake lay in as much as the local Administration accepted the appellant as one more Khullakpa in that village though there was a compromise between the present parties. On this point even this should not have been recognised. It has only encouraged the appellant to agitate time and again. The appeal is therefore dismissed and the order of D.C. dated 9-6-60 will stand.

Sd/-Shri J.M. Rama, IAS

Chief Commissioner, Manipur,

Dated the 3rd February, 1961'.

It appears that the parties were silent thereafter for about 16 years. Then came the impugned order dated 5-12-78 as stated above.

9. We have heard Mr. T. Nandakumar Singh, learned counsel for the petitioners and Mr. R. K. Nokulsana Singh, learned counsel for the respondents.

10. The first submission of the learned counsel for the petitioners is that the learned Deputy Commissioner has no jurisdiction to bifurcate a village in terms of Section 3(2) of Manipur (Village Authorities in Hills Areas) Act, 1956 and that such power of constitution of village and bifurcation of village land is vested only in the State Authority. In *K. Khubam v. P. Baochalin Rongmei Naga*, 1983 (II) G.L.R. 53, this Court held that the Deputy Commissioner has no jurisdiction to bifurcate the village. On perusal of the judgment rendered by a Division Bench of this Court, we have no reasons to differ our opinion. In other words, we respectfully agree with the view taken by this Court in this case. That apart, para 10 of the affidavit filed on behalf of the respondents 1 and 2 (State of Manipur and the Deputy Commissioner, Ukhrul) takes the same view and, therefore, this portion of the affidavit filed on behalf of the respondents 1 and 2 supports the contention made on behalf of the petitioners. Para 10 of the said affidavit is to the effect that 'that this deponent begs to submit that under Section 3(2) of the Manipur Hill Village Authority Act, 1956, the State Government can create any new village authority in the interest of the villagers.' It follows from the above statement and also in terms of Section 3(2) of the said Act, that unless a new village is established and clearly bifurcated, there can be no question of creating any new village authority. On bare reading of the impugned order it is seen that the Deputy Commissioner has demarcated and set boundary between Pushing Chingthak and Pushing Chingkha. This bifurcation of the Pushing village as Pushing Chingthak and Pushing Chingkha is not, in our view, within the province of the Deputy Commissioner. It has been argued on behalf of the respondents by Mr. R. K. Nokulsana Singh that it is absolutely within the domain of the Deputy Commissioner, Ukhrul, to issue pattas as it is done in the impugned order, in exercise of his executive authority. This submission of Mr. Nokulsana Singh does not appear to be reasonable, because of the fact that if we are to accept his contention that the Deputy Commissioner is indeed competent to pass the

impugned order in this manner, we see no reason why he saw it fit to take approval of the Government of Manipur while issuing this impugned order. Therefore, if the Deputy Commissioner is completely authorised to issue such an order, the question of taking approval of the State Government before issuance of the order does not arise. At the same time, even assuming that the Deputy Commissioner had, indeed, sought the approval of the State Government before the impugned order was issued and assuming such approval was duly given, we have our doubts if such an order could have been issued by the Deputy Commissioner. In other words, even if the Deputy Commissioner had issued the impugned order with the approval of the State Government, whether such an order would amount to an order by the State Government is still questionable. However, the fact of the matter is that there was no approval, therefore, obviously it is incorrect that the impugned order was issued with the approval of the State Government. We have perused the affidavits filed on behalf of the State of Manipur and Deputy Commissioner, Ukhrul and there is nothing to show that the approval as stated in the impugned order, was given.

11. It has been further argued by Mr. R. K. Nokulsana Singh that two separate villages known as Pushing Chingthak and Pushing Chingkha have been in existence from time immemorial and that the Deputy Commissioner has issued separate pattas for the two villages only in recognition of existence of such villages for such a long time, this submission of Mr. Nokulsana Singh does not inspire confidence inasmuch as in the history of this village, in view of all the earlier decisions rendered in this behalf, for the first time, the boundary was sought to be demarcated by the impugned order only in 1978. Hence, we do not accept the submission of Mr. R. K. Nokulsana Singh and we reject it.

12. On perusal of the impugned order, we come to an irresistible conclusion that it is not a speaking order. Several decisions have been referred to at the time of argument. In our view, it is not necessary to refer to those decisions. We take this view, because, the impugned order is absolutely devoid of any reasons. It has no reference to any materials as to how the learned Deputy Commissioner has come to the conclusion. It is not such a simple matter that the Deputy Commissioner would have passed an order in a Casual manner as sought to be done in this

case. In fact, such an order can have very serious consequence as far as 500 or so villagers of Pushing village are concerned. It is needless to emphasise that the order of this nature must be founded on materials before the Court. To put it differently, the very fact that the impugned order does not mention any reasons, would vitiate the order itself.

13. Several averments have been made in the Government affidavit to say that there were circumstances which justified the issuance of the impugned order by the Deputy Commissioner, Ukhul. We are simply unable to accept such averments made in the Government affidavit inasmuch as the learned Deputy Commissioner while issuing the impugned order, has not referred to any such circumstances whatsoever. If such circumstances were in existence, it was the duty of the Deputy Commissioner to say so. Therefore, we are of the view that such circumstances or materials were not available before the Deputy Commissioner at the time of passing the impugned order or else the Deputy Commissioner would have no good reasons to omit to refer to such circumstances as are stated in the Government affidavit.

14. Mr. L. Shyamkishor Singh, learned Addl. Govt. Advocate's main submission is that the Deputy Commissioner, Ukhul is competent to pass the impugned order and would not in this regard need any approval from the State Government. As stated earlier, affidavit has been filed on behalf of the State of Manipur and the Deputy Commissioner, Ukhul. Whereas the impugned order clearly states that the order was passed with the approval of the Government of Manipur, the learned Additional Government Advocate cannot be heard to say that the approval as such is not necessary and that the Deputy Commissioner is competent to pass the impugned order. As we have stated above, we fail to understand how the Deputy Commissioner would say that the impugned order was issued with the approval of the State of Manipur if such approval was not necessary. We are, therefore, unable to accept the submission made by the learned Additional Government Advocate.

15. It has been submitted on behalf of the petitioners that the impugned order was passed without giving an opportunity to the petitioners of being heard. In other

words, the contention of the learned Counsel for the petitioners is that the impugned order was passed behind the back of the petitioners. As stated earlier, the impugned order does not give any reasons how the order came to be passed. There is nothing to show if the parties were heard. The order itself does not state that parties have been heard. It is unnecessary for us to examine whether or not parties, in fact, were heard. On perusal of the affidavit and upon hearing the learned counsel of the parties, we have no hesitation to come to the conclusion that the petitioners were not given any opportunity of being heard before the impugned order was passed. What is mandated by the Constitution of the country is that no one should be condemned unheard but that seems to have been done in the present case inasmuch as the petitioner were not heard before the impugned order was passed. On this count alone, the impugned order is liable to be quashed.

16. Admittedly, Pushing village is an old village, Villagers of Pushing village have been living together from time immemorial. Like any other villages in the hills, there might have been some misunderstanding among some sections or clans of the villagers but such ups and downs should not stand in the way of the villagers to live together under one patta. In fact, with the passage of time and advancement of education of modern days, are of the view that the villagers of Pushing village should learn to live in harmony and in peace. Since this village has been under one patta from the inception of the village and since the villagers of this village have been living together from time immemorial, we see no reasons why, instead of struggling to live separately, they should not strive to live in unity and in love.

17. In the premises aforesaid, we allow this petition and we make the rule absolute by setting aside the impugned order dated 5th December, 1978. In the facts and circumstances of the case and keeping in view the importance of the unity in the village among various sections, we make no order as to costs.

N.G. Das, J.

18. I agree.

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