



Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 304 of 2018

Date of Decision: 20.09.2024

1. Shri. Diwan A. Sangma,
Village Rangmalgre
Aking No. III-28(5),
P.O. Rongmatchok.
West Garo Hills District,
Meghalaya.
2. Smti. Winji Ch. Marak,
Village Rangmalgre
Aking No. III-28(5),
P.O. Rongmatchok.
West Garo Hills District,
Meghalaya.

.....**Petitioners**

-Versus-

1. The Chief Executive Member,
Garo Hills Autonomous District
Council, Tura, Meghalaya.
- 1(A). Secretary to the Executive Committee,
GHADC.
2. The Executive Member,
In-Charge Land and Revenue,
Garo Hills Autonomous District
Council, Tura, Meghalaya.
3. Shri. Mingseng Ch. Marak,
S/o Late Tonang Sangma,



Village Rangmalgre,
P.O. Rongmatchok,
West Garo Hills District,
Meghalaya.

4. Smti. Watje Ch. Marak,
Village Rangmalgre,
P.O. Rongmatchok,
West Garo Hills District,
Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. E.B. Sangma, Adv.
Mr. S. Changkija, Adv.

For the Respondent(s) : Mr. S. Dey, SC, GHADC (For R 1 & 2)
Mr. S. Deb, Adv. (For R 4)

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

J U D G M E N T

1. The petitioners, said to be the Nokma of Rangmalgre III-28(5) Aking have approached this Court with this instant petition on being aggrieved by the order of the respondent No. 2/Executive Member, Garo Hills Autonomous District Council, Tura dated 23.08.2016 whereby the registration of the Nokmaship of the petitioners have been cancelled, and also by the order dated 23.03.2018 passed by the respondent No. 1/Chief Executive Member, Garo Hills Autonomous District Council, Tura, who



has upheld the said order dated 23.08.2016 in appeal.

2. Heard Mr. E.B. Sangma, learned counsel for the petitioners who has submitted that the petitioner No. 2 belongs to the 'Chambugong Clan' coming from the lineage of the genealogical tree of the Rangmalgre III-28(5) Aking Nokma family, being the biological daughter of late Rakji Marak who was the daughter of late Gatran Sangma and late Watme Marak Mechik (female) who were the then Nokma of Rangmalgre III-28(5).

3. The learned counsel has further submitted that after the demise of the last recorded Nokmas of Rangmalgre Aking, Raban Sangma and Nosing Marak, an application was filed before the respondent No. 2 by Shri. Duran Marak, the matrilineal uncle of the petitioner No. 2 for registration of the names of the petitioner No. 2 and her husband as the Nokma of Rangmalgre III-28(5) Aking. The application was registered as GDC-30 A/C of 2003-2004. On an enquiry conducted by the Mouzadar and after complying with all the formalities, a report dated 18.11.2003 was filed by the Mouzadar and the respondent No. 2 on being satisfied with the same, has accordingly registered the names of the petitioners herein as the successor Nokmas of Rangmalgre Aking III-28(5) vide order dated 03.12.2003.

4. It is also the submission of the learned counsel that on 24.03.2004 a fresh petition under Section 7 and 8(1) of the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 was filed by the respondent No. 3 herein for registration of the name of the petitioner No. 2 as the Nokma of the said Rangmalgre III-28(5) Aking. The petition



was registered as GHADC-Rev/33 A.C/2004.

5. The respondent No. 2 then directed the Mouzadar to conduct a re-enquiry on the basis of the said petition dated 24.03.2004 and upon enquiry, a report dated 07.06.2004 was filed, inter alia, indicating therein that the petitioners herein have already been registered and appointed as Nokma of the said Rangmalgre Aking. The respondent No. 2 however, vide order dated 24.08.2004, has directed that notice be issued to the parties to appear before him. Notice was accordingly issued upon the petitioner No. 2 only on 01.03.2007 with direction to appear before the Court of the respondent No. 2 on 07.03.2007.

6. The learned counsel went on to submit that the petitioners filed their written statement on 12.04.2007 to which the respondent No. 3 filed a rejoinder dated 20.09.2007 to the same, however, without seeking leave to amend his pleadings, has added new set of facts. Again, the petitioner has filed a counter to this with a prayer for dismissal of the main petition but the respondent No. 2 proceeded to frame the issues on the basis of the suggested issues filed by the parties.

7. The respondent No. 2 after considering the materials before him including the written statement and rejoinder and on the basis of the issues framed by him, after hearing the parties had passed the impugned order dated 23.08.2016, the petitioners being aggrieved by such order have preferred an appeal before the respondent No. 1/Chief Executive Member, GHADC the same being registered as GHADC-Rev./Appl. No. 9 of 2016. A rejoinder to the contents in the memo of appeal was filed by the respondents No. 3 and 4. The respondent No. 1 after hearing the



parties had vide the impugned judgment and order dated 23.03.2018 upheld the order of the respondent No. 2 dated 23.08.2016. The petitioners therefore are before this Court with this instant petition seeking a direction to set aside and quash the impugned judgment and order dated 23.08.2016 passed by the Executive Member, Incharge Revenue, GHADC/respondent No. 2 and the impugned judgment and order dated 23.03.2018 passed by the Chief Executive Member, GHADC/respondent No. 1.

8. The learned counsel has contended that the fact that the petitioners herein have been registered as the Nokma of the said Rangmalgre III-28(5) Aking vide order dated 03.12.2003 passed by the court of the respondent No. 2 itself is a matter of record and is a known fact as far as the proceedings before the successor/respondent No. 2 is concerned, as such, the said order having attained finality with no appeal preferred against the same at the relevant point of time, the respondent No. 2 vide the impugned judgment and order dated 23.08.2016 could not have reopened the case on the same facts and circumstances and also on the same cause of action. The respondent No. 2 not being conferred with the power of review under the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 could not have passed the impugned order which in essence is a review of the earlier order dated 03.12.2003 (*supra*) since the power of review is not an inherent power. The case of *Patel Narshi Thakershi & Ors. v. Shri. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, para 4 has been cited in this regard.

9. The learned counsel has also submitted that the respondent No. 2 had rejected the amendment application filed by the respondent No. 3



vide order dated 14.06.2012 however, in the impugned judgment and order dated 23.08.2016 the respondent No. 2 has reconsidered the contents of the amendment application which fact was reflected in the said order, which could not have been done so without giving the petitioners an opportunity to response to such application at the relevant point of time. In the context of this contention, the learned counsel has cited the case of A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation, (1966) 1 SCR 796, para 28.

10. The learned counsel has reiterated that the order dated 03.12.2003 confirming the status of the petitioners as Nokma of the said Aking in question, the same could not be disturbed except by a relevant order passed by a superior court. That the respondent No. 2 vide the said impugned judgment and order dated 23.08.2016 had cancelled the Nokmaship of the petitioners, such order or action is ultra vires, illegal and unjustified and the same cannot escape the scrutiny of law. It is therefore proper for this Court to set aside and quash the said impugned order, submits the learned counsel.

11. Similarly, the appellate authority, that is the respondent No. 1, on appeal having disregarded the settled issues of facts as far as the status of the petitioners are concerned and being fully aware of the said order dated 03.12.2003, have, in a mechanical manner without due application of mind, in total contravention of the settled principle of justice, equity and fair play passed the impugned order dated 23.03.2018 which order is also liable to be dismissed herein, submits the learned counsel.

12. Mr. S. Dey, learned Standing Counsel, GHADC/respondents No.



1 and 2 in his submission has recounted the case of the petitioners, that is, the fact that one Shri. Duran Marak had approached the respondent No. 2 for registration of the names of the petitioners as the Nokma of the said Rangmalgre III-28(5) Aking, wherein in such application it has been indicated that the petitioner No. 2 is the daughter of the last recorded Nokma and as such, is entitled to be named as the said Nokma. However, this is a suppression of facts inasmuch as the biological daughter of the last recorded Nokma is Watje Ch. Marak, the respondent No. 4 herein. The learned Standing Counsel has further submitted that to correct the anomaly which has occurred in the order dated 03.12.2003 an application was filed by the respondent No. 3 before the respondent No. 2 seeking registration of the name of respondent No. 4 as the Nokma though inadvertently instead of the name “Smti. Watje Ch. Marak” the name “Smti Winje Ch. Marak” (petitioner No. 2) appeared. However, in course of the proceedings the respondent No. 3/petitioner had filed an amendment petition before the respondent No. 2 to correct the mistake which was allowed and reflected in the impugned order dated 23.08.2016.

13. It is also the submission of the learned Standing Counsel that the proceedings before the respondent No. 2 as far as the petition filed by respondent No. 4 dated 24.03.2004 have been conducted in a fair and transparent procedure with the relevant parties being issued notice to appear before the court of the respondent No. 2 and also the filing of the objection and rejoinder was allowed. Further, both parties having filed their suggested issues, the respondent No. 2 had framed the issues on 11.06.2009 and the argument of the parties was accordingly heard.



14. On the merits of the case of the parties, while adhering to the principles found in the Garo customary law wherein the right to inherit property is vested only in one daughter who becomes the heiress and is known as the Nokna, the Nokna being the rightful daughter of the Nokma and as such, in the area of inheritance and lineage vis-à-vis appointment of Nokma, the court of the respondent No. 2 having come to the findings that the respondent No. 4 is the biological daughter of the last recorded Nokma and also that her claim to Nokmaship having secured the approval of the Maharis who have decided to recommend her name to be appointed as the Nokma, the decision and findings rendered in the impugned order dated 23.08.2016 cannot be faulted. In this regard, the order dated 26.09.2014 passed in the case of Smti. Chellish Sangma & Anr. v. Smti. Labina Sangma & Ors., in WA No. 43 of 2011 by a Division Bench of this Court, para 4, 5, and 6 was cited in support of this contention.

15. The learned Standing Counsel has also refuted the contention of the petitioners that the respondent No. 2 has no power or authority to review its own judgment or order and has submitted that the proceedings before the court of the respondent No. 2 is to be guided by the spirit of the Code of Civil Procedure in order to render complete justice to the parties and as such, there is no infirmity or illegality or even irregularity in the manner and procedure adopted by the respondent No. 2 in the passing of the said impugned order dated 23.08.2016. The order dated 21.03.2017 passed by this Court in the case of Shri. Munising T. Sangma & Ors. v. GHADC & Ors., WP(C) No. 314 of 2014, para 5 is cited in this regard.



16. Mr. S. Deb, learned counsel for the respondents No. 3 and 4 respectively, has submitted that the impugned judgment and order of the respondent No. 2, who is the Executive Member Incharge of Revenue has covered all the factual aspects of the case between the contesting parties and has rightly come to the conclusion that the respondent No. 4 is rightfully the one who should be made the Nokma of the said Rangmalgre III-28(5) Aking, the appeal made against this finding also being deservingly rejected.

17. Reiterating the factual circumstances of the case, the learned counsel has submitted that the respondent No. 4 is the rightful daughter of the last and undisputed Nokmas (L) Raban Sangma and Nosing Marak and was also chosen by the Chras and Maharis as the successor Nokma or Nokna. On the other hand, the petitioners having failed to prove their lineage to the last recorded Nokma, have no vested right to claim the Nokmaship.

18. The learned counsel has further submitted that by suppressing and misrepresentation of facts, the petitioners have got themselves registered as Nokmas and as such, obtaining an order by way of fraud would render the said order non est in the eyes of law. Therefore, the order dated 03.12.2003 cannot be sustained, the subsequent petition for registration of the name of the respondent No. 4/Watje Ch. Marak as the Nokma of the said Aking in question has been dealt with by the learned Executive Member Incharge Revenue/respondent No. 2 in the light of the materials on record leading to the conclusion drawn as is evident in the order dated 23.08.2016 whereby the registration of the names of the petitioners as Nokmas have been cancelled.



19. It is the submission of the learned counsel that the order dated 23.08.2016 passed by the respondent No. 2 has been passed based on sound principles of Garo customary law in connection with Nokmaship and after proper appreciation of the materials on record. Due procedure in terms of the judgment in the case of Dore Sangma, (1988) 2 GLR 120, has been adhered to, the petitioners having failed to prove their claim or case in the face of the concurrent findings of the respondent No. 2 and respondent No. 1 have preferred this instant writ petition without any merits and the same is liable to be rejected.

20. This Court, without repeating whatever have been stated as far as the facts and circumstance of the case of the parties is concerned, except what is necessary to be stated for the purpose of emphasis, inasmuch as the same have been elaborately enumerated hereinabove, will consider the relevant issue(s) to be decided which have a bearing on the claim and counterclaim of the respective parties herein.

21. On consideration of the factual matrix of the case of the parties, what is understood is that Shri. Duran Marak, the matrilineal Uncle of the petitioner No. 2 approached the Executive Member Incharge Revenue, GHADC in the year 2003 with a prayer for registration of the name of the petitioner No. 2 and her husband, the petitioner No. 1 as Nokma of the said Rangmalgiri Aking III-28(5). After due and proper procedure was followed, in view of the related report of the Mouzadar, the order dated 03.12.2003 was passed confirming the petitioners as the said Nokmas.

22. It is also noticed that from the contents of the said order dated 03.12.2003, the Executive Member Incharge Revenue has noted that on



there being no objections from any quarters and on the statements of the clan people, the same was passed.

23. Further, as is evident from records is found the application dated 24.03.2004 filed by Shri. Mingseng Ch. Marak/respondent No. 3 seeking registration of the name of Smti. Winje Ch. Marak, who is the petitioner No. 2 herein as the Nokma of the self-same Rangmalgre Aking. This application was assumed to be an objection to the registration of the names of the petitioners as Nokmas since the Executive Member has caused issuance of notices and has also called upon the parties to file their written statement.

24. Again, it could not be understood as to how and under what provision and procedure an application seeking to reinforce the name of the petitioner No. 2 as Nokma was considered or taken as an application objecting to such registration. From the impugned order dated 23.08.2016, the Executive Member has observed that after the filing of the said application dated 24.03.2004 by Shri. Mingseng Ch. Marak, an application dated 17.05.2012, for amendment of the same was subsequently filed by Shri. Mingseng Ch. Marak. This amendment application was however not allowed by the Executive Member vide order dated 14.06.2012.

25. However, it is surprising to note that the Executive Member in the impugned order dated 23.08.2016 has referred to this amendment application and has allowed the same, by doing so, the whole course of the case between the parties have been changed inasmuch as according to the argument of the learned counsel for the petitioner, such amendment



seeks to correct the name of “Winji Ch. Marak”, the petitioner No. 2 to that of “Smti Watje Ch. Marak”, the respondent No. 4 herein, which would in essence be considered or taken as an application of objection to the registration of the name of the petitioners as Nokmas, following which, notices to the contesting parties and filing of written statement and rejoinder can be allowed. But having rejected the amendment application, the Executive Member could not have proceeded with the proceedings culminating in the passing of the said impugned order. The impugned order dated 23.03.2016 was therefore passed without any basis and not in accordance with due procedure, the same has even verged on the threshold of violation of the principle of natural justice as the said amendment application was not made known to the petitioners who were parties in the said proceedings before the Executive Member.

26. This would lead to one conclusion, that is, that the said application filed by Shri. Mingseng Ch. Marak/respondent No. 3 before the Executive Member dated 24.03.2004 is an application for review of the order dated 03.12.2003. However, there being no specific provision of review under the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958 and the power to review not being an inherent power as was held by the Hon’ble Supreme Court in the case of Patel Narshi Thakershi (supra) relied upon by the petitioner, the Executive Member could not have made such related observations in the order dated 23.08.2016. The said order is therefore liable to be set aside and dismissed.

27. This aspect of the matter was also not noticed or discussed by the appellate authority, that is, the Chief Executive Member/respondent No. 1



in his order dated 23.03.2018, also impugned herein.

28. This Court would not go into the merits of the case of the respective parties as the respondents herein have collectively argued on the merits of the case to say that the petitioners have got their names registered as Nokmas by suppression of facts and therefore the impugned orders passed are justified in this regard. The reliance of the respondents No. 1 and 2 on the case of Smti. Chellish Sangma (supra) was also based on this premise. However, this Court would agree with the petitioners who have placed reliance on the case of Mohammed Hanif v. State of Assam, (1969) 2 SCC 782 wherein at para 5, extracts of which is reproduced herein, the Hon'ble Supreme Court has held as follows:-

“5. It is true that the jurisdiction of the High Court under Article 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the private rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. In other words, the jurisdiction of the High Court under Article 226 is a supervisory jurisdiction, a jurisdiction meant to supervise the work of the tribunals and public authorities and to see that they act within the limits of their respective jurisdiction. In a proceeding under Article 226 the High Court is not concerned merely with the determination of the private rights of the parties; the only object to such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that various authorities and tribunals act within the limits of their respective jurisdiction...”

29. In view of the observations and discussion made hereinabove, this Court is of the considered opinion that the impugned order dated 23.08.2016 as well as the order dated 23.03.2018 have been passed beyond jurisdiction and not in conformity with the accepted procedure,



the same are therefore hereby set aside and quashed. Consequently, the prayer of the petitioners in this regard is also hereby allowed.

30. The records as produced by the learned Standing Counsel, GHADC are hereby also returned to him.

31. Petition disposed of. No costs.

Judge