

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

CRP 20 (AP) 2012

1. Rinchin Dondup,
S/o Sri Leki Tsering,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

2. Lungten Khochilu,
S/o Sri Choti
S/o Sri Leki Tsering,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

3. Kesang Wangdi,
S/o Sri Phurpa,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

4. Shri Dor Tsering @ Dorjee Tsering,
S/o Sri Phurpa,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

5. Kukpa Khochilu,

S/o Lt. Naksang,
 R/o Village Thembang,
 P.O/P.S. Dirang, West Kameng District,
 Arunachal Pradesh.

6. Lobsang Dawa,
 S/o Sri Leki Tsering,
 R/o Village Thembang,
 P.O/P.S. Dirang, West Kameng District,
 Arunachal Pradesh.

7. Serkongma,
 S/o Lt. Naksang,
 R/o Village Thembang,
 P.O/P.S. Dirang, West Kameng District,
 Arunachal Pradesh.

..... ***Petitioners.***

– *Versus* –

1. Pema Wange
 S/o Sri Tseten Gurme,
 R/o Village Thembang,
 P.O/P.S. Dirang, West Kameng District,
 Arunachal Pradesh.
2. Phurpa Sharchokpa,
 S/o Lt. Lobsang,
 R/o Village Thembang,
 P.O/P.S. Dirang, West Kameng District,
 Arunachal Pradesh.
3. Tseten Jurme,

S/o Lt. Ngoichung,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

4. Tsering Gambu,
S/o Lt. Lobsang,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

5. Thinly,
S/o Lt. Junuru,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

6. Namgyal Tsering,
S/o Lt. Ngoichung,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

7. Tenzin Chaigyel,
S/o Lt. Passang,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

8. Lobsang Tsering Sharchokpa,
S/o Sri Tsering Gambu,

R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

9. Sonam Tsering Sharchokpa,
S/o Sri Tsering Gambu,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

10. Lama Sharchokpa,
S/o Lt. Nawang,
R/O Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

11. The Branch Manager,
State Bank of India,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

.....**Opposite Parties.**

Advocate for the Petitioners : Mr. Kalyan Bhattacharya,
Mr. D. Boje, Advocates.

Advocate for the Opposite Parties : Mr. Tony Partin,
Mr. K. Saxena
Mr. U. Bori, Advocates.

RFA 02 (AP) 2012

1. Rinchin Dondup,
S/o Sri Leki Tsering,
R/o Village Thembang,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

2. Lungten Khochilu,
S/o Sri Choti
S/o Sri Leki Tsering,
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7. Serkongma,
S/o Lt. Naksang,
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..... ***Appellants.***

– *Versus* –

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Arunachal Pradesh.

11. The Branch Manager,
State Bank of India,
P.O/P.S. Dirang, West Kameng District,
Arunachal Pradesh.

.....**Respondents.**

Advocate for the Appellants : Mr. Kalyan Bhattacharya,
Mr. D. Boje, Advocates.

Advocate for the Respondents : Mr. Tony Pertin,
Mr. K. Saxena
Mr. U. Bori, Advocates.

BEFORE
THE HON'BLE MR. JUSTICE M. R. PATHAK

ORDER

19.09.2015

Heard Mr. Kalyan Bhattacharya, for the Petitioners/Appellants and Mr. Tony Pertin, learned counsel appearing for the Opposite Parties/Respondents.

2. In Civil Revision Petition No. 20 (AP) 2012, the petitioners have filed the application under Article 227 of the Constitution of India challenged the order dated 16.11.2012, passed by learned Additional District Judge, West Session Division, Bomdila, (Arunachal Pradesh) in Title Suit No. 2 of 2012 refusing to allow the petitioners to file their written statement and decreeing the suit of the Opposite parties/plaintiffs.

3. In RFA No. 02 (AP) 2012, the petitioners of said CRP No. 02 (AP) 2012 as appellants have preferred an appeal under Section 96 of the Code of Civil Procedure against the Judgment & order dated 16.11.2012 passed in Title Suit No. 02 of 2012 passed by learned Additional District Judge, West Session Division, Bomdila decreeing the suit in favour the plaintiffs/respondents, holding that the appellants are not entitled to claim title over the land of plot Nos. 4, 5, 5A, 6, 7 & 8 of at Thembang Village in the Dirang Circle of West Kameng District acquired for construction of Gongri Hydro Electric Project vacating the Deputy Commissioner, West Kameng District, Bomdila's WT Message No.BR-2572/167/08 DT-25/09 dated 25.08.2009 communicated to the Branch Manager of State bank of India, Dirang Branch by which the bank account of the plaintiffs were hold up.

4. As the issues evolved from the same Suit and as agreed by the parties both the matters are taken up together for consideration.

5. The petitioners, the opposite parties as plaintiffs filed a suit on 27.01.2012 being the Title Suit No. 02 of 2012, in the Court of Deputy Commissioner, West Kameng District, Bomdila, under the Assam Frontier (Administration of Justice) Regulation 1945, challenging the legality of the Fax/WT Message Dated No.BR-2572/167/08 DT-25/09 dated 25.08.2009 and the Order No. No.BM/29/319 dated 25.08.2009, issued by the Branch Manager, State Bank of India, Dirang Branch, praying for recalling the said WT Message dated 25.08.2009, and to direct the Branch Manager of SBI, Dirang Branch to allow uninterrupted operation of the Account of 'Sharchocka Economic Socio Cultural and Eco Development Society' and to grant all other incidental reliefs which the Court deem fit and proper wherein the present

petitioners were made defendants. On 28.09.2012, the petitioners received a WT Message by which they were directed to appear before the Court of learned Additional District Judge, West Sessions, Bomdila on 04.10.2012 in the Title Suit No. 2/2012. But the petitioners were not served with any copy of the Plaint of the said suit. The petitioners/defendants appeared before the learned Additional District Judge at Bomdila on 04.10.2012 and made a verbal prayer to allow them some time to file written statement in the matter, which the learned Trial Court refused and fixed the said Title Suit on the next date i.e. 05.10.2012 for production of necessary records from the Additional Deputy Commissioner, Dirang and on 05.10.2012 after such production of records, both the parties were heard and concluded the hearing and fixed 08.11.2012 for appropriate orders. On the said date parties were granted time to settle their disputes amicably as they are Clan brothers and fixed 16.11.2012 for judgment and orders of the suit. On 16.11.2012 the Trial Court took up the application of the petitioners/defendants dated 14.11.2012 in which petitioners prayed for allowing them reasonable opportunity to file their written statement in the matter, to adduce evidence and examination of witnesses before the final disposal of the said suit in the interest of justice. The opposite parties/plaintiffs objected to such prayer of the petitioners/defendants and the learned Trial Court after hearing the parties, by its order dated 16.11.2012 rejected such prayer of the petitioners/defendants and on the same day pronounced the judgment/order separately in the said Title Suit No. 2/2012.

6. Mr. Bhattacharya appearing for the petitioners/appellants/defendants contended that Section 27 of the Code of Civil Procedure provides that summons to the defendants must be served in the manner as prescribed under Order 5 i.e. within 30 days from the date of instituting the suit and in the present case though the suit was filed on 27.01.2012, only the WT Message was served upon the petitioner 28.09.2012, without the copy of the plaint, which clearly shows that the summon as prescribed by the CPC was not properly served upon them. It is also urged on behalf of the petitioners that they were served with a copy of the pliant only on 04.10.2012 and

in-spite of the oral prayer and written application of the petitioners for allowing them to file their written statement, learned Trial Court out rightly rejected such prayer, which is an abuse process of law on the part of the Trial Court since the provisions under Order 8 Rule 1 & 10 of the CPC provides 30 days time with outer limit to 90 days time and in exceptional cases beyond the said time to file written statement and whereas, in the present case the petitioners did not even exhausted the specified time in question and as such rejecting petitioners such prayer is bad in law and miscarriage of justice and the petitioner have been denied their statutory right.

7. The petitioners other contentions are that whenever a trial commences, issue has to be framed, contesting parties has to lead the evidence with documents to prove their claims, but in the present case no issues were framed, no evidence was led by the opposite parties/plaintiffs, no opportunity was given to the petitioners/defendants to cross examine the plaintiffs and their witnesses. Petitioners submitted that though the Trial Judge relied on some documents but those were not proved by the plaintiffs in original nor exhibited in the trial Court as per the provision of the CPC and without any basis decided the title of the disputed land on behalf of the opposite parties/respondents/plaintiffs. Further, as the matter involves in the suit relates to share of compensation for acquisition of land of Thenbang Village that was acquired for the public purpose of Gongri Hydro Electric Project, it should have been treated as Reference Case under the Land Acquisition Act.

8. Petitioners have urged that the verbal rejection order dated 04.10.2012 and the order dated 16.11.2012 passed in Title Suit No. 02/2012, impugned in CRP No. 20 (AP) 2012 as well as the Judgment & order dated 16.11.2012 passed in Title Suit No. 02/2012 impugned in RFA No. 02 (AP) 2012, all passed by Additional District Judge, West Siang District, Bomdila should be set aside & quashed and the petitioners/appellants/defendants should be allowed to file their written statement(s) in the said suit and to

direct the Additional District Judge, West Kameng District, Bomdila i.e. the Trial Court to proceed with the trial of the said suit in accordance with law.

9. Petitioners/appellants relied on the judgments reported in (i) (2010) 9 SCC 385, (ii) (2007) 9 SCC 466, (iii) (2012) 1 GLR 285, (iv) 2012 CLT 203 (SC), (v) 2011 AIR SCW 5985, (vi) AIR 1999 SC 3381, (vii) Air 2008 SC 911, (viii) CLT 2012 (2) 243 SC & (ix) (2005) 7 SCC 190, which are perused and considered.

10. Mr. Toni Pertain appearing for the opposite parties submitted that after the common order dated 20.01.2011, passed in WP(C) Nos. 388 (AP) and 487 (AP) of 2010 by this Court, the Deputy Commissioner Bomdila issued notice on 27.12.2011, to the petitioner No. 1 representing Kochilu Clan, opposite party No. 1 representing Sharchokpa Clan and one Mr. Tsering Wangchu representing Kochilu Clan, from Merakpa clan for filing proper Civil Suit on or before 27.01.2012 as this Court by its order dated 20.01.2011 passed in afore said writ petitions directed the parties to file their respective claims over the land in question. As such, the opposite party No. 1, on behalf of Sharchokpa Clan complying with the aforesaid orders of the Court and the Notice of the Deputy Commissioner, Bomdila dated 27.12.2011 filed its claim that was being registered as Title Suit No. 02/2012, whereas the petitioner No. 1 and said Mr. Tsering Wunchu on behalf of their respective Clans by their communication dated 27.01.2012 to the Deputy Commissioner, Bomdila sought for time to file proper civil suits.

11. The opposite parties contended that subject matter of the title suit being not immovable or movable property but an order of prohibition by the Deputy Commissioner, West Kameng District, Bomdila and the said order not being in existence or relevance any more after the factual matrix of existence of the cheque disappeared on its encashment, there is no question of reinstatement of the said order in as much as there is no more a cheque for substituting the prohibition order. The cause of action of the suit having expired, a revision petition, or an appeal being a mere continuation of the suit cannot be claimed to be of any semblance of the cause of action.

Moreover, the compensation amount has been already been withdrawn after the judgment & order dated 16.11.2012 and disbursed among the beneficiaries of Sharchokpa Clan, some of whom are not parties to the suit and in this petition. It is further contended that though this Court, the Trial Court and the Deputy Commissioner, Bomdila granted ample opportunities to the petitioners to establish their claims before the concerned authorities, but they never tried to establish their claims either before this Court or before the Trial Court and only sought for time with the plea of filling their claims and though they did not challenge the land acquisition proceeding, but only after the land acquisition compensation amount was disbursed to the opposite parties herein; the petitioners woke up and sought for their share of the said compensation. The opposite parties also contended that the petitioners instead of preferring an appeal or revisional jurisdiction, the alternative remedy available to them against the order aggrieved with, their approach in supervisory jurisdiction under Article 227 of the Constitution is not maintainable, and as such this petition should be dismissed.

12. It is seen from the records of the case that the Department of Land Management, Government of Arunachal Pradesh in the year 2008-09 acquired 1,19,550 sq. mtrs. of land at Thembang Village in the Dirang Circle of West Kameng District along with other land of neighbouring villages under the Land Acquisition Act, 1894 as amended at the cost of Rs. 3,96,97,015/- for the public purpose i.e. for construction of Gongri Hydro Electric Project, Munna Camp by M/S. Patel Engineering Limited (PEL), Mumbai. For the said purpose on 17.08.2009, an amount of Rs. 1,15,71,120/- was deposited by the Collector/Deputy Commissioner, West Kameng District, Bomdila in the Saving Banks account of one "Sharchokpa Economic Socio Culture and Eco Development Society" of Thembang Village in the Dirang Branch of State Bank of India towards land acquisition compensation of Sharchokpa Clan of Thembang Village of Dirang District, acquired for the said purpose. On 24.08.2008 (2009), the petitioner No. 1 herein as a Chairman of Committee for Dealing Gongri Project filed an application before the Deputy Commissioner, West Kameng District, Bomdila objecting such disbursement of

compensation for acquisition of land of Thembang Village to said Sharchokpa Clan ignoring the claim of the actual owners of the said land. On receipt of the same the concerned Deputy Commissioner, Bomdila by a Fax/WT Message No.BR-2572/167/08 DT-25/09 dated 25.08.2009, requested the Additional Deputy Commissioner, Dirang and the Branch Manager of Dirang Branch of State Bank of India, to hold-up the payment of land acquisition compensation in favour of Sharchokpa Clan until further communication from his end and accordingly the concerned Branch Manager vide No.BM/29/319 dated 25.08.2009 informed the Deputy Commissioner, West Kameng District, Bomdila about the compliance of the same.

13. Being aggrieved with the same, the respondents, herein, who belongs to Sharchokpa Clan filed a Writ petition being WP (C) No. 438 (AP) 2010 and in the said writ petition, amongst others, the present petitioners were made party respondents who belongs to Khochilu Clan, at whose objection, the Bank Account of the petitioner's Clan was held up. This Court by order dated 01.12.2010 disposed of the said WP (C) No. 438 (AP) 2010 with the observation that there being claim and counter claim from both the clan side the Court would not entertain the writ petition and disposed of the same directing the Deputy Commissioner, West Kameng District, Bomdila to issue notice upon the parties concerned providing opportunity of hearing to them and to pass a speaking order in the matter within a period of 2 months.

14. The petitioners' herein filed another Writ petition being WP (C) No. 388 (AP) 2010 claiming for a direction to give them their share of compensation of land at Thembang Village under Dirang Circle which was in possession of Sharchokpa Clan and subsequently acquired for the said purpose. Another Writ petition being WP (C) No. 487 (AP) 2010 was preferred by one Sri Tsering Wangchu and four others belonging to Merakpa Clan claiming land acquisition compensation for acquisition of said land of Thembang Village, acquired for the said project, stating that they are the owner of the said land at Thembang Village which was under possession of Sharchokpa Clan. This Court by a common order dated 20.01.2011 disposed

of both the Writ petitions WP (C) Nos. 388(AP) & 487 (AP) of 2010 observing that it would not be appropriate for the Writ Court to adjudicate the claims in those Writ petitions involving claim for compensation for acquisition of land as determination of title involves evidence and the Writ Court should not enter into that arena. The Court while disposing of said Writ petitions on 20.01.2011 also observed that as the Deputy Commissioner, West Kameng District, Bomdila is considering the matter on the claim of the Sharchokpa and Khochilu Clans, accordingly directed the members of the Merakpa Clan to file their claim before the said Deputy Commissioner on or before 31.01.2011 and also directed the said Deputy Commissioner to examine their claim while deciding the claim of the members of Sharchokpa and Khochilu Clan, if such claim is filed by the members of the Merakpa Clan within the said specified date, observing that the said Deputy Commissioner shall decide the dispute preferably on or before 14.03.2011 if required by requisitioning the available records and reports from the Office of the Additional Deputy Commissioner, Dirang and Circle Officer, Thembang giving reasonable opportunity of hearing to all the parties.

15. Accordingly, the parties filed their applications before the Deputy Commissioner, West Kameng District, Bomdila. The respondents herein preferred a Transfer Petition (C) 04 (AP) 2011 before this Court praying for a direction to the Deputy Commissioner, West Kameng District, Bomdila to transfer their Title Suit No. TS.DRG/LR-3/2008-09 with regard to dispute regarding payment of compensation in connection with aforesaid acquisition of land to the Court of learned District Judge, Yupia Western Session, Papum Pare and this Court after hearing the parties by order dated 01.11.2011 disposed of said transfer petition of the respondents directing the said Deputy Commissioner to dispose of the case in accordance with law as expeditiously as possible preferably within the least possible time. On receipt of the copy of the said order 01.11.2011, the Deputy Commissioner, West Kameng District, Bomdila vide No. BJ/MISC-GONGRI/11 dated 27.12.2011 issued Notice to the Writ petitioners of WP (C) No. 388 (AP) 2010 for Khochilu Clan (petitioners herein), WP (C) No. 438 (AP) 2010 for Sharchokpa Clan (the present opposite

parties) and WP (C) No. 487 (AP) 2010 for Marakpa Clan directing them to file proper civil suit on or before 27.01.2012 for further proceeding in the matter.

16. In view of the above, the opposite parties herein, as plaintiffs on 27.01.2012 filed the suit in question before the Court of Deputy Commissioner, West Kameng District, Bomdila challenging the legality of the WT/Fax Message dated 25.08.2009 issued by the Deputy Commissioner, West Kameng District, Bomdila and the order No. BM/29/319 dated 25.08.2009 issued by the Branch Manager, SBI, Dirang wherein the present petitioners were made party respondents/defendants. As the Additional District Judge for the District of West Kameng has already been posted and joined in the Head Quarter at Bomdila, the Deputy Commissioner, West Kameng District, Bomdila by his order dated 11.04.2012 transferred the said suit of the opposite parties/plaintiffs to the Court of Additional District Judge, Bomdila which was received by the concerned Judge, Bomdila on 11.05.2012 and the said suit was accordingly registered and numbered as Title Suit No. 02 of 2012 (Pema Wange & Ors....Plaintiffs -Vs- Rinchin Dondup & Ors.....Defendants) and the Trial Judge on the said date directed to list the matter on a suitable date. On 26.06.2012 plaintiffs/opposite parties with their counsel appeared before the Additional District Judge, Bomdila and prayed for adjournment of the suit and to fix the matter on another suitable date. Defendants/petitioners herein were not present on that date and the order sheet of the said suit does not reflect that summons in the suit were issued and/or served upon them. On 26.06.2012, the Trial Court considering such prayer of the plaintiffs adjourned the matter till 09.07.2012 with a direction to issue fresh summons to the parties for the next date. Even in this time, there is nothing on record to show that fresh Summons were issued to the defendants as per order dated 26.06.2012 and as per provisions of the Code of Civil Procedure. It is seen from the records of the case that on 09.07.2012 the said suit could not be taken up as the presiding Judge was on leave. On 20.09.2012 when the matter was placed before the Court, learned Trial Judge fixed 04.10.2012 for hearing of the matter and directed to issue WT Message to the parties.

17. On 04.10.2012, both the parties were present before the Court along with their counsels and after hearing the parties, the Trial Court was of the view that there is a need for calling the original records relating to the subject matter of the case and accordingly, it called for all the original records relating land acquisition proceedings of Gongri Hydro Project in respect of plot Nos. 4, 5(A), 6, 7 & 8 of Thembang Village from the Additional Deputy Commissioner, Dirang for its production on 05.10.2012 and posted the matter for hearing on the next date i.e. on 05.10.2012 at 11.00 Clock with a copy of the order to the learned ADC, Dirang. On 05.10.2012, the parties present themselves before the Court along with their learned counsels and they submitted the documents on the basis of which they claim their respective title over the land in dispute. On the said date (05.10.2012) documents were also submitted on behalf of Marakpa Clan. After hearing the both the plaintiffs and the defendants and on perusing the records that he called from the ADC, Dirang, learned Trial Judge concluded the hearing of the said suit and fixed 08.11.2012 for appropriate order. On finding that the plaintiffs and defendants are Clan brothers, residing in the same village and that Merakpa Clan is also one of the clan that resides in the said village, on 08.11.2012, the Trial Court recording the presence of both the parties passed the order observing that though said date was fixed for judgment/order, before passing any judgment/order it considered to give them one more chance for amicable settlement amongst themselves for maintaining peace and harmony amongst themselves and accordingly directed the respective counsels of either side to advise the parties and to co-operate them for such amicable settlement, before the next date and accordingly fixed 16.11.2012 for judgment and order.

18. On 16.11.2012, the plaintiffs/opposite parties herein filed an application apprising the Trial Court that the parties could not come to any amicable settlement in the given time and therefore requested the Court to pass judgment and it was considered by the Trial Judge. In the mean time on 14.11.2012 the defendants/present petitioners filed an application stating that they were not given opportunity of filing written statement and

therefore, made prayer before the court for giving them opportunity of filing written statement to which the plaintiffs objected. It was submitted on behalf of the defendants/present petitioners that during first hearing of the case on 04.10.2012, oral prayer was made, which was rejected on the said day and thereafter, it was heard on next day i.e. on 05.10.2012.

19. With regard to the prayer for giving some time to the defendant/petitioners herein for filing written statement in the suit, the Trial Court found that the prayer of the applicants for the said purpose was hard and disposed of on 04.10.2012 as the dispute regarding ownership of the suit land between the parties was already pending before the Deputy Commissioner based on which the account of the plaintiff was held up. The Trial Court came to a finding that the plaintiffs were already recognized by the Government of Arunachal Pradesh as the title holders and land owners of the disputed plot of land for which land compensation was already awarded, but the said payment of compensation to the plaintiffs was disputed by the defendants before the Deputy Commissioner claiming amongst others that all disputed plots belonged to them, based on which the Deputy Commissioner is of the WT message is withholding the release of payment of the plaintiffs. Therefore, the Trial Court opined that as in the land acquisition proceeding the Government have already recognised the plaintiffs as the landowners having title over the suit land as such they were not required to file the title suit and in contrary it is the defendants who raised objection against payment of land compensation to the plaintiffs and was aggrieved by the order of the Government awarding compensation for the disputed land of the plaintiffs as landowners of the same, ought to have filed a suit against the plaintiffs in terms of the notice issued by the Deputy Commissioner to which the defendants have failed. The Trial Court also came to the finding that as the defendants have failed to discharge their duties in preferring proper civil suit before the Deputy Commissioner against the plaintiffs with regard to the suit land, found claiming benefit for filing written statement at the stage of judgment & order on mere technical ground that they were not furnished with the copy of the plaint by the plaintiffs. The Trial Court by the said order

dated 16.11.2012 observed that the dispute between the parties was already pending before the Deputy Commissioner, Bomdila and as the High Court has already directed to dispose of the said dispute with regard to the title of the suit land on a time bound manner as such the defendants ought to have taken interest in making their claims in proper form. The Trial Court also observed that a copy of the plaint was furnished the defendants on the first day of hearing on 04.10.2012, but they instead of filing written statement filed list of documents on 05.10.2012 on the basis of which is the Counsel for the defendants argued the case on merit. For the said reasons the Trial Court rejected the prayer of the defendants in granting them time to file their written statements at the stage of judgment and proceeded that case for delivering the judgment in the suit separately.

20. From the above facts it is seen that after the institution of the said Title Suit No. 02/2012, as required under the provisions of Order 5, Rule 1 & 2 of the Code of Civil Procedure (CPC) Summons were never issued and served on the defendants and it is only when the Trial Court on 20.09.2012 directed to issue WT Message to the parties fixing 04.10.2012 for hearing and the defendants, on receipt of the said WT Message on 28.09.2010 from the Dirang Police Station, appeared before the Trial Judge on 04.10.2010 then only, a copy of the plaint of the suit was furnished to the defendants on the said date and heard the parties on the next day i.e. on 05.10.2012, concluded the hearing of the suit on the that date and fixed 08.11.2012 for appropriate order.

21. In the case of *Sumtibai -Vs- Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)* reported in (2007) 10 SCC 82 the Hon'ble Court has held that –

“Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) CPC

cannot be construed in the manner suggested by learned counsel for the respondent.”

22. In the case of *Kailash -Vs- Nanhku*, reported in (2005) 4 SCC 480 the Hon’ble Supreme Court has held that –

*“All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen -Vs- State of Bihar* are pertinent: [(1975) 1 SCC 774]*

The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer.

*The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence - processual, as much as substantive.”*

23. Hon’ble Apex Court in the case of *Zolba -Vs- Keshao*, reported in (2008) 11 SCC 769 has held that –

“It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.”

24. In the case of *C.N. Ramappa Gowda -Vs- C.C. Chandregowda*, reported in (2012) 5 SCC 265, the Hon’ble Apex Court has held that –

“in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.”

25. The Hon’ble Apex Court in the case of *Ramesh Chand Ardawatiya -Vs- Anil Panjwani*, reported in (2003) 7 SCC 350, has held that –

“..... even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of Order 8 Rule 10 CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the “points for determination” and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

26. In the Case of *A. Shanmugam -Vs- Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, reported in (2012) 6 SCC 430, the Hon’ble Supreme Court has held that –

“Framing of issues is a very important stage of a civil trial. It is imperative for a Judge to critically examine the pleadings of the parties before framing of issues and if issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light. The relevant evidence can also be carefully examined. Careful framing of issues also helps in proper examination and cross-examination of the witnesses and final arguments in the case.”

27. In the case of *Kanwar Singh Saini -Vs- High Court of Delhi*, reported in (2012) 4 SCC 307, the Hon'ble Supreme Court has held that –

“Order 10 Rule 1 CPC provides for recording the statement of the parties to the suit at the “first hearing of the suit” which comes after the framing of the issues and then the suit is posted for trial i.e. for production of evidence. Such an interpretation emerges from the conjoint reading of the provisions of Order 10 Rule 1, Order 14 Rule 1(5) and Order 15 Rule 1 CPC. The cumulative effect of the above referred provisions of CPC comes to that the “first hearing of the suit” can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard by the court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed.

The date of “first hearing of a suit” under CPC is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the “first hearing of the suit” prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words “first day of hearing” do not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken.”

28. In the present case, the Trial Court without giving any chance to the defendants to file their written statements, without scrutinizing the available pleadings & documents, without allowing any evidence to be adduced by the parties, without framing any issues to decide the suit and without any evidence of the plaintiffs, only on the basis of the Collector/Deputy Commissioner, West Siang District, Bomdila' decision to award land acquisition compensation to the plaintiffs with regard to the acquisition of land involved in the said suit and relying on some documents of the said land acquisition proceeding, which were not proved by the plaintiffs in original nor exhibited in the Trial Court as per the provision of the CPC decided the title of the disputed land in favour of the plaintiffs which in the opinion of the Court is bad in law and in flagrant violation of principle of justice.

29. For the reasons aforesaid, the verbal rejection order dated 04.10.2012 and the order dated 16.11.2012 passed in Title Suit No. 02 of 2012, impugned in CRP No. 20 (AP) 2012 as well as the Judgment & order dated 16.11.2012 passed in Title Suit No. 02 of 2012 impugned in RFA No. 02 (AP) 2012 all passed by Additional District Judge, West Kameng District, Bomdila are hereby set aside and quashed.

30. The matter now shall now go back to the Trail Court, i.e. the Court of learned Additional District Judge, West Kameng District, Bomdila to decide the matter afresh, in accordance with law, enabling the defendants/petitioners herein to file their written statement(s) in the said Title Suit No. 02 of 2012.

31. The parties to the said Title Suit No. 02/2012 shall appear before learned Additional District Judge, West Kameng District, Bomdila on 16th October, 2015.

32. With the aforesaid observation and direction both the Civil Revision Petition and the Appeal are allowed. No order as to cost.

33. Registry shall send down the records, forthwith.

JUDGE

Talom