

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal From
Writ Petition (Civil)

CRP No.....16..... (AP) 2009

Smti Karmik Hoyi

Appellant
Petitioner.

-Versus-

The Deputy Commissioner & others

Respondent
Opposite Party.

Counsel for the Appellant
Petitioner.

Mr. M. Kato
" D. Niva
" J. Niva

Counsel for the Respondent
Opposite Party.

GAAP.

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

Smty. Karmik Loyi.
W/o Shri Gumdo Loyi.
Permanent resident of Kabu Village.
P.O & P.S. Aalo. District: West Siang.
Arunachal Pradesh.

.....PETITIONER.

-versus-

1. The Deputy Commissioner
West Siang District. Aalo.
Arunachal Pradesh.
2. The Judicial Magistrate First Class.
Cum Extra-Assistant Commissioner.
West Siang District, Aalo.
Arunachal Pradesh.

Contd.....p/3.

2. Smty Gibom Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

4. Smty Marter Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

5. Smty Japu Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

6. Smty Miyi Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

7. Smty Nyapu Lomi
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

8. Smty Dengam Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

9. Smty Marngam Lomi
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

10. Smty Pagbin Loya
Resident of Kabu Village
P.O & P.S. Aalo.District: West Siang
Arunachal Pradesh.

.....RESPONDENTS.

**BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

28.1.2011

Heard Mr. M. Kato, learned Counsel appearing for the petitioner. The private respondents although served have not appeared in this proceeding. The official respondents are represented by Mr. R.H. Nabam, learned Sr. Government Advocate.

2. This matter pertains to the functioning of the Women Self Help Group (SHG) of *Kabu* village where the petitioner was selected as a leader of the said group. The SHG after functioning for sometime became defunct and the members of the group constituted by the private respondent complained against the petitioner alleging misappropriation of the SHG's funds.

3. The complaint of the private respondent was considered by a village level *Keba* and the matter was settled by directing the petitioner to pay Rs.15,423/- and also interest amounting to Rs.1000/-. It was also recorded that the balance amount along with bank pass book and register of the SHG was handed over to the *Kabang* on that date itself. In terms of the *Kebang* decision of 16.8.2006, the petitioner deposited the awarded sum of Rs.16,423/- on 16.8.2006 and accordingly the matter was resolved through the decision of the *Kabang*.

4. However notwithstanding the village *Kabang* decision, a fresh complaint was filed by the SHG members and the Deputy Commissioner of West Siang district directed complaint to be considered through a Circle Level *Keba* at the District *Keba Dero*, Aalo. The petitioner protested the constitution of a fresh *Kabang* by referring to the earlier *Kabang* decision of 16.8.2006. But

disregarding the objection of the petitioner, an ex parte District Level *Keba* was conducted on 3.5.2007 (Annexure-A), whereby direction was given against the petitioner, to deposit a further amount of Rs.67,000/-, in the Account of the SHG.

5. Aggrieved by the decision rendered in the District Level *Keba* dated 3.5.2007, the petitioner filed an appeal on 15.5.2007 under *Section 45(1)* of the *Assam Frontier (Administration of Justice) Regulation 1945* before the Deputy Commissioner. But the said appeal was referred for settlement through *Lok Adalat* on 5.10.2010. A representation was filed by the petitioner's husband indicating the petitioner's unwillingness to settle the case through *Lok Adalat* and a prayer was accordingly made for adjudication of the appeal through a normal procedure.

6. It appears that the Judicial Magistrate First Class, Aalo who was to conduct the *Lok Adalat* of the entrusted matters, continued with this dispute and it further appears that the impugned order dated 23rd October 2007 was passed by the Judicial Magistrate First Class, directing the petitioner to make payment of the amounts as was earlier ordered by the District Level *Keba*. In fact an order of Warrant of Arrest was also issued against the petitioner because of her alleged failure to pay the amount determined by the District Level *Keba* and she was arrested by the police.

6. It is argued by Mr. M. Kato that while the appeal of the petitioner was pending before the Deputy Commissioner, the Judicial Magistrate First Class had no jurisdiction to adjudicate the said appeal. The learned Counsel submits that the pecuniary jurisdiction of the learned Magistrate is limited to Rs.50,000/- and in this case the pecuniary value of the appeal was Rs.67,000/- and accordingly consideration of the appeal by the learned Magistrate was without jurisdiction.



8. From the above narratives, it becomes clear that the private respondents had not challenged the original village *Kebang* decision dated 16.8.2006. Instead a fresh complaint was lodged by them which was entertained by the Deputy Commissioner and constitution of second *Keba* was ordered. Thereafter the District Level *Keba* through its deliberation on 3.5.2007 gave an ex parte decision. The petitioner being aggrieved had challenged the said decision by filing an appeal under *Regulation 45* before the Deputy Commissioner. Therefore it was the Deputy Commissioner, Aalo who was in seisin of the matter and the Judicial Magistrate First Class neither had the pecuniary jurisdiction nor any of the parties had approached the Judicial Magistrate, in respect of the pending appeal. But nevertheless, merely because the pending Appeal at some stage was referred for disposal through *Lok Adalat*, the Judicial Magistrate First Class on the strength of such reference to the *Lok Adalat*, passed the impugned order on 23rd October 2007 (Annexure-16).

9. In this case the dispute between the petitioner and the members of the SHG was resolved in the Village Level *Keba* held on 16.8.2006. In the absence of any challenge, the said decision became final. But at the instance of the private respondents, a District Level *Keba* was held and an ex parte decision was rendered therein on 3.5.2007. The petitioner's Appeal against the decision of the District Level *Keba* was not considered by the Deputy Commissioner but the Judicial Magistrate First Class unilaterally assumed jurisdiction and passed the impugned order on 23.10.2007 against the petitioner directing her to make additional payment to the Account of the SHG and also issued Warrant of Arrest on the alleged failure of the petitioner, to pay the ordered amount.



10. Since the decision of the Village Level *Kebang* of 16.8.2006 has attained finality, I am of the considered view that a Second *Kebang* on the same subject matter was not competent as the subject matter in the 2nd *Kebang* pertains to the very same dispute already resolved between the parties. Assumption of the jurisdiction by the Judicial Magistrate First Class in the matter is also found to be improper as the learned Magistrate lacked the pecuniary jurisdiction. In any event, the appeal filed by the petitioner was pending before the Deputy Commissioner and not before the Court of the Judicial Magistrate First Class.

11. For the foregoing reasons, I hold that the decision of the *Kebang* rendered on 3.5.2007 and the order dated 23.10.2007 of the Judicial Magistrate First Class are not legally sustainable and same are accordingly quashed. The consequent undertaking obtained from the petitioner on 27.5.2009 is also interfered with.

12. This case stands allowed with the above order.


JUDGE

Datta