

**IN THE GAUHATI HIGH COURT
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND
ARUNACHAL PRADESH]**

**ITANAGAR BENCH
NAHARLAGUN**

CRP 08 (AP) 2017

Shri Karmar Doji,

R/o Doji-Jeko Village, P.O. & P.S. Aalo,

West Siang Distrit, Arunachal Pradesh

.....Petitioner.

Advocate for the Petitioner:

Mr. D. Panging,
Mr. V. jamoh,
Ms. D. Tamuk,
Ms. E. Perme,
Mr. M. Doji,
Mr. M. Tamut,
Mr. M. Giti,
Mr. H. Kadu,
Mr. J. kamsi,

VS

1. Shri Tomo Doji,

R/o Doji-Jelly Village, P.O & P.S. Aalo,
West Siang District, Arunachal Pradesh.

2. Shri Kirdo Doji,

R/o Doji-Jelly Village, P.O & P.S. Aalo,
West Siang District, Arunachal Pradesh.

3. Shri Toli Doji,

R/o Doji-Jelly Village, P.O & P.S. Aalo,
West Siang District, Arunachal Pradesh.

..... Respondents

Advocate for the Respondents:

Mr. T. Rame,
Mr. B. Sora,
Mr. G. Loyi,
Mr. L. Perme,
Mr. K. Dubey,
Mr. P. Tamin,
Mr. D. Tatak,
Mr. L. Kamsi,

:::BEFORE:::

HON'BLE MR JUSTICE AJIT BORTHAKUR

Date of hearing : **16.12.2017.**

Date of Judgment & Order : **16.12.2017.**

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Panging, learned counsel appearing for the petitioner and Mr. B. Sora, learned counsel appearing for the respondents No. 1 & 3 as well as Mr. K. Dubey, learned counsel appearing for the respondent No. 2.

2. This is an application, under Article 227 of the Constitution of India, read with Section 50 of the Assam Frontier (Administration of Justice) Regulation, 1945 (for short '**the Regulation, 1945**') challenging the legality and validity of the order, dated 10.08.2016, passed by the Deputy Commissioner, Aalo, West Siang District, whereby the petitioner has been directed to file an appeal before the Assistant Commissioner, Bagra Administrative Circle, against the Keba decision, dated 17.05.2006, in connection with dispute between the parties to the instant proceeding over possession of WRC field locally called as '**June WRC field**', and accordingly, the appeal was forwarded to the Circle Officer, Bagra on 28.03.2016, for disposal.

3. The petitioner's case, in a nutshell, is that several Keba at different levels were held in regard to the dispute between him and the respondents and the last such Keba was held at District Level, Aalo on 20.10.2008 and 21.10.2008, wherein it was decided that the respondent No. 1 has to pay a 'mithun' to the petitioner. The said WRC field was accordingly decided in favour of the respondent No. 1. Being aggrieved with the aforesaid District Level Keba decision, the petitioner filed a complaint before the Deputy Commissioner, Aalo. The Deputy Commissioner, Aalo forwarded the matter to the Circle Officer, Bagra for disposal. Thereafter, the Circle Officer, Bagra passed an order, dated 17.05.2016, who in turn upheld the District Level Keba decision, dated 20.10.2008 and directed the respondents No. 1 & 3 to deliver a mithun (female) to the petitioner within one month and allowed the respondents No. 1 & 3 to continue to cultivate the said WRC field. Against this order, the petitioner filed an appeal under Regulation 46 of the Regulation, 1945 in the Court of the Deputy Commissioner, Aalo for setting aside the aforesaid order, dated 17.05.2016. However, the Deputy Commissioner, Aalo instead of entertaining the appeal himself, by the impugned order, dated 10.08.2016, referred the matter to the Assistant Commissioner, Bagra Administrative Circle for disposal, inspite of the fact that the said Circle Officer himself is the ex-Officio Assistant Commissioner and exercises the powers of the Assistant Commissioner conferred under the Regulation 1945. The petitioner has contended that the Deputy Commissioner, Aalo has failed in duty to exercise the jurisdiction vested on him by law.

4. The respondents No. 1 & 3 in their affidavit averred that the instant petition is not maintainable as the essential facts of the whole matter have been suppressed deliberately by the petitioner. It has been stated that the order, dated 17.05.2016, being an order in appeal, it has attained finality as there is no provision for a second appeal under the provisions of the Regulation, 1945, and therefore, the relief sought in instant revision petition is an abuse of the process of law. According to the respondents, the petitioner and the respondents are the progenies of a common progenitor, namely, late Gomi Doji, who was the original owner of the disputed WRC field. The respondents inherited the said WRC field

peacefully without interruption until the year 2001, when the petitioner started claiming ownership over it. In view of the dispute raised by the petitioner, a Keba was held on 09.07.2001, wherein it was decided that since the WRC field has been in possession of the respondents and their forefathers for about five-six generations, the disputed land shall remain with the respondents and they shall pay a cow each to the petitioner. Pursuant thereto, the respondents No. 1 & 2 offered a cow each to the petitioner, but the petitioner refused to accept the cow offered by the respondent No. 1. The petitioner, however, accepted the cow offered by the respondent No. 2. In spite of being so, the respondents No. 1 & 3 continued to possess and cultivate in their share of the WRC field without any disturbance till 2008. In 2008, the petitioner again started claiming the WRC field and made a complaint to the Circle Officer, Bagra, West Siang District. The Circle Officer, Bagra accordingly held a meeting and based on a fake and manufactured Keba decision produced by the petitioner passed an order, dated 21.08.2008, whereby the respondent No. 1 was directed to hand over the 'June WRC field' to the petitioner. Being aggrieved, the respondent No. 1 preferred an appeal challenging the aforesaid order, dated 21.08.2008, to the Deputy Commissioner, Aalo, whereupon, the Deputy Commissioner, Aalo vide order, dated 09.09.2008, directed the petitioner and the Keba members of Keba, dated 09.06.2001, to appear before the EAC (K) along with the original Keba decision, dated 09.06.2001 on 11.09.2008.

5. The respondents have further contended that on 11.09.2009, a preliminary hearing was conducted, and by order, dated 01.10.2008, referred the dispute to the District Level Keba with the consent of the parties. Pursuant thereto, a District Level Keba was held on 20.10.2008 and 21.10.2008, and the Keba members vide Keba decision, dated 21.10.2008, concluded that the purported Keba, dated 09.06.2001, submitted by the petitioner before the Circle Officer, Bagra was a fake and manufactured one and that followed the passing of the order, dated 21.08.2008 and therefore, the Keba members imposed a fine of `1,000/- on the petitioner and directed that the said WRC field which was in possession of the respondent No. 1 shall continue to be in his possession and he shall give a

mithun or in lieu thereof Rs.10,000/- to the petitioner. On being offered the aforesaid amount of money, the petitioner, however, refused to accept the same. Therefore, the respondent No. 1 deposited the said amount with the office of the Deputy Commissioner, Aalo. Accordingly, the EAC (K) by an order, dated 11.05.2010, directed the petitioner to collect the same, but the petitioner neither collected the said amount nor preferred any appeal against the Keba decision, dated 21.10.2008. The petitioner, however, preferred an appeal against the aforesaid Keba decision, dated 21.10.2008, to the Deputy Commissioner, Aalo and thereupon, the Deputy Commissioner, Aalo by letter, dated 29.03.2016, forwarded the appeal to the Circle Officer, Bagra for disposal. Pursuant thereto, the Circle Officer, Bagra heard the appeal on 17.05.2016 in presence of both the parties and the GBs, HGBs and witnesses and after hearing the parties and perusal of the relevant records as agreed by both the parties, upheld the District Level Keba decision, dated 20.10.2008, with some modifications. As per the aforesaid decision, the respondents No. 1 & 3 were allowed to continue possession over the field by cultivation as usual on condition that the respondent No. 3 shall pay a mithun (female) to the petitioner within a period of one month from the date of the order, dated 17.05.2016 and to collect the sum of ` 10,000/- deposited by him from the office of the Deputy Commissioner, Aalo. It was further directed that a community feast would be arranged by the respondents No. 1 & 3 after handing over of the mithun to the petitioner, on the same day as per Galo tradition to endure good relation among them.

6. According to the respondents, the aforesaid Keba decision, dated 21.10.2008, had attained its finality, and no appeal lies to the Deputy Commissioner, Aalo as the petitioner participated in the proceeding without any objection as to the jurisdiction of the Circle Officer to try the first appeal by him.

7. The scheme for adjudication of the civil disputes under the provisions of the Regulation, 1945, is provided as follows (the relevant provisions)-

"36: Civil Justice shall be administered by the (Deputy Commissioner), the (Assistant Commissioner) and the village authorities.

40: The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the (Union territory of Arunachal Pradesh) and live within their jurisdiction and which are not submitted to arbitration under the provisions of Section 38. All other suits which are not submitted to arbitration under the provisions of Section 39 shall be tried by the (Deputy Commissioner) or an (Assistant Commissioner).

46: (1) Any person aggrieved by a decision of a village authority may appeal to the (Assistant Commissioner) in suits not exceeding Rs.50,000 in value and to the (Deputy Commissioner) in suits exceeding that value.

(2) If such an appeal is filed, a record shall be made of the record in dispute, and of the decision of the village authority.

(3) The appellate Court shall, if necessary, examine the parties, and if the decision appears to be just, shall try the cases de novo or refer to a Panchayat; in any case so referred, the provisions of Section 38 shall apply as if the parties had agreed to submit to arbitration.

47: An appeal shall lie to the (Deputy Commissioner) from any decision original or appellate, of an (Assistant Commissioner)."

8. I have carefully appreciated the above provisions in the Regulation, 1945, and do find that the responsibility to administer civil justice lies on the Deputy Commissioner, the Assistant Commissioner and the village authorities. The village authorities are empowered to adjudicate the civil disputes irrespective of the value of the suit property. If any

person is aggrieved by a decision of a village authority, he has a right to appeal to the Assistant Commissioner, when the suit value does not exceed `50,000/- and to the Deputy Commissioner, when the suit value is above `50,000/-. On receipt of an appeal, the appellate authority, if feels necessary in the backdrop of the facts of the dispute between the parties that the dispute needs to be tried, may try the same *de novo* or refer the dispute to the Panchayat and in the case of a reference being made, as per Regulation 38, may persuade the parties to submit their dispute to arbitration. Regulation 47 makes it clear that an appeal against the decision rendered by the Assistant Commissioner, whether original or appellate, shall lie to the Deputy Commissioner.

9. In the instant case, the petitioner appears to have preferred an appeal before the Deputy Commissioner, Aalo against the Keba decision, dated 17.05.2006, which the Deputy Commissioner, Aalo disposed of with a direction to file an appeal before the Assistant Commissioner, Bagra Administrative Circle. It is also noticed that by an order, dated 17.05.2016, the Circle Officer, Bagra settled the dispute amicably in presence of both the parties. Therefore, in terms of the Regulation 47 of Regulation, 1945, the Deputy Commissioner, Aalo himself ought to have entertained the appeal filed by the petitioner instead of referring the appeal to the Circle Officer, Bagra Administrative Circle, who had passed the order, dated 17.05.2016, whereby the dispute was settled between the parties.

10. In the result, this revision petition succeeds. The impugned order, dated 10.08.2016, issued by the Deputy Commissioner, Aalo is hereby set aside with a direction to entertain the appeal filed by the petitioner against the order, dated 17.05.2016, passed by the Circle Officer, Bagra, West Siang District, Arunachal Pradesh and further, to proceed with the appeal as per Regulation 46 (3) of the Regulation, 1945.

JUDGE

Cha Gang