

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

[Itanagar Permanent Bench, Naharlagun]

1. CRP 15(AP)2014

1. Sri Mori Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
2. Sri Karsen Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
3. Sri Yimo Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
4. Sri Domo Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
5. Sri Marken Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.

.....Petitioners

Advocates for the Petitioners:

Mr. D. Panging
Mr. Ojing Pada
Mr. G. Basar
Mr. D. Soki
Mr. R. Basar
Ms. D. Tamuk
Ms. E. Perme
Mr. M. Doji

-Versus-

1. Sri Mito Nyodu, S/o Rimi Nyodu, Nyodu Village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
2. Sri Marni Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.

.....Respondents

Advocates for the Respondents:

Mr. Kento Jini
 Mr. T. T. Tara
 Mr. Dugmar Kamduk
 Mr. Tamar Gadi
 Mr. Binter Picha
 Ms. S. Ketan
 Mr. D. Loyi
 Ms. J. Jini
 Mr. G. Bam
 Mr. T. Ete
 Mr. G. Kato

2. MC(CRP) 06(AP)2014

1. Sri Mori Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
2. Sri Karsen Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
3. Sri Yimo Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
4. Sri Domo Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.
5. Sri Marken Basar, R/o Soi village, PO & PS - Basar, West Siang District, Arunachal Pradesh.

.....**Applicants**

Advocates for the Petitioners:

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 Mr. Ojing Pada
 Mr. G. Basar
 Mr. D. Soki
 Mr. R. Basar
 Ms. D. Tamuk
 Ms. E. Perme
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-Versus-

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.....**Respondents**

Advocates for the Respondents:

Mr. Kento Jini
 Mr. T. T. Tara
 Mr. Dugmar Kamduk
 Mr. Tamar Gadi,
 Mr. Binter Picha
 Ms. S. Ketan
 Mr. D. Loyi
 Ms. J. Jini
 Mr. G. Bam
 Mr. T. Ete
 Mr. G. Kato

:::BEFORE:::

HON'BLE JUSTICE (MRS.) Dr. INDIRA SHAH

Date of hearing : **25.08.2015**

Date of Judgment & Order : **25.08.2015**

JUDGMENT & ORDER(ORAL)

Heard Mr. Dicky Panging, learned counsel for the petitioners. Also heard Mr. Kento Jini, learned counsel, appearing on behalf of private Respondents No. 1 and 2.

2. By filing this petition, under Article 227 of the Constitution of India; *read with* Section 50 of the Assam Frontier(Administration of Justice) Regulation, 1945, the petitioners have challenged the legality and validity of the judgment & order dated 26.05.2014, passed by the learned Additional District Judge, Basar, in Case No. Basar/Civil Appeal No. 110/2012, directing the Additional Deputy Commissioner, Basar, to constitute a Banggo Level Keba(BLK, for short), for conducting fresh trial of the dispute.

3. There was a dispute between the petitioners and the respondents with regard to a property. The Respondent No. 2 lodged a complaint before the Additional Deputy Commissioner, Basar, alleging that a joint family property has been sold by his brother Marni Basar to Mito Nyodu of Nyodu village without his will and consent. The Deputy Commissioner, West Siang District, Aalo, referred the matter to Village Level Keba(VLK, for short). When the petitioners came to know about the pendency of Keba, they approached the Keba authority to implead them as party to the proceedings claiming that the property in question is a clan property. The Keba members, thereafter, issued *parwana*(summons) to all members of Donya clan and after hearing, passed the decision that the property is a joint family property and since Sri Marni Basar had already sold the said joint family property, the same amount shall be refunded to the purchaser. Aggrieved by the judgment, the purchaser(Respondent No. 1) filed an appeal before the District Sessions Judge, Yupia, wherein he alleged that he is the purchaser of the property, in question, and he was not impleaded as a party in the Keba proceeding.

4. The said Judge in the impugned judgment, held that the Head Gaon Burah has no authority to implead any new parties and to issue *parwana* (summons)/notice of the new parties when he was acting as per the direction of the Additional Deputy Commissioner, Basar. The Head Gaon Burah superseded the order of the Additional Deputy Commissioner, Basar, and committed gross procedural error and remitted the matter giving a direction for conducting fresh trial of the dispute at BLK by allowing the parties to participate in the BLK.

5. The Judgment of the appellate Court has been challenged on the ground that the Addl. District Judge, Basar, had no jurisdiction to entertain the appeal so filed by the Respondent No. 1 under the provisions of the 1945 Regulation since the appeal lies before the Deputy Commissioner against a Keba Decision. Moreover, the direction of the Court to constitute a Banggo

Level Keba was also wrong as the Banggo Level Keba(BLK) is a non-existent forum in terms of the provisions of 1945 Regulation. The Statute does not recognize the forum.

6. Mr. Jini, learned counsel for the respondents, has submitted that the Respondent No. 1 was not a party to the proceeding before the Keba authority and after separation of judiciary, all Deputy Commissioners were directed to refer the case pending before them to the District Judge or Chief Judicial Magistrate, as the case may be. Therefore, the District Judge has the authority to entertain the appeal.

7. The Division Bench of this Court in WP(C)422(AP)2013, has dealt with the matter whether the appeal lies before the Deputy Commissioner against the decision of the village authorities and held that the appeals against the decision of the village authorities lies before the Deputy Commissioner till further amendment of the Regulation 145. It further made clear that the validity of any order passed by the District Judge, in exercise of appellate power against the orders passed by the village authorities will be subject to such remedy as may be available in law except the plea for want of jurisdiction.

8. In view of the aforesaid judgment, the District Judge or the Additional District Judge, has the jurisdiction to entertain the appeal.

9. Admittedly, the Respondent No. 1 was not a party to the earlier proceeding before the Village authority. He is the purchaser of the property, in question and he, needs to be heard in the matter.

10. Mr. Jini, learned counsel, has also submitted that in compliance of the order passed by the learned Addl. District Judge, Basar, the Deputy

Commissioner, Aalo, has already referred the matter to Banggo Level Keba(BLK).

11. When the matter was pending before the Keba, the Keba had the authority to implead persons whom they feel necessary party to the proceeding. The village authorities have the original jurisdiction as per the said Regulation 1945 although a complaint might have been filed before the Deputy Commissioner.

12. Mr. Jini, learned counsel for the private respondents, has submitted that State Government has circulated the relevant Guidelines and as per the said Guidelines, there is existence of Banggo Level Keba. He has also referred the case of *Ige Tacha-vs- Chiken Dirchi & Ors.* reported in **CRP 27(AP)2011**, wherein this Court had observed that the guidelines for appointment of Gaon Burahs recognizes the Village level Keba, Banggo Level Keba and Circle Level Keba/Sub-Divisional Keba as well as District Level Keba.

13. In the aforesaid cited case, both the parties participated in the Banggo Level Keba proceeding.

14. Section 5(1) & (2) of the Assam Frontier(Administration of Justice) Regulation, 1945, reads, as under:

"5. (1). The Deputy Commissioner shall appoint such persons as he considers to be the members of a village authority for such village or villages as he may specify, and may modify or cancel any such order of appointment, and may discuss any person so appointed.

(2). In any area for which no village authority has been constituted under the provisions of sub-Section(1), the powers and functions of village authority as provided by this Regulation, shall be exercisable and performed by the Deputy Commissioner or by any Assistant Commissioner authorized by him in this behalf."

15. Although, village authority has not been defined in the Regulation 1945, the Deputy Commissioner is to appoint such persons for such village and in any area for which no village authority has been constituted. The Deputy Commissioner or any Assistant Commissioner shall exercise the power of village authority. Since the matter has already been referred back to the Additional Deputy Commissioner, Basar, he/she shall dispose of the matter in terms of Section 46 of the Regulation 1945, giving opportunity of hearing to all the parties concerned.

16. In view of the above, the Judgment passed by the Addl. District Judge, Basar, is hereby set aside and quashed.

17. The Additional Deputy Commissioner, Basar, is hereby directed to dispose of the appeal, afresh, giving opportunity of hearing to both the parties, in terms of the Assam Frontier(Administration of Justice) Regulation, 1945.

18. Both the parties to this case, are hereby directed to appear before the Additional Deputy Commissioner, Basar, within a period of 15(fifteen) days from the date of receipt of a certified copy of this order.

19. With the above directions, this Civil Revision Petition stands disposed of. The connected misc. application shall accordingly stand closed.

JUDGE

Bikash