

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

**ITANAGAR PERMANENT BENCH**

**IA 82(AP)/2016**

1. Sri Sang Tashi,  
Gaon Burah, Paikhar village,  
R/o Paikhar village,  
P.O. & P.S.- Tawang District,  
Arunachal Pradesh.

2. Sri Mindu Gyatso,  
R/o Paikhar village,  
P.O. & P.S.- Tawang District,  
Arunachal Pradesh.

3. Sri Nawang Norbu,  
Paikhar village,  
R/o Paikhar village,  
P.O. & P.S.- Tawang District,  
Arunachal Pradesh.

4. Sri Jimmy Gyatso,  
R/o Paikhar village,  
P.O. & P.S.- Tawang District,  
Arunachal Pradesh.

5. Sri Dorjee Phuntso,  
S/o Late Yapko,  
R/o Paikhar village,

P.O. & P.S.- Tawang District,  
Arunachal Pradesh.

..... Petitioners

-Versus-

1. The State of Arunachal Pradesh, through the Chief Secretary,  
Government of Arunachal Pradesh, Itanagar,
2. The Deputy Commissioner, District Tawang,  
P.O./P.S. Tawang, PIN 790104.
3. The Ex-Officio Assistant Commissioner,  
Kitpi Circle, Tawang District,  
P.O./P.S. Tawang, PIN 790104.
4. The Namet Village Panchayat represented by its Gaon Burah,  
P.O. Kitpi, P.S. Tawang, District Tawang, PIN 790104.
5. The Arbitration Board represented by Sri Passang, Gaon Burah,  
Shernup, PO/PS Tawang,  
District Tawang, PIN 790104.
6. Sri Lobsang Dorjee,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.
7. Sri Tenzin Norbu,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.

8. Smti. Karmu  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.

9. Sri Norbu,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.

10. Sri Lobsang Gombu,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.

11. Sri Ngrup Tashi,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh.

12. Sri Sang Phuntso,  
Namet Village, P.O. Kitpi,  
P.S. Tawang, Distt. Tawang,  
Arunachal Pradesh. PIN 790104.

.....Respondents

**BEFORE**  
**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

Advocates for the Petitioners : Mr. E. Eshi, Mr. D. Kamduk.  
Advocates for the Respondents : D. Soki, GA (AP)  
Date of hearing & Order : 22.05.2017.

### **JUDGMENT AND ORDER (ORAL)**

Heard Mr. D. Kamduk, learned counsel for the applicatn. Also heard Mr. D. Soki, learned State Govt. Advocate appearing for the respondents No. 1 to 3 as well as the learned counsel appearing for the respondents No. 4 to 12.

2) The learned counsel for the respondents No. 4 to 12 submits that he has filed the Vakalatnama only today.

3) By filing this application under Section 5 of the Limitation Act, the petitioner has prayed for condoning the delay of 3013 days in filing the connected Civil Revision Petition against the order dated 07.12.2017 passed by the Ex-Officio Assistant Commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District.

4) The case of the petitioner is that the petitioners are the residence of Paikhar village and since time immemorial and the ownership of the land within the jurisdiction of said village exclusively belongs to the villagers in individual capacity and on community basis. However, the villagers of Namet village have conspired to dispossess the applicants from their ancestral land. It is projected that the villagers of Namet village had filed a complaint on 05.12.2006 before the learned Deputy Commissioner, Tawang District, alleging therein that one Smt. Tashi Yangjom and other villagers of Paikhar village had unlawfully fetched firewood from an area locally known as "TE-THOME". On the basis of the said complaint, the learned Deputy Commissioner, Tawang District constituted a Board of Arbitrators under Section 38 of the Assam Frontier (Administration of Justice) Regulation Act, 1945. The said Board of Arbitrator had submitted their settlement report dated 05.02.2007. Aggrieved by the said report, the petitioners herein submitted a representation/objection dated 06.02.2007 to the Ex-Officio Assistant Commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District, not to accept the said settlement report dated 05.02.2007. It is projected that on the repeated request made by the petitioners, the said authority issued a notice dated 09.05.2007 for hearing of the matter.

5) It is also projected that the said representation/objection dated 06.02.2007 had not been acted upon till date. The petitioners were under the impression that the said authority was not acting upon the settlement report dated 05.02.2007, but they later on came to know that the said authority had already passed an order on 07.02.2007 behind the back of the petitioners without providing any opportunity of hearing. It is submitted that subsequently on an application dated 19.03.2008 by the respondent No. 4, the learned Ex-Officio Assistant Commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District, by his order dated 05.08.2007, inserted the name of disputed land as "TE-THOME" without even informing the petitioners about the status of the actual demarcation. Once again, the said villagers of Namet village filed another complaint dated 28.08.2009 before the learned Deputy Commissioner, Tawang District against the Paikhar village, alleging that they were fetching firewood from their area. On such complaint, the Officer-in-Charge of Tawang police station came and then only for the first time, the petitioners came to know about the order dated 07.12.2007. It is projected that thereafter, the petitioners filed another representation before the learned Deputy Commissioner, Tawang District on 30.12.2009 with a prayer to dispose of the representation dated 06.12.2007, whereupon the learned Deputy Commissioner, Tawang District passed an order dated 30.12.2009. However, the learned Deputy Commissioner, Tawang District issued a notice dated 19.12.2013 to both the contesting parties to appear before him for deciding the land dispute case on 23.12.2013. Both the parties appeared before the learned Deputy Commissioner, Tawang District on 23.12.2013 and the said authority without appreciating the case projected by the petitioners, passed an order dated 23.12.2013. Thereafter, the petitioners submitted another representation before the learned Deputy Commissioner, Tawang District on 03.01.2014, but without appreciating the contents thereof, the said authority by an order dated 08.01.2014 directed the petitioner to approach a competent court.

6) The petitioner thereafter, approached this Court by filing WP(C) No. 43(AP)/2014 and this Court by an order dated 16.12.2015 held that the writ of certiorari cannot be issued to correct the errors of inferior court and held that in view of above settled

position of law, the writ petition filed under Article under Article 226 of the Constitution of India, was not maintainable and the same was dismissed.

7) It is submitted that thereafter, the present counsel has filed the instant civil revision petition, but, the present revision could not filed on time and there was some delay in preferring the connected revision petition before the court. It is further submitted that from the actual date of knowledge of the passing of the impugned order, the actual delay is only about 915 days delay, if calculated from 08.01.2014. The learned counsel for the petitioner submits that there is no intentional and willful delay and therefore, the delay in presenting of the connected revision may be condoned. It is further submitted that the petitioners are villagers and were bonafide pursuing their remedy before the court of learned Deputy Commissioner, Tawang District and that they had no knowledge of the procedural law of limitation and, as such, the petitioners may not be denied of their legal remedy as they are the owners of the disputed land since time immemorial, which belongs to their ancestors

8) The learned State counsel has pointed out that the Board of Arbitrator had submitted their settlement report on the land disputes between Namet and Paikhar village on 05.02.2007 and as per the said settlement, the disputed land was given to Namet village and that the Paikharpas had to forfeit their bet of Rs.50,000/- to the Nametpas. It is further submitted that the learned Ex-Officio Assistant commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District, by passing an order dated 07.12.2007 in case No. TJ/Civil-01/2007 had accepted the agreements signed between both the parties on 02.02.2007 and the report on arbitration submitted by the Tribal Council and the proceedings of arbitration as submitted by the Tribal Council was accepted and the following orders was issued.

*"10. **Adjudicated and Ordered** that the disputed land belongs to village Namet."*

*"11. **Adjudicated and Ordered** that the villagers of Paikhar village not to interfere with the rights of possessions, use and title*

*off Namet Village community over disputed land, without prior approval of the Namet Community.”*

9) The learned State counsel submits that without challenging the aforesaid order dated 07.12.2007, the petitioners submitted a representation on 13.12.2009, wherein no grievance was made that if any appeal was filed by them, the same was pending for adjudication. It is pointed out that even if the letter dated 06.02.2007 is read, it would appear that the said letter dated 06.02.2007 was only a request for stay of the judgment passed by the Arbitration Board and it was not an appeal to challenge the order of Arbitration settlement dated 05.02.2007. It is submitted that subsequent order dated 13.12.2009 (Annexure-13 to the writ petition) would show that the learned Deputy Commissioner, Tawang District, in the said order, had clarified that the order dated 07.12.2007 was passed by the learned Ex-Officio Assistant Commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District. The learned State counsel has further referred to the order dated 23.12.2013 passed by the learned Deputy Commissioner, Tawang District in connection with case No. TJ/Civil-01/2007, wherein also a reference is made to the order dated 07.12.2007. It is submitted that despite the categorical references to the order dated 07.12.2007, the petitioners once again submitted another representation before the learned Deputy Commissioner, Tawang District on 03.01.2014, with request to dispose of the representation filed on 06.01.2007, which was rejected by the learned Deputy Commissioner, Tawang District by order dated 08.01.2014 (Annexure-17), by once again referring to the order dated 07.12.2007. Hence, it is submitted that the order dated 07.12.2007 had all throughout was in the knowledge of the petitioners and, as such, it is submitted that it is unacceptable that the petitioners became aware of the said order only after passing of the order dated 08.01.2007 (Annexure-17).

10) The learned State counsel has referred to the judgment of this Court dated 24.01.2017 passed in Civil Revision Petition 23(AP)/2012. In the said case, this Court has held that the judgment passed by the Arbitrators in exercise of powers under Section 38 shall be final as per the provisions of sub-Section 6 of Section 38 of the Assam Frontier

(Administration of Justice) Regulation Act, 1945. This Court had opined that the meaning and purports of expression shall be final appearing in Section 38(6) of the Assam Frontier(Administration of Justice) Regulation, 1945 would be that no further appeal or revision against the decision of Panchayat recorded by the learned Deputy Commissioner, Tawang District under Section 38(5), but the correctness of veracity of the said decision is always open for a judicial review under Article under Article 226 of the Constitution of India. The learned State counsel further submits that the order dated 07.12.2007 is an order within a meaning of Regulation 38 (5) of the Assam Frontier (Administration of Justice) Regulation, 1945. However, the petitioner approached this Court by filing WP (C) No. 42(AP)/2014, but the aforesaid order dated 07.12.2007 was not in challenge. This Court while dismissing the said writ petition by order dated 16.12.2016 had recorded that the challenge in the said writ petition was a validity of order dated 30.12.2009 passed by the learned Deputy Commissioner, Tawang District, holding decision dated 30.01.2007 passed by the Board of Arbitrators. Hence, the unexplained delay for filing the revision is 3013 days instead of 915 days as orally projected in course of arguments advanced by the learned counsel for the petitioner.

11) This Court on considering rival submissions advanced by both the sides and on perusal of the materials available on record, it appears to this Court that in the order bearing No. TJ/Civil-01/2007 dated 30.12.2009 as well as order dated 23.12.2013 passed in the same case, there is a categorical reference to the order dated 07.12.2007. Hence, it is unbelievable that although the learned Deputy Commissioner, Tawang, District has passed those orders, the petitioner was not aware of the disposal and finality of the orders dated 07.12.2007. Hence, it is not believable that the petitioner came to know about order dated 07.12.2007 for the first time on receipt of the copy of order dated 08.01.2014. In the opinion of this Court, as per the provisions of Assam Frontier (Administration of Justice) Regulation, 1945, there is no duty on the part of the parties or the authorities to communicate the orders passed by the learned Deputy Commissioner, Tawang, District to the other parties. Hence, if one of the aggrieved parties has filed an appeal, it was their obligation to pursue their remedy. It is definitely not open to them to allege that the authorities did not communicate its decision to them.

12) Moreover, as per the ratio of the judgment dated 24.01.2017 passed by this Court in CRP 23(AP)/2012, this Court already held that orders passed by the Board of Arbitration under Regulation 38 attained finality. As per the Regulation 38 (6) of the said Regulation, the only remedy which the petitioner could have availed is by challenging the order dated 07.12.2007 under Article 226 of the Constitution of India. In the present application the prayer is to condone the delay of 3013 days in filing the connected civil revision petition against the impugned order dated 07.12.2007 passed by the learned Ex-Officio Assistant Commissioner cum Judicial Magistrate Second Class, Kitpi Circle, Tawang District as well as the subsequent order dated 30.12.2009 and 23.12.2013. This Court is of the opinion that in view of the decision of this Court passed by order dated 24.01.2017 in CRP 23(AP)/2012, since the connected revision is also not maintainable, no purpose would be served in allowing the present application, notwithstanding that no sufficient cause has been shown in the present application for condoning the delay of 3013 days because the petitioners are deemed to have knowledge about the order dated 07.12.2007 all throughout as indicated above, in view of the reference to the said order in the subsequent order dated 30.12.2009 as well as order dated 23.12.2013.

13) Therefore, this IA stands dismissed. Consequently, the revision shall not be registered and it would stand dismissed.

**JUDGE**

*Mkumar*