

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

**ITANAGAR BENCH
NAHARLAGUN**

CRP 45 (AP) 2016

Shri Arung Yamdo,

S/o Shri Tadang Yamdo,

a permanent resident of Village – Tatatara,

PO/PS – Seppa, East Kameng District, AP

and presently residing at -

Pagyawa Model Village Seppa, PO/PS-Seppa,

East Kameng District, AP.

... Petitioner.

-VERSUS-

Shri Kating Weshi,

S/o Late Tabia Weshi,

a permanent resident of Vill- Tatatara,

PO/PS- Seppa, East Kameng District, AP,

and presently residing at

Pagyawa Model Village Seppa,

PO/PS – Seppa, East Kameng District, AP.

... Respondent.

Advocates for the petitioner:

Mr. T. Gyadi.

Advocates for the respondent:

Mr. M. Pertin, Senior Advocate.

L. Perme,

Mr. C. Congo,

Mr. H. Tayo,

Mr. J. Dulom,

Mr. K. Dubey,

Mr. S. Ringu,

Mr. D. Tatak,

Mr. L. Koyu,
Mr. C. Perme,
Mr. K. Dabi,
Mr. W. Sawin.

Date of hearing: 30.11.2017.

Date of judgment: **30.11.2017 (released on 03.01.2018).**

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

JUDGMENT & ORDER (ORAL)

Heard Mr. T. Gyadi, the learned counsel appearing for the petitioner as well as Mr. L. Perme, the learned counsel appearing for the respondent.

2) This revision under Section 51 of the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as the "1945 Regulation" for short) was originally filed as an appeal under Section 48 of the said 1945 Regulation against the judgment and order dated 29.01.2016, passed by the Court of the learned Deputy Commissioner, East Kameng District, Seppa, Arunachal Pradesh. However, by an order dated 06.12.2016, passed by this Court in I.A. (C) 18 (AP)/ 2016, the said appeal (i.e. MFA 1 (AP)/ 2016) was re-registered as CRP 45 (AP) of 2016.

3) The brief facts of the case is that the petitioner, namely, Shri Arung Yamdo claimed that in the year 1974-75, as a consideration for a plot of land, his father Late Tadang Yamdo had given 1(one) Cow and 1(one) Goat to Late Tabiya Weshi, the father of Shri Kating Weshi @

Katung Weshi, the respondent. However, in the year 2012, the respondent sold the said plot of land to one Sri Lokap Yangfo without the knowledge of the petitioner. Therefore, a complaint was lodged by the petitioner. Subsequently, a Village Kebang was held and the Village Authority amicably settled the dispute under the supervision of Circle Officer (Y) and the Political Interpreter. The Mel Settlement Order was passed vide Memo No. Jud/T/ Case (Y)-03/2012 dated 13.04.2012. The operative order of the Mel order was as follows:

"1. Shri Fetar Weshi & Shri Kating Weshi (Respondents) have given a plot of land at near Pagya river, Length Road to Pagya river and Breath 11 mtrs to Shri Arung Yamdo (Complainant).

2. The demarcation made by the Pls are final and binding, hence, no any repercussion be made against the land owner and Shri Fetar Weshi & Shri Kating Weshi in near future."

4) On 24.02.2012, the petitioner had filed a complaint before the learned Deputy Commissioner, East Kameng District against (i) Sri Fetar Weshi and (ii) Sri Kating Weshi (Respondent), stating therein that the said persons had illegally sold their land illegally to one Sri Lokap Yangfo without his knowledge, which was in his occupation since last 5 years, further stating therein that the said land was actually occupied by his father since the year 1974-75 as gifted by Late Tabiya Weshi, the father of Sri Fetar Weshi and Sri Kating Weshi for one cow and one goat.

5) On 07.03.2013, a complaint was lodged before the learned Deputy Commissioner, East Kameng District by Sri Kating Weshi against one Tayo Yamdo, who is the younger brother of petitioner, wherein it was stated that in a land dispute case, the said person had not

appeared on 02.08.2012 in Court in connection with Case No. JUD/T/CASE(Y) -03/2012. Hence, request was made for issuing summons/parawana.

6) On 08.07.2013, another complaint was lodged by the respondent before the learned Deputy Commissioner, East Kameng District, stating therein that the land dispute was settled with the petitioner, who was the elder brother of Sri Tayo Yamdo, but Sri Tayo Yamdo was raising the issue of land and inflicting mental and physical torture on him and threatening his life, as such, request was made for directing Sri Tayo Yamdo to abide by the Mel Settlement. Similar complaint was made against the petitioner by letter dated 19.08.2013.

7) Thereafter, the learned Deputy Commissioner, East Kameng District by order No. JUD/T/CASE(Y) -03 dated 01.11.2013, directed the petitioner and party to comply with the decision passed by Yallung/ Village Authority within one week from the date of receipt of the order. In respect of the said complaint, the petitioner was served with a notice dated 21.11.2013, issued by the learned Deputy Commissioner through the learned EAC and Judicial Magistrate, First Class to show cause on or before 10.12.2013 as to why arrest of warrant should not be issued against the petitioner for contempt of Court/ lawful authority. Upon receipt of the said notice, the petitioner had filed his written objection before the Court of the Extra Assistant Commissioner, Yallung on 19.12.2013. The petitioner projected therein that a fresh complaint was not maintainable and if the respondent was aggrieved by the Mel Settlement order, the respondent could have approached the authorities by filing an appeal. The further stand of the petitioner was that he had already filed his reply together with a Certificate issued by the Range Forest Officer, Seppa, certifying that he had created "APNAVAN PLANTATION" during the year 1993-94 on land measuring 1

hectare and therefore, the complaint dated 07.03.2013, 08.07.2013 and 19.08.2013 of the respondent may be revoked or dismissed.

8) Subsequently, by virtue of order dated 24.02.2014, the said case No. Jud/T/Case (Y)-03/2012 was transferred from the Court of Extra Assistant Commissioner, Seppa to the Court of the learned Deputy Commissioner, Seppa. On transfer, the case number was sometimes referred as Case No. JUD/T/CASE(Y)-03 and sometimes as Case No. Jud/T/Case (Y)-03/2011-12.

9) The learned Deputy Commissioner, by order dated 21.10.2014, directed the petitioner and party to comply with the decision passed by Yallung/ Village Authority within one week from the date of receipt of the order.

10) The learned Magistrate 2nd Class, Seppa, acting for and on behalf of the learned Deputy Commissioner, East Kameng District, issued an Order/Notice dated 05.12.2014, directing the petitioner to comply with the decision of the Village Authority within 1 (one) week from the date of receipt of the said order, further directing him to vacate the land and to remove all physical evidence of his illegal occupation over the land immediately and that the non- compliance of the order would lead to issue of warrant of arrest against the petitioner. Thereafter, by the second order dated 11.02.2015, the parties were directed to appear before the Village Authority at Yallung House at Seppa on 23.02.2015 for trial/amicable settlement of the case as per customary laws. The parties were directed to settle the case with 5 (five) restriction/ conditions as mentioned therein. It is not deemed necessary for this Court to reproduce the said conditions.

11) Thereafter, the petitioner approached the Court of the Deputy Commissioner, Seppa with an application dated 16.02.2015, under Subject- An application prayer not to contest the case as per Section 38 of the 1945 Regulation, informing that Sri Kating Weshi had alleged that as per Case No. JUD/CASE(Y)-03/2013, he had not complied the Mel Settlement order and that he had not violated any Mel Settlement order dated 13.04.2012 and submitted that the present dispute is not a part of the earlier Yallung Case and the present allegation is of the different case and not the part of the Mel Settlement order dated 13.04.2012. Thereafter, by an order dated 11.03.2015, the parties were directed to appear before the Village Authority at Yallung House at Seppa on 23.03.2015 for trial/amicable settlement of the case as per customary laws. The parties were directed to settle the case with same 5 (five) restrictions/ conditions as mentioned herein before. It is not deemed necessary for this Court to reproduce the said conditions.

12) Thereafter, by an order dated 18.05.2015, passed for the Deputy Commissioner, East Kameng District, in Case No. JUD/T/CASE(Y)-03/2013, under the heading "Execution order", it is recorded that in order to unearth the truth of the matter, the PI of the case and Gaon Buras of the village concerned were called to make their depositions vide order No. JUD/T/CASE(Y)-03/2013 dated 11.02.2015 and that after considering the depositions of all concerned it has been ascertained that the land under dispute was also a part of the earlier dispute and is not a separate issue and the ownership of the said plot was declared in favour of Mr. Kating Weshi. Therefore, it was held that the complaint of Mr. Kating Weshi (respondent) against the petitioner is found to be genuine. Consequently, the petitioner was directed to relinquish all the claims over the land under question, to vacate it and to remove all physical evidences of his illegal occupation of the land

within a week. It was also stated that the non compliance of the order would lead to issue of warrant of arrest. By another order under No. JUD/T/CASE(Y)-03/2013 dated 28.05.2015, the learned Deputy Commissioner, East Kameng District, it was informed that after due consideration of all claims and counter-claims and the deposition of witnesses, the ownership of the land under question was upheld in favour of the respondent vide Execution Order No. Case No. JUD/T/CASE(Y)-03/2013 dated 18.08.2015, as such, the petitioner herein was directed to vacate the land of the respondent within 1 week from the issue of the order, and any attempt on part of the petitioner to stop/ obstruct the respondent from using/ developing the land shall lead to his arrest and further action as per law.

13) Aggrieved by the above referred orders dated 18.05.2015 and 28.05.2015, the petitioner had filed an appeal before the learned Deputy Commissioner, East Kameng District under Section 46 of the 1945 Regulation in the month of June 2015.

14) However, once again the Circle Officer (Y), acting for the learned Deputy Commissioner, Seppa vide Execution Order No. JUD/T/CASE(Y)-03/2013 dated 03.08.2015, directed the petitioner to comply with the Mel Settlement orders, failing which strict action would be initiated against him as per law.

15) In the meanwhile, the petitioner had approached this Court by filing CRP No.32 (AP)/ 2015, and this Court by an order dated 12.10.2015, disposed of the said revision with a direction to the learned Deputy Commissioner, East Kameng District, Seppa to dispose of the petition for condonation of delay as well as the appeal petition in accordance with law by giving opportunity of hearing to the petitioner. Pending disposal of the said petition as well as the appeal, the

execution of the impugned orders dated 18.05.2015 and 03.08.2015 were suspended.

16) Thereafter the appeal was registered and numbered as Case No. DC/APPEAL-04/2015, and the same was tried by the Court of the learned Deputy Commissioner, East Kameng District, Seppa. Be it stated that the provisions of appeal is regulated by Regulation 45 to 48 of The Assam Frontier(Administration of Justice) Regulation, 1945. On the basis of the materials on record, the following issues were framed by order dated 29.12.2015:-

- i. *Whether Plot-A and Plot-B are related in any ways in the present case?*
- ii. *Who is the owner of the Plot-B?*

17) In support of their respective case, while the present Petitioner i.e. Shri Arung Yamdo had examined 3 (three) witnesses including himself (P-1), Sri Tayo Yamdo (P-2) and Sri Tagang Tachang (P-3), the respondent i.e. Katung Weshi examined 4 (four) witnesses including himself (CP-1), Sri Moila Taku (CP-2), Sri Tade Cheda (CP-3) and Smt. Pape Yangfo (CP-4).

18) The learned Deputy Commissioner, East Kameng District, Seppa disposed of the Appeal Case No. DC/APPEAL-04/2015 by judgment dated 29.01.2016. The operative part of the said order is as follows:-

“ORDER

Therefore, after perusal of the records and statements given by the witnesses, it is hereby ordered that –

1. *The land at Plot-B near Pagya River belongs to Sh. Katung Weshi and the claim of Sh. Arung Yamdo is not*

genuine over this piece of land. Hence, Sh. Katung Weshi is free to use this piece of land at Plot-B for any purposes.

2. The decision of MEL SETTLEMENT ORDER issued on 13/4/2012 is upheld with Sh. Arung Yamdo to have possession over only Plot-A (length Road to Pagya River and Breadth 11 metres) at near Pagya River.

3. All the land disputes will be closed as per the agreement of MEL SETTLEMENT ORDER dated 13/4/2012 and if any dispute arise, then it will go in favour of Sh. Katung Weshi as it has been mentioned in MEL that after giving away Plot-A to Sh. Arung Yamdo, all the disputes will be deemed to be settled.

4. Sh. Arung Yamdo will not try to forcefully occupy the land at Plot-B and if any complaint of non-execution of this order is received then appropriate legal action will be initiated against him.

The matter is disposed off as an appeal case and as per the directions of the Hon'ble Gauhati High Court , Itanagar Permanent Bench vide CRP No. 32(AP)/2015 dtd. 12/10/2015."

19) The learned counsel for the petitioner submits that the petitioner had filed the appeal under Regulation 46 of the 1945 Regulation against the execution orders No. JUD/T/CASE(Y)-03/2013 dated 18.05.2015 and 28.05.2015. In the said appeal, it was claimed that the disputed land described in Plot-B was different from the land involved in the previous dispute between the parties. Therefore, it was the case projected by the petitioner that the Mel Settlement order dated 13.04.2012 was not liable to be executed.

20) It was submitted by the learned Counsel for the petitioner that in the proceedings of appeal, no opportunity was granted to the petitioner to cross examine any witnesses, as such, there was violation of principle of natural justice for not giving him the right to cross examine the witnesses. In support of this submission, the learned counsel for the petitioner has referred to the Case of *Jumnya Ete Vs. Jumbe Ete & Anr., 2011 (4) GLT 704*. It is submitted that in the said case, it was held that by not allowing any opportunity to the parties to cross examine the witnesses, there was a procedural irregularity and, as such, as even in the present case, the petitioner was not provided with any opportunity to cross examine the witnesses of the adversarial party, the matter is liable to be remanded back for *de novo* trial by allowing the petitioner to cross examine the respondent's witnesses.

21) Per contra, the learned counsel for the respondent has submitted that the learned Deputy Commissioner had arrived at categorical finding in his order dated 18.05.2015, in Case No. Jud/T/ Case (Y)-03/2011-12, wherein upon consideration of the stand taken by the petitioner, it had been specifically held that the complaint of the respondent against the petitioner regarding non-compliance of the Mel Settlement Order dated 13.04.2012 was found to be genuine and a direction was issued to the petitioner to relinquish his claims over the land under question, to vacate it and to remove all physical evidences of his illegal occupant of the land within 1 (one) week. It is submitted that as the decision was given upon consideration of the evidence on record, this revisional court may not disturb such finding of facts and substitute its opinion with that of the learned appellate court. In this regard, the learned Counsel for the respondent has referred to the case of *Management of Kalpataru Vidya Samasthe (R) & Anr. VS. S. B. Gupta & Anr., (2005) 7 SCC 524*, and submits that there is a limit to the jurisdiction of the revision Court under Section 115 CPC and therefore,

this Court ought not to reverse the concurrent finding of this Court i.e. the Mel Settlement Order dated 13.04.2012 as well as the impugned order passed by the learned Deputy Commissioner dated 29.01.2016 in case No. DC/APPEAL-04/2015.

22) It is further submitted that in so far as the present claims is concerned there is no dispute regarding Plot-A land. However, in so far as Plot-B is concerned, the petitioner has not been able to show any evidence before the appellate Court as to how he became the owner of the land in Plot-B. The learned Counsel for the respondent has submitted that as per the existing land laws in force, the petitioner, who is not the original inhabitant of East Kameng District, is not entitled to hold any land in the said District. Therefore, unless he acquires land by way of gift, the petitioner is not permitted to own the land holding certificate in his favour. On the other hand, the learned counsel for the respondent claims that the respondent is the original inhabitant of East Kameng District and therefore, he has the authority to claim ownership of the land described as Plot-B.

23) It is further submitted that in his evidence, the P-1 i.e. the petitioner had submitted that he had acquired the Plot-B land as the said land was handed over to him by the original owner, namely, Tade Cheda (CP-3). However, the petitioner had not produced the said Tade Cheda (CP-3) as his witness. However, the said Tade Cheda (CP-3) had appeared as witness of the respondent and he had admitted in his evidence that he had handed over the possession of Plot-B land to the father of the respondent. Referring to the same, it is asserted that the respondent has been able to give evidence as regards his ownership and possession of the Plot-B land and therefore, in terms of clause 2 of the Mel Settlement Order dated 13.04.2012, the petitioner is prohibited from any repercussion against the respondent because as per the said

order dated 13.04.2012, the petitioner is prohibited from prosecuting the respondent in respect of any plot of land.

24) This Court had made the following query to the learned counsel for the respondent which are:

- a. *Whether any right flowed in favour of the respondent in the Mel Settlement Order dated 13.04.2012?*
- b. *If no such right flowed in favour of the respondent from the Mel Settlement order dated 13.04.2012, whether there was anything which could be executed by the Deputy Commissioner in Case No. Jud/T/Case (Y)-03/2011-12?*

25) On the aforesaid query of this Court, the learned counsel for the respondent submits that by the Mel Settlement order dated 13.04.2012, the petitioner was prohibited from prosecuting the respondent after getting the right over the plot of land described as Plot-A. It is also submitted although there is no reference to the nature of dispute that had arisen in respect of the land which was the subject matter of the Mel Settlement order dated 13.04.2012. However, from the nature of dispute raised by the petitioner, a conclusion can be drawn by this Court, which is that all the disputes existing between the parties was settled by handing over the Plot-A land (i.e. land at near Pagya river, Length Road to Pagya river and Breadth 11 meters) by Shri Fetar Weshi & Shri Kating Weshi (Respondent) to Shri Arung Yamdo (Petitioner). Therefore, if this Court accepts the said plea, then the first question can be answered in the affirmative by holding that right flowed in favour of the respondent in the Mel Settlement order dated 13.04.2012, prohibiting the petitioner from any repercussion against the land owners viz., Shri Fetar Weshi and Shri Kating Weshi (respondent) in future. Similarly, the second question can be answered by holding that the said Mel Settlement order is liable to be enforced against the petitioner, by preventing him from prosecuting the respondent in respect of his other land. Therefore, according to the

learned Counsel for the respondent, no jurisdictional error was committed by the learned Deputy Commissioner in passing the impugned order in the present case.

26) This Court has considered the arguments advanced by the learned Counsels for both sides and has also perused the materials on record. The sequence of events as narrated above shows that the respondent had filed a petition for enforcement of the Mel Settlement order dated 13.04.2012, pursuant to which the impugned orders dated 18.05.2015 and 28.05.2015 were passed. However, the Respondent had filed (i) an objection for setting aside and/or dismissing the complaint dated 19.08.2013 and notices dated 01.11.2013 and 21.11.2013, (ii) application dated 16.02.2015 not to contest the case under Regulation 38 of the 1945 Regulation on the ground that the present dispute did not relate to Mel Settlement order dated 13.04.2013, and (iii) appeal under section 46 of the 1945 Regulation against order dated 18.05.2015 and 28.05.2015 in Case No. JUD/T/CASE(Y)-03/2013, which was registered as Case No. DC/APPEAL-04/2015.

27) It would be relevant to quote the provisions of Regulation 46 of the 1945 Regulation, which is as follows:-

"46. (1) Any person aggrieved by a decision of a Village Authority may appeal to the Assistant Commissioner in suits not exceeding Rs.500 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 matter 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 affirm and enforce the decision of its own. If the appellate court sees grounds to doubt the justice of the decision, it shall try the case de novo or refer to a panchayat; in the case so

referred, the provisions of section 38 shall apply as if the parties had agreed to submit to arbitration."

28) This Court is conscious of the fact that the appeal was registered and tried on the basis of the order dated 12.10.2015 passed by this Court in CRP No. 32(AP)/2015, which is also reflected in the impugned order dated 29.01.2016, the effective part of which is quoted above.

29) From the materials on record it appears that the application dated 07.03.2013 filed by the respondent in the Court of learned Deputy Commissioner, Seppa was for land dispute case and the complaint was that he did not appear before the Court and thereafter, another complaint dated 08.07.2013 by the respondent had complained that in terms of the Mel Settlement order dated 13.04.2012, the petitioner herein should be asked to abide to the said Mel Settlement order and should not make any controversies and if he does so, a case against him should be registered for the breach of Mel Settlement order dated 13.04.2012. Once again by the compliant dated 19.08.2013, the respondent has projected before the Deputy Commissioner, Seppa that the petitioner was not complying with the Mel Settlement order dated 13.04.2012. Therefore, the nature of application filed by the respondent is concerning enforcement of the Mel Settlement order dated 13.04.2012 and that in connection with the said matter, execution orders were passed on 18.05.2015 and 28.05.2015 by the Circle Officer (Y), for and on behalf of the Deputy Commissioner, East Kameng District.

30) In connection with the said orders dated 18.05.2015 and 28.05.2015 passed in connection with Case No. JUD/T/CASE(Y)-03/2013 by the Circle Officer (Y), for and on behalf of the Deputy

Commissioner, East Kameng District, the petitioner had filed appeal under section 46 of the 1945 Regulation. Under this background, if the said provisions of Appeal as provided in Regulation 46 of 1945 Regulation as quoted herein before is perused, it is seen that appeal under Regulation 46 of 1945 Regulation is provided only against the orders passed by the Village Authority.

31) Moreover, as stated above, the said impugned orders dated 18.05.2015 and 28.05.2015 were passed by the Circle Officer (Y), for and on behalf of the Deputy Commissioner, East Kameng District. Thus, this Court finds that the same authority which had passed the original execution orders in Case No. JUD/T/CASE(Y)/03-2013 cannot sit over in appeal filed under Regulation 46 of 1945 Regulation.

32) As per the provisions of Regulation 47 of 1945 Regulation, it is provided that appeal shall lie to the Deputy Commissioner from any decision, original or appellate, of an Assistant Commissioner. However, the impugned orders clearly reflect that the said orders were signed by the Circle Officer (Y) for the Deputy Commissioner as follows –

*"sd/- (illegible)
(Takam Nicholas) CO(Y)
For Deputy Commissioner
East Kameng District:: Seppd".*

33) It would be relevant to mention that from the order dated 24.02.2014 passed in Case No. JUD/T/Case(Y)-03/2012 (Annexure-VII), it appears that the Extra Assistant Commissioner (Y) Cum Assistant Commissioner had transferred the case to the Court of Deputy Commissioner under Section 37 of the Assam Frontier (Administrative of Justice) Regulation 1945. As per the said order, the transfer was made because the jurisdiction was found to be executing Rs.50,000/-. Therefore, it appears that the EAC (Y) was entertaining the dispute of

the execution proceeding as suit for transferring the same to the appellate Court. Therefore, an anomalous and/or out of ordinary situation is seen in the present case, which is that if the case was transferred as a suit, jurisdictional error is found to have crept in the case because the Deputy Commissioner, East Kameng District who was acting through Circle Officer (Y), lost sight of the said fact that he was passing execution orders dated 18.05.2015 and 28.05.2015 in the said transferred suit.

34) Therefore, when appeal was filed with application for condonation of delay, and this Court was moved by filing CRP 32(AP)/2015, these issues were not placed before this Court and moreover, this Court was not called upon to decide on the merit of the appeal and under such circumstances, the order dated 12.10.2015 appears to have been passed, directing the appellate authority i.e. the Deputy Commissioner to register and hear the appeal.

35) Thus, bound by the said order dated 12.10.2015, the learned Deputy Commissioner had adjudicated the appeal, which is also reflected in the impugned order. Hence, the learned Deputy Commissioner has committed jurisdictional error by deciding the appeal notwithstanding that the impugned orders dated 18.05.2015 and 28.05.2015 were not passed by the Village Authority, for which the appeal ought not to have been entertained under Regulation 46 of 1945 Regulation.

36) In view of the discussions above, this Court is of unhesitant opinion that there has been a jurisdictional error by the learned Court below and, as such, this revisional Court has the power to interfere in respect of the order impugned herein. Therefore, on facts, the present

case is found to be distinguishable from the facts involved in the case of *Management of Kalpataru Vidya Samasthe (supra)*.

37) It is well settled that a point not raised and not decided by this Court cannot constitute *res-judicata*. In this regard, this Court is guided by the case of *Nand Kishore V. State of Punjab*, reported in (1995) 6 SCC 614 - (para 15 - 20), which though under different circumstances, it has been held that a pure question of law, unrelated to facts which gives rise to a right, cannot be deemed to be a matter in issue in previous proceeding. Hence, when the real issue in controversy in this case as discussed above was not pointed out before this Court, the order dated 12.10.2015 passed by this Court in CRP 32(AP)/2015, cannot confer appellate jurisdiction to the learned Deputy Commissioner, as such this Court as well as the learned first appellate court below on remand can decide the issue of jurisdiction to entertain appeal. Hence, following the well founded principle of "*actus curiae neminum gravabit*", meaning thereby that an act of the court shall prejudice no one, this Court is of the well considered opinion that this is a fit and proper case wherein the matter be remanded back to the Court of the learned Deputy Commissioner, East Kameng District, Seppa, for deciding the matter afresh. In light of the above discussions, the said learned Court shall first decide the issue – "*Whether the appeal under Regulation 46 of the Assam Frontier (Administration of Justice) Regulation, 1945 against the impugned orders dated 18.05.2015 and 28.05.2015 is maintainable?*" If the finding on the said issue is in affirmative, then the said learned first appellate Court would decide the matter afresh. It is clarified that while hearing the matter afresh on remand, the said learned Court may not be influenced with the observations made herein.

38) However, this Court would like to clarify on the issue of right of cross examination raised by the learned counsel for the petitioner, in this regard, the learned first appellate court may be guided by the case of *Jumnya Ete (supra)*.

39) Thus, this revision is allowed on terms as indicated above by remanding the matter back to the Court of the learned Deputy Commissioner, East Kameng District. The parties are left to bear their own cost.

40) As both the parties are represented by the learned counsels. The parties will appear before the learned Deputy Commissioner, East Kameng District, Seppa on 08.02.2018 without any further notice for appearance and the parties, by submitting the certified copy of this order, shall seek further instructions from the said learned Court. Till the said date of appearance, i.e. till 08.02.2018, it is provided that the execution orders passed in Case No. JUD/T/CASE(Y)-03/2013 against the petitioner i.e. Shri Arung Yamdo shall not be enforced.

41) Let the LCR be returned forthwith.

42) Although the order was dictated in open Court on 30.11.2017, but as the order could not be transcribed immediately, this order was subsequently transcribed, corrected and released on 03.01.2018.

JUDGE

Cha Gang.