



F/R

GAUHATI HIGH COURT AT NAHARLAGUN
ITANAGAR PERMANENT BENCH: NAHARLAGUN

WA 43(AP)/2017

Sri Tenzin Norbu & OrsAppellants
Vs
The State of Arunachal Pradesh & Ors.....Respondents

--BEFORE--

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA
HON'BLE MR JUSTICE AJIT BORTHAKUR

For the Appellants: Mr. P.D. Nair
Advocate
For the respondents: Mr. D Soki
Advocate for the State
Mr. D Kamduk
Advocate for the private respondents.

Date of hearing and judgment: 11.09.2019.

Judgment & order (oral)

(P.K. Deka, J)

Heard Mr. P D Nair, learned counsel for the appellants. Mr. D Soki, learned Additional senior Govt. Advocate for the State of Arunachal Pradesh and Mr. D Kamduk, learned counsel for the private respondents.

2. A dispute in respect of the ownership of land was initiated by filing complaint dated 05.12.2006 by seven villagers of Namet village before the Deputy Commissioner, Tawang district alleging that one Smt. Tashi Yangzom

and other villagers of Paikhar village had unlawfully fetched firewood from an area locally known as "TE-THOME". The present five appellants were signatories in the said complaint. The Deputy Commissioner, Tawang district, the respondent No. 2 constituted a Board of Arbitrator vide order dated 06.12.2006. Accordingly, five Arbitrators/ Members were appointed on 30.01.2007 to settle the land dispute between the Namet and Paikhar villages. The Arbitration Board submitted the settlement report to the Deputy Commissioner, Tawang vide report dated 05.02.2007. As per the said settlement report the decision was in favour of the villagers of Namet village. Being aggrieved by the settlement report the representatives of Paikhar village submitted representation on 06.02.2007 to the Extra Assistant Commissioner, Kitpi Circle, Tawang praying for stay order on the settlement report of the Arbitration Board. The Extra Assistant Commissioner on behalf of the Deputy Commissioner, Tawang issued notice dated 09.05.2007 in case No. TJ/Civil-01/2007 to the representatives of both Namet and Paikhar villages and also to the Arbitration Board Members to appear before the Court on 22.05.2007 for hearing of the land dispute. The noticees appeared on 07.12.2007 before Ex-officio Assistant Commissioner and Judicial Magistrate Second Class the respondent No. 3. It is pertinent to mention herein that the settlement report dated 05.02.2007 between the representatives of the said two villages was arrived at upon consideration of an agreement dated 02.02.2007 and on the basis of the settlement report dated 05.02.2007 finally, vide order dated 07.12.2007 of respondent No. 3 decided the dispute in favour of Namet village. The representatives of both the parties were present during the pronouncement of the order dated 07.12.2007.

3. After two years from the disposal of the said case TJ/Civil-01/2007 the representatives of Paikhar village submitted a representation dated 30.12.2009 before the respondent No. 2, the Deputy Commissioner, Tawang stating that they were yet to receive the copy of order passed in favour of Namet village. Vide said representation the representatives of Paikhar village once again initiated and requested the Deputy Commissioner to look into the matter. The respondent No. 2 on the same day i.e. on 30.12.2009 passed an order directing both the parties to maintain peace and tranquillity and abide by the decision dated 07.12.2007. The respondent No. 3 on behalf of respondent No. 2 issued a notice dated 19.12.2013 to the respective Gaonbura of Namet and Paikhar villages to appear before the court of Deputy Commissioner, Tawang on 23.12.2013 along with other villagers in connection with the said land dispute case. The Court of Deputy Commissioner, Tawang vide order dated 23.12.2013 upheld the order dated 07.12.2007 holding that the matter was already adjudicated in favour of the Namet village and as the villagers of Paikhar did not prefer any appeal as such the order dated 07.12.2007 had attained its finality. Even after passing of the order dated 23.12.2013 the representatives of Paikhar village instead of preferring appeal or approaching the appropriate forum submitted representation dated 03.01.2014 to the respondent No. 2 to dispose of the appeal petition/ representation filed on 06.02.2007 which was filed before the Extra Assistant Commissioner, Kitpi Circle as stated herein above. The respondent No. 2 vide his communication dated 08.01.2014 addressed to the Gaonbura of Paikhar village informed that the dispute was already adjudicated by the Deputy Commissioner, Tawang and no appeal could be taken in that

court and further advised the Gaonbura to approach competent court for redressal of the grievances.

4. The representatives of Paikhar village filed WP(C) 42(AP)/2014. In the said writ petition the present respondent Paikhar village impugned the orders dated 30.01.2007 by way of which the Arbitration Board was constituted, the settlement report dated 05.02.2007 of the Arbitration Board, the order dated 07.12.2007 of the respondent No. 2 and the order dated 30.12.2009 of the Deputy Commissioner, Tawang district. In the said writ petition the respondent Paikhar village sought for the following reliefs:

"In the premises aforesaid, it is most respectfully prayed that your Lordships may graciously be pleased to;

- (i) Issue a writ of certiorari quashing and setting aside the impugned Board or Arbitrators dated 30.01.2007 and its findings/ report/ decision dated 05.02.2007 and be further pleased to remand back the matter for fresh adjudication in accordance with law.*
- (ii) Issue a writ of certiorari quashing and setting aside the impugned order dated 07.12.2007 passed by the Ex-Officio Assistant Commissioner & Judicial Magistrate second Class, Kitpi Circle, Tawang district vide Memo No. TJ/Civ-01/2007/7518-21 on the basis of the findings/ report/ decision dated 05.02.2007 of the impugned Board of Arbitrators'*
- (iii) Issue a writ of certiorari quashing and setting aside the impugned order passed by the Deputy Commissioner, Tawang District vide No. TJ/Civ-01/2007/7518-21 dated 30.12.2009 upholding the order dated 07.12.2007.*
- (iv) Pass such other order (s) as may be deemed fit and proper in the interest of justice considering the facts and circumstances of the case.*

And

- (v) Pending disposal of the petition may kindly further be pleased to Stay / suspend the operation of the impugned order dated 17.12.2007 passed by the Ex-officio Assistant Commissioner & Judicial Magistrate second Class, Kitpi Circle, Tawang District vide memo No. TJ/Civ-01/2007/7518-21 and the impugned order passed by the Deputy Commissioner, Tawang district vide No.*

TJ/Civ-01/2007/7518-21 dated 30.12.2009 upholding the order dated 07.12.2007."

5. The said writ petition was finally dismissed on 16.12.2015 holding that the writ petition was not maintainable as the representatives of the Paikhar village failed to make out a case of arbitrariness or abuse of judicial process etc. while passing the said impugned orders.

6. The said respondent Paikhar village again approached this Hon'ble High Court by preferring a Civil Revision Petition alongwith an Interlocutory Application being IA No. 82 (AP)/2016 for condonation of delay of 3013 days in preferring the said revision petition. Both the I.A. 82(AP)/2016 as well as Civil Revision Petition were dismissed vide order dated 11.05.2017 passed by the learned Single Judge. The same set of petitioners who preferred WP(C) 42(AP)/2014 and the Civil Revision Petition along with delay condonation petition again preferred WP(C) 454(AP)/2017 on identical grounds and prayers as the one contended in WP(C) 42 (AP)/ 2014. For reference, the prayers made in WP(C) 454(AP)/ 2017 are reproduced herein below:

"In the premises aforesaid, it is most respectfully prayed that your Lordships may graciously be pleased to;

- (i) Issue a writ of certiorari quashing and setting aside the impugned Board of Arbitrators dated 30.01.2007 and its findings/ reports, decision dated 05.02.2007 and further pleased to remand back the matter for fresh adjudication in accordance with law.*
- (ii) Issue a writ of certiorari quashing and setting aside the impugned order dated 07.12.2007 passed by the Ex-Officio Assistant Commissioner & Judicial Magistrate Second Class, Kitpi Circle, Tawang District on the basis of the settlement report dated 05.02.2007 of the Board of Arbitrators.*
- (iii) Issue a writ of certiorari quashing and setting aside the impugned order dated 30.12.2009 and order dated 23.12.2013 passed by the Deputy Commissioner, Tawang District.*

(iv) *Pass such order order(s) as may be deemed fit and proper in the interest of justice considering the facts and circumstances of the case.*

And

Pending disposal of the petition may kindly further be pleased to stay/ suspend the operation of the impugned order dated 07.12.2007 passed by the Ex-Officio Assistant Commissioner & Judicial Magistrate Second Class, Kitpi Circle, Tawang District.

And for this act of kindness, the petitioners as is duty bound shall ever pray.

7. The said writ petition was disposed of vide order dated 21.09.2017 by holding as follows:

"Accordingly, it is deemed appropriate that ends of justice would be met, it the matter is remanded back to the Deputy Commissioner, Tawang for consideration as to whether the order of the 2 arbitrators are valid and sustainable under Section 38 of the AFR, 1945. If not, the matter be again referred for arbitration under Section 38 of the AFR, 1945 by appointing the arbitrator as per law.

The Deputy Commissioner, Tawang shall pass a necessary order within a period of 3 months from the date of receipt of certified copy of this order.

In doing so, the Deputy Commissioner shall issue notice to the petitioners as well as to the respondent Nos. 4 to 11 and give both the parties an opportunity of hearing to present their respective cases.

Till the aforesaid exercise is completed, the order of the arbitrator shall not be given effect to. Further, while undertaking the aforesaid exercise, the Deputy Commissioner, Tawang shall not rely on the earlier orders dated 07.12.2007, 30.12.2009 and 23.12.2013.

In the terms of the above, this writ petition stands disposed of."

8. While passing the said order the learned Single Judge observed that inspite of notice being served upon the respondent Nos. 4 to 11 none appeared on their behalf. It was also observed that vide order dated 13.09.2017 the

Hon'ble Court observed that in the event if the respondent Nos. 4 to 11 remained unrepresented matter would be taken up for its final decision purportedly on the next date.

9. Mr. Nair submits that the chequered history of the dispute and the acts of filing writ petitions one after another on the same cause of action seeking same reliefs were suppressed by the private respondents before the learned Single Judge while passing the impugned order. It is further submitted that in fact no notice/ notices were served on the present appellants who were respondents in WP(C) 454(AP)/2017. Accordingly, the subsequent writ petition wherein the learned Single Judge interfered the orders is barred by principle of res-judicata inasmuch as the observations made in the earlier writ petition the private respondents accepted the same and filed revision petition on the same matter in issue in this court which was dismissed. The private respondents suppressing the said facts preferred the subsequent writ petition. Accordingly, Mr. Nair sought for interference in the order passed by the learned Single Judge.

10. Mr. Kamduk submits that the earlier writ petition was held to be not maintainable and directed the private respondents to move appropriate forum and keeping in view the findings and observations in the earlier writ petition the Civil Revision Petition was preferred. However, that too was also dismissed and thereafter the writ petition was filed and the learned Single Judge accepted the contentions made therein and interfered with the findings of the lower courts.

11. We have given due consideration to the submissions of the learned counsel. From the relief has hereinabove stated the private respondent sought for the identical reliefs in both the writ petitions which indicates that the cause

of action for seeking the relief in the subsequent writ petition arose at the time of filing the prior writ petition. The earlier WP(C) 42 (AP)/2014 was dismissed by holding as follows:

"In view of the above settled position of law, the court is of the considered opinion that the instant writ petition preferred by the writ petitioners under Article 226 of the Constitution of India, is not maintainable and therefore, the same is hereby dismissed."

12. The said order was never challenged and allowed to attain its finality. Under such factual matrix the private respondents accepted the facts that the reliefs sought in the earlier writ petition were not maintainable but even then the subsequent writ petition was filed and the learned Single Judge passed the impugned order. The subsequent writ petition and the reliefs sought therein are barred by principles of res-judicata inasmuch as already there is a finding that the earlier writ petition was not maintainable under the law on the factual matrix pleaded therein. The issue of maintainability was decided on the basis of the contentions made in the writ petition. The said contentions are the causes of action for filing the earlier writ petition thereby seeking the consequential reliefs as sought for in the earlier writ petition. On the other hand the reliefs sought in the subsequent writ petition are also initiated on the basis of same facts and circumstances of the case. Thus the subsequent writ petition is barred under the principles of res-judicata.

13. The fact of acceptance of the findings in the earlier writ petition by the private respondents is amply proved as the respondents filed a Civil Revision Petition against the impugned order in the earlier writ petition. The same was dismissed on the ground of delay.

14. The private respondents cannot be allowed to approbate and reprobate at a time. Once the private respondents accepted the findings of the earlier writ petition and allowed to attain its finality they are estopped in preferring the subsequent writ petition on the same cause of action. It is contended by Mr. Nair that the present appellants were not served with notice duly and as such the grounds mentioned in the appeal could not be raised before the learned Single Judge. On perusal of the impugned order of the learned Single Judge it is apparent that the present appellants were not represented at the time of passing the impugned order. However the contention of the counsel for the appellants are not disputed by the learned counsel for the private respondents and as such we have applied our minds and decided this appeal on merits on the basis of the pleadings and the submissions of learned counsel. In our considered opinion we are of the view that it would be proper to set aside the order passed by the learned Single Judge in WP(C) 454 (AP)/2017 which we accordingly do.

15. This appeal succeeds for the reasons and discussions made hereinabove.
No cost.

JUDGE

JUDGE