

HIGH COURT OF MEGHALAYA

Review Petn. No. 5 of 2014

Shri. Allan W Kharkongor,
Resident of Raitsamthiah,
Block-1, Shillong
Dist : East Khasi Hills,
Meghalaya.

.... Review Petitioner

- Vrs -

1. The State of Meghalaya
Represented by the Chief Secretary
to the Govt. of Meghalaya, Shillong
2. The Principal Secretary
Revenue Department,
Meghalaya, Shillong.
3. The Secretary to the Govt. of Meghalaya,
Revenue & Disaster Management Deptt.
Meghalaya, Shillong.
4. The Under Secretary to the Govt. of Meghalaya,
Revenue & Disaster Management Deptt.
Meghalaya, Shillong.
5. The Deputy Commissioner (Revenue),
East Khasi Hills District, Shillong,
Meghalaya.
6. The Addl. Deputy Commissioner (Revenue)
East Khasi Hills District, Shillong
Meghalaya.
7. Shri. Rishan Rapsang,
Managing Director,
Ferndale Rapsang (P) Ltd.,
Ferndale Compound,
East Khasi Hills District,
Shillong.
8. Shri. Narayan Agarwal,
C/o Shri Rishan Rapsang,
Managing Director,
Ferndale Rapsang (P) Ltd.,
Ferndale Compound,
East Khasi Hills District, Shillong.

..... Respondents

BEFORE
HON'BLE MR JUSTICE T NANDAKUMAR SINGH
& HON'BLE MR JUSTICE SR SEN

Advocate for the Review Petitioner : Mr. B Bhattacharjee, Adv.

Advocate for the Respondents : Mr. KS Kynjing, AG
Mr. ND Chullai, Sr. GA
Mr. VGK Kynta, Sr. Adv.
Mr. R Kar, Adv.

Date of Hearing : 28.07.2014

Date of Judgment & Order : 04.09.2014

JUDGMENT & ORDER

(SR Sen, J)

This instant Review Petition has been filed against the Judgment & Order dated 20.12.12 passed in Writ Appeal No. (SH) No. 16 of 2011 passed by this Court as common High Court of Gauhati.

2. The petitioner's case in nut shell is that, "this Review Petition has been filed seeking review of the Judgment & Order dated 20.12.12 passed by this Hon'ble Court as the common High Court in Writ Appeal No. (SH) No. 16 of 2011. As a matter of fact earlier challenging the said Judgment & Order dated 20.12.12, the petitioner filed an SLP before the Hon'ble Supreme Court being SLP (Civil) cc 13585/2013. However, the SLP was dismissed as withdrawn with liberty to the petitioner to file a Review Petition before this Hon'ble Court on the ground that the proviso to paragraph 20(2) of the Sixth Schedule of the Constitution of India has not been taken into consideration. Although the matter relates to the Meghalaya High Court, the Review Petition has been filed before this Hon'ble Court in terms of Sub-sec (3) of Sec-28 I of the North Eastern Areas (Reorganization) and other related laws (Amendment) Act 2012 which provides that, a petition seeking review of an order passed by the common High Court before the commencement of the aforesaid Act ought to be filed before the common High Court and the proviso to Sec-28 I (3)

of the Act further provides that after entertaining the petition, the common High Court may transfer the proceedings to the concerned High Court i.e. the Meghalaya High Court. The facts of the case in brief are that, the petitioner belongs to Schedule Tribe (Khasi) community Meghalaya. Respondent No. 7 took up a project for construction of flats in the Ferndale apartments within the Shillong Municipality. Subsequently, a notice under Rule-6 (1) of the Meghalaya Transfer of Land (Regulation) Rules, 1974 was issued by the Addl. Deputy Commissioner on 18.05.09 inviting intending purchasers from the tribals in respect of the flat in the Ferndale apartments. The petitioner submitted his application on 10.06.09 in response to the said notice. However, the petitioner later gathered that the Government granted permission for transfer of the flat in favour of respondent No. 8. The petitioner challenged the aforesaid permission before the Single Judge in WP(C) No. 99 (SH) of 2010 stating that it is violative of Sec-31(1) of the Meghalaya Transfer of Land Regulation Act, 1971 which prohibits transfer of land to non-tribal. The respondents contended that the flat in question is located in European Ward within the Shillong Municipality which is not within tribal area and therefore the Meghalaya Transfer of Land Regulation Act, 1971 is not applicable. The Writ Petition was dismissed and the Writ Appeal being Writ Appeal No. (SH) No. 16 of 2011 filed by the petitioner was also dismissed on 20.12.12. The findings of this Hon'ble Court in the Writ Petition and also in the Writ Appeal is that, the Municipality of Shillong had been excluded from the purview of the United Khasi Jaintia Hills District as provided in Sub-paragraph (2) of paragraph (20) of the Sixth Schedule of the Constitution of India and therefore the Meghalaya Transfer of Land (Regulation) Act, 1971 is not applicable to the area covered by the Shillong Municipality. But the contention of the review petitioner is that, both the Courts did not consider as per the proviso to paragraph 20(2) of the Sixth Schedule, the area of Shillong Municipality is not a tribal area for 11(eleven) purposes specified therein. Meaning

thereby that, for all other purposes including the purpose of land, area within Shillong Municipality is a tribal area. Consequently, the provisions of Meghalaya Transfer of Land (Regulation) Act, 1971 is applicable and the permission granted to respondent No. 8 is violative of provisions of the said Act. Hence, the Judgment & Order passed by this Hon'ble Court in the Writ Petition and Writ Appeal vitiated by error apparent on the face of record.”

3. Mr. B Bhattacharjee, the learned counsel for the petitioner submitted only one point that, while passing the Judgment & Order dated 20.12.12 in Writ Appeal No. (SH) No. 16 of 2011, this High Court has ignored or did not take into consideration the Proviso to Paragraph 20(2) of the Sixth Schedule of the Constitution of India.

4. On the other hand, Mr. KS Kynjing, the learned Advocate General assisted by Mr. ND Chullai, the learned senior GA appearing for respondents No. 1 – 16, Mr. VGK Kynta, the learned senior counsel appearing for respondent No. 7 and Mr. R Kar, the learned counsel for respondent No. 8 submitted that, Proviso to Paragraph 20(2) has been elaborately discussed in the Writ Appeal No. (SH) No. 16 of 2011.

5. After hearing the submissions advanced by the learned counsel and after going through the Judgment & Order passed by Division Bench in Writ Appeal No. (SH) No. 16 of 2011, we find that Proviso to Paragraph 20(2) of the Sixth Schedule has been elaborately discussed, specifically in Para-14 and Para-15 of the Judgment.

6. Considering the submissions advanced by the learned counsel and taking in totality the Judgment & Order passed by Division Bench in Writ Appeal No. (SH) No. 16 of 2011, we find that the Proviso to Paragraph 20(2) of the Sixth Schedule of the Constitution of India has been taken into consideration and there is nothing wrong in the

Judgment. Therefore, in our considered view, this instant Review Petition has no merit; hence, dismissed and stands disposed of.

7. Parties are to bear at their own cost.

JUDGE

JUDGE

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