WA No. 15/2015
& MC [Review Pet.] No. 4/2015

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. K. Paul, learned counsel, appears for the appellant/respondent.

Mr. MF Qureshi, learned counsel, represents the respondents.

Learned counsel for the appellant/respondent, Mr. K. Paul, prays for and is granted 2 (two) weeks' time to seek instructions in both the matters namely, WA No. 15/2015 and MC [Review Pet.] No. 4/2015 in Review Pet. No. 2/2015. List the matter on 03.08.2015.

JUDGE **CHIEF JUSTICE**

Sylvana

CRL.A. No. 2/2014

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. MF Qureshi, learned counsel, appears for the petitioner.

Mr. ND Chullai, learned senior GA, represents the respondents.

Learned counsel for the appellant, Mr. MF Qureshi prays for and is granted 2 (two) weeks' time to argue the matter. List on 04.08.2015.

JUDGE **CHIEF JUSTICE**

Sylvana

MC (PIL) No. 16/2015
In PIL No. 1/2014

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. B. Bhattacharjee, learned counsel, appears for the petitioner.

Mr. K. Paul, learned counsel, represents the respondents.

This application has been filed praying for review and/or modification/alteration/vacation of the order dated 10.06.2015 passed by this Court which reads as:

"10.06.2015

Mr. K. Paul, learned counsel, appears for the petitioner.

Mr. N.D. Chullai, learned senior GA, assisted by Mr. S.Sen Gupta, learned GA, represents respondents No. 1, 2 & 4.

Mr. S.P. Mahanta, learned senior counsel, represents respondent No. 3.

Mr. H.S. Thangkhiew, learned senior counsel, represents respondents No. 6, 10, 14, 15, 17, 18 and 22.

Mr. S. Chakravarty, learned counsel, is for respondents No. 7, 8, 11 and 19.

Mr. B.K. Das, learned counsel, is present for respondent No. 9.

Mr. L. Lyngdoh, learned counsel, appears for respondent No. 24.

Mr. B. Bhattacharjee, learned counsel, represents respondents No. 23 and 26.

In-charge Deputy Commissioner, Ms. P. Lyngdoh Lawai, is present in Court. She prays for and is granted time till 18.06.2015 to seal all the 24 buildings identified to be in violation of the MUDA's guidelines by the Committee and to remove the bamboo/iron poles used for construction works in the odd hours in the night in violation of this Court's order. Needless to say, that the costs of removal of the bamboo/iron poles shall be borne by the building owners. The Deputy Commissioner shall submit the video-graphy as well as the still photographs of the buildings after sealing.

It is also complained that the building owners taking advantage of the order dated 11.04.2014, whereby they have been restrained from raising construction beyond G + 3, are continuing with

constructions, even in such portions of the buildings which have been directed to be sealed by Court's orders. Thus, we further direct that there shall be no construction in any portion of these buildings till the pending cases are finally decided. As the parties have already completed the pleadings, now the matter is posted for final hearing on 18.06.2015.

Copy of this order shall be furnished to learned counsel for the parties at the earliest for compliance."

As per Bye Laws No. 40 of the Meghalaya Building Bye Laws, 2011, the maximum number of floor including basement for residential apartment has been limited to only four. The said Bye Law with table No. VIII is reproduced hereunder:

"40. The Specific Floor Area Ratio and Plot Coverage stipulation shall be as per Table VII below:

TABLE VIII
FLOOR AREA RATIO & MAXIMUM COVERAGE

Sl. No.	*Type of Occupancy*	*Maximum permissible (F.A.R.)*	*Maximum permissible (coverage percentage of plot area)*	*Maximum Floor permissible (excluding basement)*	*Maximum Height permissible (in meters)*
1	*2*	*3*	*4*	*5*	*6*
1.	*Residential Bungalow*	*2.0*	*50%*	*4*	*15 mts. With ground floor parking 19 mts.*
2.	*Residential Apartment*	*2.0*	*50%*	*4*	*15 mts. With ground floor parking 10 mts.*
3.	*Institutional*	*1.5*	*40%*	*4*	*15 mts. With ground floor parking 19 mts.*
4.	*Mercantile (Commercial)*	*2.0*	*60%*	*4*	*15 mt. With ground floor parking 19 mts.*
5.	*Public or Semi-Public Business*	*2.0*	*50%*	*4*	*15 mts. With ground floor parking 19 mts.*

Sl. No.	*Type of Occupancy*	*Maximum permissible (F.A.R.)*	*Maximum permissible (coverage percentage of plot area)*	*Maximum Floor permissible (excluding basement)*	*Maximum Height permissible (in meters)*
1	*2*	*3*	*4*	*5*	*6*
6.	*Assembly*	*1.5*	*40%*	*4*	*15 mts. With ground floor parking 19 mts.*
7.	*Industrial*	*1.5*	*40%*	*3*	*12 mts. With ground floor parking 16 mts.*
8.	*Storage*	*2.0*	*70%*	*3*	*12 mts. With ground floor parking 16 mts.*
9.	*Hazardous*	*1.2*	*25%*	*2*	*8 mts. With ground floor parking 12 mts.*
10.	*Special Buildings*	*3.0*	*50%*	*6*	*23 mts. With ground floor parking 27 mts.*
11.	*Industrial Zone (factory)*	*1.0*	*40%*		*As per functional requirement."*

It appears that one of the parties to the lis challenged the aforesaid order dated 10.06.2015 in the Supreme Court. Learned counsel for the petitioner, produced the order passed therein. The order reads as:

"Upon hearing the counsel the Court made the following

O R D E R

The Special Leave Petition is disposed of. However, liberty is given to the petitioner to file an appropriate Review Petition before the High Court by bringing to the notice of the Court that the petitioner has not violated the guidelines issued by the Meghalaya Urban Development Authority (MUDA).

The sealing of the petitioner's premises is kept in abeyance for a period of fifteen days' from today.

Ordered accordingly.

Sd/- ***Sd/-***
(G.V. Ramana) ***(Vinod Kulvi)***
AR-Cum-PS ***Asstt. Registrar"***

However, the copy of the Special Leave Petition (SLP) filed in the Supreme Court is not available so that this Court could have the advantage of knowing the grounds and points taken therein.

Learned counsel for the petitioner, submitted an incomplete copy of the petition. As page 11 to 14 containing grounds VI to XXIV are missing, it would be appropriate for learned counsel for parties to submit the complete paper book.

According to learned counsel for the petitioner, the respondent has suppressed the information regarding Bye Law No. 40 of the Meghalaya Urban Development Authority Bye Laws 2011 in the Special Leave Petition. Moreover, it is also not the case of the respondent that he has constructed the basement so that he could seek permission to construct upto five floors. Learned counsel for the petitioner on the other hand justified the reasons for sealing the building on the ground of violation of the Bye Laws of MUDA. Thus, we direct the Secretary, MUDA to produce the records connected with the case whereas learned counsel for the respondent shall produce the copy of Special Leave Petition.

List the matter on 27.07.2015.

JUDGE **CHIEF JUSTICE**

Sylvana

PIL No. 1/2014

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. K. Paul, learned counsel, appears for the petitioner.

Mr. N.D. Chullai, learned senior GA, assisted by Mr. S.Sen Gupta, learned GA, represents respondents No. 1, 2 & 4.

Mr. S.P. Mahanta, learned senior counsel, represents respondent No. 3.

Mr. S. Murarka, learned counsel, represents respondent No. 5

Mr. H.S. Thangkhiew, learned senior counsel, is present for respondents No. 6, 10, 14, 15, 17, 18 and 22.

Mr. K.P. Bhattacharjee, learned counsel, is for respondents No. 7, 8, 11 and 19.

Mr. B.K. Das, learned counsel, is present for respondent No. 9.

Mr. L. Lyngdoh, learned counsel, appears for respondent No. 24.

Mr. B. Bhattacharjee, learned counsel, represents respondents No. 23 and 26.

Mr. S. Murarka, learned counsel appearing for respondent No. 5 argued for about 2 ½ hours by way of additional submission. Thus the argument on behalf of respondent No. 5 finally stands closed today. As regards allegations against the MUDA in the arguments of learned counsel that they are responsible for violations, if any the Secretary, MUDA and the Town Planning Officer, present in Court state that they were not posted during the period of alleged violation of the Bye Laws. According to them, one Mr. Ben Lyngdoh was a Town Planner who may be held responsible for the violations if any.

Now, we proceed to hear the arguments on behalf of respondent No. 6. Mr. H.S. Thangkhiew, learned senior counsel at the very outset, states that his client wants to demolish the floor alledged to be in violation of the Building Bye Laws, but since the building is sealed, the respondent is not able to proceed. The respondent may file appropriate application for consideration on the next date of hearing.

Mr. K.P. Bhattacharjee, learned counsel for respondent No. 7, states that he has already submitted arguments on affidavit on behalf of respondent No. 7. He further states that respondent No. 7 also wants to file application to take corrective measures in case there is any violation. As and when such application is made, it would be considered on its merit. Mr. K.P. Bhattacharjee, learned counsel also prays for opportunity to supplement his arguments, he may do on the next date of hearing.

List the matter on 27.07.2015.

JUDGE **CHIEF JUSTICE**

Sylvana

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

20.07.2015

Mr B Bhattacharjee, Advocate/Amicus Curiae, appears for the appellant.

Mr ND Chullai, learned senior GA, represents the respondents.

On joint request, let this matter be listed on 10.08.2015 as item No. 1.

JUDGE CHIEF JUSTICE

dev

WA No. 21 of 2015
IN WP(C) No. 122 of 2015

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

20.07.2015

Mr K Paul, learned counsel, appears for the appellant.

Mr ND Chullai, learned senior GA, represents the respondents.

Learned counsel for the appellant prays for and is granted a week's time to seek instructions. List on 27.07.2015.

JUDGE CHIEF JUSTICE

dev

WP(C) No. 9/2015
With WP(C) No. 23/2015
WP(C) No. 16/2014
WP(C) No. 17/2014
WP(C) No. 18/2014
WP(C) No. 19/2014
WP(C) No. 20/2014
WP(C) No. 203/2012
WP(C) No. 94/2013
WP(C) No. 117/2013
WP(C) No. 385/2013
WP(C) No. 386/2013
WP(C) No. 387/2013
WP(C) No. 388/2013
WP(C) No. 123/2008
WP(C) No. 124/2008
WP(C) No. 126/2008
WP(C) No. 133/2008
WP(C) No. 86/2013
WP(C) No. 87/2013
WP(C) No. 88/2013
WP(C) No. 324/2013

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. S. Rana, learned counsel, appears for the petitioner.

Mr. R. Deb Nath, learned CGC, represents the respondents.

Learned counsel for Union of India, prays for and is granted 2 (two) weeks' time to file affidavit. List on 03.08.2015

JUDGE **CHIEF JUSTICE**

Sylvana

WP(C) No. 154/2015

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

20.07.2015

Mr. R. Kar, learned counsel, appears for the petitioners.

Mr. S. Dey, learned counsel, represents respondents No. 1, 2 & 3.

At the very outset, learned counsel for the respondents refers to Section 8 (1) of the Garo Hills Autonomous District Council (Social Customs and Usages) Validating Act, 1958 to argue that any matter relating to or connected with any Akhing is to be decided by the Revenue member of the Autonomous District Council. The said provision reads as under:

> ***"8. (1) Whenever a vacancy occurs in the office of a Nokma of any Akhing or there arises any dispute in the matter of succession of Nokmaship of any Akhing or any dispute with regard to any other matter relating to or connected with, any Akhing and the boundaries thereof, the matter shall be referred, in the first instance, to the Revenue Member for disposal in accordance with the customary practice and the usages of the Garos."***

Learned counsel for the petitioner, on the other hand, refers to para 5 of the application submitted before the Executive Member, Garo Hills Autonomous District Council, Tura which reads as:

> ***"5. That, the learned E.M. I/C Rev. GDC, Tura who passed alleged legally void order has passed the order exercising the power of a Judicial Officer that the moneys of Rs. 6 to 7 lacs being the sale proceed of Rubber of Gandupara (Danjonggre) Akhing of the past 6/7 years and it should be divided at the ratio of 50% to both the parties in dispute is the civil issue, the E.M. I/C. Rev. GDC has no legal jurisdiction to exercise the power of a Civil Judge. The order is void legally. Under the law an Executive Member of GHADC has not been invested with the power of Judicial Officer as the Rules of GDC provided. "Provided that the Chief Executive Member of the Executive Committee or any other Member of the District Council shall not be entitled to hold Office as Judicial Officer of the Judicial Court."***

As the aforesaid Act of 1958 relates only to social customs and usages with regard to Nokmaship and boundaries etc of Akhings, the question pertaining to the determination of civil rights of the parties, essentially a subject matter within the jurisdiction of Civil Courts, cannot be decided by the Revenue Member or any other member of the council. We thus issue notice. Learned counsel for respondents No. 1, 2 & 3 prays for and is granted 3 (three) weeks' time to file reply. Let separate notice issue to private respondent. He may also file response before the next date of hearing. List on 10.08.2015.

JUDGE **CHIEF JUSTICE**

Sylvana