

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 13 of 2021

Date of Decision: 14.09.2022

Shri Thwen Marngar & Anr. Vs. The Marwir Village Dorbar & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. S. Chakrawarty, Sr. Adv. with
Ms. A. Barua, Adv. (For 1-3)
Mr. H. Kharmih, Addl. Sr. GA (For 4-6)

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. The petitioners are before this Court by this instant writ application for quashing and setting aside an impugned resolution dated 24.04.2019, passed by the respondents No. 1, 2 and 3 (Village

Dorbar and functionaries), and for directions to not restrict the petitioners from using an existing village public road.

2. The two petitioners herein, both senior citizens, engaged in agriculture, are residents of a Village known as Marwir, Myriaw Syiemship, West Khasi Hills. Sometime in the year 2019, the respondent Village Dorbar for the proposed construction of a motorable road on the existing village kutcha road, by availing Government Schemes, had requested the petitioners and 5 other land owners to give No Objection Certificates (NOCs) to part with a portion of their individual lands for construction of the said road. It was then alleged by the respondent No. 1, 2 and 3, that the petitioners had refused to give an NOC, with regard to their portion of land, after which the impugned resolution dated 24.04.2019 was passed. By the impugned resolution, the Village Dorbar restrained the petitioners from using the village road for transportation of their produce, and also forbade any vehicle from transporting or carrying the produce of the petitioners, with the condition that a fine of an amount of Rs. 5,000/- would be imposed on any violator. The petitioners on the resolution being passed against them, approached the respondents No. 1, 2 and 3, requesting them to reconsider the same and to compromise the matter,

but it appears the same bore no fruit. Thereafter the petitioners lodged a complaint before the Police on 23.10.2019, which was however withdrawn, on the assurance by the respondents No. 2 and 3 that the matter would be settled amicably. However, as the matter remained unsettled, the petitioners then approached the State respondents, by way of a representation, against the mis-treatment and discrimination meted out to them by the respondent Village Dorbar. Though certain efforts were made by the State respondents, through the Block Development Officer, Mawthadraishan, (Respondent No. 6) and also by the Gram Sevak, no solution could be arrived at, which had therefore compelled the petitioners to approach before this Court.

3. Mr. H.L. Shangreiso, learned Senior counsel assisted by Mr. T. Dkhar, learned counsel for the petitioners has submitted that the petitioners have faced undue hardships and incurred substantial financial loss, as their agricultural produce, and essential commodities has not been allowed to be transported via the village road due to the resolution of the respondent Village Dorbar, forbidding usage of the same. Learned Senior counsel submits that the petitioners in fact, by a letter dated 02.03.2022, which is appended at Annexure-6, had refused to sign the NOC, because the respondent Village Dorbar had asked

them to sign the NOCs, even for the lands which belonged to the other land owners. It is submitted by the Learned Senior counsel that as far as their portion of land is concerned, the petitioners are ready to sign the NOC. He submits that as the actions of the respondents has resulted in grave injustice being caused which is violative of Articles 14, 19, 21 and 300-A of the Constitution of India, the impugned resolution was liable to be quashed and the respondents Village Dorbar be made to compensate the petitioners for the loss and injustice caused.

4. Mr. S. Chakrawarty, learned Senior counsel assisted by Ms. A. Barua, learned counsel for the respondents No. 1, 2 and 3 submits that the Project for constructing a motorable road in the Village under the available Government Schemes, was for the general benefit of all residents of Marwir Village and its surrounding areas. Learned Senior counsel further submits that the refusal of the petitioners to contribute any land, whereas all the other five land owners had willingly contributed their portions, had put the entire project in jeopardy. It is then submitted, that the petitioners were never asked to sign the NOC's on behalf of all the other five land owners, but the petitioners were to only give an NOC for the portion of their land. The resolution dated 24.04.2019, he submits had to be adopted in view of

the non-cooperation of the writ petitioners and their failure to participate in the Dorbar. It is then also submitted that notwithstanding the circumstances, the respondent Village Dorbar was agreeable to take appropriate initiatives for resolution and settlement of the dispute.

5. Mr. H. Kharmih, learned Addl. Sr. GA on behalf of the respondent No. 4, 5 and 6 submits that no relief has been claimed against the State respondents. He however, refers to the affidavit filed on behalf of the respondent No. 6, to show that the respondent No.6 had gone to meet the village authorities and the writ petitioners, to inquire into the matter and to advise the Village Dorbar to withdraw the impugned resolution, but the same did not materialize as the petitioners were insisting on being compensated by the Village Dorbar.

6. In reply to the submissions made by Mr. S. Chakrawarty, learned Senior counsel for the respondent No. 1, 2 and 3 and Mr. H. Kharmih, learned Addl. Sr. GA for the respondent No. 4, 5, and 6, Mr. H.L. Shangreiso, learned Senior counsel has rebutted the same and has placed the rejoinder affidavits filed in reply thereto, and submits that two of the other land owners also did not give the NOC, but no action was taken against them, and that in spite of the overtures made by the petitioners for an amicable settlement, the respondent No. 2 and 3 never

took any steps to settle the matter, or even allow the writ petitioners to sign the NOC for their own land. It is further submitted that the petitioners had never demanded any compensation, but had only made a request for withdrawal of the impugned resolution dated 24.04.2019, by which they had been restrained from utilizing the village kutchha road for transportation of their produce and for plying any vehicle thereon hired or otherwise, on their behalf.

7. Heard learned counsels for the parties.

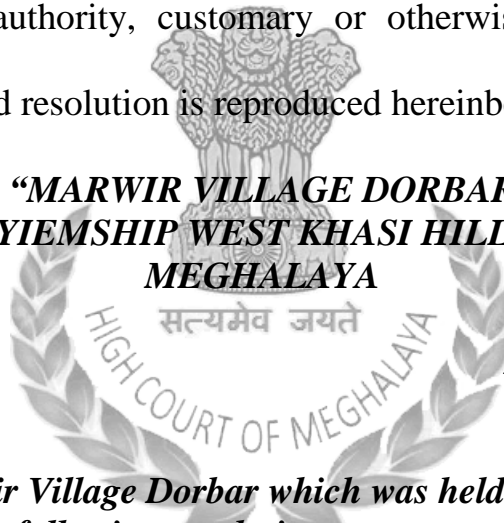
8. In the interest of justice and to try to work out an amicable settlement between the parties, this Court by order dated 01.04.2022 had directed the petitioners, the respondent Village Dorbar and the Block Development Officer (respondent No. 6) to appear personally before this Court on 26.04.2022. The parties accordingly appeared as directed and were allowed to personally air their grievances and difficulties. They were then instructed to sit together to try and resolve the issue, but unfortunately though two attempts were made, no settlement could be arrived at. As such, the matter proceeded for final hearing.

9. The dispute as it can be seen, stems from the issue of the non-grant of NOC by the petitioners to the village for construction of a

motorable road over the existing kutchha road in Marwir Village. From the facts as laid out, due to the situation and circumstances that had prevailed, as narrated earlier in this judgment, the impugned resolution came to be passed. A perusal of the impugned resolution shows that the same is unconscionable, and has resulted in the violation of the fundamental rights of the petitioners. This impugned resolution, notwithstanding any provocation, cannot and should not, have been passed by any authority, customary or otherwise. The translated version of the said resolution is reproduced hereinbelow: -

**“MARWIR VILLAGE DORBAR
MYRIAW SYIEMSHIP WEST KHASI HILLS DISTRICT
MEGHALAYA**

Ref: _____
The _____



Dated Marwir,

The Marwir Village Dorbar which was held on the 24.4.2019 has arrived at the following resolutions:

Marwir Village Dorbar has thoroughly discussed with the land owners Shri. Thwen Marngar and Smti. Drian Lyngkhoi to sign the NOC to construct the road from Twah Mashin to Twah Ram Kynshi which will pass through the land of Shri. Thwen Marngar and Smti. Drian Lyngkhoi who did not sign the NOC obtained from the scheme to construct this road therefore the Marwir Village along with all the villagers has lost all the benefits especially the agricultural products, transportation and other works therefore the Marwir Village Dorbar with one mind has unanimously resolved to forbid Shri. Thwen Marngar and Smti. Drian Lyngkhoi to use any vehicle for transportation of timber, charcoal and essential commodities and to drive through this road which is within the boundary of the Marwir

Village. The Village Dorbar has also resolved to warn that any one who carry or transport in their vehicle any timber, charcoal and essential commodities which belong to Shri. Twnen Marngar and Smti. Drian Lyngkhai, the Marwir Village will not allow them to do so. If any vehicle violates this order of the Marwir Village Dorbar, they have to pay a fine of Rs. 5,000/- (Rupees Five Thousand) only and to unload the goods from the vehicle and the Dorbar will take action later. Therefore the Marwir Village Dorbar has decided to inform the land owners so that they will know the resolutions of the Village Dorbar that has been taken today that you cannot carry or transport your belongings or goods since today as long as the Marwir Village Dorbar cannot settle until the Dorbar has meet again.

***Sd/-
Secretary
Marwir Village
Myriaw Syiemship
West Khasi Hills***

***Sd/-
Headman
Marwir Village
Myriaw Syiemship
West Khasi Hills”***

10. First, it is noted that the respondent Dorbar sought to obtain an NOC from the petitioners, to part with a portion of their land for construction of the said road, which no doubt would be for the benefit of all, but however, the manner in which the same was gone about, without showing any respect for private property, cannot be condoned in any manner. Article 300-A of the Constitution provides that ‘no person shall be deprived of his property say by authority of law’ and every citizen is guaranteed this protection, apart from every other authority such as a Village Dorbar, being bound in this aspect. The respondent No. 1 Village Dorbar, is headed by the respondent No. 2 Headman, who is elected and empowered in accordance with

prevalent law, in this case, the Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem and Electors of Myriaw Syiemship) Act, 2007. The Village Headman is regarded as a customary head at the village level discharging customary duties, and as has been observed by earlier judicial pronouncements of this Court, this customary role has been recognized and has since been accorded importance, prominence and even legal sanction by the Government in the implementation of Government Schemes such as MGNREGS, agricultural and welfare Schemes etc. In the context of the present case however, on the basis of the Government Scheme for construction of the road, sought to be executed by the Village Dorbar, the acquisition of land from land owners by way of donation cannot be said to have any legal sanction, or that the petitioners were under any customary obligation to part with the same, which would have permitted the respondent No.1 to pass such a resolution on not receiving the NOC.

11. As observed earlier, the resolution dated 24.04.2019, is in violation and in contravention of the petitioners' fundamental rights, as it has imposed restrictions on the movement of the petitioners, as also preventing them from transporting their produce and essential commodities which is manifestly illegal, discriminatory and at the

same time punitive which militates against and offends Articles-14, 19 and 21 of the Constitution of India. The resolution dated 24.04.2019 therefore being patently illegal and arbitrary, is accordingly quashed and set aside.

12. It is also further provided and ordered that the petitioners shall not be prevented, restrained or impeded in any manner by the respondents 1, 2 and 3, in the use the village road for any lawful purpose such as for transport of their agricultural produce, essential commodities and other goods, by headload, or by vehicle as the case may be. It is also made clear that the petitioners shall also not be prevented in any manner from availing of any available developmental Schemes and assistance from Govt. agencies. Any coercive action against the petitioners, such as social boycott or any other punitive measure that may be adopted by the respondents No. 1, 2 and 3, shall forthwith be reported to the District Administration, who shall take appropriate action thereon.

13. No doubt the respondent Village Dorbar in all fairness, had appealed for the donation of land which was in the general interest of the village community, but what is disturbing is the manner and method adopted by the respondents No. 1, 2 and 3, to achieve the same.

In this backdrop therefore, looking into the entire facts and circumstances of the case and that the writ petitioners are both senior citizens, who should not have been put to such loss and agony, affecting their right to life and livelihood, this Court deems it fit to impose a cost of Rs. 25,000/- (Rupees Twenty-Five Thousand) only, on the respondent No. 1, 2 and 3 which shall be made over to the writ petitioners within a period of 4(four) weeks from the date a certified copy of this order is handed over to them.

14. However, in the interest of establishing peace and harmony in the village, it is further directed that an Executive Magistrate of the District Administration along with the Block Development Officer, shall facilitate a meeting in the village itself, with the village functionaries and the writ petitioners, at the earliest, to explain and enlighten them as to their duties and functions which should be exercised within legal parameters, in a lawful and just manner.

15. With the above noted direction directions, the instant writ petition is accordingly disposed of.

JUDGE

Meghalaya
14.09.2022
"V. Lyndem-PS"