REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025

(Arising out of S.L.P. (Civil) No. 9897 of 2016)

OLD JALUKAI VILLAGE COUNCIL **…APPELLANT(S)**

VERSUS

KAKIHO VILLAGE & ORS. **…RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J. :-

For the convenience of exposition, this judgment is divided into the following parts:

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1. Leave granted.

2. This appeal arises from the Judgment and Order passed by the High Court of Gauhati, Kohima Bench in Writ Appeal No. 6(K) of 2015 dated 07.10.2015 (hereinafter, the "**impugned decision**"), by which the High Court affirmed the Judgment and Order passed by the Single Judge in Writ Petition (C) No. 65(K) of 2014 directing the State authorities to take steps for the issuance of formal order(s) for the recognition of the respondent no. 1 village within a period of three months. The said period was however, extended by another four months subsequently.

A. FACTUAL MATRIX

3. Land is one of the priceless assets for the people of Nagaland and forms an inalienable part of their identity and life.[1] The landholding system in Nagaland differs slightly from the rest of the States and is especially characterized by its non-cadastral nature. Each district, more or less, is occupied by a predominant

[1] A. NSHOGA, TRADITIONAL NAGA VILLAGE SYSTEM AND ITS TRANSFORMATION 87 (Anshah Publishing House 2009)

concentration of one major tribe and other sub-tribes with distinct socio-cultural and linguistic characteristics, and therefore, the different districts of the State are demarcated primarily on the basis of the inhabitation patterns of a specific tribe or tribes.[2] Land is either owned communally by a clan or village or, by individuals and a new village is formed only within the community land which is owned by its inhabitants. The formation of villages and its recognition is also extensively rooted in customary traditions and practices. It is the case of the appellant that since the establishment and recognition of a new village on the ancestral land of another village results in the transfer of ownership of the said land to the newly created village, the prevailing custom requires the village ancestrally owning such land to accord their consent by way of a 'No Objection Certificate' to the new village which is sought to be established on their land.

4. The aforesaid custom is said to have been recognized in the O.M. dated 22.03.1996 issued by the State of Nagaland which lays down several criteria for the recognition of villages. The relevant portions of the same read as follows:

" ***Government of Nagaland***
Home Department
(General Administration Branch)

<u>OFFICE MEMORANDUM</u>

[2] LANUSASHI LONGKUMER ET. AL., STATUS OF ADIVASIS/INDIGENOUS PEOPLES LAND SERIES – 6: NAGALAND 20 (Aakar Books 2012).

Dated, Kohima the 22nd March, 1996

No. GAB-12/13/74 : The existing criteria/conditions for recognition of villages in Nagaland having found inconsistent in the present context of administration, the Cabinet in their sitting on 30-06-1995 decided to modify the existing criteria/conditions. Therefore, superseding the Department's Memorandum No. GAB-13/17/1983 dated 20-7-1987, the existing criteria/conditions for the recognition of villages in Nagaland have been modified as follows with immediate effect:-

(i) A new village should have a minimum of 50(fifty) houses with a population of not less than 250 (two hundred and fifty) people.

(ii) A new village should have sufficient land expansion of the village and also for agriculture purposes.

(iii) A new village should be constituted by indigenous inhabitants only.

(iv) A new village constituted by members of more than one village should obtain from the Village Council Chairman a 'No Objection Certificate' of the parent village indicating that the boundaries of the new village.

(v) A new village constituted by members of more than one village in a different location but within the ancestral land of the parent village, should obtain from the Village Council Chairman of the parent village a 'No Objection Certificate' indicating the boundaries of the new village. In cases where exact boundary demarcations cannot be defined due to scatter of pockets of land, the Village Council Chairman and all the GBs of the parent village should determine the nature of boundaries with the new village on any permanent basis acceptable to both the villages.

(vi) In cases where GBs are appointed and allowed to function as the constitutional head of the village in matters of administration of the village land, the GBs concerned should attest their signatures in the 'No Objection Certificate' jointly with the Village Council Chairman.

(vii) The entire area of the newly established village should be surveyed jointly by competent staff of Land Records & Survey and civil administration to clearly demarcate and map the village territory and also record the area in hectares.

(viii) A new village on completion of the process of boundary demarcations with the neighbouring villages/parent village and also on completion of survey as required under (vii) given below, should erect pillars at its own expenses in the presence of competent staff as requisitioned under the same point.

(ix) The following certificates/documents are required to accompany the proposal:
(a) Clearance from Forest Department issued by an officer not below the rank of DFO.
(b) Judicial clearance from a Class-I Magistrate.
(c) 'No Objection Certificate' from neighbouring village(s) duly countersigned by an Administrative Officer.

(x) Administrative approval should be from an officer not below the rank of SDO(C).

(xi) No approval is required from extra-constitutional body like students' union, tribal hoho(s).

Sd/- L. COLNEY
Addl. Chief Secretary to the Govt. of Nagaland"

(Emphasis supplied)

Condition (v) of the aforesaid O.M. clearly lays down that if a new village is constituted by the members of more than one village, in a different location which is within the ancestral land of another parent village, then the new village must obtain a 'No Objection Certificate' from the Village Council Chairman of the said parent village while also indicating the boundaries of the new village.

5. In the meantime, there arose a boundary dispute between the districts of Kohima (where the appellant village is located) and Dimapur (where the respondent village is *allegedly* located). On 26.09.2000, a Committee (hereinafter, called the "**Ezong Committee**") was constituted by the Government of Nagaland to work

out and submit their recommendations as regards the demarcation of the inter-district boundary between the aforesaid two districts, with particular reference to the boundary between the Dhansiripar sub-division of the Dimapur District and the Jalukai sub-division of the Kohima District. A new district called Peren District has since been carved out of Kohima District and the Jalukai sub-division now falls under the Peren District. On 28.05.2002, the Ezong Committee submitted its report to the Additional Chief Secretary & Commissioner of Nagaland. The Committee decided to give due consideration in placing the villages associated with the 'Sumi' tribe under the Dimapur District and those associated with the 'Zeliangrong' tribe under the Kohima district as far as conveniently practicable and wherever the same was not possible, the boundary was to be demarcated strictly in accordance with administrative convenience. The Committee also suggested that it would be desirable for the State Government to consider the issue of recognition of new villages existing in the disputed areas only after the boundary demarcation between the two districts was finalized.

6. The Government of Nagaland issued one another Office Memorandum dated 01.10.2005 which introduced an additional criteria/condition in the process of village recognition i.e., the requirement of a public notice providing a 30 day period to the public to register their objections, if any, regarding the specific village which is sought to be recognised. This notice which would also indicate the area of land/boundary of the new village was to be issued by the Deputy

Commissioner of the concerned district. The authorities were specifically implored to strictly abide by and adhere to the cumulative conditions mentioned in the O.M. dated 22.03.1996 and the O.M. dated 01.10.2005, the failure of which would result in the rejection of the application of village recognition. The aforesaid O.M. dated 01.10.2005 is reproduced hereinbelow:

" ***Government of Nagaland***
Home Department
General Administration Branch-I

No. GAB-1/COM/108/2005

Dated Kohima, the 1st October, 2005

OFFICE MEMORANDUM

Subject: Criteria/ conditions for recognition of new villages in Nagaland

In addition to the instructions contained in this Department's O.M. No.GA-12-13/74 dtd. 22/03/96 on the above mentioned subject, all cases relating to recognition of new villages in Nagaland, shall henceforth, with immediate effect, require a public notice to be issued by the Deputy Commissioner of the District concerned. The notice shall indicate the area of land/boundary of the village proposed for recognition, giving 30(thirty) days' time for objection, if any, to be filed.

2. All other conditions/ criteria laid down in the O.M. under reference shall remain unchanged.

3. It is hereby impressed on all concerned that any proposal for recognition of village in Nagaland which does not comply with the prescribed conditions shall be rejected. District Administration shall therefore ensure strict adherence to these conditions/criteria while recommending cases to the Government.

Sd/-
Banuo Z. Jamir
Principal Secretary to the Government of Nagaland"

(Emphasis supplied)

7. On 01.09.2007, the respondent no. 2, who is the Head Gaobura-cum-Council Chairman of the respondent no. 1 village, had *allegedly* established the respondent no.1 village which is affiliated to the 'Sumi' tribe. While it is the case of the appellant that the said village falls within the bounds of their ancestral land, the respondent nos. 1 and 2 respectively instead contend that their village falls within another district altogether i.e., the Dhansiripar sub-division of the Dimapur District. With a view to initiate the process of recognition, on 24.03.2009, the respondent no. 2 submitted an application requesting the Deputy Commissioner, Dimapur to depute a Survey Team and conduct a spot verification of the respondent no. 1 village. On 10.09.2009, the spot verification report was submitted which revealed that the respondent no. 1 village, admeasuring 1012 Acres, with a population of 300 people and 57 households, falls under the Dhansiripar sub-division of the Dimapur district. It was said to be bounded by Ghowoto Village in the North, K. Xekiye Village in the South, the Pathor river/Ballu Nallah in the East and K. Xekiye Village in the West. The report also observed that the respondent no. 1 village has no inter-boundary dispute at least in so far as the neighbouring villages were concerned.

8. In order to expedite the recognition of the respondent no. 1 village, on 21.09.2009, the respondent no. 2 submitted yet another representation to the Deputy Commissioner, Dimapur *inter-alia* stating that the respondent no. 1 village has been established with his own privately purchased land and that 'No Objection Certificates' were obtained from their parental village i.e. Khumishi 'A' Village under the Zunheboto District and from all the villages currently neighbouring the respondent no. 1 village i.e. Ghowoto Village and K. Xekiye Village. Having complied with the conditions laid down in the O.M. dated 22.02.1996, it was requested that their application be forwarded to the appropriate higher authorities with a recommendation that the respondent no. 1 village be recognised. Soon thereafter, on 30.09.2009, the local authorities had also submitted other relevant documents to the Deputy Commissioner, Dimapur which included the 'No Objection Certificates' from the Judicial Magistrate and the Forest Department.

9. On 13.10.2009, whilst kickstarting the last leg of the village recognition process and in accordance with the O.M. dated 01.10.2005, the Deputy Commissioner, Dimapur published a public notice inviting claims/objections, if any, as regards the recognition of the respondent no. 1 village within a period of 30 days. The notice was also published in a local daily, "The Nagaland Post", on the very next day. On 16.10.2009, i.e., within two days of the public notice, the appellant raised an objection to the proposal for granting recognition to the respondent no. 1

village with the Deputy Commissioner, Dimapur, predominantly for the reason that it is sought to be established on the land ancestrally belonging to them. The objection is also said to have been published in a local daily i.e., "The Morung Express" on 19.10.2009. *Vide* communication dated 08.11.2009, the Deputy Commissioner, Dimapur, directed the appellant to provide additional and complete information as to how the respondent no. 1 village falls within their land and the same was to be furnished within a period of 7 days, failing which their objection would be nullified. Immediately on the ensuing day, i.e., on 09.11.2009, the appellant addressed a letter providing several pertinent information along with some historical context as to how the respondent no. 1 village indeed fell within their ancestral land.

10. Despite the objections raised by the appellant herein, on 18.11.2009, the Deputy Commissioner, Dimapur, submitted its recommendation for the recognition of the respondent no. 1 village under the Dhansiripar sub-division of the Dimapur District to the Commissioner, Nagaland. Pursuant to the above, a Cabinet meeting was held on 14.12.2011 to deliberate on the issue of recognition of villages. The State Cabinet had approved the proposal of the Home Department for the recognition of a total of 34 villages listed therein. However, in so far as the recognition of those villages listed between Sl. Nos. 19 to 24 were concerned, the order of recognition was to be issued only after a joint verification was conducted by the Deputy Commissioners of Peren and Dimapur respectively. It

is pertinent to note that the respondent no. 1 village featured at Sl. No. 23 in the said list.

11. In compliance with the Cabinet decision aforementioned, a joint verification is said to have been conducted on 08.03.2012. Thereafter, on 26.07.2012, the Deputy Commissioner, Dimapur forwarded the joint verification report to the Commissioner, Nagaland specifically indicating that both the joint verification report and the map of the Dimapur District reveals that the respondent no. 1 village is situated within the Dhansiripar sub-division of the Dimapur District. However, on the contrary, *vide* communication dated 23.08.2012, the Deputy Commissioner, Peren, had refrained from offering any conclusive opinion as regards the recognition of the respondent no. 1 stating that "*the office of the D.C. Peren has no further comments for recognition of the above two villages until the boundary dispute between the two districts is settled*". Alluding to the opinion of the Deputy Commissioner, Peren, the Office of the Commissioner, Nagaland also addressed a letter dated 05.11.2012 to the Home Commissioner suggesting that the recognition of two villages, i.e. the A.K. Industrial Village and the respondent no. 1 village, be kept in abeyance until the inter-district boundary dispute is resolved since the grant of recognition would motivate other villages in the disputed areas to also seek recognition and cause serious unrest at the ground level.

12. To address this issue effectively, a consultation meeting was held on 10.06.2013 under the auspices of the Home Ministry which included the Commissioner, Nagaland, the Deputy Commissioner, Peren and the Deputy Commissioner, Dimapur, amongst others, regarding the inter-district boundary dispute between the Peren and Dimapur districts. It was decided that the boundary demarcation which was recommended by the Ezong Committee in the year 2002 would be notified for the purpose of inviting claims/objections from the public after due approval from the Cabinet. It was further reiterated that, notwithstanding the Cabinet decision to order recognition subject to joint verification having been completed, the recognition of the respondent no. 1 village would stand deferred. Consequently, the Cabinet accorded its approval for the publication of the Ezong Committee report *vide* O.M. dated 05.09.2013 and the same was published in all the local dailies on 20.09.2013. It is averred by the State of Nagaland that several objections were received from different Hohos, Village Councils, Gaobura's etc. in response to the publication of the Ezong Committee report and that the issue had further been referred to the district administration of Dimapur for an update on the ground reality.

13. Notwithstanding the above Cabinet decision, on 05.03.2014, the Sub-Divisional Officer (SDO) (Civil) of the Dhansiripar sub-division is said to have issued a certificate of administrative approval for the recognition of the respondent no. 1

village while also recording that there were no objections against the recognition of the said village from any quarter.

14. However, still having witnessed abysmal progress as regards its recognition, on 21.04.2014, the respondent no. 1 village along with the respondent no. 2 filed a Writ Petition being W.P.(C) No. 65(K) of 2014 before the High Court of Gauhati, Kohima Bench *inter-alia* seeking a writ of mandamus directing the State government to take necessary steps for its recognition. *Vide* judgment and order dated 21.04.2015, the Single Judge of the High Court directed the State to take appropriate steps for the purpose of issuing formal order(s) for the recognition of the respondent no. 1 within a period of 3 months. The High Court's reasoning was three-fold: –

(i) *First*, that all the criteria/conditions mentioned in the O.M.'s dated 22.03.1996 and 01.10.2005 respectively, for the recognition of the respondent no. 1 village, were complied with. 'No objection certificates' were also issued by the neighbouring villages i.e., Ghowoto Village on 16.08.2007 and K. Xekiye Village on 30.11.2007 respectively. The public notice published in the newspaper also yielded no objection from any quarter. The Cabinet had then given its approval for recognition subject to a joint verification being conducted by the Deputy Commissioners of the Peren and Dimapur districts. Such a joint verification had also been completed. Therefore, all the steps for the recognition of the respondent no. 1 as a village were duly undertaken.

(ii) *Secondly,* the main objection which was canvassed by the State was the existence of an inter-district boundary dispute between the districts of Peren and Dimapur and that until the same was resolved, recognition of the respondent no. 1 village must be stalled. The High Court was at a loss to understand how the inter-district boundary dispute was related to the issue at hand and stated that it would have no bearing insofar as the issue of recognition was concerned.

(iii) *Thirdly,* the High Court interpreted the communication of the Deputy Commissioner, Peren, dated 23.08.2012 which was issued after the joint verification was completed, to mean that she had no further comments whatsoever to offer on the issue of recognition of the respondent no. 1 village. Therefore, it was held that the communication dated 05.11.2012 sent from the office of the Commissioner, Nagaland to the Home Commissioner which reflected upon the comments of the Deputy Commissioner, Peren was done without any application of mind and was considered devoid of the other circumstances which favoured the case of the respondent no. 1. The High Court adopted such a view especially since the Cabinet had accorded its approval subject only to a joint verification by the concerned authorities and the said joint verification was completed.

15. The relevant observations made by the Single Judge of the High Court are reproduced hereinbelow:

"*6. As required by the O.M's dated 22.03.1996 and 01.10.2005, the respondents had carried out all formalities for recognition of the petitioner village and no objection certificates were also issued by the Ghowoto Village Council on 16.08.2007 and K. Xekiye Village Council on 30.11.2007. as there was no objection from any quarter, survey was conducted and such report was also submitted on 10.09.2009. The Deputy Commissioner, Dimapur had also issued a public notice on 13.10.2009. Such public notice was also published in the local newspaper and as there was no further objection, the Deputy Commissioner, Dimapur by letter dated 18.11.2009 had written to the Commissioner, Nagaland, Kohima stating that all formalities has been completed and as such, the matter regarding recognition of the petitioner village was recommended. On such recommendation, the matter was put up before the cabinet and the cabinet on 14.12.2011 had given its approval for recognition of the petitioner's village along with 33 others. A condition was also laid down by the Cabinet that for the villages appearing at Serial No.19 to 24, a joint verification has to be done by the Deputy Commissioners of Dimapur and Peren under the supervision of Commissioner, Nagaland. The name of the petitioner village appears at Serial No.23 and as required by the cabinet, joint verification was also conducted by the two Deputy commissioners of Dimapur and Peren.*

7. The main taken by the State respondents is that there is a boundary dispute between the districts of Dimapur and Peren and therefore until and unless such boundary dispute is settled recognition cannot be given to the petitioner village. This Court is not in a position to understand the ground taken by the State respondents inasmuch as, the inter-district boundary dispute would have no bearing insofar as recognition of the petitioner's village is concerned. Important point of note is that all steps have been taken insofar as the recognition of the petitioner's village is concerned.

8. A reading of the communication dated 23.08.2012 written by the Deputy Commissioner, Peren would indicate that the Deputy Commissioner, Peren has no further comments for recognition of the two villages i.e. A.K. Industrial Village and

Kakiho Village (petitioner villages). The letter dated 23.08.2012 is reproduced herein below […]

9. Further, the letter of the Office of the Commissioner, Nagaland dated 05.11.2012 would clearly indicate that it has reflected only the comments of the Deputy Commissioner, Peren without application of mind. When the cabinet has given its approval subject to verification by two Deputy Commissioners of Dimapur and Peren districts and such verification having been already completed this Court is not in position to understand as to why the recognition of the petitioner's village has not been given till date.

10. This being the position, this Court has no hesitation to direct the State respondents to take steps for issuance of formal order(s) for recognition of the petitioner's village. Let such exercise be completed within a period of three months from the date of receipt of a certified copy of this order.

11. Writ petition is allowed.

12. No costs."

(Emphasis supplied)

16. Aggrieved by the aforesaid, the State preferred Writ Appeal No. 6(K) of 2015 against the judgment and order rendered by the Single Judge of the High Court. *Vide* judgement and order dated 07.10.2015, the Division Bench of the High Court acknowledged that the respondent no. 1 village is situated on the boundary between the Peren and Dimapur districts, which is predominantly inhabited by different tribes and that this was the foremost reason as to why the issue of boundary demarcation has become a sensitive one. However, since it was pleaded that the government was taking necessary steps for effecting the demarcation

which would in turn enable the issuance of a formal order of recognition of the respondent no. 1 village, the Court extended the time granted by the Single Judge by another four months from the date of the impugned decision. The relevant observations are reproduced hereinbelow:

> "*From the submissions of the learned Addl. A.G, it is quite clear that State is not contesting the judgment on merit. It appears from the submissions made that the village of the respondents/writ petitioners is situated on the boundary between Dimapur and Peren districts, both districts being pre-dominantly inhabited by members of different tribes. Therefore, demarcation of the boundary of the village has become a sensitive issue. However, the Government is taking necessary steps for making the demarcation to enable issuance of formal order of recognition of the respondents village as directed by learned Single Judge. But considering the sensitiveness of the matter, some more time may be required to complete the exercise, he submits.*
>
> *Learned counsel for the respondents fairly submits that he would have no objection for grant of time to the State for issuance of the consequential order of recognition of the village.*
>
> *The being the position, we extend the time of 3 months granted by the learned Single Judge by another period of 4 months effective from today. Appellant State shall issue the formal order of recognition of respondents village within this extended period of 4 months.*
>
> *This disposes of the writ appeal.*"
>
> (Emphasis supplied)

17. It is the case of the appellant that despite being a necessary and proper party to the writ petition filed before the High Court by the respondent no. 1 village, they

were not impleaded in the said proceedings. Having come across the impugned decision subsequently and also having learnt that effective steps to issue orders for the recognition of the respondent no. 1 village were being undertaken by the State, the appellant is before us with the present appeal.

B. SUBMISSIONS OF THE PARTIES

i. Submissions on behalf of the Appellant

18. Mr. Parthiv K. Goswami, the learned Senior Counsel appearing on behalf of the appellant, submitted that the appellant was a necessary and proper party in the adjudication of the dispute before the High Court on account of the fact that the respondent no. 1 village falls within their ancestral land and that they had also filed objections to the Public Notice dated 13.10.2009. Hence, the impugned decision, having been passed in the absence of the appellant would be bad in law, in violation of principles of natural justice and therefore, deserves to be set aside on this ground alone.

19. He submitted that the issue of granting recognition to a village falls within the domain of the executive decision making. It is well settled that in exercise of the power of judicial review, a writ court can only examine the decision-making process, and not substitute the decision under consideration with its

own decision. Therefore, once the state government/cabinet had taken a decision to keep recognition of the respondent no. 1 village in abeyance upon a consideration of several relevant factors, the High Court had committed a serious error by issuing a mandamus and directing the grant of a formal recognition order, more so, when the question as to whether the respondent no. 1 village falls within the ancestral land of the appellant is a disputed question of fact which needs proper examination at the ground level. The impugned decision, which was passed in the absence of the appellant was neither alive to the existence of such a dispute nor did it have the assistance of the material now being placed on record by the appellant.

20. It was further submitted that a new village is generally only established within the community land which is owned by its inhabitants. The establishment and recognition of a new village on ancestral land of another village results in transfer of ownership of the land to the newly created village. It is for this reason that upon the establishment of a new village on a land which ancestrally belongs to another village, the prevailing custom requires a 'No Objection Certificate' of the parent/ancestral village. The said custom is recognized in the O.M. dated 22.03.1996 and also finds codification in the Nagaland Village and Area Councils Act, 1978 (for short, the "**1978 Act**"), more specifically Sections 3 and 4 thereof.

21. He vehemently submitted that a bare perusal of the British Survey Map of 1921-1923, shows that the area admeasuring approx. 1000 acres which is said to be owned by the respondent no. 1 village falls within the larger area ancestrally owned by the appellant. Furthermore, he submitted that there also exists an agreement between the appellant and the Dhansiripar sub-division (within which the respondent no. 1 village is allegedly situated) where the Dhansiripar Village Council has also explicitly stated that their land falls within the absolute jurisdiction of the appellant. According to customary law governing land ownership and transfer in Nagaland, the inhabitants of a newly established village falling within the land ancestrally owned by another village are required to seek the consent of the parent village and also pay a nominal annual token of acknowledgment called 'rampwa lunget'. Such prior consent of the parent/ ancestral village is a condition precedent even under the O.M. dated 22.03.1996. It was submitted that the said policy was backed by a sound rationale and the non-adherence thereof would result in frustrating the very purpose behind it i.e., the peaceful co-existence of the neighbouring villages and/or the predominant tribes inhabiting them, especially considering that inter-tribal conflicts continue to remain a very sensitive issue in the State. Hence, no formal order(s) of recognition of the respondent no. 1 village can be issued in the absence of a 'No Objection Certificate' from the appellant.

22. With a view to emphasize the importance of the customary practices in the State of Nagaland governing social practices and ownership and transfer of land, the counsel placed great emphasis on Article 371A of the Constitution, which was introduced immediately prior to the creation of the State of Nagaland in 1963 by the 13th Constitutional Amendment Act of 1962. He submitted that Article 371A of the Constitution *inter alia* recognizes the importance of safeguarding the social practices of the Nagas along with the customary laws and traditions existing in the region by specifically excluding any law made by the Parliament in respect of certain matters from application in the State of Nagaland, unless a resolution to that effect is passed by the Legislative Assembly. Customary practices that govern land ownership and transfer would subsume under themselves the issues relating to village establishment and recognition as well and therefore, would fall within the protection afforded under Article 371A.

23. The counsel reiterated that the present matter is a clear case of encroachment which has been committed by the respondent no. 1 and its villagers. The respondent no. 1 villagers are from the 'Sumi' tribe whose ancestral home is in the district of Zunheboto, Nagaland. The ancestral home of the Respondent Village is 'Khumishi A' Village in sub-division Asuto, falling within the Zunheboto district. The Counsel also brought our attention to a complaint for eviction which was filed by the appellant with the Deputy Commissioner,

Peren, much prior to the inauguration of the respondent no. 1 village i.e., on 22.01.2005, alleging that the respondent no. 1 village has been illegally established on their land. Addressing the same, on 07.04.2005, the Office of the Sub-Divisional Officer (Civil), Jalukie is said to have communicated the decision of the Deputy Commissioner, Peren and issued an eviction order directing the villagers belonging to the respondent no. 1 village to vacate the 'encroached land' within a period of 15 days, upon failure of which appropriate legal action would be initiated. In light of the same, the counsel submitted that it is a well settled principle of law that "*to seek equity, one must do equity*". The respondent no.1, having encroached upon the ancestral land of the appellant without following the conditions precedent for the establishment of a new village, has no right to seek equity, more so having approached the court with unclean hands by suppressing the fact that the appellant had filed objections to the public notice issued on 13.10.2009.

24. In the last, the counsel brought our attention to the fact that since the respondent no. 1 village is unrecognized, its villagers have the right to obtain all facilities which are due to them from their parent village, namely, the 'Khumishi A' Village of sub-division Asuto falling under the Zunheboto District till such time the formal order(s) for their recognition is granted. Therefore, it may not be correct to suggest that the villagers of the respondent no. 1 would be denied all the benefits that they otherwise may be entitled to,

thereby, causing an infringement of their fundamental right to life under Article 21 of the Constitution.

25. In light of the aforesaid, the counsel prayed that the impugned decision be set aside and the State authorities be directed to take a final call on the issue of recognition of the respondent no. 1 village, in a time-bound manner, after taking into consideration the objections of the appellant. Furthermore, it was also prayed that in the event that the State authorities arrive at a decision which goes against the appellants, their right to take recourse to available legal remedies before the appropriate forum, be protected.

ii. <u>Submissions on behalf of the respondent nos. 1 and 2</u>

26. Ms. Renuka Sahu, learned counsel appearing on behalf of the respondent nos. 1 and 2 respectively submitted that the appellant was not a necessary party both in the Writ Petition and the Writ Appeal before the High Court.

27. It was submitted what while an objection was raised by the appellant to the public notice dated 13.10.2009 *vide* its letter dated 16.10.2009, the Office of the Deputy Commissioner, Dimapur had replied to the same *vide* its communication dated 08.11.2009 and directed the appellant to provide additional and sufficient details to back their claim that the respondent no. 1

village would fall within the boundary of their ancestral land. However, it was the appellant who has failed to produce any such document. Therefore, naturally, the objections raised by the appellant were nullified.

28. The counsel further submitted that there exist around 16 recognised and unrecognised villages along with the 18th Assam Rifles Head Quarter between the boundary of the respondent no. 1 village and the appellant. The respondent no. 1 village is bound by Ghowoto village in the north, K. Xekiye Village in the South, the Pathor River/Ballu Nallah in the East and the K. Xekiye Village in the West. The same is also evident in the map which reveals the boundaries of the respondent no. 1 village. Therefore, the counsel submitted that the issue of the inter-district boundary, if any, has nothing to do with the recognition of the respondent no. 1 and that she was at a loss to understand how the appellant would be affected in any manner if the respondent no. 1 village is granted recognition. This was more so because the respondent no. 2 has established the respondent no. 1 village in a self-acquired land i.e., the Zhuthovi Village, which is a recognized village under the Dhansiripar Sub-Division, Dimapur District, had donated land to Ghowoto Village, which in turn had donated land to the respondent no. 1 village.

29. The counsel submitted that the respondent no. 1 village has duly complied with all the formalities for the recognition of a new village as required by the O.M.'s dated 22.03.1996 and 1.10.2005. i.e., - (a) 'No Objection Certificates'

were obtained from the neighbouring villages on 16.08.2007 and 30.11.2007 respectively, (b) a Survey report dated 10.09.2009 was submitted by the local authorities, (c) A public notice dated 13.10.2009 was issued by the Deputy Commissioner, Dimapur, (d) The Deputy Commissioner, Dimapur *vide* its letter dated 18.11.2009 addressed to the Commissioner of Nagaland, Kohima, confirmed that all formalities for the recognition of the respondent no. 1 village were completed, (e) On 14.12.2011, the Cabinet given its approval for the recognition of the respondent no. 1 village subject to a joint verification, (f) On 23.08.2012, the joint verification was conducted by the Deputy Commissioners of Dimapur and Peren in compliance with the Cabinet's condition and the Deputy Commissioner, Peren stated that he had no further objections. In light of the aforesaid, it was submitted that, having complied with all the requirements, recognition must be granted to the respondent no. 1 village.

30. The counsel acknowledged that Article 371A pertains to special provisions *vis-à-vis* the State of Nagaland whereby the State is granted immunity in respect of Parliament made law with respect to certain matters. However, it was her case that while individual 'Acts of Parliament' may not apply, certain overarching principles under the Constitution, including the Fundamental Rights guaranteed under Part III would still find application in the State of Nagaland. The very object and purpose of the enactment of Article 371A was

to keep the interest and welfare of people of Nagaland at the forefront. Therefore, such a provision cannot be utilised to the detriment of its people. Hence, under the garb of customary and religious practices which are protected by Article 371A, the fundamental rights, more particularly Articles 14, 19 and 21 respectively, cannot be sought to be abridged. To fortify her submissions, the counsel placed reliance on the decision of this Court in ***PUCL & Anr. Vs. State of Nagaland and Ors.,*** **(Civil Appeal No. 3607 of 2016)** and the decision of the Gauhati High Court in ***Mangyang Lima v. State of Nagaland and Ors,*** reported in **2019 SCC OnLine Gau 3494**.

31. The counsel submitted that the rights guaranteed under Articles 14, 19 and 21 respectively, of the villagers belonging to the respondent no. 1 village were being infringed owing to that fact that their 'unrecognised' status deprives them access to several facilities and schemes provided by the Central and State governments. This denial of Centrally Sponsored Schemes (CSS) and State Sponsored Schemes (SSS) hampers their fundamental developmental rights which are critical to social and economic progress. These would include:

i. **Village Development Board (V.D.B.)** : The absence of a V.D.B. in the respondent no. 1 village has stripped them off the power to independently plan, implement, and oversee infrastructure along with providing services and amenities using funds from the Rural Development Department. The essential schemes to which access has been denied as a consequence

include the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Pradhan Mantri Awas Yojana-Gramin (PMAY-G), Pradhan Mantri Gram Sadak Yojana (PMGSY), Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY), National Rural Livelihoods Mission (NRLM) etc.

ii. **Public Works Department (PWD):** No roads are constructed, nor is maintenance work undertaken in the absence of official recognition of the respondent no. 1 village.

iii. **Health Department:** The village is denied access to critical health care infrastructure such as Primary Health Centres or dispensaries.

iv. **Education Department:** There is no establishment of government schools for primary or secondary education, depriving children of their fundamental right to education.

v. **Food and Civil Supplies Department:** Essential food security schemes under the National Food Security Act (NFSA) remain inaccessible. These include (a) Antyodaya Anna Yojana scheme where a household receives 35 kg of food grains per month and (b) Priority House Hold scheme where up to 5 kg of subsidized food grains per family member, per month, is granted.

vi. **Forest Department:** Recognized villages benefit from the grant of free tree saplings, annually, for environmental protection and improvement.

vii. **Horticulture and Agriculture Department:** Free fruit saplings, free vegetable saplings, farming machinery, tools, and equipment critical to agricultural development are all denied to the respondent no. 1 village.

viii. **Land Resources Department**: Free saplings of cash crops like Arecanut, Coffee, and local spices such as broom grass, naganeem, lali, kadam etc. which foster sustainable livelihoods are also denied.

ix. **Transport Department**: Public transport facilities essential for connectivity and mobility are also not extended to unrecognized villages, perpetuating isolation and backwardness.

32. In the last, it was submitted that the fundamental rights and Directive Principles of State Policy under Parts III and IV of the Constitution respectively, form the bedrock of our Constitution and cannot be over-shadowed by Article 371A or any other customary law of the State, since the rule of law and constitutional supremacy must remain paramount. Having already complied with the procedural requirements for its recognition, the objections raised by appellant, cloaked under the guise of special provisions and customary practices, are clearly legally untenable and morally unjust. Such opposition seeks to perpetuate inequality and injustice, denying the residents of the respondent no. 1 village their rightful access to essential services.

33. In light of the aforesaid, it was submitted that the impugned decision not be interfered with and that the State Government be directed to take immediate steps for the recognition of the respondent no. 1 village, without any further delay.

iii. <u>Submissions on behalf of the State</u>

34. Ms. Enatoli Sema, learned counsel appearing on behalf of the State of Nagaland submitted that the Ezong Committee which was tasked to demarcate the inter-district boundary between the Dhansiripar Sub-Division of Dimapur District and Jalukie Sub-Division of Peren, Kohima District had recommended in its Report dated 28.05.2002 that the Government recognise villages in the disputed areas only after the boundary demarcation is finalised. She submitted that the while the appellant belongs to the Jalukie sub-division, the respondent no. 1 belonged to the Dhansiripar sub-division. The Report had also recorded that several rounds of meetings were held with the representatives of both the communities belonging to the disputing villages but no mutually agreeable decision could be arrived at. Therefore, the attempt of the Government to amicably settle the issue way back in 2002 was rendered futile. Subsequently, the Ezong Committee Report of 2002 was placed before the Cabinet wherein, the recognition of the respondent No.1 village was recommended to be kept in abeyance. The Report was then published and

several objections and counter-claims were filed before the Government which are being reviewed.

35. It was submitted that after the Single Judge of the High Court had directed the grant of recognition of the respondent no. 1 village, the State had preferred an appeal before the High Court since the inter-district boundary demarcation was pending and on-going. The State, while keeping in mind the past instances of violence in the disputed areas wished to amicably settle the dispute between the parties herein, in order to avoid any untoward situation relating to the two communities in the area.

36. The counsel submitted that pursuant to the order of this Court dated 13.01.2017, a meeting dated 16.03.2017 was held between both the parties in the presence of the Deputy Commissioners of the concerned districts. In the aforesaid meeting, while both the parties could not arrive at a logical conclusion, they agreed to (a) maintain peace and tranquillity between the villages located in the inter-district boundaries i.e., Peren and Dimapur Districts; and (b) form a Committee amongst themselves comprising of a convenor and three representatives each from both sides. However, the counsel submitted that no report from the aforesaid committee has been received by the concerned authorities till date.

37. It was submitted that since the dispute between the two villages pertain to and touch upon Inter-District Boundary dispute between the Peren and Dimapur Districts respectively, the State constituted a Cabinet Sub-Committee *vide* Notification No. GAB-1/333/2014 (VOL-I) 309 dated 7.8.2019. The mandate of the said Sub-Committee was to look into the setting up of new settlement 'Lamhai Namdi' and finalise the boundary demarcation between the two Districts of Peren and Dimapur in order to arrive at a solution to solve the present impasse. The Sub-Committee physically visited the spot on 14.9.2019 and on 23.10.2019, a consultative meeting with both the Hoho's/ Tribal Organisations, in the presence of both the respective Deputy Commissioners was held whereby the Hoho's/Tribal organisations were directed to submit additional documents. Finally, the Report of the Sub-Committee was placed before the cabinet on 13.7.2021. Pursuant to the Report of the Sub-Committee, a new District called Chumoukedima was carved out in 2021 and therefore, the inter-district dispute between the two villages presently falls between the Peren and Chumoukedima districts.

38. Furthermore, it was submitted that pursuant to the intervention of this Court *vide* order dated 3.12.2024 and in the interest of maintaining peace between the two communities, the State convened two meetings on 21.12.2024 and 3.1.2025 respectively with the disputing villages. The discussions during the meeting revealed that the outstanding issues between the two villages have

narrowed down. There is every chance of a positive negotiation between the parties which may lead to a final settlement. Therefore, the counsel submitted that in order to facilitate such a settlement, a final chance be given to the State so that the two villages can meet under the aegis of the tribal councils, consisting of tribal elders, as provided under Section 26 of the Nagaland Village and Tribal Councils Act, 1978. This section enjoins the tribal council to *inter-alia*, "*assist settlement of disputes and cases involving breaches of customary laws and usages.*".

C. ISSUES FOR DETERMINATION

39. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

I. Whether it could be said that the respondent no. 1 village had fulfilled all the necessary conditions/criteria for the issuance of formal order(s) of recognition as per the O.M.'s dated 22.03.1996 and 01.10.2005 respectively, especially in light of the fact that the appellant had raised objections to the Public Notice dated 13.10.2009?

II. Whether the existence of an "inter-district boundary dispute" was a valid reason to keep the recognition of the respondent no. 1 village in abeyance?

D. ANALYSIS

i. Whether all the necessary conditions/criteria for the issuance of formal order(s) of recognition as per the O.M.'s dated 22.03.1996 and 01.10.2005 respectively were fulfilled?

40. Article 371A of the Constitution which was inserted by the Constitution (Thirteenth Amendment) Act, 1962 and which came into effect on 01.12.1963 carves out a special provision as regards the State of Nagaland. It specifically provides that no Act of Parliament in respect of the religious or social practices of the Nagas, Naga customary law and procedure, and ownership and transfer of land and its resources, amongst others, shall apply to the State of Nagaland unless the Legislative Assembly of the State decides to adopt them through a specific resolution to that effect. The relevant portion of Article 371A reads thus:

> ***"371A. Special provision with respect to the State of Nagaland**.—(1) Notwithstanding anything in this Constitution,—*
> *(a) no Act of Parliament in respect of—*
> *(i) religious or social practices of the Nagas;*
> *(ii) Naga customary law and procedure;*
> *(iii) administration of civil and criminal justice involving decisions according to Naga customary law;*
> *(iv) ownership and transfer of land and its resources,*
> *shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;"*
>
> (Emphasis supplied)

41. The insertion of Article 371A was the outcome of a political settlement which culminated after a decade-long struggle and is also a reflection of the grant of the right to 'self-rule' and political autonomy to the people of Nagaland.[3] The decision of the Gauhati High Court in ***Sabeituo Mechulho and Ors v. State of Nagaland and Ors.*** reported in **2011 SCC OnLine Gau 592** which held that Article 371A has no role to play in the matter of provision of reservation to a woman representative belonging to a society/NGO in the Village Council or local body, had the occasion to deal with the reason behind the insertion of a special provision in the nature of Article 371A. The High Court emphasized the lofty purpose for which such a provision had been included in the Constitution i.e., the preservation of the distinct identity of the Naga people by allowing them to live with their distinct religious and social practices, customs, traditions etc. The relevant observations are thus:

> "*10. This provision has been made to preserve the identity of Naga People by allowing them to live with their distinct religious, social practice, customs, tradition, etc. They have been given opportunity to administer civil and criminal justice as per their customary law. Article 371A is silent about the share of participation of Naga men and women in the local administration. There is no mention about reservation for Naga Woman representative in the local administration. In my considered view article 371A has no role to pay or application in the matter of providing reservation for woman representative in the Village Council or local body. This provision is for a mighty and lofty purpose/aim to preserve the distinct identity of Naga people for which it has been made incumbent upon the parliament to*

[3] RAJYA SABHA DEB., (Sep. 3, 1962) 4660.

> *have the approval of the Nagaland State Legislature before any Act is implemented or enforced in the State of Nagaland. The parliament would not have any say in the matter of providing reservation for woman in the local body like Village Council. It is the State Government which is required to enact law or rules for such purpose*."
>
> (Emphasis supplied)

42. In the debates which ensued in the Rajya Sabha as regards the passing of the Constitution (Thirteenth Amendment) Bill, 1962 and the State of Nagaland Bill, 1962, the then Prime Minister of India, Mr. Jawaharlal Nehru, remarked that "*Anyhow, it is for the people of Nagaland to make their rules about their land*"[4]. It is the case of the appellant that the issue of village establishment and recognition falls within the larger umbrella of "*ownership and transfer of land and its resources*" and is rooted in certain unique social and customary practices and procedures. In this context, it is relevant for us to refer to the provisions of the 1978 Act, especially Section 3 thereof which reads thus:

> "***Section 3 - Constitution:*** *Every recognised Village shall have a Village Council.*
>
> *Explanation: Village means and includes an area recognised as a Village as such by the Government of Nagaland. An area in order to be a Village under this act shall fulfil the following conditions namely:*
>
> *(a) The land in the area belong to the population of that area or given to them by the Government of Nagaland, if the land in question is a Government land or is land given to them by the lawful owner of the land; and*

[4] *Ibid* at 4716.

(b) The Village is established according to the usage and customary practice of the population of the area."

(Emphasis supplied)

43. The Explanation to Section 3, elaborates on the meaning of a 'Village'. It states that a village would mean and include "an area which is recognised as a village by the Government of Nagaland". Furthermore, an area in order to be recognised as a village must fulfil certain conditions i.e. – The land/area in which the village exists must either belong to the population in that area or be given to such a village/population by the Government of Nagaland/lawful owner **AND**, the village must be established according to the usages and customary practices of the population belonging to that area. The land in question would be given to the village population by the government if it is a government land and if otherwise, by the lawful owner of the land.

44. Therefore, a great amount of emphasis is placed primarily on two things – *One*, ownership of the land, either communally by the village as a whole or individually by the members of the village; and *two,* the adherence to the existing customary practices in the process of 'recognition' of the village. The State Government is empowered to recognise a particular area as a 'village' in accordance with Section 3 of the 1978 Act, upon the fulfilment of the conditions mentioned therein and only when an application is made to them in that behalf by a section of people inhabiting the particular area which is

sought to be given a recognised status. In such an application, the people residing in such an area must be able to show in a *bona fide* and sufficient manner that they are the lawful owners of the said area/land and that they have established their village as per the existing customary practices.

45. The two O.M.'s dated 22.03.1996 and 01.10.2005 respectively, elaborates on the process which is to accompany such a claim for recognition. These O.M.'s are said to also mirror and codify the existing customs pertaining to village recognition in the State. A bare reading of the two O.M.'s reveals that the idea of consent and communication between all the relevant stakeholders is cardinal and fundamental to the process of village recognition. We say so because, in the O.M. dated 22.03.1996, apart from the conditions stipulating that a village must have a minimum of 30 houses with a population of not less than 150 people, have sufficient land for its expansion and agricultural purposes and be constituted by indigenous inhabitants, it is also required that 'No Objection Certificates' be obtained from several stakeholders. Condition (v) stands testament to this and states that when a new village is constituted by members of more than one village, but in a different location and within the ancestral land of a parent village, the Village Council Chairman of such a parent village must give a 'No Objection Certificate' while indicating the boundaries of the new village which is sought to be established and later, recognised. When the exact boundaries of the village cannot be determined, it

is required that the Village Council Chairman of the parent village along with all the Gaobura's of the parent village decide upon the nature of the boundaries with the new village, on any permanent basis, which is acceptable to both parties. Additionally, if the parent village has appointed Gaobura's who are allowed to function as the constitutional head of the village in matters of administration of the village land, then the concerned Gaobura's must also attest their signatures to the 'No Objection Certificate' along with the Village Council Chairman.

46. A joint survey of the newly established village is also conducted by competent personnel and authorities belonging to the Land Records & Survey Department and other appropriate civil authorities to demarcate, map and record the area of the village. Apart from the same, clearance in the form of a 'No Objection Certificate' is also required from the appropriate officials of the Forest Department, a Class-I Magistrate and the neighbouring villages. Finally, after all the clearances and procedures are complied with, an administrative approval would be given by the Sub-Divisional Officer (SDO) and the matter of recognition of the said village would be referred to the higher authorities of the District administration who would place their proposal(s) for recognition before the government.

47. The O.M. dated 01.10.2005, which brought in the requirement of issuance of a public notice by the Deputy Commissioner of the concerned district also places the idea of mutual consent from all concerned parties at the forefront. This notice must mandatorily contain details as regards the area of the land and the boundary of the village whose recognition is being proposed. A period of 30 days is provided to the public to file objections, if any. This additional criterion, again, fortifies the assertion that all the relevant parties/villages must be apprised of and also be on board with the recognition of the new village.

48. The *raison d'être* behind the issuance of a public notice is that one last opportunity be given to those interested parties/villages who might be adversely affected by the recognition of the new village but who were otherwise left out from the process preceding the publication of notice and to also ensure that a transparent platform is provided for them to put forth their case with reasons so that they can be heard before any further progress is made in the matter. This would further obviate any possibility of a subsequent conflict occurring in the area between two or more villages laying claim over a particular land. On this aspect, the appellant is right in submitting that there is a sound rationale behind the existence of such a procedure i.e., the peaceful co-existence of the neighbouring village and/or the predominant tribes inhabiting the areas, especially considering that inter-tribal conflicts remain a very sensitive issue in the State.

49. However, what we would like to further point out is that it is the bounden duty of the State and its relevant authorities to adequately and appropriately consider any and all such objections which may be raised by the interested parties in response to the public notice issued by them, provided that they are lodged within the stipulated time-period. Otherwise, the very object of issuing a public notice would be vitiated. In the present case, the said public notice was issued on 13.10.2009 and *vide* communication dated 16.10.2009, the appellant had raised its objections to the recognition of the respondent no. 1 village by contending that that the respondent no. 1 village is in fact sought to be established on their land. The objection is said to have also been published in a local daily on 18.10.2009. The Office of the Deputy Commissioner, Dimapur *vide* its letter dated 08.11.2009 had directed the appellant to furnish more comprehensive details along with the relevant boundaries and records to incidate as to how the respondent no. 1 village would fall within their land. The authorities further stipulated that, if the same is not provided within a period of 7 days, their objection dated 16.10.2009 would stand nullified. On the ensuing day i.e., on 09.11.2009, the appellant sent a reply providing details supporting their claim to the Deputy Commissioner, Dimapur. It is unclear as to what extent the aforesaid communication made by the appellant was considered by the Deputy Commissioner, Dimapur before additional steps were taken to forward the proposal for recognition of the respondent no. 1 village to the government. The State of Nagaland has not made a single

averment regarding the merits of the claim made by the appellant over the land in which the respondent no. 1 village is situated. It is not the case of the State of Nagaland that the claims made by the appellant are absolutely baseless and devoid of merit as well. Therefore, we are at a loss to understand how it can be contended, both by the State of Nagaland and by the respondent nos. 1 and 2 respectively, that the conditions/criteria laid down in the two O.M.'s, especially the latter O.M. dated 01.10.2005, were fulfilled in the present case.

50. With the existing procedure that is prescribed for the recognition of a village in the State of Nagaland, we are of the view that it would not be open for the respondent nos. 1 and 2 respectively to blanketly assail the right of the appellant to raise its objections as regards the recognition of the respondent no. 1 village. However, what we would like to highlight is that it is the responsibility of the State to weed out frivolous objections and those devoid of merit from the process, in such a manner that the rights of the village seeking recognition are not prejudiced. What would be appropriate at this juncture is for the State to consider the objections of the appellant on their own merits and decide whether their 'No objection' is a pre-requisite for the grant of recognition of the respondent no. 1 village or not. If answered in the negative, the appellant would have no locus to challenge the recognition of the respondent no. 1 village and the matter would be put to bed at least insofar as these two parties are concerned. Only in the instance that the said question is

answered in the affirmative, would the respondent no. 1 village be required to initiate conversation with representatives of the appellant, to arrive at a mutually beneficial settlement and prevent the risk of any adverse measures being taken against them.

ii. <u>Whether the existence of an "inter-district boundary dispute" was a valid reason to keep the recognition of the respondent no. 1 village in abeyance?</u>

51. The demarcation of the inter-district boundary between the districts of Kohima and Dimapur and its nexus with the recognition of village(s) was first brought to the fore by the Ezong Committee Report. While undertaking the task of boundary demarcation and receiving information from all corners, it was observed that groups belonging to both districts had claims and counterclaims over pieces of land irrespective of whether they had effective physical possession of the said land. The broad consensus amongst the concerned parties was to place all the villages affiliated with the 'Sumi' tribe in the Dimapur District and those affiliated to the 'Zeliangrong' tribe under the Kohima district. This aspect is relevant for us since the appellant belongs to the 'Zeliangrong' tribe, while the respondent no. 1 village is affiliated to the 'Sumi' tribe.

52. In the course of examining the issue of boundary demarcation, the Committee was apprised of certain newly established villages which were seeking recognition. It was in this context that the Committee was of the opinion that it would be desirable if the government considers the question of recognition of these newly established villages in the disputed areas after the boundary demarcation between the two districts was finalised. It is, however, noteworthy that while suggesting the final boundary which is to run between the two districts, more particularly the Jalukie sub-division of Peren in the Kohima District and the Dhansiripar sub-division in the Dimapur District, the Committee noted that there were some practical difficulties in placing all the 'Sumi' villages in Dimapur and all the 'Zeliangrong' village in Kohima respectively. Therefore, from a purely administrative standpoint, it was decided that 'Kiyevi A' which is a 'Sumi' village would be placed under the Kohima District and 'Mhaikam' which is a 'Zeliangrong' village would be placed under the Dimapur District. Therefore, in the eventuality that the respondent no. 1 village, a 'Sumi' village, is given recognition but the boundary demarcation is decided in such a manner that they would be placed under the Kohima (now Peren) District instead of the Dimapur District, the same would not be an outlier considering that there exists another 'Sumi' village which was also suggested to be placed under the Kohima (now Peren) District by the aforesaid Committee for administrative reasons.

53. In the meantime, the respondent no. 1 had applied for recognition in the year 2009 and their proposal was elevated for a final decision to the Cabinet after *allegedly* complying with the requirements under the O.M.'s dated 22.03.1996 and 01.10.2005 respectively. The Cabinet in its meeting dated 14.12.2011 had directed that out of the 34 villages whose proposal for recognition was being considered, a set of 6 villages, which included the respondent no. 1 village herein, would be required to undergo a joint verification conducted by the Deputy Commissioners of Peren and Dimapur districts respectively. Now, once the joint verification was complete, the Deputy Commissioner, Dimapur *vide* communication dated 26.07.2012 reiterated that the respondent no. 1 village would fall within the Dhansiripar sub-division of the Dimapur District. However, the Deputy Commissioner, Peren *vide* communication dated 23.08.2012 seems to have again referred to the issue of the "inter-distrct boundary dispute" by stating that "*the office of the D.C. peren has no further comments for recognition…until the boundary dispute between the two districts is settled*". Due to the aforesaid observation made by the Deputy Commissioner, Peren, the Office of the Commissioner, Nagaland *vide* communication dated 05.11.2012 addressed to the Home Commissioner had suggested that the recognition of the respondent no. 1 village and another village by the name 'A.K. Industrial village', be kept in abeyance till such time the boundary issue is resolve since this would invite more villages in the disputed area to seek recognition and cause an environment of serious unrest.

Additionally, the Commissioner also invited attention to the Ezong Committee Report which had recorded its detailed recommendations on the issue of the boundary dispute between the two districts and sought necessary action on the matter.

54. Despite granting a formal approval to the Ezong Committee Report on 24.10.2003, it was only after the aforesaid development that a decision was made to notify the Ezong Committee Report for inviting claims and objections from the public. Such a decision was taken by the Cabinet in its consultation meeting as late as 10.06.2013 i.e., more than 10 years after the Ezong Committee Report was submitted for necessary action. The Cabinet had, again, emphasized that the recognition of the respondent no. 1 village would be kept in abeyance until such time the recommendations of the Ezong Committee is finally notified.

55. In the writ proceedings which was initiated by the respondent no. 1 before the Single Judge of the High Court, the stance taken by the State was that they could not decide on the recognition of the respondent no. 1 due to the subsisting inter-district boundary dispute. It was averred that they were in the midst of examining the multiple objections received after the recommendations of the Ezong Committee Report was notified for inviting views from the public. Furthermore, it was also submitted that they were

awaiting a ground reality report on the issue. This stance, however, did not seem to find favour with the Single Judge of the High Court who went on to observe that "*the inter-district boundary dispute would have no bearing insofar as the recognition of the petitioner's village is concerned*". However, the State preferred a Writ Appeal and the Division Bench in its impugned decision had extended the time-limit for the issuance of formal order(s) of recognition of the respondent no. 1 village by observing as follows:

> "*[…] It appears from the submissions made that the village of the respondents/writ petitioners is situated on the boundary between Dimapur and Peren districts, both districts being pre-dominantly inhabited by members of different tribes. Therefore, demarcation of the boundary of the village has become a sensitive issue. However, the Government is taking necessary steps for making the demarcation to enable issuance of formal order of recognition of the respondents village as directed by learned Single Judge. But considering the sensitiveness of the matter, some more time may be required to complete the exercise, he submits*."
>
> (Emphasis supplied)

Therefore, the impugned decision while agreeing with the Single Judge that the inter-district boundary dispute had nothing to do with the recognition of the respondent no. 1 village appears to have nevertheless been convinced with the argument canvassed by the State at least for the purpose of allowing some additional time to the State authorities.

56. Under circumstances such as these, i.e., when the State has taken a policy decision or through its Cabinet has arrived at a certain conclusion, in their wisdom, after exhaustively considering all the relevant factors and recommendations, it would not be appropriate for courts to interfere or supplant the finding arrived at by the government. In the absence of any patent arbitrariness, capriciousness, *mala fides* or illegality, courts have always subscribed to the rule that executive decision-making must not be dissected and prodded unnecessarily. This is specially true for a State like Nagaland wherein the system of administration and governance is slightly different from the other States and where the government might be more familiar and informed of the ground realities that exist. In such scenarios, yielding to the executive expertise might be the right call. This judicial policy of non-interference with the Cabinet decisions made by the government or *vis-á-vis* policy matters is no more *res integra*.

57. This Court in ***Sachidanand Pandey and Another v. State of West Bengal and Others*** reported in **(1987) 2 SCC 295** was faced with a question on whether the court could judicially review the Cabinet decision of the State government to lease out a part of the zoo land which was used for fodder cultivation, as a burial ground, hospital etc. for animals for the construction of a five-star hotel. While answering in the negative, it was held that the decision to lease out the land was taken openly and after due application of mind to relevant

considerations including the ecology and the provision of alternative facilities to the zoo. Furthermore, it was stated that in a scenario where the decision-making of the government was alive to the various relevant considerations and a conscious decision was arrived at after investing sufficient thought and deliberation, it would not be appropriate for the court to interfere in the absence of *mala fides* plaguing the process. However, if the relevant considerations are proven to have been cast aside without due deliberation and irrelevant considerations seem to bear significance, there would be every reason for courts to interfere in public interest. Still, it was cautioned that it would not be proper for the court to intervene to the extent that it attempts at a laborious balancing of the relevant considerations. Instead of indulging in that exercise, it was suggested that courts must rather resign themselves to accepting the decision of the government/appropriate authority in that regard. The relevant observations are reproduced thus:

> "*4. […] The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a five star hotel at the expense of the zoological garden that it warrants interference by this Court? Obviously, if the government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A of the*

Constitution, the Directive Principle which enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country", and Article 51-A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". When the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further must depend on the circumstances of the case. The court may always give necessary directions. However the court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority. We may now proceed to examine the facts of the present case."

(Emphasis supplied)

58. In yet another decision of this Court in ***Indian Charge Chrome Ltd. and Another*** reported in **(2006) 12 SCC 331**, it was held that in the absence of the Cabinet decision being tainted or, vitiated for any palpable reason, the role of the court in scrutinising the said policy decision, was limited. It was observed thus:

"[…]There is nothing to show that the noting of the Minister was tainted in any manner or that the subsequent Cabinet decision was vitiated for any reason that could be gone into by the Court. In a sense, counsel for OMC and the State of Orissa are right in submitting that it was really a policy decision and the role of this Court in respect of such a policy decision and its scrutiny was limited and within the scope of that limited scrutiny, there was no justification in interfering

> *with the decision of the Government. Of course, as we have indicated earlier, it is for the Central Government to give its approval or not to give its approval to the proposal of the State Government. The Central Government is yet to take a decision. Since, we have not reached that stage, we are also not called upon to pronounce on it at this stage.*"
>
> (Emphasis supplied)

59. Subsequently, in ***State of Uttar Pradesh and Others v. Chaudhari Ran Beer Singh and Another*** reported in **(2008) 5 SCC 550**, this Court was concerned with an issue wherein the State Government decided on the creation of a new district by the name of 'Baghpat' and published a notification in that regard The same was challenged by way of a writ petition. This Court had reiterated that the scope of interference is very limited when policy decisions are concerned since the government is better equipped to weigh and measure all the relevant aspects that must be taken into consideration. So long as the infringement of fundamental rights is not shown or evident, courts must refrain from substituting its own judgment while assessing the propriety of the government's decisions which is made in exercise of its discretion or as a matter of policy. The relevant observations are reproduced hereinbelow:

> "*13. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from*

different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

(Emphasis supplied)

60. A conspectus of the aforementioned decisions would indicate that when an executive Cabinet decision is the outcome of sound reasoning, an inclusive consideration of all the relevant factors and based on recommendations, it cannot be sought to be faulted with, especially through judicial intervention. Assailing it in the absence of arbitrariness and merely because a 'better' alternate view could have been taken or was possible, would not suffice in order to strike down such a decision or render it inoperative. The Ezong Committee, while working on its recommendations for a boundary demarcation between the two districts and while assessing the ground level realities existing in the disputed areas, witnessed first-hand potential for conflict if recognition is given to those villages which were situated in the disputed area and therefore, suggested that recognition of those select villages be kept in abeyance. The Deputy Commissioner, Peren also refrained from commenting on the recognition of the respondent no. 1 village in view of the subsisting boundary dispute. Therefore, on the advice of the Commissioner and Home Commissioner, the Cabinet sought to keep the recognition of the

respondent no. 1 village in abeyance until the inter-district boundary dispute was solved. The same cannot be faulted for being unreasonable or arbitrary and based on no materials.

61. However, we have been apprised of the report of yet another Cabinet Sub-Committee which was submitted before the Cabinet on 13.07.2021, which re-examined the inter-district boundary dispute between the Peren and Dimapur districts. The new committee had the occasion to consider or rather, re-consider the recommendations made by the Ezong Committee back in 2002. This Report of the Cabinet Sub-Committee came much after the impugned decision dated 07.10.2015. Therefore, it cannot be said that the authorities designated by the Cabinet sub-committee would have been unaware of the unrecognised status of the respondent no. 1 village or their claim for recognition while undertaking the site visits, assessing the ground realities and performing their due diligence on the matter. However, what must be noted with emphasis is that the Report of the Cabinet sub-committee while mentioning the tussle which had ensued between the 'Lamhai' Village and 'Kiyevi' village due to their claims in the disputed area, is conspicuously silent about the respondent no. 1 village and its conflict, if any, with another village on account of it falling within the disputed boundary area of the two districts. Therefore, while there may exist a dispute between the appellant and the respondent no. 1 village regarding the ownership of land, what is evident is

that it does not seem to have anything to do with the boundary dispute which is prevailing in the region.

62. Moreover, the Report of the Cabinet Sub-committee arrived at a conclusion that the recommendations of the Ezong Committee were largely feasible and practical albeit with a few exceptions and partial modifications. Under this Report too, a 'Sumi' village was suggested to be placed under the Peren District and a 'Zeliangrong' village was recommended to be kept in the Dimapur District, purely for administrative convenience. The second noteworthy aspect of the present Report was that the establishment and recognition of new villages within a demarcated "buffer-zone/area" between the Jalukie sub-division of the Peren District and Dhansiripar sub-division of the Dimapur District was recommended to be considered only after the boundary dispute was put to rest. The Report provided an Annexure under which the list of villages, both recognised and unrecognised, falling within such a "buffer-zone/area", was detailed. A careful perusal of the same reveals that the respondent no. 1 village does not fall within the said buffer-zone/area.

63. On a consideration of the recent report of the Cabinet sub-committee, which comes as a relatively recent development, it can be seen that the stance of the State blaming the inter-district boundary dispute for the non-recognition of the respondent no. 1 deserves to be viewed strictly. When the Ezong Committee

Report was published in the year 2002, the respondent no. 1 village was not inaugurated or established yet. Hence, there is every possibility that the State authorities attributed the persisting inter-district dispute as a *bona fide* reason for keeping the recognition of the respondent no. 1 village in abeyance, largely due to the absence of clarity on the bounds of the respondent no. 1 village and whether it fell within the disputed area or not. However, post the year 2021, i.e., it was obvious and plain as day that the boundary dispute had nothing whatsoever to do with the case of the respondent no. 1 village, especially since it's the case of the State themselves that the respondent no. 1 village is situated approx. 3.7 kms from the buffer-zone/area.

64. The only reasonable ground or basis to further delay the recognition of the respondent no. 1 was the objection raised by the appellant to the public notice dated 13.10.2009. Still, this was also more than 15 years ago. We are equally baffled and frustrated with the enormous reluctance that the State has exhibited in considering the merits of the objections of the appellants and putting an end to this issue.

65. Furthermore, the nature of the objections raised by the appellant are such that they render it impossible for this court, which owing to its systemic limitations, would not be well-equipped to understand the nuances of the rich history of the land and the inter-tribal land related interactions which

transpired over the years, to authoritatively decide such claims. The State authorities would be better suited to delve into the accuracy and correctness of the claims put forth by the appellant and effectively decide the issue once and for all. The courts face, for the lack of a better word, a real impediment in deciding such complex disputed questions of fact which are involved in the present litigation, especially at this stage. It would also be apposite to mention that courts must also not bear the burden of what is a responsibility cast upon the State and entrusted to executive decision-making.

66. The learned counsel for the State has also submitted in her counter-affidavit that there might be objections by other parties, apart from those raised by the appellants, which are germane to the issue of the respondent no. 1 village's recognition. It is clarified that any and all such objections may also be looked into and decided upon expeditiously.

67. We appreciate that the State has refrained from adopting a completely adversarial stand on the present issue but it must not be forgotten that the State is still duty bound to carry out its role as an administrator and ensure that the proper governance of its districts and villages do not suffer as a result of it embracing such a non-confrontational role instead. In the face of conflict, the State must delicately balance its function as a mediator but also as an authority while seamlessly morphing into either role as per the demands of the situation

before itself. Ever since this Court has taken *seisin* of this matter, the State has attempted to bring both parties together, at the same table, on multiple occasions, in the hopes of an amicable settlement being reached. However, every one of those attempts has remained unsuccessful in view of both parties refusing to concede or arrive at a middle-ground. In such a scenario, the only option that remains with the State is to consider the stand taken by both parties, on merits, from an objective point of view and implement its decision without hesitation. We say so, because the alternative – protracting the present impasse and maintaining this limbo - is equally, if not more undesirable.

68. We have been informed by the State that certain basic facilities have been made available to the respondent no. 1 and the same is tabulated below:

SL. NO	NAME OF DEPT.	SCHEME/FACILITIES	REMARKS
1.	Rural Development	77 job card holders are there in Kakiho village	The job holders are registered under K. Xikeye village since 2012-13.
2.	Education	NIL	There are at present no schools in the village. The nearest schools are: 1. GPS Ghowoto which is approx.. 2km away. 2. GHS Lhotavi village which is approx.. 3km away.

			3. GMS at Amaluma which is approx.. 3-4 km away. 4. GMS at Doyapur which is approx.. 5 km away.
3.	Social Welfare	Anganwadi centre with Anganwadi worker/helper available. PMMVY/IGNPS are availed.	
4.	PHED	The village is connected with water supply under Jal Jeevan Mission since 2022-2023. All 35 households have functional tap connection. Under SBM (Grameen) one plastic waste management unit has been provided during 2022-2023.	
5.	Electrical	Electricity connected	Single Point metering
6.	Food and Civil Supplies	There are 16 priority house hold ration card holders.	
7.	Agriculture	NIL	NIL
8.	Horticulture	NIL	NIL
9.	Medical	NIL	No PHC/CHC/SC In Kakiho (U/R). Nearest Sub Centre is at Pimla which is about 6-7 KM

			from Kakiho (U/R) village.
10.	Water Resource	Balu Nallah MI Project – Surface Minor Irrigation (SMI) project under PMKSY "Har Khet Ko Pani".	
11.	Forest	NIL	NIL
12.	Fishery	NIL	NIL
13.	Land Resources	NIL	NIL
14.	Industries and Commerce	NIL	NIL

69. In the aforesaid context, the counsel for the appellant also submitted that the respondent no. 1 currently being unrecognised, would still be entitled to avail certain benefits which are due to them from their parent village, namely the 'Khumishi A' Village belonging to the Asuto sub-division of the Zunheboto District. The aforesaid may be true in terms of availing benefits like obtaining free tree saplings under the schemes of the Forest Department; free fruit saplings from the Horticulture Department; free vegetable saplings, farming machinery, tools etc. from the Agricultural Department; free saplings of cash crops and local spices from the Land Resources Department and; access to several food security schemes under the Food and Civil Supplies Department. These benefits, not requiring the existence of permanent structures and being easily transportable, can be availed by sharing in the proceeds of what is made available to the parent village/neighbouring village(s) on a mutual consent

basis for the interim period. However, other essentials facilities like the construction of roads, health infrastructure, school and other benefits that would be made available upon the creation of a Village Development Board, still remain denied to the respondent no. 1 village since they require a separate and considerable amount of fund allocation on part of the State along with the erection of permanent structures. It is keeping this in mind that we urge the State authorities to take a final call on the issue of recognition of the respondent no. 1 village with the utmost urgency and with strict adherence to the procedure which has been contemplated for the said purpose. In the likely event that a decision is arrived at to deny recognition to the respondent no. 1 village, it must be for reasons falling within the umbrella of the procedure laid out therein and the State must be ready to clearly indicate what their next plan of action would be, in that scenario.

70. Another set of arguments were canvassed by the respondent nos. 1 and 2 as regards the relationship between the fundamental rights, more particularly Articles 14, 19 and 21 guaranteed under Part III of the Constitution and the special status assigned to customary practices under Article 371A of the Constitution. It was argued that customary practices protected under Article 371A cannot be utilised as a tool, rather a weapon, to abridge the fundamental rights of the people of Nagaland and the villagers of the respondent no. 1 village. However, in the absence of the relevant provisions of the 1978 Act

and O.M.'s dated 22.03.1996 and 1.10.2005 respectively, themselves being challenged as being violative of the fundamental rights guaranteed to the respondent no. 1 village and its inhabitants, there arises no occasion for us delve into the said question of law. The grievance of the respondent, as we understand, is primarily due to the delayed action, nay inaction, of the State authorities in conclusively deciding their application for recognition and the assignment of irrelevant reasons that perpetually kept their recognition in abeyance. We believe the said grievance has been addressed by us, appropriately and in great detail, in the preceding paragraphs.

E. CONCLUSION

71. In light of the aforesaid discussion, it cannot be said that the procedure envisaged in the two O.M.'s dated 22.03.1996 and 01.10.2005 respectively, was complied with in the present case. Furthermore, we are of the view that the inter-district boundary dispute had no nexus whatsoever with the issue of recognition of the respondent no. 1 village.

72. The decision of the High Court insofar as the observations made regarding the compliance with the aforesaid two O.M.'s are concerned, is set aside solely because the High Court while passing the impugned decision, was not alive to the case of the appellant herein.

73. The State authorities are directed to re-issue a public notice regarding the recognition of the respondent no. 1 village and exhaustively consider all the objections which may be raised from every quarter, including that of the appellant herein. A period of six months is provided to the State to complete the said process and take a call on whether recognition must be granted to the respondent no. 1 village or not. Non-adherence to this timeline would be viewed strictly.

74. We treat this matter as part heard. The Registry shall notify this matter after a period of six months before this very Bench (J.B. Pardiwala and R. Mahadevan, JJ.) after obtaining appropriate orders from Honourable the Chief Justice of India.

……J.
(J.B. Pardiwala)

……J.
(R. Mahadevan)

New Delhi.
23rd May, 2025.