

PETITIONER:
STATE OF ARUNACHAL PRADESH

Vs.

RESPONDENT:
KHUDIRAM CHARMA

DATE OF JUDGMENT 27/04/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
VENKATACHALLIAH, M.N.(CJ)

CITATION:
1994 AIR 1461 1993 SCR (3) 401
1994 SCC Supl. (1) 615 JT 1993 (3) 546
1993 SCALE (2) 682

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by
S. MOHAN, J.- Leave granted.

2. Both these civil appeals arise out of the judgment of the Gauhati High Court dated April 30, 1992 rendered in C.R. No. 166 of 1984. The short facts are as under.

3. The parties will be referred to as the appellant and the State of Arunachal Pradesh.

4. The appellant along with his family members and other 56 families migrated to India on March 30, 1964 from erstwhile East Pakistan, now Bangladesh, due to disturbances prevailing at that time. They took shelter in a Government camp Abhoypur Block in Tirap District.

5. The appellant and other 56 families are known as Chakmas of the erstwhile East Pakistan. They being the refugees were given shelter in Government camp at Ledo in the District of Dibrugarh, Assam. Later on, in 1966, they were shifted to the camp at Miao within the State of Arunachal Pradesh.

6. Arunachal Pradesh was called NEFA (North-East Frontier Agency) prior to 1972. On January 21, 1972 it was given the status of Union Territory of Arunachal Pradesh. It became a full-fledged State on February 20, 1987. Geographically, it is situated on the north-east of India and has a long international border with Bhutan, China and Burma (Burma presently called Myanmar). It is the largest State areawise in the north-east region, even larger than Assam which is the most populous State. The population of Arunachal Pradesh according to the 1981 census is 6.32 lakhs. It is scattered over 12 towns and 3257 villages. There are 26 major tribes. Broadly speaking, the people in

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the State can be divided into three cultural groups, on the basis of their socioregional affinities.

(i) The Monpas and Sherdukpens of Tawang and

West Kemeng District;

(ii) Khamptis and Singpos inhabiting the entire eastern part of the State; and

(iii) the Neotes and Wanchos adjoining Nagaland in the Tirap District.

7. In the year 1966, the State Government drew the Scheme known as Chakma Resettlement Scheme for these refugees. Areas were earmarked for their settlement in different parts of the State and accordingly they were asked to move to the areas earmarked for them. In all, 5 Schemes were sanctioned for their settlement (comprising about 3100 families of refugees) at the cost of more than Rs 2 crores.

8. The appellants along with 56 families were allotted lands in the villages of Gautampur and Maitripur. There were already a good number of Chakma refugee families who were allotted lands and were living there peacefully. The appellant instead of residing in the said allotted areas under the Resettlement Scheme drawn by the Government, strayed away from it and negotiated with the Local Raja namely Ningrunong Singpo of Damba for an area of one sq. mile of his private land and got the same from the said Singpo through an unregistered deed dated November 20, 1972.

9. The State would contend that the said transfer is illegal because as per Section 7 of the BEFRT, 1873 (Regulation 5 of 1873) no person, who is not a native of the District, would acquire any interest in the land or the produce of the land beyond the inner line without the sanction of the State Government or such officer as the State Government may appoint in this behalf. On the contrary, the stand of the appellant is that since the date of donation they have been residing and cultivating the said land and they have developed the area for habitation purposes.

10. It is further alleged on behalf of the appellant that in 1973, a village panchayat of Joypur village was formed after election of the members. The appellant was appointed as the Gaon-Bura of the village. This was with the approval of the Government, in token of which a Sanad dated November 20, 1975 was issued in his name. The Deputy Commissioner at Kenonsa approved the transfer and the Extra Assistant Commissioner, Miao by his Memorandum No. MR 8(A)/75/8648-51, dated April 26, 1976 issued instructions against any attempt to allot the land to other and generally against any eviction of the appellants from the said land.

11. Some Deori families who were allotted lands in the adjacent area of Joypur village attempted to encroach upon the lands of the appellant and on a complaint lodged, the authorities concerned i.e. Executive Magistrate at Miao by his letter dated May 30, 1977 issued instructions to Ningrunong Singpo Rajkumar to turn out the extra families from the appellant's village with a direction to the Circle Officer, Diyun to report compliance. It was after such intervention that such outsiders in due course were expelled.

12. After obtaining the donation from the Raja by dint of hard labour they developed the jungle area which was a hilly uneven tract of land. In view of the

+ Bengal Eastern Frontier Regulation

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tremendous agricultural success the Tirap District Authorities granted two Rice Huller Units in the name of the appellant. The Chakmas transformed the land into a truly self-sufficient village.

13. In view of prosperity and growth of land the nearby villagers sought to dislodge the appellant and the families

by raising various disputes, one of which was that the place cannot be utilised as refugee settlement and that they should be shifted to another place. Circle Officer, Diyun issued an order dated February 15, 1984 directing the appellant to shift to the vacant land at Gautampur and Maitripur villages latest by February 24, 1984. The representation requesting the Chief Minister of Arunachal Pradesh to interfere was of no avail.

14. The appellant after settling in this unauthorised land started committing criminal and illegal activities. There were several complaints to the effect that the appellant is encroaching upon the private lands illegally in connivance with the local people, particularly, Singpos.

15. In order to investigate the matter fully, the Government, vide its letter dated April 4, 1979, directed an inquiry into the whole matter through a Committee comprising of 9 persons with the Deputy Commissioner of the area as the Chairman.

16. The said Committee after due investigation submitted its report on June 11, 1979, stating therein that about 788 families of Refugees (Chakmas, Deori, and Bhutia) have illegally encroached upon about 872 hectares in Miao Sub-Division alone.

17. The said Committee observed:

"7. The fear of the local people regarding heavy growth of population among the Chakmas has already been stated above and it is also well known to the Government. But such fear may be true in the case of Deoris and Ahoms too because it has been seen that in their case too their population is increasing by leaps and bounds, for instance it is learnt that when they were inducted there were only 6 Ahom families and 32 Deoris, whereas this has now increased to 23 and 106 respectively. We should, therefore, watch by one method or the other that flow of Chakmas, Deoris and Ahoms does not at all take place. For this purpose formal allotment of land to each family is very necessary and further in order to guard against new entrants, the DC's office is said to be taking up the issue of identity cards.

9.2. Land is still available in Innano, Dumba and Mudoi, especially after the eviction of four Chakma villages during March last. Singpos have been known to induct outsiders not only without Government's approval but also by various undesirable methods, this has to be properly watched and if found necessary we may have to give exemplary punishment to those who indulge in such practice. Already there is some sign of dissension among the local people due to the activities of one Nirunong of Kumchai village who was mainly responsible for inducting Chakmas in Jaipur village, 10 Deori families and some others from outside. It has also been seen that in Innano village there are six tea garden tribals who have been living and working since the last 10 years with Inner Line passes renewed from time to time but

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obviously with the understanding that the local people would subsequently give them land for permanent resettlement."

18. The State received complaints that Chakma people were indulging in illegal activities such as commission of offences under various laws, collection of arms and ammunition, establishing contacts with the extremist groups, encroachment of adjoining areas. The State, therefore, found it necessary to shift them to a site where other Chakma families were already residing.

19. It was in these circumstances, by order dated February 15, 1984, the State directed the appellant and the other Chakmas to shift. The said order is to the following effect:

"In connection to this Office Memorandum No. LS-4/83/84/2478-79, dated August 6, 1984, the Chakmas of Joypur village are hereby directed to shift to the vacant land allotted at Gautampur and Maitripur villages latest by February 25, 1984.

This may be treated as final notice, failing which legal action will be taken against the defaulters."

20. Questioning the correctness of the order, C.R. No. 166 of 1984 was filed before the High Court of Gauhati.

21. It was urged:

- (i) The petitioners are citizens of India.
- (ii) Their fundamental rights have been infringed.
- (iii) The impugned notice dated February 15, 1984 is illegal, arbitrary and had been issued in violation of the principles of natural justice.

22. The High Court of Gauhati formulated three questions for determination:

- (1) Whether the writ petitioner and the 56 Chakma families now settled in Joypur village, Miyo Sub-Division, Arunachal Pradesh are citizens of India or foreigners?
- (2) If they are not citizens of India, whether the authorities concerned have right to give direction to these Chakma people to move to another place?
- (3) Whether the impugned order dated February 15, 1984 is arbitrary, devoid of reason and violative of the provisions of the Constitution?

23. While urging the first question it was contended that the petitioner and the other Chakma families came to Assam in 1964 and stayed there for some time. They were shifted to Miao Sub-Division in Arunachal Pradesh. In 1964, the territory of Arunachal Pradesh was included in Assam. Since they stayed in Assam they must be deemed to be citizens of India within the meaning of Section 6-A of the Citizenship Act, 1955 as amended in 1985. They also contended that proviso to Section 2 of Immigrants (Expulsion from Assam) Act, 1950 would also protect them.

24. The High Court, on an elaborate consideration of the provisions of Citizenship Act, came to the conclusion that the language of Section 6-A of the Citizenship Act is very clear. It states that persons who have come into Assam before January 1966 from the specified territory and who have been ordinarily resident in Assam since the date of their entry shall be deemed to be citizens. Admittedly, the petitioners therein would not fall under this category as they

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stayed in Assam for a short while in 1964. Accordingly,

they will not be citizens of India.

25. On the second question, the High Court referred to Section 7 of the Bengal Eastern Frontier Regulation, 1873. That section specifically prohibits the acquisition of interest in land by other than the natives of the district without the sanction of the State Government. Admittedly, there was no sanction of the State Government in favour of the petitioners under the said Regulation which is applicable to Arunachal Pradesh. Besides, clause 9(2)(a) of the Foreigners Order, 1948 prohibits acquisition of land or any interest thereon or within the prohibited area by any foreigner. Clause 9(2)(b) states that the local authority may impose conditions regarding acquisition of land or any interest thereof or any other matter deemed necessary in the interest of public safety. There was no controversy that the place where Chakmas were staying is within the inner line which is protected area notified by the State Government.

26. In view of the facts, the High Court came to the conclusion that the petitioners had no right to seek a permanent place of abode in that area. The authority had every right requiring them to shift.

27. On the third question, after going through the various files produced by the State Government, in the court, the High Court found various complaints against these Chakmas. They were indulging in procuring arms and ammunition and were actively associating with anti-social elements. Accordingly, it was concluded that the impugned order is not devoid of any reason.

28. Lastly, the High Court, on humanitarian grounds, directed the State Government to give adequate compensation in the event of these Chakmas being evicted from the place. The State of Arunachal Pradesh has preferred SLP (C) No. 12429 of 1992 while Khudiram Chakma has filed SLP (C) No. 13767 of 1992.

29. Mr Gobinda Mukhoty, learned counsel for the appellant urges that in 1947 the appellants were Indian citizens. Because of the partition of the country they went over to the then East Pakistan, presently Bangladesh. But when they returned in 1964 to the erstwhile Assam State they stayed there for some time and shifted to Arunachal Pradesh. To deprive them of the citizenship would be violative of Article 14 of the Constitution of India. By mere accident of their going over to Arunachal Pradesh, they cannot lose their citizenship. The learned counsel referred us to the various provisions of the Citizenship Act, 1955. He urges that there is evidence, in this case, of donation of lands in favour of these appellants by Raja Ningrunong Singpo of Damba. That was approved by the Deputy Commissioner as seen from memorandum dated April 26, 1976. The appellant was appointed Gaon-Bura of Joypur village. In proof of that Sanad was issued by the Deputy Commissioner. Again, the Executive Magistrate had directed the Raja to turn out the extra families occupying lands at Joypur in the area allotted to the appellants and other Chakmas. There is also evidence on record to show that the Chakmas have been paying taxes including house tax. When that be the position, there is no justification at all calling upon the appellants and the other 56 families to shift.

30. There was no notice before calling upon the appellants to shift. This Court in Scheduled Caste and Weaker Section Welfare Assn. v. State of

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Karnataka¹, a case arising under Karnataka Slum Areas (Improvement and Clearance) Act, 1973, held that before

eviction a slum dweller does have a right to say. Therefore, it is submitted that the principle of natural justice applies to non-citizens also.

31. In *Louis De Raedt v. Union of India*² this Court took the view that the fundamental rights are available to foreigners as well, including Article 21 of the Constitution.

32. Mr K.K. Venugopal, learned senior counsel, appearing for the State of Assam contends in opposition:

33. The appellants cannot claim to be citizens of India by invoking Section 6-A of the Citizenship Act as amended and incorporated on December 7, 1985 in pursuance of the Assam Accord. In order to get the benefit of Section 6-A two conditions mentioned in sub-section (2) of the said section must be satisfied simultaneously:

- (i) The persons who are of Indian origin (viz. undivided India) came before January 1, 1966 to Assam from the specified territory; and
- (ii) have been "ordinarily resident" in Assam (as it existed in 1985) since the date of their entry into Assam.

34. Insofar as the appellants were residing in Miao Sub-Division of Tirap District, Arunachal Pradesh since 1968 they did not satisfy these conditions. As to what exactly is the meaning of "ordinarily resident" could be seen from *Shanno Devi v. Mangal Sain*³.

35. It is true that this Court in *Louis De Raedt* took the view that even a foreigner has a fundamental right, but that fundamental right is confined only to Article 21 and does not include the right to move freely throughout and to reside and stay in any part of the territory of India, as conferred under Articles 19(1)(d) and (e). Such a right is available only to the citizens. The appellants being foreigners, cannot invoke Article 14 of the Constitution to get the same right denied to them under Article 19 since Article 14 cannot operate in regard to a right specifically withheld from non-citizens. In support of this submission, reliance is placed on *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh*, Addl. Collector of customs⁴ and *Louis De Raedt*².

36. The land donated in favour of the appellants by Raja Ningrunong Singpo of Damba by donation deed dated November 20, 1972 is illegal. Section 7 of the Bengal Eastern Frontier Regulation, 1873 and Clause 9 of the Foreigners Order, 1948, which are applicable to Arunachal Pradesh, specifically prohibit such transfer without prior permission of State Government. No such permission, in this case, was obtained. The tribals of North-Eastern States are historically protected races. Part X of the Constitution of India contains provisions and laws governing them. The decision regarding settlement of foreigners is a matter of policy. It is well-settled in law that the Court does not interfere in a matter of governmental policy since it is for the Government to decide.

1 (1991) 2 SCC 604

2 (1991) 3 SCC 554: 1991 SCC (Cri) 886

3 (1961) 1 SCR 576, 590: AIR 1961 SC 58 : 22 ELR 469

4 (1964) 6 SCR 594, 621-22 : AIR 1964 SC 1140: (1964) 2 Cri LJ 234

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37. On the question of natural justice before passing the impugned order dated February 15, 1984 the learned counsel, producing the relevant material from the file, would urge that it is not correct to state that the order came to be

issued all of a sudden. There is abundant material to show that the question of eviction was an ongoing process, right from 1978. Many notices were issued over a period of years to shift to Villages Maitripur and Gautampur. There were protests from Chakmas. From the file it is seen that the appellant was aware of the shift order dated September 26, 1983. There was also an oral hearing of the same. It was because of the complaints filed by the residents of the locality against the appellant and in view of the report that they were indulging in procuring arms and ammunition and were in close contact with anti-social elements. Taking an overall view of the matter, the impugned order came to be passed. On ground realities, natural justice is fully satisfied.

38. In support of the above submissions, the learned counsel relied on the following cases:

R. v. Secretary of State for the Home Department ex parte Cheblak⁵.

Lord Bridge of Harwich, pp. 723-F to 724-G; Lord Templeman, p. 725J, 726-A to C; Lord Ackner, pp. 731-H, 732 G-H, 735 F-J; Lord Lowry, p. 737 D-J in Brind v. Secretary of State for the Home Deptt.⁶

Council of Civil Service Unions v. Minister for the Civil Service⁷. McInnes v. Onslow Farne⁸.

J. R. Vohra v. India Export House Pvt. Ltd.⁹ Maharashtra State Board of Secondary & Higher Secondary Education v. K.S. Gandhi¹⁰. Satya Vir Singh v. Union of India

39. However, the learned counsel fairly conceded that the Chief Minister was willing to hear the appellants or any representative of their group, additionally, as a post-decisional hearing, even though they had full opportunities over a period of four years. It is his submission that it must be a post-decisional hearing as otherwise, if the decisions were against the appellants a further round of litigation would be embarked upon.

40. We will proceed to consider the correctness of the above submissions providing the necessary background and the factual matrix.

41. The history of the mountainous and multitribal north-east frontier region which is now known as Arunachal Pradesh ascends for hundreds of years into the mists of tradition and mythology. According to Pauranic legend, Rukmini, the daughter of King Bhishmak, was carried away on the eve of her marriage by Lord Krishna himself. The ruins of the fort at Bhalukpung are claimed by the Akas as the original home of their ancestor Bhaluka, the grandson of Bana Raja, who was defeated by Lord Krishna at Tezpur (Assam). A Kalita King,

⁵ (1991) 2 All ER 319, 331 A-332H, 334A-J (CA)

⁶ (1991) 1 All ER 720 (HL)

⁷ (1984) 3 All ER 935 (HL)

⁸ (1978) 3 All ER 211, 219, 223 A-J, 229 (Ch D)

⁹ (1985) 1 SCC 712, 722-723 (paras 12, 13)

¹⁰ (1991) 2 SCC 716, 730 (paras 20-22)

¹¹ (1985) 4 SCC 252, 263; 1986 SCC (L&S) 1

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Ramachandra, driven from his kingdom in the plains of Assam, fled to the Dafla (now Nishang) foothills and established there his capital of Mayapore, which is identified with the ruins on the Ita hill. A place of great sanctity in the beautiful lower reaches of the Lohit River, the Brahmakund, where Parasuram opened a passage through the hills with a

single blow of his mighty axe, still attracts the Hindu pilgrims from all over the country.

42. In the year 1838, when the British took over the administrative control of Assam from the last Ahom King, Shri Purander Singh, it was thought necessary to extend elementary regular administration to the adjoining northeast frontier region. The first important step in this direction was as such initiated with adoption of Regulation V of 1873 empowering the then Lieutenant-Governor of Assam to prescribe a Line, called 'Inner Line' with a view (1) "to bring the commercial relations of the hills with the plains under more stringent control, (2) to prevent the operation of speculators in 'Caoutchouc' (raw rubber), (3) to prevent the spread of tea gardens, and (4) to lay down rules for the possession of land and property beyond the 'Inner Line' without special permits".

43. A notification bearing No. 1486, dated June 21, 1876 was issued by the Government of India, Foreign Department to the effect that the Governor-General was pleased to prohibit all British subjects from going beyond the inner line without a pass under the hand and seal of Deputy Commissioner. After covering the hilly areas administratively, the whole of tribal region was divided into two Frontier Tracts in 1915. By 1937, the administrative status of North-East Frontier Tract could be effected to under the Government of India's (Excluded and Partially Excluded Area) Order of 1936.

44. Under the effective provision of Section 91(1) of the Government of India Act, 1935, the above Frontier Tract came to be known as Excluded Area of Assam. Again, the 1942 administrative change took place as a consequence of which Tirap Frontier Tract was carved out of the Sadiya Frontier Tract. In 1943, an advisor was appointed as the administrative head with a purpose to develop the region through gradual penetration of the administrative machinery.

45. Another change was effected in the administrative set-up on January 26, 1950 when the Government of Assam was relieved of its responsibility for looking after the administration of the Excluded Area. However, the discretionary power was vested in the Governor of Assam, under the provision of paragraph 18 of the Sixth Schedule to the Constitution and Part B of the Table 20 of the Schedule, who served as the agent of the President of the Union of the Republic of India.

46. In the course of administrative and political events Arunachal Pradesh has travelled from the Tract to the Union Territory. Under the provision of North-Eastern Areas (Reorganisation) Act, 1971 (Central Act 81 of 1971), the present status of Union Territory was granted to the erstwhile North-East Frontier Agency and renamed as Arunachal Pradesh on January 21, 1972. The Union Territory of Arunachal Pradesh was placed under the charge of Chief Commissioner during that year.

47. The year of 1975 also proved eventful for Arunachal Pradesh. On August 15, 1975, then existing Pradesh Council was constituted into the Union Territory Legislature. The panel of then existing five counsellors was

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constituted into Provisional Council of Ministers. Consequent upon the above change, the post of Chief Commissioner was further elevated to the position of Lieutenant-Governor on August 15, 1975. The first general election to Arunachal Legislature was held in the month of February 1978. The Arunachal Pradesh Legislative Assembly has 33 members in total, out of which 3 members are

nominated.

48. Earlier, Arunachal Pradesh had nominated a representative in Parliament. By an Act of the Government of India in 1971, the Union Territory was provided with one seat each in Lok Sabha and Rajya Sabha, but these representatives were nominated by the President of India. But at present, Arunachal Pradesh enjoys two elective seats in the Lok Sabha based on the universal franchise.

49. On February 20, 1987 Arunachal Pradesh was made a full-fledged State. Thus, it will be seen that at no time Arunachal Pradesh was part of the Territory of the State of Assam though it was being administered by the Governor of Assam or the President of India, as the case may be. The following Chronological Statement of changes in the Pattern of Administration in NEFA occurring in P.N. Luthra's Constitutional and Administrative Growth of the North-East Frontier Agency is useful:

1	2	3
1914	1919	1937
Administered by the Government of Assam	Administered by the Government of Assam with special safeguards	Administered by the Governor of Assam acting in his discretion independently of the Provincial Ministry.
4	5	6
1947	1950	1965
Administered by the Governor of Assam acting on the advice of the provincial Ministry	Administered by the President through the Governor of Assam as his agent acting in his discretion under the general supervision and control of Ministry of External Affairs.	Administered as before by the Governor as agent of the President but under the general supervision and control of the Ministry of Home Affairs.

50. Arunachal Pradesh is situated in the North-East of India skirted by Bhutan in West, Tibet and China in North and North-East, Burma (Myanmar) in East and Assam in South. It consists of the sub-mountains and mountainous ranges sloping to the plains of Assam. Its capital is Itanagar. It is the largest State areawise (83,743 sq. kms.) in the North-East region even larger than Assam which is the most populous State. Arunachal Pradesh is the most thinly populated State in India. According to 1991 census the population of Arunachal Pradesh is 6.32 lakh and is scattered over 12 towns and 3257 villages. There are 26 major tribes in Arunachal Pradesh. Broadly speaking, the people in the State may be divided into three cultural groups on the basis of their socio-regional affinities.

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- (i) The Monpas and Sherdukpens of Tawang and West Kameng District;
- (ii) Khamptis and Singpos inhabiting the entire eastern part of the State; and
- (iii) The Noetes and Wanchos adjoining Nagaland in the Tirap District.

51. This is the history of Arunachal Pradesh, a rich land and poor people. It was in the year 1964 thousands of Chakma families migrated from the then East Pakistan to India. The appellant along with other 56 families also migrated to India. Being refugees they were given shelter in government camps at Ledo within the district of Dibrugarh, Assam. Later on they were shifted to the camp at

Miao Sub-Division in Tirap District, now within the State of Arunachal Pradesh which was then known as North-East Frontier Agency (NEFA). In the years 1966-68 the then Government drew up the Chakma resettlement schemes. Altogether 5 schemes were sanctioned for settlement of 31 00 families at a cost of more than Rupees Two crores. The appellants were allotted lands in the villages of Gautampur and Maitripur. The other Chakmas were also staying there. As stated earlier, on January 21, 1972 NEFA was given the status of Union Territory and was renamed as Arunachal Pradesh. The appellants strayed away from the original settlement area allotted to them by the Government under the schemes. They got donation from the local Raja namely Ningrunong Singpo of Damba, an area of 1 sq. mile at Joypur Village which is inside the Inner Line. Earlier we were referred to Bengal Eastern Frontier Regulation, 1873. Clause 2 of the said Regulation states thus:

"It shall be lawful for the State Government to prescribe and from time to time to alter by notification in the Official Gazette a line to be called 'The Inner Line' in each or any of the above-named districts.

The State Government may, by notification in the Arunachal Pradesh Gazette prohibit all citizens of India or any class of such citizens or any persons residing in or passing through such districts from going beyond such line without a pass under the hand and seal of the Chief Executive Officer of such district or of such other officer as he may, authorise to grant such pass; and the State Government may, from time to time, cancel or vary such prohibition."

52. Clause 7 is important. That reads as follows:

"It shall not be lawful for any person, not being a native of the district comprised in the preamble of this Regulation, to acquire any interest in land or the product of land beyond the said 'Inner Line' without the sanction of the State Government or such officer as the State Government shall appoint in this behalf.

Any interest so acquired may be dealt with as the State Government or its said Officer shall direct.

The State Government may also, by notification in the Arunachal Pradesh Gazette extend the prohibition contained in this section to any class of persons, natives of the said districts, and may from time to time in like manner cancel or vary such extension."

53. Under Section 3 of the Foreigners Act of 1946, the Central Government may, by order, make provision for prohibiting, regulating or restricting the entry of foreigners into India. In exercise of power conferred under Section 3 of the said Act Foreigners Order of 1948 dated February 10, 1948 was issued. Under

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Clause 9 of the said Order the Central Government or with prior sanction, a civil authority may, by order, declare any area to be a protected area for the purposes of this order. On such declaration, the civil authority may, as to any protected area, prohibit any foreigner or any class of foreigners from entering or remaining in the area, impose on

any foreigner or class of foreigners entering or being entered in the area, such conditions as may be mentioned under Clause 9. Clause 9 of the Foreigners Order of 1948 in sub-clause (2) prohibits the acquisition of any land or any interest thereon within the prohibited area by any foreigner.

54. Under Clause 9 the authorities concerned, by an order, may prohibit any foreigner from remaining in any part of the protected area as stated in the Foreigners' Protected Area Order of 1958 which includes the territory of Arunachal Pradesh.

55. Examined in this light, the donation by Raja is clearly invalid.

56. However, the memorandum dated April 26, 1976 issued by the Extra Assistant Commissioner Miao states that the agreement between the appellant, Khudiram Chakma and the local Raja dated November 20, 1972 has been approved by the Deputy Commissioner. That is again mentioned in the direction given by the Executive Magistrate Miao on May 30, 1977. The effect of approval by the Deputy Commissioner will be considered later.

57. In this factual background, the question arises whether the appellants could claim citizenship under Section 6-A of Citizenship Act of 1955. We will now extract the said section:

"6-A. Special provisions as to the citizenship of persons covered by the Assam Accord.- (1) For the purposes of this section:

(a) 'Assam' means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(b) 'detected to be a foreigner' means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said order;

(c) 'specified territory' means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which

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a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

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(3) to (8) ... (unnecessary)."

58. As rightly urged by Mr K.K. Venugopal, learned counsel for the State of Assam, two conditions are required to be satisfied under sub-section (2). They are:

- (i) Persons who are of Indian origin (undivided India) came before January 1, 1966 to Assam from the specified territory; and
- (ii) have been "ordinarily resident" in Assam as it existed in 1985 since their date of entry in Assam.

59. The appellants were no doubt persons of Indian origin. They came to Assam prior to January 1, 1966, namely, March 31, 1964 from the then East Pakistan, (presently Bangladesh) which is undoubtedly one of the specified territories under Section 6-A(1)(c).

60. Assam, as seen from Section 6-A(1)(a), means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985.

61. It is the common case that Chakma people entered into Assam and stayed there for some time in Ledo within Dibrugarh District. Thereafter they shifted to Miao, Arunachal Pradesh. According to the appellant, since the territory of Arunachal Pradesh in 1964 was included in the State of Assam, they would be entitled to the benefit of Section 6-A. This contention overlooks the fact that the Immigrants (Expulsion from Assam) Act, 1950 (Act X of 1950) applied to the territories presently forming part of Meghalaya, Nagaland and Arunachal Pradesh. However, by the North-Eastern Areas (Reorganisation) Act, 1971, the territories of Arunachal Pradesh were excluded from the purview of the Immigrants (Expulsion from Assam) Act of 1950.

62. Turning to Condition No. 2 the requirement is ordinarily resident in Assam from the date of entry till the incorporation of Section 6-A, namely, December 7, 1985. As to the meaning of "ordinarily resident" we may refer to Shanno Devi (Smt) v. Mangal Sain³. We find the following observations at page 590 apposite:

"It is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words 'ordinarily resident' in the Constitution it is reasonable to take the words to mean, resident during this period without any serious break'."

63. Insofar as the appellants and the Chakmas were residing in Miao SubDivision of Tirap District in Arunachal Pradesh long before 1985, they cannot be regarded as citizens of India. We find it difficult to appreciate the argument of Mr Gobinda Mukhoty, learned counsel, that the accident of the appellants living in Arunachal Pradesh should not deprive them of citizenship. In this connection, it is worthwhile to note that Section 6-A of the Citizenship Act came to be incorporated by Amending Act as a result of Assam Accord. If law lays down certain conditions for acquiring citizenship, we cannot disregard the law. As laid down in Kennedy v. Mendoza-Martinez¹² "Citizenship is a most precious right".

64. Aristotle, Politics, III, 5 states thus:
12 372 US 144, 159 : 9 L Ed 2d 644 (1963)

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"From earliest times, it has been such status alone that has enabled the individual to share

fully in the benefits of the community in which he resides: Compare Homer's words, 'like some dishonoured stranger': he who is excluded from the honors of the State is no better than an alien." That is the position of appellant and the other 56 families.

65. If they are aliens, the donation deed dated November 20, 1972 is illegal. The Raja did not obtain any permission for sale from the Government. From the records it is also clear that the Raja had been donating the lands and was indulging in anti-social activities for which he was warned. We do not know how the Deputy Commissioner or the Extra Assistant Commissioner ever approve of this donation without there being an express authorisation by the State. It is an admitted fact that the place where the Chakma families are residing is within the inner line notified by the State Government. Therefore, the argument that they have cleared the forest and reclaimed the land and as such would be entitled to a permanent abode, cannot be accepted.

66. Now we come to the validity of the impugned order. Mr K.K. Venugopal, learned counsel has filed various notings and the orders from the relevant files. From the files it is clear that there have been complaints against Chakmas that they were procuring arms and ammunition and indulging in antisocial activities. The Deputy Commissioner, Tirap District on March 19, 1981 wrote to the Extra Assistant Commissioner, Miao as follows:

"Please refer to your report under reference, wherein it is indicated that a large number of arms and ammunition seized from the possession of the Chakmas and are still kept in Quarter guard. It is, therefore, requested to send us a detailed report indicating details of arms and ammunition seized.

2. It is further seen from your report regarding judicial cases, submitted to this office, that there are altogether 76 cases registered up to November 1979 against the Chakmas and most of them were related to theft, assault and offences under Forest Act. It is also therefore requested that more details on specific offences and results thereof may be furnished urgently.

3. The above two informations are urgently required by the Government."

67. A list of cases including ones under Section 302 IPC and other offences under Section 25-A of the Arms Act is enclosed to the letter quoted above.

68. The Chakmas also encroached upon the neighbouring area by unfair means and created trouble to the local people. An appeal was made to the Chief Minister in 1980 itself that because of these criminal activities they should be removed. It is not correct to state that the impugned notice came to be issued like 'a bolt from the blue'. The following letter of the appellant addressed to the Deputy Commissioner speaks eloquently:

"With reference to the subject quoted above, I on behalf of the villagers of Joypur village have the honour to draw your kind attention to the following few lines for favour of your needful action.

That, being landless in Abhoypur village, a few villagers consisting of fifty-six families have been settled in Joypur village in the year 1968 with the mutual help of Shri

Ningrunong Rajkumar (Singpo) and the same was approved by the then Deputy Commissioner, Khonsa in accordance with the agreement adopted by Shri Rajkumar Singpo dated November 20, 1972.

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Now, the most regretful matter is that in spite of our permanent cultivation on the area for long sixteen years keeping all conformities with the Government as well as the neighbouring local people, we are being harassed by notice after notice to shift from the area.

On the contrary, I am to state that the land where we have been directed to shift is quite short and extremely unfit for cultivation due to which those vacant lands are not yet occupied by anybody in spite of lying considerable landless families in the said villages.

All documents created in regard to this matter are attached herewith for favour of your kind perusal and necessary action.

Under the circumstances stated here, I earnestly pray and request you afresh to look into the matter and thereby revoke the shifting order at an early date.

I shall remain grateful to you thereof."

69. From the endorsement, it is also seen that two representatives met the Deputy Commissioner on February 13, 1984. Therefore, there was an oral hearing. The above letter mentions notice after notice to shift. It was alleged by a petition to the Chief Minister that the Extra Assistant Commissioner had been paid handsomely to allow Chakma families to stay on illegally.

70. On November 16, 1982 the Extra Assistant Commissioner called upon the Circle Officer, Diyum to issue notices to the Chakma families staying at Joypur village to return to their original place of settlement within December 31, 1982. The Survey Reports for resettlement of these Chakmas dated April 27, 1983 inter alia states:

"Survey had been done in Maitripur and Gautampur areas where they have found 110 acres and 245 acres respectively which are liable for settlement of Chakma settlers."

71. Thus, it will be clear that the reason for shifting these Chakma families are:

(i) They are in illegal occupation of the protected area.

(ii) They are indulging in procurement of arms and ammunition.

(iii) They are indulging in criminal activities and associating with antisocial elements.

(iv) They have been source of constant trouble to the other tribals.

72. As regards notice, it is seen from the above, that the very appellant had notice after notice proposing to evict which was resisted. Therefore, as rightly urged by Mr K.K. Venugopal, learned counsel, on ground realities, the plea of natural justice is fully satisfied.

73. Ruling in Scheduled Caste and Weaker Section Welfare Assn. v. State of Kamatakal affording a hearing to slum dwellers under the Karnataka Slum Areas (Improvement and Clearance) Act, 1973, relied on by Mr Gobinda Mukhoty,

learned counsel, has no application in the above circumstances.

74. Even then what is that is sought to be done to the appellants? They are asked to settle in Maitripur and Gautampur villages from Miao. Certainly, settling the Chakmas in a particular place is a matter of policy. This Court cannot enter into the wisdom of such a policy, in view of what has been stated above, Arunachal Pradesh is strategically important with Bhutan in the West, Tibet and China in the North and North-East, Burma (Myanmar) in the East.

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75. It is true that fundamental right is available to a foreigner as held in *Louis De Raedt v. Union of India*²: (SCC p. 562, para 13)

"The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this I country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country."

As such Articles 19(1)(d) and (e) are unavailable to foreigners because those rights are conferred only on the citizens. Certainly, the machinery of Article 14 cannot be invoked to obtain that fundamental right. Rights under Articles 19(1)(d) and (e) are expressly withheld to foreigners.

76. Now we come to the humanitarian grounds which prompted the High Court of Gauhati to direct compensation to the appellants in the event of their being evicted.

77. Blackburn and Taylor speaking on the right to enjoy asylum in Human Rights for the 1990s state at page 51 as under:

"The most urgent need of a fugitive is a place of refuge. His or her most fundamental right

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is to be granted asylum. The Universal Declaration of Human Rights addressed this issue in deceptive language. To the inexperienced reader there is great comfort in Article 14(1) of that Declaration, which provides that: 'Everyone has the right to seek and enjoy in other countries asylum from persecution', it seems tolerably clear, however, that the right to enjoy asylum means no more than the right to enjoy it if it is granted."

Again at page 52 it is stated thus:

"Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument as a whole; and must be taken to mean something. It implies that although an asylum-seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country whence he came. Moreover, the Article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments."

78. Warwick McKean, dealing with the equality in the

treatment of aliens, states in Equality and Discrimination under International Law at page 194 as under:

"It has long been recognized that persons who reside on the territory of countries of which they are not nationals possess a special status under international law. States have traditionally reserved the right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals, e.g. the right to vote, hold public office or to engage in political activities. Aliens may be prohibited from joining the civil service or certain professions, or from owning some categories of property, and States may place them under restrictions in the interests of national security or public order. Nevertheless, once lawfully admitted to a territory, they are entitled to certain minimum rights necessary to the enjoyment of ordinary private life."

At pages 195-96 it is stated thus:

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"General international law provides that aliens should not be discriminated against in their enjoyment of property rights once they have been acquired. If alien property is nationalized whereas the property of national

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remains unaffected then that act is discriminatory and prohibited under international law. As Fitzmaurice points out, it has long been recognized that in certain matters, e.g. the general treatment of foreigners in a country, or compensation for property which may be expropriated or nationalized, non-discrimination as between persons of different nationality or against foreigners as compared with persons of local nationality, amounts to a rule of international law, the breach of which gives rise to a valid claim on the part of the foreign government whose national is involved."

79. Certainly, if the acquisition had been legal, compensation could have been awarded. But in view of the Bengal Eastern Frontier Regulation, 1873 and clause 9(3) of the Foreigners Order, 1948 we do not think this is a case for award of compensation.

80. Though we have held that the principles of natural justice have been fully complied with in this case, we record the statement made by learned counsel for the State that the Chief Minister is ready to hear the respondents (appellants herein) or any representative of their group. Accordingly we direct that an opportunity be afforded to the appellants by the Chief Minister and grant such relief as he deems fit. We make it clear that it will be a post-decisional hearing.

81. Accordingly we dismiss civil appeal arising out of SLP (C) No. 13767 of 1992 filed by Khudiram Chakma while civil appeal arising out of SLP (C) No. 12429 of 1992 filed by State of Arunachal Pradesh is allowed. However, there shall be no order as to costs.

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