

PETITIONER:

THE DISTRICT COUNCIL; UNITED KHASI-JAINTIA HILLS, SHILLONG

Vs.

RESPONDENT:

KA DREPSILA LYNGDOH OF SYLLAI-U-LOR, MYLLIEM, MYLLIEM

DATE OF JUDGMENT 20/02/1975

BENCH:

GUPTA, A.C.

BENCH:

GUPTA, A.C.

MATHEW, KUTTYIL KURIEN

KRISHNAIYER, V.R.

CITATION:

1975 AIR 1022

1975 SCR (3) 601

1975 SCC (4) 809

ACT:

Constitution of India, 1950. Schedule VI, Paras 6 and 20
Scope of--Whether village of Mawkher is included within the
Shillong Municipality.

HEADNOTE:

The Executive Committee of the District Council, United Khasi-Jaintia Hills directed that no new construction or re-construction of stalls Should be undertaken in Bara Bazar. The respondents, who were thus prohibited from constructing their shops filed the writ petitions in the High Court challenging the direction.

Schedule VI of the Constitution shows that the United Khasi Jaintia Hills District is a tribal area within the State of Meghalaya. The territories comprised within this district include Bara Bazar area, In view of para 6 of the Schedule which enumerates the powers of the District Council. the District Council has power to manage the Bara Bazar market and issue the impugned orders. But para 20 of the Schedule states that if any part of the area comprised in the district were included in the municipality of Shillong, before the district came into being the powers conferred on the District Council by para 6 of the Schedule would not be available to the Council in respect of that area. The High Court found that the village of Mawkher which comprises Bara Bazar, was a part of the municipality of the Shillong on the basis of (1) a notification dated January 16, 1934, (2) an extract from the Demand and Bill Register of the Shillong Municipality for the year 1957-58 and (3) the Khasi Siemships (Application of Laws) Order, 1949, and held that the District Council had no jurisdiction, administrative or otherwise over Bara Bazar and quashed the Impugned orders.

Allowing the appeal to this Court,

HELD : (1) 'The 1934 notification shows that what was ceded by the Siem of Mylliem when he ceded Mawkher and other villages to the British Government was only the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923, and the Governor General in Council issued an order extending the 1923 Municipal Act to those villages. The Order provided that the villages were to be deemed as a municipality designated the Shillong

(Administered Areas) Municipality. Thus the villages were ceded for the specified purpose of municipal administration only and though the provisions of the Municipal Act were made applicable to the ceded villages they were never included within the territorial jurisdiction of the Shillong municipality, but were deemed to be a distinct municipality-the Shillong (Administered Areas) Municipality. This shows that the villages were not intended to be merged in the Shillong Municipality though the officer, % of the municipality were to exercise similar powers and discharge like duties in the ceded areas. Chapter 11 of the Municipal Act which empowered the provincial government to include within a municipality any local area in its vicinity was not made applicable to the villages. There is also no evidence that these territories were subsequently merged in the, Municipality of Shillong. [605F606A]

(2)The Demand and Bill Register of the, Shillong municipality refers to South East Mawkher as a ward of the Shillong Municipality. But it does not mean that Mawkher or South East Mawkher was included In the territorial jurisdiction of the Municipality. It only means that the District Council, instead of taking up the administration allowed existing arrangements to continue ill some places for some time. [606B-C]

470 Sup. CI/75

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(3)The Khasi Siemships (Application of Jaws) Order, 1949 refers to "Shillong Administered Areas" by which is meant 'so much of the areas for the time being comprised within the municipality of Shillong' as forms part of the United Khasi Jaintia Hills District. and the first Schedule to the Order defines the "Shillong Administered Areas" as comprising the areas covered by the Shillong (Administered Areas) Municipality which includes Mawkher. But, in view of the notification dated January 16, 1934, and the absence of any provision effecting merger with the Shillong Municipality the expression 'comprised within the municipality of Shillong,' can only mean that part of the district in which the officers of the Shillong municipality continued to exercise powers and discharge duties as before. [606C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1475 & 1476 of 1969.

From the judgment and order dated the 4th December, 1967 of the Assam & Nagaland High Court in Civil Rule Nos. 264 and 328 of 1966.

D. N. Mukherjee, for the appellant.

A. K. Sen and S. K. Nandy, for Respondent No. 1.

G. S. Chatterjee, for Respondent No. 2.

The Judgment of the Court was delivered by

GUPTA, J. The only question arising for decision in these two appeals, brought on certificates granted by the Assam and Nagaland High Court, is whether the jurisdiction of the District Council of the United Khasi-Jaintia Hills, extends to the area called Bara Bazar in village, Mawkhar in Shillong.

The question arises in this way. The first respondent in each of these appeals had a shop in Bara Bazar, which is a well-known market area, and both these shops were destroyed by fire. In December 1964 the Siem of Myllem permitted Ka Tiewmon Kharkongar, the first respondent in avil Appeal No.

1476 of 1969, to construct on the old site a shop similar to the one she had which was gutted by fire. A similar permission was given in May 1965 to Ka Drepsile Lyngdoh, the, first respondent in Civil Appeal No. 1475 of 1969. On July 19, 1965, however, the Siem of Myllem by a written order asked respondent Ka Tiewmon Kharkongar not to proceed with the construction of the shop; it was stated in the order that the Executive Committee of the District Council, United Khasi-Jaintia Hills, had that no new construction, reconstruction or renovation of stalls should be undertaken in Bara Bazar unless approved by the Executive Committee and that all constructions in progress should be stayed. Respondent Ka Drepsila Lyngdoh also received a similar communication from the Siem of Myllem on May 16, 1966. Both these respondents filed writ petitions in the Assam and Nagaland High Court questioning the authority of the Executive Committee of the District Council to make any order in respect of the Bara Bazar area which they contended was outside the District Council's jurisdiction. The High Court disposed of the two writ petitions by a common Judgment. The High Court found that the District Council had no jurisdiction, administrative or otherwise, over the area in question, and quashed the

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orders by which the respondents were prohibited from constructing their shops in that area. From the decision of the High Court, the District Council, United Khasi-Jaintia Hills, Shillong, and its Executive Committee have preferred the instant appeals.

The United Khasi-Jaintia Hills District is a tribal area within the State of Meghalaya as will appear from Part II, item of the Table appended to paragraph 20 of the Sixth Schedule of the Constitution. Article 244(2) of the Constitution lays down that the provisions of the Sixth Schedule shall apply to the administration of these tribal areas. Paragraph I of the Sixth Schedule provides inter alia that the tribal areas in each item of Parts I and II and in Part III of the Table appended to paragraph 20 of this Schedule shall be an autonomous district. It is provided in paragraph 2 of the Schedule that each autonomous district shall have a District Council which would be a body corporate, vested with the power to administer the District. Paragraph 6 of the Schedule which enumerates some of the powers of the District Council states inter alia that the District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and water-ways in the district. There is no dispute that the territories comprised within the United Khasi-Jaintia Hills District include the Bara Bazar area. There could be also no dispute, in view of Paragraph 6 of the Schedule, as to the power of the District Council to manage the Bara Bazar Market and to issue for that purpose the orders impugned in these two cases, if the provisions of the Sixth Schedule to which we have so far referred were the only relevant provisions for consideration. However, paragraph 20 of the Schedule has a proviso which states that : "for the purposes of clauses (e) and (f) of subparagraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph 3 and subparagraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the United Khasi-Jaintia Hills District". Therefore, if any part of the area comprised in

the United Khasi-Jaintia Hills District were included in the municipality of Shillong before the said District came into being, the powers conferred on the District Council, inter alia, by paragraph 6 of the Sixth Schedule would not be available to the Council in respect of that area. The question then comes to this, did the municipality of Shillong include within its limits the Bara Bazar area? The High Court has found that village Mawkhar which comprises Bara Bazar was a part of the municipality of Shillong. The Judgment of the High Court records the fact that Mawkhar was originally part of the Kingdom of the Siem of Myllem. The Judgment also refers to a notification dated the 16th January, 1934 showing that Mawkhar and certain other villages were ceded to the British Government by the Siem of Myllem. The relevant portion of the notification is as follows:

"No. 44-1, dated New Delhi, the 16th January 1934.

Whereas the Siem of Myllem in the Khasi and Jaintia Hills
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has ceded to the British Government the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923, of the villages of Mawkhar, Laitumkhras, Mission Compound and Jaiaw South-East Mawkhar and Garikhana, Mawprem and Jhalupra, a Laban, Lumparing cum Madan Laban, Matki and Haangumkhra, situate within the boundaries described in the Schedule annexed hereto, subject to the maintenance of all other his rights and powers as Siem of Myllem therein and with the reservation that the rivers Umshipi and Umkhra, so far as they are within the aforesaid villages, shall remain the property of the Myllem State :-

In exercise of this jurisdiction and of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, and in supersession of the Notification of the Government of India in the Foreign Department No. 31634-B., dated the 17th September 1913, and of all notifications amending the same the Governor General in Council is pleased to direct as follows :-

1. All the provisions of the Assam Municipal Act, 1923, (Assam Act 1 of 1923), as hereinbefore or hereinafter amended and as in force for the time being in the Municipality of Shillong, and all notifications, orders, schemes, rules, forms or bye-laws made or hereafter to be made for the said Municipality shall subject to the exceptions hereinafter specified and unless otherwise declared by the Government of Assam, be in force in the said village in so far as the same may be applicable thereto.

Provided that Chapter II and sections 9, 51, 58, 59(b), 59(g), 65, 78, 217 and 218 of the said Act shall not apply to the said villages and that clause (b) of subsection (i) of section 55 of the said Act shall not apply to the Umshirpi and Umkhra rivers so far as they are within the said villages.

2. For the purposes of the application of the said provisions, Notifications, orders, schemes, rules forms, and byelaws.

(a) references to the Local Government shall be read as reference to the Government of Assam.

(b) the said villages shall be deemed to be a municipality designated the Shillong (Administered Area) Municipality, and every officer or authority, for the time being appointed or constituted in accordance with the Assam Municipal Act, 1923 as amended, to exercise powers or discharge duties within the Municipality of Shillong, shall exercise the like powers and discharge the like duties in accordance with the said

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Act within the Shillong (Administered Area) Municipality and shall be deemed to have been duly appointed or constituted in accordance with the said Act.

(c) All sums received by the Municipal Board of the Municipality of Shillong and all fines paid or levied in the said villages shall be credited to the municipal fund of the Municipality of Shillong.

It would appear from this notification that what was ceded to the British Government was only "the jurisdiction necessary for the municipal administration in accordance with the Assam Municipal Act, 1923" of certain villages including Mawkhar and the Governor General in Council was pleased to issue an order extending to the said villages the provisions of the Assam Municipal Act, 1923 subject to certain exceptions. The order also provided that for the purposes of the application of the said Act, and the notifications, orders, schemes, rules, forms and bye-laws made for the Shillong Municipality which were also made applicable, these villages were to be deemed as a municipality designated the Shillong (Administered Areas) Municipality.

From this notification dated January 16, 1934, and an extract from the Demand and Bill Register of the Shillong Municipality for the year 1957-58, annexed to one of the writ petitions, which refers to SouthEast Mawkhar as a Ward of the Shillong Municipality, the High Court held that Bara Bazar was part of the Shillong Municipal area. The High Court also relied on the Khasi Siemships (Application of Laws) Order, 1949. This order refers for its purpose to "Shillong Administered Areas" by which is meant "so much of the areas for the time being comprised within the Municipality of Shillong as forms part of the United Khasi-Jaintia Hills District". The first Schedule to the order defines the "Shillong Administered Areas" as comprising the areas covered by the Shillong (Administered Areas) Municipality, which includes Mawkhar.

We do not think that the material on which the High Court relied justifies the finding that village Mawkhar which includes Bara Bazar was part of the Shillong Municipality. The notification dated the 16th January, 1934 makes it clear beyond doubt that the Siem of Myllem ceded the villages for the specified purpose of municipal administration only. It seems to us also clear that though the provisions of the Assam Municipal Act, 1923 were made applicable to the ceded villages, the villages were never included within the

territorial jurisdiction of the Shillong Municipality. The notification itself directed that these villages were to be deemed as a distinct municipality designated the Shillong (Administered Areas) Municipality which shows that they were not intended to be merged in the Municipality of Shillong though the officers and authorities exercising powers or discharging duties within the Municipality of Shillong were to exercise similar powers and discharge like duties in the ceded areas according to a direction contained in the notification. Chapter II of the Assam Municipal Act, 1923 which, as it stood at the date of the notification,

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empowered the provincial government to include within a municipality any local area in the vicinity of the same, was not made applicable to these, villages. There is also no evidence that these territories were subsequently merged in the Municipality of Shillong. After the commencement of the Constitution of India, as paragraph 19 of the Sixth Schedule provides, the administration of the territories comprised in the United Khasi-Jaintia Hills District vested in the Governor until the District Council was constituted in June 1952. It is not clear from the material on record whether the District Council took up the entire burden of administration throughout the territories from the beginning or allowed the existing arrangements to continue at some places for some time. The extract from the Bill and Demand Register of the Shillong Municipality for the year 1957-58, referred to in the Judgment of the High Court, seems to suggest the second possibility. Even if this were so, it does not mean that Mawkhar or South-East Mawkhar was included in the territorial jurisdiction of the Shillong municipality. In view of the notification dated the 16th January, 1934 which preserves the distinct entity of the ceded villages and in the absence of any provision effecting a merger of these territories in the Municipality of Shillong, reference in the Khasi Siemships (Application of Laws) Order, 1949 to any part of the Khasi-Jaintia District as "comprised within the Municipality of Shillong" must be read to mean that part of the District in which the officers and the authorities of the Shillong Municipality continued to exercise powers and discharge duties as before. In our opinion, the jurisdiction of the District Council of the Khasi-Jaintia Hills extends to the Bara Bazar area and as such the impugned orders issued at the instance of the appellants to the first respondent in each of these two appeals restraining them from constructing shops in the aforesaid area are not invalid.

In the result, the appeals are allowed, the Judgment and orders appealed from are set aside and the writ petitions are dismissed. Considering the circumstances of the case we make no order as to costs.

V.P.S.

Appeals allowed.

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