

ITEM NO.803

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.944/2023

(Arising out of impugned final judgment and order dated 15-12-2022 in WA No.44/2022 passed by the High Court Of Meghalaya at Shilong)

THE STATE OF MEGHALAYA

Petitioner(s)

VERSUS

R. HAMBERLY WAHLANG & ORS.

Respondent(s)

Date : 06-01-2023 This petition was MENTIONED today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Tushar Mehta, SG (Mentioned by)
Mr. Amit Kumar, Adv. Gen.
Mr. Avijit Mani Tripathi, AOR
Mr. Aditya Shankar Pandey, Adv.
Ms. Vishakha Kumar, Adv.

For Respondent(s) Mr. Pragyan Pradip Sharma, Adv.
Mr. Gaichangpou Gangmei, AOR

Mr. Shuvodeep Roy, Adv.
Mr. Sai Shashank, Adv.
Mr. Deepayan Dutta, Adv.

**UPON being mentioned the counsel the Court made the following
O R D E R**

- 1 On mentioning, the matter is taken on Board.
- 2 A Memorandum of Understanding (MoU) was entered into between the State of Assam and the State of Meghalaya on 29 March 2022 after a meeting of the Chief Ministers of the two States. The agreement has been signed by the Chief Ministers of Assam and Meghalaya in the presence of the Union Minister of Home Affairs.
- 3 A writ petition was instituted before the High Court of Meghalaya by four citizens seeking to challenge the MoU between the States of Assam and Meghalaya.
- 4 On 7 December 2022, a Single Judge of the High Court of Meghalaya directed that the petition be placed on 8 December 2022. On 8 December 2022, the Single Judge granted time to the Advocate General of Meghalaya to place his objections in the form of an affidavit on the record. The Single Judge passed the following interim order:

“It is however understood that during the intervening period, no physical demarcation or erection of boundary posts on the ground, pursuant to the MoU dated 29.03.2022 shall be carried out, till the next date.”

- 5 The order of the Single Judge was carried in appeal to the Division Bench by the State of Meghalaya. The Division Bench observed that “even if the

immediate challenge to the very limited interim order passed by the Single Bench may not be worthy of consideration", it was evident from the submission of the State of Meghalaya that the MoU does not cover the entire range of disputes between the two States pertaining to border villages. The Division Bench directed that the writ petition will now be heard by a Division Bench, of which one of the Judges would be the Single Judge whose order was questioned by the State of Meghalaya in the writ appeal.

- 6 The State of Meghalaya has instituted these proceedings.
- 7 We have heard Mr Tushar Mehta, Solicitor General, Mr Amit Kumar, Advocate General for the State of Meghalaya, Mr Pragyan Pradip Sharma, counsel who appeared on behalf of the original writ petitioners before the High Court and Mr Shuvodeep Roy, counsel for the State of Assam.
- 8 Mr Shuvodeep Roy, counsel appearing on behalf of the State of Assam has submitted that the impugned orders of the High Court, both by the Single Judge and by the Division Bench were passed in the absence of the State of Assam since no notice was given to it.
- 9 Mr Tushar Mehta, Solicitor General submits that the Single Judge had no justification to issue an interim direction of the nature that was issued on 8 December 2022. Responding to the submission of Mr Pragyan Pradip Sharma, counsel who appeared on behalf of the original writ petitioners that the MoU is in breach of the provisions of Article 3 of the Constitution, the

Solicitor General submitted that the MoU does not purport to alter the boundaries of either the State of Assam or Meghalaya. The submission which has been urged on behalf of the State of Meghalaya is that the boundary between the States of Assam and Meghalaya was not demarcated earlier and the MoU which was arrived at between the two Chief Ministers precisely attempts to do that in respect of six areas. In the absence of a demarcation, it has been submitted, the benefit of development schemes made available by the respective State governments could not be availed of by citizens who reside in the areas which form the bone of contention and which has now been settled by the MoU.

- 10 *Prima facie*, the Single Judge has furnished no reason whatsoever for issuing the interim order. Whether the MoU which has been entered into between the Chief Ministers of the States of Assam and Meghalaya would require any further authorization of Parliament is a distinct issue which we would reserve for further consideration. However, we are of the considered opinion that an interim order effectively staying the implementation of the MoU between the Chief Ministers of the two States was not warranted.
- 11 Issue notice.
- 12 Mr Gaichangpou Gangmei, Advocate-on-Record assisting Mr Pragyan Pradip Sharma waives service on behalf of the respondent Nos 1 to 4. The State of Assam has also waived service.

- 13 Liberty to serve the Central Agency for service on the Union of India. The seventh respondent shall be served through Dasti service.
- 14 List the Special Leave Petition on 23 January 2023.
- 15 In the meantime, there shall be a stay of the operation of the interim order of the Single Judge dated 8 December 2022.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar