

(1954) 04 GAU CK 0010
In the Gauhati High Court

Abdul Gani and Others

APPELLANT

Vs

Settlement Officer and Others

RESPONDENT

Date of Decision : 27-04-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1955 Guw 45

Hon'ble Judges : Sarjoo Prosad, C.J

Bench : Single Bench

Judgement

Sarjoo Prosad, C.J.—These ten petitioners have prayed for a Writ of Mandamus or any other appropriate Writ directing the state of Assam not to interfere with the settlement of lands already made in their favour, and the other opposite parties to refrain from reducing the areas settled with each of the petitioners under orders of the State Government.

2. The material facts may be stated thus. The petitioners claim to be residents of village Padumani-Kismat in Mouza Namati, in the District of Nowgong. On their application, the Deputy Commissioner of Nowgong, by his order, dated 2-12-49, allotted 200 bighas of "Sarkari" lands at the rate of 20 bighas to each of them. The petitioners made investments in reclaiming the lands and occupied and cultivated the same. They have been also paying the instalments of premia in respect of the lands allotted to them, for which they hold receipts, and have also made payments of the revenue regularly. It appears that subsequent to the allotments, some persons approached the authorities for converting those lands into a grazing reserve, but the Settlement Officer of Nowgong, after, making due enquiries, rejected their objections and confirmed the settlements made with the petitioners. Since then the petitioners have been all along cultivating the lands, according to the area of 20 bighas allotted to each of them and have been in peaceful occupation of the same. The boundaries of the lands in their respective occupation have also been demarcated by the "Mandal, though, so far no-"pattas" have, been issued to the petitioners.

3. Nearly two years thereafter the Settlement Officer of Nowgong received a letter from the Under Secretary to the Government of Assam, wherein it was stated that although Government did not want to interfere with the settlement of lands already made with the petitioners, Abdul Gani and 9 others, Government considered that the allotment of lands at 20 bighas per head was more than what was justified, and that it should be reduced to 15 bighas per head. The Settlement Officer was accordingly requested to take-necessary action to allot the lands at 15 bighas per head and give the remaining area to other landless people. This was by letter No. RSG 107/52/53, dated 1-5-1952 (Annexure "A" to the petition). The Settlement Officer then sent copy of the above Government order to the petitioners and informed them that by virtue of that order, the petitioners were given 15 bighas of land in place of 20 bighas each settled with them. This again was almost a year afterwards by notice, dated 20-4-53, (Annexure "B"). The petitioners then moved the authorities concerned for recall of those orders, but were unsuccessful. The above orders are questioned by the petitioners as without any sanction in law and unwarranted interference with the settlements already made with the petitioners.

4. In the report submitted by the Settlement-Officer of Nowgong, the material facts are substantially admitted. He has not disputed that 200 bighas of "Sarkari" waste lands in the village in question were allotted to the petitioners on 2-12-49 at the rate of 20 bighas each, as per orders of the then Deputy Commissioner, Mr. N. Kidwai. Since the allotments, the petitioners have admittedly paid three "kists" of premium. The report shows that the fourth kist was due, but Mr, P. A. Ahmad on behalf of the petitioners stated that they had since paid the fourth "kist" also. It is also not disputed that they have been paying the land revenue in respect of the lands settled. The report shows that in view of the Government letter referred to above, the Settlement Officer reduced the allotments from 20 bighas to 15 bighas each. The settlement is reported to be not under the Colonisation Scheme, as suggested by the petitioners, but under the Development Rate Scheme (D.R.S.) covered by Government Notification No. 4587, dated 12-9-41. A copy of the notification has been forwarded with the report of the Settlement Officer. The Officer further states that the area being under re-settlement operation, "pattas" in respect of the settlements will be issued in the normal course of procedure.

5. It appears from the above Government notification in relation to the said scheme that the waste lands in Namati and other villages should be settled at the rate of Rs. 2/- per bigha. This premium was payable in 4 equal instalments spread over four years, out of which the first instalment was to be paid on allotment, and the subsequent instalments in the succeeding three years. It also shows that the allotment, in the case of families having no lands of their own, will be normally about 30 bighas each though in other cases it may be less, and the Officer or the Sub-Deputy Collector in charge of the administration of the rules may allot reduced areas or even refuse allotment. In cases of allotments made, the allottees were to cultivate the land allotted and to reside thereon.

They were to occupy the area allotted within four years of the allotment and, if any portion remained unoccupied on the conclusion of the period, it was to be deemed to that extent to have been cancelled. The land revenue and local rates were to be charged on the basis of the extent of land occupied from the year of occupation at the rate sanctioned by Government in respect of the village, or non-cadastral area (wherein the land lies) provided that it shall not be deemed to re-open, with a view to re-assessment, settlements already made.

An important provision of the notification is that "an allottee or an annual settlement-holder shall have no transferable right or interest, in the land covered by his allotment or annual patta;

any such transfer would entail cancellation of the allotment or the re-settlement as the case may be. But where a pattadar or lessee dies, the patta or allotment would ordinarily be granted to his heirs. The Sub-Deputy Collector in charge of the scheme of administration of these rules was to work under the control of the Deputy Commissioner and was to possess the powers of an Assistant Settlement Officer and Assistant. Survey Officer and was competent to decide all disputes regarding allotment and occupation of land. This notification is dated 12-9-41 and purports to be made under Rule 2 of the Settlement. Rules framed under the Assam Land and Revenue Regulation, in connection with the settlement of land in the villages mentioned therein, including Namati, where the disputed lands are.

6. It is contended by Mr. Fakhruddin Ahmed on behalf of the petitioners that the settlements in the present case being admitted and having been validly made by the Deputy Commissioner and recognised by the Settlement Officer who were competent officers to make the settlements, it was no longer open to the Government to interfere with these settlements and reduce the areas settled. The petitioners having paid the premia and the revenue payable in respect of these lands, they had acquired a valuable right of property in these lands subject to the rules already framed. The rights and remedies of the parties will now be governed by the Assam Land and Revenue Regulation, and Government could not go beyond their own rules affecting the settlements already made in favour of the petitioners. It is further pointed out that in view of the scheme itself, the area to be normally settled was about 30 bighas per family, and the petitioners obtained the settlement of only about 20 bighas of land each, which was much less than the normal standard.

The contentions, in my opinion, are well-founded. Mr. Medhi on behalf of respondents has been at pains to discover some authority in law to support the orders in question. In the first place, he refers to Section 11, Land and Revenue Regulation, which provides that a "settlement-holder" who is not a "land-holder", has no rights in the land held by him beyond such as are expressed in his settlement lease. There are no documents of settlement leases in the present case, but the scheme notified by Government, under which the settlement appears to have been made, shows that "the allottee or an annual settlement-holder" had "no transferable right or interest in the land covered by his allotment

or annual patta". It is accordingly urged that it being in the nature of an annual lease, it could not enure beyond a period of one year, and under Rule 1(c) of the Settlement Rules framed under the Assam Land and Revenue Regulation, it conferred no right in the soil beyond a right of user for the year for which it was given, and it also conferred no right of transfer or inheritance beyond the year of issue.

7. The petitioners' case is that so far no pattas have been issued to them, and the notification shows that at any rate the premium payable by them was payable in four equal instalments spread over a period of four years. The petitioners have been admittedly paying the premium as also the land-revenue. The settlements, therefore, were bound to enure at least for that period of four years. The settlements in the present case appear to have been made by an order, dated 2-12-49, and the Rule nisi was obtained in August last. It is, therefore, difficult to say that the petitioners had no subsisting rights in the lands, for the protection of which they could seek the intervention of this Court by virtue of a prerogative writ. Besides, the notification shows that even on the death of the allottee or the "pattadar", the settlement should ordinarily be granted to his heirs, and under Rule 13 of the Settlement Rules framed under the Regulation, it was open to the Deputy Commissioner or other officer specially empowered in this behalf to convert an annual lease into a periodic lease in accordance with such instructions as may be issued from time to time for his guidance by the Provincial Government. Whatever the position may be, there is no doubt that the petitioners had a valuable right to protect arising under the above settlements of these lands, which right has been put in Jeopardy by the orders complained of.

Mr. Medhi then relies on Rule 2 of the Rules in support of the Government order. Rule 2 runs as follows:

The disposal of waste land required for ordinary or special cultivation or for building purposes will, subject to the general or special orders of the Provincial Government, vest in the Deputy Commissioner, who will dispose of such land by grant, lease or otherwise in the manner and subject to the conditions set forth in the rules following provided that the Deputy Commissioner may expressly reserve any such land from settlement.

It is obvious that the Deputy Commissioner had not reserved any portion of the disputed lands from settlement, and the attempt to convert them into a grazing reserve had failed. The Provincial Government had passed orders as embodied in the notification, dated 12-9-41, for making settlements of these waste lands. Subject to this notification, the lands were vested in the Deputy Commissioner who was competent to dispose of them by lease or otherwise according to the provisions of the Rules. This the Deputy Commissioner had actually done, and I do not see how the Provincial Government, by an executive order, could affect the rights of the petitioners arising under the settlements when the Rules do not make any such exception.

Mr. Medhi, however, contends that the words "general or special orders of the Provincial Government" appearing in Rule 2 signify that at any stage the Provincial Government could pass "special orders" regulating the settlements or nullifying the same. I do not think that Rule 2 can reasonably bear such an interpretation, because otherwise, it, would have the effect of completely setting at naught the provisions in the Regulation itself, dealing with the right of appeal to the Commissioner or to this Court, and also the power of the Commissioner and the High Court to call for proceedings of the subordinate Courts and to pass, such orders thereon as was considered to be appropriate. It is fundamental that a rule making body cannot frame rules in conflict with or derogating from the substantive provisions of the law or statute under which the rules are, framed. Rule 2, therefore, has got to be interpreted in such a way as to be consistent with the provisions of the Regulation itself. In my opinion, the words "general or special orders" though somewhat broad in their import, cannot mean that at any stage, the Government can interfere with the settlements effected by the Deputy Commissioner. These general or special orders would relate to a stage when the Deputy Commissioner has not already created rights in favour of third parties. The order of the Provincial Government directing reduction of the area already settled with the petitioners is, therefore, without any warrant in law.

8. The question then arises whether in a case like this, we should interfere under Article 226 of the Constitution by issuing a prerogative writ. Two considerations are mainly urged in this connection. The first is that the petitioners have another remedy by way of a suit, and secondly, that the petitioners are merely annual settlement-holders and cannot claim that the authorities responsible for renewing or making the settlement should be compelled to do so in their favour. As to the alternative remedy, the point which needs consideration is -- whether the remedy would be equally efficacious and prompt. The substantial facts in this case are undisputed. On those facts, it, is an unauthorised attack on the petitioners' rights. We have noticed that the orders in question have no justification in law. In these circumstances, it would be sheer harassment of the petitioners to be left to follow a long and tedious remedy by way of a suit.

On the second ground, I am doubtful if the petitioners are merely annual lease-holders. Be that as it may, the Deputy Commissioner or the Settlement Officer does not say that, for any reason, these petitioners are not entitled to a renewal of the, lease; to say the least, at any rate for a period of four years, they were certainly entitled to remain in occupation of the lands from the date of the settlement in their favour. Whether at a subsequent stage, the Deputy Commissioner or the Settlement Officer would be guided by the suggestion contained in that Government letter and reduce the area under settlement with the petitioners, is not our concern at present Nor do I think it is necessary to direct the issue of pattas in favour of the petitioners at this Stage.

9. Ordinarily, on the facts stated above, I see no reason why the petitioners should not be en-titled to the issue of pattas or the renewal of the annual lease,

even if it is held that they are annual lessees; but these are matters which have to be left to the officers competent and responsible for making settlements and issuing pattas. They have to exercise their own judicial or quasi-judicial discretion in these matters subject to the law and the rules framed thereunder. The point as to the actual nature of the tenure, whether annual or permanent, was not at length argued before us even on behalf of the petitioners, and I do not feel impelled to commit myself finally on the question.

10. All that I need say at present is that the steps taken by the Settlement Officer, reducing the area of the settlements made with the petitioners, under his notice, dated 20-4-53, and in pursuance of the illegal order of Government contained in their letter No. RSG. 107/52/53, dated 1st May, 1952, are entirely without jurisdiction. It is, therefore, directed that those orders shall not be given effect to so as to prejudice the settlements already made with these "petitioners. On the above terms, the application is allowed and the Rule made absolute.

Ram Labhaya, J.

11. I agree to the order proposed. I would add a few words.

12. It is a common ground that the land was settled on the petitioners under orders of the Government of Assam passed under Rule 2 of the Settlement Rules framed under the Assam Land and Revenue Regulation vide Notification No. 4587-R dated 12-8-41.

13. The order under Rule 2 regulates settlement of land in Mouzas, Hajoi, Namati and Lanka lying outside the Nikir Hills in the district of Nowgong.

14. Under para 5 of the order, waste land could be occupied only on application. Para 6 lays down conditions under which the allotment of land may be made. It also provides for the maximum extent of allotment in any single case. The Sub-Deputy Collector is charged with the duty of allotment. The allottee must cultivate the land allotted and must also reside on the land unless permitted by the Deputy Commissioner to reside elsewhere.

15. Para 8 is important. It provides that the area allotted must be completely occupied within four years. If any portion remains unoccupied at the expiry of four years, the allotment in respect of that portion shall be deemed to be cancelled." Failure to occupy results in automatic cancellation of the allotment of the unoccupied part.

16. Land revenue and local rates are to be charged on the basis of the extent of land occupied but the "settlement cannot be re-opened with a view to re-assessment".

17. Para 10 provides that an allottee or an annual settlement-holder shall have no transferable right or interest in the land covered by the allotment or the annual patta as the case may be. The consequences that follow such a prohibited transfer are specified. In case of death of the allottee or the pattadar, the

provision of the rule is that the patta or the allotment shall ordinarily be granted to his heirs.

18. It is only in this para that an allottee" and an annual settlement-holder are placed on the same level in the matter of transfer and in 1955 Assam/7 & 8 regard to succession. The implication of this para may be that apart from allotments covered by paras 6 to 8, lands may be given on annual leases. Another possibility is that the provision in regard to annual settlements was considered necessary in view of annual settlement made before the Notification No. 4587-R, dated 12-9-1941 was issued. But it will be seen that it is only for purposes of para 10 that allotments under paras 6 to 8 are placed on the same footing with an annual settlement or lease. In other respects the incidents of the two kinds of settlement are different. An annual lease is a lease granted for one year only and confers no right in the soil beyond the right of user for the year for which it is given. Vide Rule 1(c) of the Settlement Rules. Such a lease confers no right of transfer or of inheritance beyond the year of issue or of sub-letting.

Para 10 apparently deals with two kinds of settlement. An allottee and an annual settlement-holder have not been used as interchangeable terms. An allottee under paras 6 to 8 can in no sense be regarded as a settlement-holder for one year only. This would be opposed to the very terms of the allotment, which gives him four years within which to occupy the entire land. If he fails to occupy the entire land, the allotment in regard to the unoccupied portion alone stands cancelled. This involves an implied recognition of the position that the allotment is final and enures even beyond the period of four years without renewal and that it can only be partially cancelled on the default of the allottee to occupy it in its entirety. The condition that the settlement cannot be re-opened with a view to re-assessment also shows that it is not limited to a year.

Restrictions on transfer and preference of the heirs on the occasion of the death of the allottee also indicate that the tenure is not limited to a year nor is there any suggestion in the entire arrangement to the effect that it is renewable periodically. An allottee under the notification No. 4587-R cannot be appropriately described as an annual lessee. He, answers the description of a settlement-holder as defined in Section 3(h).

19. The Sub-Deputy Collector exercising the powers of the Assistant Settlement Officer and Assistant Survey Officer is invested with jurisdiction to decide all disputes regarding allotment and occupation of land, though he is to act in the exercise of the jurisdiction under the control of the Deputy Commissioner.

20. The facts are not disputed. Land measuring 20 bighas has been allotted to each of the petitioners by order of the Deputy Commissioner, dated 2-12-49. The petitioners claim to have reclaimed the land after occupation and they assert that they are cultivating it. They have been paying land revenue regularly and they have committed no default in the payment of specified instalments towards the premium due from each. The period of four years allowed for occupation has

expired and it is not the case of the opposite party that any part of the area in any case remained unoccupied. The allotment in each, case is complete. Nothing remains to be done under the notification No. 4587-R, dated 12-9-41 which specifically provides for allotment of land in certain villages.

21. Rule 2 of the Settlement Rules under which notification No. 4587-R has been issued cannot be pressed into service by the Provincial Government for partial cancellation of a completed allotment. It vests the disposal of waste lands in the Deputy Commissioner subject to the general or special order of the Provincial Government. He is "bound" also in disposing of waste lands by grant, lease, or otherwise by the requirements of the Settlement Rules. The exercise of jurisdiction vested in the Deputy Commissioner can be subject to general or special orders that may be existing at the time of the disposal of the land. He is bound by such orders when exercising his power under Rule 2. The power to dispose of land under Rule 2 may be taken away or reduced by any general order as was done by the Notification in question which gives a great deal of the power of the Deputy Commissioner to the Sub-Deputy Collector for allotment of land under the notification, Such general or special orders which bind the Deputy Commissioner under Rule 2 ought to be in existence at the time he decides to dispose of waste lands. The Rule does not reserve any kind of appellate, revisional or supervisory jurisdiction for the Provincial Government. It does not at all justify undoing or cancelling completed settlements or allotment in individual cases.

22. Rule 26 of the Settlement Rules also may not be relied on in justification of the order of the Provincial Government. Under this Rule, the Commissioner has the power to confirm all settlements and also to cancel any lease, or settlement made in contravention of the Rules. The exercise of this power is also subject to the general control of the Provincial Government. The note added to Rule 26 by Government by its letter No. R. S. 137/45/2, dated 29-11-1945 makes it clear that the power of the Commissioner is neither appellate nor revisional and has to be exercised in uncontested cases. The general control of the Provincial Government is on this jurisdiction and not on the exercise of judicial powers by competent authorities under the Land and Revenue Regulation. This para affords a clue also to the interpretation of Rule 2 of the Settlement Rules. Even there, the Government was not reserving any appellate or revisional powers in itself.

Allotments and settlements create legal rights. Even when no pattas are executed, the legal rights may come into existence. Interference with allotments or settlements is possible only under the Land and Revenue Regulation by the appellate or revisional authorities. It would not be open to the Government acting under Rule 2 to interfere with a particular settlement on the ground that in its opinion, a settlement of a slightly smaller area would have met the needs of the case, after it has become an accomplished fact. The Government may issue general or special orders or executive instructions for the guidance of its officers charged with the duty of making settlements but when once a settlement or an

allotment is complete; it can be interfered with only on legal grounds by competent authorities under the Land and Revenue Regulation.

23. The learned Government Advocate has also relied on Section 11 of the Land and Revenue Regulation. It defines the rights of the settlement-holder other than a land-holder. According to this section, he has no right in the land held by him beyond such as are expressed in his settlement lease. The expression "settlement-holder" is defined in Section 3, Clause (h). Settlement-holder means any person other than a proprietor who has entered into an engagement with the Crown to pay land revenue and it includes a landholder. All that the definition requires is that there should be an engagement with the Government to pay the land revenue by a person other than a proprietor. The execution of a patta is not a necessary ingredient. The engagement confers the status of the settlement holder. But a settlement-holder can have no greater rights than those expressed in the settlement lease as provided by Section 11.

This section does contemplate the execution of a settlement lease in each case; even so the provision may not be utilised to support the contention that no kinds of rights are created until the patta is actually executed. The patta or the lease deeds may take long in coming. Till then the rights will be determined by the rules under which the settlement is made or by the general law of the land. Where land is surveyed, measured and delivered to an allottee, where it is reclaimed and brought under cultivation, where premium has been paid and revenue is being paid and where execution of the patta is delayed for no fault of the settlement-holder, no unrestricted right to cancel or revoke the settlement without any refund of the money paid by him or payment of compensation for making the land culturable can be, inferred from Section 11. Even if a patta is not executed, in such circumstances, there are legal rights in an allottee who has occupied the land under an allotment. In reducing the area of the allotment, the Provincial Government did not propose or purport to act under this section. It affords no answer to the contention raised on behalf of the petitioners. The order of the Government reducing the area, of allotment in each case has no legal justification and is in excess of authority.

24. I entirely agree with my Lord the Chief Justice that it is a proper case in which relief under Article 226 may be granted. Another remedy is available to the petitioners. But that remedy cannot be regarded as appropriate or effective in this case. The only material issue in the case is whether the Government had the jurisdiction to reduce the area of the settlement in the circumstances of the present case. There is no dispute on facts. The rule that the extraordinary-jurisdiction under Article 226 may not be invoked where another remedy is available, is not invariable. Its application depends on the circumstances of each case. The petitioners held the land under allotments made in conformity with the direction contained in the notification No. 4587-R. Their tenure is not so precarious as that of an annual lessee. An annual lease is a lease for one year only. Its description as an annual lease is anomalous and misleading. An

allotment under Notification No. 4587-R does not create an annual lease which requires renewal at the expiry of each year for its continuity. On the other hand, an allottee under the notification does not stand in need of any renewal. There is no provision for renewal. The tenure is not limited to a year or to any specified time. An order which is without jurisdiction and which takes away rights of the holder of the land may appropriately be set aside under Article 226. The pursuit of the alternative remedy involves great hardship which may with abundant justification be relieved.