
(1954) 05 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 139 of 1953

Amar Prasad Barau

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 06-05-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : AIR 1956 Guw 81

Hon'ble Judges : Sarjoo Prasad, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : F.A. Ahmed, Bar-at-Law and M.C Pathak, for the Appellant; D.N. Medhi, Government Advocate for State, S.K. Ghose and P. Chaudhuri, for the Respondent

Judgement

Sarjoo Prasad, C.J.—In this application under Article 226 of the Constitution, the petitioner has moved against an order of the Revenue Minister, dated 23-9-52, and also against two subsequent orders following in the wake of that order passed by the Deputy Commissioner of Nowgong, dated 31-12-52 and 5-3-53.

2. The facts stated in the petition are that dag No. 1119 was held under an annual patta by respondent No. 5, daughter of respondent No. 6. This land was, under some verbal arrangement, given to the petitioner for the purpose of building a residential house and tea stall. The petitioner says that he was in occupation of the land as a permissive tenant and he used to cater to the needs of the passengers travelling on the Gauhati--Nowgong road.

He alleges that respondent No. 6 who was also the maujadar, subsequently became jealous of the importance of his business and tried to obstruct and take possession of the said land by erecting houses in front of the petitioner's restaurant. This led to a proceeding u/s 144, Cr.P. Code, between the parties. The petitioner then admits to have made an application to the Deputy Commissioner, Nowgong, to obtain settlement of the land on the basis of an

annual patta because he was also a landless person.

In the mean time, it appears that an order of eviction, dated 3-1-53, purporting to be u/s 18(2) of the Settlement Rules, was served on him to vacate the land. The petitioner then learnt on enquiry that at the instance of the respondent No. 5 the Revenue Minister had passed an order directing the eviction of the petitioner. The order of the Revenue Minister is in these terms:

If the man has played a fraud with the woman, he does not deserve any consideration. The land may be made Sarkari and he is evicted therefrom. After this the woman may be given the land. The D.C., Nowgong, may be directed accordingly.

The order does not disclose under what provision of the law the Minister actually acted in directing the petitioner to be evicted. This was at best a matter of a private dispute between two parties in which the Minister need not have been interested as all but the unfortunate result naturally was to set the subordinate authorities in motion against the petitioner. The Revenue Secretary forwarded the order in question to the Deputy Commissioner of Nowgong with an endorsement for necessary action.

The Deputy Commissioner asked the Sub-Deputy Collector concerned of Raha Circle to make a report and to take necessary action. It appears from the report of the Sub-Deputy Collector, as stated in the petition, that a notice had been served on the pattadar notifying cancellation of his patta and simultaneously an encroachment case was started against the man who was occupying the land, meaning thereby the petitioner. The Deputy Commissioner, Nowgong, then started an encroachment proceeding on 31-12-52 leading to the presentation of this application.

3. The petitioner contends that, the whole procedure adopted by the opposite parties is illegal. He says in the first place that the annual patta in favour of respondent No. 5 could not be terminated during the currency of the lease except within the meaning of Clause (5) of the form of the annual lease, which is to the effect that if any portion of the lands is required for a public purpose during the currency of the lease, such lands or such portion thereof could be taken away from the leaseholder by Government.

In the present case, it is contended that there was admittedly no such public purpose which could necessitate the cancellation of the lease in favour of the pattadar. It is also urged that under Clause 3 of the patta, the leaseholder was entitled to a renewal of the patta, at least for another year, unless notice had been served by Government intimating that there was no desire on the part of Government to renew the lease and that not having been done, it should be taken as a matter of course that the lease stood renewed for another period of one year, and the petitioner, who was in occupation of the lands under the leaseholder, was entitled to remain on the land, and not liable to be ejected.

4. The above arguments are not without substance. The application, however, in my opinion, cannot be sustained in view, of the fact that the petitioner has not been able to establish any legal right to maintain such an application and to invoke our extraordinary jurisdiction under this Article for the protection thereof. He himself states in his petition that he was holding under some verbal arrangement from the opposite party No. 5 or 6 who are the actual pattadars, and that his occupation of the land was merely that of a permissive tenant. Such a tenant could be turned out at any moment.

Even if he had shown a better title as against the settlement-holder, he could not claim any such right as against Government in the case of an annual patta land. Rule 1(c) of the Settlement Rules under the Assam Land and Revenue Regulation definitely says that an annual lease is a lease granted for one year only and confers no right in the soil beyond a right of user for which it is given; it confers no right of transfer or of inheritance beyond the year of issue, or of subletting. In view of this rule, the petitioner, as a sub-lessee, could not claim any rights at all against Government and could not question the cancellation of the settlement even if such a cancellation was not strictly regular and in accordance with law.

It is not open to every one to question the order of Government cancelling such leases, except those who have an established right to do so. Much stress has been laid by the petitioner on Clause 3 of the form wherein it is provided that Government shall on or before the expiry of the financial year serve on the settlement-holder a written notice to the effect that a renewal of the lease is not desired in respect of all or any of the lands in a particular lease, (sic) which the clause enjoins, that the lease shall be renewed for another year on such land revenue as Government may determine. In this case, it seems that the patta was granted to respondent No. 5 sometime in April, 1952 and continued to subsist until March, 1953, and then it is claimed that by virtue of Clause 3, the leaseholder or settlement-holder was entitled to renewal for another year as a matter of course, in the absence of any notice, as contemplated by Clause 3. It appears that even during the currency of the first year of the lease, the Revenue Minister passed the order in question. I have already said that there does not appear to be any warrant in law for that order.

At any rate, there is hardly adequate justification for a person in the high position of a Minister of State to interest himself in a case of dispute between two private individuals to the prejudice of one party. The matter could have been easily left to the discretion of the local authorities to act according to law. The point, however, remains whether it is open to the petitioner to challenge the order at all. The order, of course, cannot be justified either under Clause 8 or under Clause 5 of the form of the annual lease.

Mr. Ghose on behalf of respondent 5, however, contends that the action of the settlement-holder in creating a sub-lease in favour of the petitioner was in breach of the terms and, therefore, it was open to Government to direct cancellation of the lease and ejectment of the petitioner. It is not clear from the

various orders passed by the officers concerned that they purported to act on that account. On the contrary, it seems that their order or the proceeding which they adopted, was influenced by the order of the Minister referred to above.

In any case, it is obvious that even if the best complexion is put upon the argument of Mr. Fakhruddin, the period of the lease would expire sometime by the end of March, 1954, and even the original pattadar could not, as a matter of course, claim renewal of the lease in his favour. It was open to the Deputy Commissioner to renew or not to renew the lease. So far as the petitioner is concerned, his position is wholly precarious.

I have already pointed out that he himself admits having been merely in occupation of the land as a permissive tenant and there being no provision in the law for subletting in case of an animal patta-holder the petitioner had no right in the land at all for the protection of which he could ask the Court to issue a Writ. The orders passed by the Revenue Minister or the Deputy Commissioner in pursuance of the order may not have been valid orders, but we are not satisfied that the petitioner has made out any case for our interference under the law. Mr. Fakhruddin has also relied upon Rule 18 of the Settlement Rules. He refers, in particular, to Clause (1) of Rule 18, wherein it is provided that

subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, land-holder or settlement-holder.

It is not the case of the petitioner that he comes under the definition of a proprietor, or land-holder or settlement-holder. Nor has he been able to show us that under any of the other provisions he was not able to be ejected. Clause 3 of this rule, on the other Hand, empowers that in all other cases, the Deputy Commissioner can eject provided he has served a notice requiring the occupant to vacate the land within three months and to remove any buildings or fences which may have been raised on such land.

It is true that the period mentioned in the order is only seven days, but the order in question was passed on 31-12-52, and since then the petitioner has had ample opportunity to remove the structures standing on the land. Later a fresh order was made on 5-3-53, in which the Deputy Commissioner again directed eviction of the petitioner. This fresh order was evidently three months after the first order. On these grounds, I am not satisfied that the petitioner can claim interference by us in a case of this nature under Article 226 of the Constitution. The application accordingly fails and the Rule is discharged.

Deka, J.

5. I agree.