
(1981) 09 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 235 of 1975

Bejiram Ingty

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-09-1981

Acts Referred:

Assam Forest Regulations, 1891 — Section 3(2), 75
Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967 — Rule 17, 18

Citation : AIR 1982 Guw 88

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : J. Singh, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—Three true questions have come up for solution in the Civil Rule under a different setting. The questions to be resolved are :-- (1) Whether stone is a "Forest produce" within the meaning of the Assam Forest Regulation, 1891 (Regulation VII of 1891), or under the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967, hereinafter called "the Rules"?; (2) Whether the petitioner is obliged to pay any amount to the State who had offered extension of the settlement/lease but the petitioner refused to accept? Whether the mere offer of extension by the State which was not accepted by the petitioner created any "contract" on the basis of which the State could proceed to recover the amount of Rupees 9387,75, allegedly for breach of contract, and, recover the amount in Revenue Recovery proceedings and (3) Whether a proceeding for recovery of the said amount can be taken by the respondents under the Assam Land Revenue Regulation, 1898, or "the Rule" framed thereunder, "in other words can the State proceed to recover an amount due on account of non-payment of instalments of a stone mahal by way of a Bakijai Proceeding under the Assam Land and Revenue Regulation, or "the Rules" framed thereunder"?. These are the main questions posed in this writ proceeding.

2. The Divisional Forest Officer, South Kamrup Division, for short "the D. F. O." invited tenders for sale of stones from Kanilipara Stone Mahal for the period commencing from November, 1, 1969 to October 31, 1971. Shri Bejiram Ingty, the petitioner, a member of the Scheduled Tribe submitted tender offering Rs. 37,551/-, for 3000 cubic meters of stone. The offer was accepted and the petitioner was informed to deposit the first Kist money of Rs. 4,700/- as well as the security amount of Rs. 990/-. He was also asked to deposit seven other kists of Rs. 4,693/- each on alternate month. In all the petitioner deposited Rs. 23,472/-but could extract only 813 cubic metres of stone. As the petitioner could not extract stones" due to numerous difficulties he made a representation to the then Minister-in-charge for extension of the period of operation up to 31-10-1972. He also prayed for leave to deposit the 6th, 7th and 8th kists on 21-1-71, 1-3-71 and 1-5-71, respectively. The authorities, however, put the Mahal to resale at the risk of the petitioner. But in view of the difficulties which the petitioner had encountered, none came forward to submit any tender. Thereupon, the petitioner was informed by two notices that the quarry could not be resold at his risk as no tender was received; the petitioner was called upon to deposit the due kists otherwise in accordance with clause 13 of the sale notice the settlement will be cancelled. Moreover, if any loss is incurred by the Government, in accordance with Clause 14 of the sale notice, the same will be realised as arrears of land revenue. "In reply, the petitioner prayed to the authorities to reduce the quantity of the mahal to 1000 cubic meters and to cause refund of the excess amount to the petitioner. Thereafter, "the D. F. O." informed that the Government had granted extension of the working period of the stone mahal for six months "on payment of proportionate bid value equivalent to 25% of the settled value of the mahal amounting to Rs. 9,387.75 and on payment of the outstanding dues of Rs. 14,079.00 on account of the 6th, 7th and 8th kists during the period of extension all terms and condilions of the agreement would remain in force." On failure of payment of the dues within the stipulated time, it was stated, action would be taken to re-sell the mahal at his risk. To this the petitioner expressed his inability to deposit any extra amount and prayed that he might be given opportunity to remove stones to the extent of the amount he had already deposited. The petitioner also informed "The D. F. O." that he had extracted stones worth Rs. 8,000/- only but had already paid a sum of Rs. 23,472/-. However, in the meantime, the respondents started Bakijai proceedings against the petitioner for recovery of Rs. 23,467/-, i. e., Rs. 14,079/- for the arrears kist money and Rs. 9,387.75 being the pro-portionate bid value equivalent to 25% of the settled value of the mahal. Whereupon the petitioner appealed to the Board of Revenue who turned down the appeal. Hence, this writ application before this Court.

3. Mr. J. Singh, learned counsel for the petitioner has contended that the damages for breach of the terms of sale notice in respect of right to quarry stones is not "an amount due" either under the Assam Land and Revenue Regulation or under ""he Rules framed thereunder", as such, it is not recoverable

as arrears of land revenue. The learned counsel relies on the The Divisional Forest Officer Vs. Mool Chand Sarougi Jain, and submits that stone is not a forest produce. He also relies on AIR 1973 Gau 51, Praneswar Das v. State of Assam. Counsel further submits that under no circumstances the respondents were entitled to recover the amount of Rs. 9,387.75, being the alleged proportionate bid value of the mahal, as the petitioner had never accepted the extension of settlement offered to him. The learned counsel submits that the Assam Board of Revenue has failed to exercise its jurisdiction vested in it by law in ignoring the aforesaid decisions and the principles of law enunciated therein.

4. Mr. D. N. Konwar, appearing for the respondents contested all the contentions raised on behalf of the petitioner.

5. Let us take up the question as to whether the respondents are competent to take any proceedings to recover the sum of Rs. 9387.75 under the provisions of "the Regulation" or "the rules framed thereunder". The indubitable position is that the petitioner had asked for extension of time to quarry up to 31st Oct. 1972, vide his representation marked as annexure IX. The representation clearly expressed that the petitioner had claimed therein that he could not work out the mahal but had paid huge amount and he also set forth six insurmountable difficulties to quarry in the mahal. In clear terms he prayed for extension of the time to quarry as well as extension of time to deposit the arrears kists. He never stated that he wanted the extension on payment of any extra money. However, the Government offered an extension, on payment of proportionate bid value amounting to Rs. 9,387.75. The petitioner was asked to accept the offer within seven days but the petitioner declined to accept the offer. He fervently pleaded that he should be granted time to remove stones to the extent of the amount he had already deposited. It is apparent on the face of the records that the petitioner had asked for extension of the working period of the mahal to enable him to quarry stone without payment of any extra amount. However, the Government offered extension of the terms of the lease up to 30-4-1972, on payment of an extra amount of Rs. 9,387.75. The petitioner declined to accept it. Mr. Konwar Submits that although the petitioner had not accepted the offer of extension in so many words, but in reality he worked in the mahal and therefore he was liable to pay the amount. On perusal of the entire records, we find that the petitioner had prayed for extension of period to quarry stone without payment of extra amount, but the Government-offered him the extension on payment of an extra amount of Rs. 9,387-75. The petitioner declined to accept it in clear terms, vide his letter dt. 12-11-71 vide Annexure-VI. As such, there was no agreement and/or any valid contract between the parties nor was there any breach of the terms of any contract. Therefore, payment of any amount for breach of any contract did not arise at all. We are, therefore, constrained to hold that the Respondents proceeded to the coercive method of recovery of the said amount in Bakijai proceedings without any authority of law. The state has failed to establish its right to recover Rs. 9,387.75 under the authority of law. It was not an amount legally recoverable from the petitioner. Any penal action of the

State must have the backing or "Authority of law", which is conspicuously absent in the instant case. Under these circumstances, the proceeding for recovery of the said amount as arrears of land revenue was proceeding without jurisdiction. The petitioner cannot be fastened with the liability when the petitioner refused to accept the offer made by the Respondents. In the result, we accept the contention of the petitioner and hold that the recovery proceeding in respect of Rs. 9,387.75 is illegal and without jurisdiction and must be quashed.

6. The next question is whether "stone" is a "Forest produce". The expression "Forest produce" has been defined in Section 3 (2) of "the Regulation". The question as to whether stone is a forest produce as contemplated under "the Regulation", came up for consideration before the Supreme Court in the *The Divisional Forest Officer Vs. Mool Chand Sarougi Jain*, The Supreme Court has held that it is doubtful whether stone is a forest produce. We extract the exact words used by their Lordships in *Moolchand* (supra), (para 5)

"It is again difficult to hold that "stone" is a forest produce within the meaning of the Act."

7. The view expressed by their Lordships is binding on us and in fact a Division Bench of this Court, bound as it was, followed the law in *Praneswar Das v. State of Assam* AIR 1973 Gau 51. We are therefore constrained to hold that "we are in great doubt as to whether "stone" is a forest produce or not." We wonder how, notwithstanding the decision in *Moolchand* (Supra) the State has remained silent as a star and immobile? Why has it failed to recast, change or amend the definition of the term "forest produce" in "the Regulation"? It follows, therefore, that the State has accepted that stone is not "a forest produce" and the meaning of the word requires no reformation. So we find no amendment in Section 3 (4) of "the Regulation". Under these circumstances we are confirmed that "stone" is not a forest produce. We do not propose to paraphrase the definition as the point has been concluded by the authoritative pronouncements just alluded. Therefore, once we hold that "stone" is not a forest produce invariably it leads us to the conclusion that the provisions of Section 75 of "the Regulation" cannot be made applicable in respect of settlement of stone quarry. Section 75 of "the Regulation" reads as follows:--

"75. Recovery of money due to the Government.-- All money other fines, payable to the Government under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce or of expenses incurred in the execution of this Regulation in respect of any forest produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue."

8. Non-payment of kist is not a "money payable" under "the Regulation" as stone is not forest produce to attract the Regulation. Similarly it is not a fine payable to the Government under "the Regulation". So to attract the provisions of Section 75, "the due" must be one under any rule made under the Regulation or on

account of any price of any "forest produce". As this is not price for any "forest produce", Mr. D. N. Konwar, learned counsel for the Respondents, has submitted that it is a due under "the Rules" and attracts Section 75 of "the Regulation." Therefore, let us turn to the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967, referred by Mr, Konwar.

9. We find another obstacle when we turn to Rule 2 (c) of the Rules, which defines "mahal" thus:

"2.

(a) "Mahal" means a defined area wherefrom certain type of forest produce are sold on condition of their removal within a specified period."

Therefore, to attract the term "Mahal" it must be a defined area wherefrom forest produce are sold. When stone is not a forest produce it cannot come within the fold of the term "Mahal" defined in "the Rules." As such, we have doubt as to whether the Rules are applicable in so far as the settlement of stone quarry is concerned. If the Rules are not applicable the respondent's forum to recover the amount is civil court and they cannot take Bakijai action under "the Rules" framed under the Assam Land and Revenue Regulation. However, we do not express any final opinion in this case, as we can dispose of the case on the authority of a binding decision which has held that no Bakijai Proceeding under the Assam Land and Revenue Regulation, for default of such instalment, can be proceeded against a settlement holder or lease-holder of a stone quarry. In *Praneshwar Das v. State of Assam* AIR 1973 Gau 51 (supra) a Division Bench of this Court held that arrears of instalments is not an amount due under the Regulation or under "the Rules." Rule 14 of "the Rules" provides the manner of deposit of security amount etc. Rule 15 lays down the payment of instalments. These Rules are not very relevant insofar as this case is concerned. Rule 16 prescribed the form in which an agreement need be executed. Rules 17 and 18 are relevant which we extract hereinbelow :--

"17. Cancellation and resale for failure to pay security and instalments, and to execute agreement. If the tenderer whose tender has been accepted fails to pay on due dates the security mentioned in Rule 14 or to pay the instalments mentioned in Rule 15, or to execute the agreement mentioned in Rule 16, the settlement of the coupe or the mahal shall be liable to be cancelled and the coupe or the mahal may be resettled for the remaining part of the settlement period at the risk of such tenderer as regards the loss to the Government and if the proceeds on re-settlement are less than the value at which it was originally settled, the difference shall be realisable from him; and further, the earnest money and the security money if already deposited, shall be liable to be forfeited.

18. Mode of realisation of amount.--Any amount due under these rules shall be recoverable as arrears of land revenue."

Mr. Konwar submits that the State is authorised to recover the amount of arrears

of instalments under Rules 17 and 18. This is the authority of law pointed out to us by Mr. Konwar. The provisions of Rule 17 may be paraphrased as follows:--

(1). On failure to pay the security money or instalments on due dates the settlement must be cancelled:

(2). Upon cancellation of the settlement, "the Mahal" must be resold for the remaining part of the settlement Period at the risk of such tenderer. As regards loss to the Government it provides that if the proceeds on resettlement are less than the value at which it was originally settled, the difference shall be realisable from the original settlement holder or lessee and;

(3). the earnest money and the security money if already deposited, shall be liable to be forfeited.

Therefore, we find from Rule 17 that the first condition is cancellation of settlement by the Government and the penalties prescribed on such cancellation are two fold. First, the earnest money and the security money of the defaulter shall be forfeited, and secondly, in the event of re-sale, if the sale proceeds on resettlement are less than the value at which it was originally settled, the difference shall be realisable from him. Therefore, the entire scheme of the Rule clearly shows that there is no provision empowering the Government to realise any instalment straightway as arrears or land revenue or to treat the arrears instalments as due under Rule 18 of "the Rules". The view that we have just expressed finds ample support in *Praneswar Das AIR 1973 Gau 51 (supra)*, where the question was whether the State Government was entitled to recover arrears in payment of instalment by way of Bakijai proceeding under the Assam Land and Revenue Regulation and the Rules framed thereunder. The Division Bench answered the question in the negative and observed as follows (Para 18):

"The crucial point, therefore, is whether the amount due in these cases can be said to be due under these rules. Rule 18 is a tiny rule and does not take in any amount due under any other condition, for example, on account of breach of terms of a contract, past or present. In these cases, the amount is claimed on account of the breach of the terms of the sale notice to recover the deficiency, or resale, namely, of Rupees 15,543/- in one case and Rs. 1,32,805.60 in the other. In that sense it is clearly recovery of damages for breach of contract. The amount due for breach of contract does not come within the expression "any amount due under these rules". The matter would have been different if the rule was framed to include not only any amount due under these rules, but also for breach of terms of the agreement or otherwise whatsoever."

10. Realising the position, Mr. Kon-war tried to salvage the case of the respondents in taking up the plea that it was not a case of recovery of any instalments but the coupe was resold and the respondents proceeded to recover the balance between the nil resale value and the price which was originally settled. However, the fact clearly shows that the quarry could not be resold and in fact it was not resold. Rule 17 is applicable only when in fact and in reality a

coupe Or Mahal is resold and then the difference between resale value and the value at which it was originally settled is realisable as due. In no other contingency an arrear becomes a due under "the Rules". There is no provision to treat such arrears as dues under "the Rules". Therefore, when offer to resell was made and nobody turned up to accept the settlement Rules 17 and 18 are not attracted. In the instant case there was no resale of "the alleged coupe". Under these circumstances, we are unable to accept the contention of the learned counsel for the respondents.

11. Therefore, on the authority of Praneswar Das AIR 1973 Gau 51 (supra) and for the reasons set-forth above we hold that the proceeding in Bakijai Case No. 22/73-74 is not maintainable against the petitioner and the State action is without any authority of law liable to be quashed, which we hereby do upon setting aside the order of the Board of Revenue.

In the result, the petition is allowed. Parties to bear their respective costs.