

(2005) 09 GAU CK 0092
In the Gauhati High Court
Case No : Writ Petition (C) No. 5169 of 2005

Biren Gogoi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21, 21(2), 21(3), 21(4), 28

Assam Sale of Forest Produces Coups and Mahal (Amendment) Rules, 2000 — Rule 21

Citation : (2005) 09 GAU CK 0092

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.K. Goswami, P.J. Saikia, B. Chetia and J.C. Borah, for the Appellant; P.G. Baruah, R. Baruah, B.J. Talukdar, H.K. Mahanta and R. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.K. Goswami, learned Senior Advocate appearing on behalf of the Petitioner and Mr. P.G. Baruah, learned Senior Advocate and the learned Government Advocate appearing on behalf of the Respondents.

2. The matter relates to settlement of Dilly Stone Quarry J.P. No. 2, herein referred to as "the quarry". Pursuant to a Sale Notice, the said quarry was settled in favour of the writ Petitioner Shri Biren Gogoi for a period of two years. As there was some delay in delivering the possession of the quarry, the period of settlement was refixed from 4.6.2003 to 3.6.2005. The case of the petitioner is that due to some communal violence which erupted in the area, he could not operate the Mahal and extract the required quantity of stone and accordingly the Petitioner submitted a representation for extension which is permissible under the Assam Sale of Forest Produces, Coups and Mahal Rules, 1977, as amended in the year 2000, hereinafter called as "the Rules". After making necessary enquiry, Respondent No. 4 granted extension for a period of 90 days in favour of the

Petitioner and admittedly, the said period of extension also expired in the meantime.

3. The sole grievance of the Petitioner in this writ petition is that he had filed a representation before the State Government for extension of the period of settlement for one year and the State Government had called for a report and thereafter vide impugned order dated 18.7.2005 (Annexure-1), the said representation for extension was rejected on the ground that extension of 90 days had already been granted to the writ Petitioner by the Principal Chief Conservator of Assam. The impugned order has been challenged on the ground that the application has been rejected without application of mind and the grant of extension of 90 days time by the Principal Chief Conservator of Forest is not a bar for the State Government to grant extension under the Rules and as the said application has not been considered and rejected on merit, the Petitioner has prayed for setting aside the impugned order dated 18.7.2005 and for a direction to the Respondent authority to reconsider the prayer of the Petitioner and till then not to proceed with the settlement of the quarry pursuant to the fresh sale notice. It has also been stated that the Petitioner has been discriminated in the matter as the State Government vide order dated 16.7.2005 (Annex - ure-N) granted extension of seven months to another settlement holder in respect of a quarry, Dilli Stone quarry No. JP/4 which is situated adjacent to the quarry of the Petitioner.

4. Respondent No. 7 Manab Jyoti Gogoi was impleaded as party Respondent on his prayer and he has filed an affidavit-in-opposition denying the statement made by the Petitioner as regards the communal violence and flood in the area. The Respondent has supported the impugned order passed by the State Government by stating interalia that the maximum period of extension permissible under the law has already been granted to the Petitioner and as such the Petitioner is not eligible for any relief.

5. The Respondent State has not filed any affidavit-in-opposition. However, on instructions received, Mr. B.J. Talukdar, the learned State Counsel has made his submission in the matter.

6. The broad facts of the case as stated above are not in dispute. Mr. A.K. Goswami, the learned Senior Advocate appearing on behalf of the writ Petitioner was also fair enough to submit that so far the extension of 90 days granted by the Principal Chief Conservator of Forest is concerned, the Petitioner can not have any grievance as under the Rules, maximum period of extension which can be granted was granted by him.

7. Rule 21 of 1977 Rules was amended by the Assam Sale of Forest Produce, Coupes and Mahals (Amendment) Rules, 2000 and the amended Rule 21 which can be applied to the present case reads as follows:

21. Term of Mahal: (1) The mahal shall be allowed to be operated strictly for the period as advertised in the Notice Inviting tender and the sale Notice. However,

the term of the Mahal shall automatically expire in case the stipulated quota is exhausted before the expiry of the mahal period.

(2) As regards the stipulated quota of the Mahal materials, any quantity remaining unextracted within the mahal period shall automatically belong to the Government after expiry of the advertised mahal period and no claim of the settlement holder on the same shall be entertained.

(3) In case the settlement holder is not able to operate the Mahal for certain periods within the settled term of the Mahal, for reasons beyond his control, such periods may be provided to him in addition the Mahal period, but not exceeding a total of 3 months, by the principal Chief Conservator of Forests. The Mahalder, in every such case shall apply to the Divisional Forest Officer concerned within 7 days of each occurrence. The Divisional Forest officer shall submit a report in the matter through the concerned Conservator of Forests for consideration.

8. Mr. P.G. Baruah, learned Senior Advocate appearing on behalf of Respondent No. 7 has submitted that in view of the specific and clear provision of Rule 21, the entire writ petition is ill-conceived and misplaced as the Petitioner has not disclosed the source of power under which the relief can be granted to the Petitioner. Mr. Goswami on the other hand, has submitted that the only prayer of the Petitioner in this case, is to set aside the impugned order passed by the State Government and to direct the State Government to consider the application for extension on merit. In response to the statement made by the Respondent, it is submitted on behalf of the writ Petitioner that the State Government has power to grant extension under Rule 28 and the said Rule is not subject to the limitation of Rule 21.

9. So far the grant of extension of seven months to one Pulin Gogoi vide Annexure-N dated 16.7.2005 is concerned, the said extension is not under challenge before us and the prayer of the writ Petitioner can not be allowed simply on the ground that in another case Government has granted extension of seven months, unless this Court is satisfied that the State Government has that power / jurisdiction to grant extension. Admittedly, under Rule 21 the power to grant extension in respect of a quarry has been given exclusively to the Principal Chief Conservator of Forests.

10. Rule 28 is a savings clause and it reads as follows:

28. Savings-(i) Notwithstanding any of the provisions contained in these rules, the Government of Assam in Forest Department reserve the right to settle or dispose of any forest produce in the form of mahal, coupes or by direct negotiations or in any other manner at its discretion, otherwise than mentioned in these rules in public interest or in accordance with provisions of the Assam Forest Regulations, 1891.

(ii) Any act done or purported to have been done prior to the introduction of these rules of 1977 or any action taken or purported to have been taken under

the Settlement Rules, 1967 shall deemed to have been done under the New Rules, 1977.

(iii) No State Government or State Government Officer or Forest Officers shall be responsible for loss or damage unless he shall have caused the same maliciously or fraudulently prior to the enforcement of these rules or thereafter under these rules.

11. From the head note it is clear that Rule 28 is a savings clause.

12. In G.P. Mathur's Principles of Statutory Interpretation, the learned author has defined savings clause as under:

A distinction is said to exist between provisions worded as "Proviso", "Exception" or "Saving clause", "Exception" is intended to restrain the enacting clause to particular cases; "pro- viso" is used to remove special cases from the general enactment and provide for them specially and "saving clause" is used to preserve from destruction certain rights, remedies or privileges already existed, "saving" means that it saves all the rights the party previously had, not that it gives him any new rights. Saving clauses are introduced into Acts which repeal others to safeguard rights which, but for the saving, would be lost and these clauses are seldom used to construe the Act. It has also been pointed out that a "saving" repugnant to the enactment would be void for contrariety; whereas as already seen a repugnant proviso is construed as repeal of the enactment. A saving worded in the cloak of a proviso was, therefore, not used to determine whether a Section in the enactment was on its own terms retrospective or not. A further distinction that used to be pointed out for purposes of pleading was that it was for the party pleading the statute to negative the exceptions but that it was for the Defendant to raise a defence under a proviso. This distinction cannot be said to exist in our country either in criminal or in civil proceedings.

13. In Crawford's Interpretation of Laws, Savings Clause has been defined as:

Saving Clauses-As we have stated else-where, the saving clause is use-i to exempt something from immediate interference or destruction. It is generally used in repealing statutes in order to prevent them from affecting rights accrued, penalties incurred, duties imposed, or proceedings started under the statute sought to be repealed. Its position or verbal form is unimportant. But if it is in irreconcilable conflict with the body of the statute of which it is a part, it is ineffective, or void. And whether the saving clause should receive a strict or liberal construction, is a matter upon which there seems to be some conflict of opinion. Perhaps the best rule would make the nature of the constitution of the saving clause depend upon the nature of the statute involved-for example, whether it was remedial, penal, or procedural.

If the saving clause is a general one, that is, applicable to all recalling acts, it is considered as merely declaratory of a rule of construction. But whether they are general or not, they are regarded as much a part of every repealing act as if

written therein. Nevertheless, they are subject to repeal by subsequent acts; that is, they will not save from repeal any provision whose repeal is clearly intended by the legislature by the later act. To hold otherwise would abridge or limit the legislative power of the various later legislatures, by the enactment of irrepealable legislation.

14. In the case of *Agricultural and Processed Food Products v. Oswal Agro Furane*, 1996 (85) ELT 3 (SC) the Apex Court has this to say:

Clause 15 is a saving provision and not an exemption clause. A saving provision or clause merely preserves what exists. In *Statutory Interpretation* by F.A.R. Bennion, Second Edn., at pp. 494 and 495 the learned author with regard to the saving clause has said that:

A saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation. A saving resembles a proviso, except that it has no particular form. Furthermore it relates to an existing legal rule or right, whereas a proviso is usually concerned with limiting the new provisions made by the Section to which it is attached.

Again at pp. 494 and 495 it is stated:

A saving is taken not to be intended to confer any right which did not exist already.

To the same effect is a decision of this Court in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhas Chandra Yograj Sinha*. While dealing with the effect of a proviso it was observed as follows:

The law with regard to provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as statute a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the Section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal.

Dealing with the proviso to Section 7 of the Bombay General Clauses Act, 1904 (1 of 1904), the Court observed as under:

The substantive part of the Section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General Clauses Act would have applied and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective.

15. In view of the provisions of Section 6 of the General Clauses Act regarding

the effect of repeal, the saving clause in an enactment merely protects:

- (a) Saving to the substantive rights, accused or acquired.
- (b) Saving of privileges.
- (c) Saving of liability.

16. The learned Counsel for the Petitioner has placed reliance on the following decisions of the Apex Court:

- (a) In the case reported in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*,
- (b) In the case of *Union of India v. G.M. Kokil* reported in 1984 (Supp.) SCC196.
- (c) In the case of *State (Delhi Administration) Vs. Laxman Kumar and Others*,

17. Rule 21 as quoted above does not provide for any proviso or exception and hence, the above decisions so far it relates to proviso or exceptions is concerned, are not relevant.

18. Mr. Goswami has further submitted that Rule 28 starts with a non obstante clause and as such it overrides the provisions of Rule 21.

19. In order to find out the import of this non obstante clause, we would like to quote Rule 21 of the 1977 Rules as it stood prior to the 2000 amendment as follows:

Extension of Mahal of Coupe period-(1) No extension of the coupe or mahal period shall ordinarily be admissible. In exceptional cases, Government may however reserve to itself the right of extension on merit of each case at its discretion.

(2) In case, however, there is delay in communication of final order of acceptance of tender by two months or less beyond the date from which the coupe or mahal period is to commence, the D.F.O. within whose jurisdiction the coupe or mahal is situated, shall automatically, if necessary, recoup by giving extension for so much time as is lost without charging any extension fee.

(3) Where, under exceptional circumstances any extension beyond the time mentioned in sub rule (2) above is found to be justified, such extension maybe given on the following condition:

- (i) Extension under this sub-rule together with any extension given under Sub-rule (2) shall not exceed more than three years at a time.
- (ii) Application for extension shall have to be submitted to the D.F.O. or to Government with a copy to the competent authority one month period to the expiry of the mahal or coupe period.
- (iii) Coupe or mahal; dues shall not have failed in arrear due to the lapses on the

part of the contractor or mahaldar;

(iv) Extension granted under this sub-rule in respect of mahals shall be on payment of proportionate value, or extension fee as determined by competent authority to grant extension.

(4) Extension under Sub-rule (3) shall be granted by the following authorities:

(i) D.F.O.-(A) Upto a maximum of one month in respect of Drift Wood and clear felling coupe at half proportionate value.

(b) Upto a maximum of 4 months in respect of Dead Wood, Wind fallen and Green Wood Coupes at extension fee equivalent to 5 per cent of the coupe value.

(ii) C.F. upto a maximum of 8 months in addition to extension granted under Sub-rule (4)(i) at extension fee equivalent to 5 per cent of the coupe value on recommendation of the Divisional Forest Officer.

(iii) Governor in all other cases not covered under Sub-Rule 4(i) and (ii) on payment of extension fee or proportionate value as may be decided upto 3 years maximum at a time.

20. So far the provisions of Rule 28 are concerned, the provisions were amended in the year 2000 and the provisions contained in 1977 Rules stand as on today. A bare perusal of the old Rule and the amended Rules, we find that under the repealed Rule, the Governor had the power to grant extension upto three years whereas the other authorities had power to grant extension for different periods as stated therein. The powers of the State Government as well as the DFO and Conservator of Forests have all been taken away by the amended Rule 21 and it empowers the Principal Chief Conservator of Forests only to grant extension, that too, for a period of maximum three months. There is no dispute at the Bar that in the present case, Rule 21 as amended in the year 2000 applies.

21. The question that has been raised before us is whether the provision of Rule 28(1) as quoted above overrides Rule 21.

22. At this stage, we may recapitulate the following observations of the Apex Court in the case of A.G. Varadarajulu and Another Vs. The State of Tamilnadu and Others, as follows:

It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a Section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the Section. In *Aswini Kumar Ghose v. Arabindo Bose Patanjali Sastri*, J. observed:

The enacting part of a statute must, where it is clear, be taken in control the non obstante clause where both cannot be read harmoniously;

In *Madhav Rao Scindia v. Union of India* (SCC at p. 139) *Hidayatullah, C.J.*

observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions or the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the Section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not.

23. The learned Counsel appearing for the State of Assam submitted that the provisions under Rule 28(1) are not meant to over ride the other provisions of the Rule. These were incorporated to meet certain exigencies regarding disposal of perishable goods, where the State is required to take immediate action to dispose of the goods which are of perishable nature without adhering to the other provisions laid down under the Rules. Moreover, Rule 28(1) is very specific that the State Government has jurisdiction only when public interest is involved. The learned Counsel further submitted that in the matter of granting extension, no public interest is involved as because by granting extension the State is a loser in the matter of revenue and as such Rule 28(1) can do not be deemed to override the provisions of Rule 21.

24. In the present case, we find that Rule 21 is very specific and clear. Moreover, the Rule has been specifically amended to exclude the power of the Government to grant extension. It also does not contain any exception or proviso.

25. In the light of the observations of the Apex Court in Aswini Kumar Ghose as quoted in A.G. Varadarajulu's case (supra) it must be held that in the matter extension, Rule 21 shall prevail and Rule 28 can not override it.

26. There is another aspect of the matter. Under the provisions of Rule 28(1) the Government of Assam in the Forest Department had reserved its right in respect of certain grant of settlement for disposal of the forest produces but there is no mention about the right to grant extension. Thus, the power to grant extension has not been reserved for the State Government in Forest department by the savings clause of Rule 28(1) and where the statute is clear and specific, it has to be read in that manner only and we find absolutely no scope to hold that by virtue of the provision of Rule 28(1), the State Government had any jurisdiction to grant extension.

27. In view of the above, we hold that in the matter of extension of Mahal, the provision of Rule 21 shall apply and the power is exclusively reserved for the Principal Chief Conservator of Forests and the extension can be granted for a maximum period of three months only.

28. As the Petitioner has already been granted extension for three months by the Principal Chief Conservator of Forests, the application of the Petitioner before the State Government was rightly rejected by the impugned order and no case is made out for setting aside the same or for giving any direction as prayed for.

29. In the result, the writ petition stands dismissed. The interim order stands vacated.