(1958) 04 GAU CK 0006

In the Gauhati High Court

Case No : Revenue Appeal No''s. 81 and 82 of 1956

Dwipendra Ch. Chaudhury and Another APPELLANT

Vs

The State of Assam RESPONDENT

Date of Decision : 08-04-1958

Acts Referred:
Assam Land and Revenue Regulation, 1886 — Section 123, 126, 126(1), 126(2), 127

Citation : AIR 1958 Guw 152

Hon'ble Judges : Haliram Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : N.M. Lahiri and J.P. Bhattacharjee, for the Appellant; S.M. Lahiri, General and D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Judgement

H. Deka, J.—In these two connected appeals arising between the same parties, we do not propose to go into other details or points taken up in appeal except to decide whether the Additional Deputy Commissioner enjoyed the powers of the Deputy Commissioner for the purpose of hearing the appeals and whether the Bakijai Officer enjoyed the power of putting up the property to sale u/s 91 of the Assam Land and Revenue Regulation. In these cases it appears the appeals were presented before the posed of by Mr. K.L. Ray, Additional Deputy Commissioner of the District of Cachar.

It appears from the Gazette Notification No. RR. 19/54/76 dated 3rd September, 1955 that the particular officer Mr. K.L. Ray was authorised to exercise the powers of the Deputy Commissioner under the Assam Land and Revenue Regulation. Section 147(d) of the Regulation provides that an appeal under this Regulation shall lie to the Deputy Commissioner, from orders passed by a Sub-divisional Officer, an Assistant Commissioner, or Extra Assistant Commissioner.

In this case the order appealed against was passed by an Extra Assistant Commissioner and the appeal would lie to the Deputy Commissioner as provided under the above section. Now the question is, whether the learned Additional Deputy Commissioner could exercise the appellate powers of the Deputy

Commissioner by virtue of the Gazette notification alone in the absence of any rule or provision which allows transfer of such a power enjoyed by the Deputy Commissioner to any other subordinate officer. Mr. Lahiri, the learned Advocate General appealing in support of the State Government has drawn our attention to Sections 123, 126, 127 and 128 of the Assam Land and Revenue Regulation. Section 123 of the Regulation provides that every Commissioner of a Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioner shall be Revenue-officer for the purposes of this Regulation. Section 126 lays down more particularly the powers of a Sub-divisional Officer and it provides that a Sub-divisional Officer shall, in addition to any other powers conferred on him by or under this Regulation, have the powers of a Deputy Commissioner in respect of certain matters which are laid down in Sub-sections 1(a) to 1(e) of that section. They have no reference to the appellate powers of the Deputy Commissioner u/s 147. Sub-section (2) of Section 126 provides that the Provincial Government may confer on any Sub-divisional Officer all or any of the other powers of a Deputy Commissioner under this Regulation, which apparently refers to powers not covered by Sub-sections 1(a) to 1(e) of that section. The learned Advocate General''s contention is that Sub-section (2) of Section 126 would validate conferment on the Sub-divisional Officer of the appellate powers exercisable by the Deputy Commissioner u/s 147(d) of the Assam Land and Revenue Regulation. He then argues that since this power of the Deputy Commissioner could be conferred upon a Sub-divisional Officer, the same power could be conferred u/s 127 on an Additional Deputy Commissioner also, who continues in spite of his higher rank to be an Extra Assistant Commissioner who is not in charge of a Sub-Division, as is referred to in that section. On a perusal of Section 127 however, we are not satisfied that this contention is correct, since in our opinion this section refers to conferment of minor powers and not the appellate power u/s 147(d), which might be conferred in suitable cases on some of the Sub-divisional Officers u/s 126(2) of the Regulation. Section 127 runs as follows:

127. The Provincial Government may confer upon Assistant Commissioners and Extra Assistant Commissioners not in charge of sub-divisions of districts all or any of the powers conferred by or under this Regulation on Sub-divisional Officers in such cases or classes of cases as the Deputy Commissioner of the District may, from time to time, refer to them for disposal.

It speaks of some powers of a Sub-divisional Officer being conferred by the Provincial Government upon Extra Assistant Commissioners not in charge of a Sub-division and in reference "to such cases or such class of cases as the Deputy Commissioner of the District from time to time may refer to them for disposal. This obviously shows that the section has a restricted operation and the power of the Sub-divisional Officer may be given only where the Deputy Commissioner refers certain cases or class of cases for disposal to these Extra Assistant Commissioners who are not Sub-divisional Officers in reference to those cases only.

Further, it cannot be said that the appellate powers coming within Section 147(d) would come automatically to a Sub-divisional Officer u/s 126, or to an Extra Assistant Commissioner u/s 127, because it is not a power ''conferred'' under this Regulation on the Sub-divisional Officer. What powers could be conferred u/s 126(2) to cover certain emergency or in consideration of certain circumstances, cannot be said to be a power conferred under the Regulation on the Sub-divisional Officer.

Therefore in our opinion Section 127 is not of much assistance in the matter of empowering the Additional Deputy Commissioner with the powers of the Deputy Commissioner under this Regulation. Section 128(1) would have been really of assistance provided we could find that there was some other empowering section by which the Provincial Government could have conferred the powers of the Deputy Commissioner enjoyed u/s 147(d) on some other Revenue Officer. Section 128(1) says that all Revenue Officers in a district shall be subordinate to the Deputy Commissioner and shall exercise all powers conferred on them by or under this Regulation subject to his control.

Here the word ''conferred'' must be taken to be conferred by the State Government after proper notification and the entrustment of the powers of the Deputy Commissioner to the Additional Deputy Commissioner in this case would have been correct and he might have exercised those powers, provided the Provincial Government could have conferred such power on an Additional Deputy Commissioner. As we have already indicated there being no order empowering section, we cannot hold that the Additional Deputy Commissioner could exercise such powers of the appellate court as indicated above because of the Government notification alone, - since the notification is without any legal sanction.

It is of course a fact that in practice the Additional Deputy Commissioners have been exercising for long the appellate powers of the Deputy Commissioner, but the attention of the court was not drawn-so long to this defect in procedure and we must therefore hold though reluctantly, that this practice has no sanction in law. The Additional Deputy Commissioner unless empowered by certain provision of the Regulation itself or by rules framed thereunder, cannot exercise the powers of the Deputy Commissioner even though sought to be so empowered by the State Government.

We must therefore hold that these appeals though presented in proper court were not disposed of by proper authorities as contemplated under the Assam Land and Revenue Regulation.

2. The other branch of Mr. Lahiri''s argument was that the word "Deputy Commissioner" would also include an "Additional Deputy Commissioner" and he would be a Revenue Officer coming within Section 123 and he would enjoy the powers of the Deputy Commissioner as conferred by the State Government. The obvious difficulty in accepting this argument is that there is no mention of any

Additional Deputy Commissioner in Section 123, though there is a reference to Commissioner of Division, Deputy Commissioner, Assistant Commissioner and Extra Assistant Commissioners and Section 147 also speaks of "the Deputy Commissioner" who enjoys the appellate powers as provided Section 147(d).

The Assam General Clauses Act defines the "Deputy Commissioner" as the chief officer in charge of the general administration of a district and there is no mention of an Additional Deputy Commissioner. What more, the Government notification conferring upon the Additional Deputy Commissioner the powers of the Deputy Commissioner under the Assam Land and Revenue Regulation would indicate that the position of the Additional Deputy Commissioner is not considered to be identical with that of the Deputy Commissioner who requires no conferment of powers separately.

Further, we do not know what would be his status vis-a-vis the Deputy Commissioner for the purpose of Section 128 of the Assam Land and Revenue Regulation. Therefore we find it difficult to accept the contention that an Additional Deputy Commissioner would come within the category of a Deputy Commissioner within the scope of this Regulation. In the above view we hold that the Additional Deputy Commissioner had no power to hear or dispose of the appeals and his'' orders must be set aside and the appeals remanded to the Deputy Commissioner for hearing of the appeals according to law.

3. Another point that arises in this case is whether Mr. S.C. Bhattacharjee could exercise the powers u/s 91 of the Assam Land and Revenue Regulation for putting up the properties to sale for arrears of Income Tax dues. In this contention raised on behalf of the Appellant, there is not much substance, since the Extra Assistant Commissioner is a Revenue Officer u/s 123 of the Assam Land and Revenue Regulation and ho could exercise such powers as may be conferred on him under the Regulation, subject to the control of the Deputy Commissioner as provided u/s 128(1) of the Regulation.

There was no other irregularity of procedure, since a notice of demand had been properly issued as contemplated u/s 68 of the Assam Land and Revenue Regulation. From the entries in the Civil List it appears that this officer was entrusted with the power u/s 91 and other allied sections whereby he was competent to put up the property to sale u/s 91 of the Regulation. We must presume that there must have been corresponding Gazette notification as to the entrustment of this power to the officer concerned.

We must hold accordingly that the Bakijai Officer had necessary jurisdiction for putting up the property to sale u/s 91 of the Regulation. We must therefore dismiss that contention as unsound oven though the appeal is sent down for rehearing. We however, do not propose to discuss or deal with other contentions raised by Mr. N.M. Lahiri on be half of the Appellant. We direct that the appeals will now go back to the Deputy Commissioner for hearing on merits. The appeals are allowed to this extent and the same judgment will cover both the appeals.

G. Mehrotra, J.

4. I agree.

