

(1955) 08 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 71 of 1954

Garganarayan Barman

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 23-08-1955

Acts Referred:

Assam Land Revenue Settlement Rules — Rule 64
Assam Municipal Act, 1923 — Section 328, 329, 330(3)
Assam Rural Panchayat (Amendment) Act, 1952 — Section 3
Assam Rural Panchayat Act, 1948 — Section 1(2), 1(3), 135, 16, 3
Constitution of India, 1950 — Article 226
Land Revenue Re-assessment Act — Section 3

Citation : AIR 1958 Guw 20

Hon'ble Judges : Sarjoo Prasad, C.J.; Ram Labhaya, J

Bench : Division Bench

Advocate : M.G. Pathak, for the Appellant; D.N. Medhi, Sr. Government Advocate, for the Respondent

Judgement

Sarjoo Prasad, C.J.—In this application the Petitioner has prayed for a writ of mandamus directing cancellation of a notice issued by the State of Assam under the Assam Rural Panchayat Act 1948 and also for a writ of quo warranto against the Respondent No. 4 preventing him from functioning as the President of the Uttar Bajali Mauza Rural Panchayat.

2. The Petitioner is a voter in the Uttar Bajali Mauza Rural Panchayat and he was elected a member to the aforesaid Panchayat by the Nityananda Primary Panchayat in the said Mauza. This Uttar Bajali Mauza Rural Panchayat was constituted under Government notification dated the 10th March, 1953 in exercise of the powers conferred by Section 3 of the Assam Rural Panchayat Act 1948 (Assam Act XXVII of 1948). The Panchayat in question comprised of 20 villages, one of the villages specified in the notification being "Pathsala town." In pursuance of the said notification the Sub-Divisional Officer of Barpeta issued another notification dated 24th March, 1953 by which he declared the format on

of five Primary Panchayats in the Uttar Bajali Mauza Rural Panchayat in exercise of the powers confirmed by Section 4(1) and (2) of the Act in question as amended by Section 3 of the Assam Act XVII of 1952.

Those five Primary Panchayats are: Nityananda, Barsaderi, Barbang, Pathsala Bazar and Bamakhata, the Petitioner being elected members, as already stated, to the Nityananda Primary Panchayat. Section 16 of the Act provides for election of members from the Primary to the Rural Panchayat, and under the aforesaid provision four members were elected to the Rural Panchayat by the Pathsala Bazar Primary Panchayat. A meeting of the Rural Panchayat then took place on the 10th November, 1953 for the election of its President and Vice-President and at that meeting objections were raised by some of the members including the Petitioner to the effect that the members from the Pathsala Bazar Primary Panchayat were not duly elected and they were not entitled to participate in the election of the office bearers.

Those objections do not appear to have been taken notice of in the meeting, and the objecting members therefore left the meeting; and in their absence the Petitioner No. 4 was elected as the President of the said Rural Panchayat. Subsequently, it is alleged, there was a petition presented to the Minister in charge of Rural Development by the public and copies thereof were sent to the Director of Rural Development and some other authorities against the inclusion of Pathsala Town in the Uttar Bajali Mauza Rural Panchayat. It was stated in the petition that the provisions of the Assam Rural Panchayat Act could not be applied to the "Pathsala town" and therefore that area could not be included in the Panchayat in question. These representations did not meet with any success with the result that the Petitioner had to present this application praying for the writs aforesaid.

3. The main ground of the Petitioner is that the Assam Rural Panchayat Act had no application to a town area and consequently the "Pathsala town" area could not be included as one of the units of the Rural Panchayat; and the Government notification to that effect therefore was illegal and should be cancelled and so also was the action taken by the Sub-Divisional Officer, Barpeta in constituting the Primary Panchayats in the said area. The answer to the contention raised depends upon the interpretation of Section 1(2) of the said Act. The said Sub-section (2) runs thus:

Subject to the provisions of Sub-section (3), it shall extend to the whole of the Province of Assam except any area which has been or hereafter may be constituted a Municipality under the provisions of the Assam Municipal Act, 1923 or any other Municipal Act, or any Cantonment Area under the provisions of the Cantonments Act, 1924 or any other Act, or any area which has been or may hereafter be declared as or included in a Municipality, or as a town area provided that this Act shall not be deemed to extend to any area in the possession of an individual or firm engaged in any industrial enterprise, or in special cultivation as covered by Section II of Chap. I of the Settlement Rules framed under the Assam

Land and Revenue Regulation, 1886, when such enterprise or special cultivation is governed by factory, labour or similar legislation.

Pathsala town is admittedly not an area which has been constituted a municipality under the provisions of the Municipal Act 1923 or any other Municipal Act. But the contention of the Petitioner is that it is a "town area" and as such the operation of the Act is excluded from the area in question. We have, therefore, to examine the imports of the words "town area" and whether, if at all, the "Pathsala town" would fall in the category of a "town area". The words "town area" has not been defined in the Act itself; but Mr. Pathak on behalf of the Petitioner contends that the word is synonymous with the expression "town land"; and if it could be proved that the Pathsala town was "town land", then the Act could not be extended to this area at all.

He relies for that purpose upon a notification issued in 1926 under the Assam Land and Revenue Regulation which declares Pathsala town as "town land" within the meaning of the Land and Revenue Regulation. To understand the meaning of the expression "town land", we may refer to Rule 64 of the Rules framed under the Regulation. The above rule falls u/s IV of the Rules and is headed "Town Lands", the sub-heading being "Grant of leases and settlement of land-revenue in respect of Town Lands". "Town land" has been defined in Rule 64(a) thus:

In this Section of the Rules, unless there is anything repugnant in the subject or context "town land" means any land within an area declared or deemed to be declared to be a municipality, or notified area under the Municipal Act 1923 (Assam Act I of 1923) and any other land which the Provincial Government may declare in accordance with the provision of Section 3 of the Land Revenue Re-assessment Act (Assam Act VIII of 1936) to be town land.

The word "town land", therefore under this rule denotes three categories of land (i) A Municipality; (ii) A notified area under the Assam Municipal Act, and (iii) Any other land which the Provincial Government has declared under the provisions of Section 3 of the Land Revenue Re-assessment Act to be "town land".

4. That the land in question does not fall under the first category is not disputed. But the contention of the learned Counsel is that it may fall under the second and the third categories. Now, so far as the second category is concerned, it refers to an area notified under the Assam Municipal Act. Reference in this connection may be made to Section 328 of the Assam Municipal Act which provides amongst others that the State Government may by notification, signify its intention to declare that with respect to some or all of the matters upon which a municipal fund may be expended, improved arrangements are required within a specified area, which, nevertheless, it is not expedient to constitute as a municipality.

Such an area therefore is considered a "notified area" within the meaning of the

Municipal Act for the purposes specified. In regard to such an area the law provides for establishing a committee for the purpose of imposing taxes and regulating expenditure etc. of the proceeds thereof. This notified area though not a municipality for all purposes, is for certain purposes notified by the Government treated as a municipality and it is open to Government under Sub-section (3) of Section 330 of the Municipal Act to extend such provisions of the Municipal Act to that area as may be considered desirable.

This notified area, therefore, though something distinct from a municipality is for certain purposes regarded as a municipality with reference to the provisions which have been extended to it. A notified area of this character is governed by a town committee established for the purposes within the provisions of Section 329 of the Municipal Act. It is not the case of the Petitioner that there is any town committee in respect of this area, or that the area in question is governed by the provisions of Section 328 of the Municipal Act or was notified as such by Government. It is, therefore, obvious that the Pathsala town does not fall in either of the first two categories.

5. Then so far as the last category of land is concerned, we may refer to Section 3 of the Land Revenue Re-assessment Act (Act VIII of 1936) under which it appears that Pathsala was notified as a town and. The Provincial Government may at any time, by notification, signify its intention to declare any specified area which is not already town land to be town land for the Purposes of this Act, and "town land" has been defined in Section 2(xi) of the Land Revenue Re-assessment Act. The definition given in the Act is on the same lines as the definition contained in Rule 64 of the Rules discussed above.

From the notification therefore it is clear that this area was declared to be a town land in 1926 under the provisions of the Assam Land and Revenue Regulation, and it was only for the purposes of re-assessment of revenue that this land was declared to be town land. The expression "town land", in my opinion, is therefore something quite distinct from the words "town area" as used in the Rural Panchayat Act; and although the words "town area" or "notified area" have not been definitely used therein, it seems to be fairly obvious that the intention of the law was to exclude the operation of the Act from any area which was constituted a town area or a notified area within the meaning of the Municipal Act.

In other words, if an area was controlled by a town committee then to such an area the Panchayat Act could not be extended. But it does not appear that the intention of the Legislature was to deny the benefits of its operation to lands which had been for the purposes of reassessment declared to be town lands within the meaning of the Assam Land and Revenue Re-assessment Act. As I have said, it is not the case of the Petitioner here that there was any notification by the Government constituting this land into a municipality or notifying this land u/s 328 of the Municipal Act for certain purposes as a municipality to be governed by a town committee. The contention of the learned Counsel therefore

cannot be sustained.

6. It is quite obvious from what I have said above that in respect of this land the Panchayat Act did apply and its operation was not excluded by virtue of Sub-section (2) of Section 1 of the Act; and that being so, there was a valid notification issued by the State Government including this area also as a constituent unit of the Rural Panchayat formed under the said notification. The other notification issued by the Sub-Divisional Magistrate constituting the Primary Panchayats is therefore also in order.

7. Mr. Medhi on behalf of the State Government further points out that u/s 135 of the Act the matter was referred to Government and the matter was decided against the contention of the Petitioner. Therefore, that decision is final on the point and cannot be questioned before this Court. Section 135 of the Rural Panchayat Act provides inter alia that if in establishing a Primary panchayat, a Panchayat or a Panchayat Adalat or Union Panchayat or in the working of such Panchayats or Adalat any dispute or difficulty arises regarding, the interpretation of any provision of this Act or any rule or bye-law made thereunder or any matter arising out of or relating to such interpretation, or any matter not provided in this Act, the same shall be referred to the Provincial Government whose decision thereon shall be final.

The section of course gives very wide powers to the Provincial Government so far as the interpretation of the Act goes. In fact it goes even further as it concedes power of final adjudication even in regard to matters not provided in the Act. It is fairly obvious that the said provision of the Act cannot affect the powers of this Court to deal with any such question in an appropriate application under Article 226 of the Constitution. It is, however, not necessary for us to determine this question at this stage, because I have already held that on the main contention, the Petitioner's application cannot stand.

8. The application, therefore fails and must be rejected. In the circumstances of the case we make no order as to costs.

Ram Labhaya, J.

9. I agree.