(1952) 08 GAU CK 0010

In the Gauhati High Court

Case No : Revenue Appeal No. 8 of 1952

Himangshu Sekhar Purkayastha APPELLANT

Vs

The State of Assam RESPONDENT

Date of Decision : 07-08-1952

Acts Referred:

Assam Forest Regulations, 1891 — Section 75
Assam Land and Revenue Regulation, 1886 — Section 147, 94

Citation : AIR 1953 Guw 55

Hon'ble Judges : Haliram Deka, J

Bench : Single Bench

Advocate : K.P. Bhattacharjee, for the Appellant; R.K. Goswami, Jr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Deka, J.—This is an appeal u/s 147 of the Assam Land and Revenue Regulation challenging the order of the Deputy Commissioner, Nowgong, dated 11-12-51, whereby he ruled out an objection raised by the appellant to the realisation of a certain amount from him as arrears of land revenue on a requisition made by the Divisional Forest Officer, Nowgong.

2. The facts leading to this appeal put shortly are as follows: The appellant entered into a certain contract for supply of bamboos to the M. E. S. Camp at Nowgong and submitted a bill for Rs. 6,240/- but before the bill reached the M. E. S. authorities, the appellant received by way of accommodation Rs. 3,200/- from the Divisional Forest Officer, Nowgong, by executing an indemnity bond on 22-12-45 the relevant portion of which runs as follows: "I do hereby declare that I shall refund to the Divisional Forest Officer, Nowgong Forest Division if called upon by him to do so Rs. 3,200/- (Rupees three thousand and two hundred only) received by me in payment of bill No. HG/22 dt. 22-12-45."

3. The Divisional Forest Officer, Nowgong Forest Division wrote a letter to the Deputy Commissioner, Nowgong, on 29-5-50 requesting him to realise Rs.

3,200/- from Babu H. S. Purkayastha of Itachali, Nowgong (Assam) u/s 75 of the Assam Forest Regulation as arrears of land revenue. The letter describes in short how the appellant Himangshu Sekhar Purkayastha received the money from the Divisional Forest Officer and that the Government has asked the Divisional Forest Officer to realise the money from the contractor as the military authorities refused to accept the bill as submitted by Purkayastha, and that the contractor has failed to refund the money as he promised and therefore, it had to be realised as money due u/s 75 of the Assam Forest Regulation.

4. On receipt of the letter of request from the Divisional Forest Officer, the Sub-Divisional Officer who acted for the Collector took necessary steps u/s 94 of the Assam Land and Revenue Regulation for realisation of the amount as arrear of land revenue by following the procedure as laid down in Chapter V of the Assam Land and Revenue Regulation. Himangshu Sekhar Purkayastha objected to the realisation of the amount mainly on the ground that the amount covered by the indemnity bond could not be realised as arrear of land revenue as provided u/s 75 of the Assam Forest Regulation. His second objection was that even if this Rs. 3,200/- covered by the indemnity bond be a public demand as described in Section 3(6) of the Bengal Public Demands Recovery Act, 1913 which is applicable to Assam, the proper procedure as provided under that Act was not followed for recovery of the amount and as such, the proceeding before the Sub-Divisional Officer, Nowgong, for realisation of the amount was incompetent. The learned Sub-Divisional Officer overruled the objections. Against that order of the Sub-Divisional Officer, an appeal was preferred in the Court of the Deputy Commissioner, Nowgong, though in my opinion, it will be questionable whether an appeal would be competent inasmuch as both the Sub-Divisional Officer and the Deputy Commissioner exercised concurrent jurisdiction with regard to the realisation of the amount.

However, for the purpose of this appeal, that point is irrelevant inasmuch as the Deputy Commissioner has upheld the order passed by the Sub-Divisional Officer. The same objections were agitated before the Deputy Commissioner and he categorically held that it was not within the jurisdiction of the revenue authorities to enquire as to whether the money requested to be recovered from the contractor by the Divisional Forest Officer was a civil liability or whether it was money due to the Forest Department covered by Section 75 of the Forest Regulation. He held further that the Bengal Public Demands Recovery Act, 1913 had no application to the facts of this case and Section 94 of the Assam Land and Revenue Regulation gives the Collector sufficient jurisdiction to realise the amount at the request of any of the Government Departments as money realisable under any enactment for the time being in force, and the learned Deputy Commissioner has relied in support of his judgment on the decision of this Court--Re: Surma Valley Foodgrain Syndicate, Silchar v. Excess Profits Tax Officer, Dibrugarh AIR 1949 Gau. 54.

5. The same contentions are repeated before me on behalf of the appellant and

they are (1) that the amount alleged to be due from the appellant does not come within Section 75 of the Assam Forest Regulation and (2) that the proceeding u/s 94 of the Assam Land and Revenue Regulation for realisation of the amount without due certificate as contemplated under the Public Demands Recovery Act, is bad in law.

6. I fully agree with the Deputy Commissioner in holding that once an amount is certified by a certain Government Officer to be money due under any particular enactment in force, Section 94 of the Assam Land and Revenue Regulation creates no obligation on the Collector to enquire as to whether the money is so due or not, nor does it give him an option to refuse to start a proceeding for realisation of the amount.

7. Mr. Bhattacharya''s contention has been that the money covered by the indemnity bond is a civil liability and not money due under the Forest Regulation nor in respect of any forest produce and not recoverable as arrears of revenue. This would involve interpretation of Section 75 of the Forest Regulation and a decision on facts which cannot be given without proper materials being placed before the Court. In this view, the learned Deputy Commissioner was quite justified in holding that this is a fit matter where clarification may be sought for from the Civil Court by the appellant if he so desires. Section 94 of the Assam Land and Revenue Regulation is of a limited scope--and gives no right to the revenue court to go into the kind of objection raised by the appellant. The Indemnity bond being admitted, it is a mere technicality whether the money is realised from the appellant as arrears of revenue--or as a decretal amount and I therefore see no reason why the Government should be referred to the Civil Court, as contended by the learned Advocate for the appellant.

8. Mr. Bhattacharya further contended that there is nothing in the Forest Regulation to show that the Divisional Forest Officer was a competent authority to write to the Collector for realisation of the amount from the appellant. He, however, placed nothing before me to show that the officer was not so competent, nor was this objection raised at any earlier stage. Therefore, I must presume that as an official act, it was correctly done and the Divisional Forest Officer was competent to ask for the realisation of the money as the indemnity bond was in his favour and the Provincial Government asked him to realise the money from the contractor. As a result, I hold that this contention on behalf of the appellant has no substance.

9. Mr. Bhattacharya''s other contention is that the Public Demands Recovery Act is applicable to the present case. In my opinion, the Division Bench Ruling as reported in--Surma Valley Foodgrain Syndicate, Silchar v. Excess Profits Tax Officer, Dibrugarh AIR 1949 Gau. 54 is a complete answer to this contention. I cannot accept Mr. Bhattacharya''s contention that the present case is distinguishable. He bases his contention on the ground that Section 46 of the Income Tax Act specifically provides that the Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears

due from an assessee and the Collector on receipt of such certificate shall proceed to recover from such assessee the amounts specified therein as if it were an arrear of land revenue, but in the Forest Regulation there is no corresponding provision authorising any particular officer to write to the Collector for realisation of the money due under the Regulation. From a consideration of the provisions of Section 75 of the Assam Forest Regulation and the provisions of Section 94 of the Assam Land and Revenue Regulation, I find nothing inconsistent or irregular if the Collector takes action u/s 94 on a letter of request from the Forest Officer concerned as in this case. I have already discussed and held that the Divisional Forest Officer was competent to make the request to the Deputy Commissioner concerned, This objection too, is therefore rejected.

10. This is an appeal u/s 147 of the Assam Land and Revenue Regulation and we are concerned only with the legality or otherwise of the proceeding started u/s 94 of the Assam Land and Revenue Regulation. For the reasons stated above, I find no irregularity in the proceeding started by the Sub-Divisional Officer or in the decision given as appellate Court by the Deputy Commissioner and I accordingly uphold the decision of the Deputy Commissioner.

11. The result is that the appeal is dismissed and the stay order is vacated. Let the orders go down along with the second forth with.

12. I make no order as to costs.

