
(1952) 05 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 131 of 1951

Jagat Chandra De

APPELLANT

Vs

Gopalram Das

RESPONDENT

Date of Decision : 26-05-1952

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1952 Guw 166

Hon'ble Judges : T.V. Thadani, C.J.; Ram Labhaya, J; Haliram Deka, J

Bench : Full Bench

Advocate : S.K. Ghose and P. Chaudhuri, for the Appellant; N.M. Dam, for the Respondent

Final Decision : Dismissed

Judgement

Thadani, C.J.—This is a petition under Art. 227 of the Constitution of India directed against an appellate order of the learned Deputy Commissioner of Cachar, dated 20-6-1951, by which he allowed an appeal preferred under S. 9, Assam Adhiars Protection and Regulation Act, 1948. The order of the learned Deputy Commissioner is in these terms:

Heard both parties. Seen Exts. 1 and 2. Ext. 1 is the relevant document here. It is clearly laid down in Ext. 1 that the tenant should pay in kind; in default, he should pay cash equivalent. I have maintained elsewhere that an adhiar must pay only in kind and if there is another stipulation in a kabala by which he is allowed to pay in cash, he cannot be called an adhiar within the meaning of S. 2(1), Assam Adhiars Protection and Regulation Act, 1948. The appeal is, therefore, allowed and the order of the learned lower Court is set aside.

The order of the learned Deputy Commissioner purports to interpret S. 2(1), Assam Adhiars Protection and Regulation Act, 1948 with reference to an agreement which it is alleged is protected by the Act. The learned Deputy Commissioner is of the view that when a person by a document stipulates to

deliver a quantity of the crop, but in default stipulates to pay a specified sum of money, the document cannot be regarded as an agreement under the Assam Adhiars Protection and Regulation Act, 1948. The view of the learned Deputy Commissioner is based upon the construction of Exts. 1 and 2. The learned Deputy Commissioner has set out the material parts of the agreement in doing which he has shown that he has applied his mind to the question for his determination.

2. this Court had occasion to express its view in a case reported in 1951 Assam 106 on the scope of Art. 227 of the Constitution of India. It was observed:

Speaking generally, this power of superintendence places at the disposal of the High Court an extraordinary reserve of power in order that there should be no species of injustice which the High Court may not be able to cure. Since the jurisdiction is extraordinary, it should not serve ordinarily as a substitute for revisional jurisdiction in cases where the revisional jurisdiction has been taken away from the High Court by a competent Legislature, though even in such cases absence, excess or abuse of jurisdiction will no doubt justify interference.

In this case, far from there being absence, excess or abuse of jurisdiction exercised by the learned Deputy Commissioner in the matter of the disposal of the appeal preferred under S. 9, Assam Adhiars Protection and Regulation Act, 1948, he has given certain reasons for coming to the conclusion that Exts. 1 and 2 do not constitute an agreement within the meaning of S. 2 of the Act. Whether the reasons are right or wrong, is not a matter which we can consider in the exercise of our extraordinary jurisdiction under Art. 227 of the Constitution of India--specially when the Assam Adhiars Protection and Regulation Act does not provide for a remedy by way of revision. The final remedy is by way of an appeal under the Act.

3. The result is that the petition is dismissed with costs. Hearing fee is assessed at Rs. 16.

Ram Labhaya, J.

4. I agree.

H. Deka, J.

5. I agree.