

(1990) 07 GAU CK 0028

In the Gauhati High Court

Case No : Second Appeal No. 94 of 1981

Jibeswar Chakravorty

APPELLANT

Vs

Kushbswar Borah @ Durga Borah and Ors.

RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Chapter 10, Chapter 10, 162(2), 162(2)

Citation : (1990) 2 GLJ 166 : (1991) 1 GLR 167

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : D.Sharma, D.N.Choudhary, C.Sharma, R.Chakraborty, S.N.Bhuyan, H.N.Sharma, Advocates appearing for Parties

Judgement

1. This appeal is from the decree of the Additional District Judge, Gauhati passed in Title Appeal No. 9 of 1978 affirming the decree of the Assistant District Judge (2) Gauhati passed in Title Suit No. I of 1976 (10 of 1972).

2. Facts, The plaintiff Jibeswar filed the suit for declaration of title and possession of the suit land described in Schedule B to the plaint. The suit land is part of the land description of which is given in ScheduleA to the plaint. The land described in ScheduleA originally belonged to Ahina Mikir (defendant 2). Ahina Mikir sold the land described in Schedule A to Gulam Ambia (defendant3) under two different sale deeds dated 26.9.61 and 30.1.64. Thereafter, out of the land described in Schedule A, Golam Ambia sold a portion of it to Jogendra Nath Kakati (defendant 4) and Upendra Nath Kakati (defendant 5) under registered deed dated 7.2.64 and as regards the remaining portion of it viz, suit land, under an agreement between plaintiff Jibeswar and Gulam Ambia to sell the suit land to the plaintiff the plaintiff took possession of the suit land and Golam Ambia executed two sale deeds dated 1.5.67 and 1.11.71. But, on 15.12.63 Kosheswar Borah (defendint 1) forcibly trespassed upon the land described in Schedule A. A proceeding under section 145 was initiated and the land was put under attachment. The Magistrate declared the possession in favour of Kasheswar

Borah (defendant 1) by an order dated 2.8.71.

The trial Court dismissed the suit. The decree was appealed to the lower appellate Court. The lower appellate Court dismissed the appeal. The Courts below have held that the disputed land lies within the tribal belt and, therefore, Ahina Mikir could not sell the land to Golam Ambi in view of Chapter X of the Assam Land and Revenue Regulation 1886, for short the ""Regulation"" and, therefore, the transfer in favour of the plaintiff was illegal and he could not claim the suit land. Hence this appeal.

3. Mr. Bhuyan, the learned counsel for the appellant, has contended that subsection (2) of section 162 under Chapter X shall have prospective operation. Therefore, the transaction which took place before section 162(2) came into force cannot be affected. Mr. D. N. Choudhury, learned counsel for the respondents, has submitted that subsection (2) of section 162 is a declaratory statute and it shall be construed to have retrospective operation.

4. The question which therefore arises for consideration is whether section 162(2) of the Regulation shall be construed to have retrospective operation.

5. Chapter X of the Regulation deals with the "protection of backward classes." Sections 160 to 171 are under Chapter X. Under sub section (I) of section 160, the State Government may adopt such measures as it deems fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance. Subsection (2) of section 160 further provides that the State Government may, by notification in the Official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid. Section 161 provides that the protective measures may include the constitution of compact areas, in regions predominantly peopled by the classes of people notified under the provisions of subsection (2) of section 160, into belts or blocks. The boundaries of the areas so constituted shall as far as possible coincide with mauza boundaries or be otherwise easily distinguishable. Under subsection (1) of section 162 the State Government may, by notification in the Official Gazette, direct that the provisions of Chapter X shall apply to the areas, or any of the areas, constituted into belts or blocks under the provisions of section 161. On such application, the disposal of the land by lease for ordinary cultivation, the nature and extent of rights conveyed by annual or periodic leases, the termination or forfeiture of such rights in the land, etc. shall so far as possible, be governed by the provisions of Chapter X and the rules made thereunder. Under section 171, the State Government may, by a notification in the Official Gazette, make rules for purpose of carrying out the provisions of Chapter X.

6. It is not disputed that defendant 2 Ahina Mikir belongs to the class of the people specified under Chapter X, and not defendant 3 Golam Arabia. It is also

not disputed that the belt or block where the land in dispute is situated is within the tribal belt constituted under Chapter X in the year 1950, although Chapter X ceased to apply in that area from 1969.

7. Rule 1 of the Rules framed under section 171 provides that the disposal of the land within the tribal belts or blocks constituted under Chapter X shall be made in accordance with the provisions of the Rules. Settlement of waste land shall be made only with the classes of people, notified under section 160(2) and specified in section 163(2) of the Regulation. Rule 9 of the Rules provides that a landholder may transfer or sublet his holding or any part of it within the belts or blocks only to persons belonging to the classes of people notified under section 16" (2) or those mentioned in section 163(2) (a) (b) and (c). If any transfer is made in contravention of Rule 9, the lease shall be cancelled forthwith and the holder will forfeit his right and status in respect of the land so transferred.

8. By the Assam Land and Revenue Regulation (Amendment) Act, 1964, for short the "Amending Act", subsection () and (3) were inserted in section 162. It is not disputed that the amendment came into force with effect from 1.11.64. Subsection (2) of section 162 runs :

"Notwithstanding any thing to the contrary in any law, usage, contract or agreement no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of subsection (1),"

Subsection (3) of section 16, provides :

"From and after the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1964 no document evidencing any transaction for acquisition or possession of any land by way of transfer, exchange, lease, agreement or settlement shall be registered under the Indian Registration Act, 1908 if it appears to the registering authority that the transaction has been affected in contravention of the provisions of subsection (2)."

9. The object and reason for enactment of the Amending Act are as follows :

"Transfer of land within the Tribal Belt"; and Blocks by Tribals and other Backward Classes to nontribals who are not eligible to acquire land therein is restricted under Rule 9 of the Rules framed under section 171 of Chapter X of the Assam Land and Revenue Regulation. But there is no restriction in the matter of registration of sale deeds in respect of such irregular transfer of land. In view of this, restriction imposed under Chapter X of the Regulation has in practice, become less effective. It is therefore, considered necessary that registration of such transfers of land within Tribal Belts and Blocks should be prohibited by provisions of law by an amendment of Chapter X of the Assam Land and Revenue Regulation. Hence the Bill." The object and reason quoted above indicate the background of the Act.

10. Coming to the question whether section 162 (2) shall be construed to have

retrospective operation, it will be helpful to refer the decision of the Supreme Court in *Mithilesh Kumari vs. Prem Behari Khare*, AIR 1989 SC 1247. In that case, the Supreme Court has, while dealing with the provisions of the Benami Transactions (Prohibition) Act, 1988, held that a retrospective operation is not to be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively the Court has to be satisfied that the statute is in fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively would prejudicially affect vested right or the illegality of the past transactions, or impair contracts, or impose new duty or attach new disability in respect of past transactions or considerations already passed. The presumption against retrospectivity may in such cases be rebutted by necessary implication from the language employed in the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. When an act is declaratory in nature the presumption against retrospectivity is not applicable. Acts of this kind only declares.

11. Keeping the above principle in view let me now examine the case on hand. Subsection (2) of section 162 declares that no person shall acquire or possess by transfer, exchange, lease, agreement or settlement of any land in any area or areas constituted into belts or blocks in contravention of Chapter X or rules framed thereunder. Subsection (2) only declares. Therefore, in view of the decision of the Supreme Court referred to above, the presumption against retrospectivity shall not be applicable. Let me further examine if subsection (2) takes away vested right. Rule 1 prohibits settlement of waste land to the person other than the classes of people notified under section 160 (2) and specified in section 163 (2). Rule 9 further prohibits transfer of land to any person other than the person belonging to the classes of people notified under Chapter X. If there is any transfer in contravention of Rule 9, the periodical lease or patta shall be cancelled and the right and status of the land holder will be forfeited. Therefore, Rule 9 is a disabling provision for nullifying transfer existing before the Amending Act came into force. Under these circumstances, no question arises for taking away vested right by section 162 (2).

12. Considering the background of the Amending Act, the declaratory nature of subsection (2) and absence of taking away vested right, I am of the view that a retrospective operation is to be given to subsection (2) of section 162.

13. Mr. Bhuyan, the learned counsel for the appellant, has contended that in terms of Rule 9, the periodic lease or patta involved in the suit has not been cancelled and the right and the status of the landlord have also not been forfeited. Therefore, the right of Golam Ambii or the plaintiff still subsists. Although the patta has not been cancelled or the right and status of the landholder have not been forfeited, it would make no difference in the present

case as Rule 9 prohibits the transfer.

14. Mr. Bhuyan has further contended that Chapter X ceased to apply in that area from 1969 and one of the transaction was of the year 1971. Therefore, the right of the plaintiff in the whole of land or a part of it which was transferred in the year 1971, cannot be affected.

15. The question which therefore arises for consideration is what would be effect of the declaration of the State Government that the application of the provisions of Chapter X. shall cease to apply in that particular area from the year 1969. The notification for application of Chapter X was in force when the transaction between Ahiaa Mikir and Golam Arabia was made. The transaction being invalid and void, the fact that the Chapter X ceased to apply in that particular area will make no difference as it could not have the effect of rendering an invalid and void transaction as a valid and binding transaction (see *Ramkrishto vs. Dhankrishto*, AIR 1969 SC 204). In this view of the matter, the invalid transaction between Ahina Mikir and Golam Abmia cannqt be made valid today.

16. For the reasons stated, Golam Arabia or his transferee, the plaintiff, has no right, title to the suit land. In the result, the appeal fails and is dismissed. No costs.