
(1951) 11 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 119 of 1951

Joges Chandra Pal

APPELLANT

Vs

Budhram Lohar

RESPONDENT

Date of Decision : 13-11-1951

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1953 Guw 103

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

Bench : Division Bench

Advocate : P. Chaudhuri, for the Appellant; J.C. Medhi, for the Respondent

Final Decision : Dismissed

Judgement

Thadani, C.J.—This is an application made under Article 227 of the Constitution of India inviting our powers of supervision in respect of an order dated 30-6-51, passed by the learned Deputy Commissioner, Cachar, upon an appeal from an order passed by the learned Extra Assistant Commissioner of Cachar on 16-4-51. The order dated 16th April 1951 arose out of an order dated 2-3-1951 passed by the same E. A. C.

2. The main ground upon which our supervision is sought is that the learned Deputy Commissioner had no jurisdiction to set aside the order dated 2-3-51 when no appeal was preferred from that order, the appeal having been preferred against the order of the learned E. A. C. dated 16-4-51.

3. The proceedings in question were brought under the Assam Adhjar Protection and Regulation Act, 1948 (Act 12 of 1948) at the instance of the landlord u/s 5 of the Act. In due course the landlord applicant obtained an order which may be likened to a decree on 2nd March 1951; subsequently, he obtained another ex parts order on 16-4-51.

4. The learned D. C. apparently entertained the appeal in respect of both the orders although no appeal had been filed from the order dated 2-3-51 by reason

of the second ground taken in the memorandum of appeal, namely that the appellant did not receive any summons before the order was passed ex parte in the case. It is true that the second ground on the face of it refers to the order dated 16-4-51, but the learned D. C. apparently did not regard it so, for, he refers to the provisions of Section 5 and Art, 164, Limitation Act. Apart from the learned D. C.'s reference to Article 164, the learned D. C. has referred to the circumstances in which the order dated 2nd March 1951 was passed by the E. A. C. From the contents of the order passed by the learned D. C., we think that he treated the memorandum of appeal not only as an appeal against the order dated 10th April 1951, but also as an appeal against the order dated 2nd March 1951.

5. It is to be remarked that we are invited to exercise our powers of supervision under Article 227 of the Constitution of India, powers which we think ought to be exercised in exceptional cases. We do not think that this is a fit case which calls for our supervision in the matter of the order of the D. C. dated 30th June 1951. Manifestly substantial justice has been done. The learned D. C., for quite proper reasons, came to the conclusion that it was not proved that the Adhinar respondent was served with a summons in the case. In these circumstances, manifestly the order passed by the E. A. C. cannot be sustained.

6. The result is that the petition is dismissed. We make no order as to costs. The Rule is discharged.

Deka J.

7. I agree.