(1951) 12 GAU CK 0005

In the Gauhati High Court

Case No : Revenue Appeal No. 65 (M) of 1951

Keshab Prosad APPELLANT

Vs

Gamiri Kharai Chaiduar Fishermen Society Ltd. RESPONDENT

Date of Decision : 06-12-1951

Acts Referred:
Constitution of India, 1950 — Article 299

Citation : AIR 1952 Guw 76

Hon'ble Judges : Haliram Deka, J

Bench : Single Bench

Advocate : S.K. Ghose and J.C. Medhi, for the Appellant; D.N. Medhi, Govt. Advocate and J.C. Chaudhury for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

Deka, J.—This is an appeal against an order of settlement of a fishery with the respondents by cancelling the settlement with the appellant by the Deputy Commissioner of Darrang on the basis of a certain order passed by the Government of Assam with respect to the settlement of the fishery. Facts are practically admitted,--the main question is whether an appeal is competent against that order.

2. The facts leading to this appeal are as follows.

3. The Government of Assam by its letter dated 1-2-1951 asked the Deputy Commissioner, Darrang to put the Chaiduar Brahmaputra Fishery to public auction and then to submit the bid list to the Government with his recommendations for the purpose of direct settlement under R. 190 A of the Executive Instructions, chap. X of Part VI, Assam Land Revenue Manual. The Deputy Commissioner accordingly submitted his report dated 26 2-1951 recommending settlement with the appellant who was the highest bidder in the auction. The Government accepted the recommendations of the Deputy Commissioner and by its letter dated 17-3-1951 sanctioned under R. 190A the

settlement of the fishery with the appellant for a period of three years from 1-4-1951 at an annual revenue of Rs. 17,700 on usual terms and conditions. The Deputy Commissioner in pursuance of the said Government order, issued a letter to the appellant dated 21-3-1951 intimating that the Government had allowed settlement of the fishery in his favour and he was called upon to deposit one fourth of the purchase money on 28-3-1951. On 22-3-1951 the Deputy Commissioner received a telegram from the Revenue Secretary dated 21-3-1951 staying delivery of possession of the fishery to the appellant ''pending further orders of the Government on revision petition since filed.''

It appears from a certified copy filed in this Court that the respondents moved the Government against the order of settlement of the fishery by a petition dated 21-3-1951. This revision petition was presumably heard by the Hon''ble Revenue Minister in presence of the parties and the Government by its letter dated 13-4-1951 vacated its order of settlement of the fishery dated 17-3-1951 in favour of the appellant and directed the settlement of the fishery for the year 1951-52 with the respondents

the Gamiri Kharai Chaiduar Fishermen Society Ltd. -- at Rs. 17,700 minus 10% rebate concession, subject to the condition that they will have to fish themselves.

The Deputy Commissioner, Darrang, acting on this letter cancelled the previous settlement entry in the Fishery Settlement Register in favour of the appellant and directed the respondents to accept settlement on the terms indicated in the Government letter of 13-4-1951. Against this action of the Deputy Commissioner, Darrang, the appellant has come up in appeal.

4. It has been contended on behalf of the appellant that the settlement of the fishery being completed under Government''s order dated 17-3-1951,--there was nothing left over for fresh settlement with the respondents either by the Government or by the Deputy Commissioner and that the order of cancellation of the settlement with the appellant was not provided for under the Assam Land and Revenue Regulation or by the rules framed thereunder for settlement of fisheries.

5. The learned Government Advocate appearing to support the Government order of settlement of the fishery with the respondents, urges that the Government had the absolute right of settlement with anybody it chose in exercise of its executive function and this Court has no jurisdiction to question the validity of the Government''s order or the settlement based thereon.

6. Mr. J.C. Chaudhury, Advocate appearing on behalf of respondent 3 the Gamiri Kharai Chaiduar Fishermen Society Ltd. urges that the appeal being one under R. 190 of Chap. X of Part VI of the Assam Land Revenue Manual,--it is confined only to the settlement made under orders of the Deputy Commissioner or the S. D. O. and not to a settlement made by the Government, as in this case.

7. Mr. Ghose for the appellant has relied on a decision of this Court reported in

Paharatdin Ahmed v. Bhatti Bargaon Co-operative Fishery Society, ILR (1950) 2 Assam 45 : AIR 1950 Gau 212, wherein it was held that an appeal is competent against the order of settlement of a fishery passed by the S. D. O. in pursuance of a Government order directing settlement with a certain person purporting to act under R. 120A of the settlement of fishery rules or executive instructions which have been adopted as rules framed under Ss. 6, 155 and 156, Assam Land and Revenue Regulation. It was however held in that case that the order passed by the Government could not be interfered with in appeal by this Court, though the order passed by the S. D. O. in pursuance hereof could be set aside and it was so done.

8. Mr. D.N. Medhi, learned Government Advocate relies in support of his contention that the appeal is incompetent, on two other decisions of this Court reported in Nareswar Das v. R. Das, Secretary, Baniakuchi Co-operative Society, ILR (1950) 2 Assam 535 and Chagin Chandra v. Bangal Ram Ijardar, ILR (1951) 3 Assam 112. In both these appeals, my Lord the Chief Justice did not try to decide the question whether an appeal would lie to this Court against an order of direct settlement passed by the Government or purported to be passed by the Government through the agency of the Development Commissioner, but the appeals were dismissed on merits as the sale in both the cases in favour of the appellants did not receive the approval of the Development Commissioner as provided under the rules of settlement for fisheries.

9. With a view to ascertain whether an appeal would lie, we must first examine the wording of R. 190 which runs as follows :

All orders of a Deputy Commissioner or Sub-Divisional Officer passed tinder these rules are appealable to the Revenue Tribunal.

The appeals that lay previously to the Revenue Tribunal now lie to this Court and this Court therefore exercises the function with respect to these appeals as were previously exercised by the Revenue Tribunal for a number of years.

10. The Executive Instructions under chap. X, had been all along respected as rules solely guiding the settlement of fisheries even though they were not rules framed under any of the provisions of the Regulation and now Appendix IV-A has been added to the A.L.R. Regulation with a set of rules duly framed. Rule 6 thereof lays down that

No fisheries shall be settled otherwise than by sale according to the procedure laid down in Chap. X of Part VI of the Assam Land Revenue Manual except with the previous sanction of the Provincial Government.

which means that in case of previous sanction by the Government for settlement of a particular fishery for a particular period, with a particular person,--the public auction for sale as laid down in the rules, need not be held,--and no more. The procedure for settlement is however, one as prescribed under Chap. X, Assam Land Revenue Manual. The Government has no right to direct settlement, not even of suggestion, but only of approval and sanction. This is the view that seems to find favour with the Hon''ble Thadani C.J., in his decision in the case reported in Paharat Din Ahmed v. Bkatti Bangaon Co-operative Fishery Society, ILR (1950) 2 Assam 45.

11. I accept the appellant''s contention that the Government has no other machinery for settlement of a fishery except through the Deputy Commissioner or the Sub-Divisional Officer. What is provided under the rules is that the settlement has to be effected through the Deputy Commissioner or the Sub-Divisional Officer in all cases whether as a result of public auction or on sanction previously obtained from the Government. In this view, the settlement order based on sanction under R. 190A, as in the present case, comes within R. 190 as an appealable order and an appeal is competent to this Court.

12. In this case the settlement had been made by the Deputy Commissioner with the appellant on the basis of the Government''s order passed under R. 190A conveyed by letter dated 17-3-1951. The rules or the Regulation nowhere provided that this settlement is subject to revision even by the Provincial Government--unless of course the settlement is cancelled for laches on the part of the lessee. Here it is admitted that there was no such default or lapses for which the settlement could have been cancelled. A subsequent application by the respondent or any other person, after the order of settlement had been duly passed and communicated could not give the Government jurisdiction to cancel the previous settlement unless provided for by the fishery Rules. I consider the Government''s order dated 13-4-1951 therefore, to be illegal and unjustified under the existing rules for settlement of fisheries and the order of the learned Deputy Commissioner based on the revisional order of the Government is therefore untenable and has to be set aside.

13. I fail to understand the contention made by Mr. D.N. Medhi that the Government has the absolute right to settle a fishery at any time and with anybody as an executive function. The Government is also a juridical person in the eye of law and its actions are fettered or governed by the rules framed under a statute so long they are in the Statute Book. The Assam Land and Revenue Regulation or the fishery settlement rules nowhere provide for revision of an order passed under R. 190A, -- and the Government has no right to pass an order in contravention of the rules.

14. The learned Government Advocate further argued that Art. 299 of the Constitution of India was a bar to the appellant''s asking for fulfilment of a contractual right when the contract was not completed as required under the law. The appellant has not as a matter of fact asked for any remedy for breach of an ''executive contract'' but the appeal is confined only to the validity of the order of cancellation of the settlement of the fishery with the appellant and the settlement thereof with the respondents. This Article of the Constitution has therefore no application to the facts of this case.

15. In the light of the above discussion, I must hold that the settlement of the fishery made with the respondents by cancelling the settlement with the appellant must be set aside and the original order of settlement with the appellant should be restored.

16. The appeal is allowed and parties to bear their own costs. The connected rule is discharged without costs.

