
(1955) 06 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 61 of 1954

Lalthaw Venga

APPELLANT

Vs

Lushai Hills District Council and Another

RESPONDENT

Date of Decision : 21-06-1955

Acts Referred:

Government of India Act, 1935 — Section 92(2)

Citation : (1955) 06 GAU CK 0007

Hon'ble Judges : Sarjoo Prosad, C.J.;Deka, J

Bench : Division Bench

Advocate : F.A. Ahmed, B.M. Goswami and H. Goswami, for the Appellant; D.N. Medi, Sr. Govt. Advocate, for the Respondent

Judgement

Deka, J.—This Rule relates to a Writ petition filed by the petitioner challenging the validity of the Lushai Hills District (Reduction of Fathang) Act, 1953--Act III of 1953--passed by the District Council of the Lushai Hills (now known as Mizo Hills District) purporting to act under Para. 3 of the 6th Schedule to the Constitution of India.

2. The petitioner challenges the validity of the legislation on the ground that it does not come under any of the "Heads" for which the District Council is competent to legislate under the sixth schedule.

3. The District Council opposes the Rule on two grounds, mainly--(i) that the Act in question relates, in fact, to a sort of administrative order which the District Council was competent to pass, and, therefore, even if it takes the form of a legislation, it does not amount to acting in excess of jurisdiction vested in the District Council, and (ii) that the Act relates to allotment or occupation or use of the lands for agricultural purpose, for which the District Council was competent to legislate under Para. 3(1)(a) of the Sixth Schedule.

4. The petitioner's case is that the impugned Act relates to rent payable by the tenant or the occupier of land to the Chief who is the sole proprietor of the land

which the cultivator holds under him. The Act, it is contended by the counsel for the petitioner, comes under Entry 18 of Schedule II of the Constitution and it is only the State Government who could legislate on such matters, and not the District Council--the purpose of the Act being to regulate the relations between the landlord and the tenant or to fix rent for agricultural tenants.

5. Before answering the questions raised, let us examine the impugned Act itself. The material portion of the Act is Para. 3, which runs as follows:

3. Notwithstanding any provision in any law for the time being in force, the Fathang which is payable to a Chief by a house-hold in respect of any land used for jhumming within the Chief's Ram, and which is liable to be so paid on and from the date of the commencement of this Act, shall be reduced from a maximum of six tins to a maximum of three tins of paddy per annum, if paid in kind, and from rupees two to rupee one per annum, if paid in cash.

The purpose of the Act is stated to be to provide for the reduction of Fathang payable to Chiefs in the Lushai Hills District. In other words, the Act relates to reduction of the rent payable by the agricultural tenant to the local Chief in whose Ram he holds the lands for jhumming or for the purpose of Shifting cultivation. The accepted rate of maximum rent at the time was double the amount of cash or kind now prescribed. This finds support from Mr. N.E. Parry's Monograph on Lushai Laws and Customs and from subsequent Standing Orders placed before us--copies whereof had been annexed to the Counter-affidavit by the District Council and marked as Exts. D and G.

6. The petitioners case, was that it was a contractual obligation that the tenant had to discharge, and the contract as to rate of rent was between the landlord and the tenant and the State or the District Authorities had nothing to do with it--nor could they interfere in such matters. This part of the petitioner's case is not substantiated,--rather it is controverted by what we get from the Standing Orders passed by the Superintendent--which were possibly based on paragraph 5 of the Rules for the Regulation of the Procedure of Officers appointed to administer justice in the Lushai Hills (1937), which laid down that the taxes and tribute should be levied at such rates and in such manner as the Governor of Assam may prescribe, and this power was exercised by the Superintendent.

This apparently continued to be the practice and this Regulation had the sanction of the Governor, as provided u/s 92(2), Government of India Act, 1935. Under paragraph 2, Sub-clause (4) of the Sixth Schedule to the Constitution, the District Council was vested with the powers of administration of the District subject to the provisions of the Sixth Schedule, and unless there was any bar under any of the provisions of this Schedule, the "District Council could pass an order fixing the rent payable by the tenant, as was done by the Superintendents of the District before. We have not been shown any bar under the Schedule to the exercise of this power by the District Council. In this view, we might say that it was within the competence of the District Council to proscribe the maximum

rate of rent payable by an agricultural tenant to his landlord.

7. The stand taken by the learned Advocate for the petitioner is that the District Council had no authority to legislate unless the authority for legislation was sanctioned under paragraph 3 of the Schedule. I have already mentioned that the learned Advocate for the District Council tried to show that the legislation came under the head of allotment or use or occupation of the land for agricultural purposes. He contends that if the District Council could make laws for allotment of land for agricultural purposes, they could as well prescribe at what rate of rent the allotment will be made, or, if they could make laws for occupation of the land by a tenant, they might as well say what would be the rent payable for the holding.

Mr. Medhi urges that liberal interpretation should be given to the words contained in the statute,--and once a right to legislate on a particular matter is sanctioned by law, it must be presumed that the same authority could legislate on matters incidentally connected with the same subject-matter. Mr. Medhi however, did not succeed in showing any direct authority on the point, except--Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, which we might say, had no direct bearing. The broad line of his argument, however, cannot be rejected as fallacious.

8. We, however, find that under paragraphs, Sub-clause (1)(d) of the Sixth Schedule, the District Council has power to make laws with respect to the regulation of the practice of "jhum" or other forms of shifting cultivation. The Act in question relates to "fathang" or the rent payable for agricultural land brought under "jhumming" by the house-holders. This fixing of maximum rent, therefore, relates to the practice of "jhumming," and there is no doubt about it. What, however, the learned Counsel for the petitioner contends is that the word "regulation" as to the practice of "jhumming" only implies that the District Council can frame laws to indicate what land should be available for "jhumming", or, to what extent it should be limited or restricted, and things like this, but will not extend to fixing of rent payable by the persons or households who do the "jhumming".

We find it difficult to give a restricted meaning to the word "regulation", unless we find something in the text or in its context to indicate that it was so used. In our opinion, the fixing of rate of rent, minimum or maximum, would come under this head of regulation of the practice of "jhumming" or other forms of shifting cultivation regarding which the District Council was competent to legislate under para. 3(1)(d) of the Sixth Schedule.

9. We hold accordingly that the passing of the impugned legislation was within the legal competence of the District Council and is, therefore, valid. It does not come within Entry 18 of List II of the Constitution, as contended by the learned Advocate for the petitioner.

10. The Rule is, therefore, discharged, but we make no order as to costs.

Sarjoo Prosad, C.J.

11. I agree. Leave to appeal to the Supreme Court is granted, as prayed for.