
(2009) 02 GAU CK 0083
In the Gauhati High Court

Md. Abdul Halim and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Assam Panchayat Act, 1994 — Section 105, 107, 109(6), 2(19), 2(3)
Constitution of India, 1950 — Article 300A, 31A(1)

Citation : (2009) 5 GLR 146

Hon'ble Judges : Jasti Chelameswar, C.J; Anima Hazarika, J

Bench : Division Bench

Judgement

Jasti Chelameswar, C.J.—The writ petition is filed with the prayer as follows:

...it is, therefore, prayed that your Lordships may be pleased to issue a rule calling upon the respondents to show cause as to why a suitable writ, order or direction should not be issued;

(i) declaring the provisions of Sections 105, 107 and 109(6) of the Assam Panchayat Act, 1994 ultra vires to the Constitution of India;

(ii) quashing the Tender Notices dated 8.5.2008 and 3.5.2008 (Annexures-2 and 3) so far as it concerns the Kadong Hat Weekly Market and declaring the same inoperative;

(iii) directing the respondents not to disturb or otherwise obstruct the running of the Kadong Hat Weekly Market on the plots of land owned by the Petitioners by and at the instance of the petitioners;

2. The facts leading to the writ petition are-

The four petitioners herein owned four different parcels of land which are contiguous in Kadong village under Jania Revenue Mouza, Barpeta district. The details of the ownership of each one of the petitioners are stated in para 2 of the petition as follows:

The said assertion of the petitioners that they are owners of the above mentioned parcels of the property is not disputed by the respondents.

3. It is further averred by the petitioners that the above mentioned property is being used as a market for the last 15 years by vendors and buyers of agricultural produces of the locality and it appears that some infrastructure facilitating for such transactions also came up on the above mentioned property. The petitioners categorically assert that the entire infrastructure was a creation of the petitioners without any contribution from the State whatsoever. Even these averments are not denied by the respondents in their affidavits filed by them in opposition.

4. However, the 2nd and 4th respondents issued notices dated 8.5.2008 and 3.5.2008 (Annexures-2 and 3) respectively inviting tenders for settlement of various items like hats (markets), ghats, fisheries, etc. One of the markets for which tenders are invited is described as Kadang Hat. Each one of these notices prescribed different value called "govt. value" for the said market. Obviously the said "govt. value" is the minimum which each of the respondents 2 and 4 expect from out of the tender process initiated by them with reference to the said market. The very fact that two different bodies functioning under the same enactment proposes to settle the same property is bad enough. What makes it worse is that the petitioners apprehend that by virtue of the above tendering process the 2nd and 4th respondents would induct successful bidder in the tender process as a licensee to manage the private market that is being run in the property owned by the petitioners, detailed earlier. Hence the present writ petition.

5. The writ petition was admitted on 27.6.2008 and it is recorded in the proceeding of that day that Mrs. B. Goyal, learned State counsel accepted notice for all the respondents/None of the respondents chose to file any affidavit in opposition. The learned State counsel, therefore, had to argue only on the basis of the instructions received by her.

6. In the absence of any affidavit disputing the various averments made in the writ petition by the petitioners the averments made in the writ petition are deemed to have been admitted. Naturally, therefore, the question is whether the respondents have any authority of law to induct any person (on the basis of a settlement made by one or some of the respondents) by the process called "settlement" into the property of the petitioners for regulating the market run on the property of the petitioners, described earlier.

7. The expression "market" is defined u/s 2(19) of the Assam Panchayat Act, 1994 (for short "the Act", 1994) as follows:

2(19) "Bazar. Hat or Market" means any place within the administrative control of the local authority where persons assemble daily or biweekly or periodically for sale or purchase of article to human or animal consumptions or of livestock or of other merchandise.

It is obvious from the definition that the definition does not take notice of the ownership of the place where the activity contemplated under the definition takes place. By definition any place where persons assemble daily or biweekly or periodically for sale or purchase is a market. Section 105 of the Act ostensibly authorizes the Anchalik Panchayat, a defined expression u/s 2(3) of the Act, to settle all hats (markets) in accordance with the procedure prescribed under the said section. Naturally the question arises whether the expression "all hats" (markets) occurring in Section 105 would include markets run on private property. If the answer to the said question is "yes", whether such a provision would be consistent with the requirement of the Constitution more particularly Article 300A and Article 31A(1) 2nd proviso. As Article 300A declares that no person shall be deprived of his property save by authority of law. The expression "all hats" occurring u/s 105, if it is to be interpreted as taking into its sweep even private hats, the section may satisfy the requirement of having the appropriate authority of law, contemplated under Article 300A, but the question is whether such an exercise, which has the effect of depriving the petitioners' right of property, would also be consistent with the provisions of Article 31A(1), 2nd proviso, which requires a person, who is deprived of his landed property held within the ceiling limit applicable to the property, to be paid compensation calculated at the market value of the property.

8. Sections 55 and 87 of the Act, 1994 authorises Anchalik Panchayat and Zilla Parishad respectively to acquire, hold or dispose of property and also to enter into contracts. The expression "property" therein includes all varieties of property including immovable property. Therefore, under the proviso to Sub-section (1) thereof it is stipulated that whether the Anchalik Panchayat or the Zilla Parishad seeks to acquire or dispose of immovable property it requires previous approval of the government. It is further stipulated under Sub-section (4) that either of the above mentioned bodies require some land for carrying out any of the purposes of the Act, such a body may either negotiate with person or persons having interest in the said land and failing an agreement on such negotiation approach the concerned Deputy Commissioner with a request for acquisition of the said piece of land. It is further stipulated that if the Deputy Commissioner is satisfied that such land is required for public purposes he may take necessary steps for acquisition of the landed property in accordance with the provisions of the Land Acquisition Act. In the light of the above mentioned two provisions it appears that the scheme of the Act is that wherever private property is required by the bodies such as respondent Nos. 2 and 4 herein such property is Required to be acquired either by negotiation or by compulsory acquisition but not otherwise.

9. Realising the difficulty the learned State counsel appearing for the respondents submitted that the tender notice in question proposing the settlement of Kadang Hat do not contemplate interference with the private property of the petitioners herein specified in the writ petition and the implementation of the name "Kadang Hat", which name is also adopted by the

petitioners for describing the private market run on their private property resulted in apprehension of the petitioners. The learned Counsel for the respondents made a categorical statement that the settlement, if any made pursuant to the impugned tender notices, would only authorize the successful bidder to run a market in some property owned by the respondents or any other property which may be lawfully acquired by the respondents herein, but not on the property which belongs to the petitioners.

10. In view of the statement of the learned Counsel for the respondents we do not see any reason to interfere with the impugned tender notice though we are still left puzzled as to how two statutory bodies with an independent legal identity propose to settle the market known as Kadang Hat simultaneously. However, we need not trouble ourselves with an answer to the question as it is not the issue raised by the petitioners.

11. In the result the writ petition is disposed of directing the respondents not to interfere with the rights of the property of the petitioners specified earlier in this judgment in any manner including their right to conduct a private market therein, except in accordance with the procedure established by law.