
(1972) 12 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 484 of 1972

M/s Deha Assam Tea Co. (P) Ltd.

APPELLANT

Vs

M. M. Rahman and others

RESPONDENT

Date of Decision : 18-12-1972

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 6
Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8

Citation : AIR 1973 Guw 122

Hon'ble Judges : P.K. Goswami, C.J.;Baharul Islam, J

Bench : Division Bench

Advocate : P. Choudhuri, B. K. Das and K. R. Pathak, for the Appellant;

Final Decision : Allowed

Judgement

P. K. Goswami, C. J.

1. This application under Art. 226 of the Constitution of India is directed against an order of the District Judge. Jorhat, who was appointed Arbitrator under Clause (b) of sub-section (1) of Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1952 as amended in 1970, hereinafter referred to as "the R.A.P. Act."

2. The notification was made by the State Government on 30-3-71 appointing the Arbitrator. The claimant is the petitioner in this case, namely M/s. Deha Assam Tea Co. (P) Ltd. A preliminary objection was raised by the learned Government Pleader before the Arbitrator that he had no jurisdiction to proceed in the matter in view of the fact that the property had been earlier requisitioned under the provisions of the Defence of India Act and, therefore, the appointment of the Arbitrator under the R.A.P. Act was void under the law. Some other issues were also framed including limitation and res judicata. The learned Judge took the first four issues in a preliminary hearing and decided against the petitioner holding that reference to him was incompetent as it has not been made under

the provisions of the Defence of India Act.

3. No one appears to oppose this application. We have, therefore, heard only Mr. P. Choudhuri, the learned Counsel for the petitioner, who was fair enough to take us through all the material papers in the original records. The first question that falls for decision is whether the Arbitrator was correct in holding that the reference as made is incompetent under the law as it has not been made in exercise of the powers under the Defence of India Act. It is clear that the Defence of India Act ceased to be in force with effect from 10-1-68. The Requisitioning and Acquisition of Immovable Property (Amendment) Act, 1968 (Act XXXI of 1968) received the assent of the President of India on 9-8-68 and was published in the Gazette of India Extraordinary on 12-8-68. By this amendment, amongst other sections, a new Section 25 was inserted in the old Act. That section may be quoted:

"25. (1) Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government under the Defence of India Act 1962. and the rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the 10th January. 1968, shall, as from that date, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of the Act shall apply accordingly:

Provided that-

(a) all determinations, agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date:

(b) anything done or any action taken (including any orders, notifications or rules made or issued) by the Central Government or by any officer or authority to whom powers in this behalf have been delegated by that Government in exercise of the powers conferred by or under Chapter VI of the Defence of India Act, 1962, shall, in so far as it is not inconsistent with the provisions of this Act be deemed to have been done or taken in the exercise of the power conferred by or under this Act as if this section was in force on the date on which such thing was done or action was taken.

(2) Save as otherwise provided in sub-section (1), the provisions of the Defence of India Act. 1962, and the rules made thereunder, in so far as those provisions relate to the requisitioning of any such immovable property as is referred to in sub-section (i). shall as from the 10th January. 1968. cease to operate except as respects things done or omitted to be done before such cesser and Section 6 of

the General Clauses Act, 1897, (10 of 1897) shall apply upon such cesser of operation as if such cesser were a repeal of an enactment by a Central Act"

It is, therefore, clear that with effect from 10-1-68 if any action has to be taken with regard to the property which had already been requisitioned under the Defence of India Act, recourse has to be taken by the appropriate authority to the provisions of the R.A.P. Act. There is, therefore, no legal infirmity in the order of the reference made by the Government on 30-3-71 for the reason given by the learned Judge, namely that it has not been done under the provisions of the Defence of India Act. that being the position, the learned Arbitrator committed an error of jurisdiction in refusing to deal with the matter under a competent reference as we find in this case. Since we set aside this main finding of the learned Arbitrator, we are not inclined in an ex parte proceeding like this to adjudicate regarding the validity of the findings of the Arbitrator with regard to the other issues. Those findings are simply set aside by us in this case. It will be open to the parties to raise those questions of law before the Arbitrator who, we have no doubt, will be able to deal with the matter with a fresh look and in an independent manner. We do not think that for the expression of his views with regard to the other issues we would be justified in holding that the learned Arbitrator is disqualified from proceeding further in the matter.

4. In the result the application is allowed. Since no one appears for the other side, there will be no order as to costs.

Islam, J.

5. I agree.