
(1989) 11 GAU CK 0009

In the Gauhati High Court

Case No : Civil Rule Nos. 179 of 1984 and 125 of 1985

Niranjan Baruah Sadau Assam Pattadar Sangha

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 23, 23

Citation : (1990) 1 GLJ 1

Hon'ble Judges : B.L.Hansaria, J and W.A.Shishak, J

Bench : Division Bench

Advocate : P.Pathak, G.C.Nath, D.N.Barua, D.K.Mahanta, A.Mannan, D.C.Mahanta, Advocates appearing for Parties

Judgement

B. L. Hansaria, J.

1.M A question of great importance relating to the right conferred on an occupancy tenant by the provisions of the Assam (Temporarily" Settled Areas) Tenancy Act, 1971, hereinafter referred to as to the Act, has come up for consideration in these writ petitions. The precise question for determination is whether the right conferred on an occupancy tenant by section 23 of the Act can be claimed in respect of a land which subsequent to the acquisition of the occupancy right came to be included in a town.

2. As is known, the Act does not apply to lands included in town vide section 2 (f). The definition of "town lands" as given in section 3 (18) of the Act as originally enacted was "any land within an area declared or deemed to be a Municipality or notified area under the Assam Municipal Act, 1956?. This definition was amended by the Assam (Temporarily Settled Areas) Tenancy (Amendment) Act, 1983, the relevant part of which is as below :

"Town land" means any land

a) included within the limits of the city of Gauhati as constituted and notified under the provisions of subsection (I) of section 42 of the Ganhati Municipal

Corporation Act, 1959 (Assam Act I of 1973)".

This amendment Act was given effect from 5th March/73. It was so done because the Gauhati Municipal Corporation Act, 1969 had itself come into force w.e.f. 5.3.73. Large parcels of agricultural land which were not included within the Municipality of Gauhati came within the fold of Municipal Corporation of Gauhati. A question has therefore arisen as to whether these tenants who had acquired the status of occupancy tenants and were personally cultivating the land of the tenancy could claim to acquire ownership rights of their landlords as visualised by section 23 of the Act in respect of those parcels of land which were not part of Gauhati Municipality but were included within the limits of Gauhati Municipal Corporation.

3. The right conferred by section 23 of the Act was claimed by many occupancy tenants. On their petitions being entertained and notices as contemplated by Rule 10 of the Assam (Temporarily Settled Areas) Tenancy Rules, 1972 having been given, the land owners have approached this Court seeking relief of quashing the proceeding which were initiated sometime in 1983⁸⁴. This is the common prayer in both these petitions which have therefore been heard together and are being disposed by this common judgment.

4. Before proceeding further we may note the relevant part of section 23 of the Act.

? Acquisition of ownership rights and intermediary rights by tenants: (1) Any occupancy tenant personally cultivating the land of his tenancy, desirous of acquiring the ownership rights of his landlord may at any time make an application in writing to the Deputy Commissioner and on such application being made and the compensation as provided in section 25 is determined and paid by the occupancy tenant, the Deputy Commissioner shall declare the said occupancy tenant to have acquired the ownership rights free from all encumbrances."

(Emphasis supplied).

5. Question is whether after inclusion of the land in question within the limits of the city of Gauhati the occupancy tenants could exercise the aforesaid option after 5.3.73.

6. It is strenuously contended by Shri Barua that the rights, which were once acquired by the occupancy tenants over the land which at one point of time was not a part of town land got wiped out or extinguished after the definition of town land was amended as aforesaid. Of course it is fairly admitted by Shri Barua that those rights which had been concluded would not be affected by amendment; but then as right conferred by section 23 of the Act was sought to be enforced in 1983⁸⁴, it is urged that the tenants would not be entitled under the law to claim the same inasmuch as after 5th March/73 the tenant got robbed of this right in so far as the land included within the limits of the city of Gauhati is concerned. The submission of the learned counsel is that though concluded rights cannot be

reopened, but the rights which had not taken any shape by 5.3.73 cannot be enforced after that date. To put it differently, according to the learned counsel, the inchoate right conferred by section 23 of the Act cannot be exercised after 5.3.73.

7. In support of the aforesaid submission, Shri Barua has referred to certain decisions of the Apex Court which we shall note later. To start with it would be appropriate to refer to *Mohendra vs. Ramprasad*, AIR 1954 Assam 109, a Bench decision of this Court. In that case the question examined was whether the right acquired by an occupancy tenant under the Assam (Temporarily Settled Districts) Tenancy Act, 1935 could protect him in an eviction proceeding even if the parcel of land came to be included subsequently within the territorial limit of the Gauhati Municipality. The land was earlier outside the limit of the Gauhati Municipality but subsequently came to be included within it because of which the landlord took a stand that the right acquired by the tenant under the law got extinguished. It may be pointed out that the aforesaid Act of 1935 had also excluded the land included in civil station from the purview of the Act.

8. The contention advanced on behalf of the landlord did not find favour with this Court because of the view that rights once acquired are not extinguished if there be no express provisions in the amending Act to the contrary. On the language of the Act, which came up for consideration it was held that as there was no express provision in the amending Act taking away the right, the intention of the legislature seemed to be not to extinguish the right because of the fact that the land was subsequently included in a civil station. In taking this view the following observations finding place in *Craies on Statute Law* (5th Edn) at page 111 was noted :

"In the construction of statutes you must not construe the words so as to take away the rights already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the legislature". Another passage at page 368 was also noted which is as follows :

"It is a well recognised rule that statutes should be interpreted, if possible, so as to respect vested rights and such a construction should never be adopted if the words are open to another construction. This rule is especially important with respect to statutes for acquiring lands for public purposes. For it is not to be presumed that interference with the existing rights is intended by the legislature, and if a statute be ambiguous the Court should lean to the interpretation which would support the existing rights. But it must be a "vested right" in the strict sense in order to raise the presumption"

9. To the aforesaid view expressed by Deka J. on behalf of the Bench, Ram Labhaya, J. added in para 8 that the only effect of the inclusion of the land in question within a civil station would be that after the date of the inclusion the relation of the landlord and tenant would not be governed by the provisions contained in the Tenancy Act; but the tenant shall retain his rights already

acquired.

10. Strong reliance has been placed by Shri Manama on the decision in Mobendra. Shri Barua however contends that the right conferred by section 23 of the Act cannot at all be available after 5.3.73 as according to the learned counsel the right which got vested in the tenants but which was not exercised before 5.3.73 got divested in view of the fact that the land in question became a part of town land. To put the argument of Shri Barua differently the amendment of the definition amounted to repeal of the earlier provision finding place in the Act qua the area covered by the amendment. It is therefore contended that the rights which got vested in the tenant got obliterated, extinguished or wiped out except in so far as the concluded or closed transactions are concerned.

11. Even if it be conceded that the effect of the amendment of section 3(18) of the Act is the repeal of the concerned law conferring the right, in view of what has been stated in section 6 of the Assam General Clauses Act the rights which were acquired would not be affected inasmuch as section 6 states that

""Effect of repealWhere any Act repeals an enactment hitherto made, or hereinafter to be made, then, unless different intention appears, the repeal shall not

(a) * *

(b) * *

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed".

12. On the effect of repeal we have been referred by Sbri Barua to Sylhet Cooperative Central Bank vs. Dhirendr Nath, AIR 1956

Assam 166 wherein the following observations made in Craies was quoted with approval in para 9 :

"When an Act of Parliament is repealed said Lord Tenterden in Surtees vs. Ellison, (1829)9 B&C 750 at page 752 that it must be considered (except as to transaction past and closed) as if it never existed. This is the general rule. Tindal, C. J. states the exception more widely. He says in "Kay vs. Goodwin". (1830) 6 Bing 576 "The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed, and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law" (P. 350)."

13. It was therefore stated that repeal completely wipes out the law which is the subject matter of the repeal. It is to be deemed as having existed only for those actions which were commenced, prosecuted and concluded. In Nani Gopal vs. State of Bihar, AIR 1970 SC 1636 the Court dealt with the change in procedural law and examined the question as to when the same could be applied

retrospectively. It was observed in para 6 that pending cases although instituted when the old procedure was in force would be governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure.

13A. What has been stated above focuses the effect of repeal insofar as the actions taken under the repealed law is concerned. In the present case however we are concerned with the effect on the rights already acquired. It has already been noted that section 6 of the Assam General Clauses Act protects, despite repeal of the old law, the rights which had been acquired under that law. In this connection we may refer to *Ekambarappa vs. Excess Profits Tax Officer*, AIR 1967 SC 1541 which has dealt with the effect of repeal vis-à-vis which has been stated in section 6 of the General Clauses Act. As already noted section 6 protects liability incurred also. It has been pointed out in this decision that as the liability to pay tax had accrued immediately at the end of the chargeable accounting period and not when it was quantified by assessment proceedings, the liability was preserved under section 6 (c) of the General Clauses Act even though the Act in question had stood repealed. We have to see as to when the right had been acquired in the present cases. On this aspect of the case we are of the opinion that the right conferred by section 23 of the Act had become available to the persons concerned on their acquiring the status of occupancy tenants on satisfaction of the conditions mentioned in section 5 of the Act. This right could have been exercised "at any time" as stated in section 23, by making an application in writing to the Deputy Commissioner. The making of application is related to only procedural part of the acquisition of the right contemplated by section 21 the substantive part having been acquired on satisfaction of the conditions mentioned in section 5 of the Act.

14. The effect of amendment in section 3 (18) of the Act is that no occupancy tenant can be clothed with the right conferred by section 23 after 5.3.73 with respect to the land included within the limits of the city of Gauhati as the amendment, though of 1983, was brought into force with effect from 5.3.73. But then as the Act had come into force w. e. f. 10.12.71 the tenant who had acquired the status of occupancy tenant with respect to the aforesaid land between 10.12.71 & 4.3.73 could not have been debarred from exercising the right contemplated by section 23 because of the amendment in the definition of "town land" as given in section 3 (18) of the Act. We do not read anything in the amendment Act of 1983 as to extinguish or wipe out the right which had been acquired by the occupancy tenant before the Act came into force. In this connection we may refer with profit to the following observations made by Ram. Labhaya, J. in *Mohendra* (supra). This is what the learned Judge observed in para 9

"It is true that the Act does not contain any express provision to the effect that rights acquired under the Act would not be taken away by the inclusion of any

area in the civil station. But no such provision is necessary. The saving of rights acquired before the Act ceased to apply may be presumed. It is the taking away of such right that requires a provision either in express terms or by intendment which may be necessarily implied. Where vested or acquired rights are expressly saved it is merely by way of abundant caution. The legislature in doing so removing all possibilities of any mistake about its intention. But the absence of such a saving clause does not necessarily lead to the inference that there was an intention to take away rights which had been acquired by the fulfilment of statutory conditions, by the mere inclusion of the area in a civil station. There must be something in the language employed in the enactment which should indicate that divesting of acquired rights was intended. There is nothing in the tenancy Act to point to any such conclusion."

15. We are in complete agreement with the aforesaid enunciation of law by the learned Judge and we therefore state that section 23 right which had become inherited in a tenant who had acquired the status of occupancy tenant by 4. 3. 73 could not have been taken away with regard to aforesaid land by the amendment in question, and this right could be exercised at any time even after 4. 3. 73.

16. Before concluding we may state that in support of his submission Shri Barua also referred to *Lalji vs. Hansraj*, AIR 1971 SC 974 and *Abdul Azeez vs. CIT*, (1981) 128 ITR 547 (Karnataka). These decisions, however, do not assist us in answering the question at hand. As to *M. S. Shivananda vs. K. S. R. T. C.*, AIR 1980 SC 77 relied on by Shri Barua we may point out that in that case the right in question had been expressly taken away by the legislature (see para 21). The present are not the cases of that nature.

17. In view of what has been stated above, we hold that the tenant who had acquired the status of occupancy tenant under the provision of section 5 of the Act by 4.3.73 could enforce his right conferred by section 23 of the Act at any time with respect to the land which was earlier outside the limit of Gauhati Municipality but came to be included within the limit of the city of Gauhati by virtue of the amending Act of 1983.

18. In the result, the petitions are dismissed and the Rules are discharged. In the facts and circumstances of the case, we however leave the parties to bear their own costs. The little delay in pronouncing the judgment has occurred because soon after hearing was over the Court closed for Long Vacation.

W. A. Shishak, J. I agree.