

(1953) 07 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 58 of 1953

Paresh Chandra Das Gupta		APPELLANT
	Vs	
Deputy Commissioner and Others		RESPONDENT

Date of Decision : 29-07-1953

Acts Referred:

Assam Adhiars Protection and Regulation Act, 1948 — Section 5
Constitution of India, 1950 — Article 227

Citation : AIR 1954 Guw 88

Hon'ble Judges : Sarjoo Prasad, C.J.; Ram Labhaya, J

Bench : Division Bench

Advocate : J.C. Sen, for the Appellant; N.M. Dam, for the Respondent

Judgement

Sarjoo Prasad, C.J.—This application under Article 227 of the constitution is directed against an order of Mr. J.K. Datta, Deputy Commissioner of Cachar confirming an order of the Extra Assistant Commissioner Mr. S.C. Bhattacharya in a proceeding arising u/s 5, Assam Adhiars Protection Act (Assam Act 12 of 1948).

The proceeding was for eviction of the Defendant Opposite Party by the Petitioner. The Courts below have taken the view that the opposite party was not the Adhiar & they have also held that there was no sufficient evidence on the record to hold that the Petitioner needed the land in question for his own "bona fide" use as required by the law. On the question whether the opposite party was not an Adhiar Mr. Sen in support of the application has referred us to the previous history of the litigation between the parties and has submitted that it had been already held in a Civil Court proceeding as also in a previous proceeding u/s 5, Adhiars' Protection Act that the opposite party was an Adhiar and that the officers in the present case completely ignoring those decisions or taking a wrong view of them have proceeded to decide the matter. There may be force in the contention of Mr. Sen, but we cannot at this stage deal with the question at all. Under Article 227 of the Constitution it is not open to us to

interfere with the merits of a decision when there is no actual want of jurisdiction in the officers concerned to decide the questions involved. Even if this finding is open to doubt it may be pointed out that the decision on the other question namely that the Petitioner did not require the land for his own "bona fide" use was sufficient to dispose of the matter and in that view it was perhaps unnecessary to decide the other point which may be taken as "obiter". For the reasons stated above the application fails and must be dismissed but in the circumstances we do not think that any costs should be granted. The Rule is discharged.

Ram Labhaya, J.

2. I agree.