

(1972) 07 GAU CK 0006

In the Gauhati High Court

Case No : Civil Rules No's. 726 of 1969 and 206 of 1968

Praneswar Das and another

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 05-07-1972

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 48
Forest Act, 1927 — Section 82

Citation : AIR 1973 Guw 51

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

Bench : Division Bench

Advocate : K. Lahiri and D. C. Goswami In C. R. No. 726 of 1969 and J. P. Bhattacharjee and S. C. Das In C R. No. 206 of 1968, for the Appellant; J. C. Medhi . Advocate General Assam, A. M. Mazumdar . Jr. Govt. Advocate, N.M. Lahiri Advocate General. Meghalaya and A. Sarma Govt. Advocate. Meghalaya (In C. R. No. 726 of 1969) and A. M. Mazumdar . Jr. Govt. Advocate and K. Sarma (In C. R. No. 206 of 1968), for the Respondent

Final Decision : Allowed

Judgement

P. K. Goswami, C. J.

1. This judgment will govern both the above Civil Rules. Civil Rule No. 206/68, although listed with the other case from 21st June. 1972 onwards, was heard separately on 27th and 28th June. 1972.

2. The facts of Civil Rule No. 726 of 1969 are as follows: In pursuance of a sale notice issued by the Divisional Forest Officer, Garo Hills, inviting tenders for settlement of Darugiri Reserve Coupe No. 1 of 1961-62, the petitioner submitted the tender on 16th May, 1966 offering Rs. 78,315/- per year. Under Clause 3 (a) of the sale notice, the Governor of Assam is the competent authority to pass the order of settlement. After some correspondence, the Divisional Forest Officer, on 27th January, 1967, informed the petitioner that the coupe was finally settled with him at his offer. He was asked by the same letter to produce documentary

evidence in support of financial soundness and was directed to attend the office of the Divisional Forest Officer, Garo Hills, for signing the agreement. For some reason or other, the agreement was not signed although there is some controversy regarding the reasons given by the petitioner for not signing the same. The petitioner ultimately made a prayer to the Divisional Forest Officer to extend the period and also to allow him to deposit the security money in October, 1967, when only, according to him, operation in the forest could be started. The Divisional Forest Officer did not pay heed to his request and ordered resale of the coupe on 13th May, 1967. The resale took place accordingly on 13th May, 1967 and the tender of one Satish Chandra Thakuria offering a sum of Rs. 62,575/- was accepted by the Governor who rejected the first tender offering an amount of Rs. 78,315/- The petitioner was informed by the Divisional Forest Officer by letter dated 31-3-1969 demanding difference of sale value being a sum of Rs. 15,543/- from the petitioner as a result of the resale at "his risk "for non-implementation of clause of the Sale Notice dated 29-4-1966". The notice closed with a threat:

"Please therefore arrange payment of the amount on or before 15-4-1969. Otherwise the same will be recovered from you as an arrear of land revenue as per Forest Law".

A Bakijai case No. 51/63-69 was started for recovery of the above amount and the petitioner was given time by the Bakijai Officer till 20th August 1969. Meanwhile, the petitioner obtained the present Rule on 11th August, 1969 and the proceedings in the Bakijai case were stayed.

3. We may also state the facts of Civil Rule No. 206/68: The Divisional Forest Officer Dibrugarh Division. (Respondent No. 3). made an advertisement on 19th June, 1965 inviting tenders for a licence for exclusive right to exploit canes from Mahal No. 6 for the period commencing from 1-9-1965 to 31-3-1968. The petitioner-company, through its Director, submitted a tender offering Rs. 2,51,701/- for the entire period. The work order was given by the Respondent No. 3 on 12th October, 1965. The petitioner deposited Rs. 12,685/- as security and Rs. 62,926/- towards the first kist which was due on 1st July, 1966. Although it is asserted to the contrary in the petition, an agreement was executed by the parties on 12th October, 1965. It does not, however, appear to be registered. After some correspondence with the Government, the petitioner, on 27th June, 1966 wrote to the Government intimating that

"We shall close all operations in the mahal as from 10-7-1966 and that we shall not be liable for the produce of the mahal or in any matter connected to or arising out of the said mahal and that the Government is at full liberty to place the mahal for sale at the Government risk and responsibility".

(Annexure "C" to the petition).

The petitioner was informed by the D. F. O. on 13-12-1966 (Annexure "D") as follows:

".....please arrange to pay the due 2nd kist amounting to Rs. 62.925.00 of the mahal by 20-12-1966 else the mahal will be resold at your risk as regards loss to Government and the difference of sale proceeds if any or if no offer received in resale, the whole amount of the mahal value will be realised from you through the Deputy Commissioner. Lakhimpur on Bakijai proceedings as an arrear of land revenue".

The second kist, however, was not paid. On 5th January, 1967, the respondent No. 3 issued an advertisement for resale of the Mahal on 6-2-1967 at the risk of the petitioner. The mahal was resold to the respondent No. 6 on 8th March, 1967 at Rs. 41,777/- for a period of about 18 months. Certain allegations of collusion regarding resale are mentioned in the petition which are emphatically denied by the respondents. Since the petitioner, in spite of demand did not pay the difference of the price of the mahal on resale, Bakijai proceedings were started against it for realisation of the same and attachment of property was ordered. This has led to this writ application in which a Rule was obtained by the petitioner on 2nd July, 1968 and the Bakijai proceedings were stayed.

4. On 20th April, 1972, on the application of the petitioner, the Court ordered the State of Meghalaya to be impleaded as a party as the area of operation has since been included in Meghalaya.

5. The common point which, is urged in both the aforesaid Rules is that mode of recovery by recourse to Bakijai proceedings in the manner laid down under the Assam Land Revenue Regulation is invalid and without jurisdiction. It is apparent that in both the cases the original settlement was made in terms of sale notices issued prior to the enforcement of the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967 (hereinafter called "the rules"). These rules came into force on 25th September, 1967. When the Civil Rule No. 726/69 was called for hearing on 20th June, 1972, Mr. D. C. Goswami, the learned counsel for the petitioner, submitted that the point raised before us is concluded by a decision of the Supreme Court of 6th January, 1971 The Divisional Forest Officer Vs. Mool Chand Sarougi Jain, affirming the decision of this Court in Civil Rule No. 242 of 1964 disposed of on 28th July, 1966 (Assam). After hearing him some time, we recorded the following order on that date:

"Heard the learned counsel for both sides at some length.

The point, inter alia, that arises in this case is whether Rule 18 of the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967 can be invoked in this particular case where resale took place after the promulgation of the rules on 25-9-1967. As this is an important question we request the learned Advocates-General, Assam and Meghalaya, to appear in this case on behalf of their respective States. We would like to give them some time to study. Accordingly the case is fixed as the first item on Friday, the 23rd June, 1972".

The above order was served on the learned Advocates-General.

6. It may be mentioned that the State of Assam is still the respondent No. 5 before us and has been represented by the Government Advocate, now led by the learned Advocate General. That is the chief reason why we wanted to know the legal stand of both the Governments and particularly because the question is of great and general importance to State Revenue. Accordingly, the learned Advocate General of Assam and the learned Advocate General of Meghalaya appeared before us on 23rd June, 1972. They were, however, dissonant in their submissions.

7. The learned Advocate General, Assam, submitted that Rule 18 of the Rules will not be applicable to a case where resale has been ordered under the terms of the sale notice and not under the rules. He further submitted that the difference of the price demanded on the resale which took place prior to the enforcement of the rules is not an "amount due under these rules" to attract Rule 18 of the Rules. The learned Advocate General, however, did not elaborate his point, nor gave any reasons and thought that it was sufficient on his part to intimate to the Court of what he described as his "views" in the matter. Naturally, therefore, the learned Advocate General, Assam, was very brief in his submission.

8. The learned Advocate General, Meghalaya, on the other hand, very strenuously contended that Rule 18 is clearly attracted and the Bakijai proceedings are therefore not without jurisdiction.

9. Again a quaint situation arose when the learned Junior Government Advocate. Mr. Mazumdar, supporting the case of the State of Assam in Civil Rule No. 206 of 1968 worked in unison with the learned Advocate General. Meghalaya in submitting to the Court in terms contrary to what the learned Advocate General Assam had submitted in Civil Rule No. 726 of 1969 in which he was instructing his leader. It is rather difficult to suppose that the State of Assam would not like their counsel to take a unified stand in such an important matter. That, however, would not relieve us of our duty to consider the matter from all aspects to arrive at a correct conclusion.

10. The Supreme Court in *The Divisional Forest Officer Vs. Mool Chand Sarougi Jain*, had to deal with a similar case of resale under the terms of a sale notice inviting tenders for purchase of monopoly rights to quarry stone from certain forest. The State of Assam therein relied upon Section 75 of the Assam Forest Regulation, VII of 1891 (hereinafter called "the Regulation"), read with Rule 10 of the Rules framed under that Regulation. We may read Section 75 of the Regulation.

"All money, other than fines, payable to Crown under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce, or of expenses incurred in the execution of this Regulation in respect of any forest produce, may, if not paid when due. be recovered under the law for the time being in force as if it were an arrear of land revenue".

Rule 10 also may be quoted:

"No lease for any fixed period giving the right of removing India rubber, cane, Kutchha or cutch, lac, Agar, ivory, or any other forest produce, shall be given otherwise than in accordance with the general or special orders of the conservator who is empowered to authorise sales in respect of such leases, by auction, tender or any other method at such rates as he may decide in his discretion".

The Supreme Court had not the Coupe Rules before it at the time of the decision. After noticing Section 75 and Rule 10 quoted above, the Supreme Court observed as follows:

"The amount claimed to be due from the respondent is not on account of the price of any forest produce, or of expenses incurred in the execution for recovery of any forest produce. The amount is also not due in the execution of the Regulation. So far there is common ground. It was claimed, however, that the amount was due under Rule 10 promulgated in exercise of power under the Regulation and on that account it was recoverable as an arrear of land revenue.

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The Rule in our judgment does not apply to recovery of the amount alleged to be due for failure to carry out the obligations of the tender by proceedings under the Assam Forest Regulation. 1891. It is again difficult to hold that "stone" is forest produce within the meaning of the Act. In any event the Rule does not give rise to any liability to pay a sum of money. It merely imposes a limitation upon the power of the officers of the Forest Department to grant leases

in respect of certain forest produce..... It is a rule relating to the exercise of power to grant leases. The High Court was, in our judgment, right in observing that the amount of damages for breach of the terms of the sale notice is not an amount due under the Regulation or Rule 10, made thereunder".

11. Mr. K. Lahiri, the learned counsel for the petitioner who followed Mr. Goswami, submitted that the present case is fully governed by this decision. This was also the submission of Mr. J. P. Bhattacharjee. The learned Advocate General, Meghalaya, however, submits that the Supreme Court did not have Coupe Rules which are now available to the State in recovering the dues. He submits that these rules are merely rules of procedure and are retrospective. Even if they are not retrospective, the procedure provided therein can be resorted to by the State for taking any action for recovery of dues even though they had arisen prior to the enforcement of the rules. The learned Junior Government Advocate endeavoured to induce us to accept the legal submission on behalf of the State of Meghalaya and gave also his own reasons. A large number of decisions was relied upon by the learned Advocate General. Meghalaya, as well as by Mr. Lahiri and Mr. Mazumdar.

12. The question is now within a short compass in view of the decision of the

Supreme Court. If the rules were not there, the matter would not admit of any enquiry. The rules have been made by the Governor of Assam in exercise of the powers conferred by Sections 34 and 72 (e) of the Regulation. Prior to the rules, similar provisions were available in the sale notice, by which tenders were invited with regard to forest coupes. There are 22 rules and a tender form is there under Schedule A. These rules appear to be exhaustive on the subject of settlement of forest coupes and mahals by tender system. It is also not disputed that these are statutory. It is also common ground that if Rule 18 is applicable to the cases. Section 75 of the Regulation will be attracted and the Bakijai proceedings will not be barred. We will, therefore, turn to some material provisions of the rules.

Rule 14:

"(1) The tenderer whose tender has been accepted shall, within 15 days of the issue of the final order of acceptance make a security deposit in the manner directed by the authority competent to make settlement.

(2) The amount of such security shall be at the following rate namely:-

(i) 10 per cent, on the first Rs. 2,000 of the amount at which the coupe or the mahal is settled, subject to a minimum of Rs. 100.

(ii) 5 per cent, on the amount in excess of the first Rs. 2,000, subject to a minimum of Rs. 200.

(3).....

(4)....."

Rule 15:

"The amount at which the coupe or the mahal is settled shall be paid in the following manner:

(1) Where it is settled for one year, in four equal installments at interval of not more than 2 months each, the first installment falling due on the same day on which the security deposit is required to be made.

(2) Where it is settled for less than one year, in two equal installments the first installment falling due on the same day on which the security deposit is required to be made, and the second installment not less than 2 months before the expiration of the period of settlement

(3) (not (b) as printed). Where it is settled for more than one year, the total amount payable for each year shall be paid in four equal installments at interval of not more than 2 months each, the first installment of the first year falling due on the same day on which the security deposit is required to be made and the first installment in succeeding year falling due at the beginning of each year".

Rule 16:

"An agreement of settlement shall be executed, within one week of the payment of the security money as mentioned in Rule 14, by the tenderer whose tender has been accepted by the competent authority".

Rule 17:

"If the tenderer whose tender has been accepted fails to pay on due dates the security mentioned in Rule 14 or to pay the installments mentioned in Rule 15. or to execute the agreement mentioned in Rule 16, the settlement of the coupe or the mahal shall be liable to be cancelled and the coupe or the mahal may be resettled for the remaining part of the settlement period at the risk of such tenderer as regards the loss to Government and if the proceeds on resettlement are less than the value at which it was originally settled, the difference shall be realisable from him; and further, the earnest money and the security money if already deposited, shall be liable to be forfeited".

Rule 18:

"Any amount due under these rules shall be recoverable as arrears of land revenue".

13. Rule 18 is now a substitute for Clause 12 of the sale notice in Civil Rule 206/68 and Clause 13 of the sale notice in Civil Rule No. 726/69, except for the words "under these rules" which appear in Rule 18 now in place of the words "under any of the provisions of this sale notice". It is absolutely clear that the Government was seeking to recover the dues in terms of the sale notice in each case. Mr. Mazumdar submits that the Supreme Court was largely influenced by the fact that Mool Chand's case was with regard to a stone quarry and the Supreme Court found it "difficult to hold that "stone" is forest produce within the meaning of the Act". The learned counsel submits that since there is no dispute about forest produce in this case, we are free to decide this case on the fresh materials available. Mr., Mazumdar also submitted that the rules are now made under Sections 33, 34 and 72 (e) of the Regulation and, therefore, in terms of Section 34 (1).

"No person shall

make use of any forest produce except in accordance with rules....."

He, therefore, submits that there is nothing wrong in the Government taking action under the rules for recovery of the dues.

14. Mr. Mazumdar also strenuously contended that the words "under the Regulation" take in their sweep the contract in pursuance of the conditions of the sale notice and relied upon the decision of the Supreme Court in Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others, , in support. The facts and the law dealt with in that decision are entirely different and do not come to the aid of the learned counsel.

15. The learned Advocate General Meghalaya. pressing for the same view to be

adopted by us submits that even though resale has taken place prior to the enforcement of the rules for a past default, there is now no other procedure available to the State besides what is laid down under Rule 18 for recovery of the dues. He drew our attention to the following passage in Maxwell on Interpretation of Statutes, Twelfth Edition, at page 217:

"But the Court held otherwise. Lord Denman, C. J. at P. 127) saying that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing".

He also draws our attention to the decision of the Supreme Court, Sajjan Singh Vs. The State of Punjab, , where the above passage was quoted with approval by the Supreme Court at paragraph 13 of the decision. He further emphasised that it is not necessary to consider retrospectivity of the rules in this case since intention of the parties has been given effect in the shape of rules so Rule 18 is available on the date of action. He submitted that the ratio decidendi of the Supreme Court's decision will now apply in view of Rule 18. The learned Advocate General Meghalaya also drew our attention to a passage in Willoughby on the Constitution of the United States, (Volume 3, Second Edition) at page 1621. where it is stated by the learned author that

"so long as the general requirements of due process of law are satisfied, no person has a vested right in any particular legal remedy or mode of judicial procedure."

The learned Advocate General Meghalaya, also relied upon the decision of the Supreme Court, in Memon Abdul Karim Haji Tayab Vs. Deputy Custodian General, New Delhi and Others, , and read the following passage at page 1258:

"It is well settled that procedural amendments to a law, apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date."

The Supreme Court in that decision had to deal with Section 48 of the Administration of Evacuee Property Act, 1950, as amended by Act No. 91 of 1956 and the question that came up for consideration was whether the amended Section 48 could be applied to the case before their Lordships. If we read the amended section of that Act. the matter will be clear :

"48. Recovery of certain sums as arrears of land revenue:- (1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue."

The Supreme Court had to decide whether the particular claim of the Custodian "was in respect of any evacuee property" and it was not required to consider

whether the sum was payable u/s 48 or not, because that section clearly in terms provides for any sum payable, inter alia, under any agreement or "otherwise howsoever". We have, however, to consider in the present case a particular condition of Rule 18, namely, whether the amount was "due under these rules" or not u/s 48 of the aforesaid Act, money payable to the Government or to the Custodian in any form could be recovered as an arrear of land revenue. Under Rule 13, only an amount "due under these rules" shall be recoverable in that manner. The Supreme Court, therefore, had not to consider the exact question which calls for decision in these cases before us.

17. The learned Advocate General, Meghalaya, in support of his submission that the former conditions of the sale notice are now engrafted in the rules and hence the rules, on their coming into force are available for taking action for recovery of the dues of the State in terms of the earlier conditions, relied upon the following passage from Craies' Statute Law, 5th Edition, at page 366, which was quoted at para. 27 of Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others, :

"Sometimes a statute, although not intended to be retrospective, will in fact have a retrospective operation. For instance, if two persons enter into a contract and afterwards a statute is passed, which, as Cockburn, C. J. said in *Duke of Devonshire v. Barrow Haemalite Steel Co. Ltd.*, (1877) 2 QBD 286 at P. 289 "engrafts an enactment upon existing contracts" and thus operates so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, in effect a retrospective operation."

The present case is however, not one of engrafting or substituting under law an earlier contract between the parties. This will be clear when we read the Queen's Bench decision referred to in the above extract, wherein the following observation was made by Cockburn C, J. at page 289.

"It is possible that this construction may operate contrary to the intention of the parties, but the legislature has chosen to engraft upon existing contracts of demise a very plain enactment, and to this enactment we must give its proper effect."

In the cases before us, however, there is no reference to contract in the rules, relied upon by the learned Advocate General, Meghalaya. His submission is therefore of no avail and the ratio decidendi of the Queen's Bench decision is also of no aid.

18. The crucial point, therefore, is whether the amount due in these cases can be said to be due under these rules. Rule 13 is a tiny rule and does not take in any amount due under any other condition. For example, on account of breach of terms of a contract, past or present. In these cases, the amount is claimed on account of the breach of the terms of the sale notice to recover the deficiency, on re-sale, namely, of Rs 15,543/- in one case and Rs. 1,32,805.60 in the other. In that sense it is clearly recovery of damages for breach of contract. The amount due for breach of contract does not come within the expression "any amount due

under these rules". The matter would have been different if the rule was framed to include not only any amount due under these rules, but also for breach of terms of the agreement or otherwise whatsoever.

19. In order that Section 75 of the Regulation be applicable, the money must be payable to Government under that section or under any other section of the Regulation or under a rule made under the Regulation, and as well recoverable as arrears of land revenue. Liability to Government must arise in terms of the section or of the rule and may be under various heads mentioned therein. It is only then, the summary procedure of recovery laid down under the law will be attracted. Whether that procedure itself may be invalid on other score, is however, a different matter.

20. The scheme of recovery under the rules is contained in Rules 14 to 17. Rule 18 then follows in sequence. Rule 18 cannot be worked without reference to Rule 17. which again brings in Rules 14 to 16. None of the rules contemplates liability or payability to Government on account of damages for breach of contract. Yet this is the *raison d'être* for the present recovery proceedings.

21. It may be noted that the situation was met by the States of Himachal Pradesh. Madhya Pradesh and Orissa by amendment of Section 82 of the Indian Forest Act 1927. and the substituted Section 82 then included, *Inter alia*, all money payable to the State Government under any contract relating to timber and other forest produce including any sum recoverable thereunder for the breach, thereof or in consequence of its cancellation or under the terms of a notice relating to the sale of timber or other forest produce. This is not to be found in Rule 18. nor in Section 75 of the Regulation.

22. After giving anxious consideration to the submissions made by the learned Advocate General, Meghalaya and the Junior Government Advocate. Assam in support of the case of the respondents, and taking into consideration all aspects of the matter, we come to the conclusion that the two impugned Bakijai proceedings are without jurisdiction and invalid, These are, therefore, quashed.

23. In the result the two applications in Civil Rule Nos. 726/69 and 206/68 are allowed. Rules are made absolute. We will, however, make no order as to costs.

24. Before parting with the records we regret to observe that we were unhappy to find the State of Assam speaking in two voices before the Court on an important question of law affecting the State Revenue - the learned Junior Government Advocate defending the State and the learned Advocate General, Assam, denying his support. We hope this may not recur in future. We should, however, hasten to add that except for this contretemps the submissions before us were indeed exhaustive.

Baharul Islam, J.

25. I agree