
(1964) 02 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 25 of 1963

Rahimuddin Sheikh and Another

APPELLANT

Vs

Trilok Chandra Roy and Others

RESPONDENT

Date of Decision : 26-02-1964

Acts Referred:

Assam Adhiars Protection and Regulation Act, 1948 — Section 11(1), 11(2), 3(1), 5, 5(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1965 Guw 18

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : K. Lahiri, for the Appellant; M.C. Pathak, Sr. Govt Advocate for Respondent No. 5 and A.R. Barooah, for the Respondent

Judgement

C.S. Nayudu, J.—This civil rule arises out of an order passed by the Adhi Conciliation Board, directing the ejectment of the Petitioners from the land in dispute comprising of about 11/2 Bighas of land, which decision was confirmed on appeal by the Subordinate Judge, Dhubri, on 12-9-62. It is this decision of the learned Subordinate Judge, that is questioned before us in this civil rule.

2. The facts of the case may be briefly stated. The Respondents 1 and 2 purchased the property in dispute in the year 1955. One of these Respondents is a blind man and the other at the time of the purchase was a minor. The case of the Respondents was that the Petitioners were adhiars on their land and that as the land is required for their personal cultivation, they not having enough in their possession, and as the Petitioners won in possession of nearly 20 Bighas of land, much more than 10 Bighas which is the minimum prescribed under the Assam Adhiars Protection and Regulation Act, 1948 (Assam Act XII of 1948), they accordingly asked for the relief of ejectment. The Petitioners while conceding in their written statement that they were adhiars claimed that they were not in possession of more than 10 Bighas of land and that, therefore, they could not be evicted. They further pleaded that as on an earlier occasion in the year 1956-57,

the present Respondents 1 and 2 had applied for delivery of possession of this very land by ejecting the Petitioners there from, which prayer was rejected by the Adhi Conciliation Board on 22-7-58 and the same confirmed by the Subordinate Judge on appeal, no present application for ejectment made to the Adhi conciliation Board was barred by res judicata and could not have been entertained. It was further contended by Mr. Lahiri, learned Counsel for the Petitioners, to us that the present application made to the Adhi Conciliation Board amounted to an application for review of the previous order, and therefore, not maintainable, there being no specific provision, authorising the Adhi Conciliation Board to review their own previous decision.

3. To take the first point first, we) are clearly of opinion that there is no question of any principle of res judicata applying to the facts of this case. It is clear from the provisions of the Act that an adhiar holds the land for a year and he may continue in possession in subsequent years in the absence of any; changed conditions. It is clear from a perusal of the definition of the expression "Adhiar" in the Act, to which we shall make reference presently, and Section 3(1) thereof, the status of the adhiar could be examined during each year as it depends on many circumstances including the material fact of the extent of land in his possession, In such a case, we are clearly of opinion that there can be no question of the application of the principle of res judicata even on analogy.

4. It has been, found by the Adhi Conciliation Board as well as by the learned Subordinate Judge that the Petitioners were in possession of nearly 18 Bighas of cultivable land, and that, therefore, as this extent is far in excess of the minimum of 10 Bighas of land, the Respondents 1 and 2 were entitled to ask for the eviction of the Petitioners from the land in dispute, They further held that as one of the Respondents is blind and the other was a minor at the time of the acquisition of the land, they must be regarded as entitled to have personal cultivation through servants, and thus are entitled to ask for possession. Both the courts below found that the case put forward by the Petitioners that they were in possession of the land for more than 20 years and that, therefore, they had acquired a right of occupancy, was not proved. The finding is that the Petitioners were in possession only for five or six years.

5. Before proceeding further, it would be useful to refer to the relevant provisions of the Assam Adhiars Protection and Regulation Act, 1948.

2. In this Act, unless there is anything repugnant in the subject or context:

(1) "Adhiar" means a person who under the system generally known, as Adhi (whether Guchi-adhi or Guli-adhi), barga, chukti, bhag or chukani cultivates the land of another person on condition of delivering a share of quantity of the produce of such land to that person;

3. (1) Notwithstanding anything to the contrary contained in any law for the time being in force or any contract or agreement, express or implied, any person who during the preceding agricultural- year cultivates any land as adhiar shall have a

right to remain in occupation and cultivate the land for subsequent years until he either voluntarily relinquishes the land or is ordered by a Revenue Officer u/s 5 to cease to cultivate and vacate the land or is evicted there from in execution of a valid order of the Revenue Officer.

This Act was amended in 1952, 1955 and 1957. With reference in the two later amendments, it would be useful to extract Section 5 of the Act, as amended.

5. (1) Subject to the provisions of Sub-section (2) below, an Adhi Conciliation Board may, on application of a landlord and after due notice and enquiry as prescribed, order an Adhiar, on one or more of the grounds mentioned below, to cease to cultivate an Adhi land and to be evicted there from in the manner prescribed:

(i) that the land is bonafide required by the landlord for his personal cultivation;

Provided that:

(a) if the aggregate area of lands in actual occupation of an adhiar does not exceed 10 bighas, then he shall not be evicted there from, until he has been provided with land of equivalent value in the locality;

(b) if the aggregate area of lands in actual occupation of an adhiar exceeds 10 bighas, then the adhiar shall not be evicted from a minimum area of 10 bighas as selected by him (adhiar), until he has been provided with land of equivalent value in the locality, but the landlord shall be entitled to resume for his personal cultivation any area in excess of these 10 Bighas. In no case, however, the aggregate area of lands so resumed from all his adhiars taken together, along with any other land already held under personal cultivation by the landlord or any member of his family on the date of resumption, shall exceed an overall limit of 100 bighas;

(c) if the landlord is a minor, or a widow, or a person subjected to any physical or mental disability or a member of the Military, Naval or Air Forces of the Union, then it shall not be obligatory on him to leave a minimum area with the adhiar as provided for in (a) or (b) above;

(d) if the landlord does not cultivate the land within one year, or sublets it to others within two years from the date he gets possession of the land by virtue of this clause, the evicted adhiar shall be restored to possession in the manner prescribed.

(2) No adhiar who has acquired any right of occupancy under any other law shall be evicted except under the provisions of that law, and no adhiar who has acquired any other right under any other law shall be deprived of It.

Assam Act XI of 1957 amended the definition "personally cultivation" and it runs as "follows:

2(7). Personal cultivation" means cultivation by the person himself or by any

member of his family or by his servants or hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervision of the person himself or any member of his family, provided it is accompanied by the bearing of risks of cultivation by the owner and by residence in the village in which the land is situated or in a nearby village within a distance of five miles during the greater part of the agricultural season:

Provided that in the case of a person who is a widow or a minor, or is- subject to any physical or mental disability or is a member of the Military, Naval or Air Force. of the Union, or is a student below the age of twenty-five years of any educational institution recognised by the State Government, the land shall be deemed to be under personal cultivation even in the absence of such personal supervision.

6. It is also clear from Section 11(2) of the Act, as amended in 1955 (Assam Act XIII of 1955), that the order of the Adhi Conciliation Board, as considered and dealt with by the appellate Court u/s 11(1), is final. This section is as follows:

11. (1) Any person aggrieved by an order of the Adhi Conciliation Board or the Revenue Officer under this Act may, within the prescribed time and in the prescribed manner, appeal to the Sub-Judge having jurisdiction over" the area concerned and the latter may uphold, modify or set aside the order, or pass such order as he may deem-fit.

(2) The order of the Adhi Conciliation Board or the Revenue Officer when no appeal is preferred, and the orders of the Sub-Judge when an appeal is preferred, shall be final.

7. On the materials placed before us, we are satisfied that the Respondents 1 and 2 are entitled to obtain possession of the land- in the circumstances, and on the-facts, as found by the courts below, namely, that the-Petitioners were adhiars and that they had been in possession for nearly five or six years and that they had lit their occupation cultivable land to the extent of nearly 18 Bighas.

8. Mr. Pathak, appearing for the State, also contended that this writ petition was filed on 15-3-63 where as the order of the Subordinate Judge on appeal was passed on 12-9-62. We also consider that the application has been filed at a very late stage. That apart, we are not satisfied on the materials of the case that there is any substance in this petition, which calls for the exercise of our extraordinary jurisdiction under Article 226 of the Constitution.

9. The petition, therefore, fails and is dismissed; with costs which we assess at Rs. 50/-.