(1963) 08 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rules No''s. 31 and 45 of 1963

Rampati Goala APPELLANT

Vs

Aswini Das and Others RESPONDENT

Date of Decision : 07-08-1963

Acts Referred:

Assam Board of Revenue (Amendment) Act, 1962 — Section 14, 14(3), 4
Assam Board of Revenue Act, 1959 — Section 4
Assam Land and Revenue Regulation (Amendment) Act, 1962 — Section 147
Fisheries Rules, 1953 — Rule 11, 12

Citation : AIR 1967 Guw 50

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Advocate : Islam and J.P. Bhattacharjee, for the Appellant; M.C. Pathak, Sr. Govt. Advocate and (sic)dar, Jr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—Briefly the facts (SIC) Rule No. 31 are that the (SIC) lessee of No. 35 Eleng Dhupna Beel Fishery in the District of Cachar for the years 1961-64. This settlement was made with him after his tender was accepted. He is alleged to have made certain default in the payment of the arrears of the instalment and the fishery was ordered to be resold on the 20th December 1962. The fishery was resold to Respondent No. 1 for the unexpired period. Against this order the Petitioner went up in appeal to the Assam Board of Revenue challenging the correctness of the order of resale. It appears that in the meantime the Government in exercise of its power under Rule 12 of the Fishery Rides made direct settlement with the Respondent.

In Rule No. 45 the facts are that the Petitioner was the lessee of No. 36/55 Karkari Janamara Beel Fishery for the term 1962-65. This fishery was also ordered to be resold and on 20th December 1962 was resold to the Respondent No. 3 Piyaricharan Namasudra for the unexpired period. Against this order also an appeal was filed to the Assam Board of Revenue u/s 4 of the Assam Board of

Revenue Act. 1959 (Assam Act VIII of 1960). The Assam Board of Revenue had the jurisdiction to entertain appeals and revise decisions in revenue cases under the provisions of the enactments as are specified in Schedule A attached to this Act. Serial No. 1 of Schedule A deals with the Assam Land and Revenue Regulation. Item 5 of column 2 of this serial number reads as follows:

Appeal against orders passed by the Deputy Commissioner and the Subdivisional under Fishery Rule 11 framed under the Regulation and the Indian Fisheries Act, 1897 (IV of 1897).

Thus under this Act which will hereinafter be called ''the Act of 1959'', appeal was provided for against an order passed under Rule 11 of the Fishery Rules to the Assam Board of Revenue. Under the Act of 1959 the Petitioners in the present Rules filed appeal before the Assam Board of Revenue. The Assam Board of Revenue Act was amended by the Assam Board of Revenue Act, 1962 - Assam Act XXI of 1962 (hereinafter called ''the Act of 1962). Section 4 of the Act of 1962 provides:

The Board shall have the power and jurisdiction to entertain appeals and petitions and revise decisions in revenue cases arising under the provisions of the enactments specified in Schedule ''A'' and shall also have such power and jurisdiction as may be conferred on it by any other law for the time being in force.

In Schedule A of the Act of 1962 the Assam Land and Revenue Regulation has been omitted. Section 14 of the Act of 1962 provides that the Assam Board of Revenue Act, 1959 is here by repealed. The Board of Revenue, in view of the repeal of the Act of 1959 was of opinion that the Board has ceased to have any jurisdiction to dispose of the appeals filed under Rule 11 of the Fishery Rules, and in this view of the matter returned the memos of appeals to the Petitioners.

2. The Petitioner challenges the validity of the order and his contention is that the Assam Board of Revenue had jurisdiction to dispose of the appeal and it has failed to exercise the jurisdiction vested in it. It is contended that a writ of certiorari would be issued quashing the order of the Board of Revenue and further the Board of Revenue be directed to dispose of the appeal on merits.

3. It should be pointed out that we have not the benefit of any reasoned judgment of the Assam Board of Revenue as to why the Board thought that the Board had no jurisdiction to dispose of the appeal which was admittedly filed before it under the Act of 1959. The Assam Board of Revenue on the 27th February 1963 passed an order to the effect that as the Assam Board of Revenue Act XXI of 1962 and the Assam Land Revenue Regulation (Amendment) Act XXII of 1962 came into force on 15th February 1963, this Board does not have jurisdiction to hear fishery appeal under these Acts It was, however, further observed in this order as follows: "It is, however, told that Government is considering question of vesting the board with the same power." The Board of Revenue thus did not dispose of the appeal finally on 27th February 1963 on the ground that the Assam Board of Revenue had no jurisdiction.

Even this order does not contain any reason and discussion of the grounds on which the Board of Revenue held that it had no jurisdiction. Finally by a letter dated 21st March 1963 issued by the Special Officer, Assam Board of Revenue the Petitioner was handed over the memo of appeal on the ground that the Assam Board of Revenue thought that it had no jurisdiction to dispose of the same. This also is not a final order passed by the Assam Board of Revenue on the appeal pending before it. It is only a communication sent by the Assam Board of Revenue to the Petitioner handing over the memo of appeal to him. The matter also required further and more elaborate consideration by the Assam Board of Revenue before disposing of the matter in such a summary manner.

4. Mr. Islam, however, who appears for die Petitioner has made two-fold arguments. His first contention is that the appeal was filed u/s 147 of the Assam Land and Revenue Regulation and not under Rule 11 of the Fishery Rules. By the Assam Land and Revenue Regulation (Amendment) Act, 1962-- Assam Act XXII of 1962 -- the powers which were exercised by the Revenue Tribunal and thereafter by the High Court have been vested in the Assam Board of Revenue by amending Section 147. That being so, the Assam Board of Revenue had power to hear an appeal under the Regulation and not under Rule 11 of the Fishery Rules inasmuch as the order relates to the settlement of the fishery.

5. The next point urged is that, even if Assam Board of Revenue has got no power under the Act of 1962 to entertain and to dispose of an appeal filed under Rule 11 of the Fishery Rules, the appeals which were pending on the date when the Act of 1962 was passed, could be disposed of in view of the provision Section 14(3) of the Assam Board of Revenue Act 1962. As in our opinion in spite of the repeal of the Act of 1959, by virtue of Section 14(3) the Assam Board of Revenue can dispose of the pending appeals, it is not necessary to deal with the first point urged by the Petitioner.

6. Section 14(3) of the Act of 1962 reads as follows:

Notwithstanding such repeal under Sub-sections (1) and (2), any decision taken, order made, anything done or any proceeding commenced under any of the provisions of the Act repealed shall, in so far as they are not inconsistent with the provisions of this Act continue in force and shall be deemed to have been taken, made, done or commenced under the corresponding provision of this Act.

This Sub-section refers to the proceedings which have commenced before the repeal of the Act of 1959. The contention is that under Rule 11 of the Fishery Rules if the Board of Revenue disposes of the appeal it will be acting inconsistently with the provisions of this Act and thus Section 14(3) is not attracted in the present case. Section 4 of the Act of 1962 provides for an appeal against the revenue matters and thus if cannot be said that the disposal of the appeals which were pending and which were validly filed under the Act of 1959 will be inconsistent with the provisions of the Act of 1962. Even Section 4 specifically provides for an appeal in revenue matters and thus the entire purpose of Section 14(3) will be nullified if the pending appeals are not disposed of by the Assam Board of Revenue. In our opinion Section 14(3) applies to the circumstances of the present case and pending appeals had to be disposed of by the Assam Board of Revenue and the Board of Revenue was not right in saying that after the Act of 1962 was passed, it had on jurisdiction to dispose of the present appeals pending before it.

7. It should also be pointed out that under Rule 11 which has not been amended, an appeal lies against an order of settlement to the High Court. At the time when the Act of 1959 was in force the Petitioner could not have filed any appeal to the High Court because there was an express provision under the Act of 1959 to file an appeal to the Board of Revenue and if that appeal was validly filed in the year 1959, it will be anomalous to hold that prior to the coming in of the Act of 1959 the appeals could be filed to the High Court and after the amending Act of 1962 came into force the appeal can be filed to the High Court but during this interim period the persons who were aggrieved by the order were deprived of any right of appeal. That could not have been contemplated by the legislature and thus appropriately, to save the pending appeals, the provisions of Section 14(3) were enacted.

8. It was then pointed out by the Counsel for the State that no useful purpose will be served in granting relief to the Petitioner in the circumstances of the present case. Firstly it is urged that on the Petitioner''s own saying here was no order of settlement passed after the confirmation by the Commissioner and therefore Rule 11 was not attracted and no appeal was competent before the Assam Board of Revenue. If there was no competent appeal pending before the Assam Board of Revenue, there were no proceedings pending before it and Section 14(3) is not attracted. That is a matter which deals with the merits of the appeal.

Whether the Assam Board of Revenue was competent under the Act of 1959 to entertain the appeal or not is a matter which will be disposed of by the Assam Board of Revenue, when dealing with appeal. But it cannot be said that Section 14(3) is not attracted. There is no patent want of jurisdiction in the Assam Board of Revenue so as to hold that Section 14(3) will not be attracted in these circumstances. When the matter goes back to the Assam Board of Revenue, it is for the Board of Revenue to take that matter into consideration and decide whether the appeal was or was not in accordance with law.

9. The next point urged is that as the Government has validly made a direct settlement in the exercise of its powers under Rule 12 of the Fishery Rules, no useful purpose will be served by sending back the case to the Assam Board of Revenue. The reasons given by us for rejecting the earlier argument will apply with equal force to this argument. This is also a matter which will be considered by the Assam Board of Revenue, when dealing with the appeal on merits. But this is not a matter which we can consider at this stage and deny the Petitioner the relief claimed by him on the ground that ultimately when the appeal goes

back to the Assam Board of Revenue, it may be rejected by the Board on some preliminary ground.

10. Accordingly we allow the petitions, set aside the orders of the Board of Revenue and send back the appeals to the Board of Revenue with a direction that the appeals will be treated to be pending before the Board and disposed of by the Board according to law. We make no orders as to cost of this petition.