
(1991) 07 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 332 of 1990

Sarat Kumar Neog

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Assam Municipal Act, 1956 — Section 148(2), 148(3), 299
Assam Sale of Pounds and Markets by Municipal Boards and Town Committees Rules — Rule 2
Constitution of India, 1950 — Article 226

Citation : (1992) 1 GLR 152

Hon'ble Judges : R.K. Manisana Singh, J;M. Sharma, J

Bench : Division Bench

Advocate : M.K. Sharma and K.P. Pathak, for the Appellant; B.P. Bora, Government Advocate, T.C. Khetri and A.K. Goswami, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—In this application under Article 226 of the Consuitution, the Petitioner Shri Sarat Kumar Neog has challenged the intension of the period of lease of a weekly market under Dhekiajuli Municipal Board.

2. The Board is under supersession. The consequence of superession is provided u/s 299 of the Assam Municipal Act, 1956, for short "the Act". u/s 299(b) of the Act, all the powers and duties which may be exercised and performed by the Board under the Act, be exercised or performed by such person or person as the State Government may direct. Whatever the designation is given to the person or persons to exercise powers and duties of the Board, be or they shall be deemed to be the Board for the purpose of the Act. Therefore, wherever the word "Board" is (sic) in this case we use the same to mean the person or persons appointed by the Government.

The Respondent-5 Shri Utpal Saikia was granted lease of the weekly market under Dhekiajuli Municipal Board for one year (1989-90) the Board. Shri Saikia

made an application to the Board for attention of the term of the lease for another one year (1990-91). The Board forwarded the application vide letter dated 27.1.90 (Annexure-C to the petition) to the Director Municipal Administration with recommendation. On receipt of the letter, the Director purporting to exercise his powers conferred on him under Rule 2 of the Rules of Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam (for short "the Rules,") made an order to the effect that the period of lease was extended for one year (1990-91) @ 5% above the last year's settlement value. The order was communicated by his letter dated 1.1.90 to the Board. Hence the present writ petition.

3. Sub-section (3) of Section 148 of the Act provides:

The Board may grant a lease according to rules under this section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets at the rates prescribed by the Board under Sub-section (2).

The amended Rule 2 of the Rules, runs:

The period of the lease for a pound or market shall be one year, provided that the Board may, if it think fit, with the previous approval of the Director Municipal Administration let a pound or market for a term not exceeding 3 (three) years.

(emphasis added)

On reading of Sub-section (2) together with Rule 2, it is clear that the authority to grant the lease of a market is the Board. However, if the term of the lease is to be more than one year, the Board has to exercise the power of the grant of the lease with the previous approval of the Director of Municipal Administration.

4. Before dealing with the rival contentions of the parties it would be important to note here that the question as to whether the Director has power under Rule 2 to extend lease has not been disputed and, therefore, we proceed with the assumption that the Director has jurisdiction to extend lease.

5. As already stated, if the period of lease is for one year, the Board has absolute power to grant the lease of a market. But if the period of the lease is for more than a year, it is to be made by the Board with the previous approval of the Director. The question which arises now is what the expression "with the previous approval" signifies? The word "approval" means an act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another. (see Black's Law Dictionary). Therefore, the expression "with the previous approval" signifies that there must be an act or thing which is done by one and that act or thing which is to be consented or ratified or confirmed by another. Therefore, if the lease is to be made for a period more than one year, the Board shall decide at least the period and rent which would invite Director to say that the proposal to lease is approved.

6. In the present cases the Board has not made any proposal or has done

nothing in the light of the discussions above, except forwarding the application for extension with recommendation. That apart, the lease was made or extended by the Director by fixing the year and the rent whereas the authority to grant the lease is the Board u/s 148(3). For these reasons, the lease was made or extended by the Director without jurisdiction.

7. For the reasons stated above, the petition is allowed and the order of the Director communicated under letter dated 1.1.90 is set aside. No costs.