

(1972) 07 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 192 of 1970

Sawna Brahma

APPELLANT

Vs

Assam Board of Revenue and another

RESPONDENT

Date of Decision : 12-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1972 Guw 121

Hon'ble Judges : P.K. Goswami, C.J.; R.S. Bindra, J

Bench : Division Bench

Advocate : S.K. Sen and D.R. Guha, for the Appellant; B.K. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Goswami, C.J.—This application under Article 226 of the Constitution of India is directed against an order of the Board of Revenue interfering in appeal purported to be made to it u/s 147 of the Assam Land and Revenue Regulation.

2. The Board of Revenue interfered with an order of the Collector in settling excess land acquired under the Assam Fixation of Ceiling on Land Holdings Act, 1956, hereinafter referred to as "the Act". The petitioner, the second Respondent and another person applied for the land in question which measures about 7 Bighas and odd. All the three applications were sent to the Sub Deputy Collector for enquiry and report. On receipt of the reports, the Collector or the authorised officer, whoever he was, settled the land in favour of the petitioner. When this came to be known, the second Respondent made a prayer to the Deputy Commissioner to stay the issue, of the patta which was done. But later on that order of stay was vacated. That led to the appeal before the Board of Revenue u/s 147 of the Assam Land and Revenue Regulation. The Board entertained the appeal and gave the second Respondent relief by setting aside the order of settlement in favour of the petitioner.

3. Mr. S. K. Sen, the learned Counsel for the petitioner, is not interested with the details of the matter or the facts and circumstances in which various orders have been passed. As a matter of fact, he did not even choose to place the order dated 22-4-1969 which was said to be the order appealed against, on the ground that no copy could be available to him is only submission is that no appeal was entertainable against an order of settlement of this type by the Board of Revenue under the Regulation. Mr. Das, the learned Counsel for the second Respondent, anxious as he is about his fate on the Writ Application, supports the order of the Board by relying on the provisions of the Assam Land and Revenue Regulation which, according to him, are clearly attracted because of Section 16(2) of the Act. We are concerned with the Act prior to its amendment by Assam Act VIII of 1971. Mr. Das submits that Section 16(2) refers to Assam Land and Revenue Regulation, 1886 and, therefore, it is implicit that the entire provisions of the Regulation including even rights of appeal conferred thereunder are available to the Board dealing with orders passed u/s 16 or 17 of the Act. We are unable to accept the above submission. The Act discloses an integrated scheme and the disposal of excess land is provided for in Chapter III of the Act. Section 15, with which it opens, provides that "subject to the provisions of this Act and of this chapter in particular the excess land acquired u/s 8 of this Act shall be at the disposal of the State Government". Sections 16 and 17 which follow deal with the manner of disposal of excess land in the first instance and disposal of the same when land could not be settled in the manner laid down in the foregoing Section 16. It is common ground that Section 16 cannot be relied upon in this case. The order was, therefore, passed by the Collector u/s 17. Both the petitioner and the second Respondent claim their respective rights u/s 17. At any rate, on receipt of the three reports the Collector preferred the petitioner and passed the order of settlement in his favour and even premium for the land was realised. Both the petitioner as well as the second Respondent appear to have already some lands. We are, therefore, not required to consider and indeed that enquiry is not permissible on the Writ side, as to who is best suited to get settlement of the land.

4. The short question that arises for consideration is whether the Board had jurisdiction to entertain an appeal against the particular order passed by the Collector in settling excess land under the Act. Section 31(1) provides for appeals. It reads as follows:

31. (1) Any person aggrieved by any order u/s 12 or 13 may, within 30 days of the order, prefer an appeal to the District Judge. (2) The decision of the District Judge, or the original order when no appeal is preferred, shall be final.

Section 32 may also be read:

32. Except as otherwise expressly provided in this Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

Appeal is a creature of the statute. In order to work out the entire scheme of this Act, bar to jurisdiction of the Civil Court is created. Only appeal against decisions made under the two sections is provided for. We are, therefore, clearly of opinion that no appeal is provided against any decision made u/s 16 or u/s 17 of the Act. Since admittedly the order was passed by the Collector u/s 17, no appeal lay to the Board. Section 147 of the Regulation could not be invoked to entertain an appeal which does not be under the provisions of the Act. That being the legal position, the Board had no jurisdiction to entertain the appeal and to pass the impugned order. The appellate order of the Board is hereby quashed.

5. The application is accordingly allowed, and the Rule nisi is made absolute. We will, however, make no order as to costs.

R.S. Bindra, J.

6. I agree.

Application allowed.