
(1984) 03 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 714 of 1981

Shew Chand Chouhan and Others	Vs	APPELLANT
The Revenue Officer, Karbi Anglong District Council		RESPONDENT

Date of Decision : 07-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 1 GLR 474

Hon'ble Judges : S. Haqub, J;K. Lahiri, J

Bench : Division Bench

Advocate : S.K. Sen and A.R. Paul Mazumdar, for the Appellant; M. Sarma, for the Respondent

Judgement

K. Lahiri, J.—By this application under Article 226 of the constitution the Petitioners who are peasants, question the validity of the notice "Annexure-B" purported to have been under Rule 18(3) of the Settlement Rules under the Assam Land and Revenue Regulation, 1898 as adopted in Karbi Anglong issued by the Revenue Officer, Karbi Anglong District Council threatening them to vacate a parcel of land under pain of various penalties.

2. The Petitioners claim is that their father had been a resident of Karbi Anglong, formerly known as Mikir Hills District, over 50 years. They claim, that they are patta holders of a parcel of land in patta No. 3 of Rajpur village paying revenue and local taxes to the Mouzadar. They have produced a receipt marked Annexure-"A" dated November 3, 1975 evidencing that Petitioner No. 1 is the Pattadar owner of the land bearing patta No. 3 in Rajpur village and he paid revenue and local taxes for the land. The Petitioners complain that by the notice marked Annexure-B, the Respondents sought to evict them from the land in their possession where they have had long standing houses and constructions. They question the jurisdiction of the authority to issue the notice under Rule 18(3) of "the Rules" on the grounds (1) that they are the patta holders of the land in question and (2) that they are in occupation of the land "bonafide" and had put

up constructions with the knowledge and consent of the Respondents, and as such, they were not "trespassers or illegal occupant" contemplated under "the Rules". At any rate, the Petitioner contend that the notice is invalid and suffers from the vagaries of lack of precision or accuracy of the land from which the Petitioners are sought to be evicted. Taking advantage of the vague notice, wherein no precise land from which they would be evicted for the alleged "encroachment of Sarkari land in village Rajpur Kachmari under Mouza Langpher"" they are sought to be evicted from their patta land in Rajpur village. They complain that unless a full and correct details are given the impugned notice be declared invalid and bad in law. The notice, according to Mr. Paul Mazumdar, learned Counsel for the Petitioners is a fraud on the constitution and the law. Mrs. M. Sarma, learned Counsel on behalf of the Respondents submits that Petitioners were merely paying Touji Bahira, and as such, they were only permissive occupants of the land. Learned Counsel submits that the land is "Sarkari land" although reflected in Annexure-"A" as "Patta land". The Respondents have claimed that they have already carried out the eviction on 12.8.81, before the Petitioners came up before this Court, asking for the relief. However, the Respondents clearly admit the existence of houses on the land but nowhere averred in their affidavit that the constructions were made without their knowledge or permission. There is no averment in the affidavit us to vagueness of the notice issued under Rule 18(3) of the Settlement Rules, It is the common case of the parties that the Petitioners could not have been removed or evicted from the land unless there was an authority of law. For the purpose of eviction of persons in occupation in certain classes of land, laws have been made and they are manifested in Rule 18 of the Settlement Rules. The relevant extracts of Rule 18 are reproduced:

18. Ejectment,-(1) Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, land-holder, or settlement-holder.

(2). When such person has entered into possession of land that has previously been reserved for roads or roadside lands or for the graving of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when, further, there is no bonafide claim of right involved, he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected, without authority on the land.

(3)(a). In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below. requiring the occupation generally to vacate the land specified in the notice within 15 days of the date of publication of the notice an the land concerned or in a prominent place in the vicinity thereof and to remove any buildings, houses, fences or crops, etc., which may have been raised on such land, provided that the Deputy Commissioner may give time to any

particular occupant to harvest the crops, If any growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice shall be confiscated to the Government.

(b). The notice referred to in Clause (a) of Sub-rule (3) above shall be published by affixing a copy thereof in the Notice Board of the office of the Deputy Commissioner or the Sub-divisional Officer, as the case may be, and also in the Notice Board of the Office of the Sub-Deputy Collector within whose jurisdiction the land is situated. A notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof.

3. In *Ramalakanta Deka v. The State of Assam* 1985 (2) GLR 258 e Division Bench of this Court has delineated the scope and jurisdiction of the authority to evict a person under Rule 18(2) of the Settlement Rules, Mrs. Sarma, learned Counsel for the Respondents concedes that it is not a case covered by Rule 18(2) of the Rules, as the land was not reserved for roads or roadside lands or for giving of village cattle or for other public purposes nor did the Petitioners enter into possession of the land from which they had been excluded by general or special order.

4. The crucial questions, therefore, are whether the Petitioners were trespassers or unauthorised occupants of the land or not, and, whether the Respondents having accepted land revenue and local taxes and permitting them to make constructions are estopped from taking action under Rule 18 of the Rules? If they were not unauthorised occupants, Rule 18(3) could not have been invoked by the Respondents. We hold that actions under Rule 18 cannot be taken against a patta-holder or against a person having right, title or interest in the land, in view of the provisions of Rule 18(1) of "the Rules". The procedure for the cancellation of a patta, it is the common case of the parties, are provided elsewhere in the Assam Land Revenue Regulation. It is also the case of the parties that the said procedure for the cancellation of the patta of the Petitioner has not been resorted to nor did the Respondent cancel the patta following the procedure under the Assam Land and Revenue Regulation.

5. We find therefore that the Petitioners have a prima facie case in their favour, as Annexure-A, do clearly indicate that they were possessing the land and were paying land revenues and local taxes to the authority. Under these circumstances, we are of the view, on the facts of the case, that the said land continued to remain a patta land even on the date of the issuance of the notice under Rule 18(3) of "the Settlement Rules". As such, the proposed action of eviction against the Petitioners was illegal, void and without jurisdiction.

6. Be that as it may, the Petitioners have claimed that they were in possession of the land over last 50 years and constructed houses thereon. Apart from the statement in the petition, documentary evidence, market Annexure-A, has been produced to show that Petitioner No. I paid land revenue and local taxes of the land for the years 1974-75. The Petitioners claim that they were not only in

occupation on payment of land revenue and local taxes but constructed houses thereon. The Respondents have failed to show that the constructions were made surreptitiously or without their knowledge or consent any person who pays land revenue and local taxes in respect of a land acquires a right to make construction unless prohibited by any law for the time being in force, No such law could be shown to establish that the constructions were made violating any such law. In the instant case, we find that there is one-way traffic that the Petitioners were in occupation of the land shown in Annexure "A" and made constructions with the knowledge of the Respondents.

7. No person can be ousted from possession of his land by an executive fiat. This necessitated the making of the settlement Rules for evicting person in occupation of land belonging to Government. A person, when bonafide put up constructions on land belonging to others, with their permission cannot be a trespasser nor would the construction so made vest in the owner of the land by the application of the Maxim "quicquid plantatur solo solo cedit". The principles have been recognised in *Tnakoore Chunder Paramanick v. Ram Dhone Bhattarchajee* 6 Suth WR. 228; *Beni Ram v. Kundan Lal* 26 Ind App. 58 and *Narayan Das v. Jatindranath* 54 Ind. App. 218 ; AIR 1927 135 (Privy Council) The principles enunciated in the aforesaid decisions have been accepted by the Supreme Court in *Bishan Das and Others Vs. The State of Punjab and Others*, In our opinion the principles of "promissory Estoppel" are squarely applicable in such cases. If the owner had taken land revenue and/or permitted a person to make construction and on the assurance expressed or implied structures and constructions are made, the owner of the land cannot retake possession by demolishing the construction without recourse to legal process, as he is bound by his own conduct or promise. In the instant case the Petitioners have established that they had put up the construction with the knowledge and consent of the Respondent and they were in occupation of the land for over 50 years. This apart, the Petitioners have shown that they paid land revenue and local taxes to the Respondent, which were duly received by them, it has been rightly contended by learned Counsel for the Petitioners that the Petitioners have had bonafide belief that they had right title and interest In the parcel of the land shown in Annexure "A", The Petitioners claim that the constructions were made with the knowledge and consent of the Respondents, as the latter received land revenue and premium, and, accordingly the Respondent cannot turn out the Petitioners as trespassers or unauthorised occupiers. In our opinion the contention has strong force. Even the principles of "Promissory Estoppel" stand in the way of the Respondents to take summary proceedings to evict them under the Rules. In our opinion such persons, so situated; may not be liable to summary eviction under the settlement rules. Of course, they are liable to be evicted if it is decided by the Civil Court of competent jurisdiction that they are liable to be evicted. While construing the provisions of The Andhra Pradesh Land Encroachment Act 1905, their Lordships have expressed similar view in *Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*, Their Lordships have

held that the authority taking up proceeding, like those under Rule 18 of the Settlement Rules, are not competent to adjudicate any complicated question of possessor right or title of the occupant. If authority finds semblance of claim of bonafide right, it should not proceed in a summary manner. Their Lordships have stated in clear terms that while considering bonafide claim of right, the authority should consider as relevant factors, the duration of the occupation of the land by the occupant, the nature of the property on which; the encroachment is alleged to have been made and whether the claim of occupation or possession is malafide or not. If an occupant openly makes construction. his acts might create a bonafide right, title or interest in the property. When the authority finds that the occupants have some right to occupy the land and that their right requires impartial adjudication the same should be left to be decided according to the established procedure of law. The duration of possession, the nature of open acts of possession, construction of structures and the manner of enjoyment of the property as their own, certainly create bonafide right in favour of the Petitioners such cases, in our opinion, should go to the Civil Court for "impartial adjudication".

8. There is a mistaken belief prevailing that the authority is competent to execute notices under Rule 18 and evict "any person" from "any land". The provisions of the rule are applicable only to certain classes of land and in respect of certain classes of persons. The Intention of the rule In specifying the classes of land from which persons may be evicted is significant. Similarly, if bonafide right of claim exists, no action can be taken under Rule 18. Similarly, If a strong bonafide claim is put forward by the person affected by notice under Rule 18(3), his case should go to the Civil Court for adjudication. In T. Krishna Rao (Supra) their Lordships have held that summary procedure for eviction provided in the Land Revenue Regulations are applicable only against persons who are in "unauthorised occupation" of any land which is "the property of the Government". If any bonafide dispute regarding title to the property, including the right of occupation or the question of "promissory estoppels" arises. it has been held by their Lordships that the authority cannot take an unilateral decision in its own favour that the property belongs to it and that the person is an unauthorised occupant, and, on the basis of its unilateral decision, it cannot take recourse to lethal eviction proceedings. We are of the view that summary remedies provided in Rule 18 of the settlement Rules are not the kind of "legal process", which is appropriate to adjudicate controversial questions of right, title and interest in respect of land.

9. Be that as it may, we find that in the instant case the provisions of Rule 18(3) of the Settlement Rules were obeyed to be violated. An unauthorised occupant is statutorily entitled to get a notice. It is his statutory right. The notice is meant for affording him an opportunity to submit his representation or put up a claim for getting settlement. However, if the land from which the person is sought to be evicted is not: at all described, as in the present case, the author of the notice violates the mandatory provision of Rule 18(3) and 18(4). In our opinion, Rules

of natural justice have been incorporated in Rule 18(3) and non-compliance of the provisions by itself calls for setting aside the eviction proceeding, In the instant case, in the impugned notice marked Annexure "B" there is absolutely no description of the land. The Petitioners are fully justified in submitting that their right so make a representation was frustrated by the action of the Respondents in not furnishing proper notice as contemplated under Rule 18(3) of the Rules. Learned Counsel for the Respondent concedes that the notice is not valid. Accordingly, we quash the notice and the proceedings.

10. Learned Counsel for the Respondents submits that the Petitioners have since been evicted from the land. To this Mr. Paul Mazumdar, counsel for the Petitioners controverts. We direct that if in pursuance of the illegal notice the Petitioners have been evicted they should be restored to possession, Time out of number, their Lordships have .given such relief to aggrieved parties and we merely refer one amongst many such decisions, namely, M/S. Wire-netting Stores and Wire-Netting Stores and Another Vs. The Delhi Development Authority and Others, wherein on the ground of breach of the principles of Natural Justice, their Lordships, under similar circumstances, ordered restoration of the premises to the Petitioner and also directed return of all machineries and other goods and parts of their factory to the Petitioner. In Civil Rule No. 634 of 1975, S.R. Barman v. State of Tripura, decided on 15.6.70, this Court restored possession to the Petitioner who had been evicted from the land and houses. The said decisions were followed in Kamala Kanta Deka (supra) and this Court directed restoration of possession of the land and property in favour of the Petitioner, with cost.

11. For the foregoing reasons, we accept the petition and direct that if the Petitioners have been evicted from their land covered by patta No. 3 of village Rajpur Town they roust forthwith be restored to possession and the properties destroyed or damaged should be adequately compensated. The Petitioners shall submit the losses so sustained and Respondent No. I shall determine the same in accordance with the principles of justice, equity and good conscience.