

(1985) 05 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 379 of 1985

Shri Jagannath Choudhury	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 15-05-1985

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 2, 21, 21(2), 21(3), 21(4)
Constitution of India, 1950 — Article 226

Citation : (1985) 1 GLR 496

Hon'ble Judges : K. Lahiri, Acting C.J.; K.N. Saikia, J

Bench : Division Bench

Advocate : D.C. Goswami, R.P. Singh and D. Devi, for the Appellant; S.A. Laskar, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri. C.J.

1. This is an application under Article 226 of the Constitution of India directed against the order dated 21.12.83 (Annexure-F) of the Government of Assam, as well as the orders dated 3.1.84 (Annexure-G) and 12.4.1984 (Annexure-K) of the Divisional Forest Officer, Darrang West Division, Tezpur.

2. Shortly put, the case of the Petitioner is that in response to a sale notice issued under the Assam Sale of Forest Coupes and Mahals Rules, 1977, for short "the Rules" he submitted a tender for settlement of the Gajalmari, Bawalmari and Karibeel Fishery with effect from 16.8.80 to 15.5.83. He was settled with the said fishery at an amount of Rs. 1,20,051.00 payable in 12 equal installments. For various reasons, the Petitioner could not operate the fishery with which we are not concerned. However, the Petitioner clearly admits that he defaulted in making payment of 11th and 12th instalments amounting to Rs. 20,008.00. Under Rule 21 of the aforesaid Rules he approached the Government for extension of the lease. On consideration of the representation of the Petitioner, the State

Government extended the term of the lease for the period of one year on payment of proportionate value plus 5% extension fee subject to the clearance of outstanding dues. Thereafter by letter dated 3.1.84, the Divisional Forest Officer, Darrang West Division, Tezpur, Respondent No. 2, directed the Petitioner to arrange to deposit a sum of Rs. 69,666 80, which included Rs. 43,655.00 as proportionate value, Rs. 6,003.00 as extension fee and Rs. 20,008.00 due for the 11th and 12 kits.

3. Mr. Goswami, learned Counsel for the Petitioner, has urged (i) that the provisions of Rule 21 of the Rules are not applicable in respect of fisheries; (ii) assuming that Rule 21 of the Rules are applicable in the case, the State Government acted illegally and without Jurisdiction in claiming both proportionate value as well as extension fee and (III) that the Divisional Forest Officer has illegally threatened the Petitioner that a Bakijal proceeding would be started against him, if he does not deposit the aforesaid amount.

4. We have heard Mr. Laskar, learned Additional Senior Government Advocate, Assam at length, It is a debatable question as to whether fishery is a "Mahal" as defined in "the Rules". It also passes our comprehension if fishery is a "coupe" as defined in Rule 2(g) of "the Rules", which signifies "a compact area where in a number of trees are pre marked for sale"". Rule 2(b) defines "Mahal" to mean "a well defined area wherefrom certain types of forest produce are sold"". The term "forest produce" has been defined in the Assam Forest Regulation, 1891, which is to the following effect:

(4) "Forest produce" includes:

(a) the following, whether found in, or brought from, a forest or not, that is to say timber, charcoal, caou-tchouc, catechu, woodoil, resin, natural varnish, bark, lac, myrabalam, and rhinoceros horns, and

(b) the following when found in, or brought from, a forest that is to say

(i) trees and leaves, and fruits and all other parts or produce, not hereinafter mentioned, of trees,

(ii) plants not being trees (including grass creepers, reeds and moss), and all parts or produce of such plants)

(iii) wild animals and skins (tusks and horns, other than rhinoceros horns), bones, silk, cocoons, honey and wax, and all other part or produce of animals, and

(iv) peat, surface-oil, rock and minerals (including limestone, nitrite, mineral oils and all products of mines or quarries) ;

5. We have our-own doubt as to whether fish is a forest produce notwithstanding the fact that the definition of "forest produce" is an inclusive one. In The Divisional Forest Officer Vs. Mool Chand Sarougi Jain, their Lordships of the Supreme Court held that stone is not a forest produce. Following the aforesaid

decision of the Supreme Court, this Court also held In *Bejiram Ingty v. The State of Assam* (1981) 1 GLR 222, that "forest produce" does not include stone. For the reasons set forth in those decisions, we are of the tentative view that ilia is not a forest product contemplated under the provisions of the Assam Forest Regulation and "the Rules".

6. We have every seasons to doubt whether the provisions of "the Rules"" are applicable to fishery settlement. However, when both the parties acted under the impression that the Rules were applicable to the settlement of fishery we do act propose to decide the question to whether the provisions of "the Settlement Rules 1977" govern settlement of fisheries. Be that as it may, we are of the opinion that the provisions of Rule 21 of the Rules are not applicable to the present ease. Even if "fish" may be somehow brought within definition of the expressions ""forest produce" "Fishery" cannot be "a mahal"" nor "a Coupe" as defined under "the Rules". Under Rule 21 of the Rules the period of settlement of "mahals" and "coupes" only can be extended. The Rule does not apply to any other class or category of settlement. However, we also pass over the point as the Petitioner has not taken up the point In the write petition.

7. Now, we come to the last and the strongest contention of Mr. Dinesh Goswami, learned Counsel for the Petitioner. Learned Counsel has submitted that nadir the provisions of Rule 21(4)(iii), the authority competent to extend the period of lease is empowered to demand either payment of proportionate value or the extension fee. It has no jurisdiction to demand both "the extension fee" as well as "proportionate value", The word "or" contained in Rule 21(S)(iv) and Rule 21(4)(iii) is disjunctive and not conjunctive. The word cannot be read as "and".

8. Under these circumstances we are constrained to bold that the impugned orders demanding both extension fee and proportionate value are illegal and without jurisdiction. The position becomes clear on perusal of "the Rules"" just alluded. We extract the provisions of Rules 21(3)(iv) and Rule 21(4)(iii).

21) Extension of mahal or coupe period:

(1) No extension of the coupe or mahal period shall ordinarily be admissible, In exceptional cases, Government may however reserve to itself the right of extension on merit of each case at its discretion.

(2) * * *

(3) Where under exceptional circumstances any extension beyond the time mentioned in Sub-rule (2) above is found to be justified, such extension may be given on the following condition,

(iv) extension granted under this sub-rule in respect of mahals shall be on payment of proportionate value, or ex tension fee as determined by competent authority to grant extension.

(4) Extension under Sub-rule (3) shall be granted by the following authorities:

(i) * * *

(ii) * * *

(iii) Governor in all other cases not covered under Sub-rule 4(1) and (ii) on payment of extension fee or proportionate value as may be decided upto 3 years maximum at a time.

(Emphasis supplied)

9. It is thus seen that extension may be granted only in exceptional cases and one of the relevant condition is that extension may be granted on payment of proportionate value or extension fee, as determined by the competent authority to grant extension, which is evident from Rule 21(3)(iv) and Rule 21(4)(iii). In our opinion, the expressions "on payment" referred in the clauses are significant. According to Black's Law Dictionary the expression "payment" inter alia, means-

the fulfillment of a promise or the performance of an agreement, a discharge of an obligation or debt and part-payment if accepted.... Payment is delivery of money or its equivalent in either specific property or services....

10. As such, only on payment of extension fee or proportionate value, the extension becomes effective. However, it may be on cash payment or promise to make the payment, The impugned order of extension demanding payment of both extension fee and proportionate value as rendered in the impugned order dated 21.12.1983 marked Annexure "F" to the writ petition must be declared to be invalid. On the same premises we hold that the demand made by the Divisional Forest Officer, Darrang under items proportionate value "amounting to Rs. 43,655.00 and 5% extension fee" amounting to Rs. 9,905/- as contained in the order dated 3.1.1984 marked Annexure "O" to the writ petition is illegal. The Petitioner was entitled to extension either on payment of the proportionate value or on payment of 396(sic) extension fees amounting to Rs. 9,905.00 as determined by the authority competent to extend the terms of the lease, As such, the demand of both proportionate value and 5% extension fee as contained in Annexure "G" to the writ petition is illegal and therefore quashed. Resultantly the demand dated 12.4.85 amounting to Rs. 69,666/-, as contained in Annexure "K" made by the Divisional Forest Officer, is an illegal demand. He could have demanded only the outstanding 11th and 12th kits amounting to Rs. 28,908.00 but could not have demanded payment of Rs. 53,558/- i.e. the proportionate value of Rs. 43,655/- and also 5% extension fee amounting to Rs. 9,903/-. As such, the demand beyond the said amount of Rs. 28,908.00 as contained in Annexure "K" was an illegal demand as the said amounts could not have been demanded of the Petitioner on the threat of Bakijai proceeding). In the absence of any fresh lease, on grant of extension and payment of either proportionate value or the extension fee, no lease could have been executed by the Petitioner, In fact no lease was executed for the extended period and as such, the question of cancellation of the lease for extension did not arise. The agreement No. 13 of 1980-83 was in respect of The original lease the terms

whereof had already expired. For non-payment of proportionate value or 5% extension fee, the earlier lease could not be cancelled, as it had already spent its force; There was no fresh lease deed executed, upon payment of proportionate value or extension fee. As such, the question of cancellation or any lease did not arise at all. The threat of cancellation of the expired lease was, therefore, illegal, so was the threat or recovery of Rs. 53,558/-. At best the Divisional Forest Officer Respondent No. 2 could have demanded Rs. 28,908/-. Under these circumstances all demands beyond Rs. 28,908/- as made in Annexure is declared illegal, Similarly, the order directing cancellation of original lease deed executed by the Petitioner in 1980 is also declared to be illegal and invalid. We also declare that the threat of a drawl of Bakijal proceedings for recovery of any amount beyond the arrears due i. e- Rs. 28,908/-for the 11th and 12th kists of the original lease is illegal and void, We accordingly quash the illegal demands and threat contained in Annexure "K" to the writ petition. We record that learned Counsel for the Petitioner contends that the Petitioner is not liable to pay to the extent of Rs, 28,908/- is outstanding dues for the 11th and 12th kists of the original lease It is much less, Mr, S.A. Laskar, learned Addl. Sr. Government Advocate contest the lime. We leave the question to the authority concerned. The Petitioner may raise the dispute regarding the amount due in respect of the 11th and 12th kists of the original lease.

11. At the instance of the learned Counsel for both parties we have disposed of the matter today although the matter was not ripe for bearing. As such, we grant liberty to the Respondents to come up with application for amendment, alteration and/or cancellation of the order, if so advised. In such an eventuality, Mr. Dinesh Goswami assured us that he would appear on behalf of the Petitioner.

12. In the result the petition is partly allowed to the extent indicated above. There will be no order as to costs.