
(1990) 01 GAU CK 0015
In the Gauhati High Court
Case No : Civil Rule No. 677 of 1985

Sirajuddin

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 18-01-1990

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 160, 160(1), 160(2), 161, 165(3)

Citation : (1990) 2 GLR 22

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.K. Sen, R.P. Sharma and A. Hai, for the Appellant; C.A. Laskar, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.M. Srivastava, J.—The Petitioner assails the notification dated 6.12.78 (Annexure-C) and the notice dated 14.11.84 (Annexure-D), on the allegations that he has been a permanent resident of village Majdimaru Part-II (Marjong Pathar). Mouza-Kaki, District Nagaon and has been living from the time of his ancestors. The Petitioner has been in possession of the land which had been settled long back. The said village has been predominantly inhabited by "non-tribal" population, but the Respondents without any proper enquiry had issued the notification dated 6.12.78 to constitute the villages stated therein as tribal block under the provisions of Section 161 of the Assam Land and Revenue Regulation, 1885 hereafter the "Regulation", and subsequently by notice dated 24.11.84 the Petitioner had been required to hand over possession of the land. The Petitioner's contention is that the constitution of the tribal block and notice issued to the Petitioner in pursuance thereof was without any justification and not warranted by law.

2. The Respondents have not filed affidavit-in opposition, and have not produced any records. It may be noted here that time was given to the Respondents to

produce the records relating to issue of notification if any under Sub-section 2 of Section 160 of the regulation or the constitution of the tribal block, but no records have been produced.

3. We have heard Sri S.K. Sen, learned Counsel for the Petitioner, and Sri B. Banerjee, learned Govt. Advocate, for the Respondents.

4. The main question to be seen is that whether the constitution of the tribal block u/s 161 of the Regulation was in accordance with law.

5. Chapter-X of the Regulation was inserted by the Assam Act XV of 1947, for the protection of the backward classes. Its section 160 provides for protection of certain classes and visualises that the State Government may adopt such measures as it deemed fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages were incapable of looking after their welfare in so far as such welfare depended upon their having sufficient land for their maintenance Sub-section (2) of Section 160 requires the State Government to by notification in the Official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid.

6. Section 161 which provides for power to the State Government to constitute compact areas into belts or blocks reads:

161. Constitution of compact areas,--The protective measures may include the constitution of compact areas, in regions pre-dominantly peopled by the classes of people notified under the provisions of Sub-section (2) of Section 160, Into belts or blocks. The boundaries of the areas so constituted shall as far as possible coincide with mauza boundaries or be otherwise easily distinguishable.

It should be clear from the provisions of Section 161 above that before any action is taken for the constitution of belts or blocks, it is necessary for the State Government to specify the class of people whom it considers entitled to protection by various measures as contemplated in Sub-section (1) of Section 160 of the Regulation, by issue of a notification under Sub-section (2) thereof.

7. The impugned notification dated 6.12.78 (Annexure - C) nowhere specifies the classes of people for whose benefit the block stated therein was constituted It does not refer to any notification as contemplated in Sub-section (2) of Section 160, Even though the learned Government Advocate had requested for time to produce the records, no records as stated before, have been produced to show that the State Government had taken any action to specify the classes people for whose benefit action was required to be taken.

8. In our opinion, the power u/s 161 of the Regulation presupposes the issue of notification under Sub-section (2) of Section 160, i.e. that in the absence of any notification specifying the claim of people under Sub-section (2) of Section 160 the power u/s 161 of the Regulation for constitution of belt or block, cannot exercised. It follows that no notification having been issued under Sub-section

(2) of Section 160, the impugned notification dated 6.12.78 (Annexure-C) cannot be sustained and has to be quashed.

9. In so far as the impugned notice dated 24.11.84 is concerned since the constitution of the tribal block itself cannot be sustained the impugned notice also cannot be sustained. Moreover it (sic) be noted that the Petitioner who, according to his contention, had been living in the area since the time of his ancestral, i.e., much before the constitution of the tribal block, was not given any opportunity of being heard but was required to hand over possession of the land and obviously the impugned action was in flagrant violation of the principles of natural justice and for that reason too it cannot be sustained.

10. For the aforesaid reasons, the impugned notification No. RSD 63/68/33 dated 6.12.78 (Annexure-C) and the impugned notice u/s 165(3)(A) of the Regulation dated 24.11.84 are quashed.

11. Petition allowed. No costs.