
(1989) 01 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 556 of 1980

Tarani Kanta Das

APPELLANT

Vs

Karbi Anglong District Council

RESPONDENT

Date of Decision : 23-01-1989

Acts Referred:

Citation : (1989) 1 GLJ 402 : (1989) 1 GLR 147

Hon'ble Judges : A.Raghuvir, C.J. and J.Sangma, J

Bench : Division Bench

Advocate : N.M.Lahiri, K.Agarwal, M.Z.Ahmed, M.Sharma, Advocates appearing for Parties

Judgement

A. Raghuvir, C. J.

1. Tarani Kanta Das is a resident of Karbi Anglong District. He is a small farmer. He owns 5 Bighas of land and has no other avocation except agriculture. He states that the land he owns is not sufficient for his family of five members therefore he is obliged to supplement his income by taking land under "Vaikas" from the settlement holders in the District. What is "Paikas" system in simple terms doing agriculture by obtaining land on advancement of credit loans. This corresponds to usufructuary mortgage under the Transfer of Property Act, 1882. Tarani Kanta Das averred he has been obtaining land since 1972 to supplement his family income. He stated sometimes he obtained land for one year and at times for more than one year upto three years. In this case he stated to have obtained 16 Bighas of land on June 15, 1979 and executed an agreement in favour of one Kania Beg the land holder for 1980 and paid him Rs. 1,600/ as advance payment. In another agreement executed by him for following years 1981, 1982 and 1983 he paid Rs. 3,600/ to Kania Beg and obtained the same land of 16 bighas.

2. In Karbi Anglong District, (Land Reforms Act) 1 of 1979 is enforced from May 10, 1979 by a Gazette Notification. Tarani Kanta Das prays to declare Act 1 of

1979 as ultra vires of the Constitution as it has become difficult for him to obtain land on Paikas system due to the provisions contained in the statute as Paikas method of cultivation is now abolished in the Karbi Anglong District by the impugned enactment. He alleges as a result of enforcement of Act 1 of 1979 his rights under Articles 14, 19, 21 and 300 A of the Constitution are violated therefore he seeks to avoid the enactment in the instant writ petition.

3. We see under Clause (2) of Article 244 of the Constitution Karbi Anglong District is formed as an Autonomous District and as per Para 1 (1) read with Para 20 and under Para A of the Table of the Sixth Schedule of the Constitution. Three fourth of the members of Council are to be elected on the basis of adult suffrage and the District Council is also conferred legislative powers.

4. For any transfer from tribal to nontribal prior permission is necessary under the Mikir Hills (Transfer of Land) Act 1959. The tribal people are in the habit of transferring land to nontribals for cash credits under Paikas system. In following Paikas method of cultivation tribals are turned into debtors. As debtors they cannot redeem the debt, the land goes into the hands of nontribals permanently. The District Council therefore opined the tribal people who are agriculturists suffer in Paikas system of transfers and finally are deprived of the land, therefore in the interest of the tribals in addition to the United Mikir Hills (Land Transfer) Regulation of 1959, Act 1 of 1979 was enacted to abolish Paikas system.

5. The District Council and the State of Assam in resisting the writ petition averred the District Council is competent to legislate laws for the administration of the Karbi Anglong District. The Act, it is averred, was passed to protect the interest of the tribals. The Sixth Schedule enabled the District Council to pass the enactment. It is further averred that those who are affected by the Act can approach the Assistant Revenue Officer, Phulani Circle for redressal of grievances. It is pointed out an appeal is provided to the Revenue Officer from the orders of the Assistant Revenue Officer. There is a further appeal to the Executive Committee of the District Council. These forums are enumerated by the respondents to direct the writ petitioner to approach the specified authorities for relief.

6. We see in the Act 1 of 1979 words "Adhi", "Adhiar" "Mortgage" and "Paikas", are defined. Under section 3 of the Act 1 of 1979 amount due to a creditor under the Paikas system is allowed to be realised from the cultivator since it is abolished. The realisation is to be made under Adhi system defined in the Act at the rate of 3 or 5 maunds of paddy per bigha as determined by the Assistant Revenue Officer. The value of paddy is adjusted towards repayment of debt. Thus after full repayment of the loan the land is released in favour of the settlement holder who are invariably the tribals of the District.

7. In this case it is not necessary to consider the grounds of attack made in the petition as in analogous District Council where a similar legislation was made by the United K & J. Hills District Council, this Court in AIR 1968 Assam & Nagaland

43 (Sitimon vs. District Council, United K & J Hills) held that under the Sixth Schedule of the Constitution the District Council is not competent to legislate on transfer and alienation of land. (The Paikas system was held to be a transfer of land and not related to the mere user of the land).

8. A Division Bench of this Court in AIR 1960 Assam 131 (Mrs. C.N. Lyod vs. District Council, United Khasi & Jaintia Hills and others) in this regard held the land comprised in an autonomous district does not belong to the District Council in the sense it is owned by the State of Assam not by the District Council. Though in that case there is no elaborate discussion touching this aspect of the issue but that decision holds the field as the decision was not dissented or doubted for over a period of three decades.

9. The decision (AIR 1968 Assam & Nagaland 43) on appeal to the Supreme Court was affirmed in AIR 1972 SC 787 (Dist. Council of U. K. & J Hills vs Sitimon). The Supreme Court held that the District Council was not competent to legislate on transfer of land but was competent to legislate on the subject of allotment occupation or use of land only. Those were the powers conferred and it was held an autonomous District is not to legislate on the subject of "transfer of land" in which case different phraseology may have been used. It was further held the legislative power conferred on bodies like the District Council are to be interpreted strictly within the limits of the plain language used and stated "We are not concerned with the provisions conferring plenary nature of legislative power on the Parliament and State Legislatures" in which case the Supreme Court opined the conclusion would have been different. This reasoning was elaborated by the Supreme Court. "The District Councils unlike the Parliament and State Legislatures are not intended to be clothed with a plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the limits which circumscribe their power. It is beyond the domain of the Courts to enlarge constructively their power to make laws." The ratio in this case was affirmed in AIR 1986 SC 1930 (District Council of Jowai Autonomous District vs. Dwet Singh). The District Councils thus were held not to possess power to make laws on Paikas and Mortgages and to that extent the provisions of the impugned Act was declared ultra vires of the Constitution of India.

10. In this regard the learned counsel for the District Council referred to the case in AIR 1988 SC 1626 (P.Rami Reddy and other vs. State of Andhra Pradesh) where transfer of immovable property in Scheduled areas by nontribal in favour of another nontribal was also prohibited. The reasoning in that case is sought to be adopted in the instant case by the counsel for the District Council. We may mention the reasoning in the case of Rami Reddy are inapplicable for obvious reasons to the situation in this case. Therefore it is not necessary to consider in detail the decision of that case.

11. For all the aforesaid reasons the definition of "Mortgage" in section 2 (f) and "Paikas" in section 2 (h) are declared ultra vires of the Constitution of India and

it is further declared the procure prescribed under section 3 is not applicable to Paikas and Mortgages. This writ petition is allowed with the above declaration. No costs.

J. Sangma, J. I agree.