

(1989) 07 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rules No's. 22 of 1981 and 312 of 1982

Udaldas Panika Prallad Chandra Das and Others

APPELLANT

Vs

Karbi Anglong District Council and Others

RESPONDENT

Date of Decision : 05-07-1989

Acts Referred:

Constitution of India, 1950 — Article 162, 294, 295

Citation : (1990) 1 GLR 78

Hon'ble Judges : S.N. Phukan, J;B.P. Saraf, J

Bench : Division Bench

Advocate : N.M. Lahiri, B.M. Mahanta, M.Z. Ahmed and A.K. Goswami, for the Appellant; P.K. Goswami, General, U. Baruah, Government Advocate and B. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—By this common judgment and order we propose to dispose of Civil Rules Nos. 22/81 and 312/82.

2. By invoking powers under Rule 18(3) of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 the Karbi Anglong District Council started eviction proceeding against the present Petitioners. It has been alieged by the Petitioners that they are in occupation of the land in question for more than 60/70 years by paying house tax as required under law. Being aggrieved, Petitioners have approached us u/s 226 of the Constitution.

3. We have heard Mr. N.M. Lahiri, learned Advocate General on behalf of the Petitioners and Mr. B. Chaudhury, learned standing Counsel on behalf of Respondent District Council. Considering the importance of the matter this Court issued notice on the learned Advocate General, Assam and we have also heard him. Learned Advocate General, Assam has urged that the present petition can be disposed of without considering all the points urged by Mr. Lahiri on other grounds.

4. Before we proceed to consider the impugned notices a point was urged before us regarding sovereign right over land in an autonomous district that is whether land vests in the State or in the District Council. This point was set at rest by a Division Bench of this Court in *Tarini Das v. Karbi Anglong District Council* (1989) 1 GLR 147 wherein in para 8 of the report it was held as follows:

A Division Bench of this Court in AIR 1960 Gau 131 (*C.N. Lyod v. District Council, United Khasi and Jaintia Hills and Ors.*) 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 and 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.

5. We would, however, like to add that under the Government of India Act, 1935 the areas comprised within the Autonomous District in question were Partially Excluded area and as such the sovereign right over land vested in the Crown. After the lapse of paramountcy such properties and assets have vested in the Union and the corresponding states respectively. This position has been made clear in Articles 294 and 295 of the Constitution. According to Article 162 of the Constitution executive power of the State shall extend to the matters in respect of which the Legislature of the State has power to make laws. Entry 18 of the List II-State List of the VII Schedule to the Constitution the land is a State subject. Therefore, the right over land vests in the State.

6. Clause (a) of sub-para (1) of paragraph 3 of the VI Schedule to the Constitution empowers the District Council for an autonomous district to make law with respect to the allotment, occupation or use, or the setting apart, of land other than any land which is a reserved forest, for the purpose of agriculture or crazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of village or town. This legislative power of the autonomous District Council came up for consideration before the Apex Court in the *District Council of United Khasi and Jaintia Hills and Others, etc. Vs. Miss Sitimon Sawian etc.*, and it was held that the District Councils unlike the Parliament and the State Legislature are not intended to be clothed with plenary power of legislation and their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they cannot do anything beyond the limits which circumscribe their power. This view was reiterated in the *District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc.*, and their Lordships held that the powers enjoyed by these District Councils cannot be equated with the plenary power enjoyed by a legislature, As the power of District Council to make laws in respect of land is limited to the subjects mentioned in Clause (a) of sub-para (1) of paragraph 3 of the Sixth Schedule to the Constitution ownership of land cannot vest with the District Council.

7. Mr. Lahiri has urged that though the Respondent namely, Karbi Anglong

District Council by enacting the Mikir Hills (Land and Revenue) Act, 1953 and the Mikir Hills (Land and Revenue Amendment) Act, 1958 has made applicable the Assam Land and Revenue Regulation, 1886 and also the Rules framed thereunder in the entire Autonomous District, the District Council has no power to make applicable all the provisions including the relevant Rules of the said Assam Land and Revenue Regulation, 1886 in view of the limited legislative power of the District Council under the Sixth Schedule. Mr. Lahiri has further urged that Rule 18 of the Settlement Rules cannot be invoked by the District Council to evict the present Petitioners from the land in question as no such power is vested in the District Council. In view of submission of Mr. Goswami, learned Advocate General, Assam we do not propose to enter into this controversy at this stage as in our opinion all the petitions can be allowed on other grounds urged by Mr. Lahiri.

8. According to Mr. Lahiri all the impugned notices are liable to be quashed on two grounds, namely, these are extremely vague and violative of the principles of natural justice.

9. In the impugned notices the description of the land is absolutely vague. It is simply mentioned that the land is sarkari land situated in a particular mouza. No boundaries have been given. On the top of that the Petitioners have annexed to the petitions receipt showing payment of house tax. There is no dispute that Petitioners were not given any reasonable opportunity to show cause for the proposed eviction. We are, therefore, of the opinion that the impugned notices are vague, arbitrary and is violative of the principle of natural justice.

10. For what has been stated above we quash the impugned notices and set aside the eviction proceeding.

11. In the result, petitions are allowed, No costs.