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STATE OF ASSAM AND ORS.
v.
SMT. RADHA KANOO AND ORS. ETC.

MARCH 1, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Assam Land and Revenue Regulation & Regulation 3(b).

Settlement Rules: Rules 16,17,17(A),18,39 and 122.

Assam Public Premises(Eviction of unauthorised occupants) Act,1976:

State of Assam—Government waste land—Right of entry into possession—Necessary conditions under Rule 16—Rule 16 held mandatory—Any person who enters into possession otherwise than pursuant to Rule 16 is encroacher and tress passer—Such a person is liable to ejection under rule 18—Right of Mauzdar to collect Touzi of miscellaneous land revenue—Held Mauzdar is a local revenue collection agent of Government for collecting Revenue from a person who has lawfully entered into possession—He has no power to collect revenue from a trespasser nor does it bind the Government—Administrative instructions issued to the Mauzdar for revenue collection do not override the statutory regulations and rules.

Administrative Law—Executive instructions cannot override statutory provisions.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4484 Of
1996 Etc.

From Judgment and Order dated 26.3.93 of the Assam High Court
in C.R. No.1243 of 1987.

S.N. Chowdhary, S.A. Syed for the Appellants.

P.K.Goswami, Rajiv Mehta, Kailash Vasdev and Sanjay Parikh for
the Respondents.

The following order of the Court was delivered :

Leave granted.

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We have heard the learned counsel for the appellant. Though the respondents have been served they are not appearing either in person or through counsel. However, we have taken the assistance of Shri P.K. Goswami, learned senior counsel who has rich experience in this branch of law in the State of Assam. The only question is: whether the respondents have acquired any right in the land in encroachment Case No.5/83 and 57/86? Proceedings in the said case were quashed by the Guwahati High Court in Civil Rule No.1243/87 by judgment dated March 26, 1993 which is being followed in all other cases. The High Court has held that the respondents are not encroachers. Touzi Bahira Revenue is not a panel rental but the respondents having been found in possession of the land they cannot be ejected under Rule 18 of the Settlement Rules except after due ejectment in accordance with the law. The question, therefore, is: whether the view of the High Court is correct in law?

Shri Goswami contends that when mauzadar collects the rent from the occupants it is a collection within the meaning of Rule 39 of the Executive instructions. The mauzadar, as contemplated under Rule 122 of the instructions, is enjoined to keep an account of collections and to deposit the same in the treasury once in four months. On the collections so made, the persons are entitled to remain in occupation until they are either confirmed with the lease or duly ejected in accordance with the law. The question, therefore, is: what is the status the respondents acquired under the regulation, the rules or the instructions read together? It is seen that Regulation 3(b) of Assam Land and Revenue Regulation (for short, the 'regulation' defines an 'Estate'to include :-

"(1) any land subject, either immediately or prospectively, to the payment of land revenue for the discharge of which a separate engagement has been entered into. Section 12 of the Regulations gives power to the State to make regulations:-

(i) for disposal by way of grant, lease or otherwise of such land,

(ii) the ejectment of any person who has entered into unauthorised occupation of such land, and

(iii) the disposal of any crop raised, or any building or other construction erected without authority on such land."

Rule 16 of the Rules framed under the Regulation prescribes that lease shall be issued on written application only, and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by Deputy commissioner has been granted to him, pending issue of such lease, to enter into possession. Rule 17 imposes liability to pay revenue on such settlement. Rule 17(A) gives power to the Deputy Commissioner to increase or reduce at any time, either on an application or of his own, the revenue in proportion to the change in area of the lease as a result of gain by alluvion or by dereliction of a river, or loss by diluvion, during the currency of the settlement. In other words, right of entry into possession of Govt. land is hedged with a written lease or permission by Dy. Commissioner. They are entitled to pay revenue in terms of lease or permission. Any person who enters into possession otherwise than pursuant to Rule 16 is an encroacher into Govt. vacant land. Rule 18(1) provides thus:

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

Rest of the rules are not material since they deal only with procedural aspects.

It is true, as pointed out by Shri Goswami that mauzadars have been given right to collect touzi of miscellaneous land revenue in the appropriate cash form prescribed in the instructions and that on collection the mauzadar is enjoined to deposit the collection so made in the manner prescribed. The question is: whether the persons who enter into possession otherwise than in accordance with Rule 16 would be recognised to be a person to have duly entered into possession of the Govt. waste land and thus entitled to be recognised in touzi possession of the land, even though they may have paid revenue to mauzadars? The mauzadar as an agent of the Govt. cannot clothe himself with any higher right than is given as an agent to collect revenue on behalf of the Government and has no power to create any right under Rule 16. His collection of land revenue from persons other than those covered by Rules 16, 17 and 17A would not confer any right on such persons in unauthorised occupation. At best such collection must be only illegal collection and it does not bind the Government. A reading of Rule 16 clearly indicates its mandatory character. The person

is entitled to enter into possession in two characters, namely, settlement of a written lease granted by the Dy. Commissioner pursuant to a written application; or by a written permission given by the Dy. Commissioner pending settlement. In either of the events, a person is entitled to enter into possession of Government waste land and from such person the mauzadar is entitled to collect the revenue, as contemplated in terms of lease. Since rule 17 or 17A gives express power to the Dy. commissioner either to increase the revenue as specified in the lease or to reduce the revenue, as circumstances warrant under rule 17A this would indicate that the mauzadar is a local revenue collection agent of the Government to collect revenue only in respect of the persons who rightly and lawfully entered into possession of the lands pursuant to orders in Rule 16. No other person has got any legitimacy to make any payment to the mauzadars. Nor Mauzadar has any power to collect such land revenue from the trespasser; nor shall it bind the Government which is contrary to the provisions of Rule 16. Any other interpretation would be clearly repugnant to the scheme of the relevant provisions of the Regulation and the Rules. The administrative instructions issued to the mauzadars for revenue collection do not override the statutory operation of the Regulation and the Rules nor do they give legitimacy to illegal acts of mauzadar for which he would be liable to disciplinary action. The high court, therefore, was clearly in error in holding that Touzi Bahira Revenue collected by mauzadar would amount to collection of revenue and that the possession of such person would not become unlawful and no action under Rule 18 is called for unless action is taken to terminate a non-existent lease or to pass any proper order and then to recover possession of lands from encroacher in accordance with the provisions of the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1976.

The appeal is accordingly allowed but in the circumstances without costs.

C.A. Nos. (@ SLP (C) Nos. 548/95 and 14121/94/96)

With regard to other cases, we think that since it is only an interim order passed by the High Court and no reasons have been recorded on the nature of the possession of the respondents, the matter is remitted to the Dy. Commissioner concerned. He would issue notice to the respondents and after considering their objections, decide whether they have any right

acquired under Rule 16, as held in this order and then to take action accordingly. The order of the High Court is set aside. Similarly in Civil Appeal @ S.L.P. (C) 14121/94, the matter is remitted to the Deputy Commissioner concerned who would give notice to the respondents, decide whether their possession is in accordance with Rule 16 and would then take action thereon.

The appeals are accordingly allowed. No costs.

Appeals allowed.