

A

SWAMI NATH CHOUHAN AND ORS.

v

UNION OF INDIA AND ORS.

DECEMBER 18, 2002

B

[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

*Assam Settlement Rules :*

C

*r.18—Land acquired by Union of India for defence purposes—Later, land reconveyed to landowner but possession not delivered—Notice under r.18 issued to respondents 5 to 7—Suit filed by R.5 to R.7 for declaration of their tenancy of suit land contending that they were tenants protected under s.5 of Assam Non-Agricultural Urban Areas Tenancy Act, 1955—Suit and appeal dismissed—R5 to R7 held to be encroachers—Again notice under r. 18 issued to them—Notice quashed in writ petition—However, writ appeal of Union of India allowed by Division Bench of High Court upholding the notice—Held, r.18 empowers the Government to evict any person from land over which no person has acquired right of a proprietor, land holder or settlement holder—Suit land was not so acquired—Ejectment of appellants w/r. 18 is under due process of law—There is no illegality in the order of Division Bench of High Court—Appeal dismissed—Assam Land and Revenue Regulations, 1886—Assam Non-Agricultural Urban Areas Tenancy Act, 1955—s5.*

D

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8549 of 1994.

F

From the Judgment and Order dated 16.11.1993 of the Gauhati High Court in Writ Appeal No. 45 of 1993.

Manoj Saxena and Pravir Choudhary, for the Appellants.

G

V.K. Sidatharan, Rajiv Mehta and Mrs. Rekha Pandey for B.V.B. Das, for the Respondents.

The following Order of the Court was delivered:

H

The appellants claimed to be the tenants of land measuring 4 Bighas,

4 Kathas and 15 Lechas at Hukanpukhuri (for short, 'the suit land'). The suit land originally belonged to the father of respondents 5 to 7. In 1943, the first respondent (Union of India) acquired the suit land for defence purposes. The case of the appellants is that they entered into agreement of lease of the suit land with respondents 5 to 7 in 1947. However, on September 17, 1976, the first respondent reconveyed the suit land in favour of respondents 5 to 7 but did not hand over the possession to the said respondents. Perhaps for that reason, the 4th respondent issued ejectment notice against the appellants under rule 18 of the Assam Settlement Rules framed under the Assam Land and Revenue Regulations, 1886. While so, the appellants filed suit—T.S. No. 111/78—On the file of Munsiff No. 1, Tinsukhia for declaration of their tenancy of the suit land and confirmation of possession over it. The trial court decreed the suit in favour of the appellants on June 4, 1985. Aggrieved by judgment and decree of the trial court, the first respondent filed an appeal—T.A. No. 77/86—before the Additional District Judge, Tinsukhia. On December 21, 1987, the learned Additional District Judge partly allowed the appeal and held that the appellants herein were not tenants but encroachers and that they could be evicted by due process of law. That judgment was assailed unsuccessfully by respondents 5 to 7 in Second Appeal No. 67/88 before the High Court. After dismissal of the second appeal on July 20, 1988, fresh proceedings were initiated against the appellants by the State Government under Rule 18 of the Assam Settlement Rules. The notice issued by the State Government (Respondents 2 to 4) on June 19, 1992 was assailed by the appellants in writ petition—C.R. No. 1912/92—before the High Court of Assam. A learned single Judge of the High Court quashed the impugned notice and allowed the writ petition on February 18, 1993. Respondents 5 to 7 carried the matter before a Division bench in Writ Appeal No. 45/93. The Division Bench allowed the writ appeal, set aside the judgment of the learned single Judge and upheld the validity of the impugned notice dated June 19, 1992. That judgment and order of the Division Bench is under challenge in this appeal.

Mr. Manoj Saxena, the learned counsel appearing for the appellants, vehemently contends that the appellants are protected under section 5 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955, therefore, they cannot be evicted by issuing notice under rule 18 of the Settlement Rules. A perusal of the said provision shows that it protects tenants from eviction. To claim the protection of the said section, the appellants must show that they are the tenants. There are more reasons than one to hold that the appellants are not the tenants. First, the appellants claim tenancy through respondents

A s 5 to 7 who had no right, title or interest in the suit land in 1947 as it has been, noted above that the suit land was already acquired by the first respondent as long back as in 1943. Secondly, the appellants were held to be encroachers in the earlier civil proceedings. Thirdly, the father of respondents 5 to 7 who was the original owner of the suit land, died in 1960. It is only thereafter that respondents 5 to 7 came into the picture, as such they could not have leased out the suit land to the appellants in 1947. Be that as it may, the proceedings which gave rise to this appeal were initiated under rule 18 of the Settlement Rules which reads thus:

C “18. Ejectment—(1) 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.”

D A perusal of the rule shows that it empowers the Deputy Commissioner to evict any person from land over which no person has acquired the right of a proprietor, landholder or settlement-holder. The Division Bench of the High Court, having referred to rule 18, held that the suit land was not acquired by a proprietor or landholder or settlement-holder within the meaning of the Settlement Rules.

E It is next contended that in the earlier suit proceedings, it was held that the appellants could be evicted by due process of law. In our view, ejecting the appellants under rule 18 of the Settlement Rules cannot but be due process of law. In view of this position, the fact that as on the date of issuance of the impugned notice, the first respondent did not have title to the land in question is immaterial.

F It is brought to our notice by the learned counsel for respondents 5 to 7 that after the order under challenge in this appeal was passed on November 16, 1993, the State Government took over the possession of the land in question and handed over the same to respondents 5 to 7 on March 25, 1994. These facts are set out in the counter affidavit but they were not traversed by filing a rejoinder affidavit. On December 1, 1994, this Court passed the order directing the parties to maintain status quo, which was long after the alleged handing over of possession. However, the appellants claim to be in possession and we do not propose to express any opinion on this aspect.

For these reasons, we find no illegality in the impugned order of the Division Bench of the High Court. The appeal fails and it is, accordingly dismissed. A

There shall be no order as to costs.

The application for deletion of the name of Union of India from the array of the respondents is dismissed. B

R.P.

Appeal dismissed.