

(1999) 06 GAU CK 0004**Gauhati High Court****Case No:** Civil Revision No. 428 of 1992

Rameswar Rai

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: June 22, 1999**Acts Referred:**

- Assam Land and Revenue Regulation, 1886 - Rule 18, 18(2), 18(3)
- Civil Procedure Code, 1908 (CPC) - Section 115, 151
- Constitution of India, 1950 - Article 14, 226

Citation: (2001) 1 GLT 650**Hon'ble Judges:** A.P. Singh, J**Bench:** Single Bench**Advocate:** S.P. Roy and S.N. Debnath, for the Appellant; B.M. Sarma, for the Respondent**Judgement**

A.P. Singh, J.

The present revision has been filed by Sri Rameswar Rai, Petitioner herein u/s 115 CPC read with Section 151 of the CPC challenging the order dated 14.7.92 passed in Misc. Appeal No. 17/89 by Shri R.N. Dev, Asstt. District Judge No. 1, Guwahati whereby the learned Asstt. District Judge had set aside the order dated 20.12.88 passed by Sri L.C. Nath Munsiff No. 2, Guwahati in Misc. (J) Case No. 21/88 arising out of T.S. No. 19/88.

2. Consequent upon the issue of notice from the office of the SDO (Sadar) Pragjyotishpur, Panikheti on 4.3.86 under Rule 18(2) (3) of the Assam Land and Revenue Regulation for his eviction, the Petitioner approached this Court by way of filing a writ petition seeking to challenge the notice. This Court however instead of entering into the merits of challenge posed by the Petitioner against the notice disposed of the writ petition with a direction to the State Government to consider the Petitioner's application for settlement of the land for a reasonable period or for the settlement of some alternative suitable lands if possible. Getting no positive

response from the State Government, Petitioner approached the Civil Court by filing Title Suit No. 19/86 for seeking an injunction order against his eviction from the suit land in pursuance of the notice and sought preliminary injunction as to protect his possession over the land during the pendency of the suit. The trial court granted the interim injunction order on the ground that the Petitioner would suffer irreparable loss which shall not be able to be compensated in terms of money. Against the said order the State Government filed appeal challenging the legality of the order of interim injunction. In the appeal, the injunction order has been discharged. Hence, this revision.

3. In support of the revision, Sri S.P. Roy, learned Advocate made has argued that the trial court granted injunction order on consideration of various aspects including the *prima facie* case and balance of convenience of the Petitioner whereas the lower appellate court, without examining any of the relevant aspects of the case including *prima facie* case and balance of convenience, has illegally set aside the injunction order without application of mind. Learned Counsel further argued that since the Petitioner is occupying the land for many number of years for running brick kiln on it and have been paying huge revenue therefrom in the form of Sales Tax, land revenue and Royalty therefore it will not at all be feasible to evict the Petitioner as per the notice served on him by the SDO whereby contrary to law he has not been given an opportunity even to satisfy the SDO or the DC that his possession on the land covered by the notice is not illegal.

4. Mr. B.M. Sarma, learned Govt. Advocate supporting the impugned order has however contended that the Revision application of the Petitioner has no merit in as much as the learned Asstt. District Judge has passed a proper order which calls for no interference by this Court.

5. Having heard the learned Counsel for the parties, I do not find that sufficient reason exist to justify interference by this Court against the impugned order of the first appellate court whereby the prayer for grant of temporary injunction has been refused and the temporary injunction order granted in Petitioners favour by the trial court has been set aside. I state my reasons as under: The Petitioner has not been able to produce any materials either before the trial court or before the first appellate court to prove that the land in dispute was settled by the State Government with him. Therefore, there is complete absence of *prima facie* case (title) in favour of the Petitioner. So far balance of convenience is concerned simply because Petitioner has been carrying the business of manufacture of bricks in running a brick kiln on the land that does not by itself justify grant of injunction order or existence of balance of convenience in his favour because person who is a trespasser on Defendants land cannot claim injunction to protect his wrongful trespass over that land. No court will be justified in protecting trespass where the trespass on land is being removed by lawful means by the owner of the land. Therefore, lower appellate court has rightly discharged the injunction order which

was granted in Petitioners favour by the trial court. The revision petition on this ground has no merit which is liable to be dismissed. However, in view of the important aspect of the case whereto reference will follow hereafter. I do not think that the revision application should be dismissed without some relief being given to the Petitioner.

6. Perusal of the notice, translated copy whereof has been filed by the Petitioner as annexure 2 with the memo of revision petition, would disclose that it was issued to the Petitioner directing him to vacate the land. The notice reads as follows:

The SDC Chandrapur Circle has reported vide his report No. S.D.C.S.5/85/86/179 dated 1.3.86 that your encroached Govt. land as described in the schedule below and running bricks kiln. Hence, you are hereby directed to vacate the said land within 15 days from the date of receipt of this notice and stop the manufacturing of bricks failing which necessary action will be taken as per law.

7. The notice does not disclose that before its issue determination/adjudication was made by a competent authority to hold that possession of the Petitioner over the land covered by notice was unauthorised and he was encroacher over public land hence liable to be forcibly evicted there from by having resort to the power Under Rule 18(2) and (3) of the Rules framed under the provisions of the Assam Land and Revenue Regulation, 1886. The notice, on the contrary appears to have been issued on the basis of a report submitted by SDC, Chandrapur Circle. In the present state of law especially in view of the guarantees provided to the people by Article 14 of the Constitution, it is not possible now for the State Government or for its officers to adopt a course of action which has been adopted by means of the notice Under Rule 18. Provisions of Rule 18 have therefore to be read in the manner which confirms to reason and rules out arbitrary exercise of power by the State or by its instrumentalities. Therefore the notice has to call upon the encroacher to show-cause as to why his encroachment from Public land, which is covered by the notice, should not be removed. That would save Rule 18 from the vice of Article 14 of the Constitution. Therefore, it was necessary for the Deputy Commissioner or for the SDO, who so ever may have issued the notice, to have issued the notice on the basis of the report, which appears to have been received by him from the SDC, Chandrapur Circle, first calling upon the Petitioner to show cause as to why he should not be evicted from the land in question. Resort to Rule 18 cannot be had to evict an alleged trespasses over public land without first giving him an opportunity of hearing to prove that his possession over the land is not unlawful.

8. Though in the present proceedings I am not sitting in writ jurisdiction but I do not think High Court should have any compunction in exercising its extra-ordinary powers under Article 226 of the Constitution where situation requires it. The power has been conferred mainly for protecting people from illegal, unreasonable and tyrannical orders or actions of the State against which no remedy is readily available to the people. Present case to my mind is one such case where this Court should

and must deviate from its routine practice and must exercise its power under Article 226 to save the Petitioner from the harshness of the notice (Annexure-2 to the memo of to the revision). The Assam Land Revenue Regulation, 1886 or the Rules made under it in which the notice has been issued to the Petitioner offers no remedy. Remedy if at all of suit is hardly effective to meet the harshness of the notice. This Court regrets that Petitioners earlier writ petition was disposed of by it without adverting to these aspects of the case. Therefore considering all the aspects of the case. I invoke the power under Article 226 of the Constitution and direct that the impugned notice, Annexure-2 to the Revision petition, which has been issued by the SDO (Civil) Pragjyotishpur, would be treated as a notice of show cause requiring the Petitioner to file his reply as to why he should not be evicted from the land which is covered by that notice. In case Petitioner files his reply/show cause before the said SDO (Civil) or before the DC concerned, as the case may be, within a period of 3 weeks from now, the SDO (civil) or the appropriate authority as the case may be, shall pass appropriate orders thereon after affording Petitioner opportunity of filing evidence in support of his case and giving him hearing if he so wants. The authority whosoever may happen to pass orders on Petitioners show-cause against the notice shall give reasons to support his order. Petitioner undertakes to withdraw the suit within a period of 3 weeks from now. In case the suit is not withdrawn, the direction given hereinabove by way of relief to the Petitioner shall stand vacated and the SDO shall be entitled to proceed to adopt the course of action that may be open to him under the law. Till the expiry of period of one month after passing of the order by the SDO on the show-cause of the Petitioner, his possession over the land shall not be disturbed. The Petitioner shall however not run his bricks kiln on the land hereafter.

9. With the above directions and observations, this Revision petition is disposed of finally.